

CHAPTER II.

RULES AND REGULATIONS CONCERNING UNINTENTIONAL MURDER AND EXILE WHICH IS THE PUNISHMENT THEREFOR.--WHO IS AND WHO IS NOT SUBJECT TO EXILE.--THE CITIES OF EXILE AND THEIR PREPARATIONS.--THE REDEEMING OF THE EXILED BY THE DEATH OF THE HIGH-PRIEST.

MISHNA I.: The following are exiled: He who kills a person unintentionally. If, *e.g.*, one fixes his roof with a machine and the latter falls from his hand and kills a man, or if he takes off a barrel from the roof and it falls from his hand and kills, or if he himself falls from the ladder while descending and kills, he is to be exiled. However, if, while carrying the machine up to the roof, or pulling a barrel on a rope up to the roof, the rope breaks and the barrel falls and kills, or if he himself, while ascending to the roof, falls and kills, there is no exile. As there is a rule that for killing while descending, he is exiled, but not while ascending.

GEMARA: Whence is this deduced? Said Samuel: From [Numb. xxxv. 23]: "And he have let it fall upon him, that he died," which means that it fell in the usual manner. The rabbis taught [ibid., ibid. 15]: "Unawares" means to exclude the case when it was done intentionally; [Deut. xix. 4] "without knowledge" to exclude him who intends to do so. But is it not self-evident that he who kills a person intentionally is to be put to death? Said Rabha: It excludes even him who thought that such is allowed. Said Abayi to him: Is the act of one who thought that such is allowed not to be considered an accident? Answered Rabha: I hold that such is to be considered almost intentional.

Further on it is stated "without knowledge to exclude him who intended to do so." Is this not self-evident? Said Rabha, *i.e.*, to exclude him who intended to kill an animal, and killed a man, or miscarried and killed a full term child.

The rabbis taught: It reads [Numb. xxxv. 22]: "If he have pushed against him accidentally" means to exclude a corner

[paragraph continues] (where the injured one has entered, while the murderer was going from the opposite with a knife in his hand and wounded the former). "Without enmity" excludes the case where the murderer was his enemy. "Pushed" means with his body. "Or have cast upon him" includes the one who injured while bending himself for the purpose of raising his instrument to land the blow harder. "Without lying in wait" excludes him who intended to strike in one side, but struck in the opposite. [Ex. xxi. 13] "And if he did not lie in wait" excludes the one who intended to throw it as far as two and threw it four yards. [Deut. xix. 5] "And he that goeth into the forest with his neighbor" means as the entrance into a forest is permitted to every one, so also must the place be open where the accident happened--be open to every one--to the injurer

as well as to the injured. R. Abuhu questioned R. Johanan: What is the law in this case: If one was climbing a ladder and, a step having been broken under him, he fell down and killed; is this to be considered on *ascending*, for which one is not liable, or on *descending*; for which he is? And he answered: It is already explained above: That a *descending* for the purpose of *ascending* is included. He (Abuhu) objected to him from the following: "This is the rule, that if while descending he is to be exiled, but if while ascending, he is not." Does not the expression "while ascending" include a similar case to that about which I questioned you) And he answered: According to your theory, the expression "while descending" must also include something. And what is it? You must then say that it means to include chopping, *e.g.*, a butcher that chops meat and kills a man (by a slip of the hatchet, etc.); similarly it may be said that the expression "while ascending" means to exclude same. As we have learned in the following Boraitha: "A butcher who has chopped meat," etc. One Boraitha declares him guilty if the killing was in front of him, but not if it happened behind. And another Boraitha asserts the contrary. A third one, however, declares him free at any rate. And they are not contradictory, since one of them speaks of the case that, while he was bending himself, the accident took place in front of him, he is then responsible. And if through his rising the accident happened behind, he is free. And the other two Boraithas speak of cases which happened to be in the contrary and otherwise.

Shall we assume that in this case the Tanaim of the following Boraitha differ--viz.: If one has climbed a ladder and the

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step under him broke and killed, one Boraitha declares him guilty, and another free. Is it not because one considered his climbing as *ascending* and the other as descending? Nay, according to both, it is considered as *ascending*. But that which declares him liable means in respect of damages, and that which declares him free means from exile.

MISHNA II.: If the iron of a hatchet slipped off and killed, according to Rabbi he is not to be exiled, and according to the sages he is. The same differ also as regards the case where a piece of wood split off from the felled tree and kills; according to Rabbi he is, and according to the sages he is not exiled.

GEMARA: There is a Boraitha. Rabbi said to the sages: Does it read [Deut. xix. 5]: "The iron slippeth from *its* tree"? It reads, "from *the* tree." And secondly, in the beginning of the verse the expression is "to hew (*etz*) trees," and herewith "the iron slippeth," the same word, *etz*, is used, whence, as above, it means that a chip slipped from the tree, so by the expression "from the *etz*" is meant a piece of wood split from the tree. Hence, he is to be exiled. Said R. Hiye b. Ashe in the name of Rabh: Both (the sages and Rabbi) took their opinion from one and the same passage cited above. Rabbi holds that the law must be decided in accordance with the Masora writing, which is "*v'nishshel*," *i.e.*, and the iron chips off a part of the wood. And the rabbis hold that the attention must be called to the traditional reading which is *v'nashal*, *i.e.*, "and the iron slips off the helve." But does Rabbi indeed hold that attention must be given to the *Masora*? Did not R. Itz'hak b. Joseph in the name of R. Jo'hanan say: Rabbi, R. Jehuda b. Roietz, the school of Shamai, R. Simeon and R. Aqiba all hold that the attention must be given to the traditional reading? For this purpose Rabbi added in his discussion "and secondly," etc.

R. Papa said: If one threw a lump of brittle stone at a date tree and the dates fell off and killed (a child), we come to the differing of Rabbi and the sages mentioned in our Mishna.

Is this not self-evident? Lest one say that Rabbi would consider this as a secondary force (*i.e.*, the killing was not the result of the direct force of the man who struck the tree, but of the second force of the tree), he came to teach us that it is not so. What then is considered second force according to Rabbi? If, *e.g.*, he struck a bare branch of the tree, and it struck the

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branch upon which the dates were growing, and the dates fell and killed.

MISHNA III.: If one throws a stone in a public ground and it kills, he is to be exiled. R. Eliezer b. Jacob, however, maintains: If after the stone had been thrown one bent his head and received it, the thrower is free. If one throws a stone in his yard and kills a person, he is guilty if the killed one had a right to enter it, otherwise he is not. Because concerning this case a forest is mentioned in the Scripture, that the place of injuring should be similar to a forest into which every one is allowed to enter; excluding a private yard into which every one is not permitted to enter. Aba Shaul said: As the hewing of wood (mentioned in the Scripture in this case) is a private thing, so also the punishment of exile attaches but to a private act; excluding, *e.g.*, a father who struck his son, or a teacher his pupil, or the messenger of the court who was on duty.

GEMARA: In public ground! Then he must be considered an intentional murderer? Said R. Samuel b. Itzhak: It speaks that the accident occurred while he was removing his wall (see the discussion to this answer in Baba Kama, p. 72, l. 11-26).

"R. Eliezer b. Jacob said," etc. The rabbis taught: It reads [Deut. xix. 5]: "And find 1 his neighbor," to exclude him who causes himself to be found under the stone. And from this R. Eliezer b. Jacob inferred his theory, that if after the stone was already thrown, one has put his head under it and was killed, the thrower is free.

"As hewing wood," etc. One of the rabbis questioned Rabha: Is hewing wood always considered a private affair? Is there not a meritorious act to hew wood for making a *Sukka* or for the purpose of burning it upon the altar? Hence, if an accident happened by such an act, let him be free. And he answered: This cannot be considered so, as a *Sukka* can be prepared from hewed wood, and the same it is with the altar. Hence, such an act cannot be considered meritorious.

MISHNA III.: A father is exiled if the accident happened to his son, and *vice versa*. All kinds of human beings are exiled when they killed by accident an Israelite; and same is exiled if he killed one of them accidentally, except a proselyte (who accepted upon himself only the seven commandments which

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were given to the descendants of Noah) who is to be exiled only, then, when he killed accidentally a proselyte like himself.

GEMARA: The Mishna states: A father is exiled if he killed his son accidentally. Was it not taught above that a father who struck his son is excluded? It speaks of a case where the son was

already a learned one; or of a father who taught a trade to his son, who had had already another trade.

"*And the son may be exiled,*" etc. There is a contradiction from the following. It reads [Numb. xxxv. 15]: "That killeth any person unintentionally." "Any person" means to exclude him who struck his father? Said R. Ka'hana: This presents no difficulty; the cited Boraitha is in accordance with R. Simeon, who holds that choking, which applies to killing one's father, is more rigorous, and such cannot be atoned. And our Mishna is in accordance with the rabbis, who hold that the sword is more rigorous than choking. And therefore the sword applies to parricide; however, an error in a crime to which the sword applies, can be atoned.

"*All kinds of human being,*" etc. What does the expression "all" mean to add? If a heathen and a slave, this was taught by the rabbis: A heathen or a slave is to be exiled or punished with stripes through an Israelite and *vice versa*. But how is this to be understood? It is correct that they are to be exiled in case an Israelite was accidentally killed by them, and by stripes it they cursed an Israelite. But how can this be done with an Israelite? It is correct that he is exiled when he killed one of them accidentally; however, how can he be beaten if he cursed one of them? Is it not written [Ex. xxii. 27]: "And a ruler among thy people thou shalt not curse." And it was explained that it speaks of him who acts according to the rules of thy people. Said R. A'ha b. R. Aika: It speaks of a case that one of the above-mentioned has hit an Israelite in such a manner as could not be appraised with payment. As R. Ami said in the name of R. Jo'hanan, that in such a case the heathen gets stripes. And the same is the case when an Israelite hits a heathen. And we do not compare the case of hitting with the case of cursing.

"*Except a proselyte,*" etc. There are some who presented a question of contradiction in the following passages--viz. [Numb. xxxv. 15]: "For the children of Israel, and for the stranger and for the sojourner among them, shall these six cities," etc., while [ibid., ibid. 12] "And these cities shall be

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[paragraph continues] *unto you* for a refuge," which means to exclude strangers. Said R. Kahana: "This presents no difficulty; verse 12 means in case the stranger killed an Israelite, while verse 15 speaks of a stranger who killed one of his like." But there is a contradiction from the following: "And therefore a stranger, or an idolator who has killed even unintentionally is put to death; hence, it compares a stranger to an idolator, as in the case of an idolator there is no difference whether he kills a person of his like, or any person. The same is the case with a stranger." Said R. 'Hisda: "This presents no difficulty, as one Boraitha speaks of him who killed while *descending*, and the other while *ascending*. He who killed while descending, in which case an Israelite is to be exiled, is also exiled; but if he killed while ascending, in which case an Israelite is free, is put to death." Said Rabha to him: "Is it not to be drawn by *a fortiori* argument that in such a case he is to be free; namely, if while descending, in which case an Israelite is exiled, he is also exiled only; in case of ascending, in which an Israelite is free, so much the more he should not be put to death?" and therefore, says Rabha, that only then when the stranger has killed intentionally, thinking that such is allowed; and this is in accordance with his foregoing theory (p. 15) that such is to be considered almost intentional. Abayi and R. 'Hisda, however, consider such a case an accident. Rabha objected to them from the following [Gen. xx. 3]: "Behold, thou shalt die for the sake of the woman whom thou hast taken." Does this not mean that he will die upon the decision of a human court? (Hence, although Abimelech thought

she is single, nevertheless the court would sentence him to death)? Nay, it means he deserves death by Heaven. And as evidence to this can be adduced, the expression [ibid., ibid. 6] "against me." But how can this theory be taken as evidence? Is it not written [ibid. xxxix. 9] "and sin against God"? Does this mean and not against men? It surely means that for such a sin against God he will be tried by the human court (which punishes adultery with death).

Abayi objected to Rabha from [ibid. xx. 4]: "Lord, wilt thou then slay also a righteous nation?" (Hence we see that his uncertainty is considered accidentally.) Nay, this objection was already met as follows: It reads [ibid., ibid. 7]: "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not

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have to be returned? We must then say that this passage is to be interpreted in accordance with R. Samuel b. Na'hman thus: "Thou shalt return the wife at any rate, and to thy question, 'Lord, wilt thou then slay also a righteous nation? . . . She is my sister,' etc., the answer is, he is a prophet, and has learned to say so from thyself." Usually, when a guest comes to a house, he is questioned about eating and drinking, but not whether the woman accompanying him is his wife or sister. (In his country, however, Abraham said that she is his sister only because he was questioned.) From all this it is to be inferred that a descendant of Noah is put to death because he had to learn and did not.

MISHNA IV.: Exile does not apply to a blind one. So says R. Jehuda. R. Meyer maintains that it does. An enemy is not exiled (as such a punishment does not suffice). R. Simeon, however, maintains: An enemy is to be put to death, for he is considered vicious. To which R. Simeon said: "It depends upon circumstances; sometimes such is exiled, and at other times he is not. For this is the rule: If there is a possibility to think that he killed intentionally, exile is not sufficient; but if such is not the case, he is exiled."

GEMARA: The rabbis taught [Numb. xxxv. 23]: "Without seeing" means to exclude a blind one who cannot see at all. So R. Jehuda. R. Meyer, however, maintains that this *includes* him; and their reasons are as follows [Deut. xix. 5]: "Into the forest," where, as usually, also the blind go; therefore the expression "without seeing" excludes him. Such is the reason of R. Jehuda. And R. Meyer's is: Because "without seeing" is an exclusion, and there being another expression "without knowledge," which is also an exclusion, we have two exclusions, and there is a rule that an exclusion after an exclusion comes to add something; hence it adds a blind one. R. Jehuda, however, explained the last expression to mean the exclusion of an intentional murder.

"An enemy is to be put to death." Why, he was not warned? Our Mishna is in accordance with R. Jose b. Jehuda, who says above ([p. 13](#)) that no such warning is needed.

"R. Simeon said," etc.: There is a Boraitha: How does R. Simeon illustrate his theory? If, *e.g.*, the rope, to which the man's instrument was attached, broke--then he is exiled; but if the instrument slips out of his hand, exile is not sufficient, as he was the enemy of the killed, it is to be supposed that he did

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it intentionally. But have we not learned in another Boraitha: R. Simeon said. He is not exiled "until the entire ramming machine slips out of his hands"? Hence it contradicts in both cases: in case the rope broke, and in case the instrument slips. Nay, there is no contradiction in case of the rope; as one speaks of an enemy and the other of a friend. There is also no contradiction in case of the slipping of the instrument; as one Boraitha is in accordance with Rabbi (who says: If such a case happen to a friend he is exiled), while the other is in accordance with the rabbis who do not agree with him. [1](#)

MISHNA V.: Whither are they to be exiled? To the cities of refuge, three of which are situated on the other side of the Jordan and three in the land of Canaan. As [Numb. xxxv. 14]: "Three of these cities shall ye give on this side of the Jordan, and the three other cities shall ye give in the land of Canaan." However, until the latter three were selected, those on this side of the Jordan have not protected as yet; as it reads [ibid., ibid. 13]: "six cities of refuge," which means none of them protects unless all the six are selected.

They were also obliged to prepare roads from one city to the other; as it reads [Deut. xix. 3]: "Thou shalt put in order for thyself the (way to them), and divide into three." Two scholars are to accompany the exile on the road to protect him, so that he shall not be killed by the relatives of the deceased, and they are to reconcile them. R. Meyer, however, said: He himself has to reconcile them, as it reads [ibid., ibid. 4]: "And this is the talk [2](#) of man-slayer." R. Jose b. Jehuda, however, said: Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge; the court then sends after them and tries them. He who was found guilty was executed, otherwise he was freed; and him who was to be exiled they returned to the city of which he was taken; as it reads [Numb. xxxv. 25]: "The congregation shall restore him to the city of his refuge."

GEMARA: The rabbis taught: Three cities Moses separated on this side of the Jordan, and opposite them Joshua separated out in the land of Canaan, and they were right opposite:

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one against the other, as two rows in a vineyard." Namely [Joshua xx. 7] "Hebron in Judah," opposite [Deut. iv. 43] "Bezer in the wilderness," "Shechem in the mountain of Ephraim", "Ramoth in Gil'ad," "Kedesh in Galilee in the mountain of Naphtali," "Golan in Bashan." "And divide into three" means there shall be the same distance from South Palestine to Hebron as from Hebron to Shechem; and from Hebron to Shechem as from the latter to Kedesh, and from Shechem to Kedesh as from the latter to North Palestine. Now let us see: three were needed on the other side of the Jordan, and only three for the whole land of Israel? Said Abayi: In Gil'ad there were many murderers, as it reads [Hosea vi. 8]: "Gil'ad is become a city of workers of wickedness, is full of traces of blood." What does this expression mean? Said R. Elazar: They were thirsty to shed blood. Why were the cities on both sides of the Jordan far from the boundary, and the middle one was near? Said Abayi: Because Shechem was also full of murderers; as it reads [ibid., ibid. 9]: "And troops that lie in wait for a man, like the band of priests, they murder on the way to Shechem." [1](#) "Band of priests"--what does it mean? Said R. Elazar: They conjoin themselves to kill as the priests conjoin themselves to receive the heave-offering from the barns. But were there not more cities of refuge? Is it not written [Numb. xxxv. 6]: "And in addition to them shall ye give forty and two cities"? Said Abayi: The former protect the refugee at any rate, whether he is aware of that city being a place of refuge or not; while the latter accept him only when he was aware.

Was then the city of Hebron indeed a city of refuge? Does it not read [Judges i. 20]: "And they gave Hebron," etc. Said Abayi: It was only the suburb of it, as it reads [Joshua xxi. 12]: "But the fields of the city, and its villages, they gave to Caleb." Was Kedesh one of them? Does it not read [ibid. xix. 37]: "And Kedesh, and Edre'i," etc.? And there is a Boraitha that the city of refuge must neither be too large nor too small, but middle-sized ones. (The cities mentioned there were, however, all large ones?) Said R. Joseph: "There were two cities of the same name." Said R. Ashi: As, for instance, Sliquus and Aquri of Sliquus.

The text says: Middle ones. To this is added: They must

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be situated in places where there is water, and also where there are markets; and if such are not found, the same must be established. Also must they be situated near the army, and if the army was diminished, it must be added. If the dwellings in such cities become vacated, there must be brought new people composed of priests, Levites, and Israelites; and ammunition must not be sold in such cities, according to R. Ne'hamayi. The sages, however, allow this. But both agree that neither snares (for catching beasts) nor rope factories must there be established. All this is to prevent the relatives from coming to the cities in question. And R. Itz'hak said: This is inferred from [Deut. iv. 42]: "And that he should flee unto one of these cities and live," which means you shall prepare for him all the necessities of life. And there is a Boraitha that if a disciple is exiled, his master is exiled with him; because the expression "and live" means you shall supply him with the sources of moral life. And R. Zera said: From this we infer that one shall not teach a disciple of bad character. R. Johanan says: If it happens that the head of a college is exiled, the whole college is exiled with him. Is that so? Did not R. Johanan say that the study of the Torah relieves one; for immediately after the verse "in the wilderness" stated above, is written "and this is the law"? This presents no difficulty: it relieves only at the time he is occupied with it, but not otherwise. And if you wish, it may be said that it relieves from the Angel of Death; as it happened with R. Hisda, who was studying continuously, so that the Angel of Death could not come near him until he caused the cedar in the yard of the college to break, the noise of which stopped his studying, and the Angel of Death took hold of him. R. Tan'hum b. Hanilaye said: Why is the tribe of Reuben mentioned first among the cities of safety? Because he was the first to save Joseph from his brothers, as it reads [Gen. xxxvii. 21]: "And when Reuben heard it, he delivered him out of their hand."

R. Simlae lectured: It reads [Deut. iv. 41]: "Then Moses set aside three cities on this side of the Jordan, toward the rising of the sun." The Holy One, blessed be He, said to Moses: "Thou hast made the sun shining toward the murderers."

R. Simaye lectured: It reads [Eccl. v. 9]: "He that loveth money will never be satisfied with money; but he that loveth abundance, will finally have income." 1 He that loveth money

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means Moses, our Master, who was aware that the three cities on the other side of the Jordan do not accept until the other three cities are selected; nevertheless he selected them, saying: I shall not fail to perform a meritorious act which came to my hand. And "he that loveth abundance"--

who is fit to lecture before a crowd, he who possesses the fruits of knowledge (of Bible, Mishna, Halakha and Hagada). And this is what R. Elazar said. It reads [Psalm cvi. 2]: "Who can utter the mighty acts of the Lord? He who can publish all his praise." (He takes the latter not as a question, but as answer to the former.) The rabbis, according to others, Rabba b. Mari explained this passage thus: He who loves the abundance of scholars possesses the fruit of knowledge; and the rabbis looked upon Rabha b. Rabba who possessed such a quality. R. Ashi said: He who likes to learn among a crowd of scholars possesses the fruit of their knowledge. And this is what R. Jose bar Hanina said: It reads [Jer. l. 36]: "The sword on the *badim* means the sword may cut the necks of the scholars who are studying separately each for himself; and not only this, but they become also foolish and also commit a crime thereby." ¹ Rabina said: He who loves to teach many, has the fruit of knowledge. And this is what Rabbi said: I learned much from my masters, more, however, from my colleagues, and still more from my disciples.

R Jehoshua b. Levi said: It reads [Psalm cxxii. 2]: "Our feet are now standing within thy gates, O Jerusalem." Who caused that our feet shall conquer the enemy and stand within the gates of Jerusalem? The same gates in which the Law was studied. He said again: It reads [ibid., ibid. 1]: "I was rejoiced when they said unto me, Unto the house of the Lord let us go." David said before the Holy One, blessed be He, Lord of the Universe, I have heard people say, When will this man die, so that Solomon, his son, shall build the Holy Temple and we will rejoice? And He answered [ibid. lxxxiv. 11]: "For better is a day in thy courts than a thousand." I like one day in which thou art occupied with the Law better than the thousand burnt-offerings which Solomon, thy son, will sacrifice before me in the future.

"*To prepare roads,*" etc. There is a Boraitha. R. Eliezer

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b. Jacob said: "The word 'refuge' was written at every crossing for the purpose that the murderer shall recognize the way to take. Said R. Kahana: This is inferred from the above-cited verse [Deut. xix. 3], which means you shall establish all preparations needed on this way.

R. Hamma b. Hanina, when he wanted to lecture on this case, used to begin with [Psalm xxv. 8]: "Good and upright is the Lord: therefore he pointeth out to sinners the right way," saying, If He puts the sinners in the right way, so much the more the upright.

Resh Lakish used to begin his lecture on this case with [Ex. xxi. 13 and I Sam. xxiv. 14]: "From the wicked proceedeth wickedness." The Scripture speaks about two men each of whom killed a person: one of them intentionally, and the other unintentionally, but there were no witnesses in either of these cases. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him (the one under the ladder). Hence the outcome is: he who has killed intentionally was killed; and the unintentional killer was exiled.

Rabba b. R. Huna in the name of his father, according to others the latter in the name of R. Elazar, said: From the Pentateuch, Prophets, and Hagiographa it is inferred that the way the man likes to follow, he is led upon by Heaven. From the Pentateuch [Numb. xxii. 12]: "Thou shalt not go with them," and [ibid., ibid. 20]: "Rise up, go with them"; from the Prophets [Is. xlvi. 17]: "Who teach thee for thy profit, who lead thee by the way thou shouldst go"; and from

Hagiographa [Prov. iii. 34]: "If (it concern) the scornful, he will himself render them a scorn; but unto the lowly doth he give grace."

R. Huna said: If a relative killed the murderer who had already been in the city of refuge, he is nevertheless free; because he holds that the expression "he deserveth not a judgment of death" [Deut. xix. 6] applies to the relative. An objection was raised from the following: The just-cited verse speaks of the murderer; but perhaps it speaks of the relative of the dead? For this purpose it reads [ibid., ibid. 4]: "When he hath not been an enemy to him in time past." Hence the verse in question speaks of the murderer? He (R. Huna) holds with the Tana of the following: The verse in question speaks of the

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relative; but perhaps of the murderer? For this it reads (4) "enemy" hence the verse in question necessarily concerns the relative.

Another objection was raised from our Mishna which states: "Two scholars have to accompany him." Was it not for the purpose of warning the relatives, that, in case they would attempt to slay, the same will be done to them? Nay, only to reconcile them; they should not consider him as a blood-shedder, for he has done it by error. And to the opinion of R. Mair that the murderer himself could do so, it was answered: "Outside defence is more considered."

R. Elazar said: A city, the majority of which are murderers, does not protect; as it reads [Joshua xx. 4]: "And speak in the ears of the elders of that city *his* words," but not the words which they (the elders) had to speak for themselves some time ago. The same said again that a city in which there are no elders does not protect. In this case, however, R. Ami and R. Assi differ. According to one it does, and according to the other it does not. The same differ concerning a stubborn and rebellious son, and also concerning breaking the neck of the heifer [Deut. xxi.], as in all the cases the elders are mentioned, and they are not found; however, he who holds that it does not matter maintains that it was written only because it is usual that a city should have its elders, but not to prevent if there are none.

R. Hama b. Hanina said: Why is the portion of murderer., with a strong language [Joshua xx. 1]: "And the Lord *spoke* to Joshua" instead of *said*; and also at the end of the verse (2), "Whereof I have *spoken*"? Because this command was the only one which the Lord commanded Joshua to fulfil what had been already written in the Pentateuch. And whence do we know that *spoke* is stringent language? From [Gen. xlii. 30]: "Spoke roughly." However, concerning this subject R. Jehudah and the rabbis differ: according to the one it was because Jeshuah delayed to establish them, and according to the others the reason is as said above.

It reads [Josh. xxiv. 26]: "And Joshua wrote these words in the book of the law of God." R. Jehudah and R. Ne'hamiah differ: according to one he wrote only the eight verses, which begin with "And Moses died"; according to the other he wrote the portion of the cities of refuge. And the latter explains the expression "in the book of the law of God" thus: Joshua wrote

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in *his* book that which had been already written in the book of the law of God.

In case the Holy Scrolls were sewn with thread of flax, R. Jehuda and R. Meyer differ: according to the one it is valid; according to the other it is not. The latter's reason is [Ex. xiii. 9]: "In order that the Law of the Lord may be in thy mouth," we see, then, that the Law is compared to Tephilin, and as the Tephilin are to be sewn with thread of a calf, the same is the case with the Holy Scrolls. And according to the other it is compared only as regards the hide of such cattle which is allowed to the mouth, but not concerning other laws. Said Rabh: I have seen the Tephilin of my uncle and they were sewn with thread of flax. (Says the Gemara): The Halakha, however, does not prevail with him.

MISHNA VI.: There is no difference between the high-priests who were anointed with the holy oil (in the first Temple) and those who were sanctified by the holy dress (in the second Temple), and even him who has temporarily substituted the high-priest in case of sickness--they all release the murderer by their death. R. Jehudah said: Even the priest who was anointed for the war only. Therefore the mothers of the priests used to support the murderers with food and clothes that they shall not pray death to their sons.

GEMARA: Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25-28], where the death of the high-priest is mentioned three times, from which we infer the three kinds of priests in the Mishna. And R. Jehudah, who adds also the anointed for the war, infers it from verse (32), where the priest is mentioned the fourth time. The rabbis, however, do not care to add same, because the word *high* is not mentioned there, hence it means one of the above-mentioned.

"*The mothers of the priests,*" etc. They shall not pray, but what if they should, would it effect? Does it not read [Prov. xxvi. 2]: "As the bird (cometh) to flit away, as the swallow, to fly off: so will an undeserved curse not come (to fulfilment)"? Said a certain elder: I understood from the lecture of Rabha that it is counted as a sin to the priest, who should pray that no accident might happen in that generation, and he did not. As it happened with one whom a lion has consumed a distance of three passas from R. Jehoshua b. Levi's dwelling, and Elisha did not talk to him for three days. Said R. Jehudah in the name of Rabh: The curse of a sage and be it for nothing, is realized;

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and this we see to have been the case with Achithaphel. When David was digging under the altar a hole to reach the watery depth of the earth (*-Shithin*), the water came up and menaced to inundate the world; whereupon David asked: Is it allowed to inscribe the Holy name upon a piece of broken clay and drop it into the water; and as no answer came from the people present, he exclaimed: Whoever amongst ye knows and abstains from answering, shall be suffocated! Then Achithaphel concluded *a fortiori* thus: If the Lord has allowed His name to be erased by water in order to make peace between husband and wife, so much the more so when the peace of the whole world is concerned. Accordingly he decided that it is allowed; David then following this decision dropped the bit of clay with the name on into the water, and the water turned back into its depths. Nevertheless Achithaphel choked himself [2 Sam. 17, 23]; all which corroborates Rabh's saying quoted above by R. Jehudah.

R. Jehudah in the name of Rabh said: If a sage has put some one under the ban conditionally, a release must take place at any rate by the same sage or by some other one. And this is inferred from the case of Judah, of whom it reads [Gen. xliii. 9]: "If I bring him not unto thee," etc. R.

Samuel b. Na'hamoni in the name of Jonathan said: It reads [Deut. xxxiii. 6-7]: "May Reuben live . . . this is the blessing of Judah." (Why, then, is Judah mentioned just after Reuben and also his blessing distinguished with the expression "and *this*"?) Because all the forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses arose and prayed for him, saying: Lord of the universe! Who caused Reuben to confess if not Judah? Hear, Lord, the voice of Judah!" Immediately, then, the members of his body were placed in their order. However, he was not allowed to enter the heavenly college until Moses prayed: "And bring him unto his people." Still he could not discuss with the rabbis; to this Moses said: "Let the power of his hand contend for him!" Still he could not answer questions; thereupon Moses said: "And be thou a help to him from his adversaries."

The schoolmen propounded a question: When is the murderer released? Does the release of the murderer require the death of all those priests mentioned in the Mishna or the death of one of them suffices? Come and hear: If his decision was rendered at the time when a high-priest did not exist, he remains there forever. Now, if he is released by the death of one

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of them, let him be returned by the death of a substitute? Hence he must wait until the death of them all. However, perhaps the Mishna speaks of a case where there was no substitute?

MISHNA VII.: If after the decision had been rendered the high-priest dies, he is not exiled. If, however, the priest dies before it was rendered and another priest was appointed and the decision was then rendered, he returns on the death of the second one. If, however, his decision was rendered while a high-priest did not exist, or he was to be exiled, because he killed a high-priest, or a high-priest who himself killed accidentally, he never returns from his exile.

The murderer is never to go out from his place of exile even if he was a witness to a meritorious or to a civil, or even to a criminal case. And even if Israel needs him and should he be a captain in Israel, like Johab b. Zeruah, he must not go out all his life; as it reads [ibid., ibid. 25]: "To the city of his refuge, whither he had fled," which means there shall be his dwelling, there shall be his death, there his burial.

As the city itself protects, so does its limit; therefore, if it happens that a murderer goes outside of the limit and the relatives of the deceased meet him, according to R. Jose, the Galilean, it is a meritorious act for the relatives to kill him; and if a stranger kills him he is not responsible. R. Aqiba, however, maintains that a relative is not responsible, but it is not meritorious; while a stranger is responsible for his death.

GEMARA: What is the reason of the first statement in the Mishna? Said Abayi: This is to be drawn by *a fortiori* reasoning: he who was already exiled is released, so much the more is he who is only sentenced to it. But perhaps he who was already in exile is atoned, but not he who was not there as yet? Does, then, the exile atone? The death of the high-priest atones.

"Dies before it was rendered," etc. Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25]: "And he shall abide in it until the death of the high-priest, who hath been anointed with the holy oil." Who has anointed him? Certainly not the murderer! It, therefore, means: He who was anointed in his days. But what has the high-priest done that the murderer's fate should

depend upon his death? He ought to have prayed that the decision of the court be in behalf of the defendant, which he did not.

Abayi said: We have a tradition that if after the decision was rendered the defendant dies, his remains must be carried to

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the city of refuge; as it reads [ibid., ibid. 32]: "That he should come again to dwell in the *earth* ¹ until the death of the priest." Dwelling in the *earth* means the grave. There is a Boraitha: If he dies in the city of refuge before the death of the high-priest, his remains may be carried to his native place; as it reads [ibid., ibid. 28]: The manslayer may return unto the earth of his possession. What is meant by "the earth of his possession"? The *grave*. In the case when after the decision had been rendered, the high-priest was found unfit for his dignity, *e.g.*, he was the son of a married, or of one who performed the ceremony of *Halitzah*, R. Ami and R. Itz'hak of Nafha differ: one holds that the priesthood is dead, and it is equivalent to the death of the high-priest; while the other holds that it is abolished, hence he was never a priest and the decision against the murderer was rendered when a high-priest did not exist; accordingly, he must remain there forever.

"*And a high-priest did not exist*," etc. R. Jehudah said in the name of Rabh: It reads [I Kings ii. 28]: "And Joab fled unto the tabernacle." Joab erred twice in so acting. (*a*) he thought that the horns of the altar protect, while the roof of the Temple protects; and (*b*) he thought that the altar of the tabernacle of Shila protects; in reality, however, the altar of the Temple, only, protects. Said Abayi: He erred also in this: he thought that it protects every one, while in reality it protects only a priest on duty, which was not the case with him.

Resh Lakish said: It reads [Isaiah lxiii. 1]: "Who is this that cometh from Edom, dyed red in his garments from Bozrah?" The heavenly ruler of Rome will err thrice in the future. (*a*) He will think Bozrah protects, while only Bezer does so; (*b*) that it protects even an intentional criminal, while it does so only an unintentional; and (*c*) it protects only a man, but not an angel as he was.

R. Abuhu said: The cities of refuge are not given for cemeteries, as it reads [Numb. xxxv. 3]: "And their open spaces shall be for their cattle, and for their goods, and for all their requirements," *i.e.*, requirements for life, but not for death; and the statement above that the murderer must be buried in the city is no objection, as concerning him the Scripture dictates a separate law.

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"*So does its limit*." There is a contradiction from the following: It reads [ibid., ibid. 25]: "And he shall abide in it," but not in its limit? Said Abayi: This presents no difficulty; concerning protection it does, but to dwell he is not allowed.

"*Outside of the limit*." The rabbis taught: It reads [ibid., ibid. 27]: "And the avenger of the blood should kill the manslayer: he shall not be guilty of blood." It is a meritorious act of the avenger to do so; and every stranger may do so if there is no relative. Such is the decree of R. Jose the Galilean. R. Aqiba, however, maintains that if the relative likes to do so, he may; but it is not

meritorious. A stranger, however, if he did so, is guilty. The reason of the former is: it does not read "if he will kill him;" and the reason of the latter is: it does not read "he *shall* kill him." Mar Zutra b. Tubiah in the name of Rabh, however, said that if the relative has killed him while he was out of the limit, he is to be killed if he did it intentionally. But this is not in accordance with R. Jose, nor with R. Aqiba. In accord with whom, then, is his theory? With the Tana of the following Boraitha: R. Eliezer said [ibid., ibid. 12]: "Until he have stood before the congregation for trial." To what purpose is this written (is it not self-evident that he is not to be executed without a trial)? Because (27) reads "should kill . . . not guilty of blood"; lest one say that so it is even if the avenger had killed him before he was tried and found guilty, therefore it reads "until he have stood . . . for trial." R. Jose and R. Aqiba, however, infer from the just-cited passage that if the Sanhedrin themselves have seen one killing a man, they must not execute him unless he has been tried before another court and found guilty.

The rabbis taught: It reads (26): "Should at any time pass the boundary," etc., which means intentionally, but whence do we know as to if he pass unintentionally? Therefore, "at any time," which would be superfluous if not signifying this case. But is there not a Boraitha to the effect that if one has killed intentionally he is put to death, etc.? This presents no difficulty: the Boraitha cited is in accordance with him who holds that the Scripture speaks in accordance with human language, while the rabbis do not hold so. Said Abayi: It seems to me that he who holds that the Scripture speaks in accordance with human language is correct in this case, because his final case should not be more rigorous than the beginning. In the beginning if he had killed a man intentionally he is put to death, and

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if unintentionally he is exiled; and the same is to be his final case: if he goes out of the limit intentionally, he is killed; but if unintentionally, he must be returned to his exile.

If a father has killed a son unintentionally, his other son may be considered the avenger in accordance with one Boraitha; another Boraitha, however, states that he must not be so considered. Shall we assume that one is in accordance with R. Jose and the other with R. Aqiba? How can such be borne in mind? Is it not decided (Sanhedrin, p. 246) that a son must not be appointed by the court to punish his father with whatsoever punishment, etc.? Therefore, we must say that one Boraitha speaks of his son, and the other of his grandson.

MISHNA VIII.: A tree placed in the limit, but its branches extending outside of it or *vice versa*, in any case the inclination of the branch must be considered.

GEMARA: There is a contradiction from the following: A tree which stands inside but is inclined outside, or *vice versa* if from opposite the surrounding wall and inside, it is considered as inside; and if the same were inclined outside it is considered as outside? 1 Do you contradict tithe with cities of refuge? Concerning tithe the Scripture relies upon the surrounding wall of the city, but concerning the cities in question it relies upon the dwelling, and one can use his dwelling under the branch but not upon the root of a tree. Rabh Ashi explains the expression of the Mishna, "the inclination of the branch must be considered," with *also, i.e.*, the inclination must also be considered, and so much the more the root of it.

MISHNA IX.: If one killed accidentally in the city of refuge, he is to be exiled from one

neighborhood to another; and if such happen to a Levite, he is to be exiled from one city to another.

GEMARA: The rabbis taught: It reads [Ex. xxi. 13]: "Will I appoint thee a place," etc., *i.e.*, while thou art still alive. "Whither he shall flee" signifies that if such happen while Israel was still in the desert, they were exiled. And where to?--to the camp of the Levites. From this it was said that if it happen to a Levi that he killed, he is exiled from one district to another; and even if he was exiled to the district in which he resides, it protects him. And R. A'ha b. R. Aika said:

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This may be inferred from [Numb. XXXV. 28]: "Because in the city of his refuge shall he remain," *i.e.*, "his refuge" means which was his before he was exiled.

MISHNA X.: Similarly, if a murderer was exiled to the city of refuge and the townsmen like to honor him, he has to say to them: "I am a murderer"; and if they say it does not matter, he may accept. The exiled have to pay to the Levites rent for their dwellings. So R. Jehudah. R. Mair, however, said: They have not. If, after the high-priest's death, he returns to his city, he is returned to that office which he occupied before (*e.g.*, head of a college), according to R. Mair. R. Jehudah, however, maintains: He must not occupy the same.

GEMARA: Said R. Kahana: The Tanaim of the Mishna differ concerning the rent in the six cities in question only, for one explains the expression "unto you" to mean for protection only, and the other one explains it "unto all Your necessities." However, on the addition of 42 cities all agree that they have to pay rent. Said Rabha to him: There cannot be any doubt in the explanation of "unto you," which certainly means to all your necessities, and therefore it is the contrary: they differ concerning the 42 cities; the one holds they were added only for protection, and the other holds they were added on equal terms with the six; but concerning the six themselves all agree that there was no rent.

"*He returns to his office.*" The rabbis taught: It reads [Lev. xxv. 41]: "And he shall return unto his own family, and unto the possessions of his father shall he return," *i.e.*, he may return only to his family, but not to the office which his parents occupied. So R. Jehudah. R. Mair, however, said he may return to the offices of his parents, and the same is the case with exile. And this is inferred from the pleonastic words, "shall he return." What does it mean, "the same is with exile"? As the following Boraitha: The murderer shall return to the land of his possession, *i.e.*, he may return only to the land, but not to the office of his parents. So R. Jehuda. R. Mair, however, maintains: He may also occupy the place of his parents, because of the analogy of expression "return," which is mentioned in both places, Ex. xxi. and Numb. xxv.

Footnotes

[18:1](#) Leeser translates "strikereth" according to the sense. The text, however, takes it literally.

[22:1](#) In text is not explained the theory of Rabbi and his opponents. Rashi, however, explained

this in one version as we did. He brought also some others in which he doubts.

[22:2](#) The term for talk in Hebrew is "dbar," literally "talk" or "word"; Leeser, however, translates it "case," in accordance with the sense.

[23:1](#) Leeser's translation does not correspond at all.

[24:1](#) Leeser's translation does not correspond at all.

[25:1](#) The analogy of expression used in text to infer the foolishness and sin mentioned, we omitted; it was also impossible to use the translations of Leeser, etc., as the Talmud has here its own way.

[31:1](#) The term in Hebrew is *eretz*, literally earth. Leeser translates land in accordance with the sense.

[33:1](#) This Mishna is concerning the second tithe which must be eaten inside of Jerusalem only.

[Next: Chapter III](#)