

דיני ממונות פרק שלישי

(fol. 20d) **משנה א:** דיני ממונות בג'. זה בורר לו אחד וזה בורר לו אחד ושניהן בוררין להן עוד אחד דברי רבי מאיר. וחכמים אומרים שני הדיינים בוררין להן עוד אחד.

Mishnah 1: Money matters by three [judges]. Each party selects one judge and both together select a third, the words of Rabbi Meïr¹. But the Sages say, the two judges together select a third.

1 The “court” is a panel of arbitration. The parties have the option to go before the permanent court of the community but are not required to do so.

(21a line 5) **הלכה א:** דיני ממונות בשלשה כול'. אמר רבי זירא. שמתוך שפיררו מרדף זכותו. מאי טעמא דרבי מאיר. כדי שיתבררו שלשתן מדעת אחת. ומאי טעמו דרבנן. לאו כוילה מיעד מיבחר ומייסב מה דאת בעי אלא אנא ואת מבררין ומסבין מה דנן בעיין. וקשיא על דרבנן. מת אחד לא נמצאו שלשתן מתבררין מדעת אחת.

Halakhah 1: “Money matters by three,” etc. Rabbi Ze’ira said, because he selected him, he will take care of his interests². What is Rabbi Meïr’s reason? So that all three should be chosen unanimously. What is the rabbis’ reason? “I do not trust you to select and let me sit with whom you want, but I and you shall select and empanel whom we want.”³ It is difficult for the rabbis: If one of them⁴ dies, will not all three have been chosen through the choice of one person?

2 The arbitration judgment will be acceptable to all parties since each party expects his point of view to be forcefully represented. The Babli, 23a, holds that the judgment will be just since each party is represented in the panel of arbitrators.

3 The judges cannot be forced to sit with a third judge who is not agreeable to them.

4 If one of the original judges dies after the third has been chosen, his replacement who is chosen by one party only and is forced upon the two judges already empaneled. The situation preferred by Rabbi Meïr may develop also if the rabbis are followed.

(fol. 20d) **משנה ב:** זה פוסל דיינו של זה וזה פוסל דיינו של זה דברי רבי מאיר. וחכמים אומרים אימתי בזמן שהוא מביא עליהן ראיה שהן קרובין או פסולין אבל אם היו קשרים או מומחין מפי בית דין אינו יכול לפסלן.

Mishnah 2: Each of them disqualifies the other's judge, the words of Rabbi Meir. But the Sages say, when is this? If he brings proof that they are relatives⁵ or disqualified⁶. But if they are unexceptionable or qualified by the court⁷ he cannot disqualify them.

5 Anybody not acceptable as a witness in a case is unacceptable as a judge; cf. Mishnah 7.

6 A felon or a person disqualified under the rules of Mishnah 6.

7 He passed bar examinations.

(21a line 9) **הלכה ב:** זה פוסל דיינו של זה כול. כיני מתניתא. זה פוסל דיינו של זה. הא דיינו לא. ריש לקיש אמר. בארכאות שבסוריא אמרו. הא בדיני תורה לא. רבי יוחנן אמר. אפילו בדיני תורה. היך אמרין. תרין בני נש הוה לן דין באנטוכיא. אמר חד לחבריה. מה דרבי יוחנן אמר מקבל עלי. שמע רבי יוחנן ומר. לא כל-מיניה מטורפא בעל דייניה אלא שמעין מיליהון תמן ואין הוות צורכא כתבין ומשלחין עובדא לרבנן. אמר רבי לעזר. זה אומר. בטיבריא. וזה אומר. בציפורי. שומעין לזה שאמר. בטיבריא.

ולעולם זה פוסל וזה מביא. אמר רבי זירא. בטפילה שנו. אמר רבי לא. והאי דמר רבי לעזר. זה אמר בטיבריא. וזה אמר בציפורי. באינון דהוון יהיבין בחדא משכנא. מן הקא להקא ז' מילין. מן הקא להקא ט' מילין. אמר רבי יוסי. ואת שמע מינה. תרין בני נש הוה לון דין בטיבריא. זה אומר. בבית דין הגדול. וזה אומר. בבית דין הקטן. שומעין לזה שאמר. בבית דין הגדול.

Halakhah 2: "Each of them disqualifies the other's judge," etc. So is the Mishnah: Each of them disqualifies the *other's* judge, but not his own.

Rebbi Simeon ben Laqish said, they spoke about Syrian courts⁸, but not about following Torah law⁹. Rabbi Johanan said, even following Torah law¹⁰. How was this said? Two people had a case in Antioch. One said to the other, I am accepting everything which Rabbi Johanan will decide¹¹. Rabbi Johanan heard it and said, he is not empowered to tear apart his opponent¹², but they shall hear their arguments there and if need be they should write and send the case before the rabbis¹³.

Rebbi Eleazar said, if one says in Tiberias, but the other said in Sepphoris, one listens to the one who says in Tiberias¹⁴.

Can he forever disqualify and have the other appoint [a replacement]¹⁵? Rabbi Ze'ira said, they taught this about subsidiaries¹⁶.

Rebbi La said, what Rebbi Eleazar said about “one said in Tiberias, but the other said in Sepphoris,” is about those who live at the same place¹⁷, from where to [Sepphoris] it is seven *mil*, but from there to [Tiberias] it is nine *mil*¹⁸. Rebbi Yose said, one understands from this, that if two people had a case in Tiberias; one of them said in the permanent court, but the other said in an *ad hoc* court; one listens to the one who said in the permanent court¹⁹.

8 Greek ἀρχεῖον, cf. *Gittin* 1:5, Note 107.

9 *Ad hoc* courts formed by ignorant people.

10 In a court of arbitration it makes no difference whether a judge be learned in the law or not.

11 Implying that he wants the case to be tried before the permanent court of the Academy in Tiberias.

12 By forcing him to spend money and time in travelling from Antioch to Tiberias.

13 If one party wants to try a case out of town, the other party can appeal to the local permanent court to try the case in town, subject to submitting arguments in dispute to an out-of-town court of appeals; Babli 31b.

14 Between the court of the Academy in Tiberias and the local court in Sepphoris,

precedence must be given to the court of the Academy.

15 According to R. Meïr, cannot one party endlessly drag out the case by objecting to the other's choice of judges?

16 R. Meïr permits rejections without cause only for judges not learned in the law. The other party can cut short the selection process either by appointing a judge learned in the law or by removing the case to the permanent local court.

17 And their village had no permanent local court.

18 A small inconvenience must be accepted in order to bring the case before the most competent court nearby.

19 Even though the Mishnah prescribes *ad hoc* courts of arbitration for monetary disputes, the party who wants to bring the case before the permanent rabbinic court of the community can force the opposing party to agree to his choice.

(fol. 20d) **משנה ג:** זה פוסל עדיו של זה וזה פוסל עדיו של זה דברי רבי מאיר. וחכמים אומרים אימתי בזמן שהוא מביא עליהם ראיה שהן קרובים או פסולים. אבל אם היו כשרים או מומחין מפי בית דין אינו יכול לפוסלן:

Mishnah 3: Each of them disqualifies the other's witnesses, the words of Rabbi Meir. But the Sages say, when is this? If he brings proof that they are relatives⁵ or disqualified⁶. But if they are unexceptionable or qualified by the court⁷ he cannot disqualify them.

(21a line 22) **הלכה ג:** זה פוסל עדיו של זה כולו. ריש לקיש אומר. ביני מתנייתא. עדו. הא עדיו לא. ורבי יוחנן אומר. אפילו עדיו. דתני. לעולם מוסיפין דינים עד שיגמר הדין והדין יוכלו לחזור בהן. נגמר הדין אין יכולין לחזור בהן. מודה רבי יוחנן שאם אין שם אלא הן שאין יכולין לפוסלן. אומר זעירה. והוא ואחד מן השוק מצטרפין לפסול עדות זה. רבי חנינה בעי. ואין עד אחד זקקו לשבועה בכל מקום. אומר רבי זעירא. פסול צריך לפסול בבית דין. קרוב אין צריך לפסול בבית דין. אומר רבא בר בינא בשם רב. שלשה כגמר דין.

Halakhah 3: "Each of them disqualifies the other's witnesses," etc. Rabbi Simeon ben Laqish said, so is the Mishnah: "His witness," but not his witnesses²⁰. But Rabbi Johanan said, even his witnesses²¹, as it was stated²²: "One always adds judges until judgment is rendered, and the judges may change their opinions. After judgment is rendered they may no longer change their opinions." Rabbi Johanan agrees, that if these were the only ones²³, he cannot disqualify them. Ze'ira said, he and a person from the street can team up to disqualify this testimony²⁴. Rabbi Hanina asked, does not one witness force an oath everywhere²⁵? Rabbi Ze'ira said, by disqualification one can only be disqualified by a court²⁶. A relative does not have to be disqualified by the court²⁷. Rava bar Binah said in the name of Rav: Three are like final judgment²⁸.

20 Since a single witness is never decisive, one of the parties can claim that a single witness appearing for one of the parties was unacceptable as a witness (Mishnah 6) without presenting formal proof. But if two witnesses are appearing together, only formal proof of ineligibility is

admissible since "two or three witnesses are sufficient to confirm anything" (*Deut.* 19:15).

21 Even the credibility of a pair of witnesses can be attacked, under the conditions spelled out later in the Halakhah.

22 It seems that a text similar to Tosephta 6:4 is intended. That Tosephta states first that “One always may add judges until judgment is rendered.” If after hearing the case, the arbitration panel is split, one judge voting for each side, but the third cannot decide how to vote, then each of the parties has to select an additional judge. In case of an evenly split court one always adds two new judges until a majority verdict is reached. After a lengthy discussion of the deadlines to be imposed for the presentation of witnesses, the Tosephta concludes: “Witnesses can always change their testimony before being cross-examined; after they were cross-examined they can no longer change their testimony; this is a matter of principle.” R. Johanan holds that as long as witnesses may change their testimony, their credibility can be attacked.

23 If the other side’s case depends on the testimony of one pair of witnesses, the other party has a monetary interest in seeing them disqualified. Therefore, the party to the dispute is barred from appearing as a witness against any of the witnesses since his testimony would be tainted (Babli 23b).

24 Ze’ira (in the Babli he is called Ze’iri) explains what it means that “a party to a suit may disqualify the other side’s witness.” He and another witness may appear before the

permanent communal court as witnesses to ask for a judgment which will disqualify the witness for the other side. Even if the other side has alternative witnesses, one should disqualify the party as a tainted witness. He is admitted only because the opposing party, by presenting a multitude of witnesses, cast doubt on the reliability of their own witnesses.

25 Since *Deut.* 19:15 spells out that “a single witness is insufficient for any conviction,” instead of saying that “a single witness is unacceptable,” it follows that a single witness is acceptable for anything short of a conviction. In money matters this implies that a single witness to a claim can force a party to swear to dispute the claim (*Sifry Deut.* 188; Babli *Ketubot* 87b).

26 Only a permanent communal court is qualified to bar a person from being a witness, based on Mishnah 7.

27 A person can be an acceptable witness for anybody but his close relatives. This case of disability is a matter of showing facts; it does not need the formal proclamation of a court.

28 This has nothing to do with the Mishnah; it refers to the Tosephta quoted earlier, Note 22. As soon as a verdict is reached, one can no longer add judges. A verdict is rendered by three voting judges.

משנה ד: אָמַר לוֹ נֶאֱמָן עָלַי אֲבֵא נֶאֱמָן עָלַי אֲבִיד נֶאֱמָנִין עָלַי שְׁלֹשָׁה רוֹעִי בְּקֹר רַבִּי
מֵאִיר אוֹמֵר יָכוֹל לַחְזוֹר בּוֹ. וְחֻכָּמִים אוֹמְרִים אֵינוּ יָכוֹל לַחְזוֹר בּוֹ.

Mishnah 4: If somebody said, I am accepting my father; I am accepting your father²⁹; I am accepting three cowboys³⁰; Rabbi Meïr says, he may change his opinion, but the Sages say, he may not change his opinion.

29 These are disqualified by biblical law to serve as judges. They may be accepted on an arbitration panel as free

choice of the parties.

30 They are illiterate and ignorant of the law.

הלכה 4: (21 a line 30) נִאָמַן עָלַי אָבִי כֹל. אָמַר לוֹ. נִאָמַן עָלַי אָבִי. קִיבֵּל עָלָיו בְּפָנֵי שְׁנַיִם יָכוֹל הוּא לְחַזֹּר בּוֹ. בְּפָנֵי שְׁלֹשָׁה אֵין יָכוֹל לְחַזֹּר בּוֹ. שְׁמוּאֵל אָמַר. בְּשָׂלָא נָטַל מִזָּה וְנָתַן לָזָה. אָבֵל נָטַל מִזָּה וְנָתַן לָזָה יָכוֹל הוּא לְחַזֹּר בּוֹ. רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ אָמְרִי. אָפִילוּ נָטַל מִזָּה וְנָתַן לָזָה יָכוֹל הוּא לְחַזֹּר בּוֹ. קִיטָּה בַּמִּקְטִיָּה דְּנָקוּם. קִיבֵּל עָלָיו יָכוֹל לְחַזֹּר בּוֹ.

Halakhah 4: “I am accepting my father,” etc. If somebody said, I am accepting your father,³¹ if he accepted in the presence of two others, he may retract³²; in the presence of three³³, he may not retract. Samuel said, as long as he did not take from one and give to the other³⁵; but if he took from one and gave to the other, he may retract. Rabbi Johanan and Rabbi Simeon ben Laqish say even if he took from one and gave to the other, he may retract³⁶.³⁷ “If he hit him with a mace that he should agree; if he accepted he may renege.”

31 The discussion is based on R. Meïr’s point of view.

32 This is an agreement which according to R. Meïr can be rescinded.

33 If these three are persons qualified to act as judges, they act as a court and once a panel of arbitration is empanelled by a court it cannot be changed.

34 I. e., as long as judgment was not rendered.

35 The context requires that one read: “but if he took from one and gave to the other, he may *not* retract.” This is Samuel’s opinion in the Babli, 24b.

36 Their opinion is not mentioned in the Babli.

37 This sentence is corrupt, and probably belongs to the next Halakhah.

A similar text is in Tosephta 5:1: “If somebody became obligated to swear and the other party instead required him to make a vow for his life, or by קִיטָּה וּבַמִּקְטִיָּה קִיטָּה R. Meïr and the Sages disagree whether he may retract his agreement.” D. Pardo declares the Tosephta text as unintelligible. *Arukh s.v. קטו* points to *Thr. r. 1(30) ad 1:3* where קטו or קטיתא means “a bat”. This would give as meaning of the Tosephta: “be exposed to *the mace and the bat* in my hands.” The explanations in the standard commentaries are pure conjectures.

(fol. 20d) **משנה ה:** הִיָּה חַיִּב לַחֲבֵרוֹ שְׁבוּעָה וְאוֹמֵר לוֹ דֹּר לִי בְחַיִּי רֵאשֶׁן רַבִּי מֵאִיר אוֹמֵר יָכוֹל לַחֲזוֹר בּוֹ. וְחֻכְמִים אוֹמְרִים אֵינוּ יָכוֹל לַחֲזוֹר בּוֹ:

Mishnah 5: If one was obligated to swear to another, who asked him to make a vow “by his life”³⁸, Rabbi Meïr says, he may change his opinion³⁹, but the Sages say, he may not change his opinion.

38 He asked him to replace the oath by a vow not subject to dissolution. The claimant was afraid to be guilty of “putting a stumbling stone in the path of a blind man” if the other party was making a false oath because of him.

39 And require a formal oath.

(21a line 35) **ההלכה ה:** הִיָּה חַיִּב לַחֲבֵרוֹ שְׁבוּעָה כּוֹלִי. רַבִּי חִיָּיָה בַר אֲבָא אָמַר. בְּשֹׁאֲמֵר לוֹ. יֹאמֵר לִי אֲבִיד וְאֵין לִי עֵמֶד עֵסֶק. אֲבָל אִם אָמַר לוֹ. יֹאמֵר אֲבִיד וְאֵין מִקְבֵּל עָלַי. עֵלָא הִיָּה רוֹצֶה לְהוֹדוֹת לוֹ. רַבִּי יוֹסִי בֶן חֲנִינָה אָמַר. וְאִפְּלוּ אָמַר לוֹ. יֹאמֵר לִי אֲבִיד וְאֵין מִקְבֵּל עָלַי. לֹא מְצִינוּ עֲדוּת יוֹצֵא מִפִּי קְרוֹב.

Halakhah 5: “If one was obligated to swear to another,” etc.⁴⁰ Rabbi Hiyya bar Abba said, if he told him, let your father tell it to me, then I shall have no claim on you⁴¹. But if he told him: Let you father tell it, then I shall accept it; he seeks a pretext to confess to him⁴². Rabbi Yose ben Hanina said, even if he told him, let you father tell it to me, then I shall accept it. We never find that testimony be accepted from the mouth of a relative⁴³.

40 This paragraph refers to Mishnah 4.

41 The claimant tells the defendant that if the defendant’s father states that his son owes nothing, he will retract his suit. R. Meïr lets him change his mind.

42 The defendant tells the claimant that if the claimant’s father states that the sum is due to his son, the defendant will pay. R.

Hiyya sees this as a confession cloaked in a face-saving device; R. Meïr will agree with the Sages that this is irrevocable.

43 While R. Hiyya bar Abba’s argument may be correct, his conclusion is not, since as a matter of principle we never accept a relative’s testimony to be determining in law.

(fol. 20d) **משנה ו:** אֵילוֹ הֵן הַפְּסוּלִין הַמְּשַׁחֲקִים בְּקוֹבְצֵי וְהַמְּלִיָּה בְּרַבִּית וּמִפְּרִיחֵי יוֹנִים וְסוֹחְרֵי שְׁבִיעִית וְעֹבְדִים. אָמַר רַבִּי שְׁמַעוֹן מִתְחַלָּה לֹא הָיוּ קוֹרִין אוֹתָן אֶלָּא אוֹסְפֵי שְׁבִיעִית. מְשַׁרְבוּ

האֲנָסִין חֲזָרוּ לְקָרוֹתָן סוֹחְרֵי שְׁבִיעִית. אָמַר רַבִּי יְהוּדָה אִימָתִי. בְּזֶמֶן שֶׁאֵין לָהֶם אוֹמְנוֹת אֵלָּא הֵיא אֲבָל יֵשׁ לָהֶן אוֹמְנוֹת שְׁלֵא הִיא הָרִי זֶה כְּשֶׁר:

Mishnah 6: The following are disqualified: The dice-player⁴⁴, the lender on interest⁴⁵, participants in pigeon contests⁴⁶, dealers in sabbatical produce⁴⁷, and slaves⁴⁸. Rabbi Simeon said, earlier they were listing harvesters of sabbatical produce; but since the increase of oppressors they returned to list only dealers in sabbatical produce⁴⁹. Rabbi Jehudah said, when? If he has no profession but this; but if he has another profession, he is qualified⁵⁰.

44 Since the player with honest dice will lose as often as he wins, he cannot possibly live off the income from his wagers. A gambler living off his gambling by necessity must be dishonest.

45 The lender on interest to Jews shows that he is willing to break the law for monetary gain; he will be willing to commit perjury for a fee.

46 Or any sport where money is made by betting.

47 He is willing to break the law for monetary gain.

48 Since a slave has no *persona* in law, he could commit perjury with impunity.

49 Biblical law requires that the produce of fields in a Sabbatical year be abandoned,

available to anybody. Therefore, originally the owner of a field who harvested the field for his own use was branded as a scofflaw disqualified as witness or judge. But when Palestine was turned into a Roman province and, after the war of Bar Kokhba, the *annona*, contribution of produce, was imposed yearly, it was necessary to permit harvesting in the Sabbatical year in order to deliver the *annona* and prevent confiscation of the land by the government. Therefore, only actual trade in sabbatical produce was sinful, not harvesting.

50 An occasional gambler and occasional trader in sabbatical produce are qualified.

(21 a line 40) **הלכה ו:** אֵילּוּ הֵן הַפְּסוּלִין. הַמְּשַׁחֵק בְּקוֹבְנָא כּוּל. הַמְּשַׁחֵק בְּקוֹבְנָא זֶה הַמְּשַׁחֵק בְּפִסְיָסִין. אֶחָד הַמְּשַׁחֵק בְּפִשְׁפִּישִׁין וְאֶחָד הַמְּשַׁחֵק בְּקִלְפִי אֲגוּזִין וְרִימוֹנִים לְעוֹלָם אֵין מְסַבְּלִין אוֹתָן עַד שֶׁיִּשְׁבֵּר פְּסִיפְסִיו אוֹ יְקַרַע שְׁטְרוֹתָיו וְיַבְדֵּק וְיַחְזְרוּ בָּהֶן חֲזָרָה גְּמוּרָה.

Halakhah 6: “The following are disqualified: The dice-player,” etc.⁵¹ The dice player is the one who plays with small stones⁵².⁵³ “Not only the player with stones, even one who plays with shells of nuts or pomegranates is not accepted unless he break his stones or tear up his IOU’s⁵⁴, and be checked out and repent in complete repentance.”

51 Parallels to the first part of this Halakhah are found in *Roš Haššanah* 1:9 and *Ševuot* 7:4.

52 Greek ψῆφος “pebble, cube; the stones used for mosaics and tokens used in elections.” Rashi defines as “marbles”.

53 Similar texts are in the Babli 25b,

Tosephta 5:2.

54 This should be part of a separate sentence, as in the parallel Yerushalmi texts, Babli, and Tosephta.

The lender on interest cannot repent unless he tear up his IOU's and repent in complete repentance.

(21a line 44) ומפריחי יונים. אחד הממרה יונים ואחד הממרה שאר בהמה חיה ועוף אין מקבלין אותן עד שישברו פנימיו ויחזרו בהן חזרה גמורה.

“Participants in pigeon contests.”⁵⁵ ⁵³Whether one bets on pigeons or bets on any other domesticated animal, wild animal, or bird, he is not accepted unless he break his tools of the catch and repent in complete repentance.

סוחרים שביעית. אי זהו תגר שביעית. זה שיושב ובטל כל-שני שבו. כיון שבא שביעית התחיל מפשט גדיו ונושא ונותן בפירות שביעית. ולעולם אין מקבלין אותן עד שתגיע שביעית אחרת ויבדק ויחזור בו חזרה גמורה. תני. רבי יוסי אומר. שתי שביעיות. רבי נחמיה אומר. חזרת ממון לא חזרת דברים. שיאמר להם. הא לכם ר' זו וחלקים לעניים מה שכנסתי מפירת עבירה. הוסיפו עליהן הרועין והחמקנין והגזלנין וכל החשודין על הממון עדותן בטילה. אמר רבי אבהו. ובלבד ברועין בהמה דקה.

“Dealers in sabbatical produce.” ^{53a}“Who is a dealer in sabbatical produce? One who sits idle all the years of a sabbatical cycle. As soon as the sabbatical year starts, he becomes active and trades in sabbatical produce. One does not accept them before another sabbatical year starts and he can be checked out that he repented in complete repentance.” It was stated: Rabbi Yose says, two sabbatical periods. ⁵⁶“Rebbi Nehemiah says, repentance in money, not repentance in words; that he say to them, here are 200 denars, distribute them to the poor, for I earned them from forbidden produce.” ⁵⁷They added shepherds, extortionists, and any who are suspect in money matters, that their testimony be invalid. Rabbi Abbahu said, only shepherds of small animals⁵⁸.

55 The parallel sources show that there is a sentence missing here: “This is one who bets on pigeons.” Organizing pigeon contests is not dishonest, but making a

living by betting on animal contests would be impossible for honest betters.

56 Tosephta 5:2.

57 A similar text in the Babli, 25b.

58 Sheep and goats which are destructive of vegetation in agricultural areas. Herders of sheep and goats are acceptable only in regions devoid of agriculture. The Babli notes that robbers and other felons are

excluded by biblical law (*Ex.* 23:2). It concludes that Mishnah and *baraitot* refer to actions classified as extortion or robbery only by rabbinical standards.

59 (21a line 54) אָמַר רַב הוּנָא. מֵאֵן תִּנָּא מִפְּרִיחֵי יוֹנִים. רַבִּי לִיעֶזֶר. דְּתִנְיִנְךָ תִּמְנָן. מִפְּרִיחֵי יוֹנִים פְּסוּלִין מִן הָעֵדוּת. אָמַר רַבִּי מְנָא קוּמִי רַבִּי יוֹסִי. עוֹד הָדָא דְסִנְהֶדְרִי כְּרַבִּי לִיעֶזֶר. אָמַר לֵיהּ. דְּבָרֵי הַכֹּל הֵיא. הָכָא אָמַר רַבִּי יוֹסִי. יוֹדְעִין הֵיִינוּ שְׁפָסוּל מַעֲדוֹת מָמוֹן. מִי בָא לְהָעִיד. אֶלָּא כְּשֶׁם שְׁפָסוּל מַעֲדוֹת מָמוֹן כִּד פְּסוּל מַעֲדוֹת נֶפְשׁוֹת. וְעִידֵי הַחוּדָשׁ כְּעִידֵי נֶפְשׁוֹת אִינוּן. דְּתִנְיִנְךָ. זֶה הַכֹּל. כָּל-עֲדוֹת שְׂאִין אִשָּׁה כְּשִׁירָה לָהּ אִף הֵן אִינוּן כְּשִׁירִין לָהּ. מֵאֵן תִּנְיִנְתָּה. רַבִּינִין. רַבִּינִין. כְּרַבִּי לִיעֶזֶר. מוֹדִין לֵיהּ וּפְלִיגִין עָלוּהִי. רַבִּי הוּנָא בְּשֵׁם רַב הוּנָא אָמַר. כּוֹלָה כְּרַבִּי לִיעֶזֶר. וְאַתִּיכָא אֵילִין פְּלוּגְתָא כְּאֵילִין פְּלוּגְתָא. דְּתִנְיִן. עַד זֹמָם פְּסוּל מִכָּל-עֲדוּת שְׁבִתוֹרָה. דְּבָרֵי רַבִּי מֵאִיר. אָמַר רַבִּי יוֹסִי. בְּמָה דְּבָרִים אָמּוּרִים. בְּזִמְן שְׁנַמְצָא זֹמָם בְּעֲדוֹת נֶפְשׁוֹת. אֲבָל אִם נִמְצָא זֹמָם בְּעֲדוֹת מָמוֹן אִין פְּסוּל אֶלָּא מֵאוֹתָה עֲדוּת בִּלְבַד. וְתִיכָא דְרַבִּי יוֹסִי כְּרַבִּינִין וְדְרַבִּי מֵאִיר כְּרַבִּי לִיעֶזֶר.

Rav Huna said: Who is the Tanna of “participants in pigeon contests”? Rabbi Eliezer, as we have stated there⁵⁹: “Participants in pigeon contests are disqualified from testimony.” Rabbi Mana said before Rabbi Yose: Is that statement in *Sanhedrin* Rabbi Eliezer’s⁶⁰? He told him, it is everybody’s opinion. ⁶¹So said Rabbi Yose: We knew that he was disqualified for testimony in money matters. What does he⁶² come to testify about? For as he is disqualified in money matters, so he is disqualified to testify in criminal trials. The witnesses for the New Moon are held to the standards of criminal trials, as we have stated⁶³: “This is the principle: Any testimony for which a woman is not qualified, they⁶⁴ are not qualified for.” Who stated this? The rabbis⁶⁵! Do the rabbis follow Rabbi Eliezer? They agree with him and disagree with him. Rabbi Huna⁶⁶ in the name of Rav Huna said: It follows Rabbi Eliezer in everything. It turns out that this disagreement⁶⁷ parallels another disagreement, as it was stated⁶⁸: A perjured witness is disqualified for any and all testimony required by the Torah, the words of Rabbi Meïr. Rabbi Yose said, when has this been said? When he was found perjured in criminal matters. But if he was found perjured in money matters, he is disqualified

only from that particular testimony. It turns out that Rabbi Yose parallels the rabbis and Rabbi Meïr Rabbi Eliezer.

59 Mishnah *Idiut* 2:7, formulated as testimony in R. Aqiba's court in the name of R. Eliezer.

60 If this represents a minority opinion, it should have been labelled as such.

61 There is a sentence missing here. found in *Roš Haššanah*: What is meant by "it is everybody's opinion? That is what R. Yose meant to say:". It makes clear that one refers to the statement of the Amora R. Yose. The entire discussion does not refer to the Mishnah in *Sanhedrin* but the one in *Roš Haššanah*. The text in *Roš Haššanah*

has to be considered as the original.

62 The witnesses mentioned in the Mishnah *Roš Haššanah*.

63 Mishnah *Roš Haššanah* 1:10.

64 The people disqualified in Mishnah *Sanhedrin* 3:6.

65 In the anonymous Mishnah.

66 In *Roš Haššanah*: R. Jonah. In *Ševuot*: R. Huna.

67 R. Eliezer and the rabbis, R. Meïr and R. Yose (the Tanna).

68 *Tosephta Makkot* 1:11, in the name of R. Jehudah (student of R. Eliezer's student.)

(21a line 67) רבי שמעון אומר. מתחילה לא היו קורין אותן אלא אוספי שביעית. משרבו האנסיין חזרו לקרותן סוחרים שביעית. אמר רבי יודן. אימתי. בזמן שאין להן אלא היא. אבל יש לו אומנות שלא היא הרי זה כשר: היך עבדא. יושב ובטל כל-שני שבו. כיון שפאת שביעית התחיל פושט את גדי ונושא ונותן בפירות שביעית. אם יש עמו מלאכה אחרת כשר. ואם לאו פסול. אבל אם היה עוסק במלאכתו כל-שני שבו. כיון שפאת שביעית התחיל מפשט את גדי ונושא ונותן בפירות שביעית אף על פי שאין עמו מלאכה אחרת כשר. רבי בא בר זבדא רבי אבהו בשם רבי לעזר. הלכה כרבי יהודה דמתניתין. איקלס רבי בא בר זבדא דמר שמועה משום דזעיר מיניה.

תני רבי חייה לחימר. היך עבדא. יושב ועוסק במלאכתו כל-שני שבו. כיון שפאת שביעית התחיל מפשיט את גדי ונושא ונותן בפירות שביעית. אף על פי שיש עמו מלאכה אחרת פסול. לא בדא רבי בא בר זבדא רבי אבהו בשם רבי לעזר. הלכה כרבי יהודה דמתניתין. תמן רבי בא בר זבדא דמר שמועה משום זעיר מיניה. אף הך כן. אמר רבי יוסי בירבי בון. תמן אין מלכות אונסת. ברם הך המלכות אונסת.

⁶⁹Rebbi Simeon says, earlier they were listing harvesters of sabbatical produce; but since the increase of oppressors they returned to list only dealers in sabbatical produce. Rabbi Jehudah said, when? If he has no profession but this; but if he has another profession, he is qualified." How is this implemented? If he was sitting idle all the years of the sabbatical cycle but

when the Sabbatical began he became active and traded in sabbatical produce. If at the same time he is engaged in another occupation, he is qualified; otherwise he is disqualified. But if he was working in his profession all the years of the sabbatical cycle and when the Sabbatical began he became active and traded in sabbatical produce, even if he has no other profession on the side he is qualified. Rabbi Abba bar Zavda, Rabbi Abbahu in the name of Rabbi Eleazar: Practice follows Rabbi Jehudah⁷⁰ of our Mishnah. Rabbi Abba bar Zavda was praised for formulating the tradition in the name of a person younger than himself.

Rabbi Hiyya stated restrictively. How is this implemented? If he was working in his profession all the years of the sabbatical cycle but when the Sabbatical began he became active and traded in sabbatical produce. Even if he has another profession on the side he is disqualified. This is not what Rabbi Abba bar Zavda, Rabbi Abbahu said in the name of Rabbi Eleazar: Practice follows Rabbi Jehudah of our Mishnah. Rabbi Abba bar Zavda was praised for formulating the tradition in the name of a person younger than himself. Here also should it be so? Rabbi Yose ben Rabbi Abun said, there the government is not oppressive, here the government is oppressive.

(21b line 6) בְּרֵאשׁוֹנָה כְּשֶׁהֵיטָה הַמַּלְכוּת אוֹנֶסֶת הוֹרִי רַבִּי יַנָּאי שֶׁהָיוּ חוֹרְשִׁים חֲרִישָׁה הָרֵאשׁוֹנָה. הֵד מְשׁוּמֵד הָיָה אֵינְכָר שְׁמִיעָתָא. חֲמֵתוֹן רַמְיִין קוֹבְעָתִיהָ. אָמַר לוֹן. הֶסְטוּ. שְׂרָא מֵרַא.⁷¹ שְׂרָא לְכוֹן מֵרַמָּא קוֹבְעָת.

When the government was oppressing the first time, Rabbi Yannai instructed to plough a single ploughing⁷². An apostate was passing by; he saw the putting up of the harrow. He said to them, hey you! Is it permitted for you to plough? Is it permitted for you to put up the harrow?

(21b line 9) אָמַר רַבִּי יַעֲקֹב בַּר זִבְדִּי. קִשְׁיָתָה קוֹמִי רַבִּי אֲבָהוּ. לֹא כֵן אָמַר זְעִירָא וְרַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יַנָּאי רַבִּי יִרְמְיָה רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי שְׁמַעוֹן בֶּן יְהוֹצָדָק. נִמְנוּ בַּעֲלִית בֵּית נִתְּנָה בְּלוֹד. עַל הַתּוֹרָה מְנִיין. אִם אָמַר גּוֹי לִישְׂרָאֵל לַעֲבוֹר עַל אַחַת מִכָּל-מִצְוֹת הָאֲמּוּרוֹת בַּתּוֹרָה חוּץ מִעֲבוֹדָה זָרָה וְגִילּוֹי עֲרִיזוֹת וּשְׁפִיכוֹת דָּמִים יַעֲבוֹר וְאֵל יִיחָדְג. הֵדָּא דְתִימַר בֵּינוּ לְבִין עֲצָמוּ. אָבֵל בְּרַבִּים אָפִילוּ עַל מִצְוָה קֹלָה אֵל יִשְׁמַע לוֹ. כְּגוֹן פְּפוֹס וְלִיִּינִים אַחִיו שְׁנָתְנוּ לָהּ מִיִּם בְּכָלִי זְכוּכִית צְבוּעָה וְלֹא קִיבְלוּ מֶהָן. אָמַר. לֹא אֵיתְכֶּן מְשַׁמְדֵּהֶתוֹן אֱלָא מִגְּבִי אֲרֻנוּיִן. כְּמָה הֵן רַבִּים. רַבְּנִן דְּקִסְרִין אָמְרִין. עֲשֶׂהָ. דְּכָתִיב וְלֹקֵד שְׂתִי בַתּוֹד בְּנֵי יִשְׂרָאֵל.

Rebbi Jacob bar Zavdi said, I asked before Rebbi Abbahu: Did not [Rebbi] Ze'ira and Rebbi Johanan in the name of Rebbi Yannai, Rebbi Jeremiah, Rebbi Johanan in the name of Rebbi Simeon ben Yehosadaq, say that they voted on the upper floor of the Nitzah house in Lydda: About all the Torah, if a Gentile tells a Jew to transgress any commandment of the Torah except those concerning idolatry, incest and adultery, and murder, he should transgress and not be killed⁷³. That is in private, but in public he should not follow him even for the slightest commandment, as exemplified by Pappos and his brother Julianus to whom they gave water in a colored glass and they did not accept.

He said, they do not intend to lead you to apostasy, they only want to collect *annona*.

What means "in public"? The rabbis of Caesarea say ten, as it is written⁷⁴: *I shall be sanctified in the midst of the Children of Israel.*

(21b line 17) רבי בינא זעירא חמוניה פרי חורי חמרא בשבבא. רבי יונה ורבי יוסי הורון מיפי לארטקינס בשובבא. אמר רבי מני. קשיטה קומי רבי יונה אבא. לא כן אמר רבי זעירא רבי יוחנן בשם רבי ינאי רבי ירמיה רבי יוחנן בשם רבי שמעון בן יהוידק. נמנו בעליית בית נתנה בלוד וכול. לא איתכון משמדתהון אלא איתכון מיכול פיתא חמימא. כמה הו רבים. רבנו דקיסרין אמרי. עשרה. דכתיב ולקדשתי בתוך בני ישראל.

They saw the young Rebbi Bina collecting donkey's dung on the Sabbath. Rebbi Jonah and Rebbi Yose permitted baking for Ursicinus on the Sabbath. Rebbi Mana said, I asked before my father Rebbi Jonah, did not Rebbi Ze'ira and Rebbi Johanan in the name of Rebbi Yannai, Rebbi Jeremiah, Rebbi Johanan in the name of Rebbi Simeon ben Yehosadaq, say that they voted on the upper floor of the Nitzah house in Lydda, etc.? He said, he did not intend to lead you to apostasy, he only wanted to eat warm bread..

What means "in public"? The rabbis of Caesarea say ten, as it is written⁷⁴: *I shall be sanctified in the midst of the Children of Israel.*

(21b line 23) רבי אבינא בעא רבי אמי. גוים מהו שיהו מצוין על קידוש השם. אמר ליה ולקדשתי בתוך בני ישראל. ישראל מצוין על קידוש השם ואין ה גוים מצוין על קידוש השם. רבי יוסי בשם רבי לעזר שמע לה מהדא. לדבר הוה יסלח יי לעבדך וגו'. ישראל מצוין על קידוש השם ואין הגוים מצוין על קידוש השם.

Rebbi Abinna asked Rebbi Immi: Are Gentiles required to sanctify the Name? He answered him: *I shall be sanctified in the midst of the Children of Israel*. Israel are required to sanctify the Name; the Gentiles are not required to sanctify the Name. Rebbi Nissai in the name of Rebbi Eleazar understood it from the following: *May the Eternal forgive His servant for this*, etc. Israel are required to sanctify the Name; the Gentiles are not required to sanctify the Name.

(21b line 28) רבי בא בר זמינא הנה מחיט גבי חד בר נש ברומי. אייתי ליה בשר נבילה. אמר ליה. אכול. אמר ליה. לי נא אכיל. אמר ליה. אכול דילא כן אנה קטיל לך. אמר ליה אין בעית מיקטול קטול דלי נא אכיל בשר נבילה. אמר ליה. מאן מודע לך דאילו אכלתה הוינא קטלין לך. או יהודי יהודי או ארמאי ארמאי. אמר רבי מנא. אילו הנה רבי בא בר זמינא שמע מליהון דרבנין מיזל הנה בהדא.

Rebbi Abba bar Zemina was working as a tailor for somebody in Rome. He brought him carcass meat and told him to eat. He said to him, I will not eat. He said to him, eat! Otherwise I shall kill you. He said to him, if you have to kill, kill, for I shall not eat carcass meat. He said to him, certainly you should know that I would have killed you, had you eaten. Either one is a Jewish Jew or an Aramean Aramean. Rebbi Mana said, if Rebbi Abba bar Zemina had understood the words of the rabbis, he would have been gone.

69 This and the following paragraphs are from *Ševi'it* 4:2, Notes 20-34. A few passages are reformulated.

70 Babli 26b.

71 Read with the *Ševi'it* text מרדי "to plough".

72 Babli 26a. This dates the change in Roman taxation policy to the end of the Severan dynasty. For הסטר cf. *Ševi'it* 4:3, Note 23.

73 Babli 74a.

74 *Lev.* 22:32.

75 *2K.* 5:18.

(21b line 34) רבי ירמיה סבר מימר. בטל הדין בטילה גזירתא. רבי יוסי סבר מימר. לעולם הגזירה במקומה עד שיעמוד בית דין אחר ויבטלה. ודכוותה. מאימתי אדם זוכה לפירותיו בשביעית. רבי ירמיה סבר מימר. משיתגנס לתוך כילו. רבי יוסי סבר מימר. אפילו נתנוין בתוך כילו לא זכה. סבר דינון דידיה ולית אינון דידיה.

⁷⁶If somebody improved [his field] today, what is the rule? Rebbi Jeremiah was of the opinion that when the reason disappeared, the ordinance

is void. Rabbi Yose was of the opinion that even if the reason disappeared, the ordinance stands until another court abolishes it.

⁷⁷Similarly, how does an owner acquire his own produce in a Sabbatical year? Rabbi Jeremiah wanted to say, from the moment he put it into his vessel. Rabbi Yose was of the opinion that even if he put it into his vessel he did not acquire, for he thinks that it is his but it is not his.

76 The paragraph is a reformulation of one in *Ševi'it* 4:2, Notes 35-37. The prohibition to work after the Sabbatical a field which was improved in the Sabbatical is purely rabbinical.

77 *Ševi'it* 4:2, Note 43, *Ketubot* 9:3 Notes 109-110. The connection with the preceding is a leniency of R. Jeremiah opposed by R. Yose.

(21b line 38) רבי מנא כד אעל פרוקלא בצפורי הורי מפקא נחתומיא בשוקא. רבנין דגולה הורו מיכי חמיע בפסחא.
אמר רבי יוסי בירבי בון. אנלי פירמלך שמור. אני פי מלך מלכי המלכים אשמור. שאמר לי בסיני אנכי יי אלהיך. ועל דברת. לא יהיה לך אלהים אחרים על-פני שבעת אלהים. לא תשא את-שם יי אלהיך לשוא. בדרך הזה נבוא ההוא נברא וההו כלבא שניהן שוין.
רב יהודה בשם רב. הלכה כרבי יהודה.

When Proclus⁷⁸ entered Sepphoris, Rabbi Mana instructed the bakers to present their wares in the market. The rabbis of Newe⁷⁹ instructed to bake leavened on Passover.

⁸⁰Rabbi Yose ben Abun said: *I shall keep the King's sayings*⁸¹, Who told me at Sinai *I am the Eternal, your God*⁸², *on the pronouncement*⁸¹, *you shall not have other gods before Me*⁸³, *of God's oath*⁸¹, *do not take the Name of the Eternal, your God, in vain*⁸⁴. In this matter we come together, this man⁸⁵ and this dog⁸⁶ are both equal.

Rav Jehudah in the name of Rav: Practice follows Rabbi Jehudah.

78 Grätz (*Geschichte der Juden*³ p. 314) reads *Proculus* and identifies him as an officer of Ursicinus's army (under the emperor Gallus.)

79 Sometimes called *Niniveh*, a place *Nova* in the Golan.

80 The old Midrashim, *Lev. r.* 33:6, shorter *Cant. r. ad* 2:14, *Eccl. r. ad* 8:2 quote this in the name of the older R. Levy. Possibly there is no claim of originality asserted here for R. Yose ben R. Abun, three generations after R. Levy, but the sermon is

84 *Ex. 20:7.*

81 *Eccl.* 8:2.

82 *Ex. 20:2.*

83 *Ex. 20:3.*

Mishnah 7: The following are the relatives:⁸⁷ His brother, his father's brother and his mother's brother⁸⁸, his sister's husband, his father's sister's husband and his mother's sister's husband, his father-in-law, and his brother-in-law⁸⁹; these, their sons and sons-in-law, but his steps⁹⁰ alone. Rabbi Yose said, this is Rabbi Aqiba's teaching; but the original Mishnah was: His uncle and his uncle's son⁹¹, and anybody in line to inherit from him, and any related to him at that moment⁹². If he had been related but became unrelated, he is qualified. Rabbi Jehudah says, even if his daughter had died but he had children from him, he remains a relative⁹³.

91 Quoted as relative *par excellence* in *Lev.* 25:29.

92 Any man married to a woman who is a possible heir (as defined in Mishnah *Bava batra* 8:1) is barred to act as witness. At the dissolution of the marriage, by death or divorce, the relationship is terminated.

93 Since the grandchildren are possible heirs, they are barred from being witnesses, and so is their father. This holds true even if the grandchildren all are female.

(21b line 40) **הלכה ז:** אילו הן הקרובין כול'. מפנין דתנינן אחיו מה צורכה למתני אחי אביו. לומר בנו וחתנו של חתן.

אחי אביו. מפנין דתנינן אחי אביו מה צורכה למתני אחי אמו. לומר בנו וחתנו של חתן. אחי אמו. מפנין דתנינן בעל אחותו מה צורכה למתני בעל אחות אביו. לומר בנו וחתנו של חתן.

בעל אחות אביו. מפנין דתנינן בעל אחות אביו. מה צורכה למתני בעל אחות אמו. לומר בנו וחתנו של חתן.

בעל אחות אמו. וחתנינן חורגו לבדו. רב אמר. אם חתן חמותו אסור בעל חורגתו לא קל-שכן. תיפתר שיש לה בנים וחתנים ממנה.

אגיסו. אית תני תני. יש לו בנים וחתנים. ואית תני תני. אין לו בנים וחתנים. מאן דמר יש לו בנים וחתנים. ממנה. ומאן דמר אין לו בנים וחתנים. ממקום אחר.

Halakhah 7: “The following are the relatives,” etc. Since we have stated “his brother,” why does one have to state “his father’s brother”⁹⁴? To include the son-in-law’s son-in-law⁹⁵.

“His father’s brother”. Since we have stated “his father’s brother,” why does one have to state “his mother’s brother”⁹⁶? To include the son-in-law’s son-in-law⁹⁷.

“His mother’s brother”. Since we have stated “his sister’s husband,” why does one have to state “his father’s sister’s husband”⁹⁸? To include the son-in-law’s son-in-law⁹⁷.

“His father’s sister’s husband”. Since we have stated “his father’s sister’s husband,” why does one have to state “his mother’s sister’s husband”? To include the son-in-law’s son-in-law⁹⁹.

“His mother’s sister’s husband”. But did we not state: “his stepson alone”¹⁰⁰? Rav said, if his mother-in-law’s son-in-law¹⁰¹ is forbidden, then certainly his stepdaughter’s husband¹⁰². Explain it that she has sons and sons-in-law from him¹⁰³.

“His brother-in-law”. Some Tannaïm state: Including sons and sons-in-law; but some Tannaïm state: Excluding sons and sons-in-law. He who said, including sons and sons-in law, from her¹⁰⁴. But he who said, excluding sons and sons-in law, from another family¹⁰⁵.

94 Two unexpressed principles are symmetry: If A is disqualified for B, then B underlying the discussion. The first is is disqualified for A. The second one is that

for the definition of "relative", there is no difference between male and female.

[It has to be noted that for the definition of incestuous relations, both principles are accepted by Sadducees and rejected by Pharisees. The father's sister is biblically forbidden (*Lev.* 18:12); the brother's daughter, for whom the husband would be the father's brother, is biblically forbidden by Sadducees and Karaites, permitted (and recommended) by Pharisees and rabbinic Jews. The Midrash which asserts that Sarah was not Abraham's paternal half-sister but his niece (*Yebamot* 10:17 Note 210) is more an anti-Sadducee polemic than a genuine interpretation of the biblical text.]

Since the Mishnah states that sons and in-laws of disqualified relations are also disqualified, the mention of the brother implies that the nephew is also disqualified. But for the nephew, the original person is the father's brother; why does he have to be mentioned?

95 The Mishnah by implication disqualifies the cousin (or cousin's husband); this disqualification is not implied by the disqualification of the brother (Babli 28a).

96 In the Babli, 28a, the mention of the mother's brother is taken as proof of the second rule of Note 92. The same is implied here.

97 The same argument as before, to disqualify cousins from the mother's side.

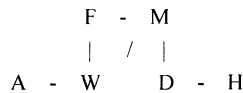
98 This question presupposes that any person disqualified for A also is disqualified for A's son (Babli 28a). A's sister's husband is the father's sister's husband for A's son.

99 This probably is a scribal error, copied from the preceding paragraph. The only reasonable answer would be: to show that in matters of disqualification as witnesses, relations by females are the equivalent of relations by males.

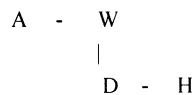
100 Excluding the stepson's wife and his descendants and in-laws.

101 Husband of his father-in-law's stepdaughter.

102 Since it was established that females be treated like males in this matter, the status of the mother-in-law is that of the father-in-law, and her children and children-in-law also are disqualified. Let A be the person in question, W his wife, F, M, his father and mother, D the mother-in-law's daughter from another man, and H the daughter's husband. The relationship between A and H can be given by a diagram:



On the other hand, the relationship between a man and his stepdaughter's husband can be described by



This graph clearly is a subgraph of the preceding (up to labelling, replacing F,M by A,W). Therefore, if the first graph describes a disqualifying relationship, *a fortiori* the second also describes one.

103 Since the preceding argument leads to a result contradicting the Mishnah, the premiss of the argument is shown to be false. The only siblings of a person's wife disqualified as witnesses are her full or

paternal siblings. “She” in this sentence is the mother-in-law.
104 His wife’s sister.

105 Another wife. In the Babli, 28b, there is a dispute whether “he alone” refers to the stepson or *any* brother-in-law.

(21b line 55) רב נפק למיתרי משכין לרבי חייה רבה. עבר בחד אתר ואשכח רבי יוחנן ותיב ומקשי. תינין. חורגו לבדו. אשת חורגו מהו. בעל חורגתו מהו. אשה קבעלה ובעל קאשתו. וקמת אשת חורגו כחורגו והבעל כאשה.
רב חסדא בעי. דור שלישי מהו שיהא מותר באשת ראשון. משה מהו שיהא מותר באשת פינחס. ריש לקיש אמר. מקבלין דור שני ודור שלישי מדוחק. רבי יוחנן אמר. אפילו מריח.

Rav went to sell hides¹⁰⁶ for the elder Rabbi Hiyya. He passed by a place where he found Rabbi Johanan sitting and asking: We have stated, “his stepson alone.” What is the situation of his stepson’s wife, his stepdaughter’s husband? A woman is like her husband and the husband is like his wife¹⁰⁷. Therefore, the situation of his stepson’s wife is that of his stepson, and the husband is like his wife¹⁰⁸.

Rav Hisda asked: If the third generation permitted the first generation’s wife¹⁰⁹? Is Phineas’s wife permitted to Moses¹¹⁰? Rabbi Simeon ben Laqish said, one accepts the second and third generations with difficulty¹¹¹. Rabbi Johanan said, even with ease¹¹².

106 Text and meaning are in doubt. One might read מיתרי משכין “to span hides”; this does not make much sense. *Nimmuqe Yosef* (Commentary to Alfasi, 6b in the Wilna ed.) reads למזבן משכין “went to sell a pledge”. This agrees with the following possessive, לרבי חייה. The parallel source in the Babli, 28a/b reads: רב איקלע למזבן גיילי. “Rav happened to be selling parchment.”

107 The Babli 28b treats the two statements as different; one does not necessarily imply the other.

108 A person is disqualified from being a witness for or against his stepson’s wife or stepdaughter’s husband, but not for or

against the stepchild’s children or children-in-law.

109 The brother’s children are disqualified by the Mishnah. What about the grandchildren?

110 The question is formulated as one of permitted marriages. This does not fit the context, since that problem was discussed in *Yebamot* 2:4. With all commentators one has to read the question whether Moses be qualified to testify for the wife of Phineas, his brother’s grandson.

111 A court will accept testimony from persons one generation removed from the Mishnaic disqualifications only if no other

witnesses are available.

Mishnah is qualified.

112 Any testimony not disqualified by the

(21b line 61) כְּהֵדָא אָגִיסִיָּה דְרַב הוּנָא הֵינָה לִיה דִּין עִם חַד בְּרִנְשׁ. אָמַר. כָּל־מָה דְרַב הוּנָא
אָמַר אָנָּה מְקַבֵּל עָלֵי. שְׁמַע רַב הוּנָא וְאָמַר כְּהֵדִין. יוֹדְעִי כְּשֵׁם שְׁאָמְרוּ מְלַמְעֵלָן כֹּן אָמְרוּ
מְלַמְטָן. רַב יְרֵמְיָה בְּשֵׁם רַב. הִלְכָּה כְּרַבִּי יִיְדָה.

¹¹³As the following: A brother-in-law¹¹⁴ of Rav Huna's had a case with some person. He said, I am accepting anything which Rav Huna will decide¹¹⁵. Rav Huna heard it and said, this is it¹¹⁶. I know that just as they said for the preceding generations, so it is for the following¹¹⁷. Rav Jehudah in the name of Rav: Practice follows Rabbi Jehudah¹¹⁸.

113 This refers to the last part of the Mishnah, the statement of R. Jehudah.

114 The husband of one of Rav Huna's sisters and one of the sisters had died. He had been a relative but now became unrelated.

115 Since Rav Huna was no longer a relative, he was qualified to be a judge.

116 The statement of the Mishnah.

117 The Mishnah refers to the relation between a person and his son-in-law, two different generations. Since R. Jehudah

states that if there be grandchildren, the son-in-law remains related, it follows that the anonymous Tanna holds that in all cases the son-in-law becomes unrelated at the moment his marriage is dissolved by death or divorce.

118 This is also quoted in the Babli, 28b, as Rav's opinion. The school of Samuel, represented by Rav Nahman, holds that practice does not follow R. Jehudah. Rav Nahman's rulings have the status of Supreme Court decisions in Babylonia.

(fol. 20d) **משנה ח:** האוהב והשונא. אוהב, זה שושבין. שונא כל שלא דבר עמו שלשה ימים
באיבה. אמרו לו לא נחשדו ישראל על כך:

Mishnah 8: ¹¹⁹The lover and the hater¹²⁰. The lover, that is the best man. The hater, anyone who did not talk to him for three days because of ill-will. They told him, Israel are not suspected of this¹²¹.

(21b line 65) **הלכה ח:** האוהב והשונא כול'. רבי טבליי רבי אבינא בשם רב. בשבעת ימי
משפחה שנו.

Halakhah 8: “The lover and the hater,” etc. Rabbi Tevelai, Rabbi Abinna in the name of Rav: They stated this for the seven days of wedding festivities¹²².

119 The Mishnah is a continuation of R. Jehudah’s statement.

120 Are disqualified as witnesses.

121 To testify falsely because of this. But a judge emotionally involved with one of the parties is disqualified (Babli 29a).

122 The best men are disqualified only during the festivities. Rav’s opinion is quoted in the Babli, 29a, where a later authority restricts R. Jehudah’s rule to the wedding day only.

(fol. 20d) **משנה ט:** כיצד בודקין את העדים. היו מכניסין אותן ומאיימין עליהן ומוציאין אותן לחוץ ומשייירין את הגדול שבהן ואומר לו אמור היאך אתה יודע שזה חייב לזה. אם אמר הוא אמר לי שאני חייב לו איש פלוני אמר לי שהוא חייב לו לא אמר כלום עד שיאמר בפנינו הודה לו שהוא חייב לו מאתים זוז.

Mishnah 9: How does one check out the witnesses? One brings them to court and instills fear into them¹²³, then removes them¹²⁴ but retains the greatest among them¹²⁵. One says to him, tell why you know that this person owes to the other one. If he said, he himself confessed to me that he owes the money¹²⁶, or another person told me that he owes it¹²⁷, he did not say anything until he says, before us¹²⁸ he confessed to him that he owed him 200 denar.

123 Since witnesses are not interrogated under oath, they have to be informed of the gravity of the crime of perjury.

124 This also is the reading of Alfasi and Rosh. Maimonides and the Venice text of the Babli read: One removes everybody.

125 The witnesses are interrogated separately.

126 He might have said this either to establish credit or to publicize his needy status in order that no public service should be required of him.

127 Hearsay has to be disregarded.

128 At least two witnesses, whose word confirms everything by biblical standards.

(21b line 66) **הלכה ט:** כיצד בודקין את העדים כול'. רבי יוסי בשם רבי יוחנן. אם היה מתבון למסור לו עדות עדות קיימת.

Halakhah 9: “How does one check out the witnesses,” etc. Rabbi Yose in the name of Rabbi Johanan: If he had intended to appoint them as witnesses, their testimony is valid¹²⁹.

129 Testimony that the debtor admitted to the debt (Note 126) is to be accepted if the debtor explicitly stated that he made the statement to his listeners for the purpose of testimony. There must be two listeners (Halakhah 10, Note 180).

(21b line 68) כִּיצַד דָּנִין. הַדִּינִין יוֹשְׁבֵין וְהַנִּדְוִינִין עוֹמְדִין וְהַתּוֹבֵעַ פּוֹתֵחַ בְּדַבְּרֵי רֵאשׁוֹן שְׁנָאִמְר מִי־בִעַל דְּבָרִים יָגֵשׁ אֲלֵיכֶם.
וּמִנִּין שְׁהַמוּצִיא מִחֲבִירוֹ עָלָיו הָרָאִיָּה. רַבִּי קְרִיסְפָּא בָּשֵׁם רַבִּי חֲנִנְיָה בֶן גַּמְלִיאֵל. יָגֵשׁ אֲלֵיכֶם. יָגִישׁ רֵאשׁוֹנִי.
רַבִּי יוֹחָנָן בְּעֵי. בִּיבְמָה מִי מְרַדֵּף אַחֵר מִי. הַתִּיב רַבִּי לַעְזָר. וְהַכְּתִיב וְעָלְתָהּ וּבִמְתָּו הַשְּׁעָרָה. אָמַר רַבִּי יוֹחָנָן. יָפָה לִּימְדֵנִי רַבִּי לַעְזָר.
רַבִּי בְּרֻקָּה וְרַבִּי חֲלָבּוֹ רַבִּי בָּא בָּשֵׁם רַבִּי יַנָּאי. הַתּוֹבֵעַ תּוֹבֵעַ וְהַנִּדְוִינִין מְכַרְעִי. אָמַר רַבִּי סִימוֹן. צְרִיד הַדִּינִין לְשׁוֹנוֹת טְעֻנוֹתֶיהֶן. שְׁנָאִמְר וְנָאִמְר הַמֶּלֶךְ זֹאת אִמְרָת זֶה־בִּנְי הַחַי וְבִנְי הַמֵּת וְגו'.

How does one judge? The judges are sitting¹³⁰, the parties are standing, and the claimant starts first with his words, as it is written¹³¹: *He who has something to say shall present before you*¹³².

From where that the burden of proof is on the claimant? Rabbi Crispus in the name of Rabbi Hanina ben Gamliel: *Shall present before you*, shall present his proofs¹³³.

¹³⁴Rabbi Johanan asked, in the case of a sister-in-law, who runs after whom? Rabbi Eleazar answered: *His sister-in-law shall come to the gate*¹³⁵. Rabbi Johanan said, Rabbi Eleazar taught me correctly.

Rabbi Berekhiah and Rabbi Helbo, Rabbi Abba in the name of Rabbi Yannai: The claimant claims, the respondent responds, and the judge decides. Rabbi Simon said, the judge has to repeat their arguments¹³⁶, as it is said¹³⁷: *The king*¹³⁸ *said, this one says, my son is the living and yours is the dead one*, etc.

130 They have to sit during the entire proceedings.

132 Tosephta 6:3.

133 Babli Bava qamma 46b.

131 A misquote from Ex. 24:14.

134 A slight reformulation of a text in

Yebamot 12:7, Notes 123-124.

135 *Deut.* 25:7.

136 To give each party the opportunity to complain that its arguments were not

understood correctly by the judges.

137 *1K.* 3:23.

138 Solomon, acting as judge.

(21c line 1) רב הונא כד הנה חמי סהדי מכוונא הנה חקר וכד הנה חמי הכן הנה מכוון. רב הונא מיקל לדיינא דאמר. מקבלין עליכון חד סהיד. אלא יימרון אינון. רב הונא כד הנה ידע זכו לבר נש בדינא ולא הנה ידע ליה הנה פתח ליה. על שם פתח-פיך לאלם.

When Rav Huna saw that witnesses said exactly the same, he was investigating¹³⁹. When he saw them essentially identical, he determined the common element¹⁴⁰. Rav Huna made light of a judge who said, “accept a single witness,” but they should say it themselves¹⁴¹. When Rav Huna realized an argument in favor of a person who himself did not know it, he guided him¹⁴², following¹⁴³ *open your mouth for the dumb*.

139 Witnesses using exactly the same language either bear false witness or they went over their testimony beforehand. Then they can be counted only as one witness, not as the biblically required two.

140 He summarized the common points.

141 Two independent witnesses are absolutely necessary only in criminal trials. Civil suits may be determined on the basis of documents or, with the agreement of the

parties, single witnesses. But accepting a single witness cannot be suggested by the court.

142 Since the parties are not supposed to consult lawyers, the judge may by a Socratic dialogue with the parties steer one of the parties to a certain argument which the latter did not see before.

143 *Prov.* 31:8.

(21c line 4) רבי אבהו בשם רבי יוחנן. המכמין עידיו אחורי גדר לא עשה כלום. כהדא. חד בר נש אשגח למיגוס גו אריסטון. אמר ליה. הב לי מה דאת חייב לי. אמר ליה. אין. בתר דקמון אמר ליה. לי נא חייב לך כלום. אמר ליה. אית לי סהדין. אמר ליה. לא אמרית אלא בגין דלא מעירבב מגוסתך. אתא קומי רבי אמי ומר. הדא דמר רבי יוחנן. המכמין עידיו אחורי גדר לא עשה כלום.

Rebbi Abbahu in the name of Rebbi Johanan: He who hides his witnesses behind a wall did not do anything¹⁴⁴. As in this case: A man happened to prepare food for a meal¹⁴⁵. He said to another, give me what you owe me. That one answered, yes. When he rose, he told him, I do not owe you

anything. He answered, I have witnesses. The other said, I said that only in order not to spoil your food. The case came before Rabbi Immi, who said, this is what Rabbi Johanan said, he who hides his witnesses behind a wall did not do anything¹⁴⁶.

144 Babli 29a.

145 Greek ἄριστος.

146 What a person says not in the presence of witnesses must be interpreted following the speaker's explanation.

(fol. 20d) **משנה י:** הוי מכניסין את השני ובדקין אותו. אם נמצאו דבריהם מכוונים נושאין ונותנין בדבר. שנים אומרים זכאי ואחד אומר חייב זכאי. שנים אומרים חייב ואחד אומר זכאי חייב. אחד אומר זכאי ואחד אומר חייב ואחד אומר איני יודע יוסיפו הדיינין: ואפלו שנים מוצין או מחיבין ואחד אומר איני יודע יוסיפו הדיינין:

Mishnah 10: One calls in the second [witness] and examines him. If their testimonies are found consistent, one argues the case. Two¹⁴⁷ say not guilty¹⁴⁸ and one says guilty, he is not guilty. Two say guilty and one says not guilty, he is guilty. One says not guilty, one says guilty, and one says “I do not know”, they shall add judges. Even if two say not guilty or guilty but one says “I do not know”, they shall add judges¹⁴⁹

147 Of the judges.

148 Since one deals with civil cases, this means that the claim is rejected.

149 Since the judge who does not vote is considered absent, judgment cannot be given by two judges. There must be three voting judges for the verdict to stand..

(21c line 10) **הלכה י:** הוי מכניסין את השני כול. שְׁעִירִים. מיעוט שְׁעִירִים שְׁנִים. מה תלמוד לומר שני. שיהו שניהן שוין.

קבשים. מיעוט קבשים שנים. מה תלמוד לומר שני. שיהו שניהן שוין.

מיעוט צפרים שנים. מה תלמוד לומר שתי. שיהו שוות. מיעוט חצוצרות שתיים. מה

תלמוד לומר שתי. שיהו שוות.

התיב רבי חגי לרבי יסא. והקתיב ועמדו שני האנשים. מעתה מיעוט אנשים שנים. מה

תלמוד לומר שני. שיהו שוין. והקתיב לא תטה משפט גר יתום. הרי גר דן עם מי שאינו גר.

יתום דן עם מי שאינו יתום. אם כן למה נאמר שני. מופנה להקיש ולדון ממנו גזירה שוה. נאמר כאן שני ונאמר להלן וישארו שני-אנשים. מה להלן אנשים ולא נשים אף כאן אנשים ולא נשים ולא קטנים. הרי למדנו שאין האשה דנה. ולא מעידה. רבי יוסי בי רבי בון בשם רב יוסי. נאמר כאן שני ונאמר להלן שני. מה להלן על-פי שנים עדים אף כאן על-פי שנים עדים. אם כן מה תלמוד לומר שני. שלא יהא אחד עומד ואחד יושב. אחד אומר כל-צרכו ואחד אומר לו. קצר דבריד. אמר רבי יהודה. שמעתי שאם רצה הדיין להושיב את שניהן מושיב. רבי ישמעאל אומר. אומרין לו. לבוש כשם שהוא לבוש או הלבישהו כשם שאת לבוש. אמר רבי בא בשם רב הונא. צריכין העדים לעמוד בשעה שמעידין. שנאמר ועמדו שני-האנשים. רבי ירמיה בשם רבי אבהו. אף הנידונין צריכין לעמוד בשעה שמקבלין דינן. שנאמר אשר-להם הריב לפני יי.

Halakhah 10: “One calls in the second [witness],” etc. ¹⁵⁰*Rams*¹⁵¹, the minimum of rams are two. Why does the verse say *two*? That both be equal¹⁵².

Sheep, the minimum of sheep are two. Why does the verse say *two*? That both be equal¹⁵³.

The minimum of *birds* are two. Why does the verse say *two*? that both be equal¹⁵⁴. The minimum of *trumpets* are two. Why does the verse say *two*? that both be equal¹⁵⁵.

Rebbi Haggai objected to Rebbi Yasa. Is there not written: *The two men shall stand*¹⁵⁶? Now, is not two the minimum of “men”? Why does the verse say *two*? That both be equal? But it is written¹⁵⁷: *Do not bend the lawsuit of the proselyte, the orphan, . . .* That means that a proselyte can have a lawsuit against one who is not a proselyte, an orphan may have a lawsuit against one who is not an orphan. Then why is there written *two*? It is free to be combined and to infer from it an *equal cut*¹⁵⁸. It is said here *two* and it is said there *two men were left*¹⁵⁹. Since there one speaks of men but not women, also here men but not women nor underaged.¹⁶⁰ From this we learn that a woman may not be a judge¹⁶¹ and may not be a witness.

Rebbi Yose ben Rebbi Abun in the name of Rav Joseph. It is said here *two* and it is said there¹⁶² *two*. Since there it must be by the testimony of two witnesses, also here by the testimony of two witnesses. Then why does the verse say *two*? Lest one of them be standing while the other be sitting; one

says everything he has to say, but to the other one says, make your statement short¹⁶¹.

Rebbi Jehudah said, I heard that if the judge wants to let both of them sit, he may tell them to sit down¹⁶³. Rebbi Ismael says, one says to him,¹⁶⁴ either you dress as he is dressed or pay him to be dressed as you are.

Rebbi Abba said in the name of Rav Huna: The witnesses have to stand while testifying, for it is said: *the two men shall stand*. Rebbi Jeremiah in the name of Rebbi Abbahu: Also the parties have to stand at the moment the verdict is given, as it is said¹⁶⁵: *who have the quarrel before the Eternal*¹⁶⁵.

150 There are two parallels to this text. The one in *Ševu'ot* 4:1 is almost identical with the present text; the one in *Yoma* 6:1 is slightly rewritten (or changed in transmission.) The *Ševu'ot* text seems to be the original of most of the Halakhah.

As explained in the author's *Logical problems in Jewish tradition* (in: *Confrontations with Judaism*, ed. Ph. Longworth, London 1966, pp. 171-196, mainly p. 174), talmudic interpretation of pentateuchal verses operates on a *principle of definiteness*: The language always is definite. Since the sequence of integers has a smallest but no largest element, an indefinite plural means "two". Therefore, the explicit mention of "two" always implies some special meaning.

151 *Lev.* 16:5,7,8 speaking of the rams used in the service of the Day of Atonement.

152 Babli *Yoma* 62b, *Sifra Ahare Parašah* 2(1).

153 The daily sacrifice required *two sheep* (*Ex.* 27:38, *Num.* 28:3). In both verses, the numeral is שנים (Babli *Yoma* 62b).

154 The birds required for the purification of the person healed from skin disease, *Lev.*

14:4. Babli *Yoma* 62b, Mishnah *Nega'im* 14:1, *Sifra Mesora* Introduction 11.

155 The trumpets to be sounded at the time of sacrifices, *Num.* 10:2. *Sifry Num.* 74.

156 *Deut.* 19:17. The verse can be read either as referring to the parties in a lawsuit or to the witnesses in a civil or criminal suit. Cf. Babli *Ševu'ot* 30a.

157 *Deut.* 24:17.

158 Cf. *Berakhot* 1:1 Note 70, *Nedarim* 1 Notes 18,159, *Nazir* 4:1 Note 23, *Logical problems* (Note 150) pp. 185-186. Two identical expressions, written in two different connections, each of which is *free*, i. e., not used for an inference not otherwise possible, can be used to transfer rules from one connection to the other. This hermeneutical principle is accepted by all rabbinic schools.

159 *Num.* 11:27. Since Eldad and Medad are mentioned by name in the verse, it is obvious that two men are meant.

160 Only people potentially acceptable for Moses's council of 70 Elders.

161 Babli *Ševu'ot* 30a, *Sifry Deut.* 190.

162 *Deut.* 19:15. The verse explicitly speaks of witnesses.

163 Babli *Ševu`ot* 30a, Tosephta *Sanhedrin* 6:2, *Sifra Qedošim Pereq* 4(4).

164 A person appearing in court dressed better than usual.

165 Babli *Ševu`ot* 30a.

(21c line 30) כתיב לא־יומְתוּ אָבוֹת על־בָּנִים. וְהֵלֵא כָּבֵד נֹאמֵר אִישׁ בְּחֻטָּאָו יוֹמֵת: מֵה תִלְמִיד לומֵר לא־יומְתוּ אָבוֹת על־בָּנִים. לא־יומְתוּ אָבוֹת בְּעֵדוּת בָּנִים וּבָנִים לא־יומְתוּ בְּעֵדוּת אָבוֹת. מְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין שְׁלֵמִידוּנִין.

וּמְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָךְ שְׂאֵם הוֹזָמוּ לא מִפִּיָּהּ נִהְרָגִין. וּמְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין שְׁלֵמִידוּנִים. הִגַּע עֲצָמָךְ שְׂאֵם הוֹזָם אֶחָד מֵהֶן כָּלוּם נִהְרָג עַד שְׁיִזּוֹם חֲבִירוֹ. אִם אֶת אֹמֵר כֵּן לֹא הִזָּה נִהְרָג עַל פִּי.

וּמְנִיין שֶׁלֹא יִהְיוּ הַדִּינִיין קְרוֹבִין זֶה לָזֶה. אֶמְרָה תוֹרָה. הָרוֹג עַל פִּי עֲדִים. הָרוֹג עַל פִּי דִינִיין. מֵה עֲדִים אֵין קְרוֹבִין זֶה לָזֶה אֶף דִּינִיין אֵין קְרוֹבִין זֶה לָזֶה.

אֵין לִי אֶלָּא אָבוֹת וּבָנִים. שְׂאֵר קְרוֹבִין מְנִיין. אֶמֶר רַבִּי זְעִירָא וּבָנִים. לְרֵבּוֹת שְׂאֵר קְרוֹבִין. עַד כְּדוֹן כְּרַבִּי עֲקִיבָה.

¹⁶⁶It is written¹⁶⁷: *Fathers shall not be killed because of sons*. Is it not already written, *each one should be killed for his own crime*^{167,168}? Why does the verse say, *fathers shall not be killed because of sons*? Fathers shall not be killed on the testimony of sons, and sons shall not be killed on testimony of fathers¹⁶⁹. From here^{169a} that witnesses shall not be relatives of the accused.

From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would they not be killed by their testimony¹⁷⁰? From where that witnesses may not be relatives of the judges? Think of it, if one of them be found perjured, he could not be killed unless the other also was found perjured. If you say so, would he not be killed by his sentence¹⁷⁰?

From where that judges may not be relatives of one another? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since witnesses may not be relatives of one another, neither may judges be relatives of one another¹⁷¹.

So far¹⁶⁷ only fathers and sons; from where the other relatives? Rabbi Ze'ira says, *and sons* includes the remaining relatives.

So far according to Rabbi Aqiba¹⁷².

166 This section also has an almost identical copy in *Ševuot* 4:1.

167 *Deut.* 24:16.

168 A slight misquote.

169 Babli 17b, *Sifry Deut.* 280.

169a Read with *Ševuot* 4:1 מניין מכן.

170 Cf. *Gittin* 9:8, Note 128. Formal perjury, “plotting”, is testimony which is impossible, i. e., where it was proven that the witnesses were not at the place about which they testify at the time they assert to have seen the object of their testimony. If only one witness was perjured, there is only one valid witness and his testimony is worthless by biblical standards; for worthless testimony there can be no biblical punishment. Therefore, if the two perjured witnesses were related, each would be convicted by his relatives’ testimony; this is forbidden by *Deut.* 24:16. But testimony

which would not expose the witnesses to the penalty of perjury is worthless. The Babli, 28a, points out that this argument also eliminates a single relative among the witnesses.

171 *Deut.* 24:16 is indeterminate enough to include both testimony and sentence by relatives.

172 Who will consider any *prefixed* ו which is not 100% necessary for the understanding of the text as an addition which invites extension of the rules. The statement attributed here to the late Amora R. Ze’ira is formulated in *Sifry Deut.* 280 as tannaïtic, representing R. Aqiba’s opinion.

21c line 40) כְּרֵבִי יִשְׁמַעְעָל מְנִיין. תַּנִּי רַבִּי יִשְׁמַעְעָל. וְשִׁפְטוֹ הָעֵדָה וְהַצִּילוּ הָעֵדָה. שְׁלֹא יִהְיֶה הָעֵדָה לֹא קְרוֹבִי מִכָּה וְלֹא קְרוֹבִי מוֹכָה. אָמַר רַבִּי יוֹסִי. אִם אוֹמֵר אֶת כֹּן נִמְצְאָת אוֹמֵר. בֵּית דִּין גּוֹאֲלֵי הַדָּם. מִיכֹן שְׁלֹא יִהְיֶה הַדִּינִין קְרוֹבִי הַנִּידוֹנִין. וּמְנִיין שְׁלֹא יִהְיֶה הָעֵדִים קְרוֹבִי הַנִּידוֹנִין. אָמְרָה תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי דִינִין. מִה הַדִּינִין אֵינֶן קְרוֹבִי הַנִּידוֹנִין. אִף הָעֵדִים לֹא יִהְיֶה קְרוֹבִי הַנִּידוֹנִין. וּמְנִיין שְׁלֹא יִהְיֶה הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִנֵּעַ עֲצָמָד שְׁהוֹמִי לֹא מִפִּתּוֹ הוֹן נִהְרָגִין.

¹⁷³From where following Rabbi Ismael? Rabbi Ismael stated: *The congregation shall judge*¹⁷⁴; *the congregation shall save*¹⁷⁵. The congregation be neither relatives of the murderer nor relatives of the murdered. Rabbi Yose said, otherwise you would say that the court is engaged in vendetta¹⁷⁶. This implies that the judges may not be related to the accused. And from where that the witnesses may not be related to the accused? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since judges may not be related to the accused, neither may witnesses be related to the accused. From where that witnesses may not be relatives of one another¹⁷¹? Think of it, if they be found perjured, would they not be killed by their testimony¹⁷⁰?

173 A slightly changed parallel is in *Ševu’ot* 4:1.

174 *Num.* 35:24, about the trial of the homicide who fled to a city of asylum. R.

Ismael objects to R. Aqiba's inferences from additional *ו, את* etc. and insists that any interpretations of verses conform to the plain sense of the verse within the purview

of his hermeneutical rules.

175 *Num.* 35:25.

176 This gives the missing argument in R. Ismael's statement.

(21c line 47) בְּפֶשְׁרִים וְלֹא בְּפִסּוּלִים. שְׁנֵאמַר אִם-לֹא יִגִּיד וְנִשְׁאַ עוֹנוֹ: אֶת שְׂמִגְד וְחִבְרִירו מִשְׁלֵם מָמוֹן. יֵצֵא פֶסוּל שְׂאֶפִילו מִגִּיד אֵין חִבְרִירו מִשְׁלֵם מָמוֹן. בְּפִנֵּי בֵּית דִּין. לְהוֹצִיא עַד אֶחָד. בְּשִׁאמְרוּ לוֹ. הֲרִי אֶת מִקְוֶבֶל עֲלֵינוּ כְּשֵׁנִים. כֹּזֵל יִהְיֶה חֵיב. תִּלְמִיד לֹמֵר אִין רָאָה אִין דִּעַ. אֶת שֶׁהוּא כָּשֶׁר לְהַעֲדֵד עֲדוֹת תִּנּוּרָה. יֵצֵא עַד אֶחָד שְׂאֵין כָּשֶׁר לְהַעֲדֵד עֲדוֹת תִּנּוּרָה. שְׁלֹא בְּפִנֵּי בֵּית דִּין. אִם-לֹא יִגִּיד וְנִשְׁאַ עוֹנוֹ: אֶת שְׂמִגְד וּמִשְׁלֵם מָמוֹן. יֵצֵא חוּץ לְבֵית דִּין שְׂאֶפִילו מִגִּיד אֵין חִבְרִירו מִשְׁלֵם מָמוֹן.

¹⁷⁷“Qualified one but not disqualified one.” For it is said, *if he does not tell, he has to bear his punishment*. If he told, the other would have to pay money. This excludes one where the other would not have to pay money even if he told¹⁷⁸.

“Before the court.” To exclude a single witness. If they told him that they would accept his word as if there were two [witnesses], would he be guilty? The verse says, *if he had seen or known*. One who is qualified to testify according to biblical standards; this excludes a single witness who is not qualified to testify according to biblical standards¹⁷⁹.

“Outside of court.” *If he does not tell, he has to bear his punishment*. If he told, one would have to pay money. This excludes outside of court where the other would not have to pay money even if he told.

177 These paragraphs all start with quotes from Mishnah *Ševu`ot* 4:1; they are copied from the Halakhah there. The object of discussion is *Lev.* 5:1: *If a person sinned when he heard the sound of an imprecation, being a witness, either having seen or known, if he does not tell he has to bear his punishment*. If one of the parties in a civil suit addresses a potential witness and by an oath tells him to appear as a witness in court, if the person so addressed refuses to

appear or to testify he has to confess his sin (5:5) and bring a sacrifice graded according to his means (5:6-13). Mishnah *Ševu`ot* 4:1 details the rules under which a person may be declared guilty of violating the oath put on him.

178 A person disqualified as witness never has to appear in court. Babli *Ševu`ot* 30a.

179 *Deut.* 19:15.

(21c line 54) ומניין לשני עדים. הוא ועד אחר הרי כאן שנים. וכרבי ישמעאל. דרבי ישמעאל אמר. כל מקום שכתוב בתורה עד סתם הרי הוא בכלל שני עדים עד שיודיעך הכתוב שהוא עד אחד. אשכח תני רבי ישמעאל. עד אחד מהו לחייב עליו משום שבועת ביטוי. אופשר לומר אחר ראוי לצרפו ולחייבו משום שבועת עדות ואת מחייבו משום שבועת ביטוי. קרוב מהו לחייב עליו משום שבועת ביטוי. יבא כהדא דמר רבי בא (בר) שמואל. שבועת שנתן פלוני לפלוני מנה. נמצא שלא נתן. מאחר שאין בידו לבא אין בידו לשעבר. או כהדא. אמר לו. היכן שורי. אמר לו. איני יודע מה אתה סח. והוא שמת או נשבר או נשבה או אבד. משביעך אני. ואמר אמן. פטור. רב אמר. פטור משבועת פיקדון וחייב משבועת ביטוי. אמר רבי יוחנן. מאחר שמצוה להפיסו אין חייב משום שבועת ביטוי. על דעתיה דרב אינו מצוה להפיסו. מפיסו על האמת ואינו מפיסו על השקר. תני רבי ישמעאל. ונשא עינו. קרבן. מנן ליה בית דין. ילפין אגדה אגדה. מה אגדה שנתמר להלן בית דין אף כאן בית דין.

From where two witnesses¹⁸⁰? He and another make two¹⁸¹. Or following Rabbi Ismael, as Rabbi Ismael said, any place where the Torah mentions a witness without further determination it implies two witnesses¹⁸² unless the verse informs you that a single witness is meant. It was found stated in the name of Rabbi Ismael: Can a single witness be found guilty of a blurted oath¹⁸³? Since it is possible to say that another person could team up with him, then he would be subject to the oath of testimony, how could you find him guilty of a blurted oath¹⁸⁴?

Should a relative be found guilty of a blurted oath¹⁸⁵? Does it follow what Rabbi Abba said (ben) [in the name of]¹⁸⁶ Samuel: ¹⁸⁷“An oath that X gave a *mina* to Y,” and it turns out that X had not given; since there is nothing in the future there is nothing in the past. Or the following: ¹⁸⁸“One said to another, ‘where is my ox?’ He responded, ‘I do not know what you are referring to.’ It so happened that it had died, or was wounded, or captured, or lost. ‘I require you to swear,’ the other said ‘Amen’. He is not liable.¹⁸⁹” Rav said, he is not liable for a keeper’s oath¹⁹⁰ but is liable because of a blurted oath¹⁹¹. Rabbi Johanan said, since it is a religious duty to appease him¹⁹², he is not liable because of a blurted oath. In Rav’s opinion, is there no religious duty to appease him? One appeases with truthful statements, not with lies.

Rebbi Ismael stated: *He has to bear his punishment*¹⁹³, a sacrifice¹⁹⁴. From where that one needs a court¹⁹⁵? One learns “telling, telling”¹⁹⁶. Since *telling* mentioned there is before a court, also telling here is before a court.

180 The sacrifice for disregarding an imprecation is due only if two witnesses can testify that the potential witness acknowledged the oath put on him.

181 This is R. Aqiba’s argument. Since it is written in *Lev. 5:1* *and he is a witness*, the copula implies the existence of a counterpart, a second witness.

182 Since a single witness is declared insufficient in *Deut. 19:15*, any mention of valid testimony in the biblical text must refer to two witnesses; cf. *Sotah* 6:2 Note 23; Babli 30a, 31b, *Sotah* 2b.

183 This refers to *Lev. 5:4*: *Or a person who blurts out swearing from his lips, to worsen or to improve, for anything a human might blurt out in an oath, and it slipped his mind but then he remembered and became guilty of one of these*. A blurted oath is one which could have been avoided by some reflection.

184 By its nature, a blurted oath is totally disconnected from any judicial procedure.

185 If only two witnesses are known to the party putting an imprecation on those who would not testify and one of these is a relative who could not testify, is the imprecation a blurted oath?

186 From the text in *Ševu’ot*. Samuel only had daughters.

187 Since *Lev. 5:4* sanctions only future-directed thoughtless oaths, *to worsen or to improve*, in Samuel’s opinion oaths that refer to past acts only are not included

in the category of blurted oaths. They are meaningless oaths which might not be reparable by a sacrifice.

188 Mishnah *Ševu’ot* 8:3. The person spoken to was an unpaid keeper responsible only if he appropriated another’s property for his own use, not if it was otherwise lost (*Bava meši’a* 7:9).

189 If the keeper maintains that he never received the ox when he had in fact received it, but it died or was lost under circumstances which do not make the keeper responsible for the loss, he does not have to bring the sacrifice for a false oath since his lie did not result in monetary loss to another person.

190 Since he could have told the truth and still not be liable for damages.

191 Since what he pronounced was an oath which resulted from speaking before thinking.

192 The keeper is under a religious obligation to tell the truth to the ox’s owner.

193 *Lev. 5:1*.

194 This supports Rav, that a sacrifice is due for any untruthful oath.

195 That a sacrifice is required only for oaths connected with judicial proceedings.

196 The only *legal* texts in the Pentateuch which use the root נגד are *Lev. 5:1* and *Deut.*

17:9-11. The latter text contains the rules of the Supreme Court and the punishment for disobeying its rulings.

(69 line 21c) כְּהֵדָא. אִין מְקַבְּלִין עֲדִים אֶלָּא אִם כּוֹן רְאוּ שְׁנֵיהּ כְּאַחַת. רַבִּי יְהוֹשֻעַ בֶּן קֶרְחָה אָמַר. אֶפִּילוּ בְּזֶה אַחֵר זֶה. רַבִּי יִרְמְיָה בְּשֵׁם רַב. מוֹדִין חֲכָמִים לְרַבִּי יְהוֹשֻעַ בֶּן קֶרְחָה בְּעִידֵי כְּכֹרָה וּבְעִידֵי חֲזָקָה. רַבִּי בָּא בְּשֵׁם רַבִּי יִרְמְיָה. אִף בְּעִידֵי סִימָנִין כּוֹן. מַה דְּפִשְׁטָא. בְּשִׁטָּה אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. וְזֶה אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. אֶחָד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּגָבּוֹ. וְאַחַד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּכָרְסוֹ. וְלֹא כְּלוּם. בְּלִשְׁכּוֹן גָּבּוֹ וְגָבּוֹ. שְׁנַיִם אֲמָרִים רְאִינוּ שְׁעָרָה אַחַת בְּכָרְסוֹ. רַב יוֹסִי וְרַב הוֹשִׁיעָה בְּרַב שְׁמִי. חַד אָמַר. פְּסוּל. וְחַד אָמַר. כָּשֶׁר. מֵאֵן דְּמַר פְּסוּל. בְּמַעֲיָד עַל חֲצִי סִימָן. וּמֵאֵן דְּמַר כָּשֶׁר. אֲנִי אָמַר. שְׁמָא נִשְׂרֹו. אֶחָד אָמַר. שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. וְאַחַד אָמַר. שְׁנַיִם בְּכָרְסוֹ. רַבִּי בָּא אָמַר. דְּבָרִי הַכֹּל כָּשֶׁר. אָמַר רַבִּי חֲגַי. דְּבָרִי הַכֹּל פְּסוּל. רַבִּי יוֹסִי אָמַר. בְּמַחְלוּקַת. אָמַר רַבִּי [יוֹסִי] לְרַבִּי חֲגַי. הֵא רַבִּי יוֹדֵן אָמַר דְּכוּתָתִי. אָמַר לִיה. וְעַל רַבִּיָּה אֲנָא פְּלִיג בְּלִשְׁכּוֹן עֲלוֹי. אָמַר רַבִּי מֵנָא. יְאוּת אָמַר רַבִּי חֲנָא. אִילוּ שְׁטַר שְׁחֲתוּם בְּאַרְבַּעַת חוֹתֻמוֹת זֶה מַעֲיָד עַל שְׁנַיִם וְזֶה מַעֲיָד עַל שְׁנַיִם וְקָרָא וְקָרָא עֲלֵיו עֲרָעַר שְׁמָא כְּלוּם הוּא. וְאִין כְּלִיחֻתִּימָה צְרִיכָה שְׁנֵי עֲדִים. וְהָכָא כְּלִיחֻתִּימָן צְרִיךְ שְׁנֵי עֲדִים. רַבִּי חֲנָא וְחֲזָקָה וְחֲזָקָה צְרִיכָה שְׁנֵי עֲדִים. וְהָכָא כְּלִיחֻתִּימָן וְסִימָן צְרִיךְ שְׁנֵי עֲדִים.

¹⁹⁷Or like the following. "One accepts the witnesses' testimony only if they saw it together. Rabbi Joshua ben Qorha says, even if they saw it one after the other." Rabbi Jeremiah in the name of Rav: The Sages agree with Rabbi Joshua ben Qorha with regard to witnesses of firstlings and witnesses of squatters' rights. Rabbi Abba in the name of Rabbi Jeremiah: the same holds for testimony regarding signs. In that case, it is obvious if one says, I saw two hairs on his back and the other says, I saw two hairs on his side. If one says, I saw one hair on his back and the other says, I saw one hair on his belly, that is nothing; so much more his back and his side. Two are saying, we saw one hair on his back; and two are saying, we saw one hair on his belly. Rav Yose and Rav Hoshia ben Rav Shammai, one said, it is invalid, but the other said, it is valid. He who says it is invalid considers him as one who testifies to half a sign. He who says it is valid? I say, maybe they were rubbed off. One says, two hairs on his back; and one says, two on his belly¹⁹⁸. Rabbi Abba said, everybody agrees that this is valid. Rabbi Haggai said, everybody agrees that this is invalid [testimony]. Rabbi Yose said, this is in disagreement. Rabbi [Yose]¹⁹⁹ said to Rabbi Haggai, does not Rabbi Yudan

follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rabbi Mama said, Rabbi Haggai was correct. If a document was signed by four seals, if one person verified the signature of two [witnesses], and another those of the other two, and the document was attacked, is that worth anything? Does not every single signature need two witnesses? And here, every single hair needs two witnesses. Rabbi Hinena learns it (because of)²⁰⁰ [from the years of] squatting rights. If one [witness] testified that he ate from the property the first, second, and third years and another testified that he ate it the fourth, fifth, and sixth years, is that worth anything? Does not every single year need two witnesses? And here, every single hair needs two witnesses.

197 This text is an incomplete copy of a text in *Sotah* 1:1, Notes 56-71 (*Ketubot* 2:4, *Ševu'ot* 4:1).

198 It is obvious that one has to read with

the *Sotah* text: *Two say one hair*.

199 From the text in *Sotah*, missing here.

200 Text here, to be replaced by the *Sotah* text in brackets.

(21d line 13) כְּהֵדָא. אֵין שׁוֹמְעִין מִן הָעֵדִים אֶלָּא אִם כֹּן בָּאוּ שְׁנֵיהֶן כְּאַחַת. רַבִּי נֶתָן אוֹמֵר. שׁוֹמְעִין דְּבָרֵי רֵאשׁוֹן וְלִכְשִׁיבּוֹא שְׁנֵי שׁוֹמְעִין אֶת דְּבָרָיו. רַבִּי יוֹנָתָן הוּא יְתִיב מִקְשִׁי. אִיפְשָׁר אֵית הִכָּא בַּר נֶשׁ דְּשָׁמַע הִלְכָּה כְּרַבִּי נֶתָן. אָמַר לֵיהּ רַבִּי יוֹסִי בַּר חֲנִינָה. הָא רַבִּי שְׁמַעוֹן בַּר יָקִים. אָמַר יָקִים לְעִיל. כִּינֹן דְּסָלַק אָמַר לֵיהּ. שְׁמַעְתָּ הִלְכָּה כְּרַבִּי נֶתָן. אָמַר לֵיהּ. שְׁמַעְתִּי מוֹדָה רַבִּי יְהוֹשֻׁעַ בֶּן קֶרְחָה לְרַבִּי נֶתָן. אָמַר לֵיהּ. לֵהֲדָא צוֹרְכָה. אָמַר לֵיהּ. וְלֹא אֵיתְּפוּנוּ רַבִּי יוֹסִי בַּר חֲנִינָה אֶלָּא מִסָּקָא רַבִּי שְׁמַעוֹן בַּר יָקִים לְעִיל בְּגִין דְּהוּא אֵינְשָׁא רַבָּא.

²⁰¹And the following. One does not listen to the witnesses unless they come together; Rabbi Nathan says, one listens to the first and when the second comes, one listens to what he has to say. Rabbi Jonathan was sitting and asking, maybe somebody is here who heard that practice follows Rabbi Nathan? Rabbi Yose bar Hanina told him, that is Rabbi Simeon ben Yaqim. He said, may he come up²⁰². When he came up, he asked him, did you hear that practice follows Rabbi Nathan? He answered, I heard that Rabbi Joshua ben Qorha agrees with Rabbi Nathan. He said, do we need this²⁰³? He said, Rabbi Yose ben Hanina only intended to elevate Rabbi Simeon bar Yaqim because he was an important person.

201 From here on, there is no parallel in *Sevu'ot*. The entire story is told in the Babli, 30 a/b, about R. Johanan instead of R. Jonathan.

202 Sit with the ordained judges.

203 This is obvious since R. Joshua ben Qorha does not require the witnesses to testify from the same point of view. Since he accepts testimonies which are consistent but not identical, he also must accept testimonies that are not synchronous.

21d line 21) רב חסדא בעי. מהו לקבל עדים שלא בפני בעל דין. רבי יוסי בשם רבי שבתאי. מקבלין עדים שלא בפני בעל דין ועבדין ליה גזר דין. אם בא וערער ערערו קיים. אדם ששאלו אתו בית דין ג' פעמים ולא בא. רבי יהושע בן לוי אמר. מקבלין העדות שלא בפני בעל דין ועבדין ליה גזר דין. כהדא כהנא דמדן ושבע ירתו לרבי יאשיה וקביל רבי לעזר סהדו דלא באפוי וזכי לרבי יאשיה. ולא עוד אלא דשבע ספרים. כתב רבי לעזר לירתו. ספרים שזכת בהן ארץ ישראל אין מוציאין אותן חוצה לארץ. רבי יוסי בשם רבי לעזר. אם כתב על מנת להוציא מוציא. רבי חייה בר בא בעא קומי רבי יוסי. מהו להוציא. אמר ליה. לעובדא את שאל לי. אמר ליה. לא. ובאיש לרבי זעירא דלא אמר ליה עובדא בגין מידע מהו אמר.

Rav Hisda asked: May one receive witnesses not in the presence of one of the parties? Rabbi Yose²⁰⁴ in the name of Rabbi Sabbatai: One may receive witnesses not in the presence of the parties and even issue a decision, but if [the absent party] appeals, their appeal must be heard. If a person was summoned by the court three times and did not appear, Rabbi Joshua ben Levi said that one may receive witnesses not in the presence of the parties and issue a decision²⁰⁵. As the following: Cahana²⁰⁶ died and had willed his estate to Rabbi Joshia. Rabbi Eleazar heard witnesses²⁰⁷ not in the presence [of the heirs] and handed the estate to Rabbi Joshia. Not only that, but the estate contained Torah scrolls. Rabbi Eleazar wrote to his heirs²⁰⁸: Scrolls won by the Land of Israel cannot be taken outside. Rabbi Nissai in the name of Rabbi Eleazar: If they were written for export, they can be exported. Rabbi Hiyya bar Abba asked before Rabbi Yasa: May one export? He asked him, do you ask me in a practical case? He answered, no²⁰⁹. Rabbi Ze'ira was dissatisfied²¹⁰ that he had not asked in a practical case, to know what he would have said.

204 Probably one should read *Yasa* for 136b, Note 2.
Yose; cf. *Diquqe Soferim Bava gamma* p.

205 The Babli restricts hearing witnesses not in the presence of both parties to this and similar cases; *Bava qamma* 112b.

206 A Babylonian without relatives in Galilee.

207 That Cahana's will conformed to the law of death-bed wills which supersedes the rights of heirs.

208 In Babylonia.

209 R. Yasa did not answer a purely theoretical question. Therefore, we do not know whether the other students of R. Eleazar accepted R. Eleazar's position.

210 R. Hiyya bar Abba's student and successor.

(21d line 32) רבי ירמיה הנה ליה דין עם חד בר נש וקבלון לשחדינא דלא באפוי דרבי ירמיה וחייבון לרבי ירמיה. ונהו יתיב ומצטער. איפשר מקבלין עדים בלא בעל דין. רבי הונא רבי פינחס רבי חזקיה חיקוק לא עלון בפירקא בההוא יומא. דחק רבי הונא ואעל ושכח לרבי ירמיה מצטער ואמר. איפשר מקבלין עדים בלא בעל דין אפילו עמקו באותה העיר. אמר ליה. כן חמתו דעתו דרבנן.

Rebbi Jeremiah²¹¹ had a suit against a certain person. They accepted testimony not in the presence of Rebbi Jeremiah, and decided against Rebbi Jeremiah. He was sitting despondent; is it possible that one accepts witnesses not in the presence of the parties? Rebbi Huna, Rebbi Phineas, and Rebbi Hizqiah from Huqoq did not go to the lecture²¹² on that day, but Rebbi Huna pushed, went in, and found Rebbi Jeremiah despondent; is it possible that one accepts witnesses not in the presence of the parties even if they are present with them in the same city? He told him, this is seen to be the rabbis' opinion²¹³.

211 A born Babylonian.

212 During the half-yearly study sessions.

213 Since the decision always could be reversed on appeal and the rabbinic court anyhow acted only as an arbitration panel, in

contrast to Babylonia where most of the time the rabbinic court had government backing in civil cases. Cf. the Introduction to Tractate *Neziqin*, pp.3-4.

(fol. 20d) **משנה יא:** גמרו את הדבר היו מכניסין אותו. הגדול שבדיינין אומר איש פלוני אתה זכאי איש פלוני אתה חייב. ומניין פשיצא לא יאמר אני הוא המזכה וחבירי מחייבין ומה אעשה ורבו עלי. על זה נאמר הולך רכיל מגלה סוד:

Mishnah 11: When they have come to a decision, they bring the parties in. The chief judge says, Mr. X, you are not guilty, Mr. X, you are guilty. From where that afterwards, one may not say, I had found for you but my colleagues found you guilty, but what can I do since they were a majority against me? On such a one it was said: *The gossip uncovers secrets*²¹⁴.

(21d line 38) **הלכה יא:** גמרו את הדבר כול'. אמר רבי יוחנן. כופין את המחייב שיקטוב זכאי. רבי שמעון בן לקיש אמר. המחייב כותב חייב והמזכה כותב זכאי. מתניתא פליגא על ריש לקיש. מניין קשיצא לא יאמר. אני מזכה וחברי מחייבין. מה עבד לה רבי יוחנן. דלא יהא מאן דהוא מימר. כמה בעית לפלוני מזכה לפלוני בדינא ולא שבקון לי. מאי טעמא דריש לקיש. דלא ייתי חורן ויסבור דכוותיה וייצר. אוף פלו הנה תמן אוף הוא טעה.

Halakhah 11: “When they have come to a decision,” etc. Rabbi Johanan said, one forces the one who finds guilty to write “not guilty.”²¹⁵ Rabbi Simeon ben Laqish says, the one who finds guilty, writes “guilty”; the one who finds not guilty, writes “not guilty.”²¹⁶ The Mishnah disagrees with Rabbi Simeon ben Laqish: “From where that afterwards, one may not say, I had found for you but my colleagues found you guilty.” What does Rabbi Johanan do with this? That nobody could say, I really wanted to justify X in his suit but they did not let me do it²¹⁷. What is Rabbi Simeon ben Laqish’s reason? That no other person should come, reason as he did, and say, also that one was there and he erred²¹⁸.

214 *Prov.* 11:13. Since this is from the Hagiographs, it does not have the force of a Torah verse.

215 The decision has to be signed by all three judges, Babli 30a.

216 The dissenter may write a dissenting opinion, Babli 30a.

217 His rule enforces the Mishnah.

218 The dissenting opinion might in the course of history become the majority opinion; then its author should get due credit.

(fol. 20d) **משנה יב:** כל־זמן שמיביא ראיה סותר את הדין. אמרו לו כל־ראיות שיש לך הבא מכאן עד שלשים יום. הביא בתוך שלשים יום סותר לאחר שלשים יום אינו סותר. אמר רבן שמעון בן גמליאל מה יעשה לא מצא בתוך שלשים ומצא לאחר שלשים. אמרו לו הבא עדים

אָמַר אֵין לִי עֵדִים הִבָּא רֵאזָה אָמַר אֵין לִי רֵאזָה וּלְאַחַר זָמַן מָצָא רֵאזָה וּמָצָא עֵדִים הֲרִי זֶה אֵינוֹ כָּלוּם.

Mishnah 12: Any time one produces a proof he may demand a new trial²¹⁹. If they told him, produce all your proofs within thirty days, if he produced within thirty days, he gets a new trial, after thirty days he does not get a new trial. Rabban Simeon ben Gamliel said, what can one do if he did not find within thirty [days] but found after thirty [days]²²⁰? If they told him, produce witnesses; he said, I have no witness; produce proofs; he said, I have no proofs. If later he found a proof, or he found witnesses, this is irrelevant²²¹.

219 The person who lost a civil suit may request a new trial based on new documentary evidence ("proof") or new witnesses.

220 He is entitled to a new trial if he can explain the delay. In general, practice

follows Rabban Simeon ben Gamliel in the Mishnah.

221 The court has to assume that the documents are forged and the witnesses false.

(21d line 45) **הלכה יב:** כָּל־זָמַן שֶׁהוּא מְבִיא רֵאזָה כּוּל'. אָמַר רַבִּי אוֹשְׁעִיָּא. תָּמַן שֶׁאִפְשָׁר לָהֶן לְהוֹסִיף דְּנִין אֵילּוּ כְּנֻגַּד אֵילּוּ. בְּרַם הָכָא אֵי אִפְשָׁר לָהֶן לְהוֹסִיף. רַבִּי יוֹחָנָן וְרִישִׁי לְקִישׁ תְּגִירְהוֹן מְרִין. אֶפְּלִילוּ הָכָא אִפְשָׁר לָהֶן לְהוֹסִיף.

Halakhah 12: "Any time one produces a proof," etc. ²²²Rebbi Oshaiah said, there²²³, where it is possible to add, they continue to argue. But here it is impossible to add²²⁴. Rebbi Johanan and Rebbi Simeon ben Laqish both teach that even here it is possible to add²²⁵.

222 The discussion of Mishnah 12 is in Halakhah 13. Therefore, the indication of a new Halakhah here is erroneous; the reference still is to Mishnah 11, in reference to a split decision of the court.

223 Mishnah 5:7, referring to criminal proceedings. If the court has the maximum number of members, 71, and 35 each are for conviction and acquittal while one is undecided, they have to continue to argue

until the undecided judge makes up his mind.

224 He holds that in civil trials one never adds judges. Therefore, even if there are only three judges, they have to continue to argue among themselves until each one has made up his mind.

225 They hold that the rules of adding judges are identical for civil and criminal trials (Maimonides, *Hilkhot Sanhedrin* 8:2).

(fol. 20d) **משנה יג:** אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל מַה יַּעֲשֶׂה לֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ עֵדִים וּמִצָּא עֵדִים וְלֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ רֵאיוֹה וּמִצָּא רֵאיוֹה. אָמְרוּ לוֹ הֲבֵא עֵדִים אָמַר אֵין לִי עֵדִים הֲבֵא רֵאיוֹה אָמַר אֵין לִי רֵאיוֹה. רֵאיוֹה שְׁמַתְחִיב בְּדִין וְאָמַר קִרְבוּ כְּלוּנִי וּכְלוּנִי וְהַעֲדוּנִי אוֹ שְׁהוּצִיא רֵאיוֹה מִתּוֹךְ אֶפְנֵדוֹ הֲרִי זֶה אֵינוֹ כְּלוּם:

Mishnah 13: Rabban Gamliel said, what should he do who did not know that he had witnesses but found witnesses; he did not know that he had proof, but he found proof²²⁶? If they told him, produce witnesses; he said, I have no witness; produce proofs; he said, I have no proofs; when he saw that the decision would go against him he said, X and Y shall come and testify for me, or he produced proof from his money belt, this is irrelevant²²¹.

226 This refers to the last case in Mishnah knowledge of the witnesses or documents
12. Late submissions must be accepted if within the period allotted him by the court.
the litigant can prove that he had no

(21d line 48) **הלכה יג:** אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל כּוֹל. רַבִּי יוֹחָנָן בְּשֵׁם רַב הוֹשַׁעְיָה. תִּלְתָּא אַמּוּרִין. חַד אָמַר. כָּל-זְמַן שְׁמַבִּיא רֵאיוֹה סוֹתֵר אֶת הַדִּין. וְחַד אָמַר. הֲבִיא בְתוּךְ ל' סוֹתֵר. לְאַחַר ל' אֵינוֹ סוֹתֵר. וְחַד אָמַר. לְעוֹלָם אֵין סוֹתֵר עַד שֶׁיָּבִיא רֵאיוֹה שְׁלֹא הָיָה יוֹדֵעַ בָּהּ כָּל-עֵינָקֵר. וְהַתִּינֵן. אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. מַה יַּעֲשֶׂה לֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ עֵדִים וּמִצָּא עֵדִים. שֶׁיֵּשׁ לוֹ רֵאיוֹה וּמִצָּא רֵאיוֹה כּוֹל. רַבִּי לֹא וְרַבִּי זִירָא. חַד אָמַר. עַד שֶׁיִּבְטֹל רֵאיוֹתָיו. וְחַד אָמַר. עַד שֶׁיִּכְפּוֹר בְּרֵאיוֹתָיו.

Halakhah 13: “Rabban Simeon ben Gamliel said,” etc. Rabbi Johanan in the name of Rav Hoshaiiah: Three Amoraïm²²⁷. One said, any time he brings proof he can demand a new trial. The other said, if he brought within 30 days²²⁸, he can demand a new trial, after 30 days he cannot demand a new trial. The other said, he never can demand a new trial unless he prove that he absolutely had no knowledge of it²²⁶. But did we not state: “Rabban Gamliel said, what should he do who did not know that he had witnesses but found witnesses; that he had no proof, but found proof?” Rabbi La and Rabbi Ze’ira: One said, unless he voided his proofs²²⁹; the other said, until he disclaimed his proofs²³⁰.

227 They explain Rabban Simeon ben Gamliel’s words. 228 Of judgment rendered.

229 Rabban Simeon ben Gamliel will agree that he is restricted in asking for a new trial if he himself had belittled the

possibility of finding other proof in a statement before the court.

230 He had affirmed before the court that there was nothing to be added.

(21d line 56) רבי לוי הנה ליה דין עם חד בר נש על עסק בתיים. והוון דיניין קומי רבי לעזר. לאחר גמר דין הביא ראיה. שאל לרבי יוחנן. אמר ליה. כל זמן שמביא ראיה סותר הדין. רבי אבמכיס הנה ליה דין עם חד בר נש על עסק ריחיא. והוון אדיניין קומי רבי לעזר. לאחר גמר דין הביא עדים. שאל לרבי יוחנן. אמר ליה. אדיין את לזו. כל זמן שמביא ראיה סותר את הדין. ולמה תרין עובדין. רבי לוי לא איתעבד ליה גזר דין. רבי אבמכיס איתעבד ליה גזר דין.

Rebbi Levi had a suit against a certain person about houses; they had it judged before Rebbi Eleazar. After a decision was reached he presented proof. He²³¹ asked Rebbi Johanan, who told him, any time one brings proof²³² he can demand a new trial. Rebbi Eumachos had a suit against a certain person about mills; they had it judged before Rebbi Eleazar. After a decision was reached he presented witnesses. He asked Rebbi Johanan, who said to him, is that still a problem for you? Any time one brings proof he can demand a new trial. Why did it need two cases? In Rebbi Levy's case, no formal verdict had been rendered, in Rebbi Eumachos's case, a formal verdict had been rendered²³³.

231 R. Eleazar.

232 Since in the next case, the same expression of "proof" is used in connection with witnesses, it seems that it refers not to the actual proof submitted to the court but to the justification, submitting proof that the

new material was unknown to the litigant during the trial.

233 Since in both cases it seems that the additional material was submitted close to the time of the trial, R. Johanan did not indicate which of the three Amora'im he was following. His instruction is binding precedent.

(21d line 63) אשר הדיניין מהו שיהא צריך בית דין. רבי הושעיה בשם שמואל רב בניי בשם שמואל. חד אמר. יתקיים או בכתב ידי עדם או בכתב ידי הדיינים. וחד אמר. אפילו בכתב אחד ובדין אחד.

Does a judicial confirmation need a court²³⁴? Rebbi Hoshia in the name of Samuel, Rav Bannai in the name of Samuel. One said, it should be confirmed either by the handwriting of the witnesses or the handwriting of the judges²³⁵; the other said, even with one handwriting and one judge²³⁶.

234 A mortgage foreclosure was certified by a certain court which confirmed the genuineness of document and claim. The property to be foreclosed was in the domain of another court. Does the second court have to ascertain that the certification be genuine or do we assume that court documents cannot be forged and the second court has to authorize the foreclosure?

235 Either the genuineness of the mortgage or the genuineness of the judicial endorsement has to be determined.

236 Two signatures have to be confirmed, but it may be the signature of one witness and one judge since the judges by their endorsement become witnesses to the genuineness of the document. This is the final determination of the Babli, *Ketubot* 21a.