

I.

BABYLONIAN TALMUD MAKKOT CHAPTER ONE

FOLIOS 2A-7A

1:1A-G

- A. How are witnesses treated [punished] as perjurers?
- B. [If they had said,] “We testify concerning Mr. So-and-so, that he is the son of a divorcée,” or, “...the son of a woman who has performed the rite of removing the shoe,” [and had been proved perjurers],
- C. they do not say, “Let this one be declared the son of a divorcée,” or, “Let him be declared the son of a woman who has performed the rite of removing the shoe.”
- D. But he is flogged [on account of perjury] with forty stripes.
- E. ...”We testify concerning Mr. So-and-so, that he is liable to exile,”
- F. they do not say, “Let this one go into exile in his stead.”
- G. But he is flogged with forty stripes.

The initial problem is to explain the wording of the Mishnah-rule, since the opening question is not answered at all in what follows, as the Talmud immediately points out. For the penalty decreed in Scripture — doing to the perjurers what the perjurers sought to do to their victim — is precisely what is not done, but the penalty of flogging is imposed instead.

- I.1** A. [Instead of the language, **How are witnesses punished as perjurers?**], *what is required is* how are witnesses not punished as perjurers?!
- B. *Furthermore, since later on it is taught, But if they said to them, “How can you give testimony, and lo, you yourselves were with us on that very day in that very place” — lo, these are declared perjurers, does it not follow from the stress on these that in the prior items on the list, the witnesses are not classified as perjurers?*
- C. *The Tannaite framer of the passage appeals to the concluding Mishnah-paragraph of the prior tractate, which is tractate Sanhedrin, to which this tractate forms a supplement: for all those who bear false witness first suffer that same*

mode of execution, except for those who bear false witness against the priest's daughter and her lover [M. San. 11:6H-J], who are taken out to meet not the same form of the death penalty as she is, but another form of penalty. [Then the intent is to set forth] that there are other perjurers [in addition to those who bear false witness against the priest's daughter and her lover], in which the principal law of retaliation is not enforced, but, rather, [in this instance] a flogging of forty lashes is substituted, namely: **How are witnesses treated [punished] as perjurers? [If they had said,] “We testify concerning Mr. So-and-so, that he is the son of a divorcée,” or, “...the son of a woman who has performed the rite of removing the shoe,” [and had been proved perjurers], they do not say, “Let this one be declared the son of a divorcée,” or, “Let him be declared the son of a woman who has performed the rite of removing the shoe.” But he is flogged [on account of perjury] with forty stripes.**

We proceed from the language of the Mishnah to its foundations in Scripture, which are now spelled out.

I.2. A. *What is the source in Scripture for this ruling?*

- B. Said R. Joshua b. Levi, “Said Scripture, ‘And you shall do to him as he planned to do’ (Deu. 19:19) — ‘to him,’ not to his seed.”
- C. *But why, in point of fact, not simply declare him invalid but not his children?*
- D. *We require the fulfillment of the verse, “And you shall do to him as he planned to do” (Deu. 19:19) , and that would not be possible through such an arrangement.*

I.3. A. Bar Padda says, “It is an argument a fortiori [that we should substitute flogging for a literal sanction]: if the one who by marrying a woman he may not marry desecrates the woman and all her future children [producing an offspring who is disqualified from the priesthood in line with Lev. 21: 6-8] is not himself desecrated [but remains a priest], he who proposes to desecrate a priest but has not done so surely should not himself be desecrated!”

- B. *Objected to this proof Rabina*, “If so, you have entirely nullified the whole of the law concerning retaliation for conspiracy to commit perjury! **[2B]** For you may argue, if one who enters a conspiracy to commit perjury against someone claiming that the latter had stoned another is himself not put to death through stoning [since, in line with Deu. 17: 7, ‘the hand of the witness shall be upon him first to put him to death,’ so if the intrigue was not discovered until after the execution had taken place, the conspiring witnesses are not punished by retaliation (Lazarus)], he who conspires to inflict the penalty of stoning on someone else by his false testimony but did not succeed in doing so surely should not himself be put to death through stoning!
- C. *“Therefore the original proof that we have repeated is a superior one [as given at No. 2].”*

The next Mishnah-clause is given a foundation in Scripture. The same form as occurs in I.2 is repeated at II.1-2.

II.1 A. **...”We testify concerning Mr. So-and-so, that he is liable to exile,” they do not say, “Let this one go into exile in his stead.” But he is flogged with forty stripes.**

- B. *What is the source in Scripture for this ruling?*

- C. Said R. Simeon b. Laqish, “Said Scripture, ‘He — he shall flee to one of the cities of refuge’ (Deu. 19: 5), meaning, ‘he shall flee to the cities of refuge, but the conspiring perjurers will not.’”

- ii.2.** A. R. Yohanan says, “It is an argument a fortiori: If one who succeeded in committing the murder he intended to commit is not sent into exile [should he escape the death penalty], then surely the conspiracy of perjurers, which did not actually carry out their intention, also should not be sent into exile!”
- B. *But the same argument produces the contrary conclusion: if one who committed a deed deliberately is not sent into exile so that he may not have the possibility of atonement, the conspiring witnesses, who have not carried out what they planned to do, should be allowed to go into exile so as to attain atonement. So the proof proposed by R. Simeon b. Laqish is the better one.*

- ii.3.** A. Said Ulla, “Whence in the Torah do we find an allusion to the disposition of perjured witnesses?”
- B. An allusion to the disposition of perjured witnesses?! *Lo, it is written in so many words*, “Then you shall do to him as he had proposed by perjury to do to his brother” (Deu. 19:19)!
- C. Rather, the question must be, “Whence in the Torah do we find an allusion to the fact that perjured witnesses are to be flogged?”
- D. “As it is written, ‘... acquitting the innocent and condemning the guilty...’ (Deu. 25: 1).
- E. “[The verse continues, ‘then if the guilty man deserves to be beaten, the judge shall cause him to lie down and be beaten...’ (Deu. 25: 2). In the assumption that the reference to acquitting and condemning refers to the judges, we ask:] Merely because the judges ‘justify the righteous and condemn the wicked,’ does it follow that ‘the guilty man deserves to be beaten’? [Shachter, *Sanhedrin*: The text cannot therefore refer to judges,] so the case must be as follows:
- F. *“We deal with witnesses whose testimony has convicted a righteous man, and other witnesses have come along and vindicated the righteous man to begin with and so turned the other witnesses into wicked men. In this case: ‘If the guilty man deserves to be beaten, the judge shall cause him to lie down and be beaten...’ (Deu. 25: 2).”*
- G. *But why not derive the same proposition from the commandment*, “You shall not bear false witness” (Exo. 20:16)?
- H. Because [at Exo. 20:16] you have a negative commandment in which no concrete deed is done, and in the case of any negative commandment in which no concrete deed is carried out, you do not inflict flogging. [Hence the proof is required as given, for the proposed proof-text will not serve.]
- Further Tannaite complements to the topic of the Mishnah-paragraph are now taken up systematically.

ii.4. A. *Our rabbis have taught on Tannaite authority:*

- B. Four statements have been made with regard to conspiratorial witnesses:

- C. They are not punished by being declared the son of a divorcée or the son of a woman who has performed the rite of removing the shoe if they have given false witness in such a matter [but are flogged].
- D. They are not sent into exile to the cities of refuge.
- E. They are not required to pay ransom.
- F. They are not sold as slaves [if they accused someone of having stolen and the accused is to be sold into slavery to pay compensation for the theft].
- G. **In the name of R. Aqiba they have said, “They also are not made to pay statutory fines on the basis of their own admission of their guilt” [T. Mak. 1:1B].**

II.5. A. “They are not in retaliation for conspiring to bear false witness in such a matter then punished by being declared the son of a divorcée or the son of a woman who has performed the rite of removing the shoe.”

B. *this is as we have just said.*

II.6. A. “They are not sent into exile to the cities of refuge.”

B. *this is as we have just said.*

II.7. A. “They are not required to pay ransom.”

B. In the theory that the ransom is a form of atonement, these are not subject to the making of atonement [since a beast owned by them has not committed manslaughter].

II.8. A. *Who is the Tannaite authority behind the view that the payment of the ransom is a form of atonement?*

B. *Said R. Hisda, “It is R. Ishmael son of R. Yohanan b. Beroqah. For it has been taught on Tannaite authority:”*

C. *“Then he shall give for the redemption of his life whatever is laid upon him” (Exo. 21:30) — compensation for the life of the one who has been injured.*

D. *R. Ishmael son of R. Yohanan b. Beroqah says, “It is compensation for the life of the one who did the injury.”*

E. *Now is the issue not the status of the ransom? One authority maintains that the ransom is a form of monetary compensation, and the other that it is a form of atonement?*

F. *Said R. Pappa, “Not at all! Not at all. All parties assume that the ransom is a form of atonement. But here, what is at issue? One authority takes the position that the estimate of what is to be paid is in accord with the value of the injured party, and the other authority holds that the estimate of what is to be paid is in terms of the value of the party that has done the injury.*

G. *What is the scriptural basis for the position of rabbis?*

H. *In the same chapter we find a reference to “assessment,” one with reference to the injury to a foetus [Exo. 21:22], the other, an ox killing a man [Exo. 21:30]. Just as at the one, the evaluation is in terms of the estimated value of the injured party, so here, the evaluation is in terms of the value of the injured party.*

I. *And R. Ishmael?*

- J. *It is written, "...for the redemption of his life" [can only mean, that of the party responsible for the injury].*
- K. *And rabbis?*
- L. *True enough, it is written, "...for the redemption of his life" — but the amount to be paid, nonetheless, is assessed in terms of the value of the injured party.*

- II.9.** A. "They are not sold as slaves [if they accused someone of having stolen and the accused is to be sold into slavery to pay compensation for the theft]."
- B. *R. Hamnuna reasoned that this rule applies in a case in which the innocent party had the means to pay the fine that the conspiracy of witnesses had proposed to impose on him, in which case he would not have been sold, so the conspiring witnesses also should not be sold. But if the accused had no such means, then the conspiracy of perjurers, even though they have sufficient funds, ought to be sold.*
 - C. *Said to him Raba, "But the conspiring perjurers can say to the accused, 'If you had the means, would you have been sold as a slave? Obviously not, therefore we too should not be sold.'"*
 - D. *Rather, R. Hamnuna reasoned that this rule applies to a case in which either the accused party or the perjurers had the means; but in a case in which neither he nor that had sufficient funds to cover the debt, they should be sold.*
 - E. *Said to him Raba, "If he has nothing, then he shall be sold for his theft" (Exo. 22: 2) — on account of the actual theft committed by the man, but not on account of his forming a conspiracy of perjury in such a regard."*

- II.10.** A. **In the name of R. Aqiba they have said, "They also are not made to pay statutory fines on the basis of their own admission of their guilt:"**
- B. *What is the operative consideration for R. Aqiba?*
 - C. *He classifies this item as an extrajudicial monetary penalty, and in the case of an extrajudicial monetary penalty, one does not pay on the basis of his own testimony [T. Mak. 1:1B].*
 - D. *Said Rabbah, "You may know that that is the case, for lo, the conspiring perjurers have not actually done a deed, yet they may be put to death or forced to pay compensation."*
 - E. *Said R. Nahman, "You may know that that is the case, for lo, the money remains in the possession of its rightful owner, and yet these persons have to pay compensation nonetheless."*
 - F. **[3A]** *What is the basis on which the claim is that the conspiring perjurers have not done a thing [so the money remains in the possession of its rightful owner]? That is pretty much the same thing that Rabbah has said!*
 - G. *State matters in this way: and so said R. Nahman."*
Beyond the Tannaite complement comes one attributed to the earliest Amoraic stratum.

- II.11.** A. Said Rab, "A conspiring perjurer has to pay in accord with his share."
- B. *What is the meaning of the language, has to pay in accord with his share? If we should say that this party to the conspiracy pays half, and that party to the conspiracy pays half, we have in any event learned that rule explicitly: **They***

divide up [among the perjurers] a penalty for making restitution, but they do not divide up the penalty of flogging. How so? [If] they gave testimony about someone that he owes his fellow two hundred zuz, and they turned out to be perjurers, they divide [the two hundred zuz] among them [and make restitution of that amount]. But if they gave testimony about him that he is liable to receiving flogging in the measure of forty stripes, and they turned out to be perjurers, each one is flogged forty times [M. 1:3E-H]. Rather, we deal with a case, for example, in which only one of the perjurers was proved to be a conspirator [but the other's evidence was not overturned], in which case he would have to pay his half of the projected fine [while the other pays nothing].

- C. *But lo, is there any payment at all in such a case, when it has been taught on Tannaite authority:* A member of a conspiracy of perjurers pays compensation only if both members of the conspiracy are properly proven to be part of a conspiracy?
- D. Said Raba, "We deal with a case in which one has said, 'I have born false witness.'"
- E. *But has he got the power?* [The following is the established rule of testimony:] Once a witness has given his deposition, he cannot retract and give another deposition!
- F. Rather, we deal with a case in which he says, "We have We gave evidence and convicted as conspiring perjurers in such and such a court" [with one witness conceding, the other not, that fact].
- G. *And in accord with what authority will that rule be? It cannot accord with R. Aqiba:* **in the name of R. Aqiba they have said, "They also are not made to pay statutory fines on the basis of their own admission of their guilt"!**
- H. Rather, we deal with a case in which he says, "We gave testimony and were convicted as conspiring perjurers in such-and-such a court, and we were furthermore obligated to pay compensation." *Now you might have supposed that since he cannot impose liability on his fellow, he also cannot impose an obligation on himself. So we are informed that that is not the case.*

I.1 commences with a wonderful example of redaction-criticism, solving a problem in the formulation of our Mishnah-paragraph by appeal to its broader context. No. 2 proceeds to a predictable question. No. 3 carries forward the problem of No. 2. II.1 then repeats the familiar exercise. No. 2 follows suit. No. 3 then goes back over scriptural proof for the basic premise of our Mishnah-paragraph. No. 4 moves on to a Tannaite complement. Nos. 5-10 then carry out the required exegesis of the Tannaite statement. No. 11 then adds a further rule to the catalogue given at No. 4.

1:1H-K

- H. [If they had said,] "We testify concerning Mr. So-and-so, that he has divorced his wife and not paid off her marriage settlement," —
- I. (and is it not so that whether it is today or tomorrow, he certainly is going to pay off her marriage settlement —)

- J. they make an estimate of how much a man will be willing to pay [now] for the ownership of her marriage settlement,**
- K. on the condition that, if she should be widowed or divorced, [he will take it over], but if she should die, her husband will inherit her [estate, including said marriage settlement].**

I.1 A. How is this assessment accomplished?

- B. Said R. Hisda, “It is in accord with the situation of the husband.” [Lazarus: the value of a speculative loan obtainable by the husband on the marriage contract in the event of his wife’s death and some compensation for their attempt to deprive him forthwith of his enjoyment of the usufruct of his wife’s property, on which he might likewise have a favorable offer by way of a loan.]
- C. R. Nathan bar Oshaia says, “In accord with the situation of the woman.” [Lazarus: the advance she might have obtained on her marriage contract. Her rights have not been assailed by these witnesses, so the estimated advance is to be deducted from the actual amount due to her on the marriage settlement and the balance is the husband’s award, apart from the threatened immediate loss of the usufruct.]
- D. Said R. Pappa, “It is in accord with the situation of the woman and her marriage contract.” [Lazarus: they are not subject to the claim of the threatened loss of usufruct, of which these witnesses may plead they had no knowledge and therefore they have not assailed this item.]

I.1 provides a detail essential for the understanding of the Mishnah-paragraph.

1:1L-N

- L. [If they had said,] “We testify concerning Mr. So-and-so, that he owes his fellow a thousand zuz, on condition that he will pay him in thirty days,”**
- M. and the accused says, “...in the next ten years,”**
- N. they make an estimate of how much a man is willing to pay for the use of a thousand zuz, whether he pays them in thirty days or in ten years.**

We ignore the foregoing and proceed to a free-standing problem, to which the statement of the Mishnah contributes a detail.

Rules Concerning the Affect of Loans upon the Sabbatical Year
[Sayings attributed to Samuel by Judah]

- I.1** A. Said R. Judah said Samuel, “He who makes a loan to his fellow for ten years — the end of the Sabbatical Year remits the debt, **[3B]** and that is the case even though one may claim that at the time that the Sabbatical Year came to an end, the commandment ‘he shall not exact it of his neighbor’ (Deu. 15: 2) does not apply, for ultimately that commandment will take effect retroactively.”
- B. *Objected* R. Kahana, “...**they make an estimate of how much a man is willing to pay for the use of a thousand zuz, whether he pays them in thirty days or in ten years.** *But if you take the view that* the end of the Sabbatical Year remits

the debt, *then the conspiring perjurers should have to pay the whole of the debt!*”
[The Sabbatical Year will otherwise intervene and they will owe nothing.]

- C. *Said Raba, “With what sort of case do we deal here? It is one in which the loan is made on the strength of a pledge or by a lender who has handed over his bonds to a court. For we have learned in the Mishnah: **One who loans [money in exchange for] security and one who hands over his bonds [for collection] to a court, 1. [these loans] are not cancelled [by the Sabbatical year] [M. Sheb. 10:2H-I].**”*
- D. *There are those who repeat the composition in the following form:*
- E. *Said R. Judah said Samuel, “He who makes a loan to his fellow for ten years — the end of the Sabbatical Year does not remit the debt, and that is the case even though the commandment ‘he shall not exact it of his neighbor’ (Deu. 15: 2) ultimately will take effect retroactively. For at this moment, in any event, we do not invoke that rule.”*
- F. *Said R. Kahana, “So too have we learned on Tannaite authority in the Mishnah: “ **they make an estimate of how much a man is willing to pay for the use of a thousand zuz, whether he pays them in thirty days or in ten years.** For if you take the view that the end of the Sabbatical Year remits the debt, then the conspiring perjurers should have to pay the whole of the debt!”*
- G. *Said Raba, “With what sort of case do we deal here? It is one in which the loan is made on the strength of a pledge or by a lender who has handed over his bonds to a court. For we have learned in the Mishnah: **One who loans [money in exchange for] security and one who hands over his bonds [for collection] to a court, 1. [these loans] are not cancelled [by the Sabbatical year] [M. Sheb. 10:2H-I].**”*
- I.2.** A. *And said R. Judah said Samuel, “He who says to his fellow, ‘...on the stipulation that the advent of the Seventh Year will not abrogate the debts’ — the Seventh Year nonetheless abrogates those debts.”*
- B. *May one then propose that Samuel takes the view that that stipulation represents an agreement made contrary to what is written in the Torah, and, as we know, any stipulation contrary to what is written in the Torah is a null stipulation? But lo, it has been stated:*
- C. *He who says to his fellow, “[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me” —*
- D. *Rab said, “He nonetheless may lay claim of fraud [by reason of variation from true value] against him.”*
- E. *Samuel said, “He may not lay claim of fraud [by reason of variation from true value] against him.”*
- F. *Lo, it has been stated in that connection: said R. Anan, “The matter has been explained to me such that Samuel said, ‘He who says to his fellow, “[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me” — he has no claim of fraud against him. [If he said,] “...on the stipulation that in the transaction itself, there is no aspect of fraud,” lo, he has a claim of fraud against him.”’*

- G. Here too, the same distinction pertains. If the stipulation was, “on condition that you do not abrogate the debt to me in the Sabbatical Year,” then the Sabbatical Year does not abrogate the debt. But if the language was, “on condition that the Sabbatical Year itself does not abrogate the debt, the Sabbatical Year does abrogate the debt.”

Now that the making of stipulations in connection with loans has been introduced, further supplementary materials are tacked on, dealing with the same theme, though in quite different terms.

I.3. A. *A Tannaite authority [stated]:*

- B. **He who lends money to his fellow without further specification has not got the right to dun him for the debt for less than thirty days [T. B.M. 10:1A-B].**
- C. *Rabbah bar bar Hannah proposed before Rab to state, “That rule pertains to a case in which the loan was on the strength of a bond, for people do not take the trouble to go and write out a bond for a span of time of less than thirty days. But if it was a loan confirmed merely by a verbal agreement, that is not the case.”*
- D. *Said to him Rab, “This is what my uncle [Hiyya] said: All the same is a loan made on the strength of a bond and one that is made by a merely oral declaration.”*
- E. *So too it has been taught on Tannaite authority:*
- F. **He who lends money to his fellow without further specification has not got the right to dun him for the debt for less than thirty days [T. B.M. 10:1A-B].** All the same is a loan made on the strength of a bond and one that is made by a merely oral declaration.

I.4. A. *Said Samuel to R. Mattenah, “Do not squat down before explaining the following tradition, specifically, the source in Scripture of the following teaching of our rabbis: ‘He who lends money to his fellow without further specification has not got the right to dun him for the debt for less than thirty days [T. B.M. 10:1A-B]. All the same is a loan made on the strength of a bond and one that is made by a merely oral declaration’!”*

- B. He said to him, “It is written, ‘Beware that there be not a base thought in your heart, saying, the seventh year, the year of release, is at hand, and your eye be evil against your poor brother’ (Deu. 15: 9). Do I not know from the language ‘the seventh year...is at hand’ that this is ‘the year of release’! So what is the point of saying, ‘the year of release’? It is to tell you that there is another means of releasing the loan that is equivalent to this. And what is it? It is lending money to his fellow without further specification, in which case, he has not got the right to dun him for the debt for less than thirty days. All the same is a loan made on the strength of a bond and one that is made by a merely oral declaration”
- C. For said a master, “Thirty days are equivalent to a year.”

Three Miscellaneous Sayings Attributed to Rab by Judah

- I.5.** A. And said R. Judah said Rab, “He who on the Sabbath day tears open the neck of a new piece of clothing [unaware that it is the Sabbath] is liable to present a sin offering.”

- B. *Objected to that statement R. Kahana, “But what is the difference between this way of opening the neck and breaching a cask, [which one is permitted to do]?”*
- C. He said to him, “The one involves something that is connected, the other not.” [Lazarus: there is a rending of integral parts of the woven material in the case of the garment, whereas the stopper is not an integral part of the cask but merely inserted].
- I.6.** A. And said R. Judah said Rab, “Three *logs* of water into which fell a *qortob* of wine, imparting to the whole the color of wine, and the mixture then fell into an immersion pool — the addition of the mixture does not invalidate the pool [as would have been the case if anything other than milk, wine, or fruit juice would have done; these do not disqualify the pool nor do these liquids serve to bring it up to the volume that is required, one way or the other being treated as null].”
- B. *Objected to that statement R. Kahana, “But what is the difference between this case and a mixture of dye water, concerning which we have learned in the Mishnah: R. Yosé says, “Dye water spoils it at the measure of three logs [of drawn water], but it does not spoil it through changing the color” [M. Miq. 7:3B]?”*
- C. *Said to him Raba, “In that case it is simply classified as dye water, while here, it is classified as diluted wine.”*
- D. *But did not R. Hiyya set forth as a Tannaite statement: These diminish the requisite volume of the immersion pool [and so invalidate it] [a teaching that contradicts Rab’s]?*
- E. *Said Raba, “There is no contradiction, the one represents the position of R. Yohanan b. Nuri, the other, of rabbis, for we have learned in the Mishnah: **Three logs of drawn water [4A] lacking a qortob — and into them fell a qortob of wine — and lo, their color is the color of wine — and they fell into the immersion pool — they have not rendered it unfit. Three logs of water, lacking a qortob — and a qortob of milk fell into them, and lo, their color is the color of the water — and they fell into the immersion pool — they have not rendered it unfit. R. Yohanan b. Nuri says, “All follows the color” [M. Miq. 7:5A-K].***
- F. *But that is the very question that R. Pappa raised. For R. Pappa raised the question, “Did Rab repeat as the Tannaite version in the first clause of the Mishnah, **Three logs of drawn water lacking a qortob**? Then from the perspective of the Tannaite framer of that first clause, if a qortob of wine fell into three logs of water, it would also invalidate the immersion pool; then it would follow that R. Yohanan b. Nuri differed, saying, **All follows the color** — and not the volume of the water. In that case Rab takes the position of R. Yohanan b. Nuri. Or, on the other hand, did Rab not repeat as the Tannaite version in the first clause of the Mishnah, **Three logs of drawn water lacking a qortob** [but rather, the whole three logs]? In that case R. Yohanan b. Nuri differed, saying, **All follows the color** — only with reference to the second clause, which concerns milk, in which case, Rab stated a view held unanimously” [Lazarus: for all agree that if the color of the mixture is that of wine or milk, it is null and does not invalidate the immersion pool, even where the milk or wine was added to the full three logs].*

G. *Well, that may have been a problem to R. Pappa, but to Raba it was no problem at all [for he took for granted that Rab took the position of R. Yohanan b. Nuri].*

I.7. A. *Said R. Joseph, “I never heard this tradition.”*

B. *Said to him Abbaye, “You are the one who told it to us. And this is how you told it to us: ‘Rab did not repeat as the Tannaite version in the first clause of the Mishnah, **Three logs of drawn water lacking a qortob** [but rather, the whole three logs]. In that case R. Yohanan b. Nuri differed, saying, **All follows the color** — only with reference to the second clause, which concerns milk, in which case, Rab stated a view held unanimously.’”*

I.8. A. *And said R. Judah said Rab, “A jug filled with water that fell into the Great Sea — one who immerses therein has not gained anything by his immersion, for we take account of the possibility that the three logs of drawn water [which may not be used for immersion] are collected in that one place [where he immersed]. And that is the case in particular with the Great Sea, where the water stands still, but in a river in general, that is not the rule.”*

B. *So too it has been taught on Tannaite authority:*

C. *A jug filled with wine that fell into the Great Sea — one who immerses therein has not gained anything by his immersion, for we take account of the possibility that the three logs of drawn water [which may not be used for immersion] are collected in one place. And so is the rule if a loaf of bread made of wheat in the status of heave offering — it is unclean.*

D. *What is the point of* And so is the rule if a loaf of bread made of wheat in the status of heave offering — it is unclean?

E. *What might you otherwise have thought? In the former case, we confirm the supposition that already pertained to the man [he was after all unclean to begin with], and here we confirm the supposition that affects the food in the status of heave offering [which is that it is clean]. So we are informed that that is not the case.*

I.1 is included because the Mishnah-paragraph’s rule plays a role in the argument. No. 2 carries forward the foregoing. The composite is made up of two large components, Judah’s statements attributed to Samuel, then Judah’s statements attributed to Rab. Nothing else joins the two units except for Judah’s authority. The first set covers more than a single topic, and so does the second.

The composite before us shows a different theory of composite-making from the one that predominates in the Talmud overall. In this theory we collect statements attributed by a principal authority to a founder of the tradition in Babylonia, Rab or Samuel; these statements cover a variety of topics and express no single cogent principle; nor do they take up one problem in a variety of forms. And since the composite does not take shape around a problem of Mishnah-exegesis or of the analysis of a problem of law, exegesis of Scripture, or theology, it follows that the theory of composite-making is different from the theory that produced the Talmud’s composites as we know them. Had the present theory prevailed, we should have no Talmud — systematic exposition of the Mishnah, with additions — but rather collections of sayings joined by the formality of common source in a given authority’s school. These collections then will have yielded something other

than a coherent statement of the law of the Mishnah, properly expanded. They will have given us the same law, but in very different form.

And yet, we notice, the character of the discussion of the components of the composite that sets forth the formulation of Judah in Samuel's or in Rab's name in no way differs from the character of the discussion of our conventional Talmud. I take that fact to mean people subjected to the same sort of sustained analytical discussion diverse types of composites, not only the types that yielded the Talmud as we know it. So in circulation were composites built on various principles, analyzed in a uniform manner. Then, it must follow, those who made the Talmud as we know it picked the kinds of materials they wanted for their Talmud and, in general, omitted such other kinds as did not serve their purpose. And one of the important other kinds is the one before us: compilations of masters' sayings, organized around other than topical-programmatic lines.

1:2-1:3E

1:2

- A. [If they had said,] “We testify concerning Mr. So-and-so, that he owes his fellow two hundred zuz,”
- B. and they turn out to be perjurers —
- C. “they are flogged, and they pay up,
- D. “[and this is on two distinct counts,] for the count which brings flogging on them is not the count which brings on them the penalty of restitution,” the words of R. Meir.
- E. And sages say, “Whoever pays restitution is not flogged.”

1:3A-D

- A. [If they had said,] “We testify concerning Mr. So-and-so, that he is liable to receive flogging in the measure of forty stripes,”
- B. and they turn out to be perjurers —
- C. “they are smitten eighty times, on the count of, ‘You shall not bear false witness against your neighbor’ (Exo. 20:13), and on the count of ‘You shall do to him as he had conspired to do’ (Deu. 19:19),” the words of R. Meir.
- D. And sages say, “They are flogged only forty stripes.”

What is now required is proof from Scripture for the position of the authorities of the Mishnah, first Meir, then sages.

- I.1 A. [4B] *There is no problem with the view of rabbis, which, after all, rests on the statement, “...according to his misdeed” (Deu. 25: 2), meaning, on the count of a single misdeed do you impose liability upon the person, but you do not impose liability on two counts of misdeed in such a case. But what is the scriptural foundation for the position of R. Meir?*
- B. *Said Ulla, “He derives the rule from an analogy drawn to the case of the husband who defames his wife. Just as the husband who defames his wife both is flogged and also pays a fine, so whoever is flogged may also be required to pay a fine.”*
- C. *But the distinctive trait applying to the husband who defames his wife is that the payment of a fine is an extrajudicial sanction [and not the norm].*

- D. *[Meir] accords with the theory of R. Aqiba who has said, "The penalty imposed on the conspiracy of perjurers is in the classification of an extrajudicial sanction [anyhow]."*
A separate version of Ulla's statement goes over the same principle with reference to a different case.
- I.2.** A. *There are those who report that which Ulla has stated in connection with the following, which has been taught on Tannaite authority:*
- B. "And you shall let nothing remain of it until the morning, and that which remains of it until the morning you shall burn with fire" (Exo. 12:10):
- C. "Scripture comes to set forth an affirmative commandment after a negative one, so as to indicate that on that account, one does not incur flogging," the words of R. Judah.
- D. R. Aqiba says, "That is not the pertinent consideration here, but rather it is because we deal with a negative commandment that does not involve the commission of an actual deed, and in the case of any negative commandment that does not involve a concrete deed, flogging is not incurred."
- E. *That yields the inference that R. Judah takes the position that, on such an account, a flogging is incurred. How on the basis of Scripture does he know that fact?*
- F. *Said Ulla, "He derives the rule from an analogy drawn to the case of the husband who defames his wife. Just as the husband who defames his wife both is flogged and also pays a fine, so whoever is flogged may also be required to pay a fine."*
- G. But the distinctive trait applying to the husband who defames his wife is that the payment of a fine is an extrajudicial sanction [and not the norm].
- H. Rather, said R. Simeon b. Laqish, "He derives the rule on the basis of an analogy drawn to the case of a conspiracy of perjurers. Just as the conspiracy of perjurers are guilty of a violation of a negative commandment in which a concrete deed has not been done and are flogged, so on account of any violation of a negative commandment in which a concrete deed has not been done are the guilty parties flogged."
- I. But the distinctive trait of the case of the conspiracy of perjurers is that no prior admonition is required for them to be guilty, [which condition does not apply here].
- J. The case of the husband who defames his wife will prove the contrary.
- K. Then the wheel turns, since the distinctive trait of the one case is not the same as the distinctive trait of the other, and the distinctive trait of the other case is not the same as the distinctive trait of the one. But there is a common trait among them, which is that we deal with a violation of a negative commandment in which a concrete deed is not done, and yet a flogging is incurred on that account. So in the case of the violation of any negative commandment in which a concrete deed is not carried out, a flogging is incurred.
- L. The shared trait among them is that we deal in all cases with an extrajudicial sanction.
- M. *That is not a problem, for R. Judah does not take the position of R. Aqiba on that matter.*

- N. Then the shared trait among them is that in each case there is an aspect in which a stringent ruling applies!
 - O. *R. Judah does not regard that as an issue.*
 - II.1** A. *[And sages say, “They are flogged only forty stripes:”] and how do rabbis read the verse, “And you shall not bear false witness against your neighbor” [for there has been a violation of that commandment as well]?*
 - B. *They derive from that verse the admonition against forming a conspiracy to commit perjury.*
 - C. *And how does R. Meir derive from Scripture the admonition against forming a conspiracy to commit perjury?*
 - D. *Said R. Jeremiah, “He derives it from the verse, ‘And those who remain shall hear and fear and shall henceforth commit no more such evil in the midst of you’ (Deu. 19:20).”*
 - E. *And rabbis?*
 - F. *They require that same verse [5A] to deal with the case of showing that as a deterrent, this crime has to be proclaimed.*
 - G. And R. Meir?
 - H. *The requirement that this crime has to be proclaimed as a public example derives from the statement, “And those who remain shall hear and fear...”*
- I.1 provides a scriptural basis for the Mishnah’s disputes. No. 2 supplements the foregoing. II.1 goes through the same exercise.

1:3E-H

- E. **They divide up [among the perjurers] a penalty for making restitution, but they do not divide up the penalty of flogging.**
- F. **How so?**
- G. **[If] they gave testimony about someone that he owes his fellow two hundred zuz, and they turned out to be perjurers, they divide [the two hundred zuz] among them [and make restitution of that amount].**
- H. **But if they gave testimony about him that he is liable to receiving flogging in the measure of forty stripes, and they turned out to be perjurers, each one is flogged forty times.**
- I.1** A. *How on the basis of Scripture do we know this fact?*
- B. *Said Abbaye, “The word ‘guilty party’ occurs in the verse that sets forth the penalty of a flogging [Deu. 25: 2-3] and the same word forms a verbal analogy in the context of the death penalty by order of the earthly court [Num. 35:31]. [The appearance of the same word in both rules establishes an analogy between them, so forming them into a single classification to which a uniform rule applies, namely:] Just as the death penalty is not inflicted by halves, so flogging may not be inflicted by halves.”*
- C. *Raba said, “We have to carry out the language, ‘Then you shall do to him as he planned to do to his brother’ (Deu. 19:19), and this would not be carried out [by halves].”*
- D. *If so, the same should apply to monetary compensation!*

E. *Money can be toted up into a single sum, but lashes cannot be toted up into a single sum.*

I.1 raises the anticipated question.

1:4-5

1:4

A. **Witnesses are declared to be perjurers only if they [by their own testimony] incriminate themselves.**

B. **How so?**

C. **[If] they said, “We testify concerning Mr. So-and-so, that he killed someone,”**

D. **[and] they said to them, “How can you give any testimony, for lo, this one who is supposed to have been killed, or that one who is supposed to have killed, was with us on that very day and in that very place” —**

E. **they are not declared perjurers.**

F. **But if they said to them, “How can you give testimony, and lo, you yourselves were with us on that very day in that very place” —**

G. **lo, these are declared perjurers,**

H. **and they are put to death on the basis of their own testimony [against the third party].**

1:5

A. **[If] others came and gave false testimony against them,**

B. **and still others came and gave false testimony against them,**

C. **even a hundred —**

D. **all of them are put to death.**

E. **R. Judah says, “This is a conspiracy, [to confuse the judges], and the only ones to be put to death are those of the first group alone.”**

I.1 A. *How on the basis of Scripture do we know this fact?*

B. Said R. Adda, “Said Scripture, ‘...and behold, if the witness of falsehood gave false testimony’ (Deu. 19:18) — only if the substance of the evidence that he has given is shown to be false.” [We have to prove that the perjurer cannot have given the evidence he claims to know, because in substance he cannot have known what he is talking about.]

C. *The Tannaite authority of the household of R. Ishmael: “‘...to testify against him, a wanton perversion’ (Deu. 19:18) — only if the substance of the testimony is controverted.”*

We proceed to examples of how this self-incrimination takes place.

I.2. A. Said Raba, “If two witnesses came and said, ‘On the east side of the castle Mr. So-and-so killed someone,’ and two others came and said, ‘Were you two not with us at the west side of the castle,’ *we examine the case: if when they are standing at the west side of the castle, they can see the east side of the castle, these are not classified as a conspiracy of perjurers, but if not, lo, they are classified as a conspiracy of perjurers.*”

B. *So what else is new!*

C. *Not at all! What might you have otherwise supposed? That we take account of the possibility that the first set of witnesses may have better eyesight. So we are informed that we do not take account of such special considerations.*

I.3. A. And said Raba, “If two witnesses came and said, ‘In Sura, in the morning, on Sunday, So-and-so killed somebody,’ and two other witnesses came and said, ‘At sunset, on Sunday, you were with us in Nehardea,’ *then we examine the case: if it is possible to go from Sura to Nehardea, they are not held to be a conspiracy of perjurers, but if not, they are held to be a conspiracy of perjurers.*”

B. *So what else is new!*

C. *Not at all! What might you have otherwise supposed? We should take account of the possibility of their having travelled via an especially swift camel! So we are informed that that is not the case.*

I.4. A. And said Raba, “If two witnesses came and said, ‘On Sunday So-and-so killed someone,’ and two others came along and said, ‘You were with us on Sunday, but on Monday So and so killed someone,’ and not only so, but even if they say, ‘On Friday So-and-so killed someone,’ the original witnesses are put to death as a conspiracy of perjurers, *since at the point concerning which they gave testimony, which was Sunday, the accused was not subject to the death penalty at all.*”

B. *What does Raba propose to tell us that we have not learned on Tannaite authority: **Therefore, if one of them turns out to be perjured, [the transgressor] and those two witnesses are put to death, but the other group of witnesses is exempt [M. 1:9E]?***

C. *Not at all! It is the concluding part of Raba’s statement that is critical: which concerned evidence that dealt with the time of the verdict, namely: If two witnesses came and said, “On Sunday the trial of So-and-so reached its verdict [of the death penalty for his having killed so and so],” and two others came and said, “On Sunday you were with us, but it was on Friday that the verdict was reached,” the first set of witnesses are not put to death, *because at the time concerning which they gave their testimony, the man was already subject to the death penalty.**

D. And so is the rule concerning payment of an extrajudicial fine: If two witnesses came and said, “On Sunday the trial of So-and-so stole and slaughtered and sold a beast,” and two others came and said, “On Sunday you were with us, but it was on Monday that he stole and slaughtered and sold a beast,” the first witnesses have to pay the fine; and not only so, but even if the second set of witnesses said, “He stole and slaughtered and sold the beast on Friday,” the first set of witnesses have to pay, *because at the time concerning which they testified, the accused was not yet subject to pay the fine.*

E. If two witnesses came and said, “On Sunday so-and-so stole and slaughtered and sold a beast,” and the verdict was reached that he had to pay the fine, and two others came and said, “On Sunday you were with us, but on Friday he stole and slaughtered and sold the beast, and furthermore the verdict was reached,” —

F. and not only so, but he they said, “On Sunday he stole and slaughtered and sold the beast, but on Monday the verdict was reached,” they do not have to pay the fine, *for at the time concerning which they gave testimony, the man was already liable to pay the fine.*

We proceed to an analysis of Judah's argument.

II.1 A. R. Judah says, "This is a conspiracy, [to confuse the judges], and the only ones to be put to death are those of the first group alone:"

- B. **[5B]** *If this is a conspiracy, then even the first set of witnesses also should not be subject to the law!*
- C. Said R. Abbahu, "We deal with a case in which the execution had gone ahead anyhow."
- D. *But then what was was [and there is no remedy]!*
- E. *Rather, said Raba, "This is the sense of the statement: if there is only one set of witnesses, that set is put to death, but if they are more, then they are not put to death [Lazarus: because they are regarded as victims of a plot].*
- F. *But [Judah] has stated, and the only ones to be put to death are those of the first group alone", meaning, there really are more!*
- G. *That is a problem.*

II.2. A. There was a certain woman who produced witnesses in her own behalf, and they were found to be discredited, and who produced more, who also were discredited, and who then produced more, who were not discredited.

- B. Said R. Simeon b. Laqish, "This woman is now assumed to be unreliable."
- C. Said to him R. Eleazar, "If she is presumed to be a liar, are all Israelites also presumed to be liars? [These in any event may have told the truth.]"
- D. *Once, when they were in session before R. Yohanan, a case like this one came up before them.*
- E. Said R. Simeon b. Laqish, "This woman is now assumed to be unreliable."
- F. Said to him R. Eleazar, "If she is presumed to be a liar, are all Israelites also presumed to be liars? [These in any event may have told the truth.]"
- G. *R. Simeon b. Laqish looked angrily at R. Eleazar, saying to him, "You heard this rule from Bar Nappaha [Yohanan himself] but you never reported it to me in his name!"*
- H. *May one then propose that R. Simeon b. Laqish ruled in accord with R. Judah and R. Yohanan in accord with rabbis [in which case the former takes the schismatic position]?*
- I. *R. Simeon b. Laqish may say to you, "I make my ruling even in accord with the position of Rabbis. The rabbis take the position that they do there only because there is no one out beating the bushes for witnesses, but here, there is someone out beating the bushes for witnesses."*
- J. *And R. Yohanan may say to you, "I make my ruling even in accord with the position of R. Judah. R. Judah takes the position that he does there only because we may wonder, 'Was everybody in the world standing right there with them?' [It is inherently implausible.] But in the case of the woman, those who came at the very last happened to know what they were talking about, and the earlier ones did not."*

I.1 asks the familiar question. No. 2 then amplifies and illustrates the rule of the Mishnah-paragraph. The pattern persists through Nos. 3-4. II.1 asks a basic question of clarification. No. 2 introduces a case for analysis, illustrating the

Mishnah's rule. With a composite like this one before us, can anyone wonder why the framers of the Talmud made the decision that they did? I cannot imagine a more perfect presentation of a problem together with the principles and positions that pertain to it, along with the possibility of a full exposition of the issues.

1:6

- A. **Perjured witnesses [in a capital case] are put to death only at the conclusion of the trial.**
- B. **Now lo, the Sadducees say, "Only when the accused has actually been put to death, since it is said, 'A life for a life' (Deu. 19:21)."**
- C. **Sages said to them, "And has it not also been said, 'And you will do to him as he had planned to do to his fellow' (Deu. 19:19)? And lo, his fellow is still alive!**
- D. **"If so, why has it been said, 'A life for a life'?"**
- E. **"For one might suppose that from that very moment at which [the judges] have received their testimony [which is proved to be perjury], they should be put to death.**
- F. **"Scripture says, 'A life for a life' — lo, they are put to death only at the conclusion of the trial."**

We take up a Tannaite complement to the Mishnah.

I.1 A. *A Tannaite statement in the name of Rabbi:*

- B. If they have not killed, they are put to death, if they have killed, they are not put to death [Deu. 17:7 says that the witnesses have to strike the first blow, so, in line with the statement, **they are put to death only at the conclusion of the trial**, if they have not killed the accused, they are put to death, but if they have, they are not.]
- C. His father said to him, "My son, does the contrary conclusion not follow along the lines of an argument a fortiori?"
- D. He said to him, "Our lord, you have taught us that penalties are not fabricated merely on the basis of logic."

We now show how, on the basis of logic, a penalty can be adduced, with further evidence that, despite that fact, Scripture found it necessary to make the penalty explicit. That proves that penalties are not fabricated merely on the basis of logic."

- E. *For it has been taught on Tannaite authority:*
- F. "If a man shall take his sister, daughter of his father or daughter of his mother...it is a shameful thing and they shall be cut off" (Lev. 20:17) —
- G. **"takes his sister, a daughter of his father or a daughter of his mother:"**
- H. **I know only the cases of the daughter of his father and the daughter of his mother. I know that encompassed under the prohibition are the daughter of his mother but not his father, or the daughter of his father but not his mother. But what about his sister through the same father and mother?**
- I. **Scripture says, "his sister" — under all circumstances.**
- J. **But if Scripture had not made the point explicit, I could have proven it through a logical argument:**

- K. If one is liable for his sister by his father but not by his mother, or by his mother but not by his father, all the more so that he will be liable for his sister through the same father and mother!
- L. But if you argue in this way, you have imposed a penalty only on the basis of logical argument [which is not to be done].
- M. Therefore Scripture makes the matter “his sister” entirely explicit, to indicate that one should not impose a penalty only on the basis of logical argument [Sifra CCIX:II.2-3].
- N. We have now established the penalty. How on the basis of Scripture do we know the sanction?
- O. “The nakedness of your sister, the daughter of your father or the daughter of your mother, shall you not uncover” (Lev. 18: 9).
- P. I know only the rule governing the daughter of the father who is not the daughter of the mother, or the daughter of the mother who is not the daughter of the father. How do I know the rule governing the daughter of the same mother and the same father? Scripture states, “The nakedness of your father’s wife’s daughter begotten by your father, she is your sister” (Lev. 18:11).
- Q. But even if Scripture had not stated the matter, I could have derived it on the basis of a logical argument: If one is admonished concerning his sister by his father but not by his mother, or by his mother but not by his father, all the more so that he will be admonished concerning his sister through the same father and mother!
- L. But if you argue in this way, you have set forth an admonition only on the basis of logical argument [which is not to be done]. Thus you learn that on the basis of mere logic, an admonition is not set forth.
- M. How on the basis of Scripture do I know the law concerning those who are liable to be flogged?
- N. It comes through establishing an analogy between the one and the other area of law through the use, in common, of the word “wicked” (Deu. 19:21 and Deu. 25:2-3).
- O. How do we know that the same rule applies in cases of those liable to exile?
- P. We establish an analogy through the common use of the word “murderer.”
- Q. How do we know that the same rule applies in cases of those liable to exile?
- R. We establish an analogy through the common use of the word “murderer.”

II.1 A. [Supply:] Now lo, the Sadducees say, “Only when the accused has actually been put to death, since it is said, ‘A life for a life’ (Deu. 19:21).” Sages said to them, “And has it not also been said, ‘And you will do to him as he had planned to do to his fellow’ (Deu. 19:19)? And lo, his fellow is still alive! If so, why has it been said, ‘A life for a life’? For one might suppose that from that very moment at which [the judges] have received their testimony [which is proved to be perjury], they should be put to death. Scripture says, ‘A life for a life’ — lo, they are put to death only at the conclusion of the trial.”]

- B. *It has been taught on Tannaite authority:*
- C. Said R. Judah b. Tabbai, “May I never see consolation if I did not put to death a single witness who was proved to be a perjurer. This was to root out

from the heart of the Boethusians the position that they stated: a perjured witness could be put to death only after the person whom he had accused had actually been executed.' [That could have been done only if two witnesses had given testimony. The individual perjurer has been put to death even though his testimony could not have convicted the accused; Judah wanted to prove his point even in this irregular way.]

- D. Said to him Simeon b. Shatah, "May I never see consolation, if you have not shed innocent blood. For lo, sages have said, 'Perjured witnesses are put to death only if both of them have been proved perjurers, and they are flogged only if both of them have been proved perjurers.'"
- E. Forthwith R. Judah b. Tabbai undertook never to give a decision unless it was in the presence of Simeon b. Shatah.
- F. And for all of his days did R. Judah b. Tabbai prostrate himself on the grave of that false witness, and his screams were heard abroad.
- G. People thought, "This is the scream of the slain man."
- H. He said, "It was my very own scream. You may know that that is the fact, for when I die, you will not hear the scream any more."
- I. *Said R. Aha b. R. Raba to R. Ashi, "But maybe he went to court with the deceased or gotten his forgiveness [on which account there was no more crying, so this proves nothing]."*

I.1 goes over the Mishnah's rule and restates it in an exegetical framework. No. 2 provides an important Tannaite complement.

1:7-8

1:7

- A. "At the mouth of two witnesses or three witnesses shall he that is to die be put to death" (Deu. 17: 6).
- B. If the testimony is confirmed with two witnesses, why has the Scripture specified three?
- C. But: [the purpose is] to draw an analogy between three and two.
- D. Just as three witnesses prove two witnesses to be false, also two witnesses may prove three witnesses to be false.
- E. And how do we know that [two witnesses may prove false] even a hundred?
- F. Scripture says, "Witnesses."
- G. R. Simeon says, "Just as two" are put to death only if both of them are proved to be perjurers, also three witnesses are put to death only if all three of them are proved to be perjurers.
- H. "And how do we know that this applies even to a hundred?"
- I. "Scripture says, 'Witnesses.'"
- J. R. Aqiba says, "The mention of the third [witness] is only to impose upon him a strict rule and to treat the rule concerning him as the same as that applying to the other two.

- K. “And if Scripture has imposed a punishment on someone who gets involved with those who commit a transgression, precisely equivalent to that which is imposed on those who themselves commit the transgression,
- L. “how much the more so will [Heaven] pay a just reward to the one who gets involved with those who do a religious duty, precisely equivalent to that which is paid to those who themselves actually do the religious duty”

1:8

- A. Just as, in the case of two [witnesses], if one of them turns out to be a relative or otherwise invalid, the testimony of both of them is null,
- B. so in the case of three, [if] one of them turns out to be a relative or otherwise invalid, the testimony of all three of them is null.
- C. How do we know that the same rule applies even in the case of a hundred?
- D. Scripture says, Witnesses.
- E. [6A] Said R. Yosé, “Under what circumstances? In the case of trials for capital crimes.
- F. “But in the case of trials in property litigations, the testimony may be confirmed with the remaining [valid witnesses].”
- G. Rabbi says, “All the same is the rule governing property cases and capital cases.”
- H. This is the rule when [both witnesses] warned the transgressor.
- I. But if they had not joined in warning the transgressor, what should two brothers do who saw someone commit homicide?

We begin with a qualification of the rule of the Mishnah.

- I.1** A. [Just as three witnesses prove two witnesses to be false, two witnesses may prove false even a hundred]:] said Raba, “That rule [on the power of two witnesses to prove a hundred to be perjurers] applies in particular to a case in which all of them testified without significant spells of interruption between one and the next [so that we treat the entire testimony as unified].”
- I.2.** A. *Said R. Aha of Difti to Rabina, “Since the definition of making a series of statements without significant spells of interruption between one and the next is specified as the interval that it takes a disciple to say, ‘Peace to you, my lord and teacher,’ it is clear that the evidence of a hundred witnesses is going to take much more time than that!”*
- B. *He said to him, “The statement of each comes forth uninterruptedly after the statement of the other [and that qualifies].”* [The testimony is not disjointed, in that the process of testifying is continuous.]
- II.1** A. R. Aqiba says, “The mention of the third [witness] is only to impose upon him a strict rule and to treat the rule concerning him as the same as that applying to the other two...Just as, in the case of two [witnesses], if one of them turns out to be a relative or otherwise invalid, the testimony of both of them is null, so in the case of three, [if] one of them turns out to be a relative or otherwise invalid, the testimony of all three of them is null:”

The rule of the Mishnah yields an anomaly, which is laid out: the murdered party is a (third) witness and not a valid one, so the murderer can never be tried.

- B. Said R. Pappa to Abbayye, "Then the murdered party's presence at the murder will itself save the murderer from the death penalty" [Lazarus: since he is an interested party in the case, and a witness of the crime is his own kin, in which case the death penalty could never be applied.]
- C. "We deal with a case in which the murderer did the killing from behind the victim."
- D. "But the fact that the one who was raped was present at the rape will save the criminal from the death penalty!"
- E. "We deal with a case in which the rapist did the rape from behind the victim."
- F. "Then let the presence of the murderer in each of these cases serve to disqualify the testimony?"
- G. *He shut up.*
- H. *When he came before Raba, he said to him, "Scripture states, '...at the mouth of two witnesses or at the mouth of three witnesses shall the matter be established' (Deu. 19:15), meaning, the Scripture speaks only of those who have to establish the matter [and not of the participants]."*

III.1 A. Said R. Yosé, "Under what circumstances? In the case of trials for capital crimes. But in the case of trials in property litigations, the testimony may be confirmed with the remaining [valid witnesses]." Rabbi says, "All the same is the rule governing property cases and capital cases:"

- B. *What do the judges say to the witnesses?*
- C. *Said Raba, "This is what we say to them: did you come to see or to bear testimony? If they say that they came to bear witness, then if one of them turned out to be a relative or invalid, the testimony is null. If they say that they came to see [but not to bear witness, then the remaining testimony is validated]."*

IV.1 A. [But if they had not joined in warning the transgressor, what should two brothers do who saw someone commit homicide:]

- B. *It has been stated:*
- C. Said R. Judah said Samuel, "The decided law accords with the position of R. Yosé."
- D. And R. Nahman says, "The decided law is in accord with Rabbi."

I.1 clarifies the application of the Mishnah's rule. No. 2 clarifies the foregoing. II.1 raises some casuistic questions, yielding resort to a scriptural proof, instead of one based on reason. III.1 explains how we make the distinction for which the Mishnah calls, and IV.1 indicates how the decided law is defined.

1:9

- A. [6B] [If] two saw the incident from one window, and two saw it from another window,
- B. and one warns [the transgressor] in the middle,
- C. when part of one group see part of another, lo, these constitute [disjoined witnesses nonetheless form] a single body of testimony [subject to the rules given above].
- D. But if not, lo, these constitute two distinct bodies of testimony.

- E. Therefore, if one of them turns out to be perjured, [the transgressor] and those two witnesses are put to death, but the other group of witnesses is exempt.
- F. R. Yosé says, “Under no circumstances is one put to death unless both witnesses against him have given warning to him,
- G. “as it is said, ‘At the testimony of two witnesses’ (Deu. 17: 6).”
- H. Another matter:
- I. “At the mouth of two witnesses” [directly] — that a sanhedrin should not listen to the testimony through the intervention of a translator.

The invalidity of disjointed testimony — the witnesses seeing the same incident but not one another — is now proven from Scripture.

- I.1 A. Said R. Zutra b. Tobiah said Rab, “How on the basis of Scripture do we know that disjointed testimony is invalid? As it is said, ‘At the mouth of one witness he shall not be put to death’ (Deu. 17: 6). *What is the meaning of the word ‘one’? Should we say it actually means one, literally? But that fact we derive from the opening part of the clause: ‘at the mouth of two witnesses or three witnesses shall he that is worthy of death be put to death.’ So what is ‘one witness’? It means, ‘one and the same testimony.’*”
- B. *So too it has been taught on Tannaite authority:*
- C. “At the mouth of one witness he shall not be put to death.” (Deu. 17: 6):
- D. this serves to cover under the law cases in which two persons see the criminal, one from one window, one from another, but they cannot see one another; these are not joined together to form a valid testimony.
- E. And not only so, but even if the two see the act sequentially from the same window, their testimony is not joined together.
- I.2. A. Said R. Pappa to Abbaye, “*But if you have maintained that in cases in which two persons see the crime, one from one window, one from another, but they cannot see one another; these are not joined together to form a valid testimony, then what need is there to go on with the case described in the language, And not only so, but even if the two see the act sequentially from the same window, their testimony is not joined together? In the former instance, after all, each of the two witnesses saw the entirety of the action. If their testimony is not joined together, then in a case in which the witnesses saw the action only in sequence so one saw only half the act and the other likewise, why specify the rule?*”
- B. *He said to him, “It was necessary to cover the case of one’s having intercourse with a woman who was in a consanguineous relationship” [Lazarus: where the merest superficial penetration constitutes carnal knowledge, and yet even here, disjointed testimony is not admissible].*
- I.3. A. Said Raba, “If both witnesses were within sight of the one who give the admonition [to the prospective criminal not to perform the act, with information on the penalty for doing so], or if the one who give the admonition saw them both, their testimony does joined together.”

- I.4.** A. And said Raba, “In regard to the admonition of which they spoke, even if it was stated by the victim of the crime himself, or even if it derived from a demon, that suffices.”
- I.5.** A. Said R. Nahman, “Disjoined testimony in monetary cases is valid, for it is written, ‘By the mouth of one witness he shall not be put to death’ (Deu. 17: 6), meaning, it is in particular in capital cases that such testimony is not valid, but in property cases it is valid.”
- B. *Objected R. Zutra, “Then what about the following: if so, in a capital case it should serve as a pretext for affording protection. [Lazarus: while disjoined testimony is not fit to effect a capital sentence, it should suffice to effect dismissal of the charge on the ground that, as a witness of disjoined evidence is disqualified in a capital charge, he disqualifies by his presence all other witnesses, even those whose testimony is otherwise valid.] How come then have we learned in the Mishnah: Therefore, if one of them turns out to be perjured, [the transgressor] and those two witnesses are put to death?”*
- C. *That’s a problem.*
- II.1** A. R. Yosé says, “Under no circumstances is one put to death unless both witnesses against him have given warning to him, as it is said, ‘At the testimony of two witnesses’ (Deu. 17: 6):”
- B. *Said R. Pappa, “But does R. Yosé really take this position? And have we not learned in the Mishnah: R. Yosé [b. R. Judah] says, “One who bears enmity [for his victim] is put to death, for he is in the status of one who is an attested danger” [M. Mak. 2:3J] [and there is no requirement of admonishing an attested danger]!”*
- C. *He said to him, “That is in fact R. Yosé [b. R. Judah]. For it has been taught on Tannaite authority: R. Yosé b. R. Judah says, ‘A colleague [in mastery of the Torah] does not have to be given an admonition, since an admonition is required only so as to distinguish between unknowing and deliberate action.’”*

- III.1** A. Another matter: “At the mouth of two witnesses [directly]” — that a sanhedrin should not listen to the testimony through the intervention of a translator:
- B. *Some people who spoke a foreign language came before Raba, who appointed an interpreter for them.*
- C. *But how could he have done so, for have we not learned in the Mishnah: that a sanhedrin should not listen to the testimony through the intervention of a translator?*
- D. *Raba really understood what they were saying, but he did not know how to talk the language.*

The next item is tacked on for no clear reason.

- III.2.** A. [7A] *Ilaa and Tubiah were related to one who had given a surety for a loan, but R. Pappa considered validating their evidence, since they were not related to either the debtor or the creditor.*
- B. *Said R. Huna b. R. Joshua to R. Pappa, “But if the borrower were not in hand, would the creditor not collect from the guarantor of the loan?”*

I.1 provides a scriptural demonstration for the rule of the Mishnah. No. 2 clarifies the foregoing. Nos. 3-5 then complement the basic clarification of the Mishnah. II.1 harmonizes two conflicting teachings of the same figure. III.1 shows how the rule works. I have not got the slightest idea why No. 2 is tacked on here. This sort of thing is exceedingly rare in our Talmud.

1:10

- A. **He whose trial ended and who fled and was brought back before the same court —**
 - B. **they do not reverse the judgment concerning him [and retry him].**
 - C. **In any situation in which two get up and say, “We testify concerning Mr. So-and-so that his trial ended in the court of such-and-such, with Mr. So-and-so and Mr. So-and-so as the witnesses against him,”**
 - D. **lo, this one is put to death.**
 - E. **[Trial before] a sanhedrin applies both in the land and abroad.**
 - F. **A sanhedrin which imposes the death penalty once in seven years is called murderous.**
 - G. **R. Eleazar b. Azariah says, “Once in seventy years.”**
 - H. **R. Tarfon and R. Aqiba say, “If we were on a sanhedrin, no one would ever be put to death.”**
 - I. **Rabban Simeon b. Gamaliel says, “So they would multiply the number of murderers in Israel.”**
- I.1** A. **He whose trial ended and who fled and was brought back before the same court — they do not reverse the judgment concerning him [and retry him]:**
- B. Before that court in particular the judgment is not reserved, but it may be reversed before some other court! *But then it is taught further on: In any situation in which two get up and say, “We testify concerning Mr. So-and-so that his trial ended in the court of such-and-such, with Mr. So-and-so and Mr. So-and-so as the witnesses against him,” lo, this one is put to death!*
 - C. Said Abbaye, “This is no contradiction. The one statement refers to a court in the land of Israel, the other, to a court abroad.”
 - D. *For it has been taught on Tannaite authority:*
 - E. **R. Judah b. Dosetai says in the name of R. Simeon b. Shatah, “If one fled from the land to abroad, they do not reverse the verdict pertaining to him. If he fled from abroad to the land, they do reverse the verdict concerning him, because of the higher priority enjoyed by the land of Israel” [T. San. 3:11A-B].**
- II.1** A. **Trial before] a sanhedrin applies both in the land and abroad:**
- B. *What is the source of this rule?*
 - C. *It is in line with that which our rabbis have taught on Tannaite authority:*
 - D. “And these things shall be for a statute of judgment to you throughout your generations in all your dwellings” (Num. 35:29) —
 - E. we learn from that statement that the sanhedrin operates both in the land and abroad.

- F. If that is so, then why does Scripture state, “Judges and officers you shall make for yourself in all your gates that the Lord God gives you tribe by tribe” (Deu. 16:18) [meaning only in the tribal land, in the land of Israel]?
- G. “In your own gates you set up courts in every district and every town, but outside of the land of Israel you set up courts in every district but not in every town.”

III.1 A. A sanhedrin which imposes the death penalty once in seven years is called murderous. R. Eleazar b. Azariah says, “Once in seventy years:”

- B. *The question was raised: does the statement, A sanhedrin which imposes the death penalty once in seven years is called murderous mean that even one death sentence was enough to mark the sanhedrin as murderous, or is this merely a description of how things are?*
- C. *The question stands.*

IV.1 A. R. Tarfon and R. Aqiba say, “If we were on a sanhedrin, no one would ever be put to death.” Rabban Simeon b. Gamaliel says, “So they would multiply the number of murderers in Israel:”

- B. *So what would they actually do?*
- C. *R. Yohanan and R. Eleazar both say, “Did you see whether or not the victim was already dying from something, or was he whole when he was killed?” [Such a question would provide grounds for dismissing the charge of murder, if the witnesses could not answer properly.]*
- D. *Said R. Ashi, “If they said that he was whole, then, ‘Maybe the sword only cut an internal lesion?’”*
- E. *And in the case of a charge of consanguineous sexual relations, what would they actually do?*
- F. *Both Abbayye and Raba said, “Did you see the probe in the kohl-flask [the penis in the vagina, that is, actually engaged in sexual relations]?”*
- G. *And as to rabbis, what would suffice for conviction?*
- H. *The answer accords with Samuel, for said Samuel, “In the case of a charge of adultery, if the couple appeared to be committing adultery [that would be sufficient evidence].”*

I.1 clarifies the language of our passage. II.1 provides a source in Scripture for the rule of the Mishnah. III.1 and IV.1 provide minor glosses for the Mishnah’s language.