



# After the Ten Commandments: The Laws of the Covenant Code

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# Killing a slave

וְכִי יִכֶּה אִישׁ אֶת עַבְדּוֹ אוֹ אֶת  
אֲמָתוֹ בַּשֵּׁבֶט וּמֵת תַּחַת יָדוֹ נָקָם  
יִנָּקֵם.

רש"י: נקם ינקם – מיתת סייף.  
וכן הוא אומר: חרב נקמת נקם  
ברית (ויקרא כ"ו: כ"ה)

When a man strikes his slave,  
male or female, with a rod, and he  
dies there and then, he must be  
avenged.

Rashi: HE MUST BE AVENGED –  
This means execution by the  
sword. For thus does Scripture  
state, (Leviticus 26:25) "a sword  
avenging the vengeance of my  
covenant."

## Ibn Ezra and the Karaites

המינין אמרו: כי פירוש  
"נקם ינקם" – נקמה גדולה  
ליסר אותו. . . . וכל זה  
היה קשה עליהם, שיהרג  
האדון בעבור מות העבד.

והנה אשיב עליהם. . . .

The heretics say that the meaning of נָקָם יִנְקָם (he must be avenged) is that great vengeance shall be exacted, namely, that the master shall be beaten. . . . Their real difficulty lies in accepting the idea that the master would be executed because of the death of a slave.

I will now answer them. . . .

## Ibn Ezra and the Karaites (cont.)

והנה כל החולקים על  
החכמים בעל כרחם יסמכו  
עליהם במלת נקם ינקם,  
שהנקמה על דרכים רבים.  
והנה לא תועיל להם  
הסברא במקום הזה.

All those who dispute the words of our sages are forced to rely on them with regard to the phrase נקם ינקם (he must be avenged), for vengeance takes many forms. Logic will not help them in this case.

# Encyclopedia Britannica Master-Slave Relationship

An owner could kill his slave with impunity in Homeric Greece, ancient India, the Roman Republic, Islamic countries, Anglo-Saxon England, medieval Russia, and many parts of the American South before 1830.

... The Code of Justinian [6<sup>th</sup> century CE] changed the definition of the slave from a thing to a person and prescribed the death penalty for an owner who killed his slave by torture, poison, or fire. Spanish law of the 1260s and 1270s denied owners the right to kill their slaves.

# Two texts about assessing murder culpability

**יח** וְכִי יִרְיֹבּוּ אֲנָשִׁים וְהִכָּה אִישׁ  
אֶת רֵעֵהוּ בְּאֶבֶן אוֹ בְּאֶגְרֹף וְלֹא  
יָמוּת וְנָפַל לְמִשְׁכָּבוֹ. **יט** אִם יָקוּם  
**וְהִתְהַלֵּךְ בַּחוּץ עַל מִשְׁעַנְתּוֹ** וְנִקָּה  
הַמִּכָּה רַק שְׂבִיתוֹ יִתֵּן וְרִפְאוֹ יִרְפֵּא.

**כ** וְכִי יִכֶּה אִישׁ אֶת עַבְדּוֹ אוֹ אֶת  
אֲמָתוֹ בַּשֵּׁבֶט וּמֵת תַּחַת יָדוֹ נִקָּם  
יִנְקָם. **כא** אֲךָ אִם יוֹם אוֹ יוֹמִים  
**יַעֲמֵד** לֹא יִקָּם כִּי כֶסֶף הוּא.

**18** When men quarrel and one strikes the other with stone or fist, and he does not die but has to take to his bed—**19 if he then gets up and walks outdoors upon his staff**, the assailant shall go unpunished, except that he must pay for his idleness and his cure.

**20** When a man strikes his slave, male or female, with a rod, and he dies there and then, he must be avenged. **21 But if he survives a day or two**, he is not to be avenged, since he is the other's property.

## Rashbam on the two texts

אם יקום והתהלך וגו' –  
ואם ימות, אפילו לזמן  
מרובה, מות יומת מכהו.

אבל בעבדו אינו חייב אלא  
מת תחת ידו, אבל אם יום  
או יומים יעמוד – פטור.

IF HE THEN GETS UP AND WALKS:  
But [if he does not get up and  
walk but rather] dies [as a result  
of the blow] even a long time  
later, then the one who struck him  
shall be put to death.

However, with his slave he is not  
culpable unless the slave (20) DIES  
THERE AND THEN, but (21) IF HE  
SURVIVES A DAY OR TWO then the  
owner is not culpable.

## Rashbam/Shadal: And why?

רשב"ם: כי כספו הוא – ודינו  
להכותו דרך תוכיחה.

Rashbam: SINCE HE IS THE  
OTHER'S PROPERTY: And his  
owner is entitled to beat him for  
the sake of discipline.

שד"ל: רשאי הוא ליסרו, גם  
רחוק הוא שנתכון להמיתו  
שהרי מפסיד ממונו.

Shadal: SINCE HE IS THE OTHER'S  
PROPERTY: and he is allowed to  
discipline him. Also it's hard to  
imagine that he intended to kill  
the slave since he would be losing  
his investment.



Relevance to  
understanding order of  
laws in Exodus 21?

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## “With a rod (בַּעֲבֹט)”

רש"י: בשבט – בשיש בו כדי  
להמית הכתוב מדבר. (מכילתא)

רשב"ם: בשבט – בדבר שאדם  
רגיל להכות את עבדו להוכיחו.  
אבל בחרב, לפי הפשט: אפילו  
לאחר יום או יומים, אם ימות,  
חייב מיתה, שאין זה דרך  
תוכיחה אלא דרך רציחה.

Rashi: WITH A ROD – Scripture speaks of a rod that is capable of inflicting death.

Rashbam: WITH A ROD: I.e. with an instrument with which a man is wont to strike his slave to discipline him. But, following the plain meaning of Scripture, if he struck him with a sword, then even if the slave were to die *after* A DAY OR TWO, the owner would be liable for the death penalty. A sword is not an instrument of discipline, but an instrument of murder.

## Rambam, Laws of Murder 2:14

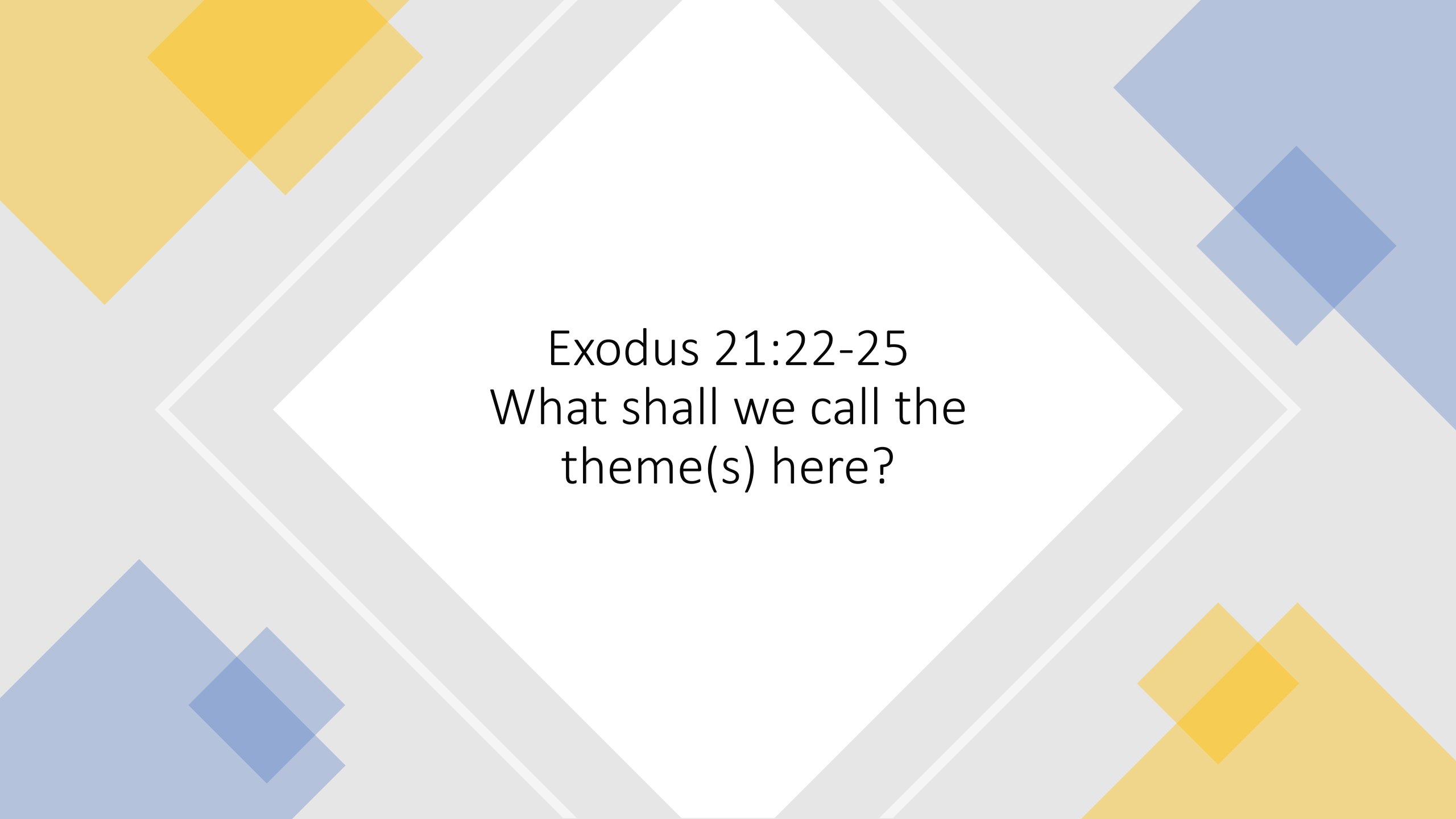
יִרְאֶה לִי שֶׁהִמְכָּה אֶת עַבְדּוֹ  
בְּסִכִּין וּסְיִיף אוֹ בְּאֶבֶן  
וְאֶגְרוֹף וְכִיּוֹצֵא בֵּהֶן וְאִמְדּוֹ  
לְמִיתָה וּמֵת אִינוֹ בְּדִין יוֹם  
אוֹ יוֹמִים, אֲלֵא אִפִּי' מֵת  
לְאַחַר שָׁנָה נִהְרַג עָלָיו,

It appears to me that if someone struck their slave with a knife, a sword, a stone, or an אגרוף, or anything of that nature, and the injured party was assessed as being in mortal danger, and then later died, the leniency of “a day or two” does not apply. Even if the slave were to die a year later it would be a capital crime.

## Rambam (cont.)

לכך נאמר בשבט, שלא  
נתנה תורה רשות  
להכותו אלא בשבט  
ומקל ורצועה וכיוצא  
בהן, ולא בהכאת  
רציחה.

That is why the verse says,  
“with a rod,” for the Torah  
gave the owner  
permission to strike the  
slave only with a rod or  
stick or strap, but not with  
a murderous striking.



Exodus 21:22-25  
What shall we call the  
theme(s) here?

## Exodus 21:22-25

וְכִי יִנְצוּ אַנְשִׁים וְנִגְפוּ אִשָּׁה הָרָה  
וַיֵּצְאוּ יִלְדֶיהָ וְלֹא יִהְיֶה אֲסוֹן עַנּוֹשׁ  
יַעֲנֹשׁ כְּאִשֶּׁר יֵשִׁית עָלָיו בְּעַל הָאִשָּׁה  
וְנָתַן בְּפִלְלִים.

When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning.

וְאִם אֲסוֹן יִהְיֶה וְנִתְּתָה נַפְשׁ תַּחַת  
נַפְשׁ. עַיִן תַּחַת עַיִן שֵׁן תַּחַת שֵׁן יָד  
תַּחַת יָד רֶגֶל תַּחַת רֶגֶל. כְּוִיָּה תַּחַת  
כְּוִיָּה פֶצַע תַּחַת פֶּצַע חֲבוּרָה תַּחַת  
חֲבוּרָה

But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.

# Intentional/Unintentional?

וְכִי יִנְצוּ אַנְשֵׁים וְנִגְפוּ אִשָּׁה

רש"י: וכי ינצו אנשים – זה עם זה, ונתכוון להכות את חברו, והכה את האשה.

When men fight, and one of them pushes a woman

Rashi: WHEN MEN FIGHT with each other, and one intended to strike the other and inadvertently struck the woman.

# Rambam/Rabad, Laws of Murder 4:1

**רמב"ם:** המתכוין להרוג את זה והרג  
את זה פטור ממיתת בית דין

**Rambam:** If one intends to kill one person but [mistakenly] kills a different person it is not a capital crime.

**ראב"ד:** כר"ש הוא זה ואין הלכה כרבי  
שמעון

**Rabad:** This is the opinion of Rabbi Shimon [in the Talmud], but halakhah does not follow Rabbi Shimon's opinion.