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## Mishnah with a Twist [16]

### ... And if Not, They Stand to Count (Insights into Mishnah Sanhedrin 5:4-5)



#### Background of Our Story

**Differences between the procedures for cases of capital law and those for cases of monetary law.**



Koren Talmud Bavli, The Noe Edition. Sanhedrin Part 1. Koren publishers Jerusalem  
Page 207

There are fundamental differences between the procedures in place for cases of capital law and those for cases of monetary law, for several reasons. First and most obviously, because of the value of human life, the court must take care not to execute an innocent person. The Torah enjoins the court to attempt to acquit one accused of committing a transgression that results in court-imposed capital punishment. In cases of monetary law, in contrast, there are always two parties to the dispute. Any ruling to the benefit of one is to the detriment of the other, so the court has no reason to attempt to reach a specific verdict. Furthermore, it is noted that an incorrect judgment with regard to monetary matters can always be rectified in one manner or another, while death is irreversible.

#### The Text: Mishnah Sanhedrin 5:4-5

וְאַחַר כֵּן מְכַנְיָסִין אֶת הַשָּׁנִי וּבּוֹדְקִין אוֹתוֹ. אִם נִמְצְאוּ דְבָרֵיהֶם מְכוֹנְנִים,  
פּוֹתְחִין בְּזָכוֹת. אָמַר אֶחָד מִן הָעֵדִים: "יֵשׁ לִי לְלַמֵּד עָלָיו זְכוֹת", אוֹ אֶחָד  
מִן הַתְּלָמִידִים: "יֵשׁ לִי לְלַמֵּד עָלָיו חוֹבָה", מִשְׁתַּקֵּין אוֹתוֹ, אָמַר אֶחָד מִן  
הַתְּלָמִידִים: "יֵשׁ לִי לְלַמֵּד עָלָיו זְכוֹת", מַעְלִין אוֹתוֹ, וּמוֹשִׁיבִין אוֹתוֹ  
בִּינְיָהֶם, וְלֹא הָיָה יוֹרֵד מִשָּׁם כָּל הַיּוֹם כּוֹלוֹ. אִם יֵשׁ מִמֶּשׁ בְּדַבְּרָיו, שׁוֹמְעִין

לו. וְאֶפִּילוּ הוּא אוֹמֵר: "יֵשׁ לִי לְלַמֵּד עַל עֲצָמֵי זְכוֹת", שׁוֹמְעִין לוֹ, וּבְלִבָּד שֵׁשׁ מִמֶּשׁ בְּדַבְּרָיו.

וְאִם מָצְאוּ לוֹ זְכוֹת, פְּטְרוּהוּ. וְאִם לֹא, מַעֲבִירִין אוֹתוֹ לְמַחֵר. וּמִזְדוּוֹגִין זוּגוֹת זוּגוֹת. הָיוּ מְמַעֲטִין מִמֶּאֱכָל, וְלֹא הָיוּ שׁוֹתִין יַיִן כָּל הַיּוֹם. וְנוֹשְׂאִין וְנוֹתְנִין כָּל הַלֵּילָה, וְלִמְחָרֵת מִשְׁפִּימִין וּבָאִין לְבֵית דִּין.

הַמְזָכָה אוֹמֵר: "אֲנִי מְזָכָה, וּמְזָכָה אֲנִי בְּמִקוּמִי". וְהַמְחִיֵּב אוֹמֵר: "אֲנִי מְחִיֵּב, וּמְחִיֵּב אֲנִי בְּמִקוּמִי". הַמְלַמֵּד חוֹבֵה מְלַמֵּד זְכוֹת, אֲבָל הַמְלַמֵּד זְכוֹת אֵינוֹ יָכוֹל לְחַזֹּר וּלְלַמֵּד חוֹבָה. טְעוּ בְּדַבָּר, שְׁנֵי סוֹפְרֵי הַדְּיִינִין מְזָכְרִין אוֹתוֹ.

אִם מָצְאוּ לוֹ זְכוֹת, פְּטְרוּהוּ. וְאִם לֹא, עוֹמְדִים לְמִנְיָו. שְׁנַיִם עֶשֶׂר מְזָכְרִין, וְאֶחָד עֶשֶׂר מְחִיֵּבִין, זְכָאִי.

And afterward, after the court examines the first witness, they bring in the second witness and examine him. If the statements of the witnesses are found to be congruent, the court begins to deliberate the matter.

They open the deliberations with an appeal to anyone who can find a reason to acquit the accused.

If one of the witnesses said: I can teach a reason to acquit him, or if one of the students sitting before the judges said: I can teach a reason to deem him liable, the judges silence him, i.e., both the witness and the student. The reason is that these people are not allowed to offer information such as this. But if one of the students said: I can teach a reason to acquit him, they raise him to the seat of the court and seat him among them, and he would not descend from there the entire day, but would sit and participate in their deliberations. If the statement of that student has substance, the court listens to him. And if even the accused says: I can teach a reason to acquit me, the court listens to him and considers his statement, provided that his statement has substance.

And if the court found it fit to acquit him during the deliberations, as all or a majority of the judges agreed to acquit him, they excuse him. But if a majority does not find it fit to acquit him, they delay his verdict to the following day, and they then assign pairs of judges to discuss the matter with each other. They would minimize their food intake and they would not drink wine all day. And they would deliberate all night, and the following day they would arise early and come to court. One who yesterday was of the opinion to acquit the defendant says: I said to acquit, and I acquit in my place, i.e., I stand by my statement to acquit. And one who yesterday was of the opinion to deem him liable says: I said to deem him liable, and I deem him liable in my place. One who yesterday taught a reason to deem him liable may then teach a reason to acquit, but one who yesterday taught a reason to acquit may not then teach a reason to deem him liable. If they erred in the matter, as one of the judges forgot what he had said the previous day, two judges' scribes, who recorded the statements of the judges, remind him.

If the court then found it fit to acquit him unanimously, they excuse him, and if not, they stand to count the vote. If twelve judges vote to acquit him and eleven judges deem him liable, he is acquitted



**Explaining the Story** - What is going on in our story? (Explain the sequence of events)

### **Comprehension and Analysis Questions**

**?** Why does the court open the deliberations with an appeal to anyone who can find a reason to acquit the accused?

**?** Why, if a majority does not find it fit to acquit him, would they delay his verdict to the following day?

**?** Why do they assign pairs of judges to discuss the matter with each other?

**?** Why do the court members minimize their food intake and not drink wine at all?

Answer 1 \_\_\_\_\_

Answer 2 \_\_\_\_\_

Answer 3 \_\_\_\_\_

**Bonus ?** If the judges are going to vote at the end (if voting is contemplated as part of the process), why wouldn't they vote at the beginning of the process to save time?

### **"The Twist" – Or the Lessons We Can Learn from These Texts**

! "Faster isn't always better!" Or "When rushing the process can kill the conversation, the shaping of a community, and the possibility of building consensus."



"All in favor?" "Against?"

Our story illustrates how voting should be the last resort when it comes to important decisions (in this case it is literally a matter of life and death). Voting should be – when necessary- the conclusion of the process and not its beginning. While focusing simply on who is in favor and who is against can sometimes be used to address inconsequential decisions, every important decision should resort to voting as the last option.