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TRACT HORIOTH (DECISIONS).

CHAPTER I.

MISHNA I.: If, after the court had decreed the transgression of one of all the commandments prescribed in the Torah, an individual guided by this decree acted erroneously, either simultaneously with the judges, or after they had acted, or altogether independently, the court not having acted yet at all, he is free, for he followed the decree of the court. If, however, the transgressor was one of the members of the court and knew the decree to be erroneous, or a scholar already qualified to himself decide, he is in any of the aforementioned conditions liable (to bring a sin offering), as he has not based his transgression upon the decree of the court. This is the rule: Whoever relies upon his own judgment is liable, but whoever follows the decision of the court is free.

GEMARA: Samuel said: The court is not liable unless its decree read thus: You are all-owed to practise so and so. R. Dimi of Nahardea, however, said: The phrase "to practice" is not necessary, the statement "you are allowed" being sufficient; which view was, however, objected to by Abaye, R. Aba, and Rabima from Mishnaioth that oppose it and it was accordingly overthrown without any further discussions.

"*An individual . . . acted erroneously,*" etc. Said Rabha: This is so only when he acted according to the decree of the court, but if he ate, e. g., illegal fat in the belief that it was legal, he is liable. This view of the case so certain to Rabha was doubtful to Rami b. Hama, as he propounded the same question and Rabha answered it from the expression "guided by this decree" (the Gemara, however, says) that in this case Rabh R. Johanan differ, viz.: in case the court has decreed that this fat is allowed to use and has consumed illegal fat thinking it legal, according to the former he is free, and according to the latter he is liable. And. R. Papa explained R. Johanan's

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reason to be that the transgressor is still considered as having acted in accordance with the decree, as if the court became aware that it has erred it would retract and so would the transgressor abstain from eating, hence R. Johanan's decision. And Rabha said: Rabh admits that the transgressor in question does not complete the majority, because it reads "erroneously," which means that all must err with regard to the same thing but not to different things.

"*Either simultaneously with the judges,*" etc. This is stated in order to teach that he is free, not only when he acted simultaneously with, but also when after, the judges had acted.

"*A scholar qualified,*" etc. To what purpose are both the conditions stated? Rabha: To teach that

even such a person who is learned but who lacks discriminating power, or *vice versa*, is also culpable. Said Abaye to him: But from the statement of the Mishna, "who is already qualified to decide," obviously follows that he is both learned and strong is discrimination? Answered Rabha: I mean to say that if the Mishna stated not the last phrase, it could be said that in order to make him liable he must possess the two qualifications, hence the Mishna states it to indicate that its first phrase refers to him who possesses even but one qualification.

Again: "*Qualified himself to decide*," etc. Who is meant thereby? Said Rabha, such, *e.g.*, as Simeon b. Azai and Simeon b. Zoma. Said Abaye to him: An act of such great men may be considered intentional; we must, therefore, say that such a case can take place only if he was aware that such is prohibited, but he committed an error by thinking that it is meritorious to follow the decree of sages even when they err.

"*This is the rule*," etc. What does this sentence intend to add? Him who does not care at all to guide himself by the decision of the court. Said R. Jehudah in the name of Samuel: The whole Mishna is in accordance with R. Jehudah (the Jana), but according to the sages one is liable for acting upon the decree of the court as his guidance. Which R. Jehudah is this? From the following Boraitha. It reads [Lev. iv. 27]: "If any person . . . sin through ignorance, by his doing," where there are three extensions, to teach that he is liable by his doing it himself, but if by doing it upon the decree of the court, he is free. And which sages are there spoken of? From *Torath Kohanim*, section i., Leviticus. But let us see, our Mishna as well as that of *Torath Kohanim* is each taught anonymously;

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hence, then, do we know that our Mishna is in accordance with R. Jehudah and the Boraitha with the rabbis, may be the converse is the case? Nay, as of no other have you heard to consider such extensions than of R. Jehudah, who said in the following Boraitha: it reads [ibid. vi. 2]: "This is the law of the burnt-offering," where there are three extensions. However, the Mishna can not be in accordance with R. Jehudah, for the reason that according to him the congregation is liable to bring a bullock in case its majority have sinned erroneously, while according to the sages the *court* must bring it. Therefore, our Mishna must be interpreted to mean that the court has decreed and only the minority has acted thereupon, and the point of their difference is that according to one an individual acting on the basis of the court's decree is free, while according to the other he is liable. R. Papa, however, said: All agree that in such a case the transgressor is free, and their point of difference is that one holds. The court is completing the majority of the congregation, while the other does not hold so.

R. Assi said: In a decision for practising, it is not the majority of the congregation but that of all the population that must be considered, as [I Kings viii, 65], "And Solomon held at that time the feast, and all Israel with him, a great assembly, from the entrance of Chamath unto the river of Egypt, before the Lord our God, seven days and seven days, even fourteen days," now, as it is written, "and all Israel with him," what for, then, yet the description, "great assembly from the entrance of Chamath unto the river of Egypt"? To teach that in such a decision (as to abolish the day of atonement) the population of the whole land is considered the assembly.

R. Jonathan said: If there were one hundred assembled to decide some point, there is no liability (attached to the transgression of the decision) unless the decree was made unanimously, as it reads [Lev. iv. 13]: "And if the whole congregation of Israel sin," which means that all sin by

error, and that the decision be brought about unanimously. Said R. Huna b. R. Ashia: It seems to be so, since with regard to all the laws of the Torah there is a tradition that the majority is equivalent to the whole, and here it reads, "the whole congregation," *i.e.*, it must be the *whole* of the body, so that if there were one hundred their decision must be unanimous.

An objection was raised from our Mishna which states that

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he is liable if "he has not based his transgression upon the decree of the court," whence it follows by implication that if another one (not so qualified) acted thus he would be free; why so, since in this the decree was no longer unanimous (as one of the members deviates)? It means here that this one member has also nodded his head affirmatively (while the vote was taken).

R. Mesharshia objected from the following: Our masters have relied upon R. Simeon b. Gamaliel and R. Elazar b. Zadok, who have decided that no decree must be promulgated unless the majority of the congregation is able to comply with it; and R. Ada b. Aba said: Where is there an allusion thereto in the Scripture? [Mal. iii. 9]: "With curse are ye cursed, and yet me do ye rob, O ye entire nation." Now, here is written the entire nation and nevertheless the majority is equivalent to the whole; hence, R. Jonathan's view is wholly overthrown, and the expression in the Scripture (cited above), "the whole congregation" means: if the whole is able to comply with the decree it is considered, but not otherwise.

MISHNA II.: If upon issuing the decree the court becomes aware of its being conceived in error and retracts, and meanwhile an individual commits a transgression upon that decree either before or after the court succeeded to bring its atoning offering, he is free according to R. Simeon, while R. Elazar classes it among the doubtful cases. In what sense is it doubtful? He may have stayed at his home, then he is liable; but if he was in the sea countries he is free. Said R. Aqiba: I agree that in the latter case he is rather free than liable. Whereupon Ben Azai asked: What difference is there between the two cases? It consists in that he who stays at home can possibly hear (of the retraction), while to the other one this is impossible.

If the court decided to annihilate a law in its very essence, by saying, *e.g.*, that there is not in the Torah the law of menses, of Sabbath, of idolatry, the members of the court are free (from an offering); but if it decided to abolish only one part of a law retaining in force the other part, they are liable. How so? If it decided, *e.g.*, that, though the law of menses is in the Torah, a man who has sexual relations with a woman in her watching days is free; or, that he who transports something from private to public grounds is free though the law of Sabbath is in the Torah; or, that the Torah truly forbids idol worship, yet he who bows to the idol is free--the court is liable, for it reads

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(Lev. iv. 13): "And the thing be hidden," *i.e.*, *something*, but not the whole essence.

GEMARA: Said R. Jehudah in the name of Rabh: R. Simeon used to say that if one acted upon a decision issued by the majority of the congregation, he is free; because a decision discriminates between intentional and unintentional acting, and here the transgressor, guided in his act by the

decision, sins unintentionally (though he acts intentionally), and according to Rabb R. Simeon is consistent with his own theory elsewhere that the bullock for the forgetting by the congregation, and the he-goat for idolatry, are to be brought from the treasury of the temple.

There is a Boraitha. In the case mentioned in the Mishna, R. Mair makes him liable, and R. Simeon holds him free, while R. Elazar finds this case to be doubtful; and in the name of Symachos such was said to be a pending case. Said R. Johanan: They differ concerning a pending-offering. Said R. Zera: R. Elazar's decision is like that regarding the case where one consumes fat doubtful whether it is legal or illegal, and thereafter he became aware that it was doubtful, he is to bring a pending offering; and not only according to him who obliges the *congregation* to bring such an offering, as such an act is known to every one, hence, if the transgressor has acted after the congregation brought its atoning offering, in which case it cannot possibly be said that he in his act guided himself by the court's decree,--but even according to him who obliges the *court* to such an offering, which may be not known to everybody, the transgressor is also liable, since he could find this out upon investigating.

R. Jose b. Abin, according to others b. Zebida, likens Symachos' decision to that regarding the case where one brings his atoning offering at twilight, which makes the atonement doubtful, since if it was yet day he is atoned, but if night he is not, and none the less he is not obliged to bring another offering.

"*Ben Azai asked*," etc. Is not Ben Azai right? The difference between them is the case when the transgressor has just set out on his journey; according to Ben Azai he is liable, while according to R. Aqiba he is free as soon as he starts on his way.

"*If the court decided to annihilate*," etc. Said R. Jehudah, in the name of Samuel: The court is not liable unless it has decided

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upon a point which the Sadducees do not admit, but where they do, it is not considered an error, since even a child knows such a point, and the court is accordingly free.

MISHNA III.: If while the court was deciding, one of its members who perceived their error drew their attention to it, or if the presiding judge was absent, or one of them was a proselyte, a bastard, a nation, or an aged man who had no children, they are free; on the ground of the following analogy [Lev. iv. 3]: the expression *congregation* is used and [Numb. xxxv. 24] the same expression, it is inferred thus: just as there the expression means a congregational meeting whose members are singly and severally qualified to decide law questions, in the latter case it means the same.

GEMARA: "*The presiding judge*," etc. Whence is this deduced? Said R. Sheshith: It is likewise found in a Boraitha of the disciples of R. Ismael, viz.: Why was it said that if the court decides on a point which the Sadducees admit, it is free? Because this is not considered an error but a fact of ignorance, as the members of the court ought to have learned; the same is the case here where the presiding justice was absent, some one of the members ought to substitute him, and as there was none competent to do so they are ignorants who ought to learn.

"*The expression congregation,*" etc. And whence do we know that there they are fit to decide questions? Said R. Na'hman b. Itz'hak: It reads [Ex. xviii. 22]: "With thee," *i.e.*, such as are equal to you.

MISHNA IV.: If the court decided in error, causing the whole people to act erroneously, a bullock is to be offered; but if the court decided intentionally (against the law) and the people acted in error, a sheep or goat is to be sacrificed (by each individual transgressor). If, however, the reverse was the case, all are free.

GEMARA: It states: If the court decided unintentionally and the people acted intentionally, they are all free, whence it follows by implication that if the unintentional act was equal to an intentional one, *i.e.*, done independently of the court's decree, one is liable; and what case would illustrate this? *E.g.*, the court decided that fat is legal and one has consumed such in the belief that it is legal, whence could be solved the question propounded above by Rami b. Hama? Nay, it may be said that because in the first part it speaks of an intentional decision

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and of subsequent unintentional act, it expresses in the last part the reverse.

MISHNA V.: If upon the erroneous decree of the court the whole people, or its majority, acted, a bullock is to be brought; or, in case the decree referred to idol worship, a bullock and a he-goat; so holds R. Mair, while R. Jehudah says: Twelve tribes bring 12 bullocks, and in the case of idol worship yet 12 he-goats in addition. R. Simeon says: 13 bullocks in the one and 13 bullocks plus 13 he-goats in the other case respectively, thus making one bullock with one he-goat to each tribe, and one such pair for the court. If but seven tribes or the majority (of the people) acted upon the decree, the court members must bring a bullock, and in case of idolatry also a he-goat, so holds R. Mair, while according to R. Jehudah, the 7 tribes that sinned should bring 7 bullocks, and the innocent remaining tribes also sacrifice one bullock for the sinners. R. Simeon maintains his foregoing view, reducing the number of the sacrifices from 13 to 8.

If a tribal court caused by its erroneous decision the tribe to act accordingly, only this tribe is liable, while all the others are free, so holds R. Jehudah; the sages, however, maintain that only those are liable who act on the decree of the supreme court, for it reads [Lev. iv. 13]: "If the whole congregation of Israel sin through ignorance," hence not that of a single tribe.

GEMARA: The rabbis taught: If the court was aware that its decision was erroneous, lest one say that it is liable, it reads [Lev. iv. 14]: "The sin becometh known," but not the sinner, "through which they have sinned," *i.e.*, if there were two tribes they bring two bullocks; three, three bullocks, and so forth. But perhaps it means: If two individuals have sinned, they must bring two bullocks, and if three, three, and so on? To this it reads: "The congregation shall offer," *i.e.*, each congregation, as well as the congregation at large, is liable; how so? If there were two tribes, they bring two, and if seven tribes, they bring seven, and all other tribes who have not sinned should also each of them bring a bullock, since, though they have not sinned, they must conjoin themselves to the sinning tribes, as for this purpose it reads "the congregation," to make liable each of them. So R. Jehudah. R. Simeon, however, said: The seven tribes that have sinned bring seven, and the court brings one bullock in addition, for, as here *congregation*

is used and there the same term, hence, just as there the court *with* the congregation is meant, the same is the case here. R. Mair, however, said: If the seven tribes have sinned, the court brings only one bullock, and *all* are free for the same reason, as congregation mentioned above means only the court, the same is the case here. And R. Simeon b. Elazar said, in the name of R. Mair: If six tribes have sinned, and they formed the majority of all Israel, or seven tribes, though not forming the majority of Israel, only one bullock must be brought.

"*If a tribal court,*" etc. The school-men propounded a question: If one tribe has sinned, guided by the decree of the supreme court, may the other tribes conjoin with it to bring bullocks or not? Shall we assume that only to seven tribes conjoining takes place, but not to one, which does not form majority, or since it acted upon the decree of the court there is no difference whether one or seven? Come and hear: R. Jehudah said: If one tribe has acted in accordance with *its* court, it *alone* is liable, but if it acted according to the decision of the supreme court, all the other tribes are also liable. Said R. Ashi: [It](#) seems to be so also from our Mishna, which states, "only this tribe is liable, while all the others are free"; to what purpose does it add, "while all the others," etc., after it states "only this tribe," etc? To teach us, thus: Only in the case of its own court, but if it is a case of the supreme court, all the others are also liable.

But let us see, whence do both R. Jehudah and R. Simeon deduce that *one* tribe is also called *Kahal*, *i.e.*, congregation (of all Israel)? From [II Chron. xx. 5]: "And Jehoshaphat stood forward in the *Kahal* of Judah and Jerusalem." R. A'ha b. Jacob opposed: Perhaps there it was *Kahal*, because the tribe Benjamin, too, was there, hence more than one tribe? Therefore, says he, it is deduced from [Gen. xlviii. 4]: "And I will make of thee a *Kahal* of people"; now, at that time Benjamin was born, and you infer from here that so said the Merciful One to Jacob: one *Kahal* more is born to you. Said Shba to R. Kahana: But perhaps the Merciful meant, now as Benjamin is born, and you have twelve tribes you are called a *Kahal*? And he answered: Do you mean to say that eleven tribes are not called *Kahal*?

The rabbis taught: If one member of the congregation dies, the liability does not cease, but if one member of the court dies, it does cease. According to what Tana is this Said R. 'Hisda,

in the name of R. Zera, in the name of R. Jeremiah, quoting Rabh: It is in accordance with R. Mair, who said that the court and not the congregation brings the offering; hence, if a member of the court dies, it means one of the partners to the sin-offering died, and in such a case the sin-offering can not be brought.

R. Joseph opposed: Why not say on the same reasoning lines that it is in accordance with R. Simeon, who says that the court with the congregation must bring the offering? Said Abaye to him: We have heard R. Simeon saying elsewhere that a sin-offering of partners is not put to death: If the bullock and he-goat of the day of atonement upon being lost were substituted by others, and thereafter the first were found, they all are put to death (because none of them is fit for the altar); so R. Jehudah. R. Elazar and R. Simeon, however, maintain that they must be kept until they become blemished, as there is a rule that a sin-offering of a congregation is not put to death. Rejoined R. Joseph: You speak of priests, an entirely different case, as they are

themselves called *Kahal* [Lev. xvi. 33]: "For all the priests and for all the people of the *Kahal*." Answered Abaye: According to this they ought to bring a bullock for an erroneous decision by their own court; and should you say that such is the case, then there will be more than twelve tribes! Thereupon said R. A'ha b. Jacob that the tribe of Levi is not called *Kahal* at all, as from the above cited verse [Gen.], it is to be understood that they who inherited landed property in Jerusalem are called a tribe, but not the Levites, who had no such inheritance. But if so there are fewer than twelve tribes? Said Abaye: It reads there [ibid.] that Ephraim and Menashah (the two sons of Joseph) are considered as Ruben and Simion: *i.e.*, as *two* tribes. Said Rabha: Does it not read [ibid., ibid. 6]: "After the name of their brothers shall they be called"? The answer is: They are called after the brothers' name only in respect of inheritance, but not in other respects. But are they not all divided into flag-division? This was only to honor the flags, as the division of the inheritance took place in accordance with the flag-divisions. But are they not divided according to their respective princes? This also was done to honor the princes; as we have learned in the following Boraitha: Solomon has celebrated seven days the dedication of the temple; why did Moses celebrate twelve days the tabernacle? To honor the princes.

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