

## CHAPTER IV.

RULES AND REGULATIONS CONCERNING EXAMINATIONS AND CROSS-EXAMINATIONS OF WITNESSES IN CIVIL AND CRIMINAL CASES. THE DIFFERENCE IN JUDGING AND IN DISCUSSIONS BETWEEN CIVIL AND CRIMINAL CASES. HOW THE MEMBERS OF THE SANHEDRIN WERE SEATED. HOW MANY RECORDING SCRIBES WERE NEEDED. HOW JUDGES WERE ADDED IF NEEDED, AND FROM WHAT PEOPLE. HOW WITNESSES SHOULD BE FRIGHTENED IN CRIMINAL CASES. THE REASON WHY ADAM THE FIRST WAS CREATED SINGLY.

*MISHNA I:* Cases coming before the court, be they civil or criminal, the witnesses thereof must be examined and investigated. As it is written [Lev. iv. 22]: "One manner of judicial law shall ye have." But what difference is there between civil and criminal cases? It is the following: (a) The former cases are to be tried by three, and the latter by twenty-three judges. (b) In the former the discussion may commence either with the accusation or with the defence, while the latter must commence with the defence and not with the accusation. (c) In the former case one voice suffices either to accuse or to acquit, and in the latter he is acquitted by one voice, while to condemn two are needed. (d) In the former the judge who proclaimed his view either to advantage or to disadvantage may, after deliberating, announce his view to the contrary. In the latter, however, he may do so only to acquit, but not to condemn. (e) In civil cases the whole body of the court may defend or accuse, while in criminal cases all of them may acquit, but the whole body must not accuse. (f) The former may be discussed in the daytime and the decision rendered at night, while in the latter the decision must be in the daytime. But if they did not come to a conclusion on the same day, they have to postpone it to the morrow. (g) The decision concerning the former may be reached on the same day either to one's advantage or to his disadvantage, while in the latter the decision may be rendered on the same day to free him, but not to condemn him until the next day; and, therefore, cases of capital punishment must not be begun on the eve of Sabbath or of a legal holiday. In civil cases,

and regarding defilement and purity, they begin by asking the opinion of the eldest, while in criminal cases they begin with those who are sitting on the side.

All are qualified to judge civil cases, but not every one is qualified to judge criminal cases; as to the latter--only priests, Levites, and Israelites who may legally marry daughters of priests.

*GEMARA:* Are investigation and examination indeed needed in civil cases? If so, there is a contradiction from the following Tosephta: A document of which the date shows the first of Nissan in a Sabbatical year and witnesses came, saying, "How can you testify in favor of this document--were you not with us at the same date mentioned in the document in such and such a place?" The document as well as the witnesses are valid, as it is to be supposed that they might

have written the document after the date mentioned therein. Hence if investigation and examination are needed, why should they be valid because of the above reason? Would not the investigation show if it were so or not. But according to this theory, how is to be understood the following Mishna: Promissory notes which were written at an earlier date are invalid. However, if they were written at a later date, they are. Now, if an investigation in civil cases is needed, why should that which was written at a later date be valid? (The investigation would show that the witnesses who signed the document were not present when the loan was made, as it was signed at an earlier date. Hence the loan which was made earlier is to be considered a verbal loan, which does not collect from encumbered estates, and the note should be considered a forgery?) This presents no difficulty, the objection mentioned applying more to the statement of the Boraitha, as it speaks of a Sabbatical year, in which people do not usually lend money because of the law [Deut. xv. 2] of that year, and nevertheless it makes valid that which was written in the month of Nissan, because the above-mentioned law concerning promissory notes applies only at the end of the year. However, the contradiction to our Mishna remains!

R. Hanina said: Biblically there is no difference between civil and criminal cases concerning investigations, as it reads, "One manner of judicial law," etc. But why was it enacted that civil cases do not need investigation? So as not to close the door to borrowers. (And our Mishna, which states that it is needed, was taught *before the enactment*; and the Boraitha cited *after the enactment*.) But if so, let the judge who made an error in the

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decision of the case not be responsible? If this should be enacted, so much the more would the door be closed to borrowers. Rabha, however, maintains that our Mishna treats of fine cases and the Boraitha of loan cases. However, both were taught after the above-mentioned enactment. And R. Papa maintains that both treat of loan cases. But our Mishna speaks of a case which appears to the court unfair; and to such, investigation is needed. The Boraitha speaks of non-suspicious cases. And this is in accordance with Resh Lakish, who used to propound a contradiction to the following: It reads [Lev. xix. 15]: "In righteousness shalt thou judge thy neighbor"; and Deut. xvi. 20 reads: "Justice, only justice, shalt thou pursue," from which it is to be understood that an investigation is needed? And he answered that the first verse speaks of an ordinary case and the second of a suspicious one. R. Ashi, however, maintains that the above answer of R. Papa, concerning the contradiction from the Mishna, holds good. However, the supposed contradiction of the verse is to be explained that the first speaks of a strict law and the second of an arbitration, as the following Boraitha states: "Justice, only justice," etc., one word means strict law and the other means arbitration. How so? If, *e.g.*, two boats are plying on a river and they meet each other, if both try to pass where there is not room, both would be lost; but if one passes after the other, both would be saved. And the same is the case with two camels passing the steps of Beth Chorin, which met each other. If both tried to pass together, both would fall; but if one after the other, both would be saved. Then the strict law is that the unloaded one should wait, and the loaded one pass; or, if one was near to the dangerous place and the other far off, the nearer one has to pass; but if both were loaded, or if both were at the same distance, then arbitration must be used as to which one has to pay to the other for loss of time.

The rabbis taught: "Justice, only justice, shalt thou pursue," means that one shall follow to the city of a celebrated judge, *e.g.*, at Luda, after R. Elazar; at Brur-Heil, after Rabban Johanan b. Zakkai. [There is a Boraitha: (At the time the government had forbidden circumcisions and

weddings, they made use of handmills to announce a circumcision.) Then, if one heard the sound of a handmill in the city of Burni, he understood that there was a ceremony of circumcision in that city; and if one saw many lights in Bene Heil, he understood that there was a wedding banquet in that city].

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There is another Boraitha interpreting the cited verse thus: You should always trouble yourself to follow after the sages in assembly, as, for instance, after R. Elazar at Luda; after R. Johanan b. Zakkai at Brur-Heil; after Jehoshua at Pekiein; after Rabban Gamaliel at Jamnia; after Aqiba at Bene Braq; after Matia at Rome; after Hanania b. Thruin at Sikhni; after Jose at Sefhorius; after Jehudah b. Bathyra at Nzibin; after Hanina, the nephew of Jehoshua, in exile; after Rabbi at Beth Shearin; and (when the Temple was in existence) after the sages at their assembly in the chamber of the Temple.

"*With the accusation or with the defence.*" But what has the court first to say to the advantage of the defence in criminal cases? Said R. Jehudah: The court may ask the witness: "Whence do we know that it was as you say?" But from such an interrogation the witness will become dejected, and will refrain from saying anything. [But let him be dejected? Have we not learned in a Boraitha, R. Simon b. Eleazar said: The witnesses may be transferred from one place to another that they shall become dejected and retract from their statement if it was not true? What comparison is this? There they become dejected by themselves; but here, if you say to them, "Whence do we know that what you say is true?" *you* cause them to be dejected.] Therefore said Ula: The court questioned the other party, "Have you other witnesses to make collusive the witnesses of your opponents?" Said Rabba to him: Is this what you call *beginning with the defence*? With this saying you begin by accusing witnesses of the other party. Therefore said he: The court may say to the other party, "Have you other witnesses who may contradict the witnesses of your opponent?" R. Kahna says: The court may say, "From your testimony it seems that the defendant may be acquitted"; and thereafter they discuss the matter. Both Abayi and Rabha say: The court may say to the defendant, "Do not fear; if you have not committed the crime, nothing will be done to you." And R. Ashi said: The beginning should be with the announcement of the court: Every one who knows of a defence concerning the defendant may come to tell it before the court. There is a Boraitha in accordance with Abayi and Rabha as follows: It reads [Num. v. 19]: "If thou hast not gone aside to uncleanness behind thy husband, then be thou free." Said Rabbi: Infer from this that in criminal cases the beginning must be with the defence (as it is written first, "then be thou free").

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"*May after deliberating . . . announce to the contrary.*" There is a contradiction from the following: If one has tried a case and made liable him who is not, or *vice versa*; has purified a thing which is unclean, or *vice versa*, his decision holds good, but he has to pay for his error from his own pocket. (Hence we see that he must not retract?) Said R. Joseph: This presents no difficulty. A judge who was appointed by the court, if he made an error, he must pay for it; but if he was appointed by the parties only, he has not. But is there not a Boraitha: If he was appointed by the court, he has not to pay? Said R. Na'hman: The just cited Boraitha treats of when there was a superior judge to him, who ignores his decision; therefore he is free from paying, as the superior judge decides it properly. But if there is no superior and his decision remains, then he must pay for his error. R. Shesheth, however, maintains: It depends in what the error was made.

If he erred in that which is plainly taught in a Mishna, then he has not to pay, because his decision will not be executed; but if he erred in his opinion, then he has to suffer. So did he hear from R. Assi. Rabhina questioned R. Ashi: Is it the same even if he has erred in that which was taught in the Boraithas of R. Hyya and R. Oshia? And he answered: Yea. And how is it if he erred in that which was said by Rabh and Samuel? And he answered: Yea. And how is it if he erred in that which was said by you and me? And he rejoined: What, then, are we? Are we splitting wood or gathering splinters in the forest! How is to be understood, "erred in his opinion"? (See the answer in Chapter I., page [9](#), line 21.)

R. Hamnuna objected to R. Shesheth from the following: It happened that a cow of which the womb had been removed was brought before R. Tarphon, and he made the owner give it to the dogs. However, a similar case came before the sages in Jamnia, and they made it valid, because Tudus the physician testified that not one cow or one swine was sent out from Alexandria in Egypt of which the womb was not removed, Or the purpose that they should not bring forth offspring. And R. Tarphon exclaimed thus: O Tarphon, thy ass is gone! (*I.e.*, I have to sell my ass to pay for the error.) Said R. Aqiba to him: You are free, as there is a rule that a judge who is appointed by the majority has not to pay for his error. Now, if an error in that which was taught in a Mishna does not hold good and must be redecided, why does not Aqiba say: You have erred against a

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Mishna? R. Aqiba meant to say both--first: You have erred against a Mishna; and secondly: Even if you erred in your own opinion you would also be free, because you were chosen by the majority.

Said R. Na'hman b. Itz'hak to Rabha: How could R. Hamnuna object to Shesheth from the case of the cow? Did not Tarphon give it to the dogs? Hence the cow was no longer in existence, and it could not be redecided. Hamnuna meant to say thus: If the decision should be that the case of one who erred against a Mishna is not to be redecided, it is correct that Tarphon was afraid that he must pay, and R. Aqiba told him that he must not, because he was a recognized judge. But if the Halakha is that in such a case it must be redecided, let Aqiba say to him: How would it be if the cow were still in existence--your decision would not remain and the cow would be declared valid? The same is the case even now that it is not in existence, as you did not yourself give it to the dogs: You had only decided that it was invalid, and as your decision does not count, the owner of the cow, himself, has to suffer for his act.

R. Hisda, however, explains our Mishna that it means: If the judge himself took from the one who was liable in his eyes and gave to his opponent, only then must he pay from his pocket, but not otherwise. But this would be correct in one case only--namely, if he had made liable the just, then we could say that he took from the just and gave to his opponent. But how could this be done in the second case, in which he has acquitted the one who was liable, as he only said to him: You are not liable? His decision, "You are free," is counted as if he would take with his hand and give to him. But if so, how is to be understood the following statement of the Mishna, that the judge may retract from this view, no matter if it is concerning defence or accusation, as this can be explained only in case he said to the just, "You are liable," but did not collect from him, as then he may retract and say, "You are not liable"? But in case he made liable a just man, how could such a case take place, if not by the decision, "You are free"? And it is said above that such a decision is considered as if he would take from one party and give to the other:

hence, after such, no retraction can take place. Our Mishna, with its expression, "whether in defence or in accusation," means to say that with the acquittal of one party the other party is accused; namely, a retraction may take place in behalf of one who was erroneously made liable but it was not as yet collected,

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although it is a disadvantage to his opponent, but in case he has acquitted the one who is liable he has to pay from his pocket. But if so, then in criminal cases a retraction could take place only when it is in behalf of the defendant. but at the same time his opponent is not accused. And this can be said if the criminal case was a violation of Sabbath or a case of adultery; but in case of murder, how can such be found? But how, if there is a retraction that he is not guilty of slaying a person, who is accused? It may be said the relatives of the person murdered; as biblically, if the relatives of the person murdered took revenge on the murderer and slew him, he is freed; and by the retraction from guilty to not guilty, if the relative should put his hand on the murderer, he would be accused. But could such a thing be supposed? You mean to say, because perhaps the relative of the person murdered will take revenge, therefore no retraction shall take place and the defendant shall be put to death. And secondly, does not the Mishna state, whether concerning defence or accusation? This difficulty remains. Rabhina, however, says: Even in case he has acquitted the one liable, it may also be found that the judge did it with his hand--namely, in case he had a pledge and the judge took it away from him and transferred it to the borrower.

"*Criminal cases*," etc. The rabbis taught: Whence do we know that if one was found guilty by the court, and thereafter one came, saying: I know a defence for him, that the case may be retried? Because it reads [Ex. xxiii. 7]: "Him who hath been declared innocent and righteous, thou shalt not slay." Read: Him who was declared innocent even by one person, you shall not slay (without a reinvestigation). And whence do we know concerning the one who was acquitted by the court, and thereafter one says, "I know of a fact which will make him guilty," that he must not be listened to? From the same cited verse: "Him who hath been declared righteous, ye shall not slay." Said R. Shimi b. Ashi. And just the reverse may be done with a seducer, as the Scripture reads [Deut. xiii. 9]: "You shall not have any pity," etc. R. Kahana infers this from [ibid., ibid. 10]: "You shall surely kill him," etc.

R. Zera questioned R. Shesheth: Whence do we know that the same law applies to them who are to be punished with exile? And the answer was: From an analogy of the expression "murder," which is to be found in both cases. And whence do we know that the same is the case with them that are to be punished

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with stripes? From an analogy of the expression, "wicked," which, is to be found in both cases. And so also is it plainly stated in a Boraita.

"*But not to condemn*." Said Hyya b. Aba in the name of R. Johanan: Provided he has erred in a thing which the Sadduceans oppose; but if they admit, it must read so plainly in the Scripture. And such a decision is not to be taken in consideration at all, as schoolchildren are aware of it; it must be retried. The same Hyya questioned R. Johanan: How is it we err in a case of adultery? And he answered: So loner as the fire in the stove burns, cut off all that you want to roast, and roast it. (*I.e.*, when you are studying a thing, consider it thoroughly to prevent questions. You



have heard from me that, a thing which the Sadduceans admit, his decision is not counted. Is not adultery one of these?)

"*All of them*," etc. Does the Mishna mean that even their witness who had accused him may also thereafter defend him? Then our Mishna is in accordance with R. Jose b. Jehudah, and,, not in accordance with the rabbis of the following Boraitha: It is written [Num. xxxv. 30]: "But one witness shall not testify against any person to cause him to die." It means whether to defend or to accuse. Jose b. Jehudah, however, maintains that he may testify to defend, but not to accuse. (Hence our Mishna is not in accordance with him.) Said R. Papa: Our Mishna with its expression *all*, means to add one of the disciples who sat in a row before the judges, and such may make use of his opinion according to all.

What is the reason of R. Jose's statement? Because it reads: "to cause him to die," we infer that only to accuse he must not testify, but to defend he may. But if so, why do the rabbis differ? Said Resh Lakish: Because it appears that the witness is interested in this case. And what do the rabbis infer from the words "to cause him to die"? They apply this to one of the disciples, as we have learned in the following Boraitha: If one of the witnesses says: "I have something to say in defence. of the defendant," whence do we know that he must not be listened to? From the verse cited: "One witness shall not testify." And whence do we know, if one of the disciples say, "I have something to say to the disadvantage of the defendant," that he must also not be listened to? From the same: "One shall not testify to cause him to die."

"*Only to acquit, but not to condemn.*" Said Rabh: This is

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said only at the time they discuss this matter; but at the time of the conclusion he may change his views from defence to accusation also. An objection was raised from the following: "On the morrow they arise early and come to the court. He who defended has to say: I defended yesterday and am of the same opinion to-day. And he who accused has also to say: I accused, and am of the same opinion to-day. However, he who had accused may change his view to defence, while this is not allowed to him who defended." Now, on the morrow it is time for the conclusion, and it nevertheless states that the defendant may not change his view? According to this theory, no discussion is to be prolonged on the morrow; and this is certainly not so. Hence the Boraitha means that he must not do so at the time of discussion.

Come and hear another objection: "All who take part in the discussion may explain their reasons, until one of the accusers shall yield to one of the defenders (and then the majority of one will suffice to acquit)." Now, if you say that one may change his view from defence to accusation, why does not the Boraitha state, "or to the contrary"? It is simply because the Tana of the Boraitha does not care to repeat a matter of accusation.

Come and hear another objection: "R. Jose b. Hanina said: If one of the disciples has defended and dies at the time of the conclusion, his view should be considered as if he were still alive." And why? Let it be said that if he were alive he might retract from his view? This is no objection, as in reality he did not retract. But how can you explain that the decision of R. Jose b. Hanina may correspond with Rabh's statement? Was not a message sent from Palestine as follows: R. Jose's statement denies our master's (Rabh's) statement? Nay, the message was just

the contrary: R. Jose's statement does not deny the statement of our master in Babylon.

"*Discussed in the daytime,*" etc. Whence is this deduced? Said R. Aha b. Papa: From [Ex. xviii. 22]: "And let them judge the people at all times." But how is it to be inferred from this that the conclusion must not be at night, and the discussion may? This is in accordance with Rabha, who has propounded a contradiction from the just cited verse to that of Deut. xxi. 16: "Then shall it be, *on the day* 1 *when he divideth* . . . what

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he hath"--on the day, "but not at any time"? And the answer was that the beginning of the trial must be in the daytime, but the conclusion may be even at night-time in civil cases. Our Mishna is not in accordance with R. Mair of the following Boraitha: It reads [ibid., ibid. 5]: "Every controversy and every plague." 1 What have plagues to do with controversies? The Scripture compares controversies to plagues, in order to apply the law of the latter to the former. As concerning plagues it must be in the daytime [Lev. xiii. 14]: "But on the day," etc., the same is the case with controversies. And also as, concerning plagues, it cannot be judged by one who is blind, as the priest must see the signs, the same is the case with controversies. And also the law concerning controversies, which must not be judged by relatives, applies to plagues--that the priest must not be a relative of him who has the plague.

In the neighborhood of R. Johanan there was one who was blind who used to judge cases, and R. Johanan did not protest. But could R. Johanan be silent in such a matter? Is it not against his own decision? Did not he himself declare that the Halakha always prevails with an anonymous Mishna, and there is one which states: Every one who is qualified to judge is also qualified to be a witness? However, there are some who are qualified to witness, but not to judge; and the same R. Johanan has declared that it means one who is blind of one eye, who is qualified to witness, but not to judge. Hence one who is blind, who is disqualified to be a witness because he cannot see, ought also to be disqualified to judge? R. Johanan found another anonymous Mishna for his basis, namely: "Civil cases may be discussed in the daytime and the conclusion at night," which is the same as a case of one who is blind. But why does he give preference to the latter Mishna, and not to the first? If you wish, it may be said because the latter treats of a majority, while the first treats of an individual. And if you wish, it is because the latter is taught concerning the laws of trying cases.

"*If they did not come to a conclusion,*" etc. Whence is this deduced? Said Shini b. Hyya: From [Num. xxv. 4]: "Take all the heads of the people and hang them up before the Lord in the face of the sun." If people have sinned, wherein have the heads of the people sinned, that they should be hanged? Said R. Jehudah in the name of Rabh: Thus said the Holy One, blessed be He, to Moses: "Take the heads of the people, and set

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them at separate places, that they shall judge the guilty ones and hang them in the face of the sun (which means in the daytime)." And why in separate places? Shall we assume, because two capital punishments must not be decided on one and the same day? Did not R. Hisda say that this is said only when capital punishments are of different kinds, but if of one kind they may? Therefore it must be said: To hasten the execution of the guilty, that the anger of Heaven shall

cease.

"*They have to postpone it until the morrow.*" Whence is this deduced? Said R. Hanina: From [Is. i. 21]: "Righteousness lodged therein; but now murderers"--which means, formerly they used to postpone the condemnation for a night, and now that they are not doing so they are considered murderers.

"*Must not be begun on the eve of Sabbath,*" etc. Why so? Because it could not be done otherwise; as, if they should begin and finish on the eve of Sabbath, perhaps they would need to condemn him, and then they would have to postpone it over night. And to conclude the case on Sabbath and to execute on the same day, the execution does not violate the Sabbath; and should it be executed at night, after Sabbath the law requires, "in the face of the sun"; and should the conclusion be on Sabbath and the execution on the following day, then it would be torture for the guilty one, which is not allowed. Should they begin on the eve of Sabbath and conclude on the day after Sabbath, then they are liable to forget the reasons. Although there were two scribes who used to write down the discussions--the defence as well as the accusation--they wrote only what was said, but could not write the heart of the man. And, therefore, it was impossible otherwise.

"*They used to ask the opinion,*" etc. Said Rabh: I used to be among the judges of the court of Rabbi, and they used to begin the question of opinions with me. But does not the Mishna state that they have to begin with the eldest? Said Rabba b. Rabba, according to others Hillel b. Wals: It was different in the court of Rabbi, as in all cases they used to begin from those who were sitting at the side. The same said again: From the time of Moses until the time of Rabbi we do not find one man who was unique in the possession of wisdom, riches, and glory. Is this so? Was it not so with Jehoshua? Nay, there was Elazar the high-priest, who was equal to him. But was not Pinchas such a man? Nay, there were the elders who ruled with him. But was there not King Saul, of whom the same could be

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said? Nay, there was Samuel. But did not Samuel die before Saul? It means, all the years of his life. But was not David such a man? There was Era of Ja'ir. He also departed before him. It means, also, all the years of his life. Was not King Solomon such a man? There was Shimi b. Geara. But did not Samuel slay him? It means, all the years of his life. Was there not Hezekiah? There was Shbna. Was there not Ezra? There was Nehemiah. Said R. Ada b. Ahbah: I can add thus: From the time of Rabbi until the time of R. Ashi there is also not to be found a man who was unique in all that is said above. But was there not Huna b. Nathan? R. Huna was under the influence of R. Ashi.

"Criminal cases they began from those sitting at the side." Whence is this deduced? Said R. Aha b. Papa: It is written [Ex. xxiii. 3]: "Neither shalt thou speak in a cause." (The term for "cause" is "rib," literally "quarrel," and "rab" means "great." ) Do not read "rib," but "rab," which means: You shall not contradict one who is greater than you. Rabba b. b. Hana in the name of R. Johanan said: This is inferred from [I Sam. xxv. 13]: "Gird ye on every man his sword, and they girded on every man his sword; and David also girded on his sword." (We see that first it was done by the people and afterwards by the master.)



Rabh said: One may teach his disciple, and at the same time may judge in association with him in criminal cases. An objection was raised from the following concerning purification and defilement. A father with his son, or a master with his disciple, are counted as two voices. However, in civil cases, in criminal cases concerning stripes, in consecration of the month and in the establishment of leap year, a father with his son, or a master with his teacher, is counted as one voice only. (Hence we see that the master with his disciple cannot judge together in criminal cases, so that they should be counted two.) Rabh speaks of such disciples as R. Kahana and R. Assi, who needed only Rabh's tradition, but not his sagacity, to equalize things.

R. Abuhu said: In ten things civil cases differ from criminal cases. However, all of them do not apply to the case of an ox which is to be stoned, except as to the number of judges, twenty-three being needed, similar to all other criminal cases. But whence is this deduced? Said R. Aha b. Papa: From [Ex. xxiii. 6]: "Thou shalt not wrest the judgment of thy poor in his cause"; *i.e.*, thou shalt not wrest the case of thy poor, but thou

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mayst wrest the case of the stoning of an ox. (And as this law does not apply to the stoning of an ox, so do not apply the other laws except the one of the twenty-three, judges mentioned above.) But are there not some other things in which criminal cases differ from civil? Have we not learned in a Boraitha that among the Sanhedrin must not be any one of great seniority, a castrate, and those who have no children? R. Jehudah also adds to these a cruel man.

*"All are competent to judge civil cases."* What does the Mishna mean by the expression *"all"*? Said R. Jehudah. To add a bastard. But this was taught already in the above-mentioned Boraitha, that all who are competent to judge criminal cases are competent for civil cases. However, there are those who are competent for civil cases but not for criminal. And in our discussion we have debated: "What does it mean by all who are competent?" The same R. Jehudah said: It means to add a bastard. One means to add a proselyte and the other means to add a bastard; and both cases are necessary to be stated. For if a proselyte only were stated, one might say, it is because he is eligible to marry a daughter of an Israelite; but a bastard, who is not allowed to do so, is not competent. And if a bastard only were stated, one might say, because, after all, he is a descendant of an Israelite; but a proselyte, who is a descendant of a heathen, is not competent. Therefore both statements are necessary.

*"But not all of them are competent to judge criminal cases."* What is the reason? That which was taught by R. Joseph: As the court must be select in its uprightness, so it must be select in all other things--without any blemish. And R. Ameimar said: Where is there to be found an allusion to this in the Scripture? In [Solomon's Song, xiv. 7]: "Thou art altogether beautiful, my beloved, and there is no blemish on thee." But perhaps it means literally that the judges shall be without any bodily blemish? Said R. Aha b. Jacob: It reads [Num. xi. 16]: "And they shall stand there *with thee*"--which means those who are equal to thee (*i.e.*, in birth, but not a proselyte and a bastard). But perhaps there is a difference, because of the glory of the Shekinah. Therefore said R. Na'hman b. Itz'hak: This is inferred from [Ex. xviii. 22]: "When they shall bear with thee." This means they shall be equal to thee in birth.

MISHNA II.: The Sanhedrin sat in a half-circle in order that they could see each other. Two scribes of the judges stood before them, one on the right and one on the left, and they wrote

down the reasons of the accuser and of the defender. According to R. Jehudah there were three--one who wrote down the reasons of the accuser and one the reasons of the defender, and one the reasons of both. And before them sat three rows of scholars (disciples). To every one of them his seat was known. If it was necessary to add a judge, one from the first row was elevated, and one from the second came and took the latter's place, and one from the third took the place of this one; and for the place in the third row one of the standing people was selected, but he did not take the same seat as the one departed occupied, but that to which he was entitled.

GEMARA: Whence is this deduced? Said R. Aha b. Hanina: From [Solomon's Song, vii. 3]: "Thy navel is like a round goblet which lacketh not the mixed wine." By "navel" is meant the Sanhedrin. And why were they named navel? Because they used to sit in the middle of the world (according to the Talmud, Jerusalem was the middle of the world and the Temple was in the centre of Jerusalem), and also protected the whole world. And why were they named a "round goblet"? Because the Sanhedrin sat in a circle: "Which lacketh not the mixed wine"--*i.e.*, if one wished to leave, it must be seen that besides him twenty-three remained, and if there were less, he must not. "Thy body is like a heap of wheat fenced about with lilies," means that as from a heap of wheat all derive benefit, so all were pleased to hear the reasons given by the Sanhedrin in their discussions. "Fenced about with lilies" means that even a fence of lilies was not broken by them to go out of it. This is what was said by a certain Minn to R. Kahana: Your law permits a man to stay alone with his wife during the days of her menstruation. Is it possible that flax and fire should be together and should not burn? And he answered: The Torah has testified that we are such a kind of people that even a fence of lilies is sufficient for us, and will never be broken. Resh Lakish said: This is inferred from *ibid.* vi. 72, which means that even thy vain fellows, are full of meritorious acts--like the pomegranate. 1 R. Zera said: From [Gen. xxvii. 27]: "And he smelled the smell of his garments," etc. Do not read "bgadov," which means dress, but "bagdov," which means his transgressor. There were •βριον {Greek *ù!brion*} 2

(insolent fellows) in the neighborhood of R. Zera, who nevertheless associated with them and showed them respect, to the end that they should repent. The rabbis, however, were not satisfied with this. But after the soul of R. Zera had gone to its resting-place the above-mentioned people took this to heart, saying: Hitherto there was the little man who prayed for us, but now who will do so? And they repented and became good.

"*Three rows*," etc. Said Abayi: Infer from this that if one left his place, all in the row had to change their places. But could one not protest, saying: Hitherto I have sat in front, and now you place me in the back? Said Abayi: To such a protest he was answered: There is a parable that it is better for one to be the tail of a lion than the head of a fox.

MISHNA *III.*: How were the witnesses awestruck in criminal cases? They were brought in and warned: Perhaps your testimony is based only on a supposition, or on hearsay, or on that of another witness, or you have had it from a trustworthy man; or perhaps you are not aware that finally we will investigate the matter by examination and cross-examination. You may also be aware of the fact that there is no similarity between civil and criminal cases. In civil cases one may repay the money damage and he is atoned; but in criminal cases the blood of the person

executed, and of his descendants to the end of all generations, clings to the originator of his execution. So do we find in the case of Cain, who slew his brother. It reads [Gen. iv. 10]: "The voice of the 'bloods' of thy brother are crying unto me from the ground." It does not read "blood," but "bloods," which means his blood and the blood of his descendants. [According to others it reads "bloods" in the plural, because his blood was scattered all over the trees and stones.] Therefore the man was created singly, to teach that he who destroys one soul of a human being, the Scripture considers him as if he should destroy a whole world, and him who saves one soul of Israel, the Scripture considers him as if he should save a whole world. And also because of peace among creatures, so that one should not say: My grandfather was greater than yours; and also that the heretic shall not say: There are many creators in heaven; and also to proclaim the glory of the Holy One, blessed be He. For a human being stamps many coins with one stamp, and all of them are alike; but the King of the kings of kings, the Holy One, blessed be He, has stamped every man with the stamp of Adam the First, and nevertheless not one of them is like the other. Therefore

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every man may say: The world was created for my sake, hence I must be upright, just, etc. Should you (witnesses) say: Why should we take so much trouble upon ourselves? To this it is written [Lev. v. 1]: "And he is a witness, since he hath seen or knoweth something; if he do not tell it, and thus bear his iniquity." And should you say: After all, why should the blood of this man cling to us? To this it is written [Prov. xi. 10]: "When the wicked perish, there is joyful shouting."

GEMARA: The rabbis taught: What means a supposition? The court may say to them: Although you saw that one ran after his companion to a ruin and you ran after them, and found a sword in his hand from which the blood dripped, and you also saw the one killed move convulsively, you saw nothing (so long as he did not kill him in your presence).

There is a Boraitha: Simeon b. Shetha said: May I not live to see the consolation of our people if I did not see one who ran after his companion to a ruin, and I ran after him, and saw a sword in his hand from which blood dripped, and the one killed moved convulsively, and I said to him: You wicked one, who has slain this man--I or you? But what can I do that your blood is not legally in my hands, as it reads [Deut. xvii. 6]: "Upon the evidence of two . . . be put to death." But He who knows the thoughts of man shall take revenge on this man who has slain his companion. It was said that both (Simeon and the murderer) had not moved before a snake came and stung the guilty one that he died.

But was this man liable to be killed by a snake? Did not R. Joseph say, and so also taught the disciples of Hiskia: Since the Temple was destroyed, although the court of the Sanhedrin existed no longer, the punishment of the four kinds of death prescribed in the Scripture was not abolished by Heaven--as, *e.g.*, he who is liable to be stoned finds his death by falling from a roof or by being trodden down by a wild beast; he who is liable to be burned finds his death by fire or by the bite of a snake; he who is liable to be slain by the sword falls into the hand of the government, which slays him, or he comes to death by the sword of murderers; and he who ought to be hanged finds his death by drowning in the river or by diphtheritis. (But the murderer is only to be slain, and not burned?) This man was liable to be burned for another, crime; and the master said elsewhere that he who is guilty of two crimes is to be punished by the heavier death.

"Supposition." We see that a supposition does not hold good

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in the case of crimes. Does it hold good in civil cases? And if yea, it would be in accordance with R. Aha, who said in the "Last Gate" that if there was a biting camel among camels and a killed camel was found at its side, it might be taken for a certainty that it had killed him and its owner was liable. But according to this theory, if there was a witness who heard this by hearsay from another, which is not considered in criminal cases, it should be considered in civil. Does not the Mishna state that if he said, "The defendant has confessed to me that he owes," etc.; or, "So and so told me that he owes him," he said nothing? Hence if such does not hold good in civil cases, why should this be repeated concerning criminal cases? Therefore we must say that, notwithstanding that such a testimony is not considered in civil cases, they nevertheless warned them in criminal cases. The same is the case with the above-mentioned case of supposition.

"*You shall be aware*," etc. R. Jehudah b. Ahia said: Infer from the verse cited in the Mishna that Cain made wounds and gashes on the body of his brother Abel, as he did not know by what member the soul departed until he reached his neck. The same said again: From that time when the earth opened its mouth to receive the blood of Abel, it has not again opened. As it is written [Is. xxiv. 16]: "From the edge of the earth," etc. Hence it reads "from the edge," but not "from the mouth." Hiskia, his brother, however, objected to him from [Num. xvi. 32]: "And the earth opened her mouth," etc. And he answered it opened for disadvantage, but not for advantage. The above said again in the name of the same authority: Exile atones for only half of a sin, but not for all of it, as it reads [Gen. iv. 14]: "And I shall be a fugitive and vagabond on the earth," etc.; and [ibid. 16]: "And dwelt in the "land of Nod" (vagabond). Hence half of his sin was atoned. [1](#)

"*Therefore after them man was created singly*." The rabbis taught: Adam the first was created singly, and why? That disbelievers should not say there were many Creators in Heaven. And another reason is because of the upright and the wicked, that the upright should not say: We are descendants of an upright man; and the wicked should not say: We are descendants of a wicked one (hence we are not to be blamed). There is another reason: Because of families, that they should not quarrel, saying

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[paragraph continues] Our parents were better than yours. As we see that when only one man was created there are quarrels of rank, how much the more if many original Adams had been created. Still another reason: Because of robbers and forcers. As even now, when he was created singly, there are robbers and forcers although they are all from one father, how much the more would there be robbers and forcers if they were from different parents.

"*To save the glory*," etc. The rabbis taught: To save the glory of the King of the king of kings, the Holy One, blessed be he! A human being stamps many coins and all are alike, but the Holy One, blessed be He, has stamped every man with the stamp of Adam the First, and nevertheless not One is like his neighbor. As it reads [Job, xxxviii. 14]: "She is changed as the sealing-clay; and (all things) stand as though newly clad." And why are not the faces of men alike? Because one might see a nice dwelling or a handsome woman, and say: It is mine. As it reads [ibid. 15]: "And from the wicked is their light withdrawn, and the high-raised arm is broken."

There is a Boraitha: R. Mair used to say: In three things one is different from his neighbor--in voice, in face, and in mind: in voice and in face, because of adultery; and in mind, because of robbers. (*I.e.*, if one were to know the mind of his neighbor, he would know of all his treasures and mysteries and would rob him of them. [1](#))

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## Footnotes

[105:1](#) In Leeser's version it is not mentioned "on the day," notwithstanding that the text so reads, which, according to the sense, may mean "the time." The Talmud, however, takes it literally.

[106:1](#) Leeser's translation does not correspond.

[110:1](#) It is useless to quote the passage, as its translation does not correspond with the saying of Resh Lakish at all.

[110:2](#) We have translated in accordance with Schönhack's Dictionary, as it seems to us correct.

[113:1](#) Here come Haggadah, which we have transferred to the Haggadic part of this tract.

[114:1](#) Here also are a few pages of Haggadah, which we have transferred to the Haggadic chapter.

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[Next: Chapter V](#)