

The Soncino Babylonian Talmud

Book II

Folios 25b-45b



SANHEDRIN

**TRANSLATED INTO ENGLISH
WITH NOTES**

**CHAPTERS I - VI
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SANHEDRIN – 25b-45b

Sanhedrin 25b

'I feel certain that I know more [than my opponent], [and so I am sure to win]; but where he relies on his pigeon's ability, I should say [that the gain is] not [illegal].¹ Again, had the Mishnah dealt only with a case where he relies on his pigeon's ability [I might have assumed that only then was the gain illegal], as he might have thought: 'Surely winning the race depends on the use of the rattle,² and I am the more skilled in its use;' but where he depends on his own abilities, I might have said that [the gain is] not [illegal].³ Hence both are necessary.

An objection is raised: Dice-players include the following: Those who play with checkers,⁴ and not only with checkers, but even with nut-shells and pomegranate peel.⁵ And when are they considered to have repented?⁶ When they break up their checkers and undergo a complete reformation, so much so, that they will not play even as a pastime.⁷ A usurer: this includes both lender and borrower.⁸ And when are they judged to have repented? When they tear up their bills and undergo a complete reformation, that they will not lend [on interest] even to a Gentile. Pigeon trainers: that is those who race pigeons,⁹ and not only pigeons, but even cattle, beasts, or other birds. When may they be reinstated? When they break up their pegmas¹⁰ and undergo a complete reformation, so that they will not practice their vice even in the wilderness.¹¹ Sabbatical traders are those who trade in the produce of the Sabbatical year. They cannot be rehabilitated until another Sabbatical year comes round and they desist from trading.¹² Whereon R. Nehemia said: They [the Rabbis] did not mean a mere verbal repentance, but a reformation that involves monetary reparation. How so? He must declare, 'I, so and so, have amassed two hundred *zuz* by trading in Sabbatical produce, and behold,

here they are made over to the poor as a gift.¹³ At any rate, cattle too are mentioned.¹⁴ Now, on the view that it means pigeon racing, it is correct, for racing of beasts, is also possible. But if it means 'an Ara', are cattle suited to this [viz. to decoy other beasts]? — Yes, in the case of the wild ox,¹⁵ on the view that this is a species of cattle. For we have learnt:¹⁶ A wild ox is a species of cattle; R. Jose said: It is a wild animal.¹⁷

A Tanna taught: [To those enumerated in the Mishnah] were added robbers and those who compel a sale.¹⁸ But are not robbers [disqualified] by Biblical law?¹⁹ — [Yes, but] it [the addition] was necessary in respect of one who appropriates the finds of a deaf-mute, an imbecile, or a minor.²⁰ At first it was thought that this was of infrequent occurrence,²¹ or [that such appropriation was robbery only] judged by neighborliness in general:²² but when it was seen that after all it was someone else's property²³ that they seized,²⁴ the Rabbis disqualified them.

'Those who compel a sale:' At first they thought, They do, in fact, pay money, and their pressure is incidental.²⁵ But when they observed that they deliberately seized the goods,²⁶ they made this decree against them.

A Tanna taught: They further added to the list, herdsmen,²⁷ tax collectors and publicans.²⁸

'Herdsmen': At first they thought that it was a question of mere chance;²⁹ but when it was observed that they drove them there intentionally, they made the decree against them.

'Tax collectors and publicans:' At first they thought that they collected no more than the legally imposed tax. But when it was seen that they overcharged, they were disqualified.

Raba said: The 'herdsmen' whom they [the Rabbis] refer to, include the herdsmen of

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both large and small cattle, [i.e., both cowherds and shepherds]. But did Raba actually say so? Did he not say: Shepherds are disqualified only in Palestine, but elsewhere they are eligible; while cowherds are qualified even in Palestine?³⁰ — That applies to breeders.³¹ Logic too supports this. For we learnt: [If one says,] I HAVE CONFIDENCE IN THREE COWHERDS, etc. [they are acceptable].³² Surely [that implies that they are normally ineligible] for witnesses? — No: for judges.³³ This is also evident from the expression: THREE COWHERDS; for if it means, qualified as witnesses, why three? What then: it refers to judges? Then why particularly cowherds; the same applies to any court of three men unversed in law?³⁴ — He [the Tanna] means this: Even such as these, who are rarely to be found in populous areas.³⁵

Rab Judah said: A herdsman in general³⁶ is ineligible, while a tax collector in general is eligible.³⁷

R. Zera's father acted as tax collector for thirteen years. When the Resh Nahara³⁸ used to come to a town, if he [R. Zera's father] saw the scholars [of the city] he would advise them, Come my people, enter thou into thy chambers.³⁹ And when he saw the other inhabitants of the town he would say to them: The Resh Nahara is coming to the city, and now he will slaughter the father in the presence of the son, and the son in the presence of the father;⁴⁰

1. Since he made the promise notwithstanding the doubtfulness of the issue.
2. By which the race is started and the pigeon spurred on.
3. As the promise might have been made with serious intent.
4. [H] ([G] = pebble), polished blocks or stones.
5. These latter were probably employed as a temporary means for gambling when proper dice were not obtainable.
6. And thus become qualified again to be witnesses and judges.
7. Lit., 'for nothing'.
8. V. p. 144, n. 9.

9. So the Aruch. Rashi, however, translates: Those who train pigeons to fight with each other — probably a form of cock-fighting.
10. A fixture made of boards; a wooden contrivance that opened and shut itself, [a trap (R. Han.), or a rattle to spur on the pigeons (Rashi).]
11. Where there is no one to see or pay. According to the view that 'pigeon trainer' means an ara, the meaning would be: 'Even in the place far from civilization, they would not put up their pegmas' (Rashi).
12. E.g., leave their fields free to the poor.
13. V. Tosef. Sanh. V.
14. Parallel with pigeons, as being trained for racing.
15. It would appear that these were caught, domesticated, and then used to decoy beasts, also semi-domesticated and possessing owners, on perhaps similar lines to elephant hunting and taming.
16. Kil. VIII, 6.
17. Cattle and wild animals must not be mated with one another.
18. Against the desire of the owner, even though they pay fairly.
19. On the basis of Ex. XXIII, 1.
20. Under the age of thirteen for males, and twelve for females.
21. Which did not call for a specific legal provision.
22. But not by Biblical law, because these have no legal powers of acquisition or possession, and therefore, Biblically speaking, their finds do not belong to them. Nevertheless, it is obvious that to enforce this in practice would lead to strife and a feeling of grievance, and hence the Rabbis conferred upon them the power of effecting possession. Thus, since such appropriation was not robbery in the Biblical sense, it was thought unnecessary to impose disqualification on its account.
23. Though only by Rabbinical law, still, the ruling of the Rabbis was fully binding.
24. And that it was greed for money that tempted them to transgress the laws.
25. Yet perhaps the owners were willing to sell all the same.
26. Without the owners' agreement to the sale.
27. Because they allowed cattle to graze on other people's lands. This law applies only to graziers of their own cattle, but not to hired herdsmen, for it is taken for granted that a man does not trespass unless material benefit accrues to him. Cf. B.M. 5b.
28. Government lessees who collected customs duties, market tolls and similar special imposts, thus helping the Romans to exact the

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- heavy taxes imposed upon the Jews. Hence these men were classed with robbers.
29. That their cattle grazed upon other people's land.
 30. V. B.K. 79b and discussion in Gemara.
 31. Who stable their cattle. Thus only shepherds are disqualified, since sheep cannot be kept tethered.
 32. *Supra* 24a. From which it follows that they are usually disqualified.
 33. Who must be persons learned in the law.
 34. Who are normally ineligible to act as judges.
 35. And so have little experience of ordinary human affairs; yet they are eligible by mutual agreement.
 36. I.e., of whom it is not known whether he trespasses or not. V. p. 148, n. 5.
 37. Unless it is definitely known that he is making exorbitant demands in taxation.
 38. [H] lit., 'head of the river' — chief of the district bordered by a river or canal.
 39. Isa. XXVI, 20; i.e., hide, so as to avoid giving the impression that the town was largely populated, lest it be heavily taxed.
 40. I.e., will collect heavy taxes.

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whereupon they all hid themselves. When the officer arrived [and rebuked him for failing in his duty,] he would say: Of whom shall I make the demand?¹

Before he died, he said: Take the thirteen ma'ahs² that are tied in my sheets and return them to so and so, for I took them from him [by way of tax] and have had no need for them.

R. SIMEON SAID, AT FIRST ... GATHERERS OF THE PRODUCE OF THE SABBATICAL YEAR. What does he mean? — Rab Judah said: This; at first they [the Rabbis] ruled that gatherers of the Sabbatical produce³ are eligible, but traders in it are not. But when they saw that large numbers offered money to the poor,⁴ who then went, gathered the produce and brought it to them, they revised the law and enacted that both [gatherers and traders] are ineligible. The sons of Rehabah⁵ objected to this: Does this mean, WHEN THE OPPRESSORS GREW IN NUMBER? It

should then have been worded: When the traders grew in number! But we may explain it thus: At first they ruled that both [even gatherers] were ineligible. But when THE OPPRESSORS GREW IN NUMBER, viz., the [collectors of] Arnona⁶ (judging by R. Jannai's proclamation, 'Go and sow your seed [even] in the Sabbatical year, because of the [collectors of] Arnona,')⁷ they revised the law and enacted that only traders were disqualified but not gatherers.⁸

R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak once went to Assia⁹ to intercalate the year.¹⁰ They were met by Resh Lakish, who joined them, saying, 'I will come and see their procedure.'¹¹ On the way, he saw a man plowing, and remarked to them, 'That man who is plowing is a priest.'¹² But they replied, 'Can he not say: I am an imperial servant¹³ on the estate?' Further on he saw a man pruning his vineyard, and again observed, 'That pruner is a priest.' 'But', they demurred, 'he might say: I need [the twigs] to make a bale¹⁴ ['akkel] for the wine-press, [a legitimate purpose].' 'The heart knows whether it is for 'akkel' or 'akalkaloth [perverseness]', he retorted.¹⁵ — Now, which remark did he make first? Shall we say, his first remark was the one first recorded: then for the other too they could have suggested [the same excuse], 'I am an imperial servant on the estate.' Hence the latter remark must have come first: and only subsequently did he make the other observation.

Why was each assumed to be a priest? — Because they [the priests] are suspected of breaking the Sabbatical laws, as it has been taught; If a *se'ah* of Terumah¹⁶ [accidentally] fall into a hundred *se'ahs* of Sabbatical produce, it [the *Terumah*] is neutralised.¹⁷ In case of a lesser quantity [of Sabbatical produce], the whole must be left to rot.¹⁸ Now, we raised the question, Why must it be left to rot? Why not let it be sold to a priest at a price of *Terumah*¹⁹ less the value of the one *se'ah*!²⁰ To which R. Hiyya replied on the authority of 'Ulla: This fact²¹ proves that the

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priests were suspected of violating the laws of the Sabbatical year.²²

[To resume the narrative.] They said:²³ He is a troublesome person, and so, on reaching their destination, they ascended to the upper chamber,²⁴ and removed the ladder.²⁵ Thereupon he [Resh Lakish] went before R. Johanan and asked: Are people suspected of trespassing Sabbatical laws²⁶ qualified to intercalate the year? But on second thoughts he said: This presents no difficulty, for there is a similar case of three cowherds,²⁷ upon whose calculations the Rabbis relied. Subsequently, however, he said: There is no comparison between the two cases; there it was the Rabbis who eventually decided²⁸ and declared the year intercalated,²⁹ whereas here, it is a confederacy of wicked men,³⁰ such as may not be counted [on the intercalary board]. R. Johanan replied: That is a misfortune.³¹

When they³² came before R. Johanan, they complained: He described us as cowherds, and you made no objection whatever.³³ R. Johanan answered: Even had he called you shepherds,³⁴ what could I have said?

What is [the reference to] 'a confederacy of wicked men'? — [It is as follows:] Shebna³⁵ expounded [the law] before thirteen myriads,³⁶ whereas Hezekiah expounded it only before eleven. When Sennacherib³⁷ came and besieged Jerusalem, Shebna wrote a note, which he shot on an arrow [into the enemy's camp, declaring]: Shebna and his followers are willing to conclude peace; Hezekiah and his followers are not. Thus it is written, For lo, the wicked bend the bow, they make ready their arrow upon the string.³⁸ So Hezekiah was afraid, and said: Perhaps, Heaven forefend, the mind of the Holy One, blessed be He, is with the majority; and since they wish to surrender, we must do likewise! Thereupon the Prophet came and reassured him: Say ye not a confederacy, concerning all of whom this people do say, A confederacy;³⁹ it is a

confederacy of the wicked, and as such cannot be counted [for the purpose of a decision].

[Later, when] Shebna went to hew out for himself a sepulcher among the sepulchers of the house of David, the Prophet came and said to him: What hast thou here and whom hast thou here that thou hast hewn here a sepulcher? Behold, the Lord will hurl thee down as a man is hurled.⁴⁰ Rab observed: Exile is a greater hardship for men than for women.⁴¹

Yea, He will surely cover thee⁴² R. Jose son of R. Hanina said: This teaches that he was stricken with leprosy: here it is written, surely cover; and elsewhere [in reference to a leper] it is said, And he shall cover his upper lip.⁴³

He will violently roll and toss thee like a ball into a large country.⁴⁴ It has been taught: He [Shebna] sought the shame of his master's house: therefore his own glory was turned to shame.⁴⁵ [For] when he went out [on his way to surrender to Sennacherib], Gabriel came and shut the city gate in the face of his servants

1. [The demand here was not for the regular poll-tax, but in respect of a special imposition, v. Obermeyer, *op. cit.* 237.]
2. Small coins, one *ma'ah* = 1/2 a silver dinar.
3. It was permissible to gather Sabbatical produce and keep it as long as the same kind was available for the beasts of the field too. But when that was consumed, private possession was forbidden, and the produce had to be removed from the house and deposited in the fields, where it would be free to all. Now, in the case under discussion, it might have been possible for the gatherers to consume all they had gathered before the 'time of removal', in which case they committed no transgression; therefore they were not disqualified. [Yad Ramah adds 'even if they happened to sell any of the hoard'.]
4. The poor could gather from all fields irrespective of the 'time of removal' (cf. Sheb. IX, 8; Nahmanides on Lev. XXV, 7), but only for their personal use. Thus, these wealthy men were disqualified because they virtually

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bribed the poor to trade therein. According to this, the Mishnah must be explained thus: At first, these were only regarded as gatherers (from the poor), and therefore eligible. But subsequently, when owing to the increase of oppressors (q.v. Mishnah), the practice of making gifts to the poor grew apace, the donors were classed as traders, not merely gatherers, and therefore disqualified (Rashi). [According to Yad Ramah it was the poor who were declared disqualified, as traffickers in Sabbatical produce.]

5. [Efo and Abimi, v. *supra* 17b.]
6. An adaptation of annona, the annual income of natural products. Hence taxes paid in kind.
7. The observance of the Sabbatical year in post-Temple times was merely Rabbinical and therefore R. Jannai felt justified in abrogating it in the face of dire necessity (Rashi). [The privilege which the Jews enjoyed since the days of Caesar exempting them from taxes in the Sabbatical year (v. Josephus, Ant. XIV, 10, 5-6) was abrogated in the year 261 C.E. V. Graetz IV, 213, and Auerbach, M., Jahrb. d. jud. liter. Gesel. V, 155-188].
8. Accordingly, the Mishnah is thus to be interpreted: AT FIRST ... GATHERERS, etc. i.e., even gatherers were classed amongst the ineligible; BUT ... TRADERS, i.e., only the latter were so designated, but not the former.
9. Tosaf. regards it as a district outside Palestine and, since it was thus not qualified as a place for the intercalation of a year (cf. *supra* 11b), suggests that they must have gone there only for the purpose of calculating. (V. Yeb. 164). It is, however, probably Essa, east of the lake Tiberias, Neub. p. 38. 'Weinstein maintains that it is identical with Callirhoe and its surroundings on the east of the Jordan, near the Dead Sea (Jast.). [Halevy, Dorothe, Ie, 787, suggests that Assia was specially chosen for the Intercalation as it was considered a safe place owing to its hot springs which attracted many visitors from far and wide, and the arrival of the Rabbis would not rouse the suspicion of the Romans.]
10. From the context it appears that the incident must have happened in a Sabbatical year. But no intercalation could take place in such a year, (v. *supra* 12a) hence, as has been said, Tosaf. suggests that they must have gone there only for the purpose of making the necessary calculations. But even a Sabbatical year may be intercalated in an emergency. Cf. Yad, Kid. Hahodesh, 4, 16.
11. V. *supra* 11a with reference to Samuel the Small.
12. The reason for this statement is given below.
13. Heb. [H] or [H] (Augustanus, Augustanius), a servant in a colonia Augustana (Jast.); an imperial servant, and therefore engaged in permissible labor. [Krauss, Lehnwörter, derives it from [G], 'a farmer-tenant.']
14. 'A bale of loose texture containing the olive pulp to be pressed' (Jast.).
15. The root of both words being 'bend' or 'twist' — i.e. either woven, or crooked.
16. V. [Glos.](#)
17. So that the whole may be eaten by a non-priest. In the case of other forbidden objects, a quantity of permitted food in a ratio of 60-1, is necessary for neutralization (v. Hul. 98a); but in the case of *Terumah*, a hundred fold is necessary. Cf. Ter. IV, 7.
18. I.e., no one may make use of it. Tosef. Ter. VI.
19. Which is lower than that of ordinary produce, owing to the small demand for it, as only priests may consume it.
20. Which in any case belonged to the priest. Sabbatical produce may be sold on condition that both the produce itself, and the money paid for it, are consumed before the 'time of removal'.
21. That it may not be sold to a priest.
22. By benefiting from the produce after the 'time of removal'. This suspicion arose because they claimed that just as *Terumah* and other consecrated objects were permitted to them, though not to other Israelites, so should Sabbatical produce.
23. R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak, on observing that he was ready to find fault.
24. Lit., 'roof'. Cf. *supra* 11a, where it is stated that intercalators met in an upper chamber.
25. So as to prevent him from following them.
26. Basing this allegation on the ground of their having tried to justify the actions of those mentioned by him as trespassers.
27. Who offered information to the Rabbis. V. *supra* 18b.
28. Lit., 'took a majority vote'.
29. Notwithstanding the fact that they were aided by the observations of the cowherds, the decision was taken by the Rabbis themselves.
30. I.e., the actual Board consists of such.
31. I.e., your attack on them is distressing. He thus reproached him for his intolerance.
32. R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak.
33. Probably they were not aware of his more serious slander.
34. Which is a still lower rank: v *supra* 25b.
35. Chamberlain of the Palace of King Hezekiah (Isa. XXII, 15).
36. 'Great men', according to others.

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37. King of Assyria, 705-681 B.C.E. Invaded Judah in the fourteenth year of Hezekiah's reign).
38. That they may shoot in darkness against the upright heart i.e., Hezekiah. Ps. XI, 2.
39. Isa. VIII, 12.
40. Isa. XXII, 16: i.e., will carry thee away with the captivity of a mighty man.
41. Deducing this from the verse quoted, 'hurl' referring to exile. Through exile a man loses the sphere of his livelihood, but a woman can assure hers by marriage.
42. E. V. 'wind thee round and round' Ibid.
43. Lev. XIII, 45.
44. Isa. XXII, 18.
45. Cf. end of verse 18, Thou shame of thy Lord's house.

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[who were following him].' On being asked, 'Where are your followers' he answered, 'They have deserted me.' 'Then you were merely ridiculing us' they (the Assyrians) exclaimed. So they bored holes through his heels, tied him to the tails of their horses, and dragged him over thorns and thistles.

R. Eliezer said: Shebna was a Sybarite. Here it is written, Get thee unto ha-soken [the steward];¹ and elsewhere it is written, And she [the Shunamite] became a sokeneth [companion] unto him.²

When the foundations [ha-shathoth] are destroyed, what hath the righteous wrought?³ Rab Judah and R. 'Ena [both explained the verse]. One interpreted it thus: If Hezekiah and his followers had been destroyed [by the plot of Shebna], what would the Righteous [sc. God] have achieved?⁴ The other: If the Temple had been destroyed, what would the Righteous have achieved?⁵ 'Ulla interpreted it: Had the designs of that wicked man [Shebna] not been frustrated, how would the righteous [Hezekiah] have been rewarded?⁶

Now, according to the [last] explanation, viz., Had the designs of the wicked man [etc.], it is well: hence it is written, When ha-shathoth are destroyed.⁷ The explanation which refers

it to the Temple is likewise [acceptable]. For we learnt:⁸ A stone lay there [beneath the Ark] ever since the time of the Early Prophets and it was called 'shethiyah'.⁹ But as for its interpretation as referring to Hezekiah and his party: where do we find the righteous designated as 'foundations'? — In the verse, For the pillars of the earth are the Lord's and He hath set [wa-yasheth] the world upon them.¹⁰ Alternatively [it may be deduced] from the following, Wonderful is His counsel and great his Tushiyah [wisdom].¹¹

R. Hanin said: Why is the Torah called Tushiyah? — Because it weakens the strength of man [through constant study].¹² Another interpretation: Tushiyah because it was given to Moses in secret, on account of Satan.¹³ Or again, because it is composed of words, which are immaterial, upon which the world is [nevertheless] founded.¹⁴

'Ulla said: Anxiety¹⁵ [adversely] affects [one's] learning,¹⁶ for it is written, He abolisheth the thoughts of the skilled [i.e., scholars], lest their hands perform nothing substantial.¹⁷ Rabbah said: [But] if they study it [the Torah] for its own sake, it [anxiety] has no [adverse] effect, as it is written, There are many thoughts in man's heart, but the counsel of the Lord, that shall stand:¹⁸ counsel in which there is the word of God [i.e., study of the Torah] will stand for ever [under all circumstances].

R. JUDAH SAID: WHEN, etc. R. Abbahu said in R. Eleazar's name: The *halachah* rests with R. Judah. R. Abbahu also said in R. Eleazar's name: All [those] enumerated in the Mishnah as ineligible must be proclaimed at the *Beth din* [as such]. As for a shepherd, R. Aha and Rabina differ therein: one maintains that proclamation must be made; the other holds that it is unnecessary.¹⁹

Now, on the view that it is not required, it is correct: hence the dictum of Rab Judah in Rab's name, viz., a shepherd in general is

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incompetent.²⁰ But according to the view that a proclamation is necessary, what is meant by 'a shepherd in general is incompetent'?²¹ — That in general²² he is proclaimed so.

A certain deed of gift was witnessed by two robbers. Now, R. Papa b. Samuel wished to declare it valid, since their [the robbers'] ineligibility as witnesses had not been publicly announced. But Raba said to him: Granted that proclamation is required in the case of persons declared only by the Rabbis as robbers;²³ must those defined as such by Biblical law also be proclaimed?²⁴

(Mnemonic: *Dabar, wa-Arayoth, Ganab*).²⁵

R. Nahman said: Those who accept charity from Gentiles²⁶ are incompetent as witnesses;²⁷ provided, however, that they accept it publicly, but not if they accept it in private. And even if publicly [accepted], the law is applicable only if, when it was possible for them to obtain it privately they yet degraded themselves by open acceptance. But where [private receipt] is impossible, it [public acceptance] is vitally necessary.²⁸

R. Nahman said: One who is suspected of adultery is [nevertheless] eligible as a witness. Said R. Shesheth: Answer me,²⁹ Master; forty stripes on his shoulders,³⁰ and yet [you say] he is eligible!³¹ Raba observed: Even R. Nahman admits that he is incompetent to testify in matrimonial matters. Rabina — others state R. Papa — said: That is only where his evidence is to free her;³² but if it is to bind her,³³ there is no objection [to him]. But is this not obvious?³⁴ — I might think that he would prefer this,³⁵ even as it is written, Stolen waters are sweet;³⁶ therefore he teaches us that as long as she is in her present [unmarried] state, she is even more within his reach.³⁷

R. Nahman said further: One who steals [produce from the fields] in Nisan, and [fruit from the orchards] in Tishri³⁸ is not regarded as a thief.³⁹ But this is only in case

of a metayer,⁴⁰ where the quantity is small and the produce is ripe⁴¹ [and no longer needs tending].

One of R. Zebid's farm-laborers' stole a *kab* of barley, and another a cluster of unripe dates. So he disqualified them [from acting as witnesses].

Certain grave diggers buried a corpse on the first day festival 'Azereth,⁴² so R. Papa excommunicated them, and disqualified them as witnesses.⁴³ R. Huna the son of R. Joshua, however, removed their disqualification; whereupon R. Papa protested: 'But surely, they are wicked men!' — 'They might have thought that they were doing a good deed!' 'But did I not excommunicate them?'⁴⁴ — They might have thought that the Rabbis thereby effected expiation for them.⁴⁵

It has been stated:

1. Isa. XXII, 15.
2. I Kings I, 4. A play on the different meanings of the verb [H], to serve, to administer, to associate, or to be a companion of one (of the opposite sex).
3. Ps. XI, 3.
4. Where is the fulfillment of the promise to him?
5. Where is God's miraculous power? people would ask.
6. He translates: For the designs (of the wicked) shall be overthrown; (otherwise) what would the Righteous have achieved?
7. From the verb [H] 'to set' — set one's thoughts. Cf. Ex. VII, 23. In some editions there follows, 'as it is written, And David laid (wa-yasheth) those words on his heart.' This verse, however, appears nowhere in Scripture, and Rashi here quotes Ex. VII, 23, but not this phrase. Hence Maharsha a.l. deletes it as an erroneous interpolation.
8. Yoma 53b.
9. [H], i.e., foundation stone. '*Ha-shathoth*' therefore, may refer to the foundations of the Temple.
10. I Sam. II, 8. And the righteous are considered the foundations of the world. Cf. Prov. X, 25: *But the righteous are the foundation of the universe.* (This verse could not be quoted, as a different word is used there.)

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11. Isa. XXVIII, 29. Referring to the Torah, upon the teachings of which the world was established. [H], is here connected with [H].
12. Connecting [H] with [H], to weaken.
13. Satan was purposely kept in ignorance of the giving of the law, since he had opposed its being delivered into Moses's hands, on the ground that forty days later the Israelites would violate it by worshipping the golden calf. Cf. Tosaf. Shab. 89a quoting Midrash.
14. *Tohu-shuthath*, indicated by the syllables composing *Tushiyah* [H], — [H] void; [H] — [H] foundation.
15. Lit., 'thought' — about one's livelihood, etc.
16. Lit., 'words of the Torah'.
17. Job V, 12; i.e., he frees them from thoughtful anxiety (by providing them with food), for otherwise they could not progress in their studies. Both Rashi and Tosaf. offer additional interpretations.
18. Prov. XIX, 21.
19. For if he had trespassed in other persons' fields, it would be known.
20. Cf. B.M. 5b.
21. Once a proclamation is made, he ceases to be 'a shepherd in general' and becomes an individualized person.
22. Even if there are no witnesses that he has led his flocks into other people's fields.
23. Such as those enumerated in the Mishnah.
24. Surely not! hence the deed is invalid. A robber, according to Biblical law, is one who, without judicial sanction, has seized the movable property of another by force or intimidation. Cf. B.K. 79b.
25. On mnemonics v. p. 21, n. 5. The phrase reads: A Thing, and Incest, Theft.
26. Lit., 'Those who eat of a thing unnamed (other).' [H] is the colloquial term for pork; the whole expression is metaphorical, and is meant as translated in the text. (V. Rashi and Tosaf.).
27. For such an action is regarded as a profanation of 'The Name', and he who performs it is regarded as wicked.
28. Lit., 'it is a matter of life'. Cf. Yoma 82a, 'Nothing stands in the way of saving life'.
29. So Rashi. Jast.: 'Be slow', 'beg pardon'.
30. I.e., even though he is liable to flagellation.
31. Surely not! Though by Biblical law punishment could not be imposed without evidence and warning, it was nevertheless meted out on the ground of strong suspicion. Cf. Kid. 81a where Rab said: We impose the punishment of lashes even on the ground of an evil report alone, as it is written, For it is no good report which I hear (I Sam. II, 24).
32. E.g., when he testifies to the death of her husband or that she was divorced from him. His purpose is then quite obvious, and therefore his evidence is suspect.
33. Lit., 'to bring her into' (the married state).
34. Since no selfish interests can animate him.
35. I.e., to keep her in a forbidden state to him, for then her occasional company would be more pleasurable.
36. Prov. IX, 17.
37. And that this factor is bound to outweigh the other; therefore his evidence is admissible.
38. Its these months cereals and fruits ripen respectively.
39. In respect of bearing witness.
40. Who works for a certain share in the produce.
41. Lit., 'its work is completed.'
42. [H] solemn assembly. The Talmudic name for the Feast of Weeks. (Cf. Lev. XXIII, 9 ff). Burial is forbidden on the first day of a Festival. Cf. Bez. 6a top.
43. Since they violated the law for the sake of gain. It should be observed that this is the main test of eligibility.
44. That should have indicated to them that their action was not right; yet they repeated their action.
45. For the desecration of the day, though their act in itself was meritorious.

Sanhedrin 27a

A witness who was proved a *Zomem*:¹ Abaye ruled, His disqualification is retrospective;² Raba maintained, He is disqualified only for the future.³ — Abaye makes the disqualification retrospective: he was a wicked man from the time of testifying [falsely], and the Torah says: Do not accept the wicked as witness.⁴ Raba holds that he is disqualified prospectively [only]: now, the entire law of a falsified witness is anomalous; for [it is two against two, then] why accept the evidence of one pair rather than that of the other? Therefore it can take effect only from the time that this anomalous procedure is employed. Some say that Raba really agrees with Abaye; yet why does he rule [that the incompetence is] prospective? — Because of the purchaser's loss.⁵ Wherein do they [the two views on Raba's ruling] differ? — A difference arises where two have testified against one,⁶ or where he was disqualified on the grounds of robbery.⁷ And R. Jeremiah of Difti related that R. Papi ruled in a certain case in accordance with Raba's view; while

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Mar son of R. Ashi said: The law rests with Abaye. And, [concludes the Talmud], the law rests with Abaye in Y'AL KGM.⁸

As for a Mumar⁹ who eats *nebelah*¹⁰ merely to satisfy his greed,¹¹ all agree that he is disqualified.¹² If his purpose is provocative;¹³ Abaye said, He is ineligible; Raba ruled, He is eligible. Abaye said: He is ineligible, because he is classed with the wicked, and the Torah said: Do not accept the wicked as witness.¹⁴ Raba ruled: He is eligible, because he must have been wicked for the sake of gain [hamas].¹⁵

An objection is raised: Do not accept the wicked as witness; [this means,] Do not accept a despoiler¹⁶ as witness; e.g., robbers, and those who have trespassed by [false] oaths.¹⁷ Surely this refers to both a vain oath¹⁸ and an oath concerning money matters?¹⁹ — No; in both cases,²⁰ oaths concerning money matters are alluded to; then why state 'oaths' [plural]? — [To indicate] oaths in general.²¹

An objection is raised: Do not accept the wicked as witness; [this means,] Do not accept a despoiler as witness, e.g., robbers and usurers.²² This refutation of Abaye's view is unanswerable.

Shall we say that their difference is identical with that of Tannaim? [For it has been taught:]²³ A witness proved a *Zomem* is unfit [to testify] in all Biblical matters: this is R. Meir's view. R. Jose said: That is only if he has been proved a *Zomem* in capital cases;²⁴ but if in monetary cases, his evidence is valid in capital charges. Shall we affirm, Abaye agrees with R. Meir, and Raba with R. Jose? 'Abaye agrees with R. Meir,' who maintains that we impose [disqualification] in respect of major cases as a result of a minor transgression.²⁵ 'And Raba²⁶ with R. Jose,' who says, We impose [disqualification] in respect of minor matters²⁷ as a result of a major transgression;²⁸ but not the reverse! — No! On R. Jose's opinion, there is no

dispute at all.²⁹ They differ only on the basis of R. Meir's opinion. Abaye certainly agrees with R. Meir. But Raba [may argue]: So far R. Meir gives his ruling only in the case of a *Zomem* in a monetary case, who is evil in the sight of God and man. But in this case, since he is evil in the sight of God alone,³⁰ even R. Meir does not disqualify him. And the law rests with Abaye. But has he not been refuted? — That [Baraitha which refuted him] represents the opinion of R. Jose.³¹ Granted; yet even so, [wherever] R. Meir and R. Jose [are in dispute], the *halachah* rests with R. Jose!³² — In the other case it is different, for the Tanna has taught R. Meir's view anonymously.³³ And where does this occur? — [As we find] in the case of Bar Hama, who committed murder. The Resh Galutha³⁴ said to R. Abba b. Jacob:³⁵ Go and investigate the matter, if he is definitely the murderer, dim his eyes.³⁶ Two witnesses thereafter appeared and testified to his definite guilt; but he [Bar Hama] produced two other witnesses, who gave evidence against one of the accusing witnesses. One deposed: In my presence this witness stole a *kab* of barley; the other testified: In my presence he stole

1. V. [Glos.](#) This refers to a case where a period elapsed between his giving of evidence and being proved a *Zomem*.

1. .e., from the time he began to give his evidence in court, and all the evidence he has given in the intervening period becomes invalidated.

2. I.e., from the time when he is proved a *Zomem*.

3. An interpretation of Ex. XXIII, 1.

4. If purchasers have transacted business through documents signed by the *Zomemim*, having been unaware of their disqualification, they would become involved in considerable loss, should their evidence be declared invalid.

5. Rashi: two pairs against one pair, each of the former refuting the testimony of a single member of the latter; in this case there is no anomaly, hence disqualification is retrospective. Tosaf.: there are two witnesses refuting one, leaving the other unaffected. The reason based on the injury to purchasers, on both interpretations, however, is still valid.

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6. Here again the argument that it is an anomalous procedure no longer holds good. It should be observed that, strictly speaking, the term *Zomem* is inapplicable in that case, but it is here used rather loosely in the sense of a witness proved to have been ineligible. Tosaf. however, gives this explanation: A and B attested a certain act, claiming that they had witnessed it together, whereupon C and D declared A a *Zomem*, but leaving the testimony of B unaffected. Now, in point of fact, since A and B jointly testified, they both (including B), deny the allegation of C and D, and therefore it is an anomaly that credence is given to the latter pair. Here, however, B too was proved to be incompetent, though on other grounds, viz., robbery; therefore it is no anomaly that the testimony of C and D against A should be accepted.
7. [H]. Six decisions scattered throughout the Babylonian Talmud in which Abaye differs from Raba, and where the law rests with the former. Y'AL KGM is composed of six initial letters of words which indicate various legal terms, YOD (') [H], 'abandonment of lost article,' B.M. 21b. 'AYIN ([H]) [H], referred to here. LAMED ([H]) [H], 'A pole put up accidentally,' 'Er. 15a. KOF (e) [H], 'Betrothal which cannot result in actual cohabitation,' Kid. 51a. GIMEL ([H]) [H] 'The act of revealing one's attitude indirectly in regard to a Get,' Git. 34a. MEM [H] [H], A Pervert, in the following discussion.
8. [H] (from run convert, exchange), hence a pervert; an apostate; an open opponent of the Jewish law; a non-conformist. The word Mumar is also employed by the Talmud to designate one who transgresses a Biblical command in general.
9. [H] carrion, an animal that died a natural death or which was not slaughtered according to ritual law.
10. I.e., his greed for money, because it is cheaper.
11. Because he is classed with the wicked, who commit their misdeeds for gain.
12. I.e., to defy, and show his contempt for, the law.
13. Cf. Ex. XXIII, 1.
14. [H], 'violence', 'plunder'. Cf. Ex. XXIII, 1, 'to be a witness of violence' (E.V. 'unrighteous witness'). I.e., such as a robber; whereas in this case his action is prompted by other motives.
15. One who violates another's rights to satisfy his own greed.
16. I.e., perjurers.
17. E.g., an oath that a pillar of stone is made of stone, which is a needless oath.
18. As follows from the plural, oaths. Hence the motive for his evil act need not be lust for money, in contradistinction to Raba's opinion.
19. Actually, only one case is mentioned, viz., oaths. But the phrase is used on the questioner's hypothesis (v. n. 6), and the answer proceeds to demolish that assumption.
20. I.e., such as are made in litigation.
21. Hence his wickedness must, to disqualify him, have been prompted by gain for money only, in contradistinction to the opinion of Abaye.
22. Tosef. Mak. I.
23. For, having been found dishonest in grave matters, his evidence is all the more suspect in matters less grave.
24. And the case under discussion is similar: that of a provocative Mumar only; nevertheless, he is declared incompetent to testify in a civil suit, though false evidence in such a case is evil both in the sight of God and man, and hence constitutes a greater transgression.
25. Who maintains that the evidence of a man who transgressed a ritual law (an evil in the sight of God alone) need not be doubted in a civil case.
26. E.g., is the case of a *Zomem* in monetary cases.
27. E.g., in the case of a *Zomem* in capital cases.
28. Abaye can certainly not agree with R. Jose, for he can in no wise hold that a *Zomem* in civil cases is eligible in capital cases.
29. Such as is involved in the open defiance of the ritual law by eating *Nebelah*.
30. In accordance with the preceding argument (cf. n. 3). Abaye, however, rules as does R. Meir.
31. Cf. 'Er. 46b. This is a general rule.
32. It is a general principle that if an individual view is stated anonymously, as though it were a general opinion, the *halachah* rests with it.
33. Exilarch.
34. [Read with Ms. M., R. Aha b. Jacob, v. D.S. a.l.]
35. Perhaps, 'blind him,' 'put out his eyes.' Capital punishment was abolished four decades before the fall of Jerusalem (cf. *infra* 41a). Others, however, interpret it of Kenas, i.e., confiscation of property.

Sanhedrin 27b

the handle of a burtya.¹ Then [R. Abba] said to the [defendant]: What is thy intention: [to disqualify this man] in accordance with the opinion of R. Meir?² But wherever R. Jose is at variance with R. Meir, the *halachah* rests

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with R. Jose; and R. Jose ruled: One [a witness] who was proved a *Zomem* in a civil suit is competent [to testify] in capital charges. Said R. Papi: That [the rule] is only where the Tanna has not stated R. Meir's view anonymously. Here, however, he has. Whence do we infer this?³ Shall we say, from what we learnt? 'Whoever is competent to try capital cases, is also competent to try civil suits'?⁴ Now, whose opinion is this? Shall we say, R. Jose's? But what of a witness proved a *Zomem* in monetary cases, who, even though incompetent in civil suits, is nevertheless eligible in capital charges? Hence it must surely express the opinion of R. Meir.⁵ But why so? Perhaps it [the Mishnah] refers to those who are disqualified on account of [defective] family descent?⁶ For should you not agree, what of the latter clause of the Mishnah, viz., One may be competent to try monetary cases, but incompetent for capital cases? Now, why is he incompetent: because he was proved a *Zomem* in a capital charge? Is he then competent to adjudicate a monetary case? But all agree that he is ineligible! Hence it must refer to disqualification through [some defect of] family descent.⁷ Similarly, here too [the first clause of the Mishnah] it must refer to this type of disqualification!⁸ — But this is where the Tanna stated it anonymously, for we learnt:² These are ineligible [to be witnesses or judges]: a gambler with dice, usurers, pigeon trainers, traders in Sabbatical produce, and slaves. This is the general rule: For all testimony for which a woman is ineligible, they too are ineligible.¹⁰ Now, whose opinion is this? Shall we assume, R. Jose's? But there is the case of testimony in capital charges, for which a woman is not eligible, whilst they are!¹¹ Hence it must surely express the opinion of R. Meir.¹² Thereupon Bar Hama arose and kissed his [R. Papi's] feet, and undertook to pay his poll-tax for him for the rest of his life.¹³

MISHNAH. NOW, THE FOLLOWING ARE REGARDED AS RELATIONS;¹⁴ A BROTHER,¹⁵ FATHER'S BROTHER, MOTHER'S

BROTHER, SISTER'S HUSBAND, THE HUSBAND OF ONE'S PATERNAL OR MATERNAL AUNT, A STEP-FATHER, FATHER-IN-LAW, AND BROTHER-IN-LAW [ON THE SIDE OF ONE'S WIFE]; ALL THESE WITH THEIR SONS AND SONS-IN-LAW; AND ONE'S STEPSON HIMSELF.¹⁶ R. JOSE SAID: THIS IS [THE TEXT OF] R. AKIBA'S MISHNAH;¹⁷ BUT THE FIRST MISHNAH¹⁸ [READS]: AN UNCLE AND HIS SON,¹⁹ AND WHOEVER IS ELIGIBLE TO BE ONE'S HEIR.²⁰ AND ALL WHO WERE RELATED AT THAT MOMENT.²¹ IF ONE HAD BEEN RELATED, BUT SUBSEQUENTLY CEASED TO BE SO,²² HE IS ELIGIBLE. R. JUDAH HOLDS; EVEN IF ONE'S DAUGHTER HAS DIED, BUT HE [THE SON-IN-LAW] HAS HAD CHILDREN BY HER, HE STILL RANKS AS A KINSMAN. FURTHER, A FRIEND OR AN ENEMY [IS INELIGIBLE]. BY 'FRIEND' ONE'S GROOMSMAN²³ IS MEANT; BY 'ENEMY', ANY MAN WHO, BY REASON OF ENMITY, HAS NOT SPOKEN TO ONE FOR THREE DAYS, IS UNDERSTOOD. TO THIS THE RABBIS REPLIED: ISRAELITES, AS A RULE, ARE NOT TO BE SUSPECTED ON SUCH GROUNDS.²⁴

GEMARA. Whence is this law derived? — From what our Rabbis taught: The fathers shall not be put to death for [on account of] the children.²⁵ What does this teach? Is it that fathers shall not be executed for sins committed by their children and vice versa? But is it not already explicitly stated, Every man shall be put to death for his own sin?²⁶ Hence, Fathers shall not be put to death on account of children, must mean, fathers shall not be put to death on the testimony of their sons and similarly, and sons shall not be put to death on account of fathers, means, nor sons on the testimony of their fathers.

[To revert to the text.] Are not children then to be put to death for the sins committed by their parents? Is it not written, Visiting the iniquities of the fathers upon the children?²⁷ — There the reference is to children who follow their parents' footsteps.²⁸ As it has

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been taught: And also in the iniquities of their parents shall they pine away with them,²⁹ [i.e.,] if they hold fast to the evil doings of their fathers. Thou sayest thus: Yet perhaps it is not so, but true even if they do not hold fast to their [evil] doings?³⁰ When Scripture states, Every man shall be put to death for his own sin,³¹ [it must refer to those who do not hold fast to their fathers' ways. Then how shall we interpret, And also in the iniquities of their fathers shall they pine away with them?]³² — As referring to those who continue in the ways of their fathers.³³ But do they [really] not [suffer for the sins committed by others]? Is it not written, And they shall stumble one upon another,³⁴ meaning, One [will stumble] through the sin of the other, which teaches that all are held responsible for one another?³⁵ — There the reference is to such as had the power to restrain [their fellowmen from evil] but did not.

1. [H]; a corruption of *verutum* — a spit; spear; javelin.
2. That the evidence of a *Zomem* in monetary cases is also doubted in capital cases.
3. For it is nowhere explicitly taught.
4. Nid. 49b.
5. According to whom the evidence of one proved a *Zomem* in monetary cases is also unacceptable in capital charges.
6. The family tree of judges in capital cases must be without defect. V. *infra* 36b.
7. In which instance they may be competent in monetary, through incompetent in capital, cases.
8. And so, in reality, it may express the opinion of R. Jose.
9. *Supra* 24b; R. H. 22a.
10. 'Ed. II, 7.
11. In accordance with his ruling that one whose wickedness has been prompted by monetary gain is not disqualified from testifying in capital cases.
12. This then is the anonymous Mishnah taught in accordance with R. Meir. Hence the evidence of evil-doers by reason of their monetary greed is invalid in capital charges; hence one of the witnesses against Bar Hama was disqualified.
13. In recognition of his successful defense of his case.
14. Of any of the parties, and so incompetent to act as judge or witness, according to an earlier Mishnah.
15. The editio princeps of the Mishnah adds (and begins with) ONE'S FATHER.
16. I.e., he alone, and not his children, etc.
17. V. n. 7.
18. A collection of Halachoth the compilation of which began, according to Gaonic accounts, as early as Hillel and Shammai. When owing to political disorders many Halachoth of the Mishnah had been forgotten and their words had become a subject of controversy, the one Mishnah developed into many. This multiplication of Mishnahs occurred during the period of the later Beth Hillel and Beth Shammai. In order to avert the danger which threatened its uniformity a synod was convened in Jabneh to examine differences and to consider revision. But as the mass of material grew and with it the need for a methodical arrangement, R. Akiba undertook the task of sifting the material and editing it systematically in various sections (*Sedarim*) and treatises (*Massekoth*). J.E. vol. VIII, p. 610.
19. [H] is the brother of one's father.
20. Cf. B.B. 108a. These words belong, according to Rashi, to the First Mishnah; according to Maimonides and Bertinoro, to the Mishnah of R. Akiba.
21. When the incident which they wished to attest occurred, though they are no longer so at the time they wish to testify in court.
22. Lit., 'became estranged', e.g., a son-in-law whose wife, the litigant's daughter, had died, or had been divorced before the incident occurred.
23. 'Best man' at marriage. Generally an intimate friend of one's youth, v. B.B. (*Sonc. ed.*) p. 618, n. 10.
24. I.e., they are not suspected of giving false evidence through friendship or enmity; hence they are competent to testify. Nevertheless, they cannot act as judges, because it is difficult for them to be unbiased and impartial.
25. Deut. XXIV, 16. Fathers and sons are unnecessarily in the plural. The Rabbis deduce from this that the text refers to fathers who are brothers, whose relationship is next to that of father and son, so that not only the kinship between one another but also that between one and the son of the other debar from giving evidence. The following kinsmen are thus derived from the text: Father, son, brother and nephew. V. *infra*.
26. Deut. XXIV, 16, cf. Lev. XXVI, 39.
27. Ex. XXXIV, 7.

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28. Lit., 'who hold in their hands the deeds of their parents'.
29. Lev. XXVI, 39.
30. I.e., that they are still held accountable for their fathers' iniquities.
31. Deut. XXIV, 16.
32. Lev. XXVI, 39. The passage in brackets is a marginal addition to the text.
33. Cf. Ber. 7a.
34. Lev. XXVI, 37, lit., 'upon his brother'. The prefix [H] is here taken in the sense of 'because of'.
35. Showing that the iniquities of one may be borne by the other.

Sanhedrin 28a

We have thus found that 'fathers'¹ [cannot testify] for the sons [of each other], and vice versa; and all the more, 'fathers' [cannot testify] in respect of each other.² But whence is derived [the inadmissibility of] 'sons' [to give evidence] in respect of 'sons'?³ — If so [sc. that such evidence is admissible], the text should have read, The fathers shall not be put to death on account of [the evidence of] a son.⁴ Why 'sons'?⁵ [To teach] that they too [are ineligible] in respect of each other. Thus we have found that 'sons' [are inadmissible] for each other. Whence do we know their inadmissibility [as joint witnesses] concerning others?⁶ — Said Rami b. Hama: It is deduced by logic. For it has been taught: Witnesses cannot be declared Zomemim⁷ until both are proved Zomemim.⁸ Now, should you think that kinsmen⁹ are eligible [to testify in cases] concerning strangers, a witness declared a Zomemim¹⁰ might suffer death because of his brother's evidence [which supported his own].¹¹ Raba demurred: But according to your argument, what of that which we learnt: If three brothers are [separately] supported by another witness,¹² they count as three separate sets of witnesses. But they count as one set in respect of being proved Zomemim.¹³ It thus results that the perjured witness must pay money on account of the evidence given by his brother?¹⁴ Hence [it must be assumed that the penalty for] false testimony is brought about through outsiders;¹⁵ so here too, [the penalty for] false

testimony comes about through strangers!¹⁶ — But if so,¹⁷ the text should have read: and a son on account of fathers, or, and they on account of the fathers. Why and sons? — To show that 'sons'¹⁸ [are not eligible] in respect of strangers.

We have thus deduced [the exclusion of] paternal relations. Whence do we know [the same] of maternal relations? — Scripture says, 'fathers' twice.¹⁹ Since [the repetition] is unnecessary in respect to paternal relations, we may refer it to maternal relations.²⁰ Now, we have thus learnt [the exclusion of relatives' evidence] for condemnation.²¹ Whence do we know [the same] of acquittal? — Scripture states, they shall be put to death, twice. Since that [the repetition] is unnecessary in respect of condemnation, refer it to acquittal. Again, we have learnt [the exclusion of relatives] in capital cases. Whence is the same known of civil suits? — Scripture says, Ye shall have one manner of law,²² meaning that the law must be administered similarly in all cases.

Rab said:²³ My paternal uncle, his son and his son-in-law may not bear testimony for me;²⁴ nor may I, my son nor my son-in-law testify for him. But why so? Does not this involve relationships of the third and the first degrees?²⁵ whereas we learnt that a relative of the second degree²⁶ [may not testify] for a relative of the second degree; and also that one of the second degree cannot testify for one of the first;²⁷ but not that a relative of the third degree may not bear testimony for one of the first? — What is meant by HIS SON-IN-LAW, stated in the Mishnah, is the son-in-law of his [the uncle's] son.²⁸ But should he not include [instead] his [the uncle's] grandson?²⁹ — He [the Tanna] teaches us incidentally that the husband bears the same relationships as his wife.³⁰ But what of that which R. Hiyya taught: [The Mishnah enumerates] eight chief relations³¹ who make up the number of twenty-four.³² But these [on the assumption that a son-in-law of the uncle's son ranks as a relative of the third

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degree] amount to thirty-two!³³ — But in fact, SON-IN-LAW is literally meant.³⁴ Why then does he [Rab] designate him the son-in-law of his [the uncle's] son?³⁵ — Because since his relationship comes from without,³⁶ he is regarded as one degree further removed.³⁷ If so, it is a case of the third degree vis a vis the second³⁸ [which is forbidden], whereas Rab allowed [the testimony of] the second degree to the third!³⁹ — But Rab agrees with R. Eleazar.⁴⁰ For it has been taught: R. Eleazar said: Just as my paternal uncle, his son and son-in-law may not testify for me so the son of my paternal uncle, his son and son-in-law may not testify for me. But still, that includes relatives of the third and the second degrees,⁴¹ whereas Rab permitted the testimony of such relatives!⁴² — Rab agrees with R. Eleazar in one point,⁴³ but differs from him in another.⁴⁴

What is Rab's reason? — Scripture states, Fathers shall not be put to death for sons ['al banim]; and sons ... :⁴⁵ this [the 'and'] teaches the inclusion of another generation [as ineligible to testify]. And R. Eleazar?⁴⁶ — Scripture states, 'al banim,⁴⁷ implying that the fathers' disqualification is carried over to the sons.⁴⁸

R. Nahman said: My mother-in-law's brother, his son, and my mother-in-law's sister's son, may not testify for me. The Tanna [of the Mishnah] supports this: A SISTER'S HUSBAND; THE HUSBAND OF ONE'S PATERNAL OR MATERNAL AUNT, ... ALL THESE WITH THEIR SONS AND SONS-IN-LAW [ARE INELIGIBLE AS WITNESSES].⁴⁹

R. Ashi said: While we were with 'Ulla,⁵⁰ the question was raised by us: What of one's father-in-law's brother, the father-in-law's brother's son, and the father-in-law's sister's son? — He answered us: We learnt this: A BROTHER, FATHER'S BROTHER, AND MOTHER'S BROTHER ... ALL THESE

WITH THEIR SONS AND SONS-IN-LAW [ARE INELIGIBLE].⁵¹

It once happened that Rab went to buy

1. I.e., who are brothers.
2. As the exclusion of 'sons' is due only to the kinship of their fathers.
3. I.e., first cousins. Cf. Mishnah, PATERNAL UNCLE'S SON.
4. I.e., on the evidence of any brother's son.
5. In the plural.
6. I.e., that witnesses who are related to each other may not join in giving evidence in a case concerning strangers.
7. In the sense that they are punished with the penalty they sought to impose, v. Deut. XIX, 19.
8. Mak. 5b, cf. Tosef. VI. But otherwise, though their evidence may be dismissed, no penalty is imposed upon the false witness.
9. Lit., 'sons'.
10. In a murder case.
11. For had no one else supported him, he could not, according to the above ruling, have been declared a *Zomem*. Consequently he would incur the death penalty through his kinsman's testimony.
12. E.g., in support of a claim to the title of land; v. next note.
13. V. B.B. 56b. Proof of three years' undisturbed possession of land is sufficient to establish a claim to it (cf. B.B. 28a). The case under consideration is one where each of three brothers testified to one year only, while the other witness who joined them attested possession for the three consecutive years. Thus the evidence of the three sets taken together was adequate proof for establishing the possessor's claim. When, however, collusion is discovered, the three pairs of witnesses are considered as one set, since the evidence of all was necessary before the claim could be established. Therefore no penalty is imposed unless they are all proved *Zomemim*.
14. Who would have helped to establish the claim had it not been refuted.
15. So that it is not the brothers who cause the infliction of punishment.
16. Hence the difficulty remains; — whence do we know that two kinsmen are inadmissible as witnesses in cases of other persons?
17. That such evidence is admissible.
18. I.e., relatives.
19. The verse might have been written, Fathers shall not be put to death for sons nor they for them.
20. V. p. 368, n. 7, on this mode of exegesis.

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21. Of which the text explicitly speaks.
22. Lev. XXIV, 22.
23. To understand Rab's statement and the others that follow it is necessary to give some explanation of affinity and consanguinity in Talmudic law. Relationships between persons are divided into two categories: (a) relationships between persons governed by the ties of consanguinity, i.e., persons of the same blood either lineally or collaterally; (b) relationships through marriage, i.e., affinity. And on the principle that man and wife are considered as one, the relatives of the one are related to those of the other by affinity. Again, the rules by which kinsfolk are excluded from bearing testimony for or against each other affect only certain degrees of relationship, e.g., relatives in the first degree, such as father and son, or brothers may not testify for or against each other; relatives in the second degree may not testify for or against those of the first degree. e.g., a nephew for his uncle; relatives in the second degree may not testify for or against each other, e.g., first cousins. On the other hand, relatives in the third degree may testify for or against relatives in the first, e.g., a grand-nephew in respect of an uncle (according to Raba in B.B. 128a, in opposition to Rab's opinion here); and relatives in the third degree may testify for or against relatives in the second degree, e.g., first cousins for second cousins (Rab agrees with this opinion, but not R. Eleazar.) It should be noted that the ineligibility is mutual.
24. Cf Mishnah. In all these passages, 'for someone' means in a case where that person is a litigant, whether the evidence be in his favor or not.
25. Rab's son is a grand-nephew' of Rab's uncle; hence, Rab's son is a relative of the third degree to Rab's uncle, who is of the first degree in relation to Rab's father. (N.B. 'First,' 'Second', and 'Third' almost correspond to generations, but not quite, since a father vis a vis his son ranks as first to first.)
26. I.e., a first cousin.
27. E. g., his uncle.
28. The Mishnah is therefore to be explained thus: ALL THESE (which includes an uncle) WITH THEIR SONS AND THEIR (sc. THE SONS') SONS-IN-LAW. Hence this teaches the inadmissibility of relatives of the third degree.
29. 'Which is a more direct way of stating a third degree of relationship.
30. Just as the daughter of his uncle's son is a relation of the third degree, so is her husband.
31. There are actually nine chiefs enumerated, apart from the step-son who is counted by himself. This point will be raised later on; v. *infra* 28b.
32. Since each is counted together with his son and son-in-law.
33. Eight fathers, eight sons, eight grandsons, and eight sons-in-law of the sons.
34. The uncle's, not the uncle's son's.
35. [Thus Rashi, in accordance with the reading in our texts which seems to assume that the answer given above, 'What is meant by HIS SON-IN-LAW is the son-in-law of his son still stands as representing the view of Rab. This assumption is however hardly justified. Yad Ramah's text did not seem to contain the words, 'Why then ... of his son', which certainly makes the reading smoother.]
36. I.e., through marriage.
37. Hence, he ranks as a third degree relation, and thus justifies Rab's ruling.
38. A man and his uncle's son-in-law are in the relationship of the second to the third degree. Thus: If A and B are brothers, then C, A's son, and B are second and first degrees; C and D, B's sons, are two seconds; therefore C and E, B's sons-in-law, rank as second and third (since a son-in-law, according to the last answer, is one degree further removed than a son).
39. In that he said: I, my son and my son-in-law (a relative of the third degree) may not bear testimony against my uncle; from which it may be inferred that Rab's son (third degree) may bear testimony against the uncle's son (second degree).
40. In truth, he does not regard the son-in-law as a relative of the third degree, and so the Mishnah does, in fact, contradict him, as explained above. His view, however, is based on R. Eleazar.
41. C and F (B's grandson) are second and third degrees.
42. As stated above, v. n. 1.
43. In that he disqualifies the evidence of a relative of the third degree for a relative of the first.
44. That of disqualifying a relative of the third degree for one of the second degree.
45. [H] Deut. XXIV, 16.
46. Why does he rule that even second and third degrees are inadmissible?
47. [H], 'upon', or 'for sons'. [H] means *upon* or *for*.
48. I.e., all who are disqualified in respect of the fathers, are likewise disqualified in respect of the sons. Therefore, just as the first and third are ineligible (for R. Eleazar accepts Rab's

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exegesis of 'and'), so are the second (i.e., the son of the first) and the third disqualified.

49. To his sister's son-in-law he is his mother-in-law's brother, to his paternal aunt's son-in-law he is his mother-in-law's brother's son, and to his maternal aunt's son-in-law he is his mother-in-law's sister's son.
50. [Read with Ms.M. Rab 'Ulla.]
51. To his brother's son-in-law he is his father-in-law's brother; to his father's brother's son-in-law he is his father-in-law's brother's son; and to his maternal uncle's son-in-law he is his father-in-law's sister's son.

Sanhedrin 28b

parchment,¹ and they² asked him³ whether a man may testify for his step-son's wife.⁴ [Rab answered:] In Sura they say that a husband is as his wife;⁵ in Pumbeditha, that the wife is as her husband,⁶ For R. Huna said in Rab [Nahman]'s⁷ name: Whence do we know that a woman is as her husband? — From the verse: The nakedness of thy father's brother thou shalt not uncover; thou shalt not approach to his wife, she is thine aunt.⁸ But is she not actually thy uncle's wife?⁹ Hence we infer that a woman is as her husband.¹⁰

AND A STEP-FATHER, HE, HIS SON AND SON-IN-LAW. HIS SON! But that is his brother!¹¹ — R. Jeremiah said: This is only added to indicate [the exclusion of] a brother's brother.¹² R. Hisda declared a brother's brother eligible. Said the Rabbis to him: Are you unaware of R. Jeremiah's dictum? — 'I have not heard it, 'he answered, that is to say, 'I do not accept it.'¹³ If so, [the difficulty remains,] he [i.e., his step-father's son] is **HIS BROTHER!** — He [the Tanna] enumerates both a paternal and a maternal brother.

R. Hisda said: The fathers of the bride and bridegroom may testify for each other; their inter-relationship is no more than that of a lid to a barrel.¹⁴

Rabbah b. Bar Hana said: One may testify for his betrothed wife.¹⁵ Rabina remarked: That is only where his evidence is to her

disadvantage;¹⁶ but if it is to her advantage, he is not to be believed.¹⁷ But [in reality] that is not so: it makes no difference whether his evidence is to her advantage or disadvantage; in neither case is he to be believed. [For] on what [do you base] your opinion [that you do not regard him as a relative]? On R. Hiyya b. Ammi's dictum stated on the authority of 'Ulla, viz.: When the betrothed wife [of a Priest dies], he is not obliged to mourn as an Onen¹⁸ nor may he defile himself.¹⁹ Similarly, she is not bound to mourn as an Oneneth²⁰ [if he dies] nor to defile herself.²¹ If she dies, he does not inherit from her;²² but if he dies, she receives her Kethubah!²³ But there, the Divine law has made it all²⁴ depend on the fact that she is 'she'ero' [his wife],²⁵ a designation which cannot be applied to a betrothed wife.²⁶ Whereas here [the evidence of a relative is inadmissible] because of mental affinity; and such mental affinity does exist here [in the case of a betrothed woman and her groom].²⁷

ONE'S STEP-SON HIMSELF. Our Rabbis taught: A step-son himself. R. Jose said: A brother-in-law.²⁸ Another [Baraita] has been taught: A brother-in-law himself. R. Judah said: A step-son. What does this mean? Shall we assume it to mean as follows: A step-son himself, and the same applies to a brother-in-law; whereas R. Jose reversed this: A brother-in-law himself, and the same applies to a step-son?²⁹ If so, when our Mishnah states: **A BROTHER-IN-LAW, HIS SON AND SON-IN-LAW**, whose view is this? It is neither R. Judah's nor R. Jose's!³⁰ But [again] if this is its meaning: A step-son himself; while as for a brother-in-law, [the exclusion extends to] his son and son-in-law; whereas R. Jose reversed this: A brother-in-law himself; while as for a step-son, [the exclusion extends to] his son and son-in-law too: in that case, what R. Hiyya taught, viz., that the Mishnah enumerates eight chief relations which [together with the sons and sons-in-law] involve twenty-four in all,³¹ is neither the opinion of R. Judah nor that of R. Jose! — 32 Hence this must be the meaning:

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A step-son himself; but as for a brother-in-law, his son and son-in-law too [are included]; whereas R. Jose ruled: A brother-in-law himself, and *a fortiori* his step-son. The Mishnah³³ therefore agrees with R. Judah; while [the view expressed in] the Baraitha³⁴ is R. Jose's.³⁵

Rab Judah said in the name of Samuel; The *halachah* rests with R. Jose.³⁶

A certain deed of gift had been attested by two brothers-in-law. Now, R. Joseph thought to declare it valid, since Rab Judah said in Samuel's name: The *halachah* rests with R. Jose. But Abaye said to him: How do we know that [he referred to] the ruling of R. Jose as stated in the Mishnah which permits the evidence of a brother-in-law: perhaps he meant the ruling of R. Jose in the Baraitha, which disqualifies a brother-in-law? — One cannot think so, for Samuel said:³⁷ 'E.g., I and Phinehas, who are brothers and brothers-in-law (are inadmissible);'³⁸ hence others who are only brothers-in-law are admissible.³⁹ But [Abaye retorted] may it not be that Samuel, in saying, 'e.g., I and Phinehas,' meant only to illustrate the term 'brothers-in-law'?⁴⁰ Thereupon [R. Joseph] said to him:⁴¹ Go and establish your title through those who witnessed the delivery,⁴² in accordance with R. Eleazar.⁴³ But did not R. Abba say: Even R. Eleazar agrees that a deed bearing its own disqualification⁴⁴ is invalid? — Thereupon R. Joseph said to him: Go your way; they do not permit me to give you possession.

R. JUDAH SAID, etc. R. Tanhum said in the name of R. Tabla in the name of R. Beruna in Rab's name: The *halachah* rests with R. Judah. Raba said in R. Nahman's name: The *halachah* is not in agreement with R. Judah. Rabbah b. Bar Hana said likewise in R. Johanan's name: The *halachah* does not rest with R. Judah. Some refer this dictum of Rabbah b. Bar Hana to the following: R. Jose the Galilean gave the following exposition: And thou shalt come unto the Priests, the

Levites, and unto the judge that shall be in those days.⁴⁵ Is it then conceivable that, one could go to a judge who does not exist in his lifetime? But the text refers to a judge who was formerly a relative but who subsequently ceased to be one.⁴⁶ [Whereon] Rabba b. Bar Hana said: The *halachah* rests with R. Jose the Galilean.

The sons of Mar 'Ukba's father-in-law who

1. Cf. J. Sanh. 17a, where it is related that Rab went to buy skins for R. Hiyya the Great, his uncle (cf. *supra* 5a) who needed them for parchment on which to write scrolls of the Torah. V. also Keth. 103b, how far R. Hiyya distinguished himself in the promotion of learning.
2. Some scholars.
3. In J. *loc. cit.* Rab heard R. Johanan raise the question.
4. In a case where her personal estate is involved.
5. This answer is here irrelevant; probably it was given in answer to the question whether one may testify for or against his step-daughter's husband. Cf. J. Sanh. *ibid.*
6. Hence the evidence is inadmissible.
7. Some versions rightly omit the word in brackets.
8. Lev. XVIII, 14.
9. The term aunt is usually applied to a father's sister.
10. Which justifies her being referred to as an avuncular relative, *dodah* (the word translated 'aunt') being the feminine of *dod* (uncle).
11. Who has already been mentioned.
12. I.e., the son of his step-father by another wife; though he is not related to him at all, but only through his brother.
13. I.e., he holds that one who is related neither by blood nor by marriage, but merely through an intermediary brother, is not excluded.
14. Which is not fastened thereto, but merely lies upon it. I.e., they have a neighborly but not an intimate relationship.
15. V. p. 34 n. 3.
16. Lit., 'to draw away from her.'
17. Though he is not a relation yet, nevertheless, he is not believed, since what is to her advantage will be to his too, when the marriage is completed.
18. *ibut*. One deeply grieved. Designation given to a mourner during the time between death and

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- burial, when he is not permitted to eat consecrated things. Cf. Deut. XXVI, 14.
19. According to the exegesis of Lev. XXI, 2, a Priest is obliged to defile himself for his wife. Yeb. 22b. Here, however, there is no obligation, and hence he is forbidden too.
 20. [H] fem. of [H].
 21. This latter law is only incidentally stated since even a wife by marriage, or even the daughter of a Priest, has no restriction imposed upon her as regards contact with the dead. Cf. Sot. 23b.
 22. Whilst a husband inherits from the wife. Cf. B.B. 111b.
 23. Provided he has written her one. Hence, since he may not defile himself for her, it proves that there is no real relationship between them.
 24. The compulsory defilement and inheritance.
 25. [H]. E.V., 'his kin that is near unto him,' Lev. XXI, 2.
 26. The root meaning of [H] is 'flesh relationship,' and hence excludes a betrothed wife. Cf. Mek. on Ex. XXI, 10: [H] means marital duty.
 27. Therefore his evidence might be biased.'
 28. The husband of the wife's sister.
 29. Thus differing, not in the application of the law, but in expression. On this hypothesis, the difference lies in which is to be regarded as fundamental and which as derivative.
 30. Both agreeing that only a brother-in-law himself is excluded.
 31. V. *supra* 28a.
 32. For according to both of them there will be nine chief relations. According to R. Judah, the brother-in-law is included in the list; according to R. Jose there is to be added, the step-son.
 33. That the exclusion of one's brother-in-law is extended to his son and son-in-law.
 34. That there are eight chief relations, involving twenty-four in all.
 35. Who does not extend the exclusion of a brother-in-law to his son and son-in-law too. However, it must not be taken that R. Jose differs from the Mishnah to the extent of admitting a brother-in-law's son, since he has already been excluded by the ruling: 'The husband of his mother's sister,' which, in other words, means that one may not give evidence for or against his sister-in-law's son, with which ruling he is in agreement, since he supports the view in the Baraitha, that there are twenty-four relations in all, and the above-named is included in that number. He differs however from the Mishnah in that he admits the evidence of one's brother or sister-in-law's son-in-law, since the ruling in the Mishnah, 'one's mother's sister's husband', is

not irreconcilable with this opinion. The Mishnah excludes only a mother's sister's husband, not a mother-in-law's sister's husband. V. Rashi and Tosaf. a.l.

36. Here the reference is assumed to be to R. Jose, in the Mishnah, who excludes only such relations as are eligible to be heirs, which brothers-in-law are not.
37. In illustration of a brother-in-law who is disqualified.
38. They must have married two sisters.
39. In accordance with R. Jose in the Mishnah.
40. And so the fact that they were also brothers was immaterial. Hence brothers-in-law are ineligible as witnesses, so that the deed was invalid.
41. The man who had produced the contract.
42. Of the deed of gift to you,
43. That it is the witnesses who saw the delivery of the document who establish its validity. In fact, according to R. Eleazar, a document unsigned by witnesses is also valid. Cf. Git. 3b.
44. I.e., which is signed by incompetent witnesses.
45. Deut. XVII, 9.
46. I.e., at the time the litigation is brought before him. Such a judge is eligible.

Sanhedrin 29a

had ceased to be relatives of his,¹ came before him [Mar 'Ukba] for trial. But the latter said to them: I am ineligible to try your suit. They answered: What is your opinion; is it as R. Judah's [in the Mishnah]? We can produce a letter from 'the West'² that the *halachah* does not rest with R. Judah! He retorted: Am I then stuck to you by a *kab* of wax?³ I told you that I was disqualified from acting as your judge only because [I knew] that you do not accept court decisions.⁴

BY 'FRIEND' ONE'S GROOMSMAN IS MEANT. How long [is he regarded as such]? — R. Abba said in R. Jeremiah's name in Rab's name: The whole seven days of the [marriage] feast.⁵ The Rabbis said on Raba's authority: After the very first day [he is no longer regarded as such].

BY 'ENEMY', ANY MAN, etc. Our Rabbis taught; And he was not an enemy;⁶ then he may give evidence. Again, neither sought his harm;⁷ then he may be his judge.⁸ Here we

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find [the exclusion of] an enemy. Whence is deduced [the exclusion of] a friend? — Read [these texts] thus: And he was not his enemy, nor his friend, — then he may give evidence, neither sought his harm, nor his good, — then he may be his judge. Is then 'his friend' actually stated?⁹ — But it is a matter of logic. Why is an enemy [excluded]? Because of his disaffection.¹⁰ Then a friend too [is ineligible] because of his friendly inclination.¹¹ Now, how do the Rabbis¹² interpret this text, And he was not his enemy, neither sought his harm?¹³ — One [expression] intimates [his unfitness to be] a judge;¹⁴ the other they interpret as has been taught: R. Jose son of R. Judah said, And he was not his enemy, neither sought his harm; from this we deduce that two scholars who hate each other may not sit together as judges.

MISHNAH. HOW ARE THE WITNESSES EXAMINED? — THEY ARE BROUGHT INTO A ROOM,¹⁵ AND AWE IS INSTILLED INTO THEM.¹⁶ THEN THEY ARE SENT OUT,¹⁷ SAVE FOR THE OLDEST [WITNESS] TO WHOM THEY [THE JUDGES] SAY, TELL US, HOW DOST THOU KNOW THAT SO AND SO OWES [MONEY] TO SO AND SO? IF HE ANSWERS: HE PERSONALLY TOLD ME: 'I OWE HIM [THE MONEY],' OR, 'SO AND SO TOLD ME THAT HE OWES HIM,' HIS STATEMENT IS WORTHLESS,¹⁸ UNLESS HE DECLARES, 'IN OUR PRESENCE,¹⁹ HE ADMITTED TO HIM THAT HE OWES HIM TWO HUNDRED ZUZ.'²⁰ AFTER THAT THE SECOND WITNESS IS ADMITTED AND SIMILARLY EXAMINED. IF THEIR STATEMENTS TALLY, THEY [THE JUDGES] PROCEED TO DISCUSS THE CASE. SHOULD TWO FIND HIM NOT LIABLE AND ONE LIABLE, HE IS DECLARED NOT LIABLE; TWO LIABLE, AND ONE NOT LIABLE, HE IS DECLARED LIABLE; ONE LIABLE, AND ONE NOT LIABLE, OR TWO EITHER NOT LIABLE OR LIABLE, WHILE THE THIRD IS UNDECIDED,²¹ THE NUMBER OF JUDGES IS INCREASED.

WHEN THE VERDICT IS ARRIVED AT,²² THEY²³ ARE READMITTED, AND THE SENIOR JUDGE SAYS: SO AND SO, THOU ART NOT LIABLE; OR, SO AND SO, THOU ART LIABLE.

AND WHENCE DO WE KNOW THAT HE [ONE OF THE JUDGES] WHEN LEAVING, MUST NOT SAY, 'I WAS FOR ACQUITTAL WHILST MY COLLEAGUES WERE FOR CONVICTION, BUT WHAT COULD I DO, SEEING THAT THEY WERE IN THE MAJORITY?' — OF SUCH A ONE IS IT WRITTEN: THOU SHALT NOT GO ABOUT AS A TALEBEARER AMONG THY PEOPLE,²⁴ AND AGAIN, HE THAT GOETH ABOUT AS A TALEBEARER REVEALETH SECRETS.²⁵

GEMARA. How are they²⁶ cautioned? Rab Judah said: We admonish them thus: As vapors and wind without rain, so is he that boasteth himself of a false gift.²⁷ Raba remarked: They might say [inwardly]: Though a famine last seven years it does not pass the artisan's gate.²⁸ But, said Raba, this is what is said to them: As a maul and a sword and a sharp arrow, so is a man that beareth false witness against his neighbour.²⁹ R. Ashi demurred: They might say: Though a plague last seven years, no one dies before his time! But, said R. Ashi, Nathan b. Mar Zutra told me, We warn them thus: False witnesses are despised [even] by their own employers, as it is written, And set two men, base fellows, before him, and let them bear witness against him, saying, Thou didst curse God and the King.³⁰

IF HE ANSWERS, HE [PERSONALLY] TOLD ME: I OWE HIM [THE MONEY];' OR, 'SO AND SO TOLD ME THAT HE OWES HIM,' HIS STATEMENT IS WORTHLESS, UNLESS HE DECLARES, 'IN OUR PRESENCE HE ADMITTED THAT HE OWES HIM TWO HUNDRED ZUZ. This³¹ supports Rab Judah. For Rab Judah said in Rab's name: One must definitely instruct them [those who witness a transaction]: Ye are my witnesses.³² It has

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been stated, likewise: R. Hiyya b. Abba said in R. Johanan's name. [If A says to B,] 'You owe me a maneh',³³ and B admits it; and if he demands it from him the following day, and B answers, 'I was only jesting with you,'³⁴ he is not liable.³⁵ So also it has been taught: [If A says to B,] 'You owe me a maneh'; and B answers, 'Yes, it is so;' but on the following day, when the former demands it, the latter replies. 'I was but jesting with you,' he is not liable. Moreover, if he hid witnesses behind a fence and said to him: 'You owe me a maneh', and B answered, 'Yes;' and A added, 'Are you willing to make this admission in the presence of so and so?' And he replied: 'I am afraid to do so, lest you compel me to go to court;' and if on the following day, on his [A's] demanding it from him, B retorts; 'I was only jesting with you', he is not liable. But we do not plead [thus] on behalf of a Mesith.³⁶ Mesith? Who mentioned him?³⁷ — The text is defective, and should read thus: If he himself did not plead [this],³⁸ we do not plead it for him. But in capital charges, even if he himself does not plead,³⁹ we plead on his behalf. Yet no such plea is made on behalf of a Mesith. Wherein does a Mesith differ? — R. Hama b. Hanina said: I heard it said in a lecture⁴⁰ by R. Hiyya b. Abba: A Mesith is different, because the Divine Law states, Neither shall thine eyes pity him; neither shalt thou conceal him.⁴¹

R. Samuel b. Nahman said in R. Jonathan's name: Whence do we know that we do not plead on behalf of a Mesith? — From the [story of] the ancient serpent.⁴² For R. Simlai said: The serpent had many pleas to put forward but did not do so. Then why did not the Holy One, blessed be He, plead on its behalf? — Because it offered none itself. What could it have said [to justify itself?] — 'When the words of the teacher and those of the pupil [are contradictory], whose words should be hearkened to; surely the teacher's!'⁴³

Hezekiah said: Whence do we know that he who adds [to the word of God] subtracts

[from it]? — From the verse, God hath said, Ye shall not eat of it neither shall ye touch it.⁴⁴

R. Mesharshia said: [We derive it] from the following verse: Ammathayim [two cubits] and a half shall be his length.⁴⁵ R. Ashi said: From this: 'Ashte-'esreh [eleven] curtains.⁴⁶

Abaye said: The above ruling⁴⁷ holds good only if he says: 'I was only joking with you'; but if he pleads:

1. Owing to the death of their sister, the wife of Mar 'Ukba.
2. Palestine.
3. [Do you mean that my ties with you are indissoluble, and that this accounts for my refusal to act as your judge? (Yad Ramah.)]
4. [Presuming too much on my relationship with you (Yad Ramah).] And not for the reason that I was unaware that the *halachah* does not rest with R. Judah.
5. Cf. Rashi on Gen. XXIX, 27, Yalkut, LXX, on Judges XIV.
6. Num. XXXV, 23. This verse is understood to refer to the witnesses in a case of murder, not to the accused. As regards the murderer it is written, That the man slayer that slayeth his neighbor and hated him not in the past may flee thither. Deut. IV, 42.
7. Num. XXXV, 23.
8. Because immediately after this it is written, And the Congregation shall judge.
9. Surely it is inadmissible to deduce a law by adding to the text!
10. Lit., 'alienation of his mind.'
11. Lit., 'the proximity of his mind.'
12. In the Mishnah who do not disqualify a man on such grounds.
13. Ibid.
14. In which case they agree with R. Judah
15. Most edd. omit 'a room'.
16. Lit., 'Frightened,' — to tell the truth.
17. That is the reading of Alfasi and Asheri. (also J.) and seems to be supported by the discussion in the Gemara (v. *infra*, p. 185., n 5). But our text reads: THEN ALL THE PEOPLE ARE ...
18. Lit., 'He has said nothing.'
19. I.e., in the presence of himself and another person.
20. I.e., intending, by so doing, to recognize us officially as witnesses.
21. Lit., 'Says, I do not know.'
22. Lit., 'when the matter is finished.'

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23. The Talmud discusses to whom 'THEY' refers.
24. Lev. XIX, 16. In other versions this verse is omitted. Cf. J. and Maim. Yad, Sanh. XXII.
25. Prov. XI, 13.
26. The witnesses.
27. Prov. XXV, 14. I.e., just as abundant and seasonable rain is promised as a reward for faithfully keeping the commandments, so the iniquity of the people is the cause of the withholding of the rain, cf. Ta'an. 7b Thus the witnesses are warned that, by their false evidence, they may cause drought.
28. I.e., the warning may prove ineffective, for hunger need not be feared by those who have learned a trade.
29. Prov. XXV, 18, i.e., their misdemeanor might cause a plague to come upon the world.
30. I Kings XXI, 10. regarding Naboth. The contention is proved from the fact that the witnesses are called base fellows by Jezebel, their own employer.
31. The fact that they must declare, IN OUR PRESENCE, which implies that he explicitly appointed them for the purpose.
32. Otherwise their testimony cannot be accepted.
33. A hundred *zuz*.
34. Because I knew you asked a thing which never happened.
35. Alfasi and Asheri omit the bracketed passage, and substitute: And he must instruct (them), 'Ye are my witnesses.'
36. [H], an inciter to idolatry; v. [Glos.](#)
37. I.e., it has no bearing on the discussion.
38. That he was only jesting with him.
39. Circumstances that would help to prove his innocence.
40. [H], the lecture held on the Sabbath before Festivals, Rashi, B.B. 22a. V. Zunz, GV 349, n.g.]
41. Deut. XIII, 9; this refers to a Mesith.
42. In the Garden of Eden. Cf. Gen. III.
43. So Eve, evens though seduced by me, should have obeyed the command of God.
44. Gen. III, 3. Eve added to God's words by telling the serpent that she was not even permitted to touch the tree. The serpent then pushed her into contact with the tree and told her: See, just as death did not ensue from the touch, so it will not follow from eating of it. V. Rashi a.l.
45. Ex. XXV, 17. If [H] be decapitated it will read [H] ([H]) two hundred. Thus by adding the [H] the number will be reduced to two.
46. Ex. XXVI, 7. By taking away the [H] from [H] [11], it reads [H] [12].
47. That where witnesses were not present by special appointment he might plead that he was joking.

Sanhedrin 29b

'The whole thing never happened,'¹ he is adjudged a confirmed liar.² R. Papa the son of R. Aha b. Adda said to him: Thus we say on the authority of Rab; People do not remember aimless words.³

A man once hid witnesses against his neighbor behind the curtains of his bed, and said to him: 'You owe me a *maneh*'. 'Yes', he replied. 'May all present, whether awake or asleep be witnesses against you?' he asked⁴ 'No', was the reply. R. Kahanah [before whom the trial was brought] observed; Surely he answered, No!⁵

A man hid witnesses against his neighbor in a grave, and then said to him: 'you owe me a *maneh*'. 'Yes' he answered. 'Shall the living and the dead be witnesses against you?' 'No', he retorted. Said R. Simeon [b. Lakish]: Surely he answered, No!⁶

Rabina, or some say R. Papa, said: We may infer from the above, that the dictum of Rab Judah in Rab's name, viz., One must definitely instruct them: 'You are my witnesses,' holds good no matter whether the debtor says it, or the creditor says it while the debtor remains silent. For it⁷ is only because the debtor said, 'no'.⁸ but had he kept silent, it would indeed have been so.²

A certain man was nicknamed, 'A *kab*-ful of indebtedness.' [On hearing the name,] he exclaimed: 'To whom do I owe anything but to so and so and so and so?' Thereupon they summoned him before R. Nahman. Said he: A man is wont to disclaim abundance [of wealth].¹⁰

A certain man was nicknamed, 'The mouse lying on the *denarii*.'¹¹ Before he died, he declared: 'I owe money to so and so and to so and so.' After his death they summoned his heirs before R. Ishmael son of R. Jose. Said he to them:¹² The dictum, 'A man is wont to disclaim abundance [of wealth],' holds good

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only in life, but not in death.¹³ They paid half, and were summoned for the other half, before R. Hiyya. Said he to them: Just as one is wont to disclaim his own abundance [of wealth], so he is likely to disclaim it for his children.¹⁴ Thereupon they [the plaintiffs] asked: 'Shall we return [the half we have already received]?' R. Hiyya replied: The Zaken¹⁵ has already given his ruling.¹⁶

If a man admitted [a claim] in the presence of two witnesses, and they confirmed this by *Kinyan*,¹⁷ they may indite [a note],¹⁸ if not, they may not do so.¹⁹ [If he admitted] it in the presence of three, and they made no *Kinyan*: Rab [Ammi]²⁰ said, They may write a note;²¹ R. Assi ruled, They may not. There was a case once where Rab took into consideration R. Assi's ruling.

R. Adda b. Ahabah said: Sometimes a deed of acknowledgment²² may be drawn up; sometimes it may not. If they [the witnesses] merely happened to be assembled [when he made the admission,] it may not be drawn up; but if he [the debtor] called them together, it is to be drawn up. Raba said: Even then it may not be indited, unless he definitely told them, 'Be you my judges.'²³ Mar son of R. Ashi said: Even then, it may not be drawn up, unless the [necessary] meeting place is fixed and he [the debtor] is summoned to appear before the court.²⁴

If a man admitted a claim of movable property, and they [the witnesses] secured a formal title from him, they may record it; but not otherwise. But what if it concerned real estate, and they secured no formal title? — Amemar said: They may not record it. Mar Zutra said: They may. The law is that a deed is to be drawn up.²⁵

Rabina once happened to be at Damharia,²⁶ and R. Dimi son of R. Huna of that town asked him: What of movable property which is still intact [i.e., in the possession of the debtor]? — He answered: It ranks as real

estate.²⁷ R. Ashi, however, ruled: Since it still needs collection, it is not so.

A certain deed of [debt] acknowledgment did not contain the phrase: 'He said unto us, Write it, attest it and give it to him [the creditor].'²⁸ Abaye and Raba both said: This case comes under the ruling of Resh Lakish, who said: We may take it for granted that witnesses will not sign a document unless he [the vendor] has attained his majority.²⁹ R. Papi — others say, R. Huna the son of R. Joshua — objected: Can there be anything which we [the judges] do not know, and yet the clerks of the court know?³⁰ But in fact when the clerks of Abaye's court were questioned, they were found to know this law, and similarly the clerks of Raba's court.³¹

A certain deed of acknowledgment contained the phrase; 'A memorial of judicial proceedings,'³²

1. That he never admitted liability, notwithstanding that there are witnesses who testify to the contrary.
2. So that not even an oath can free him.
3. I.e., what one says in jest is not remembered. His total denial therefore does not weaken his case.
4. Probably the plaintiff knew that the defendant would refuse to admit the debt in the presence of witnesses, but he thought that he might assent if he believed that all were asleep. (Rashi.)
5. And so refused to admit his debt in the presence of witnesses. Hence he is not liable.
6. Therefore he acquitted him.
7. The ruling in the above-mentioned cases, where the debtor is acquitted.
8. When requested to authorize those present to be witnesses.
9. I.e., his admission in liability in the first place would be valid
10. Therefore he probably spoke of non-existent debts so as to disclaim wealth. Consequently he is not liable.
11. I.e., a miser. [Mice often drag away into their holes glittering object such as coins, rings, etc. V. Lewysohn, Zoologie, p. 106.]
12. The heirs.
13. Hence the claim against the heirs is established.

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14. So that his declaration before death might have been fictitious.
15. The elder R. Ishmael, son of R. Jose. v. *supra* p. 137, n. 1.
16. So that I cannot reverse the decision with regard to the amount already paid.
17. V. p. 142, n. 2.
18. Of the debt, even if not explicitly instructed by the debtor.
19. Unless directly requested, for though the debtor expressly appointed them as witnesses, he may prefer an oral debt to a written bond, since the former can be collected only out of property in his possession, but not out of real estate sold subsequent to the incurring of the debt, whereas the latter can be so collected.
20. Some versions correctly omit the name in brackets.
21. Since in this case they are given the authority of a *Beth din* to convert an oral debt into a written one.
22. [H], Of debt, made before three witnesses and without *Kinyan*.
23. I.e., he conferred upon them the powers of a court.
24. I.e., this improvised court must observe the usual formalities of a court, sitting in a place previously determined, and summoning the debtor.
25. In the case of immovable property, as soon as the admission is made, the debt is considered as collected; consequently there is no reason why the debtor should prefer an oral debt to a written one; which latter, however, might well be preferred in the case of movable property.
26. [A town in the neighborhood of Sura, v. Obermeyer, *op. cit.* p. 298.]
27. The law of which is stated above.
28. The question is whether the omission is proof that the contract was written without the debtor's request or not.
29. I.e., the age of twenty, v. B.B. 156a; the sale of a legacy before that is invalid, and it is taken for granted that witnesses are aware of this law. So also in this case, where the admission was made before two witnesses, and without *Kinyan*, the latter would know that they could not write a deed without the debtor's instructions; hence they must have been so instructed.
30. This law, that two witnesses must not record the admission without explicit instructions, is not even known to all judges. How then can it be assumed that they must have known it?
31. It was therefore shown that this rule was known to clerks of the court, charged with the drafting of legal documents, and before whom they were generally attested.

32. Lit., 'A memorial of the words of so and so,' instead of, 'A memorial of testimony by witnesses.'

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and was entirely worded like a Court document,¹ but did not include [the usual phrase], 'We were in a session of three judges one of whom [subsequently] absented himself.'² Rabina thought to rule: This is covered by Resh Lakish's dictum;³ but R. Nathan b. Ammi observed: It has been said on the authority of Raba: In all such cases a mistaken *Beth din* is to be suspected.⁴ R. Nahman b. Isaac said: If '*Beth din*' is mentioned anywhere in the document, no such [fear] is necessary.⁵ But suppose it was a presumptuous *Beth din*: for Samuel said: If two tried a case, their decision stands, but they are called, 'A presumptuous *Beth din*!'⁶ — No, for the document referred to⁷ stated: 'The *Beth din* of Rabbana Ashi.'⁸ But perhaps the Rabbis of Rabbana Ashi's academy agreed with Samuel?⁹ — There was written therein, 'Rabbana Ashi told us [to write the document].'¹⁰

Our Rabbis taught: If a man says to them:¹¹ 'I saw your father hiding money, [say,] in a strong box, a chest, or a store-room, and he told me that it belonged to so and so, or that it was [for the redemption] of the second tithe:'¹² if it [the hiding place] is in the house, his statement is valueless,¹³ if in a field, his words stand. This is the general rule of the matter: Wherever he has access [to the hiding place] his statement stands;¹⁴ but otherwise, it is of no value. If they [the heirs] saw their father hide money in a strong box, chest or store-room, saying, 'It belongs to so and so,' or 'It is for the payment of the second tithe': if it [his statement] was by way of giving directions, his words stand; but if it was in the nature of an evasion,¹⁵ his statement is of no value. If one felt distressed over some money which his father had left him,¹⁶ and the dispenser of dreams¹⁷ appeared to him and named the sum, indicated the place, and specified its purpose,

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saying that it was [for the redemption] of the second tithe — such an incident once occurred, and they [the Rabbis on that occasion] said: Dreams have no importance for good or ill.¹⁸

IF TWO DECLARE HIM NOT LIABLE, etc. How is it [the judgment] worded?¹⁹ — R. Johanan said: [Thus; 'The defendant is] not liable.' Resh Lakish said: 'So and so [of the judges] acquit; so and so holds him liable.' R. Eleazar said: 'As a result of their [the judges'] discussion, [it is decided that] he is not liable.' Wherein do they [practically] differ? — As to whether he is to share in the payment of compensation, [in case of error,] together with the others.²⁰ On the view [that the verdict is to be worded]: 'He [the defendant] is not liable,'²¹ he [the dissenting judge] must pay his share;²² while on the view [that the wording should be]: 'So and so acquit, and so and so holds him liable,' he makes no restitution.²³ But even on the view [that the wording should be]: 'He is not liable,' he [the dissentient] might argue, 'Had you accepted my opinion, you too would not have to pay!²⁴ — But the difference arises concerning their liability to pay his share in addition to their own. According to the view [that the verdict is framed thus]: 'He is not liable,' they bear [the whole] liability;²⁵ but on the view [that it is worded]: 'So and so [of the judges] acquit, and so and so holds him liable,' they do not pay [the dissentient's share].²⁶ But even according to the opinion [that the wording should be]: 'He [the defendant] is not liable,' why should they pay [the whole amount]? They might surely argue:²⁷ Hadst thou not been with us, the trial would have had no result at all! — The difference must arise therefore with reference to, Thou shalt not go up and down as a talebearer among thy people.²⁸ R. Johanan says: [The verdict is to be framed thus:] He is not liable,' because of this injunction against talebearing.²⁹ Resh Lakish holds [that the wording must be]: 'So and so acquit; so and so holds him liable,' since [otherwise] it [the verdict] would appear a falsehood,³⁰ while R. Eleazar agrees with

both; therefore it [the verdict] must be framed thus: 'After a decision by the judges, he was found not liable.'

WHEN THE VERDICT IS ARRIVED AT, etc. Whom [do they admit]? Shall we say, the litigants: but they are there already?³¹ But [if it refers to] the witnesses: whose view is this? Assuredly it does not agree with R. Nathan, for it has been taught: The evidence of witnesses cannot be combined,³² unless they simultaneously saw what they state in evidence. R. Joshua b. Korha said: Evidence is valid even if they witnessed it consecutively. Again, their evidence is not admissible by the court unless they both testify together. R. Nathan said; The court may hear the evidence of one witness one day, and when the other appears the next day, they may hear his evidence!³³ No. In reality, the litigants are meant, and this represents the view of R. Nehemiah. For it has been taught: R. Nehemiah said: This was the custom of the fair-minded³⁴ in Jerusalem; first the litigants were admitted and their statements heard; then the witnesses were admitted and their statements heard. Then they³⁵ were ordered out, and the matter was discussed. [And when the verdict was arrived at, etc.]³⁶ But has it not been explicitly taught: When the deliberations come to an end, the witnesses are readmitted?³⁷ That certainly does not agree with R. Nathan.

The above text [reads]: 'The evidence of witnesses cannot be combined unless they simultaneously saw what they state in evidence. R. Joshua b. Korha said: It is valid even if they saw it consecutively.' Wherein do they differ? — If you wish, I might say, in the interpretation of a Biblical verse; alternatively, in a matter of logic. On the latter assumption, [the first Tanna argues,] the [loan of the] *maneh* to which the one testifies, is not attested by the other, and vice versa.³⁸ Whereas the other [Tanna]³⁹ [argues that, after all,] both testify to a mina in general.⁴⁰ Alternatively, they differ in respect to a Biblical verse. For it is written, And he is a witness whether he has seen or known of

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it.⁴¹ Now, it has been taught:⁴² From the implications of the verse, A witness shall not rise up, etc.,⁴³ do I not know that one is meant? Why then state 'one'.? — That it may establish the principle that wherever it says A witness, it implies two, unless one is specified by the verse.⁴⁴ And the Divine Law expressed it in the singular to teach that they must witness [the act in question] both together as one man.⁴⁵ And the other?⁴⁶ — He is a witness whether he hath seen or known of it,⁴⁷ teaches that in all circumstances [the evidence is admissible].⁴⁸

'Again, their evidence is not admissible by the court unless they both testify together. R. Nathan said: The court may hear the evidence of one witness one day, and when the other witness appears the next day, they may hear his evidence.' Wherein do they differ? — Either in a matter of logic or in [the interpretation of] a Biblical text.

'Either in a matter of logic.' One Master argues: A single witness comes to impose an oath, but not to prove liability.⁴⁹ The other⁵⁰ argues: Even if they appear simultaneously, do they testify with one mouth?⁵¹ But [nevertheless], their evidence is combined. So here too [where they come separately] their evidence may be combined.

'Or [in interpretation of] a Biblical text.' [And he is a witness whether he has seen or known of it;] If he do not utter it, then he shall bear his iniquity.⁵²

1. Though it was signed only by two.
2. Cf. Keth. 22a: If one of the three judges necessary for the authentication of a document died before signing it, the document should be so worded.
3. V. *supra*, where Resh Lakish said that it may be taken for granted that an attested document has been legally drawn up. Hence the presence of three originally may be assumed.
4. In this case where the phrase 'In a session of three judges' was omitted they might have thought that two judges sufficed for purposes of authentication.

5. That two thought that they constitute a *Beth din*, for all know that the term '*Beth din*' applies to three.
6. V. *supra* 3a.
7. By R. Nahman b. Isaac.
8. The signatories belonged to his school, and they, no doubt, were aware that two cannot compose a *Beth din*. R. Ashi, the Babylonian Amora, is given here merely as an illustration because his was the principal court at the time when this passage was incorporated in the Gemara (cf. Rashi). 'Rabbana is a higher title than Rabbi, and is the Aramaic equivalent of Rabban', Chief Teacher (cf. Graetz, *Geschichte*, IV, 350ff). [According to Funk, *Die Juden in Babylonien II*, 103, however, the title Rabbana (the Great One) in Persia was reserved for Exilarchs, yet it was bestowed on R. Ashi owing to his unique position and the power he wielded, v. also I, 33.]
9. That two could form a *Beth din*, though they did not care about Samuel's uncomplimentary designation.
10. The court must therefore have been legally constituted, since he would not have asked two to form a *Beth din*.
11. To heirs.
12. V. p. 48, n. 4.
13. Unless there is another witness to support his statement.
14. Since he is then not under suspicion of having been prompted in his statement by some ulterior motive, e.g., the desire to serve someone's interests; for had he wished, he himself could have handed over the amount to whomever he wished.
15. I.e., as though he purposely told them this, so that they might not use it, or that they might not realize his wealth and indulge in extravagance.
16. And which he suspected to be tithe-money, but was unable to trace the amount.
17. Or, 'The Master of Dreams', which merely represents the personification of the dream.
18. Lit., 'neither raise nor lower'. Hence the money might be used for secular purposes. Cf. Tosef., M. Sh. V.
19. I.e., in a case of disagreement.
20. C. *supra* 6a; and *infra* 33a with reference to the liability of judges to compensate in cases of misjudgment.
21. Irrespective of whether there has been disagreement or not.
22. For without him, the remaining two could not have issued such a decree.
23. Since his opinion is explicitly stated in the verdict.
24. So that he himself should certainly bear no liability.

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25. Since their view is finally adopted.
26. The opinion of the two judges was specified to show that the final decision was given by only two (Rashi).
27. With the third judge.
28. Lev. XIX, 16.
29. And stating the names of the dissenting judges is tantamount to tale-bearing
30. I.e., the protection of truth is more urgent than the avoidance of tale-bearing.
31. Nowhere in the Mishnah is it mentioned that they had to withdraw.
32. As is necessary for it to be valid.
33. Cf. Tosef. Sanh. V; B.B. 32a. Hence if it is the witnesses who are admitted after a decision has been arrived at, which implies the necessity of their joint appearance this interpretation of the law is not in accord with the view of R. Nathan as given.
34. [H] v. *supra* p. 131, n. 3. Ms.M. [H] 'men of Jerusalem' whom Klein, S., *loc. cit.*, regards as synonymous with [H].
35. This is understood to refer to the witnesses.
36. [This seems to be quoted from the Mishnah and hence rightly omitted by Rashal. Ms.M. however, reads. 'when the verdict is arrived at, they readmit the litigants', etc.]
37. Hence the necessity of their conjoint appearance.
38. E.g., if A claims a mina from B, and C testifies that he saw B receive a *maneh* from A on the first day of the month, while D testifies that he saw B receive a *maneh* on the second of the month, notwithstanding that both testify that A gave B a *maneh*, it is evident that they do not refer to the same transaction, and therefore there is only one witness for each alleged loan, and therefore the evidence is invalid.
39. I.e., R. Joshua b. Korha.
40. Hence the fact of the loan is proved, though one witness must have mistaken the date.
41. Lev. V, 1, referring to witnesses who were adjured by parties in a case to testify before the court in their favor.
42. Sot. 2b; 31b.
43. Deut. XIX, 15.
44. Therefore in the text above, And he is a witness, two are implied. Also, because the guilt-offering for the transgression of the oath imposed on the witnesses ([H]), referred to in the Biblical text, applies only to two witnesses and not to one. V. J. Sanh. III, 9; and Shebu. 31b.
45. Otherwise their testimony is invalid.
46. R. Joshua b. Korha: how does he interpret the verse?
47. Which appears superfluous, for a witness is supposed to see and know of things.

48. Whether the act was witnessed or the evidence given at the same time or not.
49. If the claimant produces one witness in his favor, an oath is imposed on the defendant, but he is not ordered to repay. (V. Shebu. 40a.) Hence, when witnesses testify separately, the evidence of neither proves liability, and therefore the two testimonies cannot be combined.
50. R. Nathan.
51. Surely not!
52. Lev. V, 1.

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Now, both agree with the Rabbis who disagree with R. Joshua b. Korha:¹ they differ as to whether the 'uttering' [of the testimony] is assimilated to the 'seeing' [of the fact attested]. One Master² maintains that 'uttering' is assimilated to 'seeing';³ the other⁴ holds that they are not assimilated.

R. Simeon b. Eliakim was anxious for R. Jose son of R. Hanina to be ordained, but an opportunity did not present itself.⁵ One day, as he was sitting before R. Johanan, the latter asked them [the students]: 'Does anyone know whether the *halachah* rests with R. Joshua b. Korha or not?'⁶ R. Simeon b. Eliakim replied, 'This man here [R. Jose son of R. Hanina] knows.' 'Let him then answer,' said R. Johanan. Thereupon P. Simeon b. Eliakim said: 'Let the Master first ordain him.'⁷ So he ordained him and then asked: 'My son, what tradition in the matter have you heard?' — 'I heard,' replied R. Jose son of R. Hanina, 'that R. Joshua b. Korha agreed with R. Nathan [that the evidence need not be given simultaneously].'⁸ R. Johanan exclaimed: 'Is that what I wanted? If R. Joshua b. Korha maintained that the essential witnessing [of the act need not have been simultaneous, is it necessary [to state this] in reference to the giving of evidence [in court]! However, he concluded, since you have ascended,⁹ you need not descend.'¹⁰ R. Zera said: We may infer from this that once a great man is ordained, he remains so.¹¹

R. Hiyya b. Abin said in Rab's name: The *halachah* rests with R. Joshua b. Korha in

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respect to both immovable and movable property.¹² 'Ulla said: The *halachah* rests with R. Joshua b. Korha only in respect to immovable,¹³ but not movable property.¹⁴ Said Abaye to him: [Your statement as to the] *halachah*, implies that they [the Rabbis] dispute [thereon]: but did not Raba say in R. Huna's name in Rab's name: The Sages agree with R. Joshua b. Korha in respect to testimony concerning real estate? Moreover, R. Idi b. Abin learned in Karna's compilation [of Halachoth] on Nezikin:¹⁵ 'The Sages agree with R. Joshua b. Korha in respect to [evidence regarding] firstborns,¹⁶ real estate, Hazakah,¹⁷ and [the symptoms of puberty] in males and females likewise?'¹⁸ — Would you oppose man to man!¹⁹ One Master ['Ulla] holds that they differ: the other [R. Abba or R. Idi] holds that they do not.

What is meant by, 'And [the symptoms of puberty] in males and females likewise'? Does it mean that one [witness] testified to [the appearance of] one hair on the part below [the genitals] and another to one hair on the part above? But that is both half of the necessary fact, and also half of the requisite testimony!²⁰ — But it means that one testified to two hairs on the part below, and the other to two hairs on the part above.

R. Joseph said: I state on the authority of 'Ulla that the *halachah* is as R. Joshua b. Korha says, in respect to both movable and immovable property. Whilst the Rabbis who came from Mehuza state that R. Zera said in Rab's name: [This ruling holds good only] in the case of movable, but not immovable property. Rab²¹ follows his own views. For he said: An admission after an admission,²² or an admission after a loan,²³ may be combined.²⁴ But a loan after a loan,²⁵ or a loan after an admission cannot be combined.

R. Nahman b. Isaac, on meeting R. Huna the son of R. Joshua, asked him: Wherein does a loan after a loan differ, so that it [the testimony] is not [combined]: because the [loan of a] *maneh* witnessed by one is not the same as that witnessed by the other? Then

the same applies to an admission after an admission: the [debt of a] *maneh* which he admitted in the presence of one witness may not be the same as that which he admitted before the other witness! — It means that he declared to the latter (witness): 'Regarding the *maneh* which I have admitted in your presence, I have also made an admission in the presence of so and so.' Yet even then, only the latter would know [this], but not the former? — He [subsequently] went again and said to the first witness: 'The *maneh* which I admitted receiving in your presence, I also admitted receiving in the presence of so and so.' Thereupon [R. Nahman] said to him [R. Huna the son of R. Joshua]: 'May your mind be at ease as you have made mine.' Said he, 'Why at ease?' Did not Raba — others say, R. Shesheth — hurl a hatchet at this [answer],²⁶ viz., surely it is then identical with the case of an admission after a loan.²⁷ Thereupon he [R. Nahman b. Isaac] said to him: 'This proves what I heard about you folk, that you tear down palm trees and set them up again.'²⁸

The Nehardeans said: [In all cases,] whether of admission after admission, admission after loan, loan after loan, or loan after admission, the testimonies are combined. With whom does this agree? — With R. Joshua b. Korha.

Rab Judah said: Testimony that is contradicted²⁹ under examination,³⁰ is valid in civil suits. Raba said: Logically, Rab Judah's ruling refers to such a case as where one witness says: '[I saw it paid] out of a black bag,' and the other says, 'Out of a white bag.' But if one declares, 'The money was old,'³¹ and the other says, 'The money was new,'³² their testimonies cannot be combined. But in criminal cases, are not testimonies combined where there are differences such as over the color of a bag? Did not R. Hisda say: 'If one testifies that it [sc. the murder] was with a sword, and the other maintains, it was with a dagger, it is not valid³³ evidence; whereas if one affirms that the color of his garments was black, and

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the other that it was white, their evidence is valid'?

1. I.e., they hold that the act must be witnessed by both witnesses simultaneously.
2. The first Tanna.
3. I.e., just as the act must be seen by both simultaneously, so also must it be attested simultaneously. He deduces this from the juxtaposition of the witnessing of the act and the giving evidence of it.
4. R. Nathan.
5. V. p. 65, n. 3.
6. V. *supra*. R. Joshua b. Korha holds that the two witnesses need not observe the deed attested simultaneously.
7. For only traditions reported by ordained scholars can be relied upon. Cf. Rashal a.l.
8. From this answer, which has no bearing on the question, one might be led to conclude that R. Simeon b. Eliakim, though aware that R. Jose b. R. Hanina was incapable of providing the information desired by R. Johanan, nevertheless stated that he could give the information, in order to have him ordained. This cannot but appear as an unworthy ruse. A similar incident, however, is recorded in the Jerushalmi, though the names of the Sages figuring in the story are slightly different in order. There, the question is asked whether the *halachah* rests with R. Nathan, and the answer given there is more pertinent. This would seem to indicate that our text is in some confusion. [Cf. Weiss, Dor III, 90, n. 15]
9. I.e., seeing that the degree of Rabbi has been conferred upon you.
10. It will not be withdrawn. 'Ascended' and 'descended' are probably meant quite literally, the ordained scholars sitting on a higher bench than the unordained.
11. So the text as emended in the marginal note. Our reading is: once a great man confers ordination, it stands.
12. I.e., whether the alleged transaction referred to, e.g., the sale of land, or the granting of a monetary loan.
13. Be-cause they must both be referring to the same transaction.
14. Where each may be testifying with respect to a different object.
15. A collection of Baraitoth compiled by Karna and his *Beth din*, of which only quotations are found here and there in Talmud. V. Weiss, Dor, vol. iii, p. 164.
16. Even after the destruction of the Temple a firstborn animal might not be employed for secular purposes unless it suffered from some physical blemish. To inflict such blemishes

- was strictly forbidden. In the case of animals belonging to Priests, two witnesses had to testify that their injuries were not man-inflicted, since Priests were under suspicion of exposing their firstborn animals to such defects in order that they might put them to domestic use. The testimony of one witness to one defect and of another to another defect on the same animal could be combined to declare the animal permissible for work. According to Tosaf., their difference concerns the testimony that one is a firstborn and so entitled to a double share of the patrimony.
17. To prove a three years' undisturbed possession of an estate, where one witness testifies to the possession of the land for the first three years of the Sabbatical cycle, and another for the latter three years, their evidence is combined for the establishment of the possessor's claim, since each separately testifies in reference to the same estate.
 18. Where it is necessary to establish the majority of a person, from which point he or she is to be regarded as an adult and responsible for his actions to the laws of the Community. His or her majority begins from the time when two hairs appear in the region of the pubes. V. Nid. 52a. Hence from the reference given above it may be seen that the Rabbis agree with the view of R. Joshua b. Korha regarding the case of immovable property.
 19. R. Abba and R. Idi on the one hand, and 'Ulla on the other. They enjoyed equal status, so that the teaching of one cannot authoritatively refute that of the other. Nor does the fact that there are two against one make any difference.
 20. I.e., each witness does not individually testify to the complete fact necessary to establish puberty, but to half a fact. Moreover, that half fact (i.e., a single hair in a particular place) is attested by only half the necessary testimony — one witness instead of two. Whereas in the other cases under discussion each witness testifies to a whole fact, e.g., that A lent money to B.
 21. Who holds that successive evidence cannot be combined in the case of movable property.
 22. I.e., where one witness testifies that A admitted indebtedness to B on the first day of the month, and another testifies likewise, but refers it to the second day of the month.
 23. I.e., where one witness testifies to the transaction of a loan between A and B on the first day of the week, and another to A's admission of indebtedness to B on the second day.
 24. Since it is quite possible that both refer to the same loan

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25. I.e., where one witness testifies to the transaction of a loan between A and B on one day, and another testifies to the same on another day.
26. I.e., disproved the opinion.
27. For since it is necessary, according to this answer, that each witness shall know what the other has seen, it follows that an admission after a loan must be explained likewise, viz., he must have said to the latter witness: The *maneh* I have admitted receiving in your presence, I borrowed in the presence of so and so; and then he must have gone and said to the former witness: The *maneh* which I borrowed in your presence, I have admitted receiving before so and so. Why then did Rab need to state both laws?
28. I.e., you remove difficulties merely to resurrect them!
29. I.e., if the testimony of one witness contradicts that of the other.
30. As to attendant circumstances, e.g., regarding the color of the clothes worn, etc., in which cases the agreement or disagreement is immaterial in reference to the law of declaring them *Zomemim*. V *infra* 40a.
31. Lit., 'black' (with use).
32. Lit., 'white'.
33. Lit., 'certain', cf. Deut. XIII, 15.

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— Would you oppose man to man!¹

The Nehardeans said: Even if one testified that it was an old *maneh*, and the other declares that it was new, we combine [their testimony]. With whom does this agree: with R. Joshua b. Korha?² But tell me! when did you learn that R. Joshua b. Korha ruled thus? Only where they are not contradictory:³ Yet did he rule so even where they contradict each other? — But they [i.e., the Nehardeans] agree with the following Tanna: For it has been taught:⁴ R. Simeon b. Eleazar said: Beth Shammai and Beth Hillel⁵ do not differ with respect to two sets of witnesses, [of which] one attests a debt of two hundred [zuz] and the other of one hundred [a *maneh*]: since one hundred is included in two hundred.⁶ They differ only where there is but one set.⁷ Beth Shammai say, Their testimony is sundered,⁸ but Beth

Hillel maintain, Two hundred include one hundred.⁹

If one witness attests [the loan of] a barrel of wine, and the other, of a barrel of oil: — such a case happened, and it was brought before R. Ammi, who ordered him [the defendant] to repay a barrel of wine out of [the value of] the barrel of oil.¹⁰ In accordance with whom? With R. Simeon b. Eleazar [as above]! But might it not be said that R. Simeon b. Eleazar ruled so only [of a case such as the former,] where a hundred *zuz* is certainly included in two hundred.¹¹ Did he however rule thus in such a case as this?¹² — This holds good only in respect to the value thereof.¹³

If one deposes, It [e.g., the loan] was given in the upper storey, and the other declares, In the lower storey, — R. Hanina said: It happened that such a case was brought before Rabbi and he combined their evidence.

AND WHENCE DO WE KNOW, etc. Our Rabbis taught: Whence do we know that when he goes out he must not say: I was for acquittal, whilst my colleagues were for condemnation; but what could I do, seeing that they were in the majority? — Scripture states: Thou shalt not go up and down as a talebearer among thy people,¹⁴ and further, He that goeth about tale-bearing revealeth secrets.¹⁵

It was rumored of a certain disciple that he revealed a matter stated [as a secret] in the Beth ha-Midrash twenty-two years before. So R. Ammi expelled him from the Beth ha-Midrash saying: This man revealeth secrets.

MISHNAH. WHENEVER HE¹⁶ BRINGS PROOF, IT¹⁷ CAN UPSET THE VERDICT. BUT IF THEY¹⁸ HAVE TOLD HIM: 'ALL THE PROOFS WHICH YOU MAY HAVE YOU MUST PRODUCE WITHIN THIRTY DAYS:' IF HE DIES SO WITHIN THIRTY DAYS, IT UPSETS [THE DECISION]. AFTER THIRTY DAYS, IT DOES NOT. BUT RABBAN SIMEON B. GAMALIEL SAID: WHAT IS HE TO DO WHO DID NOT FIND [FAVOURABLE

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EVIDENCE] WITHIN THE THIRTY DAYS, BUT ONLY THEREAFTER?¹⁹ IF THEY¹⁸ HAVE SAID TO HIM, 'BRING WITNESSES,' AND HE ANSWERED, 'I HAVE NONE,' OR, 'BRING PROOF,'²⁰ AND HE REPLIED, 'I HAVE NONE:' YET SUBSEQUENTLY HE PRODUCED PROOF, OR FOUND WITNESSES, IT IS OF NO VALUE.²¹ SAID RABBAN SIMEON B. GAMALIEL: WHAT IS HE TO DO WHO DID NOT KNOW THAT WITNESSES WERE AVAILABLE, BUT FOUND THEM AFTERWARDS; OR THAT THERE WAS PROOF, YET DISCOVERED IT LATER?²² IF ON SEEING THAT HE WAS ABOUT TO BE CONDEMNED HE SAID: 'ADMIT SO AND SO TO TESTIFY IN MY FAVOUR,' OR PRODUCED [DOCUMENTARY] PROOF FROM HIS FUNDA,²³ IT IS VALUELESS.²⁴

GEMARA. Rabbah son of R. Huna said: The *halachah* rests with Rabban Simeon b. Gamaliel.²⁵ Rabbah son of R. Huna also said: The *halachah* does not rest with the Sages. But is this not obvious; since he says that the *halachah* rests with Rabban Simeon b. Gamaliel it automatically follows that the *halachah* is not as the Sages? — I might have thought that his ruling²⁶ holds good only at the outset;²⁷ but once it [i.e., the reverse] has been done,²⁸ it is correct: therefore he informs us²⁹ that even then, it [the decision] is reversed.

IF THEY SAID TO HIM: 'BRING WITNESSES,' etc. ... SAID RABBAN SIMEON B. GAMALIEL, etc. — Rabbah son of R. Huna said in R. Johanan's name: The *halachah* rests with the Sages. Rabbah son of R. Huna also said in R. Johanan's name: The *halachah* does not rest with Rabban Simeon b. Gamaliel. But is this not obvious; since he said that the *halachah* rests with the Sages it follows automatically that the *halachah* does not rest with Rabban Simeon b. Gamaliel? What he teaches us is this: Only in this case is the *halachah* not as Rabban Simeon b. Gamaliel holds; whereas in all other cases,³⁰ the *halachah* rests with him. Thus he opposes the dictum of Rabbah b. Bar Hana in the name of R. Johanan, viz.,

Wherever Rabban Simeon b. Gamaliel's view is taught in our Mishnah, the *halachah* rests with him, except in [the following three cases]: 'Areb,³¹ Zidon³² and 'the latter proof'.³³

A lad³⁴ was once summoned for a [civil] suit before R. Nahman. The latter asked him: 'Have you any witnesses?' He answered: 'No.' 'Have you any [documentary] proof?' 'No,' was the reply. Consequently, R. Nahman ruled him to be liable. As he went along weeping, some people heard him and said to him, 'We know your father's affairs.'³⁵ Said R. Nahman: In such a case even the Rabbis³⁶ agree that the youth is not expected to know his father's affairs.³⁷ A certain woman³⁸ produced a note of a debt,³⁹ but said to him:⁴⁰ 'I know that this bill was discharged.' R. Nahman⁴¹ believed her.⁴² Said Raba to him: According to whose view [did you act]? According to Rabbi who said: [Ownership of] 'letters' is acquired through delivery?⁴³ This case is different, he replied, since she could have burnt it, had she desired.⁴⁴ Others say, R. Nahman did not believe her. Thereupon Raba objected: But had she desired,

1. V. p. 189, n. 2.
2. V. p. 185. For here too, after all, both testify to the same fact, viz., the debt of a *maneh*.
3. Differing only in the matter of date.
4. B.B. 41b, *Nazir* 20a.
5. Who are at variance in the following case, viz., where of two sets of witnesses one testifies that A took upon himself the vow of neziruth for two years, and the other, for five years. The Shammaites maintain that since they differ, their evidence is invalid; the Hillelites say that, as both sets of witnesses testify for a period of not less than two years, the lesser period is considered proved.
6. So that the debt of a hundred *zuz* is witnessed to by both.
7. One witness testifying to a hundred, and the other to two hundred.
8. I.e., since one is obviously false, he is cut off from the other; hence there is no valid testimony at all.
9. So that there are two witnesses for a debt of a hundred. Hence the Nehardeans are supported by this view.

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10. I.e., since the value of the latter is greater, he regarded the smaller debt as proved.
11. I.e., a hundred is actually part of two hundred.
12. Where they differ as to the substance.
13. I.e., the witnesses did not attest the indebtedness of the defendant in actual wine or oil, but his indebtedness for their value. Accordingly they differed in respect to the amount.
14. Lev. XIX, 16.
15. Prov. XI, 13.
16. The defendant (Rashi). According to the Codifiers, Tur and Caro, any of the litigants, v. H.M. XVI, 1.
17. The court (Rashi).
18. The judges. So Alfasi, Me'iri and others. The text reads [H] (He, the other litigant, said unto him). The version rendered seems the more acceptable.
19. I.e., even if he produces it after the stipulated period, the decision may be reversed.
20. Viz., documentary evidence.
21. Since he might forge a document or engage false witnesses.
22. I.e., both documentary proof and witnesses are valid.
23. Gr. [G]. A moneybag or hollow belt for keeping money or documents.
24. Even according to Rabban Simeon b. Gamaliel; since he knew of it, and yet did not produce it, we fear that it is false.
25. In the first clause, where the litigant was asked to produce evidence within thirty days and did not say that he had none.
26. That the *halachah* rests with Rabban Simeon b. Gamaliel.
27. I.e., even if proof is brought after the prescribed time, it is to be accepted.
28. I.e., the court had rejected this evidence and given a verdict accordingly.
29. By his second statement that the *halachah* does not rest with the Sages.
30. Where Rabban Simeon b. Gamaliel is at variance with other Sages.
31. Surety. V. B.B. 173a.
32. Git. 74a.
33. I.e., the case, dealt with in our Mishnah, of evidence offered late, the case under discussion; thus Rabbah b. R. Huna maintains that the *halachah* does rest with Rabban Simeon b. Gamaliel in respect to 'Areb and Zidon.
34. I.e., minor.
35. And can testify in your favor.
36. Who oppose Rabban Simeon B. Gamaliel in the Mishnah.
37. Hence the decision can be reversed.
38. Who was a trustee, appointed by the creditor and debtor, of a bill of indebtedness.
39. Lit., 'A *Shetar* came forth from under her hand.'
40. The creditor.
41. Before whom the dispute was brought.
42. Notwithstanding the creditor's denial; for as long as they kept her their trustee, they vouched thereby for her truthfulness.
43. I.e., if a creditor wishes to make over a debt, he can do so merely by handing the note — referred to here as a compilation of (alphabetical) letters — to the assignee. Hence in our case, the woman could have claimed ownership of the note, on the plea that it had been handed to her not as a trustee, but in transference of the debt. Consequently her statement that the bill was paid may be regarded as true by reason of a *Miggo*, v. [Glos.](#) Raba was not in favor of the opinion of the Sages that a *Shetar* cannot be legally assigned by mere delivery. V. B.B. 76a.
44. Hence, without accepting Rabbi's ruling, there are still grounds for believing her.

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she could have burnt it! — Since it had been proved at Court,¹ we cannot say that she could have destroyed it had she desired.

Raba refuted R. Nahman: A witnessed receipt² must be authenticated by the signatories. If unwitnessed, but produced by a trustee, or if written on the note of indebtedness, under the signatures of the witnesses, it is also valid.³ Hence we see that the trustee is believed! This refutation of R. Nahman remains unanswered.

When R. Dimi came [from Palestine] he said in R. Johanan's name: One may always adduce proof to upset [the decision unless he declares his arguments closed, and [immediately thereafter] says: Admit so and so to testify on my behalf.⁴ But is not this self-contradictory? First you say, 'Unless he declares his arguments closed,' — which agrees with the Rabbis;⁵ then you say, 'and [immediately thereafter] says, Admit so and so to testify on my behalf' — which agrees with Rabban Simeon b. Gamaliel!⁶ And should you answer, The whole agrees with

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Rabban Simeon b. Gamaliel, and that [the latter clause is] merely elucidatory [of the first] viz., What is meant by, 'Unless he declares his arguments closed'? That means he says, Admit so and so that he may give evidence for me:⁷ but did not Rabbah b. Bar Hana say in R. Johanan's name: Wherever Rabban Simeon b. Gamaliel's view is taught in our Mishnah, the *halachah* rests with him, save in the cases of 'Areb, Zidon, and the 'latter proof'?⁸ — But when R. Samuel b. Judah came [from Palestine], he said in R. Johanan's name: One may always produce evidence to upset [a decision], unless he declares his case closed and they say unto him, 'Bring witnesses,' and he answers, 'I have no witnesses;' 'Bring proof,' and he replies, 'I have no proof.'⁹ If, however, witnesses arrive from overseas, or if his father's despatch case¹⁰ had been deposited with a stranger, he can produce the evidence and upset [the decision].

When R. Dimi came [from Palestine], he said in R. Johanan's name: If a man, known as a difficult adversary in court, [has a trial],¹¹ and one of them¹² says: Let us be tried here; while the other says: Let us go to the place of Assembly,¹³ he is compelled to go to the place of Assembly. R. Eleazar, however, said in his presence: Rabbi, if a man claims a *maneh* from his fellow, must he spend another *maneh*¹⁴ on top of the first? Nay, he is compelled to attend the local court.¹⁵ It has been stated likewise: R. Safra said [in R. Johanan's name]:¹⁶ If two litigants are in obstinate disagreement with respect to [the venue of] a lawsuit, and one says: Let us be tried here; and the other says: Let us go to the place of Assembly;¹⁷ he [the defendant] must attend the court in his¹⁸ home town. And if it is necessary to consult [the Assembly], the matter is written down and forwarded to them. And if the litigant¹⁹ says 'Write down the grounds on which you made your decision and give them to me,²⁰ they must write them down and give him the document.

The Yebamah²¹ is bound to follow the Yabam [to his own town] that he may release her.²² How far? — R. Ammi answered: Even from Tiberias to Sepphoris.²³ R. Kahana said: What verse proves it? — Then the elders of his city shall call him;²⁴ but not the elders of her city.

Amemar said: The law is that he is compelled to go to the place of the Assembly.²⁵ R. Ashi said to him: Did not R. Eleazar say, He is compelled to attend court in his [opponent's] town? — That is only where the debtor demands it²⁶ of the creditor; but if the creditor [demands, it, the debtor must submit, for] The borrower is servant to the lender.²⁷

A message was once sent²⁸ to Mar 'Ukba:²⁹ 'To him whose luster is like that of the son of Bithia,³⁰ Peace be with thee. 'Ukban the Babylonian has complained to us, saying: "My brother Jeremiah has obstructed my way."³¹ Speak therefore to him, and see that he meets us in Tiberias.' But is this not self-contradictory? First you say, 'Speak to him, 'i.e., judge him;³² and then you add, 'See that he meets us in Tiberias,' showing [that they told him], Send him hither! — What they meant was: Speak to him and judge him;³³ if he accepts your decision, well and good; if not, see to it that he appears before us in Tiberias.³⁴

R. Ashi says: This was a case of Kenas, and in Babylonia they could not try cases of Kenas.³⁵ But as for their sending him a message in such terms,³⁶ that was only to show respect to Mar 'Ukba.

1. Rashi: Its genuineness had been proved in Court. Tosaf. however points out that even then, it was still in her power to burn it. Therefore Tosaf. explains: It had been proved at court that she had it in her possession.
2. [H] Gr. [G], a kind of codicil, the precise significance of which is unknown.
3. For the note is in the creditor's possession, and he would certainly not have permitted a false receipt to be written thereon.
4. This implies, that, having stated that he has no more evidence in his favor, he then asks,

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- (presumably because he sees the case going against him, as in the Mishnah,) that certain witnesses shall be heard on his behalf.
5. Who hold that once he states that he has no more evidence, his case is closed, and new evidence cannot be offered even at a later date.
 6. For this implies that the evidence is not admissible only because he offered witnesses of whose existence he had known and who were available at the time. But if he subsequently produced new evidence, unknown to him when he made his declaration, it would be valid.
 7. I.e., only if he immediately thereafter offers fresh evidence is it not accepted, the court abiding by his previous statement that his case was closed.
 8. Thus proving that R. Johanan holds that once he has declared, 'I have no further proof,' he cannot produce any, much later.
 9. At which point his defense is regarded as closed.
 10. [H] Gr. [G]; bisaccium, a bag with two pouches.
 11. [Thus Rashi. According to Yad Ramah render, 'He who constrains his neighbor to stand with him for trial.']
 12. The more influential man.
 13. The meeting place of scholars; the supreme *Beth din* in Jerusalem, according to Maim. Yad, San. XI, 6. For a full discussion of this and the following passage, v. Finkelstein, *Jewish Self-Government in the Middle Ages*, pp. 379 et seqq. (note C.). This was said with the hope that his opponent might be humbler out of respect for the Scholars (Rashi).
 14. In travelling expenses.
 15. The creditor's.
 16. Rashal deletes the bracketed passage. See, however, Finkelstein, *loc. cit.*
 17. Maintaining that he lacked confidence in the local court and feared an erroneous decision,
 18. The plaintiff's.
 19. Who declined to appear before the local court, v. Tosaf.
 20. So that he might ascertain the legality of their decision.
 21. [H] fem. of [H] v. [Glos.](#)
 22. From the obligations of levirate marriage.
 23. Although the court in the former city was more eminent (Rashi). Actually, these two towns were near to each other.
 24. Deut. XXV, 8.
 25. Referring to a dispute between litigants regarding the place of trial.
 26. To go to the Assembly.
 27. Prov. XXII, 7.
 28. By the judicial court in Palestine.
 29. He held the office of Ab-Beth-din in Kafri nearby Nehardea, and was a contemporary of Samuel Yarhinai. v. Sabb. 55a; Rashi, Kidd. 44b.
 30. Moses (Rashi). V. p. 102. [Or, 'like the Son of the House', an honorific title among the Persian nobility, Funk, *op. cit.*, I, 33, n. 1.]
 31. I.e., he treated me injuriously.
 32. Hence, in Babylonia.
 33. I.e., Judge you the case first.
 34. Hence we see that even where the plaintiff desired the defendant to appear in another court, yet at the outset preference was given to the local court.
 35. V. B.K. 84a.
 36. Implying that they asked him to judge the case himself.

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CHAPTER IV

MISHNAH. BOTH CIVIL AND CAPITAL CASES DEMAND INQUIRY AND EXAMINATION.¹ AS IT IS WRITTEN: YE SHALL HAVE ONE MANNER OF LAW.² WHAT IS THE DIFFERENCE BETWEEN CIVIL AND CAPITAL CASES? — CIVIL SUITS [ARE TRIED] BY THREE; CAPITAL CASES BY TWENTY-THREE³ CIVIL SUITS MAY BE OPENED EITHER FOR ACQUITTAL OR CONDEMNATION; CAPITAL CHARGES MUST BE OPENED FOR ACQUITTAL, BUT NOT FOR CONDEMNATION.⁴ CIVIL SUITS MAY BE DECIDED BY A MAJORITY OF ONE, EITHER FOR ACQUITTAL OR CONDEMNATION; WHEREAS CAPITAL CHARGES ARE DECIDED BY A MAJORITY OF ONE FOR ACQUITTAL, BUT [AT LEAST] TWO FOR CONDEMNATION.⁵ IN MONETARY CASES THE DECISION MAY BE REVERSED⁶ BOTH FOR A ACQUITTAL AND FOR CONDEMNATION; WHILST IN CAPITAL CHARGES THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY, BUT NOT FOR CONDEMNATION; WHILST IN CAPITAL CHARGES THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY, BUT NOT FOR CONDEMNATION. IN MONETARY CASES, ALL⁷ MAY ARGUE FOR OR AGAINST THE DEFENDANT; WHILST IN CAPITAL CHARGES, ANYONE MAY ARGUE

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IN HIS FAVOUR, BUT NOT AGAINST HIM. IN CIVIL SUITS, HE WHO HAS ARGUED FOR CONDEMNATION, MAY⁸ THEN ARGUE FOR ACQUITTAL, AND VICE VERSA; WHEREAS IN CAPITAL CHARGES, ONE WHO HAS ARGUED FOR CONDEMNATION MAY SUBSEQUENTLY ARGUE FOR ACQUITTAL, BUT NOT VICE VERSA.⁹ CIVIL SUITS ARE TRIED BY DAY, AND CONCLUDED AT NIGHT.¹⁰ BUT CAPITAL CHARGES MUST BE TRIED BY DAY AND CONCLUDED BY DAY. CIVIL SUITS CAN BE CONCLUDED ON THE SAME DAY, WHETHER FOR ACQUITTAL OR CONDEMNATION; CAPITAL CHARGES MAY BE CONCLUDED ON THE SAME DAY WITH A FAVOURABLE VERDICT, BUT ONLY ON THE MORROW WITH AN UNFAVOURABLE VERDICT.¹¹ THEREFORE TRIALS ARE NOT HELD ON THE EVE OF A SABBATH OR FESTIVAL.¹² IN CIVIL SUITS.¹³ AND IN CASES OF CLEANNESS AND UNCLEANNES, WE BEGIN WITH [THE OPINION OF] THE MOST EMINENT [OF THE JUDGES]; WHEREAS IN CAPITAL CHARGES, WE COMMENCE WITH [THE OPINION OF] THOSE ON THE SIDE [BENCHES]. ALL ARE ELIGIBLE TO TRY CIVIL SUITS, BUT NOT ALL ARE ELIGIBLE TO TRY CAPITAL CHARGES, ONLY PRIESTS, LEVITES, AND ISRAELITES [LAYMEN] WITH WHOM PRIESTS CAN ENTER INTO MARRIAGE RELATIONSHIP.¹⁴

GEMARA. Do civil suits really need inquiry and examination? The following opposes it: If a bond is dated the first of Nisan in the Shemittah,¹⁵ and witnesses came and said: 'How can ye testify to this bond: were ye not with us on that day in such and such a place?' the bond is valid, and its signatories remain competent [witnesses], for we presume that they might merely have postponed writing it.¹⁶ Now if you should think that inquiry and examination are necessary, how 'presume that they might merely have postponed writing it?¹⁷ — But on your reasoning, one should object rather to the [following] Mishnah:¹⁸ Ante-dated bonds¹⁹ of indebtedness are invalid;²⁰ if post-

dated, they are valid.²¹ Now, if you should think that examination and inquiry are necessary, why are post-dated notes valid?²² — This²³ is no difficulty, for a more powerful objection is raised,²⁴ viz., that even in the case of a bond dated the first of Nisan in the Sabbatical year, when people, as a rule, do not transact loans, and when, consequently, we cannot [plausibly] say that the writing [of the bond] might have been postponed, since no one would intentionally weaken the validity of his document:²⁵ yet since the annulment of debts is effectuated only at the expiration of the Sabbatical year, we declare the bond valid.²⁶ At all events, however, the difficulty²⁷ remains.

(Mnemonic: *HaRPaSH*.²⁸)

R. Hanina said: By Biblical law, both monetary and capital cases require inquiry and investigation, as it is written: One manner of judgment ye shall have.²⁹ Why then were civil suits exempted from this procedure? In order not to lock the door against borrowers.³⁰ But if so,

1. Heb. [H], i.e., examination of witnesses on the main points, e.g., amount (loaned), date and place.
2. Lev. XXIV, 22. I.e., both capital and monetary cases shall be alike. With regard to capital cases it is written; Then shalt thou inquire and make search (Deut. XIII, 15).
3. V. *supra* 2a; 23a.
4. The reference is to the judicial debate on the matter. In civil suits, the points in favor of condemnation may be put first; but in capital charges, the arguments for acquittal must be first marshaled, but v. Krauss, a.l. for another interpretation. But of course, it cannot refer to the actual opening of the case; the indictment and case for the prosecution must obviously be stated before there is a charge to answer.
5. V. *supra* 2a and *infra* 36b.
6. On errors being revealed.
7. Even the pupils, those seated behind the judges for the purpose of filling up vacancies. Cf. *infra* 37a.
8. On finding his arguments erroneous.
9. According to Rashi, this is deduced from Num. XXXV, 25, The Congregation shall deliver the manslayer, meaning that all the

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- endeavors of the court should be directed towards deliverance. According to Maim., Yad, Sanh., X, 2, it is deduced from Ex. XXIII, 2, Neither shalt thou speak in a quarrel to incline, etc. Probably he based his deduction on the Mekilta comment on the verse, where reference is made to the judges' duty to lean towards acquittal.
10. Where the deliberations have been protracted.
 11. In case points in the accused's favor are discovered during the night.
 12. Since should he be found guilty, the case cannot be concluded on the morrow, execution being forbidden on Sabbaths and Festivals. (From this it is seen that by 'concluding' the actual carrying out of the sentence is meant, not merely the promulgation of the verdict.) Moreover, it is against the law — except in the case of a rebellious Elder, v. *infra* 89a — to leave judgment in suspense. V. Maim., Yad, Sanh. XII, 4.
 13. CIVIL SUITS is omitted in most Mishnaic versions.
 14. I.e., of pure descent.
 15. [H]; Sabbatical year. Though the regulations of the Sabbatical year include also the annulment of all monetary obligations, 'when the creditor is legally debarred from collecting his debt (v. Deut. XV, 2), yet in various exceptional cases the law of Shemittah did not operate, e.g., if a *Prosbul* ([H]) had been written. This was a legal instrument executed and attested in Court whereby the lender retained the right to collect the debt at any time he thought fit (cf. Sheb. X, 4). Further shemittah does not affect a loan advanced on a pledge, or where the claim for collection had been made before the expiration of the Sabbatical year, in which cases loans are not annulled. V. 'Ar. 28b.
 16. I.e., they might have witnessed the loan on an earlier date, but have postponed writing the bond until the first day of Nisan (Rashi). [According to Yad Ramah, render, 'they might have post-dated it.' We do not assume that it has been ante-dated (v. *infra*) as there is a presumption in favor of all duly attested documents, v. B.B. (Sonc. ed.) p. 748, n. 16.]
 17. If such an assumption is permissible, examination as to date and placed is purposeless.
 18. Rather than the Baraitha, since scholars are more conversant with the Mishnah than with Baraithoth.
 19. I.e., bearing on the evidence of witnesses, of an earlier date than the actual loan.
 20. As a rule the debtor's property is given as security for the loan, and in the case of default, the creditor may seize it if sold after the loan was incurred, but not before. Hence, if the note was ante-dated, sold property might be seized unlawfully. In order to prevent this, an ante-dated bond was declared altogether invalid, even from the date of transaction. Cf. B.M. 72a.
 21. It appears that the creditor must have renounced his security for the period between the date of the loan and that appearing on the note.
 22. Seeing that they might be mere forgeries? Hence, even if the loan itself is attested as having taken place, it should rank as only a verbal loan, which cannot be collected from property sold even after it was incurred.
 23. I.e., the fact that the objection is raised on the ground of a Baraitha rather than of a Mishnah.
 24. In the Baraitha quoted.
 25. By dating it sometime in the Sabbatical year, when the debt is threatened with annulment, and so inevitably arousing the suspicion of forgery.
 26. By assuming its writing has been postponed to the Sabbatical year. Thus, this assumption, since it is possible, is made in spite of its improbability, a loan in the Sabbatical year still being rare. How much more so is the assumption to be made in normal cases. Why then should the witnesses be examined on the date, since even if it is disproved, their testimony holds good?
 27. I.e., the fact that the Baraitha is contradictory to our Mishnah; v. preceding note.
 28. V. p. 21, n. 5. Here it stands for R. Hanina, Raba, R. Papa, and R. ASHi. the four Rabbis whose views are given here.
 29. Lev. XXIV, 22.
 30. V. *supra* 2b. The view expressed in our Mishnah was taught before this enactment; and the Baraitha and Mishnah in Sheb., after this enactment.

Sanhedrin 32b

when they [the judges] erred [in their verdict], they should not be liable! — Then thou wouldst most certainly lock the door against borrowers.¹

Raba² said: Our Mishnah refers to a case of Kenas,³ the other teachings⁴ to the admission and transaction of loans.⁵

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R. Papa said:⁶ Both this and the other teachings deal with the admission and transaction of loans. In our Mishnah, however, the suit is [suspected of being] dishonest,⁷ while in the other,⁸ the claim is [i.e., appears] genuine. This agrees with Resh Lakish, for Resh Lakish opposed [two verses to each other]: It is written, In justice⁹ shalt thou judge thy neighbour;¹⁰ but elsewhere, Justice, justice shalt thou follow.¹¹ How so? — The latter refers to a suit suspected to be dishonest; the former, to an [apparently] genuine claim.

R. Ashi said: The [contradictory] teachings are reconciled as above;¹² but as for the [Scriptural] verses, one¹³ refers to a decision based on strict law, the other to a compromise. As it has been taught: Justice, justice shalt thou follow; the first [mention of justice] refers to a decision based on strict law; the second, to a compromise. How so? — E.g., where two boats sailing on a river meet; If both attempt to pass simultaneously, both will sink,¹⁴ whereas, if one makes way for the other, both can pass [without mishap]. Likewise, if two camels met each other while on the ascent to Beth-Horon;¹⁵ if they both ascend [at the same time] both may tumble down [into the valley]; but if [they ascend] after each other, both can go up [safely]. How then should they act? If one is laden and the other unladen, the latter should give way to the former. If one is nearer [to its destination] than the other,¹⁶ the former should give way to the latter. If both are [equally] near or far [from their destination,] make a compromise between them, the one [which is to go forward] compensating the other [which has to give way].

Our Rabbis taught: Justice, justice shalt thou follow, means, Thou shalt follow an eminent *Beth din*, as for example, [follow] R. Eliezer [b. Hyrkanus] to Lydda.¹⁷ or R. Johanan b. Zakkai to Beror Hail.¹⁸ It has been taught: The noise of grindstones at Burni¹⁹ [announced] a circumcision²⁰ [was being

performed]; and the light of a candle [by day, and many candles by night] at Beror Hail, showed that a feast [was being celebrated] there.²¹

Our Rabbis taught: justice, justice shalt thou follow,' this means, Follow the scholars to their academies. e.g.. R. Eliezer to Lydda, R. Johanan b. Zakkai to Beror Hail,²² R. Joshua to Peki'in,²³ Rabban Gamaliel [II] to Jabneh,²⁴ R. Akiba to Benai Berak,²⁵ R. Mathia to Rome,²⁶ R. Hanania b. Teradion to Sikni,²⁷ R. Jose [b. Halafta] to Sepphoris. R. Judah b. Bathyra to Nisibis,²⁸ R. Joshua²⁹ to the Exile,³⁰ Rabbi to Beth She'arim,³¹ or the Sages³² to the chamber of hewn stones.³³

CIVIL SUITS MAY BE OPENED EITHER FOR ACQUITTAL, etc. What is said?³⁴ Rab Judah said: We speak thus to them:³⁵ Who can tell that it is as ye say?³⁶ 'Ulla objected: But do we not thereby shut their lip?³⁷ — Then let them be shut! Has it not been taught: R. Simeon b. Eliezer said: The witnesses are moved from place to place,³⁸ that they³⁹ may become confused, and withdraw [their evidence].⁴⁰ What comparison is there! In that case, they are automatically repelled, whereas here, we repel them by our own act!

But, said 'Ulla: We say thus: Have you [sc. the defendant] any witnesses to refute them?⁴¹ Rabbah demurred: Can we then open the defense of one in a manner which involves the condemnation of another?⁴² — But does this really involve his condemnation? Have we not learnt: Witnesses declared *Zomemim* are not executed unless the verdict has [already] been given!⁴³ — I mean this: Should the defendant remain silent until the verdict is given, and then produce witnesses and refute the others, it involves their condemnation?⁴⁴ — Therefore Rabbah said: We say to him: Have you any witnesses to contradict them?⁴⁵

R. Kahana said: [We open the defense by saying,] From your words it appears that so

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and so is not guilty.⁴⁶ Abaye and Raba both say: We say to him: If you did not commit the murder, have no fear. R. Ashi says: [We begin thus:] Whoever knows anything in his [sc. the accused's] favor, let him come forward and state it. It has been taught in agreement with Abaye and Raba: Rabbi said, If no man have lain with thee and if thou hast not gone aside to uncleanness, etc.;⁴⁷

1. For notes v. *supra* 3a.
2. Who holds that there is no difference between the teachings, and that they were all taught after the enactment referred to.
3. E.g., the payment of the double restitution (v. [Glos.](#)), where the fear locking the door against borrowers has no ground.
4. The Baraitha and Mishnah in Sheb.
5. And where refusal to lend might be a consequence of this enacting procedure.
6. In reconciliation of the views of the two teachings.
7. The judges find suspicious circumstances attending the claim; therefore full investigation is essential for the establishment of the truth.
8. V. p. 202. n. 11.
9. E.V. 'righteousness'.
10. Lev. XIX, 15.
11. Deut. XVI, 20. The repetition of 'justice' indicates the necessity' of stricter investigation than is implied by the single use of the word.
12. As explained by R. Hanina, Raba and R. Papa.
13. The Biblical emphasis on justice.
14. Through collision.
15. [H] (lit., 'the house of the hollow'). There were two towns of this name, distinguished on account of their situation, as Beth Horon the Upper, and Beth Horon the Lower. They both lay on the southern border of Ephraim and close to the territory of Benjamin (cf. Josh. XVI, 3, 5; XVIII, 13, 14) Beth Horon the Upper stands on the summit of a conical hill, while a short distance west of this point, on a rocky eminence, stands Beth Horon the Lower. The deep valley between the two places may account for the name, 'The house of the hollow.' The road winds up the mountain in zigzag line, and is in many places cut in the rock. It is rugged and difficult.
16. Lit., 'if one is near and the other is not near.'
17. A city in Palestine, twelve miles from Jaffa on the road to Jerusalem. Was famous as a seat of Jewish scholarship after the destruction of the Temple.

18. Seat of R. Johanan b. Zakkai's College. near Jabneh (Jastr.) [Klein, S., [H] I, 46, identifies it with the village Burer, west of Beth Gubrin (Eleutheropolis.)]
19. A place near Lydda. 'The noise of grinding' was an indication that some ingredients were being ground for the purpose of treating the circumcision wound.
20. [H] lit., 'the week of the son' (bis), v. B.B. (Sonc. ed.) p. 246. n. 8.
21. Bis: This was (a) during the time of Hadrian, the Emperor, who forbade the observance of the law and the rite of circumcision. Such were the signs by which Jews were invited to celebrate the solemn occasions [V. Graetz, *Geschichte*, IV, p. 158, who however regards these announcements as words of denunciation by the spies of the Roman Government on noticing these signs. Or (b) during the persecutions under Antiochus, Klein, *op. cit.*, 40ff.]
22. [Where he spent the last years of his life, v. Derenbourg, *MGWJ*. 1893, 304.]
23. Or Beki'in, a small town in Palestine, between Jabneh and Lydda. A seat of a Talmudic School during the patriarchate of Gamaliel II.
24. A small town on the N.W. borders of Judea, identified with Jabneel of Naftali (Josh. XIX, 33). Seat of the celebrated school after the destruction of Jerusalem, which locality is replaced as the seat of the Sanhedrin. Scholars (Weiss, Graetz, Halevy) disagree as to the exact authority it possessed.
25. One of the cities of the tribe of Dan (Josh. XIX, 45) identified with the modern Benai Berak, a flourishing Jewish Colony.
26. [He left Palestine at the same time as Judah b. Bathyra and R. Hananiah, the nephew of R. Joshua b. Hananiah (v. *infra*) shortly before the Bar Kochba war, and making his way to Rome he there established a school, v. Bacher, *AT.*, I, 380.]
27. [H] or Sogana (v. Josephus, *Vita* 51). North of Jotapata in Galilee.
28. Nisibis, city in North-eastern Mesopotamia, in the ancient province of Migdona.
29. Read: Haninah (nephew of R. Joshua) about whose journey to Babylon. v. Ber. 63a. V. marginal note.
30. [He established a school in Nehar Pekod, west of Nehardea, v. Bacher, *op. cit.* 389.]
31. A city identified with El Shajerah, south of Sepphoris. (Neubauer, *Geographie*, p. 200.) One of the stations the Sanhedrin were destined to pass in its ten exiles during the period 30-170 C.E. V. R.H. 31b; Keth. 103b.
32. The Great Sanhedrin (Rashi).
33. [H], the chamber of hewn stones in the inner court of the Temple which was the home of

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the Great Sanhedrin. [On the refutation of Schurer's view that it was the chamber 'close to the Xystus' on the western border of the Temple Mount, v. Krauss, J.E., XII, 576.]

34. In opening the case for the defense.
35. Sc. the witnesses for prosecution.
36. I.e., perhaps your evidence is false
37. I.e., discourage them from giving further evidence.
38. Rashi: When they came to give evidence, the Court would decline to hear it in that place, but appoint another and at the second place, they found some reason for moving to a third and so on.
39. Lit., 'their minds'.
40. Tosef. Sanh. IX.
41. The accusing witnesses, and prove them *Zomemim*..
42. For in a capital charge, witnesses proved *Zomemim* are liable to death.
43. And unless before it was carried out, they had been proved *Zomemim*. Consequently, if the accused is invited to produce witnesses to refute the other at this early stage of the proceedings, no question of condemnation arises.
44. Hence at the very outset, he must not be invited to prove the accusing witnesses *Zomemim*.
45. I.e., to prove the former evidence false, but not by means of showing that the witnesses are *Zomemim*. (V. [Glos.](#) and p. 36, n. 3.)
46. The judges start by pointing out the weak features of the prosecution, e.g., even if certain statements of the prosecution are proved true, they do not show the guilt of the accused.
47. Num. V, 19.

Sanhedrin 33a

we infer from this that capital charges are opened for acquittal.¹

IN MONETARY CASES THE DECISION MAY BE REVERSED, etc. But the following contradicts this: 'If a man judged a case [by himself] and pronounced him who was liable, "not liable", or vice versa; the clean, "unclean," or the reverse: his decision stands, but he must pay an indemnity² out of his own pocket'³ — R. Joseph answered: This presents no difficulty: here it [our Mishnah] refers to a Mumheh;⁴ there, to one who is no Mumheh.⁵ But in the case of a Mumheh, do we reverse [the decision]? Have

we not learned: If he was recognized by the *Beth din* as a Mumheh, he is exempted from paying [compensation]! — 6 R. Nahman answered: Here [in our Mishnah] the circumstances are that there is a court superior to this one in learning and numbers;⁷ whereas in the other Mishnah there is no court available superior to this in learning and numbers.⁸ R. Shesheth said: Here it treats of a case where he [the judge] erred regarding a law cited in a Mishnah;⁹ there, of a case where he erred in the weighing of [conflicting] opinions. For R. Shesheth said in R. Assi's name: If he erred in a law cited in the Mishnah, the decision is reversed; if he erred in the weighing of [conflicting] opinions, the decision may not be reversed.

Rabina asked R Ashi: Is this also the case if he erred regarding a teaching of R. Hiyya or R. Oshaia?¹⁰ — Yes, said he, And even in a dictum of Rab and Samuel?¹¹ Yes, he answered. Even in a law stated by you and me? Are we then reed cutters in the bog?¹² he retorted.

How are we to understand the phrase: 'The weighing of [conflicting] opinions'? — R. Papa answered: If, for example, two Tannaim or Amoraim are in opposition, and it has not been explicitly settled with whom the law rests, but he [the judge] happened to rule according to the opinion of one of them, whilst the general practice;¹³ follows the other, — this is a case of [an error] in the weighing of [conflicting] opinions.

R. Hamnunah refuted R. Shesheth: It once happened that R. Tarfon ordered a cow [belonging to Menahem],¹⁴ whose womb had been removed, to be given to dogs.¹⁵ When the matter was brought before the Sages in Jabneh, they permitted [her as human food], for Theodos¹⁶ the Physician stated that no cow or sow was allowed to leave Alexandria in Egypt unless her womb had first been cut out, so as to prevent her from having issue.¹⁷ Thereupon R. Tarfon exclaimed: Thy ass is gone, Tarfon!¹⁸ But R. Akiba said to him:

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You are not bound to make compensation, since he who is publicly recognized as a Mumheh is free from liability to pay.¹⁹ Now if it [your dictum] is correct,²⁰ she should have said to him: You erred regarding a law cited in a Mishnah,²¹ and he who errs in a law cited in the Mishnah, may revoke his decision! — He²² meant two things:²³ Firstly, you have erred in a law cited in the Mishnah, and he who errs in a law cited in the Mishnah may reverse his decision. Secondly: even if you had erred in the weighing of [conflicting] opinions, you are a publicly recognized Mumheh, and such are free from liability to pay [compensation].

R. Nahman b. Isaac said to Raba: What objection did R. Hamnunah raise against R. Shesheth from the case of the cow? Surely, the cow had already been given as food to dogs, and was no longer available for return to its owner!²⁴ — He meant this: Should you say, that he who errs regarding a law cited in the Mishnah may not reverse the decision, it is correct: seeing that his decision stands, R. Tarfon was apprehensive, whereupon [R. Akiba] said to him: You are recognized by the Court as a Mumheh, and free from liability to refund. But if you say that he who errs in a law stated in the Mishnah may revoke his decision, then [R. Akiba] should have said to him: Since if the cow were still in existence, your decision would have been invalid and you would have done nothing, so too now, [that the cow has been consumed] you have done nothing.²⁵

R. Hisda said:²⁶ The one [Mishnah]²⁷ treats of a case where he [the judge] took [from one] and gave [to the other] with his own hand;²⁸ the other [Mishnah],²⁹ where he did not take and give with his own hand.³⁰ Now, that is correct in regard to pronouncing him who is not liable, 'liable'; when he might have taken [from the defendant] and given [to the plaintiff] with his own hand; but how is it conceivable in the reverse case [except] where he said to him: 'Thou art not liable'? Then he did not take [from one] and give [to the other] with his own hand! — Since he

declared, 'Thou art not liable,' it is really as though he had taken [from one] and given [to the other] with his own hand.³¹ Then what of our Mishnah, which teaches: IN MONETARY CASES THE DECISION MAY BE REVERSED BOTH FOR ACQUITTAL, AND FOR CONDEMNATION? As for acquittal, it is correct: this is conceivable where he [the judge] originally said to him, 'Thou art liable,' but did not actually take [from him] and give [to the other] with his own hand.³² But how is it possible [to make any reversal] for condemnation, [except in the case] where the judge has first said to him: 'Thou art not liable'?³³ But you maintain that when he said to him: 'Thou art not liable,' it is as though he had taken and given with, his own hand!³⁴ — The Mishnah really states [only] one ruling. Viz., IN MONETARY CASES A DECISION MAY BE REVERSED IN FAVOUR [OF THE ONE],³⁵ WHICH IS [TO THE OTHER'S (i.e.. THE PLAINTIFF'S)] DISADVANTAGE. Then by analogy, in regard to capital charges, [the statement,] THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY

1. Since Scripture begins with the negative. Thus, Rabbi too understands by this that the 'opening for acquittal' is an assurance to the accused that he has nothing to fear if he is innocent.
2. For any loss caused by his erroneous decision.
3. Mishnah, Bek. 28b. Thus it is evident that in monetary cases the decision cannot be reversed.
4. V. Glos. To such authority was given to retract his first decision.
5. Who, though his decision stands, must pay compensation in case of error.
6. For an erroneous judgment, whilst his decision holds good. Thus, even if the judge is a Mumheh, his decision is not reversed.
7. Which can act, in a sense, as a court of appeal to reverse the lower court's decision.
8. And hence the desire to reverse the decision may be opposed by one of the parties. But in reality, both instances, viz., that of the Mishnah here, and that of the latter part of the Mishnah there, treat of a case where the decision is given by a Mumheh.
9. In which case his decision may be revoked.

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10. I.e., does the above ruling regarding an error in a law cited in Mishnah apply also to an error in a law cited in the Tosefta: a collection of Halachoth the redaction of which is attributed to R. Hiyya and R. Oshaia? The authority of the Tosefta is not equal to that of the Mishnah.
11. Whose ruling is not so authoritative as the traditional law in the Tosefta.
12. I.e., insignificant, of no importance.
13. Adopted by a majority of judges. So the text as given in Rashi and elsewhere. Our reading is: and the general trend of the (Talmudic) discussion thereon, v. *supra* 6a.
14. The bracketed phrase is absent in Bek. 28b, whence this Mishnah is quoted.
15. I.e., he declared her unfit for human consumption
16. Or, Theodoros.
17. The Egyptian breed was unique in its quality, and so they took this measure in order to limit its breeding to that country. Such a mutilation did not, however, affect them.
18. I.e., shall now have to sell my ass to compensate the owner of the cow for my erroneous decision!
19. Bek. 28b and *infra* 93a.
20. That an error in a law cited in Mishnah justifies rescinding.
21. Cf. Hul. 54a. An animal whose womb has been removed may be used for food.
22. R. Akiba
23. Lit., He meant, 'One thing and yet another.'
24. What purpose, then, could the reversal of the decision serve?
25. I.e., you personally did not throw it to the dogs: it was the owner's misfortune to follow your ruling. (V. B.K. 100a.) Seeing therefore that R. Akiba did not argue in the manner, it can be inferred that if one errs regarding a law cited in the Mishnah, the decision may not be reversed.
26. In answering the contradiction.
27. The Mishnah in Bek.
28. Then the decision cannot be reversed.
29. Our Mishnah.
30. In that case, an erroneous judgment was reversed.
31. For he is confirming the defendant in the possession of the money claimed from him by the plaintiff.
32. Then he can subsequently revise his verdict.
33. And now declares that he is.
34. In which case judgment cannot be reversed according to R. Hisda, and yet it is taught that the verdict may be upset.
35. Sc., the defendant, who had previously been pronounced liable.

Sanhedrin 33b

BUT NOT FOR CONDEMNATION, must mean, it can be reversed for acquittal, provided this involves only acquittal.¹ BUT NOT FOR CONDEMNATION. i.e., [there must be no reversal] in favor [of one] which is detrimental [to the other]. But to whose detriment can it possibly be? — That is no difficulty: It means to the detriment of the avenger of blood.² Because it is detrimental to him, are we to execute a man!³ Moreover, how explain, BOTH ... AND?⁴ This remains a difficulty.

Rabina explained it⁵ thus: E.g. he [the plaintiff] had a pledge [from the defendant] and he [the judge] had taken it from him:⁶ He declared the clean, 'unclean', means that he brought it into contact with a reptile;⁷ he declared the unclean, 'clean', by mixing it with his [the questioner's] own fruit.⁸

IN CAPITAL CHARGES, etc. Our Rabbis taught: Whence [do we infer] that if the accused leaves the *Beth din* guilty, and someone says: 'I have a statement to make in his favor,' he is to be brought back?⁹ — Scripture reads: The guiltless¹⁰ slay thou not.¹¹ And whence [do we infer] that if he leaves the *Beth din* not guilty, and someone says: 'I have something to state against him, 'he may not be brought back? — From the verse, And the righteous,¹² slay thou not.¹³

R. Shimi b. Ashi said: It is the reverse in the case of a Mesith, for it is written: Neither shalt thou spare, neither shalt thou conceal him.¹⁴ R. Kahana derived it¹⁵ from the words: But thou shalt surely kill him.¹⁶

R. Zera asked of R. Shesheth: What of those condemned to exile?¹⁷ — Identical law is inferred from the use of rozeah in both cases.¹⁸ What of those liable to flagellation? Identical law is derived from the use of rasha' [guilty] in both cases,¹⁹ it has been taught likewise: Whence [do we infer the same procedure] for those liable to exile? — Identify of law is derived from the use of

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'murderer' in both places. And in the case of those liable to flogging? — From the fact that 'guilty' is used in both places.²⁰

BUT NOT FOR CONDEMNATION. R. Hiyya b. Abba said in R. Johanan's name: Proving that he erred in a matter which the Sadducees²¹ do not admit.²² But if he erred in a matter which even they admit,²³ let him go back to school and learn it.²⁴

R. Hiyya b. Abba asked R. Johanan: What if he erred in a law regarding an adulterer or an adulteress?²⁵ — He answered: While thy fire is burning, go, cut thy pumpkin and roast it.²⁶ It has been stated likewise: R. Ammi said in R. Johanan's name: If he erred in the case of an adulterer, the decision must be reversed. Then in what cases are decisions not reversed?²⁷ — R. Abbahu said in R. Johanan's name: E.g., If he erred in respect to unnatural intercourse.²⁸

IN MONETARY CASES, ALL, etc. 'ALL' [implies] even the witnesses. Shall we say that our Mishnah represents the view of R. Jose son of R. Judah, and not that of our Rabbis? For it has been taught: 'But one witness shall not testify against any person²⁹ — both for acquittal and condemnation.³⁰ R. Jose son of R. Judah said: He may testify for acquittal, but not for condemnation'? — Said R. Papa: ['ALL'] refers to [even] a single one of the disciples, and thus it agrees with all.³¹

1. I.e., it does not cause damage to anyone else, e.g. in the case of the intentional desecration of the Sabbath, or of adultery.
2. V. Num. XXXV, 19. It is a duty of the avenger of blood, the victim's nearest relative, to call the murderer to account (v. Mak. 12a; *infra* 45b; Mains. Yad, Rozeah I, 2), therefore in case the verdict were reversed for acquittal he would lose the opportunity of avenging his relative's blood.
3. Surely it will not be argued that in order to soothe the kinsman's wrath we are to abide by the decision to execute the accused, even where there are reasons for reversing it.
4. In the words of the Mishnah; **BOTH FOR CONDEMNATION AND FOR ACQUITTAL**; this proves that two statements are made, not one.

5. R. Hisda's statement above, that where he found the guilty innocent, the decision cannot be reversed for condemnation, for that would mean actually a taking from the one and giving to the other.
6. And had given it to the defendant on finding him not liable.
7. In a case where there was a doubt as to the cleanness of a certain object, and the judge established his decision by actually making it unclean.
8. As a demonstration of its cleanness. These are illustrations of the possibility of the judge himself causing loss through his verdict.
9. For re-trial.
10. [H], not guilty of the crime so long as there are still arguments in his favor unheard.
11. Ex. XXIII, 7.
12. [H], found righteous in court, though not necessarily innocent, seeing that there is still evidence against him to be heard.
13. Ex. XXIII, 7.
14. Deut. XIII, 9.
15. I.e., that it is the reserve in the case of a Mesith.
16. *Ibid.* 10.
17. For unintentional homicide. Cf. Num XXXV, 11ff. Is his trial similar in procedure to trials in capital, or monetary cases?
18. [H]; 'murderer', as used in connection with murder (Num. XXXV, 16), where he is punished by death, and as used in connection with unintentional homicide (*ibid.* 11) which shows that the procedure with regard to reversing decisions is the same in both cases.
19. [H]. Flagellation: If the guilty is worthy to be beaten, Deut. XXV, 2; capital punishment: Who is guilty of death. Num. XXXV, 31.
20. Tosef. Sanh. VII.
21. [H]. A party holding views directly opposite to those of the Pharisees. They regarded only those observances obligatory which are contained in the written Word, and did not recognize those derived from Rabbinical interpretations; but v. p. 239, n. 9.
22. E.g., the prohibition in marriage of a father-in-law's mother (Cf. *infra* 75a) which is transmitted by oral law.
23. Such as a law found in the Biblical text.
24. I.e., Since he erred in a Biblical law, his decision must be reversed.
25. Whereas other criminal cases lend themselves to mistakes in judgment, owing to the investigation of the manifold details accompanying the act, in cases of illicit intercourse, once the act is done, there is no room for error (Rashi). According to R. Hananel, the question is, what if the judge erred by deciding that liability falls only on

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the male transgressor against whom alone Scripture provides, (cf. Lev. XVIII, 20), and not on the woman?

26. I.e., when engaged in your lesson pursue it further, it will save you from asking questions, for the law provides against an adulteress in Lev. XX, 10.
27. Cf. Mishnah. Decisions in capital cases (including adultery) may not be reversed for condemnation.
28. Which is derived from an interpretation of Lev. XVIII, 22, which the Sadducees do not agree. V. *infra* 54a.
29. Num. XXXV, 30.
30. I.e., A witness who has testified in a case may not come again to bear other testimony in favor of, or against the accused, in the same case.
31. I.e., with the Rabbis too.

Sanhedrin 34a

What is R. Jose b. R. Judah's reason?¹ — Scripture says: But one witness shall not testify against any person [that he die];² hence, only 'so that he die' may he not testify, but he may testify for acquittal. And the Rabbis?³ — Resh Lakish answered: Their reason is that the witness seems personally concerned in his testimony.⁴ But how do our Rabbis interpret, so that he die?⁵ — They apply it to one of the disciples,⁶ as it has been taught: Whence do we learn that if one of the witnesses says, I have a statement to make in his favor, that he is not listened to? — From the verse, But one witness shall not testify.⁷ And whence do we know that if one of the disciples says, I can argue a point to his disadvantage, that he is not listened to? From the verse, One⁸ shall not testify against any person that he die.⁹

IN CAPITAL CHARGES, ONE WHO ARGUED, etc. Rab said: They taught this only of the period of the deliberations,¹⁰ but at the time of pronouncement of the verdict,¹¹ one who has argued for acquittal may turn and argue for condemnation. An objection is raised:¹² On the following day, they rise early and assemble. He who was for acquittal declares, I was in favor of acquittal and I stand by my opinion. He who was for condemnation says, I was in favor of

condemnation and I stand by my opinion. He who was in favor of condemnation may argue in favor of acquittal. But he who was in favor of acquittal may not retract and argue in favor of conviction. Now surely, on the 'the following day' the decision is to be promulgated!¹³ — But on thy view, are there no deliberations on the 'the following day'? Therefore the reference of the Mishnah is merely to the period of the deliberations.

Come and hear! They debate the case amongst themselves, until one of those who are for conviction agrees with those who are for acquittal.¹⁴ Now if that is so,¹⁵ then he [the Tanna] should have taught the reverse too! — But the Tanna fosters the possibilities of acquittal, not those of condemnation.¹⁶

Come and hear! R. Jose b. Hanina said: If one of the disciples pronounced for acquittal and then died, he is regarded [when the vote is taken] as if he were alive and [standing] in his place.¹⁷ But why not assume, had he been alive, he might have retracted?¹⁸ — Because in fact he did not retract! But did they not send [a message] from 'there' [Palestine], that the words of R. Jose b. Hanina preclude the words of our Master?¹⁹ The true version was, 'Do not preclude [the words of our Master]'.

Come and hear! Two judges' clerks stand before them [the judges], one on the right and one on the left, and indite the arguments of those who would acquit, and those who would convict.²⁰ Now, as for the arguments for conviction. It is well [that they be recorded], for on the following day another argument²¹ may be discovered, which necessitates postponement of judgment over night.²² But why [record] the grounds of the defenders; surely so that should they discover different arguments for conviction, they may not be heeded?²³ — No, it is lest two judges draw a single argument from two Scriptural verses, as R. Assi asked R. Johanan: What if two [judges] derive the same argument from two verses? — He answered: They are only counted as one.²⁴

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Whence do we know this? — Abaye answered: For Scripture saith, God hath spoken once, twice have I heard this, that strength belongeth unto God.²⁵ One Biblical verse may convey several teachings, but a single teaching cannot be deduced from different Scriptural verses. In R. Ishmael's School it was taught: And like in hammer that breaketh the rock in pieces:²⁶ i.e., just as [the rock] is split into many splinters,²⁷ so also may one Biblical verse convey many teachings.

What is an example of: 'One argument drawn from two Biblical verses'? — R. Zebid answered: As we learnt: The Altar sanctifies²⁸ all that is 'fit' for it.²⁹ R. Joshua said: [That means,] Anything 'fit' for the fire of the Altar',³⁰ once it ascended [thereon], may not descend,³¹ for it is written: The burnt offering, it is that which goeth up upon its fire-wood, upon the altar:³² Just as the burnt offering which is 'fit' for the altar-fire, once it ascended, may not descend,³³ so everything which is 'fit' for the altar-fire, once it ascends, may not descend. R. Gamaliel said: Anything 'fit' for the altar,³⁴ once it has ascended, may not descend, for it is written: The burnt offering, it is that which goeth up upon its fire-wood upon the altar: Just as the burnt offering which is 'fit' for the altar, once it has ascended, may not descend, so everything else which is 'fit' for the altar, once it has ascended, may not descend. What do both include?³⁵ — Invalidated objects.³⁶ One Master [sc. R. Joshua] deduces the law from the word 'fire-wood', and the other from 'altar'.³⁷ But there, they do actually differ! For the second clause [of that Mishnah] states: R. Gamaliel and R. Joshua differ only with reference to the Sacrificial blood and libations: according to R. Gamaliel. these may not descend; whereas in R. Joshua's view, they do descend.³⁸ But, said R. Papa, it [the required example] is illustrated in the following Baraita: R. Jose the Galilean said: From the verse,

1. For the view that the witnesses may change their evidence only in favor of the accused.

2. Num. XXXV, 30.
3. Why do they forbid a change of his evidence in favor of the accused?
4. Since he might have been induced to change his evidence in favor of the accused, lest he be proved a *Zomem* and so become subject to punishment by the law of retaliation.
5. Which seem to indicate that the testimony may not be changed only when it leads to death.
6. That he may not put forward arguments in favor of condemnation.
7. Num. XXXV, 30. I.e., change his testimony even in his favor.
8. Who is not a witness, but a disciple.
9. Ibid. But he may do so for acquittal.
10. When all endeavors must be used to strengthen the case for acquittal.
11. When all arguments in favor of acquittal have been exhausted.
12. Cf. *infra* 40a.
13. Then why not retract in favor of conviction.
14. *Infra* 40a.
15. Viz., that when the decision is about to be pronounced, an opinion can be reversed even for condemnation.
16. Theoretically, however, the trend of the debate might be in the reverse direction.
17. *Infra* 43a.
18. In favor of conviction, when judgment is pronounced.
19. Sc. Rab. Therefore his ruling not to consider an eventual change of opinion is due to the fact that he holds that at the promulgation of the decision one cannot retract.
20. *Infra* 36b.
21. For condemnation.
22. Cf. *supra* 17a; i.e., so as to give the judges a chance to alter their opinion. Hence the necessity of recording their statements in order to show that they have changed their grounds for conviction, so necessitating a further postponement.
23. Unless they erred in a law accepted even by the Sadducees. Hence the necessity of recording their grounds for acquittal in order to be able to discover the nature of the error. This proves that an opinion for conviction may not be reversed even at the time of the promulgation of the decision.
24. Since no two verses are intended to teach one and the same thing, one of the judges must have erred.
25. Ps. LXII, 12.
26. Jer. XXIII, 29.
27. The text contains a grammatical difficulty. Literally translated, it is, Just as the hammer is split, etc.; whereas for the present translation, the text must read [H] instead of

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[H], and some commentators emend the text accordingly. R. Tam, however, on the basis of Ekah R. IV, 7, retains the present text and its literal translation, as above, and explains, Just as the hammer, when it smites an extraordinary hard object, may itself be split, — so may the Biblical verse, when subjected to the scrutiny of a very keen intellect, split up into different meanings.

28. I.e., that nothing that was laid upon it may be taken back.
29. I.e., anything which has come into contact or relationship with the altar, after having been appointed for it. Even if it became subsequently invalid for its original purpose, for any reason, e.g., in the case of a sacrifice, if the officiating priest slaughtered it with a forbidden intention, it nevertheless retained its sanctity. Now, this statement lays down the general principle with which all are in agreement, the further definition and application of which form the subject of dispute amongst various teachers whose views the Mishnah proceeds to state.
30. I.e., only that which could have served that purpose. e.g., the flesh of a burnt offering. If, however, the blood of a sacrifice became invalid, since that is not intended to feed the fires of the altar, it does not retain its sanctity.
31. I.e., may not be taken back, for the altar has given it a sacred character.
32. Lev. VI, 2.
33. Derived from ... upon the altar all night unto the morning. (ibid).
34. I.e., not only fit for the fires of the altar, but used in any service of the altar. Hence, in his opinion, the law applied to blood and libations too, since these were respectively sprinkled and poured upon the altar.
35. Among the things which may not be taken back when once laid upon the altar.
36. As explained in note 2.
37. Now, at this stage it is assumed that since both deduce the same general principle from two different verses, there is no real disagreement between them. Thus this affords an illustration of 'one law drawn from two different verses.
38. I.e., they lose their sanctity. For the explanation of this, v. p. 215. n. 3. Hence, this is not a true example of one law devised from two texts. (Note: A single word is also referred to as a 'verse' or 'text'.)

Sanhedrin 34b

Whatsoever toucheth the altar shall be holy,¹
I might infer [that this holds good] whether it

be fit for the altar or not.² Scripture therefore says,³ [Now this is that which thou shalt offer upon the altar; two lambs; ... just as lambs are fit [for the altar], so are all things that are fit [included in the previous statement].⁴ R. Akiba said: [Scripture states,] burnt offering:⁵ Just as the burnt offering is fit [for the altar], so with all things that are so. And what do both exclude? Invalid objects.⁶ One Master deduces this from the word 'lambs'; the other, from 'burnt offering'.⁷ But did not R. Adda b. Ahabah say: They differed with respect to a fowl burnt offering which had been disqualified: he who deduced it [the scope of the law] from 'lambs', holds that only lambs are included,⁸ but not the burnt offering of a fowl; whereas he who deduced it from 'burnt offering' includes even a burnt offering of a fowl? — But, said R. Ashi, it is illustrated by the following Baraita:⁹ Blood shall be imputed unto that man, he hath shed blood;¹⁰ this¹¹ is to include [him] who sprinkles:¹² that is R. Ishmael's view. R. Akiba said: [Scripture adds] Or a sacrifice:¹³ this is to include him who sprinkles. Thus, What do both include? — Sprinkling; one Master deducing it from the words: Blood shall be imputed, the other from the words: Or a sacrifice.¹⁴ But did not R. Abbahu say: They differ where a man both slaughtered and sprinkled [the blood of a sacrifice]:¹⁵ for according to R. Ishmael,¹⁶ he is liable only to one [sin offering]; whereas on R. Akiba's view,¹⁷ he is liable to two? — But surely it was stated regarding this: Abaye said: Even according to R. Akiba he is liable only to one [sin offering], for Scripture writes, There thou shalt offer thy burnt offerings and there thou shalt do [all that I commanded thee]:¹⁸ the Divine Law thus grouped all acts [of sacrifice in the same category]!¹⁹

CIVIL SUITS ARE TRIED BY DAY, etc.

(Mnemonic: *J*udgment, *A*nswering, *I*nclining.)

Whence is this derived? — R. Hiyya b. Papa said: From the verse, And let them judge the

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people at all times.²⁰ If so, even the beginning of the trial may [take place at night]! — It is as Raba explained. For Raba opposed [two verses]: It is written, And let them judge the people at all times;²¹ but elsewhere it is said, And in the day that he causeth his sons to inherit.²² How [can these be reconciled]? — The day is for the beginning of the trial, the night is for the conclusion of the trial.²³

Our Mishnah²⁴ does not agree with R. Meir. For it has been taught. R. Meir used to say: What is meant by the verse, According to their word shall every controversy and every leprosy be?²⁵ Now, what connection have controversies with leprosy? — But controversies are assimilated to leprosy: just as leprosy [must be examined] by day, since it is written, And in the day when [raw flesh] appeareth in him,²⁶ so controversies [must be tried] by day; and just as leprosy cannot [be examined] by the blind,²⁷ for it is written, Wherever the priest looketh,²⁸ so controversies too may not be tried by the blind.²⁹ And leprosy is further compared to controversies: Just as the latter may not be tried by relatives, so the former may not be examined by relatives. Now, if so,³⁰ [one might argue,] that just as controversies must be tried by three, so must leprosy too [be examined] by three; moreover, it follows a *minori*, [if questions affecting] one's wealth are [to be tried] by three, how much more so [when they concern] one's body! Therefore Scripture teaches, When he shall be brought unto Aaron the priest or unto one of his sons the priests,³¹ thus thou learnest that a single priest may examine leprosy.

A blind man in the neighborhood of R. Johanan used to try suits, and R. Johanan raised no objection. But how could he do so?³² Did not R. Johanan himself say, The *halachah* is as [every] anonymous Mishnah.³³ and we learnt: He who is qualified to judge is qualified to testify; some, however, are qualified to testify but not to judge. Whereon R. Johanan said: This is to admit [as witness] one who is blind of one eye?³⁴ — R. Johanan found another anonymous Mishnah,³⁵ viz.,

CIVIL SUITS ARE TRIED BY DAY AND CONCLUDED BY NIGHT.³⁶ But why is this anonymous Mishnah more authoritative³⁷ than the other? — Either because an anonymous Mishnah which expresses the opinion of the majority is preferable;³⁸ or alternatively, because this Mishnah is taught in the tractate relating to legal procedure.³⁹ But how does R. Meir⁴⁰ interpret the verse, And let them judge the people at all times? — Raba answered: As including even a cloudy day.⁴¹ For we learnt:⁴² Leprosy may not be examined in the morning, in twilight, in the house, or on a cloudy day, for [then] a dull [spot] might appear bright,⁴³ at mid-day,⁴⁴ for a bright [spot] might then appear dull.⁴⁵ Now [again], according to R. Meir, what is the purpose of, And in the day that he causeth his sons to inherit?⁴⁶ — He utilizes it, even as Rabbah b. Hanina recited before R. Nahman: And in the day he causeth his sons to inherit: only by day mayest thou assign estates, but not by night. Whereupon the other retorted:⁴⁷ If so, if one dies by day, his sons inherit, but should he die at night, they do not inherit! Perhaps you refer to the legal procedure in bequests.⁴⁸ For it has been taught: And it shall be unto the children of Israel a statue of judgment:⁴⁹ that invests the whole chapter with the force of judicial proceedings.⁵⁰ Thus [your dictum] will agree with that which Rab Judah said in Rab's name, viz.: If three [persons] come to visit a sick man,⁵¹ they may, according to their desire, either record [his bequest],⁵² or render a judicial ruling.⁵³ In case of two, however, they may write it down,⁵⁴ but not render a judicial ruling.⁵⁵ Whereon R. Hisda said: This⁵⁶ holds good by day; at night, however, they may indite the bequest, but not render a judicial ruling, since they are witnesses, and a witness cannot act as judge.⁵⁷ — He [Rabbah b. Hanina] answered: Yes, I meant it so.

BUT CAPITAL CHARGES MUST BE TRIED BY DAY [AND CONCLUDED BY DAY]. Whence is this deduced? — R. Shimi b. Hiyya said: Scripture states, And hang [we — hoka'] them up unto the Lord in face of

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the sun.⁵⁸ Whence do we know that hoka'ah means hanging? — From the verse, And we will hang them up [we — hoka'anum] into the Lord in Gibeah of Saul, the chosen of the Lord.⁵⁹

1. Ex. XXIX, 37. I.e., once it touches the altar, it retains its sanctity, as above.
2. E.g., leaven and honey, (cf. Lev. II, 11) which are never permissible for the altar, or unconsecrated animals (i.e., hullin), which are not yet fit for the altar. — Animals had to be formally consecrated before they might be sanctified upon the altar.
3. In the following verse. Ex. XXIX, 38.
4. Even if now disqualified. Yet they must be things that are essentially fit for the altar, as explained in p. 215. n. 7; otherwise, the law does not apply to them.
5. [H] Ibid. verse 42; This shall be a continued burnt offering (R. Hananel). According to Rashi, it occurs in the same verse 38 as above. Though the word does not appear in the Masoretic text, it occurs in the Samaritan Text. On such variants, v. Heller, Samaritan Pentateuch, an adaptation of the Masoretic Text.
6. I.e., things that were never permissible upon the altar, e.g., leaven and honey; v. Lev. II, 11.
7. Thus, this Baraitha illustrates one law drawn from two Biblical verses.'
8. Amongst the objects which, though disqualified, may not be taken back when once laid upon the altar.
9. Zeb. 107a.
10. Lev. XVII, 4.
11. Apparent redundancy of the expression.
12. The blood of a sacrifice outside the Temple courts, as being liable to excision (*kareth*).
13. Ibid. verse 8.
14. Thus it illustrates 'one law drawn derived from two Scriptural verses.'
15. Without the Temple precincts, i.e. Unwittingly, in a spell of forgetfulness, without being reminded between the two acts that they were of a forbidden character. Now, it is a principle that every forbidden act, which, if done wittingly, involves *kareth*, requires a sin offering if done wittingly. There is a further principle that all things whose forbidden nature is deduced from the same word, rank as a small transgression, and therefore involve only one sacrifice.
16. Who deduces the penalty of *kareth* for sprinkling outside the court from the same verse which prohibits slaughter.
17. That *kareth* for sprinkling without the Temple precincts is deduced from a different verse.
18. Deut. XII, 14.
19. Hence there is only this one verse which commands that all acts of sacrifice, which includes slaughtering and sprinkling, shall be done in the prescribed fashion. Therefore, transgression of both involves only one sacrifice
20. Ex. XVIII, 22; i.e., even at night.
21. Ibid.
22. Deut. XXI, 16. From the fact that day is stressed, the Talmud deduces that all matters in connection therewith, which principle includes disputes over the inheritance, are to be settled by day. But such disputes are part of civil suits in general, and thus this verse contradicts the preceding.
23. For, 'and they shall judge ... at all times' implies the giving of the verdict, which is the essence of judgment.
24. Which rules that the decision may be issued at night.
25. Deut. XXI, 5.
26. Lev. XIII, 14.
27. [Even of one eye only. v. Neg. II, 3.]
28. Ibid. verse 12.
29. [Even by one who is blind of one eye only, since it is deduced from 'leprosy', Yad Ramah.]
30. If they are similar in so many respects.
31. Ibid. verse 2.
32. I.e., permit him to judge.
33. A Mishnah that is taught without mention of its author, or of any conflict of opinions that exists regarding it.
34. But not as judge, so coinciding with R. Meir's opinion stated above, (v. p. 218 nn. 5 and 7).
35. Which implied that a blind man is permitted to judge.
36. For there are many whose eye-sight is as dim by night as that of a blind man by day.
37. Lit., 'stronger'.
38. The Mishnah which, according to R. Johanan, treats of a blind man, expresses the view of R. Meir as expressed in the preceding Baraitha, but our Mishnah, that of the majority.
39. Whereas the other anonymous Mishnah is cited only incidentally in a tractate relating to a different subject entirely, and it stands to reason that greater care would be taken in the former to teach what is actually the *halachah*.
40. Who holds that disputes may only be tried by day.
41. On which, unlike the cases of leprosy, civil suits may be tried.
42. Neg. II, 2.
43. So that it might wrongfully be declared unclean. Cf. Lev. XIII, 2ff.
44. When the sun is brightest.

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45. So that it might wrongfully be declared clean, Neg. II, 2.
46. Since R. Meir deduces the law that civil suits must be tried by day from the case of the examination of leprosy, the reference to 'day' here appears superfluous.
47. In B.B. 113b, this question is attributed to Abaye.
48. If made by day, a bequest has judicial authority, and does not need court authentication; by night, those who witnessed it are required to legalize it before court. (Rashi.) The Rashbam in B.B. 113b translates: 'Perhaps you refer to lawsuits concerning legacies,' i.e., that these, like any other civil suits, must take place by day.
49. Num. XXVII, 11, at the conclusion of the section dealing with laws of inheritance.
50. I.e., when a bequest is made, those who are present become ipso facto a *Beth din*, even against the wish of the testator's natural heirs. This is the explanation given by Tosaf. in B.B. 113b, which adds that the reference is not particularly to a bequest made on one's deathbed, but even to one made in full health, save that it must be accompanied by a formal *kinyan* (q.v.). Rashi's interpretation here is on the same lines, but he appears to refer it to a sickbed bequest.
51. And hear him assign his estate to his heirs.
52. Merely as witnesses. That document is afterwards produced by the heirs in court and there given its necessary authority.
53. Since they are three they can constitute themselves into a court and have legal authority to execute the Will.
54. In the form of a witnessed document.
55. Since two do not make a properly constituted Court.
56. Ruling with reference to three.
57. I.e., when they hear a bequest at night, they can obviously do so only as witnesses, since a court cannot function at night, consequently, they cannot subsequently constitute themselves a court, for they already have the status of witnesses.
58. [H], Num. XXV, 4; i.e., in the day time.
59. [H] II Sam. XXI, 6.

Sanhedrin 35a

And it is written, And Rizpah the daughter of Aiah took sack-cloth, and spread it for her upon the rock, from the beginning of harvest.¹

It is written, And the Lord said unto Moses, Take all the chiefs of the people.² If the

people had sinned, wherein had the chiefs sinned?³ — Rab Judah said in Rab's name: The Holy One, blessed be He, said unto Moses: Divide them into [many] courts.⁴ Why? Shall we say, because two [men] may not be tried [and sentenced] on the same day?⁵ But R. Hisda said: This was taught only with reference to [charges involving] two different modes of execution;⁶ whereas [cases that involve only] one mode of execution⁷ may be tried? — But it was so, that the fierce anger of the Lord may turn away from Israel.⁸

CIVIL SUITS MAY BE CONCLUDED ON THE SAME DAY, etc. ... Whence is this derived? — R. Hanina said: Scripture saith, She that was full of justice, righteousness lodged [yalin] in her,⁹ but now, murderers.¹⁰ Raba derived it from the following: Ashsheru hamoz¹¹ — i.e., bless¹² the judge who reserves¹³ his verdict. And the other?¹⁴ — [He interprets it thus:] Relieve the oppressed,¹⁵ not the oppressor.¹⁶ And the latter [Raba]: how does he utilize the verse: And she that was full of justice? — Even as R. Eleazar said in the name of R. Isaac. Viz.: If on a fast day, the distribution of alms¹⁷ is postponed overnight, it is just as though blood were shed,¹⁸ as it is written, She that was full of justice, charity¹⁹, etc. This, however, applies only to bread and dates;²⁰ but in the case of money, wheat or barley, [postponement] does not matter.

THEREFORE TRIALS ARE NOT HELD [ON THE EVE OF A SABBATH OR FESTIVAL], etc. Why so? — Because it is impossible, for how could it be done? Should they try him [the accused] on the eve of the Sabbath and pronounce judgment on the same day; perhaps they may find cause for condemnation, and judgment will then have to be postponed overnight.²¹ Or again, if they try him on the eve of the Sabbath, and pronounce judgment on the Sabbath, and execute him on that day,²² but execution cannot supersede the Sabbath.²³ Again, should he be executed in the evening; execution must be carried out 'in the face of

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the sun.²⁴ One the other hand, if judgment is pronounced on the Sabbath whist he is executed on the first day of the week [Sunday], they might delay the course of justice.²⁵ If he be tried on the eve of the Sabbath, and the matter concluded on the first day of the week, they might have forgotten their reasons by then, for although two judges' clerks stand before them and write down the arguments of those who would acquit and those who would convict,²⁶ they can but record according to the mouth,²⁷ yet once the heart forgets, it remains forgotten.²⁸ Hence this is impossible.

Resh Rakish said to R. Johanan: Why should not the burial of a Meth-Mizwah²⁹ supersede [the laws of] the Sabbath, reasoning a minori: if the Temple service, which sets aside the Sabbath,³⁰ is itself suspended for the burial of a Meth-Mizwah (as is deduced from, And to his sister, even as it has been taught: To his father and to his mother and to his brother and to his sister:³¹ What does this teach us?³² [Even] if he [the *Nazir*] were on his way to sacrifice the Paschal lamb or to circumcise his son,³³

1. Ibid. verse 10, as a protection from the birds of prey. They must have been hanged on trees.
2. Num. XXV, 4.
3. Only the people are mentioned as sinning (vv. 2, 3), but not particularly the chiefs.
4. To try the sinners. The verse is accordingly translated: Take the chiefs of the people (and appoint them as judges,) and hang up them (whom they shall condemn), etc.
5. By one court; therefore many courts had to be set up, since the culprits were many'.
6. Since the members of the court would find it difficult to find a plea in favor of the accused in each case.
7. When the crime committed is the same, as in this case.
8. When it was seen that all the chiefs were concerned in punishing the sinners.
9. Isa. I, 21. I.e., judgment was held over lest points for acquittal might be found. *ihkh* means, 'to stay overnight'.
10. I.e., but now they do not postpone the verdict until the next day, and thus are (judicial) murderers.
11. Ibid, 17. [H] (E.V. 'relieve the oppressed').

12. [H] is rendered, 'declare happy'.
13. Lit., 'makes sour,' (H) from [H], 'sour') in the sense of preserving (e.g., pickle vegetables), and hence metaphorically 'to postpone', 'to keep in reserve.'
14. R. Hanina, who derives it from the other verse. How does he interpret the verse?
15. I.e., attend to the plaintiff.
16. The defendant. He is hinting at the general rule in legal procedure that the plaintiff must be heard first. Cf. B K. 46b. The application of this law is particularly noticeable in the case of a counter claim, designed to nullify the original, when priority must be given to the first claim.
17. It was customary to distribute the value of the food saved during the fast to the poor. Cf. Ber. 6b the merit of a fast consists in dispensing charity.
18. For the needy who relied on it might have died of starvation.
19. [H] means also 'charity', as in fact, in Hebrew there is only one word for 'righteousness' and 'charity': charity is righteousness. The verse is accordingly translated: She was full of justice; but now that charity is made to lodge therein, i.e., postponed overnight, they ate as murderers.
20. I.e., only when these articles of food were distributed, on which the poor depend for breaking their fast.
21. And pronounced on the Sabbath, which is not permissible, v. nn 6 and 7.
22. Execution must be carried out on the same day as the pronouncement of the verdict.
23. Killing is one of the labors forbidden on the Sabbath, even when it takes the form of judicial execution.
24. I.e., in the day time. Num XXV, 4.
25. Since execution must be carried out on the same day as the verdict. [H] 'to afflict', when used in connection with a court verdict, means to afflict the condemned man by postponing his execution, the wait being an additional mental torment.
26. *Supra* 34a.
27. I.e., the actual words.
28. I.e., the spirit of the argument may not be recalled through the written word.
29. [H] Lit., 'A corpse which it is a religious obligation (to bury). 'The burial of a dead person has no relatives to attend to him devolves upon anyone, even a High Priest. This query is raised here only because of a subsequent question whether execution on a Sabbath day is permissible.
30. E.g., by the offering of the Tamid or daily burnt offering. Cf. Num. XXVIII, 2; Pes 77a.

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31. Num. VI, 7. For these the Nazirite may not render himself unclean. A similar restriction is imposed on the High Priest.
32. I.e., why is it necessary to detail all these relations, seeing that it has already been stated in the previous verse: He shall not come near to a dead body, which includes all relations? The Sifre on the verse comments on the reason for each: He may not defile himself for his father, but he must for a Meth-Mizwah; nor for his mother, but he must for a Meth-Mizwah, even if he be a priest as well as a Nazirite, nor for his brother, but he must for a Meth-Mizwah even if he be a High Priest as well as a Nazirite; nor for his sister, but he must defile himself for a Meth-Mizwah, even if he be a High Priest as well as a Nazirite and engaged in such duties as are stated in the Gemara.
33. Both of which acts must he performed at a prescribed time.

Sanhedrin 35b

and he heard that one of his relatives had died, it might be thought that he should defile himself, but in fact the law¹ provides that he should not. Now, it might be thought that just as he may not defile himself for his sister, so may he not defile himself for a Meth-Mizwah: therefore Scripture states, And to his sister, i.e., [only] for his sister may he not defile himself, but he must do so for a Meth-Mizwah). Then the Sabbath, which is abrogated in favor of the Temple service, should surely be set aside for the burial of a Meth-Mizwah! — He answered: Execution² can prove it [sc. the contrary]: it supersedes the Temple service,³ and yet does not set aside the Sabbath.⁴ But let execution itself supersede the Sabbath, arguing [likewise] a minori: If the Temple service, which supersedes the Sabbath, is itself set aside for execution, as it is written, Thou shalt take him⁵ from mine altar that he may die:⁶ then the Sabbath, which the Temple service sets aside, should surely be set aside by execution! — Said Raba: A Tanna of R. Ishmael's School has already decided this, for a Tanna of the school of R. Ishmael taught: Ye shall not kindle a fire:⁷ What does this teach?⁸ 'What does this teach?' [asket thou]! According to R. Jose, [it is particularized] in

order to constitute it merely a prohibitory command;² according to R. Nathan in order to teach separation,¹⁰ as has been taught: The [singling out of] kindling is to show that it is subject merely to a negative command: this is the view of R. Jose. R. Nathan said: It is to teach separation. But, said Raba, the Tanna's difficulty is [the word] 'habitations'.¹¹ Why is the word 'habitations'¹² stated? For consider: [the observance of the] Sabbath is a personal duty,¹³ and a personal duty is obligatory both within and without the Land [sc. Palestine]; what then is the purpose of 'habitations', which the Divine Law wrote? — A disciple said on R. Ishmael's authority: Since it is written, And if a man have committed a sin worthy of death and he be put to death,¹⁴ I [might] understand it to mean both on week-days and on the Sabbath.¹⁵ How then should I interpret, He that profaneth it shall surely be put to death?¹⁶ — As referring to other forms of work, but not judicial execution. Or perhaps that is not so, and it does indeed include execution by the *Beth din*; and how am I to interpret, And he be put to death? — as applying only to week-days, but not to the Sabbath!¹⁷ Or perhaps, on the contrary, even the Sabbath is meant?¹⁸ — Therefore¹⁹ Scripture states: Ye shall not kindle a fire throughout your habitations,²⁰ and elsewhere it says And these things shall be for a statute of judgment for you throughout your generations in all your habitations:²¹ Just as the word 'habitations' found there,²² refers to [matters concerning] a *Beth din*, so the word 'habitations' found here refers to [work entailed by a] *Beth din*.²³ And regarding it the Divine Law states: Ye shall not kindle a fire in all your habitations.²⁴

Abaye said: Now that you have concluded that execution does not supersede the Sabbath, it [necessarily] follows that execution does not suspend the Temple service, a minori: If the Sabbath, which is abrogated in favor of the Temple service, is not set aside for execution; then the Temple service, which supersedes the Sabbath, is surely not suspended by execution! And as to the Scriptural verse, Thou shalt take him

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from mine altar that he may die?²⁵ — this refers only to a private sacrifice,²⁶ which does not suspend the Sabbath.²⁷ Raba said:²⁸ But execution should not suspend [attendance even upon] a private sacrifice, a *minori*:

1. In the verse under discussion; v. n. 6.
2. Lit., 'Murder'.
3. If a priest is convicted of murder; he must be executed, even if he wishes to perform the Temple service.
4. As was stated above.
5. The murderer.
6. Ex. XXI, 14.
7. Ex. XXXV, 3.
8. I.e., why was the kindling of fire specially mentioned; surely it was already included in: Ye shall not do any work! (Ex. XX, 10.)
9. I.e., its infringement is punishable only by lashes and not by stoning, as is the performance of other work on the Sabbath.
10. I.e., to teach that each transgression of the Sabbath laws is to be atoned for separately. This interpretation is based on the eighth of the thirteen exegetical principles expounded by R. Ishmael, namely: If anything is included in a general proposition and is then made the subject of a special statement, that which is predicated of it is not to be understood as limited to itself alone, but applies to the whole of the general proposition.
11. Ex. XXXV, 3.
12. Which word, as a rule, indicates that the law is confined to Palestine alone.
13. As opposed to laws dependent on the soil, such as those of the Sabbatical year, or the fruits of the soil, such as tithes, etc.
14. Deut. XXI, 22.
15. Since, by reason of the a *minori* argument propounded above, execution might supersede the Sabbath.
16. Ex. XXXI, 14.
17. Since the argument a *minori* can be refuted by the fact that the burial of a Meth-Mizwah does not suspend the Sabbath laws even though it sets aside the Temple service.
18. I.e., execution might nevertheless supersede the Sabbath, a *minori*, as above. Nor is the refutation stated in the last note a valid one, since the same reasoning may be used to show that the burial of a Meth-Mizwah too should be permissible on the Sabbath.
19. I.e., in order to clarify the position.
20. Ex. XXXV, 3.
21. Num. XXXV, 29.
22. With reference to the manslayer and court executions.
23. I.e., execution.
24. Even such fire as is involved in execution by burning, ordered by a *Beth din*. This execution cannot suspend the Sabbath laws, in spite of the argument a *minori*. This fact too refutes the argument by which it was sought to prove that the burial of a Meth-Mizwah should abrogate the Sabbath.
25. Ex. XXI, 14, which conflicts with this conclusion.
26. I.e., when a priest accused of murder officiates at an offering brought by an individual.
27. Execution therefore supersedes it. But if he is engaged in offering a public sacrifice, execution may not set it aside, by the preceding argument.
28. Raba disagrees with Abaye, and proceeds to demonstrate the incorrectness of Abaye's view by an argument somewhat similar to a *reductio ad absurdum*.

Sanhedrin 36a

If a festival, which is superseded by a private offering,¹ is not abrogated for an execution;² then a private offering, which supersedes the festival, is surely not to be suspended by an execution? Now, on the view that vows and free-will offerings [i.e., private offerings] may not be sacrificed on festival days, it is correct;³ but on the view that vows and free will offerings may be sacrificed on Festivals, what can you say?⁴ Therefore Raba said: [Abaye's reasoning is unacceptable] not only on the view that vows and free-will offerings can be sacrificed on a festival, — since in that case, [the verse] From mine altar, etc. has no applicability at all,⁵ — but even if it be held that vows and free-will offerings cannot be sacrificed on festivals.⁶ For, is it not written: From mine altar, [implying,] my altar, viz., that which is peculiarly mine;⁷ and which altar is that? the *Tamid*.⁸ And thereon the Divine Law writes, Thou shalt take him from mine altar that he may die.⁹

IN CIVIL SUITS, AND IN CASES OF CLEANNESS AND UNCLEANNES, etc. Rab said: I was once one of the voters in the school of Rabbi, and it was with me that the voting began.¹⁰ But did we not learn, WE COMMENCE WITH THE ELDEST? — Rabbah the son of Raba — others state, R.

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Hillel the son of R. Wallas — said: The voting in the school of Rabbi was different [from the usual form], because in all their voting they began with the side [benches].¹¹

Rabbah the son of Raba — others state, R. Hillel the son of R. Wallas — also said: From Moses until Rabbi we do not find sacred learning and [secular] greatness combined in the one [person]. But do we not? Was it not so in the case of Joshua? — [No, for] there was Eleazar.¹² But what of Phinehas? — There were the Elders.¹³ But was not Saul such? — No, [with him] was Samuel. But did not Samuel die [before him]? — We are referring to his whole life-time. But did not David [combine these possessions]? — There was Ira the Jairite.¹⁴ But he died [before David]! — We are referring to his whole life-time. Was not Solomon [such a man]? — [No, for] there was Shimei son of Gera.¹⁵ But he [Solomon] slew him! — We are referring to his whole life-time. Was there not Hezekiah? — [with him] was Shebnah.¹⁶ But he was slain [during Hezekiah's life-time]! — We are referring to his entire life-time. But was this not true of Ezra? — No, for [with him] was Nehemia the son of Hachalia.

R. Adda b. Ahabah said: I similarly affirm that since the days of Rabbi until R. Ashi we do not find learning, and high office combined in the same person. But do we not: was there not Huna b. Nathan?¹⁷ — Huna b. Nathan was certainly subordinate to R. Ashi.¹⁸

WHEREAS IN CAPITAL CHARGES, WE COMMENCE WITH [THE OPINION OF] THOSE ON THE SIDE BENCHES. Whence is this derived? R. Aha b. Papa said: Scripture states, Thou shalt not speak¹⁹ 'al rib [in a case]²⁰ — [i.e.,] thou shalt not speak 'al rab, against the chief [of the judges]. Rabbah b. Bar Hana deduced it in R. Johanan's name from the following verse, And David said unto his men, gird ye on every man his sword; and they girded on every man his sword, and David also girded on his sword.²¹

Rab said: In capital charges one may instruct his disciple,²² and pronounce judgment with him.²³ An objection was raised: 'In cases of cleanness and uncleanness, a father and his son, or a master and his disciple count as two;²⁴ but in monetary cases, capital cases of flagellation, the sanctification of the month and the intercalation of the year, a father and his son, or a master and his disciple count only as one'?²⁵

1. I.e., a private offering may be brought on a Festival, though it entail labor unconnected with the preparation of food for human consumption, v. Ex. XII, 16.
2. Since in regard to work there is no difference between Sabbaths and Festivals save as regards the preparation of food.
3. Since the preceding argument is fallacious, being based on a false premise (v. Bezah, 19a). — This is still part of Raba's reasoning.
4. The premise being correct, the deduction is likewise correct, viz., that an execution cannot supersede a private offering. How then can the verse, Thou shalt take him from mine altar, be reconciled with this conclusion?
5. For, as shown above, if Abaye's reasoning be accepted, execution does not suspend even private offerings: to what then can from mine altar, etc.' refer?
6. According to which view the Scriptural verse might refer to private offerings; yet even so, Abaye's deduction is unacceptable.
7. I.e., public offerings in which the individual, as an individual, has no part.
8. I.e., the altar on which the daily offering was made.
9. Thus the Bible expressly negatives the deduction a minori proposed by Abaye.
10. In connection with the Sikarikon (robber) law, a title to a piece of property held by such for twelve months. Cf. Git. 59a.
11. Owing to Rabbi's humility.
12. His colleague, equal to him in wisdom.
13. Who shared his authority with him.
14. Chief Minister to David. II Sam. XX, 26. Cf. M.K. 16b which speaks of his great learning.
15. V. II Sam. XIX, 18, where his great influence is indicated.
16. Whose college was larger than Hezekiah's. V. *supra* 26a.
17. Cf. Zeb. 19a. which refers to his intimate friendship with the Persian King, Yezdegerd. [According to Sherira's Epistle, he was Exilarch in the time of R. Ashi.]
18. [He surrendered one by one his prerogatives to R. Ashi, v. Blank, REJ. XXX, 51.]

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19. Lit., 'Answer'.
20. Ex. XXIII, 2. V. p. 94. n. 2. He takes [H] in the sense of [H]. Therefore the opinion of the lessor judges is first ascertained.
21. I Sam. XXV, 13. I.e., the question whether Nabal the Carmelite's act was to be treated as rebelliousness against the king was here discussed and a vote taken in the form of girding on the sword. David was the last to express his opinion.
22. In the laws relating to such cases, and the pros and cons for conviction.
23. The master and the disciple have each a separate vote.
24. Since such cases could at the outset be decided by a single person, the need for voting arises only in the event of a controversy.
25. Since these cases require at the very outset a fixed number of judges. Tosef. Sanh. IV.

Sanhedrin 36b

— Rab referred to [disciples] such as R. Kahana and R. Assi who needed Rab's traditional teaching,¹ but not his reasoning.²

R. Abbahu said: In ten respects do civil suits differ from capital charges,³ and none of those is practiced in [the trial of] the ox that is stoned,⁴ save that twenty-three [judges are necessary] — Whence is this derived? — R. Aha b. Papa said: Scripture states, Thou shalt not wrest⁵ the judgment of thy poor in his cause;⁶ — the judgment of thy poor thou mayest not wrest,⁷ but thou mayest do so in the case of the ox that is stoned.⁸

Ten? But there are only nine! ([You say that there are only nine,] but indeed, ten are taught! — The laws that not all [persons] are eligible,⁹ and that twenty-three judges are necessary, are but one.)¹⁰ — There is yet another [difference]:¹¹ for it has been taught: 'We do not appoint as members of the Sanhedrin, an aged man, a eunuch or one who is childless.¹² R. Judah includes also a cruel man. It is the reverse in the case of a Mesith,' for the Divine Law states, Neither shalt thou spare, neither shalt thou conceal him.¹³

ALL ARE ELIGIBLE TO TRY CIVIL SUITS. What does 'ALL' include? — It

includes a bastard. But have we not already learnt this once, viz.: Whoever is competent to try capital charges is also competent to try civil suits. But some are competent to try civil suits, yet not capital charges.¹⁴ Now, when we discussed this question: What does that¹⁵ include? Did not Rab Judah answer, It includes a bastard? — One includes a proselyte, the other, a bastard. And both are necessary. For had the rule been given concerning a proselyte only, [one might have assumed that the reason is] because he is eligible to come into the Congregation;¹⁶ but a bastard,¹⁷ we would say, is not [competent]. Again, had this been stated of a bastard only, [we should think that the reason was that] he issues from a proper origin,¹⁸ but a proselyte, who does not issue from a proper origin, is not [competent]. Hence the statements are [both] necessary.

BUT NOT ALL ARE ELIGIBLE TO TRY CAPITAL CHARGES. Why?¹⁹ — As R. Joseph learned: Just as the *Beth din* must be pure in righteousness, so they must be free²⁰ from every blemish.²¹ Amemar said: What verse [proves this]? — Thou art all fair, my love, and there is no blemish in thee.²² But perhaps a literal defect [blemish] is meant?²³ — R. Aha b. Jacob answered: Scripture states, That they may stand there with thee:²⁴ 'with thee' implies, like to thee.²⁵ But perhaps it was so stated there on account of the *Shechinah*?²⁶ — But, said R. Nahman b. Jacob: Scripture states, And they shall bear with thee:²⁷ 'with thee' implies that they must be like to thee.

MISHNAH. THE SANHEDRIN SAT IN THE FORM OF A SEMICIRCULAR THRESHING FLOOR,²⁸ SO THAT THEY MIGHT SEE ONE ANOTHER, AND TWO JUDGES CLERKS STOOD BEFORE THEM, ONE TO THE RIGHT, THE OTHER TO THE LEFT, AND WROTE DOWN THE ARGUMENTS OF THOSE WHO WOULD ACQUIT AND THOSE WHO WOULD CONDEMN.²⁹ R. JUDAH SAID: [THERE WERE] THREE: ONE TO RECORD THE ARGUMENTS FOR ACQUITTAL, A SECOND, THOSE FOR CONVICTION, AND A

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THIRD, TO RECORD THE ARGUMENTS FOR ACQUITTAL AND CONVICTION.

1. I.e., laws transmitted down from Master to pupil.
2. In the application of these traditions. Therefore they rank as independent opinions, for with respect to the actual traditions, even the Masters had to receive them from their masters.
3. As detailed in the Mishnah.
4. Though its trial must be similar to that of its owner. Cf. *supra* 2a.
5. Lit., 'incline', or 'bend'.
6. Ex. XXIII, 6. This is interpreted, judgment must not be inclined in favor of conviction by a majority of only one.
7. By a majority of one, for condemnation.
8. From this it may be inferred that the procedure in the trial of an ox to be stoned is other than that of capital cases, except in the number of judges; and that difference is extended to all the other peculiarities of capital procedure, since the object of particularly applying that procedure in capital cases was to achieve the acquittal of the accused. Not so with an ox.
9. E.g., bastards may not try capital cases.
10. So making the total of nine given in the Mishnah. People of illegitimate birth are ineligible as judges in capital cases because a court of twenty-three holds the status of a minor Sanhedrin, with whom pure descent is essential; hence they are counted as one.
11. Which completes the number of ten.
12. Because such are more or less devoid of paternal tenderness Cf. Tosef Sanh. VII and X.
13. Deut. XIII, 9.
14. V. *supra* 27b.
15. The law that one may be competent to act as judge in one and not in another case.
16. I.e., to intermarry with Israelites.
17. Who may not come into the Assembly. Cf. Deut. XXIII, 3
18. I.e., is of pure Israelitish blood.
19. Since the Talmud does not ask, 'whence is this derived,' as before, but 'why', it may be assumed that this limitation is a Rabbinical one, and therefore the Talmud asks why it was imposed.
20. Lit., 'pure'.
21. Of family descent.
22. Cant. IV, 7. [This verse must refer to the Sanhedrin, as such a praise can hardly be sung of the whole people (Yad Ramah).]
23. I.e., a bodily defect.
24. Num. IV, 16.
25. The Elders were required to be like Moses with regard to family descent.
26. That passage explicitly states that the *Shechinah* was to rest upon them. Cf. Num. XI, 17. And I will take of the spirit which is upon thee and put it upon them; therefore, purity of descent was indispensable, but elsewhere, this may be unnecessary.
27. Ex. XVIII, 22, with reference to the judges set up on the advice of Jethro, to bear with Moses the burden of the people. In that passage there is no indication of the bestowal of the divine spirit upon them.
28. In Krauss, Sanhedrin-Makkot [1933] a.l. this is discussed at great length. In fact, most threshing floors were round, but their essential feature was that they were shaped like a trough. i.e., forming a depression in the soil. It is to this aspect of the threshing floor that they are compared. Hence the meaning of the passage is: They sat in semi-circular rising tiers, as in an amphitheatre.
29. They were two, as a precautionary measure against error. Cf. *supra* 34a.

Sanhedrin 37a

AND THREE ROWS OF SCHOLARS SAT¹ IN FRONT OF THEM; EACH KNOWING HIS OWN PLACE.² IN CASE IT WAS NECESSARY TO ORDAIN [ANOTHER JUDGE],³ HE WAS APPOINTED FROM THE FIRST [ROW] IN WHICH CASE ONE OF THE SECOND [ROW] MOVED UP TO THE FIRST, ONE OF THE THIRD TO THE SECOND, AND A MEMBER OF THE ASSEMBLED [AUDIENCE]⁴ WAS SELECTED AND SEATED IN THE THIRD [ROW]. HE⁵ DID NOT SIT IN THE PLACE VACATED BY THE FIRST⁶ BUT IN THE PLACE SUITABLE FOR HIM.⁷

GEMARA. Whence is this derived? — R. Aha Haninah said: Scripture states, Thy navel is like a round goblet ['aggan ha-Sahar] wherein no mingled wine is wanting.⁸ 'Thy navel' — that is the Sanhedrin. Why was it called 'navel'? — Because it sat at the navel-point⁹ of the world. [Why] 'aggan?¹⁰ — Because it protects [meggin] the whole world. [Why] ha-Sahar? — Because it was moon-shaped.¹¹ [Why] in which no mingled wine is wanting? — I.e., if one of them had to leave, it had to be ascertained if twenty-three, corresponding to the number of the minor

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Sanhedrin, were left,¹² in which case he might go out; if not, he might not depart.

Thy belly is like a heap of wheat:¹³ Just as all benefit from a heap of wheat, so do all benefit from the deliberations of the Sanhedrin.

Set about with lilies:¹⁴ Even through a hedge of lilies they would make no breach.¹⁵ In this connection there is the story of a Min¹⁶ who said to R. Kahana: Ye maintain that a menstruant woman is permitted yihud [privacy] with her husband: can fire be near tow without singeing it? He retorted: The Torah testifies this of us: Set about with lilies — even through a hedge of lilies they make no breach. Resh Lakish deduced [the same answer] from the following verse, Thy temples [rakkathek] are like a pomegranate split open!¹⁷ Even the emptiest [rekanin]¹⁸ among you are as full of meritorious deeds as a pomegranate [of seeds].¹⁹ R. Zera deduced it from the following verse, And he smelt the smell of his raiment;²⁰ read not begadaw [his raiment] but bogedaw [his traitors].²¹

In the neighborhood of R. Zera there lived some lawless men. He nevertheless showed them friendship in order to lead them to repent; but the Rabbis were annoyed [at his action]. When R. Zera's soul went to rest,²² they said: Until now we had the burnt man with the dwarfed legs²³ to implore Divine mercy for us; who will do so now? Thereupon they felt remorse in their hearts and repented.

THREE ROWS Abaye said: We may infer from this²⁴ that when one moves they all move.²⁵ But can he²⁶ not object to them: Until now I used to sit at the head,²⁷ whilst now ye place me at the tail!²⁸ Said Abaye: They can answer him thus: Better a tail to lions than a head to foxes.²⁹

MISHNAH. HOW WERE THE WITNESSES INSPIRED WITH AWE? WITNESSES IN CAPITAL CHARGES³⁰ WERE BROUGHT IN AND INTIMIDATED [THUS]: PERHAPS WHAT YE SAY IS BASED ONLY ON

CONJECTURE,³¹ OR HEARSAY,³² OR IS EVIDENCE FROM THE MOUTH OF ANOTHER WITNESS,³³ OR EVEN FROM THE MOUTH OF A TRUSTWORTHY PERSON:³⁴

PERHAPS YE ARE UNAWARE THAT ULTIMATELY WE SHALL SCRUTINIZE YOUR EVIDENCE BY CROSS EXAMINATION AND INQUIRY? KNOW THEN THAT CAPITAL CASES ARE NOT LIKE MONETARY CASES. IN CIVIL SUITS, ONE CAN MAKE MONETARY RESTITUTION³⁵ AND THEREBY EFFECT HIS ATONEMENT; BUT IN CAPITAL CASES HE IS HELD RESPONSIBLE FOR HIS BLOOD [sc. THE ACCUSED'S] AND THE BLOOD OF HIS [POTENTIAL] DESCENDANTS UNTIL THE END OF TIME,³⁶ FOR THUS WE FIND IN THE CASE OF CAIN, WHO KILLED HIS BROTHER, THAT IT IS WRITTEN: THE BLOODS OF THY BROTHER CRY UNTO ME:³⁷ NOT THE BLOOD OF THY BROTHER, BUT THE BLOODS OF THY BROTHER, IS SAID — i.e., HIS BLOOD AND THE BLOOD OF HIS [POTENTIAL] DESCENDANTS. (ALTERNATIVELY, THE BLOODS OF THY BROTHER, TEACHES THAT HIS BLOOD WAS SPLASHED OVER TREES AND STONES.)³⁸

FOR THIS REASON WAS MAN CREATED ALONE, TO TEACH THEE THAT WHOSOEVER DESTROYS A SINGLE SOUL OF ISRAEL,³⁹ SCRIPTURE IMPUTES [GUILT] TO HIM AS THOUGH HE HAD DESTROYED A COMPLETE WORLD; AND WHOSOEVER PRESERVES A SINGLE SOUL OF ISRAEL, SCRIPTURE ASCRIBES [MERIT] TO HIM AS THOUGH HE HAD PRESERVED A COMPLETE WORLD.⁴⁰

FURTHERMORE, [HE WAS CREATED ALONE] FOR THE SAKE OF PEACE AMONG MEN, THAT ONE MIGHT NOT SAY TO HIS FELLOW, 'MY FATHER WAS GREATER THAN THINE, AND THAT THE MINIM⁴¹ MIGHT NOT SAY, THERE ARE MANY RULING POWERS IN HEAVEN; AGAIN, TO PROCLAIM THE GREATNESS OF THE HOLY ONE, BLESSED BE HE: FOR IF A MAN

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STRIKES MANY COINS FROM ONE MOULD, THEY ALL RESEMBLE ONE ANOTHER, BUT THE SUPREME KING OF KINGS,⁴² THE HOLY ONE, BLESSED BE HE, FASHIONED EVERY MAN IN THE STAMP OF THE FIRST MAN, AND YET NOT ONE OF THEM RESEMBLES HIS FELLOW. THEREFORE EVERY SINGLE PERSON IS OBLIGED TO SAY: THE WORLD WAS CREATED FOR MY SAKE.⁴³

PERHAPS YE WILL SAY:

1. Also in semi-circular form, but on the floor. Each row numbered twenty-three, making a total of sixty-nine. They were there for completion purposes in case there might be a majority of only one for condemnation. Although forty-eight would have sufficed for that purpose, since the completion goes on till the number of seventy-one is reached, some difficulty would have been experienced in arranging that number into rows. It would not have been proper to make two rows of twenty-four, since these would have been larger than that of the Sanhedrin, nor three rows of sixteen, which would have seemed too small, nor two rows of twenty-three and a third one only of two. Hence the sixty-nine (Rashi).
2. The disciples were seated according to rank.
3. If a member died, or for completion purposes.
4. [Behind the rows of the members of the Courts there stood a large audience of scholars, v. Krauss *op. cit.*]
5. Who was chosen from the assembly.
6. Of the row.
7. When the one at the head of the row was promoted, all moved one place up, leaving the last seat for the new member.
8. Cant. VII, 3.
9. I.e., the centre. According to Midrashic legend the Temple was situated in the centre of the world. Cf. Tanhuma, Wayikra. XVIII, 23.
10. [H] akin to [H] — 'to enclose'. Hence, shield, protect.
11. [H]=moon. I.e., they were seated in circular form like a moon.
12. The actual number required for capital cases is twenty-three, roughly a third of seventy-one, the remaining two-thirds being for completion purposes. The Aggadists therefore compare the court to mingled wine, a mixture of one-third of wine and two-thirds of water. Cf. B M. 60a; Tanhuma. Bamidbar IV.
13. Cant. VII, 3.
14. Ibid.
15. Metaphorically: the lightest barrier sufficed to keep them from sin.
16. [H], a sectarian. v. [Glos.](#)
17. Cant. VI, 7.
18. [H] from [H] (empty, void: a play on [H]). Even those who by comparison are emptiest of good deeds.
19. So there is no fear of their infringing the prohibition.
20. Gen. XXVII, 27.
21. The consonants of both words are the same — [H] I.e., even those who are traitors to the teachings of Judaism diffuse the fragrance of good deeds. Maharsha: Isaac was able to trace in Jacob his original character even though he appeared before him in disguise, so even in his apparently unworthy descendants their good qualities are discernible.
22. I.e., when he died.
23. V. B M. 85a for the reason for this nick-name.
24. The statement in the Mishnah that the member chosen from the assembled audience does not occupy the seat just vacated.
25. V. p. 231, n. 7.
26. The promoted member of the rows of scholars.
27. E.g., of the second row.
28. Of the first row.
29. Aboth IV, 15.
30. [Ms.M: How are witnesses in capital charges intimidated? They were brought in, etc.]
31. I.e., from circumstantial evidence.
32. [A general rumor (Yad Ramah).]
33. [Each one of you has heard it from a separate witness (Yad Ramah).]
34. [You both heard it from the same trustworthy person.]
35. If he causes financial loss through giving false testimony.
36. Lit., 'the world', i.e., not only for the death of the accused himself, but of his potential descendants for all time.
37. Gen. IV, 10; [H] is plural.
38. This is obviously not part of the caution, but interpolated. V. Krauss, Sanhedrin-Makkot a.l.
39. 'OF ISRAEL' is absent in some texts.
40. Since all mankind originated from one man.
41. V. p. 211, n. 8, and p. 239, n. 9; here, however, it is more probable that the allusion is to the Gnostics and their doctrine of the Demiurgus; v. Krauss, *op. cit.* a.l.
42. Lit., 'the King of the Kings of the Kings.'
43. How grave the responsibility therefore of corrupting myself by giving false evidence, and thus bringing the moral guilt of murder upon a whole world.

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Sanhedrin 37b

WHY SHOULD WE INCUR THIS ANXIETY?¹ [KNOW THEN:] IS IT NOT ALREADY WRITTEN, AND HE BEING A WITNESS, WHETHER HE HATH SEEN OR KNOWN, IF HE DO NOT UTTER IT?² AND SHOULD YE SAY: WHY SHOULD WE BEAR GUILT FOR THE BLOOD OF THIS [MAN]:³ — SURELY, HOWEVER, IT IS SAID, WHEN THE WICKED PERISH, THERE IS JOY!⁴

GEMARA. Our Rabbis taught: What is meant by BASED ON CONJECTURE? — He [the judge] says to them: Perhaps ye saw him running after his fellow into a ruin, ye pursued him, and found him sword in hand with blood dripping from it, whilst the murdered man was writhing [in agony]: If this is what ye saw, ye saw nothing.⁵

It has been taught: R. Simeon b. Shatah said: May I never see comfort⁶ if I did not see a man pursuing his fellow into a ruin, and when I ran after him and saw him, sword in hand with blood dripping from it, and the murdered man writhing, I exclaimed to him: Wicked man, who slew this man? It is either you or I!⁷ But what can I do, since thy blood [i.e., life] does not rest in my hands, for it is written in the Torah, At the mouth of two witnesses, etc., shall he that is to die be put to death?⁸ May he who knows one's thoughts exact vengeance from him who slew his fellow! It is related that before they moved from the place a serpent came and bit him [the murderer] so that he died.

But should this man [have died] through a serpent? Did not R. Joseph say, and so too it was taught in the school of Hezekiah: From the day the Temple was destroyed, although the Sanhedrin was abolished, the four modes of execution were not abolished? They were not abolished, [you say,] but surely they were! — But the law of the four modes of execution was not abolished:⁹ He who is worthy of stoning either falls from the roof,¹⁰ or is trampled to death by a wild beast; he who merits burning either falls into the fire

or is bitten by a serpent;¹¹ he who is worthy of decapitation is either delivered to the [gentile] Government¹² or brigands attack him; he who is worthy of strangulation is either drowned in a river or dies of suffocation?¹³ — I will tell you: that man was guilty of another crime,¹⁴ for a Master said: One who incurs two death penalties imposed by *Beth din* is executed by the severer.¹⁵

BASED ON CONJECTURE. Thus, only in capital charges do we disallow conjecture, but permit it in civil suits.¹⁶ Who [is the authority for this]? — R. Aha. For it has been taught: R. Aha said: If among camels there is a lustful one, and a camel is found killed by its side, it is certain that this one killed it.¹⁷ Now, on your reasoning,¹⁸ when he [the Tanna] regards **EVIDENCE FROM THE MOUTH OF ANOTHER WITNESS** [as invalid]: it is only in capital charges that we do not admit it; whilst we do in monetary cases? But did we not learn: If he [the witness] says: He [the defendant] said to me, 'I owe him [the money],' or, 'So and so told me that he owes him,' his statement is worthless,¹⁹ unless he states, 'In our presence²⁰ he admitted to him that he owed him two hundred *zuz*!'²¹ This proves that although [such evidence] is inadmissible in monetary cases too, we caution them²² only in capital cases. So in the present instance,²³ though it [sc. conjecture] is inadmissible in civil suits too, we nevertheless admonish them only in capital cases.

KNOW THAT, etc. Rab Judah the son of R. Hiyya said: This teaches that Cain inflicted upon his brother many blows and wounds, because he knew not whence the soul departs,²⁴ until he reached his neck.²⁵ Rab Judah the son of R. Hiyya also said: Since the day the earth opened her mouth to receive the blood of Abel, she has never opened it again, for it is written, From the edge of the earth have we heard songs, glory to the righteous:²⁶ implying, from the 'edge' of the earth, but not from the mouth of the earth. Hezekiah his brother objected thereto: And the earth opened her mouth!²⁷ — He

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answered: She opened if for evil,²⁸ but not for good.

Rab Judah the son of R. Hiyya also said: Exile atones for the half of men's sins. Earlier [in the Cain narrative] it is written, And I shall be a fugitive and a wanderer;²⁹ but later, And he dwelt in the land of Nod [wandering].³⁰

Rab Judah said: Exile makes remission for three things, for it is written, Thus saith the Lord, etc. He that abideth in this city shall die by the sword and by the famine and by the pestilence; but he that goeth out and falleth away to the Chaldeans who besiege you he shall live and his life shall be unto him for a prey.³¹ R. Johanan said: Exile atones for everything, for it is written, Thus saith the Lord, write ye this man childless, a man that shall not prosper in his days, for no man of his seed shall prosper sitting upon the throne of David and ruling any more in Judah.³² Whereas after he [the king] was exiled, it is written, And the sons of Jechoniah, — the same is Assir — Shealtiel his son, etc.³³ [He was called] Assir,³⁴ because his mother conceived him in prison. Shealtiel,³⁵ because God did not plant him³⁶ in the way that others are planted. We know by tradition that a woman cannot conceive in a standing position.

1. If the moral responsibility is so great, why should we give evidence at all? Quite unintentionally we may cause a perversion of justice.
2. Then he shall bear his iniquity. Lev. V, 1.
3. I.e., we prefer to transgress that law, rather than be responsible for the accused's death.
4. Prov. XI, 10.
5. For it is not an actual witnessing of the murder. But v. Mishnah on 81b, and Talmudic discussion thereon.
6. A customary oath. This may either mean, May I (personally) always be afflicted; or, May I never see the comfort of Zion and of Jerusalem. If the latter be correct, the troublous times of the period, owing to the clash of the Pharisees and the Sadducees, might have given rise to such an oath.
7. I.e., it must be you.
8. Deut. XVII, 6.
9. I.e., the death which the Jewish courts could no longer decree was now brought about by Heavenly agencies.
10. Before stoning one was thrown from a certain height. Cf. *infra* 45a.
11. The action of the poison was likened to the inner fire of burning; v. p. 349.
12. Whose mode of execution was then as a rule by the sword: 'handed over' does not mean, by the Jews, but rather, falls into their hands, through some misdeed which attracts their attention.
13. Now, returning to the subject, the said murderer ought to have met his death by the sword: why then did he die of a bite?
14. Punishable by burning, which is severer. Cf. *infra* 49b.
15. *Infra* 81a.
16. This follows from the fact that the Mishnah states this only in connection with the former.
17. V. B.B. 93a. Hence in monetary cases circumstantial evidence is acceptable. The Mishnah thus follows the view of a single authority.
18. That, because in monetary cases the attention of the witnesses is not actually called to the inadmissibility of circumstantial evidence, such is permissible.
19. Lit., 'He hath said nothing.'
20. I.e., 'In the presence of another witness and myself.'
21. *Supra* 29a.
22. Sc. the witnesses.
23. With reference to circumstantial evidence.
24. I.e., he did not know which blow would prove fatal.
25. And severed the arteries.
26. Isa. XXIV, 16.
27. Num. XVI, 32.
28. To swallow Korah and his associates; the opening to receive Abel's blood is however accounted for good. i.e., to hide Cain's guilt.
29. [H] Gen. IV, 14.
30. [H], The other half of the curse, 'to be a fugitive' was remitted because of his wandering, i.e., exile,
31. Jer. XXI, 8-9. He that remained at home was subject to these three evils; but wandering and its consequent hardships outweighed them all.
32. Jer. XXII, 30.
33. I Ch. III, 17. Notwithstanding the curse that he should be childless and not prosper, after being exiled he was forgiven.
34. [H], imprisoned.
35. According to this Haggadah they were one and the same person.
36. [H], a play on [H].

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yet she¹ did conceive standing.² Another interpretation: Shealtiel, because God obtained³ [of the Heavenly court] absolution from His oath.⁴ Zerubbabel [was so called] because he was sown in Babylon.⁵ But [his real name was] Nehemiah the son of Hachaliah.

Judah and Hezekiah, the sons⁶ of R. Hiyya, once sat at table with Rabbi and uttered not a word. Whereupon he said: Give the young men plenty of strong wine,⁷ so that they may say something. When the wine took effect, they began by saying: The son of David⁸ cannot appear ere the two ruling houses in Israel shall have come to an end, viz., the Exilarchate, in Babylon and the Patriarchate in Palestine, for it is written, And he shall be for a Sanctuary, for a stone of stumbling and for a rock of offence to both houses of Israel.⁹ Thereupon he [Rabbi] exclaimed: You throw thorns in my eyes, my children!¹⁰ At this, R. Hiyya [his disciple] remarked: Master, be not angered, for the numerical value of the letters of yayin¹¹ is seventy, and likewise the letters of sod:¹² When yayin [wine] goes in, sod [secrets] comes out.

R. Hisda said in Mar 'Ukba's name — others state, R. Hisda quoted from a lecture of Mari b. Mar: What is meant by the verse, And so the Lord hath hastened¹³ the evil and brought it upon us, for the Lord our God is righteous?¹⁴ Because God is righteous He hastened with the evil and brought it upon us! — Even so: the Holy One, blessed be He, did a righteous [i.e., charitable] thing unto Israel in that he anticipated the exile of Zedekiah while the exile of Jechoniah was yet in being,¹⁵ for it is written with reference to the latter, And the craftsmen [he-harash] and the smiths [masger], a thousand.¹⁶ Harash,¹⁷ implies, as soon as they opened a [learned] discussion, all [the others] became as though deaf.¹⁸ Masger:¹⁹ i.e., when they closed [the discussion of] a *halachah*, it was not reopened.²⁰ And how many were they? — A thousand.

'Ulla said: He advanced [the exile by] two years as compared with the period indicated by we-noshantem.²¹ R. Aha b. Jacob said: We infer from this that the 'speediness' of the Lord of the universe meant eight hundred and fifty-two years.²²

THEREFORE, etc. Our Rabbis taught: Man was created alone.²³ And why so? — That the Sadducees²⁴ might not say: There are many ruling powers in Heaven. Another answer is: For the sake of the righteous and the wicked; that the righteous might not say: 'Ours is a righteous heredity.'²⁵ and that the wicked might not say: 'Ours is an evil heredity.'²⁶ Another answer is: For the sake of [the different] families, that they might not quarrel with each other.²⁷ Now, if at present, though but one was [originally] created,²⁸ they quarrel. how much more if two had been created!²⁹ Another answer is: Because of robbers and plunderers: I.e., If at present, though but one was originally created, people rob and plunder, how much more had two been created.³⁰

AND AGAIN, TO PROCLAIM THE GREATNESS OF, etc. Our Rabbis taught: [The creation of the first man alone] was to show forth the greatness of the Supreme King of kings, the Holy One, blessed be He. For if a man mints many coins from one mould, they are all alike, but the Holy One, blessed be He, fashioned all men in the mould of the first man, and not one resembles the other, for it is written, It is changed as clay under the seal and they stand as a garment.³¹ And why are men's faces not like one another? — Lest a man see a beautiful dwelling or a beautiful woman and say, 'She is mine for it is written, But from the wicked their light is withholden and the high arm is broken.'³²

It has been taught: R. Meir used to say: In three things man differs from his fellow: In voice, appearance and mind [i.e., thoughts]. In voice and appearance', to prevent unchastity;³³ 'In mind', because of thieves and robbers.³⁴

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Our Rabbis taught: Adam was created [last of all beings] on the eve of Sabbath. And why? — Lest the Sadducees say: The Holy One, blessed be He, had a partner [viz., Adam] in His work of creation. Another answer is: In order that, if a man's mind becomes [too] proud, he may be reminded that the gnats preceded him in the order of creation. Another answer is: That he might immediately enter upon the fulfillment of a precept.³⁵ Another answer is: That he might straightway go in to the banquet.³⁶ The matter may be compared to a king of flesh and blood who built palaces and furnished them, prepared a banquet, and thereafter brought in the guests. For it is written: Wisdom hath builded her house, she hath hewn out her seven pillars. She hath prepared her meat, she hath mingled her wine, she hath also furnished her table. She hath sent forth her maidens, she calleth upon the highest places of the city.³⁷ Wisdom hath builded her house, — this is the attribute of the Holy One, blessed be He, who created the world by wisdom. She hath hewn out her seven pillars, — these are the seven days of creation. She hath prepared her meat, she hath mingled her wine, she hath also furnished her table, — these are the seas and the rivers and all the other requirements of the world. She hath sent forth her maidens, she calleth, — this refers to Adam and Eve. Upon the highest places of the city; Rabbah b. Bar Hana opposed [two verses]. It is written, Upon the top of the highest places.³⁸ But elsewhere it is written, On a seat on the high places.³⁹ — At first⁴⁰ he was seated upon the 'top' of the highest places, but subsequently upon a 'seat'.

Whoso is thoughtless, let him turn in hither; as for him that lacketh understanding, she saith to him.⁴¹ The Holy One, blessed be He, said: Who was it that enticed him? — A woman⁴² hath spoken to him, for it is written, He that committeth adultery with a woman, lacketh understanding.⁴³

It has been taught: R. Meir used to say: The dust of the first man was gathered from all

parts of the earth, for it is written, Thine eyes did see mine unformed substance,⁴⁴ and further it is written, The eyes of the Lord run to and fro through the whole earth.⁴⁵ R. Oshaiah said in Rab's name: Adam's trunk came from Babylon,

1. His mother.
2. For lack of room in prison, v. Lev. Rab. XIX.
3. [H] 'God asked'.
4. Which He had made, to punish Jechoniah with childlessness.
5. [H].
6. They were twins. Cf. Yeb. 65b.
7. Lit., 'Make the wine strong for the young men.'
8. I.e., the Messiah.
9. Isa. VIII, 14.
10. They were foretelling the abolition of the Nasi's office which he, Rabbi, occupied.
11. [H] 10 + 10 + 50 = 70. [Ms.M. omits [H] letters. If retained it must be taken as a direct translation of the Gr. grammata derived from gamma 'letter', hence the equivalent of [H], cf. Rashi. V. Gandz, S., *op. cit.* 90 and J.E. V, 589.]
12. [H] 60 + 6 + 4 = 70.
13. For this meaning of [H] (E.V. 'watched over'), cf. Jer. I, 12: [H] hasten.
14. Dan. IX, 14.
15. So that the great scholars who were exiled with Jechoniah were still alive to transmit their traditional teachings to their posterity (Rashi.)
16. II Kings XXIV, 16.
17. [H], 'craftsman' or 'deaf' (with different pointing in each case).
18. I.e., they overwhelmed them with the depth of their wisdom
19. [H] (E.V. 'smith') from [H] 'to close'.
20. None would presume to cast the least doubt on their ruling.
21. *And ye shall have been long* (lit., 'grown old'). Deut. IV, 25. The numerical value of [H] (6 + 50 + 6 + 300 + 50 + 400 + 40) is eight hundred and fifty-two. Subtracting two years according to this Haggadah, there are eight hundred and fifty years left, which is the length of time between Israel's entry into Palestine and the destruction of the Temple. The Temple was erected in the four hundred and eightieth year from the Exodus out of Egypt, and it stood for four hundred and ten years. Subtracting forty years for the period of their wanderings in the desert, we reach a total of eight hundred and fifty years that acceleration by two years is here regarded as a 'righteous' (i.e., charitable) act, since it

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- averted the complete destruction threatened in Deut. IV, 26.
22. For the following verse states, *Ye shall speedily perish completely from off the land*. Thus by 'speedily' God meant 852 years, alluded to by *we-noshantem*.
 23. I.e., only one man was created.
 24. Many early versions have *Minim* in this place and in several other instances further on. [H] must have been inserted by the censors, v. p. 234. n. 4.
 25. And therefore we have no need to avoid temptation.
 26. And therefore we have no power to resist temptation.
 27. On the superiority of their respective ancestry.
 28. I.e., when they all descend from one father.
 29. I.e., if they came from different stocks.
 30. In which case some might claim that the land originally belonged to their first ancestor.
 31. Job XXXVIII, 14.
 32. *Ibid.* 15, their light = 'their visage', i.e., it is not like their neighbor's; the high arm = 'the excuse for high-handed action'.
 33. In order that the sexes might not be confused either in the darkness or the light.
 34. Who cannot be trusted to know the secrets of others
 35. The hallowing of the Sabbath.
 36. I.e., that all nature should be ready for his use.
 37. Prov. IX, 1-3.
 38. Prov. IX, 3.
 39. Prov. IX 14, which denotes a lower station (*Rashi*). *Tosaf.* reverses their significance.
 40. Before his sin. *Tosaf.* At first, before Eve was created, he merely sat on the top, etc., but afterwards, Eve's creation raised him to a higher pinnacle, so that he had a throne set for him.
 41. *Ibid.* 4.
 42. Who is referred to as enticing.
 43. *Ibid.* VI, 32.
 44. Ps. CXXXIX, 16.
 45. Zech. IV, 10. Adam's substance was seen by the look of the Lord which sweeps through the whole world. [This is perhaps another way of teaching the 'equality of man', all men having been formed from one and the same common clay, v. Bacher, AT, II, 65.]

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his head from Erez Yisrael,¹ his limbs from other lands, and his private parts, according to R. Aha, from Akra di Agma.²

R. Johanan³ b. Hanina said: The day consisted of twelve hours. In the first hour, his [Adam's] dust was gathered; in the second, it was kneaded into a shapeless mass. In the third, his limbs were shaped;⁴ in the fourth, a soul was infused into him; in the fifth, he arose and stood on his feet; in the sixth, he gave [the animals] their names; in the seventh, Eve became his mate; in the eighth, they ascended to bed as two and descended as four;⁵ in the ninth, he was commanded not to eat of the tree, in the tenth, he sinned; in the eleventh, he was tried, and in the twelfth he was expelled [from Eden] and departed, for it is written, *Man abideth⁶ not in honour.*⁷

Rami b. Hama said: A wild beast has no dominion over man unless he appears to it as a brute,⁸ for it is written. Men are overruled⁹ when they appear as beasts.¹⁰

(Mnemonic: *When;*¹¹ *The End; Aramaic.*)

Rab Judah said in Rab's name: When the Holy One, blessed be He, wished to create man, He [first] created a company of ministering angels and said to them: Is it your desire that we make a man in our image? They answered: Sovereign of the Universe, what will be his deeds? Such and such will be his deeds, He replied. Thereupon they exclaimed: Sovereign of the Universe, What is man that thou art mindful of him, and the son of man that thou thinkest of him?¹² Thereupon He stretched out His little finger among them and consumed them with fire. The same thing happened with a second company. The third company said to Him: Sovereign of the Universe, what did it avail the former [angels] that they spoke to Thee [as they did]? the whole world is Thine, and whatsoever that Thou wishest to do therein, do it. When He came to the men of the Age of the flood and of the division [of tongues] whose deeds were corrupt, they said to Him: Lord of the Universe, did not the first [company of angels] speak aright? Even to old age I am the same, and even to hoar hairs will I carry,¹³ He retorted.

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Rab Judah said in Rab's name: The first man reached from one end of the world to the other, as it is written, Since the day that God created man upon the earth, even from the one end of Heaven unto the other.¹⁴ But when he sinned, the Holy One, blessed be He, laid His hand upon him and diminished him, as it is written, Thou hast hemmed me in behind and before, and laid Thy hands upon me.¹⁵ R. Eleazar said: The first man reached from earth to heaven, as it is written, Since the day that God created man upon the earth, and from one end of the Heaven [to the other].¹⁶ But when he sinned, the Holy One, blessed be He, laid His hand upon him and diminished him, for it is written, Thou hast hemmed me in behind and before, etc.¹⁵ But these verses contradict each other! — Both measurements are identical.¹⁷

Rab Judah also said in Rab's name: The first man spoke Aramaic,¹⁸ for it is written, How weighty are thy thoughts unto me, God.¹⁹ And that is what Resh Lakish meant when he said: What is the meaning of the verse, 'This is the book of the generations of Adam?'²⁰ It is to intimate that the Holy One, blessed be He, showed him [Adam] every generation and its thinkers,²¹ every generation and its sages. When he came to the generation of Rabbi Akiba, he [Adam] rejoiced at his learning but was grieved at his death,²² and said: How weighty²³ are Thy friends²⁴ to me, O God.¹⁹

Rab Judah also said in Rab's name: Adam was a Min,²⁵ for it is written, And the Lord God called unto Adam and said unto him, Where art thou?²⁶ i.e., whither has thine heart turned? R. Isaac said: He practiced episplasm:²⁷ For here it is written, But like man, [Adam] they have transgressed the covenant;²⁸ whilst elsewhere it is said, He hath broken my covenant,²⁹ R. Nahman said: He denied God.³⁰ Here it is written, They have transgressed the covenant;²⁸ whilst elsewhere it is stated, [He hath broken my covenant,³¹ and again,] Because they forsook the covenant of the Lord their God.³²

We learnt elsewhere:³³ R. Eliezer said: Be diligent to learn the Torah and know how to answer an Epikoros.³⁴ R. Johanan commented: They taught this only with respect to a Gentile Epikoros; with a Jewish Epikoros, it would only make his heresy more pronounced.³⁵

R. Johanan said: In all the passages which the Minim have taken [as grounds] for their heresy,³⁶ their refutation is found near at hand. Thus: Let us make man in our image,³⁷ — And God created [sing.] man in His own image;³⁸ Come, let us go down and there confound their language,³⁹ — And the Lord came down [sing.] to see the city and the tower;⁴⁰ Because there were revealed [plur.] to him God,⁴¹ — Unto God who answereth [sing.] me in the day of my distress;⁴² For what great nation is there that hath God so nigh [plur.] unto it, as the Lord our God is [unto us] whensoever we call upon Him [sing.];⁴³ And what one nation in the earth is like thy people, [like] Israel, whom God went [plur.] to redeem for a people unto himself [sing.],⁴⁴ Till thrones were placed and one that was ancient did sit.⁴⁵

Why were these⁴⁶ necessary? To teach R. Johanan's dictum; viz.: The Holy One, blessed be He, does nothing without consulting His Heavenly Court,⁴⁷ for it is written, The matter is by the decree of the watchers, and the sentence by the word of the Holy Ones.⁴⁸ Now, that is satisfactory for all [the other verses], but how explain Till thrones were placed? — One [throne] was for Himself and one for David.⁴⁹ Even as it has been taught: One was for Himself and one for David: this is R. Akiba's view. R. Jose protested to him: Akiba, how long will thou profane the *Shechinah*?⁵⁰ Rather, one [throne] for justice, and the other for mercy. Did he accept [this answer] from him or not? Come and hear! For it has been taught: One is for justice and the other for charity; this is R. Akiba's view. Said R. Eleazar b. Azariah to him: Akiba, what hast thou to do with Aggada? Confine thyself to [the study of] *Ne'g'im* and *Ohaloth*.⁵¹ But one was a

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throne, the other a footstool: a throne for a seat and a footstool in support of His feet.

R. Nahman said: He who is as skilled in refuting the Minim as is R. Idith,⁵² let him do so; but not otherwise. Once a Min said to R. Idith: It is written, And unto Moses He said, Come up to the Lord.⁵³ But surely it should have stated, Come up unto me! — It was Metatron⁵⁴ [who said that], he replied, whose name is similar to that of his Master,⁵⁵ for it is written, For my name is in him.⁵⁶ But if so, [he retorted,] we should worship him! The same passage, however, — replied R. Idith says: Be not rebellious⁵⁷ against him, i.e., exchange Me not for him. But if so,⁵⁸ why is it stated: He will not pardon your transgression?⁵⁹ He answered: By our troth⁶⁰ we would not accept him even as a messenger,⁶¹ for it is written, And he said unto him, If Thy [personal] presence go not, etc.⁶²

A Min once said to R. Ishmael b. Jose: It is written, Then the Lord caused to rain upon Sodom and Gomorrah brimstone and fire from the Lord:⁶³ but from him should have been written! A certain fuller⁶⁴ said, Leave him to me, I will answer him. [He then proceeded,] It is written, And Lamech said to his wives, Ada and Zillah, Hear my voice, ye wives of Lamech;⁶⁵ but he should have said, my wives! But such is the Scriptural idiom — so here too, it is the Scriptural idiom.

Whence do you know that? asked he [R. Ishmael]. — I heard it in a public discourse⁶⁶ of R. Meir, [he answered]. Even as R. Johanan said: When R. Meir used to deliver his public discourses, a third was Halacha, a third Haggadah, and a third consisted of parables. R. Johanan also said: R. Meir had three hundred parables of foxes, and we have only three left,⁶⁷

1. His head, the most exalted part of his body, comes from Eretz Yisrael the most exalted of all lands.
2. [A town near Pumbeditha (Obermeyer, *op. cit.* 237, n. 3), notorious on account of the

loose morals of its inhabitants, v. Ginzberg, *Legends V*, 15.]

3. V. l.: R. Ahai.
4. Lit., 'Extended'.
5. I.e., Cain and his twin sister were born. V. Yeb. 62a. Abel and his other twin sister were born after they sinned. V. Tosaf. a.l.
6. [H], lit., 'tarrieth not over night'.
7. Ps. XLIX, 13.
8. Man's majesty keeps the wild beasts in check only as long as he does not descent to their level.
9. [H], *He is like the beasts that perish*.
10. Ps. XLIX, 13.
11. Lit., 'hour'.
12. Ps. VIII, 5.
13. Isa. XLVI, 4. I.e., I shall suffer mankind under all conditions.
14. Deut. IV, 32.
15. Ps. CXXXIX, 5.
16. Rashal rightly deletes the bracketed passage, because on this dictum the verse must be read: He created man upon the earth and reaching up to the end of Heaven, i.e., he reached from earth to Heaven.
17. [The gigantic stature of Adam plays an important part in the system of many Gnostic sects, v. Ginzberg, *op. cit.* V, 79.]
18. [This may have been said in justification of the abandonment by the Babylonian Jews of the Hebrew language in favor of Aramaic.]
19. Ps. CXXXIX, 17. This Psalm deals with the creation of man. [H] 'weighty', and [H] 'thoughts' are Aramaisms.
20. Gen. V, 1.
21. Lit., 'exponents'.
22. R. Akiba was executed by Tineius Rufus after being most cruelly tortured. Cf. Ber. 61b.
23. Perhaps to be understood here with a twofold meaning: weighty = honored; and weighty = a source of heaviness and grief.
24. [H] is probably here taken in its usual Hebrew meaning, '*Thy friends*'.
25. V. *Glos.* V. p. 234, n. 4; it is to be observed that Min is contrasted (in the next passage) with unbeliever.
26. Gen. III, 9.
27. I.e., he removed the mark of circumcision.
28. Hos. VI, 7.
29. Gen. XVII, 14. with reference to circumcision.
30. Lit., 'the fundamental (principle)'.
31. Gen. XVII, 14. Ms.M. omits the bracketed passage; rightly so, for it is irrelevant.
32. Jer. XXII, 9, referring to belief in God.
33. Aboth II, 14.
34. Who endeavors to draw support from the Torah for his beliefs. [H] is derived from the personal name, Epicurus, and is adopted by the Talmud for the sake of the play upon the

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- word [H] 'to be free from restraint'. To denote one who denies God and his commandments, v. Herford, *Christianity in Talmud* p. 120.
35. Lit., 'He is more lawless.' With him, therefore, discussion is not advised since he is deliberate in his negation and not therefore easily dissuaded (Rashi).
 36. E.g., where God is spoken of in the plural.
 37. Gen. I, 26.
 38. Ibid. 27.
 39. Gen. XI, 7.
 40. Ibid. 5.
 41. Ibid. XXXV, 7.
 42. Ibid. 3.
 43. Deut. IV, 7.
 44. II Sam. VII, 23.
 45. Dan. VII, 9.
 46. Plural forms.
 47. [H], 'family' v. p. 675.
 48. Dan. IV, 14.
 49. The Messiah.
 50. By asserting that a human being sit beside Him.
 51. Names of Treatises in the Seder Tohoroth, the most difficult in the whole of the Talmud. V. *infra* 67b. R. Akiba was a great authority on these laws, whereas his *Haggadic* interpretations were not always acceptable. [This interpretation involved the same danger as that of R. Akiba's first interpretation in that it tended to obscure the true monotheistic concept of God.]
 52. [Ms.M.: R. Idi.]
 53. Ex. XXIV, 1.
 54. Name of an Angel, probably derived from metator, guide. In Talmud and Midrash he is regarded notably as the defender of the rights of Israel (cf. Hag. 16a).
 55. Cf. Rashi on Ex. XXIII, 21. The numerical value of Metatron ([H]) is equal to that of [H] (the Almighty) viz. 314.
 56. Ex. XXIII, 21.
 57. [H] is here taken, in the sense of 'exchange', from [H].
 58. That he is not to be worshipped, but God alone.
 59. Ibid. Surely, he has no authority to do so.
 60. Lit., 'we hold the belief.'
 61. Lit., 'Postman' — of forgiveness.
 62. Ex. XXXIII, 15. [The *Min* was a believer in the doctrine of two rulers and he sought support for this belief from Ex. XXIV, 1. R. Idith met his argument by showing that even Metatron was accepted by Jews only as guide, and in no sense a second god. For a full discussion of the passage, v. Herford, *op. cit.* p. 285ff.]
 63. Gen. XIX, 24

64. A figure frequently mentioned in the Talmud as of a specific type. V. e.g., Ber. 28a, Ned. 41a. [In Roman literature, he is an object of ridicule; in rabbinic lore, he plays a more dignified role.]
65. Gen. IV, 23.
66. [H] v. *supra* p. 178 n. 3.
67. Probably of those collected by R. Meir, since many other fox fables are found scattered throughout the Talmud and Midrash. Cf. Ber. 61b; Eccl. Rab. V. 14.

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[as illustrations to the verses]. [a] The fathers have eaten sour grapes and the children's teeth are set on edge;¹ [b] Just balances, just weights,² [c] The righteous is delivered out of trouble and the wicked comes in in his stead.³

The Emperor⁴ once said to Rabban Gamaliel:⁵ Your God is a thief, for it is written, And the Lord God caused a deep sleep to fall upon the man [Adam] and he slept [and He took one of his ribs, etc.]⁶ Thereupon his [the Emperor's]⁷ daughter said to him: Leave him to me and I will answer him, and [turning to the Emperor] said: 'Give me a commander.'⁸ 'Why do you need him?' asked he. — 'Thieves visited us last night and robbed us of a silver pitcher, leaving a golden one in its place.' 'Would that such visited us every day!' he exclaimed. 'Ah!' she retorted, 'was it not to Adam's gain that he was deprived of a rib and a wife⁹ presented to him in its stead to serve him?' He replied: 'This is what I mean: he should have taken it from him openly.'¹⁰ Said she to him: 'Let me have a piece of raw meat.' It was given to her. She placed it under her armpit,¹¹ then took it out and offered it to him to eat. 'I find it loathsome,' he exclaimed. 'Even so would she [Eve] have been to Adam had she been taken from him openly,' she retorted.¹²

The Emperor also said to Rabban Gamaliel: I know what your God is doing, and where He is seated. Rabban Gamaliel became, [as it were] overcome and sighed, and on being asked the reason, answered. 'I have a son in one of the cities of the sea, and I yearn for

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him. Pray tell me about him.¹³ 'Do I then know where he is,' he replied. 'You do not know what is on earth, and yet [claim to] know what is in heaven!' he retorted.

Again the Emperor said to Rabban Gamaliel: 'It is written, He counteth the number of the stars, etc.¹⁴ In what way is that remarkable; I too can count them!' Rabban Gamaliel brought some quinces, put them into a sieve, whirled them around, and said: 'Count them.' 'Keep them still,' he requested. Thereupon Rabban Gamaliel observed, 'But the Heavens revolve so.' Some say that the Emperor spoke thus to him: 'The number of the stars is known to me.' Thereupon Rabban Gamaliel asked him, 'How many molars and [other] teeth have you' Putting his hand to his mouth, he began to count them. Said he to him, 'You know not what is in your mouth and yet wouldst know what is in Heaven!'

Again the Emperor said to Rabban Gamaliel, 'He who created the mountains did not create the wind, for it is written, For lo, there is a former of mountains and creator of wind.'¹⁵ — According to this reasoning, when we find it written of Adam, And He created...¹⁶ and, And he formed:¹⁷ would you also say that He who created this [one limb] did not create that [another limb]? Further there is a part of the human body just a handbreadth square, which contains two holes,¹⁸ and because it is written, He that planteth ear, shall he not hear; he that formeth the eye, shall he not see?¹⁹ would you maintain there too that He who created the one did not create the other? 'Even so,' he answered. 'Yet,' he [Rabban Gamaliel] rejoined, 'at death both²⁰ are brought to agree!'

A magi²¹ once said to Amemar: From the middle of thy [body] upwards thou belongest to Ormuzd;²² from the middle downwards, to Ahriman.²³ The latter asked: Why then does Ahriman permit Ormuzd to send water²⁴ through his territory?

The Emperor proposed to R. Tanhum, 'Come, let us all be one people.' 'Very Well,'

he answered, 'but we who are circumcised cannot possibly become like you;²⁵ do ye become circumcised and like us.' The Emperor replied: 'You have spoken well; nevertheless, anyone who gets the better of the king [in debate] must be thrown into the vivarium,²⁶ So they threw him in, but he was not eaten. Thereupon a heretic remarked: 'The reason they did not eat him is that they are not hungry.' They threw him [the heretic] in, and he was eaten.²⁷

The Emperor said to Rabban Gamaliel: 'Ye maintain that upon every gathering of ten [Jews] the *Shechinah* rests:²⁸ how many Shechinahs are there then?' Rabban Gamaliel called [Caesar's] servant, and tapped him on the neck,²⁹ saying, 'Why does the sun enter into Caesar's house?'²⁹ 'But,' he³⁰ exclaimed, 'the sun shines³¹ upon the whole world!' 'Then if the sun, which is but one of the countless myriads of the servants of the Holy One, blessed be He, shines on the whole world, how much more the *Shechinah* of the Holy One, blessed be He, Himself!'

A certain Min said to R. Abbahu: 'Your God is a jester,³² for He said to Ezekiel. Lie down on thy left side,³³ and it is also written, Lie on thy right side.'³⁴ [Just then] a disciple came and asked him: 'What is the reason for the Sabbatical year?' 'Now,' said R. Abbahu, 'I shall give you an answer which will suit you both equally. The Holy One, blessed be He, said to Israel, Sow your seed six years but omit the seventh, that ye may know that the earth is mine³⁵ They, however, did not do so, but sinned and were exiled. Now, it is the universal practice that a king of flesh and blood against whom his subjects³⁶ have rebelled, if he be cruel, kills them all; if merciful, he slays half of them; but if he is exceptionally merciful,³⁷ he only chastises the great ones.³⁸ So also, the Holy One, blessed be He, afflicted Ezekiel in order to cleanse Israel from their iniquities.'

A certain Min said to R. Abbahu: Your God is a priest, since it is written, That they take for me *Terumah* [wave offering].³⁹ Now,

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when He had buried Moses,⁴⁰ wherein did He bathe [after contact with the corpse]?⁴¹ Should you reply, 'In water: is it not written, Who hath measured the waters in the hollow of His hand?'⁴² — 'He bathed in fire,' he answered, 'for it is written, Behold the Lord will come in fire.'⁴³ 'Is then purification by fire effective?' 'On the contrary,' he replied, 'bathing [for purposes of purification] should essentially be in fire, for it is written, And all that abideth not the fire ye shall make to go through the water.'⁴⁴

A Min once said to R. Abina: It is written, And what one nation in the earth is like Thy people, [like] Israel.⁴⁵ Wherein lies their superiority: ye too are combined with us, for it is written, All the nations are as nothing before Him?⁴⁶ He answered: One of yourselves [Balaam] has already testified for us, as it is written,

1. Ezek. XVIII, 2.
2. Lev. XIX, 36.
3. Prov. XI, 8 Rashi gives the parables in question, as follows, combined in a single story. [Cf. however, Ms.M.: 'We have only one'.] A fox once craftily induced a wolf to go and join the Jews in their Sabbath preparations and share in their festivities. On his appearing in their midst the Jews fell upon him with sticks and beat him. He therefore came back determined to kill the fox. But the latter pleaded: 'It is no fault of mine that you were beaten, but they have a grudge against your father who once helped them in preparing their banquet and then consumed all the choice bits.' 'And was I beaten for the wrong done by my father?' cried the indignant wolf. 'Yes,' replied the fox, 'the fathers have eaten sour grapes and the children's teeth are set on edge. However,' he continued, 'come with me and I will supply you with abundant food. He led him to a well which had a beam across it from either end of which hung a rope with a bucket attached. The fox entered the upper bucket and descended into the well whilst the lower one was drawn up. 'Where are you going?' asked the wolf. The fox, pointing to the cheese-like reflection of the moon, replied: 'Here is plenty of meat and cheese; get into the other bucket and come down at once.' The wolf did so, and as he descended, the fox was drawn up. 'And how am I to get out?' demanded the wolf. 'Ah'

said the fox 'the righteous is delivered out of trouble and the wicked cometh in in his stead. Is it not written, Just balances, just weights'?

4. [H] So. Ms.M. Cur. edd. [H] 'an infidel'.
5. Gamaliel II, also known as Gamaliel of Jabneh [He visited Rome twice — once during the reign of Domitian and again during that of Nerva, his successor, and the disputations that follow may have taken place on one of these occasions, probably the latter, v. Graetz, *MGWJ* I, 192ff]
6. Gen. II, 21.
7. [So Midrash ha-Gadol, p. 84].
8. [H], guard in charge of a military company.
9. Lit., 'a handmaid'.
10. I.e., when he was awake.
11. Rashi translates: She placed it under the hot ashes, and after roasting it, etc.
12. One often takes an instinctive dislike to food or other objects if they are first seen in their raw state (Rashi). According to the rendering adopted, the flesh was repulsive because it had come into contact with her body. Likewise, had Adam known that Eve was part of his body, he might have been repelled.
13. Lit., 'show him to me.'
14. Ps. CXLVII, 4.
15. Amos IV, 13. That is how the Emperor must have translated the verse, drawing an inference from the two different words used to denote creation (E.V. = he that formeth the mountains and createth the wind.
16. Gen I, 27.
17. Ibid. II, 7.
18. The part containing both eye and ear.
19. Ps. XCIV, 9. Two different expressions are used for the creation of the eye and ear respectively.
20. The one who planted and the one who created. I.e., assuming that there were two creators of man, he could not completely die unless both agreed; otherwise, the creator of the eye might insist that the eye goes on living, whilst the creator of the ear might wish it to die.
21. A priest of the Zoroastrian Religion.
22. Ormuzd, the principle of light, life and good, in the Zoroastrian system, constantly at war with Ahriman (q.v.).
23. Angra Mainyus Lit., 'the Destroyer', the head of the forces of darkness, death and evil. Warfare must be waged between the two, Ormuzd and Ahriman, for twelve thousand years, at the end of which Ahriman will be defeated by Ormuzd V. J.E. I, 294. s. v. Ahriman. Hence the upper part of the body, which contains the head and heart, and consequently what is good in man, belongs to the former; the lower half of the body, the

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seat of the sexual and excretory organs, to the latter.

24. I.e., the excreta.
25. Circumcision cannot be effaced entirely.
26. An enclosure in which wild beast or fish are kept. Perhaps the arena.
27. [Herford, *op. cit.* 253, suggests this Emperor to have been Julian the Apostate (361-363).
28. Cf. Aboth III, 6.
29. So Rashi. Others translate: Struck him with his ladle.
30. I.e., why doest thou permit it to enter?
31. Rashi: the infidel.
32. Lit., 'rests'.
33. I.e., He makes His prophets ridiculous.
34. Ezek. IV, 4.
35. Ibid. verse 6.
36. Cf. Lev. XXV, 3; 21.
37. Lit., 'His country.'
38. Lit., 'A merciful one full of mercy.'
39. I.e., the leaders.
40. Ex. XXV. 2. Wave offering, as a rule, were given to Priests.
41. Deut. XXXIV, 6.
42. V. Lev. XXII, 4-6.
43. Isa. XL, 12. I.e., He could not bathe in water, relatively so scanty compared with Himself.
44. Ibid. LXVI, 15.
45. Num. XXXI, 23. Essentially therefore, purification is by fire.
46. II Sam. VII, 23.
47. Isa. XL, 17.

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And he [Israel] shall not be reckoned amongst the nations.¹

R. Eleazar opposed [two verses]: It is written, The Lord is good to all,² but it is also written, The Lord is good unto them that wait for Him!³ — This may be compared to a man who has an orchard. When he irrigates it, he irrigates the whole; but when he prunes, he prunes only the best [trees].⁴

THEREFORE EVERY SINGLE PERSON, etc. And there went out the song⁵ throughout the host:⁶ R. Aha b. Hanina said: [It is the song referred to in the verse.] When the wicked perish, there is song;⁷ [thus] when Ahab b. Omri perished there was 'song'. But does the Holy One, blessed be He, rejoice over the downfall of the wicked? Is it not written, [That they should praise] as they

went out before the army, and say, Give thanks unto the Lord for His mercy endureth for ever;⁸ concerning which R. Jonathan asked: Why are the words, He is good⁹ omitted from this expression of thanks? Because the Holy One, blessed be He, does not rejoice in the downfall of the wicked.¹⁰ For R. Samuel b. Nahman said in R. Jonathan's name: What is meant by, And one approached not the other all night?¹¹ In that hour the ministering angels wished to utter the song [of praise]¹² before the Holy One, blessed be He, but He rebuked them, saying: My handiwork [the Egyptians] is drowning in the sea; would ye utter song before me!¹³ — Said R. Jose b. Hanina: He Himself does not rejoice, yet He causes others to rejoice. Scripture supports this too, for it is written, [And it shall come to pass, that as the Lord rejoiced over you to do good ... so yasis will the Lord] cause rejoicing [over you by destroying you],¹⁴ and not yasus [so will the Lord rejoice, etc.].¹⁵ This prove it.

[And dogs licked his blood] and the harlots washed themselves:¹⁶ R. Eleazar said: This was in clear fulfillment of two visions, one of Micaiah, the other of Elijah. In the case of Micaiah it is written, If thou returned at all in peace the Lord hath not spoken by me.¹⁷ In the case of Elijah it is written, In the place where dogs licked the blood of Naboth.¹⁸

[With reference to the harlots:] Raba said, they were real [pictures of] harlots. Ahab was frigid by nature [passionless], so Jezebel painted pictures of two harlots on his chariot, that he might look upon them and become heated.¹⁹

And a certain man drew his bow at a venture²⁰ and smote the king of Israel.²¹ R. Eleazar said: The word means 'without intention'. Raba said: In order to fulfil²² the two visions, that of Micaiah and that of Elijah.

(Mnemonic: *He called, merited, to Edom.*)

It is written, And Ahab called Obadiah who was over the household — Now Obadiah

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feared the Lord exceedingly.²³ What did he²⁴ say to him? — R. Isaac answered: He spoke thus to him: Of Jacob it is written, I have observed the signs and the Lord hath blessed me [Laban] for thy sake;²⁵ and of Joseph it is written, The Lord blessed the Egyptian's house for Joseph's sake,²⁶ whilst my house²⁷ has not been blessed! Perhaps [it is because] you are not a God-fearing man? Thereupon a Heavenly voice issued and proclaimed, And Obadiah feared the Lord greatly, but the house of Ahab is not fit for a blessing.

R. Abba said: Greater [praise] was expressed of Obadiah than Abraham, since of Abraham the word 'greatly' is not used,²⁸ while of Obadiah it is.

R. Isaac said: Why did Obadiah attain²⁹ the gift of prophecy? — Because he hid a hundred prophets in caves, as it is written, For it was so when Jezebel cut off the prophets of the Lord that Obadiah took a hundred prophets and hid them, fifty in a cave.³⁰ Why just fifty? — R. Eleazar said: He learnt this lesson from Jacob,³¹ as it is written, 'Then the camp which is left shall escape.'³² R. Abbahu said: It was because the one cave could not hold more than fifty.

'The vision of Obadiah. Thus said the Lord God concerning Edom.³³ Why particularly Obadiah against Edom? — R. Isaac said: The Holy One, blessed be He, said: Let Obadiah, Who has lived with two wicked persons³⁴ and yet has not taken example by their deeds, come and prophesy against the wicked Esau,³⁵ who lived with two righteous persons³⁶ and yet did not learn from their good deeds.

Ephraim Maksha'ah,³⁷ the disciple of R. Meir, said on the authority of R. Meir: Obadiah was an Edomite proselyte: and thus people say, From the very forest itself comes the [handle of the] axe [that fells it].³⁸

And he [David] smote Moab, and measured them with a line, casting them down to the ground.³⁹ R. Johanan said on the authority of R. Simeon b. Yohai: Thus the proverb runs,

From the very forest itself comes the [handle of the] axe [that fells it].⁴⁰ When R. Dimi came [from Palestine] he said [similarly]: The joint putrefies from within.

Then he took his eldest son that should have resigned in his stead and offered him for a burnt offering upon the wall.⁴¹ Rab and Samuel [differ therein:] One said: [He offered him] to God; the other, To a heathen deity. Now, on the view that it was to God, it is correct: hence it is written, And there came great wrath upon Israel.⁴² But if it be maintained that he was offered to a heathen deity, why, And there was great wrath, etc.? — Even as R. Joshua b. Levi [taught]: For R. Joshua b. Levi opposed [two verses]: It is written, Neither have ye done according to the ordinances of the nations that were round about you;⁴³ yet it is [elsewhere] written, But ye have done according to the ordinances of the nations that were round about you?⁴⁴ [That means:] Ye did not act as the right minded,⁴⁵ but as the corrupt amongst them.⁴⁶

And they departed from him and returned to the earth.⁴⁷ R. Hanina b. Papa said: In that hour the wicked of Israel descended to the lowest depths [of depravity].⁴⁸

And the damsel was fair, until [she was] exceedingly [so].⁴⁹ R. Hanina b. Papa said: Yet she never attained to half of Sarah's beauty, for it is written, 'until ... exceedingly', 'exceedingly' itself not being included.⁵⁰

1. Num. XXIII, 9.
2. Ps. CXLV, 9.
3. Lam. III, 25.
4. The world and all in it was given to all, but only the good are fully cared for.
5. [H], E.V. 'cry'.
6. I Kings XXII, 36, with reference to Ahab's death at Ramoth in Gilead.
7. [H] Prov. XI, 10.
8. II. Chron. XX, 21, with reference to Jehoshaphat king of Judah, when he went to engage in war with the Ammonites and Moabites.
9. [H], as in Ps. CVII, 1.
10. [H], can also be rendered 'it is good'.
11. Ex. XIV, 20.

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12. Cf. Isa. VI, 3. And one (angel) called unto another, and said, Holy, holy, holy, etc.
13. The verse is thus taken to mean that one (angel) did not approach the other, calling upon him to join in the Song (Maharsha).
14. Deut. XXVIII, 63. [H], in the Hiphil (causative).
15. [H], in the Kal.
16. I Kings XXII, 38. The verse ends, according to the word of the Lord which he spake and R. Eleazar's comment is based on that (Maharsha).
17. I Kings XXII, 28.
18. Ibid. XXI, 19.
19. The harlots washed means, therefore, that their pictures were smeared with blood.
20. Lit., 'in his innocence.'
21. Ibid. verse 34.
22. Lit., 'to make perfect.'
23. I Kings XVIII, 3.
24. So Ms.M. Cur. edd.: 'What does the verse say?' which Rashi explains: What connection have the two facts related in the verse?
25. Gen. XXX, 27.
26. Ibid. XXXIX, 5.
27. Lit., 'the house of that man'.
28. Cf. Gen. XXII, 12.
29. The Heb. [H] denotes to merit something, and to attain through merit.
30. Kings XVIII, 4. If the one cave was discovered the others might escape.
31. Who divided his followers into camps.
32. Gen. XXXII, 9.
33. Obad. I, 1.
34. Ahab and Jezebel.
35. I.e., Edom; Esau is the 'father' of Edom.
36. I.e., Isaac and Rebecca.
37. 'The disputant', or 'seller of cucumbers.'
38. I.e., the descendant of Edom was found to be the most suitable person to reprimand them. From this narrative it appears that the Rabbis of the Talmud identified Obadiah, the governor of Ahab's household with the Obadiah of the minor Prophets. [This view is shared also among moderns by Hoffmann and Keil.]
39. II Sam. VIII, 2.
40. David was descended from Ruth the Moabitess.
41. II Kings III, 27.
42. Ibid. Because of their failure to show loyalty to God in comparison with the devotion shown by the Moabite King.
43. Ezek. V, 7.
44. Ibid. XI, 12.
45. As, for example, is related of Eglon, king of Moab who, when Ehud said to him: I have a message from God unto thee, (Judges III, 20) arose out of his seat as a sign of respect.
46. E.g., in allowing human beings as sacrifices, as did the king of Moab.
47. Lit., translation of II Kings III, 27; E.V. 'to their land'.
48. Interpreting 'to the earth' in the sense of (moral) degradation.
49. Lit., rendering of I Kings I, 4, with reference to Abishag.
50. 'Until' ([H]) is taken in the sense of 'up to' but not including. I.e., she reached only the point of medium beauty. This Haggadic interpretation is quoted here in order to group together the two sayings of the one teacher.

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CHAPTER V

MISHNAH. THEY [THE JUDGES] USED TO EXAMINE THEM¹ WITH SEVEN [HAKIROTH] SEARCHING QUERIES: IN WHAT SEPTENNATE?² IN WHAT YEAR? IN WHAT MONTH? ON WHICH DAY OF THE MONTH? ON WHAT DAY?³ AT WHAT HOUR [OF THE DAY]? AND, AT WHAT PLACE? R. JOSE SAID: [THEY WERE ONLY ASKED:] ON WHICH DAY [OF THE WEEK]? AT WHAT HOUR? AND, AT WHAT PLACE? [THEY WERE FURTHER ASKED:] DID YE KNOW HIM?⁴ AND, DID YE WARN HIM?⁵

WHERE ONE COMMITS IDOLATRY, [THE WITNESSES ARE ALSO ASKED] WHAT⁶ DID HE WORSHIP? AND, HOW⁷ DID HE WORSHIP? THE MORE EXHAUSTIVE THE CROSS-EXAMINATION [BEDIKOTH] THE MORE PRAISEWORTHY THE JUDGE. IT ONCE HAPPENED THAT BEN ZAKKAI⁸ CROSS-EXAMINED [THE WITNESSES] EVEN AS TO THE STALKS OF THE FIGS.⁹

WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH?¹⁰ — IN HAKIROTH, IF ONE [OF THE WITNESSES] ANSWERS: 'I DO NOT KNOW,' THEIR¹¹ EVIDENCE IS VOID. WITH RESPECT TO BEDIKOTH, HOWEVER, IF ONE ANSWERS: 'I DO NOT KNOW,' OR EVEN IF BOTH SAY: 'WE DO NOT KNOW, THEIR EVIDENCE IS VALID. BUT IF THEY [THE WITNESSES]

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CONTRADICT EACH OTHER, WHETHER IN THE HAKIROTH OR THE BEDIKOTH, THEIR EVIDENCE IS VOID.

IF ONE [WITNESS] TESTIFIES, '[IT HAPPENED] ON THE SECOND OF THE MONTH,' AND THE OTHER, 'ON THE THIRD OF THE MONTH:' THEIR EVIDENCE IS VALID, FOR ONE MAY HAVE BEEN AWARE OF THE INTERCALATION OF THE MONTH AND THE OTHER MAY NOT HAVE BEEN AWARE OF IT.¹² IF, HOWEVER, ONE SAYS, 'ON THE THIRD,' AND THE OTHER, 'ON THE FIFTH, THEIR EVIDENCE IS INVALID. SIMILARLY, IF ONE TESTIFIES, 'DURING THE SECOND HOUR [OF THE DAY]'¹³ AND THE OTHER 'DURING THE THIRD HOUR:' THEIR EVIDENCE IS VALID.¹⁴ BUT IF ONE SAYS, 'AT THREE,' AND ANOTHER, 'AT FIVE,' THEIR EVIDENCE IS INVALID.¹⁵ R. JUDAH SAID: [EVEN THEN, THEIR EVIDENCE IS] VALID. BUT IF ONE SAYS, 'AT FIVE,' AND THE OTHER, 'AT SEVEN,' THEIR EVIDENCE IS INVALID, FOR AT FIVE THE SUN IS TO THE EAST, WHILE AT SEVEN, THE SUN IS TO THE WEST.

AFTER THIS, THE SECOND [WITNESS] IS ADMITTED¹⁶ AND [LIKEWISE] EXAMINED. IF THEIR EVIDENCE TALLIES, THEY [THE JUDGES] COMMENCE [THE PROCEEDINGS] IN FAVOUR [OF THE ACCUSED].¹⁷

SHOULD ONE OF THE WITNESSES DECLARE, 'I HAVE SOMETHING TO SAY IN HIS FAVOUR'; OR ONE OF THE DISCIPLES, 'I HAVE AN ARGUMENT IN HIS DISFAVOUR', HE IS SILENCED.¹⁸ BUT IF A DISCIPLE SAYS, 'I HAVE SOMETHING TO PLEAD IN HIS FAVOUR', HE IS BROUGHT UP AND SEATED WITH THEM,¹⁹ AND DOES NOT DESCEND FROM THERE ALL THAT DAY. IF THERE IS SUBSTANCE IN HIS STATEMENT HE IS HEARD. AND EVEN IF HE [THE ACCUSED] HIMSELF SAYS, 'I AM IN A POSITION TO PLEAD IN MY OWN DEFENCE, HE IS HEARD, PROVIDED THERE IS SUBSTANCE IN HIS STATEMENT.

IF THEY FIND HIM NOT GUILTY, HE IS DISCHARGED, IF NOT, IT [THE TRIAL] IS ADJOURNED TILL THE FOLLOWING DAY,²⁰ WHILST THEY [THE JUDGES] GO ABOUT IN PAIRS,²¹ PRACTISE MODERATION IN FOOD, DRINK NO WINE THE WHOLE DAY,²² AND DISCUSS²³ THE CASE THROUGHOUT THE NIGHT. EARLY NEXT MORNING THEY REASSEMBLE IN COURT. HE WHO IS IN FAVOUR OF ACQUITTAL STATES, 'I DECLARED HIM INNOCENT AND STAND BY MY OPINION.' WHILE HE WHO IS IN FAVOUR OF CONDEMNATION SHALL SAY: 'I DECLARE HIM GUILTY AND STAND BY MY OPINION.' ONE WHO [PREVIOUSLY] ARGUED FOR CONVICTION MAY NOW ARGUE FOR ACQUITTAL, BUT NOT VICE VERSA. IF THEY HAVE MADE ANY MISTAKE, THE TWO JUDGES' CLERKS²⁴ ARE TO REMIND THEM THEREOF.

IF THEY FIND HIM NOT GUILTY, THEY DISCHARGE HIM. IF NOT, THEY TAKE A VOTE.²⁵ IF TWELVE ACQUIT AND ELEVEN CONDEMN, HE IS ACQUITTED. IF TWELVE CONDEMN AND ELEVEN ACQUIT, OR IF ELEVEN CONDEMN AND ELEVEN ACQUIT AND ONE SAYS, 'I DO NOT KNOW,'²⁶ OR EVEN IF TWENTY-TWO ACQUIT OR CONDEMN AND A SINGLE ONE SAYS, 'I DO NOT KNOW,'²⁷ THEY ADD TO THE JUDGES. UP TO WHAT NUMBER IS THE COURT INCREASED? — BY TWOS UP TO THE LIMIT OF SEVENTY-ONE.²⁸

IF THIRTY-SIX ACQUIT AND THIRTY-FIVE CONDEMN,²⁹ HE IS ACQUITTED. BUT IF THIRTY-SIX CONDEMN AND THIRTY-FIVE ACQUIT, THE TWO SIDES DEBATE THE CASE TOGETHER UNTIL ONE OF THOSE WHO CONDEMN AGREES WITH THE VIEW OF THOSE WHO ARE FOR ACQUITTAL.

GEMARA. 'Whence is this³⁰ inferred? — Rab Judah said: Scripture states, Then shalt thou inquire and make search and ask diligently;³¹ and it says, And [if] it be told thee and thou hear it, then shalt thou inquire

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diligently;³² again it says, And the judges shall inquire diligently.³³

1. The witnesses, in a capital charge, after admonition. Other versions read 'him', i.e., the witness, since the witnesses were separately examined.
2. Of the Jubilee, was the murder committed?
3. Of the week. This latter inquiry is necessary because witnesses who might come to refute their evidence, might not remember the date while knowing on what day of the week it took place. (Rashi).
4. Rashi, the murderer; Maim. and others: the accused: R. Hananel: the murderer and the accused.
5. That murder is forbidden on pain of death? These two questions, according to Maimonides (Yad 'Eduth, I, 4-5) belong to the specific category of [H] (inquiry) which is on the one hand treated like [H] (investigation) in that the evidence is invalid if one of the witnesses cannot answer them; and on the other like [H], (cross-examination) in this respect that the witnesses are not amenable to the law of retaliation in case of refutation.
6. I.e., which idol?
7. Lit., 'with what?'
8. Cf. *infra* 41a.
9. Of the tree under which a murder was alleged to have been committed.
10. HAKIROTH refers to the questions on date, hour and place: BEDIKOTH to cross examination on the accompanying circumstances.
11. I.e., that of both witnesses.
12. I.e., one knew that the previous month had consisted of thirty days whilst the other thought that it had consisted only of twenty-nine days provided they agree as to the day of the week. Cf. Kesef Mishneh, on Yad 'Eduth II, 4, and Tosaf. 41b s.v. [H].
13. The length of the day was counted from sunrise to sunset, and having regard to the variation of that period, an hour lasted anywhere between 49 and 71 minutes.
14. For people are liable to error in matters of the exact time in the hour.
15. An error in two hours is improbable.
16. Mishnah *supra* pp. 175-6.
17. V. *supra* 32b.
18. Cf. *supra* 34a. Witnesses after having given their testimony, are not allowed to make any further statements, even for acquittal, as they might do so with a view to avoiding any possible charge of collusion arising out of their first evidence.
19. The judges. It follows that the judges sat on raised seats faced by the disciples. V. *supra* p. 230, n. 10.
20. Cf. *supra* 32a, and note.
21. During the adjournment, to discuss the matter.
22. Another precautionary measure in capital cases
23. [V. Yad Ramah.]
24. Cf. *supra* 36b.
25. Lit., 'they stand to vote.'
26. So that there is no majority of two for conviction. cf. *supra* 2a.
27. The member who is doubtful is regarded as non-existent (cf. *supra* 17a), whilst capital cases may not be tried by less than twenty-three.
28. If there is a division of opinion amongst the newly co-opted members.
29. When the court has been increased to the extreme limit.
30. The seven questions of time and place.
31. Deut. XIII, 15. In reference to a condemned city. The three expressions for investigation indicate three questions. It should be observed, however, that the Talmud does not regard the word 'ask' by itself as teaching that a formal question must be put to the witnesses but that here it is coupled with 'diligently'.
32. Ibid. XVII, 4, in connection with the trial of an idolater. The words thou shalt inquire denote one question, and the emphasis, diligently, a second.
33. Ibid. XIX, 18, with reference to witnesses proved *Zomemim* (v. Glos). Here also two questions are implied. Hence seven questions in all are necessary.

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But perhaps we should say that each case is as written,¹ for if it be so,² the Divine Law should have stated them in a single case?³ — Since all [seven] are severally prescribed,⁴ [the requirements of] each is inferred from the other,⁵ and that being so, it is as though all [seven] were written with reference to each. But surely they [the cases in question] are not similar to each other!⁶ (Mnemonic: *Spared, Sword, Warning*.) Thus: The condemned city is unlike the other two,⁷ for their possessions [the condemned's, in the latter two charges,] are spared.⁸ Again, idolatry differs from the other two cases, for in them [execution is] by the sword.⁹ Again,

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witnesses proved *Zomemim* are unlike the other two cases, since they require a formal warning?¹⁰ — We infer it¹¹ from the identical use of 'diligently'¹² and the *gezerah-shawah*¹³ is free,¹⁴ for otherwise, it [the deduction] could be refuted.¹⁵ And it is truly free: since Scripture could have read,¹⁶ And they shall inquire and they shall search,¹⁷ and yet changes its expression [by employing the word] 'diligently',¹⁸ it follows that the purpose thereof was to leave it free.¹⁹ But it [the analogy] is free only on one side!²⁰ [For] granted that it is free in these two cases,²¹ since [another expression] could have been used:²² in the case of the condemned city,²³ what else could have been written:²⁴ for are not all [three]²⁵ employed?²⁶ — There too it [sc. 'diligently'] is truly free, for Scripture could have read, Inquiring thou shalt inquire,²⁷ or searching thou shalt search;²⁸ and varies the idiom by the use of 'diligently'; it may therefore be inferred that this was in order to leave it free.²⁹

Now,³⁰ we infer [the same requirement for charges punishable by] strangulation a *minori* from cases punishable by stoning or decapitation.³¹ Again, the same is deduced for cases of burning a *minori* from those of stoning.³² This [however] is right on the view of the Rabbis that stoning is severer [than burning]. But what is to be said on the view of R. Simeon that burning is the severer?³³ — Rab Judah therefore said: [Scripture states,] Behold if it be truth and the thing certain,³⁴ [and again] Behold if it be truth and the thing certain:³⁵ this gives eleven [expressions implying inquiry].³⁶ Seven [are employed] to indicate the seven queries: then subtracting the three needed for the *gezerah shawah*,³⁷ one still remains, whose purpose according to R. Simeon, is to include the cases of burning,³⁸ whereas according to the Rabbis,³⁹ [the necessary explanation is that] Scripture [sometimes] takes the trouble of stating a fact which can be deduced a *minori*. R. Abbahu ridiculed this [explanation]: Perhaps it [the eleventh expression] indicates an eighth query!⁴⁰ But are eight queries

[hakiroth] conceivable?⁴¹ Why not? Surely, What part of the hour, may be added [as the eighth question]! And indeed, it has been taught even so: 'They examined him with eight queries.' Now, that is correct⁴² according to Abaye on R. Meir's ruling, viz., A man is [to be treated as] not liable to make even the slightest error.⁴³ And even according to the version which states, A man is liable to make a slight error: it is also right.⁴⁴ But according to Abaye on R. Judah's ruling, viz., A man is liable to err to the extent of half an hour, and according to Raba, who said, People are liable to err to even a greater extent, what can you say? — Well then, [the eleventh expression] may be intended to add, 'Which year of the Jubilee' as a query. But that is identical with: 'In what septennate?!' — Rather this is the additional question: 'In what Jubilee? And the other Tanna? — 45 Since he [the witness] tells us in which septennate, it is necessary to ask: 'In which Jubilee?'⁴⁶

R. JOSE SAID, etc. it has been taught: R. Jose said to the Sages: According to your view, one who comes and testifies, 'He killed him last night,' must be asked: 'In which septennate? In what year? In what month? On what day of the month?' They retorted: And according to your view, one who comes and declares, 'He killed him just now,' is to be asked: 'On what day? At what hour? And where?' But [you too must answer that] even though the questions may be unnecessary, they are put to them [the witnesses], in accordance with the view of R. Simeon b. Eleazar;⁴⁷ so here too,⁴⁸ even if they are unnecessary, they are put to them [the witnesses], in accordance with R. Simeon b. Eleazar's view. And R. Jose?⁴⁹ — 'He killed him last night,' is a frequent testimony; whereas, 'He has killed him just now,' is rare.⁵⁰

DID YE KNOW HIM? Our Rabbis taught: [The following questions are asked]: Do ye know him? Did he kill a heathen? Did he kill an Israelite? Did ye warn him? Did he accept

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your warning?⁵¹ Did he admit his liability to death?⁵² Did he commit the murder within the time needed for an utterance?⁵³ Where he committed idolatry, [the witness is asked:] Which [idol] did he worship? Did he worship Peor?⁵⁴ Did he worship Merkolis?⁵⁵ How did he worship? By sacrifice, offering incense, libations, or prostration?

'Ulla said: Where is the need of warning intimated in the Torah? — In the verse, And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness.⁵⁶ Does guilt then depend upon [mere] seeing? Hence it must mean [that he is liable to punishment] only if he 'sees' the reasonableness thereof.⁵⁷ And since this is inapplicable to *Kareth*,⁵⁸

1. I.e., three questions are to be put to the case of the condemned city; two in a charge of idolatry, and two for *Zomemim*.
2. That seven are necessary in each individual charge.
3. Whence the procedure for all other capital charges would follow.
4. I.e., in the three charges taken together. [Our text is difficult. Yad Ramah reads [H] 'Since all have been prescribed for the purpose of enquiry'].
5. I.e., since close examination is stated in the case of each, the three charges are assimilated to each other, and therefore the questions that are to be put in one case are to be put in the others too (Rashi)
6. How then assimilate the three charges to each other?
7. That of the idolater and the *Zomemim*.
8. This act of leniency may indicate a greater degree of leniency in general, therefore a more rigid inquiry might be necessary, this too being in favor of the accused; but in the case of the condemned city, where the possessions of the condemned are destroyed, the inquiries might be less exacting, since the general tendency there is to greater severity. Hence only the number explicitly stated, as above, may be necessary.
9. Deut. XIII, 16, with regard to the condemned city. V. also Deut. XIX, 21, where a false charge of murder seems to be referred to, which is punished by decapitation, which is therefore also the punishment of the *Zomemim*. This is a milder form of death than stoning, the penalty for idolatry. Cf. *infra* 49b.

10. I.e., before conviction is possible but in the case of *Zomemim*, no previous warning is required. V. Keth. 33a and Rashi's interpretation a.l., which is based on the verse. Ye shall do unto him as he had purposed to do unto his brother. Since then the cases are dissimilar, how could the procedure in all capital cases be learnt from one?
11. That the requirements of each case are transferred to the others
12. Which is common to all the three verses cited.
13. V. [Glos.](#)
14. I.e., the words of the text which form the basis of the analogy are pleonastic and not legally essential.
15. As shown above. It is a principle of exegesis that if the two terms of the analogy are not altogether similar the deduction of the *gezerah shawah* is not valid. V. also p. 363, n. 3.
16. With reference to the *Zomemim*.
17. Which is the expression used in respect of a condemned city.
18. I.e., instead of 'they shall search', the second question was expressed by 'diligently'.
19. I.e., though the main purpose of the verse is to indicate the number of questions to be put, this alteration of expression serves the subsidiary purpose too of intimating that the verse is free, so as to permit an analogy to be drawn.
20. I.e., the word 'diligently' which forms the basis of the analogy is pleonastic only in one of the two terms that are compared, regarding idolatry and *Zomemim* as one term, and a condemned city as the other. Hence the analogy can be rejected. (This is a matter of dispute on the part of various teachers; v. p. 363, n. 3.)
21. Sc. idolatry and *Zomemim*.
22. E.g., make a search. The modification of the expression therefore denotes a basis for the analogy.
23. Where there is the expression search.
24. Instead of 'diligently'.
25. I. e., (i) thou shalt inquire; (ii) and make search, (iii) and ask diligently, 'ask' by itself being disregarded, as stated on p. 258. n. 4.
26. Hence 'diligently' cannot be regarded as pleonastic and consequently the analogy can be refuted.
27. [H].
28. [H] [H] The connection of the infinitive with the verb to convey emphasis is a common feature in the Bible. Cf. Ex. XXII, 3: Deut. XV, 10, 14.
29. Hence it is free on both sides, and so cannot be rejected.

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30. Since the need of the seven questions has been established in cases punishable by stoning or decapitation, viz., idolatry and witnesses proved *Zomemim*.
31. Strangulation is regarded as a milder form of death than the former two, hence the seven questions are certainly necessary there. (V. p. 259, n. 2).
32. Stoning is severer than burning, and decapitation milder.
33. I.e., how then can we deduce a seven-fold inquiry from cases involving a milder to those involving a severer punishment?
34. Deut XIII, 15, with reference to the condemned city.
35. Ibid. XVII, 4, with reference to the idolater.
36. For 'if it be truth' implies that a question is put to ascertain it; likewise, 'and (if) the thing (be) certain' implies another question; hence the two sentences imply another four questions, in addition to the seven.
37. Sc. concerning the word 'diligently' in the cases of idolatry, *Zomemim*, and the condemned city.
38. That there too the witnesses must be examined with the seven queries of time and place.
39. For, as stated above, they declared the need of seven queries in the cases of charges punishable by burning a minori from stoning. What need then of the eleventh expression, which likewise indicates the case of burning? Hence this assumption must be made.
40. How can it be taken for certain that its purpose is to extend the law of seven queries to charges of burning?
41. I.e., can one ask a further question through which false witnesses may be declared *Zomemim*?
42. I.e., that eight queries are conceivable, each of which may serve the purpose of refuting the witnesses.
43. In regard to the exact time (Pes. 11b). So that, should the witnesses be refuted over a matter of half an hour, e.g., if they stated that they witnessed a murder at 4:30, and other witnesses testify that they were elsewhere, we do not assume that they might have witnessed the murder at 4 or 5, and erred in half an hour, but declare them *Zomemim*. Hence a purpose is served by questioning them on the precise part of the hour.
44. To add another query as regards the precise part of the hour.
45. Who does not favor an eight-fold inquiry, — what view does he hold?
46. Since it is highly improbable that evidence would be postponed from one Jubilee to another (Rashi) (Or. one includes the other, v. Yad Ramah]. — It may be observed that owing to the discussion on the possibility or need of eight questions, R. Abbahu's objection remains unanswered, unless it be assumed that R. Simeon who maintains that burning is severer than stoning also agrees with the Tanna of the Mishnah that only seven questions are put.
47. Cf. *supra*. 32b. 'They shall take the witnesses from one place to another in order to confuse them.'
48. I.e., to defend our view.
49. How does he maintain his objection, seeing that it may rightly be raised against his own view too?
50. Therefore R. Jose maintains that the latter possibility may be disregarded.
51. By saying, e.g., 'I know that I am warned not to do so.'
52. By answering you, e.g., 'Even though I shall be punished by such and such a death, yet I will commit this crime.'
53. Such as a greeting from a disciple to teacher, e.g., 'Peace be unto thee, my Master and Teacher'. V. B.K. 73b; Mak. 6a. If the murder was delayed longer, the plea that he forgot the warning might be accepted. (Rashi)
54. Num. XXV, 1-9. Worshipped by obscene rites. V. *infra* 60a, and Rashi, on Num. *loc. cit.*, also p. 410, n. 1.
55. [H], Roman, Mercurius, Greek, Hermes, the patron deity of wayfarers. V. p. 410, n. 2.
56. Lev. XX, 17.
57. I.e., if the witnesses previously warn him that his proposed action is forbidden on pain of *kareth*.
58. [H]; excision — punishment by Heaven, where no warning is needed, since God knows whether the culprit was aware of the forbidden nature of his action or not.

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we must refer it to flogging.¹

The school of Hezekiah taught: And if a man come presumptuously upon his neighbor to slay him with guile;² — this implies that they warned him, yet he remained with willful intent.³ The school of R. Ishmael taught: And they that found him gathering sticks:⁴ that implies that they warned him, yet he continued gathering. The school of Rabbi taught: Because [lit., 'for the word that'] he hath humbled [his neighbor's wife'],⁵ teaching, [it is] by reason of 'the word' [that

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he is stoned].⁶ And [these verses] are all necessary: for had the Divine Law stated [this provision] only in reference to a man's sister, one might have said that it applied only to those liable to flogging, but not to those liable to death,⁷ therefore the Divine Law wrote, If a man come presumptuously, etc.⁸ Again, had this verse only been written, I might have thought that it [sc. a warning] is necessary only for decapitation, which is a milder form of death; but for stoning, which is severer, one might hold that it is not [required]: thus all are necessary. But why need two [intimations]⁹ in respect of stoning? — According to R. Simeon,¹⁰ to extend [the law of warning] to cases of burning;¹¹ whilst the Rabbis¹² [answer]: (Scripture [sometimes] takes the trouble of stating a law¹³ which can be deduced a minori. But Scripture should have intimated it for stoning [only], and then these other cases¹⁴ could have been inferred from it! — Here too [the same answer must be given]: Scripture [sometimes] takes the trouble of stating a law which can be deduced a minori.

'Did he admit his liability to death?' Whence do we infer this? Raba — others state, Hezekiah — said: Scripture states, Shall he that is to die¹⁵ be put to death;¹⁶ [He is not put to death] unless he [previously] admitted his liability to death.¹⁷

R. Hanan said: Witnesses against a betrothed damsel¹⁸ who were proved *Zomemim*, are not executed,¹⁹ since they may plead, We came forward [to testify] only to render her ineligible for her [intended] husband.²⁰ But they must surely have warned her!²¹ — This treats of a case where they did not warn her. But if so, how could she be put to death at all?²² This refers to an educated woman, and is based on the view of R. Jose son of R. Judah. For it has been taught: R. Jose son of R. Judah said: A scholar needs no warning, for warning was instituted only in order to distinguish between willfulness and unwillfulness.²³ But since they are not executed, how could she be? For this becomes evidence to which the law of *Zomem*

cannot be applied,²⁴ and such is not admissible!²⁵ — He [R. Hanan] actually meant it thus: Since they are not executed, for they can plead, 'We came only to make her ineligible for her [intended] husband,' she too cannot be executed, because it is evidence to which the law of *Zomem* cannot be applied. Then in the case of an educated woman, who, as we know, is to be executed on the view of R. Jose son of R. Judah, how, is that possible?²⁶ — If she misconducted herself twice.²⁷ But they [the witnesses] can still plead, We came only to render her forbidden to her second paramour!²⁸ — [The case in question is one] where the misconduct was repeated with the first adulterer,²⁹ or one of misconduct with one of her relations.³⁰

But why state this only of a 'betrothed damsel': surely the same applies to a married woman too! — True: but [the purpose here is to teach that] even in such a case, though she has not yet lived with her husband, they can plead, We came forward only to make her ineligible for her [intended] husband.

R. Hisda said: If one testified that he [the accused] slew him with a sword, and another, that he slew him with a dagger, it [the evidence] is inadmissible.³¹ If one says, His clothes were black, and the other, His clothes were white; the evidence is admissible.³²

An objection is raised: 'Certain'³³ implies that the evidence must be certain; if one witness says, He slew him with a sword, and the other says, With a dagger; or if one says, His clothes were black, and the other, They were white, the evidence is not 'certain'?³⁴ — R. Hisda interpreted this as referring to the [color of] the cloth with which he strangled him, which comes under the same category as sword or dagger.

Come and hear! If the one says that his sandals were black, and the other, that they were white, the evidence is not certain!³⁵ — There too the meaning is, that he kicked him with his sandal and killed him.³⁶

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Come and hear! IT ONCE HAPPENED THAT BEN ZAKKAI CROSS-EXAMINED [THE WITNESSES] AS TO THE STALKS OF THE FIGS. — Rami b. Hama replied: The meaning is, that a man cut off a fig on the Sabbath, for which he was to be put to death.³⁷ But has it not been taught: They said to him, 'He killed him beneath a fig-tree'? — But, said Rami b. Hama: It was a case where he [the accused] pierced his victim with the sharp end of a fig branch.

Come and hear! He questioned [the witnesses]: Were the stalks of this fig tree thin or thick? And were the figs [themselves] black or white?³⁸ But, answered R. Joseph: Would one raise an objection from Ben Zakkai! Ben Zakkai had a different view, since he assimilated bedikoth to hakiroth.³⁹

Now, who was this Ben Zakkai? Shall we say, R. Johanan b. Zakkai? Was he then [a member] of the Sanhedrin?⁴⁰ Has it not been taught:⁴¹ The whole lifetime of R. Johanan b. Zakkai was a hundred and twenty years. Forty years he engaged in business; forty years he studied, and forty years he taught. And it has also been taught: Forty years before the destruction of the Temple, the Sanhedrin were exiled⁴² and took up residence in Hanuth.⁴³ Whereon R. Isaac b. Abudimi said: This is to teach that they did not try cases of Kenas.⁴⁴ 'Cases of Kenas!' Can you really think so!⁴⁵ Say rather, They did not try capitol charges.⁴⁶ Again we learnt:⁴⁷ When the Temple was destroyed, R. Johanan enacted [so and so].⁴⁸ But the reference is to some other Ben Zakkai. Reason too supports this: for were R. Johanan b. Zakkai meant, would Rabbi⁴⁹ have called him merely Ben Zakkai!⁵⁰ Yet has it not been taught: It once happened that R. Johanan b. Zakkai examined [witnesses] as to the stalks on the figs?⁵¹ — He must therefore have been a disciple sitting before his Master,⁵² when he made this statement the reasoning of which was so acceptable to them [the Rabbis]

1. I.e., a warning must be given that he is liable to flagellation.
2. Ex. XXI, 14.
3. From the use of the imperfect [H], which connotes a continuous present. Murder is punishable by decapitation.
4. Num. XV, 33; here too, the deduction follows from the use of the present part. ([H]), i.e., 'he went on gathering sticks after he was found (and warned). This shows the need for warning in the case of stoning
5. Deut. XXII, 24.
6. [H] 'By reason of the word' — sc. of warning.
7. For one might think that owing to the severity of the crime people would themselves realize the consequences and so not need warning.
8. So indicating the need of warning in a case punishable by death.
9. One in connection with the 'gatherer of sticks', and the other regarding the 'betrothed damsel'.
10. Who holds that burning is a severer death; consequently, the warning here cannot be deduced from the reference to stoning, since it might be thought that in the case of a severer punishment, warning is not required.
11. R. Simeon bases this on the hermeneutical [H] i.e., if it has no hearing on cases of stoning, it must refer to cases of burning.
12. Who hold that stoning is a severer death, so that warning for burning follows therefrom *a fortiori*.
13. Here, not explicitly, but by the same principle of [H].
14. Sc. lashes and decapitation.
15. Lit., 'the dead.'
16. Deut. XVII, 6.
17. This is deduced from the expression, [H], the dead, instead of 'murderer'. In accepting the warning then, he is regarded as dead de jure, even before appearing in court, since the warning involves the consequences of the evil deed.
18. Who have testified to her infidelity. Had the charge been proved, she would have been executed.
19. Despite the fact that collusive witnesses are punished according to the law of retaliation.
20. For if the charge were proved, even if for some reason she were not executed, she would be forbidden to her husband!
21. That the consequence of her act was death. How then could this argument for the defense be raised
22. And in that case the witnesses too are not liable, since it is written, And ye shall do unto him as he thought (plotted) to do unto his brother (Deut. XIX, 19), i.e., they are

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- punished only as the accused would have been punished.
23. If the murderer was not warned he could plead ignorance of the death penalty. A scholar could not raise such a point in his defense. Hence this woman would have been liable to death, and in consequence, the false witnesses too, but for the plea stated above.
 24. I.e., even if their evidence is proved to be false, the law of retaliation cannot operate, because of their possible defense that they intended only to make her ineligible for her intended husband, and not to bring the death penalty upon her.
 25. Lit., 'is not called testimony.' For unless there is this deterrent to false testimony, it is suspect *ab initio*.
 26. Since the witnesses themselves, if proved *Zomemin*, are not executed.
 27. And so the witnesses in the second charge can no longer plead that their intention was only to prohibit her to her husband, since she is already forbidden.
 28. An unfaithful woman is forbidden not only to her husband, but also to the adulterer, if he afterwards wishes to marry her. V. Sotah 26b.
 29. To whom she is already prohibited in consequence of their earlier relations.
 30. Whom she is absolutely forbidden to marry at all.
 31. Lit., 'not certain', quoted from: Behold if it be truth and the thing certain (Deut. XIII, 15. XVII, 4.), v. *supra* 30b.
 32. Contradictory statements made during cross examination are of sufficient importance to be invalidated only when they refer to the act itself.
 33. Deut. XIII, 15: XVII, 4. V p. 265, n. 9.
 34. Hence inadmissible. I.e., the evidence must tally, even in respect of matters which have no direct bearing on the act.
 35. Although there is here no actual contradiction in matters directly involving the act.
 36. The sandals being the actual weapons, the question of color is on a par with the question of sword or dagger.
 37. Hence the species of fig is of direct importance for the veracity of the witnesses.
 38. I.e., ripe or unripe. Now surely, he could not have killed anyone with the figs. This proves that the meaning is that the witnesses deposed that the accused had killed his victim under or near a fig-tree, and thus this again refutes R. Hisda.
 39. And maintained that just as contradictions on the latter invalidated the evidence, so on the former. The general view, however, disagrees with this, and R. Hisda's dictum was likewise in accordance with the general view.
 40. At the time when they still had power to try capital cases.
 41. Cf. R. H. 31b.
 42. From the Hall of Hewn Stones. V. *infra* p. 205, n. 5.
 43. [H] A place on the Temple Mount outside the hewn chamber where they had temporary residence. (Derenbourg, *Essai*, p. 467, and Krauss, *REJ*, LXIII, 66f., identify it with the 'Chamber of the sons of Hanan' (a powerful priestly family, cf. Jer. XXXV, 4) mentioned in *J. Pe'ah* I, 5.]
 44. V. [Glos.](#)
 45. That these, like capital charges, could be tried only in the chief seat of the Sanhedrin — the Hall of Hewn Stones! These cases could, in fact, be tried anywhere in Palestine.
 46. V. A.Z. 8b on Deut. XVII, 10: And thou shalt do according to the tenor of the sentence which they shall declare unto thee, from that place; this implies that it is the place that conditions the authority of the Sanhedrin in respect of the death sentence. [*J. Sanh.* I, 1 has, 'the right to try capital cases was taken away from them, i.e., by the Romans. For a full discussion of the subject v. *Juster. op. cit.*, II, 138ff.]
 47. R. H. 29b.
 48. Hence the last period of R. Johanan's career was after the destruction of the Temple, when the Sanhedrin no longer tried capital cases.
 49. In the Mishnah.
 50. Depriving him of the title given at ordination.
 51. I.e., it must be the same person.
 52. At a time when capital cases were yet tried.

Sanhedrin 41b

that they established it in his name. Thus while he was yet a student he was called Ben Zakkai, as is customary for a disciple sitting before his master, and when later he was a teacher,¹ he was called Rabban Johanan b. Zakkai. Hence, when he is referred to as Ben Zakkai,² it is in accordance with his earlier status;³ while when he is called R. Johanan b. Zakkai, it is in accordance with his status at the time [that the Baraitha was taught].

IT ONCE HAPPENED THAT, etc. ... WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH.?, etc. What does 'EVEN⁴ IF BOTH SAY, etc. mean? It is surely obvious that if when one of the two witnesses says, 'I do not know,' their evidence

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is valid, if two say so, their testimony is likewise valid?⁵ — R. Shesheth said: This refers to the first clause [of the Mishnah]⁶ and its meaning is as follows: In hakiroth, even if two say, 'We know,' and one is in doubt, their evidence is invalid. With whom does this agree? — With R. Akiba, who treated three [witnesses] as equal to two.⁷ Raba demurred: Surely the Mishnah states: **THEIR EVIDENCE IS VALID!**⁸ — But, said Raba, it means this: Even in hakiroth, if two say, 'We know,' and the third says, 'I do not know,' their evidence is valid. With whom does this agree? — Not with R. Akiba.

R. Kahana and R. Safra were studying [the Tractate] Sanhedrin in the school of Rabbah. When Rami b. Hama met them, he asked them: What have ye to say on the Tractate Sanhedrin as taught in the school of Rabbah?⁹ They retorted: And what in particular are we to say of the Tractate itself?¹⁰ What is your special difficulty? — He answered: [The difficulty arises] from what is stated: **WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH? IN HAKIROTH, IF ONE [OF THE WITNESSES] ANSWERS, 'I DO NOT KNOW,' THEIR EVIDENCE IS VOID. WITH RESPECT TO BEDIKOTH, HOWEVER, IF ONE ANSWERS, I DO NOT KNOW,' OR EVEN IF BOTH SAY, 'WE DO NOT KNOW THEIR EVIDENCE IS VALID. Now consider: both are Biblically [required]:¹¹ why then should hakiroth differ from bedikoth? — They said to him: How compare them?¹² As for hakiroth, if one of the witnesses say, 'I do not know', the evidence is invalid because it cannot be refuted;¹³ but with respect to bedikoth, if one of them answers, 'I do not know', the evidence remains valid, since it is still subject to refutation. Thereupon he said to them: If that is what you have to say, you have much to say thereon. But they replied: only because of your great forbearance have we said so much; had you criticized us, we should not have said anything.¹⁴**

IF ONE TESTIFIES ... [FOR ONE MAY HAVE BEEN AWARE OF THE INTERCALATION OF THE MONTH, etc.] Till what date?¹⁵ — R. Aha b. Hanina said in the name of R. Assi in the name of R. Johanan: Until the greater part of the month [has passed].¹⁶ Raba said: We too learnt likewise' IF HOWEVER, ONE SAID, 'ON THE THIRD, AND THE OTHER, 'ON THE FIFTH, THEIR EVIDENCE IS INVALID. But why so? Why not assume that the one may have known of two intercalations,¹⁷ whilst the other was ignorant of both! Hence it must surely be so because, when the greater part of the month has passed, one knows thereof [sc. intercalation]! — [No.] In truth I might argue that even after the passing of the greater part of the month, one does not necessarily know [of the intercalation],¹⁸ yet he must have known of the *Shofar*-signal:¹⁹ we may then say that he may have erred regarding one signal,²⁰ but not regarding two.²¹

R. Hanina also said in the name of R. Assi in R. Johanan's name: Until what day of the month may the benediction over the new moon be recited?²² — Until its concavity is filled up. And how long is that? — R. Jacob b. Idi said In Rab Judah's name: Seven days. The Nehardeans said: Sixteen [days].

1. I.e., after ordination.
2. In the Mishnah.
3. Which is chronologically correct.
4. The word 'even' gives the impression that when both witnesses are dubious, the evidence is less likely to be valid than when only one is in doubt.
5. For if one is ignorant on a certain point, the other's knowledge thereof is valueless. Hence whatever evidence is valid when one is ignorant, is also valid when both are ignorant.
6. Which deals with HAKIROTH.
7. Just as when there are only two witnesses, if one of them is disqualified, the whole evidence falls to the ground, so when there are three. V. Tosaf. and cf. Mak. 5b.
8. How then interpret it of a case where the evidence is invalid?
9. Seeing that you have studied under such a great man, you must surely have discovered many new points.

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10. I.e., even if we had not studied with Rabbah, was there really any difficulty to be found there? (Rashi). [Yad Ramah adds: 'as generally taught' (lit., 'as all the world teaches')?]
11. V. *supra* 40b, 41a.
12. Lit., 'How so, now!'
13. Be proving that the witnesses were elsewhere at the said time. Hence, if one is in doubt regarding the place or time, such refutation is impossible. — It should be observed that only refutation of time and place is meant in the whole discussion, since that is the only form of refutation which renders the witnesses liable to the law of retaliation.
14. I.e., had you criticized our arguments we should not have been able to resist yours!
15. I.e., until what day of the month may ignorance of the defectiveness or fullness of the last month be assumed in explanation of the discrepancy between two witnesses?
16. After that, contradiction as to date invalidates the evidence. The greater part of the month means one day beyond half way.
17. Either consecutively or alternately.
18. And so the question from the Mishnah is not corroborative.
19. Blown at the proclamation of the new moon, be the month full or defective.
20. I.e., though knowing that the *Shofar* had been sounded, he may have erred once as to the day on which it was sounded.
21. Hence the invalidity of the evidence where there is a difference of two days.
22. A benediction is recited at each re-appearance of the new moon just as on the re-appearance of everything that is beneficial to mankind. V. J. Ber. IX, 2. 'He who sees the moon in her stage of renovation, utters: Blessed, etc.'

Sanhedrin 42a

Now, both agree with R. Johanan,¹ but the one [explains it as meaning]: Until it is like a strung bow;² the other: Until it is like a sieve.³

R. Aha of Difti⁴ said to Rabina:⁵ Yet should not one utter the benediction,⁶ 'Blessed ... who art good and dispensest good'!⁷ — He replied: But when it is waning, do we say, 'Blessed be the true judge.'⁸ that we should say: 'Blessed ... who art good and dispensest good?'⁹ But why should not both be recited?¹⁰ Since it is a regular phenomenon, no benediction at all is required.¹¹

R. Aha b. Hanina also said in the name of R. Assi in R. Johanan's name: Whoever pronounces the benediction over the new moon in its due time welcomes, as it were, the presence of the *Shechinah*: for one passage states, This month;¹² whilst elsewhere it is said, This is my God, and I will glorify Him.¹³

In the school of Rabbi Ishmael it was taught: Had Israel inherited no other privilege¹⁴ than to greet the presence of their Heavenly Father once a month,¹⁵ it were sufficient. Abaye said: Therefore¹⁶ we must recite it standing. But Meremar and Mar Zutra allowed themselves to be carried on the shoulders¹⁷ when they pronounced the blessing.

R. Aha said to R. Ashi: In 'the West,' they pronounce the following benediction: 'Blessed be He who reneweth the moons.' Whereupon he retorted: Such a blessing even our women folk pronounce!¹⁸ But [one should rather use the following], in accordance with Rab Judah, who gives it thus: Praised, etc.¹⁹ who created the Heavens with His word, and all their hosts with the breath of His mouth. He appointed unto them fixed laws and times, that they should not change their ordinance. They rejoice and are glad to do the will of their Creator. They work²⁰ truthfully, for their action is truth. The moon He ordered that she should renew herself as a crown of beauty for those whom He sustains from the womb,²¹ and who will, like it, be renewed in the future, and magnify their Maker in the name of the glory of His kingdom. Blessed art Thou, O Lord, who renewest the moons.

For with wise advice²² thou shalt make thy war.²³ R. Aha b. Hanina [further] said in the name of R. Assi in R. Johanan's name: In whom do you find [skill to conquer in] the battle of the Torah?²⁴ — Only in him who possesses bundles of Mishnah [teaching].²⁵

SANHEDRIN – 25b-45b

R. Joseph applied to himself [the verse]: Much increase [of grain] is by the strength of the ox.²⁶

SIMILARLY, IF ONE TESTIFIED, 'DURING THE SECOND HOUR', etc. R. Shimi b. Ash said: They taught this only of hours.²⁷ But if one testifies, 'It was before sunrise,' and the other says, 'After sunrise, their evidence is invalid.²⁸ This is obvious²⁹ — But [put it thus:] if one testifies, 'Before sunrise,' and the other, 'During sunrise.'³⁰ But this too is obvious! I might, however, think that he [the witness] was standing in the glow [before sunrise] and what he saw was but a gleam.³¹ He therefore informs us otherwise.

AFTER THIS, THE SECOND WITNESS IS ADMITTED, etc. [AND HE DOES NOT DESCEND FROM THERE ALL THAT DAY.] Only THAT DAY,³² and no longer? But has it not been taught: 'If there is substance in his statement, he does not go down from there at all;³³ but if there is no substance therein, he does not descend thence all that day, that his rise be not his fall!'³⁴ — Abaye said: Interpret it [sc. the Mishnah] as applying [to a case] where no substance was found in his statement.

IF THEY FIND HIM NOT GUILTY, etc. [AND DRINK NO WINE]. Why drink no wine? — R. Aha b. Hanina said: Scripture states, It is not for princes³⁵ to say, Where is strong drink?³⁶ [i.e.,] those who are engaged in [unraveling] the secrets of the world³⁷ must not become drunk.

THE TWO SIDES DEBATE THE CASE TOGETHER UNTIL ONE OF THOSE WHO CONDEMN AGREES WITH, etc. But what if they do not agree? R. Aha ruled: He is discharged. R. Johanan said likewise: He is discharged. R. Papa said to Abaye: Then he should be set free in the first place!³⁸ He answered: Thus did R. Johanan say: It is in order that they may not leave the Court in confusion.³⁹ Some say that R. Papa said to

Abaye: Why add, Let him be discharged by the first court?⁴⁰ To which he replied: R. Jose is in agreement with you. For it has been taught: R. Jose said: Just as a court of seventy-one is not increased, so may a court of twenty-three not be increased.

Our Rabbis taught: In civil suits, a declaration is made, The judgment nizdakan;⁴¹ but not in capital charges.⁴² What does (for note 9 see p. 274) nizdakan mean? Shall we say, The case is difficult:⁴³ surely, the reverse should have been taught!⁴⁴ R. Huna b. Manoah said in the name of R. Aha the son of R. Ika: We should reverse (the instances). R. Ashi said: In truth, you need not reverse it: what is meant by 'The judgment nizdakan'? — The case is wisely [established].⁴⁵

An objection is raised: The presiding judge declares, 'The judgment nizdakan.' Now, should you agree that it means, 'The case is wisely established,' it is correct, hence the presiding judge makes the declaration. But if you maintain that it means, 'The case is difficult;' is it not better that the presiding judge should not say it? Surely in doing so he actually disgraces himself! — There is no comparison between declaring one's own disgrace and having another declare it.⁴⁶ Others state: Should you agree that it means, 'The case is difficult,' it is correct, for there is no comparison between declaring one's own disgrace and having another declare it. But if you maintain that it means, 'The case is wisely established:' does not the president [of the court] thereby praise himself? Whereas it is written, Let another praise thee and not thine own mouth?⁴⁷ — It is different in judicial matters, since the president is charged with the duty,⁴⁸ as we learnt: When a decision has been arrived at, they are admitted, and the presiding judge declares, 'So and so, thou art not liable,' or, 'So and so, thou art liable.'⁴⁹

1. That the recital of the benediction is conditioned by the filling up of the moon's concavity.

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2. I.e., semicircular, which shape it assumes after seven days.
3. I.e., round, at full moon.
4. [Dibtha on the Tigris. (Obermeyer *op. cit.* p. 197)].
5. With reference to Rab Judah's view.
6. After seven days and until full moon.
7. This benediction is made on the attainment of a thing over which its due blessing has already been pronounced, but which has now either been improved or been replaced by a thing of the same kind but of a better quality (v. Ber. 59b). And so R. Aba maintained that even if in Rab Judah's opinion the usual benediction for the new moon is not to be uttered after seven days because it is then no longer new, yet since it is still in its growing stage, becoming more luminous as the days pass until full moon is reached, this latter blessing should be uttered.
8. A benediction recited on hearing bad tidings. Cf. Ber. 54a.
9. When it is waxing. I.e., since its waning is not regarded as a loss, entailing this benediction, its waxing is not a gain, necessitating the other.
10. On the respective occasions.
11. For its waxing is no particular boon from God, nor its waning an infliction, which are the fundamental reasons of these benedictions.
12. Ex. XII, 2, concerning the New Moon.
13. Ex. XV, 2, in the Song of Moses. 'This' is taken as connoting something that could, as it were, be pointed at with the finger (v. Mekilta. Ex. XV, 2), and the use of this word in the two verses suggests that he, who praises God at the periodical renewal of the moon, gives witness to the revelation of Divine Glory as manifested in natural phenomena.
14. [H]; v. p. 153. n. 2.
15. I.e., if they practiced no other observance but this — the benediction over the new moon.
16. Because it is a greeting of God's Presence.
17. Probably because of their infirmity through age. Cf. *supra* 7b, and Rashi's comment
18. As if to say, 'There is nothing in that.' Such a short benediction is fit only for the uneducated. e.g., women (Maharsha).
19. The 'etc.' (curr. edd. in brackets) stands for 'art thou, O Lord our God...'
20. Tosaf.'s reading: 'He works', referring to God.
21. I.e., from childhood, viz., Israel, cf. Isa. XLVI, 3.
22. [H].
23. Prov. XXIV, 6.
24. I.e., who is qualified to meet the difficulties of the Torah, and give a true interpretation?
25. I.e., he who is fully conversant with the law; according to Rashi, the point is that mere dialectic skill and ingenuity are no substitutes for a sound knowledge of the sources. [H], bundle, is a word play on [H].
26. Prov. XIV, 4. V. Deut. XXXIII, 17, where Joseph is symbolically compared to a bullock; also Hor. 14a: R. Joseph was renowned for his erudition, being known as Sinai. Hence his application of the above verse to himself.
27. I.e., if the witnesses state a definite time, e.g., three hours, four hours., etc. Only then is there a dispute in the Mishnah as to the margin of possible error.
28. Even according to R. Judah.
29. As there could be no error in such a matter.
30. Their evidence is null.
31. Mistaking it for the rays of sunrise; thus their statements tally.
32. Does the disciple remain seated with the Judges.
33. I.e., he becomes a member of the Court. V. Yad, Sanh. X, 8, although according to Tosafoth Yom Tob on Sanh. V, 4, he is not given a (for note 9 see p. 274) vote. Me'iri, however, maintains that he is seated with them only as long as the trial lasts.
34. If he had to resume his seat in the presence of the Assembly, he would be disgraced.
35. [H], here connected with [H], secret. V. Dan. II, 18, 29.
36. Prov. XXXI, 4.
37. I.e., seeking to bring to light the secrets hidden in men's hearts, and so endeavoring to establish the truth — in a capital charge.
38. I.e., after the court was increased to seventy-one and there was yet no clear majority. Why then delay by debating, surely the court as a whole must not seek to convict?
39. I.e., without a definite decision. It reflects discredit on a court that it should rise in a state of controversy, having been unable to bring the matter to a definite conclusion (Rashi).
40. Of twenty-three. If there was then no clear majority, both sides should have endeavored to win one more vote over to their opinion, and in the case of failure, he should have been set free there and then.
41. [H], from the root [H], may have a twofold meaning; a) old, in that the case has become old in discussion and could not be solved; or b) wise, in that the case has become clear, or wisely established, and is no longer in need of discussion. The following discussion is based on these two alternative meanings.
42. Cf. Tosef. Sanh. VII.

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43. Lit., 'old', I.e., the case is become old and stale through prolonged discussion, and cannot be solved.
44. I.e., in capital cases one should all the more say, 'The judgment nizdakan,' so as to acquit the accused.
45. [H] according to the Rabbis, denotes 'wise' Cf. Kid. 32b.
46. Which would be the position if the words were pronounced by another member of the court.
47. Prov. XXVII, 2.
48. Of declaring the verdict.
49. *Supra* 29a.

Sanhedrin 42b

CHAPTER VI

MISHNAH. WHEN THE TRIAL IS ENDED,¹ HE [THE CONDEMNED] IS LED FORTH TO BE STONED.² THE PLACE OF STONING WAS WITHOUT THE COURT, EVEN AS IT IS WRITTEN, BRING FORTH HIM THAT HATH CURSED.³

A MAN WAS STATIONED AT THE DOOR OF THE COURT WITH THE SIGNALLING FLAG⁴ IN HIS HAND, AND A HORSE-MAN WAS STATIONED AT THE DISTANCE YET WITHIN SIGHT OF HIM,⁵ AND THEN IF ONE⁶ SAYS, 'I HAVE SOMETHING [FURTHER] TO STATE IN HIS FAVOUR', HE [THE SIGNALLER] WAVES THE FLAG, AND THE HORSE-MAN RUNS AND STOPS THEM.⁷ AND EVEN IF HE HIMSELF SAYS, 'I HAVE SOMETHING TO PLEAD IN MY OWN FAVOUR', HE IS BROUGHT BACK, EVEN FOUR OR FIVE TIMES, PROVIDING, HOWEVER, THAT THERE IS SUBSTANCE IN HIS ASSERTION.

GEMARA. And was the place of stoning only just outside the court and no further? Has it not been taught: The place of stoning was outside the three encampments?⁸ — True, it is even as you say, yet he teaches it thus, so that one may infer from it that if the *Beth din* went forth² and stationed itself outside the three encampments,¹⁰ even so the place of stoning had to be without the court, in order

that it [the court] should not appear murderously inclined, or that there might be a possibility of deliverance.¹¹

Whence is this inferred?¹² From what our Rabbis taught: Bring forth him that hath cursed without the camp:¹³ i.e., without the three camps. You say, 'without the three camps:' but may it not mean simply outside one camp? — It is here stated, Without the camp; and in reference to the bulls that were [wholly] burned,¹⁴ it is also said, without the camp:¹⁵ Just as there, [it means] without the three camps, so here too. And whence is that derived there? — From what our Rabbis taught: The whole bullock shall he carry away without the camp¹⁶ — i.e., without the three camps. You say, 'without the three camps;' but perhaps it simply means 'without one camp'?¹⁷ — But when Scripture states further, with reference to the bull offered for the Community,¹⁸ without the camp, which is unnecessary, for it has already been stated, And he shall burn it as he hath burned the first bullock,¹⁹ its purpose is to add a second camp.²⁰ And when Scripture states further, with reference to the ashes,²¹ without the camp,²² which is also superfluous, since it has already been said, Where the ashes are poured out shall it be burned,²³ its purpose must be to add a third camp.²⁴

But why not derive it²⁵ from the sacrifices slaughtered without [the legitimate precincts]?²⁶ Just as there, [the meaning is] without one camp,²⁷ so here too, without one camp is meant! — It is logical to make the deduction from the bullocks that were [wholly] burned, since they have the following points in common: [i] Bring forth ... without the camp; [ii] [the bringing forth] is a necessary preliminary [to the act]; [iii] atonement.²⁸ On the contrary, it should rather be deduced from the sacrifices slaughtered without, since they have the following in common; [i] human being; [ii] sinners; [iii] life is taken; and [iv] piggul?²⁹

SANHEDRIN – 25b-45b

— It is preferable to deduce one necessary preliminary from another.³⁰

R. Papa said:³¹ Where did Moses reside? In the camp of the Levites.³² And God said to him: Bring forth him that hath cursed without the camp³³ — which therefore means, without the camp of the Levites. Hence, when it states, And they brought forth him that had cursed outside the camp, the camp of the Israelites [must be meant].³⁴ But surely, that is necessary to intimate the fulfillment [of the command]? — This fulfillment is expressly stated:

1. And the accused is found guilty.
2. If he be so sentenced. Stoning is given here as an example, it being enumerated first in the list of the four modes of execution in Jewish law. Cf. *infra* 49b.
3. 'Bring forth' implies 'without,' as is also shown by the end of the sentence: without the camp. Lev. XXIV, 14.
4. Sudarium, a cloth or kerchief.
5. The signal man.
6. Of the judges (Rashi).
7. From carrying out the sentence until the court has gone into the details to see whether there is any substance in the new statement offered.
8. That of the Divine Presence and the Priests, that of the Levites, and that of the rest of the Israelites. In Jerusalem they were situated as follows: The first was confined to the space of the Temple court, the second to the Temple Mount and the third occupied the rest of the city.
9. From its usual locale, as stated in the previous note.
10. I.e., one of the minor Sanhedrins.
11. Between sentence and execution. The further the place of execution was from the court, therefore, the better for the condemned.
12. That the execution must take place outside the three camps.
13. Lev. XXIV, 14, with reference to the blasphemer.
14. I.e., the sin offering of the anointed priest (Lev. IV, 3, seq.), and of the whole community (ibid. 13 seq.).
15. Ibid. 12, 21.
16. Ibid. 12.
17. I.e., only outside the precincts of the Temple.
18. In case the whole community committed an unwitting transgression.
19. Ibid. i.e., the sin offering of the anointed priest, ibid. 3 seq.
20. Beyond, which the burning is to take place.
21. Which were heaped up and had to be removed.
22. Lev. VI, 4.
23. Lev. IV, 12; this explicitly states that the place for burning the ashes was without the camp. Hence the same statement in the verse first quoted is redundant.
24. V. n. 12.
25. Sc. the meaning of 'without the camp', Lev. XXIV, 14.
26. Cf. Lev. XVII, 3ff. Whatever man, etc. ... that offereth a burnt offering or sacrifice and bringeth it not unto the entrance of the appointed tent ... that man shall be cut off from among his people.
27. As is deduced from the words, bringeth it not unto the entrance of the appointed tent, i.e., the priestly camp, but outside it.
28. In both these cases there is a positive command, Bring forth, etc. Whereas with references to sacrifices slaughtered outside the forecourt it is only stated, He that slaughtered it outside the camp. Again, the bringing forth without the camp is a prerequisite for the fitting performance of the act; whereas in the case of sacrifices slaughtered outside the Temple court it is a transgression. Moreover, the burning of the bullock is an atonement for the High Priest and the whole Congregation (cf. Lev. IV, 20), and stoning likewise is an atonement for the malefactor; but that feature is absent in the case of sacrifices slaughtered without.
29. 'Without the camp' in both these places refers to a human being; the blasphemer was to be taken 'without the camp', whilst it was a human being who slaughtered 'without the camp'; whereas, in connection with the burnt bullocks, this phrase relates to animals; they were to be taken 'without the camp'. Again, the blasphemer and the slaughterer without the camp are both sinners, whereas the bullock, in direct relation to which the phrase is stated, is not a sinner. Further, in both these cases, the leading 'without the camp' was in order to take life — that of the blasphemer and the sacrifice yet to be slaughtered; but the burnt bullocks were already slaughtered; and 'without the camp' is mentioned in connection with burning their carcasses. And finally, the law of piggul is inapplicable to these two. [H], unfitness caused by an intention in the mind of the officiating priest to dispose of a sacrifice outside the legal limits of space or time. In both these cases the performance of the act

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outside does not involve this sin. In stoning it is, of course, not applicable, and sacrificing outside the prescribed area is not piggul, which implies instead a sacrificing outside the precincts but unlawful intentions about the sacrifice's subsequent disposal. Nor is piggul possible in the case of sacrifices slaughtered without. In the case of the bullocks to be wholly burned, an intention to burn them beyond their proper place makes the sacrifice in a sense piggul (v. Rashi).

30. V. n. 3.
31. In proof that the third camp is meant.
32. Since he was a Levite.
33. Lev. XXIV, 14.
34. It was not necessary to repeat the words, out of the camp; therefore the words here mean something different from their use earlier.

Sanhedrin 43a

And the children of Israel did as the Eternal had commanded Moses.¹ If so,² what is the purpose of the sentence, And they stoned him with a stone?³ — This is needed for what was taught: And they stoned him with a stone,⁴ — him,⁵ but not his garments. With a stone,⁶ — [to teach] that if he was killed by a single stone the commandment is fulfilled.⁷ And it was necessary to write [in this instance], 'stone', and [in another], 'stones'.⁸ For had the Divine Law written [only] 'a stone', I might have said: In case he does not die through one stone, no more are to be brought to kill him. The Divine Law therefore states, 'stones'. Again, had the Divine Law written 'stones' [only], I might have said that at the outset two must be fetched. The Divine Law therefore states, 'a stone'.²

But this Tanna states, 'Here it is written [etc.],'¹⁰ — He meant, If it were not written, i.e., even if this verse¹¹ were not found,¹² I could have adduced a *gezerah shawah*; seeing, however, that this verse is written, a *gezerah shawah* is not necessary.

R. Ashi said; Where did Moses reside? In the camp of the Levites And God said to him: Bring forth him that hath cursed, — i.e., without the camp of the Levites; without the camp, — i.e., outside the camp of the Israelites.¹³ And they brought forth him that

had cursed,¹⁴ — this stands for the actual fulfillment [of the command]. But the fulfillment is expressly stated: And the children of Israel did as the Eternal had commanded Moses! — That is necessary to indicate that hands were laid [on the culprit]¹⁵ and that he was hurled down.¹⁶ Whereupon the Rabbis asked R. Ashi: How, according to you, do you interpret all the expressions; 'briny forth', in connection with the bullocks that are [wholly] burned?¹⁷ This is a difficulty.

A MAN WAS STATIONED. R. Huna said: It is obvious to me that the stone with which one is stoned, the gallows on which one is hanged, the sword with which one is decapitated, and the cloth with which one is strangled, are all provided by the Community. And why so? Because we could not tell a man to go and fetch his own property to kill himself. But, asked R. Huna, who provides the flag for signaling and the horse on which one rides to stop them?¹⁸ Seeing that they are for his protection, must they be provided by him, or rather, since the court is bound to endeavor to save him, by them? Again, what of R. Hiyya b. Ashi's dictum in R. Hisda's name; When one is led out to execution, he is given a goblet of wine containing a grain of frankincense, in order to benumb his senses, for it is written, Give strong drink unto him that is ready to perish, and wine unto the bitter in soul.¹⁹ And it has also been taught; The noble women in Jerusalem used to donate and bring it. If these did not donate it, who provided it? As for that, it is certainly logical that it should be provided out of the public [funds]: Since it is written, 'Give', [the implication is] of what is theirs.

R. Aha son of R. Huna inquired of R. Shesheth: What if one of the disciples said, 'I have a statement to make in his favor,' and there and then becomes speechless?²⁰ R. Shesheth blew into his hand,²¹ and said; [You ask, what] if one becomes speechless! Why there may also be someone in the farthest part of the earth [who could make such a

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statement]!²² — In the latter case, however, no one has actually said so, but in the former case, such a declaration has been made! [Hence the problem.] What then? — Come and hear! For R. Jose b. Hanina said: If one of the disciples who argued for acquittal died, he is regarded as though alive and in his place.²³ Thus, it is so only if he had actually spoken in favor of acquittal,²⁴ but not otherwise.²⁵ [That does not solve it:] where one has actually argued for acquittal, I have no doubts; but the problem arises if he only declared [that he could do so].²⁶

AND EVEN IF HE HIMSELF, etc. Even the first and second time?²⁷ But it has been taught: 'The first and second time, whether his statement has substance or not, he is brought back; thereafter, if there is substance in his statement, he is brought back, but not otherwise'? — Said R. Papa: Interpret it, from the second time²⁸ onwards. How do they [the judges] know?²⁹ — Abaye said: Two Rabbis are sent with him; if his statement has substance, he is [brought back]; if not, he is not [brought back]. But why not do so in the first place?³⁰ — Because being terrified, he cannot say all he wishes.³¹

MISHNAH. IF THEN THEY FIND HIM INNOCENT, THEY DISCHARGE HIM; BUT IF NOT, HE GOES FORTH TO BE STONED, AND A HERALD PRECEDES HIM [CRYING]: SO AND SO, THE SON OF SO AND SO, IS GOING FORTH TO BE STONED BECAUSE HE COMMITTED SUCH AND SUCH AN OFFENCE, AND SO AND SO ARE HIS WITNESSES. WHOEVER KNOWS ANYTHING IN HIS FAVOUR, LET HIM COME AND STATE IT.

GEMARA. Abaye said; It must also be announced: On such and such a day, at such and such an hour, and in such and such a place [the crime was committed], in case there are some who know [to the contrary], so that they can come forward and prove the witnesses *Zomemim*.³²

AND A HERALD PRECEDES HIM, etc. This implies, only immediately before [the

execution], but not previous thereto.³³ [In contradiction to this] it was taught: On the eve of the Passover Yeshu³⁴ was hanged. For forty days before the execution took place, a herald went forth and cried, 'He is going forth to be stoned because he has practiced sorcery and enticed Israel to apostasy. Anyone who can say anything in his favor, let him come forward and plead on his behalf.' But since nothing was brought forward in his favor he was hanged on the eve of the Passover!³⁵ — Ulla retorted: 'Do you suppose that he was one for whom a defense could be made? Was he not a Mesith [enticer], concerning whom Scripture says, *Neither shalt thou spare, neither shalt thou conceal him?*³⁶ With Yeshu however it was different, for he was connected with the government [or royalty, i.e., influential].'

Our Rabbis taught: Yeshu had five disciples, Matthai, Nakai, Nezer, Buni and Todah. When Matthai was brought [before the court] he said to them [the judges], Shall Matthai be executed? Is it not written, *Matthai [when] shall I come and appear before God?*³⁷ Thereupon they retorted; Yes, Matthai shall be executed, since it is written, *When Matthai [when] shall [he] die and his name perish.*³⁸ When Nakai was brought in he said to them; Shall Nakai be executed? It is not written, *Naki [the innocent] and the righteous slay thou not?*³⁹ Yes, was the answer, Nakai shall be executed, since it is written, *in secret places does Naki*⁴⁰ [the innocent] *slay.*⁴¹ When Nezer was brought in, he said; Shall Nezer be executed? Is it not written, *And Nezer [a twig] shall grow forth out of his roots.*⁴² Yes, they said, Nezer shall be executed, since it is written, *But thou art cast forth away from thy grave like Nezer* [an abhorred offshoot].⁴³ When Buni was brought in, he said: Shall Buni be executed? Is it not written, *Beni [my son], my first born?*⁴⁴ Yes, they said, Buni shall be executed, since it is written, *Behold I will slay Bine-ka [thy son] thy first born.*⁴⁵ And when Todah was brought in, he said to them; Shall Todah be executed? Is it not written, *A psalm for Todah* [thanksgiving]?⁴⁶ Yes, they answered, Todah

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shall be executed, since it is written, *Whoso offereth the sacrifice of Todah* [thanksgiving] *honored me.*⁴⁷

1. Ibid. 23.
2. That the words, And they brought forth him, etc., must be separately interpreted.
3. Ibid. It is not needed to show how the execution was carried out, as that was already stated in the words quoted above; hence, by analogy, this too needs a distinctive interpretation.
4. That is the literal translation, the sing. (stone) being used here.
5. I.e., his bare body.
6. Sing., as here.
7. And more stones are not to be thrown at his corpse, to add to his disgrace.
8. In the case of the gatherer of sticks, it is written, with stones (plural), Num. XV, 36.
9. To teach that if he died by a single stone, it was satisfactory.
10. I.e., he deduces the fact that the third camp is meant from a *gezerah shawah*. How then could R. Papa, an Amora, make the deduction from the verse itself?
11. Quoted by R. Papa.
12. Which itself indicates that the third camp is meant.
13. For 'bring forth' itself implies beyond the camp (v. p. 578, n. 4), therefore the additional phrase denotes another camp.
14. Lev. XXIV, 23.
15. Cf. Lev. XXIV, 14. Let all that heard him lay their hands upon him.
16. From a height, before stoning. V. *infra* 45a. The phrase quoted above cannot be taken as giving information regarding the carrying out of the stoning, as that has already been stated in the first portion of the verse. It indicates therefore the observance of all other regulations in connection with that penalty. e.g., the laying on of hands, etc.
17. Since he maintained that 'bring forth' has a meaning apart from 'without the camp. What separate meaning does he then give to these expressions when found in connection with the burnt bullocks?
18. From carrying out the sentence, in case one of the judges raises a new point for the defense.
19. Prov. XXXI, 6.
20. I.e., should it be assumed that his arguments would have been weighty, and so now that he is unable to give them, the case should be retried by other judges?
21. As a sign of ridicule at the question. [The figure of speech is probably taken from the method of blowing at the chaff when sifting ears of corn from one hand to the other, v. Ma'as. IV, 5.]
22. Justice is impossible if such assumptions are permitted.
23. I.e., when the vote is taken (*supra* 34a).
24. I.e., gave his grounds for doing so.
25. Hence if one said he could speak for the defense and there and then became dumb, his declaration is disregarded.
26. I.e., when R. Jose states, 'argued for acquittal,' did he mean that he must have given reasons for his statement, or that he merely said he could do so, even if he was subsequently prevented from giving his reasons.
27. I.e., must there be substance in his statement even the first and second time?
28. Exclusive, not inclusive, i.e., from the end of the second time, viz., from the third time.
29. Whether his statement has substance.
30. I.e., as soon as he starts out for the place of execution, so as to avoid an unnecessary return even the first time.
31. Therefore the first two times he receives the benefit of the doubt.
32. V. [Glos.](#)
33. E.g., not forty days before. The two passages that follow have been expunged in all censored editions. [As to the historical value to be attached to them, v. Klausner, *Jesus*. p. 27ff.]
34. [Ms.M. adds the Nasarean'.]
35. [A Florentine Ms. adds: and the eve of Sabbath.]
36. Deut. XIII, 9.
37. Ps. XLII, 3.
38. Ibid. XLI, 6.
39. Ex. XXIII, 7.
40. Naki is employed here as subject.
41. Ps. X, 8.
42. Isa. XI, 1.
43. Ibid. XIV, 19.
44. Ex. IV, 22.
45. Ibid. IV, 23.
46. Ps. C, 1.
47. Ibid. L, 23. ['We can only regard this fencing with texts as a jeu d'esprit occasioned no doubt by some 'actual event', Herford, *op. cit.* p. 93. Cf. also Klausner, *op. cit.* p. 28ff]

Sanhedrin 43b

R. Joshua b. Levi said; He who sacrifices¹ his [evil] inclination and² confesses [his sin] over it,³ Scripture imputes it to him as though he had honored the Holy One, blessed be He, in both worlds, this world and the next; for it is

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written, Whoso offereth the sacrifice of confession honoreth me.⁴

R. Joshua b. Levi also said: When the Temple was in existence, if a man brought a burnt offering, he received credit for a burnt offering; if a meal offering, he received credit for a meal offering; but he who was humble in spirit, Scripture regarded him as though he had brought all the offerings, for it is said, The sacrifices of God are a broken spirit.⁵ And furthermore, his prayers are not despised, for it is written, A broken and contrite heart, O God, Thou wilt not despise.⁶

MISHNAH. WHEN HE IS ABOUT TEN CUBITS AWAY FROM THE PLACE OF STONING, THEY SAY TO HIM, 'CONFESS',⁷ FOR SUCH IS THE PRACTICE OF ALL WHO ARE EXECUTED, THAT THEY [FIRST] CONFESS, FOR HE WHO CONFESSES HAS A PORTION IN THE WORLD TO COME. EVEN SO WE FIND IN THE CASE OF ACHAN, THAT JOSHUA SAID UNTO HIM, MY SON, GIVE, I PRAY THEE, GLORY TO THE LORD, THE GOD OF ISRAEL, AND MAKE CONFESSION UNTO HIM.⁸ AND ACHAN ANSWERED JOSHUA AND SAID, OF A TRUTH, I HAVE SINNED AGAINST THE LORD THE GOD OF ISRAEL, AND THUS AND THUS HAVE I DONE.⁹ AND WHENCE DO WE KNOW THAT HIS CONFESSIONS MADE ATONEMENT FOR HIM? — FROM THE WORDS, AND JOSHUA SAID: WHY HAST THOU TROUBLED US? THE LORD SHALL TROUBLE THEE THIS DAY,¹⁰ I.E., THIS DAY ART THOU TO BE TROUBLED, BUT THOU SHALT NOT BE TROUBLED IN THE NEXT WORLD.

AND IF HE KNOWS NOT WHAT TO CONFESS,¹¹ THEY INSTRUCT HIM, 'SAY, MAY MY DEATH BE AN EXPIATION FOR ALL MY SINS.' R. JUDAH SAID: IF HE KNOWS THAT HE IS A VICTIM OF FALSE EVIDENCE, HE CAN SAY: MAY MY DEATH BE AN EXPIATION FOR ALL MY SINS BUT THIS. THEY [THE SAGES] SAID TO HIM: IF SO, EVERYONE WILL SPEAK LIKEWISE IN ORDER TO CLEAR HIMSELF.¹²

GEMARA. Our Rabbis taught: The word *na*¹³ is none other than a form of supplication. When the Holy One, blessed be He, said to Joshua, Israel hath sinned,¹⁴ he asked Him, 'Sovereign of the Universe, who hath sinned?' 'Am I an informer?' He answered, 'Go and cast lots.' Thereupon he went and cast lots, and the lot fell upon Achan. Said he to him; 'Joshua, dost thou convict me by a mere lot?¹⁵ Thou and Eleazar the Priest are the two greatest men of the generation, yet were I to cast lots upon you, the lot might fall on one of you.¹⁶ I beg thee,¹⁷ he replied, 'cast no aspersions on [the efficacy of] lots, for Eretz Yisrael is yet to be divided by means of lots, as it is written, The land shall be divided by lot.¹⁸ [Therefore,] make confession.' Rabina said: He bribed him with words, saying, Do we seek aught from thee but a confession? confess unto Him and be free. Straightway, Achan answered Joshua and said: Of a truth, I have sinned against the Lord, the God of Israel, and thus have I done.¹⁹ R. Assi said in R. Hanina's name: This teaches that Achan had thrice violated the ban, twice in the days of Moses,²⁰ and once in the days of Joshua, for it is written, I have sinned,²¹ and thus and thus have I done.²²

R. Johanan said on the authority of R. Eleazar b. Simeon: He did so five times, four times in the days of Moses,²³ and once in the days of Joshua, for it is written, I have sinned and thus and thus have I done.²⁴ And why were they [the Israelites] not punished until this occasion? R. Johanan answered on the authority of R. Eleazar b. Simeon: Because [God] did not punish for secret transgressions until the Israelites had crossed the Jordan.

This point is disputed by Tannaim: The secret things belong unto the Lord our God, but the things that are revealed belong unto us and to our children for ever.²⁵ Why are the words: *Lanu u-lebanenu*, [unto us and to our children] and the 'ayin of the word 'ad, [for ever] dotted?²⁶ — To teach that God did not punish for transgression committed in

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secret, until the Israelites had crossed the Jordan:²⁷ this is the view of R. Judah. Said R. Nehemia to him; Did God ever²⁸ punish [all Israel] for crimes committed in secret; does not Scripture say for ever?²⁹ But just as God did not punish [all Israel] for secret transgressions [at any time], so too did He not punish them [corporately] for open transgressions until they had crossed the Jordan.³⁰ Then

1. I.e., resists, or conquers.
2. After having been induced to sin.
3. Cf. e.g. Lev. XVI, 21. Ms. M. omits 'over it'.]
4. [H] Ps. L, 23. This is probably deduced from the nun energicum inserted between the suffix and the verbal stem for the sake of emphasis.
5. Ps. LI, 19.
6. Ibid.
7. This and any other sins you may have committed.
8. Josh. VII, 19.
9. Ibid. 20.
10. Ibid. 25.
11. I.e., he cannot remember his other sins.
12. Everyone would say this in order to clear himself in the eyes of men, and the court would acquire a bad reputation.
13. [H] (I pray thee) in Josh. VII, 19. quoted in the Mishnah.
14. Josh. VII, 11.
15. Without the testimony of witnesses.
16. Surely, a lot is a thing of chance and can in no way be taken as decisive evidence; it might fall on the least likely people.
17. Expressed in the word [H] (I pray thee) in the verse. Hence its meaning of 'supplication'.
18. Num. XXVI, 55.
19. Josh. VII, 20.
20. Once in the war with the king of Arad, where it is written, And Israel vowed a vow unto the Lord and said ... then I will utterly destroy their cities (Num. XXI, 2); and a second time in the war between Israel and Sihon, though a ban in that connection is not specifically mentioned, v. J. Sanh. VI, 3.
21. I.e., this time.
22. I.e., earlier, 'thus' and 'thus' implying twice apart from this instance.
23. In the wars with Arad, Sihon, Og and Midian, (Maharsha and Me'iri).
24. This view is based on the number of words in the Hebrew text, five in all.
25. Deut. XXIX, 28.
26. [H] Fifteen passages in the Bible contain dotted words. Many meanings have been attached to such dots, but the most probable

is that they were a device to indicate homiletical explanations which the Rabbis had connected with the words. Cf. C. D. Ginsburg, Introduction to the Masoretic Critical Edition of the Hebrew Bible, p. 331.

27. The dots on the words, To us and to our children, denote that corporate responsibility holds good only for revealed or open transgressions, whilst secret offenders have responsibility individually to God alone. But as one might then have inferred that it was so for all time, the [H] of the word [H] (until) is therefore dotted, indicating that it was so only until, i.e., up to the crossing of the Jordan, but not after it, when corporate responsibility was involved also in secret transgressions.
28. I.e., even after they crossed the Jordan.
29. Translating, To us and our children belong only the revealed or open things; but the secret offender will 'forever' be alone responsible to God, and will not implicate the whole people.
30. According to R. Nehemia the absence of corporate responsibility for secret sins, irrespective of peril, is expressly stated in the words for ever. The dot on the [H] in [H] however, indicates a change of responsibility for revealed transgressions in the time they crossed the Jordan.

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in the case of Achan, why were they punished? — Because his wife and children knew thereof.¹

Israel hath sinned. R. Abba b. Zabda said: Even though [the people] have sinned, they are still [called] 'Israel'.² R. Abba said: Thus people say, A myrtle, though it stands among reeds, is still a myrtle, and it is so called.

Yea, they have even transgressed my covenant which I have commanded them, yea, they have even taken of the devoted thing and have also stolen [it], and dissembled also, and they have even put it amongst their own stuff.³ R. Ile'a said on behalf of R. Judah b. Masparta: This teaches that Achan transgressed the five books of the Torah, [for the word 'gam'⁴ is written there five times].

R. Ile'a also said on behalf of R. Judah b. Masparta; Achan was an epispastic:⁵ Here it

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is written, They have even transgressed my covenant;⁶ and elsewhere⁷ it is said, He hath broken my covenant.⁸ But is this not obvious?⁹ — I might have thought that he would not practice a license in respect of a precept which concerned his own body; therefore he (R. Ile'a) informs us otherwise.

And because he hath wrought a wanton deed in Israel.¹⁰ R. Abba b. Zabda said; This teaches that Achan committed adultery with a betrothed damsel: Here it is written, And because he hath wrought a wanton deed in Israel, and elsewhere, it is said, For she hath wrought a wanton deed in Israel.¹¹ But is this not obvious?¹² — I might have thought that Achan was not so extremely licentious;¹³ therefore he gives us this information.¹⁴

Rabina said: He was punished as is a betrothed damsel [who commits adultery], viz., by stoning.¹⁵

The Resh Galutha once said to R. Huna; It is written, And Joshua took Achan the son of Zerah and the silver and the mantle and the wedge of gold and his sons and his daughters, and his oxen and his asses, and sheep, and his tent and all that he had.¹⁶ If he sinned, wherein did his sons and daughters sin? — He retorted: On your view, [one might ask:] If he sinned, how did all Israel sin, that it is written, And all Israel with him?¹⁷ But it was to overawe¹⁸ them. So here too, it was to overawe them.¹⁹

And they burned them with fire and they stoned them with stones.²⁰ By both [forms of death]?²¹ — Rabina answered: Those suitable for burning²² were burned, and those suitable for stoning²³ were stoned.

And I saw among the spoil a goodly mantle of Shinar,²⁴ and two hundred *shekels* of silver.²⁵ Rab said: It was a silk mantle;²⁶ Samuel maintained: It was a cloak dyed with alum.

And they laid them down²⁷ before the Lord.²⁸ R. Nahman said: He [Joshua] came and cast them down before God, exclaiming, 'Sovereign of the Universe! for these shall a

[number equal to a] majority of the Sanhedrin he killed?'²⁹ For it is written, And the men of Ai smote of them about thirty-six men;³⁰ regarding which it was taught, i.e., literally thirty-six: this is R. Judah's view. R. Nehemia said to him; Were there actually thirty-six? Surely, only about thirty-six men is written. But this refers to Jair the son of Manasseh³¹ who was equal [in importance] to the majority of the Sanhedrin.³²

R. Nahman said in Rab's name: What is meant by, The poor useth entreaties, but the rich answereth insolently?³³ — The poor useth entreaties — that refers to Moses;³⁴ the rich answereth insolently, — to Joshua. Why so? Shall we say, because it is written. And they laid them down before the Lord,³⁵ which R. Nahman interpreted, He came and cast them down before God;³⁶ But did not Phinehas do the same? For it is written, Then stood up Phinehas and wrought judgment [wa-yefallel] and so the plague was stayed:³⁷ whereon R. Eleazar said: Not wayithpallel,³⁸ but wa-yefallel is written;³⁹ thus teaching that he had contentions with his Creator: he came and cast them⁴⁰ before God and cried out, 'Sovereign of the Universe! because of these, shall twenty-four thousand of Israel fall?' As it is written, And those that died by the plague, were twenty and four thousand?⁴¹ — Nay it is inferred⁴² from the following: [And Joshua said, Alas! O Lord,] wherefore hast Thou brought this people over the Jordan.⁴³ Yet Moses too spake thus: Wherefore hast thou dealt ill with this people?⁴⁴ — Nay but it is derived from the following: Would that we had been content and dwelt beyond the Jordan.⁴⁵

And the Lord said unto Joshua, Get thee up.⁴⁶ R. Shila expounded this: The Holy One blessed be He, said to him: Thy [transgression] is greater⁴⁷ than theirs,⁴⁸ for I commanded, And it shall be when ye are passed over the Jordan that ye shall set up [these stones];⁴⁹ ye advanced sixty mils however, [into the country before setting them up].⁵⁰ But when he [R. Shila] had gone out, Rab⁵¹ set up his interpreter to speak for

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him, who expounded; As the Lord commanded Moses His servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses.⁵² What then do the words, Get thee up,⁵³ teach us? — The Lord said to him, Thou hast brought [guilt] upon them:⁵⁴ and for that reason He said to him with reference to Ai: And thou shalt do to Ai and her king as thou didst to Jericho and her king, [only the spoil thereof and the cattle thereof shall ye take for a prey.]⁵⁵

And it came to pass when Joshua was by Jericho that he lifted up his eyes and looked ... And he said, Nay, but I am captain of the host of the Lord, I am now come. And Joshua fell on his face to the earth and bowed down.⁵⁶ But how could he do so?⁵⁷ Did not R. Johanan say: One may not greet his fellow at night for fear that he may be a demon?⁵⁸ There it was different, for he said; I am captain of the host of the Lord, I am now come, etc. But perhaps he lied? — We have a tradition that such do not utter the name of God in vain.

1. It was therefore no longer secret.
2. Israel is the name of honor for the people when faithful to God. Cf. Isa. XLIX, 3.
3. Josh. VII, 11.
4. Also, or even. [Ms.M. omits bracketed words. The inference that he transgressed the five books will then be deduced from the verse itself: my covenant, referring in Genesis (XVIII); taken of the devoted thing, to Leviticus (XXVIII, 28); stolen, to Exodus (XX, 15); dissembled, to Numbers (V, 5-10); put it amongst their own stuff, to Deuteronomy (XXIII, 25), v. Yad Ramah.]
5. I.e., he effaced the sign of the Abrahamic covenant in circumcision.
6. Josh. VII, 11.
7. With reference to circumcision.
8. Gen. XVII, 14. Hence covenant' is assumed to have the same meaning in both verses.
9. Seeing that R. Ile'a himself said earlier that he had transgressed the five books of the Torah; that includes epispasm.
10. Josh. VII, 19.
11. Deut. XXII, 21; this refers to a betrothed maiden who committed adultery.
12. V. n. 8.

13. As to make himself despised by men also, for having brought shame (in her family, and having made her ineligible to marry her intended husband).
14. This was probably intended to teach that there is no limit to licentiousness once a man breaks loose from restraint.
15. He should legally have been burned for taking of the things under the ban. cf. Josh. VII, 15: He that is taken with the devoted things shall be burned with fire.
16. Ibid. 24.
17. Ibid.
18. Lit., 'chastise'. I.e., all Israel were taken to the place of execution to be overawed by his punishment.
19. Thus, his family was brought there merely to witness the execution.
20. Ibid. 25.
21. Surely they were not executed twice!
22. The inanimate property.
23. The livestock.
24. Babylon. Cf. Gen X, 10; XI, 2.
25. Josh. VII, 21.
26. Rashi: Woolen.
27. Lit., 'poured out'.
28. Ibid. 23.
29. I.e., of the great Sanhedrin of seventy one.
30. Ibid. verse 5.
31. A contemporary of Moses and a descendant of Manasseh by his grandmother and of Judah by his grandfather. His grandmother was probably an heiress and therefore he is reckoned by the tribe of Manasseh (I Ch. II, 5, 22, 23)
32. The Heb. is [H], and the [H] is translated as a kaf similitatis, 'like,' i.e., one man who was like thirty-six
33. Prov. XVIII, 23.
34. Who, when imploring God's mercy for the people, spake humbly. The term 'poor' which is used of Moses in this instance is attributed to the fact that in comparison with Joshua, he was poor in the conquest of the land (Maharsha).
35. Josh. VII, 23.
36. Meaning that Joshua threw them down in a challenging or insolent way.
37. Ps. CVI, 30.
38. [H], 'he interceded', 'prayed'.
39. [H], 'he judged'.
40. Zimri and Cozbi. Cf. Num. XXV, 7ff.
41. Num. XXV, 9.
42. That Joshua spoke insolently.
43. Josh. VII, 7.
44. Ex. V, 22.
45. Josh. VII, 7.
46. Ibid. 10.
47. Lit., 'harder'.

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48. Deduced from the redundant [H] 'thee', i.e., it is on thy account too that this disaster has happened. 'Theirs' probably refers to Achan's sin.
49. Deut. XXVII, 4.
50. The distance between the Jordan and the mountains of Gerizim and Ebal, where the stones were set up, is sixty miles. V. Sotah 36a.
51. [Rab. was then still in Nehardea, the place of R. Shila.]
52. Josh. XI, 15. I.e., Joshua did not sin as suggested above.
53. V. p. 288, n. 16.
54. By forbidding them the spoil of Jericho.
55. Josh. VIII, 2, thus expressly ordering him not to proclaim a ban.
56. Josh. V, 13-14. The fact that, as his question implies, he could not distinguish who the other was, shows that it was night time.
57. I.e., bow to an unknown man.
58. The customary greeting of Shalom (peace) is held in equal esteem with the name of God (v. Shab. 10b), and therefore may not be extended to a demon; whilst bowing to a demon is most certainly forbidden.

Sanhedrin 44b

He [this stranger] said to him: 'Yesterday evening, ye omitted the evening Tamid,¹ and to-day² ye have neglected the study of the Torah.'³ 'For which of these [offences] hast thou come?' 'I have now come,⁴ he replied. Straightway [we read], And Joshua lodged that night in the midst of the vale'.⁵ Whereon R. Johanan observed: It teaches that he spent the night in the profundities⁶ of the law.

R. Samuel b. Unia said in the name of Rab: The study of the Torah is more important than the offering of the Tamid, since it is written, I have now come.⁷

Abaye asked R. Dimi:⁸ To what do ye in 'the West' relate the following verse: Go not forth hastily to strife, for what wilt thou do in the end thereof when thy neighbor hath put thee to shame. Debate thy cause with thy neighbor, but reveal not the secrets of another?⁹ — [He answered]: When the Holy One, blessed be He, said to Ezekiel, Go and say unto Israel, An Amorite was thy father, and thy mother was a Hittite,¹⁰ the intercessory¹¹ spirit said before the Holy

One, blessed be He, 'Sovereign of the Universe! if Abraham and Sarah came and stood before Thee, wouldst Thou say [this] to them and put them to shame?' Debate thy cause with thy neighbour,¹² but reveal not the secret of another!¹³ But has he so much license?¹⁴ — Yes, For R. Jose son of R. Hanina said: He has three names: Pisakon, Itamon, and Sigaron.¹⁵ Pisakon, because he argues against the Most High;¹⁶ Itamon, because he hides the sins of Israel, Sigaron, because when he concludes¹⁷ a matter, none can reopen it.¹⁸

Hadst thou prepared thy prayer before thy trouble came?¹⁹ R. Eleazar said: One should always offer up prayer before misfortune comes; for had not Abraham anticipated trouble by prayer between Beth-el and Ai,²⁰ there would not have remained of Israel's sinners a remnant or a survivor.²¹ Resh Lakish said: He who devotes his strength to prayer²² below,²³ has no enemies [to overcome] above.²⁴ R. Johanan said: One should ever implore mercy that all [sc. Heavenly beings] may support his effort [in prayer] so that he may have no enemies on high.²⁵

AND WHENCE DO WE KNOW THAT HIS CONFESSIONS MADE ATONEMENT FOR HIM, etc. Our Rabbis taught: Whence do we know that his confessions made atonement for him? — From the verse, And Joshua said unto him, Why hast thou troubled us, the Lord shall trouble thee this day: [implying] this day art thou troubled, but thou shalt not be troubled in the next world. And again it is written, And the sons of Zerah: Zimri,²⁶ and Ethan and Heman and Calcol and Darda,²⁷ five of them in all.²⁸ Why the phrase: five of them in all?²⁹ — Because all five were equally destined for the world to come. Here he is called Zimri, but elsewhere, Achan.³⁰ Rab and Samuel [differ thereon]: One maintains his real name was Achan; and why was he called Zimri? — Because he acted like Zimri.³¹ The other maintains, His real name was Zimri; and why was he called Achan? — Because he

SANHEDRIN – 25b-45b

wound the sins of Israel about them like a serpent.³²

AND IF HE KNOWS NOT WHAT TO CONFESS ... R. JUDAH SAID ... TO CLEAR HIMSELF. Why not let them clear themselves? — In order that they may not bring discredit upon the Court and the witnesses.

Our Rabbis taught: It happened once that a man who was being taken to be executed said: 'If I am guilty of this sin, may my death not atone for any of my sins; but if I am innocent thereof, may my death expiate all my sins. The court and all Israel are guiltless, but may the witnesses never be forgiven.' Now, when the Sages heard of the matter they said: It is impossible to reverse the decision, since the sentence has been promulgated. He must therefore be executed, and may the chain [of responsibility] ever hang on the neck of the witnesses. But is he to be relied on?³³ — This holds good only where the witnesses have retracted.³⁴ But even so, of what consequence is it? Once a witness testified — he cannot testify again!³⁵ It is necessary [to state this] even where they [the witnesses] give a reason for their action,³⁶ as happened in the case of Ba'ya³⁷ the tax-collector.

MISHNAH. WHEN HE IS ABOUT FOUR CUBITS DISTANT FROM THE PLACE OF STONING, HE IS STRIPPED OF HIS GARMENTS.³⁸ A MAN IS COVERED IN FRONT AND A WOMAN BOTH IN FRONT AND BEHIND: THIS IS R. JUDAH'S VIEW. BUT THE SAGES SAY: A MAN IS TO BE STONED NAKED BUT A WOMAN IS NOT TO BE STONED NAKED.

1. The daily burnt offerings, one of which was sacrificed every morning, and one towards evening. Cf. Num. XXVIII, 3.
2. Lit., 'now'.
3. The conversation took place during the night when fighting was at a standstill and they should have been studying the land.
4. I.e., I have come to you for the present offence.

5. The ordinary text reads: among the people instead of: in the midst of the vale. Again, verse 13 of the same chapter in which we do find, in the midst of the vale, begins with, And Joshua went, instead of, And Joshua lodged. It is probable that the Rabbis combined the two verses for the purpose of their exegesis, which is not unusual with them. Cf. Tosaf. Meg. 3a. s.v. [H]; Shabb. 128a s.v. [H]. In a parallel passage in 'Er. 63b, the verse quoted conforms to the Biblical text: And Joshua went, and the text further reads: He went into the depths of the study of the law. BaH mentions another version which reads as follows: And Joshua lodged that night amongst the people; further it is written, into the midst of the vale, — this teaches that he went and spent that night in the depths of the study of the law. V.D.S. a.l.
6. [H] means 'valley', as well as 'deep' or 'depth'.
7. I.e., to reprimand you, not on account of the Tamid, but for the present offence, neglecting the study of the law.
8. R. Dimi often carried Palestine exegesis to the Babylonian schools.
9. Prov. XXV, 8-9.
10. Ezek. XVI, 3.
11. [H] lit., 'an arguing spirit, — an additional name of the Angel Gabriel, who always interceded on behalf of Israel. V. however p. 99, n. 6.
12. I.e., reproach him alone.
13. Do not take up another's shame.
14. To reproach God so freely!
15. [H] from [H] 'to split'; [H] from [H] 'to lock'; and [H] from [H] 'to close'. So at least according to the Talmudic interpretation which follows.
16. Lit., 'he splits words upwards.
17. I.e., when his words are of no effect.
18. No others can successfully intercede. Kohut suggests that they are of Arabic origin. Pisakon denoting shame; Itamon, sin, and Sigaron, pain, an angel being in charge of each of these three things. Hence in his opinion, [H] does not denote Gabriel but the Spirit of Shame. V. 'Aruch Completum, vol. I, p. 63.
19. [H] Job XXXVI, 19 (E.V.: Will thy riches avail that are without stint.) [H] means 'to prepare', as well as 'to estimate'; [H] means 'prayer,' or 'wealth'.
20. Cf. Gen. XII, 8: He pitched his tent, having Beth-el on his west, and Ai on the east, and he builded an altar to the Lord and called upon the name of the Lord.
21. At the Battle of Ai in the days of Joshua.
22. Lit., 'who strengthens himself in prayer.'
23. I.e., on earth.

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24. Translating: 'Hadst thou put forth thy prayer (with strength), thou wouldst have had no adversary (above)'.
25. Translating somewhat similarly: 'When thou canst prepare thy prayer, see that thou hast no enemies (on high, to urge its rejection)'.
26. According to the Rabbis, he is identical with Achan. Although the latter was a great grandson of Zerah, he is called the son of Zerah in Josh. VII, 24. The four other sons are referred to in I Kings (V. 11) as great men, and the fact that Achan (Zimri) is associated with them is taken as an indication that his confession helped him to enter the world to come in common with the others.
27. Dara, in I Chron II, 6.
28. I Chron. II, 6.
29. Surely the number is obvious and needs no special mention! Therefore it has some other meaning.
30. Cf. Josh. VII, 24.
31. I.e., he was licentious. Cf. Num. XXV, 14, and *supra* 44a.
32. Cf. Gr. [G].
33. I.e., is his statement so trustworthy that responsibility may be thrust upon the witnesses? — Such would seem to have been the text before Rashi, v. D.S. a.l. Our reading is: But that is obvious, (for) is he then the sole authority! I.e., why state that the Rabbis did not reverse the sentence! Is he then to have his own way entirely so that we should disbelieve the witnesses.
34. After the sentence had been promulgated.
35. Witnesses are not permitted to retract their first statement and make another, since they may have been prompted thereto out of pity for the accused.
36. In withdrawing their previous statement. E.g., when they say that they have previously testified against him out of hatred. In this case, though the execution is carried out, the witnesses bear responsibility.
37. According to Kohut 'Aruch Completum, vol. II, p. 140, Ba'ya is derived from the Arabic, meaning an informer. In the case in question he had denounced the tax defaulters in the Government, an act which, of course, aroused the enmity of the people. According in Rashi, the subject matter of the text is connected with this name as follows: The funeral of the said collector coincided with that of a very pious man, but accidentally the coffins were exchanged, so that the honor intended for the Rabbi was paid to the other, and vice versa. An explanation of the happening was given by the Rabbi in a dream to one of his pupils who was disturbed at the occurrence, and he also informed him that severe punishment was in

store for Simeon b. Shetah in the world to come for the neglect of his duty in tolerating eighty women in Ashkelon guilty of sorcery. Simeon, on being informed about it, took a serious view of the matter and had them executed. The relatives of these women, however, inflamed with a passion for revenge, plotted against his son, charging him with a capital crime, as a result of which he was sentenced to death. On his way to the place of execution the condemned man protested his innocence so vehemently that even the witnesses were moved to admit the falsity of their evidence, giving as ground for their former act their feelings of enmity against Simeon b. Shetah. Yet their latter statement was not accepted, according to the law expounded in the text, that a witness is not to be believed when he withdraws a former statement. The source for Rashi's story is found in J. Sanh. VI, 3; 6, and in J. Hag. II, 2, with slight variations.

38. In order to hasten his death and lessen the pain (Maim.). The Talmud, however, bases it on Scripture.

Sanhedrin 45a

GEMARA. Our Rabbis taught: One part of a man was covered, [viz.,] in front and two parts of a woman, [viz.,] in front and behind, because she is wholly shameful [when naked]: this is R. Judah's opinion. The Sages said: A man is stoned naked, but not a woman, What is the Rabbis' reason? — Scripture states, And they shall stone otho [him]. Why state 'otho'?¹ Shall we say, 'otho' but not 'othah,' [her]? but it is written, Then shalt thou bring forth that man or that woman!² What then is the significance of 'otho'. — That only he³ [is stoned] without his garments, but she⁴ is stoned in her clothes.

R. Judah⁵ said: 'Otho' implies without clothes, and there is no distinction of sex.⁶ Are we to assume that the Rabbis are apprehensive of unchaste thoughts, and that R. Judah is not? But we know in fact that they both hold the reverse, for we learnt:⁷ The Priest seizes her garments,⁸ it does not matter if they are rent or torn open, until he uncovers her bosom and unloosens her hair.

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R. Judah said: If her bosom was beautiful, he did not expose it, and if her hair was comely, he did not loosen it,² Rabbah said: In the other case, this was the reason: lest she should come forth from the *Beth din* innocent and the young priests conceive a passion for her; but here, she is about to be executed! And should you object, But through her their passions might be inflamed for others, Rabbah said: We have it on tradition that evil inclination moves a man only towards what his eyes see.

Raba said: Is there only an inconsistency between R. Judah's two statements and not between those of the Rabbis?¹⁰ — But, said Raba, R. Judah's two statements are not contradictory, even as we have solved the difficulty. And the Rabbis' views are also not opposed: Scripture says, That all women may be warned and not to do after your lewdness:¹¹ but here, no greater warning is possible than this [sc. the execution].¹² And should you say, Let us wreak both¹³ upon her, behold R. Nahman said in Rabbah b. Abbahu's name: *Scripture says Love thy neighbor as thyself:*¹⁴ choose an easy death for him.¹⁵

Shall we say that R. Nahman's statement is the subject of a conflict between Tannaim?¹⁶ — No: all agree with R. Nahman, but they

differ on the following point: One Master¹⁷ holds that [the avoidance of] personal humiliation is far preferable to lack of bodily pain,¹⁸ and the other holds the reverse.

MISHNAH. THE PLACE OF STONING WAS TWICE A MAN'S HEIGHT.¹⁹ ONE OF THE WITNESSES PUSHED HIM BY THE HIPS, [SO THAT] HE WAS OVERTURNED ON HIS HEART. HE WAS THEN TURNED ON HIS BACK.²⁰ IF THAT CAUSED HIS DEATH, HE HAD FULFILLED [HIS DUTY];²¹ BUT IF NOT, THE SECOND WITNESS²² TOOK THE STONE²³ AND THREW²⁴ IT ON HIS CHEST. IF HE DIED THEREBY, HE²⁵ HAD DONE [HIS DUTY]; BUT IF NOT, HE [THE CRIMINAL] WAS STONED BY ALL ISRAEL,²⁶ FOR IT IS

WRITTEN: THE HAND OF THE WITNESSES SHALL BE FIRST UPON HIM TO PUT HIM TO DEATH, AND AFTERWARDS THE HAND OF ALL THE PEOPLE.²⁷

GEMARA. A Tanna taught: And with his own height,²⁸ there were three [men's heights] in all. Yet do we really require so much height?²⁹ For the following contradicts it: 'Just as a pit to be reckoned as causing death must be ten handbreadths [deep],³⁰ so must all other [excavations] be sufficient to cause death, viz., ten handbreadths'?³¹ — R. Nahman said in Rabbah b. Abbahu's name: Scripture states, Love thy neighbor as thyself;³² i.e., choose an easy³³ death for him. But if so, it [sc. the place of stoning] should be still higher! — [That, however, is not so] to prevent disfiguration.³⁴

ONE OF THE WITNESSES PUSHED HIM: Our Rabbis taught: Whence do we know that it [the execution]³⁵ was accomplished by hurling down?³⁶ — Scripture states, And he shall be cast down.³⁷ And whence the necessity of stoning? — Scripture states, He shall be stoned.³⁸ And whence do we know that both stoning and hurling down [were employed]?³⁹ — From the verse, he shall surely be stoned or thrown down.⁴⁰ And whence do we know that if he died through being hurled down, it is enough? — Scripture states, or cast down.⁴¹ Whence do we know the same procedure is to be followed for [all subsequent] generations?

1. In a separate pronoun, instead of using the pronominal suffix.
2. Deut. XVII, 5, with reference to idolatry which is punishable by sinning.
3. I.e., a man.
4. I.e., a woman.
5. Who requires only partial covering of a woman.
6. Since 'Otho' serves for one exclusion, that of clothes — it cannot serve as excluding women from that requirement, v. *supra* 43a.
7. Sotah 8a.
8. In connection with the procedure for a woman suspected of infidelity (*sotah*). Cf. Num. V, 11ff.

SANHEDRIN – 25b-45b

9. Hence it is R. Judah and not the Rabbis who are apprehensive that the sight of her may incite to unchaste thought.
10. For Rabbah's distinction only reconciled R. Judah's two views, but left the difficulty of the Rabbis' views untouched.
11. Ezek. XXIII, 48. The procedure with the Sotah therefore was only instituted as a deterrent.
12. Hence there is no need to add humiliation.
13. Humiliation and stoning.
14. Lev. XIX, 18.
15. One entailing as little humiliation as possible.
16. R. Judah and the Sages, inasmuch as the former, by requiring only partial covering of the woman and so enhancing her humiliation, does not seem to be of that opinion.
17. I.e., the Sages.
18. Lit., 'bodily ease'. Though being clothed delays death and increases pain, yet the humiliation of nakedness is harder to bear.
19. I.e., six cubits, the normal height of man to the shoulders being three cubits,
20. To see whether the drop brought his death forthwith. [So Abraham de Botton on Maim. Yad, Sanh. XV, 1. Rashi explains: Because it is degrading (for the dead) to be on the face, v. Tosaf. Yom. Tob. The rendering could accordingly be: One of the witnesses pushed him down on the hips. If (however) he overturned (i.e., fell) on his heart, he was turned on his back, v. Hoffmann.]
21. I.e., the witness, the obligation of execution lying primarily upon him.
22. According to the Naples ed. he himself takes, etc. and only if that failed to cause death did the second witness take part.
23. 'The' stone, because it was prepared beforehand. This was a very heavy stone, which it required two men to lift.
24. Lit., 'placed'.
25. Sc., the second witness.
26. I.e., all the bystanders.
27. Deut. XVII, 7.
28. He was pushed down from a standing position.
29. To cause instant death.
30. Cf. M. B.K. 50b.
31. Why is the height of three men required in this case?
32. Lev. XIX, 18.
33. I.e., a quick death.
34. A fall from a greater height would unnecessarily disfigure the body.
35. Of those who approached Mt. Sinai, Ex. XIX, 12ff.

36. In Scripture stoning is first mentioned, as that was the means of bringing about the actual death. Here hurling down is dealt with first as that is preliminary to the other.
37. Ex. XIX, 13.
38. Ibid; cf. Deut. XXII, 24, where stones are expressly mentioned in connection with 'stoning'.
39. In case death did not result from the hurling down alone.
40. Ibid.
41. Because if stoning were always necessary in addition to the hurling down, even when the latter alone had caused death, why state or cast down?

Sanhedrin 45b

— Because Scripture states, He shall surely be stoned.¹

BUT IF NOT, THE SECOND WITNESS TOOK THE STONE. 'HE TOOK'?² But has it not been taught: R. Simeon b. Eleazar says: 'A stone was there which it took two men to lift, — he lifted that and dropped it on his [the victim's] chest; if it killed him, his duty was fulfilled'?³ But on your reasoning, that itself is inconsistent! That 'which it took two men to lift' — 'he lifted that and dropped it on his chest!' But it must mean that he lifts it up together with his fellow witness, but drops it [down] by himself in order that it may come down with force.⁴

BUT IF NOT, HE WAS STONED BY ALL ISRAEL, etc. But has it not been taught: It [the stoning] was never actually repeated?⁵ — Do I then say that it was done? I merely state what might be necessary! The Master said: 'A stone was there, etc.'⁶ But has it not been taught: 'The stone with which he [the condemned] was stoned, the gallows on which he was hanged, the sword with which he was beheaded, or the cloth with which he was strangled, are all buried with him'?⁷ — It merely means that others were prepared and brought in their place.⁸ 'They are all buried with him.' Surely it has been taught: They are not buried with him!⁹ — R. Papa explained: What is meant by 'with him?' In the earth surrounding his corpse.¹⁰

SANHEDRIN – 25b-45b

Samuel said: If the hand[s] of the witnesses were cut off,¹¹ he [the condemned] goes free. Why so? — Because it is necessary that The hand of the witnesses shall be first upon him,¹² which is here impossible. But according to this, if they were without hands from the outset,¹³ are they also ineligible?¹⁴ — There¹⁵ it is different, for Scripture states, The hand of the witnesses, implying, the hand which they had previously possessed.¹⁶

An objection is raised; 'Wherever two witnesses testify, saying, We testify against so and so¹⁷ that he was sentenced by such and such a court, and so and so are his witnesses, he is to be executed'.¹⁸ — Samuel explained this as referring to a case where the same were also the original witnesses.¹⁹ But must [every] verse be [carried out] as written? Has it not been taught: 'He that smote him shall surely be put to death, he is a murderer?'²⁰ I only know that he may be executed with the death that is decreed for him.²¹ But where it is not possible to execute him in the manner prescribed,²² whence do I know that one may execute him by any means possible? From the verse: He that smote him shall surely be put to death, — in all cases?'²³ — There it is different, for Scripture says, He shall surely be put to death.²⁴ Then let us draw an inference from it.²⁵ — Because the references to a murderer, and the 'avenger of blood' are two verses written with the same object, and the teaching of two such verses does not extend to anything else.²⁶ 'A murderer', as has just been stated. And what is the reference to the 'avenger of blood'? — It has been taught: The avenger of blood shall himself put the murderer to death;²⁷ it is [primarily] the duty of the avenger of blood [to slay the murderer]. And whence do we know that, if he [the murdered man] has no avenger of blood,²⁸ the *Beth din* must appoint one?²⁹ — From the verse, *When he meeteth him*,³⁰ i.e., in all cases.³¹

Mar Kashisha, the son of R. Hisda, said to R. Ashi: But are we really not to interpret the verse literally? Have we not learnt: If either of them³² has a hand or fingers cut off, or is

dumb, lame, blind, or deaf, he does not become a 'stubborn and rebellious son';³³ because it is written, And they shall lay hold on him,³⁴ — this excludes those with hands or fingers cut off; and they shall bring him out, so excluding lame [parents]; and they shall say, excluding the dumb; this our son,³⁵ excluding the blind; he will not obey our voice, excluding the deaf.³⁶ Why so? Surely because a verse must be literally interpreted! — No. There it is different, because the entire verse is superfluous.³⁷

Come and hear! If it [the city] has no 'public square',³⁸ it cannot become a condemned city: this is R. Ishmael's view. R. Akiba said: If it has no public square, one is made for it.³⁹ Now, they differ only in that one holds that 'the public square thereof'⁴⁰ implies, that it must have been there from the outset [i.e., before sentence]; and the other holds that 'the public square thereof', even if it has only now [sc. after sentence] become one, is to be regarded as though it had been one originally. Yet both agree that the verse must be interpreted literally! — It is a point of difference between Tannaim, for we learnt:⁴¹ If he has no thumb or great toe or right ear, he can never obtain cleansing. R. Eliezer said: He [the priest] applies it [the blood] on the corresponding place, and his duty is discharged. R. Simeon said: He applies it on the left side and his duty is discharged.⁴²

MISHNAH. ALL WHO ARE STONED ARE [AFTERWARDS] HANGED: THIS IS R. ELIEZER'S VIEW, THE SAGES SAY: ONLY THE BLASPHEMER AND THE IDOLATER ARE HANGED. A MAN IS HANGED WITH HIS FACE TOWARDS THE SPECTATORS, BUT A WOMAN WITH HER FACE TOWARDS THE GALLOWS: THIS IS THE VIEW OF R. ELIEZER. BUT THE SAGES SAY: A MAN IS HANGED, BUT NOT A WOMAN. WHEREUPON R. ELIEZER SAID TO THEM: BUT DID NOT SIMEON B. SHETAH HANG WOMEN AT ASHKELON?⁴³ THEY RETORTED: [ON THAT OCCASION] HE HANGED EIGHTY WOMEN, NOTWITHSTANDING THAT TWO

SANHEDRIN – 25b-45b

[MALEFACTORS] MUST NOT BE TRIED ON THE SAME DAY.⁴⁴

GEMARA. Our Rabbis taught: [Scripture states,] And if he be put to death, then thou shalt hang him on a tree:⁴⁵ I might think that all who are put to death are to be hanged: therefore Scripture states, For he is hanged [because of] a curse against God.⁴⁶ Just as the blasphemer in question is executed by stoning, so all who are stoned [must be subsequently hanged]: this is R. Eliezer's view. But the Sages say: Just as the blasphemer in question denied the fundamental principle [of faith].⁴⁷ So all who deny the fundamental principle [of faith].⁴⁸ Wherein do they differ?⁴⁹ — The Rabbis⁵⁰ employ [the rule of] the general and the particular; whilst R. Eliezer employs [the rule of] extension and limitation.⁵¹ 'The Rabbis employ [the rule of] the general and the particular.' [Thus:] And if he be put to death then thou shalt hang him, is a general proposition; for he is hanged [because of] a curse against God is the particular. Now, had these two clauses been placed beside each other,⁵² we should have said, the general includes nothing [but] the particular, i.e., only this man⁵³ and no one else.

1. In the future tense. [Ms.M. adds 'or he shall surely be thrown down.']
2. Was it done by one man alone?
3. Obviously two people were required to handle it.
4. Because if two threw it they might not both follow exactly the same direction with a consequent loss of force.
5. Death having always resulted from the first operation.
6. Implying that the same stone was regularly employed for stoning.
7. A.Z. 62b.
8. I.e., that a stone was lying there in readiness, and not brought just at the moment when it was needed.
9. Tosef. Sanh. IX.
10. Which comes to be regarded as part of the body and must be carried with it when moved. Cf. *Nazir* 64b.
11. After they testified.
12. Deut. XVII, 7.
13. Before they testified.

14. Seeing that the injunction in Deut. XVII, 7 cannot in their case be applicable.
15. In the case dealt with by Samuel.
16. But if they lack hands at the outset they are eligible to testify.
17. If the condemned person escaped and was recaptured (Mak. 7a).
18. Even in the absence of the original witnesses. This proves that the injunction in Deut. XVII, 7 is not indispensably essential, but only desirable when possible.
19. Hence the injunction can be carried out.
20. Num. XXXV, 21,
21. I.e., decapitation by the sword.
22. E.g., if he fled, but could be reached by an arrow (Rashi on 72b).
23. *Infra* 53a; 72b. Hence it is not necessary to understand the verse literally.
24. [H]. The infinitive strengthens the idea of the verb and denotes an inclusion of other modes of execution if necessary.
25. That just as there, where he should be decapitated, he is nevertheless executed by any means possible, so here too, where he should be hurled down by the hands of the witnesses, he is still to be executed even if their hands have been cut off.
26. V. p. 458, n. 9.
27. Num. XXXV, 19, referring to willful murder. Rashi's interpretation that it refers to accidental homicide where the murderer was found outside the city of refuge is difficult. V. *Mishneh Lemelek on Yad, Rozeah I, 2.*
28. A near kinsman, upon whom devolves the duty of hunting down a murderer to death.
29. I.e., the Court is always responsible for prosecuting the murderer, whether there is a relative or not.
30. *Ibid.*
31. Thus this verse too shows that the provisions of an avenging kinsman are not limited to the precise statement of the Bible.
32. The parents of a 'stubborn and rebellious son'; Deut, XXI, 18ff.
33. So the law concerning such is not operative.
34. *Ibid*, 19.
35. Showing that they must point him out.
36. Who are unable to bear his reply to their orders. V. *infra* 71a.
37. It could have been written thus: 'And they shall bring him unto the elders of his city, and all the men shall stone him with stones,' as is usual with other cases punishable by stoning, without repeating the indictment. Therefore that verse must certainly be understood literally; but it does not prove that all verses are to be understood exactly as they are written.

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38. Cf. Deut, XIII, 17: And thou shalt gather all the spoil of it into the midst of the public square thereof.
39. *Infra* 112a.
40. Cf. n. 5.
41. *Nazir* 46b, with reference to the purification of a leper. Cf. Lev, XIV, 14:
42. I.e., the leper becomes clean, This proves that in the opinion of R. Eliezer and R. Simeon a verse need not be understood literally, whilst the first Tanna maintains that it must be so interpreted. Hence Samuel agrees with the latter.
43. Though this southern coastal city was never for any length of time populated by Jews, a fact which makes such an execution most unusual, it was twice surrendered to Jonathan the Maccabee (cf. Mace. X, 36; XI, 60) and later to Alexander Jannaeus (Simeon's brother-in-law). It is therefore not improbable that Jews made their home there, despite the view of Schurer. [V. Klausner, [H] II, 134. Derenbourg, however, *op. cit.*, p. 69, n. 1, maintains that Simeon Maccabeus has been here confused with Simeon b. Shetah, as it was only in the days of the former that Ashkelon had a large Jewish population, and it is also known from other sources that he visited Ashkelon several times.]
44. Hence this occurrence cannot be brought forward as a valid precedent, owing to its extraordinary nature. Witchcraft amongst Jewish women prevailed at that time to an alarming extent, and in order to prevent a combined effort on the part of their relations to rescue the culprits, he had to execute all of them at once. He hanged them, then, to prevent such practices and to avoid rescue, but his action is no precedent, and in itself was actually illegal, as the Sages pointed out.
45. Deut. XXI, 22.
46. [H] (E.V. *For he that is hanged is a reproach unto God*.) is so interpreted by the Mishnah, i.e., he was a blasphemer.
47. I.e., the unity of God.
48. Are to be hanged. 'All' can only mean an idolater.
49. On what principle of exegesis — the practical difference, of course, being obvious,
50. The Sages.
51. These two hermeneutical rules form one of R. Ishmael's thirteen principles by which the law is expounded. The former rule [H] means that when a general term (which may denote an indefinite number of things) is followed by a particular (specifying a definite thing), the law is restricted to the specified thing alone. A particular is then regarded, not as an illustrative example of the preceding general,

but as its explanation, so indicating that the content of the general is restricted solely to that of the particular. According to the other theory [H], the general retains its significance as applying to many things, but the particular limits the scope of the preceding general so as to include in it only things which are similar and to exclude such as are not similar thereto. The application of these exegetical principles, however, is dependent on the two terms following each other in the same passage. If they are found in two different passages, the rule is somewhat varied, as explained here in the Talmudic discussion.

52. I.e., in the same verse.
53. The blasphemer.