

The Soncino Babylonian Talmud

Book II

Folios 29a-49b



SHEVUOS

**TRANSLATED INTO ENGLISH
WITH NOTES**

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SHEVUOS – 29a-49b

Shevu'oth 29a

and he ate figs,¹ and set apart the offering; and then he ate grapes alone,² the grapes are then only half the quantity,³ and for half the quantity he is not liable. So here also, if he said: 'I swear I shall not eat ten [figs],' and then he said, 'I swear I shall not eat nine [figs],' and he ate nine, and set apart the offering, and then he ate a tenth [fig], the tenth is then only half the quantity, and for half the quantity he is not liable.⁴

MISHNAH. WHAT IS A VAIN OATH? IF HE SWORE THAT WHICH IS CONTRARY TO THE FACTS KNOWN TO MAN, SAYING OF A PILLAR OF STONE THAT IT IS OF GOLD; OR OF A MAN THAT HE IS A WOMAN; OR OF A WOMAN THAT SHE IS A MAN; IF HE SWORE CONCERNING A THING WHICH IS IMPOSSIBLE, [AS E.G., 'IF I HAVE NOT SEEN A CAMEL FLYING IN THE AIR',⁵ OR, 'IF I HAVE NOT SEEN A SERPENT LIKE THE BEAM OF THE OLIVE PRESS'; IF HE SAID TO WITNESSES, 'COME AND BEAR TESTIMONY FOR ME', [AND THEY REPLIED,] 'WE SWEAR THAT WE WILL NOT BEAR TESTIMONY FOR YOU';⁶ IF HE SWORE TO ANNUL A PRECEPT, [AS E.G.,] NOT TO MAKE A SUKKAH,⁷ OR, NOT TO TAKE A LULAB,⁷ OR, NOT TO PUT ON TEFILLIN;⁷ THESE⁸ ARE VAIN OATHS, FOR WHICH ONE IS LIABLE, FOR WILFUL TRANSGRESSION, STRIPES, AND FOR UNWITTING TRANSGRESSION ONE IS EXEMPT. [IF A MAN SAID:] 'I SWEAR I SHALL EAT THIS LOAF; I SWEAR I SHALL NOT EAT IT,' THE FIRST IS AN OATH OF UTTERANCE,⁹ AND THE SECOND IS A VAIN OATH.¹⁰ IF HE ATE IT, HE TRANSGRESSED THE VAIN OATH; IF HE DID NOT EAT IT, HE TRANSGRESSED THE OATH OF UTTERANCE.¹¹

GEMARA. Ulla said: Provided that it was already known to three men.¹² IF HE SWORE CONCERNING A THING WHICH IS IMPOSSIBLE, [AS E.G.,] 'IF I HAVE NOT SEEN A CAMEL FLYING IN THE AIR.' 'I swear that I have seen,' he does not

say! What [then] is meant by, 'If I have not seen ? Abaye said: Learn, 'I swear I have seen.'¹³ Raba said: [The Mishnah means:] he said, '[I swear that] all the fruits of the world shall be prohibited to me, if I have not seen a camel flying in the air.' Said Rabina to R. Ashi: Perhaps this man saw a large bird, and gave it the name of camel, and when he swore, he swore according to his own mind;¹⁴ and if you say, we go according to his mouth, and we do not go according to his mind,¹⁵ [that cannot be,] for it has been taught: When they adjure him,¹⁶ they say to him, 'Know that we do not adjure you according to your own mind, but according to the mind of the Omnipresent and the mind of the Beth din.' What is the reason? Is it not because we say, perhaps he gave him counters,¹⁷ and called them Zuzim, in which case when he swears, he swears according to his own mind?¹⁸ — No! There [the reason is] because of the cane of Raba.¹⁹

Come and hear! And so we find that when Moses adjured the Israelites, he said to them: Know that I do not adjure you according to your own minds, but according to the mind of the Omnipresent and according to my mind.²⁰ Now, why [should he say this]? Let him say to them: Fulfill what God has decreed. Is it not then because they might bring to their minds an idol?²¹ — No! But because an idol is also called god,²² for it is written: gods of silver, or gods of gold, [ye shall not make unto you].²³ — Well, let him say to them: Fulfill the Torah.²⁴ — [That might have implied] one Torah.²⁵ Let him [then] say: Fulfill the two Torah. — [That might have implied] the Torah of sin offering and the Torah of trespass offering.²⁶ [Let him say:] Fulfill the whole Torah. — [That might have implied merely the avoidance of] idolatry,²⁷ for it has been said: Important is idolatry in that he who denies it is as if he accepts the whole Torah.²⁸ Well, let him say to them: Fulfill the precept. — [That would have implied] one precept. [Let him say:] Fulfill the precepts. — [That might have implied merely] two. [Let him say: Fulfill] all the precepts. — [That

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might have implied] the precept of zizith,²⁹ for a Master said: The precept of zizith is equal to all the precepts together.³⁰ Then, let him say to them: Fulfill the six hundred and thirteen precepts. — But, even according to your reasoning,³¹ let him say. ‘According to my mind;’ why is it necessary to add, ‘according to the mind of the Omnipresent’?³²

- (1) Having forgotten the second oath.
- (2) Having forgotten the first oath.
- (3) I.e., only a portion of that which he prohibited to himself by the first oath, for as soon as he had set apart his offering for the figs, they can no longer combine with the grapes to make him liable for the first oath; so that he is not now transgressing the first oath by eating the grapes, for the oath was ‘grapes and figs’.
- (4) If he had not yet set apart the offering for the nine figs, and had eaten the tenth fig, he would have been liable for the first oath also; but now that he has set apart the offering for the nine, they no longer combine; he is therefore now eating only one fig, and is not thereby transgressing the first oath.
- (5) The Gemara explains why the oath is not positive: ‘I swear I have seen a camel flying’.
- (6) This is annulling a precept, for they must bear testimony, if they were witnesses; Lev. V, 1.
- (7) V. Glos.
- (8) All those mentioned in the Mishnah.
- (9) Lev. V, 4: if any one swear uttering with his lips to do evil, or to do good.
- (10) For he is swearing to annul a precept; the fulfilling of his first oath is incumbent upon him like a precept.
- (11) In addition to transgressing the vain oath (v. infra 29b).
- (12) That the pillar is of stone; then it is a vain oath (for at the moment of utterance its falsity is already evident); but if it was not known to three men, it is a false oath, and not a vain oath.
- (13) I.e., emend the Mishnah.
- (14) And not according to the universally accepted view of what the word ‘camel’ connotes; therefore it is not a vain oath, for he really did see a ‘camel’ (the name he gave in his own mind to the large bird) flying.
- (15) Therefore it is a vain oath, for his mouth said ‘camel’, i.e., what is universally recognized as camel.
- (16) When the Beth din impose an oath on a litigant in court.
- (17) Perhaps the debtor (who has to swear) had given to the creditor counters, such as are used as tokens (instead of money) in the game of iskundre (a kind of draughts or chess).

(18) I.e., when taking the oath the debtor may have mentally called the counters Zuzim; therefore the Beth din say to him that the oath must be taken according to their mind, not his (i.e., mental reservations are not taken account of); hence, since the Beth din's warning is necessary, we deduce that an oath (were it not for the Beth din's warning) would take effect in accordance with the mind of the utterer.

(19) Ned. 25a; a case came before Raba where the debtor, when ordered by Raba to take an oath, handed the creditor a cane to hold for a moment while he took the oath: ‘I swear I have given to the creditor the money I owe him.’ The creditor, in a fit of temper, broke the cane, and a number of coins (the amount of the debt) fell out. The debtor had put the coins in a hollow cane; the oath he took was true: he had given the creditor the money he owed him (by handing him the cane, which he would have taken back later). To avoid the occurrence of such an incident as this the Beth din warn the debtor that the oath he takes is in accordance with their mind, and not his. Hence, the Beth din's warning is necessary not because a man may swear an oath with mental reservations, but because he may swear a true oath (though with trickery). It may be, therefore, that in an oath we go according to the mouth and not the mind.

(20) Deut. XXIX, 13: Neither with you only do I make this covenant and this oath, i.e., neither with you only, not as you yourselves think (with possible reservations in your minds) do I impose this oath of allegiance upon you.

(21) I.e., they might in their own minds interpret the word ‘God’ by ‘idol’; hence, an oath is in accordance with the mind of the utterer; and therefore Moses had to warn them.

(22) An oath is in accordance with the mouth (i.e., actual words uttered); and ‘god’ may actually imply ‘idol’.

(23) Ex. XX, 20.

(24) Yet he did not say this because, presumably, they could have made a mental reservation (when taking the oath to fulfill the Torah) that sins be included in the word ‘Torah’; hence, we go according to the mind or thought of the utterer of the oath.

(25) Therefore he could not have imposed the oath in that form, for we have two Torah, written and oral.

(26) Lev. VI, 18: זאת תורת הקטאת *ibid.* VII, 1: זאת תורת האשם The name ‘Torah’ is applied to the laws concerning sin offerings and trespass offerings, as also to the laws concerning burnt offerings (Lev. VI, 2) meal offerings (VI, 7), and peace offerings (VII, 11). If Moses had said: ‘Fulfill the two Torah’, the Israelites, in taking the oath, might have intended it to apply only to the laws concerning sin offerings and trespass offerings (or any other two, such as

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burnt offerings and peace offerings) to which the name תורה is specifically applied, but not to any other precepts.

(27) Had the oath been imposed in that form, they could have fulfilled it by merely refraining from idol worship, without fulfilling any other commandments.

(28) Num. XV, 22: And if ye err, and do not observe all these commandments; it is explained (Hor. 8a) that all these commandments refers to idolatry.

(29) The fringes; Num. XV, 38.

(30) Ibid. 39: that he may look upon it, and remember all the commandments of the Lord; v. Men. 43b.

(31) You infer that the reason for the formula of the oath which Moses administered to the Israelites was because they might have made mental reservations.

(32) Moses could have said, 'I adjure you according to my mind, not yours.' That would have sufficed to overcome the difficulty of possible mental reservations on their part.

UNWITTING TRANSGRESSION, A SLIDING SCALE SACRIFICE. A VAIN OATH APPLIES TO MEN AND WOMEN, TO NON-RELATIVES AND RELATIVES, TO THOSE QUALIFIED [TO BEAR WITNESS] AND THOSE NOT QUALIFIED, [WHETHER UTTERED] BEFORE THE BETH DIN OR NOT BEFORE THE BETH DIN, [BUT IT MUST BE UTTERED] WITH HIS OWN MOUTH; AND HE IS LIABLE, FOR WILFUL TRANSGRESSION, STRIPES, AND FOR UNWITTING TRANSGRESSION HE IS EXEMPT. [IN THE CASE OF] BOTH THIS AND THAT [OATH], IF HE WAS ADJURED BY THE MOUTH OF OTHERS, HE IS LIABLE; THUS, IF HE SAID, 'I HAVE NOT EATEN TODAY,' OR, 'I HAVE NOT PUT ON TEFILLIN TODAY,' [AND THE OTHER SAID,] 'I ADJURE THEE,' AND HE SAID, 'AMEN!' HE IS LIABLE.

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Obviously, therefore, merely so that there should not be any absolution for their oath.¹

'IF I HAVE NOT SEEN A SERPENT LIKE THE BEAM OF THE OLIVE PRESS.' And is it not [possible]?² Lo! There was one in the reign of King Shapur³ which swallowed thirteen hides⁴ stuffed with straw.⁵ — Samuel said: [He meant] striped.⁶ But they are all striped! [He meant] striped on his back.⁷

'I SWEAR I SHALL EAT THIS LOAF; I SWEAR I SHALL NOT EAT IT', etc. Now, for the oath of utterance he is liable, and for the vain oath he is not liable?⁸ Surely, the oath was uttered in vain! — R. Jeremiah said: Learn, ALSO THE OATH OF UTTERANCE.⁹

MISHNAH. THE OATH OF UTTERANCE APPLIES TO MEN AND WOMEN, TO RELATIVES AND NON-RELATIVES,¹⁰ TO THOSE QUALIFIED [TO BEAR WITNESS] AND THOSE NOT QUALIFIED,¹¹ [WHETHER UTTERED] BEFORE THE BETH DIN, OR NOT BEFORE THE BETH DIN, [BUT IT MUST BE UTTERED] WITH A MAN'S OWN MOUTH;¹² AND HE IS LIABLE, FOR WILFUL TRANSGRESSION, STRIPES, AND FOR

GEMARA. Samuel said: He who responds 'Amen' after an oath — it is as if he uttered the oath with his own mouth, for it is written: And the woman shall say, Amen, Amen.¹³ R. Papa said in the name of Raba: A Mishnah and a Baraitha also prove it, for the Mishnah states: 'The oath of testimony applies to men, and not to women; to non-relatives, and not to relatives; to those qualified [to bear witness], and not to those unqualified; and it applies only to those liable to bear witness; and [whether uttered] before the Beth din or not before the Beth din, [if uttered] with his own mouth; but if [adjured] by the mouth of others, he is not liable unless he denies it before the Beth din: this is the opinion of R. Meir.'¹⁴ And in the Baraitha it was taught: What is the oath of testimony? He said to witnesses, 'Come and bear testimony for me;' [and they replied,] 'We swear we know no testimony for you,' or they said,¹⁵ 'We know no testimony for you,' [and he said,] 'I adjure you,' and they responded. 'Amen' — whether [it was uttered] before the Beth din, or not before the Beth din, whether from their own mouths or the mouths of others, since they denied [knowing any testimony], they are liable: this is the opinion of R. Meir. Now, they contradict each other!¹⁶ Obviously, therefore, we deduce from this that here¹⁷ [it

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is a case where] he said ‘Amen,’¹⁸ and there¹⁹ [a case where] he did not say ‘Amen’. This proves it.²⁰

Rabina said in the name of Raba: Our Mishnah also proves it, for it states: **THE OATH OF UTTERANCE APPLIES TO MEN AND WOMEN, TO NON-RELATIVES AND RELATIVES, TO THOSE QUALIFIED [TO BEAR WITNESS] AND THOSE NOT QUALIFIED, [WHETHER UTTERED] BEFORE THE BETH DIN OR NOT BEFORE THE BETH DIN, [BUT IT MUST BE UTTERED] WITH HIS OWN MOUTH. [Hence, if uttered] WITH HIS OWN MOUTH, he is liable; but from the mouth of others, he is not liable. And yet the last clause states: [IN THE CASE] OF BOTH THIS AND THAT [OATH], IF HE WAS ADJURED BY THE MOUTH OF OTHERS HE IS LIABLE. Thus they contradict each other! Obviously, therefore, we must infer from this that here²¹ [it is a case where] he said ‘Amen’, and there²² [a case where] he did not say ‘Amen’. — But, if so, what does Samuel teach us?²³ — The deduction of the Mishnah he teaches us.²⁴ [**

(1) For an oath taken in accordance with the mind of others cannot be absolved. An oath, however, always takes effect in accordance with the mouth (i.e., actual words uttered); therefore, ‘I have seen a camel flying’ is a vain oath.

(2) To see a serpent as thick as the beam of the olive press?

(3) Sapur I, King of Persia.

(4) [Var. lec., ‘stables’.]

(5) [According to Rashi, this was a man-devouring serpent, and he was killed by being stuffed with straw in which hot coals were concealed.]

(6) Like the markings in the wood of the beam; but he was not thinking of its girth or length.

(7) Whereas all serpents are striped only on the neck. (Rashi.) [Asheri, Ned. 28a, renders ‘flat at the back’, whereas serpents are flat only at the belly, v. Lewysohn, Zoologie, p. 234.]

(8) But why should he not be liable also, if he does not eat it for the vain oath, even if he fulfils it (by not eating the loaf)? The vain oath, when uttered, was designed to annul a precept (not to fulfill the previous oath); and if one swears to annul a precept, would he not be liable even if he fulfills the oath, and annuls the precept?

(9) The Mishnah means: If he did not eat it, he transgresses the oath of utterance also, in addition to the vain oath.

(10) If he swore, ‘I shall give So-and-so a loaf,’ and did not fulfill his oath, he is liable, whether that person is a relative or not.

(11) V. Sanh. III, 3, 4.

(12) But if he is adjured by another to say, e.g., whether he has eaten, and he replies. ‘I have eaten,’ it is not an oath, since he himself did not utter the oath. If, however, he says. ‘Amen’ to the other’s adjuration, it is counted as an oath (v. infra).

(13) Num. V, 22; the previous verse states that the priest shall cause the woman to swear; but the priest himself pronounces the oath, and the woman merely responds, ‘Amen’.

(14) Infra 30a.

(15) Without taking an oath.

(16) For in the Mishnah R. Meir says that, if adjured by others, they are liable only if the adjuration be uttered before the Beth din; and in the Baraitha he says that, even if adjured by others, they are liable even if the adjuration be not uttered before the Beth din.

(17) In the Baraitha.

(18) And this is counted as if he uttered the oath himself.

(19) In the Mishnah.

(20) That responding ‘Amen’ to an oath is like uttering an oath oneself, as Samuel states.

(21) The last clause.

(22) The first clause.

(23) Why does Samuel need to tell us that he who responds ‘Amen’ to an oath is reckoned as uttering an oath himself? This is so easily and obviously deduced from the Mishnah!

(24) That the Mishnah really wishes to teach us that there is no liability if adjured by others, unless he did say, ‘Amen’; and we should not think that the first clause, in stating that the oath must be uttered by himself, does not thereby desire to exclude adjuration by others, but mentions it merely because it is more usual for the oath to be uttered by himself; and that the last clause, in stating that adjuration by others makes him liable, if he responds, ‘Amen’, does not thereby desire to imply that if he does not respond, ‘Amen’, he is not liable, but merely mentions ‘Amen’ because it is usual for ‘Amen’ to be said in response to an oath, but that really he is liable, if adjured by others, even if he does not say, ‘Amen’. Therefore, Samuel states that the Mishnah really does desire to make this distinction in adjuration by others [between the case where ‘Amen’ is said and the case where it is not said.

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CHAPTER IV

MISHNAH. THE OATH OF TESTIMONY¹ APPLIES TO MEN AND NOT TO WOMEN,² TO NON-RELATIVES AND NOT TO RELATIVES,³ TO THOSE QUALIFIED [TO BEAR WITNESS] AND NOT TO THOSE UNQUALIFIED;⁴ AND IT APPLIES ONLY TO THOSE LIABLE TO BEAR WITNESS; AND WHETHER [UTTERED] BEFORE THE BETH DIN OR NOT BEFORE THE BETH DIN, IF [UTTERED] WITH HIS OWN MOUTH; BUT IF [ADJURED] BY THE MOUTH OF OTHERS HE IS NOT LIABLE UNLESS HE DENIES IT BEFORE THE BETH DIN; THIS IS THE OPINION OF R. MEIR. BUT THE SAGES SAY: WHETHER [UTTERED] WITH HIS OWN MOUTH OR [ADJURED] BY THE MOUTH OF OTHERS HE IS NOT LIABLE UNLESS HE DENIES IT BEFORE THE BETH DIN. AND THEY ARE LIABLE FOR WILFUL TRANSGRESSION OF THE OATH, AND FOR ITS UNWITTING TRANSGRESSION COUPLED WITH WILFUL [DENIAL OF KNOWLEDGE OF] TESTIMONY;⁵ BUT THEY ARE NOT LIABLE FOR ITS UNWITTING TRANSGRESSION.⁶ AND WHAT ARE THEY LIABLE FOR THE WILFUL TRANSGRESSION OF THE OATH? A SLIDING SCALE SACRIFICE.

GEMARA. How do we know?⁷ — Because the Rabbis taught: And the two men shall stand.⁸ the verse refers to witnesses.⁹ — You say [it refers to] witnesses; but perhaps [it refers to] the litigants? When it says: between whom the controversy is,¹⁰ the litigants are already mentioned; hence, how do I explain and the two men shall stand, [Therefore,] the verse refers to witnesses.¹¹ And if you wish to say [something to refute this deduction, I give you another]: Here¹² it is said, ‘two’, and there¹³ it is said, ‘two’; just as there it refers to witnesses, so here it refers to witnesses.¹⁴ What is meant by: If you wish to say [something to refute the deduction]?¹⁵ — You might say, because the verse did not write: and those between whom the controversy is,

the whole verse refers to the litigants,¹⁶ [therefore, I give the second deduction:] here it is said: two, and there it is said: two; just as there it refers to witnesses, so here it refers to witnesses.

Another [Baraita] taught: And the two men shall stand; the verse refers to witnesses. You say [it refers to] witnesses; but perhaps [it refers to] the litigants? You may retort: Do, then, two come to court, and do not three ever come to court?¹⁷ But if you wish to say something [to refute this deduction, I give you another]: Here it is said, ‘two’, and there it is said, ‘two’, just as there it refers to witnesses, so here it refers to witnesses. What is meant by: If you wish to say [something to refute this]? You might say, the verse refers to plaintiff and defendant,¹⁸ [therefore I give the second deduction:] here it is said, ‘two’, and there it is said, ‘two’; just as there it refers to witnesses, so here it refers to witnesses.

Another [Baraita] teaches: And the two men shall stand; the verse refers to witnesses. You say [it refers to] witnesses; but perhaps [it refers to] the litigants? You may retort: Do, then, men come to court, and do not women ever come to court?¹⁹ But if you wish to say [something to refute this deduction, I give you another]: Here it is said, ‘two’, and there it is said, ‘two’; just as there it refers to witnesses, so here it refers to witnesses. What is meant by: If you wish to say [something to refute this]? — You might say, it is not usual for a woman,²⁰ because all glorious is the King's daughter within,²¹ [therefore I give the second deduction:] here it is said, ‘two’, and there it is said, ‘two’; just as there it refers to witnesses, so here it refers to witnesses. Our Rabbis taught: And the two men shall stand: it is a precept that the litigants stand. R. Judah said: I heard that if they²² desire to allow them both to sit, they may allow them to sit. What is prohibited? One should not stand, and the other sit; one speak all that he wishes, and the other bidden to be brief.

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Our Rabbis taught: In righteousness shalt thou judge thy neighbor:²³ that one should not sit, and the other stand; one speak all that he wishes, and the other bidden to be brief. Another interpretation: In righteousness shalt thou judge thy neighbor: judge thy neighbor in the scale of merit.²⁴ R. Joseph learnt: In righteousness shalt thou judge thy neighbor- he who is with thee²⁵ in Torah and precepts — Endeavour to judge him favorably. R. Ulla the son of R. Elai had a case before R. Nahman. R. Joseph sent [a message] to him:²⁶ Our friend Ulla is a neighbor²⁷ in Torah and precepts. Said [R. Nahman]: Why did he send [this message] to me? That I should favor him?²⁸ Then he said: [Probably] that I should settle his case first;²⁹

- (1) Witnesses denying on oath that they know any testimony for a litigant; Lev. V, 1.
- (2) Because women are not eligible as witnesses.
- (3) V. Sanh. 27b.
- (4) Such as, e.g., a robber.
- (5) Knowing testimony for the litigant, and willfully denying the knowledge on oath, but transgressing unwittingly so far as the sacrifice is concerned, i.e., not knowing that they are liable to bring a sacrifice for the transgression of the oath.
- (6) If, at the moment of taking the oath, they really thought they did not know any testimony, they are exempt from a sacrifice, for they swore falsely merely by accident.
- (7) That women are ineligible as witnesses.
- (8) Deut. XIX, 17.
- (9) Hence witnesses must be men.
- (10) Deut. XIX, 17: And the two men, between whom the controversy is, shall stand before the Lord, before the priests and the judges.
- (11) For the verse could have said: 'And those between whom the controversy is shall stand.' Because the verse adds, superfluously, 'the two men,' the reference is to witnesses, and what follows, 'between whom the controversy is,' is an asyndeton construction.
- (12) Deut. XIX, 17.
- (13) Ibid. 15: at the mouth of two witnesses.
- (14) This is a deduction by גזירה שויה similarity of words.
- (15) How can the first deduction be refuted?
- (16) Had the verse written: 'And the two men, and those between whom the controversy is, shall stand', we could have inferred definitely that the two men refers to witnesses: since, however, the verse writes: And the two men between whom the controversy is, it refers to litigants only.

- (17) Litigants may be more than two: therefore the two men refers to witnesses.
- (18) And though there may be several plaintiffs and several defendants, the verse calls them the two men, i.e., the two protagonists, plaintiffs on the one side, and defendants on the other.
- (19) Surely, women are also litigants sometimes; hence, the two men refers to witnesses, who must be men.
- (20) To go to court as a litigant: therefore the verse talks of the two men, but in reality it includes women and refers to litigants.
- (21) Ps. XLV, 14; the King's daughter (i.e., the Jewish woman) is modest, and stays within her home as much as possible.
- (22) The court.
- (23) Lev. XIX, 15.
- (24) When you see a person doing what appears to be wrong, take a favorable view of his action.
- (25) Taking עמיתך as אתך.
- (26) R. Nahman.
- (27) A colleague, of your fraternity; i.e., a learned man.
- (28) Surely, that cannot be!
- (29) Before any other case that may come before me, and not keep him waiting.

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or, [with reference to] the discretion of the judges.¹ Ulla said: The controversy² is in regard to the litigants, but in regard to witnesses all agree that they must stand, for it is written: And the two men shall stand. R. Huna said: The controversy is in regard to the time of the discussion,³ but at the time of the completion of the case⁴ all agree that the judges sit and the litigants stand, for it is written: And Moses sat to judge the people; and the people stood.⁵ Another version: The controversy is in regard to the time of the discussion, but at the time of the completion of the case all agree that the judges sit and the litigants stand, for witnesses are like the completion of the case,⁶ and it is written with reference to them: And the two men shall stand.⁷

The widow of R. Huna had a case before R. Nahman. He said [to himself]: What shall I do? If I should rise before her,⁸ the plea of her opponent will be stopped up;⁹ if I should not rise before her, [I should be doing wrong, for]

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the wife of a scholar is like a scholar.¹⁰ So he said to his attendant: 'Go and make a duck fly over me, and urge it towards me, so that I will rise.'¹¹ But the Master said: The controversy is in regard to the time of the discussion, but at the time of the completion of the case all agree that the judges sit and the litigants stand!¹² — He sits as one who unties his shoes,¹³ and says, 'You, So-and-so, are innocent, and you, So-and-so, are guilty.'

Rabbah son of R. Huna said: If a Rabbinical scholar and an illiterate person have some dispute with each other, [and come to court,] we persuade the Rabbinical scholar to sit; and to the illiterate person we also say, 'Sit', and if he stands, it matters not. Rab son of R. Sherabya had a case before R. Papa. He told him to sit, and told his opponent also to sit; but the attendant of the court came and nudged¹⁴ the illiterate man and made him stand up. And R. Papa did not say to him, 'Sit'. How could he do so; will not the other's plea be stopped up?¹⁵ —

R. Papa may say: He¹⁶ will say, 'He has¹⁷ asked me to sit, but the attendant was not appeased by me.'¹⁸ And Rabbah son of R. Huna said: If a Rabbinical scholar and an illiterate person have some dispute with each other, the scholar should not come first and sit down [before the judge],¹⁹ because it will appear as if he is setting forth his case. And we do not say this except when he has not a fixed time with him;²⁰ but if he has a fixed time with him, it matters not,²¹ for he²² will say, he is occupied with his lesson. And Rabbah son of R. Huna said: If a Rabbinical scholar knows some testimony, and it is undignified for him to go to the judge, who is inferior to him, to give testimony before him, he need not go.

R. Shisha the son of R. Idi said: We also learnt thus: If he found a sack or a basket which it is not his custom to handle, he need not take it.²³ However, this is only the case in money matters,²⁴ but in the case of a prohibition²⁵ [he must give evidence, for it is

written]: There is no wisdom nor understanding nor counsel against the Lord:²⁶ wherever there is a profanation of the Name, the honor of a scholar is not regarded. R. Yemar knew some testimony for Mar Zutra, and came before Amemar. He told them all to sit. Said R. Ashi to Amemar: Did not Ulla say: The controversy is in regard to the litigants, but in regard to witnesses all agree that they should stand? — He replied to him: This is a positive precept,²⁷ and that is a positive precept;²⁸ the positive precept enjoining respect for the Torah²⁹ is greater.

(Mnemonic: Advocate, Uncultured, Robbery, False.)

Our Rabbis taught: How do we know that a judge should not appoint an advocate for his words?³⁰ — Because it is said: From a false matter keep far.³¹ And how do we know that a judge should not allow an uncultured disciple to sit before him?³² Because it is said: From a false matter keep far. And how do we know that a judge who knows his colleague to be a robber, or a witness who knows his colleague to be a robber, should not join with him?³³ Because it is said: From a false matter keep far. And how do we know that a judge who knows that a plea is false³⁴ should not say, Since the witnesses give evidence, I will decide it,³⁵ and

(1) In a case which does not depend on witnesses or oath the judge may use his discretion. Here R. Joseph sent a message to R. Nahman that, if the case in which Ulla was involved was of such a nature, he should use his discretion in his favor, because he was a learned and righteous man, and was therefore more likely to be in the right.

(2) Between R. Judah and the Sages as to whether the litigants may sit in court.

(3) While the case is being argued.

(4) When the judge gives his decision.

(5) Ex. XVIII, 13.

(6) When they give their evidence, the case virtually ends.

(7) This only proves that the litigants must stand, not that the judges have to sit.

(8) Out of respect, because she is the widow of a scholar.

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- (9) He will be intimidated, and will not be able to state his case clearly.
- (10) And must be respected.
- (11) I will really rise out of respect for her, but her opponent will not be intimidated, because he will think I rise to ward off the duck.
- (12) How then is a judge to show his respect for scholarship should a scholar happen to come in while he is giving the verdict?
- (13) [MS. M.: ‘shoe-laces.’] Half sitting and half standing, and pronounces the verdict.
- (14) Lit., ‘kicked.’ [Omitted in some texts; v. D.S. a.l.]
- (15) When he sees that R. Papa respects his opponent more.
- (16) The illiterate man.
- (17) R. Papa. [MS. M.: ‘He (the litigant) will say, R. Papa has asked me to sit but,’ etc.]
- (18) I did not tip him, so he made me stand.
- (19) Before his opponent comes, even if he remains silent.
- (20) For study.
- (21) If the judge is his teacher, and they have a fixed time for study together, the scholar may come to him before his opponent arrives.
- (22) The opponent.
- (23) B.M. 29b; if an eminent man finds in the street something which, even if it were his own, he would not trouble to take into his house, because he deems it undignified, he need not pick it up in order to restore it to its owner.
- (24) He need not give evidence, if it is undignified.
- (25) E.g., if a married woman comes before the judge saying she believes her husband to be dead, and she desires to re-marry; and this scholar knows her husband to be alive, he must give his evidence before the judge, though he is his junior or inferior, for, in face of a prohibition, his dignity does not count.
- (26) Prov. XXI, 30; wisdom and understanding are of no value against the Lord, i.e., if their possession results in His will being opposed.
- (27) And the two men shall stand.
- (28) Thou shalt fear the Lord thy God: Deut. X, 20; from 'ה נא it is deduced that respect for scholars is also enjoined; v. B.K. 41b.
- (29) And its exponents.
- (30) Should not Endeavour to bolster up his decision (though realizing he has made a mistake) by an advocate, i.e., by trying to think of further arguments to support it, because he is ashamed to change his view.
- (31) Ex. XXIII, 7.
- (32) When trying a case, in order to discuss the arguments with him, for he may suggest wrong views to him.
- (33) To judge, or to give evidence.
- (34) Having concluded from the evidence of the witnesses that they are not speaking the truth.

- (35) In accordance with their evidence.

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the chain [of guilt] will hang round the neck of the witnesses?¹ — Because it is said: From a false matter keep far.

(Mnemonic: Three [of] disciples, Three [of] creditors, Rags, Hearing, Explaining.)

How do we know that a disciple sitting before his master, who sees that the poor man is right and the wealthy man wrong, should not remain silent?² Because it is said: From a false matter keep far. And how do we know that a disciple, who sees his master making a mistake in the law, should not say, I will wait until he finishes, and then upset his decision, and build up [another decision] according to my own judgment, so that the decision will be called by my name? Because it is said: From a false matter keep far. And how do we know that a disciple to whom his master says, ‘You know that if I were given a hundred manehs, I would not tell a lie; now, So-and-so owes me one maneh, and I have only one witness against him;’ how do we know that the disciple should not join with him?³ —

Because it is said: From a false matter keep far. — Is this, then, deduced from: From a false matter keep far? Surely this is definitely lying, and the Divine Law said: Thou shalt not bear false witness against thy neighbor!⁴ — Well, then, for example, if he said to him, ‘I have definitely one witness; and you come and stand there,⁵ and you need not say anything, so that you will not be uttering a lie from your mouth;’⁶ even so it is prohibited, because It is said: From a false matter keep far. How do we know that he who has a claim of a hundred Zuzim against his neighbor should not say, ‘I will claim two hundred, so that he will admit a hundred, and be liable for an oath,⁷ then I will be able to impose an oath upon him from another place?’⁸ —

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Because it is said: From a false matter keep far. And how do we know that, if one has a claim of a hundred Zuzim against his neighbor, and sues for two hundred, the debtor should not say, 'I will deny it totally in court, but admit it outside the court, so that I should not be liable for an oath, and he may not impose on me an oath from another place'? Because it is said: From a false matter keep far. And how do we know that, if three persons have a claim of a hundred Zuzim against one person,⁹ one should not be the litigant, and the other two, the witnesses, in order that they may extract the hundred Zuzim and divide it? Because it is said: From a false matter keep far. How do we know that, if two come to court, one clothed in rags and the other in fine raiment worth a hundred manehs, they¹⁰ should say to him,¹¹ 'Either dress like him, or dress him like you'?¹² —

Because it is said: From a false matter keep far. When they¹³ would come before Raba son of R. Huna, he would say to them, 'Remove your fine shoes, and come down for your case.' How do we know that a judge should not hear the words of one litigant before the other litigant arrives? —

Because it is said: From a false matter keep far. And how do we know that a litigant should not explain his case to the judge before the other litigant arrives? — Because it is said: From a false matter keep far. R. Kahana learnt [these deductions] from: Thou shalt not utter [a false report]:¹⁴ thou shalt not cause to be uttered.¹⁵ And did that which is not good among his people:¹⁶ Rab said this refers to one who comes with power of attorney;¹⁷ and Samuel said it refers to one who buys a field about which there are disputes.¹⁸

AND IT APPLIES ONLY TO THOSE LIABLE TO BEAR WITNESS, etc. What does this exclude? — R. Papa said, it excludes a king;¹⁹ and R. Aha b. Jacob said, it excludes a dice player.²⁰ He who says [it excludes] a dice player certainly [holds it excludes] a king;²¹ but he who says [it excludes] a king

[holds it does not exclude] a dice player, for he is fit [to be a witness] according to Holy Writ, and it is the Rabbis who have disqualified him.²²

BEFORE THE BETH DIN OR NOT BEFORE THE BETH DIN, etc. In what do they disagree?²³ — Said the Scholars to R. Papa: They disagree [as to whether we say,] 'deduce from it, and [entirely] from it'; or, 'deduce from it, and establish it in its own place'.²⁴ R. Meir holds, 'deduce from it, and [entirely] from it'. 'Deduce from it':²⁵ just as [in the case of] a deposit, if he swears of his own accord,²⁶ he is liable, so [in the case of] testimony, if he swears of his own accord, he is liable;²⁷ 'and [entirely] from it' — just as [in the case of] a deposit [he is liable] whether [he utters the oath] before the Beth Din or not before the Beth Din,²⁸ so [in the case of] testimony [he is liable] whether [he utters the oath] before the Beth Din or not before the Beth Din. And the Rabbis²⁹ hold, 'deduce from it, and establish it in its own place': 'Deduce from it':³⁰ just as [in the case of] a deposit, if he swears of his own accord, he is liable, so [in the case of] testimony, if he swears of his own accord, he is liable; 'and establish it in its own place': just as when adjured by others, [he is liable only if he swears] before the Beth Din,³¹ but not [if he swears] not before the Beth Din, so if he swears of his own accord, before the Beth Din he is liable, but if not before the Beth Din he is not liable.

- (1) The guilt will be on their heads.
- (2) If his master has come to the opposite conclusion.
- (3) With the witness to give evidence, in order that there should be two witnesses.
- (4) Ex. XX, 13.
- (5) In the court.
- (6) But the debtor will think you have come to give evidence, and will perhaps admit the debt of his own accord.
- (7) He who admits a portion of a claim (מודה במקצת) takes an oath that he owes no more, and is exempt.
- (8) I.e., in connection with another claim which he totally denied (בופר הכל), and for which no oath could be imposed; but since he has to take an oath

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in this case, the court can at the same time include the previous claim in the oath.

(9) And have no witnesses.

(10) The court.

(11) The well dressed man.

(12) In order that the judges be not biased in your favor, and the poorly dressed man be not intimidated.

(13) Litigants.

(14) Ex. XXIII, 1, lit., ‘thou shalt not take up, or accept’; a warning to the judge not to hear one litigant before the arrival of the other, because the litigant, in his opponent's absence, may be tempted to lie.

(15) Reading the same Hebrew word, **השח**, with different vowels (the Hiphil): ‘thou shalt not cause to be accepted’; a warning to the litigant not to explain his case to the judge in his opponent's absence, because he may be tempted to lie, and will thereby cause the judge to accept a false report, v. Sanh. 7b.

(16) Ezek. XVIII, 18.

(17) He is authorized by one of the litigants to take his place; he is doing ‘that which is not good among his people’, if he undertakes it merely out of love of contention and litigation, for the litigant himself might have been willing to compromise, whereas he presses for the full amount of the claim. If, however, the litigant himself is not able to appear for some reason, and he is acting on his behalf, in order to obtain his money for him, he is doing a meritorious act; v. Tosaf. a.l.

(18) The title of which is disputed; this man buys it, relying on his strength to resist other claimants.

(19) ‘Thou shalt set a king over thee (Deut. XVII, 15); he must be respected, and it is therefore not seemly that he should stand as a witness before the Judge; and since he cannot be a witness (Sanh. 18a), the oath of testimony does not apply.

(20) A gambler, since he is willing to retain money won by him which is not really his, is disqualified by the Sages from being a witness. The Torah disqualifies only **עד חמס** (Ex. XXIII, 1), ‘a witness of violence’, i.e., who has been guilty of robbery by violence.

(21) For a dice player is disqualified only by the Sages, whereas a king is disqualified by the Torah.

(22) And, therefore, though we do not accept him as a witness owing to the Sages' disqualification, the oath of testimony

applies in his case, for, according to the Torah, he may be a witness.

(23) R. Meir and the Sages, in the Mishnah; i.e., on what principle do they differ?

(24) Where Holy Writ does not explicitly state the law concerning a certain subject, and it is necessary to deduce it by **גזירה שויה** from another subject concerning which Holy Writ states the law explicitly, we may either deduce one from the other

entirely (i.e. liken the unexplained subject to the explained subject in every respect), or deduce only one point, and, as for the rest, leave the unexplained subject in its own place, i.e., leave it to be governed by the rules which govern other aspects of it.

(25) [Adopting reading of MS.M.] By **גזירה שויה** in the case of a deposit it is said **תקטט** if anyone sin (Lev. V, 21), and in the case of the oath of testimony it is also said **תקטט** (Lev. V, 1).

(26) Lev. V, 24: about which he hath sworn falsely (i.e., of his own accord).

(27) Though Holy Writ does not specifically say so, but we deduce it by **גזירה שויה** from the case of a deposit.

(28) For Holy Writ says: and sweareth falsely (Lev. V, 22) — wherever he swears falsely, not necessarily before the Beth Din.

(29) The Sages.

(30) V. p. 173, n. 8.

(31) Lev. V, 1: he heareth the voice of adjuration... if he tell it not, then he shall bear his iniquity — in the place where, if he had told it (i.e., given his testimony), it would have been effective, i.e., before the Beth Din.

Shevu'oth 31b

Said R. Papa to them: If the Rabbis deduce it from [the law of] deposit, none disagrees that we ‘deduce from it, and [entirely] from it’;¹ but this is the reason of the Rabbis; they deduce it by inference from minor to major:² since, if [adjured] by others, he is liable; if [he swears] of his own accord, how much more so should he be liable; and because they deduce it by inference from minor to major, [they hold] it is sufficient for that which is deduced by this inference to be similar to that from which it is deduced:³ just as, if adjured by others, he is liable before the Beth Din only, but not outside the Beth Din; so, if he swears of his own accord, he is liable before the Beth Din only, but not outside the Beth Din.

Said the Scholars to R. Papa: How can you say that they do not disagree on [the principle of] ‘deduce from it, and [entirely] from it’? Surely we learnt concerning a deposit: The oath of deposit applies to men and women, to non-relatives and relatives, to those qualified [to bear witness] and those unqualified, before the Beth Din and not before the Beth Din, if [uttered] from his own mouth; but if

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[adjured] by the mouth of others, he is not liable unless he denies it before the Beth Din: this is the opinion of R. Meir. And the Sages say, whether [uttered] by his own mouth or [adjured] by the mouth of others, since he denied it, he is liable.⁴ [Now,] if adjured by the mouth of others, in [the case of] a deposit, how do the Sages know that he is liable?⁵ Is it not because they deduce it from [the case of] testimony?⁶ Hence, you must infer from this that they disagree on [the principle of] ‘deduce from it, and [entirely] from it’!⁷ — [R. Papa replied:] From this, yes;⁸ but from the other it is not possible to infer it.

AND THEY ARE LIABLE FOR THE WILFUL TRANSGRESSION OF THE OATH. How do we know this? — For our Rabbis taught: In all of them⁹ it is said, and it be hid [from him]; but here it is not said, and it be hid, in order to make him liable for willful as for unwitting transgression.¹⁰

AND FOR ITS UNWITTING TRANSGRESSION COUPLED WITH WILFUL [DENIAL OF KNOWLEDGE OF] TESTIMONY. How is unwitting transgression possible coupled with willful [denial of knowledge of] testimony? — Said Rab Judah that Rab said: If one says, ‘I know that this oath is prohibited, but I do not know if one is liable to bring an offering for it or not.’

BUT THEY ARE NOT LIABLE FOR ITS UNWITTING TRANSGRESSION ONLY. Shall we say that we are here taught [a confirmation of] that which R. Kahana and R. Assi [were told]?¹¹ — No! Although we learnt it [here], it was necessary,¹² for I might have thought, here,¹³ because it is not written and it be hid, we require unwitting to be like willful transgression;¹⁴ but there,¹⁵ since it is written and it be hid, even unwitting transgression in a slight degree [makes him liable],¹⁶ therefore he¹⁷ teaches us [that this is not so].¹⁸

MISHNAH. WHAT KIND IS THE OATH OF TESTIMONY? HE SAID TO TWO [PERSONS]:

‘COME AND BEAR TESTIMONY FOR ME’; [AND THEY REPLIED:] ‘WE SWEAR WE KNOW NO TESTIMONY FOR YOU’; OR THEY SAID TO HIM: ‘WE KNOW NO TESTIMONY FOR YOU’, [AND HE SAID:] ‘I ADJURE YOU’, AND THEY SAID, ‘AMEN!’, THEY ARE LIABLE.¹⁹ IF HE ADJURED THEM FIVE TIMES OUTSIDE THE BETH DIN,²⁰ AND THEY CAME TO THE BETH DIN, AND ADMITTED [KNOWLEDGE OF TESTIMONY], THEY ARE EXEMPT;²¹ BUT IF THEY DENIED,²² THEY ARE LIABLE FOR EACH [OATH].²³ IF HE ADJURED THEM FIVE TIMES BEFORE THE BETH DIN, AND THEY DENIED [KNOWLEDGE OF TESTIMONY], THEY ARE LIABLE ONLY ONCE. SAID R. SIMEON: WHAT IS THE REASON?²⁴ BECAUSE THEY CANNOT AFTERWARDS ADMIT [KNOWLEDGE].²⁵ IF BOTH [PERSONS] DENIED [KNOWLEDGE] TOGETHER,²⁶ THEY ARE BOTH LIABLE; IF ONE AFTER ANOTHER, THE FIRST IS LIABLE, AND THE SECOND EXEMPT.²⁷ IF ONE DENIED, AND THE OTHER ADMITTED, THE ONE WHO DENIED IS LIABLE. IF THERE WERE TWO SETS OF WITNESSES, AND THE FIRST DENIED, AND THEN THE SECOND DENIED, THEY ARE BOTH LIABLE, BECAUSE THE TESTIMONY COULD BE UPHELD BY [EITHER OF] THE TWO.

GEMARA. Samuel said: If they²⁸ saw him running after them, and they said to him, ‘Why are you running after us? We swear we know no testimony for you’, they are exempt, [being liable only] when they hear from his mouth.²⁹ — What does he teach us? We have learnt it: If he sent [the adjuration] by his slave,³⁰ or if the defendant said to them: ‘I adjure you that, if you know any testimony for him,³¹ you should come and bear testimony for him’, they are exempt³²

(1) And the Sages would therefore hold that if he swore of his own accord even outside the Beth Din he would be liable.

(2) From oath of testimony itself, and not from deposit at all.

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(3) The principle of dayyo (v. B.K. 25a) is that the derived law cannot logically be stricter than the original law.

(4) Even if he denied it outside the Beth Din.

(5) For Holy Writ says: he hath sworn falsely (Lev. V, 24), implying of his own accord.

(6) By גזירה שויה v. p. 173, n. 8.

(7) Since they hold that, in the case of deposit, even where adjured by others, he is liable even outside the Beth Din, obviously they deduce liability for adjuration by others from the case of testimony, though they do not make the case of deposit entirely like the case of testimony; for in the latter they hold the denial must always be before the Beth Din; whereas in the case of deposit, once they have deduced that there is liability for adjuration by others, they say, 'establish it in its own place', i.e., make the law of adjuration by others equal to the law of swearing of his own accord, which (in the case of a deposit) does not need to be before the Beth Din.

(8) We certainly infer that the Sages hold 'deduce from it, and establish it in its own place'; but from our Mishnah it is not possible to draw this inference, for it may be that the Sages deduce their ruling by inference from minor to major, as explained above.

(9) Laws of uncleanness and oath of utterance; Lev. V, 2-4.

(10) V. supra p. 136, for notes.

(11) Supra 26a; Rab re-assured the one who had sworn falsely by telling him he had committed no offence, since he had made a genuine mistake. Why was it necessary for Rab to re-assure him? Does not this Mishnah teach us that one is not liable for absolutely unwitting transgression?

(12) For Rab to re-assure them in the case of oath of utterance.

(13) In the case of oath of testimony.

(14) But for a genuine mistake he is not liable.

(15) In the case of oath of utterance.

(16) For Holy Writ says he must bring an offering even if 'it be hid from him', i.e., even if he made a mistake.

(17) Rab, in re-assuring R. Kahana and R. Assi.

(18) But that even in the case of oath of utterance there is no liability for a genuine mistake.

(19) If they really knew testimony, and thus swore falsely.

(20) And they denied knowledge of testimony.

(21) Because denial outside the Beth Din does not make them liable.

(22) Before the Beth Din.

(23) Sworn outside.

(24) Why are they not liable for all the oaths?

(25) If they denied knowledge of testimony immediately after the first adjuration before the Beth Din, they are no longer able to bear testimony (for the principle that one cannot testify again after

having testified once, v. Sanh. 44b). Hence, even if they denied it at the end, all the adjurations except the first are in vain; for, if silence at the beginning implies denial, they cannot be adjured again; and if silence at the beginning implies acquiescence (that they do know testimony), why the further oaths? But adjurations outside the Beth Din are all counted, because denial outside does not impose liability, and they can still bear testimony, and can therefore be adjured again and again; then, when they deny the knowledge at the Beth Din they are liable for all the adjurations.

(26) Or, within a short time of each other's denial; v. infra 32a.

(27) For since the first denied knowledge, there is only one witness left, and one witness is not liable to bear testimony.

(28) The witnesses.

(29) 'Come and bear testimony for me.'

(30) He sent his slave to adjure them to bear testimony for him.

(31) The plaintiff.

(32) If they falsely deny knowledge of testimony.

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unless they hear [the adjuration] from the mouth of the plaintiff!¹ — 'If he ran after them' he requires [to tell us]: I might have thought that, since he ran after them, it is as if he had said to them,² therefore he teaches us [that it is not so]. But this we have also learnt:³ What is the oath of testimony? He said to witnesses, 'COME AND BEAR TESTIMONY FOR ME', [AND THEY REPLIED,] 'WE SWEAR, etc.', [implying only] if he said, ['Come and bear testimony,'] they are liable, but if he did not say it, they are not liable! —

'HE SAID' is not necessarily stressed [by the Mishnah],⁴ for if you will not say thus, then, with reference to deposit, where we learnt: What is the oath of deposit? He said to him, 'Give me the deposit that you have of mine',⁵ will you also say that if he said, ['Give me the deposit,'] he is liable, and if he did not say it, he is not liable?⁷ [That cannot be,] for [the verse] and deal falsely with his neighbors [implies] in however slight a degree.⁹ Hence, 'HE SAID' is not stressed [in that Mishnah], and here also it is not stressed.¹⁰ What is this!¹¹ Granted, if you say that 'HE SAID'

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here [in our Mishnah] is stressed, he states it there¹² because of here;¹³ but if you say, neither 'HE SAID' there is stressed nor 'HE SAID' here is stressed, why does the Mishnah say 'HE SAID' in both places?¹⁴ —

Perhaps because it is the usual thing,¹⁵ therefore he¹⁶ teaches us [that it is to be taken literally]. It was taught in agreement with Samuel: If they saw him coming after them, and said to him: 'Why are you coming after us? We swear we know no testimony for you', they are exempt; but in the case of a deposit, they are liable.

IF HE ADJURED THEM FIVE TIMES, etc. How do we know that for denial in the Beth Din they are liable, but outside the Beth Din they are not liable? — Abaye said: Scripture says, If he tell it not, he shall bear his iniquity;¹⁷ I do not say to you [that he bears his iniquity]¹⁸ except in the place where, if he would tell [his evidence], the other would be liable to pay money.¹⁹ Said R. Papa to Abaye: If so, say the oath itself, if [uttered] before the Beth Din, makes him liable, if not before the Beth Din, does not! — That cannot enter our minds, for we learnt: [Scripture says: when he shall be guilty] in one [of these things]²⁰ — to make him liable for each one; and if it enters your mind [to say it must be uttered] before the Beth Din, is he then liable for each one? Surely we learnt: **IF HE ADJURED THEM FIVE TIMES BEFORE THE BETH DIN, AND THEY DENIED IT, THEY ARE LIABLE ONLY ONCE. SAID R. SIMEON: WHAT IS THE REASON? BECAUSE THEY CANNOT AFTERWARDS ADMIT IT.** Hence, we deduce from this, the oath [must be uttered] outside the Beth Din, and denial [must be] before the Beth Din.

IF THEY BOTH DENIED IT TOGETHER, THEY ARE BOTH LIABLE. But it is impossible to ascertain simultaneity!²¹ — R. Hisda said: This is in accordance with the view of R. Jose the Galilean, who says it is possible to ascertain simultaneity.²² R. Johanan said: You may even say it is in

accordance with the view of the Rabbis,²³ [and the Mishnah means,] for example, they both denied it within the time of an utterance;²⁴ and [two statements following each other] within an interval of the time of an utterance are considered one utterance. Said R. Aha of Difti²⁵ to Rabina: Well, now, within the time of an utterance — what is its duration? As the greeting of a disciple to his Master (some say, as the greeting of a Master to his disciple);²⁶ now, till they say, 'We swear, we know no testimony for you', the duration is longer!²⁷ — He said to him: Each one within the interval of utterance of his neighbor.²⁸

ONE AFTER ANOTHER, THE FIRST IS LIABLE, AND THE SECOND EXEMPT. Our Mishnah will not be in accordance with the view of this Tanna, for we learnt: If he adjures one witness,²⁹ he is exempt; but R. Eleazar son of R. Simeon makes him liable. Shall we say that they disagree in this: One³⁰ holds that one witness, when he comes [to bear testimony], comes [to make the defendant liable] for an oath; and the other³¹ holds that one witness, when he comes [to bear testimony], comes [to make him liable to pay] money?³² —

Can you really think so?³³ Surely Abaye said: All agree in [the case of] the witness of the Sotah; and all agree in [the case of] the witnesses of the Sotah; and they disagree in [the case of] the witnesses of the Sotah.³⁴ All agree in [the case of] one witness;³⁵ and all agree in [the case of] the witness where his³⁶ adversary is suspected of swearing falsely!³⁷ — Well then, all agree that one witness, when he comes [to bear testimony], comes [to make the defendant liable] for an oath; and here, they disagree in this: one³⁸ holds that which causes [extraction of] money is counted as [if it had actually extracted] money;³⁹ and the other holds it is not counted as [if it had actually extracted] money.

[To revert to] the text above: 'Abaye said: All agree in [the case of] the witness of the Sotah;

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and all agree in [the case of] the witnesses of the Sotah, and they disagree in [the case of] the witnesses of the Sotah. All agree in [the case of] one witness, and all agree in [the case of] the witness where his adversary is suspected of swearing falsely.’ ‘All agree in [the case of] the witness of the Sotah that he is liable’ — the witness of defilement,⁴⁰ for Scripture believes him, as it is written: and there be no witness against her⁴¹ — as long as there is [some testimony] against her. ‘And all agree in [the case of] the witnesses of the Sotah that they are exempt’ — the witnesses of jealousy, for they are the cause of a cause.⁴²

- (1) *Infra* 35a; why, then, does Samuel need to tell us his ruling? It is already taught in a Mishnah!
- (2) ‘Come and bear testimony.’
- (3) That he must definitely ask them, and running after them is of no avail.
- (4) And, were it not for Samuel, we might have thought that if he ran after them, they are also liable.
- (5) *infra* 36b.
- (6) The bailee.
- (7) If the bailee denied on oath having the deposit, will you say he is not liable, if the depositor did not in the first place ask for it!
- (8) Lev. V, 21.
- (9) As long as he deals falsely (i.e., denies the deposit), he is liable.
- (10) We would therefore have thought that if he ran after the witnesses (even if he did not say, ‘Come and bear testimony’), they are liable; therefore Samuel must teach us that they are not.
- (11) This is no argument.
- (12) In connection with deposit, though it is not intended to be taken literally there.
- (13) In our Mishnah it has to be stated, and is intended to be taken literally.
- (14) Let them both be omitted. Obviously therefore we must say that at least in our Mishnah ‘HE SAID’ is to be taken literally; why, therefore, does Samuel need to tell us his ruling? It is implicit in the Mishnah!
- (15) We might have thought that the Mishnah mentions ‘HE SAID’, not because it is to be taken literally, but because it is usual for the plaintiff to say, ‘Come and bear testimony for me.’
- (16) Samuel.
- (17) Lev. V, 1.
- (18) For denying knowledge of testimony.
- (19) The emphasis is on ‘tell’, ‘declare’, i.e., before the Beth Din.
- (20) Lev. V, 5.

- (21) How can we know if both witnesses denied it actually simultaneously?
- (22) Bek. 9a.
- (23) Who disagree (*loc. cit.*) with R. Jose.
- (24) Which is explained below as the time required for the greeting: ‘Peace be upon thee, my Master!’
- (25) [Dibtha on the Tigris, v. Die Landschaft Babylonien Obermeyer, J. p. 197.]
- (26) ‘Peace be upon thee.’
- (27) These words cannot be said in the time that a greeting can be uttered, for the greeting (in Hebrew) is three words, whereas the oath (in Hebrew) is six words.
- (28) The interval elapsing between the denials of the two witnesses must not be longer than the time taken to utter the greeting.
- (29) And he denies knowledge of testimony, he is exempt from bringing the offering.
- (30) The first Tanna holds that one witness is not sufficient to make the defendant liable to pay what the plaintiff demands, but can only make him take an oath denying liability (v. *infra* 40a), and therefore, his testimony being ineffective, the witness, if he denies knowledge of testimony, is not liable to bring an offering.
- (31) R. Eleazar b. R. Simeon.
- (32) Though Scripture says: One witness shall not rise up against a man for any iniquity, or for any sin (Deut. XIX, 15), R. Eleazar holds it refers only to stripes or other punishment, but one witness is sufficient in money matters; therefore, if one witness denies knowledge of testimony, he is liable. Our Mishnah, in exempting the second witness, is therefore not in accordance with the view of R. Eleazar b. R. Simeon.
- (33) That R. Eleazar b. R. Simeon holds one witness is sufficient in money matters?
- (34) Wife suspected by husband of unfaithfulness, Num. V, 11-31; all agree that in certain circumstances even if one witness of the Sotah is adjured and denies knowledge he is liable; and in certain circumstances even if two witnesses are adjured and deny knowledge they are exempt; and in certain circumstances if two witnesses are adjured, R. Eleazar b. R. Simeon and the Sages disagree, the former holding they are liable, and the latter that they are exempt. The circumstances are explained below.
- (35) That in certain circumstances (such as those at which R. Abba was present; *infra* 32b) he is liable, if he denies on oath knowledge of testimony.
- (36) The reference will be explained *infra*.
- (37) That he is liable (v. *infra* 32b for reason). Now the reason for R. Eleazar b. R. Simeon's view that in certain circumstances witnesses of the Sotah who are adjured are liable, is explained below by Abaye to be that they are the cause of pecuniary loss and this is so also in the case of one witness (in money

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matters) who, though his testimony is insufficient to extract money, is yet liable, if adjured, because he is the cause of pecuniary loss, for he makes the defendant take an oath (to deny liability), and since the majority of people do not swear falsely, the defendant would have to pay. The witness, therefore, by denying knowledge of testimony, causes pecuniary loss to the plaintiff. This consequently shows that even according to R. Eleazar b. R. Simeon no money can be extracted on the strength of the mere evidence of one witness!

(38) R. Eleazar b. R. Simeon, in saying that if one witness is adjured he is liable, though if he had given evidence, he would have made the defendant liable for an oath only.

(39) This witness, though not actually extracting money, causes extraction of money, because the defendant, rather than take an oath, pays the claim.

(40) First there must be two witnesses before whom the husband warns his wife, 'Do not go with So-and-so secretly' (עדי קנוי witnesses of his jealousy); and two witnesses that she did go secretly with him (עדי סתירה witnesses of the secret meeting). If now there is one witness that she actually was unfaithful at this secret meeting (עדי טומאה witness of defilement), the witness is believed, and the husband need not pay his wife her כתובה (marriage settlement). If this witness of defilement avoids giving testimony by swearing falsely that he knows no testimony, he is liable to bring an offering, for he has, by his avoidance of evidence, occasioned a pecuniary loss to the husband (who has to pay his wife the Kethubah).

(41) Lev. V. 13; though Scripture says, there is no עד (singular), it is explained (Sotah 31b) that עד (without the qualifying numeral אחד) denotes two witnesses; hence, Scripture means, 'there be not two witnesses', but only one.

(42) Even if they had given evidence, there is still the need of the other two witnesses that the wife had secreted herself with her paramour; and even these latter do not actually benefit the husband directly (by freeing him from paying the Kethubah), but indirectly, for by their evidence they cause the wife to drink the 'bitter waters' (Lev. V. 17-24), and possibly, out of fear, she might confess her unfaithfulness, and lose her Kethubah. Hence, the עדי סתירה are merely the cause of pecuniary loss, and the עדי קנוי the cause of the cause, i.e., remote and very indirect cause. If, therefore, the עדי קנוי avoided giving evidence by swearing falsely, they are not liable, for they did not directly cause any pecuniary loss.

Shevu'oth 32b

'And they disagree in [the case of] the witnesses of the Sotah' — the witnesses of the

secret meeting; one holds that which causes [extraction of] money is counted as [if it had actually extracted] money, and they are liable; and the other holds it is not counted as [if it had actually extracted] money, and they are exempt.¹ 'All agree [in the case of the witness] where his adversary is suspected of swearing falsely'.² 'All agree in [the case of] one witness' [in such circumstances as came] before R. Abba.³ 'All agree [in the case of the witness] where his adversary is suspected of swearing falsely.' Who is suspected? Shall we say the debtor is suspected; and the creditor could say [to the witness]. 'If you would have come to bear testimony for me, I would have sworn, and taken [the debt]'? Let the witness say to him, 'Who says that you would have sworn?'⁴ —

Well then, for example, if they are both suspect, in which case it has been said, the oath returns to the one who is bound to take it,⁵ and because he cannot swear,⁶ he pays.⁷ 'All agree in [the case of] one witness' [in such circumstances as came] before R. Abba; for there was a man who snatched a bar of silver from his neighbor; they came before R. Ammi, and R. Abba was sitting before him. He went and brought one witness that he had snatched it from him. The other said, 'Yes, I snatched it, but it is mine that I snatched'.

Said R. Ammi: How shall judges settle this dispute? Shall he pay? There are not two witnesses. Shall he be exempt? There is one witness that he snatched it. Shall he swear? Since he said, 'Yes, I snatched it, but it is mine that [snatched]', he is like a robber.⁹ R. Abba said to him: He is bound to take an oath,¹⁰ and he cannot swear; and anyone who is bound to take an oath, and cannot swear, pays.¹¹

R. Papa said: All agree in [the case of] a witness of death¹² that he is liable; and all agree in [the case of] a witness of death that he is exempt. 'All agree in [the case of] a witness of death that he is exempt', — if he told it to her,¹³ and did not tell it to the Beth

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Din; for we learnt: A woman who said, 'My husband died', may remarry; 'my husband died', marries her brother-in-law.¹⁴ 'All agree in [the case of] a witness of death that he is liable,' — if he told it neither to her nor to the Beth Din.¹⁵ Can we deduce from this that if one adjures witnesses in connection with land [and they deny knowledge of testimony], they are liable?¹⁶ — No! Perhaps she had seized movables.¹⁷

IF ONE DENIED, AND THE OTHER ADMITTED, etc. Now, if in the case of one after another where both deny, you say the first is liable,¹⁸ and the second exempt, in the case where one denies and the other admits, is there any question?¹⁹ — It is not necessary [for the Mishnah to tell us this except in the case] where both denied, and then one of them turned and admitted within the interval of the time of an utterance; and this he teaches us, that [two statements following each other] within the interval of the time of an utterance are considered one utterance.²⁰ Granted, according to R. Hisda who explains that [clause]²¹ as being in accordance with the view of R. Jose the Galilean;²² the first clause [establishes that] it is possible to ascertain simultaneity, and the second clause²³ is necessary in order to teach us that [two statements following each other] within the interval of the time of an utterance are considered one utterance; but, according to R. Johanan, the first clause [teaches us the law with regard to statements uttered] within the interval of the time of an utterance, and the second clause [teaches us the law with regard to statements uttered] within the interval of the time of an utterance! Why do we need both? — You might have thought that only in the case of denial and denial²⁴ [do we say that two statements within a brief interval are considered one],²⁵ but in the case of denial and admission²⁶ we do not say this, therefore he teaches us [that we do].

IF THERE WERE TWO SETS OF WITNESSES, AND THE FIRST DENIED, AND THEN THE SECOND DENIED,

[THEY ARE BOTH LIABLE]. Granted, the second should be liable, because the first denied;²⁷ but the first — why [should they be liable]?

(1) If the husband adjures the two witnesses of the secret meeting (עדי סתירה) to bear testimony for him, and they swear, denying knowledge of testimony, R. Eleazar b. R. Simeon (who regards the causing of pecuniary loss as the direct infliction of a money loss, as is proved by his view imposing liability on one witness who was adjured) will hold they are liable, for by withholding their testimony they cause a pecuniary loss to the husband (for, had they given testimony, the wife might have confessed rather than undergo the ordeal of the 'bitter waters', and the husband would have been exempt from paying the Kethubah); but the Sages hold they are not liable, for their testimony would not have directly freed the husband from paying the Kethubah.

(2) If there is one witness for a debt, the debtor takes an oath denying liability; but if he is suspected of swearing falsely, the creditor takes an oath that the debt is due, and is paid (infra 44b). If the witness is adjured by the creditor, and denies knowledge of testimony, he is thereby depriving the creditor of his debt, and therefore all agree that in such a case he is liable. [The order of the text in cur. edd. is somewhat disarranged. MS.M. preserves a better order and reading which avoid the needless repetitions in our text, v. D.S.].

(3) Explained below.

(4) Perhaps you would not have wished to swear, and would not have obtained your money. The witness is therefore merely a possible cause of monetary loss (and does not actually deprive the creditor of his money); the Sages (who disagree with R. Eleazar b. R. Simeon) would therefore not hold him liable. Why, then, say that all agree in this case?

(5) The debtor, infra 47a.

(6) Being suspected of swearing falsely.

(7) The witness, therefore, by withholding his testimony in such a case, definitely deprives the creditor of his money, and all agree that he is liable.

(8) The owner of the bar.

(9) A man cannot free himself by saying, 'it is mine that I snatched', for if this excuse were accepted, no robber would ever be liable, even when there were two witnesses that he robbed, for he could always say, 'I admit I took it, but it is my own property'; v. Tosaf. a.l. And since he is like a robber, he cannot take an oath.

(10) He cannot keep it by saying, 'it is mine', for there is a witness that he snatched it from someone else; and property is always presumed to belong to the one in whose possession it has been (unless there is definite proof to the contrary). He must therefore

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take an oath to deny the statement of the witness. This he cannot do, for he admits that he snatched it (agreeing with the witness), and since he cannot swear, he must return it; v. B.B. (Sonc. ed.) p. 156 and notes.

(11) The witness, therefore, if he had withheld his evidence, would have deprived the man of his bar of silver; therefore all agree that he must bring an offering for his false oath in such circumstances.

(12) That a woman's husband had died.

(13) That he knows her husband has died abroad; but when she adjured him to give evidence before the Beth Din, he denied the knowledge. He is not liable, because she can go to the Beth Din herself, and say her husband is dead, and requires no witness. He has therefore not occasioned any monetary loss to her by withholding his evidence, for she is believed, and can obtain her Kethubah from the heirs.

(14) If her husband died without issue; Deut. XXV, 5.

(15) If the wife adjures him to give evidence, and he denies having any knowledge, he is liable, for he has deprived her of the Kethubah, since he did not tell even her that her husband had died, and she has therefore no information at all on the matter.

(16) The Kethubah was collected (in Talmudic times) from immovable property only; the witness of the husband's death is liable, according to R. Papa, if he is adjured and withholds information. But there is already a dispute between Tannaim on this point (v. infra 37b). Let R. Papa then merely say he agrees with one of the Tannaim!

(17) The wife had in her possession during the husband's lifetime some of his movable property; and if the witness had given evidence, she would have retained it in settlement of her Kethubah. R. Papa's ruling may refer to such a case, and not to a case where the Kethubah has to be collected from immovable property.

(18) Though he could say, 'Why should I be liable? My testimony alone is of no avail, since the other also denies', yet because when he denies, the other had not yet denied, he is liable.

(19) Surely, it is obvious that the first is liable, for the second admits knowing testimony; hence, the first, by withholding testimony, deprives the claimant of his money. Why, then, does the Mishnah mention this clause? It is superfluous!

(20) And the Mishnah does not wish to teach us that the one who denies is liable (for this we know from the previous clause), but that the one who admits is exempt, although he first denied, his admission within the brief interval being accepted, and exempting him.

(21) Where both denied together.

(22) V. supra 32a.

(23) One denied, and the other admitted.

(24) As in the first clause.

(25) And the second is liable like the first.

(26) The second clause, where the same person first denies, and then admits.

(27) Hence, only the second set were left to bear testimony, and by withholding testimony, they make the claimant incur a loss.

Shevu'oth 33a

The second set are still there!¹ — Rabina said: Here we are discussing [a case] where, for example, the second set, at the time of the denial of the first set, were related through their wives;² and their wives were dying: you might have thought [because we say] the majority of dying people actually die [the second set are eligible],³ therefore he teaches us [that they are not], because as yet the wives are not dead.⁴

MISHNAH. 'I ADJURE YOU THAT YOU COME AND BEAR TESTIMONY FOR ME THAT THERE ARE OF MINE IN THE POSSESSION OF SO-AND-SO A DEPOSIT, LOAN, THEFT, AND LOST OBJECT.'⁵ — 'WE SWEAR WE KNOW NO TESTIMONY FOR YOU': THEY ARE LIABLE ONLY ONCE. 'WE SWEAR WE KNOW NOT THAT THERE ARE OF YOURS IN THE POSSESSION OF SO-AND-SO A DEPOSIT, LOAN, THEFT, AND LOST OBJECT': THEY ARE LIABLE FOR EACH ONE. 'I ADJURE YOU THAT YOU BEAR TESTIMONY FOR ME THAT THERE IS OF MINE IN THE POSSESSION OF SO-AND-SO A DEPOSIT OF WHEAT, BARLEY, AND SPELT'. — 'WE SWEAR WE KNOW NO TESTIMONY FOR YOU': THEY ARE LIABLE ONLY ONCE. 'WE SWEAR WE KNOW NO TESTIMONY FOR YOU THAT THERE IS OF YOURS IN THE POSSESSION OF SO-AND-SO A DEPOSIT OF WHEAT, BARLEY, AND SPELT': THEY ARE LIABLE FOR EACH ONE.⁶ — 'I ADJURE YOU THAT YOU COME AND BEAR TESTIMONY FOR ME THAT SO-AND-SO OWES ME FULL INDEMNITY FOR DAMAGE, OR HALF INDEMNITY,⁷ OR DOUBLE,⁸ OR FOUR OR FIVE TIMES THE AMOUNT;⁹ OR THAT SO-AND-SO VIOLATED MY DAUGHTER, OR SEDUCED MY DAUGHTER;¹⁰ OR THAT MY SON SMOTE ME;¹¹ OR THAT MY NEIGHBOR

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INJURED ME, OR SET FIRE TO MY HAYSTACK ON THE DAY OF ATONEMENT';¹² [AND THEY DENY KNOWLEDGE OF TESTIMONY] THEY ARE LIABLE.¹³

GEMARA. It was debated: If he adjures witnesses in [a case where] a fine [is imposed],¹⁴ what is the ruling? In accordance with the view of R. Eleazar son of R. Simeon who says, let the witnesses come and hear testimony, there is no question;¹⁵ but the question is in accordance with the view of the Rabbis who say, he who admits [an act for which] a fine [is imposed], and then witnesses come, is exempt.¹⁶ But [consider] the Rabbis there,¹⁷ with whom do they agree? Shall we say they agree with R. Eleazar son of R. Simeon here?¹⁸ Surely he says, that which causes [extraction of] money is counted as [if it had extracted] money!¹⁹ — Well then, they agree with the Rabbis here²⁰ who say that which causes [extraction of] money is not counted as [if it had extracted] money: what is the ruling? [Shall we say] since, if he had confessed, he would have been exempt,²¹ he is not denying [a legitimate] money [liability],²² or, since now he did not actually confess, [he is denying a money liability]?²³

Come and hear: 'I ADJURE YOU THAT YOU COME AND BEAR TESTIMONY FOR ME THAT SO-AND-SO OWES ME FULL INDEMNITY FOR DAMAGE, OR HALF INDEMNITY'. Now, half indemnity is a fine,²⁴ [and yet they are liable]!²⁵ — [The Mishnah will agree with him] who holds the half indemnity is a liability.²⁶ That is well according to him who holds that the half indemnity is a liability, but according to him who holds it is a fine, what shall we say?²⁷ — [The Mishnah will refer to] the half indemnity of pebbles,²⁸ for which there is a tradition that it is a liability.

Come and hear: '[SO-AND-SO OWES ME] DOUBLE'!²⁹ — Because of the principal.³⁰ 'FOUR OR FIVE TIMES THE AMOUNT'! — Because of the principal. — 'SO-AND-SO

VIOLATED, OR SEDUCED MY DAUGHTER'!³¹ — Because of the shame and deterioration.³² What does he teach us? It is all liability!³³ — The first clause teaches us one thing, and the last clause teaches us one thing. The first clause teaches us one thing, that the half indemnity of pebbles is a liability.³⁴ The last clause teaches us one thing: 'THAT HE SET FIRE TO MY HAYSTACK ON THE DAY OF ATONEMENT' [etc.]. What does this exclude? It excludes the view of R. Nehunia b. Hakkanah, for it was taught: R. Nehunia b. Hakkanah made the Day of Atonement equivalent to the Sabbath for payment; just as on the Sabbath, etc.³⁵

Come and hear: 'I adjure you that you come and bear testimony for me

- (1) To bear testimony; and the first have therefore not occasioned him any loss by withholding their evidence.
- (2) They married two sisters, and therefore were ineligible to bear testimony together in one case.
- (3) Because we assume the wives are counted as dead, therefore the witnesses are no longer related to each other; and since they are now eligible, the first set should be exempt, because the second set are there to give evidence.
- (4) The first set are therefore liable, because they alone are eligible, and by withholding their testimony they make the claimant incur a loss.
- (5) 'I deposited with him some wheat, and he borrowed from me some wheat, and stole from me some wheat, and found some wheat which I had lost'.
- (6) In this clause the claim is under one head (deposit), but of different kinds (wheat, barley, and spelt). In the first clause the claim is under different heads (deposit, loan, theft, lost object), but one kind (e.g., wheat).
- (7) Explained in the Gemara.
- (8) For theft; Ex. XXII, 3.
- (9) If the thief sold or killed the animal he stole, he pays four times its value (for a sheep), and five times its value (for an ox); Ex. XXI, 37.
- (10) He must pay the father for the shame caused to his daughter (בְּרִישָׁה), and for the deterioration in her value (פְּגָמָה).
- (11) Without causing a wound, he must pay for the shame. If he caused a wound, the penalty is death (Sanh. 85b), and the lesser penalty (compensation for בְּרִישָׁה) is not inflicted, but is merged in the larger.

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(12) Though the penalty for wounding or setting fire on the Day of Atonement is kareth, the money penalty is also inflicted.

(13) For they thereby deprive the claimant of his money.

(14) E.g., for seducing a maid, for which he pays 50 shekels; Deut. XXII, 29. This is a fine (קנס) in contradistinction to a real liability (מזון). Any payment that does not correspond to the amount of damage caused is considered a fine.

(15) He who admits an act for which a fine is imposed is exempt (B.K. 64b); but if after his confession witnesses give evidence, he is liable, according to R. Eleazar b. R. Simeon. If, therefore, the witnesses withhold their testimony, they cause a pecuniary loss to the injured party, and are therefore liable.

(16) Do we say this is not a real liability, since a confession would exempt him, and therefore if witnesses are adjured to bear testimony before he confesses, and deny knowledge of testimony, they are exempt; or, since, if they had given evidence before his confession, he would have been liable, they are, by withholding evidence, causing a loss to the claimant, and consequently should be liable?

(17) Who hold that even if witnesses come after his confession he is still exempt.

(18) Supra 32a; if one witness is adjured, and denies knowledge, he is liable.

(19) Therefore, even if we say that confession of a fine, followed by witnesses, still exempts him; the witnesses, who are adjured before the confession, should be liable, because, by withholding their evidence, they cause loss to the claimant.

(20) Supra 32a.

(21) Even if witnesses had come later.

(22) And therefore the witnesses, who are adjured before he confesses, are not liable, though by withholding testimony they cause a loss to the claimant, for that is merely גורם למזון.

(23) And the witnesses who are adjured are depriving the claimant of money by withholding their testimony, and are therefore liable.

(24) It is assumed at present that this half indemnity is for the damage caused by a goring ox on the first two occasions while yet a Tam (v. Glos.), Ex. XXI, 35; and this is a fine, B.K. 15a.

(25) Hence you may deduce that if witnesses for a fine are adjured, they are liable.

(26) B.K. 15a; hence you cannot solve the problem from the Mishnah.

(27) How will he explain the half indemnity of the Mishnah?

(28) If an animal, while walking, treads on pebbles, and they fly out from under its feet, and cause damage to another's property, the owner of the animal pays half the amount of the damage; B.K. 17a.

(29) For theft; the extra amount above the principal is a fine. The witnesses are liable; hence you may solve your problem.

(30) The witnesses are liable because by withholding evidence they deprive him even of the principal.

(31) For which a fine is imposed; Deut. XXII, 29.

(32) By withholding evidence the witnesses deprive the father of compensation by the seducer (apart from the fine of 50 shekels) for the shame, and also for the deterioration in value of the girl (which sums are קנס מזון not קנס).

(33) If all the clauses in the Mishnah refer to מזון and not קנס why does the Mishnah need to enumerate them all?

One clause would suffice.

(34) And because the Mishnah mentions this, it mentions also the rest (double, four or five times), for they are equal in that they are either more or less than the principal.

(35) Because he incurs the death penalty (מיתה בית דין) for setting a haystack on fire, he does not pay for the damage; so on the Day of Atonement, because he incurs the penalty of kareth, he does not pay; Keth. 30a. Our Mishnah, in stating that the witnesses are liable if they withhold evidence in the case of a man who set fire to a haystack on the Day of Atonement, obviously holds that had they given evidence he would have had to pay, hence it disagrees with R. Nehunia b. Hakkanah. This last clause is therefore inserted to exclude R. Nehunia b. Hakkanah's view.

Shevu'oth 33b

that So-and-So uttered an evil report about my daughter';¹ [and the witnesses deny knowledge of testimony] they are liable. If he confessed himself, he is exempt!² — This is in accordance with the view of R. Eleazar son of R. Simeon, who says, let the witnesses come and bear testimony.³ Read then the latter clause: 'If he confessed himself, he is exempt'.⁴ We here thus come round to [the view of] the Rabbis! — It is all in accordance with the view of R. Eleazar son of R. Simeon; and thus he means: It is not possible that, if he confessed himself, he should be exempt, except when there are no witnesses at all, and he confessed himself.⁵

MISHNAH. 'I ADJURE YOU THAT YOU COME AND BEAR TESTIMONY FOR ME THAT I AM A PRIEST, OR, THAT I AM A LEVITE, OR, THAT I AM NOT THE SON OF A DIVORCED

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WOMAN, OR, THAT I AM NOT THE SON OF A HALUZH;⁶ THAT SO-AND-SO IS A PRIEST, OR, THAT SO-AND-SO IS A LEVITE, OR, THAT HE IS NOT THE SON OF A DIVORCED WOMAN, OR, THAT HE IS NOT THE SON OF A HALUZH; THAT SO-AND-SO VIOLATED ANOTHER'S DAUGHTER, OR SEDUCED HIS DAUGHTER; THAT MY SON INJURED ME;⁷ THAT MY NEIGHBOR INJURED ME,⁸ OR SET FIRE TO MY HAYSTACK ON THE SABBATH,⁹ — THEY ARE EXEMPT.⁹

GEMARA. The reason [they are exempt] is because [he adjured them:] 'SO-AND-SO IS A PRIEST, OR, SO-AND-SO IS A LEVITE',¹⁰ but [if he adjured them:] 'So-and-So owes So-and-So a hundred Zuz', they would be liable? Surely he teaches in a later clause: [They are exempt] unless they hear [the adjuration] from the mouth of the claimant!¹¹ — Samuel said: [It refers to a case where] he comes with power of attorney.¹² But the Nehardeans say: We do not write an authorization on movables!¹³ — That is only when he denies it, but when he does not deny it, we do write.¹⁴ Our Rabbis taught: How do we know that the verse refers only to a money claim?

R. Eliezer said, Here¹⁵ it is said: or... or;¹⁶ and there¹⁷ it is said: or... or;¹⁸ just as there it refers only to a money claim, so here it refers only to a money claim. But let the or... or of a murderer¹⁹ prove [that a money claim is not intended], for they are or... or, and refer not to a money claim! We deduce or... or which are concerned with an oath²⁰ from or... or which are concerned with an oath;²¹ and let not the or... or of a murderer prove [anything], for they are not concerned with an oath. But let the or... or a Sotah²² prove, for they are or... or,²³ and are concerned with an oath,²⁴ and refer not to a money claim!²⁵ We deduce or... or which are concerned with an oath, and not concerned with a priest from or... or which are concerned with an oath, and not concerned with a priest; and let not the or... or of a murderer prove [anything], for they are not concerned with an oath; nor let

the or... or of a Sotah prove [anything], for, although they are concerned with an oath, they are also concerned with a priest.

R. Akiba said: And it shall be, when he shall be guilty in one of these things²⁶ — in some of 'these things' he is liable, and in some of 'these things' he is exempt: how is this? If he claimed from him money, he²⁷ is liable, if something else, he is exempt. R. Jose the Galilean said, Behold Scripture says: He being a witness, whether he hath seen or known²⁸ — of such testimony as may be established by seeing without knowing, and by knowing without seeing, the verse deals.²⁹ 'Seeing without knowing', how? 'A hundred Zuz I counted out to you before So-and-so and So-and-so.'³⁰ 'Let So-and-so and So-and-so come and bear testimony.'³¹ This is seeing without knowing. 'Knowing without seeing', how? 'You admitted that you owe me a hundred Zuz before So-and-So and So-and-so.'³² 'Let So-and-so and So-and-so come and bear testimony.'³³ This is knowing without seeing.

R. Simeon said: He is liable here,³⁴ and he is liable in [the case of] deposit; just as there it deals only with a money claim, so here it deals only with a money claim; and further, [we have an argument] from minor to major: Deposit, where the law makes women equal to men, relatives equal to non-relatives, those ineligible [to bear testimony] equal to those eligible, and where he is liable for

(1) That he found her not a virgin when he married her; Deut. XXII, 14. If his allegation is false, he is fined 100 shekels of silver; *ibid.* 19.

(2) Apparently even if witnesses came later; yet if witnesses are adjured before the confession, and they withhold testimony, they are liable. Hence it is proved that if witnesses for a fine are adjured and withhold testimony they are liable.

(3) Even after confession (cf. p. 187, n. 10), but the question is with reference to the Rabbis.

(4) Apparently even if witnesses come later.

(5) And the confession was not followed by witnesses. We cannot therefore decide the question (according to the Rabbis) whether or not witnesses who are adjured for a fine and withhold testimony, are liable.

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- (6) A woman (whose husband died without issue) released, by the ceremony of halizah (Deut. XXV, 9), from marrying her husband's brother.
- (7) Causing a wound. Since death is inflicted, there is no money payment.
- (8) On the Sabbath: the penalty is death.
- (9) The witnesses, denying knowledge of testimony, are exempt in all these cases, for they are liable only if by their refusal to testify they cause a monetary loss to the claimant. In the case of 'So-and-so violated another's daughter', they are exempt (though causing monetary loss) because it is not the claimant himself who adjures them.
- (10) The issue is not monetary.
- (11) Infra 35a.
- (12) Our Mishnah, which implies that if it were a money claim the witnesses would be liable even if the person who adjured them was not the claimant, refers to a case where he who adjured the witnesses was authorized by the creditor to claim the debt on his behalf.
- (13) B.K. 70a.
- (14) Should then the debtor deny the claim after the authorization was given, the witnesses, by withholding their testimony, would cause a loss to the claimant, and therefore be liable.
- (15) In connection with the oath of testimony.
- (16) Lev. V, 1: or saw or knew.
- (17) In connection with the oath of deposit.
- (18) Lev. V, 21: in a deposit or pledge or robbery, or oppressed his neighbor.
- (19) Num. XXXV, 18-21: or if he smote him with a weapon of wood... or hurled at him... or in enmity smote him.
- (20) Oath of testimony.
- (21) Oath of deposit.
- (22) Woman suspected by husband of infidelity; Num. V, 12-31.
- (23) Num. V, 14: or if the spirit of jealousy; ibid. 30: or when the spirit of jealousy.
- (24) Ibid. 21, 22: the priest shall cause the woman to swear.
- (25) But to make her drink the bitter waters; Num. V, 24.
- (26) Lev. V, 5.
- (27) The witness who withholds testimony.
- (28) Lev. V, 1.
- (29) And this is only possible in a money claim, as he explains.
- (30) The claimant says to the debtor: 'The witnesses saw me counting out the money to you, but I did not tell them if it was a gift or loan or repayment of debt.'
- (31) The debtor replies: 'If they testify that they saw you counting out the money to me, I will pay you.'
- (32) They did not see the transaction; they only heard your admission, and therefore know that you owe me the money.

- (33) That they heard my admission, and I will pay you.
- (34) In the case of oath of testimony.

Shevu'oth 34a

each [oath], whether [uttered] before the Beth Din or not before the Beth Din,¹ yet deals only with a money claim; testimony, where the law does not make women equal to men, relatives equal to non-relatives, those ineligible [to bear testimony] equal to those eligible, and where he is liable only once [if adjured] before the Beth Din, how much more that it should deal only with a money claim!² — [No! We may argue:] Deposit [is restricted to money claims] because the law does not make him who is adjured [by others] equal to him who swears [of his own accord], or him who swears willfully like him who swears unwittingly; but how can you say in [the case of] testimony [that it should be restricted to money claims], since the law makes him who is adjured [by others] equal to him who swears [of his own accord], and him who swears willfully equal to him who swears unwittingly? —

It is said: sin, sin, for deduction by analogy;³ here⁴ it is said: [If any one] sin,⁵ and there⁶ it is said: [If any one] sin;⁷ just as there it deals only with a money claim, so here it deals only with a money claim. Rabbah b. Ulla raised an objection:⁸ Or... or of [the oath of] utterance⁹ will prove [that a money claim is not intended], for they are or... or, and are concerned with an oath, and not concerned with a priest, and yet deal not with a money claim!¹⁰ — It is more reasonable to deduce it from deposit, because [we may deduce] 'sin'¹¹ from 'sin'.¹² —

On the contrary, we should deduce it from [the oath of] utterance, for [we may deduce] sin offering from sin offering!¹³ — Well, it is more reasonable to deduce it from deposit, because [they are both equal in respect of] sin,¹⁴ wilful,¹⁵ claim and denial,¹⁶ past.¹⁷ On the contrary, we should deduce it from [oath of] utterance, because [they are both equal in

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respect of] sin offering, sliding scale, fifth!¹⁸
— The others are more.¹⁹

‘R. Akiba said: And it shall be, when he shall be guilty in one of these things — in some of these things he is liable, and in some of these things he is exempt; how is this? If he claimed from him money, he is liable; if he claimed from him something else, he is exempt.’²⁰ Let me reverse it!²¹ — R. Akiba relies on the or... or of R. Eliezer.²² — [If so,] what is the difference between R. Eliezer and R. Akiba?²³ — The difference between them is, if he adjures witnesses for land: according to R. Eliezer²⁴ they are liable, according to R. Akiba they are exempt. — But according to R. Johanan who says there²⁵ that if he adjures witnesses for land, they are exempt even according to R. Eliezer, what will be the difference here between R. Eliezer and R. Akiba? — The difference between them will be witnesses for a fine.²⁶

‘R. Jose the Galilean said: He being a witness, whether he hath seen or known — of such testimony as may be established by seeing without knowing, and by knowing without seeing, the verse deals.’²⁷ R. Papa said to Abaye: Shall we say that R. Jose the Galilean²⁸ does not agree with R. Aha? For it was taught: R. Aha said; If a camel copulates among other camels, and one camel is found killed at his side, it is known that he killed him.²⁹ Now, if he would agree with R. Aha, it is possible also in capital cases, as [in the incident related by] R. Simeon b. Shetah, for we learnt, R. Simeon b. Shetah said; May I not see the consolation [of Zion] if I did not see a man running after his neighbor into a ruin, and I ran after him, and found him with a sword in his hand with the blood dripping, and the victim writhing in agony. I said to him: ‘Wicked one! Who killed this man? I or you? But what can I do, since your blood is not given into my hand, for Scripture says: At the mouth of two witnesses, or three witnesses, shall he that is to die be put to death.³⁰ But the Omnipresent will exact retribution from you!’

It is said, they had not yet moved from there, when a serpent bit him, and he died!³¹ — You may say, he does agree with R. Aha. Granted, knowing without seeing is possible,³² but seeing without knowing how is that possible?³³ Does he not need to know if he killed a heathen or a Jew,³⁴ if he killed a man suffering from a fatal disease or a healthy man? We may deduce that R. Jose the Galilean holds that if he adjures witnesses for a fine,³⁵ they are exempt, for if you will say they are liable, granted that knowing without seeing is possible,³⁶ but seeing without knowing — [how is that possible]? Does he not need to know if he cohabited with a heathen woman or a Jewish woman, with a virgin or with a woman who is not a virgin?³⁷ R. Hamnuna sat before Rab Judah, and Rab Judah sat and enquired; [If one said;] ‘A hundred Zuz I counted out to you before So-and-So and So-and-So’;

- (1) Infra 36b.
- (2) If the law concerning the oath of deposit, which has a more universal application, is yet restricted to money claims only, the law concerning the oath of testimony, which is restricted in many points, should the more so be restricted to money claims.
- (3) A Gezerah shawah, v. Glos.
- (4) In the case of oath of testimony.
- (5) Lev. V. 1.
- (6) In the case of oath of deposit.
- (7) Lev. V, 21.
- (8) To the deduction of R. Eliezer; supra 33b.
- (9) Lev. V, 4: Or if any one swear... to do evil, or to do good.
- (10) Therefore let us say that the oath of testimony also does not deal with a money claim.
- (11) Lev. V. 1: if any one sin (referring to oath of testimony).
- (12) Ibid. 21: if any one sin (referring to oath of deposit).
- (13) For transgression of oath of testimony, or oath of utterance, a sin offering (sliding scale sacrifice) is brought, whereas for transgression of oath of deposit a guilt offering is brought.
- (14) In both testimony and deposit the phrase if any one sin occurs.
- (15) In both an offering is brought for willful transgression, whereas in the case of oath of utterance an offering is brought only for unwitting transgression.

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(16) In both the oath is the result of a claim and a denial.

(17) In both the oath is in the past ('We did not see you lend money to So-and-so' — testimony. 'You did not deposit anything with me' — deposit); but the oath of utterance is mainly concerned with the future ('I swear I shall eat'), for Scripture clearly implies the future: to do evil, or to do good (though according to R. Akiba it is possible to deduce the past also; supra 25a).

(18) Testimony and utterance entail liability for a sin offering, which is a sliding scale sacrifice, and no fine of a fifth of the principal is imposed, whereas in the case of deposit, the liability is for a guilt offering, which is a fixed sacrifice, and a fine of a fifth of the principal is imposed.

(19) Testimony is equal to deposit in four things, and equal to utterance only in three things, hence it is more reasonable to deduce testimony from deposit (and infer that it deals only with money claims) rather than deduce it from utterance (and infer that it is not restricted to money claims).

(20) V. supra 33b.

(21) Why deduce that if the claim is for money the witnesses are liable, and if not, they are exempt? The verse does not mention money claims.

(22) Supra 33b; R. Eliezer deduces from or... or that the oath of testimony refers to money claims only; and on this R. Akiba says that in some cases (of money claims) the witnesses are liable, and in some they are exempt.

(23) What sort of money claims does R. Akiba exempt?

(24) Cf. infra 37b.

(25) Loc. cit.

(26) According to R. Eliezer who expounds the Torah on the principle of amplification and limitation (v. infra 37b), if he adjures witnesses in a case where only a fine would be imposed, they are liable if they withhold their testimony; according to R. Akiba they are exempt.

(27) Supra 33b.

(28) Who holds that only in money matters can there be testimony based on seeing without knowing, and knowing without seeing; but in other matters both seeing and knowing are necessary.

(29) It is assumed that this camel kicked the other males away, and the owner of this camel must pay for the dead camel. R. Aha thus holds that circumstantial evidence is equivalent to definite knowledge, v. B.B. 93a; Sanh. 37b.

(30) Deut. XVI, 6.

(31) V. Sanh. (Sonc. ed.) p. 235. If R. Jose the Galilean agrees with R. Aha that circumstantial evidence is as good as definite knowledge, why does he say that only in money matters is it possible to have testimony based on knowing without seeing? Hence, he does not agree with R. Aha.

(32) As in the case of R. Simeon b. Shetah.

(33) If he sees one person killing another, would that be sufficient to condemn him? Would it not be necessary to know whether or not the victim e.g., suffered from a fatal disease (in which case the murderer does not pay the extreme penalty;)? Sanh. 78a? R. Jose therefore rightly says that only in money matters is it possible to have evidence based on seeing without knowing.

(34) V. B.K. (Sonc. ed.) p. 253, n. 4.

(35) E.g., to testify that a man had seduced his daughter, for which a fine of 50 shekels is imposed; Deut. XX, 29.

(36) By circumstantial evidence.

(37) Since testimony cannot be established by seeing without knowing, R. Jose must hold that when witnesses are adjured in the case of a fine, and they withhold testimony, they are exempt; for he holds that the oath of testimony is applicable only in such a case where testimony may be established by seeing without knowing, and by knowing without seeing.

Shevu'oth 34b

and witnesses had been watching him from outside,¹ what [is the ruling]? — R. Hamnuna said to him: And what does that one² plead? If he says, 'The thing never occurred', he is proven a liar.³ If he says, 'Yes, I took [the money], but it was my own that I took', if witnesses come, what happens?⁴ — He said to him: 'Hamnuna, you come and go in'.⁵ A certain [man] said to his neighbor. 'A hundred Zuz I counted out to you by the side of this pillar'. He replied to him, 'I did not pass by the side of this pillar'. Two witnesses came and bore testimony that he had urinated by the side of that pillar. Said Resh Lakish, he is proven a liar. R. Nahman raised an objection: This is a Persian judgment!⁶ Did he then say 'never'?⁷ In connection with this affair, he meant.

Some say: A certain [man] said to his neighbor, 'A hundred Zuz I counted out to you by the side of this pillar'. He replied to him, 'I never passed by the side of this pillar'. Witnesses came that he had urinated by the side of that pillar. R. Nahman said, he is proven a liar. Said Raba to R. Nahman; Anything which is not imposed upon a man he will do without being conscious of it.⁹ 'R. Simeon said: He is liable here, and he is liable

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in [the case of] deposit, etc.’¹⁰ They laughed at it in the West.¹¹ Why the laughter? — Because he states; ‘Deposit [is restricted to money claims] because the law does not make him who is adjured [by others] like him who swears [of his own accord], nor him who swears willfully like him who swears unwittingly.’ Now, he who swears of his own accord in [the case of] testimony — how does R. Simeon know [that he is liable]?¹² Because he deduces it from deposit;¹³ then let him also in [the case of] deposit deduce adjuration by others from testimony.¹⁴ But why the laughter? Perhaps R. Simeon deduces it by argument from minor to major: if when adjured by others he is liable, when he swears of his own accord he should the more so be liable?¹⁵ — Well then, the laughter is in connection with ‘willful like unwitting’, for he states: ‘Deposit [is restricted to money claims] because the law does not make him who is adjured [by others] like him who swears [of his own accord], nor him who swears willfully like him who swears unwittingly.’ Now for swearing willfully in [the case of] testimony, how do we know [that he is liable]? Because it is not written, and it be hidden. Here¹⁶ also it is not written, and it be hidden.¹⁷

R. Huna said to them: But why the laughter? Perhaps R. Simeon deduces that willful [transgression] is not like unwitting in [the case of] deposit from [the law of] trespass [in holy things].¹⁸ — This then is the very reason for the laughter: why does he deduce it from trespass?¹⁹ Let him rather deduce it from testimony!²⁰ — It is more reasonable that he should deduce it from trespass, because it is ‘trespass’ from ‘trespass’!²¹ On the contrary, he should deduce it from testimony, because it is ‘sin’ from ‘sin’.²² It is more reasonable that he should deduce it from trespass, because [they are both equal in respect of] ‘trespass’,²³ all,²⁴ enjoyment,²⁵ fixed offering,²⁶ fifth, and guilt offering. On the contrary, he should deduce it from testimony, because [they are both equal in respect of] ‘sin’,²⁷ layman,²⁸ oath,²⁹ claim and denial,³⁰ and ‘or... or’!³¹ —

The others are more.³² Well then, why the laughter?³³ —

When R. Papa and R. Huna the son of R. Joshua came from the Academy,³⁴ they said this is the reason for the laughter: Behold R. Simeon deduces by analogy [testimony from deposit].³⁵ Why then does he argue: ‘Deposit [is restricted to money claims] because the law does not make him who is adjured [by others] like him who swears [of his own accord], nor him who swears willfully like him who swears unwittingly.’³⁶ But why the laughter? Perhaps he argued thus before he established the analogy, but after he established the analogy he does not argue thus.³⁷ But does he not? Surely Raba b. Ithi said to the Sages: Who is the Tanna who holds that [in the case of] the oath of deposit willful transgression is not atoned for [by an offering]? It is R. Simeon!³⁸ —

Perhaps he argues that willful transgression [is not] like unwitting [in the case of deposit], because he deduces it from trespass³⁹ since [it is equal to it] in more respects; but that adjuration by others [is not] like swearing of his own accord he does not argue.⁴⁰ — Well, let testimony now be in turn deduced from deposit that willful is not like unwitting transgression; just as [in the case of] deposit he is liable for unwitting but not for willful transgression, so [in the case of] testimony let him be liable for unwitting and not for willful transgression; just as he deduces deposit from trespass!⁴¹ —

- (1) Unknown to the debtor.
- (2) The debtor.
- (3) And is not believed on oath, but must pay.
- (4) The witnesses only saw him count the money, but they do not know if it was a loan, or gift, or the repayment of a loan.
- (5) To the Academy; i.e., you are fit to teach.
- (6) An arbitrary decision.
- (7) ‘I never passed by this pillar’.
- (8) An act which is not of sufficient importance to be done with concentration.
- (9) Therefore he may really be unaware that he had urinated near the pillar, and should not be presumed a liar.

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(10) Supra 33b.

(11) [Phrase generally denoting R. Jose b. Hanninah, v. Sanh. 17b.]

(12) For Scripture implies only adjuration by others; Lev. V, 1.

(13) Where Scripture implies that only he who swears of his own accord is liable; Lev. V, 21, 22. R. Simeon deduces testimony from deposit by analogy of phrases: תחטא תחטא.

(14) By the same analogy. Why then assume that in the case of deposit adjuration by others does not make him liable? This was the cause of the laughter.

(15) He does not deduce testimony from deposit by גזרה שוה from תחטא תחטא he argues that in the case of testimony, where Scripture says adjuration by others makes him liable, he should certainly be liable if he swears of his own accord. Since he does not make use of the גזרה שוה he does not use it for deducing deposit from testimony either.

(16) In the case of deposit.

(17) Therefore let us say that for swearing falsely willfully he is also liable to bring an offering. Because R. Simeon did not say this, they laughed.

(18) Lev. V, 15: If any one commit a trespass, and sin through error in the holy things. And in the case of deposit Scripture says: If any one sin, and commit a trespass: Lev. V, 21. We deduce deposit from trespass by the גזרה שוה of מעל 'מעל': as in the case of trespass an offering is brought only for unwitting transgression, so also in the case of deposit.

(19) And say that willful transgression is exempt.

(20) And say that willful transgression is liable.

(21) In both, the word מעל is used.

(22) In both, the word תחטא is used.

(23) In both, מעל is used.

(24) The laws of deposit and trespass are applicable to all people, whereas testimony is limited to those eligible to be witnesses.

(25) In the case of both deposit and trespass the transgressor derives enjoyment and benefit from his transgression (from the deposit or from the holy things), but in the case of testimony the witnesses derive no benefit by withholding testimony.

(26) For deposit and trespass a fixed offering is brought, whereas for testimony a sliding scale sacrifice is brought. In the case of the first two also a fifth of the principal is imposed as a fine, and a guilt offering is brought, but not in the case of testimony. Therefore because deposit and trespass are equal in all these respects, we also equate deposit with trespass to exempt willful transgression from an offering.

(27) In both deposit and testimony תחטא occurs.

(28) Deposit and testimony are both concerned with laymen, but not so trespass in holy things, where the Temple is the claimant.

(29) The transgression in the case of deposit and testimony is in respect of swearing falsely, but not so in the case of trespass.

(30) The transgression is the result of claim and denial.

(31) In both, 'or... or' occurs, which is not the case in trespass, v. supra p. 191.

(32) Deposit is like trespass in more respects than it is like testimony, six instead of five.

(33) For it is really more reasonable to deduce deposit from trespass, and therefore to exempt willful transgression from an offering.

(34) Be-rab; v. Sanh. (Sonc. ed.) p. 387, n. 7.

(35) Supra 34a; by the גזרה שוה of תחטא תחטא that just as deposit deals only with money claims so testimony deals only with money claims.

(36) Since he uses the גזרה שוה to deduce testimony from deposit, let him use the same גזרה שוה to deduce deposit from testimony for liability in the case of adjuration by others, and for willful as for unwitting transgression.

(37) But agrees that deposit may be deduced from testimony to make him liable in the case of adjuration by others, and for willful transgression.

(38) Hence R. Simeon does not use the גזרה שוה to deduce deposit from testimony; and that was the cause of the laughter.

(39) Even after he has established the גזרה שוה of תחטא תחטא (testimony from deposit).

(40) After having established the גזרה שוה but deduces deposit from testimony that adjuration by others makes him liable. There is therefore no cause for laughter, for he likens deposit to trespass to exempt willful transgression from an offering (for deposit is like trespass in more respects than it is like testimony); and he likens deposit to testimony (because he has a גזרה שוה) to make him liable in the case of adjuration by others. (He cannot liken it to trespass in this respect, for there is no oath involved.)

(41) Since he has already deduced deposit from trespass that he is not liable for willful transgression, and since he has a גזרה שוה to equate testimony with deposit, let him say that in the case of testimony also he is not liable for willful transgression; why does he say that in testimony willful is like unwitting transgression? Hence the laughter.

Shevu'oth 35a

For this reason Scripture wrote testimony near the oath of utterance and near [the laws of] uncleanness in connection with the Temple and the holy food thereof: for in all of them it is said, and it be hidden; and here it is not said, and it be hidden; in order to make him

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liable for willful as for unwitting transgression.²

MISHNAH. [IF A MAN SAID,] ‘I ADJURE YOU THAT YOU COME AND BEAR TESTIMONY FOR ME THAT SO-AND-SO PROMISED TO GIVE ME TWO HUNDRED ZUZ, AND DID NOT GIVE ME’, THEY ARE EXEMPT, FOR THEY ARE LIABLE ONLY FOR A MONEY CLAIM AS [IN THE CASE OF] DEPOSIT.³ ‘I ADJURE YOU THAT, WHEN YOU KNOW ANY TESTIMONY FOR ME, YOU SHOULD COME AND BEAR TESTIMONY FOR ME,’ THEY ARE EXEMPT, BECAUSE THE OATH PRECEDED THE TESTIMONY.⁴ IF] HE STOOD IN THE SYNAGOGUE AND SAID, ‘I ADJURE YOU THAT IF YOU KNOW ANY TESTIMONY FOR ME YOU SHOULD COME AND BEAR TESTIMONY FOR ME,’ THEY ARE EXEMPT⁵ UNLESS HE DIRECTS HIMSELF TO THEM.⁶ HE SAID TO TWO [PERSONS]. ‘I ADJURE YOU, SO-AND-SO AND SO-AND-SO, THAT IF YOU KNOW ANY TESTIMONY FOR ME YOU SHOULD COME AND BEAR TESTIMONY FOR ME,’ [AND THEY REPLIED,] ‘WE SWEAR WE KNOW NO TESTIMONY FOR YOU;’ AND THEY DID KNOW TESTIMONY FOR HIM, [BUT IT WAS EVIDENCE OF] ‘ONE WITNESS FROM THE MOUTH OF ANOTHER WITNESS;’⁷ OR IF ONE OF THEM WAS A RELATIVE OR [OTHERWISE] INELIGIBLE [AS A WITNESS], THEY ARE EXEMPT.⁸ IF HE SENT BY THE HAND OF HIS SERVANT;⁹ OR IF THE DEFENDANT SAID TO THEM, ‘I ADJURE YOU THAT IF YOU KNOW ANY TESTIMONY FOR HIM YOU SHOULD COME AND BEAR TESTIMONY FOR HIM;’ THEY ARE EXEMPT, [BEING LIABLE ONLY] WHEN THEY HEAR [THE ADJURATION] FROM THE MOUTH OF THE CLAIMANT.

GEMARA. Our Rabbis taught; [If a man says,] ‘I adjure you that you come and bear testimony for me that So-and-So promised to give me two hundred Zuz, and did not give me’; I might think they should be liable, therefore it is said: [If any one] sin,¹⁰ [if any one] sin,¹¹ for analogy; here¹² it is said; ‘[if any one] Sin’, and there¹³ it is said: ‘[if any

one] sin’; just as there it deals with a claim of money which is due to him, so here it deals with a claim of money which is due to him.

‘I ADJURE YOU THAT WHEN YOU KNOW ANY TESTIMONY FOR ME, etc.’ Our Sages taught: ‘I adjure you that when you know’ any testimony for me you should come and bear testimony for me’: I might think they should be liable, therefore it is said; and heard the voice of adjuration, he being a witness, whether he hath seen or known¹⁴ — where the testimony precedes the oath, and not where the oath precedes the testimony.

HE STOOD IN THE SYNAGOGUE AND SAID; ‘I ADJURE YOU, etc.’ Samuel said: Even if his witnesses are among them [they are exempt]. This is obvious!¹⁵ — It is not necessary [for him to tell us this except] where he stands next to them; you might have thought it is as though he said it to them [specifically], therefore he teaches us [that it is not so]. It was also taught likewise: If he saw a company of men standing, and his witnesses were among them, and he said to them, ‘I adjure you that if you know any testimony for me you should come and bear testimony for me;’ I might think they should be liable, therefore it is said, he being a witness¹⁶ — and here he did not single out his witnesses. I might think that even if he said, ‘All who stand here [I adjure’, they are exempt], therefore it is said, ‘he being a witness’; and here he did single out his witnesses.

HE SAID TO TWO [PERSONS]: ‘I ADJURE YOU, etc.’ Our Sages taught: If he said to two [persons]. ‘I adjure you, So-and-So and So-and-So, that if you know any testimony for me you should come and bear testimony for me;’ and they knew testimony for him, but it was evidence of ‘one witness from the mouth of another witness’, or if one of them was a relative or [otherwise] ineligible [as a witness]; I might think they should be liable, therefore it is said, if he do not tell it, then he

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shall bear his iniquity¹⁷ — with those who are eligible to tell, the verse deals.

IF HE SENT BY THE HAND OF HIS SERVANT, etc. Our Sages taught: If he sent by the hand of his servant; or if the defendant said to them, ‘I adjure you that if you know any testimony for him you should come and bear testimony for him;’ I might think they should be liable, therefore it is said, if he do not tell it, then he shall bear his iniquity. How is the deduction made? — R. Eleazar said: It is written: if he tell it not,¹⁸ [implying] if to him¹⁹ he tell it not, then he shall bear his iniquity; but if to another he tell it not, he is exempt.

MISHNAH. [IF HE SAID.] ‘I ADJURE YOU’; ‘I COMMAND YOU’; ‘I BIND YOU’; THEY ARE LIABLE.²⁰ ‘BY HEAVEN AND EARTH!’ THEY ARE EXEMPT. ‘BY ALEF DALETH’;²¹ ‘BY YOD HE’;²² ‘BY SHADDAI’;²³ ‘BY ZEBAOth’;²⁴ ‘BY THE MERCIFUL AND GRACIOUS ONE’; ‘BY THE LONG SUFFERING ONE’; ‘BY THE ONE ABOUNDING IN KINDNESS’; OR BY ANY OF THE SUBSTITUTES [FOR THE NAME]: THEY ARE LIABLE. HE WHO BLASPHEMES²⁵ BY ANY OF THEM IS LIABLE:²⁶ THIS IS THE OPINION OF R. MEIR; BUT THE SAGES EXEMPT HIM.²⁷ HE WHO CURSES HIS FATHER OR MOTHER BY ANY OF THEM IS LIABLE;²⁸ THIS IS THE OPINION OF R. MEIR; BUT THE SAGES EXEMPT HIM. HE WHO CURSES HIMSELF OR HIS NEIGHBOR BY ANY OF THEM TRANSGRESSES A NEGATIVE PRECEPT.²⁹ [IF HE SAID,] ‘THE LORD³⁰ SMITE YOU’; OR ‘GOD SMITE YOU’;³¹ THESE ARE THE CURSES WRITTEN IN THE TORAH.³² ‘MAY [THE LORD] NOT SMITE YOU’; OR ‘MAY HE BLESS YOU’; OR ‘MAY HE DO GOOD UNTO YOU [IF YOU BEAR TESTIMONY FOR ME]’: R. MEIR MAKES [THEM] LIABLE,³³ BUT THE SAGES EXEMPT [THEM].

GEMARA. ‘I adjure you:’ what does he mean? Rab Judah said; Thus he means: ‘I adjure you by the oath stated in the Torah’; ‘I

command you by the command stated in the Torah;’ ‘I bind you by the bond stated in the Torah’.³⁴ Abaye said to him: But then what of R. Hiyya who taught; ‘I chain you’;³⁵ they are liable. Is ‘chain’ then mentioned in Scripture? — Well, said Abaye. Thus he means: ‘I adjure you by oath’; ‘I command you by oath’, ‘I bind you by oath’; ‘I chain you by oath’.³⁶

‘BY ALEF DALETH’; ‘BY YOD HE, BY SHADDAI’; ‘BY ZEBAOth’; ‘BY THE MERCIFUL AND GRACIOUS ONE’; ‘BY THE LONG SUFFERING ONE’; ‘BY THE ONE ABOUNDING IN KINDNESS’. Shall we say that Merciful and Gracious are Names?³⁷ This is contradicted [from the following]: There are Names which may be erased;³⁸ and there are Names which may not be erased. These are the Names which may not be erased, such as: ‘El’,³⁹ ‘Eloha’,⁴⁰ ‘Elohim’, ‘your God’, I am that I am,⁴¹ ‘Alef Daleth’, ‘Yod He’, ‘Shaddai’, ‘Zebaoth’ — these may not be erased; but the Great, the Mighty, the Revered, the Majestic, the Strong, the Powerful, the Potent, the Merciful and Gracious, the Long Suffering, the One Abounding in Kindness these may be erased!⁴² Abaye said: Our Mishnah means: ‘[I adjure you] by Him who is Gracious’;

- (1) In the case of testimony.
- (2) Therefore we do not deduce testimony from deposit though we have a גזירה שויה, for it is as though Scripture had expressly stated (by the omission of ויעלה) that in the case of testimony he is liable also for willful transgression.
- (3) Where there is a definite liability; but here, even if the witnesses had given their testimony that he had promised the money, he would not have to pay, for he could say that he had changed his mind.
- (4) At the time of the oath there was no testimony to be given.
- (5) Because he must single out particular witnesses.
- (6) [I.e., to some among them in particular. Some texts omit this clause.]
- (7) A technical phrase denoting indirect evidence. They had no direct evidence, but only what they had heard from others; they could not, in any case, offer that as testimony.
- (8) Even if there were three witnesses, and only one was ineligible. Though there are two eligible witnesses left, they are also exempt, because as soon as one of the original three is found to be ineligible,

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the testimony of the other two is inadmissible; v. Tosaf.

- (9) He sent his servant to adjure them.
- (10) Lev. V, 1.
- (11) Ibid. 21.
- (12) With reference to oath of testimony.
- (13) With reference to oath of deposit.
- (14) Lev. V, 1, he being a witness implies that he already had evidence at the time of adjuration.
- (15) For if the witnesses were not there, of course they are exempt.
- (16) Lev. V, 1.
- (17) Ibid.
- (18) The Heb. Has לוי instead of לא so that we may deduce: אב לא יניד.
- (19) The claimant.
- (20) If he uses any of these forms when adjuring the witnesses, they are liable, if they deny knowledge of testimony.
- (21) If he adjures them by the Name Adonai.
- (22) The Tetragrammaton.
- (23) The Almighty.
- (24) (Lord of) Hosts.
- (25) The Name.
- (26) Death by stoning, v. Sanh. VII, 5.
- (27) If he uses the substitutes; holding that he is liable only if he uses the Names: Tetragrammaton, God, Lord, Almighty, Hosts.
- (28) V. Lev. XX, 9; Sanh. 66a; but the Sages hold that if he uses the substitutes he is exempt.
- (29) V. infra 36a.
- (30) [So MS.M. Cur. edd.: The Lord God. Var. lec. (v. Mishnah texts): God smite you; v. n. 7.]
- (31) [If you do not come to testify for me. According to var. lec. given in previous note: or 'Thus may God smite you.' I.e., having heard someone reading the curses in Deut. XXVIII, he says, 'Thus may God smite you if you do not come to testify for me.']
- (32) Deut. XXVIII, 22; e.g., 'The Lord smite you with consumption if you do not bear testimony for me'.
- (33) Because the opposite may be deduced: 'May the Lord smite you if you do not bear testimony.'
- (34) Using forms of adjuration mentioned in Scripture.
- (35) I impose upon you the obligation like a chain to bear testimony.
- (36) In all cases invoking the Name.
- (37) I.e., substitutes for the divine Name, and that therefore adjuration by these Names makes then, liable.
- (38) Because they are not used solely of the Deity, and are therefore not sacred.
- (39) God.
- (40) V. Vilna Gaon, a.l.
- (41) אהיה אשר אהיה.
- (42) Hence, Merciful and Gracious are not substitutes for the divine Name.

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'by Him who is Merciful'. Raba said to him: If so, BY HEAVEN AND EARTH also [let us say] it means; 'By Him to whom heaven and earth belong'!¹ — That is no question! There, since there is nothing else which is called Merciful and Gracious, it is clear that he means, 'By Him who is Gracious', 'By Him who is Merciful'; but here, since there are heaven and earth, he means, 'By heaven and earth'. Our Sages taught: If he wrote Alef lamed of Elohim, yod he of the Tetragrammaton, they may not be erased;² shin Daleth of Shaddai, Alef Daleth of Adonai, Zadi Beth of Zebaoth, they may be erased.³

R. Jose said: The whole word Zebaoth may be erased, because Zebaoth refers only to Israel, as it is said: And I will bring forth My hosts, My people the children of Israel, out of the land of Egypt.⁴ Samuel said: The halachah is not in accordance with R. Jose. Our Sages taught: That which is joined to the Name, whether before it or after it,⁵ may be erased. Before it; how? To the Lord; the lamed ['to'] may be erased; in the Lord: the beth ['in'] may be erased; and the Lord: the vav ['and'] may be erased; from the Lord; the mem ['from'] may be erased; that the Lord; the shin ['that'] may be erased; interrogative he before the Lord: the he may be erased; as the Lord: the kaph ['as'] may be erased. After it: how? Our God: the suffix nu ['our'] may be erased; their God: the suffix hem ['their'] may be erased; your God: the suffix kem ['your'] may be erased. Others say, the suffix may not be erased, for the Name has already hallowed it. R. Huna said: the halachah is in accordance with these others.

(Mnemonic:⁷ Abraham, who cursed, Naboth, in Gibeah of Benjamin, Solomon, Daniel.)

All the Names mentioned in Scripture in connection with Abraham are sacred, except this which is secular: it is said; And he said, 'My lord, if now I have found favor in thy sight'.⁸ Hanina, the son of R. Joshua's

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brother, and R. Eleazar b. Azariah in the name of R. Eliezer of Modin, said, this also is sacred.⁹ With whom will [the following] agree? Rab Judah said that Rab said: Greater is hospitality to wayfarers than receiving the Divine Presence. With whom [will this agree]? With this pair.¹⁰ All the Names mentioned in connection with Lot are secular, except this which is sacred: it is said: And Lot said unto them, ‘Oh, not so, my Lord: behold now, thy servant hath found grace in thy sight, [and thou hast magnified thy mercy which thou hast shown unto me in saving my life]’¹¹ — He in whose power it is to kill and to revive; that is the Holy One blessed be He. All the Names mentioned in connection with Naboth¹² are sacred; in connection with Micah¹³ are secular.

R. Eliezer said, in connection with Naboth [all are] sacred; in connection with Micah, some are secular, and some sacred: [the Name beginning] Alef lamed is secular,¹⁴ yod he¹⁵ is sacred; except this which is Alef lamed and is sacred: all the time that the house of God was in Shiloh.¹⁶ All the Names mentioned in connection with Gibeah of Benjamin,¹⁷ R. Eliezer said, are secular; R. Joshua said, are sacred. R. Eliezer said to him: Does He then promise, and not fulfil?¹⁸—

R. Joshua replied to him: What He promised. He fulfilled; but they did not inquire whether [the result would be] victory of defeat;¹⁹ later, when they did inquire [of the Urim and Tummim], they approved their action, as it is said; And Phineas, the son of Eleazar, the son of Aaron, stood before it in those days — saying: ‘Shall I yet again go out to battle against the children of Benjamin my brother, or shall I cease?’ [And the Lord said: ‘Go up; for tomorrow I will deliver them into thy hand’].²⁰

Every Solomon mentioned in the Song of Songs is sacred: the Song to Him whose is the peace,²¹ except this: My vineyard, which is mine, is before me; thou, O Solomon, shalt have the thousand²² — Solomon for himself

[shall have a thousand]; and two hundred for those that keep the fruit thereof²³ — [viz.] Sages. And there are some who say this also is secular: Behold it is the bed of Solomon²⁴ — ‘This also’, [implies] that the other²⁵ is undoubtedly [secular]. But then what of Samuel who said: A Government which kills Only one out of six²⁶ is not punished; for it is said: My vineyard, which is mine, is before me; thou, O Solomon, shalt have the thousand — for the Kingdom of Heaven;²⁷ and two hundred for those that keep the fruit thereof — for the kingdom on earth.²⁸ Now Samuel is not in agreement with the first Tanna nor with the ‘some who say’!²⁹ —

But this is what it means: And some there are who say this³⁰ is sacred, and this is secular — [the verse] about his bed; and Samuel agrees with them. All Kings mentioned in Daniel are secular except this which is sacred: Thou, O king, king of kings, unto whom the God of heaven hath given the kingdom, the power, and the strength, and the glory.³¹ And some say, this also is sacred; it is said: My Lord, the dream be to them that hate thee, and the interpretation thereof to thine adversaries.³² To whom does he say this? If it should enter your mind that he says it to Nebuchadnezzar — who are those who hate him? Israel! Then he is cursing Israel!³³ And the first Tanna?³⁴ — He holds: Are the enemies [of Nebuchadnezzar] only Israelites? Are there not enemies [too] who are heathens?³⁵

OR BY ANY OF THE SUBSTITUTES [FOR THE NAME], THEY ARE LIABLE, etc. We may cite [the following] in contradiction: The Lord make thee a curse and an oath.³⁶ Why is this stated? Is it not already said: The priest shall cause the woman to swear with the oath of cursing?³⁷ Because it is said: And hear the voice of Alah [cursing]:³⁸ here³⁹ it is said ‘Alah’, and there⁴⁰ it is said ‘Alah’; just as here it implies an oath,⁴¹ so there it implies an oath; just as here it must be by the Name,⁴² so there it must be by the Name.⁴³ —

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Abaye said: It is no question. This⁴⁴ is [the view of] R. Hanina b. Idi, and that⁴⁵ is [the view of] the Rabbis; for we learnt: R. Hanina b. Idi said: Since the Torah said, 'Thou shalt swear,'⁴⁶ and 'thou shalt not swear';⁴⁷ 'thou shalt curse',⁴⁸ and 'thou shalt not curse';⁴⁹ [we deduce:] just as 'thou shalt swear' means by the Name, so 'thou shalt not swear' means by the Name; and just as 'thou shalt curse' means by the Name, so 'thou shalt not curse' means by the Name. Now, the Rabbis, if they received on tradition this Gezerah shawah,⁵⁰ let them require the actual Name;⁵¹ and if they did not receive on tradition this Gezerah shawah, how do they know that 'Alah'⁵² implies an oath?⁵³ —

They deduce it front [the Baraitha in] which it was taught. 'Alah':⁵² 'Alah' is nothing but the expression of an oath; and so it says: And the priest shall cause the woman to swear with the oath of Alah.⁵⁴ But there it is written: the oath of Alah!⁵⁵ — Thus he means: 'Alah'; 'Alah' can only be an oath,⁵⁶ and thus it says: 'and the priest shall cause the woman to swear with the oath of Alah.'

- (1) Why does the Mishnah say it is not a proper adjuration, and they are exempt?
- (2) Although he had not yet finished the words, because the first two letters also constitute a Name: יה א'.
- (3) Because צב' אד' שד' are not Names. [So Rashi; but MS.M. and R. Han. (v. Tosaf. a.l.) include Alef Daleth in the first group, i.e., among the Names that may not be erased, the reason being that דא as well as הי and אל were commonly used as abbreviations for a Divine name, which was not the case with שד and צב which out of reference for the Divine Name were never used as abbreviations, the former two letters spelling a 'demon' (דש), the latter, a 'great lizard' (צב). V. Lauterbach, J.Z American Academy for Jewish Research, Proceedings, 1930-1931, pp. 43ff.]
- (4) Ex. VII, 4.
- (5) Prefix or suffix.
- (6) The fifth letter of the Heb. alphabet, ה.
- (7) [In aid of memory; consisting of key words of the statements that follow. 'Who cursed' דלשיא is a play on the word 'Lot' who figures in the second passage.]

- (8) Gen. XVIII, 3; Abraham was addressing the chief of the three men who came towards him: according to midrash they were the angels Michael, Gabriel, and Raphael.
- (9) He was addressing the Lord.
- (10) R. Hanina and R. Eleazar who say that Abraham addressed the Lord, asking Him not to withdraw His Presence while he entertained the angels.
- (11) Gen XIX, 18, 19; the verse is read thus: And Lot said unto them. 'Oh, not so'; then turning to God: 'My Lord, behold now, Thy servant, etc.' The ordinary interpretation is that Lot is addressing one of the angels.
- (12) I Kings XXI, 10, 13.
- (13) Judges XVII, XVIII.
- (14) E.g., Judges XVII, 5. XVIII, 5, 10, 24.
- (15) E.g., Judges XVII, 2, 3, 13; XVIII, 6.
- (16) Judges XVIII, 31.
- (17) Ibid. XX, 18-28.
- (18) If, as you say, God is intended, why did He tell the other tribes to make war on the tribe of Benjamin, and then allow them to be defeated?
- (19) They merely enquired whether they should go to war against Benjamin, and which of their tribes should go to battle first.
- (20) Judges XX, 28, and this promise He fulfilled.
- (21) שלמה = His peace.
- (22) Cant. VIII, 12: homiletically interpreted the verse means this: God said: From My vineyard (Israel) Solomon shall have 1,000 men as soldiers out of every 1,200; and 200 shall be left to 'keep the fruit', i.e., study the Torah.
- (23) Ibid.
- (24) Ibid. III, 7.
- (25) V. p. 206, n. 12.
- (26) By going to war. [So according to reading of Rashi and R. Han. Cur. edd.: 'one-sixth of the world;' this was probably said by him with reference to Shapur's military campaigns in Asia: v. Krochmal, Hechalutz, I, p. 89.]
- (27) Taking Solomon as referring to God.
- (28) Serving the king; 200 for the king, and 1,000 for God = 1,200 altogether; the king is thus permitted one sixth for his army.
- (29) For they all hold that the word Solomon in the verse My vineyard, etc. is secular.
- (30) My vineyard, etc.
- (31) Dan. II, 37: Daniel would not have called Nebuchadnezzar King of Kings; the verse is therefore interpreted thus: Thou, O king (Nebuchadnezzar), unto whom the King of Kings, the God of heaven hath given, etc.
- (32) Dan IV. 16.
- (33) Hence, we must say that Daniel in saying, 'My lord, the dream, etc.' is addressing God, whose enemies are the heathens.

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(34) Who holds that 'My Lord' is secular, and that it is addressed to Nebuchadnezzar.

(35) When Daniel said: 'My lord [Nebuchadnezzar], the dream be to them that hate thee', he referred to the heathens who hated him.

(36) Num. V, 21.

(37) Ibid.; this implies that she shall be for a curse and an oath. It would suffice if the verse now merely stated the curse: the Lord make thy thigh to fill away.

(38) Lev. V, 1; i.e., adjuration.

(39) Num. V, 21.

(40) Lev. V, 1.

(41) Because it is said: the priest shall cause... to swear.

(42) For it is said: The Lord (Tetragrammaton) make thee a curse.

(43) Hence, adjuration of witnesses must be by the Name, and not by substitutes.

(44) The Baraita which states that an oath must be by the Name.

(45) The Mishnah which states that the substitutes are of equal potency.

(46) There are occasions when an oath is obligatory, e.g., the oath of the Lord shall be between them both (Ex. XXII, 10).

(47) E.g., ye shall not swear by My name falsely (Lev. XIX, 12).

(48) E.g., the Lord make thee a curse (Num. V, 21).

(49) E.g., thou shalt not curse the deaf (Lev. XIX, 14).

(50) V. Glos. The analogy deriving adjuration from Sotah. Adjuration (Lev. V, I): and hear the voice of אלה (cursing); Sotah (Num. V, 21): the Lord make thee אלה (curse) and an oath. Just as אלה used in connection with Sotah implies oath (for oath is explicitly mentioned in the verse), so אלה used in connection with adjuration means oath. But if we deduce adjuration from Sotah we must carry the deduction further: just as in the case of Sotah, the oath was by the Name (for the verse states: the Lord make thee a curse and an oath), so in the case of adjuration it should be by the Name, and not by any substitute. [It is a well established principle that no man may draw a conclusion from a Gezerah shawah unless he received it on tradition from his teacher. Pes. 66a; Nid. 19b.]

(51) שם המיוחד the 'Distinguishing Name', the Tetragrammaton; v. Sanh. (Sonc. ed.) p. 408, n. 1.

(52) Mentioned in Lev. V. 1.

(53) For in the case of adjuration, oath is not mentioned in the verse.

(54) Num. V, 21. This proves that 'Alah' implies an oath.

(55) [This is a new question: the phrase 'the oath of Alah' indeed proves that 'Alah' implies an oath, but whence do we know that an oath without an accompanying 'Alah' (curse) is an oath? V. n. 7.]

(56) [So MS.M. V. Sifra on Lev. V, 1; cur. edd.: with an oath; cf. n. 7.]

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And whence do we know to make an oath unaccompanied by an Alah like an oath accompanied by an Alah? Because it is said; and heareth the voice of cursing;¹ and heareth the cursing; and heareth the voice.² R. Abbahu said: Whence do we know that Alah implies an oath? Because it is said: And brought him under an Alah;³ and it is written; And he also rebelled against king Nebuchadnezzar who made him swear by God.⁴

A Tanna taught: Arur⁵ may imply excommunication,⁶ curse,⁷ or oath. [It implies] excommunication, as it is written: 'Curse ye Meroz', said the angel of the Lord, 'curse ye bitterly the inhabitants thereof.'⁸ And Ulla said: With four hundred blasts of the trumpet did Barak announce the ban over Meroz. It implies curse, as it is written: And these shall stand for the curse;⁹ and it is written: Arur be the man that maketh a graven image.¹⁰ It implies oath, as it is written: And Joshua adjured them at that time, saying, Arur be the man before the Lord...¹¹ But perhaps two things he did to them: he adjured them, and cursed them!¹²—

Well then, from here: And the men of Israel were distressed that day; but Saul adjured the people saying, Arur be the man that eateth;¹³ and it is written: But Jonathan heard not when his father adjured the people.¹⁴ But perhaps here also he did two things to them; he adjured them, and cursed them! — Is it then written: and Arur?¹⁵ Now since you have come to this,¹⁶ [you may say] there¹⁷ also it is not written: and Arur. R. Jose b. Hanina said: 'Amen' implies oath,¹⁸ acceptance of words,¹⁹ and confirmation of words.²⁰ It implies oath, as it is written: And the woman shall say, Amen, Amen.²¹ It implies acceptance of words, as it is written: Cursed be he that confirmeth not the words of this law to do

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them, and all the people shall say, Amen.²² It implies confirmation of words, as it is written: And the prophet Jeremiah said, Amen, the Lord do so! The Lord perform thy words!²³

R. Eleazar said: ‘No’ is an oath; ‘Yes’ is an oath. Granted, ‘No’ is an oath, as it is written: And the waters shall no more become a flood;²⁴ and it is written: For this is as the waters of Noah unto Me; for as I have sworn [that the waters of Noah should no more go over the earth...].²⁵ But that ‘Yes’ is an oath, how do we know? — It is reasonable; since ‘No’ is an oath. ‘Yes’ is also an oath. Said Raba: But only if he said, ‘No! No!’ twice;²⁶ or he said, ‘Yes! Yes!’ twice; for it is written: And all flesh shall not be cut off any more by the waters of the floods;²⁷ [and also:] and the waters shall no more become a flood.²⁸ And since ‘No’ [must be said] twice [to imply an oath]. ‘Yes’ [must] also [be said] twice.

HE WHO BLASPHEMES BY ANY OF THEM IS LIABLE: THIS IS THE OPINION OF R. MEIR; BUT THE SAGES EXEMPT HIM. Our Rabbis taught: Whosoever curseth his God shall bear his sin.²⁹ Why is it written? Is it not already said: And he that blasphemeth the name of the Lord shall surely be put to death?³⁰ — I might think he should be liable only for the actual Name;³¹ whence do we know to include the substitutes? Therefore it is said: Whosoever curseth his God — in any manner; this is the opinion of R. Meir; but the Sages say: for the actual Name, [the penalty is] death;³² for the substitutes, there is a warning.³³

HE WHO CURSES HIS FATHER OR MOTHER, etc. Who are the Sages?³⁴ R. Menahem b. Jose; for we learnt, R. Menahem b. Jose said; When he blasphemeth the Name, he shall be put to death.³⁵ Why is it said: ‘Name’?³⁶ It teaches us that he who curses his father or mother is not liable unless he curses them by the Name.

HE WHO CURSES HIMSELF OR HIS NEIGHBOR, etc. R. Jannai said; This is the

view of all.³⁷ **[HE WHO CURSES] HIMSELF:** as it is written: Only take heed to thyself, and keep thy soul diligently;³⁸ and as R. Abin said in the name of R. Elai; for he said; Wherever it is said, take heed, lest, or not, it is nothing but a negative precept.³⁹ **[HE WHO CURSES] HIS NEIGHBOR;** as it is written: Thou shalt not curse the deaf.⁴⁰

‘THE LORD SMITE YOU’, OR ‘GOD SMITE YOU’; THESE ARE THE CURSES WRITTEN IN THE TORAH. R. Kahana sat before Rab Judah, and was reciting this Mishnah as we learnt it. He⁴¹ said to him: Modify it!⁴² One of the Scholars was sitting before R. Kahana and reciting: God will likewise break thee forever; He will take thee up, and pluck thee out of thy tent, and root thee out of the land of the living. Selah.⁴³ He said to him: Modify it! — Why do we require both?⁴⁴ — I might have thought that only the Mishnah [we are permitted to modify], but verses of Scripture we are not permitted to modify; therefore he teaches us [that we are].

‘[MAY THE LORD] NOT SMITE YOU’; OR, ‘MAY HE BLESS YOU’; OR, ‘MAY HE DO GOOD UNTO YOU, [IF YOU BEAR TESTIMONY FOR ME]’; R. MEIR MAKES THEM LIABLE; AND THE SAGES EXEMPT THEM. But R. Meir does not hold that from the negative you may derive the affirmative!⁴⁵ — Reverse it!⁴⁶ When R. Isaac came, he stated the Mishnah as we learnt it.⁴⁷ R. Joseph said; Since we learnt it thus, and when R. Isaac came he also stated it thus, we may infer that we learnt it definitely so. But the question [then] remains!⁴⁸ — He does not hold [that from the negative we derive the affirmative] in money matters, but in prohibitions he holds [this principle].⁴⁹ But the case of Sotah is a prohibition, and yet R. Tanhum b. R. Hakinai said; It is written; hinnaki.⁵⁰ The reason is because it is written hinnaki [which may be read as hinki], but were it not for this, [we should not know the affirmative], for we do not say that from the negative you may derive the affirmative!⁵¹ —

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(1) Lev. V, 1.

(2) The verse could have said: and heareth the Alah (cursing) i.e., oath accompanied by a curse; the word voice is superfluous, so we deduce that it implies even a voice (i.e., oath) unaccompanied by a curse. [The interpretation adopted here follows Rashi who, apart from the reading of MS.M. referred to in n. 5, which he seemed to have had, deletes the words: 'an Alah unaccompanied by an oath like an Alah with an oath,' which are placed in cur. edd. in brackets. These words are, however, retained by Nahmanides in his novella on Shebu'oth, and other texts. Adopting this reading, preference is to be given to the reading 'with an oath' of cur. edd. (v. n. 5) and the whole passage must be taken as a continuation of the discussion relating to the source whence the Rabbis derive that 'Alah' implies an oath, and is to be interpreted thus: 'But there it is written the oath of Alah (how then can there be derived from that verse that Alah by itself denotes an oath)? — Thus he (the Tanna of the Baraitha) means: 'Alah'; Alah can only be with an oath, and thus it says: 'and the priest... of Alah.' And whence do we know to make an Alah unaccompanied by an oath like an Alah with an oath, and an oath unaccompanied by an Alah like an oath accompanied, etc. — Thus is afforded the source whence the Rabbis deduce that Alah implies an oath.]

(3) Ezek. XVII, 13; Nebuchadnezzar imposed an oath (Alah) upon King Zedekiah.

(4) 2 Chron. XXXVI, 13; here a derivative of שבוּעָה is used; so that אלה in Ezekiel is equated with שבוּעָה in Chronicles; hence אלה is an oath.

(5) 'Cursed be'. If a Sage says to a man: 'Thou art Arur', he is excommunicated.

(6) For a period of at least 30 days; v. M.K. 16a.

(7) He who curses another, using this word, is liable.

(8) Judg. V, 23.

(9) Deut. XXVII, 13; קללה is used.

(10) Ibid. 15; ארור is used; hence ארור implies קללה.

(11) Josh. VI, 26; ארור is used in the adjuration, hence it is a form of oath.

(12) And ארור is not the expression of the adjuration, but a curse apart from the adjuration.

(13) I Sam. XIV, 24.

(14) Ibid. 27; 'cursed be' (of verse 24) is here termed adjuration (שבוּעָה).

(15) Which would have implied that he adjured the people, and also said, 'and cursed be the man...' Since, however, the verse says: he adjured the people saying, 'Cursed be', this phrase is obviously the form of the adjuration.

(16) Since you argue thus.

(17) Josh. VI, 26.

(18) He who responds 'Amen' after an oath is accounted as if he had uttered the oath himself.

(19) Agreement to fulfill a request.

(20) I.e., prayer for fulfillment: so may it be!

(21) Num. V, 22; the priest utters the oath, the woman merely responding 'Amen'. Her response is counted as an oath, and the 'bitter waters' test her.

(22) Deut. XXVII, 26. The people taking upon themselves to fulfill the words of the Law.

(23) Jer. XXVIII, 6.

(24) Gen. IX, 15.

(25) Isa. LIV, 9.

(26) Since he emphasizes his statement, he intends it as an oath.

(27) Gen. IX, 11.

(28) Ibid. 15; the promise not to bring a flood was made twice; but v. Asheri a.l.

(29) Lev. XXIV, 15.

(30) Ibid. 16.

(31) Tetragrammaton, v. supra p. 208, n. 16.

(32) By stoning; v. Lev. XXIV, 14.

(33) I.e., negative prohibition, for the transgression of which the penalty is stripes.

(34) Who exempt him, if he curses his father or mother by the substitutes.

(35) Lev. XXIV, 16.

(36) The verse is superfluous, because it is already said: He that blasphemeth the Name of the Lord shall surely be put to death. The verse is therefore taken to refer to the case of cursing a parent by the Name.

(37) R. Meir and the Sages agree in this that he who curses himself or his neighbor by any of the substitutes (not merely the Name) transgresses a negative precept. [Although the verse is superfluous (cf. p. 211, n. 14), it can nevertheless be applied only in regard to the cursing of a parent, which like blasphemy is punishable by death, but not with reference to cursing oneself or one's neighbor which does not involve so grave a penalty.]

(38) Deut. IV, 9. [The verse is explained in Ber. 32b as an injunction to take care of the body and its physical requirements and not to expose oneself to dangers. This implies the prohibition of invoking upon oneself any curses.]

(39) Here, 'take heed to thyself' means 'do not curse thyself.'

(40) Lev. XIX, 14; v. Sanh. 66a: the prohibition includes all persons, not only the deaf.

(41) Rab Judah.

(42) Use the third person, so that it should not appear as if you were cursing me.

(43) Ps. LII, 7.

(44) To be informed that both in the Mishnah and the Psalms it is necessary, when in company, to use the third person instead of the second, to avoid giving offence.

(45) Kid. 61a. In our Mishnah: 'May the Lord not smite you, if you bear testimony' is not an oath unless the positive is implied: 'May the Lord smite you, if you do not bear testimony'; and yet R. Meir

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CHAPTER V

makes the witnesses liable, though he does not hold that the positive may be derived from the negative.

(46) Read in the Mishnah: R. Meir exempts them, and the Sages make them liable.

(47) Not reversed.

(48) R. Meir does not hold that from the negative we derive the affirmative!

(49) And our Mishnah deals with an oath (a prohibition).

(50) Num. V, 19: הִנָּקִי; If thou hast not gone aside to uncleanness... be thou free from this water of bitterness. This implies: 'if thou hast gone aside... be thou not free'. Hence, we deduce from the fact that Scripture does not state the affirmative, that we may derive the affirmative from the negative. This is an argument against R. Meir. R. Tanhum (explaining R. Meir's view) states that Scripture uses the word הִנָּקִי advisedly, so that it may also be read as הִנָּקִי ('be thou choked'), and taken with the subsequent verse: be thou choked by this water of bitterness... if thou hast gone aside. Hence, Scripture itself gives both negative and positive: if thou hast not gone aside... be thou free (הִנָּקִי); and be thou choked (הִנָּקִי)... if thou hast gone aside. But we cannot derive the affirmative from the negative. According to Aruch, s.v. הִנָּקִי the word is taken by R. Tanhum in its double meaning 'to be bereft' (cf. Isa. III, 23), as well as 'to be free', and the phrase הִנָּקִי is employed by him as a mere wordplay.

(51) Hence, even in the case of a prohibition R. Meir does not hold this principle.

Shevu'oth 36b

Well then [you must] reverse;¹ for even in a prohibition he does not hold [this principle]. To this Rabina demurred; And in a prohibition does he not hold [this principle]? Now then, [priests ministering in the Temple] intoxicated with wine,² or with a long growth of hair,³ the punishment for which is [said to be] death — will you also say [in these cases] that R. Meir does not hold [the principle]?⁴ Surely we learnt: These are liable for death: [priests] intoxicated with wine, and with a long growth of hair!⁵ — Hence indeed, reverse; but only in money matters does he not hold [the principle]; in a prohibition, however, he does hold the principle;⁶ and the case of Sotah⁷ is different, because it is a prohibition which includes also money matters.⁸

MISHNAH. THE OATH OF DEPOSIT⁹ APPLIES TO MEN AND WOMEN. TO NON-RELATIVES AND RELATIVES, TO THOSE QUALIFIED [TO BEAR TESTIMONY] AND THOSE UNQUALIFIED; BEFORE THE BETH DIN AND NOT BEFORE THE BETH DIN, [IF UTTERED] FROM HIS OWN MOUTH;¹⁰ BUT [IF ADJURED] BY THE MOUTH OF OTHERS,¹¹ HE IS NOT LIABLE UNLESS HE DENIES IT BEFORE THE BETH DIN: THIS IS THE OPINION OF A. MEIR; BUT THE SAGES SAY, WHETHER [UTTERED] FROM HIS OWN MOUTH OR [ADJURED] BY THE MOUTH OF OTHERS — SINCE HE DENIED IT, HE IS LIABLE. AND HE IS LIABLE FOR THE WILFUL TRANSGRESSION OF THE OATH,¹² AND FOR ITS UNWITTING TRANSGRESSION,¹³ COUPLED WITH WILFUL [DENIAL OF] DEPOSIT; BUT HE IS NOT LIABLE FOR UNWITTING TRANSGRESSION SIMPLY.¹⁴ AND TO WHAT IS HE LIABLE FOR WILFUL TRANSGRESSION? A GUILT OFFERING¹⁵ OF [THE VALUE OF] TWO SHEKELS OF SILVER.¹⁶ THE OATH OF DEPOSIT — HOW? HE SAID TO HIM: 'GIVE ME MY DEPOSIT WHICH I HAVE IN THY POSSESSION.' [THE OTHER REPLIED:] 'I SWEAR THAT THOU HAST NOT [ANYTHING] IN MY POSSESSION'; OR HE REPLIED TO HIM; 'THOU HAST NOT [ANYTHING] IN MY POSSESSION,' [AND THE DEPOSITOR SAID:] 'I ADJURE THEE.' AND HE RESPONDED, 'AMEN!'; HE IS LIABLE. IF HE ADJURED HIM FIVE TIMES, WHETHER BEFORE THE BETH DIN OR NOT BEFORE THE BETH DIN, AND HE DENIED, HE IS LIABLE¹⁷ FOR EACH ONE. R. SIMEON SAID: WHAT IS THE REASON? BECAUSE HE CAN RETRACT AND ADMIT.¹⁸ IF FIVE CLAIMED FROM HIM, AND SAID TO HIM: 'GIVE US THE DEPOSIT THAT WE HAVE IN THY POSSESSION,' [AND HE REPLIED:] 'I SWEAR THAT YOU HAVE NOT [ANYTHING] IN MY POSSESSION,' HE IS LIABLE ONLY ONCE. [IF HE SAID:] 'I SWEAR THAT THOU HAST NOT IN MY POSSESSION, NOR THOU, NOR THOU,'¹⁹ HE IS LIABLE FOR EACH ONE. R.

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ELIEZER²⁰ SAYS: ONLY IF HE SAYS, 'I SWEAR' AT THE END.²¹ R. SIMEON SAYS: ONLY IF HE SAYS, 'I SWEAR' TO EACH ONE. 'GIVE ME THE DEPOSIT, LOAN, THEFT, AND LOST OBJECT THAT I HAVE IN THY POSSESSION.' — 'I SWEAR THAT THOU HAST NOT [THESE] IN MY POSSESSION,' HE IS LIABLE ONLY ONCE. 'I SWEAR THAT THOU HAST NOT IN MY POSSESSION DEPOSIT, LOAN, THEFT, AND LOST OBJECT,' HE IS LIABLE FOR EACH ONE. 'GIVE ME THE WHEAT, BARLEY, AND SPELT THAT I HAVE IN THY POSSESSION.' — 'I SWEAR THAT THOU HAST NOT [THESE] IN MY POSSESSION,' HE IS LIABLE ONLY ONCE. 'I SWEAR THAT THOU HAST NOT IN MY POSSESSION WHEAT, BARLEY, AND SPELT,' HE IS LIABLE FOR EACH ONE. R. MEIR SAID: EVEN IF HE SAID, '... A GRAIN OF WHEAT, BARLEY AND SPELT,'²² HE IS LIABLE FOR EACH ONE. 'THOU HAST VIOLATED OR SEDUCED MY DAUGHTER' AND THE OTHER SAYS, 'I DID NOT VIOLATE, NOR SEDUCE.' — 'I ADJURE THEE,' — AND HE RESPONDS, 'AMEN!' HE IS LIABLE. R. SIMEON EXEMPTS HIM, FOR HE DOES NOT PAY A FINE ON HIS OWN ADMISSION.²³ THEY SAID TO HIM: THOUGH HE DOES NOT PAY A FINE ON HIS OWN ADMISSION, HE STILL PAYS FOR THE SHAME AND BLEMISH ON HIS OWN ADMISSION.²⁴ 'THOU HAST STOLEN MY OX,' AND HE SAYS, 'I HAVE NOT STOLEN IT.' — 'I ADJURE THEE,' — AND HE RESPONDS, 'AMEN!' HE IS LIABLE. 'I HAVE STOLEN IT, BUT I HAVE NOT KILLED IT OR SOLD IT.' — 'I ADJURE THEE,' AND HE RESPONDS, 'AMEN!' HE IS EXEMPT.²⁵ 'THY OX KILLED MY OX,' AND HE SAYS, 'IT DID NOT KILL [THY OX].'- 'I ADJURE THEE,' — AND HE RESPONDS, 'AMEN!' HE IS LIABLE. 'THY OX KILLED MY SLAVE,' AND HE SAYS, 'IT DID NOT KILL [THY SLAVE].' — 'I ADJURE THEE.' — AND HE RESPONDS, 'AMEN!' HE IS EXEMPT.²⁶ HE SAID TO HIM, 'THOU HAST INJURED ME, OR BRUISED ME,' AND THE OTHER SAYS, 'I HAVE NOT INJURED THEE OR BRUISED THEE.' — 'I ADJURE THEE,' AND HE RESPONDS, 'AMEN!' HE IS LIABLE.

HIS SLAVE SAID TO HIM, 'THOU HAST KNOCKED OUT MY TOOTH, OR BLINDED MY EYE,' AND HE SAID, 'I DID NOT KNOCK OUT [THY TOOTH], OR BLIND [THY EYE].' — 'I ADJURE THEE,' — AND HE RESPONDS, 'AMEN!' HE IS EXEMPT.²⁷ THIS IS THE PRINCIPLE: WHENEVER HE PAYS ON HIS OWN ADMISSION,²⁸ HE IS LIABLE,²⁹ AND WHEN HE DOES NOT PAY ON HIS OWN ADMISSION,³⁰ HE IS EXEMPT.

GEMARA. R. Aha b. Huna and R. Samuel the son of Rabbah b. Bar Hanah and R. Isaac the son of Rab Judah studied [the tractate of] Shebu'oth at the School of Rabbah. R. Kahana met them and said

- (1) Our Mishnah.
- (2) Lev. X, 9: Drink no wine nor strong drink... when ye go into the tent of meeting, that ye die not.
- (3) More than 30 days' growth; v. Rashi, Sanh. 83a. They shall not suffer their locks to grow long... neither shall any priest drink wine, when they enter into the inner court (Ezek. XLIV, 20, 21). Allowing the hair to grow long is equated with drinking wine; just as for drinking wine the penalty is death, so for allowing the hair to grow long the penalty is death; Sanh. 83b.
- (4) In these cases we must derive the affirmative from the negative in order to impose the penalty: Drink no wine... that ye die not; but if you drink wine, you will die.
- (5) Sanh. 83a, none disputing.
- (6) Therefore he agrees that intoxicated priests are liable to the penalty of death.
- (7) Where he does not hold the principle.
- (8) Her Kethubah is involved, for if she is guilty she does not receive it. In our Mishnah, too, the oath (adjuring the witnesses) involves a money claim; therefore R. Meir exempts the witnesses (for we reverse the reading).
- (9) Lev. V, 2.
- (10) Or if he responds 'Amen!' after the depositor's adjuration.
- (11) Without responding 'Amen!'
- (12) Knowing that he has the deposit, and knowing that for denying it on oath he is liable to bring a guilt offering.
- (13) Not knowing that he is liable to an offering.
- (14) If he really forgot that he had the deposit.
- (15) Lev. V, 25.
- (16) Ibid, 15: according to thy valuation in shekels of silver (shekels == two).
- (17) An offering.

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(18) After each oath he may retract, and admit that he has the deposit; each denial is thus a fresh denial of money.

(19) Addressing each of the five in turn.

(20) [MS.M.: ‘R. Eleazar’.]

(21) ‘You have not in my possession, nor you, nor you; I swear it,’ he is liable for each one, because the oath refers to all.

(22) V. infra 38a.

(23) If he had confessed to the seduction, he would not have had to pay the fine (50 shekels; v. Deut. XXII, 29); on the principle that he who admits on his own accord liability to a fine is exempt from payment, v. B.K. 74b. Since he is therefore denying a fine קנס, and not a money liability, ממון he is exempt.

(24) Because these sums are ממון therefore he is liable for the oath.

(25) The extra amount he is liable to pay for killing or selling it (Ex. XXI, 37) is a fine; his oath is hence a denial of a fine, and not of an actual money liability.

(26) Because the 30 shekels which the owner of the ox has to pay for the slave (Ex. XXI, 32) is merely a fine, this sum being paid even if the slave is worth much less.

(27) For blinding an eye or knocking out a tooth of a slave the master must allow him to go free; Ex. XXI, 26, 27; this is a fine.

(28) I.e. ממון.

(29) To bring an offering for his oath.

(30) I.e. קנס.

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to them: If he willfully transgressed the oath of deposit, and [witnesses] warned him, what is the ruling?¹ Since it presents an anomaly in that in the whole Torah we do not find that a willful transgressor brings an offering, and here he brings an offering;² there is therefore no difference whether he is warned or not warned;³ or, it applies only when he is not warned; but when he is warned, he receives stripes, and does not bring an offering; or, do we impose both [punishments] on him? —

They said to him: We have it stated [in a Baraitha]: The oath of deposit is more severe than it;⁴ for one is liable for its willful transgression, stripes,⁵ and for its unwitting transgression, a guilt offering of [the value of] two silver shekels.⁶ Now, since it says: ‘for its willful transgression, stripes,’ we deduce they

warned him;⁷ and yet it says stripes only and not an offering!⁸ And wherein lies then the greater severity?⁹ [In that] a man prefers to bring an offering rather than suffer stripes. Said Raba b. Ithi to them: [No! this affords no solution, for] who is the Tanna [who holds that] willful transgression of oath of deposit is not atoned for by an offering? It is R. Simeon;¹⁰ but according to the Rabbis, he brings an offering also.¹¹ —

R. Kahana said to them: Away with this [Baraitha];¹² for I learnt it, and thus I learnt it: Both for its willful and unwitting transgression [the penalty is] a guilt offering of [the value of] two silver shekels. And wherein lies its greater severity?¹³ There¹⁴ [he may bring] a sin offering of the value of a danka,¹⁵ whereas here [he must bring] a guilt offering of the value of two shekels of silver. Let us then deduce from this!¹⁶ — Perhaps [it refers to the case where] they did not warn him.¹⁷

Another version.¹⁸ Come and hear: One is not liable for its unwitting transgression.¹⁹ To what is one liable for its willful transgression? A guilt offering of [the value of] two shekels of silver. Now does this not refer to the case where they warned him?²⁰ — [No!] Here also it may refer to the case where they did not warn him.

Come and hear: No! If you say in the case of a Nazirite who had become unclean [that such and such is the case],²¹ it is because he receives stripes,²² but how can you say in the case of the oath of deposit [that such and such is the case], since its transgressor does not receive stripes? Since it says, ‘he receives stripes,’ we deduce that they warned him; and it says, ‘how can you say in the case of the oath of deposit [that such and such is the case], since its transgressor does not receive stripes?’ — but [presumably] an offering he brings!²³ — What is meant by ‘he does not receive stripes’ is that he is not freed by stripes.²⁴ Do we infer then that a Nazirite who had become unclean is freed by stripes?²⁵

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Surely an offering is [specifically] mentioned with reference to him!²⁶ —

There he brings an offering merely in order that his Naziriteship should recommence in cleanliness.²⁷ The Scholars told this to Rabbah.²⁸ He said to them: Hence,²⁹ if they did not warn him, though there are witnesses, he is liable,³⁰ [but surely] it is [like] a merely [useless] denial of words!³¹ This³² shows that Rabbah [himself] holds, he who denies money for which there are witnesses, is exempt.³³ R. Hanina said to Rabbah: There is [a Baraitha] taught in support of your view: And denieth it³⁴ — except if he admits it to one of the brothers or one of the partners;³⁵ and sweareth falsely³⁴ — except if he borrowed on a bond or borrowed in the presence of witnesses!³⁶ —

He said to him: From this you can bring no support to my view. [It refers to a case where] he says, ‘I borrowed, but I did not borrow in the presence of witnesses’; ‘I borrowed, but I did not borrow on a bond.’³⁷ How [do we know it refers to such a case]? Because it states: ‘and denieth it — except if he admits it to one of the brothers or one of the partners.’ [Now,] ‘to one of the brothers’ — what does it mean? Shall we say [it means] he admits his half?³⁸ But there is the denial of the other!³⁹ Obviously then, it means, they say to him: ‘From both of us you borrowed,’ and he replies to them: ‘No! From one of you I borrowed’;⁴⁰ and this is simply a denial of words.⁴¹ And since the first clause refers to a denial of words, the second clause also refers to a denial of words.

(Mnemonic: *Li*able, *sets* [of witnesses], *of the trustee*, *the severity*, *of the Nazirite*.⁴²)

Come and hear: He is not liable for its unwitting transgression; and to what is he liable for its willful transgression? A guilt offering of [the value of] two silver shekels. Does it not mean willful transgression [after warning by] witnesses?⁴³ — No! [It may

mean] willful transgression on his own account.⁴⁴

Come and hear: If there were two sets of witnesses, and the first denied, and then the second denied, they are both liable, because the testimony could be upheld by [either of] the two.⁴⁵ Now granted, the second set should be liable, for the first set have denied;⁴⁶ but the first set — why should they be liable?

- (1) Does he bring an offering; or is he punished by stripes; or both?
- (2) [Rashi and Tosaf. point out that it is not exactly an anomaly as there are other instances, a Nazirite who willfully makes himself unclean, where an offering is brought for a willful transgression, being one of them.]
- (3) And even if warned he brings all offering, but does not suffer stripes.
- (4) The oath of testimony.
- (5) Whereas in the case of oath of testimony there cannot be stripes, because it is not possible to know if the witnesses transgressed willfully, for they can always say they forgot the testimony; v. Tosaf. a.l.
- (6) Whereas in the case of oath of testimony a sliding scale sacrifice (which may be worth less than 2 shekels) is brought.
- (7) For without warning, stripes are not inflicted.
- (8) Hence, R. Kahana's question is solved.
- (9) Of oath of deposit. If for willful transgression with warning, stripes only are inflicted (and no offering is brought); and in the case of oath of testimony an offering is brought, why is the oath of deposit said to be severer than the oath of testimony?
- (10) Supra 34b.
- (11) R. Kahana's question cannot be solved from this Baraitha, for it may be voicing the view of R. Simeon; but according to the Sages it is possible that for willful transgression of oath of deposit, with warning, an offering is also brought.
- (12) We cannot in any way deduce anything from it; and there is no need to say it is in accordance with R. Simeon's view.
- (13) Since in the case of oath of testimony, too, only an offering is brought for both willful and unwitting transgression.
- (14) In the case of oath of testimony.
- (15) Small Persian coin, one sixth of Dinar.
- (16) That he brings an offering, and does not suffer stripes; and thus solve R. Kahana's question.
- (17) Therefore he does not suffer stripes.
- (18) [MS.M. rightly omits.]
- (19) If he swore falsely really by mistake.
- (20) And we may solve R. Kahana's question that even when warned he brings only all offering.

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(21) The actual reference is not known (Rashi), yet this does not affect the argument; but see R. Han. and Tosaf.

(22) For willfully making himself unclean; Num. VI, 6 ff. Therefore his case is stricter.

(23) Hence, R. Kahana's question is solved, that the transgressor of the oath of deposit, after warning, does not receive stripes, but brings an offering.

(24) Stripes alone are insufficient; he must bring an offering also.

(25) And brings no offering.

(26) Num. VI, 12: and he shall bring a lamb of the first year for a guilt offering.

(27) And not as an atonement for sin.

(28) The scholars mentioned above who studied the tractate of Shevu'oth in the School of Rabbah told Rabbah of R. Kahana's question.

(29) Because R. Kahana asks only the ruling in the case where he was warned, he is apparently satisfied that, when not warned, he brings an offering, although the witnesses may know that he has the deposit.

(30) An offering.

(31) For his denial can achieve nothing, since there are witnesses who know he has the deposit.

(32) Rabbah's question.

(33) From an offering.

(34) Lev. V, 22.

(35) Who has a share in this deposit; when the deposit is claimed by one brother or partner, he admits it, and when it is claimed by another, he denies it; he is not, in such a case, liable to bring an offering for his false oath, because Scripture says: and denieth it, i.e., completely.

(36) Since his denial can achieve nothing, he does not bring an offering for his oath. This supports Rabbah.

(37) He does not deny that he owes the money; he merely denies that there were witnesses or that he gave a bond. Therefore, he does not bring an offering for his oath, because his denial is of no material consequence, but he who denies a money claim though there are witnesses would be liable to an offering.

(38) The amount owing to the one brother.

(39) He should be liable to bring an offering for denying the other half on oath.

(40) The whole amount.

(41) And not of money; therefore he is not liable for an offering.

(42) Mnemonic of the teachings that follow.

(43) Yet he is liable to bring an offering. This is opposed to Rabbah's view that where there is denial of money for which there are witnesses, he does not bring an offering.

(44) And there are no witnesses.

(45) Supra 31b.

(46) And the claim now depends entirely on the evidence of the second set.

Shevu'oth 37b

The second set are still available!¹ — Rabina said: Here we are discussing [a case] where the second set, at the time of the denial of the first set, were related through their wives, and their wives were dying; you might have thought that [because we say] the majority of dying people actually die [the second set are reckoned eligible witnesses];² therefore he teaches us [that they are not, because] as yet the wives are alive and not dead.³

Come and hear: If the trustee⁴ pleaded the plea of theft in the case of a deposit,⁵ and swore, then confessed, and witnesses came — if before the witnesses came he confessed, he pays the principal, the fifth, and brings a guilt offering;⁶ if after the witnesses came he confessed, he pays double,⁷ and brings a guilt offering!⁸ —

Here also, as Rabina said.⁹ Rabina said to R. Ashi: Come and hear: The oath of deposit is more severe than it,¹⁰ for one is liable for its willful transgression, stripes, and for its unwitting transgression, a guilt offering of [the value of] two silver shekels. Now, since he says he receives stripes, it follows that there are witnesses; and yet he says, for its unwitting transgression a guilt offering of [the value of] two silver shekels.¹¹ — R. Mordecai said to them:¹² Away with this [Baraitha]; for, lo. R. Kahana said to them: I learnt it, and thus I learnt it: Both for its willful and unwitting transgression [the penalty is] a guilt offering of [the value of] two silver shekels.¹³

Come and hear: No! If you say in the case of a Nazirite who had become unclean [that such and such is the case], it is because he receives stripes, but how can you say in the case of an oath of deposit [that such and such is the case] since its transgressor does not receive stripes!¹⁴ —

Now, how is this? If there are no witnesses, why does he receive stripes? Obviously,

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therefore, there are witnesses; and yet he states: 'How can you say in the case of an oath of deposit [that such and such is the case] since its transgressor does not receive stripes?' — stripes he does not receive, but an offering he brings! Verily, a refutation of Rabbah's view!¹⁵ It is a refutation! R. Johanan said: He who denies [on oath] money for which there are witnesses, is liable;¹⁶ for which there is a bond, is exempt. R. Papa said: What is R. Johanan's reason? Because witnesses are likely to die,¹⁷ but the bond remains.¹⁸ Said R. Huna the son of R. Joshua to R. Papa: But a bond, too, is likely to be lost!

—

However, said R. Huna the son of R. Joshua: This is R. Johanan's reason: A bond is a hypothecary pledge of lands,¹⁹ and an offering is not brought for a denial of a hypothecary pledge of lands. It was stated: He who adjures witnesses for land,²⁰ — R. Johanan and R. Eleazar disagree: one says they are liable,²¹ and the other says they are exempt. It may be concluded that it is R. Johanan who says they are exempt, for R. Johanan said: He who denies money for which there are witnesses is liable; for which there is a bond, is exempt; and as R. Huna the son of R. Joshua [explained it].²² It is conclusive.

R. Jeremiah said to R. Abbahu: Shall we say that R. Johanan and R. Eleazar disagree on the same principle on which R. Eliezer and the Rabbis [disagree]? For we learnt: He who robs a field from his neighbor and a river flooded it, must restore a field to him: this is the opinion of R. Eliezer; but the Sages say: He may say to him, 'Lo, thine own is before thee.'²³ And we said: On what do they disagree? R. Eliezer expounds 'amplifications and limitations,' and the Rabbis [Sages] expound 'generalizations and specifications.'²⁴ R. Eliezer expounds 'amplifications and limitations': and lie unto his neighbor²⁵ — this amplifies;²⁶ in deposit or loan — this limits; or anything about which he hath sworn²⁷ — this again amplifies; since it amplifies, limits, and amplifies, it includes

all. What does it include? It includes all things: and what does it exclude? It excludes bonds.²⁸

And the Rabbis expound 'generalizations and specifications': and lie unto his neighbor — this generalizes; in deposit or loan or robbery — this specifies; or anything about which he hath sworn — this again generalizes; since it generalizes, specifies, and generalizes, you may include only that which is similar to the specification: just as the specification is clearly movable and intrinsically money, so everything which is movable and intrinsically money [may be included], but exclude lands,²⁹ which are not movable, and exclude slaves, which have been likened to lands, and exclude bonds, which, though they are movable, are not intrinsically money. — [Now, shall we say that] he who makes them liable agrees with R. Eliezer,³⁰ and he who exempts them agrees with the Rabbis?³¹ — He said to him:³² No! He who makes them liable agrees with R. Eliezer; but he who exempts them, may tell you that in this even R. Eliezer agrees,³³ for Scripture says, 'of all', and not, 'all'.³⁴

R. Papa said in the name of Raba: Our Mishnah too is evidence,³⁵ for it states: 'THOU HAST STOLEN MY OX,' AND THE OTHER SAYS, 'I HAVE NOT STOLEN IT.' — 'I ADJURE THEE,' AND HE RESPONDS, 'AMEN!' HE IS LIABLE. — Now, 'Thou hast stolen my slave' it does not state. What is the reason? is it not because a slave is likened to land, and an offering is not brought for a denial of a hypothecary pledge of lands? —

Said R. Pappi in the name of Raba: Say the final clause: THIS IS THE PRINCIPLE: WHENEVER HE PAYS ON HIS OWN ADMISSION, HE IS LIABLE; AND WHEN HE DOES NOT PAY ON HIS OWN ADMISSION, HE IS EXEMPT. — This is the principle: What does this include?³⁶ Does it not include [the case where he claims], 'Thou hast stolen my slave'?³⁷

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- (1) And the claim can be upheld by them. Since we say, however, that the first set are also liable (though their denial has not harmed the claimant), we may deduce that a denial of money for which there are witnesses (in this case, the second set), though it is ineffective, is still deemed a denial; and the transgressor is liable. This is opposed to Rabbah's view.
- (2) And the first set should therefore be exempt, because there are other witnesses; v. supra 33a.
- (3) And the first set are therefore liable.
- (4) Lit., 'owner of a house'.
- (5) That it had been stolen from him; he is not responsible for theft, because he is an unpaid bailee, שומר חנם.
- (6) Lev. V, 24, 25.
- (7) As if he had been the thief himself, but he pays no fifth; v. B.K. 63b.
- (8) Though there are witnesses; this is opposed to Rabbah's view.
- (9) At the time the trustee swore the oath the witnesses were related through their wives, and, therefore, being ineligible, are counted as non-existent; he therefore brings an offering.
- (10) Oath of testimony.
- (11) Hence, a guilt offering is brought even when there are witnesses.
- (12) [Read with MS.M.: 'He said to him.']
- (13) Since stripes are not mentioned, willful transgression need not imply the presence of witnesses; so that we cannot, from this Baraitha, refute Rabbah's view.
- (14) V. supra p. 219.
- (15) For Rabbah holds he who denies money where there are witnesses does not bring an offering for his false oath.
- (16) An offering.
- (17) And since his denial would be effective if they died, he brings a guilt offering for his false oath.
- (18) His denial is therefore always ineffective.
- (19) Where there is a signed document of indebtedness, the lands of the debtor are security for the debt.
- (20) To bear testimony for him in a claim for land.
- (21) To bring a sliding scale sacrifice for denying testimony on oath.
- (22) That the reason for exemption in the case of a bond is that the lands of the debtor are security for the debt; and no offering is brought for a denial on oath in such a case.
- (23) They hold that land cannot be stolen, i.e., though he dispossesses the owner forcibly, it is still counted as the owner's property.
- (24) For full exposition v. supra 4b; and B.K. (Sonc. ed.) p. 703.
- (25) Lev. V, 21.
- (26) I.e. it includes anything about which he may lie.
- (27) Lev. V, 24.

(28) Which are most dissimilar to the examples ('limitations') given by Scripture: but it does not exclude land. R. Eliezer therefore holds that he who robs a field, which was later flooded, must recompense the owner.

(29) The Rabbis thus hold that land cannot be stolen.

(30) R. Eleazar, as is concluded above, holds that witnesses who, adjured to bear witness to a land claim, deny testimony on oath, are liable to bring an offering. He will therefore agree with R. Eliezer who holds that land may be stolen and is in the same category as other goods.

(31) R. Johanan who exempts the witnesses will agree with the Rabbis that land cannot be stolen.

(32) R. Abbahu said to R. Jeremiah.

(33) Though he holds that land is included in the category of things that may be stolen, and must be returned in the state it was at the time of the robbery (or the owner recompensed), he agrees that there is no liability to bring an offering for a false oath in a land claim, for with reference to oath Scripture says: of all things about which he hath sworn falsely he shall bring his guilt offering; this implies that an offering is not brought for all things, but of all things: of excludes something, i.e., land, because land is (after bonds) least similar to the particulars mentioned by Scripture.

(34) Lev. V, 24: מכל רשע ישבע.

(35) In support of R. Johanan that there is no liability to bring an offering for an oath in respect of a land claim.

(36) The principle is obvious from the previous examples; the Mishnah, in stating this clause, therefore wishes us to infer something additional.

(37) For here also the thief pays on his own admission; hence, in his case too, he is liable to bring an offering for a false oath.

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Hence, then, from this it is not possible to deduce.¹

THE OATH OF DEPOSIT-HOW? 'GIVE ME THE DEPOSIT WHICH I HAVE IN THY POSSESSION', etc. Our Rabbis taught: For a general statement he is liable only once; for a particular he is liable for each one:² this is the opinion of R. Meir. R. Judah says: 'I swear I do not owe thee, and not thee, and not thee,' he is liable for each one.³ R. Eliezer says: 'I do not owe thee, and not thee, and not thee, I swear it,' he is liable for each one. R. Simeon says: [He is not liable for each one]

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unless he says, ‘I swear’ to each one. Rab Judah said that Samuel said: The general statement of R. Meir is the particular of R. Judah, and the general statement of R. Judah is the particular of R. Meir.⁴ And R. Johanan said: All agree that ‘and not thee’ is a particular; they disagree only in ‘not thee,’ R. Meir holding it is a particular, and R. Judah holding it is a general; and what is the general statement according to R. Meir? ‘I swear that you have not in my possession...’⁵ In what do they disagree? —

Samuel argues from the Baraitha, and R. Johanan argues from our Mishnah. ‘Samuel argues from the Baraitha’: Since R. Judah says ‘and not thee’ is a particular, we infer that he heard R. Meir say it is a general, and therefore R. Judah [disagrees and] says to him it is a particular. And R. Johanan says: Both⁷ are, according to R. Meir, particulars; and R. Judah said to him: In ‘and not thee’ I agree with you,⁸ but in ‘not thee’ I disagree with you. But Samuel says: [If so,] why mention that in which he agrees with him; let him mention that in which he disagrees with him.⁹ ‘And R. Johanan argues from our Mishnah’: Since R. Meir says:¹⁰ ‘I swear you [plural] have not in my possession...’ is a general statement, we infer that ‘and not thee’ is a particular, for if it enters your mind to say that ‘and not thee’ is a general statement, why does he teach us ‘I swear I do not owe you,’¹¹ let him teach us, ‘I swear I do not owe thee, and not thee, and not thee,’ and it would be obvious that ‘I swear I do not owe you’ [is a general statement]. — And Samuel says, if he says, ‘and not thee,’ it is as if he says, ‘I swear I do not owe you.’¹²

We learnt: NOT THEE, AND NOT THEE, AND NOT THEE.¹³ — Read in the Mishnah: ‘not thee’.¹⁴ Come and hear: GIVE ME THE DEPOSIT, AND LOAN, AND THEFT, AND LOST OBJECT.¹⁵ Read: ‘loan, theft, lost object.’ Come and hear: GIVE ME THE WHEAT, AND BARLEY, AND SPELT. — Read: ‘barley, spelt.’ — But does the Tanna go on so frequently blundering?¹⁶ — Well

then, it is the view of Rabbi,¹⁷ who says: There is no difference between ‘Ka-zayith, Ka-zayith’ and ‘Ka-zayith and Ka-zayith’: both are particulars.¹⁸ Come and hear — from his own view:¹⁹ R. MEIR SAYS, [EVEN IF HE SAID:] ‘A GRAIN OF WHEAT, AND BARLEY, AND SPELT,’ HE IS LIABLE FOR EACH ONE.²⁰ — Read: ‘A grain of wheat, a grain of barley, a grain of spelt.’ — What is the force of EVEN?²¹ R. Aha the son of R. Ika said: Even a grain of wheat is included in wheat, and a grain of barley is included in barley, and a grain of spelt is included in spelt.²²

‘GIVE ME THE DEPOSIT, LOAN, THEFT, AND LOST OBJECT WHICH I HAVE IN THY POSSESSION,’ etc. ‘Give me the wheat and barley.’ R. Johanan said: If there is a Perutah²³ [in the value] of all of them together, they combine.²⁴ — R. Aha and Rabina disagree. One says: For the particulars he is liable, but for the general statements he is not liable;²⁵ and the other says: For the general statements he is also liable.²⁶ But did not R. Hiyya teach: Behold, there are here fifteen sin-offerings;²⁷ and if it is [as you say], there are twenty. — This Tanna²⁸ is counting the particulars, and is not counting the general statements.²⁹ And behold, R. Hiyya taught: There are here twenty sin-offerings.³⁰ — [No!] that refers to deposit, loan, theft, and lost object.³¹ Raba inquired of R. Nahman: If five claimed from him, saying to him: ‘Give us the deposit, loan, theft, and lost object which we have in thy possession,’ and he said to one of them: ‘I swear that thou hast not in my possession a deposit, loan, theft, and lost object; and thou hast not, and thou hast not, and thou hast not, and thou hast not;’ what is the ruling? For one is he liable,³²

(1) Support for R. Johanan: the Mishnah may, or may not, agree with him.

(2) If he denies on oath the claim of several people in one general statement, ‘I swear I owe you all nothing,’ he is liable only for one oath; but, if he particularizes, and says, ‘I swear I do not owe you,

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nor you, nor you,' he is liable for each one; v. Mishnah, supra 36b.

(3) The difference between R. Meir and R. Judah is explained below.

(4) Because R. Judah says, 'I swear I do not owe thee and not thee' is counted a particular, he must have heard R. Meir say that it is a general statement (because of the connecting and), equivalent to 'I do not owe all of you.' R. Meir's particular must therefore be, 'I do not owe thee, not thee, not thee' (without and) — turning to each claimant, and addressing him separately. This expression, 'not thee, not thee,' R. Judah counts as a general statement, for he states that 'and not thee' is a particular.

(5) I.e., 'I swear I do not owe you' (plural).

(6) Samuel and R. Johanan, in their interpretation of the views of R. Meir and R. Judah.

(7) 'Not thee' and 'and not thee'.

(8) That it is a particular.

(9) When stating his view in the Baraitha, R. Judah should say, 'not thee' is a general (in which he disagrees with R. Meir, who holds it is a particular); and not 'and not thee' is a particular (with which R. Meir agrees).

(10) The author of an anonymous statement in the Mishnah is generally R. Meir.

(11) Is a general statement.

(12) They are both equal, and one is not more obvious than the other.

(13) He is liable for each one, supra Mishnah 36b; the author of the anonymous statement in the Mishnah being R. Meir (v. note 6), it proves that R. Meir holds that 'and not thee' is a particular; which is a refutation of Samuel's interpretation of his opinion.

(14) Without and.

(15) And he replies, 'I swear I have not in my possession the deposit, and loan, and theft, and lost object,' he is liable for each one. Hence the enumeration of the objects with the connecting word and makes the statement a particular. This again is an argument against Samuel.

(16) The Tanna inserts and, and you say it must be omitted in all these instances; a Tanna is always very careful and exact.

(17) The anonymous statements in our Mishnah, which imply that and denotes a particular, are not the view of R. Meir (according to Samuel), but of Rabbi.

(18) If one kills a sacrifice, and intends to eat a ka-zayith (a piece the size of an olive) of it later than the time allotted for its consumption, or outside the place fixed for its consumption (v. Zeb., Mishnah, Chap. V), it is, in the first case, Piggul (an abomination), v. Lev. VII, 18, (for which kareth (v. Glos.) is inflicted), and in the second case, merely ritually unfit (v. Zeb., 29b). If one has the intention: 'I shall eat a ka-zayith outside the time limit, a ka-

zayith outside the place,' or, 'I shall eat a ka-zayith outside the time limit, and a ka-zayith outside the place,' it is the same, according to Rabbi, the first thought ('ka-zayith outside the time') being in either case counted as the main thought, and the sacrifice is therefore Piggul, and kareth inflicted; Zeb. 30b. Hence, Rabbi holds that whether and is inserted or omitted, the thoughts are separate, and in our Mishnah also he will hold that and separates the persons (or objects); and the statement is therefore particular, and not general.

(19) An argument against Samuel's interpretation of R. Meir's view from R. Meir's own clearly expressed opinion.

(20) Hence, and separates the items, and makes each one a particular.

(21) R. Meir says: Even if he said, 'Give me the grain of wheat...'

(22) Even if the claimant said, 'grain of wheat,' and the bailee said, 'wheat,' or vice versa, it matters not: they are the same; and the bailee is denying on oath exactly what the other is claiming.

(23) A small coin (v. Glos.).

(24) If the wheat, barley and spelt are together worth only one Perutah they combine, and the bailee is liable to an offering for denying on oath that he has them in his possession; for less than a Perutah there is no liability.

(25) When the bailee says, 'I swear thou hast not in my possession wheat, barley, or spelt,' he is liable for each one' i.e., three offerings (for the three particulars), but not four: we do not say that his first words ('I swear thou hast not in my possession') are themselves also an oath, meaning, 'I swear thou hast not anything in my possession.' R. Johanan's statement (that the wheat, barley and spelt combine to make up the value of a Perutah) does not refer to this clause, because he is liable for three separate oaths, and there must be a Perutah in each. R. Johanan's statement refers to the first clause: 'I swear thou hast not these in my possession,' he is liable only once; and in this case R. Johanan says: The wheat, barley and spelt combine to the value of a Perutah.

(26) And he is liable for four oaths: for the three particulars, and for his opening words, which are counted as a general oath. R. Johanan's statement will hence refer to this clause too; and the wheat, barley and spelt combine to the value of a Perutah to make him liable at least for one oath, the general oath; though not for the other three, if there is not a Perutah in each.

(27) If five persons claimed, each one claiming wheat, barley, and spelt, and he denied on oath the claim of each one, he is liable to bring 15 sin-offerings (more correctly, guilt-offerings). Hence, since R. Hiyya said 15 offerings, he is counting the particulars only, for if he counted the general

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statements also, there would be 4 offerings for each of the 5 claimants, i.e., 20 offerings.

(28) R. Hiyya.

(29) Though he may agree that altogether he has to bring 20 offerings.

(30) So he really agrees that for the general statements he also brings offerings.

(31) Where there are 4 particulars, i.e., 20 for the 5 claimants; but he really does not reckon the general statements.

(32) For each of the 4 claimants, apart from the first, is he liable to only one offering, because he did not mention all the particulars to each claimant; and, therefore, he will be liable to 4 offerings for the 4 claimants, and another 4 for the first claimant (because in his case he mentioned the 4 particulars), i.e. 8 offerings in all.

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or is he liable for each one?¹ — Come and hear: R. Hiyya taught: Behold, there are here twenty sin offerings. How is this? If he expressed fully,² [it is obvious;] does R. Hiyya come to tell us the number?³ Obviously therefore, he did not express fully;⁴ hence, we deduce from this that they are particulars.⁵

‘THOU HAST VIOLATED OR SEDUCED MY DAUGHTER,’ etc. R. Hiyya b. Abba said that R. Johanan said: What is R. Simeon's reason?⁶ Because mainly it is the fine that he is claiming.⁷ Said Raba: In illustration of R. Simeon's view, to what may it be compared? To a man who said to his neighbor, ‘Give me the wheat, barley, and spelt that I have in thy possession,’ and he replied to him, ‘I swear that thou hast not in my possession wheat,’ and it was found that wheat he really did not have, but barley and spelt he had; he is exempt, for when he swore about the wheat, he swore the truth.⁸ Said Abaye to him: How can they be compared? There he denies the wheat, but does not deny the barley and spelt,⁹ but here, he denies the whole thing!¹⁰ But this then is to be compared only to one who says to his neighbor, ‘Give me the wheat, barley and spelt which I have in thy possession,’ [and the other replies,] ‘I swear that thou hast not anything in my possession,’ and it was found that wheat he

really did not have, but barley and spelt he had; he is liable!¹¹ —

But when Rabin came [from Palestine] he said in the name of R. Johanan: According to R. Simeon, he is claiming the fine, and not for shame and blemish; according to the Sages, he is claiming also for shame and blemish. In what do they disagree? — R. Papa said: R. Simeon holds, a man does not leave that which is fixed¹² to claim that which is not fixed;¹³ and the Rabbis hold, he does not leave that which, if he were to admit it, he would not be exempt,¹⁴ to claim that which, if he were to admit it, he would be exempt.¹⁵

CHAPTER VI

MISHNAH. THE OATH OF THE JUDGES¹⁶ [IS IMPOSED WHEN] THE CLAIM IS [AT LEAST] TWO SILVER COINS,¹⁷ AND THE ADMISSION THE EQUIVALENT OF A PERUTAH.¹⁸ AND IF THE ADMISSION IS NOT OF THE SAME KIND AS THE CLAIM,¹⁹ HE IS EXEMPT.²⁰ HOW? — ‘TWO SILVER MA’AHS²¹ OF MINE HAVE YOU IN YOUR POSSESSION,’ [AND THE OTHER REPLIES,] ‘I HAVE NOT IN MY POSSESSION OF YOURS EXCEPT A PERUTAH,’²² HE IS EXEMPT.²³ — ‘TWO SILVER MA’AHS OF MINE AND A PERUTAH HAVE YOU IN YOUR POSSESSION,’ [AND THE OTHER REPLIES,] ‘I HAVE NOT IN MY POSSESSION OF YOURS EXCEPT A PERUTAH,’ HE IS LIABLE.²⁴ — ‘YOU HAVE OF MINE A HUNDRED DINARII.’ — ‘I HAVE NOT OF YOURS,’ HE IS EXEMPT.²⁵ — ‘YOU HAVE OF MINE A HUNDRED DINARII.’- ‘I HAVE OF YOURS ONLY FIFTY DINARII,’ HE IS LIABLE. — ‘YOU HAVE OF MY FATHER'S A HUNDRED DINARII.’²⁶ — ‘I HAVE OF HIS ONLY FIFTY DINARII.’ HE IS EXEMPT, BECAUSE IT IS AS IF HE RESTORES A LOST OBJECT.²⁷ ‘YOU HAVE OF MINE A HUNDRED DINARII.’ HE SAID TO HIM,²⁸ ‘YES.’ ON THE MORROW HE SAID TO HIM, ‘GIVE THEM TO ME;’ [AND HE REPLIED,] ‘I HAVE GIVEN THEM TO YOU,’ HE IS EXEMPT. [IF HE SAYS,] ‘I HAVE NOT OF YOURS IN MY POSSESSION,’ HE IS LIABLE.²⁹ — ‘YOU HAVE OF MINE A

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HUNDRED DINARIL.' HE SAID TO HIM, 'YES. — GIVE THEM NOT TO ME EXCEPT BEFORE WITNESSES.' ON THE MORROW HE SAID TO HIM, 'GIVE THEM TO ME;' [AND HE REPLIED,] 'I HAVE GIVEN THEM TO YOU,' HE IS LIABLE, BECAUSE HE SHOULD HAVE GIVEN THEM TO HIM BEFORE WITNESSES.— 'YOU HAVE OF MINE A LITRA³⁰ OF GOLD.' — 'I HAVE OF YOURS ONLY A LITRA OF SILVER,' HE IS EXEMPT.³¹ — 'YOU HAVE OF MINE A GOLDEN DINAR.'³² — 'I HAVE OF YOURS ONLY A SILVER DINAR, OR A TRESIS,³³ OR A PUNDION, OR A PERUTAH'; HE IS LIABLE, FOR ALL ARE ONE KIND OF COINAGE.³⁴ — 'YOU HAVE OF MINE A KOR³⁵ OF GRAIN.' — 'I HAVE OF YOURS ONLY A LETHEK OF BEANS;' HE IS EXEMPT; 'YOU HAVE OF MINE A KOR OF PRODUCE.' — 'I HAVE OF YOURS ONLY A LETHEK OF BEANS;' HE IS LIABLE, FOR BEANS ARE INCLUDED IN PRODUCE. IF HE CLAIMED FROM HIM WHEAT, AND THE OTHER ADMITTED BARLEY, HE IS EXEMPT; BUT R. GAMALIEL MAKES HIM LIABLE.³⁶ IF HE CLAIMS FROM HIS NEIGHBOR JARS OF OIL, AND HE ADMITS [HIS CLAIM TO THE EMPTY] JARS, ADMON SAYS, SINCE HE ADMITS TO HIM A PORTION OF THE SAME KIND AS THE CLAIM, HE MUST SWEAR. BUT THE SAGES SAY, THE ADMISSION IS NOT OF THE SAME KIND AS THE CLAIM.³⁷ R. GAMALIEL SAID, I APPROVE THE WORDS OF ADMON. IF HE CLAIMS FROM HIM VESSELS AND LANDS, AND HE ADMITS THE VESSELS, BUT DENIES THE LANDS; OR ADMITS THE LANDS, BUT DENIES THE VESSELS, HE IS EXEMPT.³⁸ IF HE ADMITS A PORTION OF THE LANDS, HE IS EXEMPT; A PORTION OF THE VESSELS, HE IS LIABLE;³⁹ BECAUSE PROPERTIES FOR WHICH THERE IS NO SECURITY⁴⁰ BIND PROPERTIES FOR WHICH THERE IS SECURITY⁴¹ TO TAKE AN OATH FOR THEM. NO OATH IS IMPOSED IN A CLAIM BY A DEAF-MUTE, IMBECILE, OR MINOR. AND NO OATH IS IMPOSED ON A MINOR; BUT AN OATH IS IMPOSED WHEN A CLAIM IS LODGED AGAINST A MINOR, OR AGAINST THE TEMPLE.⁴²

GEMARA. How do we impose the oath on him? — Rab Judah said that Rab said: We adjure him with the oath that is stated in the Torah, as it is written, And I will make thee swear by the Lord, the God of heaven.⁴³ Said Rabina to R. Ashi: In accordance with whose view [is this]? In accordance with the view of R. Hanina b. Idi, who says we require the Distinguishing Name!⁴⁴ — He said to him: You may even say it is in accordance with the view of the Rabbis, who say [he may be adjured] with a Substitute [for the Name];⁴⁵ but the outcome is that he must hold something [sacred] in his hand;⁴⁶ and as Raba said, for Raba said: A judge who adjures by 'the Lord God of heaven' [without handing a sacred object to the person taking the oath] is counted as having erred in the ruling of a Mishnah,⁴⁷ and must repeat [the ceremony correctly].⁴⁸

And R. Papa said: A judge who adjures with Tefillin⁴⁹ is counted as having erred in the ruling of a Mishnah, and must repeat [the ceremony].⁵⁰ The law is in accordance with the view of Raba,⁵¹ and the law is not in accordance with the view of R. Papa.⁵² The law is in accordance with the view of Raba, for he did not hold any [sacred] object in his hand; but the law is not in accordance with the view of R. Papa, for he held a [sacred] object in his hand. The oath [must be taken] standing; a disciple of the wise [may take it] sitting. The oath must be administered with a Sefer Torah,⁵³ a disciple of the wise may directly take it with Tefillin.⁵⁴ Our Sages taught: [As to] the oath of the judges — it also may be said in any language. They say to him: Know

- (1) Of the particulars in the case of each of the claimants, i.e., 20 in all.
- (2) To each claimant: 'And thou hast not in my possession a deposit, loan, theft, and lost object,' repeating all the particulars to each claimant.
- (3) We can count ourselves.
- (4) But as in Raba's enquiry.
- (5) Though he does not express them fully to each claimant, we assume that when he says, 'and thou hast not in my possession,' he refers to the

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particulars already enumerated to the first claimant; and therefore he is liable to 20 offerings.

(6) For exempting him from an offering.

(7) 50 shekels; Deut. XXII, 29; and for denying a fine on oath he is not liable; and though for seduction there is also liability for 'shame and blemish' (which are גמון), the father of the girl is concerned mainly with obtaining the 50 shekels.

(8) Here also, since the father is claiming mainly the fine, the seducer in denying seduction on oath, is denying mainly the fine; and for denying a fine, he is not liable for an offering.

(9) And he swore the truth.

(10) For since he denies seduction, he is ipso facto denying liability also for shame and blemish, which are גמון.

(11) For he denied barley and spelt; here also, R. Simeon should make him liable, for he denied shame and blemish.

(12) The fine.

(13) Shame and blemish, which have to be estimated according to the individual.

(14) Shame and blemish, which are גמון.

(15) The fine.

(16) An oath is imposed by the judges on a debtor who admits a portion of the claim, denying the rest.

(17) Two Ma'ahs; a Ma'ah was the smallest silver coin (about 2 d.).

(18) The smallest copper coin, 1/32 of a Ma'ah (8 Perutahs = 1 Isar, 2 Isars = 1 Pundion, 2 Pundions = 1 Ma'ah); hence a Perutah = about 1/16 d.

(19) The debtor admits something else, which the creditor is not claiming.

(20) From an oath.

(21) Not the coins, but their weight in silver.

(22) Its weight in copper.

(23) Because the creditor claims silver, and the debtor admits copper. If, however, the claim was a silver coin, and the admission a copper coin, he is liable; for they are both coins.

(24) Because he admits a portion of the claim.

(25) Because there is no admission of a portion.

(26) I.e., 'I believe you have, but I am not sure'; v. infra 42b.

(27) For he could have denied it all, since the son who claims is himself doubtful.

(28) In the presence of witnesses (Rashi, 42a).

(29) To pay, and is not believed on oath, for he is already proved to be a liar, having the previous day admitted before witnesses his liability.

(30) A certain weight.

(31) Because the admission is not of the same kind as the claim.

(32) Equals 25 silver Dinarii; 1 silver Dinar = 6 Ma'ahs.

(33) Read טריסיים = 3 Isars; v. p. 232, n. 3.

(34) The claim is a coin, and the admission is a coin.

(35) 1 kor = 2 lethek; measure of capacity.

(36) He does not require the admission to be of the same kind as the claim.

(37) Since he claims both jars and oil, the admission must be a portion of both.

(38) From an oath; if he admits the vessels, but denies the land, there is no oath, for there is no oath in the case of land (infra 42b); if he admits the land, but denies the vessels, there is no oath, for there is no admission of a portion of the vessels; and since he denies all (כופר הכל) he is free from an oath.

(39) To swear for the vessels, and also for the lands, since an oath is imposed in any case because of the vessels.

(40) Movables.

(41) Land.

(42) V. infra 42b.

(43) Gen. XXIV,3.

(44) Tetragrammaton; supra p. 208, n. 16.

(45) Ibid.

(46) What Rab meant in saying he must be adjured by the oath stated in the Torah is not that the Name must be used, but that a Sefer Torah (Scroll of the Law) or Tefillin (phylacteries) must be held by the person taking the oath.

(47) Though it is not stated in the Mishnah, but is merely a law promulgated by Rab, it has the force of a Mishnaic law; Sanh. 33a.

(48) And we do not say that the judge, having already administered the oath incorrectly, should suffer the consequences of his mistake, and pay the amount denied by the debtor on this incorrectly administered oath.

(49) Tefillin are not deemed as sacred as a Scroll of the Law.

(50) With a Scroll of the Law.

(51) That if he did not hold any sacred object when taking the oath, it must be repeated properly.

(52) That if he held Tefillin it is not good enough.

(53) Though if it has already been administered with Tefillin it is effective; but a Sefer Torah is required in the first instance לכתחלה.

(54) As a special consideration.

Shevu'oth 39a

that the whole world trembled at the time when the Holy One, blessed be He, said at Sinai: Thou shalt not take the name of the Lord thy God in vain.¹ And with reference to all transgressions in the Torah it is said, holding guiltless;² but here it is said, Will not hold him guiltless.³ And for all the transgressions in the Torah he [the sinner] alone is punished, but here he and his family; for it is said: Suffer not thy mouth⁴ to bring thy flesh into guilt;⁵ and 'flesh' means 'near

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relative', as it is said: And from thine own flesh thou shalt not hide thyself.⁶ And for all the transgressions in the Torah he alone is punished, but here he and all the world; for it is said: Swearing and lying [therefore doth the land mourn, and every one that dwelleth therein doth languish].⁷ —

But say, perhaps, only when he does them all!⁸ That cannot enter your mind, for it is written, Because of swearing the land mourneth;⁹ and it is written, therefore doth the land mourn, and every one that dwelleth therein doth languish.¹⁰ And with reference to all transgressions in the Torah, if he has merit, punishment is suspended for two or three generations, but here he is punished immediately, as it is said, I cause it to go forth, saith the Lord of hosts, and it shall enter into the house of the thief and into the house of him that sweareth falsely by My name; and it shall abide in the midst of his house, and shall consume it with the timber thereof and the stones thereof.¹¹ 'I cause it to go forth':¹² immediately; 'and it shall enter into the house of the thief': he who steals the mind¹³ of people; [e.g.], there is no money owing to him by his fellow, but he claims from him, and causes him to swear; 'and into the house of him that sweareth falsely by My name': according to its plain meaning; 'and it shall abide in the midst of his house, and shall consume it with the timber thereof and the stones thereof': from this you learn, that things which neither fire nor water can destroy,¹⁴ a false oath can destroy. If he says, 'I shall not swear,'¹⁵ he is dismissed immediately.¹⁶

But if he said, 'I shall swear,' those who are standing there say to each other, 'Depart, I pray you, from the tents of these wicked men, etc.'¹⁷ And when they adjure him, they say to him: 'Know that we do not adjure you according to your own mind, but according to the mind of the Omnipresent, and the mind of the Beth din,'¹⁸ for thus we find in the case of Moses our teacher: When he adjured Israel,¹⁹ he said to them: 'Know that not according to

your own minds do I adjure you, but according to the mind of the Omnipresent, and my mind;' as it is said: Neither with you only [do I make this covenant and this oath].²⁰

But with him that standeth here with us:²¹ hence we know only those who were standing by Mount Sinai [were adjured]; the coming generations, and proselytes who were later to be proselytized, how do we know [that they were adjured also then]? Because it is said, and also with him that is not here with us this day.²² And from this we know only [that they were adjured for] the commandments which they received at Mount Sinai; how do we know [that they were adjured for] the commandments which were to be promulgated later, such as reading the Megillah?²³ Because it is said: They confirmed and accepted:²⁴ they confirmed what they had long ago accepted.²⁵

What is the meaning of: it²⁶ also may be said in any language? — As we learnt: These may be recited in any language: The scriptural text of the Sotah,²⁷ confession when giving the tithe,²⁸ the Shema',²⁹ Tefillah,³⁰ Grace after meals,³¹ the oath of testimony, and the oath of deposit.³² And now it says also, 'The oath of the judges may also be said in any language.' The Master said: They say to him, Know that the whole world trembled at the time when the Holy One blessed be He said, Thou shalt not take the name of the Lord thy God in vain. — What is the reason? Shall we say because it was given at Sinai? The Ten Commandments were also given there! Again, if because it is more serious?³³ —

But is it more serious? Behold, has it not been taught: These are light: positive and negative [precepts], except, 'Thou shalt not take [the name of the Lord thy God in vain];' serious: [sins for the transgression of which] kareth and death at the hands of the Beth din [are inflicted], and 'Thou shalt not take, etc.' is in this category.'³⁴ — Well then, because of the reason which he states: With reference to all transgressions in the Torah it is said 'holding

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guiltless', but here it is said, 'will not hold guiltless'.

And with reference to all transgressions in the Torah is it not said, 'Will not hold guiltless'? Surely, it is written: and will by no means hold guiltless!³⁵ That is required for R. Eleazar's deduction, for we learnt, R. Eleazar said: It is impossible to say, 'holding guiltless', for it is already said, 'Will not hold guiltless'; it is impossible to say, 'Will not hold guiltless', for it is already said, 'holding guiltless'. How [can they be reconciled]? He 'holds guiltless' those who repent, and 'does not hold guiltless' those who do not repent.³⁶ 'For all transgressions in the Torah he alone is punished, but here he and his family.' —

And for all transgressions of the Torah is not his family punished? Lo, it is written, And I will set My face against that man, and against his family.³⁷ And it was taught: R. Simeon said: If he sinned, what sin did his family commit? But this shows you that there is not a family containing a tax-collector,³⁸ in which they are not all tax-collectors; or containing a robber, in which they are not all robbers;³⁹ because they protect him!⁴⁰ —

There [the family are punished] with another [lighter] punishment, but here with his own punishment; as was taught: Rabbi said: And I will cut him off.⁴¹ Why is it said? Because it is said, And I will set My face [against that man, and against his family];⁴² I might think the whole family shall be cut off, therefore it is said, 'him':⁴³ him will I cut off, but not the whole family shall I cut off.⁴⁴ 'For all transgressions in the Torah he alone is punished, but here he and the whole world.' — And for all transgressions of the Torah is not the whole world punished? Lo, it is written, And they shall stumble one upon another:⁴⁵ one because of the iniquity of the other; this teaches us that all Israel are sureties one for another!⁴⁶

(1) Ex. XX, 7.

(2) Ibid. XXXIV, 7: Keeping mercy unto the thousandth generation, forgiving iniquity and transgression and sin, and holding guiltless. The text has וְיִנְקֶה לֹא יִנְקֶה and will not hold guiltless; but Scripture of set purpose did not write simply וְיִנְקֶה לֹא but wrote וְיִנְקֶה first to teach us that there are occasions when He holds guiltless the transgressors (when they repent).

(3) Ibid. XX, 7: The Lord will not hold him guiltless that taketh His name in vain. Here the text has simply וְיִנְקֶה לֹא and not וְיִנְקֶה. So serious is the sin of a false oath that even repentance and the Day of Atonement do not bring the sinner complete absolution, but he must suffer some punishment to expiate his sin; v. Maharsha.

(4) By swearing falsely.

(5) Eccl. V, 5.

(6) Isa. LVIII, 7.

(7) Hosea IV, 2, 3.

(8) The verse says also, 'killing, and stealing, and committing adultery.' If he does them all, then the whole world suffers, but not for swearing only!

(9) Jer. XXIII, 10.

(10) Hosea IV, 3; when the land mourns, every inhabitant languishes; and because of swearing the land mourns (Jer. XXIII, 20), therefore every inhabitant languishes because of swearing.

(11) Zech. V, 4.

(12) The curse (verse 3), i.e., punishment.

(13) I.e., deceives.

(14) I.e., 'stones'.

(15) As a result of the judges' homily on the seriousness of a false oath.

(16) From the court, and not given the opportunity to change his mind; and he must pay the claim.

(17) Num. XVI, 26.

(18) V. supra 29a.

(19) To keep the commandments.

(20) Deut. XXIX, 13; i.e., not in accordance with your own minds.

(21) Ibid. 14.

(22) Ibid.

(23) Scroll of Esther on Purim.

(24) Est. IX, 27.

(25) I.e., at Mount Sinai; for acceptance of laws was at Mount Sinai. The deduction is made because acceptance must come before confirmation. [For the whole passage cf. Tosaf. Sot. 7.]

(26) The oath imposed by the judges. Why also? What else is there?

(27) A wife suspected of adultery. Cf. Num. V, 19-22; the priest should adjure her in the language which she understands.

(28) Deut. XXVI, 13-15.

(29) Ibid. VI, 4-9; XI, 13-21; Num. XV, 37-41, v. Glos.

(30) Lit., 'prayer', the Eighteen (Nineteen) Benedictions recited three times daily, v. P.B. pp. 44-54.

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- (31) V. P.B. pp. 280-285.
(32) Sot. 32a.
(33) Than any other sin.
(34) Hence 'Thou shalt not take', etc. is the same as, and not more serious than the sins for which the penalty is kareth or death.
(35) Ex. XXXIV, 7.
(36) The text, literally, is: 'and holding guiltless, will not hold guiltless.' R. Eleazar explains: 'holding guiltless' those who repent, 'He will not hold guiltless' those who do not repent. But a false oath is more serious than other transgressions in that Scripture writes, with reference to it, **לֹא יִהְיֶה** He will not hold guiltless even those who repent; whereas, with reference to other transgressions, it writes, **וְנִקָּה לֹא יִנְקָה**.
(37) Lev. XX, 5; for worshipping Molech.
(38) Tax-collectors were considered unscrupulous, often taking more than their due, v. Sanh. (Sonc. ed.), p. 148, n. 6.
(39) If there is a black sheep in a family, the other members are probably not much better.
(40) Hence, in the case of other transgressions, too, the whole family is punished; and not merely in the case of a false oath.
(41) Lev. XX, 3.
(42) Ibid.
(43) 'I will cut him off.'
(44) They will suffer merely a minor punishment.
(45) Lev. XXVI, 37.
(46) Hence in the case of all transgressions the whole world (of Israel) is punished, because all Israelites are responsible for one another, and bound to prevent wrongdoing!

Shevu'oth 39b

There [they are punished], because it was in their power to prevent [the sin], and they did not prevent it.¹ What is the difference between the wicked of his² family and the wicked of the [rest of the] world; and between the righteous of his family and the righteous of the [rest of the] world? —

He himself, in the case of other transgressions, is punished by his own [appropriate] punishment, and the wicked of his family, by a severe punishment, and the wicked of the [rest of the] world, by a light punishment; the righteous, both here³ and there,⁴ are free. In the case of a [false] oath, he and the wicked of his family are punished with his punishment, and the wicked of the [rest of the] world, with

a severe punishment; and the righteous, both here and there, with a light punishment.⁵ 'If he says, I shall not swear, he is dismissed immediately; but if he said, I shall swear, those who are standing there say to each other: Depart, I pray you, from the tents of these wicked men.' — Granted that he who swears is committing a wrong, but he who causes him to swear — why [should he be counted wicked]?⁶ — As was taught: R. Simeon b. Tarfon said: The oath of the Lord shall be between them both,⁷ this teaches us that the oath rests on both.⁸ 'And when they adjure him, they say to him, Know that not in accordance with your own mind, etc.' — Why should they say this to him? — Because of [the episode of] the cane of Raba.⁹

THE CLAIM [MUST BE AT LEAST] TWO MA'AHs. Rab said: The denial [in regard to] the claim must be [at least] two Ma'ahs;¹⁰ and Samuel said: The claim itself must be [at least] two [Ma'ahs]; even if he denied only a Perutah, or admitted only a Perutah, he is liable. Raba said: Our Mishnah is evidence in support of Rab, and there are Scriptural verses in support of Samuel. 'Our Mishnah is evidence in support of Rab' — for it states: **THE CLAIM [MUST BE AT LEAST] TWO MA'AHs, AND THE ADMISSION [AT LEAST] THE VALUE OF A PERUTAH.** But it does not state that the denial of the claim may be a Perutah; and we learnt also: Admission must be [at least] a Perutah;¹¹ but it does not state that the denial [must be at least] a Perutah. 'There are Scriptural verses in support of Samuel' — for it is written: If a man give unto his neighbor silver or vessels to keep¹² — just as 'vessels' implies two,¹³ so 'silver' implies two;¹⁴ just as 'silver' is a thing of worth, so everything¹⁵ which is of worth [is included]; and Scripture says, This is it.¹⁶ —

And Rab?¹⁷ — That we require for admission of a portion of the claim.¹⁸ And Samuel? — It is written, 'it', and it is written, 'this', [to teach us] that if he denied a portion, and admitted a portion, he is liable.¹⁹ And Rab? — One [word is to teach us] that there must

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be admission of a portion of the claim, and one [word is to teach us] that there must be admission of the same kind as the claim.²⁰ And Samuel? — [He may retort:] Can you not incidentally infer that the amount of the claim is lessened?²¹ —

Well, then, Rab may tell you: ‘Silver’ when originally mentioned is with reference to the denial;²² for, if it were not so, Scripture could have written: ‘If a man give unto his neighbor vessels to keep’; and I would have said: Just as ‘vessels’ implies two, so everything must be two;²³ why did Scripture need to write ‘silver’? Since it is not required for the claim, apply it for the denial.²⁴ And Samuel? — He may say to you: If Scripture had written ‘vessels’, and had not written ‘silver’, I might have said: Just as ‘vessels’ implies two, so everything must be two, but a thing of worth we do not require,²⁵ therefore it teaches us [that we do].

We learnt: ‘TWO SILVER [MA’AHS] OF MINE YOU HAVE IN YOUR POSSESSION.’ — ‘I HAVE OF YOURS IN MY POSSESSION ONLY A PERUTAH,’ HE IS EXEMPT. What is the reason? Is it not because the claim is now less [than two Ma’ahs]? Hence it is a refutation of Samuel’s view! — Samuel may tell you: Do you think the Mishnah means the value [of two Ma’ahs]?²⁶ It means literally [two Ma’ahs];²⁷ that which he claimed, the other did not admit to him; and that which he admitted to him, he had not claimed from him. If so, say the latter clause: ‘TWO SILVER [MA’AHS] AND A PERUTAH OF MINE HAVE YOU IN YOUR POSSESSION.’ ‘I HAVE OF YOURS IN MY POSSESSION ONLY A PERUTAH,’ HE IS LIABLE. Granted, if you say [the Mishnah means] the value [of two Ma’ahs and a Perutah], therefore he is liable,²⁸ but if you say [the Mishnah means it] literally, why is he liable? That which he claimed, the other did not admit to him, and that which he admitted to him, he had not claimed from him! — Is this not an argument against Samuel?

But surely R. Nahman said that Samuel said: If he claimed from him wheat and barley, and he admitted to him one of them, he is liable.²⁹ This appears to be the more reasonable interpretation, for it states in a later clause: ‘A LITRA OF GOLD OF MINE YOU HAVE IN YOUR POSSESSION.’ — ‘I HAVE OF YOURS IN MY POSSESSION ONLY A LITRA OF SILVER,’ HE IS EXEMPT. Granted, if you say the Mishnah means them literally, therefore he is exempt;³⁰ but if you say it means their value,³¹ why is he exempt? A litra is much!³² — Well then, since the latter clause is intended literally, the first clause is also intended literally; shall we say, then, that it will be a refutation of Rab’s view!³³ — [No!] Rab may tell you: The whole Mishnah deals with the value [of Ma’ahs and Perutah];³⁴ but [the case of] a litra of gold is different.³⁵

(1) [Whereas false swearing undermines the very foundations and structure of human society involving in a common destruction the wholly righteous as well as the wicked.]

(2) The sinner’s.

(3) Of his family.

(4) Of the rest of the world.

(5) The whole passage deals with people who were able to prevent the sin, and did not; righteous people are those who are righteous in other respects, but passive in not preventing sin; and wicked people are those who are wicked in other respects. Hence, in the case of a false oath, the righteous, both of the family and others, are punished by a light punishment, because they were able to prevent it, and did not; but in the case of other transgressions they are free, though they were able to prevent them, because other transgressions are not as serious as a false oath; and they were, in any case, merely passive. According to this, the statement of the Talmud (top of 39b), that in the case of other transgressions they are punished if they were able to prevent the sin and did not (which implies, that in the case of an oath, they are punished even if they were not able to prevent it), is, in the sequel, not accepted. This explanation of the passage is opposed to that of Maharsha who explains ‘righteous’ as those unable to prevent the sin. In that case, why should they, in the case of an oath, be punished? They did not commit the sin, and they were unable to prevent its commission.

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The view of the Maharsha seems to conflict with one's sense of justice, [V. however p. 238, n. 5].

(6) For the bystanders say, these wicked men, i.e., both.

(7) Ex. XXII. 10.

(8) The claimant also merits rebuke, for if he had been careful to arrange for witnesses to be present when giving the debtor the money, or to have a signed document, there would have been no need for an oath.

(9) V. supra 29a.

(10) Lit., 'silver (pieces)'. The amount he denies must be at least two Ma'ahs, and since the admission must be at least a Perutah, the total amount claimed must be at least two Ma'ahs and a Perutah.

(11) B.M. 55a: There are five cases where the minimum is a Perutah; admission of a Perutah is mentioned, but not denial. Hence this Mishnah and our Mishnah agree with Rab.

(12) Ex. XXII, 6.

(13) Two being the minimum of the plural 'vessels'.

(14) So that the claim must be for at least two silver pieces, i.e., Ma'ahs.

(15) [Var. lec., 'vessels', reading כליים For כל; v. Rashi and Tosaf.; cf. infra p. 247, n. 6.]

(16) Ex. XXII, 8: for any claim about which the debtor says, 'I do not owe you the whole amount, but this is it', i.e., 'I admit owing you this portion only,' he takes an oath. Hence, the admission may be part of the two Ma'ahs (leaving less than two Ma'ahs for denial). Scripture thus appears to support Samuel.

(17) Scripture is against him!

(18) Scripture writes 'this is it' to teach us that an oath is imposed only when a portion of the claim is admitted; but it does not necessarily refer to the claim of two Ma'ahs mentioned in verse 6; there must always be a denial of two Ma'ahs apart from the portion admitted.

(19) I.e., 'it (a portion) I deny; this (a portion) I admit'. Hence, if the denial is only a Perutah, he is liable.

(20) I.e., 'it (a portion of the claim) I admit; this (of this very kind) I admit'.

(21) Assuming even, as you say, that the verse refers to admission only (that it must be a portion, and of the same kind), it is still obvious that the denial is less than two Ma'ahs, for the only claim mentioned by Scripture (verse 6) is two Ma'ahs, and of this, Scripture says (verse 8), he admits a portion — hence, he denies a portion (clearly less than two Ma'ahs). Thus Scripture appears to be opposed to Rab's view.

(22) The word 'silver' (Ex. XXII, 6), which we say implies two Ma'ahs, does not refer to the total claim, but to the denial.

(23) 'Silver' included; hence I would have known that two Ma'ahs are the minimum for the claim.

(24) That the denial must be at least two Ma'ahs.

(25) It is not necessary that the two things claimed shall be valuable (for silver is not mentioned), and even two Perutahs suffice for a claim.

(26) One claimed goods to the value of two Ma'ahs, and the other admitted goods (the same kind) to the value of a Perutah? If this were the case, he would be liable, though the claim is now less than two Ma'ahs.

(27) One claimed two Ma'ahs (silver), and the other admitted a Perutah (copper); he is exempt, because the admission is not of the same kind as the claim.

(28) For he admits a portion of the claim: the same kind of goods.

(29) Samuel counts this as being admission of the same kind as the claim; similarly, if he claimed two Ma'ahs (silver) and a Perutah (copper), and the other admitted a Perutah (copper), he is liable.

(30) Because he claims gold, and the other admits silver.

(31) Goods to the value of a litra of gold, or silver.

(32) Sufficient for the minimum required for admission and denial.

(33) For the first clause states that if he claims two Ma'ahs, and the other admits a Perutah, he is exempt, because, presumably (taking the Mishnah literally) he claims silver, and the other admits copper; but if he claimed goods to the value of two Ma'ahs, and the other admitted goods to the value of a Perutah, he would be liable, though the claim was only originally two Ma'ahs, and was, after the admission of a Perutah, diminished from two Ma'ahs.

(34) In the first clause he is therefore exempt, because, after the admission, the claim becomes less than two Ma'ahs; and in the second clause, when the claim is two Ma'ahs and a Perutah, he is liable, because after the admission of a Perutah, there is still denial of two Ma'ahs.

(35) The Mishnah obviously intends this literally, for one claims a certain weight (not coins) of gold, and the other admits the same weight of silver; therefore he is exempt, because the admission is not of the same kind as the claim. If the Mishnah had said that one claimed a sum of money in gold, and the other admitted a sum of money in silver, we might have said, legitimately, that goods to the value of those sums were intended, and the man would have been liable; but since the Mishnah states the weight of the gold and silver, it means actually gold and silver; and therefore he is exempt.

Shevu'oth 40a

Know [that this is so],¹ for it states in a later clause: 'A GOLDEN DINAR OF MINE HAVE YOU IN YOUR POSSESSION.' — 'I

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HAVE OF YOURS IN MY POSSESSION ONLY A SILVER DINAR, OR A TRESIS, OR A PUNDION, OR A PERUTAH,' HE IS LIABLE, FOR THEY ARE ALL ONE COINAGE.² Granted, if you say [the Mishnah deals with] values, therefore he is liable;³ but if you say it means them literally, why is he liable?⁴ —

R. Eleazar said: [It means] he claimed from him a Dinar in coins; and he teaches us that a Perutah is in the category of coin.⁵ This also is evidence [that the Mishnah means this], for it states: **FOR THEY ARE ALL ONE COINAGE.** And Rab?⁶ — All coins are subject to the same law.⁷ Now, as to R. Eleazar: shall we say, that, since he expounds the latter clause in accordance with the view of Samuel,⁸ he agrees in the first clause also with Samuel?⁹ — No! The latter clause is definitely intended literally, for it states: **FOR THEY ARE ALL ONE COINAGE;** but the first clause may be either in accordance with the view of Rab¹⁰ or Samuel. Come and hear: 'A golden Dinar coin of mine you have in your possession.' — 'I have of yours in my possession only a silver Dinar,' he is liable. Now the reason [he is liable] is because he said to him 'a golden coin,'¹¹ but if he had said simply ['a golden Dinar'], he would have implied its value!¹² —

R. Ashi said: Thus it means: If he says, a golden Dinar, it is as if he said, a golden Dinar coin.¹³ R. Hiyya taught in support of Rab: 'A sela' of mine you have in your possession.' — 'I have of yours in my possession only a sela',¹⁴ less two Ma'ahs,' he is liable; 'less one Ma'ah', he is exempt.¹⁵ R. Nahman b. Isaac¹⁶ said that Samuel said: They did not teach this¹⁷ except in the case of a claim of a creditor and admission [of a portion] on the part of the debtor; but in the case of a claim of a creditor and the testimony of one witness, even if he claimed only a Perutah, he is liable.¹⁸ What is the reason? Because it is written, One witness shall not rise up against a man for any iniquity, or for any sin;¹⁹ for any iniquity, or for any sin, he does not rise

up, but he rises up for an oath; and it was taught: Wherever two [witnesses] make him liable for money, one witness makes him liable for an oath. And R. Nahman said that Samuel said: If he claimed from him wheat and barley, and the other admitted one of them, he is liable.²⁰

Said R. Isaac to him: 'Correct! And so said R. Johanan.' Do we infer that Resh Lakish disagrees with him?²¹ — Some say, he was waiting and was silent;²² and some say, he was drinking and was silent. Shall we say this supports him: **IF HE CLAIMED FROM HIM WHEAT, AND THE OTHER ADMITTED BARLEY, HE IS EXEMPT; BUT R. GAMALIEL MAKES HIM LIABLE.**²³ — The reason [he is exempt] is because he claimed from him wheat, and he admitted barley; but [if he claimed from him] wheat and barley, and he admitted one of them, he is liable!²⁴ — No! The same rule applies: even [if he claimed] wheat and barley, [and the other admitted one,] he is also exempt; and why they disagree in the case of wheat is to show you the power of R. Gamaliel.²⁵

Come and hear: **IF HE CLAIMED FROM HIM VESSELS AND LANDS, AND HE ADMITTED THE VESSELS, AND DENIED THE LANDS; OR [ADMITTED] THE LANDS, AND DENIED THE VESSELS, HE IS EXEMPT;**

- (1) That the rest of the Mishnah deals with values.
- (2) [MS.M. rightly omits: FOR THEY ARE ALL ONE COINAGE.]
- (3) For he claims goods to the value of a golden Dinar, and the other admits goods to the value of a silver Dinar, or less.
- (4) He claims gold, and the other admits silver, or copper.
- (5) We need not necessarily infer that the Mishnah deals with goods to the value of a golden Dinar or silver Dinar; it means actual coins; and it teaches us that though the claim is for a gold coin and the admission is a silver or copper coin, he is liable, because they are all coins (and the admission is therefore of the same kind as the claim), and that even a Perutah (the value of which is very small) is still counted a coin.

SHEVUOS – 29a-49b

(6) Who says the Mishnah means values, how will he explain the phrase, **FOR THEY ARE ALL ONE COINAGE?**

(7) The Mishnah means, all the coins (being the values of the goods claimed or admitted) are in the same category. Even the smallest (a Perutah) is of sufficient value to be the amount of admission in a claim.

(8) That the Mishnah means actual coins.

(9) That if he claimed two Ma'ahs (weight in silver), and the other admitted a Perutah (weight in copper), he is exempt, because the admission is not of the same kind as the claim; but if he claimed goods to the value of two Ma'ahs, and the other admitted goods to the value of a Perutah, he would be liable, though the claim was only two Ma'ahs (and not two

Ma'ahs and a Perutah), and, after admission, was less than two Ma'ahs.

(10) That the Mishnah means values, and he is exempt because the denial is less than two Ma'ahs.

(11) Specifically mentioning 'coin'; he is liable because the admission (a silver Dinar) is of the same kind (a coin) as the claim.

(12) Hence our Mishnah which states golden Dinar (not mentioning coin) means value, and since this clause in the Mishnah means value, the first clause also means value. Now, the first clause states that if one claims two Ma'ahs (goods to that value), and the other admits a Perutah (goods to that value), he is exempt — obviously, because the denial is less than two Ma'ahs. This, therefore, supports Rab.

(13) The Baraitha does not mean that he actually said a golden Dinar coin, but simply golden Dinar; but this is equivalent to mentioning coin. The claim is a coin, and the admission a coin, therefore he is liable. Hence, we cannot deduce that if he said golden Dinar (without coin) he meant value, and obtain from this (via the Mishnah) support for Rab.

(14) Twenty-four Ma'ahs.

(15) Because the denial must be at least two Ma'ahs; which is the view of Rab.

(16) [MS.M. rightly omits 'b. Isaac'; cf. the next dictum.]

(17) That the claim must be at least two Ma'ahs to make the debtor liable for an oath, if he admits a portion and denies the rest.

(18) If the debtor denies the whole claim, and one witness testifies that he owes the money, he must take an oath, even if the whole claim was only for a Perutah; for if there had been two witnesses, the debtor would have had to pay; and wherever two witnesses impose payment, one witness imposes an oath.

(19) Deut. XIX, 15.

(20) It is counted as admission of the same kind as the claim.

(21) R. Johanan.

(22) Resh Lakish always waited till R. Johanan completed his discourse, and then he would give his own view. In the present case, R. Isaac left the Academy before R. Johanan ended the lecture, and did not know whether later Resh Lakish disagreed with him or not.

(23) He does not require that the admission shall be of the same kind as the claim.

(24) Hence this supports R. Nahman.

(25) That even when the admission is not of the same kind as the claim he holds that he is liable.

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IF HE ADMITTED A PORTION OF THE LANDS, HE IS EXEMPT; A PORTION OF THE VESSELS, HE IS LIABLE. Now, the reason [he is exempt] in the case of vessels and lands is because for land no oath is imposed; but for vessels and vessels similar to vessels and lands he is liable!¹ — [No!] The same rule applies: even in the case of vessels and vessels he is also exempt; and the reason it states vessels and lands is because it wishes to teach us that if he admits a portion of the vessels, he is liable also for the lands. What does he [intend to] teach us [thereby]? That they bind?² We have already learnt it! They³ bind the properties for which there is security, to take an oath for them.⁴ — Here is the chief place [for the enunciation of this law];⁵ there⁶ he mentions it merely incidentally. And R. Hiyya b. Abba said that R. Johanan said: If he claimed from him wheat and barley, and the other admitted to him one of them, he is exempt. — But did not R. Isaac say: 'Correct! and so said R. Johanan.'⁷ — They⁸ are Amoraim who disagree as to R. Johanan's view.

Come and hear: IF HE CLAIMED FROM HIM WHEAT, AND THE OTHER ADMITTED TO HIM BARLEY, HE IS EXEMPT; AND R. GAMALIEL MAKES HIM LIABLE. — The reason [he is exempt] is because he claimed from him wheat, and he admitted barley; but [if he claimed from him] wheat and barley, and he admitted one of them, he is liable!⁹ — [No!] The same rule applies: even [if he claimed] wheat and barley, [and the other admitted one,] he is also

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exempt; and the reason it states it thus is to show you the power of R. Gamaliel.

Come and hear: IF HE CLAIMED FROM HIM VESSELS AND LANDS, AND HE ADMITTED THE VESSELS, AND DENIED THE LANDS; OR [ADMITTED] THE LANDS, AND DENIED THE VESSELS, HE IS EXEMPT; IF HE ADMITTED A PORTION OF THE LANDS, HE IS EXEMPT; A PORTION OF THE VESSELS, HE IS LIABLE. — The reason [he is exempt] in the case of vessels and lands is because for land no oath is imposed; but for vessels, and vessels similar to vessels, and lands he is liable! —

[No!] The same rule applies: even in the case of vessels and vessels he is also exempt; but this he teaches us that if he admits a portion of the vessels, he is liable also for the lands. — What does he teach us? That they bind? We have already learnt it! They bind the properties for which there is security, to take an oath for them. — Here is its chief place; there he mentions it merely incidentally.¹⁰ R. Abba b. Mammal raised an objection against R. Hiyya b. Abba: If he claimed from him an ox, and he admitted to him a lamb; or [he claimed] a lamb, and he admitted an ox, he is exempt; If he claimed from him an ox and a lamb, and he admitted one of them, he is liable! —

He said to him: This [Baraita] is the view of R. Gamaliel. If it is R. Gamaliel's view, even in the first clause [he should be liable]! — But it is the view of Admon;¹¹ and I am not putting you off [with an incorrect answer], for it is an accepted teaching in the mouth of R. Johanan: it is the view of Admon. R. 'Anan said that Samuel said: If he claimed from him wheat [and was about to claim barley also]; and the other quickly came forward, and admitted to him barley,¹² then, if he appears to act with subtlety,¹³ he is liable,¹⁴ but if he merely intends [to reply to the claim], he is exempt.¹⁵ And R. 'Anan said that Samuel said: If he claimed from him two needles,¹⁶

and he admitted one of them, he is liable; for therefore were 'vessels' expressly mentioned — whatever their value.¹⁷

R. Papa said: If he claimed from him vessels and a Perutah, and he admitted the vessels, and denied the Perutah, he is exempt; if he admitted the Perutah, and denied the vessels, he is liable. In one law he agrees with Rab, and in the other with Samuel. In one law he agrees with Rab, who holds that the denial in the claim must be two Ma'ahs;¹⁸ and in the other he agrees with Samuel, who holds that if he claimed from him wheat and barley and he admitted one of them, he is liable.¹⁹

'A HUNDRED DINARII OF MINE YOU HAVE IN YOUR POSSESSION.' — **'I HAVE NOT OF YOURS IN MY POSSESSION;'** HE IS EXEMPT. Said R. Nahman: But they impose upon him the consuetudinary oath.²⁰ What is the reason? Because it is a presumption that a man will not claim [from another] unless he has a claim upon him. — On the contrary, it is a presumption that a man will not have the effrontery [to deny] before his creditor!²¹ — He is merely trying to slip away from him [for the moment], thinking, 'when I will have money, I will pay him.'²² Know [that this is so], for R. Idi b. Abin said that R. Hisda said: He who denies a loan, is fit for testimony;²³ a deposit, is unfit for testimony.²⁴

R. Habiba taught [R. Nahman's law] as applicable to the later clause: **'A HUNDRED DINARII OF MINE YOU HAVE IN YOUR POSSESSION;'** HE SAID TO HIM, 'YES'. **ON THE MORROW HE SAID TO HIM: 'GIVE THEM TO ME'; [AND THE OTHER REPLIED,] 'I HAVE GIVEN THEM TO YOU;'** HE IS EXEMPT. — And R. Nahman said: But they impose upon him the consuetudinary oath. — He who applies [R. Nahman's law] to the first clause²⁵ will certainly apply it to the second clause;²⁶

(1) If he claimed two different vessels, and the other admitted one (which is similar to claiming vessels

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and lands, the other admitting one of them), he is liable. Hence, it supports R. Nahman.

(2) That the vessels 'bind' the lands, i.e., that because he has to take an oath for the vessels in any case, the lands are joined and included in the oath.

(3) Properties for which there is no security, i.e., movables.

(4) Kid. 26a.

(5) Because this treatise deals with the laws of oaths.

(6) In Kiddushin; v. B.M. 4b.

(7) That if he claimed wheat and barley, and the other admitted one, he is liable.

(8) R. Isaac and R. Hiyya b. Abba.

(9) This is an argument against R. Hiyya b. Abba.

(10) V. supra p. 245.

(11) Supra 38b. [Who though he requires the admission to be of the same kind as the claim, considers the claim of two objects of different species and the admission of one of them to be an admission in like kind to the claim, v. Keth. 108

(Rashi).]

(12) Before the claimant had mentioned barley.

(13) Admitting barley quickly before the claimant mentions it, so that it appears that the claimant demanded wheat, and he admitted barley, and therefore he would be exempt from an oath.

(14) For the claimant in fact demands both, and he admits one.

(15) The claimant having, as yet, only demanded wheat; and he replies, denying wheat, but admitting barley.

(16) Though they are worth less than two Ma'ahs.

(17) The verse (Ex. XXII, 6) states: If a man give unto his neighbor silver or vessels to keep; and we deduce that 'silver' implies a thing of value, and 'vessels' implies two. But Scripture could have said 'silvers' (כסף כספיהם) instead of כסף and we could have deduced both laws (that the claim must be for two things of value). Hence, since Scripture specifically mentions 'vessels' separately, we infer that vessels need not be of value. [Whether the minimum of a Perutah is required with vessels, depends on the reading 'everything' or 'vessels'; v. supra p. 240, n. 4 and Tosaf. 39b s.v. גזק.

(18) Therefore for the denial of a Perutah he is exempt.

(19) Therefore if he claimed a Perutah and vessels, and he admitted the Perutah but denied the vessels, he is liable (and the vessels need not be of the value of two Ma'ahs, as has been explained).

(20) Lit., 'of inducement', v. B.M. (Sonc. ed.) p. 20, n. 4. Though, being a כופר כלה he is legally exempt from an oath, the Beth din, as a matter of equity, impose an oath.

(21) And since he does deny the whole claim, he must be speaking the truth; then why an oath?

(22) The denial is therefore not effrontery, but an excuse to gain time; hence, he may not be speaking the truth, and he must take an oath.

(23) For, since it is a loan, he may have spent the money, and, in order to gain time, he denies it; but he is not really dishonest; and though witnesses testify that he owes he money (and he had denied it, but not on oath), we still assume that he merely wishes to gain time, and will pay later, and he is therefore still qualified to be accepted as a witness in a case.

(24) For a deposit is not intended to be spent; and where witnesses testified that at the time of denial it was in his possession, he must be considered dishonest (v. B.M. 5b).

(25) That even if he never admitted the claim at all he must take the consuetudinary oath.

(26) For he has already admitted the claim, and therefore it is obvious at least that the claim is a valid one.

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but he who applies it to the second clause [may say] here it is applicable because there is money at stake;¹ but there where there is no money at stake,² it is not applicable. What is the difference between an oath imposed by the Torah³ and an oath imposed by the Rabbis?⁴

—

There is this difference; transference of the oath: in the case of an oath imposed by the Torah we do not transfer the oath; but in the case of an oath imposed by the Rabbis we transfer the oath.⁵ And according to Mar son of R. Ashi who holds that in the case of a Torah oath we also transfer the oath, what is the difference between a Torah oath and a Rabbinic oath? —

There is this difference: going down to his property; in the case of a Torah oath we go down to his property;⁶ in the case of a Rabbinic oath we do not go down to his property. And according to R. Jose who holds that in the case of a Rabbinic [law] we also go down to his property? For we learnt: The finding of a deaf-mute, imbecile, or minor, is subject to the law of theft, in the interests of peace.⁷ R. Jose says: Real theft.⁸ And R. Hisda said: [He means] real theft according to their enactment.⁹ What is the difference?¹⁰ Its extraction by the Court.¹¹ [Now, according to

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R. Jose] what is the difference between a Torah oath and a Rabbinic oath?¹² —

There is a difference in the case where the opponent is suspected of swearing falsely: in the case of a Torah oath, where the opponent is suspected of swearing falsely, we transfer the oath to the other one;¹³ but in the case of a Rabbinic oath, it is an enactment, and we do not institute one enactment on top of another enactment.¹⁴ And according to the Rabbis who disagree with R. Jose, holding that in the case of a Rabbinic [law] We do not go down to his property,¹⁵ what do we do to him? We excommunicate him. —

Said Rabina to R. Ashi: This is holding him by his testicles till he gives up his cloak!¹⁶ — Well then what do We do to him?¹⁷ — He [Rabina]¹⁸ said to him: We excommunicate him until the time comes for his punishment with lashes, and we lash him, and leave him.¹⁹ R. Papa said: If one produces a document of indebtedness against his neighbor, and the other says to him, ‘It is a paid document, we say to him, ‘It is not at all in your power [to question the validity of the document]; go and pay him.’ And if he says, ‘Let him swear to me,’²⁰ we say to him, ‘Swear to him.’ Said R. Aha b. Raba to R. Ashi: [If so]²¹ what is the difference between this and one who impairs the validity of his document?²² —

He said to him: There,²³ even if the debtor does not demand [an oath], we demand it for him; but here, we say to him, ‘Go and pay him’; but if he demands and says, ‘Swear to me,’ we say to the creditor, ‘Go and swear to him.’²⁴ But if he is a Rabbinic scholar, we do not make him swear. Said R. Yemar to R. Ashi: A Rabbinic scholar may strip men of their cloaks?²⁵ But²⁶ we do not attend to his case.²⁷

‘YOU HAVE OF MINE IN YOUR POSSESSION ONE HUNDRED DINARII,’ etc. R. Judah said: R. Assi said; If one lends to his neighbor before witnesses, he must repay him before witnesses. When I said this before

Samuel, he said to me: He may say to him: ‘I paid you before So-and-so and So-and-so, and they went to a country beyond the seas.’²⁸

We learnt: ‘YOU HAVE OF MINE IN YOUR POSSESSION A HUNDRED DINARII’; HE SAID TO HIM [BEFORE WITNESSES]: ‘YES’. ON THE MORROW HE SAID TO HIM: ‘GIVE THEM TO ME’; [AND THE OTHER REPLIED:] ‘I HAVE GIVEN THEM TO YOU,’ HE IS EXEMPT. Now here, since he claimed from him before witnesses,²⁹ it is as if he lent him before witnesses, and yet it states he is exempt:

- (1) The money has already been admitted in front of witnesses; and therefore when he says he has returned it, he must at least take an oath.
- (2) For it is not absolutely certain that the claim is valid, since he denied it completely.
- (3) In the case of a partial admission of the claim.
- (4) In the case of a complete denial: R. Nahman's consuetudinary oath.
- (5) The rule is that the debtor takes the oath, and is free. If he says to the claimant, ‘You take the oath’ (being satisfied to pay, if he really takes the oath), the Court do not permit this transference of the oath from debtor to creditor in the case of a Torah oath (מודה במקצת), but permit it in the case of a Rabbinic oath (כופר הכל) where a consuetudinary oath is imposed).
- (6) If he refuses to take the oath or to pay, the Court instruct their officers to distrain on his goods to the value of the debt.
- (7) If they find anything, it belongs to them, though, because of their disabilities, they have no legal right of possession. Yet, in the interests of peace, no one is permitted to deprive them of what they find; and he who does is guilty of theft.
- (8) Not only in the interests of social stability do we empower the deaf-mute, imbecile, and minor to retain what they find; it is really lawfully theirs; and he who extracts it from them is guilty of real theft.
- (9) Not real theft according to the Biblical law, but only according to the Rabbinic law.
- (10) Between R. Jose and the other Rabbis, since he also agrees that it is only theft by enactment of the Rabbis in the interests of social peace.
- (11) R. Jose makes the proprietary rights of the deaf-mute stronger (though only Rabbinically, and not Biblically), and if anyone steals from him that which he has found, the Court extracts it from the thief; though the thief has not transgressed the Biblical law (Thou shalt not steal), nor is he disqualified from being a witness (v. Git. 61a,

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Rashi). According to the other Rabbis, if the thief stole from the deaf-mute the thing that he found, the Court does not interfere.

(12) Since he holds even in the case of a Rabbinic law the court has power to distraint.

(13) If the debtor is suspected of swearing falsely (in the case of a claim of which he admits a portion) the creditor is given the oath, and obtains his money.

(14) To impose an oath on a כופר הכל is itself a Rabbinic ordinance; and to transfer the oath from debtor to creditor is also a Rabbinic ordinance; we do not impose both; if the debtor is suspect and cannot take the oath, the creditor is not permitted to take the oath, but loses his money.

(15) The Court has no power to extract from the thief who stole from the deaf-mute the object he found.

(16) This is actually force, the same as distraint, if you say that we excommunicate him till he restores the theft or, in the case of a debtor, pays the debt; then what is the difference between the Rabbis and R. Jose?

(17) [Omitted in MS.M., v. next note.]

(18) [According to MS.M. (previous note) this reply would be made by R. Ashi.]

(19) If he allows 30 days to elapse with the ban of excommunication upon him for contempt of court, he is punished with lashes (v. Kid. 12b).

(20) That I have not paid him.

(21) [Adopting reading of Florentine MS. v. D.S. a.l.]

(22) If a creditor, producing a document for his claim, admits having already received some payment on account, he impairs the trustworthiness of his document, for the amount stated on the document is now not true (on his own admission), and he may have received more than he admits; he therefore cannot obtain the rest of his claim without taking an oath. But in R. Papa's example he does not admit partial repayment, and therefore has not impaired the validity of the document he produces; why then should he be asked to take an oath?

(23) Where the document is impaired.

(24) For though the document is valid, it is possible the debtor paid him, and the creditor omitted to restore the document to the debtor for destruction; therefore he must swear, if the debtor demands it; v. Tosaf.

(25) Because he is a scholar is he favored, and allowed to enforce his claim without an oath?

(26) [It is not clear whether what follows are the words of R. Ashi or of R. Yemar. MS.M. reads, He (R. Ashi) said to him.]

(27) We do not make him swear, because it would appear that we suspect him of attempting to claim money on a paid document; but he cannot receive his money, for the debtor demands an oath. But what is the difference between a scholar and an ordinary person? An ordinary person, too, need not

swear, and loses his money. A scholar, if he has obtained his money by force from the debtor, is allowed to retain it; but an ordinary person is compelled by the court to return it; v. Asheri and א.ל. פלפולא חריפתא a.l.

(28) And are therefore not available; and the borrower is exempt.

(29) And he admitted the debt before them; v. B.B. 30a Tosaf. s.v. לאו.

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which is a refutation of R. Assi!¹ — R. Assi may say to you: I said [that he must repay him before witnesses] only if originally he lent him before witnesses, [which shows that] he did not trust him; but here, he trusted him!² R. Joseph taught it thus:³ R. Judah said, R. Assi said: If one lends to his neighbor before witnesses, he need not repay him before witnesses; but if he said to him: 'Do not repay me except before witnesses,' he must repay him before witnesses. When I said this before Samuel, he said to me: He may say to him: 'I paid you before So-and-so and So-and-so, and they went to a country beyond the seas.'⁴

We learnt: 'YOU HAVE OF MINE IN YOUR POSSESSION A HUNDRED DINARII'; HE SAID TO HIM [BEFORE WITNESSES]: 'YES'. HE SAID TO HIM: 'DO NOT GIVE THEM TO ME EXCEPT BEFORE WITNESSES'; ON THE MORROW HE SAID TO HIM: 'GIVE THEM TO ME'; [AND THE OTHER REPLIED:] 'I HAVE GIVEN THEM TO YOU,' HE IS LIABLE, BECAUSE HE MUST GIVE THEM TO HIM BEFORE WITNESSES. This is a refutation of Samuel!⁵ — Samuel may say to you: This is a question upon which Tannaim disagree;⁶ for it was taught: [If a man said to his fellow] 'I lent you before witnesses; pay me before witnesses'; he must either pay, or bring proof that he has paid.⁷ R. Judah b. Bathyra said: He may say to him: 'I paid you before So-and-so and So-and-so, and they went to a country beyond the seas.'⁸

R. Aha⁹ asked: How do we know that this¹⁰ refers to the time of the loan, perhaps it refers

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to the time of the claim? And thus he says to him: 'Did I not lend you before witnesses? You should have repaid me before witnesses!' But at the time of the loan, all hold that he is liable.¹¹ R. Papi said in the name of Raba: The law is: If one lends his neighbor before witnesses, he must repay him before witnesses. But R. Papa said in the name of Raba: If one lends his neighbor before witnesses he need not repay him before witnesses; but if he said to him: 'Do not repay me except before witnesses,' he must repay him before witnesses; and if he says to him: 'I repaid you before So-and-so and So-and-so, and they went to a country beyond the seas,' he is believed.¹²

(Mnemonic: 13 Reuben and Simeon, who studied the law, they lent and paid (before) So-and-so and So-and-so, gallnuts, different claims, being believed as two.)

There was a certain [man] who said to his neighbor: 'When you repay me, repay me before Reuben and Simeon'; but he went and repaid him before two others.¹⁴ Abaye said: He told him to repay him before two witnesses, and [he said] he repaid him before two witnesses.¹⁵ Said Raba to him: For this reason he said to him: Before Reuben and Simeon, so that he should not be able to put him off.¹⁶ There was a certain [man] who said to his neighbor: 'When you repay me, repay me before two who have studied laws.'¹⁷ He went and repaid him privately.¹⁸ The money was lost.¹⁹ The lender came to R. Nahman and said, 'Yes, I received it from him, but only as a deposit,²⁰ and I said, Let it remain with me as a deposit until we obtain two witnesses who have studied laws, so that the condition may be fulfilled.'

Said [R. Nahman] to him: 'Since you admit that you definitely received the money from him, it is a proper repayment; if you desire the condition to be fulfilled, go and bring the money [here], for here am I and R. Shesheth who have studied the laws, Sifra, Sifre, Tosefta,²¹ and the whole Gemara.'²² There

was a certain [man] who said to his neighbor: 'Give me the hundred Zuz that I lent you.' The other said to him: 'The thing never happened.'²³ He went and brought witnesses that he lent him, but [they also said] he repaid him. Abaye said: What shall we do? They say he lent him, and they themselves say he repaid him.²⁴

Raba said: If he says, 'I did not borrow,' it is as if he said, 'I did not repay.'²⁵ There was a certain [man] who said to his neighbor: 'Give me the hundred Zuz that I claim from you.' He replied to him: 'Did I not repay you before So-and-so and So-and-so?' [Thereupon] So-and-so and So-and-so came and said: 'The thing never happened.'²⁶ R. Shesheth thought of saying that he was therefore proven a liar.²⁷ Said Raba to him: Anything which does not rest upon a man he will do unconsciously.²⁸ There was a certain [man] who said to his neighbor: 'Give me the six hundred Zuz that I claim from you.' The other replied to him: 'Did I not repay you a hundred Kabs

- (1) For he says he must repay the loan before witnesses, and if he cannot produce the witnesses he is liable.
- (2) For he lent him without witnesses, and only when he claimed the loan later were there witnesses present.
- (3) He had a different tradition as to what R. Judah reported to Samuel in the name of R. Assi.
- (4) Even if the creditor says to him he must repay him before witnesses, the borrower may always exempt himself by saying he did repay him before witnesses, but they are not now available.
- (5) For Samuel says the borrower may always contend that he did repay him before witnesses, but they have since gone abroad.
- (6) And I have a Tanna who agrees with me.
- (7) The debtor cannot free himself by saying he has paid, but that the witnesses have gone abroad.
- (8) And Samuel agrees with R. Judah b. Bathyra.
- (9) [MS.M.: 'Ahai' i.e. the Saborean; v. Brull, Jahrb. II, p. 28.]
- (10) The lender's statement: 'I lent you before witnesses; pay me before witnesses.'
- (11) If the lender definitely stipulated at the time of the loan that he must repay him before witnesses, even R. Judah b. Bathyra will agree that he cannot free himself by saying the witnesses have gone abroad. Hence Samuel has no Tanna to support

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him, whilst our Mishnah is clearly in refutation of him.

(12) The reading in text alternates between ‘he is believed’ and ‘he is not believed,’ v. Maim. Yad, Malweh XV, 2.

(13) Made up of catchwords as aids to memorize discussions that follow.

(14) I.e., he said he repaid him before two other witnesses, but they went abroad (v. Tosaf.).

(15) Therefore he is believed.

(16) The lender specifically named the two witnesses so that the borrower might not put him off by saying he had repaid him before two other witnesses who went abroad and are not available. It is therefore no excuse, and he must pay.

(17) I.e., learned men.

(18) Without witnesses.

(19) After being received by the lender.

(20) Not as repayment, because I particularly wanted my condition to be fulfilled, that it should be repaid before two learned witnesses; and now that the money is lost, he must still repay the loan, because I was only a gratuitous bailee not responsible for loss.

(21) On these terms, v. Sanh. (Sonc. ed.) p. 567, n. 1.

(22) I.e., it is no excuse to say, because the money is now lost, that you accepted it as a deposit and not as repayment of the loan. [MS.M. reads ‘Talmud’ for ‘Gemara’ in curr. ed. On these terms, v. B.M.

(Sonc. ed.) p. 206, n. 6.]

(23) I did not borrow from you.

(24) Therefore he is exempt.

(25) For if he did not borrow he certainly did not repay. Witnesses testify that he did borrow, and they are believed; but they are not believed when they say he repaid, for he himself admits that he did not repay; therefore he must pay.

(26) He did not repay before us.

(27) And is not believed even on oath to say that he repaid the loan though not before those two witnesses; for he has already been proved guilty of a lie.

(28) It was not incumbent upon him to remember whether he paid before witnesses or not, for the lender had not stipulated that he must repay him before witnesses; when, therefore, he said he had repaid before witnesses, his memory was at fault, but he is not thereby accounted a liar, and may take an oath that he has repaid the loan.

Rami b. Hama. But you said: Anything which does not rest upon a man he will do unconsciously!² —

Said Raba to him: The fixed market price people remember. There was a certain [man] who said to his neighbor: ‘Give me the hundred Zuz that I claim from you, and here is the document.’³ He said to him: ‘I have paid you.’ The other said to him: ‘Those [monies] were for a different claim.’⁴ R. Nahman said: The document is impaired.⁵ R. Papa said: The document is not impaired. And, according to R. Papa, in what way does this differ from the case of the man who said to his neighbor: ‘Give me the hundred Zuz that I claim from you; and here is the document;’ and the other said to him: ‘Did you not give it to me to buy oxen,⁶ and did you not come and sit by the butcher’s stall⁷ and receive your money?’ And he replied to him: ‘Those [monies] were on a different occasion;’ and R. Papa said: The document is impaired.⁸ —

There, since he said: ‘You gave [the money] to me for oxen, and you received repayment from the [sale of the] oxen,’ the document is impaired; but here, perhaps they were for a different claim.⁹ What then [is the ruling] with reference to this? — R. Papi said: The document is not impaired. R. Shesheth the son of R. Idi said: The document is impaired. And the law is: The document is impaired; but this is so only if he paid him before witnesses, and did not remember [to take back] the document;¹⁰ but if he paid him privately, since he could have said: ‘The thing never happened,’ he can also say: ‘The monies were for a different account’;¹¹ as in the case of Abimi the son of R. Abbahu.¹² There was a certain [man]¹³ who said to his neighbor:¹⁴ ‘You are believed by me whenever you say to me that I have not paid you.’ He went and paid him before witnesses.¹⁵ Abaye and Raba both said: Behold, he believes him!¹⁶ R. Papa argued: Granted, he believes him more than himself, but does he believe him more than witnesses?¹⁷ There was a certain [man] who said to his neighbor: ‘You are believed by me

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of gallnuts, which were worth six [Zuz per Kab]?’ He said to him: ‘No! They were worth four [Zuz per Kab].’ Two witnesses came and said: ‘Yes, they were worth four [Zuz per Kab].’ Said Raba: He is proven a liar.¹ Said

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like two [witnesses] whenever you say that I have not paid you.’ He went and paid him before three [witnesses].¹⁸ —

R. Papa said: Like two he believed him, but like three he did not believe him.¹⁹ Said R. Huna the son of R. Joshua to R. Papa: When do the Rabbis say that we go according to the majority of opinions — only in the case of estimates,²⁰ where the more there are, the more experts there are; but in the case of testimony, a hundred are like two, and two are like a hundred!²¹ Another version: There was a certain [man] who said to his neighbor: ‘You are believed by me like two whenever you say that I have not paid you.’ He went and paid him before three. Said R. Papa: Like two he believed him, but like three he did not believe him.²² To this R. Huna the son of R. Joshua demurred: Two are like a hundred and a hundred are like two! But if he said to him: ‘like three’,²³ and he went and paid him before four [witnesses, the lender is not believed], for since he troubles to mention the number of opinions,²⁴ he definitely means that number of opinions.

AN OATH IS NOT IMPOSED FOR THE CLAIM OF A DEAF-MUTE, IMBECILE, OR MINOR; AND A MINOR IS NOT ADJURED. What is the reason? Scripture says: If a man give into his neighbor silver or vessels to keep;²⁵ but the giving of a minor is nothing.²⁶

BUT AN OATH IS IMPOSED IN A CLAIM AGAINST A MINOR OR THE TEMPLE.²⁷ But you said in the first clause: **AN OATH IS NOT IMPOSED FOR THE CLAIM OF A DEAF-MUTE, IMBECILE, OR MINOR!** — Rab said: If he comes on behalf of his father's claim;²⁸ and it is in accordance with the view of R. Eliezer b. Jacob; for it was taught: R. Eliezer b. Jacob says: Sometimes a man must take an oath on his own claim.²⁹ How? He said to him: ‘I have a hundred Dinarii of your father's in my possession, of which I have returned to him the half’; he takes an oath;³⁰ and this is the one who swears on his own

claim. But the Sages Say: He is only like one who restores a lost object, and is exempt.³¹ And does not R. Eliezer b. Jacob hold that he who restores a lost object is free!³² —

Said Rab: [He means], when a minor claims from him.³³ ‘A minor’! But you said: **AN OATH IS NOT IMPOSED FOR THE CLAIM OF A DEAF-MUTE, IMBECILE, OR MINOR!** — Indeed an adult [is meant]; and he is called a minor, because with reference to the affairs of his father he is a minor.³⁴ If so, [why does R. Eliezer call it] his own claim? It is the claim of others! — [Yes!] it is the claim of others, but his own admission.³⁵

- (1) And must pay the difference — two hundred Zuz.
- (2) Perhaps he did not remember the actual market price at the time, but he still maintains that he repaid the money, if not with gallnuts, then with money.
- (3) Proving the claim.
- (4) I admit you paid me 100 Zuz, but that was in settlement of another claim.
- (5) We assume the claim to be paid, since the claimant admits having received the money; and we do not believe his submission that the payment was for another claim (for which he has no document), and that the present claim is still unpaid.
- (6) To kill, and sell the meat, the profits to be divided equally between us.
- (7) As the meat was being sold, and receive the money which you advanced.
- (8) Since he admits having received the money. Why does not R. Papa hold the same view in the previous case?
- (9) Since the claimant admits all the circumstances mentioned by the debtor, and admits having received his money from the sale of the oxen, it is reasonable to assume that this was the very transaction for which he produces the document, and he cannot say that the claim on this document is still unsettled, and that the transaction with the oxen (for which no document is produced) is the one that is settled. But where he claims on a document, the debtor saying he has paid, without giving any concrete details, the claimant may say the payment was for another debt, but this document still holds good.
- (10) The claimant cannot say the payment was for another account.
- (11) If the debtor paid the claimant privately (no witnesses being present), and the claimant admits

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receiving the payment, he is believed when he says that it was for another account, and the debt on the document is still outstanding, for, had he desired to tell an untruth, he might have said that he had not received any payment at all; and having the document, he could have enforced his claim without difficulty.

(12) Where a similar incident occurred; v. Keth. 85a.

(13) Borrower.

(14) Before witnesses, when borrowing the money.

(15) And the creditor denies having received payment.

(16) The debtor himself said, when borrowing the money, that he would always believe him if he denied receiving payment; therefore he must pay again.

(17) And since there are witnesses that he paid him, he does not pay again.

(18) But the lender denies having received it.

(19) Therefore we believe the three that he has paid.

(20) E.g., estimating the value of land; v. A.Z. 72a.

(21) Therefore if he said he believes him like two, he believed him also like three; and he must pay again.

(22) MS.M. deletes the whole of this passage, apparently as a needless repetition, and begins the variant version at this point.

(23) Are you believed by me.

(24) I.e., people; that he counts him like three people; he means three, and not four; for if he had intended to imply that he counted him like any number of witnesses, he would have said two (for two are equivalent to any number of witnesses), but since he said three, he meant three only. Therefore if four witnesses say he paid, the claimant is not believed.

(25) Ex. XXII, 6; and for this an oath is imposed.

(26) And a deaf-mute and imbecile are counted as minors, for their minds are undeveloped.

(27) Lit., 'they (the defendants) must swear to a minor, or to the Temple (authorities);' i.e. if the minor or the Temple has a claim against them, and they deny the claim, they must take an oath. In the text, however, the Mishnah has been translated in accordance with the sequel (infra 42b).

(28) The original giving (of the deposit or loan) was by a man (who is now dead); therefore the claim is valid, though it is proceeded with by a minor: 'my father lent you 100 Dinarii.'

(29) I.e., on his own admission that the other has a claim against him though the other does not know it.

(30) That he owes no more, having returned the half which he admits still owing.

(31) For the son knew nothing of this debt; therefore he merely returns what he admits, and does not take an oath for the rest. Now, according to R. Eliezer b. Jacob, if the defendant must take an oath though the minor had not instituted the claim,

he must certainly take an oath if the minor does claim; hence the Mishnah is in accordance with his view.

(32) From an oath, though the person to whom it is restored claims, for example, that there was more money in the purse that is restored to him now. All admit that the restorer of a lost object is free. Surely R. Eliezer does not disagree!

(33) R. Eliezer b. Jacob imposes an oath only when the minor claims; but if no one claims, and he himself mentions the claim, he does not take an oath, for he is 'a restorer of a lost object'.

(34) For he may not be fully acquainted with the affairs of his father who is now dead.

(35) He admits owing half.

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But all [cases] are the claims of others and his own admission!¹ But [say] they² disagree in Rabbah's dictum; for Rabbah said: Why did Scripture say that he who admits a portion of a claim must take an oath? Because it is a presumption that a man has not the effrontery to deny a claim in front of his creditor,³ for this one may have wished to deny it all, but did not deny it, because he had not the effrontery [to do so] in front of his creditor;⁴ and he really wished to admit it all, but he did not admit it all, because he tried to evade him [for the moment], thinking, 'When I will have money, I will pay him'; so Divine Law said: Impose an oath on him, so that he may admit it all. Now R. Eliezer b. Jacob holds: No matter whether against him or against his son, he has not the effrontery;⁵ and therefore he is not a restorer of a lost object.' But the Rabbis hold: Against him himself he has not the effrontery, but against his son he has the effrontery;⁶ and since he is not evincing any effrontery, he is 'a restorer of a lost object' [and exempt].

But how can you affirm the Mishnah to be in accordance with the view of R. Eliezer b. Jacob? Surely it states in the first clause: 'YOU HAVE A HUNDRED DINARII OF MY FATHER'S IN YOUR POSSESSION.' — 'I HAVE OF HIS IN MY POSSESSION ONLY FIFTY DINARII'; HE IS EXEMPT, FOR HE IS 'A RESTORER OF A LOST

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OBJECT'! — There,⁷ he did not say, 'I am certain'; here,⁸ he said, 'I am certain.' Samuel said:⁹ 'AGAINST A MINOR' [means] to collect payment from the estate of a minor; 'AGAINST THE TEMPLE' — to collect payment from the estate of the Temple.¹⁰ — 'Against a minor' — to collect payment from the estate of a minor! But we have already learnt it, [viz.:] From the estate of orphans one cannot collect payment except with an oath.¹¹

Why do we require [this ruling] twice? — This he teaches us, as Abaye the Elder said, for Abaye the Elder stated: Orphans which are mentioned¹² are adults,¹³ and there is no need to say [they include] minors, whether for oath, or for [exacting payment from] the lowest class of land.¹⁴ —

'AGAINST THE TEMPLE' — to collect payment from the estate of the Temple! But we have already learnt it, [viz.:] From assigned property they cannot collect except with an oath!¹⁵ [For] what is the difference whether they are assigned to a layman or assigned to the Most High? — It is necessary,¹⁶ for I might have thought [in the case of property assigned to] a layman [an oath is necessary],¹⁷ because a man may make a conspiracy to defraud a layman;¹⁸ but in the case of the Temple [an oath is not necessary], for a man will not make a conspiracy to defraud the Temple, therefore he teaches us [that it is necessary].¹⁹ But did not R. Huna say: A dying man who dedicated all his property to the Temple, and said: 'I have a hundred Dinarii of So-and-so in my possession,' he is believed,²⁰ because it is a presumption that a man does not make a conspiracy to defraud the Temple. — I will tell you: that is only in the case of a dying man, for a man will not sin without benefit to himself;²¹ but in the case of a healthy man we certainly fear [for conspiracy].

MISHNAH. AND THESE ARE THE THINGS FOR WHICH NO OATH IS IMPOSED: SLAVES, BONDS, LANDS, AND DEDICATED

OBJECTS.²² [THE LAW OF] PAYING DOUBLE,²³ OR FOUR OR FIVE TIMES THE VALUE, DOES NOT APPLY TO THEM. AN UNPAID GUARDIAN DOES NOT TAKE AN OATH,²⁴ AND A PAID GUARDIAN DOES NOT PAY,²⁵ R. SIMEON SAID: FOR DEDICATED OBJECTS FOR WHICH HE IS RESPONSIBLE AN OATH IS IMPOSED;²⁶ AND FOR WHICH HE IS NOT RESPONSIBLE AN OATH IS NOT IMPOSED. R. MEIR SAID: THERE ARE THINGS WHICH ARE [ATTACHED] TO LAND, BUT ARE NOT LIKE LAND. BUT THE SAGES DO NOT AGREE WITH HIM. HOW? [IF A MAN SAYS,] 'TEN VINES LADEN WITH FRUIT I DELIVERED TO YOU.' — AND THE OTHER SAYS: 'THERE WERE ONLY FIVE'; R. MEIR MAKES HIM TAKE AN OATH;²⁷ BUT THE SAGES SAY: ALL THAT IS ATTACHED TO LAND IS LIKE LAND. AN OATH IS IMPOSED ONLY FOR A THING [DEFINED] BY SIZE, WEIGHT, OR NUMBER. HOW? [IF A MAN SAYS,] 'A HOUSEFUL [OF PRODUCE] I DELIVERED TO YOU,' OR 'A PURSEFUL [OF MONEY] I DELIVERED TO YOU'; AND THE OTHER SAYS: 'I DO NOT KNOW; BUT WHAT YOU LEFT YOU MAY TAKE,' HE IS EXEMPT.²⁸ IF ONE SAYS: '[I GAVE YOU PRODUCE REACHING] UP TO THE MOULDING [ABOVE THE WINDOW],' AND THE OTHER SAYS: 'ONLY UP TO THE WINDOW,' HE IS LIABLE.²⁹

GEMARA. That [THE LAW OF] PAYING DOUBLE [DOES NOT APPLY] how do we know? — Our Rabbis taught: For every matter of trespass³⁰ — is a generalization; for ox, for ass, for sheep, for raiment — are specifications; for any lost thing — is another generalization: where there is generalization, specification, and generalization, you may include only those things which are similar to the specification: just as the specification is clearly a thing which is movable, and intrinsically worth money, so everything which is movable and intrinsically worth money [may be included], but exclude lands, which are not movable, exclude slaves, which are likened to land, and exclude bonds which, though they are movable, are not intrinsically

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worth money. As for dedicated things, it is written: his neighbor.³¹

AND NOT FOUR OR FIVE TIMES THE VALUE. What is the reason? — The payment of four or five times the value, said Scripture, and not the payment of three or four times the value.³²

AN UNPAID GUARDIAN DOES NOT TAKE AN OATH. Whence do we know this? — Our Rabbis taught:

(1) Then why does R. Eliezer say: Sometimes a man must take an oath, etc.? And if an adult is claiming, why do the other Sages hold that the defendant need not take an oath, for he is 'a restorer of a lost object'? If an adult claims, the defendant is not accounted 'a restorer, etc.'

(2) R. Eliezer b. Jacob and the Sages disagree in a case where a minor claims (his father being dead). R. Eliezer calls it 'his own (the defendant's) claim,' because a minor's claim is really of no consequence, and no oath is imposed elsewhere; but here, since it is on behalf of an adult (his father), an oath is imposed, for the original 'giving' (of the deposit) was by a 'man'.

(3) Who has done him a favor by lending him the money.

(4) But since he does deny a portion, let us believe him, for since a man has not the effrontery to deny a valid claim, and this one does deny, he must be speaking the truth; then why should he take an oath? Because, continues the Talmud, to deny a portion does not necessitate effrontery (and he may really owe the money); for he is merely trying to evade his obligation temporarily in order to gain time, fully intending to pay later when he has money; v. B.M. 3b Tosaf. For an alternative interpretation of this passage, v. B.M. (Sonc. ed.) pp. 8ff. and notes.

(5) Therefore when the minor claims, it is as if the father is claiming, and the defendant, since he admits a half, takes an oath like any other person who admits part of a claim.

(6) And could have denied it all, if he had wished; therefore whatever he admits is like the restoration of a lost object, and he does not take an oath.

(7) In the first clause, the minor did not say 'I am certain you owe my father 100 Dinarii,' but 'I think you do;' therefore the defendant in admitting a half is exempt, for he is a 'restorer of a lost object'.

(8) In the later clause 'an oath is imposed for the claim of a minor' when the minor puts forward a definite claim.

(9) There is no inconsistency in the Mishnah. An oath is not imposed for the claim of a minor; but when the Mishnah states later that an oath is imposed for a minor and the Temple, it means that when a claim is made against the estate of a minor or the Temple (and even when documentary evidence is produced), the claimant must take an oath that it has not already been paid by the minor's father.

(10) If a man dedicated some property to the Temple treasury, and a claimant (with a document) desires to exact payment for his debt from that dedicated property, he must take an oath that it has not yet been paid.

(11) *Infra* 45a.

(12) That when payment is claimed from them on their father's debt the claimant must take an oath.

(13) Even if the orphans are adults, the claimant must still take an oath.

(14) When the oath is taken and payment demanded, it may be exacted only from the third grade of land (if the orphans possess best, medium, and third grade; v. B.K. 7a). The law is therefore stated twice; in our Mishnah: an oath is imposed when a claim is made against the estate of an orphan who is a minor; and in the other Mishnah (*infra* 45a) that even when they are adults an oath must be taken in any claim against them.

(15) *Infra* 45a. If the property has already been assigned (or mortgaged) to another, the creditor cannot collect his debt from that property without an oath.

(16) That we be told the law holds good also in the case of property assigned to the Temple.

(17) Before the creditor can collect from the property.

(18) The borrower may already have paid his debt; and now, having sold his land, he conspires with the creditor to defraud the purchaser, by saying he still owes the money, so that the creditor takes the land, and they divide it. Therefore the creditor must take an oath that the debt is still unpaid.

(19) For even in the case of the Temple a man may conspire.

(20) And the man obtains the money without an oath.

(21) And since he himself will derive no benefit from the 100 Dinarii we believe him.

(22) In any claim concerning these the defendant does not take an oath.

(23) For stealing.

(24) Normally, an unpaid guardian takes an oath that he did not willfully cause the loss of the deposit, and he is free from payment (v. *infra* 49a), but in the case of slaves, etc. no oath is imposed.

(25) For loss or theft, which, normally, he would have to pay (*infra* 49a).

(26) If a man vowed to bring a burnt offering, and assigned a certain animal for that purpose, and gave

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it into the keeping of a neighbor for a time, and on claiming it, the bailee denies having it; he must take an oath, for this will cause a loss to the depositor (who will have to offer another animal), and not to the Temple.

(27) Though the vines are fixed to the ground they are not accounted as land to exempt him from an oath, because the grapes were ripe and ready for picking, and it is for the grapes that he is claiming; v. infra 43a.

(28) Because the claim was not defined as to size, weight, or number.

(29) For the claim is defined.

(30) Ex. XXII, 8; the verse ends, he whom the judges shall condemn shall pay double unto his neighbor.

(31) Ibid., but he does not pay double in a claim by the Temple.

(32) Since the payment of double does not apply for theft, there would only be three or four times the value for killing or selling (three for a lamb and four for an ox), which Scripture does not enjoin; Ex. XXI, 37.

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If a man give unto his neighbor¹ — is a generalization; silver or vessels — are specifications; to keep — is another generalization: where there is generalization, specification, and generalization, you may include only those things which are similar to the specification: just as the specification is clearly a thing which is movable and intrinsically worth money, so everything which is movable, and intrinsically worth money [may be included], but exclude lands, which are not movable, exclude slaves, which are likened to land, and exclude bonds which, though they are movable, are not intrinsically worth money. As for dedicated things, it is written, his neighbor.²

A PAID GUARDIAN DOES NOT PAY. Whence do we know this? — Our Rabbis taught: If a man give unto his neighbor³ — is a generalization; an ass, or an ox, or a sheep — are specifications; or any beast, to keep — is another generalization: where there is generalization, specification, and generalization, etc. till: as for dedicated things, it is written, his neighbor.⁴

R. MEIR SAID: THERE ARE THINGS WHICH ARE [ATTACHED] TO LAND, BUT ARE NOT LIKE LAND, etc. Hence, R. Meir holds that which is attached to land is not counted like land?⁵ — Then why do they disagree about laden [vines], let them disagree about fruitless [trees]!⁶ — R. Jose son of R. Hanina said: Here they disagree about grapes which are ready to be cut, R. Meir holding they are as if they are already cut; whereas the Rabbis hold they are not as if they are already cut.⁷

AN OATH IS IMPOSED ONLY FOR A THING [DEFINED] BY SIZE, WEIGHT, etc. Abaye said: They did not teach [that an oath is not imposed] except when he said to him: 'A HOUSE' merely;⁸ but if he said to him: 'This house full, etc.' his claim is known.⁹ — Said Raba to him: If so, why does he teach in the later clause: **THIS ONE SAID: '[I GAVE YOU PRODUCE REACHING] UP TO THE MOULDING [ABOVE THE WINDOW], AND THE OTHER SAID: 'ONLY UP TO THE WINDOW,' HE IS LIABLE.** Let him make a distinction in teaching this [first] clause itself — [thus:] When is it stated [that an oath is not imposed] — only if he says: 'A full house,' but if he says: 'This full house,' he is liable!¹⁰ —

But said Raba: He is never liable unless he claims from him a thing [that is defined] by size, weight, or number; and he admits to him a thing [that is defined] by size, weight, or number.¹¹ It was taught in support of Raba: [If a man says,] 'A Kor of grain of mine you have in your possession'; and the other says: 'I have not of yours in my possession,'¹² he is exempt.¹³ 'A large candlestick of mine you have in your possession.' — 'I have of yours in my possession only a small candlestick,' he is exempt.¹⁴ 'A large girdle of mine you have in your possession.' —

I have of yours in my possession only a small girdle,' he is exempt. But if he said to him: 'A kor of grain of mine you have in your possession,' and the other said: 'I have of

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yours in my possession only a letheq [of grain],’ he is liable.¹⁵ ‘A candlestick of [the weight of] ten litras you have of mine in your possession.’ — ‘I have of yours in my possession [a candlestick of the weight of] only five litras,’ he is liable.¹⁶ The principle of the matter is: He is never liable unless he claims from him a thing [that is defined] by size, weight, or number; and he admits to him a thing [that is defined] by size, weight, or number. Now, ‘The principle of the matter’: what does this include?¹⁷ Does it not include [the case where he says]: ‘This house full, etc.’?¹⁸ Now, what is the difference? [In the case of] ‘large candlestick and small candlestick,’ [he is exempt because] what he claimed from him, he did not admit to him; and what he admitted to him, he did not claim from him; if so, [in the case of] ‘ten litras and five litras [weight]’ he should also be exempt, because what he claimed from him, he did not admit to him; and what he admitted to him, he did not claim from him!—

R. Samuel son of R. Isaac said: Here we are discussing a candlestick of sections, of which he admits a portion.¹⁹ — If so, [in the case of] girdle also let him teach [a similar law], and explain it as referring to pieces sewn together!²⁰ But [you must conclude that] he [the Tanna] does not state [the case of a girdle made up of] pieces sewn together. Here also [then], he would not state [the case of a candlestick made up of] separate sections!²¹ — But said R. Abba b. Mammal: A candlestick is different, because he can scrape it and reduce it to five litras.²²

MISHNAH. IF A MAN LENDS [MONEY] TO HIS NEIGHBOR ON A PLEDGE, AND THE PLEDGE WAS LOST, AND HE SAID TO HIM: ‘I LENT YOU A SELA’ ON IT, AND IT WAS WORTH A SHEKEL,’²³ AND THE OTHER SAYS: ‘NO! YOU LENT ME A SELA’ ON IT, AND IT WAS WORTH A SELA’,’ HE IS EXEMPT.²⁴ ‘I LENT YOU A SELA’ ON IT, AND IT WAS WORTH A SHEKEL,’ AND THE OTHER SAYS: ‘NO! YOU LENT ME A SELA’ ON IT, AND IT WAS WORTH THREE DINARII,’ HE IS LIABLE.²⁵

‘YOU LENT ME A SELA’ ON IT, AND IT WAS WORTH TWO,’²⁶ AND THE OTHER SAYS: ‘NO! I LENT YOU A SELA’ ON IT, AND IT WAS WORTH A SELA’,’ HE IS EXEMPT. ‘YOU LENT ME A SELA’ ON IT, AND IT WAS WORTH TWO,’ AND THE OTHER SAYS: ‘NO! I LENT YOU A SELA’ ON IT, AND IT WAS WORTH FIVE DINARII,’ HE IS LIABLE. AND WHO TAKES THE OATH?²⁷ HE WHO HAD THE DEPOSIT,²⁸ LEST, IF THE OTHER TAKE THE OATH, THIS ONE MAY BRING OUT THE DEPOSIT.²⁹

(1) Ex. XXII, 6; this verse deals with an unpaid guardian (v. B.M. 94b), who takes an oath that he has not been willfully neglectful, and is exempt from making restitution.

(2) Ibid.

(3) Ex. XXII, 9; this verse deals with a paid guardian (v. B.M. 94b) who normally pays for loss or theft.

(4) Ibid.; the whole argument as above.

(5) Since he says that in a claim for 10 vines (the other admitting 5) an oath is imposed.

(6) Why mention in the illustration that the trees are laden with grapes? That is surely immaterial!

(7) R. Meir holds that which is joined to the land is counted like land, but here, in the case of vines, he holds that an oath is imposed, because the grapes were ready for cutting, and therefore he accounts them as equivalent to having been cut, and therefore imposes an oath.

(8) ‘A house full of produce I delivered to you.’

(9) For if he says: ‘This house full of produce,’ he is defining his claim exactly, for the amount of produce it will contain may be ascertained; and if the other returns the house to him half empty, he is liable to take an oath.

(10) Why then should the Mishnah insert an extra clause (that one claims ‘to the molding’ and the other admits ‘to the window’)? Obviously, therefore, there is no difference between ‘a house full’ and ‘this house full’.

(11) But if he says: ‘This house full, etc.’ though the amount it holds may be ascertained, the defendant is not liable; for he too must mention specifically the exact amount (size, weight, or number) he is admitting; v. Tosaf.

(12) [MS.M. preserves a preferable reading, adding: ‘but pulse’. V. next note].

(13) Because he denies it all (כופר הכל). [According to MS.M. (n. 5): Because the admission is not in like kind of the claim, cf. next note.]

(14) Because the admission is not of the same kind as the claim; he does not admit a portion of what the other claims, but something else.

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- (15) Because he admits a portion: 1 kor = 2 lethek.
- (16) The reason is explained below.
- (17) The principle may be inferred from the examples mentioned. Why is the principle stated? Obviously, to include something that may not be deduced from the examples.
- (18) That the defendant is here also exempt, because neither the claim nor the admission is defined exactly as to size, weight, or number. Hence this Baraita supports Raba.
- (19) The candlestick of ten litras is built up of separate sections which can be taken apart, and the defendant admits that certain sections, amounting to five litras, belong to the claimant, but not the rest. He is therefore liable, because he admits a portion of this very candlestick.
- (20) If one claims a girdle of the length of ten cubits, and the other admits owing him a girdle five cubits long, he is liable, if the girdle consists of separate pieces (each, for example, one cubit long) sewn together, and he admits that five of the pieces of the girdle belong to the claimant.
- (21) Since he does not mention the case of a girdle of separate pieces, we cannot say, in the case of a candlestick, that the reason he is liable is because it is composed of sections (some of which he admits). What, then, is the reason for liability in the case of a candlestick of ten litras (the defendant admitting owing a candlestick of five litras)?
- (22) If one claims a candlestick of ten litras, and the other admits one of five litras, he is liable for an oath, because he may have scraped the metal, or planed the wood, (if it is made of wood) of this very candlestick, so that its weight is now only five litras. He therefore admits a portion of the actual claim, and is liable. If, however, one claims a large candlestick (i.e., tall) and the other admits a small candlestick (i.e., short), he is not liable, because he is admitting something which was not claimed, for we cannot say that he shortened the very same candlestick that was claimed, by cutting off top or bottom, because that would spoil it. In the case of a large girdle (i.e., long) and small girdle (i.e., short), the defendant is exempt, because we cannot say he is admitting a portion of the same girdle (which he has cut down and shortened) for the cut ends would be noticeable. Hence, both in the case of candlestick (tall and short) and girdle (long and short), the defendant is exempt, because he is admitting something else (not a portion of that which was claimed).
- (23) Two Dinarii, so you still owe me two Dinarii.
- (24) Because he denies the whole; therefore he does not take an oath.
- (25) Because he admits owing one Dinar; and he takes an oath.
- (26) Therefore you, the lender, have to pay me a sela'.
- (27) How much the pledge was worth.

(28) The lender with whom the pledge was deposited.

(29) If the borrower takes the oath, the lender (who may not have lost the deposit at all) may bring out the deposit, and show that the borrower has sworn falsely as to its value.

Shevu'oth 43b

GEMARA. To what does it refer?¹ Shall we say, to the last clause?² You may infer this [in any case], for the oath devolves upon the lender!³ — Said Samuel: It refers to the first clause: and so said R. Hiyya b. Rab: It refers to the first clause; and so said R. Johanan: It refers to the first clause. — Which first clause? The latter part of the first clause: 'I LENT YOU A SELA' ON IT, AND IT WAS WORTH A SHEKEL,' AND THE OTHER SAYS: 'NO! YOU LENT ME A SELA' ON IT, AND IT WAS WORTH THREE DINARII,' HE IS LIABLE. For here the oath devolves upon the borrower, but the Rabbis removed it from the borrower, and imposed it upon the lender.⁴ But now that R. Ashi has said that we have established that this one⁵ swears that it is not in his possession,⁶ and the other one⁷ swears how much it was worth, he means thus: WHO TAKES THE OATH first?⁸

HE WHO HAD THE DEPOSIT,⁹ LEST, IF THE OTHER TAKE THE OATH [FIRST],¹⁰ THIS ONE MAY BRING OUT THE DEPOSIT.¹¹ Samuel said: If one lent a thousand Zuz to his neighbor, who deposited with him as a pledge the handle of a saw;¹² if the handle of the saw was lost, the thousand Zuz are lost;¹³ but in the case of two handles we do not say this.¹⁴ But R. Nahman Says, even in the case of two handles, if he lost one, he loses five hundred [Zuz], if he lost [also] the other, he loses the whole [loan]; but in the case of a handle and a bar [of silver] we do not say this.¹⁵ The Nehardeans say, even in the case of a handle and silver bar, if he lost the silver bar, he loses half [the loan], if he lost [also] the handle, he loses the whole [loan].

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We learnt: 'I LENT YOU A SELA' ON IT, AND IT WAS WORTH A SHEKEL,' AND THE OTHER SAYS: 'NO! YOU LENT ME A SELA' ON IT, AND IT WAS WORTH THREE DINARII,' HE IS LIABLE. — [Now why?] Let him say to him: 'But you accepted it [as security]!'¹⁶ — Our Mishnah [refers to a case] where he stated explicitly;¹⁷ and Samuel [refers to a case] where he did not state this explicitly.¹⁸ Shall we say that Tannaim [disagree on this point]? [For it was taught:] If a man lends his neighbor [money] on a pledge, and the pledge was lost, he swears,¹⁹ and takes his money: this is the opinion of R. Eliezer. R. Akiba says: He may say to him: 'Did you not lend me because of the pledge? Since the pledge is lost, your money is lost.' But if one lends a thousand Zuz on a bond, and he deposited a pledge with him, all agree that if the pledge is lost, the money is lost.²⁰ — Now, how is this? If the pledge is equal to the amount of the loan,

- (1) The statement of the Mishnah that the lender takes the oath.
- (2) Where the borrower claims a sela' from the lender, and the lender admits owing him a Dinar.
- (3) For he is the one who admits a portion of the claim.
- (4) For the reason given in the Mishnah.
- (5) The lender.
- (6) For he may not have lost the pledge, but may have become enamored of it and desired to retain it; he therefore says that he lost it, and wishes to pay its value. Consequently, he must take an oath that it is really not in his possession.
- (7) The borrower.
- (8) In the latter part of the first clause (where the oath devolves upon the borrower) to which this question of the Mishnah refers.
- (9) Takes the oath that it is not in his possession; he cannot now produce the deposit.
- (10) About the value of the deposit.
- (11) And show that the other had sworn falsely as to its value.
- (12) Which is worth much less than the loan.
- (13) Because the lender accepted it as sufficient security.
- (14) That he accepted each handle as security for 500 Zuz, and if he loses one handle, he loses 500 Zuz. For he did not specifically say that he accepted each handle as security for half the loan. We therefore say that both handles together are the pledge for the loan, and if he loses one handle, as

long as the other is left, he may restore it to the borrower; and he deducts from the loan merely the value of the lost handle, and not 500 Zuz.

(15) That he accepted the silver bar as security for half the loan, for since a silver bar is sufficiently valuable to be accepted as part payment, the lender accepted it as a pledge only up to its value,

(16) Why should the borrower have to take an oath? Let him say to the lender: 'You accepted the pledge as security for your loan, and since you have lost the pledge, you have lost your money!' Since the Mishnah does not say this, it conflicts with the view of Samuel!

(17) That he accepts the pledge as security only up to its value.

(18) But simply accepted the pledge; we assume therefore that he accepted it as full security for the whole amount of the loan; and if he loses the pledge, he loses the loan.

(19) That he has lost it.

(20) For since the lender has a document that the other owes him the money, what need is there for a pledge? Obviously, therefore, he took the pledge to secure himself, that if the borrower would not pay (or would have no means to pay) he would keep the pledge. The pledge was therefore not merely a reminder of the loan but a possible source of repayment (for, as a reminder of the loan, he had the bond). If he loses the pledge, therefore, he loses the loan.

Shevu'oth 44a

what is the reason of R. Eliezer?¹ But [you must therefore say,] it is not equal to the amount of the loan, and they disagree about Samuel's ruling.² — No! if it is not equal to the amount of the loan, neither of them would agree with Samuel;³ but here, it is equal to the amount of the loan; and they disagree about R. Isaac's ruling; for R. Isaac said: Whence do we know that the creditor 'possesses'⁴ the pledge? Because it is said: And it shall be righteousness unto thee.⁵ [Now,] if he does not 'possess' the pledge, wherein is his righteousness [in returning it]? Hence, the creditor 'possesses' the pledge.⁶ Shall we say [then] that [these] Tannaim disagree about R. Isaac's ruling?⁷ —

How can you think so? You may say that R. Isaac stated [his law] if he took the pledge not at the time of his loan;⁸ but if he took the pledge at the time of the loan, did he say

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[this]?⁹ — But [answer thus]: If he took the pledge not at the time of the loan, all agree with R. Isaac; but here¹⁰ [we deal with a case where] he took the pledge at the time of his loan, and they disagree on [the same principle which governs] the guardian of a lost object;¹¹ for it has been stated: The guardian of a lost object: Rabbah says he is like an unpaid bailee,¹²

(1) That the lender merely takes an oath that he has lost it, and still claims his loan? If the pledge equals the amount of the loan, it was obviously intended as full security; and if he loses it, he should lose his loan.

(2) R. Eliezer does not agree with Samuel, for since the pledge is not worth as much as the loan, the lender accepts it simply as a reminder of the loan and not as full security; and he is regarded as an unpaid guardian of the pledge; therefore he takes the required oaths. And R. Akiba agrees with Samuel that, since the lender made no stipulation, he accepted the pledge as full security, and therefore if he loses it, he loses his money. Hence, Tannaim disagree on this point; then why does Samuel state his ruling as if he originated it? Let him say he agrees with R. Akiba

(3) Both R. Eliezer and R. Akiba holding that, in such a case, the lender did not accept it as security, but merely as a reminder, and therefore if he loses it, he does not lose his money.

(4) I.e., becomes legally responsible for it, and if anything happens to it (even though it is not due to his negligence) he must pay for it; v. B.M. 82a, Rashi.

(5) Deut. XXIV, 13; when the lender returns the pledge to the borrower it is accounted an act of righteousness.

(6) R. Eliezer does not agree with R. Isaac, but holds that the lender is accounted an unpaid guardian of the pledge, and therefore is not responsible for its loss; and R. Akiba agrees with R. Isaac, holding that he is responsible, and since it is equal to the amount of the loan, he loses the whole loan, if he loses the pledge.

(7) Then why does R. Isaac state his ruling as if he originated it? Let him say he agrees with R. Akiba!

(8) But later; and an officer of the Court was sent to obtain the pledge from the borrower; v. B.M. 113a. Since he took the pledge later, he obviously wanted it as a source for the repayment, and is therefore fully responsible for it: he 'possesses' it.

(9) He may thus agree with R. Eliezer that he is only an unpaid guardian, and is not responsible for its loss.

(10) The case in which R. Eliezer and R. Akiba disagree.

(11) One who finds a lost object and guards it till its rightful owner is found.

(12) For he does not receive payment for guarding it, and is not responsible for its loss or theft.

Shevu'oth 44b

and R. Joseph says he is like a paid bailee.¹ Shall we say [then] that [these] Tannaim disagree about R. Joseph's ruling?² — No! In the case of a guardian of a lost object all agree with R. Joseph;³ but here they disagree in a case where the lender requires the pledge [for his use]:⁴ one⁵ holds he is doing a mizwah, and the other⁶ holds he is not doing a mizwah. Shall we say that [the following] Tannaim [disagree about Samuel's ruling]? [For it was taught:] If one lends his neighbor [money] on a pledge, and the Sabbatical year arrives, even if it is only worth a half, it does not cancel [the debt]:⁷ this is the opinion of Rabban Simeon b. Gamaliel.

R. Judah the Prince says: If his pledge was equal in value to the debt, it does not cancel it; but if not, it cancels it.⁸ Now, what is meant by 'it does not cancel it' which the first Tanna states? Shall we say, only up to its value?⁹ [But] this would imply that R. Judah the Prince holds it cancels also that portion up to its value! Then for what purpose is he holding the pledge? But it therefore means [does it not?] all of it;¹⁰ and they disagree about Samuel's ruling!¹¹ — No! Really only up to its value,¹² and in this they disagree: the first Tanna holds [it does not cancel] up to its value; and R. Judah the Prince holds it cancels also up to its value;¹³ and as to your question: Why is he holding the pledge? That is merely as a reminder.¹⁴

CHAPTER VII

MISHNAH. ALL WHO TAKE AN OATH [ENFORCED] IN SCRIPTURE, TAKE AN OATH, AND DO NOT PAY.¹⁵ BUT THESE TAKE AN OATH, AND RECEIVE [PAYMENT]: THE HIRED LABORER,¹⁶ HE WHO HAS BEEN ROBBED, HE WHO HAS BEEN WOUNDED, HE

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WHOSE OPPONENT IS SUSPECTED OF TAKING A FALSE OATH,¹⁷ AND THE SHOPKEEPER WITH HIS ACCOUNT BOOK.¹⁸ 'THE HIRED LABORER'— HOW? [IF] HE SAYS TO HIM [HIS EMPLOYER], 'GIVE ME MY WAGES WHICH YOU OWE ME,' AND HE REPLIES, 'I HAVE GIVEN IT,' AND THE OTHER SAYS, 'I HAVE NOT RECEIVED IT,' HE [THE LABORER] TAKES AN OATH AND OBTAINS [HIS DUE]. R. JUDAH SAYS, [THERE IS NO OATH] UNLESS THERE IS PARTIAL ADMISSION:¹⁹ HOW? IF HE SAYS TO HIM, 'GIVE ME MY WAGES, FIFTY DINARII, WHICH YOU OWE ME,' AND THE OTHER SAYS, 'YOU HAVE RECEIVED A GOLD DINAR.'²⁰ 'HE WHO HAS BEEN ROBBED, — HOW? IF THEY TESTIFIED OF A MAN²¹ THAT HE ENTERED INTO ANOTHER'S HOUSE TO TAKE A PLEDGE WITHOUT AUTHORITY, AND THE OTHER SAYS, 'YOU HAVE TAKEN MY VESSELS, AND HE SAYS, 'I HAVE NOT TAKEN THEM,' HE²² TAKES AN OATH, AND RECOVERS THEM. R. JUDAH SAYS, [THERE IS NO OATH] UNLESS THERE IS PARTIAL ADMISSION: HOW? HE SAID TO HIM, 'YOU HAVE TAKEN TWO VESSELS,' AND THE OTHER SAYS, 'I HAVE TAKEN ONLY ONE.' 'HE WHO HAS BEEN WOUNDED,' — HOW? IF THEY TESTIFIED OF A MAN THAT ANOTHER WENT INTO HIM WHOLE, AND CAME OUT WOUNDED, AND HE SAID TO HIM, 'YOU HAVE WOUNDED ME,' AND THE OTHER SAID, 'I HAVE NOT WOUNDED YOU,' HE TAKES AN OATH, AND RECEIVES [DAMAGES]. R. JUDAH SAYS, [THERE IS NO OATH] UNLESS THERE IS PARTIAL ADMISSION: HOW? HE SAID TO HIM, YOU HAVE INFLICTED ON ME TWO WOUNDS,' AND THE OTHER SAID, 'I INFLICTED ON YOU ONLY ONE WOUND.' 'HE WHOSE OPPONENT IS SUSPECTED OF TAKING A FALSE OATH,' — HOW?

(1) For he receives divine reward for the mizwah of guarding the lost object, and is therefore responsible for its loss or theft. A lender also has a mizwah for helping the borrower with a loan, therefore he is like a paid bailee for the pledge which is in his keeping, according to R. Joseph. Accordingly, R. Eliezer, who holds the lender is not

responsible for the pledge, will agree with Rabbah; and R. Akiba, with R. Joseph.

(2) They certainly disagree about Rabbah's view, for R. Akiba definitely does not agree with him. But can R. Joseph (who agrees with R. Akiba) also say that R. Eliezer agrees with him, too?

(3) Even R. Eliezer agrees, for, since he is doing a mizwah, he is accounted a paid guardian (for he will receive divine payment).

(4) And he deducts from the loan the amount he would have to pay for its hire.

(5) R. Akiba holds that though he is making use of the pledge he is still doing a mizwah by lending the money, for he is deducting from the debt the amount he would have to pay for hiring the pledge; and since he is doing a mizwah, he is a paid guardian for the pledge, and is responsible for its loss.

(6) R. Eliezer holds that since he is using the pledge, he is not doing a mizwah, for he wants it for his own benefit, and is therefore an unpaid guardian, and is not responsible for its loss.

(7) The Sabbatical year cancels debts (Deut. XV, 1, 2), but if a pledge was taken for the debt, the Sabbatical year does not cancel the debt; v. Git. 37a; but Rabban Simeon b. Gamaliel holds that this applies even where the pledge was worth only half of the value of the debt.

(8) V. B.M. 48b.

(9) The Sabbatical year does not cancel that portion of the debt which is equal to the value of the pledge (and therefore secured by it).

(10) R. Simeon b. Gamaliel holds that even if the pledge is worth only half the amount of the debt, the Sabbatical year does not cancel any part of the debt at all; and R. Judah holds it does not cancel that portion which the pledge secures (i.e., up to its value).

(11) R. Simeon agrees with Samuel that, even if the pledge is not worth as much as the debt, it is counted as security for the whole debt. If so, let Samuel say he agrees with R. Simeon b. Gamaliel.

(12) Does R. Simeon b. Gamaliel hold that the Sabbatical year does not cancel it, for the pledge secures that portion; and he does not agree with Samuel.

(13) I.e., if the pledge is not actually worth as much as the loan, it is of no effect, and the Sabbatical year cancels the whole debt.

(14) That he lent him money, but is no security at all, since it is not equal in value to the debt.

(15) i.e., according to the Torah, it is the defendant in the action who takes the oath that he does not owe, and is exempt from paying.

(16) Takes an oath that his wages have not been paid.

(17) The debtor, who normally takes the oath, is known to have sworn falsely in the past; so the

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Court impose the oath on the creditor, and he exacts his money.

(18) Who has written down in his book the amount he has allowed the other on credit.

(19) When the defendant, the employer, would normally have had to take the oath (being a מִתְקַדֵּשׁ (בְּמִקְדָּשׁ); in that case, the Sages say that the oath is removed from him, and imposed upon the employee; but where there is no admission on the part of the employer, there would have been no oath (according to the Torah, except the Rabbinic consuetudinary oath, v. supra p. 247); and in this case the Rabbis do not impose it on the laborer.

(20) 25 silver Dinarii.

(21) The robber.

(22) The householder.

Shevu'oth 45a

WHETHER IT BE THE OATH OF TESTIMONY,¹ OR THE OATH OF DEPOSIT, OR EVEN A VAIN OATH;² IF ONE [OF THE LITIGANTS] WAS A DICE-PLAYER,³ OR USURER, OR PIGEON-FLYER,⁴ OR DEALER IN THE PRODUCE OF THE SEVENTH YEAR,⁵ HIS OPPONENT TAKES THE OATH AND RECEIVES [HIS CLAIM].⁶ IF BOTH ARE SUSPECT, THE OATH RETURNS TO ITS PLACE;⁷ THIS IS THE OPINION OF R. JOSE. R. MEIR SAYS: THEY DIVIDE.⁸ 'AND THE SHOPKEEPER WITH HIS ACCOUNT BOOK,'— HOW? NOT THAT HE [E.G.,] SAYS TO HIM, 'IT IS WRITTEN IN MY ACCOUNT BOOK THAT YOU OWE ME TWO HUNDRED ZUZ';⁹ BUT HE¹⁰ SAYS TO HIM, 'GIVE MY SON TWO SEAHS OF WHEAT,'¹¹ OR, 'GIVE MY LABORER SMALL CHANGE TO THE VALUE OF A SELA';¹² I HE SAYS, 'I HAVE GIVEN,' AND THEY¹³ SAY, 'WE HAVE NOT RECEIVED'; HE¹⁴ TAKES AN OATH, AND RECEIVES [HIS DUE].¹⁵ AND THEY TAKE AN OATH, AND RECEIVE [THEIR DUE].¹⁶ BEN NANNUS SAID: HOW CAN BOTH BE PERMITTED TO COME TO A VAIN OATH?¹⁷ BUT HE¹⁴ TAKES WITHOUT AN OATH, AND THEY¹³ TAKE WITHOUT AN OATH. — IF HE SAID TO A SHOPKEEPER, 'GIVE ME FRUIT FOR A DINAR,' AND HE GAVE HIM, THEN THE SHOPKEEPER SAID TO HIM, 'GIVE ME THE DINAR'; AND HE REPLIED TO HIM, 'I GAVE IT TO YOU, AND YOU PLACED IT IN

THE TILL,' THE HOUSEHOLDER TAKES AN OATH.¹⁸ IF HE GAVE HIM THE DINAR, AND SAID TO HIM, 'GIVE ME THE FRUIT,' AND THE SHOPKEEPER SAYS TO HIM, 'I HAVE GIVEN IT TO YOU, AND YOU TOOK IT TO YOUR HOUSE,' THE SHOPKEEPER TAKES AN OATH.¹⁹ R. JUDAH SAYS: HE WHO HAS THE FRUIT IN HIS POSSESSION. HIS HAND IS UPPERMOST.²⁰ IF HE SAID TO A MONEY-CHANGER, 'GIVE ME CHANGE FOR A DINAR,' AND HE GAVE HIM; AND SAID TO HIM, 'GIVE ME THE DINAR,' AND THE OTHER SAID, 'I HAVE GIVEN IT TO YOU, AND YOU PLACED IT IN THE TILL,' THE HOUSEHOLDER TAKES AN OATH. IF HE GAVE HIM THE DINAR, AND SAID TO HIM, 'GIVE ME THE SMALL CHANGE,' AND THE OTHER SAID TO HIM, 'I HAVE GIVEN IT TO YOU, AND YOU THREW IT IN YOUR PURSE,' THE MONEY-CHANGER TAKES AN OATH. R. JUDAH SAYS: IT IS NOT USUAL FOR A MONEY-CHANGER TO GIVE [EVEN] AN ISSAR UNTIL HE RECEIVES THE DINAR.²¹— JUST AS THEY HAVE SAID THAT SHE WHO IMPAIRS HER KETHUBAH CANNOT RECEIVE PAYMENT EXCEPT ON OATH;²² AND THAT IF ONE WITNESS TESTIFIES AGAINST HER THAT IT HAS BEEN PAID [IN FULL], SHE CANNOT RECEIVE PAYMENT EXCEPT ON OATH; AND THAT FROM ASSIGNED PROPERTY²³ OR ORPHANS' PROPERTY SHE CANNOT EXACT PAYMENT EXCEPT ON OATH; AND THAT IF SHE CLAIMS NOT IN HIS PRESENCE,²⁴ SHE CANNOT RECEIVE PAYMENT EXCEPT ON OATH; SO, TOO, ORPHANS CANNOT RECEIVE PAYMENT²⁵ EXCEPT ON OATH [NAMELY]: 'WE SWEAR THAT OUR FATHER DID NOT ENJOIN IN HIS TESTAMENT UPON US, NEITHER DID OUR FATHER SAY UNTO US, NOR DID WE FIND [WRITTEN] AMONG THE DOCUMENTS OF OUR FATHER THAT THIS DOCUMENT IS PAID.'²⁶ R. JOHANAN B. BEROKA SAYS: EVEN IF THE SON WAS BORN AFTER HIS FATHER'S DEATH HE MAY TAKE AN OATH,²⁷ AND RECEIVE HIS CLAIM. R. SIMEON B. GAMALIEL SAYS: IF THERE ARE WITNESSES THAT THE FATHER SAID AT THE TIME OF HIS DEATH THAT THIS

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DOCUMENT WAS NOT PAID, HE RECEIVES [HIS CLAIM] WITHOUT AN OATH, — AND THESE TAKE AN OATH THOUGH THERE IS NO [DEFINITE] CLAIM:²⁸ PARTNERS,²⁹ TENANTS,³⁰ ADMINISTRATORS,³¹ THE WIFE WHO TRANSACTS THE AFFAIRS IN THE HOUSE,³² AND THE SON OF THE HOUSE.³³ [IF] HE³⁴ SAID TO HIM,³⁵ ‘WHAT DO YOU CLAIM OF ME?’ [AND THE OTHER REPLIED.] ‘I DESIRE THAT YOU SWEAR TO ME’;³⁶ HE MUST TAKE AN OATH. IF THE PARTNERS OR TENANTS HAD DIVIDED,³⁷ HE CANNOT IMPOSE AN OATH UPON THEM.³⁸ IF AN OATH WAS IMPOSED UPON HIM IN ANOTHER CASE, THEY IMPOSE UPON HIM THE WHOLE.³⁹ AND THE SEVENTH YEAR CANCELS THE OATH.⁴⁰

GEMARA. ALL WHO TAKE AN OATH [ENFORCED] IN SCRIPTURE, TAKE AN OATH, AND DO NOT PAY. Whence do we know this? — Because Scripture said: And the owner thereof shall accept it, and he shall not pay⁴¹ — he whose duty it is to pay: upon him devolves the oath.

BUT THESE TAKE AN OATH, AND RECEIVE [PAYMENT], etc. In what way is the hired laborer different that the Rabbis have instituted for him [the privilege] that he should take the oath and receive [his wages]? — Rab Judah said that Samuel said: Great halachoth did they teach here. ‘Halachoth!’ Are these then halachoth?⁴² But say: Great enactments did they teach here. — ‘Great!’ Hence there are also small [enactments]?⁴³ — But, said R. Nahman that Samuel said: Fixed enactments did they teach here: our Rabbis removed the oath from the householder⁴⁴ and imposed it upon the hired laborer for the sake of his livelihood. [But] for the sake of the laborer’s livelihood do we fine the householder? —

The householder himself is satisfied that the laborer should take the oath and receive [his wages], so that laborers may hire themselves out to him.⁴⁵ On the contrary, the hired laborer is satisfied that the householder

should take the oath, and be released [from payment], so that the householder should hire him?⁴⁶ — The householder must of necessity employ [laborers].⁴⁷ The laborer also must of necessity be employed!⁴⁸ — Well, then, the householder is busy with his laborers.⁴⁹ — Then, let him give him without an oath!⁵⁰ — In order to appease the mind of the householder [an oath is imposed].⁵¹ — Well, let him pay him in the presence of witnesses?⁵² — That would be too troublesome for him.⁵³ Then let him pay him at the beginning?⁵⁴ — Both desire credit.⁵⁵

- (1) If he is known to have sworn falsely any of these, he can no longer be trusted to take an oath.
- (2) Though he did not thereby injure anybody.
- (3) Gambler.
- (4) Racing his pigeon against a neighbor’s pigeon, and betting on the result; or, a fowler, laying snares for pigeons; sometimes a pigeon belonging to somebody may be ensnared, and he is thus guilty of theft; v. Sanh. 25a.
- (5) The Sabbatical year’s produce was free to all to eat, and the owner of the field was not allowed to count himself the sole possessor of the produce, and was not allowed to trade with it; v. Lev. XXV, 6, and Rashi a.l.
- (6) Because those enumerated are not trusted with an oath.
- (7) It devolves upon the person who normally would take the oath, i.e., the defendant, who, if he admits a portion of the claim, must take an oath; here, since he is suspect, he cannot take the oath, so he pays the full claim; v. infra 47a.
- (8) The defendant pays half the claim only.
- (9) This is not sufficient to allow the shopkeeper to take an oath, and exact the money.
- (10) The purchaser
- (11) ‘And I will pay.’
- (12) ‘And I will give you a sela.’
- (13) The son or laborer.
- (14) The shopkeeper.
- (15) From the householder.
- (16) Also from the householder.
- (17) One of them, either the shopkeeper or the laborer, is bound to be swearing falsely.
- (18) That he paid him; this oath is a consuetudinary oath, for he is a כופר הכל denying the whole of the claim (Rashi); but v. Tosaf. infra 48a s.v. נשבע [Though the oath serves here to exempt the purchaser from paying, it is nevertheless included among those taken in order to receive payment, as the oath enables the purchaser to retain the produce he bought (Hoffmann). For other interpretations, v. Alfasi on the passage and attendant commentaries.]

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- (19) That he gave him the fruit.
- (20) He disagrees with the first clause which states that the householder takes an oath that he has paid the Dinar. R. Judah says he does not need to swear, for it is not usual for a shopkeeper who sells for cash to give the fruit before he receives the money, and since the householder already has the fruit, his hand is uppermost, and we assume that he has paid.
- (21) Therefore, in the first clause, the householder does not need to take an oath.
- (22) If a wife, producing her Kethubah (v. Glos.) admits that she has been paid a part of the money due to her, she 'impairs her Kethubah' (i.e., weakens its validity, for the amount shown in the document is no longer correct, on her own admission), and if the husband, who is divorcing her, says he has paid her the whole amount, she cannot obtain payment of her claim unless she takes an oath that she has not been paid.
- (23) Mortgaged to another.
- (24) If her husband sent her a divorce from abroad, and is not present now when she claims her Kethubah.
- (25) In their claim of a debt due to their father.
- (26) I.e., 'our father did not tell us before his death that the claim in this document which we now produce has been satisfied; nor did we find that he had already written out a receipt ready to be dispatched to the debtor.'
- (27) That he has found no documentary evidence among his father's papers that this claim has been paid.
- (28) Though the claimant does not make a definite charge of fraudulence against them, but only suspects them, they must take an oath to refute the charge; v. infra 48b.
- (29) If one suspects the other, the suspected one takes an oath.
- (30) One who tills the owner's land, and receives for his work a certain share of the produce.
- (31) One who is appointed to administer the business affairs of another.
- (32) The husband handed over his business for her to manage.
- (33) One of the sons who, after the father's death, administers the affairs.
- (34) The partner, tenant, etc.
- (35) To his respective claimant.
- (36) 'That you did not fraudulently convert to your own use what is mine.'
- (37) Had dissolved their partnership or business arrangement, each taking his due.
- (38) On the grounds of a possible fraudulent dealing.
- (39) If this partner or tenant was concerned in another law-suit with the same claimant, and had to take an oath in that case, then the Court insert in the oath a statement having reference to the present claim, so that he takes the oath for both claims together; v. infra p. 301, n. 9.
- (40) If the Sabbatical year intervenes, he does not take the oath.
- (41) Ex. XXII, 10; the verse begins: The oath of the Lord shall be between them both, to see whether he hath not put his hand unto his neighbor's goods. The owner shall accept this oath, and the guardian (in whose care the animal had died) does not need to pay; hence the person whose duty it is to pay has the oath imposed upon him, and exempts himself from payment.
- (42) The word halachah used here implies a traditional law handed down from the time of Moses.
- (43) Surely all enactments instituted by the Sages are equally important and great!
- (44) Who, according to the Biblical law, would take the oath and be exempt.
- (45) For if the employer would take the oath, and not pay the laborer, no one would ever want to work for him.
- (46) On this occasion when there is a dispute as to whether he has paid him his wages or not, the laborer prefers to allow the employer to take the oath (and not pay), so that he may employ him again.
- (47) So the laborer need not fear; and should take the oath.
- (48) Hence employer and laborer are equally dependent upon each other; so that we cannot say the reason why the oath is imposed upon the laborer is because the employer prefers it thus, so that laborers may not be afraid of him, and may hire themselves out to him; they would in any case seek employment from him.
- (49) He has many laborers to whom he pays wages, and he may genuinely have made a mistake and thought he had paid this one too; but the laborer has only one employer to deal with, and he remembers whether he has received his wages; therefore the oath is imposed upon the laborer.
- (50) Why should the laborer have to take an oath?
- (51) To satisfy him that he was mistaken, and that he had not really paid the laborer yet.
- (52) Let the Rabbis establish a rule that wages must be paid in the presence of witnesses, to avoid the necessity for an oath.
- (53) For witnesses are not always available.
- (54) In the morning before he begins work. If then, at the end of the day, the laborer claims his daily wage, there will be no need for an oath, for we would assume definitely that the wages had been paid in the morning, since the Rabbis had established that rule, and the laborer would not have commenced his work unless he had been paid first.
- (55) The employer desires credit till the evening, for he frequently has not the money for the wages in the

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morning; and the laborer desires to grant this credit, and does not want his money in the morning, in case he spends it.

Shevu'oth 45b

If so,¹ even in the case where he fixed [the wages], also [let the laborer take the oath];² wherefore has it been taught: [If] the artisan says: 'Two [Zuz] did you stipulate to pay me,' and the other says: 'I stipulated to pay you only one;' he who wishes to exact from his neighbor must bring proof!³ —

The amount fixed [as wages] he certainly remembers.⁴ If so, even in the case where his time had expired also [let the laborer take the oath];⁵ wherefore has it been taught: If his time had expired and he had not given him,⁶ he does not take an oath to receive [his wages];⁷ [for] it is a presumption that the householder would not transgress [the precept]: the wages of a hired servant shall not abide with thee all night until the morning.⁸ Now did you not say that the householder is busy with his laborers?⁹ —

That is only before the time of liability arrives, but when the time of liability arrives it thrusts itself upon him, and he remembers. Would then the laborer transgress [the precept]: thou shalt not rob?¹⁰ — With the householder there are two presumptions: one, that the householder would not transgress [the precept]: 'the wages of a hired servant shall not abide with thee', etc., and another, that the hired servant would not allow his wages to be delayed.¹¹ R. Nahman said that Samuel said: They did not teach this,¹² except when he hired him in the presence of witnesses, but if he hired him without witnesses, since he may say to him, 'I never hired you,' he may say to him, 'I hired you and paid you your hire.'¹³ R. Isaac said to him: 'Correct; and so said R. Johanan.' Are we hence to infer that Resh Lakish disagrees with him? —

Some say, that he was drinking and was silent; and some say, that he waited for him, and was silent.¹⁴ It was stated also: R. Menashya b. Zebid said that Rab said: They did not teach this, except when he hired him in the presence of witnesses, but if he hired him without witnesses, since he may say to him, 'I never hired you,' he may say to him, 'I hired you, and paid you your hire.' Rami b. Hama said: How excellent is this ruling! Said Raba to him: Wherein is its excellence? If such is the case, the oath of guardians, which the Divine Law imposes¹⁵ — how is it possible of fulfillment? Since he may say to him, 'The thing never happened,' he may say to him, 'It was an unpreventable accident.'¹⁶ —

In the case where he deposited it with him before witnesses.¹⁷ But since he may say to him, 'I returned it to you,' he may say to him, 'An accident happened.'¹⁸ In the case where he deposited it with him by a document.¹⁹ Hence we can infer that both²⁰ hold that he who deposits [an article] with his neighbor before witnesses need not return it to him before witnesses;²¹ but if by document, he must return it to him before witnesses.²² Rami b. Hama applied to R. Shesheth the verse: And David laid up these words in his heart.²³ For R. Shesheth met Rabbah b. Samuel, and said to him: Have you studied anything about a hired laborer? —

He replied to him: Yes, we are taught: A hired laborer [if he claims] within his time limit,²⁴ takes an oath, and receives [his wages]. How? If he said to him: 'You hired me, and did not pay me my wages,' and the other said: 'I hired you and did pay you your wages.'²⁵ But if he said to him: 'Two did you stipulate to pay me,' and the other said: 'I stipulated to pay you only one,' he who desires to exact from his neighbor must bring proof.²⁶ Now, since the second clause is concerned with proof, the first clause is not concerned with proof!²⁷ — R. Nahman b. Isaac said:

(1) If you say that the laborer takes the oath and receives his wages, because the employer is too busy

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with his workmen to remember whether he had paid or not.

(2) Where the dispute is as to the amount that had been agreed upon, let us also say that the laborer should swear and receive what he claims.

(3) The artisan who claims an extra one (Zuz, Dinar, or any coin) must bring witnesses to testify that his claim is correct. Why should he not take an oath and receive his money, without witnesses?

(4) The employer may possibly not remember whether he paid the laborer, but he remembers the amount he stipulated to pay; therefore the laborer is not in this case more reliable than the employer, and must bring witnesses.

(5) A day laborer has time to claim his wages during the whole of the succeeding night; and a night laborer, during the whole of the succeeding day (B.M. 110b).

(6) I.e., the laborer claims that the employer has not yet paid him.

(7) Why should not the laborer take an oath and receive his wages? Since we say the employer is busy with his laborers, he may have forgotten that he has not yet paid him.

(8) Lev. XIX, 23; since he does not wish to transgress this prohibition, he is careful to remember to pay in time.

(9) So that in spite of himself he may really have forgotten. Let the laborer then take the oath!

(10) Lev. XIX, 13; he would not rob his employer by claiming his wages twice; therefore let him take the oath.

(11) There are two presumptions in favor of the householder; i.e., which incline us to the belief that he paid the wages in the proper time.

(12) That the laborer takes an oath that he has not received his wages and obtains his due.

(13) If there were no witnesses that the employer hired this laborer, the employer, if he wished to evade payment, could have said that he did not hire him at all; therefore, if he admits he hired him, but says he has paid him, he is believed.

(14) V. supra 40a.

(15) Ex. XXII, 10; deals with a paid guardian who claims that the loss was unpreventably accidental; he must take an oath to this effect (i.e., that it was hurt, or forcibly removed by robbers, or died), and is exempt.

(16) Since the guardian may say that he never had the other's animal to guard, and he would have been exempt, he should be believed when he says that an accident happened to it. Why, then, does Scripture impose an oath on him?

(17) Then the oath is imposed; for the guardian could not have evaded payment by saying he never took the animal, for there are witnesses that it was deposited with him.

(18) He should still be believed without an oath, for he could have said that he had already returned the animal to its owner.

(19) The guardian signed a document that he received the animal from him. He cannot say that he returned the animal to the owner, because he would have claimed the return of the document. He is therefore not believed (without an oath) if he says an unpreventable accident happened to it.

(20) Raba and Rami b. Hama.

(21) For Rami b. Hama replies at first that he deposited it with the guardian in the presence of witnesses; and Raba asks, since the guardian may say to him, 'I returned it to you,' etc. Hence, Raba holds that he does not require to have witnesses that he returned it. And Rami b. Hama agrees, for he does not dispute this statement, but gives another answer — that he deposited it by document.

(22) For both agree that the guardian cannot say, 'I have already returned the article to you'; hence, he must return it in the presence of witnesses.

(23) I Sam. XXI, 13; he applied this verse to him, because he also 'laid up these words in his heart,' i.e., he took pains to ascertain if the ruling of Rab and Samuel (that the laborer takes an oath and receives his wages only if he was hired in the presence of witnesses) had any support.

(24) V. B.M. 110b, where the different time limits for claiming are enumerated, in the case of laborers hired for the day, night, week, month, etc.

(25) In this case, where the dispute is whether he paid him or not, the laborer takes an oath that he has not been paid, and receives his wages.

(26) The laborer must bring witnesses, and if he has no witnesses, he cannot take an oath and receive what he claims.

(27) For the first clause does not mention it; hence, in the first clause, the laborer takes an oath, and receives his wages, even if he does not bring witnesses that he was hired by the employer. Thus, this is opposed to the ruling of Rab and Samuel that only if there were witnesses that he was hired is he believed with an oath.

Shevu'oth 46a

Both the first and second clauses are concerned with proof:¹ the proof which necessitates payment he mentions;² the proof which necessitates [merely] an oath he does not mention.³ R. Jeremiah b. Abba said: The School of Rab sent to Samuel [the request]: Let our Master teach us: If an artisan says [to his employer]: 'Two [Zuz] have you stipulated to pay me,' and the other says: 'I stipulated to pay you only one,' who takes the oath? — He

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replied to them: In this case the householder takes the oath, and the artisan loses, for the amount stipulated people certainly remember.⁴ But this is not so? For did not Rabbah b. Samuel learn: '[In the case of dispute about the amount] stipulated, he who desires to exact from his neighbor must bring proof'⁵ — [thus implying that] if he does not bring proof, it is cancelled!⁶ But why? Let the householder take an oath, and the artisan lose!⁷ —

R. Nahman said: Both alternatives are meant: Either [the artisan] brings proof, and receives [his claim], or the householder takes an oath, and the artisan loses.⁸ An objection was raised: If one gave his cloak to an artisan [to mend], and the artisan says, 'You did stipulate to pay me two [Zuz],' and the other says, 'I stipulated to pay you only one,' as long as the cloak is in the hands of the artisan, the householder must bring proof;⁹ but if he had already given it him, then [if he claims] within his time limit,¹⁰ he takes an oath, and receives [his claim]; but if his time has passed, he who desires to exact from his neighbor must bring proof.¹¹ [Now it states] after all: '[If he claims] within his time limit, he takes an oath and receives [his claim]'! Why? Let the householder take an oath, and the artisan lose!¹² —

R. Nahman b. Isaac said: This is in accordance with the view of R. Judah¹³ who says whenever the oath inclines towards the householder, the hired person takes the oath and receives [his claim].¹⁴ Which R. Judah? Shall we say. R. Judah of our Mishnah? [Surely] he is more stringent, for we learnt: R. JUDAH SAYS: [THERE IS NO OATH] UNLESS THERE IS PARTIAL ADMISSION.¹⁵ — But it is R. Judah of the Baraitha; for it was taught: A hired laborer, as long as his time limit has not expired,¹⁶ takes an oath, and receives [his claim]; but if not,¹⁷ he does not take an oath, and receive [his claim]. And R. Judah said: When [does he take an oath]? Only if he says to him, 'Give me my wages fifty Dinarii which you owe me,

and the other says. 'You have already received of it a gold Dinar',¹⁸ or, if he says to him. 'Two did you stipulate to pay me,' and the other says. 'I stipulated to pay you only one.'¹⁹ But if he says to him, 'I never hired you at all,' or, if he says to him, 'I hired you, and paid you your wages,' then he who desires to exact from his neighbor must bring proof.²⁰

To this R. Shisha the son of R. Idi demurred: Well then, [in the case where the dispute is about the amount] stipulated [is this ruling]²¹ the view of R. Judah, and not that of the Rabbis. Now since where R. Judah is more stringent,²² the Rabbis are more lenient;²³ where R. Judah is more lenient,²⁴ will the Rabbis be more stringent!²⁵ — But then, [will] the Rabbis [also agree]?²⁶ Then, that which Rabbah b. Samuel learnt that [where the amount] stipulated [is in dispute] he who desires to exact from his neighbor must bring proof²⁷ — whose view would it be? It cannot be the view of R. Judah, nor that of the Rabbis! —

But, said Rabbah, in this they disagree: R. Judah holds in [an oath imposed by] the Torah²⁸ an enactment was instituted in favor of the hired laborer,²⁹ but in [an oath imposed by] the Rabbis,³⁰ which is itself an enactment — we do not impose one enactment upon another enactment.³¹ And the Rabbis hold even in [an oath imposed by] the Rabbis we also institute an enactment in favor of the hired laborer; but [in the case of a dispute about] the amount stipulated, this the employer remembers.³²

'HE WHO WAS ROBBED,' — HOW? IF THEY TESTIFIED AGAINST HIM THAT HE ENTERED HIS HOUSE TO SEIZE HIS PLEDGE, etc. But perhaps he did not seize his pledge.³³ Did not R. Nahman say: If one held an axe in his hand, and said, 'I am going to cut down the palm-tree of So-and-so,' and it was found cut and cast [on the ground], we do not say that he cut it down?³⁴ Hence, a man often boasts, but does not fulfill; here

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also [perhaps] he boasted, and did not fulfill! — Read:35 ‘And seized his pledge.’ — Then let us see what pledge he seized!36 —

Rabbah b. Bar Hanah said that R. Johanan said: He claimed from him vessels which may be taken under his garments.37 Rab Judah said: If they saw him hiding articles under his garments,38 and he came out,

- (1) I.e., there must be witnesses that he was hired.
- (2) In the second clause he requires witnesses as to the amount that was stipulated; this proof (without which payment cannot be exacted) the Tanna mentions.
- (3) In the first clause witnesses are necessary to testify that he was hired; this the Tanna does not mention (though the witnesses are necessary), for these witnesses merely give the laborer power to take an oath.
- (4) And we do not say that because the employer is busy with his laborers he does not remember the amount stipulated, and that therefore the oath should devolve on the laborer; but the employer takes the oath like everyone who admits part of the claim.
- (5) Supra 45b.
- (6) The extra amount which he claims; and the employer does not need to take an oath, but is automatically exempt.
- (7) Only if the employer takes an oath, but not otherwise.
- (8) Do not deduce from the teaching of Rabbah b. Samuel that if the artisan does not bring proof, the employer is automatically exempt; if he does not bring proof, the employer must take an oath that he stipulated only one.
- (9) I.e., witnesses, that he stipulated to pay only one Zuz, for he is the one who desires to exact from his neighbor (the cloak for only one Zuz).
- (10) On the day that he gave it him.
- (11) The artisan must bring witnesses that the householder had agreed to pay him two Zuz, and if he does not bring witnesses, he loses his claim.
- (12) This question is directed against Samuel who holds that where the dispute is about the amount stipulated, the householder takes an oath, and is exempt.
- (13) And Samuel does not agree with him, but with the other Sages.
- (14) Whenever the householder should, according to Scripture, take the oath, i.e., when he admits part of the claim, as here, the oath is transferred from him to the employee, because the employer cannot remember so well (even in a dispute about the amount stipulated), for he is busy with his laborers.

(15) Supra 44b. Hence R. Judah restricts the laborer, and does not allow him to take an oath, even where the Sages do allow him. Therefore in the case where the amount stipulated is in dispute, how can you say that it is R. Judah who allows the laborer to take an oath and receive his claim, since others hold that in such a case the laborer is not allowed to take an oath, but the householder takes the oath, and is exempt?

(16) In which to claim.

(17) If it is after the time limit.

(18) 25 silver Dinarii.

(19) Hence, even in a case where the amount stipulated is in dispute. R. Judah states clearly that the laborer takes an oath.

(20) The laborer must bring witnesses, and if not, the employer is exempt, for he denies the whole claim.

(21) That the laborer takes the oath.

(22) In the case of the Mishnah where there is no partial admission on the part of the employer, R. Judah is more stringent, and does not allow the laborer to take an oath.

(23) They do allow him to take the oath, and receive his claim.

(24) Where the amount stipulated is in dispute.

(25) And not allow the laborer to take the oath!

(26) That in the case where the amount stipulated is in dispute the laborer takes the oath.

(27) The laborer must bring witnesses; but he cannot receive the amount he claims merely by taking an oath.

(28) Where the employer admits a portion of the claim.

(29) That the oath be removed from the employer and given to the laborer, who takes the oath, and receives his claim.

(30) Where the employer denies the whole; and there is only the Rabbinic oath of equity.

(31) By removing this oath from the employer and giving it to the laborer.

(32) And we do not say, because he is busy with his laborers, he forgets; therefore in this case the oath is not transferred to the laborer. Hence, it is in fact true that R. Judah is sometimes more stringent (even when the Sages are more lenient, as in the case where there is no partial admission), and sometimes the Sages are more stringent (even where R. Judah is more lenient, as in the case where the dispute is about the amount stipulated): the reason is because these cases depend upon different principles. Thus the ruling that the laborer takes the oath in the case of dispute about the amount is R. Judah's view, and not that of the Sages; and Rabbah b. Samuel agrees with the Sages.

(33) The witnesses merely say that he entered the house to seize the pledge, but they did not see him take it. Why, then, should the householder be permitted to take an oath, and claim the vessels?

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(34) Though the evidence against him is strong; but we must have definite evidence before we can make him pay for the damage.

(35) In the Mishnah.

(36) If the witnesses testify that they actually saw him seize the pledge, they can give evidence and state what the pledge was. What need, then, is there for the householder to take an oath?

(37) The householder claims that he took from him small articles which could easily be hidden under his coat; and though the witnesses saw that he took something, they could not see exactly what it was; therefore the householder takes an oath.

(38) If witnesses saw a man entering another man's house, and hide some articles under his coat, and come out.

Shevu'oth 46b

and said, 'I bought them,'¹ he is not believed.² And we do not say this, except in the case of a householder who does not usually sell his [household] articles; but in the case of a householder who sometimes sells his articles, he is believed.³ And [in the case of a householder] who does not usually sell his household articles we also do not say [that the intruder is not believed] except [with regard to] articles it is not usual to hide,⁴ but [with regard to] articles which it is usual to hide, he is believed.⁵ And [with regard to articles] which it is not usual to hide we also do not say [that he is not believed] except if he is a man who is not decorous, but [in the case of] a decorous man, that is his way.⁶ And we do not say [that he is not believed] except when the householder says he lent them, and the other says he bought them, but [if the householder says the other] stole them, it is not at all in the householder's power [to say so], for we do not assuredly presume a man to be a robber.⁷ And we do not say [that the intruder is not believed] except in the case of articles which it is customary to lend or hire out, but in the case of articles which it is not customary to lend or hire out, he is believed;⁸ for R. Huna b. Abin sent⁹ [his decision that] in the case of articles which it is customary to lend or hire out, and [the intruder] said, 'I bought them,' he is not believed; as in the case where Raba removed a pair of scissors for [cutting] cloth

and a book of Aggada¹⁰ from orphans — things which it is customary to lend and hire out.¹¹

Raba said: Even the caretaker may take the oath;¹² and even the caretaker's wife may take the oath. R. Papa inquired: In the case of his hired laborer or retainer,¹³ what is the ruling?¹⁴ — Let it stand.¹⁵ R. Yemar said to R. Ashi: if he claimed from him a silver goblet, what is the ruling?¹⁶ — [He replied:] We see, if he is a man reputed to be wealthy,¹⁷ or a man who is trustworthy so that people deposit [articles] with him,¹⁸ he takes an oath and recovers [the goblet], but if not, he does not.

'HE WHO WAS WOUNDED,' — HOW? Rab Judah said that Samuel said: They did not teach it,¹⁹ except [if the wound were] in a spot where he could have inflicted it himself,²⁰ but if it is in a spot where he could not have inflicted it himself, he receives [compensation] without an oath.²¹ But let us take into consideration that perhaps he rubbed himself against a wall!²² — R. Hiyya taught [that the Mishnah deals with a case] where a bite appeared on his back or between his arm-pits.²³ But perhaps someone else did it to him?²⁴ — There was no other.

'AND HE WHOSE OPPONENT IS SUSPECTED OF SWEARING FALSELY... AND EVEN A VAIN OATH.' What is meant by EVEN A VAIN OATH?²⁵ — He²⁶ states a case of 'not only': not only [if he is guilty] in these²⁷ where there is a denial of money, but even in this²⁸ also which is merely a denial of words,²⁹ he is no longer believed [on oath]. Let him²⁶ mention also the oath of utterance. — He mentions only such an oath that at the time of swearing he swears falsely; but the oath of utterance, where it is possible to say that he is swearing the truth,³⁰ he does not mention. Granted, in the case of 'I shall eat,' or, 'I shall not eat';³¹ but in the case of 'I have eaten,' or, 'I have not eaten,'³² what shall we say?³³ — He²⁶ mentions vain oath

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- (1) And the householder said he lent them to him.
- (2) The intruder is not believed, even if he desires to take an oath; but the householder takes a consuetudinary oath that he did not sell them or give them to him, and recovers the articles; v. Maim., Yad, To'en we-Nite'am, IX, 4.
- (3) The intruder is believed (with a consuetudinary oath) that he bought them.
- (4) Articles which one is not ashamed to carry openly in the street. This person hid them, apparently because he was ashamed to have to borrow them; if he had really bought them, as he states, he would not have been ashamed to carry them openly.
- (5) That he bought them; and though this householder does not usually sell his household goods, he may have been in need of money on this occasion.
- (6) And he is believed that he bought them, though he carries them hidden under his cloak (and they are articles which other men would carry openly).
- (7) And the intruder is believed that he bought them, even if he is not a decorous man who always carries articles hidden under his cloak.
- (8) When he says he bought them.
- (9) From Palestine, v. B.B. 52b.
- (10) Containing legendary matter and homiletic literature.
- (11) The claimant brought witnesses who testified that the articles were his; and he maintained that he had lent them to the orphans' father. Raba decided in favor of the claimant (who, naturally, must take an oath that he did not give them or sell them to their father). Since Raba decided thus, it is obvious that he holds that if the father had been alive and said he had bought them, he would not have been believed (for these are articles which it is customary to lend), for had the father been believed, it would have been the duty of the Court, in his absence, to put forward the same plea on behalf of the orphans. The book, which the claimant said he had lent the father, happened to be Aggada, but the same rule applies to all books (v. Tosaf. ad loc.; but Rashi differs).
- (12) This refers to the Mishnah that if witnesses testify that an intruder entered another man's house and seized a pledge which he hid under his cloak (so that they could not distinguish what it was) the householder takes an oath that the article is his, and recovers it. Raba says that if the householder was absent when the intruder entered, but the caretaker was there, he takes the oath.
- (13) Upon whom the duty of minding the house does not devolve.
- (14) Do they take the oath in the householder's absence?
- (15) It remains unsolved.
- (16) If the householder claimed from the intruder a valuable object, is he also believed on oath?

- (17) Who is known to have in his home similar objects of value.
- (18) And he states that the silver goblet had been deposited with him by another person.
- (19) In the Mishnah that the injured person takes an oath that the other had inflicted upon him the wound which he exhibits.
- (20) Therefore an oath is necessary that the other did it.
- (21) For witnesses testified that he entered the other's premises whole, and came out injured.
- (22) And injured himself; why should he receive compensation from the other without an oath?
- (23) Or in the elbow joint, which could not have been caused by rubbing against a wall.
- (24) Why should he obtain compensation, without an oath, from the householder? Perhaps another person in the house injured him.
- (25) Why 'EVEN'?
- (26) The Tanna of our Mishnah.
- (27) Having sworn falsely in a case involving an oath of testimony or of deposit.
- (28) Taking a vain oath, e.g., swearing that a pillar of stone is gold.
- (29) Denial (i.e., false statement) involving words only.
- (30) E.g., he swears 'I shall not eat this loaf'; at the moment of swearing he may intend to fulfill it; even if later he is overcome by temptation, and eats it, he should not thereby be accounted untrustworthy and debarred from taking an oath in a money claim.
- (31) It is possible that at the moment of swearing he intends to fulfill them.
- (32) Where, at the moment of swearing, he knew he was swearing falsely.
- (33) Why should not the Mishnah mention that in such a case, too, he is no longer believed on oath, and his opponent is given the oath.

Shevu'oth 47a

and all that are similar to it.¹

IF ONE OF THEM WAS A DICE-PLAYER. Wherefore is this necessary?² — He [the Tanna] mentions a Biblical disqualification, and he mentions a Rabbinic disqualification.³

IF BOTH WERE SUSPECT, etc. Raba said to R. Nahman: 'How did we learn in the Mishnah?'⁴ — He said to him: 'I do not know.' 'What is the law?' — He said to him: 'I do not know.' It was stated: R. Joseph b. Minyomi said that R. Nahman said: R. Jose says, They divide.⁵ And so did R. Zebid b.

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Oshaia learn: R. Jose says, They divide. Some say.⁶ R. Zebid learned: R. Oshaia said: R. Jose says, They divide. R. Joseph b. Minyomi said: R. Nahman decided a case thus: they divide.

THE OATH RETURNS TO ITS PLACE. Whither does it return? — R. Ammi said: Our Masters of Babylon said, the oath returns to Sinai;⁷ our Masters of the Land of Israel said, the oath returns to him upon whom it devolves.⁸ R. Papa said: Our Masters of Babylon⁹ are Rab and Samuel; our Masters of the Land of Israel are R. Abba.¹⁰ ‘Our Masters of Babylon are Rab and Samuel,’ for we learnt: **AND SO ALSO ORPHANS CANNOT EXACT PAYMENT EXCEPT WITH AN OATH.** And we discussed this: From whom? Shall we say, from the borrower?¹¹ Their father would have received payment without an oath, and they require an oath!¹² But it means: ‘And so also orphans from orphans cannot exact payment except with an oath.’¹³ And Rab and Samuel both said: They did not teach this,¹⁴ except if the lender died during the lifetime of the borrower;¹⁵ but if the borrower died during the lifetime of the lender, the lender was already obliged to take an oath to the sons of the borrower;¹⁶ and a man cannot bequeath an oath to his sons.¹⁷ ‘Our Masters of the Land of Israel are R. Abba’; for there was a man who snatched a bar of silver from his neighbor; they came before R. Ammi, and R. Abba was sitting in his presence. He¹⁸ brought one witness that he had snatched it from him. The other said, ‘Yes, I snatched it; but it is mine that I snatched.’ Said R. Ammi: How shall judges settle this dispute? Shall we say to him, ‘Go and pay’?¹⁹ There are not two witnesses.²⁰ Shall we exempt him?²¹ There is one witness [that he snatched].²² Shall we say to him, ‘Go and swear’?²³ Since he says, ‘I snatched it,’ he is like a robber!²⁴—

R. Abba said to him: He is liable to take an oath, and he cannot take the oath; and everyone who is liable to take an oath, and cannot take the oath, must pay.²⁵ Raba said:

It is reasonable to agree with R. Abba, for R. Ammi learned: The oath of the Lord shall be between them both²⁶ — but not between the heirs. How is this [to be understood]? Shall we say, that he said to him: ‘Your father owed my father a hundred Zuz,’ and the other replied to him: ‘Fifty he owed him, but not the other fifty’; what is the difference between him and his father?²⁷ But then, [it must mean] he said to him: ‘Your father owed my father a hundred Zuz,’ and the other replied to him: ‘Fifty I know, but the other fifty I do not know.’²⁸

- (1) All oaths in the past which are false the moment they are uttered, just as a vain oath is, are included (as far as disqualifying the offender is concerned) in the category of VAIN OATH.
- (2) A dice-player is accounted a robber, and we have already been told that, in the case of a robber, the opponent takes the oath.
- (3) A real robber is disqualified by Scripture from taking an oath; but a gambler, since he does not take his winnings by force but with the other's consent, is disqualified merely by the Rabbis.
- (4) Was it R. Jose or R. Meir who said that the amount in dispute should be divided? He did not remember what the tradition was.
- (5) Later R. Nahman remembered the tradition.
- (6) Not that R. Zebid, the son of Oshaia, had that tradition, but that R. Zebid said that R. Oshaia had the tradition that it was R. Jose who holds the view that the plaintiff and defendant divide.
- (7) Since both claimant and defendant are suspected of swearing falsely, neither can be asked to take the oath; it returns to Sinai (its place of origin), for it cannot be applied. The result is, the case cannot be tried by the court, and the matter is left alone until evidence is produced by either of the two.
- (8) The defendant who admits a portion of the claim; and since he cannot take the oath (for he is suspect) he must pay the whole claim.
- (9) Who hold that the oath returns to Sinai.
- (10) v. Sanh. 17b.
- (11) If orphans produce a document showing that the borrower is indebted to their father, can they not exact payment unless they take an oath (mentioned in the Mishnah, supra 45a) that their father did not tell them before he died that the document had been settled?
- (12) Surely not! We do not impose restrictions on orphans.
- (13) The lender and borrower both died, and the lender's sons are claiming from the borrower's sons. Here the lender's sons must take an oath, for the lender himself could not have exacted payment

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from the borrower's sons without an oath; for payment cannot be exacted from orphans except on oath.

(14) That the lender's sons receive payment from the borrower's sons, if they take an oath.

(15) When the lender's sons would have obtained payment from the borrower without an oath; and when the borrower dies, the lender's sons can exact payment from the borrower's sons only with an oath.

(16) For no payment can be exacted from orphans except with an oath.

(17) I.e., a man cannot bequeath to his sons money which he himself cannot obtain without an oath. Now, the lender would have to take an oath to the sons of the borrower that he had not yet been paid by their father. When he dies, he cannot transmit this oath to his sons, for their oath (if they were to take one) would have to be, 'We swear that our father did not inform us that the debt had been paid.' (v. Mishnah). Since the father had already become liable to take an oath, and the same oath cannot be transmitted to his sons, they cannot take an oath at all. The sons of the borrower also cannot take an oath that their father had already paid. Hence, Rab and Samuel hold that since neither can take an oath, there is neither oath nor payment; i.e., the oath returns to Sinai.

(18) The owner of the silver bar; v. supra 32b.

(19) For he admits that he snatched it; and we cannot believe him when he says it is his own, for every robber could put forward that excuse.

(20) Who saw him snatch it; he could therefore have denied snatching it; he should therefore be believed when he admits he snatched it, but maintains that it is his.

(21) For this reason.

(22) He could not therefore have denied snatching it, for he would have had to take an oath to refute the statement of the witness.

(23) To refute the statement of the witness.

(24) And is not believed on oath, v. B.B. (Sonc. ed.) p. 336 and notes.

(25) Hence R. Abba holds that 'the oath returns to him upon whom it devolves'; and since he cannot take the oath, he pays.

(26) Ex. XXII, 10.

(27) Since he definitely admits a portion, and definitely denies a portion, why should he not take the oath, as his father would have taken it?

(28) He is exempt both from oath (for he cannot take an oath that his father does not owe it, since he is not sure about it) and from payment.

[to take an oath],¹ it is therefore necessary for Scripture to exempt the heirs;² but if you say, that his father in such circumstances would also have been exempt,³ wherefore do we need Scripture [to exempt] the heirs!⁴ And Rab and Samuel, how do they expound this [verse]: 'the oath of the Lord, etc.'? — They require it for what was taught: Simeon b. Tarfon says: 'The oath of the Lord shall be between them both': this teaches that the oath falls upon both.⁵ Simeon b. Tarfon says: Whence do we know that there is a prohibition to the *souteneur*?⁶ Because It is said: Thou shalt not commit adultery;⁷ thou shalt not cause adultery to be committed.⁸ And ye murmured in your tents.⁹ Simeon b. Tarfon says: You spied out and put to shame the tent of the Omnipresent.¹⁰ As far as the great river, the river Euphrates.¹¹ Simeon b. Tarfon says: Go near a fat man, and be fat.¹² In the School of R. Ishmael it was taught: The servant of a King is like a King.¹³

AND THE SHOPKEEPER WITH HIS ACCOUNT BOOK, etc. It was taught: Rabbi said: What is the object of troubling with this oath?¹⁴ — R. Hiyya said to him:¹⁵ We have already learnt it: Both take an oath and receive [payment] from the householder. — Did he accept it from him, or did he not accept it from him?¹⁶ — Come and hear: It was taught: Rabbi says, 'The workmen take an oath to the shopkeeper.'¹⁷ Now if it were so,¹⁸ it should be to the householder [that they take the oath].¹⁹ —

Raba said: The workmen swear to the householder in the presence of the shopkeeper, so that they may be ashamed because of him.²⁰ It was stated: If two sets of witnesses contradict each other, R. Huna said, this set may come by itself and bear testimony, and that set may come by itself and bear testimony;²¹ but R. Hisda said: What do we want with false witnesses!²² [Where there are] two lenders and two borrowers and two documents — is the point at issue between them.²³ [In the case of] one lender and one borrower and two documents — the holder of

Shevu'oth 47b

Now granted, if you say, that his father in such circumstances, would have been liable

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the document is at a disadvantage.²⁴ [Where there are] two lenders and one borrower and two documents — that is our Mishnah.²⁵ [But in the case of] two borrowers and one lender and two documents — what [is R. Huna's ruling]?²⁶ Let it stand.²⁷ R. Huna b. Judah raised an objection.

(1) And since he could not take an oath, for he is not sure, he would have had to pay.

(2) That in such circumstances they are entirely exempt.

(3) As Rab and Samuel say, that when an oath cannot be imposed, it 'returns to Sinai', i.e., the matter lapses, and there is neither oath nor payment.

(4) Hence, the fact that we do need the verse to exempt the heirs implies that the father would have to pay. Thus, this supports the view of R. Abba.

(5) Even the claimant, though his claim be legitimate, is guilty to some extent for causing an oath to be taken; for he could have had witnesses or a document, when transacting his affair with the defendant, and so have avoided the necessity of imposing an oath on his fellow-suitor; v. supra 39b.

(6) Lit., 'he who is at the heels of the adulterer,' i.e., procures prostitutes for him.

(7) Ex. XX, 13.

(8) The Heb. may be pointed as the Hiph'il.

(9) Deut. I, 27.

(10) The Heb. רגנו (from רגן to murmur rebelliously) is here divided into רגן גנו you have spied out (from תור), and put to shame (from גנה, Pi'el) your tent, i.e., the tent (land) which the Omnipresent had destined for you; you have rejected His offer of the Holy Land.

(11) Deut. I, 7.

(12) Or, touch a person smeared with oil, and you will also become smeared with oil. The river Euphrates is not really greater, but smaller, than the others, for it is mentioned last (of the four rivers, Gen. II, 14), but it is called here 'the great river', because it is mentioned in connection with the Holy Land (as its eastern boundary), and anything connected with the Holy Land is great (Rashi). [Maharsha: Though in reality the Euphrates is the longest of the four it is described as great only when mentioned in connection with the Holy Land.]

(13) The Euphrates, servant of the Holy Land, is great like the Holy Land itself.

(14) For there is bound to be one false oath: the shopkeeper swears he gave the workman small change to the value of a sela as instructed, and the workman swears he has not received it; and both claim from the employer, and are paid. Rabbi does not hold that both shall swear; but he does not

explain whether he agrees with Ben Nannus that both are paid without an oath, or that the workman alone takes an oath that he has not been paid by the shopkeeper, and he is paid by the shopkeeper, so that the shopkeeper loses (if he has really paid him once); and it is right that he should lose, for he ought to have paid the workman in the presence of witnesses.

(15) You yourself, the Editor of the Mishnah, stated definitely in our Mishnah (supra 45a) that both take the oath (Rashi).

(16) Did Rabbi accept this statement from R. Hiyya, i.e., did Rabbi, though at first holding the view that there should not be two oaths imposed (because one would be false), later change his mind, and agree that both should take the oath?

(17) That they have not been paid, and he must pay them.

(18) That Rabbi changed his mind.

(19) For that is his view in the Mishnah that both shopkeeper and workman take the oath, and obtain their due from the householder.

(20) Rabbi did change his mind, and both the shopkeeper as well as the workmen, take the oath to the householder; when he states that they swear to the shopkeeper, he means, in the presence of the shopkeeper: that may deter them from swearing falsely, for they might be ashamed to swear in front of him that they had not received their money, if in reality they had.

(21) In the present case, of course, since the evidence is contradictory, the accused is exempt; but in any future case, each set is qualified to testify, for, since we do not know which of the two sets had testified falsely in the first case, we cannot disqualify either; but one witness of the first set together with one witness of the second set cannot combine to testify in any case, for one of them is certainly a false witness.

(22) Neither set is qualified to testify, because one set is false.

(23) Two separate cases of lender, borrower and bond; one set of these witnesses had signed the bond in one case, and the other had signed the bond in the other case. According to R. Huna, both bonds are correct and legally enforceable, and according to R. Hisda, both bonds are invalid.

(24) One lender lent one borrower two loans, for which he produces two documents, on one of which one set of witnesses had signed, and on the other of which the other set of witnesses had signed. Both R. Huna and R. Hisda agree that since this lender desires to exact money from the borrower on both documents, on one of which (though we do not know which one) false witnesses had signed, he may obtain payment on one loan only, the lesser one; and he loses the bigger loan, for the borrower may maintain that the witnesses who had signed on the larger amount are the false witnesses; since the

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lender cannot prove the contrary, he cannot obtain that loan.

(25) Two lenders, each producing a document against the same person, one document having been signed by one set of witnesses and the other document by the other set: R. Huna holds both documents can be enforced, for the case is similar to that of our Mishnah where both shopkeeper and workman take the oath and enforce their claims against the householder, though we know definitely that one of them is swearing falsely; but we cannot deprive either of them of his money; so here, both lenders can enforce their claims. Though, according to R. Hisda, neither, of course, can enforce his claim; cf. next note.

(26) The lender produces two documents against two borrowers: does R. Huna hold, since it is one man who produces both documents (one of which is definitely signed by false witnesses), the court cannot uphold his claim at all, for each borrower may maintain that the document against him is the false one; or since his claim is against two separate people, he produces one document at a time and enforces his claim, for R. Huna holds that both sets of witnesses are believed separately. According to R. Hisda, of course, the claims cannot be enforced, for he holds that both sets of witnesses, even separately, are disqualified (even when two different lenders are the claimants).

(27) We do not know R. Huna's view in such a case.

Shevu'oth 48a

If one said it was two ox-goats high, and the other said three, their testimony is valid;¹ but if one said three, and the other said five, their testimony is invalid; but they may join for other testimony.² Now does this not mean for testimony in a money matter?³ — Raba said: [No! it means] he and another may join for other testimony for [this] new moon; for they are now two against one, and the words of one are of no value where there are two.⁴

HE SAID TO THE SHOPKEEPER: 'GIVE ME FOR A DINAR FRUIT,', etc. It was taught: R. Judah said: When [do we say that the householder takes the oath]? If the fruits are heaped up and lying there, and both are contesting about them; but if he threw them into his basket over his back, he who wishes to exact from his neighbor must bring proof.⁵

HE SAID TO THE MONEY CHANGER: 'GIVE ME, etc.' It is necessary [for both clauses to be stated],⁶ for if he had taught us only the first one, [we might have thought] in that case the Rabbis⁷ say [that the householder takes an oath]⁸ because fruit may decay, and because it decays they do not keep it,⁹ but in the case of money, which does not decay, we might think they agree with R. Judah.¹⁰ And if this [second clause] had been stated, [we might have thought] in this case R. Judah says [that the householder does not take an oath],¹¹ but in that [first clause] I might have thought he agrees with the Rabbis,¹² therefore [both clauses are] necessary.¹³

JUST AS THEY SAID THAT SHE WHO IMPAIRS HER KETHUBAH. . .SO ALSO ORPHANS CANNOT EXACT PAYMENT EXCEPT WITH AN OATH. From whom?¹⁴ Shall we say, from the borrower? Their father would have obtained payment without an oath; and they require an oath! — Thus he [the Tanna] means: So also orphans from orphans cannot exact payment except with an oath. Rab and Samuel both said: They did not teach this except if the lender died during the lifetime of the borrower; but if the borrower died during the lifetime of the lender, the lender had already become liable to take an oath to the children of the borrower; and a man cannot bequeath an oath to his children. They sent this [question] to R. Eleazar: What is the nature of this oath?¹⁵ —

He sent them [the reply]: The heirs swear the oath of heirs, and receive [their due].¹⁶ They sent this [question also] in the days¹⁷ of R. Ammi. He exclaimed: So often do they continue sending this [question]! If I would have found some argument in connection with it, would I not have sent it to them? But, said R. Ammi, since it has come to us, we will say something concerning it: If he stood in the court¹⁸ and died, the lender had already become liable to take an oath to the children of the borrower, and a man cannot bequeath an oath to his children; but if he died before

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he came to the court,¹⁹ the heirs swear the oath of heirs, and receive [their due].

To this R. Nahman demurred: Is it the Court that makes him liable to take the oath? From the time that the borrower died, the lender had already become liable to take an oath to the children of the borrower!²⁰ But, said R. Nahman, if the ruling of Rab and Samuel is accepted, it is accepted; and if not, not.²¹ Hence, he is in doubt,²² But did not R. Joseph b. Minyomi say that R. Nahman decided a case that they should divide?²³ —

According to the view of R. Meir, he means; but he himself does not agree.²⁴ R. Oshaia raised an objection: If she died, her heirs mention her Kethubah until twenty five years [have elapsed]!²⁵ Here we are discussing a case where she took the oath, and then died.²⁶ Come and hear: If he married a first [wife], and she died; and he married a second, and he died, the second and her heirs come before the heirs of the first.²⁷ — Here also, she took the oath and then died. Come and hear: But his heirs make her take an oath, and her heirs, and those who come with her authority.²⁸ —

R. Shemaiah said: Alternatives are stated: 'her', if she is a widow; and 'her heirs', if she is divorced.²⁹ R. Nathan b. Hoshia raised an objection: The son's power is more extensive than the father's power.

(1) Two witnesses who saw the New Moon came to inform the Beth din in Jerusalem; one of them said it appeared to him to be above the horizon about the height of two ox-goats; the other said three ox-goats; since their estimates differ only slightly, we believe them that they really did see the new moon, and the New Moon and festivals dependent on it can be fixed in accordance with their testimony.

(2) R.H. 24a.

(3) Each one of these witnesses may join another in a case concerning a money claim, and is accepted as a qualified witness, though we know that one of them is a false witness. This is an argument against R. Hisda.

(4) One of these two witnesses may be joined to another who agrees with him, so that there are now two against the one who had testified differently.

(5) The householder said to the shopkeeper: 'Give me fruit for a Dinar,' and the shopkeeper gave him; then asked him for the Dinar; and the householder said he had paid him; the householder takes an oath to that effect, and is free. R. Judah says this is the case only if the fruit is lying between them, but if the householder had already taken possession, he does not take an oath, but the shopkeeper (who now desires to exact from him either the money or the fruit) must bring proof that he has not yet paid him, and if he has no proof, he loses.

(6) Why does the Mishnah state the clause of the money changer? It is exactly the same as the case of the shopkeeper selling fruit.

(7) The representative of the anonymous opinion in the Mishnah.

(8) Even if the fruit is already in his basket.

(9) The shopkeeper therefore hurriedly threw it into the purchaser's basket, even before he received the money, so that the purchaser should not change his mind; therefore, even if the fruit is already in the purchaser's basket, it is possible he has not yet paid the shopkeeper, and he must take an oath.

(10) That the householder does not need to take an oath that he had already given the money-changer the Dinar, for the money-changer would not have given him the small change before he had received the Dinar.

(11) And we believe him that he has paid the money-changer, for the money-changer would not have given him the small change before receiving the Dinar.

(12) That the householder takes an oath, for in the case of fruit, the shopkeeper may have put it into the purchaser's basket before receiving the money.

(13) To teach us that R. Judah and the Rabbis disagree in both.

(14) V. supra 47a, where the whole passage is explained.

(15) Which the orphans swear to the orphans? Can they always exact money with this oath, even if the borrower had died during the lifetime of the lender (when, according to Rab and Samuel, the orphans cannot take an oath, and cannot obtain the money)?

(16) If the borrower died during the lifetime of the lender, and then the lender died, his heirs take the oath that is imposed in such a case on heirs, that their father had not told them (or left any document) that the debt due to him had been paid, and they exact the money from the borrower's heirs. R. Eleazar thus differs from Rab and Samuel and holds that a man may bequeath an oath to his children, though it cannot naturally be the same oath: the oath he would have had to take is: 'I have not yet been paid this debt by your father.' The oath the orphans take is: 'Our father has not left us instructions that your father's debt has been paid.' [The interpretation adopted here follows text in cur. edd. MS.M., however, furnishes a better reading

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which is also that of Asheri: ‘They sent (i.e., the above question) to R. Eleazar, (to which) he replied: What is the import of this oath (i.e. why should the oath which the father would have had to take be considered more effective than any other oath)? Hence the heirs swear the oath of heirs, etc.]

(17) [MS.M.: ‘before R. Ammi’.]

(18) If the lender had already appeared at court with his claim against the borrower's heirs, and been bidden to take an oath, and then, before the oath, had died, he cannot bequeath this oath, to which he had already become liable, to his heirs; and the claim lapses.

(19) He had not as yet become liable to take the oath.

(20) Even if he died before bringing his claim to the court, he had already become liable for the oath; i.e., he could not have obtained payment from the borrower's heirs except with the oath. Hence, if the lender cannot bequeath an oath to his children, they cannot, even in such a case, take the oath of heirs.

(21) Either the lender can, or cannot, bequeath his oath; we cannot accept R. Ammi's distinction.

(22) As to whether the ruling of Rab and Samuel holds good or not.

(23) Supra 47a, where it is explained that according to Rab and Samuel ‘the oath returns to Sinai’, and the case lapses. Hence, R. Nahman, in deciding that the claimant and borrower divide, does not agree with Rab and Samuel.

(24) The ruling of Rab and Samuel is applicable to R. Meir's view that the oath returns to Sinai; and on this R. Nahman says that R. Ammi's differentiation is irrational; but R. Nahman himself does not agree with R. Meir, but with R. Jose, that they divide. [MS.M. substitutes ‘R. Ammi’ for R. Meir, which simplifies the argument.]

(25) Keth. 104a. A widow who had not yet been paid her Kethubah from her husband's estate, and died, bequeaths this claim to her heirs; but they must ‘mention’ it, i.e., claim it, within 25 years of her husband's death. Now the widow herself could not have obtained her Kethubah from the husband's heirs except with an oath (supra 45a); yet when she dies, her heirs can claim the Kethubah with the oath that heirs take (‘Our mother did not leave instructions that she had received the Kethubah’). Hence, though the borrower died during the lifetime of the lender (the husband who owes the Kethubah died during the lifetime of the wife), and the lender (wife) had already become liable to take an oath to the heirs, she may bequeath the oath to her heirs. This is an argument against Rab and Samuel.

(26) Since she had already taken the oath, the Kethubah is virtually in her possession, and her heirs do not need to take an oath, but merely exact payment.

(27) Keth. 90a; when he died, the second wife who is still alive, has a claim (the Kethubah) against his estate, if she dies before receiving the money, her heirs exact payment; but the heirs of the first wife have no claim for Kethubah (for she died before her husband). When the Kethubah has been paid to the heirs of the second wife, the heirs of the first wife also, of course, participate in their father's inheritance together with their stepbrothers. The Mishnah states, however, that the heirs of the second wife can exact payment of the Kethubah; the second wife herself can obtain the Kethubah only with an oath from the husband's heirs; her heirs must also take an oath; hence she can bequeath an oath to her heirs. This is an argument against Rab and Samuel.

(28) Keth. 86b. If he gave his wife a written agreement that he would not demand an oath of her (in a case where she would otherwise have to take an oath, e.g., if she impairs a Kethubah, supra 45a), nor would he demand an oath of her heirs, nor of those who come with her authority (i.e., those to whom she sold her Kethubah, and who would be entitled to the Kethubah on her divorce or death), he cannot impose an oath upon her, her heirs, etc. But if he dies, his heirs may impose the oath upon her, her heirs, etc., i.e., if she claims her Kethubah from the husband's heirs, she must take an oath; if she dies, her heirs take an oath and obtain the Kethubah. Hence she bequeaths the oath to her heirs. This is an argument against Rab and Samuel. Here it cannot be said that she had already taken the oath, and then died; for in that case her heirs would not require to take an oath, whereas the Mishnah states definitely that the husband's heirs make the wife's heirs take an oath.

(29) The husband's heirs make ‘her’ take an oath, if she is a widow; she can obtain her Kethubah from her husband's estate only by taking an oath to his heirs (that she has not yet been paid); but if she dies before she obtains her Kethubah, ‘her heirs’ cannot obtain it from the husband's heirs, because she cannot bequeath the oath (as Rab and Samuel say). The Mishnah which states that the husband's heirs make her heirs take an oath refers to a case where she was divorced (the husband now being liable to pay her the Kethubah without imposing an oath on her, for he had given her a written agreement that he himself would not demand an oath of her), then she died before obtaining the Kethubah, then the husband died; now, when she died, the Kethubah was already due to her without an oath: this money claim she may bequeath to her heirs; but when her heirs wish to exact payment from the husband's heirs, they must take an oath (for orphans from orphans can only exact payment with an oath).

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Shevu'oth 48b

for the son exacts payment either with an oath or without an oath,¹ whereas the father exacts payment only with an oath.² Now, in what circumstances? [Obviously] if the borrower died during the lifetime of the lender;³ and yet it states that the son exacts payment either with an oath or without an oath: 'with an oath' — the oath of heirs; without an oath' — as R. Simeon b. Gamaliel says!⁴ —

R. Joseph said: This is in accordance with the view of Beth Shammai who hold that a bond which is ready to be collected is counted as if it is already collected.⁵ R. Nahman happened to come to Sura. R. Hisda and Rabbah son of R. Huna went in to him, and said to him: Come, sir, abrogate this ruling of Rab and Samuel.⁶ He replied to them: Have I taken the trouble to come all these parasangs⁷ in order to abrogate the ruling of Rab and Samuel? But grant, at least, that we do not add to it.⁸ As, for example? That which R. Papa said: He who impairs his bond, and died, his heirs swear the oath of heirs, and obtain payment.⁹

There was a man who died, and left a guarantor.¹⁰ R. Papa thought of saying in this case also [the principle] that 'we should not add to it' applies.¹¹ Said R. Huna the son of R. Joshua to R. Papa: Will not the guarantor go after the orphans?¹² There was a certain man who died, and left a brother,¹³ Rami b. Hama thought of saying this is also a case where [the principle] 'we should not add to it' applies.¹⁴ Said Raba to him: What is the difference between 'my father did not instruct me, etc.' and 'my brother did not instruct me, etc.'?¹⁵ R. Hama said: Now, since the law has not been stated either in accordance with the view of Rab and Samuel or in accordance with the view of R. Eleazar,¹⁶ if a judge decides as Rab and Samuel, it is legal; if he decides as R. Eleazar, it is also legal.

R. Papa said: This document of orphans¹⁷ we do not tear up, and we do not exact payment on it. 'We do not exact payment on it,' — in

case we agree with Rab and Samuel;¹⁸ and 'we do not tear up,' — for if a judge decides as R. Eleazar, it is legal.¹⁹ There was a judge who decided as R. Eleazar. There was a Rabbinic scholar in his town who said to him: I can bring a letter from the West²⁰ that the law is not in accordance with R. Eleazar. He replied to him: When you bring it.²¹ He came before R. Hama. He²² said to him: If a judge decides as R. Eleazar, it is legal.

AND THESE TAKE AN OATH [THOUGH NO CLAIM IS PREFERRED AGAINST THEM]. Are we discussing the case of idiots?²³ — Thus he means: 'And these take an oath not in a definite claim, but in a doubtful claim: partners, tenants, [etc.]'.²⁴ A Tanna taught: THE SON OF THE HOUSE who was mentioned [in the Mishnah as liable to take an oath] does not mean that he walks in and walks out,²⁵ but he brings in laborers and takes out laborers, brings in produce and takes out produce.²⁶ And wherein are these different?²⁷ — Because they allow themselves permission in it.²⁸ R. Joseph b. Minyomi said that R. Nahman said: But only when the claim between them is [at least] two silver [Ma'ahs].²⁹ In accordance with whose view? — Samuel's?³⁰ But R. Hiyya taught in support of Rab!³¹ — Say, the denial of the claim,³² as Rab holds.

IF THE PARTNERS OR TENANTS HAD DIVIDED,³³ [AN OATH CANNOT BE IMPOSED]. They enquired: Can this oath be superimposed on a Rabbinic oath?³⁴ — Come and hear: If he borrowed from him on the eve of the Sabbatical year, and on the termination of the Sabbatical year he became a partner with him, or a tenant, we do not impose on him [any previous oath together with the present oath].³⁵ The reason is because he borrowed from him on the eve of the Sabbatical year, so that when the Sabbatical year came, it cancelled it; but in any other of the seven years, we do impose on him [a previous oath]!³⁶ —

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Do not infer that in any of the other seven years we do impose on him [a previous oath].³⁷ but infer thus: If he became a partner with him, or a tenant, on the eve of the Sabbatical year, and on the termination of the Sabbatical year, he borrowed from him, we impose on him [a previous oath].³⁸ But this is already stated clearly: If he became a partner with him, or a tenant, on the eve of the Sabbatical year, and on the termination of the Sabbatical year, he borrowed from him, we impose on him [a previous oath]!³⁹ — Therefore, we deduce that we superimpose the oath on a Rabbinic oath.⁴⁰ It is proven. R. Huna said:

(1) The lender's heir exacts payment from the borrower's heir with an oath (that his father had told him that the debt was not yet paid), or without an oath, if there were witnesses that the father had said before he died that the debt was unpaid (supra 45a).

(2) From the borrower's heirs.

(3) The statement that the father exacts payment only with an oath can only refer to a case where the borrower is already dead, and the father (i.e., the lender) is claiming from the heirs, for if the borrower is alive the lender does not need to take an oath (for he produces a document).

(4) Supra 45a; if there are witnesses that the father said at the time of his death that the document was not settled, the heir obtains payment of the debt without an oath. However, the Baraita states that the son exacts payment with an oath from the heirs, where the borrower died during the lifetime of the lender. This is opposed to the view of Rab and Samuel.

(5) Sot. 25a; if the husband of a woman suspected of infidelity (Sotah, v. Glos.) died before she drank of the 'bitter waters' (Num. V, 11-31), she does not need to undergo the ordeal, and obtains payment of her Kethubah; and though it is possible that she did, in fact, commit adultery, yet, since she has the document (ketubah) setting forth her husband's indebtedness to her, it is as if her husband's property were assigned to her and in her possession; and it is the husband's heirs who would require to bring proof that she was unfaithful, if they desired to deprive her of the Kethubah; and if no proof is forthcoming, she obtains payment of the Kethubah. This is the view of Beth Shammai, who hold that the money in the document is reckoned as if it is already collected and in the possession of the holder of the document. Here also, if the borrower died during the lifetime of the lender, the money is counted as if it is already in the possession of the

lender (since he produces a document), though the Sages made a regulation that the lender must take an oath to the borrower's heirs. Hence, the lender is not bequeathing an oath to his sons, but a definite money asset (though the sons, when claiming from the borrower's heirs, must also take an oath, according to Rabbinic regulation). Rab and Samuel, however, agree with Beth Hillel that the money in the document is not counted as if it is already collected; Sot. 25b.

(6) That a man cannot bequeath an oath to his son, with the implication of this ruling.

(7) [From Mahuza, the home of R. Nahman, to Sura, was a distance of about 60 miles.]

(8) But agree with Rab and Samuel only in such a case as they stated; and do not extend their ruling to apply to other cases.

(9) If the holder of a bond admitted having received part payment, he cannot obtain the rest without an oath. If he dies, his heirs swear the oath of heirs, and obtain payment; and we do not, in this case, apply the ruling of Rab and Samuel that a man cannot bequeath an oath to his heirs.

(10) One man lent money to another on a document, and a third person became a surety for the loan. The borrower died (so that the lender became liable for an oath), then the lender died; and his heirs claimed from the surety.

(11) That we should not apply the restrictive ruling of Rab and Samuel, but permit the heirs to take an oath to the surety, and obtain their money.

(12) He will claim from the heirs of the borrower; hence, the heirs of the lender, if permitted to take an oath and claim from the guarantor, will ultimately be depriving the borrower's heirs because of this oath; and to such a case the ruling of Rab and Samuel applies.

(13) The lender died childless, and left a brother as his heir; the borrower had previously died, leaving children. The lender's brother now claims from the borrower's children.

(14) But that the brother should be allowed to take an oath and exact payment from the borrower's heirs, for Rab and Samuel said only the children of the lender could not take the oath in such circumstances. Let us not add the reservation also in regard to the brother of the lender.

(15) The children of the lender take the oath: 'Our father did not instruct us that the bond is paid.' The brother would have to say, 'My brother did not instruct me, etc.' There is no difference; and since Rab and Samuel ruled that the lender could not bequeath the oath to his sons, they hold similarly that he cannot bequeath it to his brother.

(16) Supra 48a, that the oath can be bequeathed to the heirs.

(17) Where the borrower died during the lifetime of the lender, then the lender died.

(18) I.e., in case they are right.

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- (19) The lender's heirs may find such a judge, and exact payment.
- (20) The Palestinian scholars.
- (21) I will believe you.
- (22) R. Mama.
- (23) If nobody is claiming from them, why should they take an oath?
- (24) If one partner suspects the other (though he admits he is not certain) of fraudulently converting a part of their joint holdings to his own use, the accused must take an oath to refute the accusation.
- (25) That he is merely a member of the household.
- (26) He attends to the business.
- (27) Why should these have to take an oath for a doubtful accusation?
- (28) Because they are engaged in the management of the property, they permit themselves certain liberties, and appropriate some of the funds for themselves.
- (29) One partner says: 'I believe you may have appropriated two Ma'ahs for yourself,' and the other admits a portion; he must take an oath to refute the rest of the claim. If the accusation is for an amount less than two Ma'ahs there is no oath.
- (30) Supra 39b.
- (31) That the denial in the claim must be at least two Ma'ahs; supra 40a.
- (32) R. Nahman meant the denial must be two Ma'ahs.
- (33) Their property, i.e., dissolved partnership; one of the partners cannot afterwards make the other swear to refute a doubtful accusation. If, however, he has to take an oath in connection with another dispute, this oath too is at the same time included; supra 45a.
- (34) If the partner was liable only for a Rabbinic oath (e.g., consuetudinary oath) in the other dispute, can an oath be imposed upon him in this case too where, after their separation, the other partner accuses him of misappropriation of their joint funds? Or is this oath included only if the other oath (which is definitely imposed upon him) is a Biblical oath (e.g., מוּדָה בְּמִקְצֵת)?
- (35) If, for example, he denied completely the loan which he borrowed on the eve of the Sabbatical year, and now, having become a partner on the termination of the Sabbatical year, an oath is imposed upon him because of his partner's accusation against him of misappropriation, the court does not include in the present oath any reference to his denial of the loan, for the Sabbatical year has cancelled the loan.
- (36) The inference is that if he had borrowed in any other year (the Sabbatical year not intervening), and later became a partner, the oath which he is liable for denying the whole loan would have been included in the present oath imposed on him by his partner. Hence, though the present oath is only a Rabbinic regulation, it has the power to include in it

another oath. The oath for denying the whole loan, it is here assumed, can only be included in some other oath, for as yet, in the mishnaic period, the consuetudinary oath had not been instituted; it was instituted much later by R. Nahman (supra 40b).

(37) For it may be that since the oath imposed by the partner is only Rabbinic, it has not the power to include another oath with it.

(38) If they dissolved partnership, and then on the termination of the Sabbatical year one partner borrowed from the other, and later admitted a portion of the loan, but denied the rest (for which he is liable a Biblical oath), we impose on him also the previous oath which his partner makes him take by accusing him, after the dissolution, of a previous fraudulence. Hence, it is because he is liable to take a Biblical oath (being a מוּדָה בְּמִקְצֵת) that we include also the previous Rabbinic oath. This Baraita wishes to teach us also that the Sabbatical year does not cancel the partner's oath; it cancels only oaths attached to loans as well as the loans themselves.

(39) Since this is already expressly stated, why should we assume that this is what the first clause desires us to deduce by inference?

(40) As we inferred from the first clause at the beginning.

Shevu'oth 49a

On all [oaths] we impose others, except on [the oath of] the hired laborer on which we do not impose others.¹ R. Hisda said: To all we are not lenient,² except a hired laborer to whom we are lenient. What is the difference between them?³ — There is this difference: [whether the court] find an opening for him [to impose another oath].⁴

BUT THE SABBATICAL YEAR CANCELS THE OATH. Whence do we know this? — R. Giddal said that Rab said: Because Scripture says. And this is the word of the release:⁵ even a 'word'⁶ it releases.

CHAPTER VIII

MISHNAH. THERE ARE FOUR GUARDIANS: AN UNPAID GUARDIAN, A BORROWER, A PAID GUARDIAN, AND A HIRER.⁷ AN UNPAID GUARDIAN TAKES AN OATH IN ALL CASES;⁸ A BORROWER PAYS IN ALL CASES;⁹ A PAID GUARDIAN AND A HIRER TAKE AN OATH IN THE CASE OF INJURY, CAPTURE,¹⁰ OR

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DEATH, BUT PAY FOR LOSS OR THEFT. IF HE [THE OWNER] SAID TO THE UNPAID GUARDIAN, 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'IT DIED,' WHEREAS IT WAS INJURED OR CAPTURED OR STOLEN OR LOST; [OR HE REPLIED], 'IT WAS INJURED,' WHEREAS IT DIED OR WAS CAPTURED OR STOLEN OR LOST; [OR HE REPLIED], 'IT WAS CAPTURED,' WHEREAS IT DIED OR WAS INJURED OR STOLEN OR LOST; [OR HE REPLIED], 'IT WAS STOLEN,' WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR LOST; [OR HE REPLIED], 'IT WAS LOST,' WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR STOLEN; [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, 'AMEN', HE IS EXEMPT.¹¹ [IF THE OWNER SAID,] 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'I DO NOT KNOW WHAT YOU SAY,' WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR STOLEN OR LOST; [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, AMEN, HE IS EXEMPT.¹² [IF THE OWNER SAID,] 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'IT WAS LOST'; [AND THE OWNER SAID,] 'I ADJURE YOU', AND HE SAID, 'AMEN'; AND WITNESSES TESTIFIED AGAINST HIM THAT HE HAD CONSUMED IT, HE PAYS THE PRINCIPAL; IF HE CONFESSED HIMSELF, HE PAYS THE PRINCIPAL, FIFTH, AND GUILT-OFFERING.¹³ [IF THE OWNER SAID,] 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'IT WAS STOLEN;' [AND THE OWNER SAID,] 'I ADJURE YOU, AND HE SAID, 'AMEN;' AND WITNESSES TESTIFIED AGAINST HIM THAT HE HIMSELF STOLE IT, HE PAYS DOUBLE;¹⁴ IF HE CONFESSED HIMSELF, HE PAYS THE PRINCIPAL,¹⁵ FIFTH, AND GUILT-OFFERING. IF A MAN SAID TO ONE IN THE STREET, 'WHERE IS MY OX WHICH YOU HAVE STOLEN?' AND HE REPLIED, 'I DID NOT STEAL IT,' AND WITNESSES TESTIFIED AGAINST HIM THAT HE DID STEAL IT, HE PAYS DOUBLE;¹⁶ IF HE KILLED IT OR SOLD IT, HE PAYS FOUR OR FIVE TIMES ITS VALUE.¹⁷ IF HE SAW WITNESSES COMING NEARER AND NEARER, AND HE SAID, I DID STEAL IT, BUT I DID NOT KILL OR SELL IT,

HE PAYS ONLY THE PRINCIPAL.¹⁸ IF HE [THE OWNER] SAID TO THE BORROWER, 'WHERE IS MY OX?' AND HE REPLIED TO HIM,

- (1) If a man is liable to take even a Rabbinic oath, other Rabbinic oaths may be included at the same time at the instance of the claimant; but when the laborer has to take an oath that he has not received his wages, the court do not permit the employer to include any other oath; for in reality the laborer should be believed without an oath; and it is only to appease the employer that an oath is imposed on him (supra 45a), therefore the court do not allow other oaths to be added.
- (2) But impose other oaths.
- (3) R. Huna and R. Hisda appear to say the same thing.
- (4) According to R. Huna, even if the claimant does not urge the imposing of other oaths, the court investigate and ask the claimant whether he has any further claims against the defendant in which an oath might be imposed; but according to R. Hisda the court are not lenient with the defendant if the claimant wishes to impose other oaths (and they permit the imposition), but they do not themselves, if the claimant does not urge it, Endeavour to find an opening for the imposition of other oaths (Rashi).
- (5) Literal rendering of Deut. XV, 2; E.V. 'the manner of the release.'
- (6) I.e., oath.
- (7) They must all guard the object given in to their care, but their liability varies.
- (8) That he has not deliberately been neglectful, and is free from liability.
- (9) Of injury, capture, death, loss, and theft; but if the animal died in the course of its work, he is free, for he borrowed it for that purpose.
- (10) Forcible capture by robbers, which is counted an accident for which he is not responsible.
- (11) From a guilt-offering for denying a deposit on oath; for he is liable for an offering only in a case where, if he had admitted the truth, he would have had to make restitution; by his denial on oath, therefore, he wishes to free himself from payment, and if it is found that he has sworn falsely, he brings a guilt-offering and makes restitution, adding also a fifth of its value (Lev. V, 21-26). In this case of an unpaid guardian, however, he did not, by his denial, wish to exempt himself from payment; for even if he had admitted the truth, he would have been exempt; therefore he does not bring a guilt-offering.
- (12) For even if he had admitted the truth, he would have been free from payment.
- (13) According to the law governing oath of deposit; if he confesses, and repents and desires atonement, he pays back the principal, adds a fifth of its value, and brings a guilt-offering: they shall confess their

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sin... and he shall make restitution for his guilt in full, and add unto it the fifth part thereof. . . besides the ram of the atonement. . . (Num. V, 7, 8).

(14) An unpaid guardian who tries to free himself by maintaining that the animal was stolen, whereas he himself had stolen it, pays double (like a thief); but if he tries to free himself by maintaining that it was lost (as in the previous clause), whereas he had himself stolen it, he does not pay double; v. B.K. 63b.

(15) But not double, for that is a fine, which is not imposed on his own confession.

(16) Ex. XXII, 3.

(17) Ibid. XXI, 37.

(18) For since he confessed that he stole it (though he confessed only out of fear of the witnesses), it is a proper confession, and he is exempt from paying double for the theft; and since there is no double, there is no fourfold or fivefold payment (though he denied the selling or killing, and witnesses testified against him that he did steal and kill or sell); v. B.K. 75b.

Shevu'oth 49b

'IT DIED,' WHEREAS IT WAS INJURED OR CAPTURED OR STOLEN OR LOST; [OR HE REPLIED,] 'IT WAS INJURED,' WHEREAS IT DIED OR WAS CAPTURED OR STOLEN OR LOST; [OR HE REPLIED,] 'IT WAS CAPTURED, WHEREAS IT DIED OR WAS INJURED OR STOLEN OR LOST; [OR HE REPLIED,] 'IT WAS STOLEN, WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR LOST; [OR HE REPLIED,] 'IT WAS LOST, WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR STOLEN; [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, 'AMEN,' HE IS EXEMPT.¹ [IF THE OWNER SAID,] 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'I DO NOT KNOW WHAT YOU SAY,' WHEREAS IT DIED OR WAS INJURED OR CAPTURED OR STOLEN OR LOST; [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, 'AMEN,' HE IS LIABLE.² IF HE SAID TO A PAID GUARDIAN, OR HIRER. 'WHERE IS MY OX?' AND HE REPLIED TO HIM, 'IT DIED,' WHEREAS IT WAS INJURED OR CAPTURED; [OR HE REPLIED,] 'IT WAS INJURED,' WHEREAS IT DIED OR WAS CAPTURED; [OR HE REPLIED,] 'IT WAS CAPTURED,' WHEREAS IT DIED OR WAS INJURED;³ [OR HE REPLIED,] 'IT WAS

STOLEN, WHEREAS IT WAS LOST; [OR HE REPLIED,] 'IT WAS LOST,' WHEREAS IT WAS STOLEN;⁴ [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, 'AMEN,' HE IS EXEMPT. [IF HE REPLIED,] 'IT DIED,' OR, 'IT WAS INJURED,' OR, 'IT WAS CAPTURED,' WHEREAS IT WAS STOLEN OR LOST; [AND THE OWNER SAID,] 'I ADJURE YOU.' AND HE SAID, 'AMEN,' HE IS LIABLE.⁵ [IF HE REPLIED,] 'IT WAS LOST,' OR, 'IT WAS STOLEN,' WHEREAS IT DIED OR WAS INJURED OR CAPTURED; [AND THE OWNER SAID,] 'I ADJURE YOU,' AND HE SAID, 'AMEN,' HE IS EXEMPT.⁶ THIS IS THE PRINCIPLE: HE WHO [BY LYING] CHANGES FROM LIABILITY TO LIABILITY. OR FROM EXEMPTION TO EXEMPTION, OR FROM EXEMPTION TO LIABILITY, IS EXEMPT;⁷ FROM LIABILITY TO EXEMPTION, IS LIABLE. THIS IS THE PRINCIPLE: HE WHO TAKES AN OATH TO MAKE IT MORE LENIENT FOR HIMSELF, IS LIABLE; TO MAKE IT MORE STRINGENT FOR HIMSELF, IS EXEMPT.⁸

GEMARA. Who is the Tanna who holds that there are four guardians? — R. Nahman said that Rabbah b. Abbuha said: It is R. Meir. Said Raba to R. Nahman: Is there then a Tanna who does not hold that there are four guardians?⁹ — He said to him: Thus I meant to say to you: Who is the Tanna who holds that a hirer is like a paid guardian? Rabbah b. Abbuha said: It is R. Meir. But surely, we have heard that R. Meir holds the reverse [view], for we learnt: A hirer: how does he pay? R. Meir said: Like an unpaid guardian; R. Judah said: Like a paid guardian! — Rabbah b. Abbuha learned it reversed.¹⁰ Are they four? They are three!¹¹ — R. Nahman b. Isaac said: There are four guardians, but their regulations are three.

IF HE SAID TO AN UNPAID GUARDIAN, etc. 'WHERE IS MY OX?', etc. IF HE SAID TO ONE IN THE STREET, etc. IF HE SAID TO A GUARDIAN,¹² etc. WHERE IS MY OX?' HE REPLIED TO HIM, 'I DO NOT KNOW WHAT YOU SAY,' etc. Rab said:

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They are all exempt from the oath of guardians,¹³ but are liable in respect of the oath of utterance;¹⁴ and Samuel said: They are exempt also in respect of the oath of utterance. In what do they disagree? — Samuel holds it is not [possible of application] in the future;¹⁵ and Rab holds it is [possible of application] both negatively and positively.¹⁶ But they have already expressed their disagreement on this point once, for it was stated: ‘I swear that So-and-so threw a pebble into the sea,’ ‘I swear that he did not throw [a pebble into the sea]’; Rab says, he is liable, and Samuel says, he is exempt. Rab says, he is liable, because it is [applicable] negatively and positively; and Samuel says, he is exempt, because it is not [applicable] in the future!¹⁷

It is necessary [for them to express their disagreement in the present instance too], for if they had told us [their disagreement] in that case, [we might have thought that] in that case Rab says [he is liable], because he swears of his own accord, but in this case, where the Court administer the oath to him,¹⁸ we might have thought that he agrees with Samuel;¹⁹ as R. Ammi said, for R. Ammi said: In any oath which the Judges administer there is no liability in respect of the oath of utterance. And if [their disagreement] had been stated in this case, [we might have thought that] in this case Samuel says [he is exempt],²⁰ but in that case we might have thought that he agrees with Rab,²¹ therefore it is necessary [for their disagreement to be stated in both cases]. [To turn to the main] text: R. Ammi said: In any oath which the Judges administer there is no liability in respect of the oath of utterance, for it is said: Or if any one swear, uttering with the lips²² — of his own accord; as Resh Lakish said, for Resh Lakish said: Ki is translatable by four expressions: ‘if’, ‘perhaps’, ‘but’, ‘because’.²³ R. Eleazar says: They are all exempt from the oath of guardians, but are liable in respect of the oath of utterance,²⁴ except [in the case of the statement], ‘I DO NOT KNOW WHAT YOU SAY, [made] by the borrower, and that of theft and loss, by

the paid guardian and hirer, where they are liable,²⁵ for they denied money.

(1) From the guilt-offering, for he did not, by his false oath, desire to evade payment, since even if the facts were in accordance with his oath, he would still have had to pay.

(2) For a guilt-offering (in addition to paying for the animal) for by his denial he desired to evade payment.

(3) A paid guardian and hirer are exempt from payment in any of these cases, therefore they do not bring a guilt-offering, for even if they had admitted the truth they would not have had to pay.

(4) In these two cases the paid guardian and hirer must pay; they did not therefore, by their oath, wish to avoid payment, and are therefore exempt from a guilt-offering.

(5) For he desired to evade payment by his oath, whereas if he admitted the truth he would have had to pay; therefore he brings a guilt-offering.

(6) For by his oath he is making himself liable to pay, whereas in reality (since it died, etc.) he would have been exempt; he is therefore exempt from a guilt-offering.

(7) If by his oath he is not trying to evade payment, he is exempt from a guilt-offering.

(8) [The last passage is omitted in MS.M. and other texts as superfluous repetition, and moreover as implying some contradiction to the preceding passage, which extends the exemption to one who effects no change by his lying, whereas here the exemption is limited to one who makes it more stringent for himself.]

(9) Surely all admit that there are four!

(10) That R. Meir holds a hirer pays like a paid guardian.

(11) For a hirer is either like a paid or an unpaid guardian.

(12) Read: ‘To A BORROWER’.

(13) Those mentioned in the Mishnah as being exempt are exempt only from liability in respect of the oath of guardians, i.e., are exempt from a guilt-offering for their false oath of deposit.

(14) For though they did not desire to evade a money payment (and are therefore exempt from a guilt-offering), they nevertheless uttered a false oath, and must bring a sliding scale sacrifice. This sacrifice is brought, however, only if the transgressor trespassed unwittingly in that he was unaware that a sacrifice was necessary for a false oath, though he knew a false oath was prohibited, and that he was swearing falsely; for if he swore falsely unwittingly (i.e., if he really thought he was swearing the truth), he would in any case be exempt from a guilt-offering for his false oath of deposit; v. supra 36b.

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(15) He holds that a sliding-scale sacrifice for a false oath of utterance is brought only if that oath is applicable to the future; e.g., if the guardian swore falsely, 'The animal died,' he does not bring a sliding scale sacrifice, for he could not swear, 'The animal will die'; v. supra 25a.

(16) Applicability in the future is not necessary, as long as it is applicable in the negative and positive; e.g., the animal died, or did not die; was stolen, or was not stolen.

(17) 'So-and-so will throw a pebble;' for he does not know what So-and-so will do; supra 25a.

(18) He must perforce take an oath, if he wishes to free himself from payment. If he is an unpaid guardian, he takes an oath that he was not willfully neglectful; if a paid guardian, he takes an oath that the animal died, or was forcibly taken from him by robbers, or injured.

(19) That if he swore falsely, he is not liable to bring a sliding scale sacrifice, because he did not utter the oath of his own free will.

(20) Because the court administered it.

(21) That he is liable, because he swore of his own accord.

(22) Lev. V, 4; he brings a sliding scale sacrifice.

(23) R. Ammi takes the conjunction כִּי in this verse (Lev. V, 4) to mean 'if': if any one swear, i.e., of his own accord; he need not swear, but if he does swear, he must bring a sliding scale sacrifice. Rab, however, takes ki here as meaning 'because': because he swears (whether of his own accord, or compelled by the court), he must bring a sacrifice.

(24) He agrees with Rab.

(25) For a guilt-offering, and do not bring a sliding scale sacrifice. R. Eleazar does not need to mention in his exceptions the case of an unpaid guardian who, after swearing that the animal was lost or stolen, confessed that he stole it himself, in which case he is exempted from a sliding scale sacrifice, for the Mishnah states clearly that he brings a guilt-offering; and it is obvious that he is therefore exempt from the sacrifice for the oath of utterance.