

# Toldot Shimshon

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## Chapter I – Mishnah 9

שמעון בן שטח אומר, הני מרבה לתקור את העדים, והני זהיר בדבריה, שמא מתוכם ילמדו לשקר.

**Shimon ben Shetach used to say: Be thorough in the interrogation of witnesses, and be careful with your words, lest from them they learn to lie.**

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**בסנהדרין** פרק ה' תנו, היו בודקין אותו בשבע תקירות, וכל המרבה בבדיקות, הרי זה משובח. והרמב"ם ז"ל בפרק כ' מהלכות סנהדרין פתב, אם העידו עליו שנים שעבד עבודה זרה, זה ראהו שעבד את הסמה והתרה בו, וזה ראהו שעבד הלבנה והתרה בו, אין מצטרפין, שנאמר "ונקי וצדיק אל-תהרג", הואיל ויש שם צד לנקותו ולהיותו צדיק, אל תהרגהו, עכ"ל.

In tractate **Sanhedrin, chapter 5, Mishnah 1, it is taught:** “[The court] would examine [the witnesses in capital cases] with seven interrogations [relating to the time and place of the crime]<sup>1</sup> . . . . And the more [a judge] questions [the witnesses] with interrogations, the more praiseworthy it is.”

The Rambam, of blessed memory, writes in the *Mishneh Torah*, chapter 20 of the Laws of the Sanhedrin, halacha 1: “If two [witnesses] testify against [the defendant] that he engaged in idolatry, one saw him worshipping the sun and he warned him [that it was a capital offense], and [the other] saw him worshipping the moon and he warned him, [their testimony] does not combine, as it is said, ‘do not kill those who are innocent and in the right,’<sup>2</sup> since there is a side by which to find him innocent (literally, “to cleanse him”) and to be righteous, do not kill him.”

ובפרק א' מהלכות עדות פתב, ומקלל התקירות יתר על השבע השוות בכל, שאם העידו עליו שעבד עבודה זרה, שואליו להם, את מה עבד, ובאיזו עבודה עבד וכו', וכן כל פיוצא בזה. והפסוק משנה שם בפרק ב' הקשה עליו, שאלו הדברים אינם נכנסים בסוג התקירות, אלא הרי הם בבדיקות. והגיס הדבר בצריך עיון, ועיין שם.

In Chapter 1 of the *Mishneh Torah*, the Laws of Testimony, halacha 4, he wrote: “In addition to these seven interrogations, which apply equally [for every capital case], they add

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<sup>1</sup> Namely: (1) In which seven year cycle the event occurred; (2) In which year; (3) In which month; (4) On which day of the month; (5) On which day of the week; (6) At what time; and (7) In which place.

<sup>2</sup> Ex. 23:7.

**additional ones** [i.e., additional interrogations, as relevant to the particular case]. **If they testify against him that he engaged in idolatry, they ask them, which [god] did he worship, and which type of worship, etc., and all the similar** [relevant questions to the particular case].

The *Kesef Mishneh*<sup>3</sup> asks about this holding of the Rambam there, i.e., Laws of Testimony, chapter 2, halacha 1. His concern is **that** the Rambam says that the court should add to interrogations, but then lists **these additional things that do not fall under the category of interrogations** [*chakirot*], as they do not pertain to the time and place of the crime, **but rather they are like examinations** [*bedikot*]. **He established the matter as requiring investigation, and see there.** This question will be addressed in further detail below.

The Rambam himself discusses the different types of questions:

What is [the difference] between interrogations [*chakirot*] and examinations [*bedikot*]? For interrogations [*chakirot*] and the critical questions relevant to the crime [*derishot*], if one witness gave specific testimony and the second said: “I do not know,” their testimony is nullified. With regard to the examinations [*bedikot*], by contrast, even if both of them say: “I don't know,” their testimony is allowed to stand. If, however, they contradict each other, even with regard to the “examinations,” their testimony is nullified.

What is implied? The witnesses testified that one person killed another. [In answering the interrogations, the *chakirot*,] one of the witnesses specified the year of the seven-year cycle, the year, the month, the date, the day of the week, Wednesday, the time, 12 noon, and the place of the murder. Similarly, [in answering critical questions, the *derishot*,] they asked him: “With what did he kill him?” and he answered: “With a sword.” If the second witnesses outlined his testimony in the same manner except for the time, i.e., he said: “I do not know the time of day at which the murder took place,” or he was able to specify the time, but said: “I don't know what he used to kill him. I did not take notice of the murder weapon,” their testimony is nullified.

If, however, [in answering examinations, the *bedikot*,] they outlined all the above factors identically, but were asked: “Was he dressed in black or white?” their testimony is allowed to stand if they replied: “We don't know. We did not pay attention to factors like these which are of no consequence.”

- *Mishneh Torah*, Laws of Testimony, chapter 2, halacha 1

Why does an answer of “I don't know” nullify interrogations and critical questions, but not examinations? Imagine that two people conspire to give false testimony, testifying that they saw the defendant commit a murder at a given time and place, using a sword. If two other witnesses

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<sup>3</sup> Rabbi Joseph Karo (1488–1575), author of the Beit Joseph and Shulchan Aruch. The *Kesef Mishneh* (Venice, 1574–75) is a commentary on the Rambam's *Mishneh Torah*.

then come and say, “At the time of the crime, we were with the first two witnesses in a different place,” or a medical examiner testifies that the victim was strangled, that would prove that the first witnesses could not have witnessed the murder, and thus they are false, conspiring witnesses. What if the first two witnesses realize this potential danger, and answer “I don’t know” to the interrogations or critical questions. This would eliminate the possibility of them being challenged and proven to be false, conspiring witnesses. To prevent this, the Torah nullifies their testimony, even though they could be true witnesses and the nullification of their testimony could result in the murderer going free.

In contrast, with examinations, such as what clothing the murderer was wearing, if one or both answer “I don’t know,” this doesn’t prevent the possibility that two other witnesses can come forward and say, “At the time of the crime, we were with the first two witnesses in a different place,” which would prove that the first witnesses could not have witnessed the murder, and thus they are false, conspiring witnesses. As that possibility exists, their “I don’t know” answer to the non-critical examination questions does not invalidate their testimony.<sup>4</sup>

וְלַעֲנִיּוֹת דַּעֲתִי, שֶׁשָּׁשֶׁט מִשְׁנָה הַזֶּה הִיא סִיּוּעַ לְדַבְרֵי הַרַמְבַּ"ם, דְּמוּכַח מִיַּנְיָה שֶׁאֵף בְּחִקְיֵרוֹת שִׁיָּדָה רַבּוּי, וְאֶפְשָׁר שֶׁהָרֵב עֲצָמוֹ סָמָךְ עָלֶיהָ. וְיִמָּה שֶׁהִקְשָׁה עוֹד הַכֶּסֶף מִשְׁנָה, אִם אָמַר אֵינִי יוֹדֵעַ, לָמָּה יַעֲדוּתוֹ בְּטִלָּה, הֲאֵין אֵין הָעֵדִים גִּיּוּמִים עַל גְּדָם. כָּבָר תִּירָץ שֶׁפִּיר בַּעַל מִשְׁנָה לְמַלְךְ, וְעִיּוֹן שָׁם.

**In my humble opinion, the simple explanation of this Mishnah, i.e., “be thorough in the interrogation of witnesses,” is an aid to the words of the Rambam, as it is proven from it that even for the interrogations, the greater the number is relevant. It’s possible that the rabbi, i.e., the Rambam, himself relied upon this Mishnah.**

**The *Kessef Mishneh* further questioned** the Rambam’s inclusion of questions such as which god the accused idolator worshipped as being an interrogation instead of an examination. **If [the witness] said “I don’t know” to such questions, why is his testimony invalid, for can’t the witnesses be challenged as being false, conspiring witnesses.** Perhaps the *Kessef Mishneh* was thinking that an interrogation was limited to questions of time and place, and the question of which god was worshipped was clearly not in that category. As to why a witness could answer “I don’t know” to that question and still be challenged as being a false, conspiring witness, he perhaps meant that the witness could be challenged as false based on his answers to the interrogation questions of time and place.

This concern of the *Kessef Mishneh* **was already solved nicely by the *Mishneh la’Melech*,<sup>5</sup> and see there.** He writes that questions such as to what the defendant was wearing are factors of no consequence, such that an answer of “I do not know” does not invalidate their testimony. However, questions such as which god the defendant worshipped, or with what weapon

<sup>4</sup> Sanhedrin 40a, 41b; Pesachim 12a.

<sup>5</sup> Judah ben Samuel Rosanes (1657–1727), author of *Mishneh la’Melech* (1731), a commentary on the *Mishneh Torah*.

he killed the victim, are particularly relevant to the crime. I.e., a witness to a murder would know whether he had seen the defendant use a sword or instead strangle the victim, so one answering “I don’t know” would likely be trying to avoid having other witnesses come and testify as to the actual instrument of death. Thus, his testimony should be nullified.<sup>6</sup>

ובפרק ד' דסנהדרין דף ל"ב ע"ב אמרינו, דיגי נפשות פותחין לזכות, היכי אמרינו, אמר רב יהודה, הכי אמרינו להו, מי יימר כדקאמרינו. אמר ליה עולא, והא חסמינו להו. ולחסמו, מי לא תנא, מסייעין את העדים ממקום למקום, כדי שתשרף דעתו, ויחזרו פיהם. מי דמי, התם ממילא קא מידחו, הכא קא דחינו להו בגידים וכו'. ופרש רש"י, קא דחינו להו בגידים, וקרא כתיב "ובערת הרע", עכ"ל.

**In the fourth chapter of tractate Sanhedrin, page 32b, it is said:**

[In cases of] **capital law**, [after hearing the testimony of the witnesses,] [**the judges**] **open** [the deliberations] **in the merit** [of the accused]. **What do we say? Rav Yehuda said: “We say this to them: ‘Who says [it occurred] as you said?’ ”**

**Ulla said to him: “But** [by confronting the witnesses thus,] **we silence them.”** [I.e., they will think that the court suspects them of lying, and they will not testify. Rav Yehuda said to him:] **“And let them be silenced. Isn’t it taught** [in a Baraita]: **‘Rabbi Shimon ben Eliezer says:** [In cases of capital law, the court] **brings the witnesses from place to place in order to confuse them so that they will retract** [their testimony if they are lying].’ ”

**Are these comparable? There,** [where witnesses are brought from place to place], **[the witnesses] are repressed by themselves. Here,** [where the court asks, “Who says it occurred as you said,]” **we are repressing them by action** [and a court should not do this].

- Sanhedrin 32b

**Rashi explained “ ‘We are repressing them by action:’ and it is written by Scripture: ‘Thus you will sweep out evil from your midst.’ ”**<sup>7</sup> In other words, we want to be cautious not to convict an innocent man, but we also have an obligation to remove evil people from society. So a court must balance their actions. It seems that moving witnesses around to make them nervous so that they may retract, if lying, is acceptable, whereas openly challenging witnesses who we have no reason to doubt is wrong.

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<sup>6</sup> It seems to the translator that questions such as what god an idolator worshipped would fall in the category of critical questions relevant to the crime [*derishot*]. It is interesting that neither the Kessef Mishneh nor the Mishneh La’Melech used that term. The critical edition of the Mishneh Torah prepared by Rabbi Yosef Kapach from ancient Yeminite manuscripts mentions the *derishot*, but as the Kessef Mishneh and Mishneh La’Melech were written 300 and 500 years after the Mishneh Torah, perhaps the authors of those works had copies of the Mishneh Torah that did not include the term “*derishot*.”

<sup>7</sup> Deut. 13:6.

והוּ הוּ דְּבָרֵי הַתַּנַּח, הַגֵּי מִרְבֵּה לְתַקְוֹר אֶת הַעֲדִים, כְּלוּמֵר, אִי עַל גַּב דְּלֵא תַנּוּן רַק שְׁבַע תַּקְוֹרוֹת, תּוּכַל לְהוֹסִיף עֲלֵיהֶם כַּנִּל, וְאִי זֶה הַרִיבּוּי יִהְיֶה מִכָּלל הַתַּקְוֹרוֹת. וְהַטַּעַם הוּא כְּמוֹ שְׁכַתֵּב הַרִב עֲצָמוֹ בְּפֶרֶק כ' מִהַלְכוֹת סְנֵהֲדָרִיו, "וְנָקִי וְצַדִּיק" וְכוּ', הוּאִיל וְיֵשׁ צַד לְנִקּוֹתוֹ, כַּנִּל.

**These, then, are the words of the Tanah: “Be thorough in the interrogation of witnesses,” as if to say, even though only seven interrogations were taught, you are able to add to them, as above, and even this increase is included in the interrogations. The reason is as the rabbi himself wrote in chapter 20 of the Laws of the Sanhedrin, halacha 1, “do not kill those who are innocent and in the right,” since there is a side by which to find him innocent (literally, “to cleanse him”), as above.**

וְאִם תֹּאמֵר, אִם כֵּן, הוּאִיל דְּמַהֲדָרִינָן אֶפּוֹלְהוּ צְדָדִים כְּדֵי לְנִקּוֹתוֹ, אִי כְּשִׁפְתָּחוּ בְּנִכּוֹת יִהְיוּ אוֹמְרִים לָהֶם, מִי יֵימַר כְּדַקְאֵמְרִיתוּ, שְׁבַנְזָה אֶפְשָׁר שְׁיִתְחַזְרוּ בְּהֶם. מִשּׁוּם הַכִּי אָמַר, "וְהִגִּי זֶהִיר בְּדַבְרֵיךָ, שְׁמָא מִתּוֹכֶם" וְכוּ', דְּהִכָּא שְׂאֵנִי, מִשּׁוּם דְּאָנּוּ דְּחִינּוּ לְהוּ בְּיָדֵים, שְׁמַפִּי דְּבָרֵינוּ הֵם לוֹמְדִים לְחַזּוֹר בְּהֶם.

**If you’ll say: If so, since we seek with regard to all of them sides in order to find him innocent, even when [the judges] open [the deliberations] in the merit [of the accused], they will say to them, “Who says [that the event occurred] as you said,” for in this way it’s possible to send [the witnesses] away.**

**Because of this, he said, “and be careful with your words, lest from them they learn to lie.”**

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