

# TRACT SANHEDRIN (SUPREME COUNCIL).

## CHAPTER I.

RULES AND REGULATIONS CONCERNING THE APPOINTMENT OF JUDGES IN CIVIL AND CRIMINAL CASES. WHICH ARE CONSIDERED CIVIL AND WHICH CRIMINAL. HOW MANY ARE NEEDED TO THE INTERCALATION OF A YEAR AND OF MONTHS; TO APPRAISE CONSECRATED REAL ESTATE AS WELL AS MOVABLE PROPERTIES; AND IF AMONG THE APPRAISERS MUST BE PRIESTS, AND IF SO HOW MANY. THE NUMBER OF PERSONS NEEDED TO ADD TO THE CITY FROM THE SUBURBS OF JERUSALEM. WHAT MAJORITY IS NEEDED TO ACCUSE AND WHAT TO ACQUIT. HOW MANY PEOPLE MUST BE IN A CITY THAT A COURT OF TWENTY-THREE JUDGES SHOULD BE ESTABLISHED.

MISHNA *I*: To decide upon the following cases, three persons are needed (the Gemara explains for which common and for which judges): Civil cases, robbery, wounds, whole damages and half, double amount and four and five fold payments; 1 and the same in the case of forcing, seducing, and libel (*i.e.*, an evil name, Deut. xxii. 19). So is the decree of R. Meir.

The sages, however, maintain: In the last case (libel) twenty-three are needed, as this is not a civil case, but a crime which may bring capital punishment. In the case of stripes, three. In the name of R. Ishmael, however, it was said: Twenty-three are needed. To the intercalation of a month and to proclaim a leap year, three. So is the decree of R. Meir.

Rabban Simeon b. Gamaliel maintains: It begins with three persons and is discussed by five, and the decision is rendered by seven. If, however, it was decided by three, their decision holds good.

The elders who had to lay their hands upon sacrifices [Lev.

iv. 15], and also in the case of the heifer [Deut. xxi. 3]--according to R. Simeon, three are needed, and according to R. Jehudah, five. At the performance of the ceremony of Halitzah and denial, three; to appraise the value of the plants of the fourth year (which must be redeemed), and the second tithe, of which the value in money is to be appraised, three; to appraise the value of consecrated articles, three; in cases of Arakhin (vows of value, men or articles), if movable property, three--according to R. Jehudah, one of them must be a priest; and if real estate, ten, and one of them a priest; and likewise to appraise the estimated value of men [Lev. xxvii.].

Crimes (which may bring capital punishment), twenty-three; in the case of Lev. xx. 15, twenty-three, as verse 16 reads: "Then shalt thou kill the woman and the beast"; and also in the

preceding verse: "The beast also shall ye slay." And the same is the case with the stoning of an ox, of which it reads [Ex. xxi. 29]: "The ox shall be stoned, and the owner . . . be put to death"--which means, as for the death of its owner twenty-three are needed, so also for the stoning of the ox.

The wolf, the lion, the bear, the tiger, the badgers, 1 and the serpent are killed by the judgment of twenty-three. R. Eliezer, however, maintains: Every one who hastens to kill them is rewarded. But R. Aqiba says: Twenty-three are needed.

A whole tribe, or a false prophet, or a high-priest, if they have to be judged for a crime which may bring capital punishment, a court of seventy-one judges is needed. The same number of judges is needed to decide upon battles which are not commanded by the Scriptures, and also for enlarging the city of Jerusalem by annexing its suburbs or free land; and the same is the case if it is necessary to enlarge the courtyard of the Temple. Also, the same number of judges is needed for appointing supreme councils to each tribe. A misled town [Deut. xii. 14] must also be condemned by seventy-one. However, a town which stands on the boundary cannot be condemned; nor three of them at one time at any place, but only one, or two.

The Great (Sanhedrin) consisted of seventy-one, and the small of twenty-three. Whence do we deduce that the great council must be of seventy-one? From [Num. xi. 16]: "Gather unto me seventy men." And add Moses, who was the head of them--hence seventy-one? And whence do we deduce that a small one, must be twenty-three? From [ibid. xxxv. 24 and 25]: "The

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congregation shall judge"; "And the congregation shall save." 1 We see that one congregation judges, and the other congregation saves--hence there are twenty; as a congregation consists of no less than ten persons, and this is deduced from [ibid. xiv. 27], "To this evil congregation," which was of the ten spies, except Joshua and Caleb. And whence do we deduce that three more are needed? From [Ex. xxiii. 2]: "Thou shalt not follow a multitude to do evil"--from which we infer that you shall follow them to do good. But if so, why is it written at the end of the same verse, "Incline after the majority, to wrest judgment"? 2 This means, the inclination to free the man must not be similar to the inclination to condemn; as to condemn a majority of two is needed, while to free, the majority of one suffices. And a court must not consist of an even number, as, if their opinion is halved, no verdict can be established; therefore one more must be added. Hence it is of twenty-three.

How many shall a city contain that it shall be fit for a supreme council? One hundred and twenty families. R. Nehemiah, however, maintains: Two hundred and thirty--so that each of them should be the head of ten families, as we do not find in the Bible rulers of less than ten.

GEMARA: Are not robbery and wounds civil cases? Said R. Abuhu: The Mishna means to explain the term "civil cases" by robbery and wounds; but to the admitting of debts or loans, three judges are not needed. And that so it should be understood, both expressions were needed; as, if it stated civil cases only, it would include loans, etc.; and if the expression "robbery," etc., only, one might also say the same is the case with loans, etc.; and the expression "robbery," etc., is because the main point wherein three judges are prescribed by the Scriptures is in cases of robbery [Ex. xxii. 7]: "Shall the master of the house be brought unto the judges." And

concerning wounds, it is the same whether a wound be in one's body or in his pocket (money), and therefore it begins with civil cases, and explains that cases like robbery are meant, and not common ones, etc. But whence are common loans excluded, that they do not need three? Did not R. Abuhu say: If two persons have judged in a matter of civil law, all agree that their

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judgment is of no value? Therefore we must say that the Mishna means to exclude loans and admission of debts--to exclude from three *established* judges; but three common men are needed. And the reason is what R. Hanina said: Biblically, investigation is needed of crimes as well as of civil cases. As it is written [Lev. xxiv. 22]: "One manner of judicial law shall ye have." But why was it said that civil cases do not need investigation? In order not to lock the door to borrowers. And Rabha explained this statement as meaning that in two kinds of civil cases--loans, etc.--three common people are needed; but in cases of robbery, etc., three established judges. And R. Aha b. R. Ekha said: Biblically, even one is fit to decide civil cases, as it is written [ibid. xix. 15]: "In righteousness shalt thou judge thy neighbor." But the rabbis enacted three, in order to prevent men of the market, who are ignorant of law, to undertake to judge cases. But is it not the same with three common men? Are they not men of the market? If three undertake to judge a case, it is highly probable that at least one of them knows something of law. But if so, let two who should make an error in judging not be responsible? If this should be enacted, then all the market people would undertake to decide upon things.

But what is the difference between Rabha and R. Aha b. R. Ekha (according to both, three common men are needed in cases of common loans, etc.)? They differ in the following, which was said by Samuel: If two commoners have decided upon loan cases, their decision is to be respected; but they are considered an impertinent Beth Din. Rabha does not hold with Samuel, and maintains: Their decision must not be respected. And R. Aha holds with him (Samuel).

"*Whole damages and half*," etc. Are not damages the same as wounds (both are to be paid)? Because it has to state half damages, it mentions also whole damages. Are not half damages also the same? The Mishna teaches concerning money which is to be collected according to the strict law and that which is only a fine. But this is correct only as to him who says that half damages are a fine; but as to him who says damages are strict law, what can be said? Because it has to state about the double amount, and four and five fold, which are more than the amount damaged, it mentions also half damages, which is less; and as half is mentioned, it mentions also the whole.

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Whence do we deduce that three are needed? From what the rabbis taught. It treats [Ex. xxii. 7 and 8] three times of judges; hence three are needed. So said R. Yachiha. R. Jonathan, however, maintains: The first expression "judges," as the beginning, must not be taken into consideration, as it is needed for itself, and therefore only the two expressions "judges," mentioned after, are to be counted, and the third one is added only because we do not establish a court of an even number (as said above).

The rabbis taught: Civil cases are to be discussed by three. Rabbi, however, said: It is discussed by five, so that the final decision should be by three. But even when there are three, is not the final decision made by two? He means to say, because the conclusion must be of three judges. This explanation was ridiculed by R. Abuhu, saying: On such a theory, then the great Supreme

Council ought to be one hundred and forty-one, to the end that the final conclusion should be made by seventy-one; and of a small council there ought to be forty-five, so that the conclusion should be made by twenty-three. And therefore we must say, as the Scripture reads, "Gather unto me seventy," it means the seventy ought to be at the time established. And the same is it in the case above cited, "the congregation shall judge, and the congregation shall save," meaning that at the time of judging there shall be ten. And in the same way are to be interpreted the just cited verses 7 and 8, that the plaintiff has to bring his case before three only. Therefore it may be said that the reason of Rabbi's decision is that because in the first verse is written, "The judges may condemn," as in the last, three is meant, so is it with the word Elohim, mentioned before, which means judges, also two is meant, which makes four; and one is added, so that they shall not be an even number--hence five. The rabbis do not care for this, as the term which is translated, "They may condemn," is written in the singular, and is only read in the plural.

The rabbis taught: Civil cases are decided by three; but if one is known to the majority of the people as an expert, he alone may decide. Said R. Na'hman: *e.g.*, I decide cases alone, without consulting any other rabbis. And so also said R. Hyya.

The schoolmen propounded a question: What does R. Na'hman mean by saying: As, for instance, I? Does he mean similar to him, who knew the laws traditionally and by common sense, and was also so empowered by the Exilarch; but if there

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was one who was equal to him in wisdom, but had no permission, his decision must not be respected? Or does he mean to say, if one were equal to him in wisdom he might so do without permission? Come and hear: Mar Zutra, the son of R. Na'hman, made an error in one of his decisions, and came to question R. Joseph whether he must make good the error. To which he answered: If he was appointed by the parties as a judge, he had not to pay; if not, he must pay. Infer from this that he who is appointed by the parties may so do even without permission from a higher court.

Said Rabh: If one wants to decide cases, and not be responsible in case of an error, he shall get permission from the Exilarch. And so also said Samuel.

It is certain that here in Babylon a permission from the Exilarch holds good for the whole country; and the same is the case from the Prince in Palestine, for the whole of Palestine and Syria. And it is also certain that if one has a permission from the Exilarch, he may practise in Palestine. As the following Boraitha states: The sceptre shall not depart from Judah. These are the exilarchs of Babylon, who rule over Israel with their sceptres. "And a lawgiver," etc., [Gen. xlix, 10] means the grandsons of Hillel, who are teaching the Torah among the majority of the people. The question, however, is, if with the permission of the princes they may judge in Babylon?

Come and hear: Rabba b. Hana had decided a case and erred, and came to question R. Hyya whether he had to pay, To which he answered: If the parties appointed you as a judge, you have nothing to pay; but if not, you have. Now, as Rabba, b. Hana had permission from Palestine, and would be obliged to pay if not appointed, it is to be inferred that the permission from Palestine did not hold good in Babylon. But is it not a fact that Rabba b. R. Huna, when he would quarrel

with the house of the Exilarch, used to say: I did not take any permission from you, but from my father, who had it from Rabh, and the latter from R. Hyya, and the latter from Rabbi? This was concerning worldly affairs only. But if the permission of Palestine does not hold good for Babylon, why did Rabba b. Hana take it? For the cities which are situated on the boundary of Palestine. How was the case when he took the permission? When he was about to descend from Palestine to Babylon, R. Hyya said to Rabbi: My brother's son, Rabba b. Hana, descends to Babylon. And Rabbi answered: He may teach the

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law, decide civil cases, and may also decide upon the blemishes of first-born animals which are prohibited to be slaughtered without a blemish on their body. [1](#)

When Rabh was about to go to Babylon, R. Hyya said to Rabbi: The son of my sister goes to Babylon. Said Rabbi: He may teach the law, decide cases, but not about blemishes of the first-born of animals.

Why did R. Hyya name the first "my brother's son" and the second "my sister's son"? And lest one say that so was the case, did not the master say: Abu, Hana, Shila, Marta, and R. Hyya all were the sons of Abba b. Aha Kharsala of Khaphri? (Hence Rabh, who was Abu's son, was also his brother's son--why did he say "my sister's"?)

Rabh, who was his brother's and also his sister's son (on his mother's side), he named him "the son of my sister"; but Rabba b. Hana was the son of his brother only. And if you wish, it may be said that R. Hyya named him "my sister's," because of his great wisdom. As it is written [Prov. vii. 4]: "Say unto wisdom, Thou art my sister." But why should Rabh not be permitted to decide about blemishes? Was he not wise enough for this? Is it not a fact that he was wiser than any of his contemporaries? Or was he not acquainted enough with the kind of blemishes? Did not Rabh say: I have dwelt eighteen months with a pasturer of cattle to learn the blemishes which are temporary, and those which remain forever? This was done that Rabba b. Hana should be respected, as Rabh was highly respected even without that. And if you wish, it might be said that because of the fact itself, that Rabh was an expert concerning blemishes, it was not allowed to him to practise, for the reason that Rabh would allow such blemishes as other experts were not aware of, and people who should see that would act likewise, relying upon Rabh, so that they would finally allow the animal which had a temporary blemish to be slaughtered.

It is said above: "Rabbi said: He shall teach law." To what purpose was this said? Does such a scholar as Rabh need such a permission for teaching? This was said because of the

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following case: It happened that Rabbi went into a certain place and saw that they kneaded dough without offering a sample for legal purity. And to the question why they did so, their answer was: There was a disciple who taught: Water of *Bzein* (swamp) does not make articles subject to defilement. In reality, however, the expression was: "Mee Beizim," which means eggs; and they took it for Bzein, and acted accordingly. And therefore it was taught: A decree was enacted that a disciple should not teach unless he had the permission of his master.

Tanchun, the son of R. Ami, happened to be in the city of Hthar, and lectured: One may wet wheat and pound for peeling on Passover. And they said to him: Is not there here R. Mani of the city of Zur, who is a great scholar, and there is a Boraitha: A disciple must not decide a Halakha at the place of his master, unless distant from him three parsas--which distance Israel took when travelling in the desert. And he answered: I was not aware of this.

R. Hyya saw a man standing in a cemetery, and said to him: Are you not the son of so and so, who was a priest? He said: Yea, but my father was one of those who follow their eyes. He saw a divorced woman and married her, and with this he annulled the priesthood.

It is certain, when one takes a permission to give judgment, in part, that it holds good (as so it was with Rabh). But how is it if the permission was conditionally for a certain time? Come and hear what R. Johanan said to R. Shauman: You have our permission until you shall return to us.

The text says: Samuel said: If it was decided by two, their, decision is valid; but they are called an impertinent Beth Din. R. Na'hman repeated this Halakha, and Rabha objected from the following. If two are defending and two are accusing, and one says, "I do not know how to decide," judges must be added; now, if it were as you say, that the decision of two is valid, let, then, the decision of the two hold good? There it is different, as they start with the intention that it should be decided by three. He then objected to him from the following: Rabban Simeon b. Gamaliel said: Judgment in accordance with the strict law must be decided by three. In an arbitration, however, two suffice; and the strength of the mediation is greater than that of the law; as, if there were two who had decided a case in accordance with the law, although they were appointed by the parties, they (the parties) may retract. But

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if a mediation was made by the arbitrators, no retraction can take place. And lest one say that the rabbis differ with R. Simeon, did not R. Abuhu say: All agree that a decision passed by two is valueless? And he answered: Do you oppose one man to another (Abuhu may say so, and Samuel otherwise)?

R. Abba objected to R. Abuhu from the following: If one has decided upon a case--freed the guilty, or pronounced guilty the innocent, or decided unclean a thing which is clean, or *vice versa*, the act is valid and he must pay from his pocket. (Hence we see that even the decision of one is respected.) This Boraitha speaks of when the parties had appointed him for this purpose. But if so, why must he pay? It means, if they tell him: We appoint you to decide this case in accordance with the biblical law.

Said R. Safras to R. Abba: Let us see what was the error. If the error was that he decided against a Mishna, did not R. Shesheth say in the name of R. Assi that he who made an error as to a Mishna might retract from his decision? Hence such a decision is not valid, and he has not to pay from his pocket. Therefore it must be said that it means he erred in his opinion. How is this to be understood? Said R. Papa: *E.g.*, there were two Tanaim and two Amoraim who differed in a case, and it was not decided with whom the Halakha prevailed. However, the world practised according to one party, and he had decided the case according to the other party; and this could be called erring in one's opinion.



Shall we assume that in that case in which Samuel and R. Abuhu differ, the Tanaim of the following Boraitha also differ: Arbitrating must be done by three persons. So is the decree of R. Meir. The sages, however, maintain: One is sufficient? The schoolmen who heard this thought that all agree that arbitration is similar to a strict law, and therefore they assumed that the point of their difference was: R. Meir holds three are needed, and the sages that two suffice. Nay, all agree that a strict law must be decided by three, and the point of their differing is: Whether arbitration must be similar to a strict law according to one it must, and according to the other it must not.

Shall we assume that there are three Tanaim who differ concerning arbitration? One holds: Three are needed; the second, two; and the third, that even one is sufficient. Said R. Aha b. R. Ekha, according to others R. Yema b. Chlamia: He says two are needed holds that even one is sufficient; and only

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to the end that they should be able to testify to this case as witnesses did he say two. Said R. Ashi: Infer from this that an arbitration does not need a sudarium; for if it should be necessary, why should not the one who maintains that three are needed be satisfied with two and a sudarium? The Halakha, however, prevails: An arbitration needs a sudarium.

The rabbis taught: Even as a strict law needs three, so is it with arbitration. However, when the decision is already given in accordance with the strict law, an arbitration cannot take place. R. Eliezer, the son of R. Jose the Galilean, used to say: It is prohibited to mediate, and he who should do so sins; and he who praises the mediators despises the law, as it is written [Ps. x. 3]: "The robber blesseth himself when he hath despised the Lord." But it may be taken as a rule that the strict law shall bore the mountain, as it is written [Deut. i. 17]: "The judgment belongs to God." And so was it said by Moses our master. But Aaron (his brother) loved peace, ran after it, and used to make peace among the people, as it is written [Mal. ii. 6]: "The law of truth was in his mouth, and falsehood was not found on his lips; in peace and equity he walked with me, and many did he turn away from iniquity." And R. Jehoshua b. Karha also said: Arbitration is a meritorious act, as it is written [Zech. viii. 16]: "With truth and the judgment of peace, judge ye in your gates." How is this to be understood? Usually, when there is judgment, there is no peace; and *vice versa*. It must then be said that an arbitration is a judgment which makes peace. So also was it said about David [II Sam. viii. 16]: "And David did what was just and charitable 1 unto all his people."

Here, also, "just" and "charitable" do not correspond; as if just, it could not be called charitable, and *vice versa*. Say, then, it means arbitration, which contains both.

The first Tana, however, who said above that arbitration is prohibited, explains the passage thus: He, David, judged in accordance with the strict law--he acquitted him who was right, and made responsible him who was so, according to the law, but when he saw that the culpable one was poor and could not pay, he used to pay from his pocket. Hence he did judgment to one and charity to the other. Rabbi, however, could not agree with such an explanation, because of the expression,

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unto all his people"; and according to the above explanation, it ought to be "to the poor." Therefore said he: Although he did not pay from his pocket, it was counted as a charitable act that he delivered a theft out of the hands of the defendant.

R. Simeon b. Menasia said: If two persons brought a case before you, before you have heard their claims, and even thereafter, but you are still not aware to whom the strict law inclines, you may say to them: Go and mediate among yourselves. But after you are aware who is right according to the strict law, you must not advise them to mediate, as it is written [Prov. xvii. 14]: "As one letteth loose (a stream) of water, so is the beginning of strife; therefore before it be enkindled, leave off the contest"; which means, before it be enkindled you may advise a mediation, but not after you know with whom the law is. Similar to this is: If two persons came with a case before you, one being mighty (who can harm you) and the other common, you may say to them, "I am not fit to judge between you," so long as you have not heard their claims; or even thereafter, not knowing as yet to whom the law inclines. But you must not say so after you are aware; as it is written [Deut. i. 17]: "Ye shall not be afraid of any man."

R. Jehoshua b. Karha said: Whence do we deduce that if a disciple were present when a case came before his master, and saw a defence for the poor and an accusation for the rich (which his master might overlook), he must not keep silence? From the verse just cited. R. Hanin said: One must not keep in his words out of respect for any one; and witnesses also must be aware for whom they testify, and for whom their testimony goes. And who is he who will punish them for bearing false witness? As it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord." And the judge must also be aware of same, as it is written [Ps. lxxxii. i]: "God standeth in the congregation of God; in the midst of judges doth he judge." And so also it reads [II. Chron. xix. 6], which was said by the king Jehoshaphat: "Look (well) at what ye are doing; because not for man are ye to judge, but for the Lord."

And should the judge say: Why should I take the trouble and the responsibility to myself?-- therefore it is written at the end of this verse: "Who is with you in pronouncing judgment." Hence the judge has to decide according to what he sees with his eyes.

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What is to be understood by final judgment? Said R. Jehudah in the name of Rabh: When the judge is able to pronounce: You, so and so, are guilty, and you, so and so, are right. Said Rabh: The Halakha prevails with R. Jehoshua b. Karha. Is that so? Was not R. Huna a disciple of Rabh, and his custom was, to question the parties of a case before him: Do you desire strict law, or arbitration? Hence we see that he did not begin with mediation; and R. Jehoshua said that mediation is a meritorious act. R. Jehoshua, with his statement, means also to say: Ask the parties which they like better. But if so, it is the same as what the first Tana said (*i.e.*, it is prohibited to arbitrate after the conclusion, but not before the case is begun)? The difference between them is--according to R. Jehoshua it is a meritorious act; and according to the first Tana it is only a permission for the judge, but not meritorious. But then it is the same as R. Simeon b. Menasia said. There is also a difference, as according to the latter we must not advise an arbitration after hearing the claim, which is not according to the former. All the Tanaim mentioned above differ with R. Thn'hum b. Hnilai, who said: The above-cited verse [Ps. x.] was said concerning the golden calf [Ex. xxxii. 5]: "And when Aaron saw this." What did he see? Said R. Benjamin b. Jephtheth in the name of R. Elazar: He saw Chur, who was killed by the people. And he thought: "If I do not listen to them, they will do likewise with me, and will



commit a sin, as written [Lam. ii. 20]: 'Shall there be slain in the sanctuary of the Lord the priest and the prophet?' And they will have no remedy. It is better for them that I should make the golden calf, and to that probably there will be a remedy by repenting."

There was one who used to say: It is well for him who is silent while being reprov'd; and if he is accustomed to do so, it prevents a hundred evil things which he might have to overcome through quarrelling. Said R. Samuel to R. Jehudah: This man only repeats what is already written in the above-cited verse [Prov. xvii. 141]. 1 There was another who used to say: A thief is not killed for stealing two or three times (*i.e.*, do not wonder if the punishment does not occur at once, as finally it will come). And Samuel said to R. Jehudah: This is also repeating the verse [Amos, ii. 5]: "Thus hath said the

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[paragraph continues] Lord, For three transgressions of Israel, and for four, will I not turn away their punishment."

There was another who used to say: Into seven pits does the man of peace fall and come out, and the wicked does not come out from the first into which he falls. And to this also said Samuel to R. Jehudah: It is a repetition of the verse, Prov. xxiv. 16: "For though the righteous were to fall seven times, he will rise up again"; and should the wicked fall in one, 1 he will not rise again.

There was another who used to say: If the court levied on one's mantle for a bet to his neighbor, he might chant a song and go on his way. And to this the same said to the same: This also is to be understood from [Ex. xviii. 23]: "The whole of this people will come to its place in peace."

There was another who used to say: She slumbers, and the basket which was placed on her head fell down. And also to this said Samuel: The same is understood of [Eccl. x. 18]: "Through slothful hands the rafters will sink," etc. And there was another who used to say: The man on whom I relied raises his fist against me. To which Samuel referred [Ps. xli. 10]: "Yea, even the man that should have sought my welfare, in whom I trusted, who eateth my bread, hath lifted up his heel against me."

There was one more who used to say: When love was strong, we--I and my wife--could place ourselves on the flat of a sword. Now, when love is gone, a bed of sixty ells is not sufficient for us. To which R. Huna said: We can see this from the Scriptures in [Ex. xxv. 22]: "I will speak with thee from above the cover." And a Boraita. states that the ark measured nine spans, and the cover one; hence, altogether, it measured ten. Also in [I Kings vi. 2]: ". . . house which was built . . . sixty cubits in length." And finally we read [Is. lxvi. 1]: ". . . where is there a house that ye can build unto me?" (*I.e.*, when the Tabernacle was built, ten spans sufficed, and at the exile no house in the world could be found in which the Shekinah would rest.)

R. Samuel b. Na'hmani in the name of Jonathan said: A judge who judges truth to his fellow-men makes the Shekinah to rest in Israel; as the above-cited Psalm lxxxii. I reads: "God

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standeth in the congregation of God; in the midst of judges doth he judge." And those who do the contrary influence the Shekinah to leave, as it is written [ibid. xii. 6]: "Because of the oppression of the poor, because of the sighing of the needy, now will I arise, saith the Lord."

The same said again in the name of the same authority: A judge who takes away from one and gives to another, against the law, the Holy One, blessed be He, (in revenge) will take souls from his house. Thus it is read [Prov. xxii. 22, 23]: "Rob not the poor because he is poor, neither crush the afflicted in the gate; for the Lord will plead their cause, and despoil the life of those that despoil them."

And he said again, in the name of the same authority: A judge should always consider as if a sword lay between his shoulders and Gehenna was open under him. As it is written [Solomon's Song, iii. 7, 8]: "Behold, it is the bed which is Solomon's; sixty valiant men are round about it, of the valiant ones of Israel. All of them are girded with the sword, are expert in war; every one hath his sword upon his thigh, because of the terror in the night--which means the terror of Gehenna, which is equal to the night."

R. Jashya, according to others R. Na'hman b. Itz'hak, lectured: It is written [Jer. xxi. 12]: "O house of David, thus hath said the Lord: Exercise justice on (every) morning, and deliver him that is robbed out of the hand of the oppressor." Do, then, people judge only in the morning, and not during the entire day? It means, if the thing which you decide is clear to you as the morning, then do so; but if not, do not. R. Hyya b. Abba in the name of R. Jonathan, however, said: This is inferred from [Prov. vii. 4]: "Say unto wisdom, Thou art my sister," which means, if the thing is as certain to you as that it is prohibited for you to marry your sister, then you may say it, but not otherwise.

R. Jehoshua b. Levi said: If there are ten judges discussing about one case, the collar lies upon the neck of all of them. But is that not self-evident? It means even a disciple who is sitting before his master (although the result does not depend upon him).

R. Huna used to gather ten disciples of the college when a case came before him, saying: In case of error, let them also have sawings of the beam. And R. Ashi, when it happened that there was the carcass of a slaughtered animal to examine if

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it was legal, used to gather all the slaughterers of the city, for the above-said purpose.

When R. Dimi came from Palestine, he said: R. Na'hman b. Kohen lectured: It is written [ibid. xxix. 4]: "A king will through the exercise of justice establish (the welfare of) a land; but one that loveth gifts overthroweth it"; meaning, if the judge is like unto a king, who needs not the favor of any one, he is establishing the land; but if like unto a priest who goes around the barns asking for heave-offering, he overthroweth it. The house of the Prince had appointed a judge who was ignorant, and it was said to Jehudah b. Na'hman, the interpreter of Resh Lakish: Go and be his interpreter. He bent himself to hear what was said for interpretation; but the judge said nothing. Jehudah then exclaimed: Woe unto him that saith to the wood, "Awake!" "Rouse up!" to the dumb stone. Shall this teach? Behold, it is overlaid with gold and silver, and no breath whatever is in its bosom [Hab. ii. 19]. And the Holy One, blessed be He, will punish his

appointer, as the following verse reads: "But the Lord is in his holy temple: be silent before him, all the earth."

Resh Lakish said: If one appoints A judge who is not fit to be such, he is considered as if he were to plant a grove in Israel. As it is written [Deut. xvi. 18]: "Judges and officers shalt thou appoint unto thyself"; and *ibid.* 21 it reads: "Thou shalt not plant unto thyself a grove-any tree." R. Ashi added: And if this were done in places where scholars are to be found, it is considered as if one should do it at the altar, as the cited verse continues: "near the altar of the Lord thy God."

It is written [Ex. XX. 23]: "Gods of silver and gods of gold," etc. Is it only prohibited from gods of silver, and of wood we may? Said R. Ashi: This means the judge who is appointed by means of silver and gold. Rabh, when he went to sit on the bench, used to say: By my own will I go to be slain (*i.e.*, if I make an error I shall be punished for it), without attending the needs of my house; and I enter, clear the court, and I pray that the departing should be like the entering (as he came without sin, so should he depart). And when he saw the crowd run after him, he used to say: "Though his exaltation should mount up to the heavens, and his head should reach unto the clouds, yet when he but turneth round will he vanish for ever" [Job, xx. 6, 71 (to quiet his excitement)].

Mar Zutra the Pious, when he was carried on the shoulders

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of his followers on the Sabbaths before the festivals (each Sabbath before the three festivals they used to preach festival laws), he used to say [Prov. xxvii. 24]: "For property endureth not forever, nor doth the crown remain for all generations."

Bar Kapara lectured: Whence do we deduce what the rabbis said: Be deliberate concerning judgment? From [Ex. xx. 23.]: "Neither shalt thou go up by steps upon my altar"; and the next verse is These are the laws of justice."

R. Eliezer said: Whence do we know that the judge should not step upon the heads of the whole people (the hearers of the lectures used to sit on the floor during the lectures, and one who passed among them appeared as if he were stepping on their heads)? From the same cited verse. It treats: Thou shalt set before them the laws of justice; it ought to be: Thou shalt teach them? Said R. Jeremiah, and according to others R. Hyya b. Abba: It means the preparation of things belonging to judgment: the cane, the strap, the cornet, and the sandal. As R. Huna, when he used to go on the bench, used to say: Bring here all the things above mentioned.

It is written [Deut. i. 16]: "And I commanded your judges at that time." This was a warning to the judges that they should be careful with the cane and straps, which were in their hands to punish them who rebelled. Farther on it is written: Hear the causes between your brethren and judge righteously." Said R. Hanina: This is a warning to the court that it shall not listen to the claims of one party in the absence of the other (in civil cases); and the same warning is to one of the parties--he shall not explain his claim in the absence of his opponent. "You shall judge righteously" means, you shall deliberate the case carefully, and make it just in your mind, and only thereafter you may give your decision.

It is written: "Between a man and his brother, and his stranger." Said R. Jehudah: It means, even between a house and its attic. (*I.e.*, if it were an inheritance, the judge must not say: You both need dwellings-what is the difference, if one take the house and one the attic? But he must appraise the value of each and then give his decision. "And his stranger" means, if you hire your house to a stranger for a dwelling, it cannot be said: What is the difference, if I give him an oven or a stove? But you must give him according to the conditions. So R. Jehudah. Farther on it reads: "Ye shall not recognize (respect) persons in judgment." According to R. Jehudah, it

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means: You shall not recognize him if he is your friend; and according to R. Elazar, it means: You shall not recognize him as strange to you, if he is your enemy.

The host of Rabh had to try a case before Rabh, and when he entered he said to Rabh: Do you remember that you are my guest? And he answered: Yea, but why? And he said: I have a case to try. Rejoined Rabh: I am unfit to be a judge for your case (because you reminded me that you favored me some time ago). And he appointed R. Kahana to judge the case. R. Kahana, however, had seen that he relied too much upon Rabh, so that he would not listen to him. He then said to him: If you listen to my decision, well and good; and if not, I will put Rabh out of your mind (*i.e.*, I will put you under the ban). It reads farther on "The small as well as the great shall ye hear." Said Resh Lakish: It means, you shall treat a case of one peruta with the same care and mind as you would treat a case involving a hundred manas. To what purpose was this said? Is this not self-evident? It means, if two cases come before you, one of a peruta and one of one hundred manas, you shall not say: It is a small case, and I will see to it after.

"Ye shall not be afraid of any man; for the judgment belongeth to God." Said R. Hama b. R. Hanina: The Holy One, blessed be He, said: "It is the least for the wicked to take away money from one and give it to another illegally"; but they are troubling me that I shall return the money to its owner. "And I commanded you at that time." Above it reads: "I commanded your judges." Said R. Elazar in the name of R. Simlai: This was a warning for the congregation, that they should respect their judges; incidentally, also, a warning to the judges that they should bear with the congregation. To what extent? Said R. Hana, according to others R. Sabbathi: Even [Num. xi. 12] "as a nursing father beareth the sucking child."

It treats [Deut. xxxi. 23]: "Thou must bring this people," etc. And in verse 7 it is written: "Thou must go with." Said R. Johanan: Moses said to Joshua: You and the elders shall rule over them; but the Holy One, blessed be He, said: "*Thou* shalt bring them (*i.e.*, thou alone), because there must be one ruler to a generation, and not two or many.

There is a Boraitha: A summons must be by the consent of three judges. And this is in accordance with Rabha, who said: If the messenger of the court had summoned one in the

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name of one of the three judges who are in the court, the summons is nothing unless he state it is in the name of all the three judges, provided it was not a court day; but on a court day he has to mention nothing.

"*Double amount.*" R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. In cases of fine, how many persons are needed? [What was the question--does not the Mishna state three? The question was, whether one judge, who is an expert, may do this, or not?] And the answer was: This is stated in our Mishna, in the double amount, and four and five fold-three. And it cannot be said it means three common men; for your grandfather said in the name of Rabh: Even ten commoners are illegal to decide cases of fine. Hence the Mishna means judges, of whom, nevertheless, three are needed.

"*It may bring capital punishment.*" And what is it (meanwhile his claim is money--why should three not be sufficient)? Said Ula: The point of their differing is, if an evil tongue is to be feared (*i.e.*, while he comes to the court complaining about his wife, witnesses may come and testify that she had indeed sinned; and then it is a crime of capital punishment). According to R. Meir, the fear of such is not to be taken into consideration; and according to the rabbis, it is. Rabha, however, maintains: The fear of an evil tongue is not taken into consideration by all of the parties; but the point of their difference is, if the honor of the first should be respected or not. And it treats that twenty-three were gathered for that case, and the husband claimed that he would bring witnesses that his wife had sinned. But thereafter he could not bring witnesses, and the case remained as a claim for money only, and then the twenty departed. And he asked them to decide at least his civil claim. According to R. Meir, this case, as a money matter, might be tried by three; but according to the rabbis, we must respect the honor of the judges gathered, and therefore even in the latter case all the twenty-three have to take part.

An objection was raised from a Boraitha which states: The sages said: If the claim was money, then three suffice; but if a crime which could bring capital punishment, then twenty-three are needed. And this is correct only according to Rabha's statement, viz.: If the beginning of the claim was money, then three; and if the beginning was crime, then twenty-three. But according to Ula's it is contradictory.

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Said Rabha: I and the lion of our society, who is R. Hyya b. Abbim, have thus explained this: The Mishna treats of a case in which the husband brought witnesses that his wife had sinned, and his father-in-law brought witnesses who proved the first collusive. And his claim against the husband was money; and therefore three sufficed. But in a case where crime is charged, twenty-three are necessary.

Abayi, however, maintains: All agree that an evil tongue is to be feared; and they also agree that the honor of the first must be respected. The Mishna, however, speaks of a case in which the warning was as to capital punishment, but not stoning. (*I.e.*, as will be explained in the proper place, one should not be put to death for a crime of which he was not warned that the punishment for it was death; and according to some, the warning must be: The punishment for such a crime is such and such a death. And as the punishment of adultery is stoning, and she was warned only of death in general, according to him who holds that the warning must state the kind of death, in this case no capital punishment can occur.) And this is in accordance with R. Jehudah, who said elsewhere: One is not put to death unless he was informed in the warning what kind of death he should die.

R. Papa maintains: It speaks of a scholarly woman who was aware of what kind of punishment

pertained to such a thing; and the point of their differing is, if to a scholar warning is needed. And R. Ashi maintains: The warning was as to stripes, instead of capital punishment; and the point of their differing is, if a trial involving stripes needs twenty-three, in accordance with the opinion of R. Ishmael, or not. <sup>1</sup> And Rabhina maintains: It speaks of when one of the witnesses was found a relative, or incompetent to be a witness; and the point of their difference is, if the testimony of the other witnesses should be ignored because of the incompetent one, or not (explained at length in Tract Maccoth). And if you wish, it can be said that it speaks of when one was warned by some others, but not by the witnesses; and there are some of the Tanaim who hold that the warning holds good only when it was made by the witnesses. And it might also be said that the witnesses contradicted one another, at the cross-examination, concerning certain unimportant things (*e.g.*, how he and she were dressed when the crime was committed),

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but they did not contradict each other concerning the important thing (*e.g.*, the date and hour). And there is a difference between Tanaim whether such a contradiction is to be taken into consideration, or not?

R. Joseph said: If the husband brought witnesses that she had sinned, and the father brought witnesses who proved them collusive, the witnesses of the husband are put to death, but do not pay the prescribed fine. If, however, the husband brought a third party of witnesses, who proved collusive the second party, they are to be punished both with death and with payment of fine to the husband.

Rabha said: If witnesses testify that A had sinned with a betrothed woman, and thereafter they be found collusive, they are put to death, but do not pay the fine; if, however, they testified that A had sinned with the daughter of B, who was betrothed, they pay the fine also. And the same is the case if they testify that one had connection with an ox, and they were found collusive; if, however, they testify with the ox of so and so, they have to pay the fine to the owner of the ox also. But to what purpose did he state the other case--is it not the same as the first? Because he himself was in doubt concerning the following case: If one testified that so and so had connection with my ox, should he be trusted or not? Shall we say that only a testimony which incriminates one's self is not to be trusted--because one is kin to himself and cannot make himself wicked, but in a case where one's property is involved, we do not say that he is kin to his money, and therefore he should not be trusted. After deliberating, however, he decided that the testifying concerning his ox should be trusted, as the latter case is not taken into consideration.

"The cases of stripes," etc. Whence is this deduced? Said R. Huna: It is written [Deut. xxv. i]: "And they judge them," which is plural, and no less than two; and as a court must not be of an even number, one is to be added--hence it is three. In the same verse it reads: "And they justify . . . and they condemn," which is also plural, and no less than two--hence two and two are four, and with the three mentioned above it is seven?

The latter terms are needed for that which Ula said: Where is to be found a hint in the Scriptures concerning collusive witnesses? [A hint--does it not read (*ibid.* xix. 19): "Then shall ye do unto him as he had purposed to do unto his brother"?

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[paragraph continues] Where is the hint that collusive witnesses are to be punished with stripes? From the above-cited terms, "and they shall justify . . . condemn the wicked: Then shall it be, if the guilty man deserve to be beaten," etc., which is not to be understood as meaning the court only, as the words, "they shall justify the righteous," would be superfluous in that case. And therefore it is to be explained thus: If there were witnesses who had made the righteous guilty, and thereafter other witnesses came and justified the righteous who were indeed right, and made guilty the witnesses who accused them; then, if the former were to be punished with stripes, if found guilty, the same punishment is to be meted to the guilty witnesses.

But is there not a negative commandment in Ex. xx. 16: "Thou shalt not bear false witness"? This negative commandment is counted among those who do no manual labor; and for the transgression of such, punishment of stripes is not applied.

"*In the name of Ishmael it was said,*" etc. What is his reason? Said Abayi: The analogy of expression, *Rosha* (guilty). It reads [Deut. xxv. 2]: "Guilty man," and [Num. xxxv. 31] "Who is guilty of death." As in case of death, twenty-three are needed, the same is the case with stripes. Rabha, however, maintains: His reason is simple, as stripes take the place of that. Said R. Aha, the son of Rabha, to R. Ashi: If so is the case, why must he be examined by the court to see if he can stand the forty stripes? Let him be beaten without any examination; and if he cannot stand them, let him die. And he answered: It reads [Deut. xxv. 3]: "And thy brother be rendered vile before thy eyes." Hence if you beat, you must beat one who is still alive, but not a dead body. If so (said R. Aha again), why does a Boraitha state that if the examination shows that he can stand only twenty, he is beaten with that number, which can be made a multiple of three, say eighteen only? Let him receive twenty-one; and if he cannot receive the last stripe let him die, as the last stripe was on a body which was still alive (*i.e.*, thrice seven are twenty-one, and as he would not die by twenty according to the examination, the twenty-one would still be on a live body). Rejoined R. Ashi: The verse reads: "Thy brother thus rendered vile before thy eyes," which means that after the stripes he shall still be thy brother, which would not be the case if he died while being beaten.

"To the intercalary month," etc. It does not state for the

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consideration of the intercalary, nor does it state for the consecration of the month; but for the intercalary itself, why are three needed? Let it be not consecrated at the thirtieth day, and it will become intercalary by itself (*i.e.*, if the thirty-first day be consecrated as the first of the next month, the past month will be intercalary with one day). Said Abayi: Read: For the consecration of the month. And so also we have learned in a Tosephtha: For the consecration of the month and the proclamation of a leap year, three. So is the decree of R. Meir. Said Rabha: You say: Read "for the consecration"; but it is stated "the intercalary." Therefore, he maintains, the consecration in the additional day (*e.g.*, the thirtieth) must be by three; but after the day is over, no consecration is needed. And it is in accordance with R. Elazar b. Zadok, who said (Rosh Hashana, p. 1): If the moon was not seen at the usual time, no consecration is needed, as it was already consecrated by heaven. R. Na'hman says: The consecration after the thirtieth day must be by three; but at the thirtieth no consecration takes place at all.

And it is in accordance with Plimi, who says in the following Boraitha: When the moon is seen

at her usual time, no consecration is needed; but if not at the usual time, then it must be consecrated. R. Ashi, however, maintains: It is to be understood, the consideration if the month should be intercalary, and the expression "to intercalary" means the consideration of it. And because it needs to teach to proclaim a leap year, it says also intercalary. Hence only to the consideration, but not to the consecration, which is in accordance with R. Eliezer, who said: A month must not be consecrated at any time, as it is written [Lev. xxv. 10]: "Ye shall hallow the fiftieth year," from which we infer that a year may be consecrated, but not months.

"Rabban Simeon Gamaliel," etc. There is a Boraitha: How was it said by R. Simeon b. Gamaliel that it began with three, was discussed by five, and concluded by seven? Thus: If one of the three says it must be considered, and the other two say it is not needed, then the individual's opinion is abandoned. If, however, *vice versa*, two more must be added to discuss the matter; and then, if two say it needs, and three say no, the majority is considered. And if *vice versa*, then two more must be added, and the decision is according to the majority.

The numbers three, five, and seven, to what have they a

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similarity? R. Itz'hak b. Na'hmani and one of his colleagues, who was R. Simeon b. Pazi, and according to others just the reverse, differ. One said that the three were taken from the three verses specifying the blessings of the priests (Num. vi. 24, 25, 26). And the other said: Three from the "three doorkeepers" mentioned in II Kings, xxv. 18; and five, from [ibid. 19]: "The five men of those that could come into the king's presence"; and the seven from "the seven princes of Persia and Media" [Esther, i. 14].

R. Joseph taught the same as the latter, and Abayi questioned him: Why did not the master explain this to us before now? To which he answered: I was not aware that you needed the explanation. Has it happened that you questioned me, and I would not answer?

The rabbis taught: A year must not be intercalated with one month, except by them who are invited for it by the Nashi. It happened with Rabban Gamaliel, who commanded that seven persons should be invited for the morrow in his attic, for the purpose of the intercalation of the year, that on the morrow, when he came, he found eight persons, and said: He who was not invited shall leave. Samuel the Little then arose and said: I am the one who was not invited. I came here, not to take part in the intercalation, but to get experience in the practice of this ceremony. To which the former answered: Sit down, my son; sit down. All the years which have to be intercalated might be done by you. But so was the decision of the sages, that such must be done only by the persons who were invited. (Says the Gemara:) In reality, it was not Samuel the Little, but some other, and he did so only not to bring shame upon his colleague. It happened that as Rabbi was lecturing he perceived the odor of garlic, and he said: He who has eaten garlic shall leave. R. Hyya then rose and left the place; and every one, seeing R. Hyya go out, did the same. On the morrow R. Simeon, the son of Rabbi, met R. Hyya, and questioned him: Was it you who disturbed my father yesterday? And he answered: Save God! Such a thing would not be done in Israel by myself. And from whom did R. Hyya learn this? From R. Meir, as is stated in the following Boraitha: It happened with a woman who came to the college of R. Meir, saying: One of you has betrothed me, but I do not know who it was. Then R. Meir arose and wrote her a divorce, and handed it to her; and after him, all the people in the college did likewise. And from whom did

[paragraph continues] R. Meir learn this? From Samuel the Little; and Samuel the Little from Shechanyah b. Yechiel, who said to Ezra [Ezra, x. 2]: "We have indeed trespassed against our God, and have brought home strange wives of the nations of the land; yet now there is hope in Israel concerning this thing." And he, Shechanyah, learned this from Jehoshua b. Nun, of whom it is said [Josh. vii. 10]: "Get thee up; wherefore liest thou upon thy face? Israel hath sinned," etc.

The rabbis taught: Since the death of the last prophets, Haggai, Zechariah, and Malachi, the Holy Spirit has left Israel; nevertheless they were still used to a heavenly voice. It happened once that they had a meeting in the attic of the house of Guriah, in the city of Jericho, and a heavenly voice was heard: Among these people there is one who is worthy that the Shekinah should rest upon him; but his generation is not fit. And the sages turned their eyes on Hillel the Elder. And when he departed, they lamented him. "Woe, pious! Woe, modesty! O thou disciple of Ezra." The same happened again when they had a meeting in an attic in the city of Yamnia, and the heavenly voice said: Among these people is one worthy that the Shekinah should rest upon him, but his generation is not fit. And the rabbis turned their eyes on Samuel the Little. When he departed, he also was lamented: "Woe, pious! Woe, modesty! O thou disciple of Hillel!"

The rabbis taught: A year must not be intercalated without the Prince's consent. It happened once that Rabban Gamaliel went to one ruler in Syria, and remained there longer than was expected; and the sages had intercalated the year on the condition that Rabban Gamaliel should agree; and then, when he came, he said, "I agree," and the year was intercalated without any other ceremony.

The rabbis taught: A leap year should not be made unless necessary, because of the spoiled roads, bridges requiring to be repaired, and because of the ovens where the paschal lambs were to be roasted, and they were not yet dry; and for them who reside in exile, and had left their places for Jerusalem to offer the paschal lamb, but could not reach in such a short time; but not if there was still snow or cold, and also not for them who resided in exile and had not as yet left their places for Jerusalem.

The rabbis taught: A leap year should not be made because of the kids, lambs, and pigeons which are too young. But this

may be taken as a support. How so? Said R. Janai in the name of R. Simeon b. Gamaliel: We inform you that the pigeons are still soft, and the lambs still thin, and the time of spring has not yet arrived; and it has pleased me to add to this year thirty days. An objection was raised from the following Boraitha: How much is to be added to a leap year? Thirty days. R. Simeon b. Gamaliel said: One month of twenty-nine days. Said R. Papa: If they wish, they can make it with thirty days; and if they wish, with one month of twenty-nine days. Come and see the difference between the old, mighty generation and that of the new, modest one. There is a Boraitha: It happened with Rabban Gamaliel, who used to sit on a step in the court of the Temple, that Johanan his scribe was standing before him, and three pieces of parchment were

lying before him. And be told him: Take one parchment, and write to our brethren in Upper Galilee and to our brethren in Lower Galilee: May your peace be increased! We inform you that the time has come to separate tithes of the mounds of olives. And take another piece of parchment, and write to our Southern brethren: May your peace be increased! We inform you that the time has come to separate tithes of the garden sheaves. And take the third one, and write to our brethren in exile in Babylon, and to our brethren in Media, and to all other Israelites who are scattered in exile: May your peace be increased everlastingly! We inform you that the pigeons are soft, and lambs thin, and the time of spring has not yet come, and it pleases me and my colleagues to add to this year thirty days. (Hence Gamaliel wrote: "pleased me and my colleagues"; and Simeon his son did not mention his colleagues.) (Says the Gemara:) Perhaps this happened after R. Gamaliel was discharged and reappointed, as then he became more modest.

The rabbis taught: For the following three things a leap year is made: because of the late arrival of spring; of the unripeness of tree-products; and for the late arrival of Thkhupha (the equinox). <sup>1</sup> When two of the three things occur, the year is made intercalary; but not if one of them. And when one of the reasons is spring, all rejoiced. And R. Simeon b. Gamaliel said: When Thkhupha (the equinox) was the reason. And the schoolmen questioned: How is he to be understood? Does he mean that they rejoiced when the Thkhupha (the equinox) was

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one of the reasons, or does he mean to say that if it was the reason it suffices to make the year intercalate even without other reasons? The question remains undecided.

The rabbis taught: For the following three lands the leap year was made: Judea, Galilee, and the other side of the Jordan. For two of them, but not for one. If it happened that Judea was one of them, all rejoiced, because the offer of the omer (as the first of the harvest) was brought only from the land of Judea.

The rabbis taught: The year is to be made intercalary only in the land of Judea; but if it was made already in Galilee, their act is valid. However, Hananiah, the man of Anni, has testified that if the leap year was made in Galilee it was not considered. And R. Jehudah b. R. Simeon b. Pazi said: The reason of Hananiah is [Deut. xii. 5]: "Even unto his habitation shall ye refrain," which means, all your repairing should be only in the habitation of the Omnipotent.

The rabbis taught: A leap year is to be made only during the day-time, and if it was done in the night it is not intercalate. And the same is the case with the consecration of the month; it holds good in the day-time, and not in the night.

The rabbis taught: A leap year must not be made in the years of famine. And there is a Boraitha: R. Meir used to say: It is written [II Kings, iv. 42]: "And there came a man from Ba'al-shalishah, and brought unto the man of God bread of the firstfruits, twenty loaves of barley-bread," etc. And we know by tradition that the city of Ba'al-shalishah was the most fruitful city in the whole land of Israel, in which the fruit became ripe previous to all other cities; and nevertheless at that time it was not ripe, but only one kind of grain; and not wheat, but barley, as so it reads. And lest one say it was before the time the omer was to be brought, therefore it is written at the end of this verse: "Give it unto the people, that they may eat." Hence, under such circumstances, that

year ought to have been intercalary. And why was it not made so by Elisha? Because it was a year of famine, and every one went to the barns in order to get something to eat, and therefore it was not intercalated.

The rabbis taught: The year must not be intercalary before Rosh Hashana (*i.e.*, no meeting must be appointed to discuss upon the necessity of an additional month in the next year). Even if it were so done, it is not to be taken into consideration. However, if circumstances compelled them to do so, they may

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do it immediately after Rosh Hashana; but the additional month must be no other one than Adar. Is that so? Was not a message sent to Rabha: A couple came from the city of Lecarte, and caught an eagle, and in their hands were found things which were made in the city of Luz (*e.g.*, Thkhalh, for Tshitizith). And by the kindness of the Merciful One, and because of their unripeness, they were redeemed, and left in peace. And the descendants of Na'hshun desired to establish one nazib (ruler) more, but the Aramaic had prevented them. However, the prominent men of the cities held a meeting, and added one ruler (nazib) in that month in which Aaron (the high-priest) died. (Hence we see that a meeting about a leap year was appointed in the month of Ab, as Aaron died in that month?) [1](#)

The discussion, and even the establishment, may be done even before Rosh Hashana; but it must be kept secret until the day of New Year is past. But whence do we know that with the above-mentioned word "nazib" they meant "a month"? From [I Kings, iv. 7]: "And Solomon had twelve superintendents (nazibun) . . . for the king's household, one month in the year"; but *ibid.* 19 reads: "Besides the one superintendent (nazib) who was in the land?"

R. Jehudah and R. Na'hman--one said: One manager over all the superintendents. And the other maintains that this nazib was for the intercalary month.

The rabbis taught: A leap year must not be made in one year, for the next; and also three successive years must not be intercalary. R. Simeon, however, said: It happened with R. Aqiba, that he established three leap years, one after the other, while he was in prison. And he was answered: This is no evidence, as the court had established each leap year in its proper time.

The rabbis taught: A leap year must not be appointed, neither in the Sabbatic year nor in the following year. But when were they used to be established? On the eve of the Sabbatic year. The house of Rabban Gamaliel, however, used to appoint it for the year following the Sabbatic.

The rabbis taught: No appointment of a leap year must be because of defilement. R. Jehudah, however, maintains it may,

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and adds: It happened with King Hezekiah, who had established such because of defilement, and thereafter he prayed for forgiveness. As it is written [II Chron. xxx. 18]: "For a large portion of the people, even many out of Ephraim and Manasseh, Issachar, and Zebulun had not cleansed themselves, but ate the Passover not as it is written. However, Hezekiah prayed for them,

saying: "The Lord, who is good, will grant pardon for this."

R. Simeon said: If they had established it because of defilement, it is intercalary; and Hezekiah prayed for forgiveness because the law dictates that only the month of Adar shall be intercalary. He, however, intercalated the month Nissin. R. Simeon b. Jehudah, however, said in the name of R. Simeon: He prayed for forgiveness because he seduced Israel to establish a second passover.

The master said: He intercalated the month of Nissin. Did he not hold the tradition [Ex. xii. 2]: "This month shall be unto you the chief of months," which means Nissin; and it is written, this is Nissin, but no other month shall be named Nissin? He erred in that which is said in the name of Samuel: In the thirtieth day of Adar no intercalary month must be appointed, because this day was fit that it should be the first of Nissin. And he, Hezekiah, did not hold this theory. There is also a Boraitha which states: In the thirtieth day of Adar no month must be intercalated because it is fit to be the first of Nissin.

But how is it if, notwithstanding this, it was established on that day? Said Ula: Then the month must not be consecrated on that day. But how is it if it was consecrated also? According to Rabba, the consecration abolishes the intercalary; and according to R. Na'hman, both hold good--the intercalary and the consecration. Said Rabba to R. Na'hman: Let us see! From Purim to Passover are thirty days; and on Purim we begin to lecture about the law of Passover. Now, if they should appoint another Adar on the thirtieth day after the lectures of Passover were already heard, people would not believe then that another month was appointed, and so they would use leavened bread on Passover. And he answered: Why, they would believe, as they know the establishment of a leap year depends on counting; and they would say that it was not as yet clear to the rabbis--the reckoning of this year--until the thirtieth day of Adar arrived.

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R. Jehudah in the name of Samuel said: A leap Year must not be established unless the Thkhupha was less with a greater part of the month, which are sixteen days. So is the decree of R. Jehudah. R. Jose, however, said: Twenty-one days. And both took their reference from [Ex. xxxiv. 22]: And the feast of ingathering at the closing (Thkhuphat--equinox) of the year. One holds that the whole feast should be in the new Thkhuphat; and the other holds that it is sufficient if a few days of the feast should occur in the new Thkhuphat. How is this to be understood? If they hold that the day in which the Thkhupha occurs is counted to the past Thkhuphat, why, then, is it necessary for R. Jehudah that the Thkhuphat shall be less with sixteen, and to R. Jose with twenty-one days? Even if it would be less with fifteen days, according to R. Jehudah, and twenty days, according to R. Jose, the whole festival will not be on the new Thkhuphat according to R. Jehudah, as the fifteenth day of Nissin, which is the first day of the feast, and in which the Thkhuphat occurs, is counted to the past Thkhuphat; and also according to R. Jose, if the Thkhuphat occurs on the twenty-first day, which is counted to the past, not one of the festival days would occur on the new Thkhuphat, as the festival begins on the fifteenth, and the seventh ends with the twenty-first. Therefore it must be said, of the day in which the Thkhuphat occurs, both R. Jehudah and R. Jose count it as the beginning of the new Thkhuphat. [1](#)

"*Laying the hand of the elders upon sacrifices.*" The rabbis taught: It is written [Lev. iv. 15]: "And the elders of the congregation shall lay their hands," etc. (The expression in Hebrew is,



Vsomkhu Ziqnye Hoedha"--literally, "and they shall lay," the elders," "of the congregation.") From the expression Hoedha, which means the congregation, instead of elders of the congregation, it is deduced that it means the prominent of the congregation, and from the plurality of Vsomkhu ("and they shall lay," which means no less than two) and the plurality of the elders who are also two, it is deduced four persons; and as the number of the court must not be even, one is added--hence it makes five. So is the decree of R. Jehudah. R. Simeon, however, maintains: There is only one

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plurality in the elders, who are two, and one is added for the purpose mentioned above, making three only. And there is a Boraitha: To laying the hand upon the elders, and laying the hands of the elders upon the sacrifices, three are needed. What does this mean? Said R. Johanan: Laying the hand upon the elders means, to give one the degree of Rabbi: Said Abayi to R. Jose: Whence do we deduce this? From [Num. xxvii. 23]: "And he laid his hand upon him," etc. Then let one be sufficient, as Moses was only one person; and lest one say that Moses took the place of the Large Sanhedrin, who were seventy-one, then say that to confer a degree seventy-one are needed? This difficulty remains.

Said R. Aha b. Rabha to R. Ashi: Do we lay the hands upon the man to whom we want to give such a degree? And he answered: We support him with that, that we name him Rabbi and give him the permission to judge about fines upon them who deserve it.

Is it indeed so--that one man cannot bestow a degree? Did not R. Jehudah in the name of Rab say: Behold, the memory of that person shall remain blessed forever--I mean, R. Jehudah b. Baba, as, if not ben Baba, the law of fines would be forgotten from Israel. It happened once that the government passed an evil decree upon Israel, that he who bestowed a degree should be put to death, and the same should be done with him who received the degree. The city where the degree was conferred should be destroyed, and even the boundaries which were used while giving the degree should be torn out. Jehudah b. Baba then went and sat between two great mountains, and between two large cities--between the two suburban limits of the cities of Usha and Sprehen--and conferred the degree of Rabbi on five elders; and they were: R. Meir, R. Jehudah, R. Simeon, R. Jose, and R. Elazar b. Shamuas. According to R. Ivia, there was a sixth: R. Nehomai. When the enemy got wind of it, Jehudah said to them: My children, run away. And to their question: Rabbi, what will become of you? he answered: I shall remain before them as a stone which cannot be moved. It was said that three hundred iron spears were put by the enemy into his body, making it as a sieve. (Hence we see that even one person only is authorized to give a degree?) There were some other persons with him, but they were not mentioned because of the honor of Jehudah b. Baba. Was indeed Meir elevated by Jehuda? Did not Rabha b. Hanah say in the name

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of Johanan that R. Aqiba gave the degree to R. Meir? Yea, R. Aqiba did so, but it was not accepted; and from R. Jehudah b. Baba he accepted.

R. Jehoshua b. Levi said: The custom of giving degrees must not be used out of Palestine. What does he mean? Shall we assume that loss of fines should not be judged at all out of Palestine? This is not so, as there is a Mishna: Sanhedrins are to be established in Palestine as well as in

other places out of Palestine. He means that one must receive his degree in Palestine only.

It is certain that a degree of Rabbi is not considered when the bestower is out of and the receiver is in Palestine. But how is it if the bestower is in Palestine and the receiver is out? Come and hear: R. Johanan was troubled for R. Shaman b. Aba, who was not present and could not receive the degree R. Johanan wished to honor him with. R. Simeon b. Zerud and his colleague Jonathan b. Ekhmai, according to others *vice versa*--one of them who was present they supported with a degree, and the one who was not did not receive such.

R. Hanina and R. Hoseah were two about whom R. Johanan troubled himself very much, to honor them with the degrees they deserved, but was always prevented, whereat he was very sorry. Said they to him: Let master not worry, as we are descendants of the house of Eli. And R. Samuel b. Na'hman in the name of R. Jonathan said: Whence is it deduced that the descendants of Eli are prevented by Heaven from receiving degrees? From [I Sam. ii. 32]: "And there shall not be an elder in thy house in all times"--which cannot be meant literally--"an old man," as it is written [ibid. 33]: "And all the increase of thy house shall die as (vigorous) men." Hence it means a *degree* of an elder (scholar).

R. Zera used to hide himself so as not to be honored with a degree, because of R. Elazar's statement: Be always misty, in order to have a better existence. Thereafter, when he heard another statement of the same authority, "One is not raised to a great authority unless all his sins are forgiven by Heaven," then he went to receive a degree. When he was graduated as a rabbi, his followers sang for him thus: "There is no dyeing, no polishing, no painting, and nevertheless it is handsome and full of grace." When Ami and Assi were graduated as rabbis, likewise people sang of them thus: "Of such men--of such people--appoint rabbis for us, but not from the sermonisers";

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and according to others, "not steel-hearted and impudent men"

R. Abuhu, when he came from college in the court of the Zaiser, the matrons of Zaiser's house used to sing for him: "Great man of his people! ruler of his nation! candle of light! may thy coming be welcomed in peace."

"*Case of the heifer.*" The rabbis taught [Deut. xxi. 2]: Then shall thy elders and thy judges go forth," etc. Elders, two, and judges, two, are four, etc. (will be translated in Tract Souta, as the proper place).

"*Plants of the fourth year and second tithe,*" etc. The rabbis taught: What is to be considered second tithe of which the value is not known? Rotten fruit, sour wine, and rusty coins. They also taught: Such second tithe must be redeemed by the appraisalment of three buyers who all know the price of such stock; but not by three laymen who do not know the exact price. Among the buyers maybe a Gentile, and also the owner of the stock. And R. Jeremiah questioned: How is it if the three were partners? Come and hear: One and his two wives may redeem the second tithe of which the value is not known. Hence it is allowed. This is no support, as this Boraitha may speak of such as were apart in business. *E.g.*, R. Papa and his wife, the daughter of Aba of Sura (who used to do business for herself).

"*Consecrated articles*," etc. Our Mishna is not in accordance with R. Eliezer b. Jacob of the following Boraitha, who said: Even for a small fork of the sanctuary, ten persons are needed to appraise the value for redeeming. Said R. Papa to Abayi: R. Eliezer is correct that it needs ten, as he may hold with the statement of Samuel, who said: Priests are ten times mentioned in the portion which speaks of consecrated things. But whence did the rabbis take three? This difficulty remains.

"*Arakhin . . . movable properly*." What are they? R. Giddle in the name of Rabh said: If one vows, the value of this utensil is to be consecrated, then it must be appraised for its value, and he must pay. R. Hisda, however, said in the name of Abayi: It means, if one vows his own value, and appoints movable property for the collection. R. Abuhu said: If one vows his own value for the treasurer of the priests, when he came to collect, if he collects from movable property, three suffice to appraise it; but if from real estate, ten are needed. Said R. Aha of Diphthi to Rabhina: It is correct that three are

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needed to appraise articles which are to be redeemed from the sanctuary; but why are three needed for bringing into the sanctuary? And he answered: It is common sense. What is the difference between bringing in and taking out? The reason of appraisal is because an error can occur by which the sanctuary would suffer; and this can take place in both taking out and bringing in.

"*A priest*," etc. Said R. Papa to Abayi: It is correct that R. Jehudah requires that one of them should be a Cohen, as in that portion a Cohen is mentioned; but what is the reason of the rabbis, who do not require him--and for what purpose is a Cohen mentioned, according to them? This difficulty remains.

"*By ten, and one of them a priest*," etc. Whence is all this deduced? Said Samuel: In this portion the word Cohenim is mentioned ten times, and only one of them is needed for itself; and all the others are considered as an exclusion after an exclusion, as to which there is a rule that such comes to add something. And therefore we add nine Israelites to one Cohen. R. Huna b. R. Nathan opposed, saying: Why not say: Add five Israelites to five Cohenim? This difficulty also remains.

"*The value of men*," etc. But does, then, a man become consecrated? Said R. Abuhu: If one vows, the money he is worth (not according to age, which is prescribed biblically) must be appraised as if he were a slave sold on the market; and a slave is equal to real estate. Therefore it needs ten: R. Abim questioned: How is it if one vows the value of his hair, and it should be cut off? Shall we say that things which ought to be cut off are considered as already cut, and movable, and the appraisal needs three only; or, so long as it is attached to the body, it is considered as the body itself, and ten are needed? Come and hear: If one consecrated his slave, no transgression is committed by using him for work. R. Simeon b. Gamaliel said: If one uses his hair, it is a transgression: And we are aware that he speaks when the hair in question is still attached to the body and is ready to be cut off. Hence there is a difference of opinion among the Tanaim.

"*The stoning of an ox . . . and the owner put to death.*" Said Abayi to Rabha: Whence do we know this verse means to equal the judgment of the ox to that of its owner? Perhaps it is meant literally--that its owner also shall be put to death? Said Hezekiah, and so also was it taught by his school: It is written [Num. xxxv. 21]: "He who smites him shall be put

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to death, for he is a murderer." From which we infer that only when he himself smote is he to be put to death: but he is not to be killed for the death by his ox.

"*The wolf, the lion,*" etc. Said Resh Lakish: This is in case they have killed some one; but if not, it is not a meritorious act to kill them. [Hence we see that he holds that these beasts can be considered the property of one who domesticates them.] R. Johanan, however, maintains: In any case, it is a meritorious act to kill them. [Hence he holds that they cannot be domesticated, and are considered ownerless.]

There is an objection from our Mishna: R. Eliezer says: Every one who hastens to kill them is rewarded--which is correct according to R. Johanan, who may explain the word "rewarded"--with the skin of the animal; but according to Resh Lakish, who said, only when they have killed, there is a rule that when so it was, the rabbis considered them as if they were already sentenced to death by the court, and in such a case it is prohibited to derive any benefit from them. What, then, means Eliezer by the expression "he is rewarded"? It means that he will be rewarded by Heaven. There is a Boraitha in accordance with Resh Lakish, as follows: An ox, as well as other animals or wild beasts which kill, must be judged by twenty-three. R. Eliezer, however, maintains: An ox which has killed, by twenty-three; but as to all wild beasts, he who hastens to kill them will be rewarded by Heaven.

"*R. Aqiba says,*" etc. Is it not the same as the first Tana? They differ in the case of a serpent.

"*A whole tribe,*" etc. Let us see what sin a whole tribe may commit. Shall we assume that it has violated the Sabbath? We know that there is a difference between an individual and a majority only in the case of idolatry; but in the other commandments there is no difference, according to the Scripture. And if it means that the whole tribe was accused of idolatry, and they should be judged as a majority, then our Mishna is neither in accordance with R. Jashiah nor with R. Jonathan of the following Boraitha: How many people must be in the city which shall be misled? From ten to one hundred. So is the decree of R. Jashiah. R. Jonathan, however, maintains: From one hundred up to the majority of the tribe. Now we see that even Jonathan says the majority, but not the whole tribe. Said R. Mathna: It means the Prince of the tribe only. As R. Ada b Ahaba explains [Ex. xviii. 22]: "Every great matter" means:

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the matter of a great man; so also here, by the whole tribe is meant the head of it. Rabhina, however, said: The Mishna speaks of a case in which the whole tribe was accused of idolatry, your difficulty being, do we then judge them as a majority? We may say, Yea! although their punishment is similar to that of an individual who is to be stoned. And this is in accordance with R. Hama b. Jose, who said in the name of R. Oseah: It is written [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman who has committed this wicked thing, unto thy gates"--

which means only an individual, but not the whole city, to thy gates. The same is the case with a whole tribe; only an individual can be brought to the gates to be stoned, but not the whole tribe. (Hence they are judged by seventy-one, as a majority.)

"*False prophet*," etc. Whence is this deduced? Said R. Jose b. Hanina: From an analogy of expression--"presume"--which is to be found in the case of a false prophet [Deut. xviii. 20] and in the case of a rebelling elder [ibid. xvii. 12]. As in the latter case seventy-two are needed, so also in the former. But is not the expression "presumptuously" used in the cited verse concerning death, of which the verse reads; and death is judged by seventy-three only? Therefore said Resh Lakish: The analogy is in the expression "Dobhor," which is mentioned in both the verses cited.

"*High-priest*," etc. Whence is this deduced? Said Ada b. Ahaba: From the above-cited Ex. xviii. 22, which is explained as the matter of a great man.

"*To decide upon battles*," etc. Whence is this deduced? Said R. Abuhu: From [Num. xxvii. 21]: "And before Elazar the priest shall he stand . . . he and all the children of Israel with him, and all the congregation." "He" means the king. "All Israel with him" means the priest who was anointed to be the leader of the war. And "all the congregation" means the Sanhedrin. But perhaps the cited verse means that only for the just-mentioned persons the Urim is allowed to be used; but not for common men. And the question, Wherefrom is it taken that seventy-one are needed to decide about battles? remains. Therefore it must be said, as R. Aha b. Bizna in the name of R. Simeon the Pious said: A harp was placed over the bed of David, and when midnight arrived a north wind used to blow in it, so that the harp would play by itself and awake David, who used to get up and occupy himself with the Torah until the

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morning star arose. And thereafter the sages of Israel used to enter to him, saying: Lord our king, thy nation Israel needs food. And to his answer: Go, then, and make business among yourselves, they answered him: A handful of food can never satisfy a lion, and a pit can never be filled with the earth taken out from it. Whereupon David decided: They shall go to a battle. Then they consulted Achithophel, took also advice from the Sanhedrin, and asked the Urim, etc.

R. Joseph said: Whence do we know from the Scripture that such was the custom? From [I Chron. xxvii. 34]: "And after Achithophel (came) Yehoyada, the son of Benayahu, and Ebyathar; and the captain of the king's army was Joab. Achithophel was the counsellor, as it reads [II Sam. xvi. 23]: "And the counsel of Achithophel, which he counselled in those days." Yehoyada means the Sanhedrin, as it is written of his father Benayahu [I Chron. xviii. 17]: "And Benayahu, the son of Yehoyada, was over the Kerethites and the Pelethites," which means the Sanhedrin, to whom Yehoyada his son was the head after Benayahu. And why was the Sanhedrin named Kerethites and Pelethites? Because the literal meaning of the two terms in Hebrew is "cutting" and "wonder"; and the Sanhedrin, with their decisions, used to cut off and do wonderful things. "And Ebyathar" means the Urim Vethumim; and then comes "the captain of the king's army, Joab," which means war. And R. Itz'hak b. Ada, and according to others B. Abudimi, said that [Ps. lvii. 9] "Awake, psaltery and harp, I will wake up the morning dawn," is a support to R. Aha b. Bizna's statement.

"*For enlarging, the city,*" etc. Whence is this deduced? Said R. Shimi b. Hyya: From [Ex. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all instruments thereof, even so shall ye make it"--which means, so shall ye do in the later generations. Rabha objected from the following: "All the utensils which were made by Moses, the anointment sanctified them; however, the utensils which were made after him, the using of them for service consecrated them." And why? Apply, "So shall ye do," etc., to the utensils also; they shall need anointment in the later generations also? With this it is different, as [Num. vii. i]: "And had anointed them, and sanctified them," means them with anointment, but not those which should be made in a later generation. But how is it inferred from the passage that for the utensils made in the later generations anointing is prohibited?

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[paragraph continues] Said R. Papa: It is written [ibid. iv. 12]: "Wherewith they minister in the sanctuary." We see, then, that the passage makes them sanctified by ministering with them.

"*Appointing supreme councils,*" etc. This is taken from Moses, who had established the first Sanhedrin; and the person of Moses is equalized to seventy-one of them.

The rabbis taught: Whence do we know it is a duty to appoint judges? From [Deut. xvi. 18]: "Judges and officers," etc. But whence do we know that it is a duty to appoint them to each tribe? From [ibid., ibid.]: "Throughout thy tribes." (From this verse is deduced that judges as well as officers are to be appointed to each tribe.) R. Jehudah maintains: It was also necessary to appoint one who should rule over all the judges; as this verse reads, "Shalt thou appoint," which means that the Great Sanhedrin, who ruled all the judges in the lower houses, should be appointed by them. R. Simeon b. Gamaliel said: It reads: "Throughout thy tribes, and they shall judge," which means, it is a meritorious act to appoint judges to a tribe from its own people.

"*To condemn a misled town,*" etc. Whence is this deduced? From [ibid. xvii. 5]. "Then shalt thou bring forth that man," etc. An individual you may bring to thy gates, but not the whole city, as said above by R. Hama b. Joseph (here mentioned Hyya, instead of Hama).

"*Town on the boundary,*" etc. Why so? Because it reads, "From thy midst," but not from a boundary.

"*Nor three of them,*" etc. Because it is written [ibid. xiii. 13]: "One of thy cities." But why two? Because of the word "cities."

The rabbis taught: One, but not three. But perhaps one, and not two? Because it reads cities, two are meant. Hence with the term one, one, not three, is meant. Rabh used to say at one time that for one court it is not allowed to make three, but for two or three courts it is allowed; and at another time he said that it is not allowed to do so, even in several courts? And the reason is, that Israel must not be made bald-headed. Said Resh Lakish: This is said only in one country; but in several countries, it may. R. Johanan, however, is of the opinion that even then it must not, for the reason that the land should not be bald-headed. There is a Boraitha in accordance with R. Johanan. Three misled cities must not be made in the land of Israel; two, however, may--*e.g.*, one in Judea and one in



[paragraph continues] Galilee; but not two in Judea, nor two in Galilee. And if it were near to the boundary, even one must not be proclaimed misled; for, should it come to the ears of the heathens, they might destroy the whole land of Israel. But why not deduce it from the passage which states "from thy midst," and not from the boundary? This is in accordance with R. Simeon, who used to explain the reasons of what is stated in the Scriptures.

"*The Great Sanhedrin*," etc. What is the reason of the rabbis, who said that Moses was as head of them? Because it reads [Num. xi. 16]: "And they shall stand there with thee," which means, and thou shalt remain with them. R. Jehudah, who says seventy only, maintains: It was necessary for Moses to remain with them, that the Shekinah should rest upon them.

The rabbis taught: It is written [ibid. xi. 26]: "And there remained two men in the camp." According to some, it means that their names remained in the urn. As, at the time the Holy One, blessed be He, said to Moses: Gather unto me seventy men of the elders of Israel, he thought: How shall I do it? Shall I appoint six of each tribe? Then there will be two more. Or shall I take five of each? Then there will be ten less. Or shall I appoint from two tribes five only, while from the others six each? Then will I bring jealousy among the tribes. So he chose six from each, and wrote on seventy tickets "Zaqan" (elder), and two he left blank; then mixed, and put all of them into the urn. Then he said: Go, each, and take your ticket. To those who drew "elder," he said: You are already sanctified by Heaven. But those who drew the blanks had no claim, as such was their lot.

Similar was the case from [ibid. iii. 47]: "Thou shalt take five shekels apiece for the poll." And to this Moses also said: How shall I do it? If I should say to one, "Give the shekels," he may answer, "The Levite has already redeemed me." Therefore he wrote on twenty-two thousand tickets "Levite"; and on two hundred and seventy-three he wrote "five shekels," mixed them, put them in the urn, and told the people: Each shall draw his ticket. To the one who drew "Levite" he said: You are free, as the Levite has redeemed you. And he who drew five shekels was told to pay the amount and go.

R. Simeon, however, said: Not their names remained in the urn, but themselves remained in the camp in doubt, saying: We

are not worthy of such a high appointment. And the Holy One, blessed be He, said: Because ye were modest, I will increase your grace. And what grace was increased to them? All the seventy had prophesied once, and ceased; but these two did not cease to prophesy. And what was their prophecy? They said: Moses shall die, and Joshua shall bring Israel to his land. Aba Hanin, however, said in the name of R. Elazar: They prophesied about the quail, saying, "Come up, quail. Come up, quail." And R. Na'hman said: About Gog and Magog they prophesied, as it is written [Ezek. xxxviii. 17]: "Then hath said the Lord Eternal: Art thou (not) he of whom I have spoken in ancient days through means of my servants the prophets of Israel, who prophesied in those days (*Shanim*) years, that I would bring thee against them?" Do not read *Shanim*, but *Shnaim*, which means two. And who were the two who had prophesied at one period, with one and the same prophecy? Eldad and Medad.

It is correct in respect to him who said above that their prophecy was, "Moses shall die," what is written [Num. xi. 28]: "My lord Moses, forbid them." But in respect to them who said they prophesied about other things, why, then, should they be forbidden? Because it was not seemly for them thus to prophesy in the presence of Moses. What is meant by the words, "forbid them"? He meant to say: Appoint them, they shall occupy themselves with the needs of the congregation, and they will be destroyed by themselves.

Whence do we know that three more are needed, as, after all, sentence of guilt by a majority of two cannot take place; as, if eleven defend and twelve accuse, then there is only a majority of one; and if ten defend and thirteen accuse, there is a majority of three? Said R. Abuhu: Such a case can be only when there is a necessity to add more judges according to all. (*I.e.*, in case eleven accuse and the same number defend, and one of them says: I am in doubt. And in such a case all agree that judges must be added, as the one who is in doubt cannot be counted; and then two more are to be added. And if the two who were added also accuse, there is a majority of two.) And such also can be found in the Great Sanhedrin, in accordance with R. Jehudah, who said: There was an even number of seventy. R. Abuhu says again: In case more judges are to be added, an even number may be made in the Small Sanhedrin also. Is this not self-evident? Lest one say that the one who says he is in

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doubt is counted, and if thereafter he gives a reason for his decision after deliberating he may be listened to, he comes to teach us that as from the time he is in doubt he is not to be counted at all, so after the deliberation he may not be listened to.

R. Kahana said: If all the persons of the Sanhedrin are accusing, the defendant becomes free. Why so? Because there is a tradition that such a trial must be postponed for one night. as perhaps some defence may be found for him; but if all accuse him, it is not to be supposed that some will find any defence for him over night, and therefore they are no longer competent to decide in his suit.

R. Johanan said: The persons who are chosen to be members of the Sanhedrin must be tall, men of wisdom, of good appearance, and of a considerable age; and, also, they should understand something in cases of witchcraft; and they must also know seventy languages, so that they shall not need to hear a case through an interpreter. R. Jehudah in the name of Rabh said: In a city in which there are not to be found two persons who can speak seventy languages, and one who can understand them although he cannot speak, Sanhedrin must not be established. In the city of Bethar were three; and in the city of Yamiam were four, namely: R. Eliezer, R. Jehoshua, R. Aqiba, and Simeon of Tehmon their disciple, who was not of age to become a rabbi.

An objection was raised from the following: A Sanhedrin in which three of them could speak seventy languages was considered a wise one; and if four, it was considered the highest one. We see, then, that three who could speak were needed? Rabh holds with the Tana of the following Boraitha: If two, it is a wise one; and if three, it is the highest one.

There is a rule that, where there is to be found throughout the Talmud the expression "the man who learned in the presence of the sages," Levi before Rabbi is meant; and where the expression, "discussed before the sages," Simeon b. Azi, Simeon b. Zoma, Hanan the Egyptian,

and Hayanya b. Hkheinai are meant. R. Na'hman b. Itz'hak taught five persons--the four mentioned above, and the fifth was Simeon of Tehmon. Where it is mentioned, "our Masters in Babylon," Rabh and Samuel are meant; "our Masters in Palestine," R. Abbi is meant; "the judges of the Exile," Karna is meant; "the judges of Palestine," R. Ami and R. Assi; "the judges of Pumbeditha," R.

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[paragraph continues] Papa b. Samuel; "the judges of Nahardea," R. Ada b. Minumi; "the elders of Sura," R. Huna and R. Hisda; "the elders of Pumbeditha," R. Jehudah and R. Eina; "the geniuses of Pumbeditha," Eiphah and Abimi sons of Rabha; "the Amoraim of Pumbeditha," Rabba and R. Joseph; "the Amoraim of Nahardea," R. Hama. If it is said "the Nhardlaien taught," Rami b. Berokha is meant. But was it not said by Huna himself: "It was said in the college"? Therefore it must be said that "Hamnuna" is meant. "It was said in Palestine," R. Jeremiah is meant; "a message was sent from Palestine," R. Jose b. Hanina is meant. And where it is said, "it was ridiculed in Palestine," R. Elazar is meant. But do we not find a message was sent from Palestine: According to R. Jose b. Hanina it is so and so? Hence R. Jose b. Hanina cannot be meant in the expression, "there is a message from Palestine"? Therefore it must be reversed. Where it is said, "a message from Palestine," R. Elazar is meant; and "it was ridiculed in Palestine," R. Jose b. Hanina is meant.

"*How many shall a city . . . one hundred and twenty,*" etc. What is the reason of that number? Twenty-three of the Small Sanhedrin, and three rows of twenty-three each (hearers), make ninety-two; and ten idle men, who must always be in the houses of prayer and learning, make one hundred and two; and two scribes, two sextons, two parties for defendant and plaintiff, two witnesses, and two men who may be able to prove the witnesses collusive, and still two more who could prove the last ones collusive--hence in the total there are one hundred and fourteen. There is a Boraitha that in a city in which the following ten things do not exist, it is not advisable for a scholar to reside, and they are: Five persons to execute what the court decides; a treasury of charity (which is collected by two and distributed by three); a prayer-house, a bath-house, lavatories, a physician, a barber, a scribe, and a teacher for children. And according to others it was said in the name of R. Aqiba: In the city should be several kinds of fruit, as the consuming of fruit enlightens the eyes.

"*R. Nehemiah,*" etc. There is a Boraitha: Rabbi said: Two hundred and seventy-seven. And there is another: Rabbi said: Two-hundred and seventy-eight. And there is no contradiction, as one Boraitha is in accordance with R. Jehudah, who needs only seventy for the Great Sanhedrin.

The rabbis taught: It is written [Ex. xviii. 21]: "And place

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these over them, as rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens." Rulers of thousands were six hundred; rulers of hundreds were six thousand; rulers of fifties, twelve thousand; and rulers of tens, sixty thousand. Hence the total number of the officers in Israel were seventy-eight thousand and six hundred.

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## Footnotes

[1:1](#) All this is explained in Tract Baba Kama.

[2:1](#) According to some, the hyena: to others, another sort of a preying beast.

[3:1](#) Leeser translates, "to deliver," the meaning of which is to save, as it is adopted in the original text.

[3:2](#) Leeser's translation here is incorrect, not only according to the Talmud, but also to the *punctuation* of the verse.

[7:1](#) The first-born of cattle which might be legally eaten, and also of an ass, had biblically to be submitted to the priest when the Temple was in existence; but after the destruction of the Temple they had to be raised until a blemish on their bodies appeared. But what kind of a blemish made them fit for slaughtering? They had to be examined by an expert who understand blemishes, and was familiar with the entire law; and a permission was needed for the expert.

[10:1](#) *Zdakha* is the term in Hebrew, which means also charity.

[12:1](#) It is inferred from the term in Hebrew, "Reshit Madun," which is not translatable into English.

[13:1](#) The end of the verse, "but the wicked shall stumble into misfortune," is not found in the Scriptures. This is one of several places which shows that at that time in the Bible was another text.

[19:1](#) All this will be explained in the proper place in succeeding volumes.

[25:1](#) See Rosh Hashana, p. 12, second edition.

[27:1](#) This riddle was sent at the time when it was prohibited by the Roman government to establish a leap year, and even to discuss about it. Therefore the message was sent as a riddle so as to be unintelligible to those not concerned.

[29:1](#) The detailed explanation of all this would take too much space. However, it will be understood by those who know the order of the Jewish calendar. Although in our work it is of no importance, we hope that the reader will have an idea of it from our text, without the detailed explanation and the discussion following, omitted.