

# V.

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## BAVLI SANHEDRIN CHAPTER FIVE

### FOLIOS 40A-42A

#### 5:1-5

- A. They interrogated [the witness] with seven points of interrogation:
- B. (1) In what septennate? (2) In what year? (3) In what month? (4) On what day of the month? (5) On what day [of the week]? (6) At what time? (7) In what place?
- C. R. Yosé says, “(1) On what day? (2) At what time? (3) In what place? (4) Do you know him? (5) Did you warn him [of the consequences of his deed]?”
- D. [In case of] one who worships an idol: Whom did he worship, and with what did he worship [the idol]?

M. 5:1

- A. The more they expand the interrogation, the more is one to be praised.
- B. The precedent is as follows: Ben Zakkai examined a witness as to the character of the stalks of figs [under which the incident took place].
- C. What is the difference between interrogation [about the date, time, and place] and examination [about the circumstances]?
- D. In the case of interrogation, [if] one witness says, “I don’t know the answer,” the testimony of the witness is null.
- E. [In the case of] examination, [if] one of the witnesses says, “I don’t know,” or even if both of them say, “We don’t know,” their testimony nonetheless stands.
- F. All the same are interrogation and examination: When [the witnesses] contradict one another, their testimony is null.

M. 5:2

- A. [If] one [of the witnesses] says, “It was on the second of the month,” and one of the witnesses says, “It was on the third of the month,” their testimony stands,
- B. for one of them may know about the intercalation of the month, and the other one may not know about the intercalation of the month.

- C. [if] one of them says, “On the third,” and one of them says, “On the fifth,” their testimony is null.
- D. [If] one of them says, “At two,” and one of them says, “At three,” their testimony stands.
- E. [If] one of them says, “At three,” and one of them says, “At five,” their testimony is null.
- F. R. Judah says, “It stands.”
- G. [If] one of them says, “At five,” and one of them says, “At seven,” their testimony is null.
- H. For at five the sun is at the east, and at seven the sun is at the west.

M. 5:3

- A. And afterward they bring in the second witness and examine him.
- B. If their statements check out, they begin the argument in favor of acquittal.
- C. [If] one of the witnesses said, “I have something to say in favor of acquittal,”
- D. or [if] one of the disciples said, “I have something to say in favor of conviction,”
- E. they shut him up.
- F. [If] one of the disciples said, “I have something to say in favor of acquittal,” they promote him and seat him among the [judges], and he did not go down from that position that entire day.
- G. If there is substance in what he says, they pay attention to him.
- H. And even if [the accused] said, “I have something to say in my own behalf,” they pay attention to him,
- I. so long as there is substance in what he has to say.

M. 5:4

- A. If they found him innocent, they sent him away. If not, they postpone judging him till the next day.
- B. They would go off in pairs and would not eat very much or drink wine that entire day, and they would discuss the matter all that night.
- C. And the next day they would get up and come to court.
- D. The one who favors acquittal says, “I declared him innocent [yesterday], and I stand my ground and declare him innocent today.”
- E. And the one who declares him guilty says, “I declared him guilty [yesterday] and I stand my ground and declare him guilty today.”
- F. The one who argues in favor of guilt may [now] argue in favor of acquittal, but the one who argues in favor of innocence may not now go and argue in favor of guilt.
- G. [If] they made an error in some matter, the two judges’ clerks remind them [of what had been said].
- H. If they now found him innocent, they sent him off.
- I. And if not, they arise for a vote.
- J. [If] twelve vote for acquittal and eleven vote for conviction, he is acquitted.
- K. [If] twelve vote for conviction and eleven vote for acquittal,

- L. and even if eleven vote for acquittal and eleven vote for conviction,
- M. but one says, "I have no opinion,"
- N. and even if twenty-two vote for acquittal or vote for conviction,
- O. but one says, "I have no opinion,
- P. they add to the number of the judges.
- Q. How many do they add? Two by two, until there are seventy-one.
- R. [If] thirty-six vote for acquittal and thirty-five vote for conviction, he is acquitted.
- S. [If] thirty six vote for conviction and thirty-five vote for acquittal, they debate the matter, until one of those who votes for conviction accepts the arguments of those who vote for acquittal.

**M. 5:5**

- I.1 A.** *What is the source of this rule [concerning seven points of interrogation]?*
- B. Said R. Judah, "It is because Scripture has said, 'Then you shall inquire and search and ask diligently' (Deu. 13:15), and it is said, 'And if it be told you and you shall hear it, then you shall inquire diligently' (Deu. 17: 4), and it says, 'And the judges shall inquire diligently' (Deu. 19:18). [Thus seven questions are specified.]"
  - C. **[40B]** *But might I say that the rule for each is as specified [and since the three cited verses refer, respectively, to trials concerning the apostate city, the trial of an idolator, and witnesses proved conspiring to commit perjury], then there should be three questions for the case of the apostate city, two for idolatry, and two for the trial for perjury? For if it were the case [that on any charge, we have to pose seven questions to the witnesses,] the All-Merciful should have written all entries in a single setting [e.g., seven references to searching and asking diligently in the matter of the apostate city].*
  - D. [Schachter:] *Since all seven are severally prescribed, the requirements of each are inferred from the other [Schachter, p. 258, n. 11: since close examination is stated in the case of each, the three charges are assimilated to each other, and therefore the questions that are to be put in one case are to be put in the others too], and since that is the case, it is as if the seven items were stated with reference to each type of trial.*
  - E. *But the three types of trials really are not equivalent to one another.*
  - F. *[Why not?] The apostate city does not fall into the category of the others [idolators' and perjurers' trials], because the property [of the others] is spared [while the property of an apostate city is condemned too].*
  - G. *A trial for idolatry is not parallel to the other two, for the idolator is put to death by the sword.*
  - H. *The trial of the conspiratorial witnesses does not fall into the category of the other two, because others [but not the conspiratorial witnesses] are subject to admonition in advance. [So the proposed argument does not work.]*
  - I. *[We shall now propose an exegetical argument:] Let us derive the commonality of the cases from the use of the word "diligently" [in all three verses cited above], and the use of that word constitutes the establishment of an analogy*

*among the three passages serving no other purpose. Were it to serve some other purpose, one could refute the proposed analogy.*

- J. *But in point of fact it serves no other purpose, for Scripture could as well have written, "And they shall inquire and they shall search" without using the word "diligently." But Scripture in using that word made a variation in its formulation by stating, "diligently," so that the use of the word is with no other purpose [but to establish an analogy as proposed just now].*
- L. *Now as to the two uses, it indeed serves no other purpose, for the Scripture could have stated matters in some other way. But as to the apostate city, how should matters have been said in some way other than they are phrased? All usages in that instant are required.*
- M. *No, there too the reference serves no other purpose and is available for establishing the analogy. For Scripture could have stated, "Asking, you shall ask," or "Searching, you shall search" [which would have conveyed the same meaning].*
- N. *But the framer of Scripture has made use of a variant mode of expression when he used the word "diligently," which indicates that it was to leave the phrase available for the purpose proposed here.*

- I.2 A.** *[Since trials covering idolatry, punished by stoning, and perjury, punished by decapitation in the case of perjury in a murder trial, now have been shown to require cross-examination through seven questions, we proceed to deal with other cases, in which the two further modes of inflicting the death penalty are invoked]. We may infer the requirement to cross-examine witnesses in cases in which the death penalty is through strangulation, on the basis of an argument a fortiori from the requirement of the same in cases ending in the death penalty through stoning or decapitation. [The former are regarded as milder modes of execution than strangulation.]*
- B. *And we infer by an argument a fortiori that the same mode of careful cross examination is required for cases involving the death penalty of burning, on the basis of the fact the same is required in cases ending in stoning. [Here, stoning is regarded as more severe mode of execution than burning; decapitation is less severe.] [If we require cross examination for the one, we surely should do so in the other.]*
  - C. *That poses no problems to the view of rabbis, who maintain that stoning is a more severe mode of execution.*
  - D. *But in the view of R Simeon, who holds that burning is the more severe mode of execution, what is there to be said?*
  - E. *Rather, said R. Judah, "'Behold, if it be truth and the thing certain' (Deu. 13:15) [concerning the apostate city], and 'Behold, if it be truth and the thing certain' (Deu. 17: 4) [concerning the idolator] provides eleven [instances of inquiry]. [Schachter, p. 260, n. 16: 'If it be truth' implies that a question is put to ascertain it, likewise, 'And if the thing be certain' implies another question, hence the two sentences imply another four questions in addition to the seven]. Seven cover the seven questions, and taking away three required for the argument from analogy*

*[diligently in inquiries for idolatry, conspiratorial perjury, and the apostate city], leaves one.*

- F. *“That [extra entry], from R. Simeon’s viewpoint, is to encompass trials in which the death penalty is burning, and, from the viewpoint of rabbis, [who prove that fact from an argument a fortiori from stoning], it may be explained that, as to a matter that can be proved from an argument a fortiori, Scripture may at times take the bother to write it out on the basis of a specific allegation of a verse of Scripture.*
- G. *R. Abbahu made fun of this explanation, “Might I say that the usage serves to add an eighth question for interrogation?”*
- H. *But is it possible that there are to be eight questions for interrogation?*
- I. *Why not? For lo, there is the possibility of adding the question concerning what time within the hour [the event took place].*
- J. *And so too it has been taught on Tannaite authority:*
- K. *They interrogated him with eight questions.*
- L. *Now that view [that there are eight inquiries] poses no problems to the position of Abbayye vis a vis R. Meir, who has said, “Someone will error in no way at all.” In the formulation that says, “Someone may make a minor error,” there is no problem either. [As to Abbayye on Meir, we assume that witnesses will not err by half an hour, and if they say that the murder they witnessed took place at 4:30, and they are proved to have been elsewhere at that hour, we do not assume the murder they saw took place at 4 or 5 (Schachter). So too, one may ask at what part of the hour the event took place.]*
- M. *But as to the position of Abbayye vis a via R. Judah, who said, “Someone may make an error by as much as half an hour,”*
- N. *and from the viewpoint of Raba, who has said, “People may make an error of still greater a magnitude than that,” what is there to say? [How shall we reach eight points of interrogation], that is to say, to utilize the eleventh proof-text]?*
- O. *One may encompass questions on which year in the Jubilee.*
- P. *But that is covered by the question, **In what septennate [M. 5:1B]?***
- Q. *Rather, the question will be, In which Jubilee.*
- R. *And the other party?*
- S. *Since the witness has stated in which year of the septennate, it is not necessary to ask in which Jubilee.*

**II.1 A. R. Yosé says, [“On what day? At what time? In what place? Do you know him? Did you warn him of the consequences of his deed?”] [M. 5:1C]:**

- B. *It has been taught on Tannaite authority:*
- C. *Said R. Yosé to sages, “In accord with your view, if someone came and said, ‘Last night he killed him,’ one says to him, ‘In what septennate? In what year? In what month? On what day of the month?’”*
- D. *They said to him, “But in accord with your position, if someone came and said, ‘He killed him just now,’ one still has to say to him, ‘On what day? At what time? In what place?’*

- E. “But even though it is not necessary [in this particular case to ask such questions], we pose those questions.’
- F. *That accords with the view of R. Simeon b. Eleazar [that they move the witness from place to place to confuse him (T. San. 9:1A)]. Here too, even though it is not necessary, we impose these tests upon the witness, in accord with the view of R. Simeon b. Eleazar.”*
- G. *And R. Yosé? The case of testimony, “Last night he killed him,” is commonplace in most matters of testimony. But, “Just now he killed him” is not common in most cases of testimony.*

### **III.1 A. Do you know him [M. 5:1C]:**

- B. *Our rabbis have taught on Tannaite authority:*
- C. “Do you know him? Did he kill a gentile? Did he kill an Israelite? Did you admonish him? Did he accept the admonishment? Did he [Schachter:] admit his liability to the death penalty? Did he commit murder within the span of the utterance [that he made, admitting his liability]?”
- D. In the case of idolatry: “What idol did he worship? Did he worship Peor? Did he worship Merqolis? With what did he conduct the rite? Was it by a sacrifice? Incense? Libation? Prostration?”

### **III.2 A. Said Ulla, “How on the basis of the Torah do we know that it is necessary to admonish [the felon prior to his act, so that we may know that what he did was with full knowledge of the consequences]?”**

- B. “As it is said, ‘And if a man shall take his sister, his father’s daughter, or his mother’s daughter, and see her nakedness’ (Lev. 20:17).
- C. “Now does the matter depend upon what he sees? [Surely it depends upon what it is done.]
- D. “But unless he is shown the reason for the prohibition [of what he proposes to do, he is not culpable.]
- E. “Since this matter does not pertain the extirpation [41A], apply it to the penalty of flogging.”
- F. *Answering the same question a Tannaite authority of the house of Hezekiah [taught], “‘And if a man come presumptuously upon his neighbor to slay him with guile’ (Exo. 21:14) — for witnesses admonished him, and he still acted intentionally.”*
- G. *A Tannaite authority of the house of R. Ishmael [taught], “‘And they who found him gathering wood’ (Num. 15:33) — for they had warned him and he continued to collect the wood.”*
- H. *A Tannaite authority of the house of Rabbi [taught], “‘On account of the word that he humbled his neighbor’s wife’ (Deu. 22:34) — it was on account of matters pertaining to words.”*
- I. *And it is necessary [that we have all three proofs]. For had the All-Merciful written the rule only in respect to the prohibition of sexual relations with one’s sister, I might have supposed that those who are liable to flogging must be admonished, but those who are liable to the death penalty may be punished even though they were not warned in advance. So Scripture stated, “If a man come*

presumptuously [in a case in which the death penalty pertains]. *And if the All-Merciful had stated that the rule requiring admonition applies in the case, "If a man come presumptuously," I might have concluded that that rule pertains to a crime punishable by the sword, which is a lighter form of execution, but as to a case in which the penalty is stoning, which is a more severe form of execution, I might have had that that is not the rule. So it was necessary to make that point.*

- J. *And why was it necessary to make the same point twice with respect to crimes punishable by stoning [both for the one who gathered wood on the Sabbath, the other in respect to the betrothed maiden]?*
- K. *In the perspective of R. Simeon, it serves to encompass crimes punishable by burning. In the view of rabbis, even though one may prove a matter through an argument a fortiori, Scripture will take the trouble and write the matter out [expressly].*
- L. *And why should Scripture not have stated the rule [requiring admonition] in the case of those who are stoned on account of their crimes, and the other classifications of crimes would have been derived from that fact [by an argument a fortiori]?*
- M. *Here too, a matter which can be shown to be the case by an argument a fortiori Scripture may well take the trouble to write out explicitly.*

### **III.3 A.** "Did he admit his liability to the death penalty"?

- B. *How do we know that this is a requirement?*
- C. Said Raba, and some say Hezekiah, "Scripture has stated, 'He who is to die shall be put to death' (Deu. 17: 6).
- D. "[He is put to death only] if he admits his liability to the death penalty."

### **III.4 A.** Said R. Hanan, "Witnesses who have testified against a betrothed maiden [that she has been unfaithful], who then were proved to have been formed conspiracy for perjury, are not to put to death. [Though had the woman been found guilty, she would have been put to death, in this case the perjurers do not suffer retaliation].

- B. "[Why not?] Because they can plead, "Our intent was to prohibit her from consummating the marriage to her betrothed husband [but not to have her put to death]."
- C. *But lo, they had admonished her [if their evidence had been valid. What sort of a defense is this?]*
- D. *It was a case in which they had not admonished her [or claimed to have done so].*
- E. *If they had not admonished her, on what basis could she have been subject to the death penalty?*
- F. *We deal with a wife in the status of an associate [who is presumed to know the law], and that accords with the position of R. Yosé b. R. Judah.*
- G. *For it has been taught on Tannaite authority:*
- H. R. Yosé b. R. Judah says, "It is not necessary to admonish an associate [who is presumed to know the law and the consequences of violating it], for the purpose of admonition is only to allow for the distinction between inadvertent and deliberate



action [but the associate knows the law and therefore could not act out of ignorance of the consequences].”

- I. *Then if [the witnesses] cannot be put to death, how could the woman be subject to the death penalty? For you have at hand testimony which is not subject to a test as to conspiratorial perjurers, and any testimony that is not subject to the test for conspiratorial perjury does not fall into the category of testimony at all.*
- J. *That is exactly the sense [of R. Hanan], “Since the perjurers cannot be executed, because they can claim, ‘We intended to prohibit her from marrying her betrothed husband,’ she too is not subject to the death penalty. The reason is that this is testimony which is not subject to a test [as to conspiratorial perjury, and any testimony that is not subject to the test for conspiratorial perjury does not fall into the category of testimony at all].”*
- K. *And as to a woman in the status of an associate, who, we have determined, is subject to the death penalty in accord with the theory of R. Yosé b. R. Judah, how do you find an appropriate case [in which she would be subject to execution, since for their part the witnesses would not be subject to the death penalty if they are proved perjurers]?*
- L. It would be a case in which the woman committed adultery and went and did so a second time.
- M. The witnesses can claim, “We came to prohibit her from marrying her second lover.” [So that would not exemplify matters.]
- N. We deal with a case in which she committed adultery against her first husband [Schachter, p. 265, n. 7: to whom she is already prohibited in consequence of their earlier relations] or with a relative [Schachter, p. 265, n. 8: whom she is absolutely forbidden to marry at all].
- O. *Why single out a betrothed woman for the present case? The same would apply even to a married one.*
- P. *That is indeed so, but the distinctive point is that even in the case of this woman, who has not yet lived with the man, the witnesses may make the claim, “We came to prohibit her from marrying her betrothed husband.”*

**III.5** A. Said R. Hisda, “If one said, ‘He killed him with a sword,’ and the other said, ‘He killed him with a dagger,’ this is ‘not certain’ testimony [in line with Deu. 13:15, 17:4: ‘Behold, if it be truth and the thing certain’ (Schachter, p. 265, n. 9)].

- B. “If one says, ‘His clothing was black,’ and the other says, ‘His clothing was white,’ lo, this is ‘certain.’ [These statements do not refer to the act, but only to the circumstances].”
- C. *An objection was raised from the following:*
- D. “‘Certain’ means that [all elements of the testimony must stand] firm. If one says, “He killed him with a sword,” and the other says, “It was with a dagger that he killed him,”
- E. if one says, “His clothing was black,” and the other says, “His clothing was white,” this is not certain.
- F. *R. Hisda explained the passage [vis a vis clothing] to refer to a scarf with which the murderer had strangled the other [so we speak not of clothing but of the*



*murder weapon in particular, in which case the clothing] falls into the category of a sword or dagger.*

- G. *Come and take note:* If one says, “His sandals were black,” and the other says, “His sandals were white,” this is not certain [testimony, and is null, contrary to Hisda’s claim as to what constitutes valid evidence].
- H. *Here too, it would be a case in which* the murderer kicked the victim with his sandal and so killed him.
- I. *Come and take note of the following:* **The precedent is as follows: Ben Zakkai examined a witness as to the character of the stems of figs [M. 5:2B].**
- J. Said Rami b. Hama, “It would be a case in which [the witnesses testified that] he had cut off a fig on the Sabbath, *on account of which he would be subject to the death penalty. [In this case what sort of fig is at hand matters as to the actual crime].*”
- K. *But has it not been taught on Tannaite authority:*
- L. They said to him, “He killed him under a fig tree” [and that is the context for the testimony at hand, contrary to Rami’s thesis at J].
- M. Rather, said Rami bar Hama, “It would be a case in which the murderer was accused of piercing the deceased with the sharp end of a fig branch.”
- N. *Come and take note:* He said to them, “As to this fig tree, were its stalks thin or thick? Were the figs black or white?” [!] [Schachter, p. 266, n. 7: Now surely he could not have killed anyone with the figs. This proves that the meaning is that the witnesses deposed that the accused had killed his victim under or near a fig-tree, and thus this again refutes Hisda.]
- O. *Rather, said R. Joseph, “Can anyone object on the basis of the position of Ben Zakkai? Surely he is in his own category, for he treats as equivalent to one another both interrogation and examination* [and maintains (Schachter, p. 266, n. 8:) just as contradictions on the latter invalidated the evidence, so on the former. The general view disagrees with this, and Hisda’s dictum was likewise in accordance with the general view.]

**IV.1 A. [Ben Zakkai examined a witness as to the character of the stalks of figs under which the incident took place.:] Who is this “Ben Zakkai”?**

- B. *If we should proposed that it is R. Yohanan ben Zakkai, did he ever sit in a sanhedrin [that tried a murder case]? And has it not been taught on Tannaite authority:* The lifetime of R. Yohanan ben Zakkai was a hundred and twenty years. For forty years he engaged in trade, for forty years he studied [Torah], and for forty years he taught. *And it has been taught on Tannaite authority:* Forty years before the destruction of the Temple the sanhedrin went into exile and conducted its sessions in Hanut. And said R. Isaac bar Abodimi, “That is to say that the sanhedrin did not judge cases involving penalties.”
- C. *Do you think it was cases involving penalties? [Such cases were not limited to the sanhedrin but could be tried anywhere in the Land of Israel!]* **Rather, the sanhedrin did not try capital cases. And we have learned in the Mishnah: After the destruction of the house of the sanctuary, Rabban Yohanan b. Zakkai ordained ... [M. R.H. 4:1].** [So the final forty years encompassed the period after

the destruction of the Temple, and Yohanan could not, therefore, have served on a sanhedrin that tried capital cases.]

- D. *Accordingly, at hand is some other Ben Zakkai [than Yohanan b. Zakkai]. That conclusion, moreover, is reasonable, for if you think that it is Rabban Yohanan ben Zakkai, would Rabbi [in the Mishnah-passage] have called him merely, “Ben Zakkai”? [Not very likely.] And lo, it has been taught on Tannaite authority: There is the precedent that Rabban Yohanan ben Zakkai conducted an interrogation about the stalks on the figs [so surely this is the same figure as at M. 5:2B].*
- E. *But [at the time at which the incident took place, capital cases were tried by the sanhedrin and] he was a disciple in session before his master. He said something, and the others found his reasoning persuasive, [41B] so they adopted [the ruling] in his name. When he was studying Torah, therefore, he was called Ben Zakkai, as a disciple in session before his master, but when he [later on] taught, he was called Rabban Yohanan ben Zakkai. When, therefore, he is referred to as Ben Zakkai, it is on account of his being a beginning [student] and when he is called Rabban Yohanan b. Zakkai, it is on account of his status later on.*

**V.1 A.** **The precedent is ... What is the difference between interrogation [about the date, time and place] and examination [about the circumstances]? [M. 5:2B-C]. [In the case of examination, if one of the witnesses says, “I don’t know,” or even if both of them say, “We don’t know,” their testimony nonetheless stands (M. 5:2E)]. What is the meaning of, “even if both of them say ...”?**

- B. *Surely it is obvious that, if one of them says, “I don’t know,” the testimony is validated, so if both of them say so, the testimony obviously will be valid? [Schachter, p. 268, n. 5: For if one is ignorant on a certain point, the other’s knowledge therefore is valueless. Hence whatever evidence is valid when one is ignorant is also valid when both are ignorant.]*
- C. *Said R. Sheshet, “The reference is to the opening clause, [dealing with interrogation]. And this is the sense of the passage: ‘In the interrogation, even if both of them say, “We know,” but one of them [the third of three witnesses to the same crime] says, “I don’t know,” the testimony is null.’ In accord with whose view is this interpretation? It accords with the position of R. Aqiba, who treats as analogous [the testimony of] three witnesses and [the testimony of] two [imposing upon both the same rules of evidence].”*
- D. *Said Raba, “But lo, [the language of the passage at hand] explicitly says, **Their testimony nonetheless stands [M. 5:2E]!**”*
- E. *Rather, said Raba, “This is the sense of the passage: Even in the case of interrogation, if two witnesses say, “We know,” but one of the witnesses [of a group of three] says, “I don’t know,” their testimony nonetheless stands.’ In accord with which authority is the passage framed? It is not in accord with the view of R. Aqiba.”*

**VI.1 A.** **[What is the difference between interrogation about the date, time, and place and examination about the circumstances? In the case of interrogation,**

**if one witness says, “I don’t know the answer,” the testimony of the witness is null. In the case of examination, if one of the witnesses says, “I don’t know,” or even if both of them say, “We don’t know,” their testimony nonetheless stands. All the same are interrogation and examination: When the witnesses contradict one another, their testimony is null.]** *R. Kahana and R. Safra were repeating [rules of] the sanhedrin in the house of Rabbah. Rami bar Hama met them. He said to them, “What is it that you people say about [the laws of] the sanhedrin at the house of Rabbah?”*

- B. *They said to him, “And what should we say about the rules of sanhedrin by themselves [without respect to what Rabbah has to teach us]? What’s your problem?”*
- C. *He said to them, “On the basis of this passage: **What is the difference between interrogation [about the date, time and place] and examination [about the circumstances], in the case of interrogation, if one witness says, ‘I don’t know the answer,’ the testimony of the witness is null. In the case of examination, if one of the witnesses says, ‘I don’t know,’ or even if both of them say, ‘We don’t know,’ their testimony nonetheless stands [M. 5:2C-E],*** [I have the following problem:]
- D. *“since the requirement to conduct both procedures rests on the authority of the Torah, what validates the distinction between interrogation and examination?”*
- E. *They said to him, “Now wait a minute. In the case of interrogation, if one of them said, ‘I don’t know,’ their testimony is null, because in this case you have testimony which is not subject to the test of conspiratorial perjury. In the case of examination, if one of them said, ‘I don’t know,’ their testimony nonetheless stands, because you do have testimony which you can subject to the test of conspiratorial perjury.”*
- F. *He said to them, “If this is what you have to say about the rules, then you have a great deal to say about them.”*
- G. *They said to him, “It was because of the patience of the master that we spoke about the matter a great deal. If it had been on account of his contentiousness, we should have said not a thing about it.”*

**VII.1 A. If one of the witnesses says, [“It was on the second of the month,” and one of the witnesses says, “It was one the third of the month, their testimony stands, for one of them may know about the intercalation of the money and the other one may not know about the intercalation of the month] [M. 5:3A-B]:**

- B. *Until what day [of the month do we assume that people may not know whether it is a full month of thirty days or a defective one of twenty-nine days]?*
- C. *Said R. Aha bar Hanina said R. Assi said R. Yohanan, “Until the greater part of the month [has gone by].”*
- D. *Said Raba, “Also we have learned that view in the Mishnah itself: **If one of them says, ‘On the third,’ and one of them says, “on the fifth,’ their testimony is null [M. 5:3C].** Now why should that be the case? Might I not say that one party knows about the intercalation of two months and the other party does not know*

*about the intercalation of two months? Rather, is it not because once the greater part of a month has passed people know [the calendar]?”*

- E. *To the contrary, I may say to you, indeed people do not know when the greater part of the month has gone by [that a month has been intercalated], [so the Mishnah-passage proves nothing]. But people do know about the sounding of the ram's horn [to signal the advent of the new month]. Our basic claim, then, is that someone may err in the case of the sounding of the ram's horn one time, but he is not likely to err about the sounding of the ram's horn two times. [Schachter, p. 270, n. 3, 4: Though knowing that the ram's horn had been sounded, he may have erred once as to the day on which it was sounded] [but one would not make two mistakes in that connection].*

### **Topical Appendix on Reciting the Blessing over the New Moon**

- VII.2** A. And said R. Aha bar Hanina said R. Assi said R. Yohanan, “Up to what point in the month do people say the blessing over the new month?”
- B. “Until its [Schachter:] concavity is filled up.”
- C. And how long does that take?
- D. Said R. Jacob Idi said R. Judah, “Up to seven [days].”
- E. *The Nehardeans say, “Up to sixteen [days].”*
- F. **[42A]** *And both parties concur with the view of R. Yohanan, but one holds that it is [Schachter] until it is like a strung bow, and the other, until it is like a sieve.*
- G. Said R. Aha of Difti to Rabina, “[After a week has passed, in line with Judah's view at D, one may nonetheless] say the blessing, ‘... who is good and does good.’ [Even though it is no longer a new moon, still the moon continues to grow, so the cited blessing is called for.]”
- H. *He said to him, “But when the moon is waning [in the given lunar month], should we then say the blessing, ‘... true judge’ [which is said on the occasion of bad news], that [in the earlier part of the lunar month] we should say the blessing, ‘Who is good and does good’?”*
- I. *Then why not say both [one for the earlier part, the other for the later part, of the lunar month]?*
- J. *Since this is the usual course of events, it is not necessary for us to say any blessing at all.*

- VII.3** A. And said R. Aha bar Hanina said R. Assi said R. Yohanan, “Whoever says a blessing for the new moon at the proper time is as if he receives the Presence of God.
- B. “*here it is written, ‘This month ...’ (Exo. 12: 1), and elsewhere, ‘This is my God, and I shall glorify him’ (Exo. 15: 2).”*

- VII.4** A. *A Tannaite authority of the house of R. Ishmael [stated], “If Israel had had the sole merit of receiving the presence of their father in heaven month by month, it would have been enough for them.”*
- B. *Said Abbaye, “Therefore we should say the blessing standing.”*
- C. *Maremar and Mar Zutra would be helped up on the shoulders [of others] so as to say the blessing.*

**VII.5** A. Said R. Aha to R. Ashi, “In the West, they say the blessing, ‘Blessed ... is he who renews the months.’”

B. *He said to him, “A blessing such as that our women recite. Rather, it accords with the view of R. Judah. For R. Judah said, ‘[We say,] “Blessed ... who with his word created the heavens, and with the breath of his mouth all of their hosts. He assigned to them a rule and a time, so that they should not vary from their assignment. They rejoice and take pleasure in doing the will of their creator, working in truth, for their task is truth. And he instructed the moon to come anew as a crown of beauty for those who are sustained for from the womb. For they are destined to be renewed as is she, so as to glorify their creator on account of the glory of his dominion. Blessed are you, Lord, who renews each month.”’”*

**VII.6** A. “For with wise advice you shall make your war” (Pro. 24: 6):

B. Said R. Aha bar Hanina said R. Assi said R. Yohanan, “In whom do you find [ability to conduct] the ‘war of the Torah’ [of rigorous reasoning]? He who possesses ‘the wise advice’ of Mishnah-learning.”

C. *R. Joseph recited in his own regard, “Much increase of grain is by the strength of the ox” (Pro. 14: 4).*

**VIII.1** A. If one of them says, “At two,” [and one of them says, “At three,” their testimony stands] [M. 5:3D]:

B. Said R. Shimi bar Ashi, “The rule applies only to differences in hours [of the day for there is a margin of error]. But if one of them says, ‘It was before dawn,’ and the other says, ‘It was after dawn,’ their testimony is null.”

C. *That is self-evident.*

D. Rather: If one of them says, “It was before dawn,” and the other says, “It was just during sunrise, ...”

E. *That too is self-evident.*

F. *[No, it requires explicit statement, for] what might you have thought? The witness was referring to the glow [before sunrise] and he saw only a gleam [but thought it was sunrise]. So we are informed that we do not [treat that as a routine margin of error].*

**IX.1** A. And afterward they bring in [the second witness and examine him ... and he did not go down from that position that entire day] [M. 5:4A-F]:

B. *That day and no more?*

C. *And has it not been taught on Tannaite authority:*

D. **If there is substance in what he says [the disciple] did not go down from that position ever.**

E. **And if not, he did not go down from that position that entire day [M. 5:4D],**

F. **so that people should not say, “His going up was his downfall [T. San. 9:3D-F].**

G. *Said Abbaye, “Refer [the allusion to that entire day] to a case in which there was no substance in what he says.”*

**X.1 A. If they found him innocent, they sent him away. If not, they postpone judging him till the next day. They would go off in pairs and would not eat very much or drink wine that entire day [M. 5:5A-B]:**

- B. *What is the reason for not [drinking] wine?*
- C. Said R. Aha bar Hanina, "Scripture has said, "[It is not] for princes [RWZN] [to say], Where is strong drink' (Pro. 31: 4).
- D. "Those who are dealing with the secrets [RZW, letters appearing in the word for princes] of the world should not get drunk."

**XI.1 A. They debate the matter [until one of those who votes for conviction accepts the arguments of those who vote for acquittal] [M. 5:5S]:**

- B. *And if they do not accept [the arguments]?*
- C. Said R. Aha, "They dismiss [the accused]."
- D. And so said R. Yohanan, "They dismiss [the accused]."
- E. *Said R. Pappa to Abbaye, "Then let him go free to begin with [if the court of seventy-one produces no clear majority? Why debate, when the entire court is not likely to convict?]"*
- F. *He said to him, "This is what R. Yohanan said, 'It is so that they should not leave the court while in a state of confusion.'"*
- G. *There are those who say, Said R. Pappa to Abbaye, "And why add to the court? Why not just dismiss him from the original court [of twenty-three judges]? [Schachter, p. 273, n. 7: If there was then no clear majority, both sides should have endeavored to win one more vote over to their opinion, and in the case of failure, he should have been set free there and then.]"*
- H. *He said to him, "R. Yosé takes your view."*
- I. *For it has been taught on Tannaite authority:*
- J. R. Yosé says, "Just as they do not add to a court of seventy-one judges, so they do not add to a court of twenty-three judges."

**XI.2 A. Our rabbis have taught on Tannaite authority:**

- B. **In property cases [the court may] rule, "The case is stale."**
- C. **In capital cases [the court may] not rule, "The case is stale [T. San. 7:7A-B].**
- D. *What is the sense of, "The case is stale"?*
- E. *Should I say, "The case is a difficult one [requiring protracted debate]? Then one should reverse the formulation of this rule just now cited [and dismiss a case capital case on the grounds that the debate is too prolonged. One should in point of fact dismiss the accused under such circumstances.]*
- F. *Said R. Huna bar Manoah in the name of R. Aha son of R. Iqa, "Reverse matters."*
- G. *R. Ashi said, "Under no circumstances should you reverse matters. What is the sense of 'The case is stale'? The case has been subjected to most learned [debate]."*
- H. *An objection was raised on the basis of the following: **The chief judge alone has the right to say, "The case is stale" [T. San. 7:7C]. Now if you maintain that the sense of the statement is, "The case has been subjected to most learned***



*[debate],” then there is no problem in having the chief judge make such a pronouncement. But if you hold that the sense of the phrase is, “The case is a difficult one,” it surely would not be appropriate for the chief judge to make such a statement, since he thereby disgraces himself.*

L. Indeed so, for the one who pronounces his own disgrace himself is not the same as one who is pronounced a disgrace by others [so it is better for the chief judge, than for a lesser one, to make the statement].

M. *There are those who state this as follows:*

N. *Now if you maintain that the sense of the statement is, “The case is a difficult one,” then that is in line with the principle: The one who pronounces his own disgrace is not the same as the one who is pronounced a disgrace by others. But if you hold that the sense of the statement is, “The case has been subjected to most learned [debate], “should the chief judge praise himself in such a manner? And has it not been written, “Let another praise you, and not your own mouth” (Pro. 27: 2)?*

O. *A rule governing court procedure is in its own category, for it is the duty of the head of the court to pronounce [the verdict]. For so we have learned in the Mishnah: **When they have completed the matter, they bring him back in. The chief judge says, “Mr. So-and-so, you are innocent,” “Mr. So-and-so, you are guilty” [M. 3:7A-B].***

Most of the Talmud focuses upon the exposition of the Mishnah-chapter at hand. Only an extended collection of materials forming a tradental aggregate (Aha-Assi-Yohanan) carries us far from the topic at hand.