

CHAPTER III.

WHO IS SUBJECT TO THE PUNISHMENT BY STRIPES.--THE DETAILS OF THE PROCEDURE REGARDING THE EXECUTION THEREOF.--WHAT CIRCUMSTANCES FREE THE CULPRIT THEREFROM.--THE RESPECTIVE DUTIES OF THE THREE JUDGES WHO MUST WITNESS THE EXECUTION.

MISHNA I.: To the following stripes apply: He who had intercourse with his own sister, with his sister of his father or his mother, or the sister of his wife, with the wife of his brother or his father's brother, or with a woman while menstruating. (To each of these crimes Korath--shortened life--applies, and according to this Mishna the human court has a right to punish them also with stripes.) The same is the case if a high-priest marries a widow; a common priest--a divorced or her who performed the ceremony of Halitzah; an Israelite--a bastard or a descendant of the Gibeonites; and the same is, if a daughter of an Israelite marries the just-mentioned persons. If a high-priest marries a widow who was previously divorced, he is to be beaten twice, because of two names ("widow" and "divorced"); if, however, a common priest marries a widow who has previously performed the ceremony of Halitzah, he is liable only for the violation of one negative. A high-priest who was unclean and partook of things belonging to the sanctuary or entered the sanctuary while unclean; and he who consumed illegal fat, blood, or meat left overnight from the sacrifice, or *piggul*, 1 or unclean meat, and also of such which was slaughtered and brought outside of the Temple; he who ate leaven on Passover, ate or labored on the Day of Atonement; who compounded oil similar to that of the Temple, or compounded the frankincense of the Temple, or anointed himself with the oil used in the Temple; who ate carcasses or animals preyed by beasts, or reptiles--to all of them stripes apply.

It applies also to him who partook of mixture, of first tithes

of which the heave-offering was not separated as yet, of second tithes and eatables belonging to the sanctuary which were not redeemed yet. How much has one to partake of the mixture to make him liable? According to R. Simeon, whatsoever; while to the rabbis, not less than the size of an olive. Said R. Simeon to the sages: Do you not admit that if one consumed an ant--minute as it is--he is culpable? And he was answered: Because it is a creature in itself. Rejoined he: One grain of wheat is also complete as to its creation.

GEMARA: The Mishna treats of those crimes to which Korath applies, but not of those under the category of capital punishment. Hence it is in accordance with R. Aqiba of the following Boraitha: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. So R. Ismael. R. Aqiba, however, maintains: Only that of Korath; because if they repent after the punishment with stripes, the heavenly court forgives them; but if they are under capital punishment the human court cannot forgive them

even though they repent. ¹ What is the reason of Ismael's theory? [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues," etc. What the peculiarity is, is not stated; however, from [ibid. xxv. 2]: "The judge shall cause him to lie down" (the expression of which has a similarity), we understand that the peculiarity is stripes; and in [ibid. xxviii. 58] it reads: "If thou wilt not observe," etc.; hence the violation of all negative commands is punished by stripes. But if so, let them apply also to the violation transgression of a positive commandment? It reads: "If thou wilt not observe." R. Aqiba's reason is: concerning stripes the expression is "according to the degree of his *fault*," which means for one fault, but not for two faults, to which capital punishment applies. ²

"*Things belonging to the sanctuary*," etc. It is correct, the transgression of entering the sanctuary of which the punishment as well as the warning is stated--viz.: the punishment [Numb. xix. 13]: "Hath defiled the tabernacle of the Lord; and that soul shall be cut off from Israel," and the warning [ibid. v. 3]:

p. 37

[paragraph continues] "That they defile not their camp"; but concerning eating sanctity, we find the punishment [Lev. vii. 20]: "The flesh . . . his uncleanness upon him . . . shall be cut off." But where is the warning to it? According to Resh Lakish from [ibid. xii. 4]: "Any thing hallowed shall she not touch"; and R. Jehanan said: Bardelah taught: From an analogy of expression "his uncleanness" here, and the same expression is found in the above quotation [Numb. xix.]. As there the punishment and the warning are stated, the same also applies to this case.

There is a Boraitha in accordance with Resh Lakish: "Hallowed shall she not touch" is a warning to the consumer. You say *consumer*, but perhaps it means literally (touching); therefore it reads further on, "into the sanctuary shall she not come," etc. Hence hallowed is compared to the sanctuary. As to the transgression of the sanctuary Korath applies, so also the warning concerning the hallowed must speak of a similar punishment (*i.e.*, consuming). But not of touching, to which Korath does not apply.

Rabba b. b. Hanna in the name of R. Jehanan said: To a negative command which is preceded by a positive one, stripes apply. There were people who questioned R. Johanan whether he said so, and he answered: Nay! Said Rabba: I swear that he said so, and it is also written and taught; "written" [Numb. v. 3]: "Shall ye send out . . . that they defile not their camps"; and "taught" in our Mishna: A defiled person who enters the sanctuary gets stripes. But why did R. Johanan retract his previous statement? Because the case of a seducer was difficult to him--namely, a seducer who had divorced his seduced wife, if he is a common Israelite, remarries her, but is not punished with stripes; if he, however, was a priest (who is forbidden to marry a divorced woman), he gets stripes and does not remarry. Now, as in this case, the negative command: "That he must not divorce her all his life" is succeeded by the positive command: "That he shall marry her," why, then, should not a common Israelite be punished with stripes for divorcing her? Said Rabba: The reason why he does not get stripes is that the positive "He shall remarry her" rests upon him all his life. (This is inferred from the words "all his days," which, if they were not explained that in case he has divorced her he shall remarry her, would be superfluous; with the explanation, however, the command, "He shall remarry her," is

p. 38

attached to the negative "He shall not divorce her"; and there is a rule that to a negative command which is succeeded by a positive, no stripes apply.) And when Rabbin came from Palestine he said the same in the name of R. Johanan. Said Rabh Papa to Rabha: Why did R. Jehanan say above that he gets stripes? The negative in question is not similar to the negative of "muzzling" (which was said that it is placed there to teach that only to such which is not succeeded by a positive stripes apply)? Rejoined Rabh Papa: Should the negative become weaker because of the succeeding positive? Answered Rabha: According to your theory stripes should apply to each negative which is succeeded by a positive, which is not the case. Said Rabh Papa again: There it is different, as the positive usually comes to remove the negative (*i.e.*, one shall *not* do so, but if he did, *shall* he do so and so). But Rabha's explanation holds good only according to him who holds that the culprit does not get stripes unless he abolishes the succeeding positive command. (Le., the seducer who has divorced his wife may always say: "I will remarry her." Hence the positive is not abolished, and therefore he is not liable. But according to him who holds that only then is he free from stripes when he fulfils the command (*i.e.*, if he comes to the court, which commands him to marry her immediately, and if he does not listen he gets stripes). Hence, you cannot say that this positive rests upon all his life, and consequently it does not modify its preceding negative? Let us see: this objection applies only to Johanan's foregoing theory, and he said to the disciple who has repeated before the Boraitha concerning a positive which succeeds a negative: "Go and teach thus: Only when he has abolished the succeeding one, but not otherwise." R. Simeon b. Lakish, however, differs, and says: He is free from stripes only when he has fulfilled the succeeding one.

What is their point of difference? A doubtful warning--*e.g.*, in the case in question, if he was warned that he shall not divorce her, it was still doubtful whether after divorcing he will not remarry her; hence such a warning is not considered certain. But, nevertheless, according to R. Johanan it suffices, so that he may be punished; but according to Resh Lakish he is not. And both differ in the explanation of R. Jehudah's theory in the following Boraitha: It reads [Ex. xii. 10]: "And ye shall not let anything of it remain until morning; and that which remaineth of it until morning ye shall burn." We see, then,

p. 39

that the verse comes to place a positive after a negative for the purpose that if one did leave he shall not be punished, and has only to burn it. Such is the decree of R. Jehudah. R. Johanan explains R. Jehudah's words thus: The reason why he does not get stripes is the succeeding positive, but if it were not he would be punished, although the warning was doubtful, as he could thereafter burn it. Resh Lakish, however, explains it thus: The reason why he does not get stripes is the succeeding, but if it were not he would get stripes, as to a negative command that does not contain manual labor, stripes do apply. But let us see: Resh Lakish cannot deny that such a warning was a doubtful one, and R. Johanan cannot deny that such a negative does not concern manual labor; what, then, is the use of their explanation? Both agree that, if not for the succeeding, stripes would apply; notwithstanding that there were both a doubtful warning and a positive of no manual labor. Resh Lakish shares the opinion of R. Jehudah of another Boraitha (Chulin 82, b.), in which R. Jehudah admits that a doubtful warning is not considered; and R. Johanan holds with R. Jehudah of the following: R. Idi b. Abin in the name of R. Amram and R. Itz'hak, quoting R. Johanan, said: R. Jehudah in the name of R. Jose the Galilean declared that for the violation of all the negatives of the Torah, if there be manual labor implied, the transgressor is punished with stripes, but not if mental, except in the cases of an oath, exchanging, 1 and cursing his neighbor by the Holy name. But if so, then, R. Johudah

contradicts himself? Resh Lakish may say that there are two Tanaim who said in the name of R. Jehudah differently, and R. Jehanan may say that in the latter Boraitha R. Jehudah declared the theory of his master, but his own opinion he declared in the former Boraitha.

There is a Mishna: He who took the mother-bird with her children gets, according to R. Jehudah, stripes, but is not obliged to send away the mother-bird; and according to the sages, he sends away, but is not punished with stripes; as the rule is: for a negative which is conjoined with a positive there is no liability. Said R. Johanan: There is only one more case similar to this. And to the question of R. Elazar, What is it? he rejoined: Go and find out! He did so and found the following: "If a seducer has divorced," etc., v. above, [p. 37](#). But this can be correct only with him who holds that he is released from

[p. 40](#)

stripes after the fulfilment of the positive only. But according to him who holds that stripes do not apply unless the positive is abolished, such can be done only with the former mother-bird by killing her, as then the positive he "shall send her away" is abolished. But how can such be found in the case of the divorce in question; and should you say that he killed her, then he deserves capital punishment; and there is a rule that stripes do not apply to him who is to be executed? Said R. Simi of Huznah: "E.g., he accepted betrothal money for her from some one else, hence she becomes the wife of another, and the positive "he shall remarry" is abolished. Said Rabh: Such cannot be considered; as in case she made him her messenger to accept the above, she may ignore the message; and, if he did it without asking her who gave him the right to such that it should be considered? Therefore said R. Simi of Nehardea: If, e.g., he has made a vow publicly that he must not derive any benefit from her (and such a vow cannot be absolved), hence the positive is abolished and he is liable. Are there indeed no more similar cases to those by R. Johanan stated? Is there not robbery to which it reads, "Thou shalt not steal," and the positive "He shall return it," and also concerning a pledge to which the negative is, "Thou shalt not come to pledge," and the positive is "Thou shalt return the pledge at sunset"? And these two cases also can be explained in both ways: Fulfilled the positives or not, abolished the positives or not? With these cases it is different, for he has to pay, and there is a rule: He who pays does not get stripes. But is there not "Peah," the negative of which "thou shalt not cut . . . the corners" and the positive "unto the poor . . . leave" [Lev. xxiii. 22], which also may be explained in both ways as said above? Therefore we must say that R. Jehanan by his statement, There is only one similar case, meant "Peah" and not a seducer; since concerning the latter the Law dictates that even if there were a vow on the mind of the public 1 it can be absolved when such absolution is necessary to a meritorious act; as it happened with a children-teacher who struck too much the children and R. A'ha excommunicated him, Rabbina, however, returned him, because he could not find as good a teacher.

"Carcasses preyed," etc. Said R. A'ha: He who neglects nature's duties when called, transgresses the negative "ye shall

[p. 41](#)

not make your souls abominable" [Lev. XX. 25]. And R. Bibi b. Abayi said: He who drinks water from the horn of a barber transgresses the same.

"Partook of mixture, first tithe," etc. R. Bibi in the name of Resh Lakish said: They differ only in case he take a grain of it, but as regards flour all agree that the size of an olive is needed., R. Jeremei in the name of same authority, however, said: As they differ in respect of wheat so they do in that of flour too. An objection was raised from our Mishna. R. Simeon said to them: Do you not agree if he ate an ant, etc., and to the answer of the rabbis "because it is a creature" he rejoined, A wheat grain is also complete in its creation, hence we see that they only differ in respect of the grain, but not in that of flour? R. Simeon meant to say thus: According to my opinion it is the same with flour, but to your theory, admit that if he ate a grain of it he shall be culpable, because of its completeness. The rabbis, however, maintain: We cannot compare a grain to a living creature. There is a Boraitha in accordance with R. Jeremei: R. Simeon said concerning stripes: Size does not count; it counts only concerning sacrifices.

MISHNA II.: Stripes also apply to the following: To him who partook of the first fruit before the ceremony of reading 1 was performed; of the sacrifices under the category of the most holy outside of the curtains, and of those under the category of a minor grade or of second tithe outside of the surrounding wall; and also to him who breaks a bone in the Paschal Lamb if it was a clean one. However, if he left from a fit one, or broke a bone of an unfit one, stripes do not apply.

To him who takes a mother-bird with her children from her coop according to R. Jehudah stripes apply, but he is not obliged to send the mother away, and according to the sages he must send her away and stripes do not apply, according to the rule: If a positive succeeds a negative, no stripes apply.

GEMARA: Said Rabba b. b. Hana in the name of R. Johanan: Our Mishna is in accordance with R. Aqiba, whose name is omitted, as it is one of the many anonymous Mishnayoth which bear his opinion without mentioning his name. The sages, however, maintain that concerning first fruits, their placing on the Temple is the main thing, but the ceremony of reading

p. 42

is no obstacle. But why not say that it is in accordance with R. Simeon, to whose opinion, also, most of the Mishnayoth were composed anonymously? This comes to teach that R. Aqiba is in this respect in accordance with R. Simeon. Which R. Simeon? Of the following Boraitha: It reads [Deut. xii. 17]: "And the heave-offering of thy hand," which means the first fruits; said R. Simeon: What does this come to teach us? If only that they must not be eaten outside the surrounding wall, it was not necessary at all, as this could be inferred from tithe, regarding which the law is more lenient, by drawing *a fortiori* conclusion: If one consumes tithe regarding which the law is lenient, outside of the wall, he gets stripes, so much the more when he consumes first fruits, concerning which case the law is more rigorous; therefore we must say that the verse means to include him who had consumed them before the ceremony of reading was performed. And "thy freewill-offering" [ibid., ibid.], means thanks and peace-offerings. R. Simeon, however, said: The verse does not mean them, as it was not necessary to teach that they must not consume outside of the wall, for the same reason that they could be inferred from the leniency in tithe by the same *a fortiori* reasoning. Therefore it means him who consumed of same sacrifices before their blood was sprinkled. And "first born" means literally. Said R. Simeon: If it meant so, it was not necessary either, as this could likewise be inferred by *a fortiori* reasoning from tithe; and if it means: who commanded them before blood-sprinkling, it was also not necessary, as it could be inferred from the above-mentioned sacrifices by *a fortiori*

reasoning, as they are more lenient than the first born. Therefore we must say that it means to include him who consumes a first born even after its blood was sprinkled. "Thy herds or of thy flocks" means sin and transgression-offerings. R. Simeon, however, said: That if it meant them, it would not be necessary, as they could be inferred by *a fortiori* reasoning from tithe; thanks and peace-offerings, and first born, all of which are more lenient than that of sin and transgression. Therefore it means to include him who consumed from the latter even after [sprinkling](#) outside of the curtain. "Nor any of thy vows" means burnt-offerings. Said R. Simeon: It would not be necessary, as they could be inferred by *a fortiori* reasoning from all those cases mentioned above, and therefore it means to include him who consumes from a burnt-offering after sprinkling even inside the curtains, that he get stripes. Said Rabha:

p. 43

[paragraph continues] Every mother should bear a son like R. Simeon; although his theory can be objected to. [1](#)

It was taught: R. Gidel in the name of Rabh said: A stranger who had consumed sin- and transgression-offerings before their blood was sprinkled, is free from any punishment, because it reads [Ex. xxix. 33]: "And they shall eat those things wherewith the atonement was made to consecrate them, and to sanctify them; but a stranger shall not eat thereof, because they are holy." Now as the sprinkling of blood only atones, they can be considered holy only after the sprinkling w performed, but before this act they are not considered as yet holy; so that the negative "one shall not eat because they are holy" does not rest upon the consumer.

R. Elazar said in the name of Hosea: Concerning the first fruit, placing it in the Temple is the main thing, and not the ceremony of reading, as it is not considered the final act. In this case the following Tanaim differ [Deut. xxvi. 10]: "Thou shalt set it down before the Lord," *i.e.*, lift it up (before the Lord in all four directions). But perhaps it means literally, to place it? This is already written in verse (9). So R. Jehudah. R. Eliezer b. Jacob, however, maintains: This means literally (hence, this is the main act which completes the ceremony prescribed to first fruit); lifting up, however, he infers from [ibid., ibid. 4]: "And the priest shall take the basket out of thy hand," *i.e.*, that the priest shall lift it up towards all four directions. His reason is based on the analogy of expression "hand," which is also mentioned concerning peace-offering [Lev. vii. 30]: "His own hands shall bring it." And as there lifting up is needed by both the ripest and the owner of the offering, so also here the hands of both are needed. How so? The priest places his hand under those of the owner, and the two lift it up together.

Rabha b. Ada in the name of R. Itz'hak said: One is culpable for the first fruits immediately after they have seen the face of the Temple; and it is in accordance with the Tana of the following Boraitha: R. Eliezer said: Of the first fruit, a part of which was outside and a part inside, that of outside is considered common in all respects, while that of inside is considered holy in all respects. And R. Shesheth said: Only the placing is the main act of the ceremony and not the reading.

p. 44

"*Most holy*," etc. But why the repetition? It has been already stated with regard to second tithe and things of the sanctuary which were not as yet redeemed? Said R. Jose b. Hanina: The second

part of the Mishna treats of a case when both were pure--and the man and the second tithes which were consumed outside of the wall, and the first part speaks of the case when both were defiled, and that he consumed them within the city. And whence do we know that one is culpable because of defilement? From the following Boraitha: R. Simeon said [Deut. xxvi. 14]: "Neither have I removed thereof while unclean," 1 means neither when I was unclean and they were clean, nor *vice versa*. R. Eliezer said: Whence do we know that second tithe which became defiled may be redeemed even within Jerusalem! From [Deut. xiv. 24]: "Not able to carry it," which means also when it was not fit for eating, as the expression for carrying is "sheath" and in [Gen. xliii. 34], a similar expression is used for eatables. R. Bibbi in the name of R. Assi said: From the just-cited verse is to be also inferred that even one step outside the wall one may redeem the second tithe, if it is too heavy for him to carry it further. R. Hanina and R. Hosea, while sitting together propounded the following question: How is it if he was already within the gate of the wall in such a position that he was already inside but his load was outside--may he redeem it at that place or not? A certain old man then taught them in the name of R. Simeon b. Jo'hai: It reads [Deut. xiv. 24]: "Is too far from *thee*," means from the full extent of your capacity (and as he is already within the gate it can, not be considered far any longer, etc., and is not to be redeemed). R. Assi said in the name of R. Jehanan: The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem, and the reason is [ibid. xii. 12]: "But before the Lord thy God must thou eat them," and (17): "Thou mayest not eat within thy gates"; hence, only at that time when the positive "before thy Lord must thou eat them" can be fulfilled, the negative: "Thou mayest not eat," etc., applies, but not otherwise.

MISHNA III.: He who makes a baldness in the hair of his head, or rounds it; he who destroys the corners of his beard, or makes incisions in his flesh for his dead, is liable. There is no difference whether he made one incision for five dead bodies or

p. 45

five incisions for one dead body, as in either case he is liable for five negatives. For rounding his hair he is also liable for two (one for one corner on one side, and another for the other corner on the other side; and for his beard five, for there are five corners. 1 R. Eliezer, however, maintains that if he took off the whole beard at one time he is culpable only for one. The culpability arises only, then, when he took it off with a razor. R. Eliezer, however, maintains that the same is the case if he took it off with snuffers or a scraper (an instrument with which the hairs are removed singly).

GEMARA: The rabbis taught [Lev. xxi. 5]: "They shall not make any baldness," lest one say that if one made several baldnesses in his head he is culpable only for one, therefore it reads, "any baldness" (*i.e.*, culpable for each one). And to what purpose is it written "upon their head"? Because [Deut. xiv. i], "Ye shall not cut yourselves, nor make any baldness between your eyes for the dead." Lest one say that he is culpable only when he did so between the eyes, therefore "their head" to include any place of the head. From here, however, we know that priests only are forbidden to do so, as they are subject to many commands which do not apply to a common Israelite; whence do we know that the same is the case with the latter? From the analogy of expression "baldness" in both verses; as in the first he is culpable for each baldness in the head as for that between the eyes, the same is the case with an Israelite. And as in [Deut. xiv.] it says plainly "for the dead," so also in [Lev.] it means for the dead only.

What should be the size of the bald spot which would make him culpable? The size of a bean

according to R. Jehanan in the name of R. Eliezer b. R. Simeon. R. Huna, however, said: Such a size which could be discerned. R. Jehudah b. 'Habibah said: In this three Tanaim differ. According to one it is the size of a bean, according to the other it is a discernible size, and the third, however, maintains that he is culpable even for two hairs. Some, however, say: Instead of two hairs, it must be of the size of a lentil.

"*He who rounds,*" etc. The rabbis taught [Lev. xix. 27]: "Ye shall not cut round the corners of your head" means the end of his head, *i.e.*, who makes his temple as hairless as the

p. 46

spot back of his ears to the nape of his neck. A disciple taught before R. Hisda: Both are culpable, he who rounds, and the rounded one. To which R. Hisda answered: Should he who eats dates from a sieve be culpable? Your Boraitha is in accordance with R. Jehudah, who holds that to a negative which does not contain manual labor, stripes apply (with whom the Halakha does not prevail). Rabha, however, says: It speaks that he himself has rounded his hair, which case all agree that he is culpable. And R. Ashi said: Even if he only assists the one who rounds his hair.

"*And he who destroys the corners of his beard.*" The rabbis taught: "The corners of his beard," means the end of it; and what is meant by the end? The Shibboleth (sheaves).

"*Incisions,*" etc. The rabbis taught [Lev. xix. 28]: "For the dead . . . any incision," lest one say that he made such because of the fall of his house or because the ship sank, therefore "for the dead," to teach that he is culpable only if he did so for a dead. And whence do we know that if he made five incisions for one dead he is culpable for each one? From "any incision" which makes him culpable for each of them. R. Jose said: Whence do we know that if he made one incision for five dead he is culpable for five? From the expression "l'Nefesh" 1 (soul) *i.e.*, he is culpable for each soul. But does not the same passage exclude the case when he did so for "his house" or "ship," etc.?

R. Jose holds that "cut" in Deut. iv. and incision is one and the same, and there also reads "for the dead," hence this also may be inferred.

Samuel said: If one made an incision with an instrument he is culpable. An objection was raised from the following: Incision and cutting is one and the same (but incision means with the hand and cutting with an instrument), hence for an incision with an instrument he should not be culpable? Samuel holds in this respect with R. Jose that there is no difference at all.

A disciple taught before R. Jehanan: For dead he is culpable at all courts whether 'by hand or instrument, but if for an idol, by an instrument he is culpable, but not by hand; as it reads [I Kings, xviii 28]: "And cut themselves after their custom with knives."

"*Culpable only for one,*" because he holds that he transgressed only one negative command.

p. 47

[paragraph continues] "*With a razor.*" The rabbis taught [Lev. xxi. 5]: "The corner of their beard shall they not shave off," *i.e.*, with a razor. But lest one say even with scissors he shall be culpable, therefore it reads [ibid. xix.], "thou shalt not destroy." But if so let him be culpable for destroying it even with snuffers or scrapers? therefore the expression "shave off," and destroying by shaving is brought about by a razor.

"*R. Eliezer,*" etc. From whatever opinion he starts: if he cares for the analogy of expression, then it is with a razor only; and if he does not, let him be culpable even if he did it with scissors? He cares for the analogy, but to his opinion snuffers and scrapers are equivalent to a razor.

MISHNA IV.: The culpability for etching-in [Lev. xix. 28] arises only when he has done both, wrote and etched-in with dye or any other indelible thing, but to one of them no culpability attaches. R. Simeon b. Jehudah in the name of R. Simeon said: He is not culpable unless he etched-in the holy name; as the above-cited verse reads, "and any etched-in writing shall you not fix on yourselves: I am the Lord."

GEMARA: Said R. Aha b. Rabha to R. Ashi: Does it mean unless he etch-in the words "I am the Lord"? And he answered, Nay! It is as Bar Kapara taught: "He is not culpable unless he writes the name of an idol, as the words "I am the Lord" mean *I* am the Lord, but not another one.

R. Malkhiya in the name of R. Ada b. Ahaba said: One is forbidden to put ashes upon his wound in the flesh, because it looks like a tattooing. [Said R. Papa: Throughout both Mishna and Boraitha, the name Malkhiya when mentioned is Malkhiyah, but in Halakhas it is Malkhiyoo]. R. Ashi, however, said: It does not matter, as the wound shows there is no tattooing.

MISHNA V.: A Nazarite who was drinking wine the whole day, is culpable only for one negative. If, however, he was warned, Do not drink, do not drink! he is culpable for each time he does not listen to. The same is the case if he had defiled himself by touching dead the whole day, he is culpable for one only; but if he was warned, You must not do so! etc., he is culpable for each one. The same is also the case with shaving himself. If he did so the whole day without warning he is culpable for one only, if with warning, for each time warned. A similar case this: If one was dressed with Kelaim, he is culpable for the whole day only once; but if he was told not to dress himself with it, and he undresses and redresses, he is liable for

p. 48

each time. There is an instance that one may plough only one bed and shall be culpable for eight negatives--viz: If he ploughs with an ox and an ass both of which were from the sanctuary, if there was Kelaim in a vineyard, if that occurs in the Sabbatical year and on a legal holiday, and, finally, if he is a priest or a Nazarite in a legally unclean place. Hanania b. 'Hakhinai said: It can be added to that "who at the same time was dressed with Kelaim." And he was answered: This is not under the category of ploughing. Rejoined he: Does, then, a Nazarite belong to this category?

GEMARA: Said R. Bibi in the name of Rabh Assi: Not only when he undresses and redresses himself entirely, but even when he put his sleeve in and out. And R. Aha b. R. Aika has shown that he puts in the sleeve and puts it out. But R. Ashi maintains that it means the time during which he could put in and out.

"*Ploughing one bed*," etc. Said R. Yanai: At a meeting there was voted and resolved that he who protects Kelaim is liable to stripes. Said R. Jehanan to him: Is this not explained in our Mishna, which mentions that there was Kelaim in the vineyard? And if one were not culpable for protection what would have the ploughing to do with it? You must, then, say that while ploughing he protects it, and the Mishna makes him culpable. Rejoined R. Yanai: If I had not uncovered for you the broken clay pot, you would surely not have the pearl which was lying under it. Said Resh Lakish to R. Jehanan: Would not such a great man praise your statement? I would say that our Mishna is in accordance with R. Aqiba, who holds that one is liable even for keeping it. Said Ula to R. Na'hman: After it was decided that protecting is the same transgression as sowing, let him also be culpable for sowing on a legal holiday? And he answered: It was left out by the Tana of the Mishna. Rejoined he (Ula): It numbers eight, consequently nothing was left. Said Rabha: The different kinds of labor in one article are considered with respect to Sabbath only, but not to holidays. And Ula said: (I also think) so it is.

MISHNA VI.: The number of stripes is forty less one, as it reads [Deut. xxv. 2, 3]: "By a number, forty," *i.e.*, near forty. R. Jehudah, however, said: Forty in full, and the fortieth is between his shoulders. The examination (by the physicians of the court) as to the number of stripes he can receive and remain alive, must be such that can be equally divided by three. If

p. 49

the decision was that he is able to receive forty, but after receiving a part of them they saw he cannot stand any more, he is free. However, if the decision was, he can stand eighteen only, and after he was stricken they saw he is able to receive more, he is nevertheless free.

GEMARA: The reason of the statement of the Mishna is the expression "number," which is before the word "forty," and is to be interpreted "about" forty; for if it meant forty in full, it would state forty in number. Said Rabha: How foolish are those who arise before the Holy Scrolls, but do not do so before a great man. We see that in the Holy Scrolls it reads forty, and the rabbis came and reduced one.

"*R. Jehudah said*," etc. What is his reason? Said R. Itz'hak [Zech. xiii. 6]: "What are these wounds between thy hands," etc. The rabbis, however, maintain that this passage speaks of school-children.

"*After he was stricken*," etc. Is that so? Does not a Boraitha state that if the first decision of the physicians was that he can receive forty and thereafter they decided again that he can not, or the first decision was for eighteen, and the second states that he is able to receive forty, he is free. (Hence we see that even if he was not stricken but only examined, he is free.)

Said R. Shesheth: This presents no difficulty. Our Mishna speaks of the decision rendered on the very same day on which he ought to be beaten, and by acting accordingly it was found that they erred; hence in the first instance he is freed because he cannot stand, and in the second, because he was already disgraced and freed we do not care to disgrace him again. The Boraitha, however, speaks that the examination was several days before, and when the day of punishment came, the decision was changed because of his health.

MISHNA VII.: If one commits a sin to which two negatives apply, if the decision was rendered

once for both negatives, he is punished once only, but if for one negative, he is punished again after he has recovered.

GEMARA: Is there not a Boraitha that one must not be appraised for two negatives? Said R. Shesheth: It presents no difficulty. Our Mishna speaks, if he was appraised for forty-one, *i.e.*, for two negatives, and because it cannot be divided into three, their appraisal is annulled, and he receives only thirty-nine for both; and the Boraitha speaks of the case when he was appraised to receive forty-two for two negatives, and as

p. 50

it can be divided into three, the three over the thirty-nine are counted for the second negative. Hence he is beaten once, and after recovery is to be appraised again and beaten accordingly.

MISHNA VIII.: How is the punishment with stripes to be performed? He ties his both hands to the pillar, and the messenger of the court takes hold of his clothes, without care whether they tear or disjoin, until he uncovers the breast. The stone on which the messenger is to stand is placed behind him, upon which he stands with a strap of calf leather compounded of two, which, folded again, constitutes four, with two small stripes attached to it.

The size of its handle was a span, and of the same size was the width of it, and the top of it reaches his belly. He strikes him one-third in front and two-thirds on the back. He is not beaten while standing nor sitting, but while bending; as it reads [Deut. xxv. 2]: "The judge shall cause him to lie down," and the striker strikes him with one hand with all his force. And the reader reads from [ibid. xxviii. 58-59]: "If thou wilt not. . . Then will the Lord render peculiar thy plagues," etc., to the end of the verse. And if the striker has not finished yet, he begins [ibid. xxix. 8]: "Keep ye therefore," etc., and finishes with [Psalm lxxviii. 38]: "But he, being merciful, forgave the iniquity." And if the act was not finished as yet, he returns to the beginning. If it happens that he dies under the messenger's hand, the latter is free. If, however, he added one stripe which caused death, he is exiled. If while beaten he collapsed and became incontinent of urine or excrement, he is freed. R. Jehudah maintains: A male, when incontinent of feces; and a female, of urine.

GEMARA: What is the reason that he shall be freed if he collapsed, etc.? His having been already disgraced.

R. Shesheth said in the name of R. Eliezer b. Azaria: Whence do we know that the strap must be of calf leather? Because immediately after "forty stripes" it reads, "thou shalt muzzle the ox." (See appendix.)

"*Two small stripes*," etc. In a Boraitha it is written from ass leather, and it is as a certain Galilean preached in the presence of R. Hisda [Isaiah, i. 3]: "The ox knoweth his owner and the ass his master's crib: Israel doth not," etc. The Holy One, blessed be He, said: "He that knoweth the master's crib shall take revenge from him who does not want to know it."

"*One-third in front*," etc. Whence is this deduced? Said

p. 51

be beaten before his face according to R. Kahana: From "to the degree of his fault," which means for one fault in the front and for two in the back.

"*The striker strikes him with one hand,*" etc. The rabbis taught: The court appoints messengers who are weak in force but strong in wisdom. R. Jehudah, however, said: Even *vice versa*. Said Rabha: It seems to me that R. Jehudah is correct, because it reads "not more"; now if the messenger were weak in wisdom he must be warned, but if strong in wisdom, why warning? The rabbis, however, maintain the contrary, that warning is of consequence only to him who is learned to be careful. There is a Boraitha: When he lifts up, he does it with both hands, but strikes with one hand, so that the strokes shall become weaker.

"*And the reader reads,*" etc. The rabbis taught: The chief of the judges reads; the second numbers, and the third says, strike! When the stripes are many he prolongs, and when less he shortens. But does not the Mishna state "he returns to the beginning of the passage"? It is better that the reading should be finished with the stripes; but if it was not, he returns. The rabbis taught: It reads [Deut. xxv. 3]: "Too many stripes"; but lest one say that one or two does not matter? Therefore is "not more"--not even one. But if so, to what purpose "too many stripes"? To teach that if it happen so, even the stripes which were given rightly are to be considered too many (in force).

"*Collapsed,*" etc. The rabbis taught: A male as well as a female "in feces," but not "in urine." So R. Mair. R. Jehuda said: A male "in feces" and a female "in urine." The sages, however, maintain: There is no difference between male and female, and between feces and urine; at all events the beaten is to be freed. But is there not a Boraitha: R. Jehudah said: Male and female in feces? He meant to say that in such a case all agree, but concerning incontinence of urine there is a difference of opinion.

Samuel said: If after he has been tied, he succeeds to run away from the court, he is free. An objection was raised from the following: Collapsing frees one whether it happen at the first stroke or the second, but if the strap broke he is free only if it happened at the second, but not at the first. Now, why should this not be equivalent to running away, which frees even before the first strike? This is no objection, when he runs away

p. 52

he could not be beaten (and as he was already disgraced, he is not taken to be disgraced again), but here he is still present.

The rabbis taught: If it was concluded by the examination that he will collapse in case he is beaten, he is to be freed; but if the conclusion is that he will collapse after having been beaten, it does not free him. Furthermore, if it happen that he collapse before he was taken to be beaten, it does not prevent after recovery; because it reads [Deut. xxv. 2, 3]: "And to be beaten . . . and . . . thus rendered vile," but not rendered vile before beaten.

MISHNA IX.: All who are liable to Korath, if beaten, are freed from it, as it reads [ibid., ibid. 3]: "Thy brother rendered vile," *i.e.*, as soon as he was rendered vile, he is thy brother. So R. Hananye b. Gamaliel; the same also said: If one loses his soul for one sin, so much the more his

soul should be saved because of one meritorious act! Said R. Simeon: This may be inferred from the very place which treats of Korath [Lev. xviii. 29]: "Even the souls that commit them shall be cut off," and [ibid., ibid. 5]: "Ordinances, which, if a man do, he shall live in them." As the whole portion is of negative commands, it is to be inferred that if one only abstains from committing a crime, he is rewarded as if he acted meritoriously. R. Simeon b. Rabbi said: It reads [Deut. xii. 23]: "Be firm so as not to eat the blood; for the blood is the life." Now, for rejecting blood which is disgusting to one, he is rewarded; from money and women, to which the nature of man is inclined, so much the more should he be rewarded if he separates himself; and not only he, but all his descendants to the end of the generations, may be rewarded. R. Hanania b. Akasiha said: The Holy One, blessed be He, wanted to make Israel blissful and therefore he multiplied to them his commands in the Torah, as it reads [Isaiah, xlii. 21]: "The Lord willed (to do this) for the sake of his righteousness: (therefore) he magnifieth the law, and maketh it honorable."

GEMARA: Said R. Jehanan: The colleagues of R. Hananye differ with him (as according to them stripes do not substitute Korath). Said R. Ada b. A'haba in the name of Rabh: The Halakha nevertheless prevails with R. Hananye. Said R. Joseph: Who, then, ascended to heaven, returned, saying that the Halakha prevails with him? Said Abayi to him: According to You, that which was said by R. Jehoshua b. Levi, "three things were done by the human court, and the heavenly court

p. 53

agreed with it," is also to be questioned: who ascended to heaven and convinced himself that it was so? but such is inferred from the Scripture; well, the same is here, too. What are the three things in question? The following: The reading of the Book of Esther on Purim, greeting with the Holy Name, and placing the tithe belonging to the Levites in the treasury of the sanctuary. The first (Book of Esther) from [Esther, ix. 27]: "The Jews took it upon themselves as a duty and accepted," means, they took upon themselves in their human court, and it was accepted in the heavenly court. "Greeting" from [Ruth, ii. 4]: "And he said unto the reapers, the Lord be with you," and also [Judges, vi. 12]: "The Lord is with thee." To what purpose is the second quotation? Lest one say that Boas did it according to his own opinion and without the admission by heaven, therefore the other quotation which was said by an angel. And concerning tithe from [Malachi, iii. 10]: "Bring ye all the tithes into the storehouse, that there may be provision in my house, and prove me but herewith, saith the Lord of hosts, if I will not open for you the windows of heaven, and pour out for you a blessing, until it be more than enough."

R. Elazar said: At three places the Holy Spirit appeared: At the court of Shem, of the prophet Samuel, and in the court of King Solomon. At the court of Shem [Gen. xxxviii. 26]: "And Judah acknowledged them and said, She hath been more righteous than I." And whence did he know it? Perhaps as he was with her, so was some one else? Therefore a heavenly voice was heard: I have decided that so is it to be. In the court of Samuel [I Samuel, xii. 5]: "And he 1 answered, He is witness." He? *they* ought to be! Hence a heavenly voice was heard, I witness that so it is. And [I Kings, iii. 27]: "The king then answered and said, Give her the living child and do not slay it. she is its mother." And whence do we know it is so; perhaps she nevertheless deceived him? Hence the last words, "she is its mother," were said by a heavenly voice. Said Rabha: If it were inferred from the Scripture only, all of them could be objected to, but this is known by tradition.

R. Simlai lectured: Six hundred and thirteen commands were said to Moses; three hundred and sixty-five of them negatives, corresponding to the number of days in a year counting according to sunrise; and two hundred and forty-eight positives,

p. 54

corresponding to the members of a man's body. Said R. Hamnurah: Where is there an allusion thereto in the Scripture? [Deut. xxxiii. 4]: "The Torah which Moses commanded us." The letters of the word Torah number six hundred and eleven (Tav is 400; Vov, 6; Reish, 200, and Hei, 5), and the two first commandments, however, of the ten, we ourselves have heard from Heaven. However, David came and reduced their number to eleven [Psalm xv. 2-5]: "He that walketh uprightly" means Abraham, to whom such an expression was said in [Gen. xvii. 1]: "Worketh righteously" means Aba A'helqiah (see Tainith, p. 66-68). "Speaketh the truth" as, e.g., R. Saphra. "Uttereth no calumny," i.e., Jacob, our father. "That doth no evil to his neighbor," i.e., he who takes care not to compete with his neighbor's business. "No reproach on his fellow man" means him who approaches his relatives. "Despicable is despised" means the king, who carried his father's bones on a bed of ropes. "Honoreth those who fear the Lord" means King Jehoshofath, who used to arise from his throne on seeing a scholar, kissed him, and called him, my father, my master, etc. "That sweareth to his own injury, and changeth not," i.e., as R. Jehanan said: If one says I will fast until I will come home, it is to be considered. "Money for interest," i.e., him who does not accept usury even from an idolator. "Taketh no bribe" means, e.g., R. Ismael b. Jose, who does not accept even his own goods from his gardener for the purpose that he shall try his case. "He that doth these things shall not be moved to eternity." [When R. Gamaliel used to come to this passage, he used to weep, saying: Who performed *all* this shall not be moved, but one of them does not suffice (see Sanhedrin, p. 237).]

Isaiah, then came and reduced them (the 613 commands) to six [xxxiii. 15]: "He that (a) walketh in righteousness, (b) speaketh uprightly, (c) despiseth the gain of oppressions, (d) shaketh his hands against taking hold of bribes, (e) stoppeth his ears against hearing of blood, and (f) shutteth his eyes against looking on evil." (a) Means Abraham, of whom it reads [Gen. xviii. 19]: "For I know him, that he will command," etc. (b) Means him who does not anger his colleague in public. (c) Means R. Ishmael b. Elisha. (d) R. Ishmael b. Jose. (e) R. Eliezar b. Simeon, and (f) means as R. Hiya b. Aba said: Who does not look on women washing near the bank of the river. (See last gate, p. 137.)

p. 55

Michah came and reduced them to three [vi. 8]: "He hath told thee, O man, what is good; and what the Lord doth require of thee: (nothing) but to do justice, and to love kindness, and to walk humbly with thy God." "To do justice" means judgment; "love kindness" bestowing of favors; and "walk humbly," providing for burial of the dead and marriage of poor maidens.

Isaiah (the second) again reduced them to two [lvi. 1]: "Thus hath said the Lord, Keep ye justice and do equity."

Amos then came and reduced them to one [v. 4]: "Seek ye for me, and ye shall live."

R. Na'hman b. Itz'hak opposed: Perhaps he means seek for me to perform everything that is

written in the Law? Therefore Habakkuk was the one who reduced them to one [ii. 4]: "The righteous should live with his faith." Said R. Jose b. Hanina: Four decrees Moses has decreed upon Israel, and four prophets came and abolished them. Moses said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone," etc. Amos abolished it [vii. 5]: "How should Jacob be able to endure," then immediately in (6) "The Lord bethought . . . this shall not be." Moses said [Deut. xxviii. 65]: "And among these nations shalt thou find no ease." Jeremiah abolished it, saying [xxx. 2]: "He is going to give rest to Israel." ¹ Moses said [Ex. xxxiv. 7]: "Visiting the iniquity of the fathers upon the children." Ezekiel abolished it by saying [xviii. 4]: "The soul which sinneth, that alone shall die." Moses said [Lev. xxvi. 38]: "And ye shall be lost among the nations." Isaiah abolished it by saying [xxvii. 13]: "The great cornet shall be blown," etc. Said Rabh, I am nevertheless afraid of the passage "ye shall be lost among the nations," and of the end of same, "the land of your enemies shall consume you." Marzutrah opposed, relating the following: It happened with Rabban Gamaliel, R. Elazar b. Azariah, R. Jehoshua, and R. Aqiba, who were on the road, and heard the noise of the city of Rome at Patlus, a distance of 120 miles, and they began to weep; but R. Aqiba smiled. And to the question, Why are you smiling, he returned the question, Why do you weep; rejoined they: Those idolators who bow themselves to images and smoke frankincense to the idols are resting in peace, the contrary is with us, that even our holy Temple is burned by fire,

p. 56

and we should not weep? Rejoined he: For the same reason I am smiling. If such is done to them who act against His will so much the more will be done in the future to them who act in accordance with His will. It happened again that the same were going to Jerusalem, when they arrived to the Mount Zerphim, they tore their garments; and when they approached the Mount of the Temple and saw a fox running from the place where the Holy of Holies had been situated, they began to weep; but R. Aqiba smiled. To their question why he smiled, he answered: It reads [Isaiah, Viii. 2]: "Witnesses, Uriyah the priest, and Zecharyahu," etc. Why is Uriyah conjoined with Zecharyahu? Was not the former at the first Temple and the latter at the second? It was because the passage bases the prophecy of Zecharyahu upon the prophecy of Uriyah. Uriyah said [Micha iii. 12]: "Therefore for your sake shall Zion be ploughed up as a field," etc. Zechariah said [viii. 4]: "Again shall there sit old men and old women in the streets of Jerusalem," etc. Until the prophecy of Uriyah was not fulfilled I feared lest the prophecy of Zechariah will come to be realized but now since I see that Uriyah's prophecy is fulfilled I am sure that Zechariah's prophecy will also be fulfilled in the near future. Upon this version they said to him: Aqiba, thou hast condoled us, thou hast condoled us!

APPENDIX TO PAGE 50.

R. Shesheth said in the name of R. Eliezer b. Azariah: He who disgraces the festivals is regarded as if he worshipped idols, as it reads [Exod. xxxiv. 17]: "Thou shall not make unto thyself any molten gods," and immediately follows the verse "The feast," etc, The same said again in the name of the said authority: He who speaks evil of his neighbor, he who listens to such evil-speaking, finally he who bears false testimony deserves to be thrown to the dogs, as [ibid. xxii. 30] "to the dogs shall ye cast it," is immediately followed by [xxiii. 1] "Ye shall not spread (thisso) false report," which should be read also thassi, *i.e.*, ye shall not excite one against the other.

Footnotes

[35:1](#) *I. e.*, meat of a sacrifice illegally slaughtered.

[36:1](#) The text contains also what Itz'hak said, repeated from Kherithoth,--the proper place.

[36:2](#) The text contains a long discussion about this subject, which is repeated in many places of the Talmud; here, however, this is very complicated and not important, and therefore omitted.

[39:1](#) Lev. xxvii., 10.

[40:1](#) This will be explained in Tract Gittin.

[41:1](#) Deut. xxv, 15.

[43:1](#) The text argues as to how the theory can be objected to by a very complicated process of reasoning, and from things entirely irrelevant to the subject, and therefore omitted.

[44:1](#) Leeser's translation does not correspond.

[45:1](#) For an illustration of the five corners, see Rashi, as we do not deem it necessary to illustrate them for the English reader.

[46:1](#) The term "for dead" is "I'Nefesh," which means for a dead soul.

[53:1](#) Leeser's translation does not correspond.

[55:1](#) Leeser's translation does not correspond.