

III.

BAVLI SANHEDRIN CHAPTER THREE

FOLIOS 23A-31B

3:1

- A. Property-cases are [decided by] three [judges] [M. 1:1A].
- B. This litigant chooses one [judge], and that litigant chooses one judge, and then the two of the [litigants] choose one more,” the words of R. Meir.
- C. And sages say, “The two judges choose one more.”
- D. “This party has the right to invalidate the judge chosen by that one, and that party has the right to invalidate the judge chosen by this one,” the words of R. Meir.
- E. And sages say, “Under what circumstances?
- F. “When he brings evidence about them, that they are relatives or otherwise invalid.
- G. “But if they are valid [judges] or court-certified experts, he has not got the power to invalidate them.”
- H. “This party invalidates the witnesses brought by that one, and that party invalidates the witnesses brought by this one,” the words of R. Meir.
- I. And sages say, “Under what circumstances?
- J. “What he brings evidence about them, that they are relatives or otherwise invalid.
- K. “But if they are valid [to serve as witnesses], he has not got the power to invalidate them.”
- I.1 A. *What is the meaning of the statement, This litigant chooses one and that litigant chooses one? Surely three [judges] should be enough?* [The sense of the question (Schachter, p. 129, n. 3) is that it is assumed each litigant selects a court, and the two courts choose a third court, which tries the case. Schachter: Hence the questions, why such a clumsy proceeding? Cannot the two litigants jointly select one court which shall try the action?]
- B. *This is the sense of the passage:* If this litigant chooses one court for himself, and that one chooses another, then they must together choose a third. [But that is the

case only if they differ on the selection of the court. If they do not, then the procedure at hand is not followed.]

I.2 A. *May even a debtor hold up matters [in the way just described]? [Or must he go to the court chosen by the creditor?]* And has not R. Eleazar said, “That rule applies only to the creditor. But as to a debtor, they force him to go to court in the town of [the creditor]”?

B. *This accords with what R. Yohanan said, “This rule applies to law courts set up in Syria.” Here too the rule applies to law courts set up in Syria.*

I.3 A. *But does [the stated procedure] not apply to court-certified experts? [Can these too not be disqualified by the debtor (Schachter)?]*

B. *R. Pappa said, “You may even maintain that the rule applies to court-recognized experts, for instance, the court of R. Huna and of R. Hisda.*

C. *“The debtor has the right to say, ‘Am I causing you any inconvenience?’ [Schachter, p. 130, n. 5: For while it is just that the debtor shall not have the power of putting the creditor to great trouble in choice of locale, seeing that the debtor is under an obligation to the creditor, this objection does not hold good when the two courts are so close to one another.]”*

I.4 A. *We have learned in the Mishnah: And sages say, The two judges choose a third” [M. 3:1C]: Now if it should enter your mind that matters are as we have proposed, that is, that we speak of each litigant’s choosing a court, after the litigants have invalidated a court, will that court go and select yet another court! [Surely this is absurd.]*

B. *And, furthermore, what is the sense of This litigant chooses one, and that litigant chooses one [M. 3:1B]?*

C. *But this is the sense of the passage: When this litigant chooses for himself one judge, and that litigant chooses for himself another judge, then the two of them choose for themselves one more.*

D. *What is the point in doing it this way?*

E. *They said in the West in the name of R. Zera, “Since this party chooses one judge for himself, and that party chooses another judge for himself, and the two of them then choose a third judge, the judgment of the case will be true, [and all parties will trust the decision].”*

II.1 A. *And sages say...[M. 3:1C]:*

B. *May we say that at issue is the view stated by R. Judah in the name of Rab? For R. Judah said Rab said, “Witnesses are not to sign a bond unless they know who is going to sign with them.” R. Meir does not concur with the statement made by R. Judah in the name of Rab, and rabbis concur with the statement made by R. Judah in the name of Rab. [Schachter, p. 130, n. 13: Meir does not require the witnesses to know beforehand who will join them; and in the same way, it is unnecessary for the two judges to know beforehand whether the third will be a fit and proper person, therefore the third is selected by the litigants.]*

C. *No, that is not the case. All parties concur in the view of R. Judah in the name of Rab, and all concur that [the third judge] must be appointed only with the knowledge and consent of the already appointed judges. Where there is a dispute,*

it is in the matter of whether or not the litigants must concur in the appointment of the third judge. R. Meir takes the view that [for the third judge] we also require the knowledge and consent of the litigants. Rabbis maintain that while we require the knowledge and consent of the other judges, we do not require the knowledge and consent of the litigants.

- D. *Reverting to the body of the foregoing statement:*
- E. R. Judah said Rab said, “Witnesses are not to sign a bond unless they know who is going to sign with them.”
- F. *So too it has been taught on Tannaite authority:*
- G. Scrupulous people in Jerusalem would not sign a bond unless they knew who was going to sign with them, and they would not take a seat on a court unless they knew who was going into session with them, and they would not join a banquet unless they knew who was going to recline with them.

III.1 A. This party has the right to invalidate the judge chosen by that one ... [M. 3:1D]:

- B. *Does a litigant have the power to invalidate a judge?*
- C. Said R. Yohanan, “The rule pertains to Syrian courts, but not to court-authorized expert judges.”
- D. *On that basis of the concluding statement: And sages say, “Under what circumstances? When he brings evidence about them, that they are relatives or otherwise invalid. But if they are valid judges or court-certified experts, he has not got the power to invalidate them” [M. 3:1E-G], it would follow that R. Meir makes reference also to court-authorized expert judges!*
- E. *This is the sense of the matter:* But if they were valid [judges] they enter the status of court-authorized experts and a litigant cannot declare them to be invalid.
- G. *Come and take note: They said to R. Meir, “He does not have the power to invalidate a judge publicly acknowledged as expert” [T. San. 5:2b].*
- H. *State matters in this way:* He does not have the power to invalidate a judge that the public have accepted upon themselves as an expert.
- I. *So too it has been taught on Tannaite authority:* “A litigant may continue rejecting a judge until he undertakes [Schachter: that the action shall be tried] before a court of publicly acknowledged experts,” the words of R. Meir. [Schachter, p. 132, n. 2: Hence it is evident that even Meir agrees that experts cannot be rejected.]
- J. *But lo, witnesses fall into the category of experts [since they know what they have seen], and yet R. Meir has said, “This party invalidates the witnesses brought by that one, and that party invalidates the witnesses brought by this one” [M. 3:1H].* [So J’s premise is contradicted.]
- K. *But lo, in this regard we have the following statement:* Said R. Simeon b. Laqish, “Could a holy mouth have made such a statement?” [How can we permit a litigant to reject the witnesses brought by opposing side?]:
- L. *It has been repeated as, “the witness” [singular].* [Schachter, p. 132, n. 5: Each can reject only a single witness produced by the other; a single witness, of course, is not on a par with an expert recognized by the court or an expert court.] [The argument of K is countered.]

- M. *But a single witness for what purpose? If one should say that it is in a monetary case, the All-Merciful has invalidated such testimony, [requiring, after all, two witnesses]. If it is as to the existence of an oath, then a single witness is believed as if he were two, [and so in what sort of case can we be confronting a valid, single witness]?*
- N. *It is indeed in a monetary case, and it is necessary to make such a statement, to deal with a case in which the litigant has accepted the evidence of a single witness as though it were two.*
- O. *What then does the statement tell us? Is it that one can retract? We have learned this already: “If one litigant said to the other, ‘I accept my father as reliable,’ ‘I accept your father as reliable,’ ‘I accept as reliable three herdsmen to serve as judges,’” R. Meir says, “He has the power to retract.” And sages say, “He has not got the power to retract” [M. 3:2A-C]. [23B] And in this regard, R. Dimi, son of R. Nahman, son of R. Joseph, said, “For example, if [the litigant] had accepted him as one [of the three judges].” [Thus we see that the revised statement goes over familiar ground.] [Schachter, p. 132, n. 11: And since one of the three judges is ineligible by biblical law, he may retract; so here, since one witness cannot impose payment by biblical law, although he was accepted as trustworthy, he may retract. Consequently we were already informed of this.]*
- P. *No, it was necessary to provide two versions of the same principle, [each to deal with a different angle of the matter.] For had the Tannaite authority spoken only of “My father” or “Your father,” I might have supposed that it is specifically in such a case that rabbis take the view that he cannot retract [once he has accepted him], because his father or the other party’s father is suitable to serve in general, [and not suitable only in the case at hand]. But as to treating one witness as equivalent to two, in general such testimony is not suitable, so I should have said that in such a case, sages concur with R. Meir. [We learn that that is not so.] And had we heard that latter instance, it is in that latter instance that R. Meir takes the position that he does, but in the other, I might have supposed that he concurs with the view of rabbis. [That too is not the case.] Accordingly, it is necessary to express the matter twice.*
- Q. *But since the Tannaite framer of the passage in the first clause speaks of “judge,” and in the second, “witness” [of the order], it must follow that he has chosen his words very carefully [and so Simeon b. Laqish’s thesis cannot stand, since it involves a less than literal reading of the evidence]!*
- R. *Said R. Eleazar, “We deal with a case in which a litigant and a third party came forward to invalidate them. [Schachter, p. 133, n. 5: and two have authority to reject, but actually the reference is to two witnesses.]”*
- S. *But does a litigant have such power? He is an interested party in the testimony of the other. [What kind of a witness is he?]*
- T. *Said R. Aha, son of R. Iqa, “We deal with case, for instance, in which [the litigant] has made a public allegation of the invalidity of the other party.”*
- U. *What sort of allegation? If I should say it is an allegation that the other party is a robber, does [the litigant] have the power to make such an allegation, since he is an interested party?*

- V. *Rather, it is an allegation as to a disqualification based on a family matter [Schachter: for example, the descendant of an unliberated slave cannot testify]. R. Meir takes the view that the two [the litigant and the other] may give testimony as to the invalidity in the witness's family history, and the man is automatically invalidated. But rabbis hold that, in the end, the litigant is an interested party [and so may not give that sort of testimony either].*
- W. *When R. Dimi came, he said R. Yohanan [said], "The dispute applies to the case of two groups of witnesses. R. Meir maintains that a litigant has to validate [what he says in respect to his second set of witnesses]. [Schachter, p. 134, n. 1: Therefore, the defendant is not regarded as an interested party when he testifies to the family unfitness of one of the first pair, since the plaintiff is bound to adduce the second set in any case, who are themselves sufficient. Should the plaintiff be unable to adduce a second set, he is the cause of his own loss.] Rabbis take the view that a litigant does not have to validate [what he says in respect to his second set of witnesses], [Schachter, p. 134, n. 2: Consequently, notwithstanding his first assertion, he can insist on basing his claims on the first pair of witnesses only, and so the defendant becomes an interested party in seeking to disqualify one of these witnesses]. But in the case of a single set of witness, all parties concur that [a litigant] has not got the power to invalidate [the witnesses brought by the other party]."*
- X. R. Ammi and R. Assi said before R. Dimi: "What if there is available only a single set of witnesses?"
- Y. "If there is available only a single set of witnesses"! But have you not just stated, "But in the case of a single set of witnesses, all parties concur that a litigant has not got the power to invalidate the witnesses brought by the other party,"?
- Z. Rather, "If the second set of witnesses turns out to be relatives or otherwise invalid, what is the rule?"
- AA. He said to them, "The first set of witnesses has already given its testimony [and that has been accepted and cannot now be rejected]."
- BB. *There are those who say:* Said R. Ashi, "The first set of witnesses has already given testimony."

III.2 A. *May we say that at issue is the same principle debated between Rabbi and Rabban Simeon b. Gamaliel. For it has been taught on Tannaite authority:*

- B. He who comes to court on the strength of evidence based both on a deed and on proof of usufruct [to establish a now-contested claim to a field] has his case judged on the strength of the deed," the words of Rabbi.
- C. Rabban Simeon b. Gamaliel, says, "His case is judged on the strength of the evidence of usufruct."
- D. *In that regard we reflected as follows: Could it mean it is with the testimony as to usufruct and not as to the testimony provided by the deed? [Surely not, thus] I should say, "Also with the testimony as to usufruct. And the fact of the case is that at issue is whether it*

is necessary for the defendant to validate [his claim]. [Schachter, p. 135, n. 2: Rabbi maintains that the whole statement must be verified and therefore the deed is necessary, while Simeon b. Gamaliel holds that it need not be verified, just as though he had never made it, and therefore the evidence as to usufruct suffices. Rabbi then agrees with Meir, and Simeon b. Gamaliel with rabbis.]

- E. *No, that is not the case. As to the view of Rabban Simeon b. Gamaliel all parties are unanimous. [Meir and rabbis reject Simeon's view.] Where there is a dispute, it is in regard to the position of Rabbi. For R. Meir concurs with the view of Rabbi. Rabbis, by contrast, will say to you, "The position taken by Rabbi there applies only to the matter of the evidence as to ownership established through usufruct. For this serves if there is evidence that there was a deed. But here, in which the standing of one set of witnesses does not depend upon the standing of another set of witnesses, even Rabbi will concur that it is not necessary for one litigant to validate [his statements in full (Schachter)]."*

III.3 A. *When Rabin came, he said R. Yohanan [said], "The first clause [of the Mishnah, M. 3:1D] [24A] speaks of a case in which the witnesses are invalid but the judges are valid. [The litigant proposes to reject both the witnesses and the judges,] and since he proves his case against the witnesses, we accept his claim also against the judges. The latter clause of the Mishnah [M. 3:1H] speaks of a case in which the judges are invalid and the witnesses valid. [The litigant here proves his case against the judges and not the witnesses], so that, since the judges are invalid, the witnesses also are treated as invalid. [That is why, from Meir's position, in both instances we allow one litigant to dismiss the evidence or the judges produced by the other.]"*

- B. *To this thesis Raba objected, "With regard to the view that, since the judges are invalid, the witnesses are provided invalid, the judges also are treated as invalid, in such a case there can always be resort to another court. But since the litigant has proven the judges of the other party invalid, should we say that the witnesses also are invalid? Lo, where will the opposed litigant find other witnesses? He has no more."*
- C. *It is necessary to postulate, therefore, that the opposed litigant does have another set of witnesses.*
- D. *But if he does not have another set of witnesses, what will be the result? Will you claim that, here too, [in Rabin's view] the litigant cannot invalidate the witnesses? That is what R. Dimi has already said!*
- E. *At issue between them is the argument of whether or not we invoke the claim that "since... " [since the one thing is so, we concede the other as well]. [Rabin] affirms that reasoning, [Dimi] does not.*

III.4 A. *Returning to the body of the text above:*

- B. *Said R. Simeon b. Laqish, "Could a holy mouth have already made such a statement? [How can we permit a litigant to reject the witnesses brought by the opposing side?]"*

- C. *It has been repeated as, "The witness" [in the singular].*
- D. Can this [obviously stupid mistake] be true? And did not Ulla say, "He who sees R. Simeon b. Laqish in the school house [sees him] as if he rips up mountains and grinds them against one another"?
- E. Said Rabina, "And is it not the case that whoever sees R. Meir in the school house [sees him] as if he rips up mountains still greater and grinds them against one another? *This is the sense of what he said:* Come and take note of how much [the sages of the Land of Israel] prize one another.

III.5 A. *It is like the case of when Rabbi was in session and stated, "It is forbidden to store up cold water [to preserve its cool quality for the Sabbath]."*

- B. Said before him R. Ishmael b. R. Yosé, "Father would permit people to store up cold water [to keep it cool]."
- C. He said to him, "The elder has already given a decision, [so I retract my ruling]."
- D. Said R. Pappa, "Come and take note of how much they prize one another. For if R. Yosé were alive, he would sit humble before Rabbi. For lo, R. Ishmael b. R. Yosé filled his father's place and he sat humbly before Rabbi. Yet [Rabbi] has said, 'The elder has already given a decision, [so I retract my ruling].'"

III.6 A. *Said R. Oshaia, "What verse of Scripture indicates it? 'And I took unto me the two staves, the one I called 'Graciousness' and the other I called 'injurers,'" (Zec. 11: 7).*

- B. "'Graciousness' refers to the disciples of sages who are in the Land of Israel, who give pleasure to one another in legal studies.
- C. "'Injurers' refers to the disciples of sages who are in Babylonia, who do injury to one another in their study of the law."
- D. "Then he said, 'These are the two anointed ones' (Zec. 4:14). 'And two olive trees by it'" (Zec. 4: 3).
- E. Said R. Isaac, "Yishar refers to the disciples of sages who are in the Land of Israel, who are smooth [and easy going] with one another in study of the law, like olive oil.
- F. "'And two olive trees by it' refers to disciples of sages who are in Babylonia, who are bitter toward one another in legal discussions as olive trees' [wood]."
- G. "Then I lifted up my eyes and saw, and behold there came forth two women, and the wind was in their wings, for they had wings like the wings of a stork. And they lifted up the measure between the earth and the heaven. Then I said to the angel who spoke with me, Whither do these bear the measure? And he said to me, To build her a house in the land of Shinar" (Zec. 5:9-11):
- H. Said R. Yohanan in the name of R. Simeon b. Yohai, "This refers to the hypocrisy and arrogance which descended upon Babylonia."

- I. *But did arrogance descend upon Babylonia?*
- J. And did not a master state, “Ten measures of arrogance descended upon the world. Elam took nine of them, and the rest of the world, one.”
- K. *Yes, that is indeed the case, for it came down to Babylonia and then went on to Elam.*
- L. Note that it is written, “To build her a house in the land of Shinar.”
- M. *So indeed it is proved.*
- N. And has not a master stated, “A symptom of arrogance is poverty,” *and did not poverty descend upon Babylonia?*
- O. *What is the meaning of poverty? It is poverty of Torah,*
- P. for it is written, “We have a little sister and she has no breasts” (Son. 8: 8), on which R. Yohanan remarked, “This refers to Elam, which has had the merit of studying but not of teaching [the Torah].”
- Q. *What is the meaning of the word “Babylonia”?*
- R. Said R. Yohanan, “A rich admixture of Scripture, Mishnah, Talmud.”
- S. “He has made me dwell in dark places like those that have long been dead” (Lam. 3: 6):
- T. Said R. Jeremiah, “This refers to the mode of Talmud-learning carried on in a Babylonia.”

The framer of the Talmud clearly had difficulty in working out the sense of the Mishnah-paragraph and assembled diverse theses on the matter. I have followed Schachter as indicated, but major text-problems require solution.

3:2

- A. “If one litigant said to the other, ‘I accept my father as reliable,’ ‘I accept your father as reliable,’ ‘I accept as reliable three herdsmen [to serve as judges],’”
- B. R. Meir says, “He has the power to retract.”
- C. And sages say, “He has not got the power to retract.”
- D. [If] one owed an oath to his fellow, and his fellow said, “[Instead of an oath], take a vow to me by the life of your head,”
- E. R. Meir says, “He has the power to retract.”
- F. And sages say, “He has not got the power to retract.”
- I.1 A. *Said R. Dimi, son of R. Nahman, son of R. Joseph, “[We deal with] a case [at M. 3:2A-C] in which one of the parties accepted such a person as one of the judges.”*
- B. Said R. Judah said Samuel, “The dispute concerns a case in which [the creditor has agreed to say, should the judges favor the debtor,] ‘The debt is forgiven to you.’”

But in a case in which [the debtor said to the creditor, should the judges favor the creditor,] ‘I shall pay you,’ all parties concur that [the debtor] has the power to retract [his agreement].” [Schachter, p. 139, n. 5: Less authority is required to rule that one retains what is already in his possession, since possession itself affords a presumption of ownership, than to transfer money from one to another. Hence, only in the former case do the rabbis rule that an undertaking to abide by the decision of an unqualified judge is binding, but not in the latter.]

- C. R. Yohanan said, “The dispute pertains to a case in which [the debtor said to the creditor, if the judges rule in favor of the creditor,] ‘I shall pay.’”
- D. *The question was raised [in interpreting what Yohanan has said], Does he hold that there is a dispute in the case in which the debtor has said, “I shall pay you” [should the court as now constituted so rule], but in a case in which the creditor has said, “The debt will be forgiven to you,” all parties concur that one cannot retract? Or is it possible that whether in the one circumstances or in the other circumstance, the same dispute pertains?*
- E. *Come and take note: For Raba has said, “The dispute pertains to a case in which the debtor said to the creditor, ‘I shall pay you,’ but in a case in which the creditor said to the debtor, ‘The debt will be forgiven to you,’ all parties concur that he cannot retract.” Now if you maintain the view that [Yohanan] holds that there is a dispute when the debtor has said to the creditor, “I shall pay you [if the court as presently constituted so orders me],” while in a case in which the creditor says to the debtor, “The debt will be forgiven to you,” all parties concur that he cannot retract, then Raba says exactly what R. Yohanan says, [so Yohanan’s position is clear]. If you say that one way or the other, there is a dispute then in accord with whose opinion does Raba make his statement?*
- F. *[Within the present thesis,] Raba gives his own opinion. [What Yohanan holds has no bearing.]*
- G. *R. Aha bar Tahalipa objected to what Raba said, “**If one owed an oath to his fellow and his fellow said, ‘Instead of an oath, take a vow to me by the life of your head,’ R. Meir says, ‘He has the power to retract.’ And sages say, ‘He has not got the power to retract’** [M. 3:2D-F]. [24B] Would this not deal with a case of someone who has taken an oath and not paid, in which case it is analogous to case in which the creditor says to the debtor, ‘The money will be forgiven to you’? [Schachter, p. 140, n. 4: The plaintiff agrees to abandon his claim as the result of an irregular procedure, whether in the choice of judges or in the form of the oath. This shows that they differ also in respect of ‘It be remitted to thee.’]”*
- H. *No, the case involves someone who takes an oath in order to collect [what is owing, rather than someone who takes an oath in order to avoid paying off]. In such a case, then, it is equivalent to claiming, “... I shall pay you...”*
- I. *The Tannaite authority has presented the case where the matter depends upon the judgment of others [in which the defendant accepts the judgment of people who cannot serve as judges], and the Tannaite authority also presents the case where the matter depends upon the judgment of the [plaintiff].*
- J. *It was, moreover, necessary to present the same principle in the two distinct cases [of M. 3:2A and D]. For had the Tannaite authority presented only the case in*

which the defendant makes the matter depend upon the judgment of others, in such a case R. Meir takes the view that the defendant may retract, for he has not decisively agreed to hand over the right of assigning ownership [to the court]. For [in making a mental reservation] he has said, "who can say that the court will give the right of ownership to the other party?" [The reservation is such that his original agreement is null.] But in a case in which the plaintiff has the matter depend upon his own judgment, I might say that [Meir] concurs with rabbis that he cannot retract later on. And had we learned the other case, in such a case rabbis might have taken the view that they did, but in the former, I might have said that rabbis concur with R. Meir. Accordingly, it was necessary to state both cases.

- I.2** A. Said R. Simeon b. Laqish, "There is a dispute about the rule pertaining before the completion of the court decision, but after the completion of the court decision, all agree he cannot retract."
- B. And R. Yohanan said, "About retraction after the completion of the court decision there is a dispute."
- C. *The following question was raised:* Is the sense of the foregoing statement that the dispute applies after the decision has been handed down, but before the decision has been handed down all parties concur that the litigant can retract? *Or perhaps is it his view that one way or the other, there is a dispute?*
- D. *Come and take note of the following statement made by Raba,* "If a litigant has accepted as his judge a relative or an invalid person [proposed by the other party], if this is prior to the completion of the trial, he can retract. If this is after the completion of the trial, he cannot retract."
- E. *Now if you take the view that there is a dispute after the completion of the trial, but before the completion of the trial, all parties concur that a litigant can retract, then Raba accords with R. Yohanan vis a vis the position of rabbis. But if you maintain that whether it is before or after the trial is complete, there is a dispute, then in accord with whose view is Raba's statement made? Does it not then indicate that there is a dispute [about retraction] after the completion of the trial?*
- F. *It does indeed show that that is the case.*

- I.3** A. R. Nahman bar Rab sent a message to R. Nahman bar Jacob, "May our master teach us: Is the dispute applicable only to the period prior to the completion of the trial, or does it apply as well to the period after the completion of the trial [so that the litigants may retract even then?] And in accord with which authority is the decided law?"
- B. He sent word to him, "The dispute pertains to the period after the completion of the trial, and the decided law accords with the view of sages."
- C. *R. Ashi said, "This is what he sent to him:* 'Does the dispute pertain to a case in which [the debtor said], "I shall pay you back" [should the court order me to do so], or does it pertain to a case in which [the creditor said], "I shall forgive the debt to you," and in accord with which authority is the decided law?'
- D. "He sent word to him, 'The dispute pertains to a case in which the debtor said, "I shall pay you," and the decided law accords with the view of sages.'"

- E. *That is how the matter was repeated on Tannaite authority in Sura.*
- F. *In Pumbedita this is how it was repeated on Tannaite authority:* Said R. Hanina bar Shelemiah, “They sent word from the house of Rab to Samuel, ‘May our master teach us: What is the law as to the [issue of retraction] prior to the completion of the trial, and in a case in which [a litigant has agreed not to retract through the making of] an act of acquisition?’”
- H. “He sent them word, ‘No valid action can take place after an act of acquisition, [and therefore can be no retraction].’
The entire Talmud is a sustained inquiry, beginning to end. My divisions mark off subunits of the whole. I cannot imagine a more successful inquiry into the issues and arguments of a Mishnah-paragraph.

3:3

- A. **And these are those who are invalid [to serve as witnesses or judges]:**
- B. **he who plays dice; he who loans money on interest; those who race pigeons; and those who do business in the produce of the Seventh Year.**
- C. **Said R. Simeon, “In the beginning they called them, ‘Those who gather Seventh Year produce.’ When oppressors became many [who collected taxes in the Seventh Year], they reverted to call them, ‘Those who do business in the produce of the Seventh Year.’”**
- D. **Said R. Judah, “Under what circumstances? When [the afore-named (B)] have only that as their profession. But if they have a profession other than that, they are valid [to serve as witnesses or judges].”**
- I.1 A. **[he who plays dice:]** *What does a dice-player do wrong [that he should be invalid as a witness or judge]?*
- B. *Said Rami bar Hama, “It is because [gambling] is based on an agreement to pay that one hopes will not come to pass, and such an agreement does not effect acquisition.”*
- C. *R. Sheshet said, “Something of that sort does not fall into the category of an agreement to pay that one hopes will not come to pass. Rather, [the reason a gambler is not acceptable is that] people of that sort do nothing productive.”*
- D. *What is at issue [between Rami and Sheshet]?*
- E. *There is the difference in the case of one who has learned another trade [besides gambling]. [Sheshet would accept an amateur gambler as a judge, Rami would not.]*
- F. *But have we not learned in the Mishnah:* **Said R. Judah, “Under what circumstances? When the afore-named have only that as their profession. But if they have a profession other than that, they are valid [to serve as witnesses or judges],” [M. 3:3D]?**
- H. *Does that not indicate that the prevailing thesis of our Mishnah-paragraph is that it is because such as these are not engaged in a productive occupation? That presents a problem, therefore, to Rami bar Hama.*
- I. *And should you say that rabbis differ from R. Judah, has not R. Joshua b. Levi said, “In any setting in which R. Judah has said, [25A] ‘Under what*

circumstances?” or ‘In what case?’ that statement serves only to explain the position of sages [with whom Judah concurs].”

- J. R. Yohanan said, “The expression, ‘Under what circumstances?’ serves to explain, but ‘In what case?’ serves to establish a point of difference.”
- K. *In any event, all parties concur that* [when Judah says,] “Under what circumstances?” *the purpose is to explain what sages have said.*
- L. *Now will you argue by simply quoting one authority in contradiction to another authority? One authority holds that [the cited language indicates] a point of difference, and the other authority holds that the cited language does not indicate a point of difference.*
- M. *And do they not differ? And has it not been taught on Tannaite authority:*
- N. Whether [one of those listed] has only that as his profession and whether he does not have only that as his profession, lo, such a one is invalid. [So there is a direct point of conflict here.]
- O. *That statement represents R. Judah speaking in the name of R. Tarfon. For it has been taught on Tannaite authority. R. Judah says in the name of R. Tarfon, “In point of fact, none of them is a Nazirite, because vows of Naziriteship apply only when they are accurately spelled out. [Schachter, p. 144, n. 8, citing Rashi: this proves that in Tarfon’s opinion an undertaking dependent on an unknown circumstance is not binding, and therefore the same applies to gambling, each gambler undertaking to pay his opponents without knowing the latter’s strength, and therefore the gambler is akin to a robber, whether gambling is his sole occupation or not.]”*

II.1 A. He who loans money on interest [M. 3:3B]:

- B. Said Raba, “One who borrows money on interest is invalid to serve as a witness.”
- C. *But have we not learned in the Mishnah: One who loans money on interest... [M. 3:3B]?*
- D. The point is that any loan on interest [disqualifies all parties to the transaction (Schachter)].

II.2 A. *Two witnesses gave testimony against Bar Binithos. One said, “In my presence he lent money on interest.” The other party said, “To me he lent money on interest.” Raba [accepting the evidence of both] declared Bar Binithos to be invalid.*

- B. *And lo, it is Raba who has said that one who borrows money on interest is invalid to testify, for such a one is wicked, and the Torah has said not to accept the testimony of a wicked person [cf. Exo. 23:1]!*
- C. *Raba is consistent with another position of his, for Raba said, “A man is regarded as relation of his own, so a man may not incriminate himself.” [So Raba accepted what the man said about the third party and ignored what he said about himself.]*

II.3 A. *There was a butcher who was found to be selling terefah-meat under his own authority. R. Nahman declared the man invalid [as a butcher] and sent him out.*

- B. *The man let his hair and nails grow [as a sign of repentance. R. Nahman considered declaring him valid once again.*
- C. *Said Raba to him, "Perhaps he is practicing deception."*
- D. *What is his remedy?*
- E. *It accords with what R. Idi bar Abin said.*
- F. For R. Idi bar Abin said, "He who is suspect of selling terefah-meat has only the remedy of going to a place in which people do not know him and returning a lost object of great value, or declaring as terefah-meat a piece of meat of great value that belongs to himself."

III.1 A. Those who race pigeons [M. 3:3B]:

- B. *What are pigeon-racers?*
- C. *Here it is explained [as one who says to another], "If your pigeon beats mine...."*
- D. R. Hama b. Oshaia said, "It is a fowler [Schachter, p. 145, no. 11: one who puts up decoy birds to attract other birds from another's dove cote.]"
- E. *Why does the one who holds that it is one who says to another, "If your pigeon beats mine....," not concur that it is a fowler?*
- F. He will say to you, "A fowler is forbidden merely for the sake of public peace, [but is not a thief]."
- G. *And why does the one who holds that it is a fowler not maintain that it is one who says to another, "If you your pigeon beats mine...."?*
- H. *He will say to you, "This is nothing other than a gambler. [The Mishnah, would not say, "This is nothing other than a gambler.] [The Mishnah would not say the same thing twice.]"*
- I. *And the other party?*
- J. *In the case [gambling], the Tannaite law speaks of one who depends upon his own intelligence, while in the other, he speaks of depending on the skill of one's pigeon [so the law has to speak of two separate cases].*
- K. *And it is necessary to address both cases. For had the Tannaite authority spoken of depending on one's own abilities, it is in such a case in which the participant has not decided to effect acquisition [to the other party, should he lose,] for he maintains, [25B] "I am confident that I know more than he does."*
- L. *But in the case of one who relies upon the skill of his pigeon, I might say [that the rule] does not [apply, since such a mental reservation cannot apply]. And had the Tannaite authority spoken only of one who depends upon the skill of his pigeon, [then the profit of the bet would be illegal], because the gambler would have thought, "Things depend on the rattle, and I know how to make the rattle work better than he does," but as to one who depends upon his own skills, I might say that the law is not the same. Accordingly it was necessary to specify both cases.*
- M. **An objection was raised: He who plays dice [M. 3:31] — this refers to one who plays with blocks of wood.**
- N. **And not only does the law apply to one who plays with blocks of wood, but even to one who plays with nut-shells or pomegranate shells.**

- O. **When does such a person reform himself? When he undertakes to break his blocks of wood and to carry out a complete reformation. [T San. 5:2A-D],**
- P. **So that he will not gamble even at no stakes.**
- Q. **One who lends on interest [M. 3:3B]: All the same are one who lends and one who borrows.**
- R. **When do we recognize their repentance?**
- S. **When they tear up bonds of indebtedness owing to them and [undertake] to carry out a complete reformation [T. San. 5:2E].**
- T. *And they do not lend an interest even to a gentile.*
- U. **Those who race pigeons [M. 3:3B3] — this refers to one who trains pigeons.**
- V. **And not only one who trains pigeons, but even one who trains any other sort of domesticated beast, wild beast, or bird,**
- W. **When are they held to have repented? When he undertakes to break those things which disqualify him and to carry out a complete repentance — —**
- X. *So that they will not practice this vice even in the wilderness.*
- Y. **Sabbatical traders? They are those who [B.:] do business in produce of the seventh year. [T.: who sit idle during the other six years of the septennate. Once the Seventh Year comes, they stretch out their hands and legs and do business in produce of transgression.]**
- Z. **When is their repentance accomplished?**
- AA. **When another year of release arrives, and he will refrain [so one may test him and find that he has reformed himself completely].**
- BB. **R. Nehemiah says, “It must be a reform through property, not merely a reform through what he has said.**
- CC. **“How so?**
- DD. **“[He must say,] ‘These two hundred denars I collected from the sale of Seventh Year [of transgression].’ Then [he must] hand them out to the poor” [T. San. 5:25 J-O].**
- EE. *Now we see that included in the Tannaite statement are cattle [Schachter, p. 147, n. 5: parallel with pigeons as being trained for racing]! Now from the viewpoint of him who has said that [under discussion is one who says,] “If your pigeon beats my pigeon,” that is how we find included in the list a reference to domesticated beasts. But in the view of him who has said that under discussion is a fowler, does a domesticated beast fall into this category?*
- FF.. *Indeed so, in the case of a wild ox. For we have learned in the Mishnah: A wild ox falls into the category of domesticated cattle. R. Yosé says, “It falls into the category of a wild beast” [M. Kil. 8:6].*

III.2 A. *A Tannaite authority [stated]: They added to the list robbers and those who impose a sale by force [even though they pay a fair market value].*

- B. *But a robber is prohibited on the basis of the law of the Torah.*
- C. *It was necessary to include in the list [a robber] who grabs something found by a deaf-mute, idiot, and minor. To begin with people thought that that was not commonplace, or because of keeping the peace in general [it was deemed robbery], [but the Torah itself did not prohibit such action so such a robber could*

testify]. But when they recognized that, in the final analysis, it is a theft of property, rabbis declared such people to be invalid. As to those who impose a sale by force, to begin with it was supposed that such a person in any event pays money [for what he takes], and the imposition [through pressure] was incidental. But when [sages] saw that such people in fact just grab [what they want], rabbis made a decree against them.

III.3 A. A. *A Tannaite authority [taught]:* They further added to the list cowboys, tax-collectors, and tax-farmers.

C. *As to cowboys, at first it was thought that it is an incidental act of theft [that they just happen to graze their herds on other people's land]. Once they saw that it was done intentionally, and they drove the herd there to begin with, they made a decree against them.*

B. *As to tax-collectors and tax farmers, at first it was thought that they take only what is specified as the tax. Once they saw that they took more [that the defined tax], they declared them invalid.*

C. Said Raba, "As to the cowboys of whom rabbis have spoken, all the same are one who herds large cattle and one who herds small cattle."

D. *And did Raba make such a statement? And did Raba not say, "One who herds small cattle in the Land of Israel is invalid [as a witness or judge], but one who does so outside of the Land is valid. In the case of one who herds a large cattle, even in the Land of Israel such a one is valid"?*

E. *That statement applies to breeders.*

F. *That moreover is a logical view, for lo, it has been taught on Tannaite authority: "I accept as reliable three herdsmen" [M. 3:2A] [and they are acceptable]. [But otherwise they are not qualified]. Now does this not indicate that they are not qualified as witnesses?*

G. *No, they are not qualified as judges. That would be shown, also, by the explicit reference to three herdsmen. Had it been a reference to their serving as witnesses, why make reference to three [when it is usually two witnesses, not three]?*

I. *Then would it not mean that at issue is their serving as judges?*

J. *But why make reference to three herdsmen? Any group of three men who had not learned the law also should be unacceptable [unless a litigant made explicit that he accepts them as judges]?*

K. *This is the sense of what he has said: "Even such as these, who are not ordinarily found in a settled area."*

III.4 A. A. Said R. Judah, "A shepherd under ordinary circumstances is invalid.

B. "A tax-collector under ordinary circumstances is valid."

C. *The father of R. Zera served as a tax-collector for thirteen years. When the canal-supervisor [who collected money for maintaining the canals] would come to town, when he would see rabbis, he would say to them, "'Come, my people, go into your chambers' (Isa. 26:20)."*

- D. *When he saw other people who lived in the town, he would say, "The canal-supervisor is coming to down. Now he will kill the father before the son and the son before the father." [The effect was to depopulate the town.]*
- E. **[26A]** *Everybody went and hid. When the man came, he said to him, "From whom shall I collect taxes?"*
- F. *When he died, he said, "Take the thirteen small coins that I have bound up in my sheet and give them back to Mr. So-and-so. For I took them from him and I did not need them [to pay the tax after all]."*

IV.1 A. Said R. Simeon, "In the beginning they called them, 'Those who gather Seventh Year produce.' [When oppressors became many, they reverted to call them, 'Those who do business in the produce of the Seventh Year'] [M. 3:3C]:

- B. *What is the sense of this statement?*
- C. *Said R. Judah, "This is the sense of this statement, "In the beginning, they ruled that those who gather Seventh Year produce are valid [as witness or judges]. Those who trade in it are invalid. When those who offered money to the poor became many, so the poor went and gathered Seventh Year produce for themselves and brought it to those [who offered the money], [sages] retracted and ruled, "Both this one [who gathers Seventh Year produce] and that one [who trades in it] are invalid."*
- E. *The sons of Rahbah objected, "But the language, **When oppressors became many, then should rather be, When traders became many!** Rather: 'In the beginning they ruled that both this one [who gathered the produce] and that one [who traded in it] are invalid. When oppressors became many — (and who are they? they are the collectors of taxes paid in kind, in accord with what R. Yannai announced, 'Go and sow your fields in the Seventh Year, on account of the taxes to be paid in kind',) they retracted and ruled that those who collect such produce are valid, while those who trade in it are invalid."*

IV.2 A. R. Hiyya bar Zaranoqi and R. Simeon b. Yehosedeq were going to intercalate the year in Assya. R. Simeon b. Laqish met them and joined them. He said, "I shall go along and see how they do it."

- B. *He saw a man ploughing. He said to them, "He is a priest, and he is ploughing."*
- C. *They said to him, "He can claim, I am an imperial employee in [the property]."*
- D. *Later on they saw another man, who was pruning his vineyard.*
- E. *He said to them, "He is a priest, and he is pruning the vineyard."*
- F. *They said to him, "He can claim that he needs [the twigs] to make a bale for the wine-press."*
- G. *He said to them, "The heart knows whether it is woven or crooked [a play on the root shared by both words]."*
- H. *Which did he say first? If one should say that it was the first remark, then the other could have given the same excuse, namely, "I am an imperial employee in it." Rather, the latter must have come in the beginning, and only later did he make the other remark.*

- I. *What difference did it make that he noted that the men [violating the law] were priests?*
- J. *It is because they are suspect of not observing the taboos of the Seventh Year. For it has been taught on Tannaite authority: **A seah of heave-offering which fell into a hundred seahs of produce which was grown in the Seventh Year — lo, this is neutralized. If it falls into less than this amount of prohibited produce, let all of the produce rot** [T. Ter. 6:3, trans. Avery-Peck, p. 183]. And we have the following reflection on the rule: Why should the produce be left to rot? Why not let it be sold to a priest at the price of heave-offering, deducting only the value of that one seah? To this question R. Hiyya said in the name of Ulla, “That indicates that priests are suspect of not scrupling in the matter of produce of the Seventh Year.”*
- K. *They said [of Joshua b. Levi], “He is a pain in the neck.”*
- L. *When they got there, they went up to the roof and drew the ladder up from below.*
- M. *[Simeon b. Laqish] went to R. Yohanan and said to him, “Are men who are suspect about violating the Seventh Year valid to intercalate the year?”*
- N. *Then he said, “There is no problem to me, since it is parallel to the case of the three cowboys, and rabbis made their calculations depending upon their view.”*
- O. *Then he went and said, “The cases really are not parallel. In that case the rabbis were the ones who made their calculations and intercalated that year. But here it is a conspiracy of wicked men, and a conspiracy of wicked men does not come under consideration [to constitute a board to intercalate the year].”*
- P. *Said R. Yohanan, “That is sad.”*
- Q. *When the men came before R. Yohanan, they said to him, “He called us cowboys, and the master did not say a thing to him!”*
- R. *R. Yohanan said to them, “Had he even called you shepherds, what could I have said to him?”*

IV.3 A. What is a conspiracy of wicked men?

- B. *Shebna gave expositions before thirteen myriads, while Hezekiah gave expositions before eleven myriads. When Sennacherib came and besieged Jerusalem, Shebna wrote a message and shot it on an arrow: “Shebna and his associates are prepared to make peace, Hezekiah and his followers are not prepared to make peace.”*
 - C. *For it is said, “For lo, the wicked bend the bow, they make ready their arrow upon the string” (Psa. 11: 2).*
- D. *Hezekiah was afraid. He said, “Is it possible — God forbid — that the opinion of the Holy One, blessed be he, follows the majority. Since the majority are ready to give up, should we too give up?”*
- E. *The prophet came and said to him, “Do not say a conspiracy, concerning all of whom this people do say, A conspiracy” (Isa. 8:12).*
- F. *“It is a conspiracy of the wicked, and a conspiracy of the wicked does not come under consideration [to make a decision].”*
- G. *[When Shebna] went to carve out a sepulchre for himself among the graves of the house of David, the prophet came and said to him, “What have you here and*

whom have you here, that you have hewn here a sepulchre? Behold, the Lord will hurl you down as a man is hurled” (Isa. 22:16). [“You will go away into exile.”]

A. *Said Rab, “Exile for a man is more difficult than for a woman.”*

H. “Yes, he will surely cover you” (Isa. 22:16): Said R. Yosé b. R. Hanina, “This teaches that the skin disease broke out on him. Here is it is written, ‘Surely cover ...,’ and with reference to the skin disease it is written, ‘He shall cover his upper lip’ (Lev. 13:45).”

I. “He will violently roll and toss you like a ball into a large country” (Isa. 22:18):

J. *A Tannaite authority [stated], “He went after the shame of his master’s household. Therefore his glory was turned to shame. When he was going out [to surrender to Sennacherib], Gabriel came along and shut the gate in front of his retinue.*

K. **[26B]** *“[When the Assyrians] asked, ‘Where is your retinue,’ he said to them, ‘They have gone back on me.’”*

L. *“They said to him, “‘If so, you are ridiculing us.’” They pierced his heels, hung him on the tails of their horses, and dragged him on brambles and thorns.”*

M. *Said R. Eleazar, “Shebna indulged himself. Here it is written, ‘Go to a companion-steward’ (Isa. 22:15) and elsewhere it is written, ‘And she became a companion-steward to him’ (1Ki. 1: 4). [The same word serves as a companion or a steward.]”*

N. “When the foundations are destroyed, what has the righteous wrought?” (Psa. 11: 3).

O. R. Judah and R. Ina: One said, “If Hezekiah and his companions had been wiped out [by Shebna], ‘what would the Righteous [God] have wrought?’”

P. The other said, “If the house of the sanctuary had been destroyed, ‘what would the Righteous [God] have wrought?’”

Q. And Ulla said, “If the intentions of that wicked man had not been upset, ‘what would the righteous [Hezekiah] have wrought?’”

R. *Now from the viewpoint of the one who has said, “If the intentions of that wicked man had not been upset, what would the righteous have wrought?” that is in line with the verse of Scripture, “When the foundations are destroyed” (Exo. 7:23). And from the viewpoint of the one who has said, “If the house of the sanctuary had been destroyed, what would the Righteous have wrought?” that is in line with what we have learned in the Mishnah: **Once the ark was taken away, there remained a stone from the days of the earlier prophets, called Shetiyyah [M. Yoma 5:2A].** [The word used in the verse at hand, translated “foundations” therefore may speak of the “foundations of the house of the sanctuary.”] But as to the view of him who has said, “If Hezekiah and his companions had been wiped out, what would the Righteous have wrought?” where do we find that the righteous are called “foundations”?*

S. As it is written, “For the pillars of the earth are the Lord’s and he has founded the world upon them” (1Sa. 2: 8) [and the righteous are the foundations].

- T. *Or if you prefer, it derives from this verse: “Wonderful is his counsel and great his wisdom” (Isa. 28:29).*
- U. Said R. Hanan, “Why is [Torah] called wisdom [using the word appearing in the verse cited above]? Because it weakens one’s power [the verb for weaken using the same root].”
- V. Another answer to the question: It is called such because it was given in secret on account of Satan.
- W. Another answer: It is founded on words, which are not material, yet the world rests on them.
- X. Said Ulla, “Worries affect one’s Torah-study, for it is written, ‘He abolishes the thought of the skilled, lest their hands perform nothing substantial’ (Job. 5:12).”
- Y. Said Rabbah, “If they do it for its own sake [rather than for a reward], [worries] have no affect.
- Z. “For it is written, ‘There are many thoughts in man’s heart, but the counsel of the Lord is what shall stand’ (Pro. 19:21).
- AA. “Counsel in which the word of the Lord is found will stand forever.”

V.1 A. Said R. Judah, “[Under what circumstances? When the afore-named have only that as their profession. But if they have a profession other than that, they are valid to serve as witnesses or judges”] [M. 3:3D]:

- B. Said R. Abbahu said R. Eleazar, “The decided law accords with the view of R. Judah.”
- C. And said R. Abbahu said R. Eleazar, “In the case of all of those [listed in the Mishnah-paragraph] it is necessary to make an announcement in court [as to their invalid status].”
- D. *R. Aha and Rabina dispute about the case of a shepherd.*
- E. *One said, “It is necessary to make an announcement as to his status.”*
- F. *The other said, “It is not necessary to do so.”*
- G. *Now from the viewpoint of the one who has said that it is not necessary to make such an announcement, that is in line with the statement of R. Judah in Rab’s name, “Any shepherd is invalid” [so it is hardly necessary to say so in a specific instance]. But from the viewpoint of the one who has said it is necessary to make such an announcement, what is the sense of the statement, “Any shepherd is invalid”? [Schachter, p. 156, n. 4: Once a proclamation is made, he ceases to be a shepherd in general and becomes an individualized person.] [So an announcement in one case is counterproductive.]*
- H. *It is that, in general, we make such a proclamation [that he is invalid as a witness, even though we have no evidence that he has driven his flock into other peoples’ property].*

V.2 A. There was the case of a deed of gift that bore the signature of two thieves.

- B. *R. Pappa bar Samuel considered declaring it valid, for lo, no announcement had been made concerning their [status as known thieves].*
- C. *Said R. Raba to him, "While we require an announcement as to the character of a robber as defined by rabbis, do we require the same sort of public announcement on the status of a robber as defined by the law of the Torah? [Currently we do not, and the deed is invalid on its own, without reference to the failure of the court to reject the testimony of the two robbers]."*

V.3 A. *Said R. Nahman, "Those who 'eat something else' [accept charity from gentiles] are invalid for testimony.*

- B. *"That applies when they do so in public, but if it is in private, the rule does not apply.*
- C. *"And as to doing so in public, we have stated that rule only in a case in which it is possible for the recipient to derive support in secret but he disgraces himself in public.*
- D. *"But if it is not possible for him to do so, then it is his way of sustaining life [and not reprehensible]."*
- E. *Said R. Nahman, "One suspected of having sexual relations with a consanguineous women is valid to give testimony."*
- F. *Said R. Sheshet, "Answer, my lord! This man will have forty stripes on his shoulders [for violating the sexual taboo] and yet is he valid to give testimony?"*
- G. *Said Raba, "And R. Nahman concedes that, in the matter of testimony given concerning the status of a woman, such testimony is invalid [if given by that man]."*
- H. *Said Rabina, and some say, R. Pappa, "That rule applies only to free a woman from marital bonds, but as to subjecting her to marital vows, we have no objection [to his testimony]."*
- I. *That is self-evident. [Why not accept his testimony when he has no interest in the matter?] What might you have said? Such a situation [her getting married] would be his preference [for the woman, since she would not make demands and be available to him when he wanted her]. For it is written, "Stolen waters are sweet" (Pro. 9:17). So we are informed that, [so far as this man is concerned,] the longer she remains in her present status, the more available she will be to him.*
- L. *And R. Nahman said, "One who steals [produce from the fields] in Nisan or in Tishri does not fall into the category of a thief. That rule applies to a sharecropper, and to some small volume of produce, and for some sort of produce on which labor is now complete."*
- M. *The sharecropper of R. Zebid stole a qab of barley, and another stole a cluster of unripe dates, and he declared them invalid [as witnesses].*

V.4 A. *Some grave-diggers buried a corpse on the first festival day of Pentecost.*

- B. *R. Pappa excommunicated them and declared them invalid to give testimony.*

- C. *But R. Huna, son of R. Joshua, declared them valid to give testimony.*
- D. *Said R. Pappa to him, "But lo, they are wicked."*
- E. *[The other had the theory that] they thought they were doing a religious duty.*
- F. *"But lo, I excommunicated them."*
- G. *"They thought that the rabbis in that way carried out an act of expiation for their [sin]."*

V.5 A. *It has been stated:*

- B. **[27A]** As to a witness who is proved to have conspired to commit perjury,
- C. Abbaye said, "[When between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed], his status as a witness is treated as invalid retrospectively [Schachter, p. 158, n. 6: from the time he began to give his evidence in court, and all the evidence he has given in the intervening period becomes invalidated]."
- D. And Raba said, "It is only from that point onward that he becomes an invalid witness."
- E. Abbaye said, "Retrospectively he is treated as an invalid witness, *for from the moment at which he gave his [perjured] testimony, he entered the status of the wicked, and the Torah has said, 'Do not put your hand with the wicked' (Exo. 23: 1), meaning, 'Do not make a wicked man a witness.'*"
- F. Raba said, "It is only from that point onward that he becomes an invalid witness, for the law governing the demonstration of conspiratorial perjury [involving two false witnesses who have agreed to testify against a man] constitutes an anomaly [Schachter]. *[How so?] Why do you rely upon these two witnesses [who testify against the original witnesses and claim they are perjurers]? Rely on the others [the original pair]!*"
- G. "Accordingly, you have against [this witness] only a [claim that applies] from the time of the application to him of the anomalous [law] and onward."
- H. *There are those who say that Raba concurs in Abbaye's reasoning. But on what grounds has he ruled that the disqualification [is not retroactive] but only from that point onward?*
- I. *It is on account of causing loss to the purchasers.* [Schachter, p. 158, n. 9: If purchasers have transacted business through documents signed by the perjured witnesses, having been unaware of their disqualification, they would become involved in considerable loss, should their evidence be declared invalid.]
 - J. *What would be at issue [between the two theories of Raba's position]?*
 - K. *A case in which two witnesses gave evidence against one witness [as a perjurer, but not against the other witness in the case].*
 - L. *Or there would also be the case in which the grounds for disqualifying the witness was that he was a robber.* [Schachter, p. 159, n. 2.: Here again the argument that it is an anomalous procedure no longer holds good.]

M. And R. Jeremiah of Difti said, “R. Pappa made a concrete decision in a case in accord with the position of Raba.”

N. Mar, son of R. Ashi said, “The decided law accords with the view of Abbayye.”

O. And the decided law accords with the view of Abbayye in six matters.

- V.6 A.** As to an apostate who eats carrion because he is hungry, all parties concur that he is invalid [as a witness].
- B. If he did so out of spite [to defy the law],
- C. Abbayye said, “He is invalid.”
- D. Raba said, “He is valid.”
- E. Abbayye said, “He is invalid, *because he falls into the category of the wicked, and the All-Merciful has said, ‘Do not put your hand with the wicked’ (Exo. 21: 1).*”
- F. Raba said, “He is valid. *We require that [the wicked act be done] for a gainful purpose [and not merely as a provocation, in which case we ignore the act].*”
- G. *An objection was raised: “Do not accept the wicked as a witness” means, “do not accept as a witness someone who is a despoiler [Schachter, p. 160, n. 3: who violates another’s rights to satisfy his own greed],” referring to robbers and people who violate oaths.*
- H. *Does this not mean that all the same are vain oaths and oaths dealing with property? [In that case, like a vain oath, which is merely provocative, so eating carrion, simply as act of spite, disqualifies a person as a witness].*
- I. *No, both references deal with oaths involving property, and why is the word used in the plural? [It is not to encompass two types of oaths, but simply to speak of] oaths in general.*
- J. *An objection was raised: “Do not make a wicked man a witness. Do not make a despoiler a witness. This refers to robbers and those who lend on interest.” [This wicked act involves concrete gain, not merely spite, and that constitutes] a refutation of the view of Abbayye, does it not?*
- K. *It indeed constitutes a refutation of his view.*
- L. *May we say that the following Tannaite dispute runs parallel [to that of Abbayye and Raba]?*
- M. **“One who has been proved a perjurer is invalid for giving testimony in regard to any matter of the Torah,” the words of R. Meir.**
- N. **Said to him R. Yosé, “Under what circumstances? In the case of one who has been proved a perjurer in a capital-case [M. 1:8E]. But if he has been proved a perjurer only in a property-case, he is valid in a capital-case [T: he is invalid only in regard to that specific matter of testimony along]” [T. Mak. 1:11A-B].**
- O. *May we then say that Abbayye accords with the view of R. Meir and Raba with the view of R. Yosé?*

- P. *[That is to say,] Abbayye accords with the view of R. Meir, who has said that we declare [the witness disqualified] in major cases on account of [his disqualification in] minor ones.*
- Q. *And Raba concurs with R. Yosé, who holds the view that we impose disqualification on witnesses' right to testify in minor cases on the basis of disqualification in major ones, but we do not impose disqualification in a major case on account of disqualification in a minor one.*
- R. *No, as to the view of R. Yosé, the authorities at hand do not dispute. [Schachter, p. 161, n. 3: Abbayye can certainly not agree with Yosé, for he can in no wise hold that a perjured witness in civil cases is eligible in capital cases].*
- S. *Where there is a dispute, it concerns the view of R. Meir.*
- T. *Abbayye concurs with the position of R. Meir.*
- U. *And Raba maintains that R. Meir holds his position in the case at hand only in the instance of one who has been proven a perjurer in a monetary case, because such a one who has behaved badly toward heaven [by taking an oath that has now been proved to be false in a monetary claim] and also has behaved badly toward human beings [in that same monetary case].*
- V. *But in the present case, in which the man has behaved badly toward heaven [by eating carrion], but has not behaved badly toward human beings, that is not the rule.*
- W. *And the decided law accords with the view of Abbayye.*
- X. *But has Abbayye not been refuted?*
- Y. *That [received law that served to refute Abbayye's ruling] accords with the position of R. Yosé.*
- Z. *Even though it does derive from R. Yosé, where there is a dispute between R. Meir and R. Yosé, the decided law accords with the view of R. Yosé.*
- AA. *That case is different, because the Tannaite authority who framed the passage gave the view of R. Meir anonymously [and so as the decided law, rather than as the opinion of a single individual].*
- BB. *And where does this anonymous version of the law [in accord with Meir's] view occur?*
- CC. *It is in the case of Bar Hama, who killed someone. The exilarch said to R. Abba bar Jacob, "Go, look into the matter. If beyond doubt he has committed murder, put out his eyes."*
- DD. *Two witnesses came to court and testified that had beyond doubt he committed murder.*
- EE. *[Bar Hama] went and brought two witnesses who testified against one of the two witnesses against him, [in the following way]:*
- FF. *One [of the two witnesses brought by Bar Hama] testified, "In my presence he stole a qab of barley."*

- GG. *The other testified, "In my presence he stole [27B] the handle of a spear."*
- HH. *[Abba] said to [Bar Hama], "What were you thinking? That the law accords with R. Meir [that one who is proved a perjurer in a monetary matter also is dismissed as a witness in a capital case]?"*
- II. "Where there is a dispute between R. Meir and R. Yosé, the divided law accords with R. Yosé. And as to R. Yosé, has he not said: **One who has been proved a perjurer only in a property-case is valid to testify in a capital-case [T. Mak. 1:11B]?**"
- JJ. *Said R. Pappi to him, "That rule applies only in a case in which a Tannaite authority has not given R. Meir's version of the rule anonymously. But here the Tannaite authority has given R. Meir's version of the rule anonymously."*
- KK. *And where do we find out that that is the fact?*
- LL. *May we say that it is from the following rule, which we have learned in the Mishnah:*
- MM. **Whoever is worthy to judge capital-cases is worthy to judge property-cases, and there is one who is worthy to judge property-cases and is not worthy to judge capital-cases [M. Nid. 6:4F].**
- NN. *Now whose opinion [is given anonymously, therefore as the decided law, in the present rule]?*
- OO. *Should we propose that it is R. Yosé's opinion, lo, we have the fact that, in his view, one who has been proven a perjurer in a monetary-case remains valid to testify in a capital-case even though he is invalid to testify in a property-case.*
- PP. *Is it not, then, R. Meir's view?*
- QQ. *Why [are we required to turn to Meir]? Perhaps the passage speaks of people who are invalid because of [defective] genealogy.*
- RR. *For if you do not conclude that that is the reference, take note of the concluding part of the same passage:*
- SS. **Whoever is suitable to judge is suitable to give testimony, but there is one who is suitable to give testimony but is not suitable to judge [M. Nid. 6:4G].**
- TT. *Why would he be unsuitable? Because he has been proved to be a perjurer in a capital-case? But could such a one be suitable to judge a property-case? Lo, in the opinion of all parties, such a one is invalid [to judge or testify in a property-case].*

- UU. *Accordingly, it must speak of one who is invalid in one account of impaired genealogy.*
- VV. *Here too [M. Nid. 6:4F] we speak of one who is invalid on account of impaired genealogy.*
- WW. *But what follows is where the rule has been given anonymously [in the version that Meir would approve].*
- XX. *As we have learned in the Mishnah: **And these are those who are invalid to serve as witnesses or judges: he who plays dice, he who loans money on interest, those who race pigeons, and those who do business in the produce of the seventh year [M. 3:3A-B], and slaves. This is the governing criterion: For any sort of testimony for which a woman is not valid, they too are not valid [cf. T. San. 5:2V].***
- YY. *Whose opinion is before us? Should we propose that it is R. Yosé, lo, there is the matter of testimony in capital-cases, which a woman is not valid to give, but which they are valid to give. Is it not then the position of R. Meir [stated anonymously and therefore as the decided law]?*

ZZ. *Bar Hama got up and kissed him on his feet and pledged to pay the poll-tax for him for the rest of his life [for it is now proved that evidence of people declared invalid because of monetary perjury in a monetary case is invalid in a capital case. One of the witnesses against Bar Hama was thus disqualified (Schachter)].*

In all matters we remain well within the framework of discourse on the Mishnah-passage at hand, so the entire composition serves to explain or amplify the Mishnah-paragraph.

3:4-5

- A. **And these are relatives [prohibited from serving as one's witnesses or judges]: (1) one's father, (2) brother, (3) father's brother, (4) mother's brother, (5) sister's husband, (6) father's sister's husband, (7) mother's sister's husband, (8) mother's husband, (9) father-in-law, and (10) wife's sister's husband —**
- B. **they, their sons, and their sons-in-law;**
- C. **but the step-son only [but not the step-son's offspring].**
- D. **Said R. Yosé, "This is the version of R. Aqiba. But the earlier version [is as follows]:**
- E. **"His uncle, the son of his uncle [Lev. 25:49] and anyone who stands to inherit him [M. B.B. 8:1]."**
- F. **And anyone who is related to him at that time,**

- G. [If] one was a relative but ceased to be related, lo, that person is valid.
- H. R. Judah says, “Even if his daughter died, if he has sons from her, lo, [the son-in-law] is deemed a relative.

3:4

- A. “One known to be a friend and one known to be an enemy —
- B. “one known to be a friend — this is the one who served as his groomsman;
- C. “One known to be an enemy — this is one who has not spoken with him for three days by reason of outrage.”
- D. They said to [Judah], “Israelites are not suspect for such a factor.”

3:5

- I.1 A. [And these are relatives prohibited from serving as one’s witnesses or judges: one’s father:] *What is the scriptural basis for the rule at hand?*
- B. *It accords with what our rabbis have taught on Tannaite authority:*
- C. “Fathers shall not be put to death for the children” (Deu. 24:16).
- D. What is the sense of the passage?
- E. If it is to teach that fathers should not be put to death on account of the transgression of children, or children on account of the transgression of the fathers, lo, it already has been stated, “Every man shall be put to death for his own sin” (Deu. 24:16).
- F. Rather, “Fathers shall not be put to death for the children” must mean, “through the testimony given by children” and “Children will not be put to death for the fathers” must mean, “through the testimony given by fathers.”
- G. And is it not the case that children will not be punished for the transgression of the fathers?
- H. *And has it not been written*, “Visiting the iniquities of the fathers upon the children” (Exo. 34: 7)?
- I. That passage speaks of those who adhere to the pattern of deeds of their fathers.
- J. *That is in accord with what has been taught on Tannaite authority:*
- K. “And also in the iniquities of their parents shall they pine away with them” (Lev. 26:39). That passage speaks of those who adhere to the pattern of deeds of their fathers.
- L. You maintain that it is when they adhere to that pattern of deeds. But perhaps it refers even to a case in which they do not adhere?
- M. When it says, “Every man shall be put to death for his own sin” (Lev. 26:39), lo, [we speak of those who do not adhere to their fathers’ deeds, so the passage at hand must speak of] those who do adhere to their fathers’ deeds.
- N. And is that not the case? And lo, it is written, “and they shall stumble upon another” (Lev. 26:37).
- O. This means that one person will stumble on account of the transgression of his brother.
- P. It teaches that all of them are held responsible for one another [so one may bear the sin of another].

Q. That passage speaks of a case in which someone could have prevented [evil from being done] and did not do so.

I.2 A. [28A] *We have found proof, therefore, that fathers may not testify against children and children against fathers, all the more so fathers [that is, brothers] cannot testify against one another.*

B. *How do we know that sons cannot testify against sons [that is, cousins, sons of fathers who are brothers]?*

C. *If matters were otherwise, Scripture should have written, “Fathers shall not die on account of the testimony of a son.”*

D. *What is the meaning of the use of the plural, “sons”? It serves to indicate that even sons [may not testify] against one another.*

E. *We have found proof, therefore, that sons may not testify against one another. How do we know that sons [brothers may not testify together in a case involving a third party]?*

F. *Said Rami b. Hama, “It is based on reasoning, as it has been taught on Tannaite authority: ‘Witnesses are declared to be perjurers [and have to suffer the penalty they conspired to inflict] only if the two of them are so proved [by corroborating one another’s perjured testimony].’ Now if you take the view that brothers together may testify against a third party, it may turn out that a perjured witness may be put to death on the basis of testimony given by his brother [supporting what he had said in testimony at the trial]. [Schachter, p. 166, n. 5: For had no one else supported him, he could not have been declared a perjured witness. Consequently, he would incur the death penalty through his kinsman’s testimony.]”*

G. *Said Raba to him, “And according to your reasoning, let us take up that which we have learned in the Mishnah: **[If there are] three brothers, and another party joins together with each of them [to give evidence of three years of usufruct of a given property, which will prove that the claimant has established right of ownership] — lo, these constitute three distinct acts of testimony. And they count as a single act of witness should the evidence be proved false [M. B.B. 3:4F-H].** It thus turns out that a perjured witness will have to pay monetary compensation on the basis of the testimony given by his brother. But the penalty for false testimony derives from evidence brought by others. Here too, the penalty of false testimony will derive from evidence brought by others [so the consideration raised by Rami B. Hama is not decisive]. But if it were so [that brothers may testify together in a case involving a third party,] then Scripture should read, ‘And a son on account of fathers,’ or, ‘and they on account of the fathers.’ Why the stress on ‘and sons’? It is to show that sons [related persons] may not testify together in regard to outsiders.”*

I.3 A. *We now have proven that people related through the father [may not give evidence together]. How do we know that people related through the mother may not do so?*

C. *Scripture makes reference to “fathers” two times. If [the second, instance] is not needed to deal with the category of the father’s relatives, apply it to the category of the mother’s relatives [so excluding them from the list of those who may judge or testify].*

- D. *We have now proven that [these parties] may not participate in a decision of guilt. How do we know that they also may not participate in a decision leading to acquittal?*
- E. Scripture makes reference to “they shall be put to death” two times. If [the second, repeated instance is not needed to deal with the category of cases involving a decision of guilt,] apply it to the category of cases involving a decision of innocence.
- F. *We have now proven that the rule is such in capital-cases. How do we know that it is the same for property-cases?*
- G. Scripture has said, “You shall have one law” (Lev. 24:22), a law that is equal for you [in all sorts of cases].

II.1 A. [and their sons-in-law:]

[Schachter, p. 167, n. 5: 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 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, and relatives in the third degree may testify for or against relatives in the second degree, e.g., first cousins for second cousins. It should be noted that the ineligibility is mutual.]

Said Rab, “My father’s brother [my paternal uncle] may not give testimony for me, nor may his son or son-in-law, and so too, I may not testify for him, nor my son or son-in-law. But why should this be the case? Would this not involve relationships of the third and first removes? [Schachter, p. 167, n. 7: Rab’s son is a grand-nephew of Rab’s uncle, hence Rab’s son is a relative of the third degree (or remove) to Rab’s uncle, who is of the first degree in relation to Rab’s father]. *But we have learned [in the Mishnah at hand] that relatives of the second remove [are forbidden to testify for] relatives of the second remove [e.g., first cousins], and relatives of the second remove cannot testify for those of the first remove [uncles], but not that relatives of the third remove may not testify for relatives of the first remove.*”

- B. *What is the sense of “one’s son-in-law” which has been listed in our Mishnah paragraph [at M. 3:4B]? It is the son-in-law of one’s son.* [Schachter, p. 168, n. 3: The Mishnah is therefore to be explained thus: All these — including the uncle — with their sons and their sons’ sons-in-law, hence this teaches the inadmissibility of relatives of the third degree].
- C. *But should the Tannaite authority not include the [uncle’s] son’s son [which is a more direct way of stating a third degree of relationship (Schachter)]?*

- D. *In framing matters as he has, the Tannaite authority has informed us of a peripheral fact, namely, the husband is equivalent [in the counting of relationships] to his wife. [Schachter, p. 168, n. 5: Just as the daughter of his uncle's son is a relation of the third degree, so is her husband.]*
- E. *Then let us consider that which R. Hiyya has taught on Tannaite authority:*
- F. *[The Mishnah lists] eight generative relationships which add up to twenty-four [each counted along with the son and the son-in-law]. [But if the son-in-law of the uncle's son counts as a relative of the third degree] they are, in point of fact, thirty-two [eight fathers, sons, grandsons, and sons-in-law of sons].*
- G. *Accordingly, [M. 3:4B] refers to one's son-in-law [and not to the son's son-in-law]. And why does [Rab] call him the son-in-law of [the uncle's] son [Schachter]?*
- H. *Since the relationship derives from [affinity, that is, marriage], he is counted as yet another generation [a third degree relation (Schachter, p. 168, n. 12)].*
- I. *If that is the case, then we deal with one in the third degree vis a vis one in the second degree. [Schachter, p. 168, n. 13: 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.] [And testimony involving a third and second degree relation is forbidden], while Rab permits it [Schachter, p. 169, n. 1: 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)].*
- J. *Rab accords with the view of R. Eleazar.*
- K. *For it has been taught on Tannaite authority:*
- L. *R. Eleazar says, "Just as father's brother [my uncle], as well as his son and his son-in-law, may not testify against me, so the son of father's brother as well as his son and his son-in-law, may not testify against me."*
- M. *Still we deal with relatives of the third and second degrees [Schachter, p. 169, n. 3: C and F, B's grandson, are second and third degrees], and Rab validates testimony of people who stand in that relationship.*
- N. *Rab concurs with him on one point and differs from him on another.*
- O. *What is the scriptural basis for the view of Rab?*
- P. *It is because Scripture has said, "Fathers shall not be put to death for sons and sons... (Deu. 24:16). Now the use of the word "and" serves to encompass yet another generation [within the list of those disqualified for testimony concerning one another].*
- Q. *And R. Eleazar? [Schachter, p. 169, n. 8: Why does he rule that even second and third degrees are inadmissible?]*
- R. *The All-Merciful has said, "Upon sons" with the sense that the invalidity of fathers' testimony is thrown onto the sons [Schachter, p. 169, n. 10: that is, who are disqualified in respect of the fathers are likewise disqualified in respect of the sons.]*

- II.2** A. Said R. Nahman, “The brother of my mother-in-law may not testify for me; the son of the sister of my mother-in-law may not testify for me.
- B. *“So does the Tannaite authority repeat the matter: **Sister’s husband, father’s sister’s husband, mother’s sister’s husband... they, their sons, and their sons-in-law** [M. 3:4A-B].”*
- II.3** A. Said R. Ashi, “When we were at Ulla’s house, the question troubled us: As to the brother of one’s father-in-law, what is his status? As to the son of the brother of one’s father-in-law, what is his status? As to the son of the sister of one’s father-in-law, what is his status?
- B. *“He said to us, ‘You have learned in the Mishnah: **Brother, father’s brother, mother’s brother... they, their sons, and their sons-in-law** [M. 3:4A-B].”*
- II.4** A. Rab went to buy [28B] parchment. People asked him, “What is the law on a man’s testifying concerning the wife of his step-son?”
- B. *[He answered,] “In Sura they rule that the husband is equivalent to his wife. In Pumbedita they rule that a wife is equivalent to her husband [so the evidence is inadmissible.]”*
- C. For R. Huna said Rab said, “How do we know that a woman is equivalent [as to testimony] to her husband?
- D. “As it is written, ‘The nakedness of your father’s brother you shall not uncover, you shall not approach his wife, she is your aunt’ (Lev. 18:14). But is she not the wife of one’s uncle [not the father’s sister]? So we see that a woman is equivalent to her husband.”
- III.1** A. **The mother’s husband [step-father], sons and sons-in-law [M. 3:4A-B]:**
- B. *[The mother’s husband’s] son is one’s brother [so this is not a new item, and why should the Mishnah repeat itself]?*
- C. Said R. Jeremiah, “It was necessary to include the item only to exclude a brother’s brother [son of the step-father by another wife] [Schachter, p. 169, n. 14: though he is not related to him, but only through his brother].”
- D. *R. Hisda declared valid the testimony of the [step-] brother’s brother.*
- E. *They said to him, “Have you not heard what R. Jeremiah said?”*
- F. *He said to them, “I have not heard it,” meaning, “it makes no sense to me.”*
- G. *If so, then [the step-father’s son] is his brother!*
- H. *[The Tannaite authority] lists his brother on his father’s side and his brother on his mother’s side.*
- III.2** A. Said R. Hisda, “The father of the groom and the father of the bride may give testimony concerning one another.
- B. *“They relate to one another only as does the lid to the barrel [not fastened on top at all].”*
- III.3** A. Said Rabbah bar bar Hannah, “A man may testify concerning his betrothed wife [prior to the consummation of the marriage].”

- B. *Said Rabina, "That rule applies only if it is to take property away from her, but as to assigning property to her, he is not believed. [It will ultimately accrue to his advantage.]"*
- C. *But that is not the case. There is no difference between removing property from her and assigning property to her: he is not believed.*
- D. *Why should you think otherwise? Is it because of what R. Hiyya bar Ammi said in the name of Ulla, "As to a priest's betrothed wife, he does not enter the status of a relative responsible for burying the deceased [who cannot eat holy things, so Deu. 26:14], nor does he contract corpse uncleanness on her account, and the same rule applies to her. If she dies, he does not inherit her estate. If he dies, she does collect her marriage-settlement"? But that rule is because the All-Merciful has made the matter depend upon her being his wife in a consummated marriage, and a betrothed wife does not fall into that category [not being related in the flesh]. Here, by contrast, [we do not admit the evidence of a relative] [Schachter:] because of mental affinity, and such mental affinity does exist her [in the case of a betrothed woman and her groom].*

IV.1 A. But the step-son only [and not the stepson's offspring] [M. 3:4C]:

- B. *Our rabbis have taught on Tannaite authority:*
- C. *The step-son only.*
- D. *R. Yosé says, "A brother-in-law [the wife's sister's husband]."*
- E. *And another Tannaite statement has it this way:*
- F. *A brother-in-law only.*
- G. *R. Judah says, "A step-son."*
- H. *What is the sense of the passage?*
- I. *Should we propose that the sense is, "The step-son alone, and the same rule applies to the brother-in-law," and R. Yosé comes along to say, "The brother-in-law alone, and the same rule applies to the step-son"? Then the Mishnah-passage as it stands, which states, **One's sister's husband, his son and son-in-law [M. 3:4A-B]** accords with whom? It can be neither R. Judah nor R. Yosé [since both concur that the brother-in-law alone is excluded].*
- J. *If, again, we propose that the sense is otherwise, [as will be spelled out], there is still a problem. Namely, is this what the passage means: "His step-son alone, but his brother-in-law, his son and father-in-law [are excluded]," and R. Yosé comes along to say, "His brother-in-law alone, but his step-son, his son and his son-in-law [are excluded]? Then what R. Hiyya has taught, namely, "There are eight generative relationships, which produce twenty-four [categories that cannot testify for one another], accords with neither R. Yosé nor R. Judah. [In their view, there will be nine generative relationships.] [Schachter, p. 172, n. 7: According to Judah, the brother-in-law is included in the list; according to R. Yosé there is to be added the step-son.]*
- K. *This is the sense of the passage: One's step-son alone, but as to his brother-in-law, his son and son-in-law [also are prohibited to testify]. R. Yosé comes along to say, "His brother-in-law alone, and all the more so his step-son."*
- L. *Then the Mishnah at hand accords with R. Judah's view, and the Tannaite teaching, R. Yosé's.*

M. R. Judah said Samuel said, “The decided law accords with R. Yosé.

IV.2 A. *There was a deed of gift which bore as signatories two brothers-in-law. R. Joseph considered validating it, for R. Judah said Samuel said, “The law accords with R. Yosé.”*

B. *But Abbaye said to him, “How do you know that it is the R. Yosé of the Mishnah’s version, validating the testimony of brothers-in-law? Perhaps it is R. Yosé of the Tannaite teaching, who invalidates it?”*

C. *Do not let such a possibility enter your mind. For Samuel said, “Such as Phineas and I, who are brothers and brother-in-law [cannot testify for one another], but brothers-in-law under ordinary circumstances pose no problem.”*

D. *But perhaps the sense of his statement was, “For example, Phineas and I” with the sense that he was his brother-in-law [and that was why Samuel and Phineas could not testify for one another, not — in Samuel’s formulation — merely because they were brothers]?*

E. *[Joseph then] said to him, “Go and establish ownership through the testimony of the witnesses to the delivery of the writ, in accord with the rule of R. Eleazar [who regards those witnesses as the decisive one].”*

F. *But did not R. Abba say, “R. Eleazar concurs in the case of a writ disqualified on the base of its own character that it is invalid [and here we have invalid witnesses]”?*

G. *[Joseph] said to him, “Go along. I am not permitted to grant you the right of possession.”*

V.1 A. **R. Judah says, “[Even if his daughter died, if he has sons from her, lo, the son-in-law is deemed a relative]” [M. 3:4H]:**

B. *Said R. Tanhum said R. Tabela said R. Barona said Rab, “The decided law accords with the view of R. Judah.”*

C. *Raba said R. Nahman [said], “The decided law does not accord with R. Judah.”*

D. *So did R. Rabbah bar bar Hannah say R. Yohanan said, “The decided law does not accord with R. Judah.”*

E. *There are those who repeat the statement of Rabbah bar bar Hannah in the following connection:*

F. *R. Yosé the Galilean gave the interpretation, “And you shall come to the priests, Levites, and judge who will be in those days’ (Deu. 17: 9). And will anyone imagine that someone can go to a judge who will not be in his time?*

G. *“But this refers to someone who had been a relative but ceased to be related [and later on such a judge may try one’s case, as against M. 3:4H].”*

H. *Said Rabbah bar bar Hannah said R. Yohanan, “The decided law accords with the view of R. Yosé the Galilean.”*

V.2 A. *The sons of the father-in-law of Mar Uqba [29A], who were no longer related to him [since their sister, Mar Uqba’s wife, had died] came to him for a trial. He said to them, “I am not valid to try your case.”*

- B. *They said to him, "What is your view? Does it accord with R. Judah [at M. 3:4H]? We shall bring a letter from the West which indicates that the decided law does not accord with the view of R. Judah."*
- C. *He said to them, "Is it with a qab of wax that I cleave to you? I told you that I am invalid to judge your case only because you will not pay attention to court rulings anyhow!"*

VI. A. One known to be a friend — this is the one who served as his groomsman [M. 3:5B]:

- B. For how long [does the relationship last]?
- C. Said R. Abba said R. Jeremiah said Rab, "For all seven days of the wedding banquet."
- D. *And rabbis in the name of Raba say, "Even beyond the very first day [the relationship is null]."*

VII.1 A. One known to be an enemy — this is one who has not spoken [with him for three days by reason of outrage] [M. 4:5C]:

- B. *Our rabbis have taught on Tannaite authority:*
- C. "And he was not an enemy" (Num. 35:23) — then he may give testimony for him.
- D. "Neither sought his harm" (Num. 35:23) — then he may judge his case.
- E. *We have shown that an enemy [may not testify or serve as judge]. How do we prove that a friend may not do so?*
- F. *This is how to read the same verses:*
- G. "And he was not an enemy" (Num. 35:23) — not a friend, then he may give testimony for him.
- H. "Neither sought his harm" (Num. 35:23) — nor his advantage, then he may judge his case.
- I. *But is the word "friend" actually written?*
- J. *Rather it is based on reasoning. Why is the "enemy" listed? It is because of his [Schachter:] disaffection. Then a friend also [is excluded], because of his [Schachter:] friendly inclination.*
- K. *And as to rabbis [who do not disqualify known enemies or friends], how do they interpret the language, "And he was not his enemy neither sought his harm" (Num. 35:23)?*
- L. *One indicates that [such a one] may not serve as a judge in that case.*
- M. *And as to the other clause, this accords with that which has been taught on Tannaite authority:*
- N. Said R. Yosé, son of R. Judah, "'And he was not his enemy, neither sought his harm' (Num. 35:23): on the basis of this verse we learn that two disciples of sages who hate one another do not sit on the same case [as judges]."

The secondary exposition of M. 1:1A-3:1A now turns to exclusions by reason of family ties. The basic entry, M. 3:4A-C, is clear as given. The earlier version, E, simply excludes all male relatives who stand to inherit. The second clarification, after Yosé's, is at M. 3:4F-H. F-G take account of the possibility of one's ceasing to be related, e.g., if one's wife died. Judah does not differ, but merely qualifies the matter. M. 3:5 continues

Judah's saying. He now adds two items to the original list, and his additions are rejected for the stated reason, but only after B-C, a rather fulsome exposition of their own. While the Talmudic discussion seems protracted, it is carefully focused upon the materials of the Mishnah. The Talmud focuses upon its usual program of exegesis and amplification.

3:6-7

- A. How do they test the witnesses?
- B. They bring them into the room and admonish them.
- C. Then they take everyone out and keep back the most important of the group.
- D. And they say to him, "Explain: How do you know that this one owes money to that one?"
- E. If he said, "He told me, 'I owe him,' 'So-and-so told me that he owes him,'" he has said nothing whatsoever,
- F. unless he says, "In our presence he admitted to him that he owes him two hundred zuz."
- G. And afterward they bring in the second and test him in the same way.
- H. If their testimony checks out, they discuss the matter.
- I. [If] two [judges] say, "He is innocent," and one says, "He is guilty," he is innocent.
- J. [If] two say, "He is guilty," and one says, "He is innocent," he is guilty.
- K. [If] one says, "He is innocent," and one says, "He is guilty," —
- L. or even if two declare him innocent and two declare him guilty —
- M. but one of them says, "I don't know,"
- N. they have to add judges.

M. 3:6

- A. [When] they have completed the matter, they bring them back in.
- B. The chief judge says, "Mr. So-and-so, you are innocent," "Mr. So-and-so, you are guilty."
- C. Now how do we know that when one of the judges leave [the court], he may not say, "I think he is innocent, but my colleagues think he is guilty, so what can I do? For my colleagues have the votes!"
- D. Concerning such a person, it is said, "You shall not go up and down as a talebearer among your people" (Lev. 19:16).
- E. And it is said, "He who goes about as a talebearer and reveals secrets, [but he that is faithful conceals the matter]" (Pro. 11:13).

M. 3:7

- I.1 A. *How do they speak to [the witnesses, when they admonish them, M. 3:6B]?*
- B. *Said R. Judah, "This is what they say to them, 'As vapors and wind without rain, so is he who boasts himself of a false gift' (Pro. 25:14)."*
- C. *Said Raba, "They can [dismiss the curse and] say, 'Seven years may a famine last, but by the gate of a skilled artisan it does not pass.'"*
- D. *Rather, said Raba, "They say to them, 'As a maul and a sword and a sharp arrow, so is a man who bears false witness against his neighbor' (Pro. 25:18)."*

- E. *Said R. Ashi, "They can say, 'Seven years may a famine last, but a man does not die before his years [have run out].'"*
- F. *Rather, said R. Ashi, "Nathan bar Mar Zutra told me, 'We say to them, "False witnesses are despised by the ones who have paid them, as it is written, 'And set two men, base fellows, before him, and let them bear witness against him, saying, You cursed God and the king' (1Ki. 21:10)." [Jezebel, who had hired them, called them base fellows.]'"*

II.1 A. If he said, "He told me, 'I owe him,' ...unless he says,, "In our presence he admitted to him that he owes him two hundred zuz" [M. 3:6E-F]:

- B. *This supports the position of R. Judah, for R. Judah said Rab said, "One has to say [to the witnesses to a transaction], 'You are my witnesses' [at which point the testimony is valid]."*
- C. *It has also been stated:*
- D. *Said R. Hiyya bar Abba said R. Yohanan, "'You owe me a maneh,' and the other party said to him, 'Yes,' and the next day, the first party said to him, 'Give it to me,' and the other one said, 'I was joking with you' — the latter is exempt [from having to pay unless he has instructed the bystanders to be his witnesses]."*
- E. *So too it has been taught on Tannaite authority:*
- F. *"You have a maneh of mine."*
- G. *The other party said to him, "Yes."*
- H. *The next day he said to him, "Give it to me."*
- I. *The other party said to him, "I was joking with you" — the latter is exempt.*
- J. *And not only so, but even if he had hidden witnesses behind a fence and said to him, "You have a maneh of mine," and the later said to him, "Yes."*
- K. *"Do you want to admit it before Mr. X and Mr. Y?"*
- L. *He said to him, "I'm afraid that you may drag me to court."*
- M. *On the next day, he said to him, "Give it to me."*
- N. *He said to him, "I was joking with you."*
- O. *He is exempt.*
- P. *But that rule does not apply to someone who incites people to commit idolatry.*
- Q. *Whoever mentioned that classification of criminal?!*
- R. *The text has a part missing, and this is how it should read:*
- S. *If [the debtor] made no such claim [that he was only joking], the court does not enter such a plea in his behalf. But in capital cases, even though the accused did not enter such a plea, the court enters that plea for him. But such a plea is not entered for one who incites [Israelites] to idolatry.*
- T. *Why is an inciter different?*
- U. *Said R. Hama bar Hanina, "In the address of R. Hiyya bar Abba I heard that the inciter is in a separate category, for the All-Merciful has said, 'Neither shall your eyes pity him, neither shall you conceal him' (Deu. 13: 9)."*

II.2 A. Said R. Samuel bar Nahman said R. Jonathan, "How do we know that a plea is not entered in behalf of an inciter?

- B. *"We learn that fact from the original snake [in the Garden of Eden]."*

- C. For R. Simlai said, "The snake could have entered many pleas but he entered none.
- D. "And why did the Holy One, blessed be he, not enter a plea for him?
- E. "Because he himself did not plead.
 - F. *"And what plea could the snake have made?"*
 - G. "He could have said, 'When there is a teaching of the master and a teaching of the disciple, to whom do people listen? It is to the teaching of the master.' [Schachter, p. 178, n. 6: So Eve, even though seduced by me, should have obeyed the command of God.]"
 - H. [Eve revised God's commandment to her. At Gen. 3:3 she indicated that she could not touch the tree, while in fact God had said only not to eat the fruit. Accordingly,] said Hezekiah, "How do we know from Scripture that one who adds to what God has said detracts from it?"
 - I. "It is from the following verse: 'God has said, You shall not eat of it nor touch it' (Gen. 3: 3)."
 - J. R. Mesharshayya said, *"The proof is from here: Two cubits and a half shall be his length" (Exo. 25:17. [If one removes the first letter of the word for two cubits, it will be two hundred. By adding the first letter the number at hand is reduced from two hundred to two.]"*
 - K. R. Ashi said, "From, 'Eleven curtains' (Exo. 26: 7) [the same sort of proof]."

- II.3** A. Said Abbayye, "The ruling [that one can plead he was joking unless he explicitly recognized the witnesses and validated their testimony of what he was about to do] is the case only if the man says, 'I was only joking with you.' But if he had said, **[29B]** 'The incident never happened at all,' he is assumed to be a confirmed liar."
- B. R. Pappa, son of R Aha bar Ada, said to him, *"This we say in the name of Raba 'People do not remember pointless remarks.'* [Schachter, p. 179, n. 3: What one says in jest is not remembered. His total denial therefore does not weaken his case.]"

II.4 A. *Someone hid witnesses against his neighbor behind bed-curtains. He said to him, "You have a maneh of mine."*

- B. He said to him, "Yes."
- C. *He said to him, "May those who are here, awake or asleep, testify against you?"*
- D. *He said to him, "No."*
- E. R. Kahana ruled, *"Lo, he said to him, 'No.'"*

II.5 A. *Someone hid witnesses against his neighbor in a grave. He said to him, "You have a maneh of mine."*

- B. He said to him, "Yes."
- C. *"May the living and dead testify against you?"*
- D. *He said to him, "No."*
- E. R. Simeon b. Laqish ruled, *"Lo, he said to him, 'No.'"*

II.6 A. *Said Rabina, and some say R. Pappa, "From what R. Judah said Rab said, 'One has to say to the witnesses, "You will be my witnesses,"" it follows that there is no difference whether the debtor said it, or the creditor said it and the debtor is silent. For [when the debtor goes free in the cited cases], it is only because the debtor said, 'No.' Had he remained silent, things would have been different."*

II.7 A. *Someone had the name "A basket of debts." He said, "Who has a claim against me except for Mr. A and Mr. B?"*

B. *The two named brought him and laid claim on him in court before R. Nahman.*

C. *Said R. Nahman, "Someone would ordinarily avoid presenting himself as wealthy."*

II.8 A. *There was a man who was called, "A mouse lying on money" [that is, a miser].*

B. *When he lay dying, he said, "Mr. A and Mr. B have a claim of money against me." After he died, they came and laid claim against the estate.*

C. *They came before R. Ishmael, son of R. Yosé.*

D. *He said to them, "When we invoke the principle, 'Someone ordinarily avoids presenting himself as wealthy,' that applies while he is in good health. But it does not apply after death."*

E. *[The estate] paid half and were brought to court for the other half. The heirs came before R. Hiyya. He said to them, "Just as some one ordinarily avoids presenting himself as wealthy while he is alive, so a man ordinarily avoids presenting his children as wealthy [and that is why the man said he owed a lot of money, when in fact he did not]."*

F. *They said to him, "May we go and retrieve the funds we have already paid?"*

G. *He said to them, "The elder has already made his decision."*

II.9 A. *If someone admitted the claim before two witnesses, and this was confirmed by an act of acquisition, they may then prepare a bond [covering the debt, even though the debtor did not instruct the scribe to do so]. But if not, they do not do so.*

B. *If he admitted the debt before three witnesses and no act of acquisition confirmed the matter,*

C. *Rab said, "Nonetheless, they prepare the bond."*

D. *R. Assi said, "They do not prepare the bond."*

E. *There was a case, and Rab took into account the opinion of R. Assi.*

II.10 A. *Said R. Ada bar Ahbah, "Sometimes a deed of acknowledgement of a debt [before three witnesses, without an act of acquisition] may be written up, sometimes not.*

B. *"If [the witnesses] happened to be together, we do not write such a writ. If [the claimant deliberately] gathered them together [to serve as his witnesses], then we do write it."*

C. *Raba said, "Even if he gathered the witnesses together, we do not write such a writ, unless he says to them, 'You serve as judges for me.'"*

D. *Mar, son of R. Ashi, said, "Even if he gathered the witnesses together and said to them, 'You serve as judges for me,' we do not write such a writ unless he designated a meeting place and called [the debtor] to come to court."*

II.11 A. *[If the debtor] conceded a claim for movables and [the witnesses] effected a formal title [given over by the debtor], they write a writ [of record], and if not, they do not write one.*

B. *If the claim has to do with real estate, and there was no formal title, what is the rule?*

C. Amemar said, "They do not write a writ."

D. Mar Zutra said, "They write it."

E. *And the decided law is that they write it.*

II.12 A. *Rabina came to Damharia. Said to him R. Dimi, son of R. Huna of Dimharia, to Rabina, "What is the law concerning movables that are as his [in the domain of the debtor]?"*

B. *He said to him, "It falls into the category of real estate."*

C. *R. Ashi said, "Since [the debt] has still to be collected, that is not the case."*

II.13 A. *There was a deed of acknowledgement of debt that lacked the phrase, "He said to us, 'Write and sign and deliver to him...'"*

B. *Both Abbaye and Raba ruled, "That accords with the position of R. Simeon b. Laqish.*

C. "For R. Simeon b. Laqish said, 'It is an assumption that witnesses sign a document only if [the vendor] is an adult.' [Schachter, p. 181, n. 6: The sale of a legacy before that age 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 an act of the transfer of ownership, the latter would know that they could not write a deed without the debtor's instructions; hence they must have been so instructed.]"

D. *To this position R. Pappa, and some say, R. Huna, son of R. Joshua, objected, "And is there something that we do not know but the scribes of the court do know? [The law is not known to all judges, so why assume the witnesses knew it?]"*

E. *They addressed the question to the scribes of Abbaye's court, who knew the rule. They turned to the scribes of Raba's court, who also knew the law.*

II.14 A. *A deed of acknowledgement had written it, "An aide memoire of the statements of so-and-so," [rather than the requisite, "an aide memoire of testimony by witnesses"], [30A] and was worded wholly as a court document [though signed by two, not three men], but omitted the phrase, "We were in session as three judges, and one of them then withdrew." [Schachter, p. 182, n. 4: If one of the three judges necessary for the authentication of a document died before signing it, the document should be so worded.]*

B. *Rabina considered ruling, "This accords with the rule of R. Simeon b. Laqish."*

C. *Said to him R. Nathan bar Ammi, "This is what we rule in the name of Raba: 'In any such case we take account of the possibility of a court that ruled in error [thinking that two judges, not three, would be sufficient to validate the writ].'"*

D. *Said R. Nahman bar Isaac, "If the language contains the words, 'A court,' it is not necessary [to scruple about a court in error]."*

- E. *But perhaps it is a presumptuous court?*
- F. For Samuel said, "If two men judged a case, their judgment stands, but they are called a presumptuous court."
- G. *But the document at hand contained the inscription, "The court of Rabbana Ashi" [Schachter, p. 182, n. 10: The signatories belonged to his school and they, no doubt, were aware that two cannot compose a court.]*
- H. *But perhaps the rabbis of the court of R. Ashi took the position of Samuel.*
- I. *But written in the document were the words, "Rabbana Ashi instructed us to write [the deed]." [Schachter, p. 183, n. 1: The court must therefore have been legally constituted, since he would not have asked two to form a court.]*

II.15 A. Our rabbis have taught on Tannaite authority:

- B. If someone said [to the heirs], "I saw your father hiding money in a box, chest, or cupboard," and he said, "They belong to so-and-so," or "they are in the status of second title [to be brought to Jerusalem and there spent on the purchase of food]," if the money was in the house, the statement is null.
- C. If the money was in the field, his statement is valid.
- D. The governing principle is this: In any case in which he has the power to take the money [but did not do so], his statement is confirmed. If he does not have the power to take the money, he has said nothing.
- E. If [heirs] saw their father hiding money in a box, chest, or cupboard, and he said, "They belong to So-and-so," "They are in the status of second tithe," if it was so as to give instructions, his statement stands. But if it was so as to practice deception, he has said nothing.
- F. If one was upset about money his father had left him, and the master of dreams came and said to him, "They are such and so, in a given place, for a given purpose, e.g., for second tithe" — —
- G. there was such a case, and [sages] ruled, "Words that are spoken in dreams make no difference one way or the other" [T. **M.S. 5:9-11**, with different wording].

III.1 A. If two judges say, "He is innocent," [and one says, "He is guilty," he is innocent] [M. **3:7I]:**

- B. *[Where the judges differ,] how do they word the court order?*
- C. R. Yohanan said, "'He is innocent.'"
- D. R. Simeon b. Laqish said, "'Judge X and Judge Y declare him innocent, Judge Z declares him liable.'"
- E. R. Eleazar said, "'On the basis of the [judges'] discussion, Mr. So-and-so was declared innocent.'"
- F. *What is the point of disagreement?*
- G. *The point of disagreement is whether [the dissenting judge] has to take a share in paying reparations [to the guilty party, should the court turn out to have erred].*
- H. *For the one who says, "[The document states,] 'He is innocent,'" will hold that the dissenting judge nonetheless has to pay a share in restitution for judicial error.*

- I. *And the one who has said, “Judge X and Judge Y declare him innocent, and Judge Z declares him guilty,” he does not have to pay.*
- J. *But from the viewpoint of him who says, “[The document simply says,] ‘He is innocent,’” in which case the dissenting judge does have to pay, why cannot that judge say to them, “Had you listened to me, you too would not have had to pay”? [Why does he share in the liability?]*
- K. *Rather, this is what is at issue between them: It is whether the others have to pay the share of the dissenting judge [who surely does not have to pay anything].*
- L. *In the opinion of the one who says, “[the document reads,] ‘He is innocent,’” the majority-judges do have to pay the share of the dissenting judge*
- M. *In the view of him who says, “[The document reads,] ‘Judge X and Judge Y declare him innocent, and Judge Z declares him liable,’” they do not have to pay the share of the dissenting judge.*
- N. *And in the view of him who has said [that the language of the document is], “He is innocent,” so they have to pay the share of the dissenting judge, why should they not say to him, “Had you not been with us, no judgment could have come from the court at all” [so your presence is partly at fault for our having to make restitution]?*
- O. *Rather, this is what is at issue between them: It is on the count of “You shall not go up and down as a talebearer among your people” (Lev. 19:16).*
 - P. R. Yohanan said, “[The document says merely], ‘He is innocent,’ on the grounds that one should not go about as a talebearer [and the names of the dissenting judges are not to be revealed on that count].”
 - Q. R. Simeon b. Laqish said, “‘Judge X and Judge Y declare innocent, and Judge Z declares liable,’ for otherwise the verdict would produce a misleading impression.”
 - R. R. Eleazar holds that this party is correct and that party is correct, and on that account he has the scribes write as follows: “After their discussion [so signifying disagreement] Mr. X was declared to be exempt [of any obligation to pay].”

IV.1 A. When they have completed the matter,, they bring them back in [M. 3:7A]:

- B. *Whom do they bring back?*
- C. *Should we say that it is the litigants? But they are standing right there.*
- D. *Rather, it is the witnesses [whom they bring back].*
- E. *In accord with whose view is the Mishnah framed?*
- F. *It cannot be in accord with R. Nathan, for it has been taught on Tannaite authority:*
- G. **The testimony of witnesses is confirmed only if they had been in sight of one another.**
- H. **R. Joshua b. Qorha says, “Even though this one was not opposite that one.”**
- I. **Under no circumstances is their testimony confirmed unless both of them are [heard] at the same time.**
- J. **R. Nathan [T.: Simeon] says, “They hear out the testimony of this one on one day, and when his fellow comes on the next day, they give a hearing to**

what he has to say as well” [T. San. 5:5F-I]. [Schachter, p. 185, n. 6: 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 Nathan as given.]

- K. *In point of fact, it is the litigants, and the view at hand is that of R. Nehemiah.*
- L. *For it has been taught on Tannaite authority:*
- M. R. Nehemiah says, “This was the practice of the more scrupulous judges of Jerusalem. They bring on the litigants and listen to their claims, then bring in the witnesses and listen to their testimony, then take them all outside and debate the matter.”
- N. *But has it not been taught on Tannaite authority:*
- O. “When they have completed dealing with the matter, they bring the witnesses back in?”
- P. *That rule has been formulated not in accord with the view of R. Nathan.*

IV.2 A. *Reverting to the body of the text just now cited:*

- B. **The testimony of witnesses is confirmed only if they had been in sight of one another.**
- C. **R. Joshua b. Qorha says, “Even though this one was not opposite that one” [T. San. 5:5F-G].**
- D. *What is at issue here?*
- E. *If you wish, I shall propose that it has to do with a biblical verse, and if you wish, I shall propose that it has to do with a matter of reasoning.*
- F. *[As to the latter possibility, we ask about the exact fact as to which testimony is given, thus, at issue is the particular maneh to which each witness testifies. For] the maneh concerning which this witness testifies will not be the one concerning which that witness testifies, and the maneh, concerning which that witness testifies is not the same as the maneh concerning which this witness testifies [unless both see the transaction simultaneously].*
- G. *The other party takes the view that both witnesses testify about the transfer of manehs in general, [and not about the particular coin at hand]. [So the witnesses prove the fact that a loan has been made.]*
- H. *And if you wish, I shall explain that at issue is the interpretation of a verse of Scripture.*
- I. For it is written, “And he is a witness, whether he has seen or known of it” (Lev. 5: 1).
- J. *And it has been taught on Tannaite authority:*
- K. Now it is said, “One witness shall not rise up against a man” (Deu. 19:15). Since it is said, “A witness,” do I not know that it is only one witness? Why then does Scripture specify that only one witness is involved when that is obvious?
- L. It serves to indicate the generative principle that in any case in which “witness” is stated, lo, two witnesses are under discussion, unless Scripture makes it explicit for you that only a single witness is at hand.

- M. *Now the All-Merciful [at Lev. 5:1] has used the singular, to indicate that [testimony is valid] only if both witnesses see the event simultaneously.*
- N. *And the other party?*
- O. *“He is witness, whether he has seen or known of it” (Lev. 5: 1) shows that, in any event, [disjoined testimony is acceptable].*

IV.3 A. Under no circumstances is their testimony confirmed unless both of them are heard at the same time.

- B. **R. Nathan says, “They hear out the testimony of this one on one day, and when his fellow comes on the next day, they give a hearing to what he has to say as well” [T. San. 5:5H-I].**
- C. *What is at issue here?*
- D. *If you wish, I shall propose that it has to do with a biblical verse, and if you wish, I shall propose that it has to do with a matter of reasoning.*
- E. *If you wish, I shall propose that it has to do with a matter of reasoning.*
- F. *One party takes the view that when a single witness comes to court, it is to prove the necessity that the accused take an oath, but not to prove that he actually owes the money. [Schachter, p. 186, n. 11: Hence when witnesses testify separately, the evidence of neither proves liability, and therefore the two testimonies cannot be combined].*
- G. *The other authority takes the view that even though they appear simultaneously, do they in any event testify with a single voice? [Obviously not. Nonetheless, the testimony of the two is joined together to validate the court action. So when they come separately], the evidence that they bring also may be joined together.*
- H. *And if you wish, I shall propose that at issue is the interpretation of a verse of Scripture:*
- I. *“[And he is a witness, whether he has seen or known it], if he does not utter it, then he shall bear his iniquity” (Lev. 5: 1).*
- J. **[30B]** *All parties concur with the view of rabbis who differ from R. Joshua b. Qorha [and maintain that both witnesses must simultaneously see the deed]. At issue here is whether or not we establish an analogy between reporting what they have seen and the actual seeing of the incident.*
- K. *One authority holds that we establish an analogy between reporting the incident and seeing it, and the other party does not maintain that we establish an analogy between reporting the incident and seeing it [in which case, in the latter’s view, it may be testimony spread out over several days].*

IV.4 A. R. Simeon b. Eliaqim was watching for an occasion on which to ordain R. Yosé, son of R. Hanina, but nothing came up. One day he was in session before R. Yohanan. He said to them, “Does anybody know whether or not the law follows the view of R. Joshua b. Qorha?”

- B. *Said to him R. Simeon b. Eliaqim, “This one knows.”*
- C. *He said to him, “Let him say so.”*
- D. *He said to him, “First let the master ordain him.”*

- E. *He ordained him. He said to him, "My son, tell me how you have heard matters?"*
- F. *He said to him, "This is what I have heard, that R. Joshua b. Qorha concurs with R. Nathan [that the evidence may be disjoined and need not be simultaneous]."*
- G. *He said to him, "Did I ask for this information? Now if in the case of what is primary, which is the actual seeing of the event together, R. Joshua b. Qorha has said that we do not require simultaneous witness to what has happened [on the part of both at once], is there any issue of his view on requiring a simultaneous narrative later on?"*
- H. *He said to him, "Since you have come up [to high rank], you do not have to go down again."*
- I. *Said R. Zera, "We may then infer that once a person has been ordained as a major authority, the ordination is indelible."*

- IV.5** A. *Said R. Hiyya bar Abin said Rab, "The law is in accord with R. Joshua b. Qorha's view, both in respect to real estate and in respect to movables."*
- B. *Ulla said, "The law accords with R. Joshua b. Qorha in real estate but not in respect to movables."*
 - C. *Said Abbaye to him, "Since you declare the decided law, you would imply that rabbis differ. But did Raba not say in the name of R. Huna in the name of Rab, 'Sages concur with R. Joshua b. Qorha in the matter of testimony concerning real estate'? And R. Idi bar Abin repeated the formulation of Qorha's version of the laws of damages, 'Sages concur with R. Joshua b. Qorha in testimony concerning firstlings, in testimony concerning real estate, in testimony concerning a claim of ownership established through usufruct, and in testimony concerning puberty signs for males and females.'"*
 - D. *Do you argue merely by citing conflicting authorities? One authority holds that they differ, and the other authority reasons that they do not differ.*
 - E. *What is the point about the statement concerning testimony involving puberty signs for males and females? If we say that the evidence under discussion concerns the appearance of one hair [below] at the genitals and another hair [above] at the belly, that is, in point of fact, half of the requisite facts of the case and half of the requisite testimony. Rather, one witness says, "There are two down below," and one witness says, "There are two up above."*

- IV.6** A. *Said R. Joseph, "I say in the name of Ulla, "The law accords with R. Joshua b. Qorha both as to real estate and as to movables."*
- B. *The rabbis who come from Mahoza say, "R. Zera said in the name of Rab, "That is the case of trials concerning evidence concerning real estate but not movables."*
 - C. *Rab is consistent with his reasoning, for Rab said, "[One witness's testimony that A has] admitted [he owes money to B, when that testimony is given on one day] followed by similar testimony of admission of a loan given later on, or [testimony concerning] admission [that the loan is owing], following [testimony concerning] the making of the loan join together [to establish the fact of liability. Both may refer to the same transaction]. But testimony as to the transaction of a loan given after other such testimony, or testimony concerning the transaction of a loan after testimony concerning the admission of a loan, do not join together."*

- E. *R. Nahman bar Isaac found R. Huna, son of R. Joshua. He said to him, "What is the difference in testimony concerning the transaction of a loan given after other such testimony, so that such testimony is not joined together [to form valid evidence that the loan was made? Is it because the maneh which this one saw is not the same as the maneh which that one saw? But the same argument applies to the testimony concerning admission of a loan. For the admission of a loan concerning the maneh that this one alleges he has witnessed is not the same as the admission of a loan concerning the maneh that that party alleges he has witnessed!"]*
- F. *We deal with a case in which [the debtor] said to the latter witness, "Concerning this maneh about which I confessed before you, I confess also before Mr So-and-so."*
- G. *But if that is the case, the latter of the two witnesses will know it, but the former of the two will not know it.*
- H. *We deal with a case in which [the debtor] went and said to the former of the two witnesses, "Concerning the maneh about which I confessed before you, I have also confessed before Mr. So-and-so."*
- I. *[Nahman] said to him, "May your mind be at rest, as you have given my mind rest."*
- J. *He said to him, "Why be at rest? Did not Raba, and some say, R. Sheshet say, 'Throw a hatchet [at this answer]! All we have at hand is the case of testimony concerning admitting the loan taken after testimony concerning the loan. [Schachter, p. 190, n. 5: 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?]*
- K. *He said to him, "This is what I have heard about you people. 'You tear down palm trees and put up palm trees.'"*
- L. *The Nehardeans say, "Whether we have a case of testimony concerning admission of a loan after another such testimony, or testimony concerning admission of a loan after testimony concerning the transaction of the loan, whether it is testimony concerning transaction of a loan after other such testimony, whether it is testimony of transaction of a loan after admission of a loan, in all such cases the two acts of testimony join together [to establish the fact that the loan is owing]."*
- M. *This is in accord with whom? It accords with R. Joshua b. Qorhah.*

IV.7 A. Said R. Judah, "Testimony of two witnesses who contradict one another under examination [in respect to peripheral issues, e.g., details of the weather that day] is valid in property-cases."

B. *Said Raba, "It is reasonable to suppose that the statement of R. Judah pertains to a case in which one says, 'The money was paid] out of a black bag,' and the other*

says, 'It is out of a white bag.' But if one witness says, 'It was a black [old] maneh,' and the other one says, 'It was a white [new] maneh,' the testimony does not join together."

- C. And would testimony about a black bag [or a white one] in capital-cases not join together? And has not R. Hisda said, "All the same is the evidence of one who says, 'He killed him with a sword,' and the other says, 'It was with a dagger that he killed him.' This would not be valid testimony. But if one says, 'He was wearing black clothes,' and the other says, 'He was wearing white clothes,' lo, this is valid testimony?"
- D. **[31A]** *Are you arguing simply by quoting conflicting authorities? The Nehardeans say, "Even if one witness says, 'It was a black maneh,' and the other says, 'It was a white maneh,' their testimony joins together." In accord with whom do they rule? It is in accord with R. Joshua b. Qorha."*
- E. *Now you may well say that that is the view of R. Joshua b. Qorha in a case in which the witnesses do not contradict one another [and then the disjointed testimony is acceptable]. But in a case in which the witnesses contradict one another, has he made that same statement? But the Nehardeans rule in accord with the following Tannaite authority, for it has been taught on Tannaite authority:*
- F. Said R. Simeon b. Eleazar, "The House of Shammai and the House of Hillel do not differ concerning two groups of witnesses, one of which says that the loan is for two hundred zuz, the other of which says that it is for a hundred. For within the frame of two hundred zuz a hundred zuz is encompassed.
- G. "Concerning what do they differ?
- H. "It is concerning a single group of witnesses.
- I. "For the House of Shammai say, 'The testimony is divided [since one witness cannot be right, so there is only a single witness at hand, and the claim is null].'
- J. "And the House of Hillel say, 'Encompassed in the claim that two hundred zuz are owing is the claim that one hundred zuz [a maneh] are owing [and so there is valid testimony as to the smaller of the two sums].'"

IV.8 A. If one witness says, "It was a jug of wine,"

- B. and the other witness says, "It was a jug of oil" —
- C. *there was a case of this kind, which came before R. Ammi.*
- D. *R. Ammi imposed upon the defendant the requirement to pay the value of the jug of wine out of the value of a jug of oil [since oil is more expensive, the smaller of the two claims was proved].*
- E. *In accord with whose position did he make this ruling? It is in accord with the position of R. Simeon b. Eleazar.*
- F. *Now I might concede that R. Simeon b. Eleazar made such a ruling in a case in which, within the sum of two hundred zuz a maneh [a hundred zuz] is encompassed.*
- G. *But did he make his ruling in a case of this sort [in which the character of what had been lent was at issue]?*

H. *The ruling applies only in a case [in which the witnesses attested not the actual wine or oil but] the value thereof.*

IV.9 A. One says, "It was in the upper room," and the other says, "It was in the lower room."

B. Said R. Hanina, "A case of this kind came before Rabbi, who joined the testimony of the two witnesses."

V.1 A. Now how do we know [that when one of the judges leaves the court, he may not say... [M. 3:7C]:

B. *Our rabbis have taught on Tannaite authority:*

C. **How do we know that when one of the judges leaves the court, he may not say, "Lo, I think he is innocent, but my colleagues think he is guilty, so what can I do? For my colleagues have the votes!"?**

D. **Scripture says, "You shall not go up and down as a talebearer among your people" (Lev. 19:16).**

E. **And it is said, "He who goes about as a talebearer and reveals secrets" (Pro. 11:13).**

F. *There was a disciple about whom there was a rumor that he had reports something that had been said in the school house twenty-two years earlier. R. Ammi expelled him from the school house, saying "This man tells secrets."*

The Talmud's discussion of the Mishnah at hand, while wide-ranging, remains cogent. For the Mishnah introduces the issue of testimony and evidence. While the Talmud completes its treatment of the Mishnah's reading of the issue, it moves on to closely related but essentially fresh issues, especially the matter of disjoined testimony, subjected to particularly thorough analysis. While the Talmud seems somewhat prolix, in fact it is entirely cogent and pursues a carefully defined program.

3:8

A. **So long as [a litigant] brings proof, he may reverse the ruling.**

B. **[If] they had said to him, "All the evidence which you have, bring between this date and thirty days from now,"**

C. **[if] he found evidence during the thirty-day-period, he may reverse the ruling.**

D. **[If he found evidence] after the thirty-day-period, he may not reverse the ruling.**

E. **Said Rabban Simeon b. Gamaliel, "What should this party do, who could not find the evidence during the thirty-day-period, but found it after thirty days?"**

F. **[If] they had said to him, "Bring witnesses,"**

G. **and he said, "I don't have witnesses,"**

H. **[if] they had said, "Bring proof,"**

I. **and he said, "I don't have proof"**

J. **and after a time he brought proof, or he found witnesses —**

K. **this is of no weight whatsoever.**

- L. Said Rabban Simeon b. Gamaliel, "What should this party do, who did not even know that he had witnesses on his side but found witnesses? Or who did not even know that he had proof, but who found proof?"
- M. [If] they had said to him, "Bring witnesses,"
- N. and he said, "I have no witnesses,"
- O. "Bring proof," and he said, "I have no proof,"
- P. [If] he saw that he would be declared liable in court and said, "Let Mr. So-and-so and Mr. Such-and-such [now] come along and give evidence in my behalf,"
- Q. or if [on the spot] he brought proof out of his pocket —
- R. lo, this is of no weight whatsoever

- I.1** A. Said Rabbah bar R. Huna, "The decided law accords with the view of Rabban Simeon b. Gamaliel."
- B. And said Rabbah bar R. Huna, "The law does not accord with the opinion of sages."
- C. *That is self-evident! Since he has said, "The law accords with the view of Rabban Simeon b. Gamaliel," it goes without saying that we know the law does not accord with sages.*
- D. *What might you have said? That rule applies to begin with, but after the fact not. So we are informed that [if the court had in fact rejected his evidence and ruled against him], we bring the case back to court and retry it.*

II.1 A. If they had said to him, "Bring witnesses," ...Said Rabban Simeon b. Gamaliel... [M. 3:8F-L]:

- B. Said Rabbah bar R. Huna said R. Yohanan, "The decided law accords with the opinion of sages."
- C. And said Rabbah bar R. Huna said R. Yohanan, "The decided law does not accord with the view of Rabban Simeon b. Gamaliel."
- D. *That is self-evident! Since he has said, "The law accords with the view of sages," it goes without saying that we know the law does not accord with Rabban Simeon b. Gamaliel.*
- E. *In so stating matters he informs us that in that particular aspect the law does not accord with Rabban Simeon b. Gamaliel, but in all the rest of the items the law does accord with Rabban Simeon b. Gamaliel.*
- F. *This then sets aside the statement of Rabbah bar bar Hannah that R. Yohanan said, "In any case in which Rabban Simeon b. Gamaliel teaches the law in our Mishnah, the law is in accord with him, except for the matter of surety, the rule of Sidon, and the 'latter proof' [that is, M. 3:8F-L]."*

II.2 A. *A minor boy was called to court before R. Nahman. He said to him, "Do you have witnesses?"*

- B. *He said to him, "No."*
- C. *"Do you have proof?"*
- D. *He said to him, "No."*

- E. *R. Nahman declared him liable. The boy left weeping. Some people heard him. They said to him, "We know about your father's business activities, [and we can testify in your behalf]."*
- F. *R. Nahman ruled, "In such a case even sages will concur, for a child might well not know about his father's business activities."*

II.3 A. *There was a woman [trustee appointed by creditor and debtor of a bond] who produced a bond [against a given debtor] but said to him, "I know that this bond has been paid off."*

- B. *R. Nahman accepted her testimony.*
- C. *Said Raba to R. Nahman, "In accord with whom? Is it in accord with Rabbi, who said, 'Right of ownership of "letters" is attained only through handing over the note'? [Schachter, p. 195, n. 6: If a creditor wishes to make over a debt, he can do so merely by handing the note to the assignee. Hence in our case the woman could have claimed ownership of the note, on the plea that it has been handed to her not as trustee but in transference of the debt. Consequently her statement that the bill was paid may be regarded as true.]"*
- D. *He said to him, "This case is different, because if the woman had wanted, she could have burned the note."*
 - E. *There are those who say that R. Nahman did not accept her testimony. Raba said to R. Nahman, "And lo, if she had wanted, [31B] she could have burned the note."*
 - F. *[He replied,] "Since the bond had been established in court as valid, we do not accept the claim that if she had wanted, she could have burned the note."*
 - G. *Since it was established in court, we cannot say she could have burned it.*
 - H. *Raba objected to R. Nahman, "A receipt that bears witnesses must be authenticated by its signatories. If there are not any witnesses on the document, but it was produced by a trustee, or of it is written on the bond under the signatures of witnesses, it is valid. [Schachter, p. 195, n. 10: For the note is in the creditor's possession, and he would certainly not have permitted a false receipt to be written thereon.] Therefore a trustee is believed."*
 - I. *That constitutes a refutation of the ruling of R. Nahman.*

II.4 A. *When R. Dimi came, he said R. Yohanan [said], "One may go on producing proof to contradict the decision, until he runs out of arguments and then says, 'Let Mr. X and Mr. Y come near and testify in my behalf.' [This implies that, having stated he has no more evidence, he asks that witnesses be heard (Schachter)]."*

- B. *There is an internal contradiction in this statement.*
- C. *First you say, "...until he runs out of arguments" — thus conforming to the view of rabbis [who maintain that when the man says he has no more evidence, his case is closed].*
- D. *Then you say, "Let Mr. X and Mr. Y come near and testify in my behalf," which accords with the position of Rabban Simeon b. Gamaliel.*

- E. *Now should you propose to maintain that the entire formulation accords with the view of Rabban Simeon b. Gamaliel, and the passage is formulated as to spell out the meaning at hand, that is, what is the sense of, "...until he runs out of arguments"? It is, "Let Mr. X and Mr. Y come near and testify in my behalf," lo, said Rabbah bar bar Hannah said R. Yohanan, "In every passage in which the opinion of Rabban Simeon b. Gamaliel is taught in our Mishnah, the decided law accords with his view except for the matters of the pledge, Sidon, and the bringing of 'final proof.' [So Yohanan takes the view that once the litigant says that he has no more proof, he cannot introduce any more, contrary to the proposed interpretation of his statement]."*
- F. *[Here is now a better version:] When R. Samuel bar Judah came, he said R. Yohanan [said], "A litigant may continue bringing proof to upset a decision, until he completes his arguments, and they say to him, "**Bring witnesses,**" and he said, "**I don't have witnesses,**" and they said to him, "**Bring proof,**" and he said, "**I don't have proof**" [M. 3:8F-I].*

I. But if witnesses arrived from overseas, or if his father's pouch had been left with an outsider, lo, he may [still later] produce that proof and upset the decision.

II.5 A. When R. Dimi came, he said R. Yohanan [said], "He who drags his fellow to court — one says, 'Let us have the trial here,' and the other says, 'Let us go to the place of the assembly,' they force him to go to the place of the assembly."

B. Said R. Eleazar before him, "My lord, he who claims a maneh against his fellow — must he spend a maneh to collect a maneh? Rather, they force him to have the trial in his own town."

C. *It has been stated along these same lines on Amoraic authority:*

D. Said R. Safra, "In the case of two litigants who contested the venue of a trial — one says, 'Let us have the trial here,' and the other says, 'Let us go to the place of the assembly' — they force him to have the trial in his town. And if a question comes up for inquiry, they write it and send it. And if one litigant says, 'Write down for me the basis for your decision in trying me, they write it down and give it to him.'"

E. The deceased childless man's widow has to go after the surviving brother [to where he lives] so that he may release her [of the levirate relationship].

F. How far?

G. Said R. Ammi, "Even from Tiberias to Sepphoris."

H. *Said R. Kahana, "What verse of Scripture indicates it? 'Then the elders of his town shall call him' (Deu. 25:28) — but not the elders of her town."*

I. *Said Amemar, "The decided law is that they force him to go to the place of the assembly."*

J. *Said R. Ashi to Amemar, "And lo, R. Eleazar said, 'They force him to have the trial in his own town.'"*

K. "That is the case when the debtor made such a claim on the creditor. But if the creditor made such a claim, 'The borrower is slave to the lender' (Pro. 22: 7)."

II.6 A. *They sent a message [from the court in the Land of Israel] to Mar Uqba, "To him whose splendor is like that of the son of Bithia [Moses], Peace to you. Uqban, the Babylonian, complained before us, 'Jeremiah, my brother, has placed*

obstacles in my path.’ Speak [judge, order] to him and get him moving so that he will appear before us in Tiberias.”

- B. *Now the text contains a contradiction.* You say, “Speak to him,” *therefore* “*you are to judge him.*” Then: “And get him moving so that he will appear before us in Tiberias,” *therefore* “send him here.”
- C. *Rather, this is what they said:* “Speak to him: you try the case. If he pays attention, well and good. And if not, get him moving and let him appear before us in Tiberias.”
- F. *R. Ashi said, “It was a case involving judicial penalties, and in Babylonia they do not judge such cases. And the reason that they sent a message to him in this way was to pay respect to Mar Uqba.”*

The triplet sets the anonymous view, that the court has the right to lay down a time-limit on the bringing of relevant evidence, against the opinion of Simeon b. Gamaliel, that such a limitation is unfair. Since the first two cases clearly spell out what is at issue, it is only the third which is interesting, and that is from Simeon’s viewpoint. Here even he concedes that evidence supposedly not available when called for, but produced at the last minute, it apt to be trumped-up.