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TRACT MACCOTH (STRIPES).

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur." (Mishna X.)

CHAPTER I.

RULES AND REGULATIONS CONCERNING COLLUSIVE WITNESSES IN BOTH CRIMINAL AND CIVIL CASES, AND THE APPLICATION THERETO OF CORPOREAL AND OTHER PUNISHMENTS.

MISHNA *I.*: How should witnesses be made collusive (so that they should be punished)? If, *e. g.*, they testify that so and so (who is a priest) is a son of a divorced woman (whom his father had illegally married, wherefore he lost his priesthood), the court has not to decide that the witness who has falsely testified shall be regarded such (and shall lose his priesthood if he is a priest), but he should be punished with forty stripes; likewise if one testifies that so and so is to be exiled for an unintentional murder, the court has not to decide that he, the witness, be exiled for false witnessing, but he is punished with forty stripes.

GEMARA: How should the text of the Mishna be understood? It states, "how should witnesses be made collusive," and according to the illustration hereafter adduced it ought to be: How should the witnesses not be made collusive (as the punishment of a collusive witness is according to the Scripture that the same which is to be inflicted upon the defendant if the accusation prove true, and it states that such a punishment does not apply to the witness; it furthermore states concerning the case of collusive witnesses, that they are considered collusive only, then, when another party of witnesses come and say that the witnesses in question were with them at another place on the same date on which, according to their testimony, the

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alleged crime was done. Hence, only in such cases they are considered collusive, but not otherwise. The Tana of the Mishna refers to this passage (Sanhedrin, p. 261): "Because all who are to be put to death biblically, their collusive witnesses and their abuses are punished with the same, except in the case of the married daughter of a priest," etc. And he (the Tana) adds that there are another sort of witnesses who are not subject to the punishment of collusiveness, but who are to suffer stripes instead, and this are those who testify that so and so is a son of a divorced woman or of such who has performed the ceremony of chalitza.

Whence is this deduced? Said R. Jeoshia b. Levy: From here [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother; to him but not to his descendants" (and if

the decision were that he should lose his priesthood, then even his children would be affected). But let the court affect him only and not his descendants? This cannot be done, as the law dictates that it shall be done just the same to him as to the alleged defendant, and if such be the case his descendants would necessarily be affected. B. Pada, however, says: This is to be drawn by *a fortiori* reasoning--viz.: he who has transgressed (by illegal marriage of a divorced woman) does not lose his priesthood, and only his descendants from this marriage lose it. Much less so should the witness who falsely testified lose his priesthood. Rabbina opposed: Were we to use such theory the whole case of collusiveness would be made illusory. As the same *a fortiori* method could be applied thus: He through whose false testimony a man was already stoned, is not to be stoned; so much less so if the accused man was not as yet stoned? Therefore the best is as it is answered above.

"*Is to be exiled*." Whence is all this deduced? Said Resh Lakish: From here [Deut. xix. 5]: "This one shall flee unto one of these cities," etc., *i.e.*, *this one*, but not his collusive witnesses. R. Jochanan, however, said: This is to be drawn by *a fortiori* reasoning. He who has done such a crime intention. ally does not become exiled; so much less so he who is only testifying to such a crime. This statement, however, cannot be taken into consideration, as the reason why an intentional murderer is not to be exiled is that he shall not be atoned. But the witnesses who have not perpetrated such a crime should be exiled, so that they should expiate; therefore, the best interpretation is that of Resh Lakish given above.

Ula said: Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes (here is quoted from Tract Sanhedrin, p. 20, l. 39 to p. 21 up to l. 17. See there). The rabbis taught, "there are four points concerning collusive witnesses: (*a*) they are not made sons of a divorced woman or of such who has performed the ceremony of chalitza; (*b*) they are not exiled to the cities of refuge; (*c*) they do not pay the atoned money, and (*d*) they are not sold as Hebrew slaves." In the name of R. Aqiba it was said that: Nor do they pay on self-confession. They are not made sons of a divorced woman, etc., as said above, nor are they to be exiled as said above, and they do not pay atoned money, because the rabbis hold that the money which one has to pay in case his ox has killed a person is not considered as a recompense for damages, but as an atonement, and collusive witnesses are not under the category of atonement. And who is the Tana who holds this? Said R. Hisda: It is R. Ismael, the son of Johanan b. Brokah. (See Baba Kama, p. 90, l. 2 from bottom, to 91, l. 16.)

"And they are not sold as Hebrew slaves." R. Hamnuna was about to say that this is only in the case when he, the alleged defendant, has money to pay for the theft, or if the witnesses have money to pay; but in case both have not they are to be sold. Said Rabba to him: It reads [ibid. xxii. 2], "he shall be sold for *his theft*, but not for his collusiveness." The text says in the name of R. Aqiba, etc.: What is his reason? He holds that this is only a fine, and one does not pay fine upon his self-confession. Said Rabba: There is a support to R. Aqiba's theory in the fact that a collusive witness, though he has not committed the crime manually, is nevertheless responsible, and is to be killed in case his testimony caused a death-sentence; and likewise in civil cases he has to pay, although he has done no damage. And similarly said R. Na'hman.

R. Jehuda in the name of Rabh said: A collusive witness pays his share. What does this mean? Shall we assume that in the case where two witnesses were found collusive each of them pays half? This is already stated further on in a Mishna. Or does it mean that if one of them was

found collusive, he has to pay half? This is not so, as there is a Boraitha which states that there is no payment imposed unless both are found collusive. Said Rabha: He speaks of the case when one came before

the court testifying: I, together with so and so, have testified before such and such a court, and we, having been found collusive, the court has decided that we have to pay such and such an amount. And lest one say that, as his testimony does not make liable his colleague, he himself should not be responsible either, he comes to teach us that this is not so.

MISHNA *II*.: We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract (and that testimony was false). Although they have not done any damage, as the husband has to pay the marriage contract at some time, they are nevertheless not free from the following payment--namely, it is to be appraised how much one would risk for her marriage contract in case she should remain a widow or be divorced. However, if she died while her husband is still alive, he would inherit her (and such an amount they have to pay).

GEMARA: How should the appraisement be made? (here are two kinds of risks, one can risk to buy the inheritance of a woman from her husband, who would inherit her in case of her death when he is still alive; and one can also risk to buy this from the woman in case her husband die first. However, there is a great difference concerning the amount one would risk. As a rule, one would give much more when buying it from the husband than from the wife). According to R. 'Hisda the appraisement must be of the husband's, and according to R. Nathan b. Oshia, of the wife's estate. Said R. Papa: It prevails that the appraisement should be as of the wife's, and only to the amount mentioned in her marriage contract, without, however, touching the benefit which her husband has in the fruit of her estate while she is yet alive.

MISHNA *III*.: We testify that so and so owes to his neighbor a thousand zuz on the condition to pay him this debt after thirty days from to-day. He, however, claims that he has to pay the amount at the expiration of ten years: and such was found to be the case. It remains, then, to appraise how much one would give for keeping a thousand zuz ten years instead of thirty days, and such an amount they have to pay.

GEMARA: R. Jehuda in the name of Samuel said: If one made a loan to his neighbor for ten years the Sabbathic year does not annul it, and although when the Sabbathic year will arrive, he would transgress the negative commandment. "He shall not exact it of his neighbor" [Deut. xv. 2], yet at present

this commandment does not exist, and we do not care for the later time. Said R. Kahana: This we have also learned in our Mishna, which states that the witnesses have to pay only the difference between thirty days and ten years. And if the Sabbathic year released the whole debt, they would have to pay the whole thousand zuz. Said Rabha: The Mishna may refer to one who lends his money on a pledge, or to one who transfers his documents to the court; and there is a Mishna teaching that in such cases the Sabbathic year has no effect.

R. Jehuda said again in the name of the same authority: "If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases." Shall we assume that Samuel holds that such is considered a condition against the biblical law, and it therefore does not hold good? Is it not taught (Baba Metzia, p. 126) if one says: I sell this article to you on the condition that you shall not claim any cheating against me, etc.? According to Samuel the condition holds good, though such a condition is against the written law? Yea, but to this it was added by R. Anan that Samuel himself has explained it to him (see continuation, p. 127); and according to this explanation there is no contradiction here. Now as the case here is analogous, it follows that he made the condition: "The Sabbathic year shall not release *me*, it releases nevertheless. But if he says in the condition that *you* shall not release it, then his condition holds good."

There is a Boraitha to the effect that if one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. And Raba b. b. 'Hana was about to interpret this Boraitha in the presence of Rabh that such is the case only when he lends on a document, as one would not trouble himself to write a document for less than thirty days; but if it was a verbal loan, he may demand it at any time. Said Rabh to him: So said my uncle that there is no difference between a verbal and a written loan as regards the thirty days, so long as the loan was made without any term. Similarly we have learned in a Boraitha. Samuel said to R. Mathna.. You shall not sit down before you have explained me the courses wherefrom is based the Halakha that one shall not demand a loan no matter whether it be verbal or written before the elapse of thirty days? And he answered from [ibid., ibid. 9]: "The seventh year, the year of release," etc. Is it not self-evident that the seventh year is the year of release? why then

the apposition? To tell that there is another release similar, and this is a loan without a term which cannot be demanded before thirty days, as the master said that thirty days, a fragment of a year, is considered a whole year.

MISHNA *IV*.: We testify that so and so owes 200 zuz to his neighbor, and they were found collusive; they have to suffer both stripes and payment, because the negative commandment for the trespass of which they have to receive stripes does not, make them pay. And only another verse concerning collusiveness makes them to pay. Such is the decree of R. Mair. The sages, however, maintain that he who pays is not to be punished with stripes. If they testify that so and so has deserved forty stripes, and are found collusive, they are to be punished with twice forty stripes, once on the basis of the negative commandment: "Thou shalt not bear false witness," and, secondly, on that of the commandment: "Shall ye do unto him as he had purposed to do unto his brother"; such is the decree of R. Mair. The sages, however, say: they suffer stripes only once.

GEMARA: This is in accord with the rabbis' theory, which reads [ibid. xxv. 2]: "According to the degree of his fault," which statement is to be explained that he is made responsible for one fault, and not for two. But what is the reason of R. Mair's decree? Said Ula: He bases it upon the case of an evil name, for which crime the law prescribes the double punishment of stripes and payment, and analogous is the case here treated. But is not the payment for an evil name considered a fine? He, R. Mair, holds with R. Aqiba that the payment of collusive witnesses is also required as a fine.

There are others who refer the saying of Ula to the following Boraitha: It reads [Ex. xii. 10]; (see Sanhedrin, p. 185, l. 23, to the end of the par.), and to the question, whence is it known that to a negative commandment that does not contain manual labor, the punishment of stripes does not apply, Ula answered from the case of an evil name stated above. What, then, do the rabbis who do not hold that they shall be beaten twice infer from "Thou shalt not bear false witness"? They need this for a warning to the case of collusiveness. And where is to be found such a warning according to R. Mair? Said R. Jeramaia in [Deut. xix. 20]: "And those who remain shall hear and be, afraid, and shall henceforth," etc. The rabbis, however, infer from this passage that such a case must be heralded (see Sanhedrin,

p. 256). As to R. Mair, he, too, infers from here heralding, as according to him the words "and shall be afraid" would be superfluous, if heralding were not inferred therefrom.

MISHNA *V.*: The fine of money may be divided into two or three shares; however, this is not to be done with stripes. How so? If they have falsely testified that one owes to his neighbor 200 zuz, and they were two or three persons, each of them has to pay his share to complete that amount. But if they have falsely testified that one deserves forty stripes, each of them is to get forty stripes in full.

GEMARA: Whence is all this deduced? Said Abaye: Concerning stripes, it reads [Deut. xxv. 2]: "Wicked"; and [Numb. xxxv. 31] it reads also "wicked" concerning capital punishment, and as that cannot be divided, so stripes are not to be divided either. Rabha, however, said: The reason is this: The punishment ought to be done to him as he had the purpose to do it to his brother. And as each one of them intended that the defendant be beaten with forty stripes, he has to get just the same. But why should not the same be concerning money fine? Because money if counted together completes the amount he should suffer, which is not the case with stripes.

MISHNA *VI.*: Witnesses cannot be made collusive unless the falsehood lies in their bodies; how so? If, *e.g.*, they testify that so and so has killed a person and another party of witnesses came to contradict them, saying: How can you testify so? The killed one or the alleged murderer was with us at that date in such and such a place. They are, nevertheless, not considered collusive (so that they should be killed instead); but if the other party say you yourself were with us at that date in such a place, consequently you could see neither the murderer nor the killed one, then they are considered collusive and are to be killed upon such a testimony. If, thereafter, a third party of witnesses came and made collusive the second party, and a fourth party made collusive the third party, even if the number reach to 100 parties they all are to be killed. R. Jehuda, however, maintains that such parties of witnesses are to be considered στασις, and only the first party is to be killed.

GEMARA: Whence is this deduced? Said R. Ada: From [Deut. xix. 18]: "And, behold, if the witness be a false witness, he hath testified a falsehood against his brother," which means that the body of the witness should be found false. The disciples of R. Ismael taught, it reads [ibid., ibid. xix. 16]:

[paragraph continues] "Testify against him for any deviation," 1 which means the testifying itself should be a deviation.

Rabha said: "If two persons testify that one has killed a man in the east side of such and such a palace, and another party of witnesses come, saying that the same witnesses were with them in the west of the same, it is to be investigated if, while standing on the west side, one can see what is going on in the east side, they are not to be considered collusive, otherwise they are." Is this not self-evident? Lest one say that we have to investigate, perhaps their sight is better than the usual one, so that they could see, he comes to teach us that this does not matter. The same said again: "If two have testified that one has killed a person in the City of Sura Sunday morning, and another party came and testified that the same persons were with them in the City of N'hardaia Sunday evening, an investigation is to be made, if it is possible.

If the investigation shows that it is possible for one to walk during that time from Sura to N'hardaia, then they are not collusive; otherwise they are." Is this not self-evident? Lest one say it is to be feared perhaps the man went to the latter city in a flying camel 2 he comes to teach us that such fear must not be taken into consideration.

And he said again: If they testify that on Sunday one has killed a person and are contradicted by another party that on Sunday they were with them, however it is a fact that the same person has killed a man on Monday; or even if they said that this man killed a person on Friday, the collusive witnesses are to be put to death, because at the time they testified the defendant was not as yet sentenced to death. But if they testified that the death sentence occurred on Sunday, and the other party testifies that they were with them at that time, the sentence, however, having occurred on Friday, or even on Monday, the first party is not to be considered collusive, because at the time they testified, the defendant was already sentenced to death. And the same is the case concerning fines. If, for instance, they testify that so and so has stolen an ox, slaughtered him or sold, on Sunday (for which he has to pay four and five fold), and the other party says that on Sunday they were with

them, but the defendant did so on Monday, the first party is subject to the fine, because on Sunday the defendant was not as yet liable. However, if they say that the accused has done so on Friday; or even if they say that the decision of the court occurred on Monday the first party is not considered collusive, because at the time they testified, the man was already sentenced to a fine.

"*R. Jehuda, however, said*," etc. But according to him that all the parties are *staçis*, why should the first party be put to death? Said Rabha: He means to say that if there was only one party of witnesses. But did he not say the first party only? This difficulty remains. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false. She then brought a third party. Said Resh Lakish: This woman is to be considered suspicious whose purpose is to use false witnesses. Said R. Alazar to him: Because she is suspicious should all Israel be suspected of testifying falsely? Such a case happened also before the court of R. Johanan, and Resh Lakish said the same as above. But R. Johanan exclaimed: "If she is suspicious should all Israel be suspected?" He (Resh Lakish) looked at R. Alazar rebukingly, saying: You have heard your statement from Bar Naf'ha (R. Johanan), and you have

not mentioned his name! Shall we assume that R. Johanan is in accordance with the rabbis of our Mishna, and Resh Lakish is in accordance with R. Jehuda? Nay. Resh Lakish may say: "I am in accordance even with the rabbis, as in that case there was no one who searched for witnesses. In this case, however, the woman was searching for them." And R. Johanan may say: "I am in accordance with R. Jehuda"; however, this case is different, as she may have thought that the first parties were aware of her case, and she erred. The third party, however, may be aware of it.

MISHNA *VII.*: Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. As only the Saducier declare that the collusive witnesses are put to death after the defendant was executed. Because it reads [Ex. xxi. 23]: "Life for life," to which the sages answered: Is it not written: "It shall be done to him as he had purposed to do unto his brother"? which means that his brother is still alive. Why, then, is it written "Life for life"? Lest one say that they should be executed as soon as their testimony was accepted, therefore it reads, "Life for life," to teach

that they are to be put to death only, then, when the death sentence for the defendant was already rendered.

GEMARA: There is a Boraitha Biribi says: If the man who was accused by them was not executed as yet, the collusive witnesses are put to death; but if he was already executed, they are not. Said his father: "My son, can this not be argued by *a fortiori* reasoning that they should be put to death, if the accused was executed?" And he answered: "My master, have you not taught me that there is no punishment on the ground of *a fortiori* conclusions?" And this we have learned in the following Boraitha: It reads [Lev. xx. 17]: "If a man take his sister, the daughter of his father, or the daughter of his mother," from this we know only about the daughter of his father, not of his mother, and *vice versa*. But where do we know that he is guilty when she was the daughter both of his father and mother? To this it reads at the end of this verse, "The nakedness of his sister hath he uncovered." And this is written only for the purpose that one should not say that such is to be drawn by *a fortiori* conclusion, thus: If he is guilty for his sister who was only from one side, his father's or mother's, how much the more should he be guilty when she was his sister from both sides? Hence, from this we have to learn, that there is no punishment based on *a fortiori* conclusions. Thus far concerning punishment; but whence do we know that the same is the case concerning warning? To this it reads [ibid. xviii. 9]: "The nakedness of thy sister, the daughter of thy father, or the daughter of thy mother." And it is also repeated [ibid., ibid. ii.]: "She is a sister," etc. Also for this purpose one shall not base this on *a fortiori* conclusion. All this is concerning capital punishment. But whence do we know that the same is the case with stripes? From an analogy of the expression "wicked" stated above (p. 7) and whence do we know that the same is the case concerning exile? From the analogy of expression "murder" as stated above. There is a Boraitha. R. Jehuda b. Tabai said: "May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the Saducier, who say that, collusive witnesses are not put to death, unless their accused were executed. Said Simeon ben Shata'h to him: I, too, swear by the consolation of our nation that you had shed innocent blood, as the law dictates that witnesses should not be put to death unless both of them are found collusive. Then Jehuda ben Tabai decided that he

shall not render any decision before consulting Simeon ben Shatah. And all his lifetime he used to prostrate himself upon the grave of that witness. And a voice was heard. People thought that this was the voice of the dead one. But Jehuda told them that it was his own voice, saying, "You will see that after my death no voice will be heard."

MISHNA *VIII.*: It reads [Deut. xvii. 6]: "Upon the evidence of two or of three witnesses, shall he that is worthy of death," etc. If the evidence of two persons is sufficient, why does the Scripture mention three? To compare the evidence of three to that of two in the case of collusiveness, as another party of two, make the first party of two collusive, so they make them collusive even if the first is of three. And whence do we know that, even if they were a hundred persons, the evidence of two persons is sufficient? To this it reads: "Witnesses." R. Simeon, however, maintains that as two cannot be put to death, unless both of them are found collusive, so is it if they were three, all of them must be found collusive. And even if their number reaches a hundred, all of them must be found collusive before sentencing one of them to death. R. Aqiba, however, maintains that the third witness mentioned in the Scripture was not for the purpose to make for him the punishment more lenient, but, on the contrary, to make it more rigorous--viz., lest one say as the testimony of the third one was superfluous, because the evidence of two suffices, and, therefore, he should not be punished at all. The Scripture terms the third one in order to make him equal with the former two. From this we see that the verse punishes one, an accomplice who conjoins himself to transgressors, with the same punishment to be inflicted upon the transgressors themselves. And we may learn from this: That so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded equally with them. Three witnesses are also equal to two in case one of them was found a relative or legally unfit for witnessing, as it is in the case of two when the testimony is invalidated, so it is in the case when one of the three was found such. And the same law applies even when their number reaches a hundred, from the expression "Witnesses." Said R. Jose: This is said concerning criminal cases only, but in civil cases, if one was found a relative or unfit, the evidence of the remainder is to be taken into consideration. Rabh, however, said, that as regards this there is no difference between civil and criminal

cases. However, this rule holds good only when the relatives took part in warning the trespasser; but if they did not, the evidence of the others must be taken into consideration, since, if not, what could two brothers do when both saw that some one has killed a person (and there were also some other ones who have seen the murder, should then the testimony of the others be eliminated as void because there were also two brothers)?

GEMARA: Rabha said: The Mishna treats of a case where all of them have testified at once. Said R. A'ha of Difti to Rabbina: How could such a thing be possible with a hundred persons; could all of them testify at once? And he answered: It means that every one of them has testified just as his colleague has finished his testimony.

"*What could two brothers do*?" But how shall the court examine them? Said Rabha: They are to be questioned for what purpose they came here: to testify, or merely to see? If they say, we came to testify, then, if there was a relative or an unfit among them, their testimony is void; but if they say that merely to see, then must be taken into consideration the testimony of the others,

since what could two brothers do, etc., as illustrated in Mishna.

It was taught: R. Jehuda in the name of Samuel said: The Halakha rules in accordance with R. Jose. And R. Nachman said: It rules in accordance with Rabbi.

MISHNA *IX*.: If two persons have seen the crime from one window and two others have seen it from another window, and there was one standing in the middle and warning the criminal, if the two parties could see each other, all of them are considered as one party of witnesses. But if not, they are considered two parties. And therefore if one of the parties was found collusive, he (the accused) and they (the collusive) are put to death, and the other party is free. R. Jose, however, maintains that there is no capital punishment unless two witnesses have warned this culprit, as it reads: "Upon the mouth of two witnesses." 1 Another explanation of the words upon the mouth is that the Sanhedrin must not hear the evidence from a demonstrator (but they themselves must understand the language of the witness).

GEMARA: R. Zuthra b. Tubia in the name of Rabh said:

[paragraph continues] Whence do we know that one witness is not relied upon? From [ibid., ibid. 6]: "He shall not be put to death upon the evidence of one witness." What does the expression, "one witness," mean? If it means that the testimony of one witness does not suffice, this is already stated above, "two witnesses"; hence it means that if two witnesses saw the crime separately, each from another place, and if they themselves could not see each other, such witnesses are not considered conjoined, so that their testimony should be taken into consideration. Furthermore, even if this was from one window, but one has seen it first, and then the other, they are likewise not to be considered conjoined. Said R. Papa to Abayi: Was it necessary to state this after the former statement, that even if each of them has seen the whole crime they are not to be conjoined if they do not see each other? So much the less so if each of them has seen but half of the act. And he answered: He speaks of an adultery case. Rabha said: If both of the witnesses have seen him who warned them, they are considered conjoined. And he said again that the warning suffices even if it comes from the mouth of the killed one. And even if a voice of warning was heard without their knowing whom it is from. R. Na'hman said: The individual witnesses in question are fit for civil cases, as it reads: "He shalt not be *put to death* upon the evidence of one witness," from which we learn about criminal cases only, but in civil cases they are to be considered.

"*R. Jose said*," etc.: Said R. Papa to Abayi: does R. Jose really hold such a theory? Have we not learned in a Mishna that if an enemy has killed unintentionally, he may be put to death because he is considered vicious, and warned? And he answered: This is not R. Jose from our Mishna, but R. Jose b. Jehuda from the following Boraitha, who said: A scholar needs no warning, for the warning is on the whole only for the purpose, that the court know whether it was done intentionally or unintentionally.

"*From a demonstrator*," etc. There were two foreigners who appeared in the court of Rabha, and he appointed an interpreter for them. But why did he do so? Is it not stated that the judges must not hear the case through an interpreter? Rabha understood what they said, but he could not answer them in that language.

Ailea and Tubia were relatives of a surety, and R. Papa was about to say that they are fit to be witnesses, because they are

not relatives of the lender and borrower. Said R. Huna b. R. Joshua to him: If the borrower should not pay would not the lender demand the debt from the surety? Hence they are considered relatives in this case, and are not fit to be witnesses.

MISHNA *X*.: If, after the decision had been rendered the guilty one ran away, and thereafter he returned to the same court, his case must not be reconsidered. Everywhere, if two persons standing at any place testify that a decision was rendered for so and so by such and such a court, according to the testimony of the witnesses, so and so, the accused may be put to death upon their testimony.

The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it.

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur. To which R. Simeon b. Gamaliel said: Such scholars would only increase bloodshed in Israel.

GEMARA: The Mishna states if he return to the same court his case must not be reconsidered. From which it is to be understood that if he returns to another court, it is to be reconsidered. And in the latter part it states that if two testify that such a decision was rendered, etc., he is to be put to death without any reconsideration? Said Abayi: This presents no difficulty. If he runs away to a court in Palestine from outside, it is to be reconsidered. As it is stated in the following Boraitha, R. Jehuda b. Dusthai said in the name of R. Simeon b. Shatah: That if one runs from the Palestine court to an outside court, his case must not be reconsidered. But if *vice versa*, it is to be reversed, because of the privilege Palestine has.

"*Sanhedrin are to be established*," etc. Whence is this deduced? From what the rabbis taught. It reads (Numb. xxxv. 29]: "For a statute of justice throughout your generations, in all your dwellings." From this it is inferred that Sanhedrin are to be established in Palestine as well as in the countries outside. But why is it written elsewhere "in thy gates"? To say that "in thy gates" in Palestine, you have to establish courts in every principal city, as well as in the small cities; but in the countries out of Palestine, you have to establish them in the large cities but not in the small ones.

Footnotes

8:1 Leeser translates "wrong"; however, he is wrong according to the sense in the text.

8:2 *Rodkinson*: The text says it shall be feared that they went there on a flying camel, We have rendered it a balloon, as the sense is the same. *JBH*: I have redacted this as the much more charming and to the point 'flying camel'.

12:1 The term in the Bible is *al pe* and the Hebrew term for mouth is *pe*, and he takes it literally.

Next: Chapter II