

## CHAPTER X.

RULES AND REGULATIONS CONCERNING THEM TO WHOM CHOKING APPLIES. CONCERNING A REBELLING JUDGE; WHAT SHALL BE HIS CRIME FOR WHICH HE IS TO BE EXECUTED; AT WHICH PLACE AND WITH WHICH KIND OF DEATH; AND CONCERNING A FALSE PROPHET.

MISHNA I.: To the following, choking applies: To him who strikes his father or mother, to him who steals a living soul of Israel, to a judge rebelling against the Great Sanhedrin, to a false prophet, to him who prophesies in the name of an idol, to the paramour of a married woman, and to the collusive witnesses of the married daughter of a priest who has sinned, and to her abuser.

GEMARA: Whence do we know that choking applies to the smiter of his father or mother? From [Ex. xxi. 15]: "Put to death"; and wherever the Scripture mentions death without specifying what kind, choking is meant. But perhaps the verse cited means "when he kills him or her"? How can it be supposed if one who kills a stranger is executed by the sword, that he who kills his father should be executed by choking, which is more lenient? However, this is correct according to him who holds that choking is lenient; but according to him who holds that the sword is lenient, what can be said? Therefore, from [ibid., ibid. 12]: "He that smiteth a man so that he die," and from [Num. xxxv. 21]: "Smitten with his hand that he die," we infer that when it is not mentioned "that he die," it means smitten only. And it was necessary for the Scripture to write both of the following passages, namely [Ex. xxi. 12]: "He that smiteth a man so that he die," and [Num. xxxv. 30]: "Whoever it be that killeth a person (soul)," for if the first only were written, one might say that one is liable only when he kills an adult, but not a minor; and if the second only were written, one might say that one is liable even if he killed a miscarried child or one who was born in the eighth month, and therefore both are necessary.

But from the above theory it is to be understood that if one smote his father he is guilty of a capital crime even if he did not

wound him. Why, then, does the succeeding Mishna state that he is *not* guilty unless he wounds him? This is inferred from [Lev. xxiv. 21]: "And he that smiteth a beast shall make restitution for it, and he that smiteth a man shall be put to death." <sup>1</sup> As concerning a beast the striker is not liable unless he makes a wound, as in ibid. 18 it reads "nefesh" (soul, blood of it), the same is the case if he smote a person--he is not guilty unless he made a wound. R. Jeremiah opposed: According to this theory, if one has made lean an animal by using it to carry stones, should he not be responsible? Therefore we must say, as verse 30 is not necessary for this case, because of verse 18, apply it to human life. If so, why the analogy? In accordance with what was taught by the school of Hiskia (above, p. 233). But this is only correct for him who agrees with the school of Hiskia. But for him who does not agree with this theory, to what purpose is the analogy? To

teach that, as there is no liability if one wounds an animal for the purpose of curing it, the same is the case with a human being. A similar question was propounded by the schoolmen: May one bleed his father to cure him? R. Mathna said: From "Thou shalt love thy neighbor as thyself" it may be inferred that he may. And R. Dimi b. Henna said: It is inferred from the analogy just mentioned. As there is no liability for wounding an animal to cure, the same is the case with a human being. Rabh did not allow his son to take out a string from his finger, lest he might wound him unintentionally, which is prohibited for one to do to his father; and Mar b. Rabhina did not allow his son to open for him a wound, for the same reason.

R. Shesheth was questioned: May a son be a messenger from the court to punish his father with stripes, or to put him under the ban? [2](#) Said Rabba b. R. Huna: And so also was it taught by the school of R. Ismael: Concerning all the crimes mentioned in the Torah, the court must not appoint the son of the criminal to strike, to curse his father, etc., except in the case of a seducer, about whom it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him," etc.

MISHNA II.: A son is not guilty of a capital crime unless he wounds his father by striking him. Cursing is in one respect

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more rigorous than striking, as for the latter one is guilty when done to his living father only, and for the former he is guilty even if he did it after his father's death.

GEMARA: The rabbis taught: It reads [Lev. xx. 9]: "His father and mother has he cursed," which means even after his death. And this is repeated only for this purpose, lest one say that one is guilty for striking his father and for cursing him. Hence, as the former applies to a living father only, the same is the case with the latter. But this is correct only for R. Jonathan, as according to him the verse just cited is superfluous; but for R. Jashiah, who uses this verse for inferring father or mother (above [p. 192](#)), whence does he deduce the above statement? From [Ex. xxi. 17]: "And he that curseth his father," etc. But let the Mishna state that in another respect striking is more rigorous than cursing, as concerning the former one is guilty if he did so to his father even if he were of another faith, which is not the case with cursing (according to the opinion of some Tanaim). The Tana of our Mishna holds that cursing is compared to striking even in the latter case; *i.e.*, one is also guilty if he curses his father who is of another faith.

Shall we assume that the Tanaim of our Mishna differ in the same way as the Tanaim of the following Boraithas, one of which states: If one's father was a Samaritan, he is forewarned against striking him, but not against cursing; and the other states: He is forewarned neither against striking nor against cursing? The schoolmen who learned these Boraithas thought: Both Boraithas agree that at the beginning the Samaritans were true proselytes (this refers to II. Kings, vii. 23-34), but at that time they were decadent. Hence the point of their difference is that, according to one Boraitha, striking is equal to cursing, and according to the other it is not? Nay! All agree that they are not equal, consequently the point of their difference is, whether the ancient Samaritans were true proselytes, or only embraced Judaism from fear of the lions. Hence they were not considered Israelites at all, but heathens.

MISHNA III.: If one steals a person, he is not guilty of a capital crime, unless he brings him upon his own premises. R. Jehudah, however, said: One is not guilty for only bringing him upon

his premises, but after he used him for work. As it reads [Deut. xxiv. 7]: "And he treateth him as a slave."

If one steals his own son and sells him, R. Ismael, the son of R. Johanan b. Beroka, makes him guilty; the sages, however, free

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him. If one steals a person who is half free and half slave, *i.e.*, a slave of two owners, one of whom has freed him, R. Jehudah makes him guilty, and the sages free him.

GEMARA: And the first Tana of our Mishna does not require any work (notwithstanding that so it is written in the Scripture)? Said R. Ahbah b. Rabha: They differ if he worked with him to the value of less than a perutha. (According to the first Tana he is guilty, and according to R. Ismael he is not.)

R. Jeremiah questioned: How is the law if one steals a person while asleep and sells him in this condition, or if he stole a pregnant woman for the purpose of selling her embryo, is it considered treating as a slave, or, because he has not done it in the usual manner, is it not so considered? Usual manner! Let him say that there was not any kind of slavery at all? He speaks of when he used the sleeping one as a support and the pregnant woman as a protection against the wind (and as she is more stout because of the embryo, the protection is stronger). And to this was the question: "Is it considered slavery, or, because it was in an unusual manner, is it not? This question is now decided.

The rabbis taught: It reads [Deut. xxiv. 7]: "If a man be found stealing any one of his brethren of the children of Israel." From this we know only concerning a male, but whence do we know concerning the stealing of a female? It reads [Ex. xxi. 16]: "And he that stealeth a man-- whatsoever. However, from both verses we know about a man who stole either a male or a female. But whence do we know that the same is the case when a woman steals a male or female? As to this, it reads in the verse above cited: "Then shall that thief die," meaning what person soever.

There is another Boraitha: The verse just cited means that there is no difference whether he stole a male or a female, a proselyte, or a bondsman who was freed, or a minor. However, if he stole him and did not sell him, or even if he sold him, but he is still on his own premises, he is not condemned to capital punishment. If he sold him to the father or brother of the stolen one, or to some one else of his relatives, capital punishment does apply. However, for stealing slaves it does not. This Boraitha was repeated by one of the disciples before R. Shesheth, and he rejoined: I teach: R. Simeon said: It reads: "From his brethren," which means that he is not guilty unless he took him out from the control of his brother. And you teach: He is guilty of a capital crime if he sold him to his father or brother.

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[paragraph continues] Go and teach that he is free. (Says the Gemara:) And what is the difficulty? Why not say that the Boraitha is in accordance with the rabbis? This cannot be supposed, as there is a rule that all the anonymous Mishnayoth are in accordance with R. Mair, anonymous

Tosephtas in accordance with R. Nehemiah, anonymous Siphra in accordance with R. Jehudah, and anonymous Siphri in accordance with R. Simeon. And all of them are after R. Aqiba's instructions. And the Boraitha above cited is to be found in Siphri.

"*If one stole his own son,*" etc. What is the reason of the rabbis, who free him? Said Abayi: It reads [Deut. xxiv. 7]: "If a man be found 'stealing,'" which means to exclude him who is often with him. Said R. Papa to Abayi: According to your theory [ibid. xxii. 22]: "If a man be found lying with a woman," etc., is also to be explained to exclude him who is often with her; *e.g.*, in the house of so and so, which is crowded, and men and women are often together--should one not be liable for adultery? And he answered: I call your attention to [Ex. xxi. 16]: "And he will be found in his hand" (which is not the case with a father, whose son is usually in his hand). Said Rabha: According to this theory, teachers of schoolchildren and masters with their disciples are considered often together, and if it happened that one of the masters stole one of the children, he is free from capital punishment.

"*Half a slave,*" etc. There is a Mishna (First Gate, p. 193): R. Jehudah says that there is no disgrace for slaves. And *ibid.* 195 (*q.v.*), the reason of R. Jehudah is given from [Deut. xxv. 11]. However, what would be his reason here? Thus: "From his brethren" means to exclude slaves; "children of Israel" means to exclude a half slave; "of the children of Israel" means again an exclusion, and means to exclude the same. And there is a rule that an exclusion after an exclusion comes to add. Hence a person who is half slave and half free is added to those for whom guilt is incurred. The rabbis do not hold his theory that "of his brethren" means to exclude slaves, as a slave is also considered a brother who is obliged to perform all the commandments which are obligatory on a woman. Hence, according to them, "children of Israel" means to exclude a slave, and "of the children of Israel" means to exclude half a slave and half a free man. But whence do we know about the forewarning of stealing a person of Israel? According to R. Jashiah: From [Ex. xx. 13]: "Thou shalt not steal." And according to R.

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[*paragraph continues*] Johanan: From [Lev. xxv. 42]: "They shall not be sold as bondmen are sold." And they do not differ, as one master counts the negative commandment of stealing, and the other the negative commandment of selling.

The rabbis taught: "Thou shalt not steal," in the third commandment, means human beings. But perhaps it means simply money? It may be said: Go and learn it from the thirteen methods by which the Torah is to be explained, one of which is that a word or (passage) is to be explained from its connection or from what follows, 1 and as the connection of this passage speaks of human beings, you must explain also that "stealing" applies to human beings. There is another Boraitha: It reads [Lev. xix. 11]: "Ye shalt not steal," meaning money. You say money, but perhaps it means human beings? Go and learn it from the thirteen methods, etc., one of which is that a word or (passage) is to be explained from what follows. And as the continuation of this passage is concerning money [ibid. 13] so also stealing is to be explained as meaning money.

It was taught: If there were two parties of witnesses, and one party testified that one stole a human being and the other testified that he sold him, and thereafter one of the parties, or both, were found collusive, they are not to be put to death, according to Hiskia. According to R. Johanan, however, they are. Hiskia's reason is that he holds in accordance with R. Aqiba, who used to say (Last Gate, p. 135): A case, but not half a case. And R. Johanan is in accordance

with the rabbis, who said: Even for half a case. R. Papa, however, said, concerning the witnesses of selling: All agree that they are to be put to death. But the point of their difference is concerning the witnesses of the stealing. According to Hiskia they are not to be put to death, because stealing and selling are two separate crimes. R. Johanan, however, is of the opinion that the stealing is the beginning of the selling. The latter, however, agrees that the first witnesses concerning a stubborn and rebellious son are not to be put to death if found collusive, as they could say: Our intention was only that he should be punished with stripes, as it is said above that the son in question is not put to death unless he first received stripes.

Said Abayi: There are three cases concerning a stubborn and

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rebellious son. In two of them all agree, and in one of them they differ. Namely, concerning the first witnesses in this case, all agree that they are not to be put to death if collusive, as they could say: Our intention was only that he should receive stripes. And their claim must be taken into consideration. And also all agree concerning the second witnesses of same, that they are to be put to death, as the first witnesses are considered as concerning stripes only. Hence the second witnesses only would be the cause of death to the criminal son, if they were not collusive; and they have done the whole case even according to R. Aqiba, who requires the whole, and not half a case.

And the third case in which they differ is, if there were two parties of witnesses, one of which testifies: "In our presence he stole," and the other testified: "In our presence he consumed." And as the law regarding the criminal son dictates that he is not to be put to death unless he stole from his father and consumed on the premises of strangers, both things depend on each other. Hence according to R. Aqiba each of the parties has done only half a case. And if one or both were found collusive, they cannot be put to death for half a case; and according to the rabbis they can, as they make one guilty for half a case.

MISHNA IV.: A judge rebelling against the Great Sanhedrin (to whom, as stated in the first Mishna of this chapter, choking applies) is commanded in the Scripture as in Deut. xvii. 8-13. There were in Jerusalem (at the time of the Temple) three courts: one was situated at the gate of the Temple Mount (this was the east gate, inside of the surrounding wall, preceding the women's court); and another was situated after the women's court, but preceding the court of the common Israelites; and the third one was situated in the Temple treasury for congregational sacrifices. And in case a judge in the country had a dispute about the law with his colleagues, as to which the Scripture commands to bring their case before the court in Jerusalem, they came to the first court, situated at the above-mentioned gate. And the judge in question related his case before the court: I have lectured thus and thus, and my colleagues have lectured otherwise--thus and thus. I have taught in accordance with my lecture so and so, and my colleagues so and so. And if this court were able to decide it traditionally, they rendered their decision; and if not, they came before the other court, explaining the same again. If this court were able to decide it traditionally, they rendered their decision; and if not, all of them came to the Great Sanhedrin,

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which was in the Temple treasury, from which the law proceeds to all Israel, wherever found. As it reads [ibid., ibid. 10]: "From that place which the Lord will choose, and thou shalt observe

to do according to all that may instruct thee." Then if the judge returns to his own city and continues his lectures as before, he is not culpable. If, however, he gives his decision for practice, he is subject to capital punishment. As it reads [ibid., ibid. 12]: "And the man that will act presumptuously," etc., which means that he is not culpable unless he decides for practice.

A disciple who is not a judge, who decides for practice against the decision of the Great Sanhedrin, is not culpable. Hence the rigorousness which lies upon him, not to give his decision in any law (until he shall be forty years of age), becomes lenient concerning the punishment.

GEMARA: The rabbis taught: It reads [ibid., ibid. 8]: "khi j'pola," literally, "if it will wonder." Hence the passage speaks of the wonder (prime) judge of the courts. "*Mimcho*"--from thee," means a counsellor. As it reads [Nahum, i. 11]: "There is gone forth (mimcho) out of thee he that devised evil against the Lord, the counsellor of infamous things." "Dabhor"--"a matter," means a Halakha; L'michphat means a decision of money matters. "Between blood and blood" means blood of menstruation and the blood of purification after birth (referring to Lev. xii. 4) or blood of infliction. "Between plea and plea" means criminal and civil cases and cases of stripes; "Between lepers and lepers"--bodily leprosy, leprosy of houses, of dress, etc.; "matters"--excommunications, appraisalment of things belonging to the sanctuary; "controversy"--a thing which came from a controversy between a husband and wife (ref. to Num. v. 11-25); breaking the neck of the heifer (Deut. xxi.)--the purification of men who were afflicted with leprosy; "within thy gates"--about gathering grain of the poor, forgetters of sheaves and peah (corner tithes); "shalt thou arise"--from thy court. "Get thee up" infer from this that the Temple was the highest building in all Jerusalem, and the land of Israel was situated higher than all other countries. "Unto the place"--infer from this that the place is the cause of the situation of the high court.

The rabbis taught: A rebelling judge is not guilty unless he gave his decision in a matter to which, if done intentionally, korath applies; and if unintentionally, a sin-offering. So is the decree of R. Mair. R. Jehudah said: As to a matter of which the source is to be found in the Scripture, and the interpretation is

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by the scribes. R. Simeon, however, maintains: Even as to one observation of the many observations of the scribes.

Said R. Huna b. Hinna to Rabha: Can you explain to me this Boraitha which has enumerated all the cases inferred from Deut. xvii. 8, in accordance with R. Mair's decree? And Rabha said to R. Papa: Go and explain it to him. And he explained thus: The Boraitha which states a counsellor, means him who is able to establish leap years and to appoint the days of the month. And a difference of opinions may cause the eating of leavened bread on Passover; namely, according to some a leap year may be established during the whole month of Adar, and according to others only until Purim. Hence if the law is in accordance with one of them, and it was done to the contrary, people would eat leaven on Passover. The Halakha which is mentioned in the same Boraitha means the difference of opinion between R. Johanan and Resh Lakish concerning the tenth day of menstruation--whether it is still to be counted menstruation blood or of infliction (explained in Tract Nidda, 72b). Criminal cases means the case concerning the daughter of a coercer mentioned above. Concerning blood of menstruation, Akabia b. Mahalalel and the rabbis differ (Nidda, 19a). Concerning blood of purification, Rabh and Levi differ (ibid. 35b).

Concerning blood of infliction, R. Eliezer and R. Jehoshua differ (ibid. 36b). Concerning civil cases, Samuel and R. Abuhu differ (above, [p. 7](#)). Concerning criminal cases, Rabbi and the rabbis differ (above, [p. 3](#)); stripes, R. Ismael and the rabbis differ (in the first Mishna of this tract); leprosies, R. Jehoshua and the rabbis differ (Nidda, 19b); leprosy of houses, R. Elazar b. Simeon and the rabbis differ (above, [p. 4](#)); leprosy of dresses, Jonathan b. Abtulmes and the rabbis (Nidda, 19a); appraisalment of men, R. Mair and the rabbis (Arachin, 5a); excommunications, Jehudah b. Bathyra and the rabbis (ibid. 28b); sanctification, Eliezer b. Jacob and the rabbis (above, [p. 32](#)); controversies concerning a woman who is suspected by her husband, R. Eliezer and R. Jehoshua (Sota, 2a); breaking the neck of the heifer, R. Eliezer and R. Aqiba (ibid. 45b); purification of leprosy, R. Simeon and the rabbis (above, [p. 137](#)); gathering, the schools of Shamai and Hillel (Tract Negaim, XIV. 9); forgotten sheaves (the same, ibid., ibid.); peah, R. Ismael and the rabbis (Themura, 6a). (And of all of them, the sources are in the Scripture and the explanation is by the scribes.)

"*There were three courts,*" etc. Said R. Kahana: If he says, "I have it from a tradition," and they (the Great Sanhedrin) also

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say the same, he is not put to death. And the same is the case if he says: So is it according to my opinion; and they also say: According to our opinion. And so much the more if he says: I have it from a tradition; and they say: So is it according to our opinion. And only when they say: We have it from a tradition; and he says: According to my opinion it is the contrary--then (if he gives his decision for practice) he is put to death. And an evidence in support of this is that Akabia b. Mehalalel, who decided against the Great Sanhedrin, was not killed. R. Elazar, however, maintains that even if he says, "I have it from a tradition," and they say, "So it is according to our opinion," he is put to death, for the reason that quarrels should not increase in Israel. And your evidence from Akabia b. Mehalalel does not hold good, as he was not killed because his decision was not for practice. An objection was raised from our Mishna: I have lectured, etc. Does not the latter expression mean that he taught so from a tradition? Nay! "I taught so because of my opinion, and they taught so from a tradition."

Come and hear another objection: R. Jashiah said: The following three things I was told by Zeerah, one of the citizens of Jerusalem: A husband who has sacrificed his claim against his wife, it is considered (and his wife is not to be brought to the court); and the same is the case if the parents of a stubborn and rebellious son have sacrificed their claim; and the same is it also if the high court were willing to sacrifice their honor in the case of a rebelling judge. And when I came to my brethren in the South, they yielded to me concerning the first two, but not concerning the third--for the reason that quarrels should not be increased in Israel. Hence the reason as to a rebelling judge is not to increase quarrel, and there is no difference whether he says, "I have it from a tradition" or "from my own opinion." This objection remains.

There is a Boraitha: R. Jose said: Formerly there was no quarrel in Israel, but a court of seventy-one was situated in the Temple treasury, and two courts of twenty-three sat at the gate of the Temple Mount and at the gate of the common Israelites; and the same courts of twenty-three were established in every city of Israel; and if there was a matter of difference concerning which it was necessary to inquire, they used to bring it before the court of their own city. And if they were able to decide from a tradition, they did so; and if not, they brought it to the court of a near-

by city; and if also they could not decide it, they brought

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it before the court which was at the gate of the Temple Mount, and thereafter to that of the common Israelite, and he related to them: So have I lectured, etc., and so have I taught, etc. And if they had any tradition concerning this, they explained it; and if not, all of them came before the court of the Temple treasury, in which the judges sat from the morning daily offering until that of the evening on week days. And on Sabbaths and on holidays they used to take their place in the chamber of the surrounding wall, and the question was laid before them. If they could decide it, they did so; and if not, they stood up to vote, and their decision was according to the majority. However, since the disciples of Shamai and Hillel who had not accomplished their study increased in number, quarrels were increased in Israel, and it seemed as if the law came from two different lawgivers.

From the court of the Great Sanhedrin they used to write and send to all the cities of Israel: Whosoever is wise, modest, and is liked in the eyes of his people may be a judge in his own city. And thereafter, if he deserved it, he was advanced to the court at the gate of the Temple Mount; and farther on, until he reached to be a member in the court of the Temple treasury.

A message was sent from Palestine: Who is the man who has surely a share in the world to come? He who is modest, bends his head when he goes in, and the same when he goes out; is always studying the Torah, and does not become proud thereof. And the rabbis gave their attention to R. Ula b. Abba (who possessed all these qualifications).

"*Returned to his own city,*" etc. The rabbis taught: He is not guilty unless he himself practised according to his decision; or, he decided so for others, and they practised. It is correct when he so decided for others, etc., as if he did so before he was not subject to a capital punishment. But if he himself has done according to his decision, he is guilty even before he goes to the higher courts? Previously, if he gave a good reason for his decision, it would be accepted; but after he came from the court, no longer is any reason accepted.

MISHNA V.: The punishment of him who transgresses the decision of the scribes is more rigorous than for that which is plainly written in the Scriptures, *e.g.*, if one says, "I do not see any commandment in the Torah about tephylin (phylacteries)," with the intention of transgressing that which is written concerning them (*i.e.*, giving another interpretation to Deut. vi. 8, etc.), he is free. However, if he (the rebelling judge) should

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decide that the phylacteries must contain five Totaphoth (portions), instead of the four enacted by the scribes, he is guilty.

GEMARA: Said R. Elazar in the name of R. Oshia: One is not considered a rebelling judge unless he decides upon a thing the sources of which are in the Scripture and the explanation is by the scribes, and there is something to add. However, if it is added, it harms the whole matter; and we cannot find such a thing in the whole Scripture but phylacteries, according to E. Jehudah (who maintains the four portions in question are to be attached one to the other [1](#)).



MISHNA V.: (The judge in question) was not put to death by the court of his own city, and also not by the court of the great Sanhedrin which was established temporarily in the city of Jamnia, but was brought to the supreme council in Jerusalem, kept in prison until the feast days, and executed on one of the feast days. As it reads [Deut. xvii. 13]: "And all the people shall hear and be afraid." So R. Aqiba. R. Jehudah, however, maintains that he must not be tortured by postponing the execution, but must be put to death immediately after being sentenced; and messengers were sent out to all the inhabitants of Israel that the judge so and so was sentenced and executed by the court for such and such a crime.

GEMARA: The rabbis taught concerning what was said by R. Aqiba mentioned in our Mishna: R. Jehudah rejoined: Does the Scripture read: "The people shall see and be afraid?" It reads: "They shall *hear* and be afraid." Why, then, should

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this man be tortured? Therefore I say that he is executed immediately, and messengers are sent out to notify the people.

The rabbis taught: The following four crimes must be heralded--of a seducer, a stubborn and rebellious son, a rebelling judge, and collusive witnesses. Concerning the first three it reads: "All the people of Israel (shall hear and be afraid)." And concerning collusive witnesses it reads [Deut. xix. 20]: "And those who *remain* shall hear"--because not all of Israel are qualified to be witnesses.

MISHNA VI.: A false prophet who is to be sentenced by the court is only he who prophesies what he (*personally*) has not heard and what he was not told at all. However, he who does not proclaim what he was told to do, or did not listen to another prophet, or he who acted against what he himself was instructed by Heaven, his death depends upon Heaven. As it reads [ibid. xviii. 19]: "I will require it from him."

He who prophesied in the name of an idol, saying, "So and so was said by such and such an idol," although it corresponds exactly with the Hebrew law, he is punished by choking. The same was the case with him who had intercourse with a married woman, as soon as she comes under the control of her husband, even before she has had intercourse with him. The same punishment applies to the collusive witnesses of the married daughter of a priest, and also to her abuser, there is a difference between this case and all other cases of collusive witnesses, who are to be punished with the same death which would apply to the accused if it were true; and also between the adulterer in this case and other adulterers to whom the death of those abused applies.

GEMARA: The rabbis taught: Concerning prophecy, there are three who are to be sentenced by the court; viz., he who prophesies what he has not heard, he who prophesies what was not said to him, and he who prophesies in the name of an idol. And there are three whose death is by Heaven; viz., he who does not proclaim his prophecy, he who acts against what he was told by another prophet, and he who acts against his own prophecy.

Whence is this deduced?' Said R. Jehudah in the name of Rabh: It reads [Deut. xviii. 20]: "But the prophet who may presume to speak a word in my name" means him who has prophesied

what he has not heard; "which I have not commanded *him*"--although it was commanded to his colleague. "Or who may speak in the name of other gods" means in the name of any

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idol. "That prophet shall die" means by choking, as choking applies to all the deaths which are mentioned in the Scriptures without specifying which. And the other three above mentioned are inferred from the preceding verse [19]: "A man who will not hearken," etc.--which is to be understood both of him who does not make the people hear it and him who himself does not listen to it--which ends: "I will require it of him." (Now the illustrations.) He who prophesies what he has not heard--*e.g.*, Zedekiah ben Kenaanah, of whom it is written [II. Chron. xviii. 10]: "Made himself horns of iron," etc. But why was he guilty? Did not the spirit of Naboth make him err? As it reads [ibid., ibid. 19 to 21]: "And the Lord said, Who will persuade Achab, the king of Israel, that he may go up and fall at Ramoth-gilead? And one spake saying after this manner, and another saying after that manner. Then came forth a spirit, and placed himself before the Lord, and said, I will persuade him. And the Lord said unto him, Wherewith? And he said, I will go forth and I will become a lying spirit in the mouth of all his prophets. And he said, Thou shalt persuade him, and also prevail; go forth and do so." And to the question: What spirit? R. Johanan said: The spirit of Naboth Haisraeli. And what is meant by "go forth"? R. Jehudah said: Go outside of the fence of my glory (as a liar must not remain in it, hence it was not Zedekiah's fault, as he was deceived by the spirit)? He ought to have given his attention to what was said by R. Itz'hak: The sense of a divine oracle is given by Heaven to many prophets equally; the language, however, by the prophets cannot be identical even in two of them, as each prophet expresses it in his own language--*e.g.* [Jer. xlix. 16]: "Thy hastiness hath deceived thee--the presumption of thy heart"; and [Ob. i. 3]. "The presumption of thy heart hath beguiled thee." Here, however, it reads [II. Chron. xviii. 11]: "And all the prophets so prophesied, saying, Go up against Ramoth-gilead," etc. Hence, as all prophesied in identical language, he ought to have known that it was not a true prophecy. But perhaps Zedekiah did not know what was said by R. Itz'hak? There was Jehoshaphat, who told him that. As it reads [ibid., ibid. 6]: "Is there not a prophet of the Eternal besides?" And to the question of Achab: Are not all these, who prophesy in the name of the Lord, sufficient? Jehoshaphat answered: I have a tradition from my grandfather's house that the sense of a divine oracle is given by Heaven, etc. And here I hear the same version from all of them. He who prophesies

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what was not said to him--*e.g.*, Chananyah ben Azzur, who said [Jer. xxviii. 2]: "Thus hath said the Lord . . . I have broken the yoke." And this was only by an *a fortiori* conclusion, drawn from what was said by Jeremiah [ibid. 49]: "Thus hath said the Lord . . . behold, I will break the bow of Elam." And his *a fortiori* conclusion was thus: Elam, who came only to assist the king of Babylon, should be broken; the king of Babylon, who himself came to destroy the kingdom of Judah, so much the more should be broken. [Said R. Papa to Abayi: But this illustration does not correspond, as such a prophecy was not given to anyone? And he answered: For if such an *a fortiori* conclusion were to be drawn, it is equal to its having been said to some one else; however, it was not said to him directly.] He who prophesied in the name of an idol--*e.g.*, the prophets of Baal. He who does not proclaim the prophecy--*e.g.*, Jonah b. Amitthai. He who does not listen to what he was told by another prophet--*e.g.*, the colleague of Michah; as its reads [I. Kings, xx. 35, 36]: "And a certain man of the sons of the prophets said unto his companion, by the word of the Lord, Smite me, I pray thee. But the man refused to smite. Then said he unto him, Forasmuch as thou hast not obeyed the voice of the Lord . . ." And a prophet who acted

against that wherein he himself was instructed by Heaven--*e.g.*, Edah the prophet, of whom it is written [ibid. xiii. 9]: "For so was it charged me by the word of the Lord"; and [ibid., ibid. 18]: "And he said unto him, I also am a prophet like thee." And farther on it is written [19]: "So he returned with him," ending [34]: "And when he was gone, a lion met him on the way and slew him." [A disciple taught in the presence of R. Hisda: He who does not proclaim the prophecy he was told has to receive stripes. And R. Hisda said to him: Should one who ate dates from a sieve receive stripes? Who warned him? And Abayi said: His colleagues, the prophets. And whence did they know this? Said Abayi: From [Amos, iii. 7]: "For the Lord Eternal will do nothing, unless he have revealed his secret unto his servants the prophets." But perhaps the decree was changed by Heaven? If it were so, all the prophets would be notified. But was not such the case with Jonah, who was not notified that the decree was changed? There was the prophecy: Nineveh will be overthrown, which had two meanings, to be destroyed, and also to be turned over from evil to righteousness, and he did not understand the real meaning. "*Who* does not listen to another prophet." But whence is one

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aware that he is a true prophet, that he should be punished? In case he gives him a sign. But was not Michah, who was punished for not listening to the prophet (as said above), although he did not give any sign? With him who has long been recognized as a true prophet it is different. For if the case were not so, how could Isaac have trusted his father that his prophecy was a true one, since such a commandment was never before heard, and also no sign was given by Abraham. And also, how could they rely upon Elijah, who commanded them to sacrifice outside of Jerusalem, which was prohibited by the Scripture? Hence, because they were recognized prophets, one must listen to them in any event. [1](#)

The rabbis taught, concerning what was taught by rabbis (above, [p. 151](#)) as to a prophet who had misled, to whom stoning applies according to the rabbis, and choking according to R. Simeon: Said R. Hisda: The point of their difference is in case one removed the whole portion of the Scripture concerning idolatry, saying: I was so commanded by Heaven. Or even if he said: To perform some of its worship and to abolish the rest. But if he removed a portion which speaks concerning other commandments, all agree that choking applies. And if he told to perform some of them and abolish the others, he is free according to all. R. Hamnuna, however, said: The point of their difference is if he removed a portion of any commandment, be it concerning idolatry or some other; and also in performing some worship of idolatry and abolishing the rest. As it reads: "From the way"--which means even a part of it. But if he prophesied as to performing some of the commandments and abolishing the others, all agree that he is free.

The rabbis taught: If one commands by prophecy to remove a commandment from the Scripture, he is guilty; but if to abolish some of it, and perform the remainder, R. Simeon frees him. However, concerning idolatry, even if he commands "To-day worship," and on the morrow to abolish it, all agree that he is guilty. Hence it contradicts the explanations of both R. Hisda and R. Hamnuna? Abayi, who holds with R. Hisda, explained the Boraitha just cited: According to his theory--viz., if one commands by prophecy to remove a commandment from the Scripture--all agree that he is to be choked. "As to performing some," etc., R. Simeon makes him free, and the same do the

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rabbis. But concerning idolatry, even if he said: "To-day worship," and on the morrow to abolish, he is subject to a capital punishment--according to the rabbis by stoning, and according to R. Simeon by choking. Rabha, however, who holds with R. Hamnuna, explains according to his theory thus: He who commands by prophecy to remove, etc., either concerning idolatry or some other commandment, is subject to a capital punishment--each of the masters according to his opinion. "As to performing some," etc., R. Simeon makes him free, and so also do the rabbis. Concerning idolatry, however, even if he says: "To-day," etc., he is guilty accordingly--each of the masters according to his opinion.

R. Abuhu in the name of R. Johanan said: In every case mentioned in the Torah, if a true prophet commands you to transgress, you may listen, except as to idolatry, when you must not listen, even if he were to stop the sun for you, as was done by Joshua.

R. Jose the Galilean said: "There is a Boraitha! The Torah foreshadowed the final mind of idolatry and therefore gave force to it, for the purpose that one should not listen to him who commands to commit it, even if he were to stop the sun for him in the middle of the sky. Said R. Aqiba: God forbid that the sun should be stopped for them who are acting against His will. But it means even, *e.g.*, Hananiah b. Azzur, who was a true prophet when he began to prophesy, and became a false one only afterwards.

*"Collusive witnesses of the married daughter of a priest,"* etc. Whence is this deduced? Said Abhah b. R. Ika: From the following Boraitha: R. Jose said: Why is it written: "Then shall ye do unto him . . . unto his brother." (Would it not be sufficient if it should read: "As he purposed to do"?) Because all who are to be put to death biblically, their collusive witnesses and their abusers are punished with the same, except in the case of the married daughter of a priest, where she is to be burned, but not her abuser, who is to be choked. However, concerning her collusive witnesses, it would not be known whether they were to be equalized to him or to her? Therefore the expression, "unto his brother," which means, not unto his sister.

END OF TRACT SANHEDRIN, PART I. (HALAKHA), AND OF VOL. VII. (XV.).

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## Footnotes

[246:1](#) Lesser's translation does not correspond.

[246:2](#) A discussion at length about this matter is omitted from the text, as most of the objections and answers are already translated, or will be translated in their proper places. Here, however, it is of no importance at all, as the question is solved by Rabha without any objection or opposition.

[250:1](#) "We refer the reader for the real meaning of this method to Mielziner's "Introduction to the Talmud" (par. No. 50 of page 174).

[256:1](#) For the explanation of this passage we published a book, "Ursprung und Entwicklung

des Phylacterien Ritus bei den Juden" (Pressburg, 1883), in which it is explained thoroughly. It is remarkable that the chief commentator of the Talmud (Rashi) does not give any sensible explanation hereon, other than that he dislikes the interpretation mentioned in our text in parentheses, and he would say that the expression, "according to R. Jehudah," means what was said by him elsewhere--that one is not guilty unless the matter discussed contains a study which relies upon the teaching of the sages how to practise. Thosphat remarks that R. Oshia, the author of this saying, ignores all that was inferred from Deut. xvii. 8, said above, without any other explanation. All the other commentators, however, keep silent.

Our book, mentioned above, is written in the language of the Talmud, and the very essence of this strange passage is that this Mishna was written after the Jewish Christians began to add to the four portions of the Scripture (viz.: Ex. xiii. 1-10; *ibid.*, *ibid.* 11-17; Deut. vi. 4-9; and *ibid.* xi. 13-21) the first portion of John in the New Testament. For the sources from which we establish that so was the custom of the Jewish Christians in the first centuries, A.C., we refer to the above-mentioned book, and also to our little book, "The History of Amulets, Charms, and Talismans," published in English (New York, 1893).

[260:1](#) Here are also some Haggadas, which we transfer to the Haggadic chapter.

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[Next: Chapter XI](#)