

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING A STUBBORN AND REBELLIOUS SON. AT WHAT AGE AND WHAT HAS HE TO DO TO BE CHARGED AS SUCH? HOW IS IT IF *e.g.*, HIS FATHER CONDEMNS HIM, BUT NOT HIS MOTHER, OR *vice versa*. IF ONE OF HIS PARENTS WERE LAME OR BLIND, ETC. IF HE RUNS AWAY BEFORE THE DECISION WAS RENDERED. CONCERNING BURGLARY AND IF A BURGLAR DESERVES CAPITAL PUNISHMENT, MUST PAY THE DAMAGE CAUSED BY BREAKING IN.

MISHNA I. A Stubborn and rebellious son--at what age may he be considered such? From the time he brings forth two hairs till they encompass the face: it does not mean the chin, but the bottom (pubes); but the sages used to speak with delicacy.

It reads [Deut. xxi. 18]: "If a man have a stubborn and rebellious son," etc. A son, and not a daughter; a son, but not a mature man. However, a minor is free from such a charge, as the commandment's obligation does not as yet rest upon him.

GEMARA: Whence do we know that a minor is free? Whence do we know! Does not the Mishna give the reason, "because the commandment's obligation does not as yet rest upon him." And secondly, where do we find that the Scripture has made a minor liable, so that in this case it is necessary to free such? We mean to say thus: Is, then, the punishment of a stubborn son because of his sins? He is punished because of his future (as will be explained farther on). Then it would be supposed that the same. is the case even when he is still a minor. And again, the Mishna itself states, "a son, but not a mature man." And if it Jehudah in the name of Rabh: It reads: "If a man has a son," which means a son who has grown up almost to maturity.

"*Till they surround*," etc. R. Hisda said: A minor who has

born a son--the latter does not become a rebellious son: which means, when a man has a son, but not a son who has a son. But was not what R. Jehudah said in the name of Rabh inferred from the same verse? It should read, "If there shall be a son to a man."

And from what is written, "when a man has a son," we infer also what R. Hisda said. However, he differs with Rabha, who said elsewhere that a minor cannot beget children. As it reads [Num. v. 8]: "But if a man have no kinsman." And to the question: Is it possible that a man in Israel should have no kinsman? it was said that the verse speaks about the robbery of a proselyte (who has no kinsman in Israel). But why does the Scripture mention a man? It should read, "if he has no kinsman," to teach that if the proselyte was already a man you have to inquire; for perhaps he has begotten children, and thus has kinsmen. But if he was a minor, you have not to inquire, as a

minor cannot beget children. Abayi objected to him from [Lev. xix. 20]: "And if a man lie," etc.--as to which a Boraitha states, "A man!" But whence do we know that the same is the case with a minor after the age of nine years and one day, who is already fit to have connection with a woman? Therefore it is written, "and if a man," to add the minor just mentioned. (Hence we see that such is already fit to beget children.) Rejoined Rabba: He is fit to have connection, but not to beget children, which is equalized to grain which has not as yet grown up to a third of its usual growth; and if such were sown, it would not reproduce. Is this so? Did not the disciples of R. Ishmael teach: It is written, "a son"; but not when he is a father. Now let us see how was the case. Shall we assume that his wife was pregnant just after he grew two hairs, and that he begot the child before the above-mentioned encompassing was completed. Has she, then, so much time? Did not R. Khruspdai say that the prescribed time for a rebellious son is only three months? You must then say she was pregnant before he grew two hairs, and begot a child before the encompassing was complete. Hence we see that a minor begets children? Nay! she was pregnant after he grew two hairs, and begot after the encompassing. And the difficulty about what was said by Khruspdai was explained by R. Dimi after his return from Palestine thus: In the West it was said, "a son," but not one who is fit to be called a father, as he has already a pregnant wife.

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The text says: Khruspdai in the name of R. Sabatta said: The time for a rebellious son is only three months. We, however, have learned in a Mishna that the prescribed time is from when he grows two hairs until the encompassing is complete. However, if the completion was before three months, the time has already elapsed; and the same is the case when the encompassing was not completed after the three months had elapsed.

R. Jacob of the city of Nhar Pauqud was sitting before Rabhina, and said in the name of R. Huna b. Jehoshua: From Khruspdai's theory we may infer that a woman who bears in the seventh month cannot be recognized as pregnant after the first third of her pregnancy. For if it were so, why was it said in the West that he is fit to become a father after three months--would not two and a third suffice, as then the pregnancy is already recognizable? Answered Rabhina: This cannot be taken as evident, as the majority do not bear children in the seventh month, but in the ninth. All this was declared to R. Huna b. Jehoshua, and the latter exclaimed: Do we, then, consider a majority in criminal cases? The Torah says: The congregation shall judge, the congregation shall save and you say that we shall go after a majority. His answer was brought back to Rabhina, to which the latter replied: Is it indeed so--that we do not consider a majority in criminal cases? Have we not learned in a Mishna that if one witness says it was in the second of the month and the other says that it was on the third, their testimony is valid, since to one the intercalation of the month was known, but not to the other. Now, if a majority which does not know of the intercalation should not be considered, why should their testimony be valid? Say they are aware of it, but they contradict each other! Hence we must say that the majority is considered.

R. Abiah b. Rabba b. Nahmani in the name of R. Hisda, according to others the latter in the name of Zeeli, said: All agree that a minor of nine years and one day is fit to have connection with a woman, and in a case of adultery it is considered; and they agree also that at less than eight years of age one is not fit, and it is not considered. And the point of their difference is from the age of eight up.

The school of Shammai holds: We may infer from the first generation. And the school of Hillel holds: We may not.

And whence do we know that the first generation produced children at the age of eight? From [Gen. xi. 27]: "Now these

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are the generations of Therach: Therach begat Abram, Nachor, and Charan." Abram was one year older than Nachor, and Nachor was one year older than Charan. And it reads [ibid., ibid. 29]: "And Abram and Nachor took themselves wives: the name of Abram's wife was Sarai; and the name of Nachor's wife was Milcah, the daughter of Charan, the father of Milcah, and the father of Yiscah." And R. Itz'hak said: There is a tradition that Yiscah is identical with Sarai. Now, how much was Abram older than Sarai? Ten years. And how much was he older than her father? Two years. Hence, when Charan bore Sarai he was eight years. But perhaps Abram was the younger, and the enumeration in Scripture is not particular, being according to their wisdom. And that the Scripture used to enumerate according to wisdom, and not age, may be seen from [ibid. vi. 10]: "And Noah begat three sons--Shem, Ham, and Japheth." And from the latter passage it is inferred that Shem was the youngest, and nevertheless he is named first, because of his wisdom. Said R. Kahana: I told this to R. Zebith of Nahardea, and he answered: Ye learned this from the cited passage. We, however, infer this from [ibid. x. 21] "But unto Shem also, the father of all the children of Elier the brother of Japheth the elder." Hence we see that Japheth was the oldest of all the brothers.

Now the question, "Whence do we know that the first generations produced children at eight years?" still remains unanswered. This is to be inferred from the following. It reads [Ex. xxxv. 30]: "And Moses said unto the children of Israel, See, the Lord hath called by name Bezaleel the son of Uri, the son of Chur, of the tribe of Judah"; and in I. Chron. ii. 19, 20, it reads: "And when Azubah (the wife of Caleb) died, Caleb took unto himself Ephrath, who bore unto him Chur. And Chur begat Uri, and Uri begat Bezaleel." And when Bezaleel was engaged in building the Tabernacle, he was at least thirteen years old. As it reads [Ex. xxxvi. 4]: "Every man from his own work which they were doing"; and one is not called a man before the age of thirteen. And there is a Boraitha: The first year Moses prepared all that was necessary for the Tabernacle, and in the second year he erected it and sent the spies. And it reads [Joshua, xiv. 7]: "Forty years old was I when Moses the servant of the Lord sent me"; and [ibid., ibid. 10]: "Behold, I am this day eighty and five years old." Now, take off fourteen, the age of Bezaleel from the forty of Joshua when

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he was sent as a spy, and there remain twenty-six; take off two years for the three pregnancies with Uri, Chur, and Bezaleel, and there remain twenty-four. Hence each of them produced at the age of eight.

"A son, and not a daughter," etc. There is a Boraitha: R. Simeon said: According to common sense, a daughter should be more open to the charges of stubbornness and rebelliousness, as it is to be supposed that her future be to stand in the way and entice men to sin. But so is the decree of the Scripture--"a son, and not a daughter."

MISHNA II.: When does such become guilty? When he consumes ἀτρι τη μ •ριον {Greek *atri thmórión*} of meat and drinks half a lug of Italian wine. R. Jose, however, maintains: Meat not less than a manna, and wine not less than a whole lug. If, however, he ate at a banquet of a meritorious society, or at the intercalation of a month, or at second tithe in Jerusalem; or he ate carcasses, illegal meat, or reptiles, and second tithe and consecrated things which were not redeemed, or mixed grain of first tithe from which the heave-offering was not separated. There is a rule: If he ate a thing which is meritorious, or, on the contrary, a thing which is a transgression--if he consumes any kind of food but not meat, any kind of beverages but not wine--he cannot be condemned as a stubborn and rebellious son, unless he eats meat and drinks wine. As it reads [Deut. xxi. 20]: "He is a glutton and a drunkard." And although there is no direct support in the Scripture that gluttony means meat, and drunkenness, means wine, a hint of this is to be found in [Prov. xxiii. 20]: "Be not among those that drink wine, among those that overindulge in eating meat." [1](#)

GEMARA: R. Zerah said: The term "tertitory" mentioned in the Mishna--I don't know how much it weighs. But from the fact of R. Jose having doubled the measure of wine from half a lug to a lug, I understand that he means also to double the weight of meat. Hence a "tertitory" must be half a manna.

R. Hanan b. Muldha in the name of R. Huna said: He is not guilty unless he consumes the meat and the wine raw. Is that so? Did not both Rabha and R. Joseph say that he who consumes meat and wine raw is not to be condemned as a stubborn

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and rebellious son? Said Rabhina: By raw wine is meant refined and not refined, and by meat is meant cooked and uncooked, as usually consumed by thieves.

Both Rabha and R. Joseph said: If he consumed salted, meat and drank wine from the press, he cannot be condemned as a stubborn and rebellious son. What is to be considered salted meat? When it has lain in salt for three days. And, what is called wine from the press? When it is still fermenting.

R. Itz'hak said: It reads [Prov. xxiii. 3 1]: "Do not look on the wine when it looketh red"--meaning that you shall not look for wine which makes red the faces of the wicked in this; world, and makes them pale in the world to come. Rabha said: You shall not look for wine which causes bloodshed. [1](#)

When R. Dimi came from Palestine, he said: About the verse [ibid., ibid. 29, 30]: "Who hath woe? who hath sorrow? who hath quarrels? who hath complaints? who hath wounds without cause? who hath redness of eyes? They that tarry late over the wine; they that come to seek for mixed drink." It was said in the West that he who tries to explain them from their beginning to their end is correct, and he who tries to explain them from their end to their beginning is also correct. [2](#)

Eubar the Galilean lectured: Thirteen vavs are enumerated, in the Scripture concerning wine, as in Genesis ix., from 20 to 25, there are thirteen vavs: "And Noah, who was a husbandman,

began his work, and he planted a vineyard. And he drank of the wine, and became drunken; and he uncovered, himself within his tent. And Ham, the father of Canaan, saw the nakedness of his father, and told it to his two brothers without. And Shem and Japheth took a garment, and laid it upon the shoulders of both of them, and went backwards, and covered the nakedness of their father; and their faces were turned backwards, and they saw not their father's nakedness. And

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Noah awoke from his wine, and discovered what his younger son had done unto him." [1](#)

R. Hisda in the name of Uqba, according to others Mar Uqba in the name of R. Sakkai, said: The Holy One, blessed be He, said to Noah: "Noah, why didst thou not learn from Adam the First that all the troubles he had were caused by wine"? And this is in accordance with R. Mair who maintains that the tree of whose fruit Adam the First partook was a vine. As we have learned in the following Boraitha: R. Mair said that the tree of whose fruit Adam the First partook was a vine, as there is no other thing which causes so much lamentation as wine does. And R. Jehudah said: It was wheat, as a child is not able to call mother or father before it has experienced the taste of wheat. R. Nehemiah said: It was a fig-tree, as their remedy came from the same thing by which they had transgressed. For it reads [Gen. iii. 7]: "And they sewed fig leaves together."

It reads [Prov. xxxi. i]: "The words of king Lemuel, the prophecy with which his mother instructed him." Said R. Johanan in the name of R. Simeon b. Jochai: Infer from this that his mother tied him to a pillar, saying: "What (hast thou done), O my son? and what, O son of my body? and what, O son of my vows?" "O my son"--all are aware that thy father has feared Heaven, and now that people see thee going in a wrong way, they will say: "It was caused by his mother." "The son of my body" means: All the wives of thy father never saw the king again after their pregnancy, which was not the case with me, as I have troubled myself to see him again after pregnancy, for the purpose that my child should be of good health. "The son of my vows"--all the wives of thy father used to vow to the sanctuary for the purpose that their child should be fit for the throne, and I have vowed that my son should be full of wisdom, and fit for prophecy. "Not for kings, O Lemuel, not for kings (is it fitting) to drink wine, nor for princes (rausnim) strong drink!" She said to him: "What hast thou to do with kings who drink wine, become intoxicated, and say: "For what purpose do we need God" ("Lomo-el"--literally, "why God")? "And to rausnim strong drink." Is it right that he to whom all the mysteries of the world are revealed should drink wine to intoxication

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[paragraph continues] --according to others: He to whose door all the princes of the world are hastening, shall he drink wine to intoxication? Said R. Itz'hak: And whence do we know that Solomon repented and confessed to his mother? From [ibid. xxx. 2]: "Surely I am more brutish than any man, and have not the understanding of a common man." "Than any man" means Noah. As it reads [Gen. ix. 20]: "And Noah, who was a husbandman, began his work, and he planted a vineyard." "Of a common man" means Adam the First (the term for this in Hebrew being "adam").

"Of a meritorious society," etc. Said R. Abuhu: He is not guilty unless he consumed the above-mentioned meat and wine with a society of reckless persons (as then there is no hope that he will

depart from his way after he is bound to such a company). But does not our Mishna state "A meritorious society"--he does not become a stubborn and rebellious son? From which it is to be understood that if it was not a meritorious one, he is culpable even if not all of the society were reckless men? The Mishna comes to teach us that if it happened that to the meritorious banquet were invited men all reckless, he is nevertheless not culpable, as he was engaged in a meritorious banquet and eating and drinking to excess will not become his habit.

"*At the intercalation of the month,*" etc. Was there then used meat and wine at the meal of intercalation? Does not a Boraitha state only bread and peas? The Mishna comes to teach us that although they were used only to bread and peas, and one in spite of this took for this meal meat and wine, he is not culpable, as the meal was of a meritorious nature and it will not become a habit.

The rabbis taught: To the intercalation meal no less than ten persons were invited, and nothing else was used but bread and peas; and it was prepared only oil the thirtieth day, and not in the daytime but at evening. But is there not a Boraitha, "not at evening but in the day"? As R. Hyya b. Abbah said to his sons: Try to go to this meal when it is yet day, before sunset: and also to leave before sunrise, that people shall know that you were engaged in a meal of intercalation.

"*Second tithe,*" etc. Because he consumed it in the usual way, it will not become a habit.

"*Carcasses,*" etc. Said Rabha: If he has consumed meat of fowls, he is not to be charged as a stubborn son. But does

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not our Mishna state "carcasses, illegal meat," etc., from which it is to be understood that if it was legal he is to be charged? Our Mishna means that even if he has eaten this to complete the prescribed quantity--*e.g.*, he has eaten a "tertiorum" less an eighth, and this eighth he ate from illegal meat--he is also not culpable, for the reason stated farther on.

"*A thing which is meritorious,*" etc.--means a meal of condolence.

"*A transgression*"--means when he ate on a fast day of the congregation. And what is the reason? It reads [Deut. xxi. 20]: "He will not hearken to our voice." "Our voice"--but not of him who does not hearken to the voice of the Omnipotent.

"*But not meat,*" etc.--means to add even pressed figs of the city of Kaêla, which cause intoxication.

"*But not wine*"--means even honey and milk, as we have learned in the following Boraitha: If one consumed pressed figs of Kaêla and drank honey and milk and entered the sanctuary, he is culpable as to [Lev. x. 91 "wine and strong drink," etc.

"*He eats meat and drinks wine,*" etc. The rabbis taught:

If he consumes any kind of food, but not meat, any kind of beverages but not wine, he cannot be

condemned as a stubborn and rebellious son unless he eats meat and drinks wine. (???--jbh)bles, it will not become a habit. In the second case, although there is no direct support the Scripture that gluttony means meat and wine, a hint to this is to be found in--"Be not among those that drink wine, among those that overindulge in eating meat." And it is also written [ibid., ibid. 21]: "For the drunkard and the glutton will come to poverty; and drowsiness clotheth a man in rags Said R. Zerah: He who sleeps in a house of learning, his wisdom is rent to pieces. As it reads: "And drowsiness clotheth a man in rags."

MISHNA III.: If he has stolen from his father and consumed on *his* premises, or he has stolen from strangers and has consumed on the premises of still other strangers, or he has stolen from strangers and consumed on the premises of his father, he is not charged as a stubborn and rebellious son unless he stole from his father and consumed on the premises of strangers. R. Jose b. Jehudah maintains: Unless he stole from his *mother* and father.

GEMARA: In the first case, when he stole from his father

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and consumed on the premises of the father, because he trembles, it will not become a habit. In the second case, although he does not tremble after stealing, as it cannot be frequently done, it will not become a habit. From strangers, and consumed on the premises of his father, there are both, because this can be done only occasionally and when consuming he trembles for his father. Unless he stole from his father and consumed on the premises of strangers--which includes both, because it can be done frequently and without any trembling.

"*From his mother*," etc. Where did his mother get this, so that it should belong to her only? Is there not a rule that all a woman buys belongs to her husband? Said R. Jose b. Hanina: He took it from the meal which was prepared for his father and mother. But did not R. Hana b. Mouldha in the name of R. Huna say that he is not culpable unless he buys meat and wine cheap and consumes them? Say that he has stolen the money which was prepared to buy a meal for his father and mother; and if you wish, it might be said that some one else gave it to his mother, with the condition that her husband should have no share in it.

MISHNA IV: If the father is willing to transfer the case of the son in question to the court and the mother is not willing, or *vice versa*, he cannot be accused as a stubborn and rebellious son, unless both are willing to do so. Furthermore, R. Jehudah says: If his mother was not fit to be the wife of his father, their son cannot be charged as a stubborn and rebellious son.

GEMARA: What does the Mishna mean by the words "was not fit"? Shall we assume that his father married a woman who was under the liability of the korat, or capital punishment by the court? Why? After all, the father is *his* father and the mother is *his* mother. Hence it must mean that she was like to his father. And so also we have learned plainly in the following Boraitha: R. Jehudah said: If his mother was not alike to his father in her voice, in her appearance and her height, he cannot be charged as the son in question. And what is the reason? Because it reads: "He does not hearken to her voice." As we see that their voices must be alike, the same is the case with the appearance and height. According to whom is the following Boraitha? The case of a stubborn and rebellious son never existed and will never occur, and it was written only for the purpose of studying and the reward for it. It is in accordance with R. Jehudah (who requires such

things as can never occur). And

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if you wish, it is in accordance with R. Simeon, who said in the following Boraitha thus: Does the law indeed dictate that because this boy consumed a "tertitory" of meat and drank half a lug of Italian wine his father and mother shall deliver him to be stoned? Hence such a thing neither occurred nor ever will be, and it is written only for studying. R. Jonathan, however, said: I myself have seen such, and have sat on his grave.

According to whom is the Boraitha that a case of a misled town never occurred and will never be--and was written only for studying? In accordance with R. Eliezer, who said in the following Boraitha thus: A misled town in which there is to be found even one mezuzah (a piece of parchment on which a portion of the Holy Writ is written to be placed on the doorpost) cannot be condemned as misled town, because it reads [Deut. xiii. 17]: "And all its spoils shalt thou gather into the midst of the marketplace thereof, and thou shalt burn them with fire." And as there is a mezuzah this cannot be done, as it reads [ibid. xii. 4]: "ye shall not do so unto the Lord your God." R. Jonathan, however, said: I have seen such and I myself have sat on its heap.

According to whom is the following Boraitha?: A house of leprosy never occurred and will never be, and it is written only for studying, etc. In accordance with R. Elazar b. Simeon, who says in the following Mishna: A house of leprosy cannot be condemned unless the leprosy was of the size of two beans upon two stones at the two walls in the corner--the length of two beans and the width of one.

There is a Boraitha: R. Eliezer b. Zadok said: There was a place within the limit of the city of Azah which was named the "ruin of leprosy." And R. Simeon, head of the village Akhu, said: It happened once that I went to Galilee and saw a place which they used to mark, saying, It was because stones of leprosy were placed there.

MISHNA V.: If one hand of his father or mother is missing, or they limp, or are dumb, blind, or mute, he cannot be condemned as a stubborn son. As it reads [Deut. xxi. 19]: "Then shall his father and his mother lay hold on him"--which cannot be done with one hand. "And bring him out." This cannot be when they limp.--And they shall say"--not when they are mutes. "This our son"--not when they are blind. "He will not hearken"--not when they are dumb.

They must first warn him in the presence of two witnesses and then bring him to the court of three judges, who punish

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him with stripes. And only then when he offends again must he be tried before twenty-three judges, but must not be stoned unless the first three judges are among the twenty-three. As it reads: "This our son"--which means, this is our son who was beaten according to *your* decision.

GEMARA: Infer from our Mishna that wherever the Scripture commands something, it must be taken literally? (See above, Chapter VI.) With this passage it is different, as it is entirely superfluous. (It should read: "Ye shall deliver him at the gate of that city, to be stoned.") But

where is it written that he must first be beaten? Said R. Abuhu: From an analogy of the expressions [Deut. xxi. 18]: "And they chastise him," which same is to be found in *ibid.* xxii. 18. And also from the expression "son," which same is to be found in *ibid.* xxv. 2, Which speaks of stripes. "*This our son.*" But is not this verse needed for this not when they are blind? It should read: "*He our son.*" Why "this"? To infer both statements.

MISHNA VI.: If he run away before the decision of condemnation is rendered and the encompassing (mentioned in the first Mishna) occurred afterwards, he is free. But if he runs away after the decision was rendered, the encompassing which occurs afterwards does not free him.

GEMARA: R. Hanina said: A descendant of Noah who blasphemed, and thereafter he embraced Judaism, is free from capital punishment, because the law concerning him was changed (for when he was yet a heathen one witness and one judge sufficed, while as an Israelite two witnesses and three judges are needed). And also capital punishment was changed--as to a heathen the sword applies, and to an Israelite stoning; and as he cannot be punished with stoning (for at the commission of the crime he was yet a heathen), he is entirely free.

Shall we assume that our Mishna, which states that if he runs away before the decision is rendered and the encompassing in question occurred afterwards, he is free, is also because, there being a change, the punishment is also changed? Nay, here it is different; because, if he were to commit the crime at the time after the encompassing, capital punishment would not apply at all. Should we say that the second case stated: If he runs away after the decision was rendered, the encompassing in question does not free him--forms an objection to R. Hanina? Do you wish that after the decision was rendered the change

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should affect the decision? After the decision is rendered he is considered as dead, which changes cannot affect.

Come and hear another objection: A descendant of Noah who killed his neighbor or committed a crime with his neighbor's wife, and afterwards he embraced Judaism, he is free from capital punishment. But if he did the same with an Israelite while he is yet a heathen, he is guilty even if, after the crime, he becomes a Jew. And why? Say, because it was a change, the capital punishment should also be changed? It requires a change in both--in the trial and in the kind of punishment. Here, however, the change is only in the trial (as said above), but not in the punishment, as either to a heathen or an Israelite the sword applies.

MISHNA VII.: A stubborn and rebellious son is tried because of his future. The Scripture prefers that he should die innocent, and not be put to death because of his sins. For the death of the wicked is both a benefit to them and a benefit to the world, while to the upright it is a misfortune for them and for the world. Drinking and sleeping are a benefit to the wicked and to the world, while they are so doing (do they not do harm to the world), and the reverse is it with the upright (because when they are drinking or sleeping they cannot do any good). Separation of the wicked is also a benefit for themselves and for the world; the reverse, however, is the case with the upright. The assembling of the wicked is a misfortune for them as well as for the world, while as to the upright it is a benefit for themselves and for the world. The idleness of the

wicked is a misfortune for them and for the world (because in the time of their idleness they will conspire to do harm, but the repose of the upright is a benefit for them as well as for the world).

GEMARA: There is a Boraita: R. Jose the Galilean said: Is it possible that because this boy ate a "tertitory" of meat and drank half a lug of Italian wine he shall be stoned? But the Torah foreshadows the final thought of the son in question, as in the future he will squander his father's property, and pursuing his habit, which he will find difficult, he will proceed to rob people in the street. Therefore the Torah said: "He shall rather die while he is still innocent than be put to death because of his sins, as the death of the wicked is a benefit," etc., as stated above in the Mishna.

MISHNA VIII.: In the case of "breaking in" [Ex. xii. i],

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for which there is no liability if one is killed by a detector, one is also punished because of his future crimes (*i.e.*, because of his intention to kill his opponent, although no crime involving capital punishment was as yet committed). And therefore, if he broke a barrel while breaking in, if according to the laws he must not be killed when caught (*e.g.*, a father who breaks into the premises of his son, who could not have intended to kill his son if he made opposition, and therefore if his son kills him he is liable to capital punishment, he must pay for damaging the barrel. But with respect to other persons who, if killed by the detector, would not be punished, he is free.

GEMARA: Said Rabha: The reason why the Scripture freed the detector if he killed the burglar, is because it is certain that a man cannot control himself when he sees his property taken. And as the burglar must have had the intention to kill anyone, in such a case, who should oppose him, the Scripture dictates that if one comes to kill you, hasten to kill him first.

Rabh said: A burglar who broke in and succeeded in taking some utensils and escaped, he is free from paying for the utensils. Why so? Because he acquired title to them by his blood. Said Rabha: It seems to me that Rabh's decision was in case he broke the utensils: and as they are no longer in existence, he is free from paying their value. But if he took them and they still exist, he must return them. [Says the Gemara: By God! Rabh's decision was even if they were still in existence, and his reason is that if they were taken by a burglar of that class, the opponent being guilty of shedding his blood, for which the Mishna makes him liable, would he not be responsible if the utensils were broken or taken away by force by someone else? He would be, because they were already under his control. The same is the case with an ordinary burglar, as by his blood he has acquired title to them, and therefore he is not obliged to return them.] However [continued Rabha], it is not so, as the Scripture considers the things stolen by the burglar to be under his control only concerning a contingency--*i.e.*, if they were taken away from him. But the Scripture never meant him to acquire title to them when they were still in his possession, for he is considered as a borrower.

It happened that rams were stolen from Rabha by burglary, and thereafter they were returned to him; but he was not willing to accept them because the above decision came from the mouth of Rabh.

The rabbis taught: It reads [Ex. xxii. 2]: "If the sun be

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risen upon him, there shall be blood shed for him." What is meant by the sun being risen upon him? Does the sun rise upon him only? It means therefore if it is as clear to you as the sun that it is impossible to be at peace with him, then you may kill him, but not otherwise. There is another Boraitha: If it is as clear to you as the sun that it is possible for you to be at peace with him, then you should not kill him; but if not, you may. Hence the Boraithas contradict each other? It presents no difficulty: one speaks in case a father breaks into his son's house, whose usual intention is not to kill his son, and the other case speaks of the reverse--namely, when the son breaks into the house of his father.

Rabh said: Anyone whatsoever who should break into my house, I would kill him, except R. Hanina b. Shila. If it should happen that he should break in, I would not kill him, as I am sure that he would have mercy upon me as a father for his son.

The rabbis taught: The expression "blood shed" mentioned in *ibid.*, *ibid.* 1 and 2 means that it makes no difference whether such a case happened on week days or on a Sabbath. Let us see I The teaching that a burglar may be killed even on Sabbath is correct, lest one say as there is a rule that the execution by the court does not violate the Sabbath the same applies here. But why the teaching that the burglar must not be killed, the same being the case if the burglary occurred on Sabbath? Even on week days he is not to be killed?

Said R. Shesheth: The teaching was needed in case it happened that while breaking in on Sabbath a heap of earth covered him. If he is of that class who are to be killed, then the heap must not be removed on Sabbath; if of the other class, it must be done to save the man, if still alive.

The rabbis taught: It reads "to be smitten so"--by any man whatsoever; "he die"--through any kind of death possible. This teaching was necessary. Lest one say, only if he were killed by the owner, who could not control himself; but if he were killed by some other detector, he is liable, it comes to teach us that the burglar is considered a life-seeker, who may be killed by anyone.

The rabbis taught: The text speaks only of breaking in whence can it be proven that the thief found on one's roof, in one's yard, or in any building whatsoever may be killed? Therefore it reads, "If a thief be found," which means in any place whatsoever. But if so, why is the term "breaking in" mentioned?

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[paragraph continues] To say that his breaking in serves the place of warning (for he knew what he might expect).

Said R. Huna: Even a minor who seeks one's life may be killed for self-protection. He holds that one who seeks one's life does not need any warning, be he of age or a minor.

R. Hisda objected to him from a Mishna (Ohaloth, VII., 7): If the head of a child were already without the womb, it must not be killed to save the life of its mother in case of danger, as one's life must not be given for that of another. And why not consider the child as the seeker of the life of its mother, so that it shall be killed? There it is different, as the child cannot intend to seek the life of its mother, and the danger in question is decreed by Heaven.

MISHNA IX: The following may be killed for self-protection: He who pursues one to kill him, and he who pursues a betrothed damsel, or pursues a male person to lie with him; but he who pursues an animal for this purpose, or he who intends to commit idolatry or to violate the Sabbath, must not be killed before the crime is committed.

GEMARA: The rabbis taught: Whence do we know that one may kill for self-protection? From [Lev. xix. 16]: "Thou shall not stand idly by the blood of thy neighbor." But how can you so infer from this passage? Is it not needed to that of the following Boraitha: Whence do we know that if one sees his neighbor drowning in a river, or a wild beast or robbers seize him, he is obliged to save him? From the verse just cited? Yea, so it is. And that one may be killed in self-protection, is to be inferred by an *a fortiori* conclusion which is to be drawn from "a betrothed damsel." If in this case, in which one only intended assault, the Torah says he may be killed in self-protection, how much the more a seeker of life. But do we then punish from an *a fortiori* conclusion? The school of Rabbi taught that this is not only an *a fortiori* conclusion, but also an analogy. As it reads [Deut. xxii. 26]: "As a man riseth against his neighbor and striketh him dead, even so is this matter." And what have we to learn from the case of a murder? This passage is intended to throw light (on the case of a violated betrothed) and is at the same time receiving light. [1](#) He compares a murder to a betrothed damsel. As in case of a damsel one may be killed in self-protection, the same is it in the case of a murder.

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And whence do we know that so is the case concerning a betrothed damsel? From what was taught in the school of R. Ismael. It reads [ibid. xxi. 27]: "There would have been none to aid her"--which means, if there were one he must help her under all circumstances, even to killing her pursuer.

The rabbis taught in addition to what is stated in the Mishna concerning self-protection: However, in the pursuing by a high-priest of a widow, or by a common priest of a divorced woman, or of one with whom the ceremony of Halitah was performed, or even in the pursuing of a betrothed damsel who had already had connection with some one, killing in self-protection is not allowed. And R. Jehudah said: Also, if the damsel herself said to the pursuers of her assaulter: Let him go--although it is to be supposed that she said so, only because of fear lest the pursuers should kill her--he must not be killed before the crime was committed. Whence is all this deduced? From [ibid., ibid. 26]: "But unto the damsel shalt thou not do anything: there is in the damsel no sin worthy of death." It is written "naar" (youth), and it reads "naaro"--from which we infer, both him who is pursuing a male for the purpose of sin and a betrothed damsel. And from the term "sin" we infer crimes of a kind to which the punishment of korath applies; and from "worthy of death," we infer those who are to be executed by the court.

The Boraitha states: R. Jehudah said: Also if the damsel herself said, etc. What is the point of their difference? Said Rabha: They differ in case the damsel cares for her honor, but without sacrificing her life for it. According to the rabbis the Scripture cares for the violation of her

honor, and as she also cares for it, though without life-sacrifice, she must be saved even by killing her pursuers. And according to R. Jehudah, the Scripture commands to kill him, only in case the damsel herself is willing to sacrifice her life for her honor, but not otherwise.

Said R. Papa to Abayi: Let us see! In case a high-priest is pursuing a widow, is not this also a violation of her honor? Why, then, is he not to be killed? Is not the Scripture particular about the honor of a woman? And Abayi answered: For the honor of a damsel, who is ruined forever, the Scripture is particular to save her even to the killing of the pursuer, which is not the case with a widow.

It says farther on, "sin"--meaning those who are liable to be punished with death. There is a contradiction from the following: Among the assailants of damsels who must pay a fine

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besides the bodily punishment, is counted also one who assaults his sister (the punishment for which is korath). Now, if he is to be killed while pursuing, he must be counted in the class subject to capital punishment. And there is a rule that he who commits a crime subject to capital punishment is absolved from paying a fine. Said Abayi: The Boraitha which states that he must pay a fine treats of a case in which, she could be saved by injuring one of the members of her pursuer's body, and it is in accordance with R. Jonathan b. Shaul who said in the following Boraitha thus: A seeker of life whom the pursued killed, although he was able to protect himself by injuring a member of the pursuer's body--it is to be tried as a case of capital punishment. And what is the reason of Jonathan? It reads [Ex. xxi. 22, 23]: "If men strive . . . and if any mischief follow, then shalt thou give life for life." And R. Elazar said: The cited verses treat about him who intended to kill his opponent. And nevertheless it reads: "And yet no further mischief follow, he shall be surely punished." Now, if you say that the law dictates that the pursuer must not be killed in case his crime could be prevented by injuring one of the members of his body, it is correct that he is to be fined. But should you say that even in the latter case there is no liability if the pursuer was killed--his offence being in the class subject to capital punishment--why, then, is he to be fined? And should you say that he is fined because his intention was to kill another, and the fine belongs to another person, we understand from Rabha's decision 1 (First Gate, pp. 269 and 270) that it is not so.

"*He who pursues an animal,*" etc. There is a Boraitha: R. Simeon b. Jochai said: The one who intends to worship idols may be killed (if there is an impossibility of preventing his crime otherwise). And this is to be drawn by an *a fortiori* conclusion thus: When the dishonoring of a commoner is to be saved even by killing the pursuer, so much the more because of a heavenly dishonor. But is one to be punished because of an *a fortiori* conclusion? R. Simeon holds that so it is. There is another Boraitha: R. Eliezar b. Simeon said: The same is the case with one who intends to violate the Sabbath. He holds with his father, that one may be punished from a decision drawn from an

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a fortiori conclusion. And he infers the violation of Sabbath from the case of idolatry by the analogy of the expression "violation," which is termed in Hebrew "chillul," and is to be found in both cases. Said R. Johanan in the name of R. Simeon b. Jehozadok, in the Ethic of Beth Nithza:

"In the city of Suda it was voted and resolved that if one were compelled, under threat of being killed, to commit any one of all the crimes which are mentioned in the Torah, he might commit it and not be killed, except idolatry, adultery, and bloodshed." But is not the case the same with idolatry as the following Boraitha states: R. Ismael said: Whence do we know that, if one were told under threat of being killed, to worship an idol, he should rather worship than be killed? From [Lev. xviii. 5]: "He shall live in them"; *i.e.*, but not die in them. But lest one say that the same is the case when he is told to do so publicly, therefore it reads [ibid. xxii, 32]: "And ye shall not profane my holy name; so that I may be sanctified." Hence we see that privately he may rather worship than die? They (R. Johanan and R. Simeon b. Jehozadok) hold with R. Eliezer who said in the following Boraitha thus: It reads [Deut. vi. 5]: "And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy might." Why, then, with all thy soul and with all thy might--is not one of them sufficient? Because people are of different natures. There are among them some who prize their body more than their money--for them it is written, "with all thy soul." And there are some others who prize their money more than their body, and for them it is written, "with all thy might? And from this we infer that even if one were told to commit idolatry privately, he must not do so, even under threat of being killed. This is concerning idolatry. But whence do we know that the same is the case with adultery and bloodshed. From the following Boraitha: Rabbi said: It reads [ibid. xxii. 26]: "For as when a man riseth against his neighbor". He compares a murder to the case of a betrothed damsel. As concerning a betrothed damsel one may be killed to save her, the same is it in the case of a murder. And as concerning a murder one is obliged to sacrifice his own life rather than kill another by command, the same is the case with a betrothed damsel--she is held to be killed rather than be ravished. And whence do we know that in a murder case one is obliged to sacrifice his own life, etc. This is common sense. Thus it happened to one who came before Rabha. (See Pesachim, p. 37, line 11.)

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When R. Dimi came from Palestine, he said in the name of R. Johanan: All this was said when there was no civil decree by the government to violate religious duties; but if there was, one must sacrifice himself even for a most lenient commandment. And when Rabbin came, he said in the name of the same authority: Even when an evil decree did not exist, he might do so privately; but publicly, one must sacrifice his life, even for a most lenient commandment. What is meant by a most lenient commandment? Said Rabba b. R. Itz'hak in the name of Rabh: (In days of religious persecution you must resist, even to changing the shoe-strap. And what is to be considered publicly? Said R. Jacob in the name of R. Johanan: If this is to be done in the presence of no less than ten Israelites. R. Jeremiah questioned: How is it if there were nine Israelites and one heathen? Come and hear what R. Janai the brother of R. Hyya b. Aba taught: It reads [Lev. xxii. 32]: "In the midst of the children of Israel," and [Num. xvi. 21]: "From the midst of this congregation"; and from the analogy of the expression "midst," we infer that, as in the case of Korach there were no less than ten, and all Israelites, the same is the case with the sanctification in question. But was not Esther compelled to sin with Ahassuerus, in the presence of more than ten Israelites? Said Rabha: In case they do it for their own benefit it is different; as, if this were not the case, how could we lend copper vessels to the Persians for the purpose that they should fill them in their houses of worship with live coals at the time of their holidays? But as this is for their own benefit, it is not considered a transgression; and Rabha is in accordance with his theory elsewhere, that if a heathen commands an Israelite to cut hay on Sabbath for his cattle, with threat of killing him, he shall rather cut the hay than be killed. But if he tells him, "Cut it and put it in the river," from which we see that he wants only to overcome his religious scruples, it is better for him to resist and be killed than to comply with his command.

R. Ami was questioned: Is a descendant of Noah commanded to sanctify the Holy Name, or not? And Abayi answered: Come and hear! "There were seven commandments which were given to the descendants of Noah," etc. Now, if they were commanded to sanctify the Holy Name, there would be eight. Said Rabha to him: From this we can infer nothing, as by the seven commandments is meant all that pertains to them (and sanctifying the Holy Name pertains to the negative commandment of idolatry). However, how should this question be decided? Said

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[paragraph continues] Adda b. Ahaba: It was said in the college: It reads [II. Kings v. 18 and 19]: "For this thing may the Lord pardon thy servant, that when my lord goeth into the house of Rimmon to prostrate himself there, and he leaneth on my hand, and I prostrate myself also in the house of Rimmon. . . . and he said unto him, Go in peace." Now, if a descendant of Noah were commanded concerning sanctification, Elisha would not say to him, "Go in peace," but would keep silent. This also is not a support, as Nahman's request was considered privately as no Israelites were present. Said R. Jehudah in the name of Rabh: It happened to one that he saw a woman and became sick through his infatuation, and he consulted physicians, who saw that there was no remedy for him unless he had connection with her, and the sages decided that he should rather die than have connection. The physicians, however, said: "Let her stand before him naked; perhaps this may do something in his behalf. But even this the sages did not allow. Let her talk to him behind a fence. Even this the sages forbade. R. Jacob b. Idi and Samuel b. Na'hmani differ. According to one she was a married woman, and according to the other she was single. Single! Why such strictness? Said R. Papa: Because of the dishonor of her family, as a daughter of an Israelite must not be sold for prostitution. And R. Ahbah b. R. Ika said: To prevent such becoming a habit among the daughters of Israel. But why did he not marry her? Said R. Itz'hak: This would not satisfy him. As it reads [Prov. ix. 171: "Stolen waters are sweet, and bread of secrecy is pleasant."

Footnotes

[205:1](#) The term in Hebrew is "zaulel v' saube," which Leeser translates "glutton," etc. In Proverbs, however, he translates the same term with "overindulging", which also means gluttony.

[206:1](#) The term in Hebrew for "becoming red" is "yithadom," and for "blood" the term is "dom"; and Rabha divides "yithadom" into two--yitha, dom--literally "will bring blood."

[206:2](#) Rashi explains the passage thus: From the beginning to the end means, "To whom is woe?" etc. To them that tarry late over the wine. And from the end to the beginning means, "For whom is it right to tarry late over wine?" For those who are crying woe--*e.g.*, mourners, and those who have quarrels, and wounds without cause, and those who have redness of eyes because they are stout or are idleness may drown their troubles in the wine.

[207:1](#) There are sixteen "ands" in these passages, three of which, being for connection only, are excluded.

[216:1](#) A proverbial phrase: "This one comes as a teacher and turns out a learner" (Jastrow).

[218:1](#) See [p. 269](#), third line from the bottom, which begins: "This decision of Rabba," to Mishna 7, which is here repeated literally, with the difference that there it is Rabba and here it is Rabha. Concerning the difference in the names, see Thospat Khethuboth, *30b*, paragraph beginning with the name "R. Ashi."

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