

Talmud - Mas. Shevu'oth 2a

CHAPTER I

MISHNAH. OATHS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR;¹ THE LAWS CONCERNING THE DISCOVERY OF HAVING [UNCONSCIOUSLY] SINNED THROUGH UNCLEANNESS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR;² THE LAWS CONCERNING CARRYING ON THE SABBATH ARE OF TWO KINDS, SUBDIVIDED INTO FOUR;³ THE SHADES OF LEPROUS AFFECTIONS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR.⁴

WHERE⁵ THERE IS KNOWLEDGE AT THE BEGINNING AND AT THE END BUT FORGETFULNESS BETWEEN,⁶ A 'SLIDING SCALES' SACRIFICE IS BROUGHT.⁷ WHERE THERE IS KNOWLEDGE AT THE BEGINNING BUT NOT AT THE END, THE GOAT THE BLOOD OF WHICH IS SPRINKLED WITHIN THE VEIL ON THE DAY OF ATONEMENT⁸ TOGETHER WITH THE DAY OF ATONEMENT ITSELF HOLD THE SIN IN SUSPENSE⁹ UNTIL IT BECOME KNOWN TO THE SINNER, AND HE BRINGS THE 'SLIDING SCALE' SACRIFICE. WHERE THERE IS NO KNOWLEDGE AT THE BEGINNING BUT THERE IS KNOWLEDGE AT THE END, THE GOAT SACRIFICED ON THE OUTER ALTAR TOGETHER WITH THE DAY OF ATONEMENT ITSELF BRING HIM FORGIVENESS;¹⁰ FOR IT IS SAID: '[ONE HE-GOAT FOR A SIN-OFFERING] BESIDE THE SIN-OFFERING OF ATONEMENT':¹¹ [THEY ARE LIKENED TO ONE ANOTHER SO THAT WE MAY DEDUCE THAT] BOTH ATONE FOR SIMILAR KINDS OF SIN: JUST AS THE 'INNER' GOAT¹² ATONES ONLY FOR AN UNCONSCIOUS SIN — WHERE THERE WAS KNOWLEDGE [AT THE BEGINNING], SO THE 'OUTER'¹³ GOAT ATONES ONLY FOR AN UNCONSCIOUS SIN — WHERE THERE WAS KNOWLEDGE [AT THE END]. WHERE THERE IS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT THE END, THE GOATS OFFERED AS SIN-OFFERINGS ON FESTIVALS AND NEW MOONS BRING ATONEMENT. THIS IS THE OPINION OF R. JUDAH [B. ILA'I]. R. SIMEON [B. YOHAI] HOLDS THAT THE FESTIVAL GOATS ALONE AND NOT THE NEW MOON GOATS ATONE FOR THIS CLASS OF UNCONSCIOUS OFFENCE.¹⁴ AND FOR WHAT DO THE NEW MOON GOATS BRING ATONEMENT? —

(1) Positive and negative with reference to both future action (I swear I shall . . . ; I swear I shall not . . .) and past action (I swear I did . . . ; I swear I did not . . .). V. Lev. V, 4.

(2) A person defiled by dead man or carrion who, forgetful of his uncleanness, eats holy food or enters the sanctuary; or, does either of these two actions, whilst conscious of his uncleanness, but not of eating holy (sacrificial) food or entering the sanctuary. V. Lev. V, 2ff.

(3) Two kinds of Hoza'ah, carrying out: standing in public ground, stretching out the hand to private ground, and withdrawing an object; standing in private ground, and removing an object thence to public ground. And two kinds of Haknasah, bringing in: standing in private ground, stretching out the hand to public ground, and withdrawing an object; standing in public ground, and removing an object thence to private ground.

(4) Bahereth, white like snow; Se'eth, like white wool; Sid ha-hekal, white like the plaster of the Temple walls; and Kerum Bezah, white like the membrane round an egg: they are all different shades of white. V. Lev. XIII, 2ff.

(5) The laws of uncleanness are here discussed. The Gemara (3a) explains why these laws rather than the laws of oaths are discussed first. The Sabbath and leprosy laws are explained in their own tractates, and are only mentioned here en passant simply because of their similarity in that they are 'two, subdivided into four'.

(6) I.e., Knowledge at the time of becoming unclean, but forgetfulness (v. n. 2) at the actual moment of eating the holy food or entering the sanctuary.

(7) According to the pecuniary circumstances of the sinner: a lamb or goat, if he be wealthy; two turtledoves or two young pigeons, if he cannot afford a lamb; or the tenth part of an ephah of fine flour, if he be poor (Lev. V, 6-11).

(8) Lev. XVI, 15.

(9) Shielding the sinner from punishment.

(10) For he can never bring a sacrifice himself, since there was no knowledge at the beginning.

(11) Num. XXIX, 11.

(12) I.e., 'the sin-offering of atonement.'

(13) The 'he-goat for a sin-offering.'

(14) V. infra 9b.

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FOR A RITUALLY CLEAN MAN WHO ATE HOLY FOOD THAT HAD BECOME UNCLEAN. R. MEIR SAYS: ALL THE GOATS [EXCEPT THE 'INNER'] HAVE EQUAL POWERS OF ATONEMENT FOR TRANSGRESSIONS OF THE LAWS OF UNCLEANNESS IN CONNECTION WITH THE TEMPLE¹ AND HOLY FOOD THEREOF.² NOW, R. SIMEON HOLDS THAT THE NEW MOON GOATS BRING ATONEMENT FOR A CLEAN MAN WHO ATE UNCLEAR HOLY FOOD; AND THE FESTIVAL GOATS ATONE FOR TRANSGRESSION OF THE LAWS OF UNCLEANNESS WHERE THERE WAS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT THE END; AND THE 'OUTER' GOAT OF THE DAY OF ATONEMENT FOR TRANSGRESSION OF THESE LAWS WHERE THERE WAS NO KNOWLEDGE AT THE BEGINNING BUT THERE WAS KNOWLEDGE AT THE END. THEY³ [THEREFORE] SAID TO HIM: 'IS IT PERMITTED TO OFFER UP THE GOAT SET APART FOR ONE DAY ON ANOTHER?'⁴ HE REPLIED 'YES!' THEY [HOWEVER] ARGUED WITH HIM: 'SINCE THEY ARE NOT EQUAL IN THE ATONEMENT THEY BRING, HOW CAN THEY TAKE EACH OTHER'S PLACE?' HE REPLIED: 'THEY ARE ALL AT LEAST EQUAL [IN THE WIDER SENSE] IN THAT THEY ALL BRING ATONEMENT FOR TRANSGRESSIONS OF THE LAWS OF UNCLEANNESS IN CONNECTION WITH THE TEMPLE AND HOLY FOOD THEREOF.' R. SIMEON B. JUDAH SAID IN HIS NAME:⁵ THE NEW MOON GOATS BRING ATONEMENT FOR A CLEAN PERSON WHO ATE UNCLEAR HOLY FOOD; THE FESTIVAL GOATS, IN ADDITION TO BRINGING ATONEMENT FOR SUCH A CASE, ATONE ALSO FOR A CASE WHERE THERE WAS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT THE END; THE 'OUTER' GOAT OF THE DAY OF ATONEMENT, IN ADDITION TO BRINGING ATONEMENT FOR BOTH THESE CASES, ATONES ALSO FOR A CASE WHERE THERE WAS NO KNOWLEDGE AT THE BEGINNING BUT THERE WAS KNOWLEDGE AT THE END. THEY ACCORDINGLY ASKED HIM: 'IS IT PERMITTED TO OFFER UP THE GOAT SET APART FOR ONE DAY ON ANOTHER?' HE SAID, 'YES!' THEY [FURTHER] SAID TO HIM: 'GRANTED THAT THE DAY OF ATONEMENT GOAT⁶ MAY BE OFFERED UP ON THE NEW MOON, BUT HOW CAN THE NEW MOON GOAT BE OFFERED UP ON THE DAY OF ATONEMENT TO BRING ATONEMENT FOR A TRESPASS THAT IS NOT WITHIN ITS SCOPE?' HE REPLIED: 'THEY ARE ALL AT LEAST EQUAL [IN THE WIDER SENSE] IN THAT THEY ALL BRING ATONEMENT FOR TRANSGRESSIONS OF THE LAWS OF UNCLEANNESS IN CONNECTION WITH THE TEMPLE AND HOLY FOOD THEREOF.

FOR WILFUL TRANSGRESSION OF THE LAWS OF UNCLEANNESS IN CONNECTION WITH THE TEMPLE AND HOLY FOOD THEREOF, THE 'INNER' GOAT OF THE DAY OF ATONEMENT TOGETHER WITH THE DAY OF ATONEMENT ITSELF BRING FORGIVENESS.⁷ FOR OTHER TRANSGRESSIONS OF THE TORAH, LIGHT AND GRAVE, WILFUL AND UNCONSCIOUS, KNOWN AND UNKNOWN, POSITIVE AND NEGATIVE, THOSE PUNISHABLE BY KARETH⁸ AND THOSE PUNISHABLE BY DEATH IMPOSED BY THE COURT — FOR ALL THESE THE SCAPEGOAT⁹ BRINGS ATONEMENT TO ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST. WHAT [THEN] IS THE DIFFERENCE BETWEEN ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST?¹⁰ — [NONE], SAVE THAT THE BULLOCK¹¹ BRINGS ATONEMENT TO THE PRIESTS FOR TRANSGRESSIONS OF THE LAWS OF UNCLEANNESS IN CONNECTION WITH THE

TEMPLE AND HOLY FOOD.¹² R. SIMEON SAYS: JUST AS THE BLOOD OF THE GOAT THAT IS SPRINKLED WITHIN THE VEIL BRINGS ATONEMENT FOR ISRAELITES, SO THE BLOOD OF THE BULLOCK BRINGS ATONEMENT FOR PRIESTS; AND JUST AS THE CONFESSION OF SINS PRONOUNCED OVER THE SCAPEGOAT BRINGS ATONEMENT FOR ISRAELITES, SO THE CONFESSION PRONOUNCED OVER THE BULLOCK BRINGS ATONEMENT FOR PRIESTS.¹³ GEMARA. Now, the Tanna has just ended the treatise Makkoth; why does he study Shebu'oth?¹⁴ — Because he learned:¹⁵ For rounding the corners of the head¹⁶ the penalty of lashes is incurred twice, once for each corner;

(1) Lit., 'sanctuary'.

(2) They all equally atone for sins committed unconsciously, whether there was no knowledge at the beginning but knowledge at the end, or no knowledge either at the beginning or at the end; and for a clean man who ate unclean holy food.

(3) The Sages.

(4) If, for example, the goat set apart for offering on the Day of Atonement was lost, and was found only after another had been offered in its place, is it permissible to offer it up on a festival or new moon?

(5) Another version of R. Simeon b. Yohai's view.

(6) Because it is more inclusive.

(7) V. 12b seq.

(8) Extinction by divine intervention; v. Glos.

(9) Lit., 'the one to be sent away'.

(10) This apparent contradiction of the former statement is explained in the Gemara (13b).

(11) The bullock brought by the High Priest, Lev. XVI, 3-6.

(12) Whereas for Israelites the 'inner' and 'outer' goats bring atonement for these transgressions; the scapegoat, however, brings atonement both to Israelites and priests for all other transgressions.

(13) Disagreeing with the previous Tanna who holds that the scapegoat brings atonement to both Israelites and priests for other transgressions, he contends that the scapegoat is for Israelites only; the sprinkling of the blood of the 'inner' goat (attended by no confession) brings atonement to Israelites for transgressions connected with uncleanness; the confession over the scapegoat (attended by no blood sprinkling) brings atonement to Israelites for other transgressions. Similarly, the sprinkling of the blood of the bullock brings atonement to priests for transgressions connected with uncleanness; and the confession over the bullock brings atonement to them for other transgressions; v. 13b. seq.

(14) Shebu'oth follows immediately upon Makkoth in the Mishnah. What connection is there between the two treatises that the Tanna studies them in this order?

(15) Mak. 20a.

(16) Removing the hair from the temples, where the head joins the cheeks; v. Lev. XIX, 27.

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and for shaving the beard, five times, twice for each cheek,¹ and once for the point of the chin. Since he has been discussing a single prohibition involving two punishments, he continues with OATHS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. Why did the Tanna enumerate all the instances of 'two, subdivided into four' only in this treatise, and not in the treatise Shabbath, when discussing the laws of carrying, nor in the treatise Nega'im, when discussing the shades of leprous affections? — I will tell you: The laws of oaths and uncleanness are mentioned together in the Bible,² and are akin to each other in that their transgressor brings a 'sliding-scale' sacrifice;³ the Tanna therefore mentions them together here, and, having mentioned these two, he includes the rest also.

Having begun with the laws of oaths, why does the Tanna proceed to explain the laws of uncleanness first? Because the laws of uncleanness are few he disposes of them first; then he proceeds to explain the laws of oaths which are more numerous.

OATHS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. TWO: I shall eat; I shall not eat. SUBDIVIDED INTO FOUR: I have eaten; I have not eaten.

THE LAWS CONCERNING THE DISCOVERY OF HAVING [UNCONSCIOUSLY] SINNED THROUGH UNCLEANNESS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. TWO: The discovery of having been unclean and partaken of holy food; and the discovery of having been unclean and entered the Temple [the uncleanness having been forgotten in both cases]. Subdivided INTO FOUR: The discovery that it was holy food he had eaten while being unclean [having forgotten that it was holy during the eating of it]; and the discovery that it was the Temple he had entered while being unclean [having forgotten it was the Temple at the time of entering].

THE LAWS CONCERNING CARRYING ON THE SABBATH ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. TWO: The carrying out by the poor man; and the carrying out by the householder.⁴ SUBDIVIDED INTO FOUR: The bringing in by the poor man; and the bringing in by the householder.

THE SHADES OF LEPROUS AFFECTIONS ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. TWO: Se'eth and Bahereth. SUBDIVIDED INTO FOUR: The derivative of Se'eth, and the derivative of Bahereth.⁵

Who is the Tanna of our Mishnah? — It is neither R. Ishmael nor R. Akiba! It is not R. Ishmael, for he states: He is guilty only when the oath is in the future tense.⁶ And it is not R. Akiba, for he states: He is guilty only in the cases where he forgets his uncleanness [while eating holy food or entering the Temple], but not in the cases where he forgets that it is the Temple he is entering [or that the food is holy while he is unclean].⁷

If you wish, I can say the Tanna of our Mishnah is R. Ishmael, or, if you prefer, I can say it is R. Akiba. It may be R. Ishmael. [Of the four kinds of oaths mentioned, not all are equally serious; but] two incur punishment, and the other two do not. Or, it may be R. Akiba. Two [of the cases of transgression through uncleanness] incur punishment, and two do not. In some cases there is no punishment?

(1) Which has two corners, the end of the lower jawbone where it joins the bottom of the ear, and the end near the chin.

(2) Lev. V, 2ff.

(3) V. p. 1, n. 7.

(4) For the sake of brevity the terms 'poor man' and 'householder' are employed, it being assumed that the poor man stands outside, and the householder inside; v. supra p. 1, n. 3 on Mishnah.

(5) V. supra p. 1, n. 4 on Mishnah.

(6) Infra 25a. Our Mishnah includes also oaths in the past tense.

(7) Infra 14b. Our Mishnah includes the four categories.

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But does not the Tanna mention them together with the laws concerning the shades of leprosy: just as in these laws all four shades make him unclean, necessitating a sacrifice, so here [in the case of oaths and uncleanness] all must be equal, necessitating a sacrifice? — Verily, the Tanna is R. Ishmael; and though in the case of oaths R. Ishmael excludes the past tense, it is only to free the transgressor from bringing a sacrifice¹ [if he transgresses unwittingly], but not to free him from lashes [if he transgresses wilfully].² And this will be in accordance with Raba's dictum, for Raba said:³ Clearly did the Torah state that a false oath is like a vain oath⁴ [for lashes]; just as a vain oath which is necessarily in the past [being untrue the moment it is uttered, is attended by the penalty of lashes], so is a false oath in the past [attended by the penalty of lashes].

Granted in the case of the oaths, 'I have eaten,' 'I have not eaten,' [he is guilty and receives the lashes, if they are false], as Raba says. Also, in the case of 'I shall not eat,' and he ate, he is guilty [and receives lashes], for he has transgressed a negative precept involving action; but in the case of 'I shall eat,' and he did not eat, why should he receive lashes, since the transgression is of a negative precept involving no action?⁵ [Where then are the four kinds of punishable oaths?] — R. Ishmael holds that the violation of a negative precept not involving action is also punishable by lashes. If so, R. Johanan contradicts himself; for R. Johanan said: The rule is in accordance with the anonymous Mishnah;⁶ and yet we find it stated: 'I swear I shall eat this loaf today,' and the day passed, and he did not eat it; R. Johanan and Resh Lakish both say he does not receive lashes, R. Johanan's reason for his opinion being because it is a negative precept not involving action, and the transgression of a negative precept involving no action is not liable to lashes; and Resh Lakish's reason being because it is an 'uncertain warning',⁷ and an uncertain warning is not a warning — R. Johanan found another anonymous Mishnah [which agrees with his view] Which one? Is it the following anonymous Mishnah? For we learnt: 'But he who leaves over a portion of even a ritually clean paschal lamb; or breaks the bone of an unclean paschal lamb, does not receive the forty lashes.'⁸ Granted that he who breaks the bone of an unclean paschal lamb does not receive lashes, because it is written: Ye shall not break a bone thereof⁹ — of a ritually clean and not of a disqualified paschal lamb. But he who leaves over a portion of a clean paschal lamb — why should he be exempt, unless it be because he is transgressing a negative precept not involving action, and a negative precept not involving action is not liable to punishment? [This, then, is the anonymous Mishnah with which R. Johanan agrees.] But how do you know that this Mishnah is reflecting the view of R. Jacob, who holds that the violation of a negative precept involving no action is not punishable by lashes? Perhaps it is reflecting the view of R. Judah [b. Ila'i], who holds that this transgression is not punishable by lashes, because Scripture has come to appoint a positive precept to follow the negative precept,¹⁰ but otherwise it would be punishable by lashes. For it is taught: Ye shall let nothing remain until the morning; but that which remaineth of it until the morning ye shall burn with fire:¹¹ Scripture has come to appoint the positive precept to follow the negative precept to teach us that this negative precept is not punishable by lashes, — this is the opinion of R. Judah. R. Jacob says, this is not the reason;¹² but rather because it is a negative precept not involving action, and the disregard of a negative precept not involving action is not punishable by lashes.¹³ But he found the following anonymous Mishnah: 'I swear I shall not eat this loaf, I swear I shall not eat it;' and he ate it,

(1) V. Lev. V, 4 seq.

(2) According to this, our Mishnah, in enumerating four kinds of oaths, is referring to wilful transgression.

(3) V. infra 21a.

(4) A vain oath is an oath which is demonstrably untrue on the face of it, e.g., 'I swear this is gold' (pointing to a lump of wood or stone). A false oath is an oath which is not, on the face of it, demonstrably untrue, e.g., 'I swear I have eaten a loaf of bread.' It may be true; it is false only if he has not eaten.

(5) V. infra.

(6) Which, in the present instance, is shown to be in accordance with R. Ishmael's view that a negative precept not involving action is liable to the punishment of the forty lashes.

(7) If a transgressor is not warned immediately before committing the sin, the punishment is not inflicted. In this case the actual moment of transgression is uncertain, for he has the whole day in which to fulfil his oath.

(8) Pes. 84a.

(9) Ex. XII, 46.

(10) I.e., to provide a remedy for the violation of the negative precept, averting punishment.

(11) Ex. XII, 10.

(12) Lit., 'not of the same denomination.'

(13) And since the exemption of the transgressor from lashes in the cited Mishnah may be due to R. Judah's reason and not R. Jacob's, the question remains, which is the anonymous Mishnah which supports R. Johanan?

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he is guilty of transgressing only one oath:¹ this is the 'useless oath'² for which the punishment of lashes is inflicted for wilful transgression, and the sliding-scale sacrifice for unwitting transgression.³ This is the oath for which the punishment of lashes is inflicted for wilful transgression, but in the case: 'I swear I shall eat,' and he did not eat, [we may deduce] he would not receive lashes. [Presumably because the transgression involves no action, and this anonymous Mishnah would be the one with which R. Johanan agrees.] Now, well! This Mishnah is anonymous, and our Mishnah is anonymous; why does R. Johanan prefer the ruling of this Mishnah rather than of ours? But [might it not be asked as a counter-question] even according to your argument, how can Rabbi⁴ himself agree with both? — At first, Rabbi held that a negative precept not involving action is punishable by lashes, and, therefore, stated the ruling of our Mishnah anonymously; afterwards, he held it is not so punishable, and stated the ruling of the second Mishnah anonymously, and [though he had changed his view] he allowed the first Mishnah to stand also.⁵

You have explained our Mishnah as being in accordance with R. Ishmael's view, and as referring to lashes for wilful transgression: if so, what lashes can there be in connection with the shades of leprosy? — There are lashes in the case where one cuts off his leprous spot; and as R. Abin said in the name of R. Ila'a; for R. Abin said in the name of R. Ila'a: Whenever there occur in Holy Writ the expressions 'take heed', 'lest', or 'do not', they are negative precepts.⁶ In connection with carrying on the Sabbath what lashes can there be? Is it not a negative precept which requires the warning that its violation is punishable by death?⁷ and every such negative precept is not punishable by lashes?⁸ — For this very reason we have explained the Mishnah as being in accordance with R. Ishmael's view, who holds that a negative precept requiring the death warning is [if the lashes warning be given] punishable by lashes.⁹ But, were it not for this, would it have been possible to explain the Mishnah as being in accordance with R. Akiba's view? [Surely not! For] has it not been shown that the laws of uncleanness in our Mishnah are not in accordance with his views? — But did you not say that even according to R. Ishmael, the Mishnah would have to be interpreted as referring to wilful transgressions involving the punishment of lashes; and, if so [were it not for the fact that R. Akiba holds that a negative precept requiring the death warning is not punishable by lashes, even if the lashes warning be given],¹⁰ we could just as easily have explained the Mishnah as being in accordance with R. Akiba's view, and as referring to lashes.¹¹

If so,¹² the phrase THE DISCOVERY OF HAVING SINNED THROUGH UNCLEANNESS [implying unconscious sinning] is inappropriate; the appropriate expression would be 'warnings against sinning through uncleanness'? — This question need cause no difficulty: the Tanna means 'the laws concerning the knowledge of the warnings against sinning' . . . If so, how can there be TWO, SUBDIVIDED INTO FOUR? There are only two!¹³ Further, WHERE THERE IS KNOWLEDGE AT THE BEGINNING AND AT THE END, BUT FORGETFULNESS BETWEEN . . . How can there be forgetfulness, if the Mishnah is referring to wilful transgression and lashes? Further, A 'SLIDING SCALE' SACRIFICE IS BROUGHT [obviously refers to wilful transgression]?¹⁴ — Hence, said R. Joseph, we must conclude that the Tanna of the Mishnah is Rabbi himself, who [as editor] incorporates the views of both Tannaim; for the laws of uncleanness he gives the view of R. Ishmael, and for the laws of oaths he gives the view of R. Akiba [the Mishnah referring accordingly to unwitting transgression]. Said R. Ashi: I repeated this statement [of R. Joseph's] to R. Kahana; and he said to me: Do not think that [R. Joseph meant that] Rabbi simply incorporated in the Mishnah the views of both Tannaim, he himself not agreeing; but the fact is that Rabbi himself, for a sufficiently good reason, agrees [with R. Ishmael in the laws of uncleanness and with R. Akiba in the laws of oaths]. For it is taught: Whence do we deduce that one is not liable [to bring a sacrifice] except when there is knowledge at the beginning and at the end and forgetfulness between? Scripture records: It was hidden from him — twice.¹⁵ This is the opinion of R. Akiba. Rabbi said: This deduction is not necessary. Scripture says:

(1) The first: for, having uttered the first oath, the loaf is already prohibited to him; and when he utters the second oath, he is, as it were, swearing to fulfil a mizvah [i.e., to fulfil the first oath]; and he who swears to fulfil a mizvah, and does not fulfil it, is not liable to punishment; v. infra 27a.

(2) See Lev. V, 4.

(3) Infra 27b.

(4) Rabbi Judah the Prince, redactor of the Mishnah. Why does he include both anonymous Mishnahs, if they contradict each other?

(5) Lit., 'the Mishnah was not removed from its place', Rabbi relying on the intelligence of the student to realise that the second Mishnah is the authoritative one. R. Johanan, therefore, agrees with the second Mishnah.

(6) Deut. XXIV, 8: Take heed in the plague of leprosy. Cutting off a leprous spot is therefore a violation of a negative precept, punishable by lashes.

(7) The violation of a negative precept is punishable only if the appropriate warning be given by witnesses.

(8) Even if the warning was, erroneously, that its violation was punishable by lashes.

(9) Mak. 13b.

(10) Ibid.

(11) And not to an offering.

(12) If the Mishnah refers to wilful transgression and lashes.

(13) Warnings: against eating holy food whilst unclean, and against entering the Temple whilst unclean.

(14) And the question, 'Who is the Tanna of our Mishnah?' still remains unanswered.

(15) Lev V, 2, 3. One being superfluous, it is to teach that the uncleanness was hidden from him after having been known to him (i.e., knowledge at the beginning); knowledge at the end is obviously necessary, otherwise how does he know to bring a sacrifice? (Tosaf).

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it was hidden from him [i.e., forgotten], therefore, it must have been known to him at the beginning; then Scripture says: and he knows of it¹ [i.e., at the end], hence, knowledge is essential both at the beginning and at the end. If so, why does Scripture say: it was hidden from him — twice? — In order to make him liable both in the case of forgetfulness of the uncleanness, and in the case of forgetfulness of the Temple or holy food.²

Concerning the laws of uncleanness, then, Rabbi has his own reason; but concerning oaths, where we do not find that he gives a reason of his own, how do we know [that he holds OATHS ARE TWO, SUBDIVIDED INTO FOUR]? — It is a reasonable assumption; for, what is R. Akiba's reason for including oaths in the past tense for liability? — Because he expounds 'amplifications and limitations'³ We find that Rabbi also expounds 'amplifications and limitations'. For it is taught:⁴ Rabbi said: The first-born of man may be redeemed⁵ by all things except bonds; but the Rabbis⁶ said: The first-born of man may be redeemed by all things except slaves, bonds, and lands. What is Rabbi's reason? — He expounds [the verse in accordance with the principle of] 'amplifications and limitations': And those that are to be redeemed from a month old — the verse amplifies; according to thy valuation, five shekels of silver — the verse limits; shalt thou redeem — the verse again amplifies; since it amplifies, limits, and amplifies, it includes everything, and excludes only bonds. But the Rabbis expound [the verse in accordance with the principle of] 'generalisations and specifications': And those that are to be redeemed from a month old — the verse generalises; according to thy valuation, five shekels of silver — the verse specifies; shalt thou redeem — the verse again generalises; since it generalises, specifies, and generalises, you must include in the 'generalisation' only those things which are similar to the 'specification': just as the specification is clearly movable and of intrinsic value, so all things which are movable and of intrinsic value [may be used for redeeming the first-born]; but you must exclude lands, which are not movable, and slaves, which have been likened to lands,⁷ and bonds, which, though they are movable, are not of intrinsic value. [Hence, since Rabbi expounds 'amplifications and limitations', he agrees with R. Akiba.]

Rabina said to Amemar: Does Rabbi really expound ‘amplifications and limitations’? Surely, Rabbi expounds ‘generalisations and specifications’! For it is taught:⁸ [Then thou shalt take] an awl . . .⁹ Hence I deduce that an awl may be used; whence do I deduce also a sharp wooden prick, thorn, needle, borer, or stylus? — It is said: Thou shalt take — anything that may be taken by hand. This is the opinion of R. Jose, son of R. Judah. Rabbi said: and awl — just as an awl is of metal, so only those things which are of metal [may be used]. And we explained the reason for their argument thus: Rabbi expounds ‘generalisations and specifications’,¹⁰ and R. Jose son of R. Judah expounds

(1) Lev. V, 3.

(2) This proves that the statement THE LAWS OF UNCLEANNES ARE TWO SUBDIVIDED INTO FOUR represents the view of Rabbi.

(3) Infra 26a. R. Akiba expounds the verse (Lev. V, 4) thus: If any one swear clearly with his lips — ‘amplification; (i.e., all oaths); to do evil or to do good — ‘limitation’ (i.e., this particularisation limits the general statement to oaths which are similar to the particular in that they are in the future tense); Whatsoever it be that a man utter clearly with an oath — another ‘amplification’ (this additional general statement serves to amplify the particular, adding even oaths which are not similar to it, i.e., even those in the past tense, and excluding only swearing to transgress a precept).

(4) Bek. 51a.

(5) V. Num. XVIII, 15, 16.

(6) Representing the opinion of teachers in general. And those that are to be redeemed is a general statement, implying that they may be redeemed with all things; this is followed by a particular statement five shekels of silver, limiting redemption to that alone; then follows another general statement shalt thou redeem — apparently with all things. According to Rabbi, the particular (five shekels) implies that the first generalisation is to be taken as including all things which are similar to the particular, and the final generalisation adds even things which are not entirely similar to the particular, excluding only that which is most dissimilar. According to the Rabbis, the particular limits the first generalisation to that particular alone, excluding even similar things, but the final generalisation adds all similar things, excluding all things which are dissimilar. Though in this verse both generalisations precede the particular (and those that are to be redeemed from a month old shalt thou redeem, according to thy valuation, for five shekels of silver), the procedure is, in such a case, to assume that the particular is between the two generalisations. Rabbi’s method of exposition is called ‘amplification and limitation’ (Ribbu u-Mi’ut ריבוי ומיעוט); the other is called ‘generalisation and specification’ (Kelal u-ferat כלל ופרט). The former is more inclusive than the latter.

(7) Lev. XXV, 46: And ye may make them (the slaves) and inheritance for your children, to hold for a possession.

(8) Bek. 51a.

(9) Deut. XV, 17, referring to a Hebrew slave who does not desire to be set free at the end of six years.

(10) Explaining the verse thus: Thou shalt take — a ‘generalisation’; an awl — a ‘specification’; and thrust it through his ear and into the door — another ‘generalisation’ (i.e., anything that may be thrust); in such a case, only those things which are similar to the specification (in the present instance, made of metal) are included. But R. Jose includes everything, excluding only the use of a poison which is powerful enough to bore a hole.

Talmud - Mas. Shevu'oth 5a

‘amplifications and limitations’.¹

True, elsewhere he expounds ‘generalisations and specifications’, but here [in connection with the redemption of the first-born he expounds ‘amplifications and limitations’, and] his reason is that which was taught in the Academy of R. Ishmael, for in the Academy of R. Ishmael it was taught:² In the waters, in the waters — twice.³ This is not ‘generalisation and specification’, but ‘amplification and limitation’. And the Rabbis [who disagree with Rabbi in connection with the redemption of the first-born — what is their reason]? Rabina said: They agree with the Western [Palestinian] Academies who hold that where there are two general statements followed by a particular, the particular should be regarded as being between the two general statements, and the verse may then be expounded on the principle of ‘generalisations and specifications’.

Now that you say that Rabbi [as a general rule] expounds ‘generalisations and specifications’, the difficulty concerning oaths [in our Mishnah] necessarily remains.⁴ We must perforce say, therefore, that [in the Mishnah] he gives R. Akiba's view on oaths, but he himself does not agree.

To revert to the main subject:⁵ ‘Whence do we deduce that one is not liable except when there is knowledge at the beginning and at the end and forgetfulness between? Scripture records: It was hidden from him — twice. This is the opinion of R. Akiba. Rabbi said: This deduction is not necessary. Scripture says: It was hidden from him, — therefore it must have been known to him at the beginning; then Scripture says: And he knows of it [i.e., at the end], hence, knowledge is essential both at the beginning and at the end. If so, why does Scripture say: it was hidden from him — twice: — In order to make him liable both in the case of forgetfulness of the uncleanness, and in the case of forgetfulness of the Temple or holy food.’

The Master said: ‘And it was hidden from him, therefore it must have been known to him’. How do you conclude this? Raba said: Because it is not written: ‘and it is hidden from him’.⁶ Abaye said to him: If so, in connection with the wife suspected of infidelity, when Scripture says: And it was hidden from the eyes of her husband,⁷ will you reason from this also that he knew at the beginning? [Surely not, for] if he knew, the waters would not test her, as it is taught: And the man shall be clear from iniquity, and that woman shall bear her iniquity:⁸ when the man is clear from iniquity, the waters test his wife; but when the man is not clear from iniquity,⁹ the waters do not test his wife.¹⁰ And further, in connection with the Torah it is written: It is hid¹¹ from the eyes of all living, and from the birds of the heavens it is kept secret;¹² will you conclude from this that they knew it? [Surely not, for] it is written: Man knows not the value thereof.¹³ Of necessity then, said Abaye, Rabbi holds that the knowledge gained from a teacher¹⁴ is also called knowledge. But if so, said R. Papa to Abaye, the statement in the Mishnah WHERE THERE IS NO KNOWLEDGE AT THE BEGINNING, BUT THERE IS KNOWLEDGE AT THE END [is incomprehensible, for] is there anyone who has not even the knowledge gained from a teacher? He replied: Yes! it is possible in a child taken into captivity among heathen.

THE LAWS CONCERNING CARRYING ON THE SABBATH ARE OF TWO KINDS, SUBDIVIDED INTO FOUR. We learnt there:¹⁵ The laws concerning carrying on the Sabbath are two, subdivided into four inside;¹⁶ and two, subdivided into four outside.¹⁷ Why does our Mishnah here state simply: TWO, SUBDIVIDED INTO FOUR, and nothing else, whereas the Mishnah there states: Two, subdivided into four inside; and two, subdivided into four outside? — The Mishnah there deals mainly with the Sabbath laws, and therefore mentions the Principals and Derivatives, but our Mishnah here, which is not concerned mainly with the Sabbath laws mentions the Principals only and not the Derivatives. Which are the principals? — Carrying out: the laws of carrying out are only two.¹⁸ [and our Mishnah says: TWO, SUBDIVIDED INTO FOUR]! And perhaps you will say, [our Mishnah means] two hoza'oth [carrying out] which are punishable, and two which are not.¹⁹ [That is not possible, for] they are mentioned together with the shades of leprous affections, and just as those are all punishable, so are these? — We must necessarily say, said R. Papa, that the other Mishnah, which deals mainly with the Sabbath laws, mentions those which are punishable, and those which are not; but our Mishnah mentions only those which are punishable, and not those which are not. Which are those that are punishable? Carrying out: these are only two!²⁰ The Mishnah means two hoza'oth and two haknasoth. But the Mishnah says hoza'oth!²¹ — Said R. Ashi: The Tanna calls haknasah also hoza'ah. How do you know?

(1) Which shows that Rabbi does not expound ‘amplifications and limitations’, and that therefore he does not agree with R. Akiba.

(2) Hul. 67a.

(3) Lev. XI, 9: These may ye eat of all that are in the waters: whatsoever hath fins and scales in the waters, in the seas,

and in rivers, they may ye eat. In the waters is a general statement; in the seas and in the rivers is a particular. In this verse the particular is not between the two general statements, but follows them. In such a case, R. Ishmael's Academy assert, the verse is expounded on the principle of 'amplifications and limitations'. Rabbi agrees, and he therefore expounds similarly the verse about the redemption of the first-born.

(4) For if Rabbi does not expound 'amplifications and limitations' he cannot agree with R. Akiba, who includes oaths in the past tense.

(5) Supra p. 11.

(6) The form of the verb (niph'al) ונעלם used by Scripture has the force of: it became hidden from him, implying knowledge at the beginning.

(7) Num, V, 13: the niph'al is used.

(8) Num, V, 31.

(9) Having known of her intrigue and yet cohabited with her.

(10) Sotah 28a.

(11) The niph'al is used, ונעלסה

(12) Job XXVIII, 21.

(13) Job XXVIII, 13

(14) The theoretical knowledge that one who touches an unclean thing becomes unclean is also considered knowledge for the purpose of 'knowledge at the beginning', even if he did not realise at the moment of touching the unclean thing that he had become unclean. According to this, there is always 'knowledge at the beginning', the only exception being the case of a child taken into captivity among heathen.

(15) In Shab. 2a

(16) The haknasah of the poor man and the haknasah of the householder (which are punishable); and the same two haknasoth when only half the action is done by each person, one person withdrawing the object, and the other taking it from him, thus completing the action. These two haknasoth are not punishable.

(17) Two hoza'oth which are punishable, and two which are not.

(18) Of the householder and the poor man.

(19) v. p. 15, n. 10.

(20) V. previous note.

(21) The word used is yezi'oth (going out), but it is presumably equivalent to hoza'oth (carrying out).

Talmud - Mas. Shevu'oth 5b

— Because we learnt: He who carries out from one domain to another domain [on the Sabbath] is guilty.¹ And are we not concerned there also with bringing in, and yet he calls it hoza'ah.? [No!] Perhaps [the Tanna means] carrying out from a private domain to a public domain. — If so, let him say distinctly: He who carries out from a private domain to a public domain [is guilty]; why does he say: 'from one domain to another domain'? Obviously, to include even bringing in from a public domain to a private domain; and he calls it hoza'ah — What is the reason? — The withdrawing of an object from its place the Tanna calls hoza'ah. Rabina said: The Mishnah also lends support to this view, for it states: The laws of carrying [Yezi'oth] on the Sabbath are two, subdivided into four inside; and two, subdivided into four outside: and it goes on to explain haknasah [bringing in]!² This is conclusive. Raba said: The Tanna means domains; there are two kinds of domain³ with regard to carrying on the Sabbath.

THE SHADES OF LEPROUS AFFECTIONS ARE TWO, SUBDIVIDED INTO FOUR. We learnt there:⁴ the shades of leprous affections are two, subdivided into four: Bahereth intensively white, like snow; secondary to it [i.e., its derivative], Sid ha-hekal; Se'eth like white wool; secondary to it, Kerum bezah.⁵ R. Hanina said: the Tanna who stated this Mishnah of leprous affections⁶ is not R. Akiba; for, if it were R. Akiba, then, since elsewhere he enumerates them one above the other,⁷ Sid hekal cannot combine with any other shade; for, with which shade will you combine it? Will you combine it with Bahereth? There is Se'eth which is [one degree] higher than it [intervening, Bahereth being two degrees higher]. Will you combine it with Se'eth.? It is not its derivative. If so, Kerum

bezah also — with what will you combine it? Will you combine it with Se'eth? There is Sid which is [one degree] higher than it [intervening, Se'eth being two degrees higher]. Will you combine it with Sid? It is not of its kind.⁸

(1) Shah. 73a.

(2) The poor man, having withdrawn an object from public territory, stretches out his hand into the house, and hands it to the householder; the poor man is guilty. V. Mishnah, Shah. 2a.

(3) Public and private, which produce four punishable transgressions, two hoza'oth and two haknasoth. Raba endeavours to explain why the Tanna uses the word yezi'oth and not hoza'oth; and he explains that it means 'goings out', i.e., roads or paths which go out or lead out, and is therefore equivalent to domains (Tosaf).

(4) V. Neg. I, 1.

(5) V. supra Mishnah, note 4.

(6) In the form of principals and derivatives, implying that a principal combines with its derivative to form the requisite size of כַּגִּיס כַּגִּיס garis, bean, to mark the person thus afflicted a leper.

(7) According to their degree of whiteness — Bahereth, Se'eth, Sid, Kerum; holding that two shades, if separated by only one degree, may combine.

(8) For Sid and Kerum are derivatives of two different principals.

Talmud - Mas. Shevu'oth 6a

This is no question: without Sid hekal, Kerum bezah would present no difficulty, for, although Kerum bezah is [two degrees] lower than Se'eth, Scripture says: For Se'eth and for Sappahath.¹ Sappahath is secondary to Se'eth although it is much [i.e., two degrees] lower. But Sid hekal presents a difficulty: [with what shade can it combine?] Obviously, then, our Mishnah [in making Sid secondary to Bahereth, and Kerum secondary to Se'eth] is not in accordance with R. Akiba's view.

And where have we heard R. Akiba [enumerating the shades of leprosy] one above the other? Shall we say, in the following [Baraita], where it is taught that R. Jose said: Joshua, the son of R. Akiba, asked R. Akiba. 'Why did they say the shades of leprous affections are two, subdivided into four?' He replied. 'What should they say?' 'They should say', [said his son, 'All shades] from Kerum bezah and upwards are unclean'. He replied. '[The Rabbis stated the law in the form of two, subdivided into four] so that we may deduce that they combine with each other.' His son argued. 'They could have said. "[All shades] from Kerum bezah and upwards are unclean, and combine with each other".' He replied. '[The Rabbis stated it in the form of two, subdivided into four] to teach us that a priest who is not well versed in them and their names is not competent to inspect the leprous shades.' Now, [in his question], Joshua did not suggest [that they could have said that the shades from Kerum bezah and upwards are unclean and combine, and the shades] from Sid hekal and upwards are unclean and combine. And because he did not say this, we may deduce that he had heard that R. Akiba held that they all combine with Se'eth,² [But this is not conclusive], as [R. Akiba may perhaps hold that] Se'eth combines with its derivative, and Bahereth with its derivative.³ Well, then from R. Hanina's statement [we may deduce that R. Akiba enumerates the shades one above the other], for R. Hanina said: To what may R. Akiba's statement be compared? — To four tumblers of milk; into one there fell two drops of blood; into the second, four drops; into the third, eight drops; and into the fourth, twelve drops — some say, sixteen drops. They are all shades of white, but one above the other. [No!]⁴ When did you hear R. Akiba holding this view — only in connection with variegated leprosy,⁵ but did you hear it in connection with plain [white leprosy]? And if you will say that, just as he holds this view in connection with variegated leprosy, so he holds it in connection with plain; are you really sure that he holds it [even] in connection with variegated leprosy? Is it not taught: R. Akiba says: the redness in this and in that [Bahereth and Se'eth] is like wine mixed with water, except that Bahereth is white like snow, and Sid is fainter than it.

(1) Lev. XIV, 56: For a rising and for a scab. Sappahath (translated 'scab') is from a root meaning 'to Join', 'be added

- to'. It is here taken to denote that which is joined, attached to Se'eth (translated 'rising'), i.e., its derivative Kerum bezah.
- (2) Because he suggests that the Rabbis could have said: the shades from Kerum and upwards are unclean and combine: without differentiating a derivative for Bahereth and a derivative for Se'eth. Hence we may deduce that Se'eth has two derivatives, Sid and Kerum (because Sappahath, which implies derivatives, is connected with Se'eth in Holy Writ), both of which combine with it and each other, and that Bahereth being only one degree higher than Se'eth also combines with Se'eth; but Bahereth has no derivative. Thus R. Akiba holds they are one above the other.
- (3) And Joshua really asked: Let them say the shades from Kerum and upwards and from Sid and upwards are unclean and combine; but R. Jose was not particular to quote him verbatim.
- (4) Neither is this conclusive.
- (5) Reddish-white; v. Lev. XIII, 19

Talmud - Mas. Shevu'oth 6b

And if it is [as you say, that R. Akiba holds they are one above the other, i.e., Bahereth, then Se'eth], he should have said: White wool [i.e., Se'eth] is fainter than it? — That is so [R. Akiba really said Se'eth, and not Sid]. And so said R. Nathan: R. Akiba did not say: Sid is fainter than it, but white wool [i.e., Se'eth] is fainter than it.

And how do we know that Bahereth is brilliantly white? Abaye said: Because Scripture says: And if the bright spot be white . . .¹ That is white and no other is [as] white [as it].

Our Rabbis taught: Bahereth is deep; and so Scripture says: And the appearance thereof [of the Bahereth] is deeper than the skin² — like the appearance of the sun which is deeper than the shade. Se'eth: Se'eth denotes high; and so Scripture says: Upon all the high mountains and upon all the hills that are lifted up.³ Sappahath: Sappahath denotes an attachment [i.e derivative]; and so Scripture says: And he shall say: Attach me, I pray thee, [to one of the priest's offices].⁴ We find a derivative for Se'eth.⁵ Whence do we deduce that there is a derivative for Bahereth.⁶ R. Zera said: The word 'white' is mentioned with Se'eth,⁷ and the word 'white' is mentioned with Bahereth.⁸ Just as the 'white' mentioned with Se'eth has a derivative, so the 'white' mentioned with Bahereth has a derivative.⁹ In a Baraita it is taught: Scripture put Sappahath¹⁰ between Se'eth and Bahereth¹¹ to teach you that just as there is a derivative for Se'eth, so there is a derivative for Bahereth.

Se'eth is like white wool. What white wool? — R. Bibi said that R. Assi said: Clean wool of a new-born lamb which is covered, up [to be made] into a cloak of fine wool.¹²

R. Hanina said: The Rabbis' enumeration [of the four shades] — to what may it be likened? To two Kings and two Governors: the King of this is higher than the King of that; and the Governor of this is higher than the Governor of that.¹³ But this [enumeration] is one above the other!¹⁴ — Well then, the King of this is higher than his own Governor; and the King of that is higher than his own Governor.¹⁵ R. Adda bar Abba said: It is like King, Alkafta,¹⁶ Rufila,¹⁷ and Resh Galutha.¹⁸ But this is one above the other! Well then, it is like King, Rufila, Alkafta, and Resh Galutha. Raba said: It is like King Shapur and Caesar.¹⁹ R. Papa said to Raba: Which of them is greater? He replied: You eat in the forest!²⁰ Go forth and see whose authority is greater in the world; for it is written: It shall devour the whole earth, and shall tread it down, and break it in pieces.²¹ Said R. Johanan: This is wicked Rome²² whose authority is recognised all over the world. Rabina said: It is like a [new white] woollen garment, and a worn-out woollen garment; and a [new white] linen garment, and a worn-out linen garment.²³

WHERE THERE IS KNOWLEDGE AT THE BEGINNING ETC. Our Rabbis taught: How do we know that Scripture [in demanding a sliding scale sacrifice for uncleanness] refers only to cases where the Temple is entered or holy food eaten while unclean?²⁴ — There is a good argument for this deduction. Scripture warns against uncleanness,²⁵ and punishes it,²⁶ and also enacts that a

sacrifice be brought for uncleanness.²⁷ Now just as Scripture, in warning against uncleanness and punishing it, did so only in cases where the Temple was entered or holy food eaten while unclean; so when it enacted that a sacrifice be brought for uncleanness, it did so only in cases where the Temple was entered or holy food eaten. Then let us include Terumah²⁸ [for sacrifice, if eaten while unclean], since Scripture also warned [against its being eaten while unclean] and punished [the transgressor with death by divine intervention]?²⁹ — We do not find that the sin for which the death penalty by divine intervention is inflicted [for wilful transgression] should be punishable by sacrifice [for unwitting transgression].³⁰ You may say it is only the case in regard to a fixed sacrifice, but

(1) Lev. XIII. 4: 'bright spot' is the translation of Bahereth.

(2) Ibid. 25.

(3) Isa. II, 14: **נשאות** (lifted up) is from the same root as **שאת**.

(4) I Sam. II, 36. **ספחני** (Attach me) is from the same root as **ספחת**.

(5) V. supra p. 17, n. 7.

(6) This question is according to the Sages who hold that Bahereth has a derivative; and not according to R. Akiba who holds that it has no derivative.

(7) Lev. XIII, 10.

(8) Ibid. 4.

(9) This kind of deduction is called **גזרה שוה** Gezerah Shawah: an inference from similarity of phrases; v. Glos.

(10) Meaning derivative.

(11) Lev. XIV, 56.

(12) A covering of skin is clasped round the lamb to protect the wool.

(13) Bahereth, the King (i.e., principal) of Sid, is higher than Se'eth, the King of Kerum; and Sid, the Governor (i.e., second in command) of this King (Bahereth), is higher than Kerum, the Governor of that King (Se'eth). According to this, the order is: Bahereth, Se'eth, Sid, Kerum.

(14) Which is R. Akiba's and not the Rabbis' enumeration.

(15) I.e., Principal and derivative: Bahereth, Sid; Se'eth, Kerum.

(16) High Persian dignitary.

(17) Persian military officer, lower than Alkafta.

(18) Chief of the Babylonian Jews.

(19) I.e., Persian King and Roman Emperor, each having an adjutant.

(20) You live in a forest, and know not what is going on in the world. Surely you know that the Roman Emperor is greater! R. Papa, however, asked the question, because Raba had mentioned Shapur before Caesar. Raba had done so, because he was a Persian subject.

(21) Dan. VII, 23.

(22) Read **רומי** in the text instead of **פרם**.

(23) New garments are whiter than worn-out ones. New woollen and linen garments are closer to each other in whiteness than are the new and worn-out garments of each kind; so the two principals are, according to the Rabbis, nearer to each other than are principal and derivative of each kind.

(24) Lev. V, 2. The verse merely states: If anyone touch any unclean thing . . . , making no mention of eating holy food or entering the Temple while unclean.

(25) Num. V, 2-3: Command the Children of Israel that they put out of the camp . . . whosoever is unclean . . . that they defile not their camp; this is explained (Pes. 67a) as a warning against entering the Temple while unclean. Lev. XXII, 4: He shall not eat of the holy things until he be clean; this is the warning against eating holy food while unclean.

(26) With Kareth for willing transgression; Num. XIX. 13: Whosoever toucheth the dead . . . and purifieth not himself — he hath defiled the tabernacle of the Lord — that soul shall be cut off; this is the punishment for entering the Temple while unclean. Lev. VII, 20: Anyone that eateth of the flesh of the sacrifice of peace offerings . . . having his uncleanness upon him, that soul shall be cut off; this is the punishment for eating holy food while unclean.

(27) For unwitting transgression.

(28) The priest's share of the produce, which is holy in a minor degree; v. Glos.

(29) **מיתיה** Mithah, as distinct from Kareth (v. Glos.). Lev. XXII, 4: He shall not eat of the holy things until he be clean; this is explained (Yeb. 74b) as being a warning also against eating Terumah while unclean, holy things including

Terumah. Ibid. 9: They shall therefore keep My charge, lest they bear sin for it, and die therein, if they profane it; this is the punishment for eating Terumah while unclean.

(30) When wilful transgression is punished by Kareth, unwitting transgression is punished by sacrifice (Hor. 8a).

Talmud - Mas. Shevu'oth 7a

a sliding scale sacrifice should perhaps be, as in the case of 'hearing the voice of adjuration'¹ and 'swearing clearly with the lips'² [where a sliding scale sacrifice is brought for unwitting transgression, though neither Kareth nor death [by divine intervention] is inflicted for wilful transgression]? — Scripture says: [Whatsoever his uncleanness be] by which [he becomes unclean].³ By which, excludes Terumah.⁴ Let us rather say that by which excludes Temple [and holy food] in that a sliding scale sacrifice shall not suffice, but a fixed sacrifice be necessary? Raba said of Rabbi: He draws water from deep pits;⁵ for it was taught: Rabbi said: I read, [If any one touch any unclean thing, whether it be the carcass of an unclean] beast [or the carcass of unclean cattle . . .].⁶ Why should cattle be written?⁷ — [To deduce the following:] Here it is said unclean cattle, and further on it is said unclean cattle.⁸ Just as there it refers to eating holy food while unclean, so here it refers to eating holy food while unclean. Thus we deduce the law regarding eating holy food while unclean; whence do we deduce the law regarding entering the Temple while unclean? — Scripture says: She shall touch no hallowed thing, nor come into the sanctuary.⁹ Sanctuary is equated with holy food. — If so, Terumah also [should be included for sliding scale sacrifice, if eaten while unclean], for it has been said that she shall touch no hallowed thing includes Terumah?¹⁰ — [No!] Scripture limits the application of the law by the expression, by which.¹¹ — Let us say that the expression by which excludes Temple [and not Terumah]? — It is reasonable not to exclude Temple, because the same punishment, Kareth, is inflicted [for wilfully entering the Temple, or eating holy food, while unclean].¹² — On the contrary, Terumah should not be excluded, because the act of transgression consists of eating, just as in the case of holy food [whereas in the case of the Temple, it is entering it which constitutes the transgression]? Well then, said Raba:¹³ Why is the punishment of Kareth for eating peace offerings [i.e., holy food] while unclean mentioned three times in Holy Writ?¹⁴ — Once for a general statement,¹⁵ once for a particular, and once for the uncleanness written in the Torah without being defined,¹⁶ so that I know not what it means. You may say, then, it means eating holy food while unclean; and since it is unnecessary to have another prohibition for eating holy food while unclean, for I deduce that from Rabbi's statement, you may utilise the prohibition for entering the Temple while unclean. — But this [extra Kareth] we require for R. Abbahu's deduction! For R. Abbahu said: Why does Scripture mention Kareth three times for eating peace offerings [while unclean]? — Once for a general statement, once for a particular, and once for things which are not eaten.¹⁷ And according to R. Simeon who holds that things which are not eaten are not punishable by Kareth if eaten during uncleanness,¹⁸ [we still require the extra Kareth to deduce that] the 'inner' sin offerings¹⁹ are included,²⁰ for we might have thought that, since R. Simeon holds that sacrifices which are not offered on the outer altar, as are peace offerings, are not subject to the law of piggul,²¹ therefore they are also not subject to the law of uncleanness;²² he therefore teaches us that they are. [The third Kareth, then, is necessary for this deduction. How then shall we deduce that an unclean person entering the Temple brings a sliding scale sacrifice?] — Well then, the Nehardeans say in the name of Raba:²³ Why does Scripture mention 'uncleanness' three times²⁴ in connection with peace offerings? — Once for a generalisation, once for a particular, and once for the uncleanness written in the Torah without being explained, so that I know not what it means. You may say then, it refers to eating holy food while unclean, and since it is unnecessary to have another prohibition for that, for I deduce that from Rabbi's statement, you may utilise the prohibition for entering the Temple while unclean. But this [extra word 'uncleanness'] we also require; since Scripture had to write [the extra] Kareth for R. Abbahu's deduction, it perforce had to write also [the extra] 'uncleanness', for without it the phrase would have been meaningless? — Well then, said Raba: We deduce [that an unclean person entering the Temple brings a sliding scale sacrifice] from [the similarity of phrases] 'his uncleanness', 'his uncleanness'. Here it is written: [If he touch the uncleanness of man] whatsoever

his uncleanness be.²⁵

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- (1) Lev. V, 1: He heareth the voice of adjuration, he being a witness; v. infra Ch. IV.
- (2) Ibid. 4: If anyone swear clearly with his lips to evil or to do good; v. infra p. 1, n. 1.
- (3) Ibid. 3.
- (4) The word **בַּרְבַּר**, by which, is superfluous, and is taken to limit the applications of the law to some extent, i.e., to exclude a sacrifice for the lesser transgression; so that only for eating holy food while unclean is a sacrifice brought, but not for eating Terumah while unclean.
- (5) I.e., shows great erudition. Here follows another argument to deduce that holy food and Temple are included, and Terumah excluded.
- (6) Lev. V, 2.
- (7) Cattle is included in beast. V. Lev. XI, 2, 3: These are the beasts which ye may eat . . . whatsoever parteth the hoof . . . among the cattle . . .
- (8) Lev. VII, 21: And when anyone shall touch any unclean thing, whether it be the uncleanness of man or unclean cattle . . . and eat of the flesh of the sacrifice of peace offerings, which pertain unto the Lord, that soul shall be cut off from his people.
- (9) Lev. XII, 4: referring to a woman after childbirth.
- (10) Mak. 14b.
- (11) V. supra p. 22, n. 5.
- (12) Whereas the wilful eating of Terumah while unclean is not punishable by Kareth.
- (13) Another argument for including Temple and holy food, and excluding Terumah.
- (14) (a) Lev. XXII, 3: Whosoever he be . . . that approacheth unto the holy things . . . having his uncleanness upon him, that soul shall be cut off. (Approach here means eat; v. Zeb. 45b). (b) Lev. VII, 20: Anyone that eateth of the flesh of the sacrifice of peace offerings . . . having his uncleanness upon him, that soul shall be cut off (c) Ibid. 21: When anyone shall touch any unclean thing . . . and eat of the flesh of the sacrifice of the peace offerings . . . that soul shall be cut off.
- (15) Lev. XXII, 3: Whosoever he be . . . that approacheth unto the holy things. This is a generalisation — holy things; Lev. VII, 20: Anyone that eateth of the flesh of the sacrifice of the peace offerings. This is a particular specification — peace offerings. Now, peace offerings are included in holy things: why should they be specified separately? — In order that we may deduce that only holy things which are sacrificed on the altar (as are peace offerings) are included in the law regarding uncleanness, but offerings for the Temple repair are excluded. (Rashi.)
- (16) The Kareth in Lev. VII, 21, being superfluous, is for the purpose of teaching that it is the punishment for the witting transgression of that sin (eating holy food while unclean), the unwitting transgression of which is punished by a sliding scale sacrifice in Lev. V, 2 (which is there not fully defined). And since we already know that unwittingly eating holy food while unclean punishable by a sliding scale sacrifice (from Rabbi's deduction, v. supra), we may apply the superfluous Kareth for deducing that it is the punishment for the witting transgression of that sin, the unwitting transgression of which is punishable by a sliding scale sacrifice, i.e., entering the Temple while unclean (for, eating holy food while unclean we already know).
- (17) Such as incense. If he eats it wittingly while unclean, the transgressor is punished by Kareth.
- (18) V. Zeb. 45b.
- (19) Such as the bullock and goat offered on the Day of Atonement, whose blood is sprinkled within the veil.
- (20) Eating them while unclean is punishable by Kareth for witting, and sliding scale sacrifice for unwitting, transgression.
- (21) Zeb. 43a. **פִּיגּוּל** (abomination, Lev. VII, 18; XIX, 7, 8) is a sacrifice left over beyond the time limit for its consumption; its eating is punishable by Kareth. Piggul is mentioned only in connection with peace offerings. The 'inner' sin offerings, according to R. Simeon, are, therefore, not subject to the law of piggul.
- (22) Anyone eating an 'inner' sin offering while unclean would not be liable to Kareth for witting transgression, or sliding scale sacrifice for unwitting transgression.
- (23) Another version of Raba's statement.
- (24) Lev. XXII, 13: having his uncleanness upon him; Lev. VII, 20: having his uncleanness upon him; Lev. VII, 21: when anyone shall touch any unclean thing.
- (25) Lev. V, 3.

Talmud - Mas. Shevu'oth 7b

And there it is written: He shall be unclean; his uncleanness is yet upon him.¹ Just as there it refers to entering the Temple while unclean,² so here it refers to entering the Temple while unclean. — If so, why is the expression by which necessary?³ — To include [that he who eats] the carcass of a clean bird⁴ [and enters the Temple or eats holy food must bring a sliding scale sacrifice]. — But you said that by which is intended to exclude [and not include]! For the very reason that it does exclude it is superfluous: it is written: Or if he touch [the uncleanness]⁵ — this implies that only that which defiles by touch is included [in the regulation of the sliding scale sacrifice], but that which does not defile by touch is not included.⁶ Then it is written also: by which⁷ which implies limitation. We have, then, limitation after limitation; and limitation after limitation serves to amplify.⁸ WHERE THERE IS KNOWLEDGE AT THE BEGINNING BUT NOT AT THE END, THE GOAT THE BLOOD OF WHICH IS SPRINKLED WITHIN THE VEIL etc.

Our Rabbis taught: And he shall make atonement for the holy place, because of the uncleannesses of the Children of Israel . . .⁹ It is possible in this phrase to include three types of uncleanness — the uncleanness of idolatry, the uncleanness of incest, and the uncleanness of bloodshed. Of idolatry the verse says: [He hath given of his seed unto Molech] to defile My sanctuary.¹⁰ Of incest it says: Ye shall keep My charge, that ye do not any of these abominable customs . . . that ye defile not yourselves therein.¹¹ Of bloodshed it says: And thou shalt not defile the land.¹² Now, I might have thought that for these three types of uncleanness this ['inner'] goat atones, therefore the text says: Of the uncleannesses of the Children of Israel,¹³ and not 'all the uncleannesses'. [These three are excluded, because] what [uncleanness] do we find that the text has differentiated from all other uncleannesses? — You must say, it is the uncleanness of [the transgressor who enters] the Temple or [eats] holy food;¹⁴ so here also [the text in stating that the inner goat atones for the transgression of the laws of uncleanness refers to] the uncleanness connected with Temple and holy food.¹⁵ This is the opinion of R. Judah. R. Simeon says: From its own text it may be deduced, for it says. And he shall make atonement for the holy place, of the uncleannesses . . ., [i.e.,] of the uncleannesses of the holy place.¹⁶ Now, I might have thought that for every uncleanness connected with the Temple and holy food¹⁷ this goat atones, therefore the text says: And of their transgressions, even all their sins¹⁸ — sins are equated with transgressions; just as transgressions are not liable for sacrifice,¹⁹ so sins [in this verse] are those which are not liable for sacrifice.²⁰ And how do we know that [only] when there is knowledge at the beginning and not at the end does this goat hold the sin in suspense?²¹ — Because the text says, even all their sins — implying sins for which a sin offering may ultimately be brought.²²

The Master stated: 'It is possible in this phrase²³ to include three types of uncleanness — the uncleanness of idolatry, the uncleanness of incest, and the uncleanness of bloodshed.' With reference to idolatry, how is it possible? If it was witting transgression, the transgressor suffers the death penalty;²⁴ if unwitting, he brings a sacrifice.²⁵ — [Yes, it may atone] for witting transgression without warning,²⁶ or unwitting transgression before it becomes known to him.²⁷

(1) Num. XIX, 13.

(2) Ibid: He hath defiled the Tabernacle of the Lord.

(3) V. supra p. 22, n. 5. It had been suggested that by which excludes Terumah; but that argument had been refuted; and now we find that we even require an extra deduction to include Temple; we should therefore not have included Terumah in any case, even without the limitation of by which.

(4) A dead clean bird defiles on being eaten, and not on being touched, as does a dead beast. V. Zeb. 69b.

(5) Lev. V, 3.

(6) Hence the carcass of a clean bird is automatically excluded.

(7) Ibid. Whatsoever his uncleanness be by which he is unclean. By which implies some limitation or exclusion.

(8) A double limitation is equivalent to an amplification, just as a double negative is equivalent to a positive. This is one

of the thirty-two hermeneutical principles by which R. Eliezer, son of R. Jose the Galilean, expounds Holy Writ. In the present instance the double limitation serves to include that he who eats the carcass of a clean bird and enters the Temple or eats holy food must bring a sliding scale sacrifice.

(9) Lev. XVI, 16: referring to the sacrifice of the High Priest on the Day of Atonement of the goat the blood of which is sprinkled within the veil.

(10) Ibid. XX, 3; worshipping Molech is idolatry (Sanh. 64a).

(11) Ibid. XVIII, 30, referring to incest and other offences enumerated in the chapter.

(12) Num. XXXV, 34.

(13) Lev. XVI, 16: The **מ** of **מטמאת** (of) is taken as partitive, implying some of, and not all.

(14) In that a sliding scale sacrifice is brought for unwitting transgression, whereas a fixed sacrifice is brought for other unwitting transgressions.

(15) And not idolatry, incest, or bloodshed.

(16) As if in the text the two consecutive words **הקדש מטמאת** were transposed to read **מטמאת הקדש**

(17) Even where there is knowledge at the end.

(18) Lev. XVI, 16.

(19) Transgressions mean witting sins, and cannot be atoned for by sacrifice.

(20) Excluding those where there is knowledge at the end, when a sliding scale sacrifice is brought.

(21) And does not atone for the sin where there is no knowledge at the beginning, though it is also not liable for a sacrifice.

(22) **הטאתם** which may be atoned for by **הטאת**; i.e., where there is knowledge at the beginning, but not at the end; a sacrifice is brought later when knowledge comes to the sinner. But where there is knowledge at the beginning, there is no possibility that a sacrifice may ultimately be brought.

(23) Lev. XVI. 16.

(24) Stoning; v. Sanh. 53a.

(25) A she-goat; v. Num. XV, 27. How then could we possibly suggest that the 'inner' goat of the Day of Atonement atones for idolatry.

(26) When warning has not been given, the death penalty is not inflicted (Sanh. 41a).

(27) The inner goat will hold the sin in suspense till it become known to him, and he brings a sacrifice.

Talmud - Mas. Shevu'oth 8a

With reference to incest also, how is it possible? If it was witting transgression, the transgressor suffers the death penalty;¹ if unwitting, he brings a sacrifice.² — [Yes, it may atone] for witting transgression without warning, or unwitting transgression before it becomes known to him. With reference to bloodshed also, how is it possible? If it was witting transgression, the transgressor suffers the death penalty;³ if unwitting, he is exiled?⁴ — [Yes, it may atone] for witting transgression without warning, or unwitting transgression before it becomes known to him, or for cases where the punishment of exile is not inflicted.⁵

The Master has stated: 'I might have thought that for these three types of uncleanness this goat atones, therefore the text says, of the uncleannesses, and not "all the uncleannesses." What do we find that the text has differentiated from all other uncleannesses? — The uncleanness connected with Temple and holy food; so here also [the text refers to] the uncleanness connected with Temple and holy food. This is the opinion of R. Judah.' What is the differentiation [alluded to]? — [In that] he [alone]⁶ brings a sliding scale sacrifice.⁷ Then include idolatry;⁸ and as to the differentiation, it is in that the sinner brings a she-goat and not a lamb?⁹ — R. Kahana said: We mean a differentiation to relax,¹⁰ but this is a differentiation to restrict.¹¹

Then include a woman after childbirth, for the text differentiates in her case in that she brings a sliding scale sacrifice?¹² — R. Hoshai said: [The verse says,] all their sins,¹³ and not 'all their uncleannesses.' And according to R. Simeon b. Yohai who said that a woman after childbirth is also a sinner,¹⁴ what shall we say?¹⁵ — R. Simeon is consistent in that he holds 'from its own text it may

be deduced.’¹⁶

Then include a leper [who also brings a sliding scale sacrifice]?¹⁷ — R. Hoshaia said [the verse says]: all their sins; and not ‘all their uncleannesses’.¹⁸ And according to R. Samuel b. Nahman who said, for seven sins leprosy afflicts man,¹⁹ what shall we say?²⁰ — There the leprosy itself atones for him;²¹ and the sacrifice is merely to permit him to join the congregation. Then include a Nazirite²² who has become unclean, for the text differentiates in his case in that he brings turtledoves or young pigeons?²³ — R. Hoshaia said [the verse says]: all their sins, and not ‘all their uncleannesses.’²⁴ And according to R. Eleazar ha-Kappar who said that a Nazirite is also a sinner,²⁵ what shall we say?²⁶ — He agrees with R. Simeon who holds that ‘from its own text it may be deduced.’²⁷

The Master has stated: ‘R. Simeon said from its own text it may be deduced, for it says: And he shall make atonement for the holy place, of the uncleannesses . . . of the uncleannesses of the holy place.’ R. Simeon argues well. [Why then does not] R. Judah [accept this deduction]?²⁸ — He may say to you that [and he shall make atonement . . .] is required [to teach us] that just as he does in the Holy of Holies,²⁹ so shall he do [outside the veil] in the Temple. And how does R. Simeon [deduce this]? — He deduces it from and so shall he do.³⁰ And R. Judah [cannot he also deduce it from this phrase? — No!] From this phrase we might have thought that he must bring another bullock and goat to do [the service outside the veil in the Temple], therefore the text teaches us [and he shall make atonement for the holy place, implying that he shall use the same bullock and goat, and so shall he do means that he shall repeat the service outside the veil]. And R. Simeon [why does he not agree with this argument of R. Judah? — Because the phrase] and so shall he do for the tent of meeting implies everything.³¹

The Master stated: ‘I might have thought that for every uncleanness connected with the Temple and holy food this goat atones, therefore the text says: and of their transgressions, even all their sins [- sins are equated with transgressions; just as transgressions are not liable for sacrifice, so sins in this verse are those which are not liable for sacrifice: but a sin which is liable for sacrifice is excluded, i.e., the inner goat does not atone for it].’³² Which is it [that is excluded]? Where there is knowledge at the beginning and at the end. [Surely for such a sin] the transgressor must bring a sliding scale sacrifice!³³ The deduction is not necessary save in the case where the sin becomes known to the transgressor near sunset [on the eve of the Day of Atonement].³⁴ I might have thought that [in the meantime] until he brings his sacrifice,

(1) Stoning; v. Sanh. 53a.

(2) Ker. I, 2.

(3) Decapitation by the sword; Num XXXV, 16; Sanh, 76b.

(4) Num. XXXV, 11.

(5) E.g., if a man ascending a ladder falls on another man and kills him, he is not exiled; v. Mak. 7b.

(6) I.e., the unwitting transgressor of the laws of uncleanness connected with the Temple and holy food.

(7) Whereas for other unwitting transgressions a fixed sacrifice is brought.

(8) That the inner goat of the Day of Atonement should atone for it.

(9) Whereas for other unwitting transgressions, either a she-goat or a lamb may be brought.

(10) A sliding scale sacrifice is an act of leniency on the part of Holy Writ enabling the sinner to bring an offering according to his means (v. p. 1, n. 7) — a differentiation characteristic of the inner goat of the Day of Atonement, which is a sacrifice bought from public funds, and secures for the individual sinner the suspension of his sin.

(11) He must bring a she-goat even at great expense.

(12) Lev. XII, 6-8. If the Day of Atonement arrives before the time when she has to bring her sacrifice, let us say that the inner goat has already atoned for her, and she need not bring a sacrifice.

(13) Ibid. XVI, 16. The inner goat atones for sins; but the woman, in giving birth to a child, has not committed a sin; she brings a sacrifice merely to cleanse her from her uncleanness, so that she may partake of holy food.

- (14) Nid. 31b; because of the travail she vows she will not cohabit again with her husband; and she breaks her vow.
- (15) Why should not the inner goat atone for her?
- (16) He does not exclude a woman after childbirth because of the phrase all their sins; but he deduces that the inner goat atones only for the sin of uncleanness connected with the Temple and holy food from its own text; v. supra p. 26.
- (17) Lev. XIV, 10-32.
- (18) A leper is not a sinner,
- (19) Calumny, bloodshed, false oath, incest, haughtiness, robbery, selfishness; 'Ar. 16a.
- (20) A leper is therefore a sinner; let us say then that the inner goat of the Day of Atonement atones for him.
- (21) The distress he suffers because of his leprosy is sufficient punishment for him.
- (22) One who vows to consecrate himself to God; he must abstain from grapes and all productions of the vine, and let his hair grow; v. Num. VI, 1-21.
- (23) Ibid. 9-10.
- (24) A Nazirite is not a sinner.
- (25) By his vow he has inflicted upon himself abstinence from wine, and has thereby sinned; Nazir 19a.
- (26) Why should not the inner goat atone for him?
- (27) That the inner goat atones only for the uncleanness connected with Temple and holy food.
- (28) Instead of deducing it from the fact that Holy Writ differentiates in the case of the uncleanness connected with Temple and holy food; v. supra p. 26.
- (29) Lev. XVI, 14, 15.
- (30) Ibid. 16.
- (31) That he shall repeat the service outside the veil; and it would not have entered our minds to think that he should bring an extra bullock and goat. Therefore the phrase and he shall make atonement for the holy place, of the uncleannesses is superfluous, and hence may of be utilised for the deduction that the inner goat atones only for the uncleannesses of the holy place, i.e., Temple and holy food.
- (32) V. supra p 26.
- (33) Why then do we require the deduction to exclude such a sin from the atonement effected by the inner goat.
- (34) When there is no time to bring the sliding scale sacrifice, as sacrifices are offered only during the day-time (v. Meg. 20b).

Talmud - Mas. Shevu'oth 8b

the inner goat should hold the sin in suspense, therefore the text teaches us [that it does not].

The Master stated: 'How do we know that, when there is knowledge at the beginning and not at the end, this goat holds the sin in suspense?' 'How do we know'! What is his question?¹ — This is his question: Now that you say, 'sins are equated with transgressions: just as transgressions are not liable for sacrifice, so sins are those which are not liable for sacrifice;' you might logically argue, just as transgressions are never liable for sacrifice, so sins are those which are never liable for sacrifice; and which are they? Those where there is no knowledge at the beginning but knowledge at the end; but where there is knowledge at the beginning and not at the end, since, when the knowledge comes to him at the end, he is liable to bring a sacrifice, let us say that the inner goat should not hold the sin in suspense! And if you² should say, where there is no knowledge at the beginning but knowledge at the end, the outer goat together with the Day of Atonement atones?² — I might have thought that we should reverse [the atonements].³ Therefore the text says: even all their sins, so that we may infer that they are ultimately liable for a sin offering⁴ [i.e., the inner goat holds in suspense those sins where there is knowledge at the beginning but not at the end]. But why should it not atone completely [instead of merely holding the sin in suspense till he brings his sacrifice]? — If it had been written: '[And he shall make atonement . . . of their transgressions and] of their sins,'⁵ I should have agreed with you: but now that it is written: '[of their transgressions], even all their sins,' [the text means that it holds in suspense] such transgressions as may ultimately be atoned for by sin offerings.⁶

Now since it does not atone completely, what is the purpose of holding it in suspense? — R. Zera said: So that if he dies [before the knowledge comes to enable him to bring his sacrifice] — he dies without sin. Said Raba to him: If he dies, his death purges him from sin;⁷ but, said Raba, the inner goat [by holding the sin in suspense] shields him from suffering⁸ [until he brings his sacrifice].

WHERE THERE IS NO KNOWLEDGE AT THE BEGINNING BUT KNOWLEDGE AT THE END THE GOAT SACRIFICED ON THE OUTER ALTAR AND THE DAY OF ATONEMENT ATONE, etc.

Now, they⁹ have been equated with each other; let the inner goat, then, atone for its own [where there is knowledge at the beginning and not at the end] and for that for which the outer goat atones [where there is no knowledge at the beginning but at the end], and the outcome of this would be [that there would be atonement] in such case where the outer goat was not sacrificed.¹⁰ [No!] The text says: [And Aaron shall make atonement upon the horns of it] once [in the year; with the blood of the sin offering of atonement once in the year shall he make atonement for it]:¹¹ one atonement it atones, but it does not effect two atonements. Well, let the outer goat atone for its own and for that for which the inner goat atones; and the outcome of this would be [that there would be atonement] in such case where uncleanness occurred between the offering of this [inner goat] and that [outer goat].¹² No! The text says: once in the year — this atonement shall be

(1) It has just been deduced that the inner goat atones for sins which are not liable for sacrifice, and such a sin is not liable for sacrifice at present.

(2) V. Mishnah: hence we know that the inner goat does not atone for it, and therefore, of necessity it will atone for the sin where there is knowledge at the beginning and not at the end, then why his question?

(3) Viz. the inner goat should atone for the sin where there is no knowledge at the beginning but knowledge at the end, because it is never liable for sacrifice; and the outer goat should hold in suspense the sin where there is knowledge at the beginning but not at the end.

(4) V. supra p. 27, n. 5.

(5) Cf. Lev. XVI, 16. **ומפשעיהם ומהטאתם**

(6) Sins is explanatory of transgressions, i.e., the inner goat atones for the transgressions until such time as they enter the category **לכל הטאתם**, i.e., until a sin offering is brought; therefore the inner goat atones temporarily, not permanently; in other words, it holds the sin suspense.

(7) Since it was an unwitting sin; death purges also certain witting transgressions for which repentance alone does not suffice, such as the profanation of the Name; v. Yoma 86a.

(8) For certain offences for which Kareth (v. Glos.) is the penalty repentance alone does not suffice, but sufferings are inflicted on the transgressor to purge him from his sin; v. Yoma 86a.

(9) The inner and outer goats: v. supra p. 2.

(10) Because there were not sufficient goats available.

(11) Ex. XXX. 10: referring to inner goat.

(12) Where an unclean person entered the Temple or ate holy food after the inner goat had been offered, so that it cannot atone for him.

Talmud - Mas. Shevu'oth 9a

only once a year.¹

And according to R. Ishmael who holds that where there is no knowledge at the beginning but knowledge at the end the transgressor must bring a [sliding scale] sacrifice,² for which sin will the outer goat atone? For that where there is no knowledge either at the beginning or at the end. But for this the goats offered on the festivals and New Moons make atonement!³ He agrees with R. Meir who holds that ALL THE GOATS GIVE EQUAL ATONEMENT FOR THE UNCLEANNESSE CONNECTED WITH THE TEMPLE AND HOLY FOOD. In that case, for what purpose was the

outer goat equated with the inner?⁴ — [To teach us that] just as the inner does not atone for other sins, so the outer does not atone for other sins.

WHERE THERE IS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT THE END THE FESTIVAL AND NEW MOON GOATS BRING ATONEMENT: THIS IS THE OPINION OF R. JUDAH [B. ILA'I].

Said Rab Judah that Samuel said: What is R. Judah's reason? — Because the text says: And one goat for a sin offering unto the Lord:⁵ for a sin which is known only to the Lord⁶ shall this goat atone. — But this [superfluous word] we require for the deduction of R. Simeon b. Lakish, for R. Simeon b. Lakish said: 'Why is the New Moon goat different in that [the phrase] onto the Lord is used in connection with it? — [Because] the Holy One, blessed be He, said: This goat shall be an atonement [for Me, as it were,] for my diminishing the size of the Moon!'⁷ — If so [for R. Simeon b. Lakish's deduction], the text could have said: '[a sin offering] for the Lord'; why 'to the Lord'? For our deduction. Then say that it is solely for this deduction [and eliminate R. Simeon b. Lakish's deduction]. If so, the text could have said: 'a sin offering of the Lord;' why 'to the Lord'? Hence we deduce both.

Let it [the New Moon goat] atone also for other sins [which are known only to the Lord, i.e., are unknown to the transgressor]! — In the school of R. Ishmael it was stated that since this [outer goat of the Day of Atonement] comes at a fixed season, and this [New Moon goat] comes at a fixed season; then, just as this [outer goat] atones only for the uncleanness connected with the Temple and holy food,⁸ so this [New Moon goat] atones only for the uncleanness connected with the Temple and holy food.

Thus we find [that] the New Moon goats [atone for this class of sin]; whence do we know [that] the festival goats [atone for it]? And if you will say that this also follows from the deduction of the school of R. Ishmael,⁹ it is possible to refute [this reasoning]: if [the deduction is made] from the New Moon [goat, it may be argued] that it is more frequent [than the festival goat, therefore it atones for this sin, but the festival goat may not atone for it]; and if [the deduction is made] from the Day of Atonement [goat, it may be argued] that the atonement of the Day is more inclusive,¹⁰ [therefore the outer goat of the Day atones for this sin, but the festival goat may not atone for it]. And if you will say,

(1) No other sacrifice can make this atonement.

(2) *Infra* 19b.

(3) *Supra* p. 2.

(4) *Ibid.* p. 2.

(5) Num. XXVIII, 15: referring to the New Moon goat.

(6) But unknown to others, i.e., where there is no knowledge at all either at the beginning or at the end. This deduction is made because the text could have said: one goat for a sin offering; the words unto the Lord are superfluous.

(7) V. Hul. 60b: It is written: 'And God made the two great lights' (sun and moon — apparently equal); and it is written: 'the greater light' and 'the lesser light' (obviously unequal)! The moon said to the Holy One, blessed be He: 'How can two kings use one crown?' He replied: 'Go and diminish thyself'.

(8) For it has been equated with the inner goat: *supra* p. 2.

(9) The festival goat comes at a fixed season, and the New Moon goat comes at a fixed season, and the Day of Atonement goat comes at a fixed season: the first may be deduced from either of the other two.

(10) Atoning for all sins, whereas the festival does not atone; and though Holy Writ states clearly that the festival goat atones, it may be that it has not the power to atone for a sin (such as entering the Temple or eating holy food while unclean), the witting transgression of which is punishable by *Kareth*.

Talmud - Mas. Shevu'oth 9b

but we deduced the New Moon [goat] from the Day Of Atonement [goat],¹ and did not refute the argument, [therefore let us deduce the festival goat from the Day of Atonement goat; it may be said in reply that with reference to the New Moon goat] atonement is distinctly mentioned in the text [for a sin which is unknown to the transgressor];² and what we desired is merely an intimation [that only the unknown sins connected with Temple and holy food are intended]; but here it may be said that the whole law we cannot deduce.³ Well then, just as R. Hama b. Hanina said [elsewhere: the text could have said] 'one goat', [but it says] 'and one goat';⁴ so here [the text could have said] 'one goat', [but it says] 'and one goat';⁵ so that the festival goats are equated with the New Moon goats; just as the New Moon goats atone only for sins where there is no knowledge either at the beginning or at the end,⁶ so the festival goats atone only for sins where there is no knowledge either at the beginning or at the end.

The question was propounded: when R. Judah said [that the New Moon and festival goats atone] for sins where there is no knowledge either at the beginning or at the end, does this statement apply only to a sin which will ultimately remain unknown [to the transgressor], but a sin which will ultimately become known⁷ is counted as if there were knowledge at the end, and consequently is atoned for by the outer goat [of the Day of Atonement] together with the Day of Atonement; or [does his statement include] even a sin which will ultimately become known, since actually at this moment it [is unknown and] may be termed a 'sin which is known only to the Lord'? — Come and hear: It has been taught: For sins where there is no knowledge either at the beginning or at the end, and for a sin which will ultimately become known, the festival and New Moon goats atone: this is the opinion of R. Judah.

R. SIMEON SAYS THE FESTIVAL GOATS ATONE [FOR THIS CLASS OF SIN], BUT NOT THE NEW MOON GOATS. [AND FOR WHAT DO THE NEW MOON GOATS ATONE? FOR A RITUALLY CLEAN MAN WHO ATE HOLY FOOD THAT HAD BECOME UNCLEAN.]

R. Eleazar said that R. Oshaia said: What is R. Simeon's reason?⁸ — The verse says: And it hath He given you to bear the iniquity of the congregation.⁹ This verse refers to the New Moon goat;¹⁰ and we deduce [by analogy, because of the use of the identical word] iniquity, from the ziz:¹¹ here it is said iniquity, and there it is said iniquity;¹² just as there it refers to the uncleanness of the flesh,¹³ so here it refers to the uncleanness of the flesh.¹⁴ [But, since we deduce one from the other, let us say,] just as there it refers to offerings, so here it refers [only] to offerings,¹⁵ [and let it not atone for a clean man who ate unclean holy food. No!] It is written: 'the iniquity of the congregation'.¹⁶ Well now, we deduce one from the other; then let the New Moon goat atone for its own,¹⁷ and also do the work of the ziz, and the outcome would be [that there would be acceptance of the offering though unclean,] even when the ziz is broken? — [No!] the verse says: the iniquity¹⁸ — one iniquity it bears, but it does not bear two iniquities. Well then, let the ziz atone for its own¹⁹ and for that for which the New Moon goat atones, and the outcome would be [that there would be atonement] for uncleanness²⁰ which occurred between this [New Moon] and the next?²¹ [No!] the verse says: it²² hath He given you to bear the iniquity of the congregation — it bears the iniquity, but no other bears the iniquity. R. Ashi said: Here²³ it is written the iniquity of the congregation — congregation and not holy things; and there²⁴ it is written the iniquity of the holy things — holy things and not congregation.

Hence we find that the New Moon goats atone for a clean man who ate unclean holy food. How do we know that the festival goats atone for [sins of uncleanness] where there is no knowledge either at the beginning or at the end? — As R. Hama b. Hanina said [elsewhere,²⁵ the text could have said:] 'one goat', [but it says:] 'and one goat'; so here [the text could have said:] 'one goat', [but it says:] 'and one goat'.²⁶

- (1) Just as this comes at a fixed season etc., supra p. 33.
- (2) Num. XXVIII, 15: a sin offering to the Lord, as explained above.
- (3) For, since it is necessary to deduce the whole law that the festival goats atone for these sins of uncleanness, the argument may be refuted: the Day of Atonement goat atones for these sins of uncleanness because its atonement is more inclusive, but the festival goats may not have the power to atone for sins which are punishable by Kareth for witting transgression.
- (4) Infra 10a.
- (5) Num. XXVIII, 22: the Passover goat; XXIX, 5: the New Year goat; XXIX, 16: the Tabernacles goat. In these verses the text has 'and one goat for a sin offering'; the superfluous, vav (ו) and, which is a conjunction, implies that the law with reference to these goats is connected with and is the same as that of the first mentioned goat, i.e., of the New Moon (XXVIII, 15). In connection with the Pentecost goat (XXVIII, 30) the text has 'one goat' (not and), but as long as and occurs in even one of the festivals, the other festivals may be likened to it: v. Tosaf.
- (6) This was deduced (supra 9a) from the phrase 'sin offering to the Lord', and by analogy from the Day of Atonement goat: just as this comes at a fixed season, etc.
- (7) E.g., if he was seen to become unclean and to enter the Temple, he will be told later.
- (8) For saying that the New Moon goat atones for a clean man who ate unclean holy food.
- (9) Lev. X, 17.
- (10) V. Zeb. 101b.
- (11) High Priest's plate of pure gold worn on the forehead: Ex. XXVIII, 36.
- (12) And it (the ziz) shall be upon Aaron's forehead, and Aaron shall bear the iniquity committed in the holy things; Ex. XXVIII, 38.
- (13) The ziz makes the sacrifice acceptable if the flesh or blood or fat had become unclean, and another need not be offered; but it does not atone for the uncleanness of the person offering the sacrifice: v. Men. 25b.
- (14) Hence, the New Moon goat atones for a clean man who ate unclean holy food.
- (15) The ziz does not atone for any sin, but makes the offering acceptable if it had become unclean. Let the atonement of the New Moon goat be limited likewise; it will be useful in the event of the ziz becoming broken.
- (16) Implying that it atones for sins committed by men.
- (17) For a clean man who ate unclean holy food.
- (18) 'It (the New Moon goat) hath He given you to bear the iniquity' (Lev. X, 17).
- (19) To make acceptable an offering the flesh of which had become unclean.
- (20) I.e., the guilt incurred by a clean man eating unclean holy food.
- (21) If the New Moon goat alone atones for this kind of sin, a clean man eating unclean holy food immediately after the New Moon would not have atonement until the next New Moon; but if the ziz atones, he will have immediate atonement, for the ziz is worn continually by the High Priest.
- (22) אִתָּהּ, the New Moon goat.
- (23) Lev. X, 17: referring to the New Moon goat; therefore it atones for a clean man who ate unclean holy food.
- (24) Ex. XXVIII, 38: referring to the ziz; therefore it makes acceptable an offering the flesh of which had become unclean.
- (25) Infra 10a.
- (26) Num. XXVIII, 22; XXIX, 5, 16: referring to the festival goats: and one goat for a sin offering. The 'and' connects and equates the festival goats with the New Moon goat mentioned in the text immediately before them.

Talmud - Mas. Shevu'oth 10a

Thus the festival goats are equated with the New Moon goats; just as the New Moon goats atone for something connected with holy things, so the festival goats atone for something connected with holy things. And if you should say, let them [the festival goats] atone for that for which the New Moon goat atones, [we would reply. No! for] we have said: it [hath He given to you to bear the iniquity] — it [the New Moon goat] bears the iniquity, and no other bears the iniquity. And if you should say, let them atone for that for which the Day of Atonement [outer] goat atones,¹ [we would reply. No! for] we have said: once in the year [shall he make atonement for it]² — this atonement [of the Day of Atonement outer goat] shall be only once a year. For what, then, do they [the festival goats] atone? If

for a case where there is knowledge at the beginning and at the end, the transgressor must bring a [sliding scale] sacrifice? If for a case where there is knowledge at the beginning and not at the end, this is a case where the inner goat and the Day of Atonement hold the sin in suspense? If for a case where there is no knowledge at the beginning but at the end, for this the outer goat and the Day of Atonement atone? Of necessity, therefore, they [the festival goats] atone for a case where there is no knowledge either at the beginning or at the end.

R. MEIR SAYS ALL THE GOATS HAVE EQUAL POWERS OF ATONEMENT, etc.

Said R. Hama b. Hanina: what is R. Meir's reason? — The text [could have] said: 'one goat', [but it says:] 'and one goat' — all the goats are thus equated with each other: the conjunction and adds to the preceding subject. It was at first assumed that each deduced [its additional powers of atonement] from its neighbour;³ [but that cannot be, for] R. Johanan said: In the whole Torah a law may be deduced by analogy from another law which has itself been deduced by analogy, except in the case of holy things, where a law may not be deduced by analogy from another law which has itself been deduced by analogy.⁴ — This need cause no difficulty: they may all deduce from the first.⁵ Granted, in every case where the text has 'and one goat',⁶ but in the case of Pentecost and the Day of Atonement where the text has not 'and one goat', how can we deduce [their laws]? — Well then, said R. Jonah, the verse says: 'These ye shall offer unto the Lord in your festivals'⁷ — all the festivals are equated with each other.⁸ But the New Moon is not a festival! Verily, the New Moon is also called a festival, as Abaye said [elsewhere], — for Abaye said Tammuz of that year⁹ they made a full month [of thirty days], as it is written: He hath called a solemn assembly [or, festival] against me to crush my young men.¹⁰

R. Johanan said: R. Meir agrees that the goat offered within [the veil on the Day of Atonement] does not atone their¹¹ atonements, nor do they atone his atonement. He does not atone their atonements: he atones one atonement, and does not atone two atonements;¹² they do not atone his atonement, for the verse says: once in the year [shall he make atonement]¹³ — this atonement shall be only once in the year. It was likewise taught [in a Baraitha]: For a case where there is no knowledge either at the beginning or at the end, and for a case where there is no knowledge at the beginning but knowledge at the end, and for a clean man who ate unclean holy food, the festival goats and the New Moon goats and the goat offered outside [the veil on the Day of Atonement] bring atonement: this is the opinion of R. Meir. The inner goat, however, he leaves out, and that they [the others] atone [his atonement] he also leaves out.¹⁴

NOW, R. SIMEON SAYS THE NEW MOON GOATS ATONE FOR A CLEAN MAN WHO ATE UNCLEAN HOLY FOOD, etc.

Granted that the New Moon goats do not atone for that for which the festival goats atone, because the text says: [It hath He given you to bear] the iniquity¹⁵ — one iniquity it bears, but it does not bear two iniquities; but let the festival goats atone for that for which the New Moon goats atone? — [No!] The text says: it¹⁶ [hath He given you to bear the iniquity] — it bears the iniquity, but no other bears the iniquity.¹⁷ Granted that the festival goats do not atone for that for which the Day of Atonement goat atones, because the text says: once in the year [shall he make atonement]¹⁸ — this atonement shall be only once a year; but let the Day of Atonement goat atone for that for which the festival goats atone? [No!] The text says: [And Aaron shall make atonement upon the horns of it] once¹⁹ — one atonement it atones, but it does not atone two atonements. But once is written in connection with the inner goat [and not the outer]! — The text says: [One goat for a sin offering,]²⁰ beside

(1) Where there is no knowledge at the beginning but at the end.

(2) Ex. XXX, 10; supra 8b.

(3) The Passover goat (Num. XXVIII, 22) is mentioned in Holy Writ immediately after the New Moon goat; it is equated with it, and therefore, like it, atones for a clean man who ate unclean holy food (R. Meir agreeing with R. Simeon that the New Moon goat atones for a clean man who ate unclean holy food.) The Tabernacles goat (Num. XXIX, 16), mentioned immediately after the Day of Atonement goat, is equated with it, and therefore, like it, atones for a case where there is no knowledge at the beginning but at the end; and the Day of Atonement goat, being equated with the Tabernacles goat, atones, like it, for a case where there is no knowledge either at the beginning or at the end. Similarly, all the goats deduce the necessary laws from each other, each one from its nearest neighbour in Holy Writ; the result is that they all equally atone for all things which they atone for individually.

(4) How then, for example, can R. Meir deduce that the Day of Atonement goat atones for a clean man who ate unclean holy food? This has to be deduced first from the Tabernacles goat, which in its turn (being likened to the Passover goat) has to be deduced from the New Moon goat?

(5) They need not deduce, by gradual stages, each one from its nearest neighbour, but they may all equally and simultaneously deduce from the New Moon goat to atone for a clean man who ate unclean holy food; and the New Moon goat may deduce from them (the festival goats) to atone for a case where there is no knowledge either at the beginning or at the end. And all may deduce from the Day of Atonement goat to atone for a case where there is no knowledge at the beginning but at the end; and the Day of Atonement goat from them for a case where there is no knowledge either at the beginning or at the end.

(6) The and adds to the preceding subject, and equates them with each other.

(7) Num. XXIX, 39.

(8) New Moon is included in festival: mo'ed (מועד), appointed season, is the word used in the text.

(9) The second year after the Exodus. The twelve men who went to reconnoitre the land of Canaan left on the 29th of Sivan, and returned on the 8th of Ab (the 2 last days of Sivan, 30 days of Tammuz, and 8 days of Ab 40 days). And the people wept that night (Num. XIV, 1), i.e., on the eve of the 9th of Ab. Because they wept for no reason that night, it was fixed as an annual night of weeping for the future. (The first and second Temples were destroyed on that date); v. Ta'an. 29a.

(10) Lam. I, 15: according to Abaye the verse means this: He called a mo'ed, מועד (festival), i.e., He intercalated an extra day, making Tammuz 30 days, so that the 30th day was proclaimed New Moon (festival), in order to crush my young men, in order that the night of weeping (9th of Ab) would coincide with the date my young men were to be crushed centuries later at the time of the destruction of the Temple.

(11) The outer goat of the Day of Atonement, festival and New Moon goats.

(12) Supra 8b.

(13) Ex. XXX, 10; supra 8b.

(14) He does not include the inner goat with the others; nor does he say that the other goats atone (or hold in suspense) where there is knowledge at the beginning but not at the end.

(15) Lev. X, 17; supra 9b.

(16) New Moon goat.

(17) Supra 9b.

(18) Ex. XXX, 10; supra 8b.

(19) Ibid.

(20) I.e., the outer goat.

Talmud - Mas. Shevu'oth 10b

the sin offering of atonement¹ — hence the outer is equated with the inner.

R. SIMEON B. JUDAH SAID IN HIS [R. SIMEON B. YOHAI'S] NAME: [THE NEW MOON GOATS ATONE FOR A CLEAN MAN WHO ATE UNCLEAR HOLY FOOD; THE FESTIVAL GOATS, IN ADDITION TO ATONING FOR A CLEAN MAN WHO ATE UNCLEAR HOLY FOOD, ATONE ALSO FOR A CASE WHERE THERE WAS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT THE END; THE OUTER GOAT OF THE DAY OF ATONEMENT, IN ADDITION TO ATONING FOR A CLEAN MAN WHO ATE UNCLEAR HOLY FOOD, AND FOR A CASE WHERE THERE WAS NO KNOWLEDGE EITHER AT THE BEGINNING OR AT

THE END, ATONES ALSO FOR A CASE WHERE THERE WAS NO KNOWLEDGE AT THE BEGINNING BUT THERE WAS KNOWLEDGE AT THE END.]

What is the difference: the New Moon goats do not atone for that for which the festival goats atone because the text says: [it hath He given you to bear] the iniquity² — one iniquity it bears, but it does not bear two iniquities; then let the festival goats also not atone for that for which the New Moon goats atone, because the text says: it [hath He given you to bear the iniquity]³ — it bears the iniquity, but no other bears the iniquity?⁴ — Because [the emphasis on] it does not seem justified to him.⁵

What is the difference: the festival goats do not atone for that for which the Day of Atonement goat atones, because the text says: once in the year [shall he make atonement]⁶ — this atonement [of the Day of Atonement goat] shall be only once a year; then let the Day of Atonement goat also not atone for that for which the festival goats atone, because it is written: [And Aaron shall make atonement upon the horns of it] once⁷ — one atonement it atones, but it does not atone two atonements?⁸ [The emphasis on] once does not seem justified to him. Why? — For it is written in connection with the inner goat [and not the outer]. If so, let the festival goats also atone for that for which the Day of Atonement goat atones, because once [in the year] is written in connection with the inner goat [and not the outer]. In reality, [the emphasis on] once does seem justified to him,⁹ but here it is different, for the text says: And Aaron shall make atonement upon the horns of it once in the year — the horns, namely, of the inner altar: with reference to this [we say that] it atones one atonement and not two atonements, but with reference to the outer [we may say] it atones even two atonements.¹⁰

Ulla said that R. Johanan said: The regular offerings which are not required for the community are redeemed unblemished.¹¹ Rabbah sat and stated this law. Said R. Hisda to him: Who heeds you and R. Johanan, your teacher! Whither has the holiness in them departed!¹² He replied to him: Do you not hold that we do not say, 'whither has the holiness in them departed'?¹³ For we learnt in a Mishnah:¹⁴ The remainder of the incense — what was done with it?¹⁵ The wages of the workmen were allocated [from the Temple treasury],¹⁶ and the extra incense was exchanged for this money, and given to the workmen as their wages, and was then re-bought [from them] with the new donations.¹⁷ Now why [should this procedure be permitted]? Let us say, 'whither has the holiness in them departed'?¹⁸ — He said to him: You argue from incense! Incense is different,

(1) I.e., the inner goat: Num. XXIX, 11.

(2) Lev. X, 17; supra 9b, 10a.

(3) Ibid.

(4) Why, then, does R. Simeon differentiate, and say that the festival goats do atone for that for which the New Moon goats atone?

(5) It hath He given you to bear the iniquity does not necessarily imply that no other goat can bear the iniquity. It may mean that it (the New Moon goat) was also, in addition to other goats, given the power of bearing the iniquity (of a clean man who ate unclean holy food). But the emphasis on iniquity he holds to be justified, for this word is clearly singular: the verse therefore implies that the New Moon goat atones for only one iniquity.

(6) Ex. XXX. 10: second half of the verse.

(7) Ibid.: first half of the verse.

(8) Why then does R. Simeon say that the Day of Atonement goat does atone also for that for which the festival goats atone?

(9) For, though it is written in connection with the inner goat, it has already been explained that the outer is equated with the inner (v. supra p. 2). Hence, the latter half of the verse: with the blood of the sin offering of atonement once in the year shall he make atonement for it implies that the atonement of the sin offering (i.e., inner goat, and also outer goat, for it has been equated with it) is only once a year, i.e., the other goats (such as the festival goats) cannot make this atonement.

(10) The first half of the verse does not mention the sin offering (i.e., inner goat), but only the inner altar; therefore we cannot say that the deduction that it atones only one atonement refers also to the outer goat; for the outer goat has been equated with the inner goat, but not with the inner altar; hence the outer goat of the Day of Atonement atones also for that for which the festival goats atone.

(11) In the Temple store-room for congregational offerings there had always to be at least six lambs which had been examined and found free from blemish ('Ar. 13a), in order that there should always be a ready supply for the two daily offerings (Num. XXVIII, 1-4). On the first of Nisan the lambs of the previous year (i.e., the day before) were not permitted to be sacrificed, because congregational sacrifices were not allowed to be bought with the previous year's donations to the Treasury; hence there were always four lambs left which are not required for the community. These could be redeemed, though they were unblemished, although an individual's offering may not be redeemed unless it has a blemish which disqualifies it as a sacrifice (Men. 101a). The method of redemption was to exchange the four lambs for their money equivalent, the lambs becoming hullin (un-holy), and the money becoming holy, and being utilised for making gold plates to cover the walls and floor of the Holy of Holies. Since the lambs were now not holy, they could be re-bought with the money subscribed in the New Year (1st of Nisan) to the Temple treasury.

(12) Since they were consecrated bodily (קדושת הגוף), and not merely for their value (קדושת דמים), how can they become hullin if they are unblemished?

(13) In the case of a congregational offering, as distinct from an individual's offering.

(14) Shek. IV, 5.

(15) The incense (Ex. XXX, 34-36) was compounded from eleven ingredients: balm, onycha, galbanum, frankincense (in quantities of seventy manehs each in weight), myrrh, cassia, spikenard, saffron (sixteen manehs each), costus (twelve manehs), aromatic bark (three manehs), and cinnamon (nine manehs) — altogether 368 manehs, one for each day of the year (half in the morning, and half in the evening) and three extra for the Day of Atonement (v. Ker. 6a). But in an ordinary lunar year there were 11 manehs over (the lunar year being 354 days); and though these 11 manehs were necessary for supplementing the incense in intercalary years, they had to be bought from the new donations every 1st of Nisan (Tosaf). Some method had to be devised, therefore, of making the remainder of the old incense valid for the new year. — The lye obtained from a species of leek and the Cyprus wine which are mentioned in connection with the incense, were not actual ingredients, but were used simply for whitening the onycha, and also for making its odour more pungent (Ker. 6a).

(16) Omit זמנה in the text. The workmen were the family of Abtinah who were skilled in compounding the incense for the Temple: Yoma 38a.

(17) The incense, having been exchanged for the money, became hullin, and could be re-bought with the donations of the new year, becoming holy again, and valid for the new year.

(18) And not permit the incense which had once been holy to become hullin; yet we do not say this. It is assumed at present that the mortar in which the incense is pounded, being a holy vessel, makes the incense bodily holy.

Talmud - Mas. Shevu'oth 11a

for it has [only] a monetary holiness.¹ — If so, let it not become invalid by [the touch of] a tebul yom,² and yet it has been taught: As soon as it [the incense] is placed in the mortar it becomes liable to invalidation by [the touch of] a tebul yom! But perhaps you will say, all things which have only a monetary holiness are liable to invalidation by [the touch of] a tebul yom — [that cannot be,] for we have learnt:³ The meal-offerings⁴ are liable to be trespassed against⁵ as soon as they are verbally consecrated; when they are consecrated in the vessel,⁶ they become liable also to invalidation by [the touch of] a tebul yom, and one lacking atonement,⁷ and by linah.⁸ [Hence we may deduce:] 'When they are consecrated in the vessel' — yes, [they become liable to invalidation by the touch of a tebul yom,] but before they are consecrated in the vessel — no!⁹ — Well then, is it [the incense] holy bodily? If so, let it become invalidated [also] by linah, and yet we have learnt:¹⁰ The handful,¹¹ and the frankincense,¹² and the incense, and the meal-offering of the priests,¹³ and the meal-offering of the anointed [High] Priest,¹⁴ and the meal-offerings brought with libations,¹⁵ are liable to be trespassed against as soon as they are verbally consecrated; when they are consecrated in the vessel, they become liable also to invalidation by [the touch of] a tebul yom, and one lacking atonement, and by linah, [Hence we may deduce:] When 'they are consecrated in the vessel' — yes, [they

become liable to invalidation by linah,] but before they are consecrated in the vessel — no.¹⁶ He said to him: You argue from [the fact that it is not invalidated by] linah [that therefore the incense is not bodily holy]! Incense is different [it is bodily holy even in the mortar, but is not invalidated by linah], because it retains its form all the year.¹⁷ Nevertheless, the question remains¹⁸ [since the incense is bodily holy]: whither has the holiness in them departed? — Rabbah said: The Beth din make a mental stipulation that if they are required, they are required [i.e., utilised]; but if not, they shall be holy only for their value.¹⁹

Said Abaye to him: But you, Sir, yourself said, if one consecrates a male [ram] to be holy only for its value, it nevertheless becomes bodily holy?²⁰ This is no question: [I said it becomes bodily holy] in the case where he said it should be holy for its value to buy a burnt offering;²¹ but if he said it should be holy for its value to buy libations [it does not become bodily holy].²² — Abaye asked him, [It was taught:]²³ The bullock and [inner] goat of the Day of Atonement which were lost, others being set apart in their stead,

(1) It is holy only for its value, and not bodily holy. The mortar in which it is pounded is not deemed to be a holy vessel; the incense can, therefore, be redeemed for money and become hullin, but why should the daily offerings which are actually holy bodily, be redeemable if unblemished?

(2) Lit., ‘bathed on that day’: a person who, having become unclean, and bathed, is not restored to perfect ritual cleanliness till sunset (Lev. XXII, 6, 7). His touch, before sunset, defiles holy objects. If the incense is not holy bodily, it should not become invalid by the touch of a tebul yom. (The holier the object the more easily it is liable to defilement.)

(3) Me'i. 9a.

(4) Of an individual who had sinned (Lev. V, II), **מנחת חוטא**; or a voluntary meal-offering (Men. 103a); or that which is brought with a thanksgiving sacrifice (Lev. VII, 12, 13).

(5) Lev. V, 15: unlawful use of sacred property constitutes **מעילה**, trespass.

(6) Having been brought to the Temple, and placed in the appropriate holy vessel, their holiness is increased.

(7) An unclean person such as a **זב**; (gonorrhoeist: Lev. XV, 1-15); **זבה** (woman having irregular issue of blood: Lev. XV, 25-30); woman after childbirth (Lev. XII, 1-8); and leper (Lev. XIV, 1-32); must bring a sacrifice on becoming clean. Before the sacrifice is brought the person is **מחוסר כפורים**; v. Ker. 8b. Strictly speaking, these four do not ‘lack atonement’, for they have committed no sin; they merely have to bring a sacrifice in order to be permitted to partake of holy food.

(8) Being kept over night.

(9) Hence things which have only a monetary, and not a bodily, holiness, are not liable to invalidation by the touch of a tebul yom; why then should the incense, if it has only a monetary holiness, become invalidated by the touch of a tebul yom?

(10) Me'i. 10a.

(11) Lev. II, 2: a handful (three middle fingers bent over the hollow of the palm) was taken by the priest from an individual's meal-offering, and burnt on the altar; the rest was eaten by the priest.

(12) Ibid. I: frankincense was put on the meal-offering to flavour it.

(13) Lev. VI, 16: a priest's meal-offering was wholly burnt on the altar.

(14) Ibid. 15.

(15) Num. XXVIII and XXIX: these meal-offerings are wholly burnt.

(16) This vessel is not the mortar in which the incense is pounded, but the vessel in which it is placed when brought to the altar to be burnt; for, while in the mortar, the Baraitha states, it is invalidated by the touch of a tebul yom, and not by linah, whereas this Mishnah states that when the incense is consecrated in the vessel it is invalidated also by linah; obviously, therefore, this is a different (holier) vessel. The incense, then, before it is placed in this holier vessel is not bodily holy.

(17) Linah does not alter its appearance or freshness as it would, for example, in the case of meat. When consecrated in the vessel, however, it is liable to invalidation by linah (though it still retains its form), because all other things consecrated in a vessel are liable to invalidation by linah; if incense were not so liable, it might sometimes be erroneously inferred that the others were also not so liable.

(18) Both in the case of incense and the daily offerings; why should they be redeemable if bodily holy?

(19) The authorities, when buying animals for the daily offerings, or when having the incense compounded, decide that only that which is necessary for that year shall become bodily holy; and that the rest shall become holy only for their value, and therefore be redeemable.

(20) And cannot be redeemed, because it is itself fit for a sacrifice. Accordingly, even granted that the Beth din do make the stipulation that they shall be holy only for their value, the daily offerings and incense ought still to retain their bodily holiness, and the question. 'Whither has the holiness in them departed?' remains.

(21) And since the ram is itself fit for a burnt offering, it cannot be sold in order that for its money another ram may be bought.

(22) Similarly, the Beth din have the power to stipulate at the outset that the daily offerings or incense not required shall become holy only for their value to provide gold plates for the floor and walls of the Holy of Holies.

(23) Tosaf. Yom Hakkip. IV.

Talmud - Mas. Shevu'oth 11b

and also the goats to atone for idolatry¹ which were lost, others being set apart in their stead — they all die.² This is the opinion of R. Judah. R. Eleazar and R. Simeon say: They pasture till they become unfit [for sacrifice],³ then they are sold, the money going as a donation [to the Temple treasury], for a congregational sin-offering does not die.⁴ — Why [should they be starved, or pasture till they become blemished]? Let us say the Beth din make a mental stipulation [that if they be lost and found again they be redeemed unblemished]? — You quote the case of lost sacrifices! Lost sacrifices are different, because they are rare.⁵ But the red heifer⁶ is rare, and yet it was taught:⁷ The red heifer is redeemed on account of any disqualification in it; if it died, it is redeemed; if it was slaughtered,⁸ it is redeemed; if he found another which was more excellent, it is redeemed;⁹ but if he had already slaughtered it on its wood-pile,¹⁰ it can never be redeemed?¹¹ The red heifer is different, for it is in the category of holy things for Temple repair.¹² If so,¹³ how is it redeemed if it died or was slaughtered [outside the prescribed place], surely we require 'placing and valuation'?¹⁴ — This will be in accordance with R. Simeon, who says that holy things for the altar are subject to the law of 'placing and valuation', but holy things for the Temple repair are not subject to the law of 'placing and valuation'.¹⁵ If it is in accordance with R. Simeon's view, how will you explain the last clause:¹⁶ If he had already slaughtered it on its wood-pile, it can never be redeemed? Surely, it has been taught:¹⁷ R. Simeon says. 'The red heifer defiles the defilement of edibles,¹⁸ because it had a period of fitness.'¹⁹ And R. Simeon b. Lakish said: 'R. Simeon used to say that the red heifer may be redeemed [even] on its woodpile!'²⁰ Well, then, the red heifer is different, because it is expensive.²¹

The Master said: 'If it died, it is redeemed.' Do we then redeem holy things in order to feed dogs?²² — R. Mesharsheya said: [It is redeemed] for the sake of its hide.²³ Do the Beth din, then, make a mental stipulation [merely] for the sake of its hide?²⁴ — R. Kahana said: 'Men say, of a camel the ear [is valuable].'²⁵

He further asked him:²⁶ THEY SAID TO R. SIMEON: IS IT PERMITTED TO OFFER UP THE GOAT SET APART FOR ONE DAY ON ANOTHER? HE SAID TO THEM: IT MAY BE OFFERED. THEY ARGUED WITH HIM: SINCE THEY ARE NOT EQUAL IN THE ATONEMENT THEY BRING, HOW CAN THEY TAKE EACH OTHER'S PLACE? HE REPLIED: THEY [ARE ALL AT LEAST EQUAL IN THE WIDER SENSE IN THAT THEY] ALL BRING ATONEMENT FOR TRANSGRESSIONS OF THE LAWS OF UNCLEANNES IN CONNECTION WITH THE TEMPLE AND HOLY FOOD THEREOF.²⁷ Now, why [should R. Simeon give such an unconvincing reply]? Let him say, the Beth din make a mental stipulation in their case!²⁸ — You argue thus against R. Simeon! R. Simeon does not hold that the Beth din are empowered to make a mental stipulation; for R. Idi b. Abin said that R. Amram said that R. Johanan said: The regular offerings which are not required for the community are, according to R. Simeon, not redeemed unblemished;²⁹ and, according to the Sages, are redeemed unblemished.

Who are the Rabbis who disagree with R. Simeon [and hold that the Beth din make a mental stipulation]? Shall we say they are the Rabbis [who state the law] of incense?³⁰

- (1) Num. XV, 22-26: referring to congregational lapse into idolatrous worship through erroneous ruling of the Beth din,
- (2) I.e., the lost ones which were found again after the others had already been sacrificed (v. Hor. 6a); they are put in a special stable, and not given food, so that they die. V. Kid. 55b; Tem. IV, 1; Tosaf. Yom Tob.
- (3) By becoming blemished.
- (4) I.e., is not starved to death. Sin-offerings of individuals are, in certain circumstances, starved to death; but not congregational sin-offerings. V. Tem. 15a.
- (5) It is rare for a sacrifice to be lost, and the Beth din, therefore, do not deem it necessary to make a stipulation for such an infrequent occurrence.
- (6) Num. XIX. During the whole period of the first and second Temples only seven were prepared. V. Parah III, 5.
- (7) Tosaf. Parah I.
- (8) Outside the spot prescribed for the purpose on the Mount of Olives. V. Parah III, 6-11,
- (9) Even if it has no blemish.
- (10) In the proper place and in accordance with the prescribed ritual.
- (11) Even if he finds a better one. Since everything in connection therewith has been correctly performed, it would not be seemly to redeem it and make it hullin (v. Glos.). Now reverting to the first clause of this Baraita, how could it be redeemed without a blemish, seeing that the Beth din do not make mental stipulations in connection with rare matters?
- (12) קדשי מזבח I.e., holy only for its value, and not for offering on the altar, and therefore redeemable without a blemish. קדשי בדק הבית is equivalent to קדושת דמים; v. Yoma 42a.
- (13) If it is holy only in respect of its value.
- (14) Lev. XXVII, 11, 12; He shall place (lit., cause to stand) the beast before the priest. And the priest shall value it. The beast must be able to stand on its feet to be valued and redeemed. If it died or was slaughtered, it cannot stand: how, then, can it be redeemed? It appears that if it were holy for the altar, the question would not arise, for, according to one authority (v. Tem, 32b), offerings for the altar, when redeemed, do not require 'placing and valuation'. V. Tosaf.
- (15) Tem, 32b: they may be redeemed even if they are not able to stand,
- (16) Lit., 'say the last clause.'
- (17) Tosaf. Parah VI.
- (18) After it has been slaughtered, its flesh can become unclean by contact with the carcass of an unclean animal (or clean animal not ritually killed), and it can then make edibles unclean by contact. Although the enjoyment of any kind of benefit from it is prohibited, and, according to R. Simeon, only edibles that are permitted are considered edibles capable of receiving and transmitting defilement (Men. 101b), it is, nevertheless, counted as an edible, because there was a time when the use of it might have been permitted, as explained infra. If it be asked, surely the flesh of the red heifer itself defiles without contact with a carcass, v. Hul. 82a, Rashi; B.K. 77a, Tosaf., for an explanation.
- (19) I.e., capable of being counted fit as an edible.
- (20) I.e., if a better one was obtainable, the heifer could be redeemed even after having been ritually slaughtered. This is the period of fitness to which R. Simeon alludes, and in virtue of which the flesh is regarded by him as an edible; R. Simeon holding that whatever is capable of being redeemed is counted as if it were redeemed. How, then, can the Baraita be in accordance with R. Simeon's view, since the last clause in it states that if he slaughtered it on its wood-pile it can never be redeemed?
- (21) The Baraita will not be in accordance with R. Simeon's view; and the reason for its statement that if he found a better heifer it can be redeemed, is that the Beth din make a mental stipulation to that effect; and though a red heifer is rare, yet, because it is expensive, the Beth din deem it worth while to make such a stipulation. The red heifer was expensive because it was difficult to obtain one which fulfilled all the ritual requirements: e.g., two black or white hairs rendered it unfit (Parah II, 5). A perfectly red heifer was so rare that almost any price could be demanded by the owner. Dama b. Nethina, a heathen, received 600,000 gold denarii for a red heifer (Kid. 31a).
- (22) If it died, its consumption is prohibited.
- (23) Which may be utilised.
- (24) Which is such an insignificant item.
- (25) A proverb current in his day. Of a valuable animal even a small part is valuable.
- (26) Abaye asked Rabbah.

(27) Supra Mishnah 2b.

(28) That if a goat set apart for the Day of Atonement, for example, is not offered on that day, it may be offered on a festival or New Moon. V. Rashal, comment on Rashi, a.l.

(29) This proves that he does not hold that the Beth din are empowered to make a mental stipulations; (v. supra 11a).

(30) Supra 10b. The incense left over at the end of the year was redeemed, because the Beth din made a mental stipulations to that effect.

Talmud - Mas. Shevu'oth 12a

[It may be retorted,] Incense is different, because it cannot be put to pasture.¹ Well, then, the Rabbis [who State the law] of the red heifer.² [But again it may be urged:] Perhaps the red heifer is different, because it is expensive!³ — Well, then, the Rabbis [of our Mishnah] who argued with him.⁴ [But here again,] how do you know that it is R. Judah⁵ [who argues with R Simeon], and that thus he argues with him: 'It is right according to my view, holding as I do that the Beth din make a mental stipulation; therefore the goat set apart for one day may be offered on another; but according to you who say, no, [we do not say the Beth din make a mental stipulation], why should the goat set apart for one day be offered on another?' — [How do you know this?] Perhaps it is R. Meir⁶ [who argues with R. Simeon], and thus he argues with him: 'It is right according to my view, holding as I do that all the goats bring equal atonement, therefore the goat set apart for one day may be offered on another; but according to you [who do not hold that all the goats bring equal atonement], why should the goat set apart for one day be offered on another?' [Who, then, are the Rabbis who disagree with R. Simeon, holding that the Beth din make a mental stipulation?] — But. R. Johanan had a tradition that, according to R. Simeon, they [the daily offerings] are not redeemed [unblemished]; and, according to the Sages, they are redeemed.⁷

And according to R. Simeon who does not hold that the Beth din make a mental stipulation [that the daily offerings which are not required should be redeemed], what is done with them? R. Isaac said that R. Johanan said: They are offered as dessert⁸ to the altar.

R. Samuel, son of R. Isaac, said: R. Simeon admits, however, that the goats for a sin-offering are not themselves offered as dessert for the altar, but their money equivalent;⁹ for here [in the case of the surplus daily offering], it was originally intended for a burnt-offering, and it is now also a burnt-offering; but there [in the case of the sin-offering], it was originally intended for a sin-offering, and now it will be a burnt-offering; [it is, therefore, not permitted to be offered up itself,] a restriction being imposed even after [the congregation have had] atonement [with another sin-offering], as a preventive measure [in case it may be offered up] before [the congregation have had] atonement [with another].¹⁰

Abaye said: We have also learnt [in a Baraitha]:¹¹ The bullock and [inner] goat of the Day of Atonement which were lost, others being set apart in their stead; and also the goats to atone for idolatry which were lost, others being set apart in their stead — they all die: this is the opinion of R. Judah. R. Eleazar and R. Simeon say: They pasture till they become unfit [for sacrifice], and then they are sold, the money going as a donation [to the Temple treasury],¹² for a congregational sin-offering does not die!¹³ — Now, why [should they pasture till they become blemished and then be sold]? Let them be offered up themselves as burnt-offerings [as dessert for the altar]. Obviously, therefore, [since they do not say this], we may deduce that a restriction is imposed [even] after atonement as a preventive measure [in case they may be offered up] before atonement.

Raba said: We have also learnt:¹⁴ . . . and the second one¹⁵ pastures till it becomes unfit [for sacrifice], when it is sold, and the money goes as a donation [to the Temple treasury].¹⁶ Now, why [should it pasture till it becomes blemished and then be sold]? Let it be offered up itself as a burnt-offering [as dessert for the altar]. Obviously, therefore, [since this is not done,] we may deduce

that a restriction is imposed [even] after atonement as a preventive measure [in case it may be offered up] before atonement,

Rabina said: We have also learnt.¹⁷ A guilt offering¹⁸ the owner of which died, or obtained atonement [with another], pastures till it becomes unfit [for sacrifice],¹⁹ when it is sold, and the money goes as a donation [to the Temple treasury]. R. Eliezer says: It dies.²⁰ R. Joshua says: He brings a burnt-offering for its money.²¹ Now, let it be offered up itself as a burnt-offering [as dessert for the altar]. Obviously, therefore, [since this is not done,] we may deduce that a restriction is imposed [even] after atonement as a preventive measure [in case it may be offered up] before atonement. This is conclusive.

This has also been taught [in the following Baraita].²² What do they bring from the surplus [congregational offerings]?

(1) Therefore the Beth din make a mental stipulation, but in the case of the regular daily offerings that are left over at the end of the year, since they may be put to pasture till they become blemished, and then redeemed, the Beth din would make no mental stipulations. The Rabbis who state the law of incense may, therefore, agree with R. Simeon in the case of the daily offerings. Who, then, are the Rabbis who disagree with him?

(2) Supra 11b. The red heifer may be redeemed unblemished.

(3) Therefore the Beth din deem it worth while to make a mental stipulation, but in the case of the daily offerings which are not expensive, the Beth din possibly do not make a mental stipulation.

(4) Thus: Since the goats are not equal in the atonement they bring, and since you do not hold that the Beth din can make a mental stipulation that if the goat of the Day of Atonement, for example, was lost and found later, it may be offered on a subsequent festival, how according to you, can the goat set apart on one day be offered on another? These Rabbis, then, themselves hold that the Beth din can make a mental stipulation.

(5) Who agrees with R. Simeon that the goats do not bring equal atonement (v. supra. Mishnah 2a), and disagrees with him only in that he holds that the Beth din make a mental stipulation that the goats can take each other's place.

(6) Who holds that all the goats bring equal atonement (v. supra Mishnah 2b). R. Judah, however, may not argue with R. Simeon, as he may not hold that the Beth din make a mental stipulation, and R. Meir's question to R. Simeon could quite as easily be directed against R. Judah too. R. Judah, also, would agree with R. Simeon's reply.

(7) Because they do hold that the Beth din make a mental stipulation.

(8) קיץ is summer fruit, v. II Sam. XVI, 1, 2. These burnt offerings were consumed by the altar after the usual obligatory offerings had been consumed, just as summer fruit (dessert) is taken at the end of a meal. Barth (Jahrb. der jud. Liter. Gesel. VII. 129), connects קיץ המזבח with the Syriac קיסא 'wood', and translates it 'fuel for the altar', i.e., the extra burnt offerings are used as fuel for the altar when the ordinary offerings have been consumed. This is ingenious, but farfetched, and against the Talmud's own explanation of the word (infra 12b, top) 'as white figs for the altar'. Barth's objection that קיץ though meaning 'summer fruit', never has the meaning 'dessert', is unreasonable, for fruit is obviously dessert. — R. Simeon holds that the superfluous regular offerings are sacrificed on the altar as congregational freewill burnt-offerings, because they were originally intended as burnt-offerings (though as regular offerings and not as dessert); just as he holds, in the Mishnah, that a goat which was not offered on a festival may be offered on the New Moon or Day of Atonement because, though not exactly the same, they are all at least equal in that they atone for the sins of uncleanness connected with the Temple and holy food.

(9) If, for example, the New Moon goat for the month of Adar was lost, and found in Nisan, it cannot be offered up then, for it was bought with money from the previous year, but it may be used as dessert for the altar; it cannot, however, itself be offered on the altar as a burnt-offering, for it was originally intended as a sin-offering. It is allowed to pasture till it becomes blemished, and is then redeemed, and the money is expended on the purchase of an animal for a burnt-offering as dessert for the altar.

(10) After the congregation have had atonement with another sin-offering there is no reason why this sin-offering should not itself be permitted to be offered up as a burnt-offering as dessert for the altar. It is, however, prohibited, for, if it were permitted, it might be taken as a precedent for offering it up as a burnt-offering even before the congregation have had atonement with another sin-offering, when it is still a sin offering, having been expressly allocated for that purpose.

(11) V. supra 11a. Confirming that R. Simeon holds sin offerings may not themselves be used as dessert for the altar, but

only their money equivalent may be used, because a restriction is imposed even after atonement, in case they may be offered up before atonement.

(12) From which burnt offerings are bought as dessert for the altar. V. Suk. 56a, Rashi.

(13) Supra 11a-b.

(14) Another confirmation.

(15) Two goats were required for the Day of Atonement (Lev. XVI, 5-10), one of which, after lots had been cast, was offered up as a sin-offering, and the other hurled down a steep precipice in the wilderness (Yoma 67a). If the goat which had to be sent into the wilderness died, two other goats had to be obtained, and lots cast again. There were now two goats for a sin-offering to the Lord, the one left over from the first pair and one from the second pair. One of them was offered up as a sin-offering, and the other left to pasture till it became blemished, when it was sold, and the proceeds expended on a burnt-offering as dessert for the altar.

(16) Yoma 62a: 'Because a congregational sin-offering does not die.' It is R. Simeon who is known to hold this view; and yet he says that the goat is not itself offered up as dessert for the altar, but is sold, after it becomes blemished, and a burnt-offering bought from the proceeds.

(17) Tem. 20b. Another confirmation.

(18) Lev. V, 15-26; XIV, 12; XIX, 20-22; Nuns. VI, 12. There are different kinds of guilt-offerings, v. Zeb. V, 5.

(19) A sin-offering would, in such circumstances, be starved to death, v. Tem. 16a. Where a sin-offering is starved, a guilt-offering pastures, Tem. 18a.

(20) Holding the view that a guilt-offering is like a sin-offering; v. Zeb. 2a.

(21) The owner of the guilt-offering who obtained atonement with another sells this one, and for its money brings a burnt-offering; it is counted as his own private burnt-offering, and he must therefore supply the libations to go with it. According to the first view, as it comes from funds that had gone to the Temple treasury, it is counted as a congregational burnt-offering, and the libations are supplied from the public funds. V. Tem. 20b.

(22) In confirmation that surplus congregational offerings remaining over at the end of the year are used as dessert for the altar, as R. Simeon holds; but v. Tosaf.

Talmud - Mas. Shevu'oth 12b

Dessert like white figs¹ for the altar. But it is written: For any leaven or honey ye shall not offer up as smoke, as an offering made by fire unto the Lord?² — R. Hanina explained: [The burnt-offerings are dessert for the altar] as white figs are [dessert] for man.

R. Nahman son of R. Hisda expounded: A burnt-offering of a bird is not offered as dessert for the altar.³ Raba said: This is an absurdity! Said R. Nahman b. Isaac to Raba: Wherein lies its absurdity? I told it him; and in the name of R. Shimi of Nehardea I told it him; for R. Shimi of Nehardea said: The surplus offerings are utilised as congregational donations;⁴ and a burnt-offering of a bird cannot be a congregational burnt offering.⁵

And Samuel also agrees with R. Johanan,⁶ for Rab Judah said that Samuel said: In the case of congregational offerings, it is the knife that draws them to what they are.⁷

It has also been taught likewise:⁸ And R. Simeon admits that the goat which was not offered on a festival may be offered on the New Moon; and if it was not offered on the New Moon, it may be offered on the Day of Atonement; and if it was not offered on the Day of Atonement, it may be offered on a festival; and if it was not offered on this festival, it may be offered on another festival; for it was originally intended only to make atonement on the outer altar.

AND FOR WILFUL TRANSGRESSION OF THE LAWS OF UNCLEANNES IN CONNECTION WITH THE TEMPLE AND HOLY FOOD THEREOF THE GOAT OFFERED WITHIN [THE VEIL] AND THE DAY OF ATONEMENT ITSELF BRING ATONEMENT.⁹

How do we know this? For our Rabbis learnt. [Scripture says:] And he shall make atonement for

the holy place, because of the uncleannesses of the children of Israel, and because of their transgressions, even all their sins:¹⁰ Transgressions mean rebellious acts,¹¹ and thus it says, The king of Moab hath rebelled against me;¹² and also, Then did Libnah revolt at the same time.¹³ Sins mean unwitting sins, and thus it says: If any one shall sin through error.¹⁴

FOR OTHER TRANSGRESSIONS OF THE TORAH, LIGHT AND HEAVY, WILFUL AND UNWITTING, KNOWN AND UNKNOWN, POSITIVE AND NEGATIVE, THOSE PUNISHABLE BY KARETH AND THOSE PUNISHABLE BY DEATH AT THE HAND OF THE BETH DIN FOR ALL THESE THE SCAPEGOAT BRINGS ATONEMENT.¹⁵

Surely LIGHT is equivalent to POSITIVE AND NEGATIVE; HEAVY is equivalent to THOSE PUNISHABLE BY KARETH AND THOSE PUNISHABLE BY DEATH AT THE HAND OF THE BETH DIN; KNOWN is equivalent to WILFUL; and UNKNOWN is equivalent to in UNWITTING!¹⁶ — Rab Judah said: Thus he means:¹⁷ For other transgressions of the Torah, whether light or heavy, whether committed unwittingly or wilfully — those committed unwittingly, whether their doubtful commission¹⁸ was known to him or not known to him; and these are the light transgressions: positive and negative; and these are the heavy transgressions: those punishable by kareth and those punishable by death at the hand of the Beth din. That positive precept [for transgression of which the scapegoat atones] — how is this [to be understood]? If he did not repent, [why should the scapegoat atone? Surely it is written:] The sacrifice of the wicked is an abomination!¹⁹ If he did repent, [why do we require the scapegoat? Repentance on] any day avails, for it was taught: If he transgressed a positive precept and repented, he does not move from there until he is forgiven!²⁰ — R. Zera said:

(1) V. Ber. 40b.

(2) Lev. II, 11. Any sweet fruit juice is called honey. (Rashi, a.l.) How, then, can you use the expression like white figs for the altar?

(3) The money obtained from selling superfluous congregational sin-offerings or individual guilt-offerings is not expended on buying a turtle-dove or young pigeon to be offered as dessert for the altar.

(4) And the money obtained from their sale is used for providing burnt-offerings as dessert for the altar on behalf of the congregation.

(5) Lev. I, 14: He shall bring his offering of turtle-doves or of young pigeons. His offering: an individual may bring a bird as an offering, but not a congregation. (Sifra.)

(6) Supra 12a, that, according to R. Simeon, the surplus of regular offerings are used as dessert for the altar; and, according to the Rabbis, they are redeemed unblemished, and are re-bought to be sacrificed as regular offerings in the coming year; so that, both according to R. Simeon and the Rabbis, the regular offerings themselves are sacrificed, and they need not be put to pasture till they become blemished.

(7) It is the slaughtering knife, or, in other words, the moment of slaughter, that determines their purpose. Before they are slaughtered, however, they may be changed, according to R. Simeon, from one type of offering to another, e.g., from regular burnt-offerings to dessert (also burnt-offerings); and, according to the Rabbis who hold that the Beth din have the power to make a mental stipulation, the year's surplus of regular offerings may be redeemed unblemished, and later re-bought and sacrificed as regular offerings in the coming year. V. Rabbenu Hananel and Tosaf. a.l.; Zeb. 6b, Rashi and Tosaf.

(8) Confirmation of Samuel's statement that congregational offerings are drawn by the knife to be what they are; and that even R. Simeon holds this view. The Rabbis obviously hold this view, for they say the Beth din have the power to stipulate that the surplus regular offerings may be redeemed unblemished; but even R. Simeon, who disagrees with them, nevertheless holds that an offering which was set apart for one purpose may be sacrificed for a similar purpose, for he holds that the goats of all the festivals, New Moon, and Day of Atonement, are interchangeable, because they are all at least equal in that they are offered on the outer altar to bring atonement for transgressions of the laws of uncleanness connected with the Temple and holy food; and he would therefore similarly hold that the surplus regular offerings may be offered as dessert, because regular offerings and dessert are both at least equal in that they are both burnt-offerings; and it is at the moment of slaughter that their purpose is fixed.

(9) Supra 2b.

(10) Lev. XVI, 16; with the inner goat (verse 15).

(11) I.e., wilful transgressions.

(12) II Kings III, 7. The word used, פשע, is from the same root as that which is used in Lev. XVI, 16, and translated transgressions.

(13) Ibid. VIII, 22. The same root, פשע, is here also used for revolt.

(14) Lev. IV, 2. The word used for sin is from the same root, חטא, as that which is used for sins in Lev. XVI, 16.

(15) Supra 2b.

(16) Then why the repetition?

(17) The latter half is explanatory of the former half: POSITIVE AND NEGATIVE is explanatory of LIGHT, and KARETH AND DEATH is explanatory of HEAVY. And both light and heavy transgressions whether committed wilfully or unwittingly are atoned for by the scapegoat. KNOWN AND UNKNOWN is an amplification of UNWITTING.

(18) If, for example, he ate one of two pieces of fat, one of which was prohibited fat (הלב, Lev. III, 3, 4), and the other permitted fat (שומן); and he is in doubt as to which of the two he ate, he would normally have to bring a guilt-offering for a doubtful sin (אשם תלוי, v. Lev. V, 17, 18, Rashi). Whether he became aware or not of the doubtful commission of this sin before the Day of Atonement, and if he had not yet brought his offering, he need not bring it after the Day of Atonement, for the scapegoat had atoned for it (Ker. 25a-b).

(19) Prov. XXI, 27.

(20) Yoma 86a.

Talmud - Mas. Shevu'oth 13a

[It refers to the case of a man] who persists in his rebellion;¹ and it is in accordance with Rabbi's view, for it was taught: Rabbi said: For all transgressions of the Torah, whether he repented or not, the Day of Atonement brings atonement, except in the case of one who throws off the yoke,² perverts the teachings of the Torah,³ and rejects the covenant in the flesh⁴ — [in these cases,] if he repented, the Day of Atonement brings atonement, and if not — the Day of Atonement does not bring atonement.

What is Rabbi's reason? For it was taught: [Scripture says:] Because he hath despised the word of the Lord:⁵ this refers to one who throws off the yoke, or perverts the teachings of the Torah; and hath broken His commandment:⁵ this refers to one who rejects the covenant in the flesh; that soul shall utterly be cut off:⁵ to be cut off before the Day of Atonement; he shall be cut off, after the Day of Atonement.⁶ I might think that [this is the case] even if he repented, therefore Scripture says: his iniquity shall be upon him.⁵ I did not say [that the Day of Atonement does not bring atonement] except when his iniquity is still on him.⁷ And the Rabbis?⁸ — [They may reply: Scripture means] to be cut off, in this world; he shall be cut off in the world to come.⁹ His iniquity shall be upon him: if he repented¹⁰ and died, death wipes out [the sin].¹¹

But how can you establish [our Mishnah as being] in accordance with the view of Rabbi?¹² Surely since the last clause is in accordance with R. Judah's view, the first clause must also be in accordance with R. Judah's view! For the last clause states — [THE SCAPEGOAT BRINGS ATONEMENT FOR] ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST.¹³ Now, who holds this view? R. Judah.¹⁴ Therefore the first clause must also be in accordance with R. Judah's view!¹⁵ — R. Joseph said: It is really in accordance with Rabbi's view, and he is in agreement with R. Judah.¹⁶

Said Abaye to him: Do you, Master, mean particularly that Rabbi agrees with R. Judah, but R. Judah does not agree with Rabbi;¹⁷ or that just as [you say,] Rabbi agrees with R. Judah, so also R. Judah agrees with Rabbi, but you state, as is customary, that a disciple agrees with his master?¹⁸ — He replied: I mean particularly that Rabbi agrees with R. Judah, but R. Judah does not agree with Rabbi; for it was taught: I might think that the Day of Atonement should atone for those who repent

and for those who do not repent; and [although] an analogy [might be adduced to the contrary thus]: since sin-offering and guilt-offering atone, and the Day of Atonement atones, [we might therefore say,] just as the sin-offering and guilt-offering atone only for those who repent,¹⁹ so the Day of Atonement atones only for those who repent, [yet we could argue,] sin-offering and guilt-offering do not atone for wilful transgression²⁰ as for unwitting, [therefore they atone only for those who repent], but the Day of Atonement atones for wilful as for unwitting transgression, [therefore let us say that] just as it atones for wilful as for unwitting transgression, so let it atone for those who repent and for those who do not repent — therefore Scripture says: Howbeit²¹ [on the tenth day of this seventh month is the Day of Atonement] — this limits [the power of the Day of Atonement]. Now, who is the author of any anonymous statement in the Sifra? — R. Judah;²² and it states that [the Day of Atonement atones] for only those who repent, and not for those who do not repent.²³

But there is a contradiction between one anonymous statement in the Sifra and another! For it was taught: I might think that the Day of Atonement should not atone unless he fasted on it, and called it a holy convocation,²⁴ and did no work on it; but if he did not fast on it, and did not call it a holy convocation, and worked on it — whence do we deduce [that the Day atones for him]? Scripture says: It is a Day of Atonement²⁵ — in all cases [it atones].²⁶ Abaye said: This is no question; this [latter statement] is in accordance with the view of Rabbi,²⁷ and that [former statement] is in accordance with the view of R. Judah. Raba said: Both statements are in accordance with Rabbi's view; but Rabbi admits [that the Day does not atone for] the kareth of the Day itself;²⁸ for, if you will not say this, does not Rabbi hold that there is kareth for the Day of Atonement!²⁹ Why not?³⁰ It is possible, for example, in the case where he committed [the sin]³¹ at night, and died, so that the Day did not come to atone for him!³² — But, say:

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- (1) I.e., who did not repent, nevertheless the scapegoat atones for him, according to Rabbi; and the verse, the sacrifice of the wicked is an abomination, which implies that a wicked man (i.e., who does not repent) cannot obtain atonement with a sacrifice, has reference to a sacrifice on any other day, except the Day of Atonement.
 - (2) Denying the existence of God.
 - (3) Lit., 'reveals an aspect of the Torah (not in accordance with the correct interpretation)', or 'acts in a bare-faced manner against the Torah.' For a full discussion of the phrase, v. Sanh. 99a and Aboth III, 11.
 - (4) Circumcision. V. loc. cit.
 - (5) Num. XV, 31. Lit., 'to be cut off, he shall be cut off'. **הכרת תכרת**: the infinitive preceding the finite verb is taken as emphatic.
 - (6) I.e., the Day of Atonement shall not have the power to wipe out the sin.
 - (7) I.e., when he did not repent. According to Rabbi, therefore, it is only for these three sins that the Day of Atonement brings no atonement without repentance; but for other sins it brings atonement even without repentance.
 - (8) Who disagree with Rabbi, holding that the Day does not atone even for other sins, without repentance. How will they interpret the emphasis of Scripture on that soul shall utterly be cut off?
 - (9) In the case of these three sins, if the sinner does not repent; and even death cannot wipe out these sins without repentance; but in the case of other sins, if he does not repent, death has the power to wipe them out. The Day of Atonement, however, has not the power to wipe out even other sins without repentance.
 - (10) His iniquity being no longer upon him.
 - (11) Whereas in the case of other sins, apart from these three, death without repentance wipes them out.
 - (12) That for all sins, except these three, the Day of Atonement brings atonement, even without repentance; and that the Mishnah, in stating that the scapegoat of the Day of Atonement atones for the transgression of positive precepts, refers to cases of non-repentance, in accordance even with Rabbi's view.
 - (13) Supra 2b.
 - (14) Infra 13b: that the scapegoat brings atonement for the priests.
 - (15) And not Rabbi's.
 - (16) That the scapegoat brings atonement for the priests.
 - (17) That the Day of Atonement brings atonement even when there is no repentance.
 - (18) R. Judah the Prince was a disciple of R. Judah b. Il'ai; and therefore you said that Rabbi agrees with R. Judah, but

the reverse is also true.

(19) Lev. V, 5: he shall confess that wherein he hath sinned (sin-offering); Num. V, 7: they shall confess their sin (guilt-offering); (cf. verse 8, and Lev. V, 15).

(20) V. Rashi: the majority of sin offerings and guilt offerings atone only for unwitting transgressions, but there are a few exceptions.

(21) Lev. XXIII, 27. Heb. **וְיָסַח** implies limitation: that the Day should atone only for those who repent. V. Sifra, a.l.

(22) Sanh. 86a: an accepted Talmudic maxim. The Sifra is the tannaitic exposition of Leviticus (v. Sanh. p. 567, n. I).

(23) Hence R. Judah, who is the author of the anonymous passage quoted from the Sifra, does not agree with Rabbi.

(24) By including in the prayers on that day: Blessed art Thou, O Lord . . . Who sanctifiest Israel and the Day of Atonement; and by wearing holiday garments to signify his acceptance of the Day as holy. V. Ker. 7a, Tosaf.

(25) Lev. XXIII, 28. V. Sifra, a.l.

(26) Hence this anonymous statement in the Sifra holds that the Day atones even for those who do not repent (but actually sin on the very Day); it, therefore, contradicts the other statement in the Sifra.

(27) That the Day atones even for those who do not repent. It is not an anonymous statement, but should be mentioned in the Sifra as being the view of Rabbi.

(28) The first anonymous statement that the Day does not atone for those who do not repent refers only to the sins, punishable by kareth, of the Day itself, such as non-fasting and working; the second statement that the Day does atone, even when the person does not fast, refers to other sins, i.e., the Day atones for other sins committed during the year even without fasting on the Day; but it cannot atone for the sin of non-fasting on the Day itself.

(29) If the Day atones for all sins, even connected with the Day itself, without repentance, why does Scripture decree the punishment of Kareth for transgressing the Day (Lev. XXIII, 29)? It can never be put into effect. Obviously, therefore, Rabbi must make the distinction which Raba suggests.

(30) Rabbi may hold that the Day atones even for the kareth which it itself carries, and yet it is possible to find a case where kareth is inflicted.

(31) Punishable by kareth, e.g., non-fasting.

(32) The night of Atonement cannot atone; Only the Day has the power of atonement: For on this Day shall atonement be made for you (Lev. XVI, 30).

Talmud - Mas. Shevu'oth 13b

Does not Rabbi hold that there is kareth for the day [of the Day of Atonement]?¹ Why not?² It is possible in the case where he ate a piece of meat, which choked him,³ so that he died; or, he ate it almost at the setting of the sun,⁴ so that there was not time to atone for him.⁵

[THE SCAPEGOAT BRINGS ATONEMENT EQUALLY FOR] ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST.⁶

This itself is contradictory: he states that [THE SCAPEGOAT BRINGS ATONEMENT EQUALLY FOR] ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST; then he states WHAT IS THE DIFFERENCE BETWEEN ISRAELITES, PRIESTS, AND THE ANOINTED HIGH PRIEST?⁷ Rab Judah said, thus he means: Israelites, priests, and the anointed High Priest all equally obtain atonement with the scapegoat for other sins, and there is no difference between them [in this respect]; but what is the difference between Israelites, priests, and the anointed High Priest? [This:] the bullock atones for the priests for transgression of the laws of uncleanness in connection with the Temple and holy food thereof [whereas for Israelites the inner and outer goats atone for these transgressions]. And who holds this view?⁸ R. Judah; for it was taught: [Scripture says:] And he shall make atonement for the most holy place,⁹ this means the Holy of Holies; and the tent of meeting,⁹ this means the Holy place; and the altar⁹ — in its usual sense; he shall atone,⁹ this means for the various compartments in the Temple court; and for the priests⁹ — in the usual sense; and for all the people of the assembly;⁹ this means the Israelites;¹⁰ he shall atone,⁹ this means for the Levites; they are all equated for one atonement,¹¹ in that they obtain atonement with the scapegoat for other sins: this is the opinion of R. Judah. R. Simeon Says: Just as the blood of the goat offered

within [the veil] atones for Israelites for transgression of the laws of uncleanness connected with the Temple and holy food thereof, so the blood of the bullock atones for the priests for transgression of the laws of uncleanness connected with the Temple and holy food thereof; and just as the confession pronounced over the scapegoat atones for Israelites for other sins, so the confession pronounced over the bullock atones for the priests for other sins.¹²

But according to R. Simeon [it may be asked]: Surely they have been equated!¹³ — In what respect are they equated? In that they all obtain atonement, but each obtains atonement with his own.¹⁴

What is R. Simeon's reason?¹⁵ — It is written: And he shall take the two goats:¹⁶ the scapegoat is equated with the goat offered within [the veil]; just as the goat offered within [the veil] does not atone for the priests for transgression of the laws of uncleanness connected with the Temple and holy food thereof, because it is written concerning it: [the goat of the sin offering] that is for the people;¹⁷ so the scapegoat does not atone for the priests for other sins. And R. Judah?¹⁸ — He may say to you: For this reason they are equated, that they should be alike in colour, height, and value.¹⁹

Who is the Tanna who made this statement which the Rabbis taught. [viz., Scripture says:] He shall kill the goat of the sin offering that is for the people:²⁰ [this teaches] that the priests do not obtain atonement with it; and with what do they obtain atonement? With the bullock of Aaron.²¹ I might think that they should not obtain atonement with the bullock of Aaron, for it has already been said: [And Aaron shall offer the bullock of the sin offering] which is for himself;²² hence they would have no atonement at all.²³ But when Scripture says: And he shall make atonement for the priests,²⁴ we find that they have atonement. With what do they obtain atonement? It is better that they should obtain atonement with the bullock of Aaron, for it was released from its implication,²⁵ in order to include also his house;²⁶ and that they should not obtain atonement with the goat offered within [the veil], which was not released from its implication.²⁷ in order to include also his house. And if you desire to say anything,²⁸ [I may add another argument, for] Scripture says: O house of Aaron, bless ye the Lord; O house of Levi, bless ye the Lord; ye that fear the Lord, bless ye the Lord.²⁹ Who is the Tanna [of this Baraitha]?³⁰ — R. Jeremiah said: It is not R. Judah, for if R. Judah, surely he says the priests obtain atonement with the scapegoat!³¹ Then who is it? Raba said: It is R. Simeon who holds that the priests do not obtain atonement with the scapegoat. Abaye said: You may even say that it is R. Judah, and thus he³² reasons: Hence they would have no atonement at all for transgression of the laws of uncleanness connected with the Temple and holy food thereof;³³ but when Scripture says: And he shall make atonement for the priest, we find that they have atonement for other sins; and just as we find that they have atonement for other sins, so they have atonement

(1) If he holds that the Day atones even for transgression of the Day itself, the punishment of kareth decreed for transgressing the Day can never be put into effect; yet Scripture says: For whatsoever soul it be that shall not be afflicted in that same day, he shall be cut off from his people (Lev. XXIII, 29).

(2) Rabbi may still hold that the Day atones even for the kareth which it carries, and yet it is possible to have a case where kareth operates.

(3) So that not even a moment of the Day passed after the eating of it; but had he lived a moment after eating, the Day would have atoned.

(4) At the termination of the Day.

(5) Hence it is possible that Rabbi holds the Day atones even for the kareth it involves, and Raba's distinction does not necessarily follow.

(6) Supra 2b.

(7) Ibid.

(8) That the scapegoat atones also for priests for other sins.

(9) Lev. XVI, 33.

(10) From this verse it is deduced that the High Priest on the Day of Atonement makes atonement with the bullock and

goat for the transgression of the laws of uncleanness in the Holy of Holies, holy place, altar, etc. If one, that is to say, became unclean in the Holy of Holies, and tarried for such time as he could prostrate himself (v. infra 16b), or if he offered incense on the golden altar while unclean, or entered other compartments of the Temple court while unclean, he has transgressed the law of uncleanness, and for this the bullock atones for priests, and the goat for Israelites.

(11) Priests, Levites, and Israelites, are all deduced from this latter part of the verse, which is superfluous, as obtaining equal atonement; but this equal atonement cannot refer to the atonement for transgression of the laws of uncleanness connected with the Temple and holy food, because in this case the atonements are not equal, the bullock atoning for priests, and the inner and outer goats for Israelites and Levites. The equal atonement, consequently, refers to the scapegoat which atones for priests, Israelites, and Levites, for other sins.

(12) V. supra p. 4, n. 7.

(13) The verse quoted by R. Judah above seemingly implying that both Israelites and priests obtain atonement with the scapegoat for other sins.

(14) Priest with the bullock, and Israelite with the goat.

(15) For stating that the scapegoat does not atone for priests for other sins.

(16) Lev. XVI, 7: the inner goat and the scapegoat.

(17) Ibid. 15.

(18) How will he explain this equation of the two goats?

(19) Yoma VI. 1.

(20) Lev. XVI, 15.

(21) Or his successor in the High Priest's office.

(22) Lev. XVI, 6.

(23) Neither with the goat, which is for the people, nor with the bullock, which is for Aaron.

(24) Lev. XVI, 33.

(25) The Biblical statement, which is for himself, implies that the bullock atones only for himself, and for other priests.

(26) Lev. XVI, 6: And he shall make atonement for himself in for his house, i.e., household. The bullock, therefore, atones for more than himself; it may, therefore, atone also for the other priests.

(27) Lev. XVI, 15: The goat of the sin offering that is for the people.

(28) In refutation of this argument.

(29) Ps. CXXXV, 19, 20. All priests are included in House of Aaron; therefore the priests obtain atonement with Aaron's bullock, for Scripture says: And he shall make atonement for himself and for his house.

(30) Which states that if the priests would not obtain atonement with Aaron's bullock, they would have no atonement at all.

(31) At least for other sins; whereas, according to the Baraitha, it appears that their atonement depends entirely on the bullock of Aaron.

(32) R. Judah who is the Tanna of the Baraitha.

(33) If we should say that the priests can obtain atonement neither with the inner goat of the people nor with bullock of the High Priest for the sins of uncleanness connected with the Temple, the result would be that they would have no atonement at all for these sins; though for other sins they would still obtain atonement with the scapegoat.

Talmud - Mas. Shevu'oth 14a

for the sins of uncleanness in connection with the Temple and holy food thereof. With what do they obtain atonement? It is better that they should obtain atonement with the bullock of Aaron, for it was released from its implication, in order to include also his house; and that they should not obtain atonement with the goat offered within [the veil], which was not released from its implication. And if you desire to say anything, [I may add another argument, for] Scripture says: O house of Aaron, bless ye the Lord, etc.

What [is meant by]: If you desire to say anything?¹ You might say, it is written: [He shall atone for himself and for] his house,² [therefore I add the argument that] all [priests] are called his house, for it is said: O house of Aaron, bless ye the Lord . . . ye that fear the Lord, bless ye the Lord.

Now, as to the phrase, that is for the people,³ does it come for this purpose?⁴ Surely it is required [to deduce] that the Divine Law means it should be from the people's [funds]!⁵ — This we may deduce from: And from the congregation of the Children of Israel [he shall take two goats].⁶

Now, as to the phrase, which is for himself,⁷ does it come for this purpose?⁸ Surely it is required [to deduce] that which was taught: From his own [funds] he brings [the bullock], and he does not bring it from public funds. I might think that he does not bring it from public funds, because the congregation do not obtain atonement with it, but he may bring it from [funds subscribed by] his brother priests, for his brother priests obtain atonement with it, therefore Scripture says: which is for himself.⁹ I might think that he should not bring it [from priestly subscriptions], but if he did, it is still valid,¹⁰ therefore Scripture says once more: which is for himself;¹¹ the verse repeats it in order to make [this condition] indispensable!¹² — The Tanna meant thus in his argument: Why do they [the priests] not obtain atonement with [the goat of] the people? — Because they spend no money on it, for it is written: that is for the people;¹³ [then we should say, that since] on Aaron's [bullock] they also spend no money,¹⁴ [they should not obtain atonement with it,]¹⁵ therefore he says, they are all called his house.¹⁶

It is right according to R. Simeon¹⁷ that Scripture mentions two confessions¹⁸ and the blood of the bullock:¹⁹ one instead of the goat offered within [the veil],²⁰ one instead of the goat offered outside,²¹ and one instead of the scapegoat.²² But according to R. Judah,²³ why do we require two confessions and the blood of the bullock? One confession and the blood should suffice!²⁴ — One for himself and one for his household;²⁵ as it was taught in the Academy of R. Ishmael:²⁶ Thus the nature of justice is practiced:²⁷ it is better that the innocent should come and atone for the guilty, and not that the guilty should come and atone for the guilty.

CHAPTER II

MISHNAH. THE LAWS CONCERNING THE DISCOVERY OF HAVING UNCONSCIOUSLY SINNED THROUGH UNCLEANNESS ARE TWO, SUBDIVIDED INTO FOUR;²⁸ [IF] HE BECAME UNCLEAN AND WAS AWARE OF IT,²⁹ THEN THE UNCLEANNESS BECAME HIDDEN FROM HIM, THOUGH HE REMEMBERED THE HOLY FOOD;³⁰ [IF THE FACT THAT IT WAS] HOLY FOOD WAS HIDDEN FROM HIM, THOUGH HE REMEMBERED THE UNCLEANNESS; [IF] BOTH WERE HIDDEN FROM HIM; AND HE ATE HOLY FOOD, AND WAS NOT AWARE,³¹ AND WHEN HE HAD EATEN, BECAME AWARE: — IN THESE CASES HE BRINGS A SLIDING SCALE SACRIFICE. [IF] HE BECAME UNCLEAN AND WAS AWARE OF IT, THEN THE UNCLEANNESS BECAME HIDDEN FROM HIM, THOUGH HE REMEMBERED THE TEMPLE;³² [IF THE FACT THAT IT WAS] THE TEMPLE WAS HIDDEN FROM HIM, THOUGH HE REMEMBERED THE UNCLEANNESS; [IF] BOTH WERE HIDDEN FROM HIM; AND HE ENTERED THE TEMPLE, AND WAS NOT AWARE,³³ AND WHEN HE HAD GONE OUT, BECAME AWARE: — IN THESE CASES HE BRINGS A SLIDING SCALE SACRIFICE.

IT IS THE SAME WHETHER ONE ENTERS THE TEMPLE COURT OR THE ADDITION TO THE TEMPLE COURT,³⁴ FOR ADDITIONS ARE NOT MADE TO THE CITY [OF JERUSALEM], OR TO THE TEMPLE COMPARTMENTS EXCEPT BY KING, PROPHET, URIM AND TUMMIN,³⁵ SANHEDRIN OF SEVENTY ONE,³⁶ TWO [LOAVES] OF THANKSGIVING,³⁷ AND SONG;³⁸ AND THE BETH DIN WALKING IN PROCESSION, THE TWO [LOAVES] OF THANKSGIVING [BEING BORNE] AFTER THEM, AND ALL ISRAEL [FOLLOWING] BEHIND THEM.

(1) What argument could be used to refute this reasoning?

(2) Limiting the atonement to his household, and excluding other priests.

- (3) Lev. XVI, 15.
- (4) To limit the atonement by the inner goat to Israelites, and to exclude priests.
- (5) Though the bullock of the High Priest is bought from his own private means.
- (6) Lev. XVI, 5
- (7) Ibid. 6.
- (8) To limit the atonement by the bullock to the High Priest, and to exclude others.
- (9) Lev. XVI, 11: **אֲשֶׁר לוֹ**, which may be translated which is his, i.e., bought with his own money.
- (10) Sometimes an action which is not directly permissible before it is done is declared legitimate after it has been done, a distinction being drawn between **לְכַתְּחִלָּה** (before the act) and **דִּיעַבַּד** (after the act).
- (11) Lev. XVI, 11. **אֲשֶׁר לוֹ** occurs twice in this verse, and once in verse 6. The first, in verse 6, prohibits the buying of the High Priest's bullock from public funds; the second, in verse 11, prohibits its purchase from priestly funds; and the third, in verse 11, is **לְעַכְבָּב**, to emphasize that it must be bought from his own funds, and that even if it had already been bought from priestly funds it is invalid.
- (12) The phrase **אֲשֶׁר לוֹ** is, therefore, necessary for this deduction. How then could the Tanna suggest that it would come to limit the atonement by the bullock to the High Priest, and exclude other priests, were it not for the further arguments adduced to include them?
- (13) From which we have deduced that it must be bought from the people's money, and not from the priest's money. More accurately, this deduction was made from the phrase: from the congregation of the Children of Israel; v. supra, and Tosaf.
- (14) For it must be bought from the High Priest's private means, as deduced from **אֲשֶׁר לוֹ**.
- (15) The Tanna, therefore, in stating that from the phrase **אֲשֶׁר לוֹ** we might be inclined to exclude other priests from the atonement of the bullock, meant that, because from this phrase we deduced that other priests must not subscribe to it, we would, for that very reason, exclude them from the atonement.
- (16) All priests are included in the house of Aaron, and therefore obtain atonement with his bullock, though they are not permitted to subscribe towards its cost.
- (17) Who holds that the priests obtain all their atonement with the bullock, and have no atonement at all, even for the other sins, with the scapegoat.
- (18) Lev. XVI, 6, 11: And he shall make atonement occurs twice. It refers to the verbal confession before the bullock is killed (Yoma 36b).
- (19) Ibid. 14: And he shall take of the blood of the bullock, and sprinkle it etc.
- (20) Which holds in suspense the sin in connection with uncleanness where there was knowledge at the beginning but not at the end.
- (21) Which atones for the case where there was no knowledge at the beginning but knowledge at the end.
- (22) Which atones for other sins. And for these three types of sin for which Israelites obtain atonement with the three goats, the priests obtain atonement with the two confessions and the blood sprinkling of the bullock.
- (23) Who holds that the priests obtain atonement for other sins with the scapegoat.
- (24) One instead of the inner goat, and one instead of the outer goat.
- (25) He confesses his own sins, and then, being innocent, is in a position to make confession for the other priests.
- (26) Yoma 43b.
- (27) I.e., common sense dictates this.
- (28) This Mishnah, elaborating the statement of the Mishnah, supra 2a, explains fully which are the four: forgetfulness of uncleanness (in connection with eating holy food), forgetfulness of holy food, forgetfulness of uncleanness (in connection with entering the Temple), forgetfulness of Temple, v. infra 14b.
- (29) Either immediately or later.
- (30) I.e., was aware that it was holy food he was eating.
- (31) That he was unclean, or that the food was holy, or both.
- (32) I.e., that the place he had entered was the Temple.
- (33) That he was unclean, or that it was the Temple he had entered, or both.
- (34) The additional portion is as holy as the original, for it is consecrated with full ceremonial. An unclean person entering the additional portion must, therefore, also bring a sacrifice. The whole of the Temple court was 187 cubits long and 135 cubits wide; and was divided into a number of compartments (Mid. V.). An unclean person was prohibited from entering anywhere within the court.

(35) V. Ex. XXVIII, 30; and Rashi, a.l.

(36) The great Sanhedrin sitting in Jerusalem; there were minor courts in each town composed of 3 members, for deciding monetary questions, and of 23 members, for deciding questions of life and death; v. Sanh. 2a.

(37) V. infra 15a.

(38) V. infra 15b.

Talmud - Mas. Shevu'oth 14b

THE INNER ONE IS EATEN, AND THE OUTER ONE IS BURNT.¹ AND AS TO ANY ADDITION THAT WAS MADE WITHOUT ALL THESE — HE WHO ENTERS IT [WHILE UNCLEAN] IS NOT LIABLE.²

IF HE BECAME UNCLEAN IN THE TEMPLE COURT [AND WAS AWARE OF IT], AND THE UNCLEANNESS THEN BECAME HIDDEN FROM HIM, THOUGH HE REMEMBERED THE TEMPLE; [OR, THE FACT THAT IT WAS] THE TEMPLE BECAME HIDDEN FROM HIM, THOUGH HE REMEMBERED THE UNCLEANNESS; [OR,] BOTH BECAME HIDDEN FROM HIM, AND HE PROSTRATED HIMSELF, OR TARRIED THE PERIOD OF PROSTRATION,³ OR WENT OUT THE LONGER WAY, HE IS LIABLE; THE SHORTER WAY, HE IS NOT LIABLE; THIS IS THE POSITIVE PRECEPT CONCERNING THE TEMPLE⁴ FOR WHICH THEY [THE BETH DIN] ARE NOT LIABLE.⁵ AND WHICH IS THE POSITIVE PRECEPT CONCERNING A MENSTRUOUS WOMAN FOR WHICH THEY ARE LIABLE?⁶ [THIS:] IF ONE COHABITED WITH A CLEAN WOMAN, AND SHE SAID TO HIM: 'I HAVE BECOME UNCLEAN!';⁷ AND HE WITHDREW IMMEDIATELY, HE IS LIABLE,⁸ BECAUSE HIS WITHDRAWAL IS AS PLEASANT TO HIM AS HIS ENTRY.⁹

R. ELIEZER SAID: [SCRIPTURE SAYS: 'IF ANY ONE TOUCH. . . THE CARCASS OF] AN UNCLEAN CREEPING THING, AND IT BE HIDDEN FROM HIM':¹⁰ WHEN THE UNCLEAN CREEPING THING IS HIDDEN FROM HIM, HE IS LIABLE; BUT HE IS NOT LIABLE, WHEN THE TEMPLE IS HIDDEN FROM HIM.¹¹ R. AKIBA SAID: [SCRIPTURE SAYS:] 'AND IT BE HIDDEN FROM HIM THAT HE IS UNCLEAN':¹² WHEN IT IS HIDDEN FROM HIM THAT HE IS UNCLEAN, HE IS LIABLE; BUT HE IS NOT LIABLE, WHEN THE TEMPLE IS HIDDEN FROM HIM.¹³ R. ISHMAEL SAID: [SCRIPTURE SAYS:] 'AND IT BE HIDDEN FROM HIM' TWICE,¹⁴ IN ORDER TO MAKE HIM LIABLE BOTH FOR THE FORGETFULNESS OF THE UNCLEANNESS AND THE FORGETFULNESS OF THE TEMPLE.

GEMARA. Said R. Papa to Abaye: TWO, SUBDIVIDED INTO FOUR! They are two, subdivided into six! Knowledge of the uncleanness at the beginning and at the end; knowledge of the holy food at the beginning and at the end; knowledge of the Temple at the beginning and at the end! — But [even] according to your argument, they should be eight; for there is the uncleanness in connection with eating holy food, and the uncleanness in connection with entering the Temple, [necessitating knowledge] both at the beginning and at the end!¹⁵ This is no question; the name uncleanness is the same.¹⁶ [But] nevertheless [there remains the question] there are six? — R. Papa said: Verily, they are eight:¹⁷ the first four which do not make him liable for a sacrifice¹⁸ are not counted; but the last four which make him liable for a sacrifice are counted. Some say: [Thus] said R. Papa: Verily, they are eight: the first four which occur nowhere else in the whole Torah are counted;¹⁹ but the last four which occur elsewhere in the Torah are not counted.

R. Papa asked; If the laws of uncleanness were hidden from him, what [is the ruling]? How do you mean? Shall we say that he did not know whether a reptile is unclean, or a frog is unclean?²⁰ Surely, this is taught in school!²¹ — Well then, he did know that a reptile is unclean, but, for example, he touched [a portion of a reptile] the size of a lentil; and he did not know whether the size of a lentil contaminates or not: What [is the ruling]? [Shall we say] since he knew that a reptile contaminates,

this is counted knowledge; or, since he did not know whether the size of a lentil contaminates or not, it is counted as unawareness?²² — The question remains undecided.²³

R. Jeremiah asked: If a Babylonian went up to Palestine, and the place of the Temple was hidden from him;²⁴ what [is the ruling]? — According to whose view? If according to R. Akiba, who holds there must be knowledge at the beginning,²⁵ [the question does not arise, for] he does not make him liable for [uncleanness in connection with] forgetfulness of the Temple;²⁶ if according to R. Ishmael, who does make him liable for [uncleanness in connection with] forgetfulness of the Temple,²⁷ [again the question does not arise, for] he does not require knowledge at the beginning?²⁸ — It is not necessary [to ask this question except] according to Rabbi, who requires knowledge at the beginning, and makes him liable in the case of forgetfulness of the Temple,²⁹ and who holds, furthermore, that knowledge gained from a teacher is counted knowledge;³⁰ what [is the ruling]? [Shall we say], since he knew that there was a Temple in existence, this is called knowledge; or, since its place was not known to him it is counted as unawareness?³¹ — The question remains undecided. IT IS THE SAME WHETHER ONE ENTERS THE TEMPLE COURT, etc. How do we know?³² — R. Shimi b. Hiyya said: Because Scripture says: According to all that I show thee, the pattern of the tabernacle, and the pattern of all its vessels,

(1) Ibid.

(2) Because it is not holy.

(3) V. infra 16b.

(4) Num. V, 2: Command the children of Israel that they send out of the camp . . . whosoever is unclean. If uncleanness occurs to him while in the precincts of the Temple, he must leave immediately by the shortest route.

(5) If the Beth din give an erroneous ruling, permitting that which is prohibited, they must bring a bullock for a sin-offering: If the whole congregation of Israel shall err . . . and do any of the things which the Lord hath commanded not to be done . . . the assembly shall offer a young bullock (Lev. IV, 13, 14). Congregation of Israel refers to the Beth din (Great Sanhedrin); v. Hor. 4b. In the present instance, if the Beth din give an erroneous ruling in connection with uncleanness occurring to a person while in the Temple, they do not bring a bullock, for they only bring a bullock for an erroneous ruling on a matter which, when unwittingly done by an individual, must be atoned for by a sin-offering, but not for an erroneous ruling on a matter which, when unwittingly done by an individual, is atoned for by a sliding scale sacrifice; v. Hor. 8b.

(6) Lev. XV, 31: Ye shall separate the children of Israel from their uncleanness; v. infra 18b. For an erroneous ruling on this the Beth din bring a bullock, because an individual, for an unwitting transgression of this precept, brings a sin offering.

(7) This is similar to entering the Temple legitimately while clean, and becoming unclean while in the Temple.

(8) And brings a sin offering.

(9) Coition; the remedy is to remain passive till the genital member becomes quiescent, when he withdraws.

(10) Lev. V, 2.

(11) He brings a sliding scale sacrifice for entering the Temple when unclean only when he has forgotten that he is unclean through contact with the carcass of a creeping thing, and not when he has forgotten that it is the Temple he is entering.

(12) Lev. V, 2.

(13) V. infra 18b for an explanation of the difference between the views of R. Eliezer and R. Akiba.

(14) Lev. V, 2, 3.

(15) The Mishnah uses the expression **ידיעות הטומאה**, states of knowledge (or, awareness) of the uncleanness. Had the Mishnah used the word **העלמות**, states of forgetfulness (or, unawareness), it would have been justified in stating that there are only four (v. supra p. 66, n. 1); states of awareness are, however, eight; for each state of unawareness must be preceded and followed by a state of awareness.

(16) The states of unawareness of the uncleanness both in connection with eating holy food and entering the Temple are reckoned as coming under one category. There are, therefore, only six states of awareness; before and after, in connection with the unawareness of the holy food; before and after, in connection with the unawareness of the Temple; before and after, in connection with the unawareness of the uncleanness (whether with reference to eating holy food or

entering the Temple).

(17) The states of awareness are definitely eight, v. n. 1.

(18) For, if he remains unaware at the end, he cannot, obviously, bring a sacrifice.

(19) Elsewhere, with reference to the commission of other transgressions, there need be no awareness before the act that it was forbidden.

(20) E.g., he touched a dead toad (צב, Lev. XI, 29) which resembles a frog, and did not know the law that a toad contaminates. A dead frog does not contaminate by touch (Ker. 13b).

(21) Lit., 'go, read it in school'. All children know that the carcass of a reptile contaminates (Lev. XI, 29, 30). His temporary forgetfulness of this law is, therefore, immaterial. He is reckoned as having knowledge at the beginning, and later, when eating holy food (having forgotten that he is unclean), there is unawareness in the middle; ultimately, when the knowledge at the end comes to him, he brings a sliding scale sacrifice. Had ignorance of the law been counted as unawareness, there would have been, in this case, no knowledge at the beginning, and he would not be liable for a sacrifice.

(22) Therefore, there is no knowledge at the beginning.

(23) Lit., 'Let it stand'.

(24) And he entered the Temple whilst unclean, and had never been aware that this building was the Temple.

(25) Supra 4a.

(26) Supra Mishnah 14b.

(27) Ibid.

(28) Infra 19b.

(29) Supra 4a-b.

(30) Supra 5a.

(31) And there is no knowledge at the beginning. The fact that he knew there is a Temple in existence does not constitute 'knowledge gained from a teacher', because he never knew its site; but in the case where he became unclean by touching a carcass though he was not aware at the moment of contact that this contact made him unclean, it is nevertheless counted as knowledge at the beginning (knowledge gained from a teacher), because he had been aware at one time that contact with a carcass makes him unclean, and he had been aware at the moment of contact that he was touching a carcass.

(32) That king, prophet, etc. are necessary for consecrating an addition to the Temple court.

Talmud - Mas. Shevu'oth 15a

even so shall ye make it¹ — for future generations. Raba objected: All the vessels which Moses made were consecrated by their anointing;² thenceforth,³ their employment in the service dedicated them.⁴ Now why? Let us say: so shall ye make it — for future generations.⁵ — It is different there, for Scripture says: And he anointed them and sanctified them⁶ — 'them' he anointed; but [vessels] in future generations [are] not [consecrated] by anointing. But you may say: 'them' he anointed; but [vessels] in future generations [may be consecrated] either by anointing or by employment in the service? — R. Papa said: Scripture says. [And they shall take all the vessels of ministry,] wherewith they minister in the sanctuary;⁷ the verse makes them dependent upon ministry.⁸ Now that Scripture has written 'wherewith they minister', why do we require 'them'?⁹ — If Scripture had not written 'them', I might have said: these [in the time of Moses] were [consecrated] by anointing [only], but [vessels] in future generations [require both] anointing and employment in service, for Scripture has written so shall ye make it;¹⁰ therefore Scripture limits [by writing] 'them' — them¹¹ by anointing, but not [vessels] in future generations by anointing.¹²

AND WITH TWO [LOAVES] OF THANKSGIVING. We learnt: The two thanksgiving offerings which are mentioned refer to their loaves and not their flesh.¹³ How do we know? R. Hisda said: Because Scripture says: And I placed two great thanksgiving offerings,¹⁴ and we went in procession, on the right upon the wall.¹⁵ Now, what is meant by 'great'? Shall we say, from a great [or, large] kind actually?¹⁶ [If so,] let him say, oxen! But then, large of their kind?¹⁷ [That is impossible, for] is there any importance [attached to size] before Heaven? Surely we learnt: It is said with reference to a

burnt offering of cattle: an offering made by fire, a sweet savour [unto the Lord];¹⁸ with reference to a burnt offering of a bird: an offering made by fire, a sweet savour [unto the Lord];¹⁹ with reference to a meal offering: an offering made by fire, a sweet savour [unto the Lord].²⁰ This teaches us that it is the same whether one gives much or little, as long as he directs his heart to his Father who is in Heaven! — Well then, that which is [inevitably] the larger in the thanksgiving offering, and which is it? The leaven. For we learnt: The thanksgiving offering came from five Jerusalem se'ahs, which are equivalent to six wilderness²¹ se'ahs, which are two ephahs, (for an ephah is three se'ahs); twenty tenths [of an ephah],²² ten for leavened, and ten for unleavened [loaves]; and the unleavened [loaves] were of three kinds: cakes, wafers, and cakes saturated with oil.²³ [Hence, the leavened loaves were larger.]²⁴

Rami b. Hama said: The [addition to the] Temple court is not sanctified except by the remnants of the meal offering.²⁵ What is the reason? — Like Jerusalem; just as Jerusalem is sanctified by that which must be eaten within it,²⁶ so the Temple court is sanctified by that which must be eaten within it.²⁷ Cannot then the loaves of thanksgiving be eaten in the Temple court?²⁸ — Well then, like Jerusalem; just as Jerusalem [is sanctified by] that which must be eaten within it, and which, if it goes outside it, becomes invalid,²⁹ so the Temple court [is sanctified by] that which must be eaten within it, and which, if it goes outside it, becomes invalid.³⁰ [But why not say,] just as there³¹ it is leaven, so here³² let it be leaven? — How can you reason thus? Is there, then, a meal offering of leaven!³³

(1) Ex. XXV, 9; the phrase, so shall ye make it, being superfluous, because it has already been said, Let them make Me a sanctuary (verse 8), is taken to imply that whatever was done for the tabernacle in the wilderness should be done for any future tabernacle or Temple. The tabernacle was consecrated in the presence of King and Prophet (Moses), Urim and Tummim (worn by Aaron), and the seventy elders.

(2) With the holy anointing oil (Ex. XXX, 25-28), becoming thereby bodily holy.

(3) Vessels in later times were not anointed.

(4) V. Sanh 16b.

(5) And let them require anointing.

(6) Num. VII, 1; the tabernacle and all its vessels.

(7) Num. IV, 12; this verse is taken to refer to future vessels, because the word used, **יִשְׁרְתוּ** is in the future tense (lit., 'they will minister'); v. Rashi, Sanh. 16b.

(8) I.e., being employed in the service, they become vessels of ministry (holy).

(9) Since we deduce from the phrase wherewith they minister that vessels in the future are consecrated by 'ministry', why do we require the emphasis on 'them' to exclude vessels in the future.

(10) In the future: Just as now the vessels are consecrated by anointing, so they shall be in the future; and that vessels in the future are consecrated by 'ministry' is deduced from wherewith they minister; hence they require both anointing and employment in service in order to become consecrated.

(11) In the time of Moses.

(12) But by 'ministry' only.

(13) A thanksgiving offering comprises, in addition to the animal sacrificed, loaves of unleavened and leavened bread (Lev. VII, 12, 13).

(14) **שְׁתֵּי תוֹדוֹת גְּדוּלוֹת**: E.V, two great companies that gave thanks.

(15) Neh. XII, 31. The verse refers to the re-dedication of Jerusalem by Nehemiah.

(16) The animals of the thanksgiving offerings were of a large breed (e.g., oxen) and not of a small breed (e.g., sheep).

(17) I.e., even if they were of a small breed (e.g., sheep), the largest of that kind were brought.

(18) Lev. I, 9.

(19) Ibid. 17.

(20) Lev. II, 2.

(21) I.e., Biblical se'ahs, measures referred to in the Bible, when the Israelites were in the wilderness.

(22) For it was made of 6 se'ahs = 2 ephahs; and an ephah is 10 tenths (i.e., omers): an omer is the tenth part of an ephah (Ex. XVI, 36).

(23) Lev. VII, 12; ten loaves of each kind were made, so that there were thirty unleavened loaves made from the ten omers; the leavened loaves were only of one kind (Lev. VII, 13); so that the ten leavened loaves were equal to the thirty unleavened loaves; each leavened loaf was, therefore, three times the size of an unleavened loaf (Men. 77a).

(24) Nehemiah's statement that he took two large thanksgiving offerings therefore means two leavened loaves of the thanksgiving offering.

(25) Eaten by the priests (Lev. VI, 9).

(26) The two loaves of the thanksgiving offering must be eaten within the city.

(27) The remnant of the meal offering eaten by the priests (Lev. VI, 9).

(28) The priest may eat the portion he receives from an Israelite's thanksgiving offering (Lev. VII, 14) within the Temple court, if he desires. Since the loaves of thanksgiving may, therefore, be eaten in the Temple court, let them sanctify the addition to the Temple court.

(29) The loaves of thanksgiving, if taken outside the city walls, become invalid.

(30) The remnant of the meal offering eaten by the priests becomes invalid, if taken outside the Temple court,

(31) In sanctifying the city two loaves of leavened bread are used.

(32) In sanctifying the Temple court.

(33) Since we require the remnant of a meal offering to sanctify the Temple Court, it must perforce be unleavened: No meal offering, which ye shall bring unto the Lord, shall be made with leaven (Lev. II, 11).

Talmud - Mas. Shevu'oth 15b

And if you should say that he leavens the remnants,¹ and sanctifies with them, [that cannot be, for] it is written: It shall not be baked leavened. As their portion [have I given it].² And Resh Lakish said: Even their portion must not be baked leavened. But why not?³ It is possible to sanctify it with the two loaves of Pentecost!⁴ — It is impossible. How shall he do it? Shall he build it⁵ on the eve [of Pentecost], and sanctify it on the eve? The two loaves become holy only by the sacrifice of the lambs [on Pentecost].⁶ Shall he build it on the eve, and sanctify it now [on Pentecost]? We require sanctification at the time of [the completion of] the building. Shall he complete the building on the festival, and sanctify it on the festival? The building of the Temple does not supersede the festival.⁷ Shall he leave [the two loaves] till [a day] later, and complete the building and sanctify it? They [the loaves] become invalid by linah.⁸ Shall he build it on the eve of the festival, and leave a little [incomplete], so that when he has recited the blessing at the end of the day [Habdalah], he may complete it immediately and sanctify it?⁹ The building of the Temple cannot take place at night, for Abaye said: How do we know that the building of the Temple cannot take place at night? Because it is said: 'And on the day that the tabernacle was reared up'¹⁰ — during the 'day' it is reared up, during the night it is not reared up. Therefore it is not possible.¹¹

AND WITH SONG. Our Rabbis taught: The song of thanksgiving¹² was [accompanied by] lutes,¹³ lyres,¹⁴ and cymbals¹⁵ at every corner and upon every great stone in Jerusalem; and [the psalm] is intoned; I will extol Thee, O Lord, for Thou hast raised me up etc.;¹⁶ and the song against evil occurrences,¹⁷ and some call it the song against plagues. He who calls it [the song] against plagues [does so] because it is written: neither shall any plague come nigh thy tent;¹⁸ and he who calls it [the song] against evil occurrences [does so] because it is written: a thousand may fall at my side;¹⁹ [that is to say, this psalm] is intoned: O thou who dwellest in the secret place of the Most High, and abidest in the shadow of the Almighty, till for thou hast made the Lord who is my refuge, even the Most High, thy habitation;²⁰ and then again [this psalm] is intoned; A Psalm of David, when he fled from Absalom his son. Lord, how many are mine adversaries become! till Salvation belongeth unto the Lord; Thy blessing be upon Thy people. Selah.²¹

R. Joshua b. Levi recited these verses²² when retiring to sleep. How could he do so? Did not R. Joshua b. Levi [himself] say it is prohibited to heal oneself with words of the Torah?²³ — To protect oneself is different.²⁴ Well then, when he said it is prohibited, [he meant] where there is [already] a wound. If there is a wound, is it merely prohibited, and nothing else? Surely, we have learnt: He who

utters an incantation²⁵ over a wound has no portion in the world to come!²⁶ — But it has been taught with reference to this; R. Johanan said: They taught [this law only] if he spits, for the Name of Heaven must not be mentioned in connection with spitting.²⁷

THE BETH DIN WALK IN PROCESSION, THE TWO [LOAVES] OF THANKSGIVING BEING BORNE AFTER THEM, etc. Shall we say that the Beth din walk in front of the [loaves of] thanksgiving? Surely, it is written: And after them [the two loaves] went Hoshaiah and half of the princes of Judah.²⁸ — Thus he means: The Beth din walk, and the two [loaves] of thanksgiving are borne, and the Beth din walk behind.²⁹

How are they borne? — R. Hiyya and R. Simeon son of Rabbi [disagreed]: One said, one opposite the other; and the other said, one behind the other.³⁰ According to the one who holds they were opposite each other, the inner one is that which is nearest the wall,³¹ and according to the one who holds that they were one behind the other, the inner one is that which is nearest the Beth din.³²

We learnt: THE INNER ONE IS EATEN, AND THE OUTER ONE IS BURNT. It is right according to the one who holds that they were one behind the other, therefore the inner one is eaten, because the outer one came before it and sanctified the place;³³ but according to the one who holds that they were opposite each other, they both simultaneously sanctified the place!³⁴ — But even according to your reasoning, according to the one who holds they were one behind the other, [why is the inner one eaten?] does the one [loaf]³⁵ then sanctify the place? Surely, we have learnt: ANY [ADDITION] THAT WAS NOT MADE WITH ALL THESE [IS NOT HOLY],³⁶ and even according to the one who holds [that the reading in the Mishnah is]: ‘with any one of all these’,³⁷ [still] these two [loaves] together are one precept!³⁸ — Well then, said R. Johanan,

(1) After the ritual has been performed by the priest with the unleavened meal offering, he takes the remnant due to him, and makes it leavened.

(2) Lev. VI, 10. **לֹא תֹאפֶה חֲמֵץ חֶלְקָם** may be translated: ‘their portion must not be baked leavened.’

(3) Is it not really possible to sanctify the Temple court with a meal offering of leaven?

(4) Lev. XXIII, 17: they shall be baked leavened.

(5) The addition in the Temple court.

(6) Lev. XXIII, 20: And the priest shall wave them with the bread of the first-fruits for a wave offering before the Lord, with the two lambs; they shall be holy to the Lord. Though the loaves are holy for their value (**קְדוּשַׁת דָּמִים**) before the lambs are sacrificed, for they are purchased from the Temple funds, they do not become bodily holy (**קְדוּשַׁת הַגּוֹף**) until the lambs are sacrificed on Pentecost; v. Men. 78b.

(7) No building operation may be performed on a Sabbath or festival even if it be for so sacred a task as the building of the Temple; v. Yeb. 6a.

(8) **לַיְנָה** (night rest) ‘Being left overnight till the morrow’: for they are permitted to be eaten only for one day (Pentecost) and one night (till midnight); v. Zeb. 54b.

(9) Before midnight, while the loaves are still valid.

(10) Num. IX, 15.

(11) To sanctify the Temple court with leavened loaves.

(12) Ps. C.

(13) Of seven strings (v. ‘Ar. 13b), resembles the guitar.

(14) Stringed instrument like harp; or, leather wind instrument like accordion or concertina; v. *ibid.* Rashi.

(15) Of metal, clashed together in pairs.

(16) Ps. XXX; the heading is: A psalm; a Song at the Dedication of the House.

(17) I.e., the psalm referring to evil spirits or demons, XCI.

(18) Ps. XCI, 10.

(19) *Ibid.* 7; i.e., the evil spirits will depart when the place is sanctified.

(20) Ps. XCI, 1-9 this is actually the song of *pegaim* or *nega'im*; v. Rashi.

(21) Ps. III; according to Maharsha the heading of this psalm was not recited.

(22) Ps. XCI, 1-9.

(23) And these verses are intended to drive away evil spirits.

(24) And is permitted; the verses are not intended to heal an actual wound, but to shield from possible affliction.

(25) Lit., 'whispers'.

(26) Sanh. 90a. This is more than merely prohibiting it. ['Spitting was believed to have the power of breaking the spell, v. Blau, Zaubewesen, p.68.]

(27) If he spits on the wound, and utters an incantation of Biblical verses, he has no portion in the world to come; but to utter the incantation without spitting is also prohibited; to utter verses to protect oneself from a possible affliction is permitted, v. Sanh. 101a.

(28) Neh. XII, 32.

(29) And the Mishnah should be emended accordingly.

(30) The loaves are borne by two priests; according to one view, the priests walk side by side; according to the other view, they walk one behind the other.

(31) According to Rashi, the procession marched round the wall outside; according to Tosaf., inside the city. In either case, the inner one is that which is nearest the wall. Tosaf. suggest that they marched inside the wall, because if the loaves were taken outside, they would automatically become invalidated by being **יצא** (outside the consecrated area, i.e., the city of Jerusalem).

(32) Because there is one priest in front, and the Beth din behind.

(33) As soon as the first loaf in the procession comes to a place, it sanctifies it; the second one, coming to it, enters holy ground, and does not, therefore, become invalid by being **יצא** (going out into unconsecrated ground). The first one, however, is burnt, because at the actual moment of entering the unconsecrated spot it became **יצא**.

(34) Then, either both should be burnt, if we assume that at the moment of entry into unconsecrated ground they became **יצא**; or, both should be eaten, if we assume that the act of entry automatically sanctifies the spot at the same moment.

(35) The first.

(36) Hence we require both loaves to enter a place in order to consecrate it.

(37) Infra 16a; that any one of those mentioned in the Mishnah suffices to consecrate a place; and you might, therefore, conceivably say that one loaf suffices.

(38) They are inseparable; 'any one of these' means either King or priest or Sanhedrin or two loaves.

Talmud - Mas. Shevu'oth 16a

by the ruling of the prophet the one was eaten, and by the ruling of the prophet the other was burnt.¹

ANY [ADDITION] THAT WAS NOT MADE WITH ALL THESE, ETC. It was taught: R. Huna said: WITH ALL THESE we learnt in our Mishnah; R. Nahman said: WITH ANY ONE OF ALL THESE we learnt in our Mishnah. R. Huna said: WITH ALL THESE we learnt in our Mishnah, because he holds the first consecration² consecrated it for the time being, and consecrated it for the future; and Ezra [in re-consecrating it] merely did it as a symbol.³ R. Nahman said: WITH ANY ONE OF ALL THESE we learnt in our Mishnah, because he holds the first consecration consecrated it for the time being, and did not consecrate it for the future; and Ezra really re-consecrated it,⁴ although there were no Urim and Tummim. Raba asked R. Nahman: We learnt: ANY ADDITION THAT WAS NOT MADE WITH ALL THESE! — [Emend it and] learn: 'With any one of all these.'

Come and hear: Abba Saul said: There were two meadows⁵ on the Mount of Olives, the lower and the upper;⁶ the lower was consecrated with all these;⁷ the upper was not consecrated with all these, but by the returned exiles,⁸ without King and without Urim and Tummim; the lower one which was properly consecrated; the illiterate⁹ entered there, and ate there sacrifices of a minor grade of holiness,¹⁰ but not the second tithe.¹¹ And the learned¹² ate there sacrifices of a minor grade of holiness and also the second tithe.¹³ The upper one which was not properly consecrated; the illiterate entered there, and ate there sacrifices of a minor grade of holiness,¹⁴ but not the second tithe. And the learned did not eat there either sacrifices of a minor grade of holiness or the second tithe. And

why did they not consecrate it? Because additions are not made to the city and to the Temple courts except by King, Prophet, Urim and Tummim, Sanhedrin of seventy-one, and two [loaves] of thanksgiving, and song. And why did they consecrate it?¹⁵ Why did they consecrate it? You have just said they did not consecrate it! — But [read] ‘why did they bring it within [the city boundaries]?’ Because it was a vulnerable spot of Jerusalem, and it would have been easy to conquer it [the city] from there.¹⁶ [This is, however, in conflict with R. Nahman's view!¹⁷ — He may answer that it is a subject upon which] Tannaim disagree [and he will agree with one of them], for it has been taught: R. Eliezer said: I heard [from my teachers] that when they were building the Temple [in Ezra's time], they made curtains for the Temple and curtains for the courts,¹⁸ but for the Temple they built [the wall] outside [the curtains],¹⁹ and for the courts they built [the walls] within [the curtains]. R. Joshua said: I heard that sacrifices were offered although there was no Temple,²⁰ and sacrifices of the highest grade of holiness were eaten although there were no curtains, and sacrifices of a minor grade and the second tithe, although there was no wall,²¹ because the first consecration consecrated it for the time being, and consecrated it for the future. This implies [does it not?] that R. Eliezer holds, it did not consecrate it for the future.²²

Said Rabina to R. Ashi; How [do you deduce this]? Perhaps all agree that the first consecration consecrated it for the time being, and consecrated it for the future, but one Master states [merely] what he heard [from his teachers], and the other Master states [merely] what he heard [from his teachers].²³ And if you will say, [if so,]²⁴ why, according to R. Eliezer, are curtains necessary? [We may reply,] for privacy only!

Well then, there the Tannaim [disagree], for it has been taught: ‘R. Ishmael son of R. Jose said: Why did the Sages enumerate these?²⁵ Because when the exiles returned, they came upon these, and consecrated them;²⁶ but [the sanctity of] the earlier [cities] was abolished when [the sanctity of] the land was abolished.’ Hence, he holds that the first consecration consecrated it for the time being, but did not consecrate it for the future. But we may point out an incongruity: ‘R. Ishmael son of R. Jose said: Were there, then, only these?²⁷ Surely it is already written: [And we took all his cities ... sixty cities, all the region of Argob, the kingdom of Og in Bashan. All these were fortified cities, with high walls.²⁸ Then why did the Sages enumerate these? Because when the exiles returned, they came upon these, and consecrated them.’ — They consecrated them now! Surely we state further on²⁹ that it was not necessary to consecrate them! But read, ‘they came upon these, and enumerated them. And not these only [are walled cities], but any one about which you may have a tradition from your fathers that it was surrounded by a wall from the days of Joshua, the son of Nun, then all these precepts³⁰ apply to it; because the first consecration consecrated it for the time being, and consecrated it for the future.’³¹ There is thus a discrepancy between [the statement of] R. Ishmael son of R. Jose [in the Baraita] and [that of] R. Ishmael son of R. Jose [in the Tosefta]!³² — If you will, you may say that [they reflect the opinions of] two tannaim [who] disagree about [the view of] R. Ishmael son of R. Jose; and if you will, you may say that one of the statements was spoken by R. Eleazar b. Jose,³³ for it has been taught: R. Eleazar b. Jose said: [Scripture says: The city] that has a wall;³⁴ although it has not [a wall] now, as long as it had one before [it is reckoned a walled city].³⁵

(1) There is no discoverable reason why one loaf suffices and the other burnt; but this was the ruling of the prophets Haggai, Zechariah, and Malachi who were present at Ezra's and Nehemiah's re-consecration of Jerusalem.

(2) Of the Temple and of Jerusalem in the time of Solomon.

(3) Because it was still holy, and did not need re-consecration, and could not, in any, case, be re-consecrated, because King and Urim and Tummim were lacking (v. Yoma 21 b); for R. Huna holds that we require ‘all these’ (enumerated in the Mishnah) for re-consecration, and Ezra neither re-consecrated the city nor made any addition to it which would require consecration.

(4) With Sanhedrin, two loaves of thanksgiving, and song; for, according in R. Nahman, even one of the requisites (mentioned in the Mishnah) suffices for re-consecration.

(5) [בצעיין] Schlatter, *Tag Trajans*, 20, renders it ‘parts’, ‘districts’; Krauss, as ‘fissures’ produced by an earthquake,

- the Eroge mentioned in Josephus, Ant. IX, 10, 4, and which he identifies with Bethsaida (Bethesda), v. REJ, LXXIII, 59ff.]
- (6) On the slopes of the mountain, one near the base and the other near the summit.
- (7) During the time if the First Temple it was incorporated within the city boundary, and joined to the city by a wall.
- (8) From Babylon, who included it in the city, and built another wall around it.
- (9) Amme ha-arez (v. Glos.). I.e., not strictly observant of the laws regarding levitical uncleanness.
- (10) Such as thanks offerings or peace offerings which were permitted to be eaten within the city by all Israelites; v. Zeb. V, 6-8.
- (11) Eaten by the owner in Jerusalem: Deut. XIV, 22-26. The second tithe could also have been eaten in the lower meadow, for it was properly consecrated, and was part of the city; but the illiterate thought that the second tithe had to be eaten within the inner (old) wall of Jerusalem, for the verse states: Thou shalt eat before the Lord thy God . . . the tithe of thy corn . . . (Deut. XIV, 23). They were stricter with the tithe than with the sacrifices, because the verse (ibid. 22) states: Thou shalt surely tithe; and they had probably heard the popular exposition: עֶשֶׂר תְּעָשֶׂר עֶשֶׂר בְּשִׁבִיל שְׂתַעֲשֶׂר (a play on the word תְּעָשֶׂר; v. Shab. 119a) — give tithes in order that thou mayest have wealth.
- (12) Haberim (v. Glos.).
- (13) Because they knew that the sacrifices and second tithe were equal, and that the lower meadow was properly consecrated and part of the city.
- (14) They thought the upper meadow was as holy as the lower, because it had also been incorporated within the city by a wall, and they did not distinguished between the full consecration of the lower meadow and the incomplete consecration of the upper meadow.
- (15) [Tosef. Sanh. III reads, ‘Why was it not consecrated?’]
- (16) [V. REJ, loc. cit.]
- (17) For it is stated that the upper meadow was not consecrated, because all the essentials were not present, whereas R. Nahman holds that ‘any one of all these’ suffices.
- (18) As temporary partitions to enable sacrifices to be offered and eaten forthwith (v. n. 8); and then they built the walls near curtain.
- (19) So that the curtains prevented the workmen from gazing into the holy place.
- (20) Before it was re-built by Ezra; v. Ezra III, 1-6; Meg. 10a, Rashi.
- (21) Round Jerusalem.
- (22) Because R. Eliezer requires curtains in order that it may be counted as a Temple; but without curtains it is not holy because, presumably, the first consecration did not consecrate it for the future. R. Nahman will thus agree with R. Eliezer.
- (23) R. Eliezer and R. Joshua are not arguing on this subject, their statements being entirely separate, and not uttered to each other's hearing.
- (24) If R. Eliezer holds that the first consecration consecrated it for the future also.
- (25) The Mishnah (‘Ar. 32a), explaining that walled cities (Lev. XXV, 29, 30) are such which had walls round them since the days of Joshua, mentions a few as examples, such as Gamala, Gedud, etc. Why did the Sages mentioned these particularly? There were many more which could have been mentioned.
- (26) By Beth din, two loaves of thanksgiving, and song; v. ‘Ar. 32b, Rashi. Cf. however Rashi a.l.
- (27) Walled cities, mentioned in ‘Ar. 32a.
- (28) Deut. III, 4, 5.
- (29) In the same passage.
- (30) Concerning the sale of a house (Lev. XXV, 20, 30); sending lepers outside the city (Lev. XIII, 46; Num. V, 2); and that the open space (1,000 cubits) round the city should be left uncultivated (‘Ar. 33b).
- (31) Tosaf. ‘Ar. V.
- (32) From the Baraitha it appears he holds that the first consecration did not consecrate it for the future, and from the Tosefta it appears he holds that it did.
- (33) The statement in the Tosefta.
- (34) Lev. XXV, 30; the kethib is לֹא הִמָּה (‘has not a wall’), but the kere is לוֹ (‘has a wall to it’).
- (35) Because the first consecration, when it had a wall, suffices for now also, though the wall is now destroyed. Hence, there are two tannaim, R. Ishmael and R. Eleazar b. Jose, who disagree as to whether the first consecration consecrated it

for the future also or not; and R. Nahman will agree with R. Ishmael.

Talmud - Mas. Shevu'oth 16b

IF HE BECAME UNCLEAN IN THE TEMPLE COURT [AND WAS AWARE OF IT], THEN THE UNCLEANNESS BECAME HIDDEN FROM HIM, etc. How do we know uncleanness in the Temple court [is punishable]?¹ — R. Eleazar [b. Pedath] said: One verse states: The tabernacle of the Lord he hath defiled;² and another verse states: For the sanctuary of the Lord he hath defiled.³ If it is not applicable to [the case of] uncleanness occurring outside,⁴ apply it to [the case of] uncleanness occurring inside.⁵ But are the verses superfluous? Surely they are necessary, for it has been taught: R. Eleazar [b. Shammua'] said: If tabernacle is mentioned, why is sanctuary mentioned; and if sanctuary is mentioned, why is tabernacle mentioned? If tabernacle had been mentioned, and sanctuary had not been mentioned, I might have thought that for [entering] the tabernacle he should be liable, because it was anointed with the anointing oil;⁶ but for [entering] the sanctuary [i.e., Temple] he should not be liable; and if sanctuary had been mentioned, and tabernacle had not been mentioned, I might have thought that for [entering] the sanctuary he should be liable, because its holiness is an everlasting holiness;⁷ but for [entering] the tabernacle he should not be liable; therefore tabernacle is mentioned, and sanctuary is mentioned.⁸ — R. Eleazar [b. Shammua'] argued thus; Since tabernacle is called sanctuary, and sanctuary is called tabernacle, let Scripture write either in both verses sanctuary, or in both verses tabernacle;⁹ why [does Scripture write] tabernacle and sanctuary? Hence, we deduce both.¹⁰

Granted that sanctuary is called tabernacle, for it is written: And I will set My tabernacle among you;¹¹ but whence do we know that tabernacle is called sanctuary? Shall we say, because it is written: And the Kohathites, the bearers of the sanctuary set forward?¹² This refers to the Ark,¹³ — Well then, from this verse: And let them make me a sanctuary, that I may dwell among them;¹⁴ and it is written: According to all that I show thee the pattern of the tabernacle.¹⁵

AND HE PROSTRATED HIMSELF, OR TARRIED THE PERIOD OF PROSTRATION, Raba said: They did not teach this¹⁶ except when he prostrated himself facing inwards;¹⁷ but if he prostrated himself facing outwards, then, only if he tarried is he liable, but if he did not tarry, he is not liable. Some append this [comment of Raba] to the latter clause; OR TARRIED THE PERIOD OF PROSTRATION: This implies that prostration itself requires tarrying. Raba said: They did not teach this except when he prostrated himself facing outwards; but, if facing inwards, even if he did not tarry [he is liable;] and thus [the Mishnah] means: If he prostrated himself facing inwards [without tarrying], or if he tarried the period of prostration in his prostration facing outwards, he is liable.

What is considered prostration in which there is tarrying, and what is considered prostration in which there is no tarrying? — Where there is no tarrying, that is mere kneeling; where there is tarrying, that is the spreading out of hands and feet. And what is the duration of tarrying? In this there is disagreement between R. Isaac b. Nahmani and one of his associates, namely, R. Simeon b. Pazzi (and some say, R. Simeon b. Pazzi and one of his associates, namely, R. Isaac b. Nahmani, and some say, R. Simeon b. Nahmani); one says: As the time taken to recite this verse:¹⁸ And all the children of Israel looked on, when the fire came down, and the glory of the Lord was upon the house; and they bowed themselves with their faces to the ground upon the pavement, and prostrated themselves, and gave thanks unto the Lord: 'for He is good, for His mercy endureth for ever';¹⁹ and the other says: As [the time taken to recite] from and they bowed till the end.

Our Sages taught: Kiddah means [falling] on the face; and so Scripture says: Then Bath-sheba bowed with her face to the earth.²⁰ Kneeling means upon the knees; and so Scripture says: from kneeling at his knees.²¹ Prostration means spreading out of hands and feet; and so Scripture says:

Shall I and thy mother and thy brethren indeed come to bow down to thee to the earth?²²

Raba queried: Is tarrying necessary for stripes,²³ or is tarrying not necessary for stripes? For [the bringing of] a sacrifice there is a tradition that tarrying is necessary,²⁴ but for stripes there is no tradition that tarrying is necessary?²⁵

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- (1) If one enters while clean, and becomes unclean in the Temple, how do we know that he must bring a sliding scale sacrifice?
 - (2) Num. XIX, 13; refers to a person defiled by a dead body entering the tabernacle or sanctuary.
 - (3) Ibid. 20.
 - (4) For that is deduced from the first verse.
 - (5) Since otherwise the verse is superfluous.
 - (6) And therefore possessed greater sanctity.
 - (7) Sacrifices on bamoth ('high places') being prohibited from the time the Temple was built, even after its destruction.
 - (8) Hence, since neither is superfluous, how can the case of uncleanness occurring inside be deduced?
 - (9) And from the superfluous verse we could deduce the case of uncleanness occurring inside.
 - (10) Because Scripture of set purpose uses tabernacle in one verse and sanctuary in the other, we may deduce also that they are both equal in sanctity, and that an unclean person entering either is liable; v. Tosaf.
 - (11) Lev. XXVI, 11; lit., 'I will set My dwelling (or, 'abode') among you'. Wherever God dwells is His mishkan; since He dwelt in the sanctuary (i.e. Temple), that also is His mishkan (i.e., tabernacle). V. 'Er. 2a. Rashi, for another interpretation.
 - (12) Num. X, 21.
 - (13) And not to the tabernacle, for that was borne by the sons of Gershon and the sons of Merari (Num. X, 17).
 - (14) Ex. XXV, 8.
 - (15) Ibid. 9: tabernacle in this verse is referred to as sanctuary in the previous verse; hence the tabernacle they built in the wilderness was also called sanctuary.
 - (16) That if he prostrated himself quickly, without tarrying the period that prostration should take, he is liable.
 - (17) To the Holy of Holies in the west.
 - (18) In Hebrew.
 - (19) II Chron. VII, 3.
 - (20) I Kings I, 31; וַתִּקַּד, from the same root as קִידָה, קָדַד, ; the face alone touches the ground; this is not the same as complete prostration of the whole body; v. Suk. 53a.
 - (21) I Kings VIII, 54.
 - (22) Gen. XXXVII, 10; 'bow down to earth' implies complete prostration.
 - (23) If, having become unwittingly unclean in the temple, he was warned to leave; but he remained, though less than the duration of the tarrying period, is he punished by stripes?
 - (24) If he became unwittingly unclean in the Temple, and tarried the period of prostration while he was unaware of his uncleanness or of the Temple, he brings a sliding scale sacrifice; supra 14b.
 - (25) Perhaps, since he remained wilfully, after being warned, he is liable for stripes, though he did not tarry the full period of prostration.

Talmud - Mas. Shevu'oth 17a

Or, perhaps the tradition is that within [the Temple] tarrying is necessary, no matter whether for sacrifice or for stripes?¹ It remains undecided.

Raba queried: If he suspended himself in the air in the Temple,² what is the ruling? Is the tradition that tarrying makes him liable only in the case of such tarrying as may be used for prostration,³ but for such tarrying which cannot be used for prostration there is no tradition [that he is liable]? Or perhaps the tradition is that within [the Temple] tarrying makes him liable, no matter whether it may be used for prostration or not? It remains undecided.

R. Ashi queried: If he defiled himself wilfully, what is the ruling?⁴ For an accidental defilement there is a tradition that tarrying is necessary, but for wilful defilement there is no tradition that tarrying is necessary? Or perhaps the tradition is that within [the Temple] tarrying is necessary, no matter whether for accidental or wilful defilement? It remains undecided.

R. Ashi queried: Does a Nazirite at a grave require tarrying for stripes or not?⁵ Within [the Temple] there is a tradition that tarrying is necessary, but outside there is no tradition that tarrying is necessary?⁶ Or perhaps for accidental uncleanness there is a tradition that tarrying is necessary,⁷ no matter whether inside or outside? It remains undecided.

IF HE WENT OUT THE LONGER WAY, HE IS LIABLE; THE SHORTER WAY, HE IS EXEMPT, etc. Raba said: THE SHORTER WAY which they said [exempts him, implies] even [walking] heel to toe,⁸ and even the whole day.

Raba queried: Can pauses be combined?⁹ — Let him solve it from his own statement!¹⁰ — There [he is exempt only] if he did not pause.¹¹

Abaye inquired of Rabbah: If he went out the longer way in the time taken for the shorter way, what is the ruling?¹² Is the tradition that the time taken [is the essential factor], and if he went out the longer way in the time taken for the shorter way, he is exempt; or, is the tradition definite that for the longer way he is liable, and for the shorter way he is exempt? — He said to him: [The law that for] the longer way [he is liable] was not given that it should be suspended for him.¹³

R. Zera objected strongly to this: Now, it is established with us that an unclean [priest] who officiated is punished by death.¹⁴ How can this be possible? If he did not tarry, how could he do the service?¹⁵ If he tarried, he is liable to kareth! Granted, if you would say that the tradition is that time [is the essential factor],¹⁶ then it is possible,¹⁷ if he strained himself in the shorter way, after he had done the service;¹⁸

(1) When one becomes unclean within the Temple accidentally, the punishment, whether of sacrifice or of stripes, is not inflicted, unless one tarries the period of prostration.

(2) For example, on becoming unclean, he immediately caught hold of a rope in the ceiling, and remained suspended thus for the tarrying period.

(3) I.e., when he is on the ground; but since he cannot prostrate himself in the air, he is not liable, even if he remains thus suspended for the period of tarrying.

(4) If Raba's question (whether tarrying is necessary for stripes) should be decided in the affirmative, that may be because he became unclean accidentally, though he tarried wilfully; but if he became unclean wilfully, perhaps he is liable for stripes, though he does not tarry.

(5) If a Nazirite (who must avoid defilement by the dead, Num. VI, 6) was borne aloft in the cemetery in a closed carriage (not, thereby, becoming unclean), and when there the top of the carriage was removed, thus making him unclean from the air of the cemetery; and he was warned to leave, but he remained, though not the period of tarrying, is he liable

for stripes? This example is similar to that of a person entering the Temple while clean, and becoming unclean inside.

(6) Because tarrying is measured as the duration of full prostration; this measure of duration is appropriate for the Temple, but not outside; and therefore the Nazirite is liable even if he did not tarry.

(7) The Nazirite became unclean accidentally, and is therefore not liable unless he tarries.

(8) Taking very short steps, so that the toe of one foot touches the heel of the foot in front.

(9) Walking out by the shorter route, he paused a while, then continued walking; then paused again; the combined moments of pausing being equal to the tarrying period. Is he liable in such case, or is he liable only when the tarrying period is one uninterrupted pause?

(10) For he holds that even if he walks very slowly, occupying the whole day, he is still exempt; though the time occupied is more than the tarrying period.

(11) Though he occupied the whole day, he did not stop walking.

(12) He ran quickly, so that the time taken in going out the longer way was only as much as would be taken in going out the shorter way at a medium pace.

(13) Even if he runs; hence, by the longer route he is always liable, even if he runs; by the shorter he is exempt, even if he walks slowly.

(14) By divine intervention, **מיתה בידי שמים**, not by a human tribunal; the priest must have become unclean in the Temple, for, if he became unclean outside, he is liable to the punishment of kareth (which is severer than **מיתה בידי שמים**) for entering.

(15) Which priestly service, however minute, could he possibly do in less time than the period of prostration?

(16) That the periods of duration mentioned in the Mishnah are simply measurements of time: the time duration of tarrying the period of prostration, and the time duration of going out by the longer route; and that he is exempt only if he does not tarry the period of prostration and goes out the shorter route, i.e., the time he spends in the Temple must be less than the combined times of the period of prostration and that occupied in walking out the shorter route at a medium pace.

(17) To have a case of an unclean priest officiating and tarrying the period of prostration, and yet not being liable for kareth, but for death by divine intervention.

(18) He ran out very quickly by the shorter route, so that, although he had tarried the period of prostration, the time he had spent altogether in the Temple was less than the combined times of prostration and walking out the shorter route at a medium pace.

Talmud - Mas. Shevu'oth 17b

but if you say that the tradition is definite,¹ how is it possible?² — Said Abaye: What a question! It is possible that he went out the shorter way [without tarrying first], and turned [a piece of the sacrifice on the altar fire] with a prong;³ and this is in accordance with R. Huna's view, for R. Huna said: A layman who turned [a piece of the sacrifice on the altar fire] with a prong is punished by death.⁴

The text says: 'R. Huna said, A layman who turned [a piece of the sacrifice on the altar fire] with a prong is punished by death.' How is this? If, without turning it, it would not have been consumed, this is self-evident! And if, without turning it, it would also have been consumed, then what has he done? — It is not necessary [for R. Huna to state his law except] in a case where if he had not turned it, it would have been consumed in two hours, and now [after turning it] it is consumed in one hour; and this [law] he teaches us, that an acceleration of the service is also a service.

R. Oshaia said: I wish to state a law, but am afraid of my associates: He who enters a house plagued by leprosy,⁵ backwards, even with his whole body [inside] except his nose, is clean, for it is written: He that cometh into the house . . . [shall be unclean].⁶ the normal way of coming in did Scripture prohibit; but I am afraid of my associates [in stating this law] for, if so, even if he entered wholly [including his nose, he should] also [be clean]. — Said Raba: His whole body is not worse than the vessels in the house; for it is written: [They shall empty the house before the priest comes to see the plague,] so that all that is in the house be not made unclean.⁷

It has also been taught similarly: These roofs [of the Temple] — sacrifices of the highest grade of

holiness may not be eaten there,⁸ and sacrifices of a minor grade of holiness may not be sacrificed there;⁹ and an unclean person who entered the Temple by the roof is exempt, for it is said: And into the sanctuary she shall not come:¹⁰ the normal way of coming did Scripture prohibit.

THIS IS THE POSITIVE PRECEPT CONCERNING THE TEMPLE FOR WHICH THEY [THE BETH DIN] ARE NOT LIABLE, ETC. What is he referring to that he says — THIS IS THE POSITIVE PRECEPT, etc.?¹¹ He is referring to this:¹² They [the Beth din] are not liable for [an erroneous ruling in connection with the transgression of] a positive¹³ or negative¹⁴ precept [concerning uncleanness] in the Temple; and they [individuals] do not bring a suspensive guilt offering for [a doubtful sin¹⁵ in connection with] the positive or negative precept [concerning uncleanness] in the Temple;¹⁶ but they [the Beth din] are liable for [an erroneous ruling in connection with the transgression of] the positive¹⁷ or negative¹⁸ precept concerning a menstruous woman;¹⁹ and they [individuals] bring a suspensive guilt offering for a [doubtful sin in connection with the] positive or negative precept concerning a menstruous woman.²⁰ So [the Tanna here] says:²¹ THIS IS THE POSITIVE PRECEPT CONCERNING THE TEMPLE FOR WHICH THEY ARE NOT LIABLE; AND WHICH IS THE POSITIVE PRECEPT CONCERNING A MENSTRUOUS WOMAN FOR WHICH THEY ARE LIABLE? [THIS:] IF ONE COHABITED WITH A CLEAN WOMAN, AND SHE SAID TO HIM; 'I HAVE BECOME UNCLEAN!', AND HE WITHDREW IMMEDIATELY, HE IS LIABLE, BECAUSE HIS WITHDRAWAL IS AS PLEASANT TO HIM AS HIS ENTRY.

It was stated: Abaye said in the name of R. Hiyya b. Rab: H²² is liable to [bring] two [sin-offerings].²³ And so said Raba that R. Samuel son of R. Sheba said that R. Huna said: He is liable to bring two, one for entering and one for withdrawing. Raba raised the question: In what [circumstances]? Shall we say, it was near the time of her regular period? And with whom? Shall we say, a learned man? Granted, then, for entering he should be liable, for he thought I am able to cohabit;²⁴ but for withdrawing, why should he be liable, since he acted wilfully!²⁵

(1) In each case: that if he tarried the period of prostration he is liable, even if he runs out the shorter way; and that if he goes out the longer way he is liable, even if he had not tarried, and even if he runs quickly.

(2) To have a case of an unclean priest doing the service, and presumably tarrying (in order to do the service), and yet not being liable to kareth?

(3) Which is a priestly function, and requires only a moment of time.

(4) Because it is a priestly function, and must not be done by a layman. Cf. Num. XVIII, 7. Death here, too, means by Divine intervention, v. n. 1.

(5) V. Lev. XIV, 33 seq.

(6) Ibid. 46.

(7) Ibid. 36.

(8) For they must be eaten within the Temple; and only the floor and air till the ceiling are holy, but not the attics and roofs.

(9) Though they may be eaten there, because, of course, they may be eaten anywhere within the walls of Jerusalem. According to Tosaf., however, they may not be eaten on the roof; but v. Pes. 85b, Rashi (s.v. גגין), and Adreth, Responsa, 34.

(10) Lev. XII, 3; a woman after childbirth, till after 40 days for a male child, and 80 days for a female. Entering by the roof is not normal.

(11) Lit., 'where does he stand?' Where have we learnt that the Beth din are not liable for an erroneous ruling concerning the transgression of a positive precept with reference to uncleanness in the Temple, that he states here: this is the positive precept for which they are not liable?

(12) Hor. 8b.

(13) Num. V, 2: Command the children of Israel that they put out of the camp . . . whosoever unclean by the dead; טמא לנפש is put out of the מרחנה שכינה, i.e., Temple; v. Rashi a.l. If a person become unclean in the Temple, and stays, he is transgressing this positive precept.

(14) Lev. XII, 4: And into the sanctuary she shall not come (a woman after childbirth, till after 40 days for a male, and 80 days for a female).

(15) A suspensive guilt offering, אשם תלוי, is brought by a person who is in doubt whether he has committed an act which, if done wilfully, is punishable by kareth, and if done wittingly, is punishable by the bringing of a sin offering; v. Lev. V, 17-19; and Rashi on verse 17; Hor. 8b.

(16) Because a sliding scale sacrifice, and not a fixed offering, is brought for actual unwitting transgression,

(17) V. infra 18b.

(18) Lev. XVIII, 19: And unto a woman who is impure by her uncleanness thou shalt not approach.

(19) Because for an unwitting transgression a fixed sin offering is brought.

(20) V. n. 7.

(21) Referring to the ruling in the Mishnah just quoted from Hor. 8b.

(22) Who withdraws forthwith.

(23) V. infra.

(24) Before she has her period; if, therefore, she becomes unclean during cohabitation, he commits a sin unwittingly, and must bring a sin offering.

(25) Being learned, he knows that it is prohibited to withdraw immediately, and is therefore liable for kareth, and not a sin offering.

Talmud - Mas. Shevu'oth 18a

And if an illiterate man,¹ then both acts are the same as eating two portions of forbidden fat, each the size of an olive, in one spell of unawareness.² Well then, [shall we say,] it was not near the time of her period? And with whom? Shall we say, a learned man? Then he should not be liable to bring even one; for, in entering he was the victim of a pure accident,³ and in withdrawing he acted wilfully!⁴ And if an illiterate man, he is liable to bring one, for withdrawing?⁵ Afterwards, Raba said: It really refers to the time near her period, and to a learned man; but a learned man for this,⁶ and not a learned man for that.⁷

Raba said: And both [these laws] we have learnt: Entering, we have learnt; and withdrawing, we have learnt. 'Withdrawing, we have learnt' — for it states, IF ONE COHABITED WITH A CLEAN WOMAN, AND SHE SAID TO HIM: 'I HAVE BECOME UNCLEAR!', AND HE WITHDREW IMMEDIATELY, HE IS LIABLE. 'Entering, we have learnt' [in another Mishnah] — If [blood is] found on his [rag after cohabitation], they are [both] unclean,⁸ and are liable for a sacrifice.⁹ Now this surely refers [does it not?] to the time near her period, and to [the act of] entering.¹⁰ R. Adda b. Mattenah said to Raba: [No!] Really I can say to you, it refers to the time not near her period, and to withdrawing.¹¹ And should you ask, what need is there to state the law of withdrawing, since it has already been stated?¹² [I may reply,] because it is necessary to tell us: If [blood is] found on her [rag after cohabitation],¹³ they are [both] unclean because of the doubt,¹⁴ but exempt from bringing a sacrifice.¹⁵ And because he wishes to teach us [this law concerning] 'If found on hers',¹⁶ he teaches us also [the law concerning] 'If found on his.'¹⁷

Said Rabina to R. Adda; How can you maintain that that [other Mishnah] refers to the time not near her period, and to withdrawing, seeing that it states; If [blood is] found, and found implies later;¹⁸ and if it refers to withdrawing, from the very first when he withdrew he already had the knowledge!¹⁹ Said Raba to him [R. Adda]; Listen to what your teacher [Rabina]²⁰ tells you.²¹ — [He replied:] How can you [maintain that it refers to entering],²² since it has been taught with reference to it:²³ This is the positive precept concerning a menstruous woman for which one is liable; and if it is [as you say],²⁴ it is a negative precept!²⁵ — He said to him: If you have learnt [the Baraita thus], it is defective, and you should read it thus: This is the negative precept concerning a menstruous woman for which one is liable; if [however] he was cohabiting with a clean woman, and she said to him; 'I have become unclean', and he withdrew immediately, he is liable: this is the positive precept concerning a menstruous woman, etc.

The text says: 'If he withdrew immediately, he is liable.' What should he do? R. Huna said in the name of Rab: He should press his ten nails into the ground [i.e., bed] until his desire dies out.²⁶ Raba said: From this we may deduce that he who commits incest²⁷ with *membrum mortuum* is exempt, for, if it will enter your mind to say that he is liable, what is the reason that he is exempt here? Because he has no alternative?²⁸ If it is because he has no alternative, then even if he withdraws immediately, let him also be exempt, for he has no alternative!²⁹ — Abaye said to him: Verily, I may say to you, he who commits incest with *membrum mortuum* is liable, and here the reason that he is exempt is because he has no alternative, and as for your question, if he withdraws immediately, why is he liable? [I may reply,] because he should have withdrawn with little pleasure, and he withdrew with much pleasure. Said Raba b. Hanan to Abaye: If so, we find a longer and a shorter route in connection with a menstruant.³⁰

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- (1) Who acted unwittingly in both cases.
 - (2) For which he brings only one sin offering. Here also, since he is illiterate, he is not aware, when she tells him she has become unclean, that he has committed a sin by cohabiting near the time of her period; or that it is prohibited to withdraw immediately. Since he has no knowledge of guilt between the two acts (entering and withdrawing), he should bring only one sin offering.
 - (3) He could not be aware that she would become unclean, since it was not near her period.
 - (4) Being learned, and knowing that it is prohibited to withdraw immediately, he is liable to *kareth*.
 - (5) Thinking it is permitted to withdraw immediately, he acted unwittingly.
 - (6) Knowing that he ought not to cohabit near the time of her period, yet thinking he still had time before she became unclean; he therefore committed a sin unwittingly (not accidentally, as would be the case if he cohabited not near her period), and brings a sin offering.
 - (7) Not knowing that he must not withdraw immediately, he thus brings two, one for entering, and one for withdrawing. This is not the same as eating two portions of prohibited fat in one spell of unawareness (for which he brings only one sin offering) for, when she told him she had become unclean, he was immediately aware that he had committed a sin; for, being learned, he knew that he ought not to have cohabited with her near her period.
 - (8) Seven days; Lev. XV, 19 and 24.
 - (9) Sin offering for cohabiting while she is unclean. Nid. 14a.
 - (10) Hence we learn that for entering (near her period) he is liable for a sacrifice, if she becomes unclean.
 - (11) He brings the sacrifice for withdrawing immediately, when she tells him she is unclean; for entering he is not liable, because it was not near her period.
 - (12) In our Mishnah, supra 14b.
 - (13) Not immediately, but after a short interval; Nid. 14a.
 - (14) The woman is definitely unclean, because she is now menstruous, but the man is unclean only because of the doubt whether he had cohabited with her when she was already unclean, or before her uncleanness commenced.
 - (15) Because she may have become unclean infer cohabitation; and he does not even bring a suspensive guilt offering for the doubtful sin (Mishnah, Nid. 14b).
 - (16) And to distinguish between the case where she applied her rag immediately and the case where an interval elapsed (v. Nid. 14a).
 - (17) Though this is superfluous.
 - (18) After withdrawing, blood was found, but during cohabitation they were not aware of uncleanness.
 - (19) That she is unclean, for she told him during cohabitation.
 - (20) [So curr. ed. Other reading adopted by Adreth and Zerachis Halevi: 'He (Rabina) said to him (R. Adda): Listen when your teacher (Raba) tells you.' This is preferable, as Raba was the teacher of Rabina.]
 - (21) That the Mishnah cannot refer to withdrawing.
 - (22) [Read with MS. M. and other ed.: אֵצִיט, 'How can I listen?']
 - (23) As a comment on Mishnah in Nid. 14a.
 - (24) That it refers to entering.
 - (25) Lev. XVIII, 19.
 - (26) He should remain passive.

(27) Cohabits with a woman forbidden to him owing to consanguinity (Yeb. 2a, b).

(28) For he must not withdraw immediately and must perforce withdraw when it is passive; but if he commits incest even with membrum mortuum he is liable.

(29) If you say that he is liable if he commits incest with membrum mortuum, then there is no difference between passive and virile member, so that he should be exempt even if he is withdraws forthwith.

(30) If he took the shorter route, i.e., withdrew immediately, he is liable; and if the longer route, i.e., waited till it was passive, he is exempt.

Talmud - Mas. Shevu'oth 18b

Whereas we learnt [this distinction, only] in the case of the Temple!¹ — They are not the same:² the longer route here³ is as the shorter route there; and the longer route there is as the shorter route here.

R. Huna son of R. Nathan raised an objection: Did Abaye then say that he had no alternative,⁴ from which we deduce that we are discussing the time not near her period;⁵ surely, it was Abaye who said that he is liable to bring two;⁶ from which we deduced that it refers to the time near her period!⁷ — Abaye's statement⁸ was made elsewhere.

R. Jonathan b. Jose b. Lekunia enquired of R. Simeon b. Jose b. Lekunia: Where is the prohibition in the Torah against intercourse with a menstruous woman? — He took a clod, and threw it at him. Prohibition against intercourse with a menstruant! And into a woman who is impure by her uncleanness thou shalt not approach!⁹ — Well then, [I meant to ask] where do we find the warning that he who cohabits with a clean woman, and she says to him, 'I have become unclean'; he should not withdraw immediately? — Hezekiah said, Scripture says: [And if any man lie with her (a menstruous woman)] her impurity shall be with him¹⁰ — even at the time of her impurity she shall be 'with him'¹¹ Hence, we have a positive precept; whence do we derive a negative precept? — R. Papa said, Scripture says: Thou shalt not approach [unto a woman who is impure];¹² thou shalt not approach means also, thou shalt not withdraw; for it is written: Who say, Approach to thyself, come not near me, for I am holier than thou.¹³

Our Rabbis taught: Thus shall ye separate the children of Israel from their uncleanness;¹⁴ R. Josiah said: From this we deduce a warning to the children of Israel that they should separate from their wives near their periods. And how long before? Rabbah said: One 'onah.¹⁵

R. Johanan said in the name of R. Simeon b. Yohai: He who does not separate from his wife near her period, then even if he has sons like the sons of Aaron, they will die, even as it is written: Thus shall ye separate the children of Israel from their uncleanness, . . .¹⁶ [this is the law . . .] of her that is sick with her impurity;¹⁷ and next to it: [And the Lord spoke unto Moses] after the death [of the two sons of Aaron].¹⁸

R. Hiyya b. Abba said that R. Johanan said: He who separates from his wife near her period will have male children, even as it is written: To make a distinction between the unclean and the clean;¹⁹ and next to it: If a woman conceive and bear a male child.²⁰ R. Joshua b. Levi said: He will have sons worthy to be teachers, for it is written: That ye may make a distinction [between . . . the unclean and the clean]; and that ye may teach.²¹ R. Hiyya b. Abba said that R. Johanan said: He who recites the Habdalah over wine at the termination of the Sabbath will have male children, even as it is written: That ye may make a distinction between the holy and the common;²² and elsewhere it is written: To make a distinction between the unclean and the clean;²³ and next to it: If a woman conceive [and bear a male child].²⁴ R. Joshua b. Levi said: He will have sons worthy to be teachers, even as it is written: That ye may make a distinction [between the holy and the common] . . . and that ye may teach.²⁵

R. Benjamin b. Japhet said that R Eleazar said: He who sanctifies himself during cohabitation will have male children, even as it is said: Sanctify yourselves therefore, and be ye holy,²⁶ and next to it: If a woman conceive [and bear a male child].²⁷

R. ELIEZER SAID, [SCRIPTURE SAYS: IF ANY ONE TOUCH THE CARCASS OF AN UNCLEAN] CREEPING THING, AND IT BE HIDDEN FROM HIM etc. What is the difference between their views?²⁸ Hezekiah said: 'Creeping thing and carcass' is the difference between them; R. Eliezer holds, we require that he should know whether he had become unclean by [the carcass of] a creeping thing or of an animal; and R. Akiba holds, we do not require that he should know this; as long as he knows that he has actually become unclean, it is not necessary [that he should know] whether he has become unclean by a creeping thing or by an animal carcass.²⁹ And so said Ulla: 'Creeping thing and carcass' is the difference between them; for Ulla pointed out an incongruity between one statement of R. Eliezer's and another, and then explained it: Did R. Eliezer, then, say that we require he should know whether he had become unclean by a creeping thing or by a carcass? I question this, for R. Eliezer said: In any case, if he ate prohibited fat, he is liable, or if he ate nothar, he is liable;³⁰ if he desecrated the Sabbath, he is liable, or if he desecrated the Day of Atonement, he is liable;³¹ if he cohabited with his wife when menstruous, he is liable, or if he cohabited with his sister, he is liable.³² Said R. Joshua to him, Scripture says: If his sin, wherein he hath sinned, be known to him;³³ only when it is known to him wherein he hath sinned.³⁴ [Ulla, however,] explains it thus: There, Scripture says: he hath sinned, then he shall bring [his offering] — as long as [he knows that] he has sinned [though he does not know the actual sin, he brings his offering]: but here, since it is already written: [If any one touch] any unclean thing,³⁵ why do we require: or the carcass of an unclean creeping thing?³⁶ Hence, we deduce that we require he should know whether he had become unclean by a creeping thing or by an animal carcass.³⁷ And R. Akiba?³⁸ — Because

(1) If this distinction holds good also in the case of a menstruous woman, why does not the Mishnah mention it?

(2) And are therefore not mentioned in the Mishnah.

(3) In the case of a menstruous woman, exempts him, as does the shorter route in the Temple.

(4) If he withdraws when it is passive, he is exempt, because he has no alternative.

(5) For if he cohabited near the time of her period he should have realised that there is a possibility that she might become unclean; and he is liable for withdrawing even when passive, for Abaye holds that he who cohabits with membrum mortuum is also liable. (V. supra 18a.) Only if he cohabits not near the time of her period is he exempt if he withdraws when passive, with membrum mortuum, for he has no other alternative, and is not to be blamed for cohabiting then.

(6) Supra 17b; one for entering, and one for withdrawing.

(7) Supra 18a.

(8) That he is liable to bring two, was not made with reference to our Mishnah. Abaye explains our Mishnah, which differentiates between withdrawing with virile member and passive, as referring to cohabitation not near the time of her period when, in entering, he is completely innocent, and in withdrawing forthwith is liable to bring a sin offering (not two), because he could have withdrawn with member passive with less pleasure. Abaye's statement that he brings two offerings does not refer to our Mishnah, but to a case where he cohabits with a clean woman near the time of her period, and she tells him during cohabitation that she has become unclean. In this case he brings two offerings, one for entering, and one for withdrawing, even passive, for Abaye holds that in this case, there is no difference how he withdrew, since he is not entirely blameless, for he should have foreseen that she might become unclean during cohabitation.

(9) Lev. XVIII, 19.

(10) Ibid. XV, 24.

(11) I.e., he must not withdraw immediately.

(12) Lev. XVIII, 19.

(13) Isa. LXV, 5; **לֹא תִקְרַב** in Lev. XVIII, 19, may, therefore, mean: thou shalt not approach to thyself, i.e., thou shalt not withdraw.

(14) Lev. XV, 31.

- (15) A period of time (with special reference to marital duty): the whole day or the whole night. If her period comes during the day, he must separate from the beginning of the day; if during the night, from the beginning of the night.
- (16) Lev. XV, 31.
- (17) Ibid. 33.
- (18) Ibid. XVI, 1. He takes the sequence and contiguity of the verses to imply that if a man does not separate from 'her that is sick with her impurity', his sons will die, even as the sons of Aaron died.
- (19) Lev. XI, 47.
- (20) Ibid. XII, 2.
- (21) Ibid. X, 10, 11.
- (22) Ibid. 10. He who recites Habdalah also makes a distinction between the holy and the common (Sabbath and weekday). In verse 9 the priests are commanded: Drink no wine . . . when ye go into the tent of meeting. The implication is: but ye may drink wine when ye make a distinction between the holy and the common, I.e., when you recite the Habdalah.
- (23) Ibid, XI, 47.
- (24) Ibid. XII, 2.
- (25) Ibid. X, 10, 11.
- (26) Ibid. XI, 44.
- (27) Ibid, XII, 2.
- (28) Both R. Eliezer and R. Akiba agree in the Mishnah (supra 14b) that he is not liable unless he is aware that it is the Temple that he entered in an unclean state, and thus the question arises, what is the difference between them?
- (29) R. Eliezer holds he must know the exact source of his uncleanness (whether by a creeping thing or animal carcass), whereas R. Akiba holds it matters not, as long as he knows he is unclean.
- (30) Ker. 19a; if there lay before him **הֵלֵב**, a piece of prohibited fat, and **נותר**, a piece of a sacrifice left over behind the time limit for its consumption, and he ate one of them unwittingly, but he does not know which, R. Eliezer says he must bring a sin offering, because, whether he ate the heleb or nothar, he is liable for a sin offering in either case; but R. Joshua says he is exempt; and is liable only when, he knows definitely which he has eaten.
- (31) If he did work unwittingly, but does not know whether it was on a Sabbath or the Day of Atonement.
- (32) His wife and sister were together with him, and he cohabited with one, thinking it was his wife not believing her to be clean, but later it was ascertained that his wife was already unclean, and, moreover, a doubt arose as to whether it might not have been his sister with whom he cohabited.
- (33) Lev. IV, 23.
- (34) I.e., exactly what his sin was, does he bring a sin offering. This contradicts the previous statement of R. Eliezer, for here he says, he brings a sin offering even if he does not know exactly what his sin was, and in our Mishnah he says, he does not bring his offering unless he knows exactly the source of his uncleanness, whether carcass of creeping thing or animal.
- (35) Lev. V, 2.
- (36) Surely, unclean creeping thing is included in any unclean thing?
- (37) Because Scripture particularises, we deduce that he does not bring an offering unless he knows the exact source of his uncleanness.
- (38) Since Scripture particularises, why does R. Akiba hold that it is not necessary he should know the exact source of his uncleanness, as long as he knows he is unclean?

Talmud - Mas. Shevu'oth 19a

Scripture wishes to write cattle and beast¹ for the sake of Rabbi's deduction,² it writes also creeping thing;³ as was taught in the School of R. Ishmael: Any Biblical passage that was stated once, and then repeated, was repeated only for the sake of something new that was added to it.⁴ And what does R. Eliezer do with the word wherein [he hath sinned]?⁵ — To exclude him who occupies himself [with a permitted thing and unintentionally does that which is prohibited].⁶

And R. Johanan said: 'Inferences of Expounders' is the difference between them.⁷ And so said R. Shesheth: 'Inferences of Expounders' is the difference between them, for R. Shesheth was wont to

change the words of R. Eliezer for those of R. Akiba, and the words of R. Akiba for those of R. Eliezer,⁸

Raba inquired of R. Nahman: If he was unaware of both, what is the ruling?⁹ — He said to him: Since there is the unawareness of uncleanness, he is liable. On the contrary, since there is the unawareness of Temple, he should be exempt! — R. Ashi said: we observe, if because of the uncleanness he leaves, then it is a case of unawareness of uncleanness, and he is liable; and if, because it is the Temple, he leaves, then it is a case of unawareness of Temple, and he is exempt:¹⁰ — Said Rabina to R. Ashi: Does he then leave because it is the Temple, unless it be also because of the uncleanness? And does he leave because of the uncleanness, unless it be also because it is the Temple?¹¹ Well then, there is no difference,¹²

Our Rabbis taught: Two [public] paths, one unclean,¹³ and one clean; and he walked along one,¹⁴ and did not enter [the Temple afterwards]; then along the other, and entered [the Temple],¹⁵ he is liable [to bring a sliding scale sacrifice].¹⁶ If he walked along one, and entered [the Temple],¹⁷ and was sprinkled upon [on the third day], and again [on the seventh day], and bathed himself;¹⁸ and then he walked along the other,¹⁹ and entered [the Temple],²⁰ he is liable.²¹ R. Simeon [b. Yohai] exempts him;²² and R. Simeon b. Judah exempts him in all these cases in the name of R. Simeon [b. Yohai].

‘In all of them,’

(1) Lev. v, 2: the carcass of an unclean beast, or the carcass of unclean cattle.

(2) Supra 7a.

(3) Though it is superfluous; but we must not deduce from this particularisation that the unclean person must know the source of his uncleanness in order to be liable for a sacrifice.

(4) Here the ‘something new’ is Rabbi's deduction.

(5) Lev. IV, 23; the word wherein implies that he must know the actual sin he has committed, yet R. Eliezer holds that if there lay before him heleb and nothar, and he unwittingly ate one of them, not knowing which, he must also bring a sin offering.

(6) E.g., on Sabbath he intended (what is permissible) to cut something which was already detached (from the ground or tree), but his knife slipped, and he cut something which was still attached (to the ground or tree). Or, he intended to cohabit with his wife who was clean, and he inadvertently cohabited with his sister who was sleeping near her. In these cases, his intention was quite innocent; and the word wherein (he hath sinned) implies that in such cases he is exempt from a sacrifice, and that he is liable only if his intention was to do something which is actually wrong, though he thought it was right; e.g., he intended to cut a definite thing, which he thought was detached, but which actually was attached; or, he intended to cohabit with a certain person, whom he thought was his wife, but who actually was his sister. In these cases, he brings a sacrifice, because the actual act, though innocently committed, was definitely intended; in the former cases, the actual act which was committed was not intended.

(7) He disagrees with Hezekiah who said that R. Eliezer and R. Akiba differ in their interpretation of the law; he holds that they do not differ at all as to the law; they both hold that it is not necessary that the unclean person should know the exact source of his uncleanness; but they merely choose different texts from which to deduce the law; they, therefore, differ as ‘expounders’ merely as to the texts from which they derive their ‘inferences’.

(8) It matters not, since there is no difference in law between them.

(9) According to R. Eliezer and R. Akiba who hold that sin offering is brought only for unawareness of uncleanness and not for unawareness of Temple, what is the ruling of the unclean person was unaware of both uncleanness and Temple?

(10) If he leaves the Temple, when told he is unclean (the fact that it is the Temple is not mentioned to him), we realise that he regrets his entry because of his uncleanness; and it is, therefore, a case of unawareness of uncleanness. If, however, he leaves the Temple, when told that he is in the Temple (his uncleanness is not mentioned), we realise that he regrets his entry because it is the Temple; and it is, therefore, a case of unawareness of Temple.

(11) When he is told one of the facts, either that he is unclean, or that he is in the Temple, he does not leave because of that one fact; for his uncleanness, were it not for the fact that he is in the Temple, would not matter; and the fact that he

is in the Temple, were it not for his uncleanness, would also not matter. He leaves, when told one of the facts, because he recollects immediately the other fact also. Since, however, when he entered the Temple while unclean, he was unaware of both facts, what is the ruling?

(12) And he is exempt, because R. Eliezer and R. Akiba hold that he is liable only for unawareness of uncleanness by itself, while realising that he has entered the Temple.

(13) Someone being buried there, and it is impossible to walk along the path without treading on the grave.

(14) But does not know whether it was the clean or the unclean path.

(15) Having forgotten that he is unclean, since he walked along both.

(16) Because he entered the Temple while definitely unclean, and had knowledge at the beginning of definite uncleanness.

(17) Having forgotten that he had walked along one path (which possibly was the unclean one, though he is not sure).

(18) Num. XIX, 19; a person unclean by the dead requires sprinkling with water into which has been put some of the ashes of the burnt red heifer.

(19) Knowing that it is possibly the unclean one.

(20) Having forgotten his possible uncleanness.

(21) Because either the first or the second time he entered the Temple while unclean.

(22) Because, before he entered the Temple either the first or second time, he had not the knowledge of definite uncleanness, for, before entering the Temple the first time, he certainly had not the knowledge of definite uncleanness (for the first path may have been clean), and even after walking along the second path he had not now the knowledge of definite uncleanness, since he had already purified himself from the first possible uncleanness (and the second path may be clean); and in order to bring a sacrifice we require knowledge at the beginning of definite uncleanness. In the previous instance, where he had not purified himself between the two entries, he has the knowledge of definite uncleanness before entering the Temple the second time.

Talmud - Mas. Shevu'oth 19b

even in the first case? At all events he is unclean?¹ — Said Raba: Here we are discussing the case of one who walked along the first [path]; and when he walked along the second [path], forgot that he had already walked along the first, so that he has only an incomplete knowledge [of uncleanness];² and this is in what they differ:³ The first Tanna holds that we say, an incomplete knowledge is like a complete knowledge;⁴ and R. Simeon [b. Judah] holds that we do not say, an incomplete knowledge is like a complete knowledge.⁵

‘If he walked along the first [path], and entered [the Temple], and was sprinkled upon [on the third day], and again [on the seventh day], and bathed himself; and then he walked along the second [path], and entered [the Temple], he is liable; and R. Simeon [b. Yohai] exempts him.’ Why is he liable,⁶ since it is a doubtful knowledge?⁷ — R. Johanan said: Here they made doubtful knowledge like definite knowledge.⁸ And Resh Lakish said: This is in accordance with the view of R. Ishmael, who holds that we do not require knowledge at the beginning.

We may point out an incongruity between the words of R. Johanan [here] and the words of R. Johanan [elsewhere]; and we may point out an incongruity between the words of Resh Lakish [here] and the words of Resh Lakish [elsewhere]; for it has been taught: If he ate doubtful prohibited fat, and became aware of it [later; and he ate again] doubtful prohibited fat, and became aware of it [later]; Rabbi said: Just as he would bring a sin offering for each one, so he brings a guilt offering for doubtful sin for each one.⁹ R. Simeon b. Judah and R. Eleazar son of R. Simeon said in the name of R. Simeon [b. Yohai]: He brings only one guilt offering for doubtful sin;¹⁰ for it is said: [And he shall bring a ram . . . for a guilt offering . . .] for his error wherein he erred¹¹ — the Torah includes many errors for one guilt offering.¹² And Resh Lakish said: Here Rabbi taught that the awareness of the doubt separates [the acts] for sin offerings.¹³ And R. Johanan said: [Rabbi meant:] Just as, the awareness of definite sin elsewhere separates [the acts] for sin offerings, so the awareness of doubtful sin [here] separates [the acts] for guilt offerings.¹⁴ [Hence, there is incongruity between R.

Johanan's statements,¹⁵ and between Resh Lakish's statements.]¹⁶ — Granted that there is no contradiction between one statement of R. Johanan and the other statement of R. Johanan, [for he said:] ‘Here they made [doubtful knowledge like definite knowledge]’, and not everywhere in the whole Torah did they do so; for [only] here, because knowledge [at the beginning] is not explicitly written, but is deduced from and it be hidden,¹⁷ [therefore they made doubtful knowledge like definite knowledge;] ‘but not everywhere in the whole Torah did they do so’, for it is written: [If his sin] be known to him¹⁸ — a definite knowledge we require. But Resh Lakish — why does he establish it as being in accordance with R. Ishmael's view? Let him establish it as being in accordance with Rabbi's view!¹⁹ — This he teaches us: that R. Ishmael does not require knowledge at the beginning. [But] it is obvious that he does not require [knowledge at the beginning], for he has no extra verse [from which to deduce it, since he requires] and it be hidden to make him liable for unawareness of Temple?²⁰ — Perhaps you might think that he does not infer [that we require knowledge at the beginning] from the verse, but he has it from a tradition; therefore [Resh Lakish] teaches us [that R. Ishmael definitely does not require knowledge at the beginning].

CHAPTER III

MISHNAH. OATHS ARE TWO, SUBDIVIDED INTO FOUR: ‘I SWEAR I SHALL EAT’, AND ‘[I SWEAR] I SHALL NOT EAT’;²¹ ‘[I SWEAR] I HAVE EATEN’, AND ‘[I SWEAR] I HAVE NOT EATEN’.²² — ‘I SWEAR I SHALL NOT EAT’, AND HE ATE A MINUTE QUANTITY, HE IS LIABLE: THIS IS THE OPINION OF R. AKIBA. THEY [THE SAGES] SAID TO R. AKIBA: WHERE DO WE FIND THAT HE WHO EATS A MINUTE QUANTITY IS LIABLE, THAT THIS ONE SHOULD BE LIABLE!²³ — R. AKIBA SAID TO THEM: BUT WHERE DO WE FIND THAT HE WHO SPEAKS BRINGS AN OFFERING, THAT THIS ONE SHOULD BRING AN OFFERING?²⁴

GEMARA. Shall We say that *okal* means ‘I shall eat’? We may question this, [for we learnt:] ‘“I swear I shall not eat of thine”, “I swear I shall eat [*okal*] of thine”; “I do not swear I shall not eat of thine”; he is prohibited [to eat of that man's food]’?²⁵ — Abaye said: Really [*okal*] means ‘I shall eat’ [as our Mishnah states], yet there is no difficulty: Here [it is a case where] he is urged to eat; and there [it is a case where] he is not

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- (1) After walking through both paths (without purification in the interval) he has the definite knowledge of uncleanness, and when he enters the Temple later, being unaware of his uncleanness, he should bring a sacrifice.
 - (2) Having forgotten that he had walked along the first path, and remembering only the second, he has not the complete knowledge of definite uncleanness.
 - (3) The first Tanna and R. Simeon b. Judah disagree as to the view of R. Simeon b. Yohai.
 - (4) The first Tanna who states that R. Simeon b. Yohai exempts him only in the case, where there was purification between the two entries, but not in the first case, holds that in the first case he is liable, because, when entering the Temple after having walked along both paths, he is definitely unclean, and though his knowledge is incomplete, for, when walking in the second path, he had forgotten about the first, nevertheless he is liable, for incomplete knowledge of definite uncleanness is counted as complete knowledge, since he is definitely unclean, and, if he had the complete knowledge, he would have known that he was definitely unclean, whereas in the case where there was purification between, the knowledge he had, though complete, was of doubtful uncleanness. He knew, that is to say, that he had walked in both paths, and yet, despite this knowledge, he is still doubtful, after walking in the second path, whether he is now unclean (for this path may be clean; and if the first was unclean he has already purified himself in any case) and is therefore exempt.
 - (5) And he is, therefore, exempt even in the first case, where there was no purification between the two entries.
 - (6) He questions the view of the Tanna who disagrees with R. Simeon b. Yohai.
 - (7) For when entering the Temple after walking along the first path he did not have the knowledge of definite uncleanness (for this path may have been clean); and when entering the Temple after walking along the second path, he also did not have the knowledge of definite uncleanness (for he had purified himself from the first path, and the second

may be clean).

(8) Though his knowledge, in the case of each entry, was doubtful, yet, since he had certainly entered the Temple once while definitely unclean, and he had knowledge at the beginning (though of a doubtful nature), he brings an offering.

(9) He ate a piece of fat about which there was a doubt whether it was prohibited fat (חלב) or permitted (שומן); at the time of eating he thought it was permitted fat, but later became aware that there was a doubt about it. In such a case he brings a suspensive guilt offering, (Lev. V. 17; Rashi). If, after becoming aware of this, he commits this doubtful sin again, he must bring a guilt offering for each separate act, since there was awareness between each act; just as, if he had unwittingly eaten actual (not doubtful) prohibited fat on a number of occasions (with awareness between each act) he would have had to bring a sin offering for each separate act.

(10) For all the acts together.

(11) Lev. V, 18.

(12) Because Scripture could have written simply, על שגגתו, for his error; but it adds the words, אשר שגג, wherein he erred, implying that, however many times he erred, he brings only one suspensive guilt offering.

(13) He takes Rabbi's statement to mean this: If, after a time, he became aware that it was definitely prohibited fat, he would have to bring a sin offering for each act, although the awareness between the acts was only the awareness of doubtful prohibited fat, because such awareness is also sufficient to separate the acts. If there were no awareness at all between the acts, he would bring only one sin offering.

(14) If, after unwittingly committing a definite sin, he became aware of it, and later again unwittingly committed the same definite sin, the awareness of the definite sin between the two acts makes a division between the acts, and he brings a sin offering for each act; so here, the awareness of the doubtful sin between the acts makes a division between the acts, and he brings a guilt offering for each act. But if the awareness between the acts was only the awareness of the doubtful sin, he does not later bring a sin offering for each act when the knowledge comes to him that he has committed a definite sin.

(15) For R. Johanan said, with reference to entering the Temple after walking along two paths, one of which was unclean (with purification between the two walks), that doubtful knowledge is counted as definite knowledge; yet here he says that doubtful knowledge is not the same as definite knowledge in making a division between acts for sin offerings.

(16) For Resh Lakish said above that the Tanna who says he is liable (in the ease of entering the Temple after walking along two paths etc.) agrees with R. Ishmael that there is no need for knowledge at the beginning; Resh Lakish could have said that he agrees with Rabbi (according to Resh Lakish's exposition of his view) that doubtful knowledge is counted as definite knowledge.

(17) Lev. V, 3; v. supra 4a.

(18) Lev. IV, 28.

(19) Why does he say that the Tanna who makes him liable in the case of walking along the two paths agrees with R. Ishmael that we do not require knowledge at the beginning? Let him rather say that he does require knowledge at the beginning, but he makes him liable because he holds with Rabbi that doubtful knowledge is like definite knowledge (in accordance with Resh Lakish's own interpretation of Rabbi's view).

(20) Supra 14b.

(21) Lev. V, 4: If any one swears, pronouncing with his lips, or to do evil, or to do good. These are the two oaths, positive and negative, in the future. 'To eat' and 'not to eat' are merely examples of doing good and doing evil.

(22) These are the two additional oaths, positive and negative, in the past; v. infra 25a.

(23) On eating prohibited food there is liability only when a certain minimum (the size of an olive) is consumed; v. Yoma 81a.

(24) An oath is merely the utterance of the lips; yet he brings an offering for transgressing his utterance; therefore he brings an offering also even if he eats a minute quantity, since thereby he has also transgressed his utterance.

(25) Ned. 16a; If he used any of these three forms of oath, he must not partake of the other's food. Hence, 'I swear that okal (I shall eat) of thine' apparently implies that he takes an oath not to eat; yet in our Mishnah it is taken as a positive oath. The explanation why שבועה שאוכל לך may be taken negatively is this: שבועה — it shall be prohibited to me by oath; שאוכל לך — that which I eat of thine; i.e., I swear I shall not eat. The third form of oath means this: לא שבועה — it shall not be prohibited to me by oath; לא אוכל — that which I shall not eat; the implications being, but that which I shall eat shall be prohibited to me by oath.

Talmud - Mas. Shevu'oth 20a

urged to eat: our Mishnah [refers to the case where] he is not urged to eat;¹ and the Baraitha² [to the case where] he is urged to eat, and he says: 'I shall not eat, I shall not eat'; so that when he swears,³ he means: 'I swear I shall not eat'. R. Ashi said: Read [in the Baraitha]: 'I swear I shall not eat of thine'.⁴ If so, what need is there to state it?⁵ — I might have thought his tongue became twisted,⁶ therefore he teaches us [that it is a definite negative].

Our Rabbis taught: Mibta⁷ is an oath; issar⁸ is an oath. What is the binding force of issar? If you say that issar is an oath, he is liable; and if not, he is exempt. If you say that issar is an oath! But you have just said that issar is an oath? Abaye said: Thus he means: Mibta is an oath; issar is tacked on to an oath.⁹ What is the binding force of issar? If you say, that which is tacked on to an oath is like a properly expressed oath, he is liable; and if not, he is exempt. And how do we know that mibta is an oath? Is it not because it is written: If any one swear, pronouncing with his lips.¹⁰ Then issar also [should be counted an oath], for it is written: Every vow and every oath of a bond?¹¹ Then again, how do we know that issar has the force of being tacked on to an oath? Is it not because it is written: Or bound he, soul by a bond with an oath?¹² Then mibta also [should have the force of being tacked on to an oath], for it is written: Whatsoever it be that a man shall pronounce with an oath.¹³ But, said Abaye: That mibta is an oath we deduce from this: And if she be married to a husband while her vows are upon her, or the utterance of her lips, wherewith she hath bound her soul:¹⁴ Now, oath is not mentioned; with what, then, did she bind herself? With mibta. Raba said: In reality, I can say to you, that which is tacked on to an oath is not like a properly expressed oath;¹⁵ and thus he [the Tanna] means: Mibta is an oath; issar is also an oath; and what is the binding force of issar? Scripture placed it between a vow and an oath [to teach us that] if he expressed it in the form of a vow, it is a vow; and if in the form of an oath, it is an oath.¹⁶ Where did [Scripture] place it [between a vow and an oath]? And if in her husband's house she vowed, or bound her soul by a bond with an oath.¹⁷

And they¹⁸ follow their own opinions, for it has been stated: That which is tacked on to an oath¹⁹ — Abaye said, it is like a properly expressed oath;²⁰ and Raba said, it is not like a properly expressed oath.

An objection was raised; [for it has been taught:] What is issar which is mentioned in the Torah? He who says: I take it upon me that I shall not eat meat, and that I shall not drink wine, as on the day that my father died, or, as on the day that So-and-So died, or, as on the day that Gedaliah, son of Ahikam, was killed, or, as on the day that I saw Jerusalem in its destruction; he is prohibited [from eating meat, etc.]; and Samuel said: only if he had already made a vow on that day.²¹ Now, it is well, according to Abaye, for just as that which is tacked on to a vow is a vow, so that which is tacked on to an oath is an oath;

(1) And he swears 'I shall eat' - obviously a positive oath.

(2) [Tosaf. deletes 'Baraitha' as the passage belongs to a Mishnah.]

(3) Using the expression שבועה שאוכל.

(4) Not שאוכל, but שאי אוכל.

(5) For לא אוכל is the same as אי אוכל.

(6) That he intended to say שאוכל (positive), but inadvertently said שאי אוכל (negative).

(7) Num. XXX, 7: the utterance (מבטא) of her lips. If a man says: 'This loaf shall be mibta to me', it is an oath, as if he had said: 'I swear I shall not eat this loaf'.

(8) Num. XXX, 3: To bind his soul with a bond (אמר). If a man says: 'This loaf shall be issar to me', it is an oath.

(9) If he says: 'This loaf is issar to me', it is not actually an oath, but has the same force as if it were tacked on to an oath, as in the following case: If he prohibits one loaf to himself by oath; then he says of a second loaf: 'This second loaf shall be like the first', the second loaf is here tacked on to an oath. Similarly, if he says: 'This loaf is issar to me', the ruling is the same as in the case of a statement which is tacked on to an oath. If that is counted as a proper oath, then issar is also a

proper oath. The Tanna is simply equating issar with a statement that is tacked on to an oath.

(10) Lev. V, 4: תשבוע לבטא, i.e., swear by the expression מבטא.

(11) Num. XXX, 14: שבועת אסר, i.e., the oath of issar.

(12) Ibid. 11: אסרה ... אסר בשבועה, i.e., bound herself by issar by (tacking it on to) an oath.

(13) Lev. V, 4: יבטא ... בשבועה, i.e., prohibit it to himself by mibta by tacking it on to an oath.

(14) Num. XXX, 7: אסרה ... מבטא, i.e., she bound herself by mibta; hence, mibta is an oath.

(15) Raba disagrees with Abaye who said that the Tanna holds that issar is the same as a statement tacked on to an oath, and that he is in doubt whether that has the force of a properly expressed oath or not; but, says Raba, the Tanna holds definitely that a statement tacked on to an oath is not the same as a proper oath.

(16) If he said: 'This loaf is issar to me', it is a vow, and he is exempt from a sliding scale sacrifice. If he said: 'Issar that I shall not eat this loaf', it is an oath, and he is liable.

(17) Num. XXX, 11: נדרה ... אסר ... בשבועה.

(18) Abaye and Raba.

(19) Lit., 'he who tacks on to an oath.'

(20) Lit., 'as if he expresses an oath by word of mouth.'

(21) He had previously vowed that he would never eat meat on the anniversary of his father's death, or on the anniversary of Gedaliah's murder (3rd Tishri); and now when he says, 'I take it upon me that I shall not eat meat on that day', he is tacking on the present prohibition to a previous vow; and he is prohibited from eating meat now, as if he had now made a vow; therefore a statement tacked on to a vow is like a proper vow; and similarly, a statement tacked on to an oath is like a proper oath.

Talmud - Mas. Shevu'oth 20b

but according to Raba, it is difficult? — Raba may say to you, explain it thus: What is the binding force of a vow which is mentioned in the Torah?¹ He who says: I take it upon me that I shall not eat meat, and that I shall not drink wine, as on the day that my father died, or, as on the day that So-and-So was killed; [he is prohibited from eating meat, etc.]; and Samuel said: only if he had already made a vow on that day. What is the reason Scripture says: If a man vow a vow unto the Lord² — only if he vow in the matter which he had already vowed.³ — 'As on the day my father died!' This is self-evident?⁴ — 'As on the day that Gedaliah, son of Ahikam, was killed' is necessary. I might have thought that, since it is also prohibited⁵ even if he had not vowed, the fact that he vowed does not bring a prohibition upon him [because of his vow]; so that it [his present vow] is not based on a [previous] vow, [and hence is not a normal vow]; therefore he teaches us [that it is so based; and because perforce he mentions this clause, he mentions also the previous clause, though it is unnecessary]. And R. Johanan also holds this view of Raba,⁶ for when Rabin came [from Palestine] he said that R. Johanan said: [If one says:] 'Mibta that I shall not eat of thine', or, 'Issar that I shall not eat of thine', it is an oath. When R. Dimi came [from Palestine] he said that R. Johanan said: [If one says: 'I swear] I shall eat', or, '[I swear] I shall not eat', [and he transgresses the oath,] it is a false oath;⁷ and its prohibition is [derived] from this [verse]: Ye shall not swear by My name falsely.⁸ [If one says: 'I swear] I have eaten' or, '[I swear] I have not eaten', [and it was untrue,] it is a vain oath,⁹ and its prohibition is [derived] from this [verse]: Thou shalt not take the name of the Lord thy God in vain.¹⁰ Vows¹¹ come under the prohibition of: He shall not break his word.¹²

An objection was raised: Vain and false [oaths] are one. Does not this imply that just as a vain oath is in the past tense, so a false oath is in the past tense;¹³ hence, '[I swear] I have eaten' and '[I swear] I have not eaten' are false oaths!¹⁴ — Is this an argument? This is in its own category, and that is in its own category.¹⁵ And what is the meaning of: 'They are one'? That they were pronounced in one utterance; as it has been taught [in another connection]: Remember¹⁶ [the Sabbath day], and Keep¹⁷ [the Sabbath day] were pronounced in a single utterance, — an utterance which the mouth cannot utter, nor the ear hear. Granted, there they were pronounced in one utterance, as R. Ada b. Ahabah said, for R. Ada b. Ahabah said: Women are in duty bound to sanctify the [Sabbath]

day,¹⁸ by decree of the Torah, for Scripture says: Remember and Keep; all who are included in the exhortation Keep are included in the exhortation Remember; and women, since they are included in Keep, are included also in Remember.¹⁹ But here, for what law is it necessary?²⁰ But, [say then to teach us that] just as stripes are inflicted for a vain oath, so they are inflicted for a false oath;²¹ — Whither are you turning?²² — Well [then, say]: Just as stripes are inflicted for a false oath,²³ so they are inflicted for a vain oath.²⁴ But this is obvious:²⁵ this²⁶ is a negative precept, and that²⁷ is a negative precept! — I might have thought, as R. Papa said to Abaye: He will not hold him guiltless at all,²⁸

(1) The Tanna is not discussing a statement tacked on to a vow, but explaining that every normal vow (to make him guilty, if he breaks it) must be based on a previous vow, and must be detailed. If, however, he says: ‘This day shall be to me as the day that father died’ (without mentioning details, ‘I shall not eat meat’, etc.), it is merely a statement tacked on to a vow, and is not counted as a vow.

(2) Num. XXX, 3.

(3) Base the present vow on a previous vow.

(4) If the reason is that he based this vow on a previous vow, why mention his father's death? This does not make the vow stronger.

(5) To him to eat, since it is a public fast.

(6) That issar expressed in the form of an oath is an oath.

(7) An oath uttered in the future tense, if transgressed, comes under the category of ‘false’ oath.

(8) Lev. XIX, 12; i.e., ye shall not swear to do that which later, by transgressing, you make false.

(9) An oath in the past tense, which is known to be untrue at the moment of utterance, comes under the category of ‘vain’ oath.

(10) Ex. XX, 7.

(11) קִנָּם konam is one of the forms in which vows are expressed.

(12) Num. XXX, 3.

(13) A vain oath is an oath which is known immediately to be untrue, such as, swearing that a stone pillar is gold (infra 29a); so a false oath in the past tense is known immediately to be untrue. It is called false, and not vain, because its falsity is not apparent to all, but only to the one who utters it.

(14) Yet R. Johanan calls them vain oaths.

(15) They are entirely different: vain oaths are in the past, and false oaths are in the future, but they are declared to be one merely because the prohibitions against both were simultaneously uttered by God.

(16) Ex. XX, 8.

(17) Deut. V, 12.

(18) By reciting, or hearing the recital of, the Kiddush. Though such positive precepts as depend for their observance on certain specified times need not be observed by women (מצות עשה שהזמן גרמא נשים פטורות), the precept of Kiddush must be observed by them, for Remember (which is explained as meaning ‘Remember it over wine’, i.e., recite Kiddush) is equated with Keep (i.e., do not transgress the negative precepts of the Sabbath); and just as women must keep the Sabbath (for all negative precepts, whether dependent for their observance on time or not, must be observed by women), so they must remember it.

(19) Therefore Remember and Keep were pronounced in one utterance, in order to teach us this.

(20) That the prohibition against vain oath and false oath should have been pronounced in one utterance?

(21) The statement ‘Vain and false oaths are one’ does not mean that they were pronounced in one utterance, but that they are both the same in that stripes are inflicted equally for both.

(22) Your statement should be reversed, for the transgression of a false oath (such as, ‘I swear I shall not eat’, and he ate) is more likely to be punishable by stripes (because it involves action) than the transgression of a vain oath (such as, ‘I swear I have eaten’ or, ‘not eaten’, which does not involve action).

(23) In the transgression of which, action is involved.

(24) Although no action is involved; v. infra 21a.

(25) As deduced from a verse, infra 21a.

(26) False oath.

(27) Vain oath.

(28) V. Ex. XX, 7; he who swears a vain oath will never be guiltless, i.e., he is not punished by stripes to remove his guilt (for, after punishment, the guilt is wiped out).

Talmud - Mas. Shevu'oth 21a

therefore he teaches us [that he is punished by stripes] as Abaye answered him.¹ And if you will, I may say, that just as he brings an offering for a false oath, so he brings an offering for a vain oath;² and it is in accordance with R. Akiba's view who makes him liable for [an oath in] the past as in the future.³

An objection was raised: What is a vain oath? Swearing that which is contrary to the facts known to man.⁴ A false oath? Swearing that which is the reverse.⁵ [Hence, a false oath is in the past tense, yet R. Johanan says, in the future.] Say, Swearing and reversing.⁶

When R. Abin came [from Palestine], he said that R. Jeremiah said that R. Abbahu said that R. Johanan said: '[I swear] I have eaten', '[I swear] I have not eaten' [and it was untrue], are false oaths,⁷ and their prohibition is from: Ye shall not swear by My name falsely.⁸ '[I swear] I shall eat', '[I swear] I shall not eat' [and he broke the oath], he transgresses: He shall not break his word.⁹ And what is a vain oath? Swearing that which is contrary to the facts known to man.

R. Papa said: This statement of R. Abbahu's was not explicitly expressed, but only deduced by implication;¹⁰ for R. Idi b. Abin said that R. Amram said that R. Isaac said that R. Johanan said: R. Judah said in the name of R. Jose the Galilean: Every negative precept in the Torah, if it involves action, is punished by stripes; if it does not involve action, is not punished by stripes, except swearing, exchanging,¹¹ and cursing one's neighbour with the Name.¹² 'Swearing' — how do we know?¹³ R. Johanan said in the name of R. Simeon b. Yohai: Scripture says: Thou shalt not take the name of the Lord thy God in vain; for the Lord will not hold him guiltless¹⁴ — the Upper Court¹⁵ will not render him guiltless, but the lower court inflict stripes and render him guiltless.¹⁶ Said R. Papa to Abaye: Perhaps Scripture means this: He will not render him guiltless at all? — If it had been written: For he will not hold him guiltless, it would have meant what you say; but now that it is written: For the Lord will not hold him, guiltless, [it means], the Lord does not render him guiltless, but the lower court inflict stripes and render him guiltless. Hence we find that a vain oath [is punished by stripes]. How do we know a false oath [is so punished]? — R. Johanan himself said: 'In vain' is mentioned twice.¹⁷ Since it¹⁸ is not needed for a vain oath, utilise it for a false oath. And R. Abbahu raised the question: This false oath — what kind is meant? Shall we say, 'I swear I shall not eat', and he ate? This is a negative precept involving action.¹⁹ Then again, if he said: 'I swear I shall eat', and he did not eat, does he then receive stripes? Surely, it has been stated: 'I swear I shall eat this loaf to day', and the day passed, and he did not eat it: R. Johanan and Resh Lakish both hold that he does not receive stripes; R. Johanan says he does not receive stripes, because it is a negative precept not involving action, and any negative precept not involving action is not punishable by stripes; and Resh Lakish says, he does not receive stripes, because it is an uncertain warning, and an uncertain warning is not a warning?²⁰ — Well then, said R. Abbahu: It refers to: '[I swear] I have eaten', '[I swear] I have not eaten'.²¹ And what is the difference?²² — Raba said: Clearly did the Torah include a false oath which is like a vain oath;²³ just as a vain oath is in the past, so a false oath which is in the past [is included].²⁴

R. Jeremiah put a question to R. Abbahu: [We learnt:] 'I swear I shall not eat this loaf; I swear I shall not eat it; I swear I shall not eat it', and he ate it, he is liable only for one [oath]:²⁵ this is the oath of utterance²⁶ for the wilful transgression of which stripes are incurred, and for the unwitting transgression of which a sliding scale sacrifice is brought.²⁷ 'This is [the oath, etc.]' What does 'this' exclude? Surely, it excludes '[I swear] I have eaten', '[I swear] I have not eaten', that he is not liable for stripes?²⁸ — No! It excludes '[I swear] I have eaten', '[I swear] I have not eaten' from an

offering: 'this²⁹ is [the oath . . .]' for the unwitting transgression of which a sliding scale sacrifice is brought, but not '[I swear] I have eaten', '[I swear] I have not eaten'; and this will be in accordance with the opinion of R. Ishmael who holds that he is only liable for an oath in the future,³⁰ but stripes he incurs.

(1) *infra* 21a.

(2) The statement 'Vain and false oaths are one' means they are equal in that an offering is brought for the transgression of a vain oath (such as, 'I have eaten', 'I have not eaten') as for a false oath ('I shall eat', 'I shall not eat').

(3) *Infra* 25a, and *supra* 3a.

(4) E.g., swearing of gold that it is wood.

(5) Of the truth; e.g., swearing that he had eaten, when he had not.

(6) Swearing to do something in the future, and not doing it.

(7) Disagreeing with R. Dimi who said in R. Johanan's name that they are vain oaths; *supra* 20b.

(8) Lev. XIX, 12,

(9) Num. XXX, 3.

(10) R. Jeremiah did not hear R. Abbahu say definitely that R. Johanan holds an oath in the past is termed a false oath, but deduced it from another statement of his; v. *infra* p. 109, n. 8.

(11) For another, a beast which he had dedicated as a sacrifice (v. Lev. XXVII, 10; both become holy); the exchange is effected merely by utterance, without action.

(12) Of God; v. Tem. 3b.

(13) That stripes are inflicted for its transgression?

(14) Ex. XX, 7.

(15) The Lord.

(16) The human tribunal punish him, and thereby (having expiated his offence), he becomes once more guiltless.

(17) Ex. XX, 7.

(18) The second 'in vain'.

(19) And therefore is certainly punished by stripes. But which is the oath not involving action which is said to be punished by stripes?

(20) *Supra* 3b; v. p. 8, n. 1.

(21) This is the false oath which, though not involving action, is punishable by stripes. From this statement of R. Abbahu's R. Jeremiah deduced that an oath in the past tense is called a false oath according to R. Johanan.

(22) Why should this oath, though not involving action, be punishable by stripes, whereas an oath in the future not involving action is not punishable?

(23) Because false oath is deduced from the second 'in vain'.

(24) Swearing that which is contrary to a known fact is like an oath in the past; the falsity is immediately evident.

(25) Although he uttered three oaths; because the second oath cannot 'fall' on the first; i.e., since the first oath already prohibits him from eating the loaf, the second oath is, in effect, a promise to fulfil the mizwah of keeping the first oath, and 'he who swears to fulfil a mizwah, and does not fulfil it, is not liable' (*Infra* 27a).

(26) Lev. V, 4; swearing to utter (or, pronounce) with the lips to do evil, or to do good.

(27) *Infra* 27b.

(28) Yet R. Abbahu states that he is.

(29) Oath in the future.

(30) *Infra* 25a.

Talmud - Mas. Shevu'oth 21b

How [then] will you explain the latter clause: This¹ is the vain oath for the wilful transgression of which stripes are incurred, and for the unwitting transgression of which he is exempt.² 'This is [the vain oath, etc.]' What does 'this' exclude? Surely, it excludes '[I swear] I have eaten', '[I swear] I have not eaten', that he is not liable for stripes!³ — No! 'This is [the oath . . .]' for the unwitting transgression of which he is exempt [from a sacrifice]' but '[I swear] I have eaten', '[I swear] I have not eaten', makes him liable for a sacrifice for unwitting transgression; and this will be in accordance

with the opinion of R. Akiba who holds that he is liable for [an oath] in the past as in the future.⁴ But you have said that the first statement is in accordance with R. Ishmael's view. Is the first statement, then, in accordance with R. Ishmael's view, and the second in accordance with R. Akiba's view! — [No!] It is entirely in accordance with R. Akiba's view; and the first statement is not intended to exclude 'I swear I have eaten', 'I swear I have not eaten' from a sacrifice, but to exclude 'I swear I shall eat', and he did not eat, from stripes; but for a sacrifice he is liable.⁵ Why should you prefer this?⁶ — It is reasonable that, since he is discussing the future, he should exclude the future; but, discussing the future, shall he exclude the past?⁷

I SWEAR I SHALL NOT EAT , AND HE ATE A MINUTE QUANTITY, HE IS LIABLE;
[THIS IS THE OPINION OF R. AKIBA.]

It was queried [by the scholars]: Does R. Akiba agree in the whole Torah with R. Simeon who imposes liability for a minute quantity, for it has been taught: 'R. Simeon says. For a minute quantity stripes are incurred;⁸ and it was not said that the size of an olive is necessary except for a sacrifice.'⁹ And by right they¹⁰ should disagree also elsewhere, but the reason their disagreement is stated here is to show you the power of the Sages, for, although it is possible to say, since if he had expressly stated [a minute quantity] he would have been liable,¹¹ he should also be liable even if his statement is undefined,¹² we are informed, nevertheless, that they exempt him.¹³ Or, elsewhere, does R. Akiba agree with the Sages,¹⁴ and here, this is the reason:¹⁵ since if he expressly states [a minute quantity] he is liable, he is liable also if his statement is undefined?

Come and hear: THEY SAID TO R. AKIBA: WHERE DO WE FIND THAT HE WHO EATS A MINUTE QUANTITY IS LIABLE, THAT THIS ONE SHOULD BE LIABLE? And if it is so [that he agrees with R. Simeon elsewhere also], let him answer them: I agree in the whole Torah with R. Simeon? — [It is possible that] he is replying according to the views of the Rabbis¹⁶ themselves: As for me, I agree with R. Simeon in the whole Torah; but as for you, agree with me at least that, since if he expressly states [a minute quantity] he is liable, he should be liable also if his statement is undefined. And the Rabbis replied to him: No!

Come and hear: R. Akiba says, A nazirite who soaked his bread in wine, and there is sufficient in both together to make up the size of an olive, is liable.¹⁷ Now if you were to hold that everywhere he agrees with R. Simeon,¹⁸ what need is there for combining?¹⁹ And again, we learnt: 'I swear I shall not eat', and he ate carrion, trefa, forbidden animals, and reptiles, he is liable;²⁰ and R. Simeon exempts him.²¹ And we asked: Why is he liable,²² since he had already been adjured on Mount Sinai? Rab and Samuel and R. Johanan said: [He is liable because] he had included permitted things with the prohibited things.²³ And Resh Lakish said: You cannot find [that he should be liable] except either, if he expressly stated half the legal quantity,²⁴ and it will be in accordance with the view of the Rabbis, or, [even] if his statement was undefined, and it will be in accordance with R. Akiba's view,²⁵ who holds that a man [in an undefined oath], prohibits to himself [even] a minute quantity. Now if you were to say that elsewhere R. Akiba also agrees with R. Simeon,²⁶ then for a minute quantity he also stands adjured from Mount Sinai! Hence, we deduce from this [must we not?] that elsewhere he agrees with the Rabbis.²⁷ It is proven.

THEY SAID TO R. AKIBA: WHERE DO WE FIND [THAT HE WHO EATS A MINUTE QUANTITY IS LIABLE, etc.]. Can we not? Is there not the ant?²⁸ A creature is different.²⁹ Is there not sacred property?³⁰ — But we require it should be the value of a perutah.³¹ Is there not the expressly defined oath?³² An expressly defined oath is like a creature.³³ Is there not dust?³⁴ May you then,

(1) Swearing that which is contrary to a known fact,

(2) Infra 29a.

- (3) Yet R. Abbahu says he is.
- (4) *Infra* 25a.
- (5) For unwitting transgression.
- (6) Interpretation of the Mishnah? Perhaps it excludes an oath in the past from sacrifice; and it will not be in accordance with R. Akiba's view.
- (7) The Mishnah states: 'I swear I shall not eat', and he ate — this is the oath for which he is liable both for witting and unwitting transgression; but (we may deduce) 'I swear I shall eat', and he did not eat — for this he does not incur stripes for witting transgression. Both statement and deduction are future.
- (8) Not only in the case of oaths, but in the case of any prohibited food, R. Simeon holds that if he eats a minute quantity wittingly he incurs stripes.
- (9) For unwitting transgression where, for witting transgression, he incurs the penalty of kareth. In the case of an oath, however, witting transgression is punishable by stripes even for a minute quantity, and consequently unwitting transgression is punishable by a sacrifice even for a minute quantity.
- (10) R. Akiba and the Sages of our Mishnah; they disagree not only in the case of an oath, but in all prohibited things. R. Akiba holding with R. Simeon that for a minute quantity he is liable.
- (11) If he had expressly sworn: 'I swear I shall not eat a minute quantity', and he ate, the Sages agree that he is liable, for he has broken his oath.
- (12) For it may be that when he says: 'I swear I shall not eat', he means even a small quantity, because he is not thinking of the legal minimum enjoined by the Torah for prohibited foods.
- (13) When his oath is undefined.
- (14) That on eating a minute quantity of prohibited food he is exempt.
- (15) Why he makes him liable.
- (16) The Sages.
- (17) The permitted food (bread) combines with the prohibited (wine) to make up the legal minimum; *Nazir* 35b.
- (18) That he is liable for a minute quantity of any prohibited food.
- (19) The permitted bread with the prohibited wine?
- (20) To bring a sliding scale sacrifice for unwitting transgression of the oath.
- (21) From a sacrifice, for all Israel had been adjured at Mount Sinai to observe the Torah and not to eat carrion, etc., therefore his present oath cannot 'fall' on the first oath; it is merely like an oath to fulfil a mizwah, (*infra* 22b).
- (22) According to the Sages?
- (23) If he had sworn: 'I swear I shall not eat carrion', this oath could not have 'fallen' on the first oath (adjuration at Mount Sinai); but he said: 'I swear I shall not eat', thus including even permitted things; and since the oath can fall on the permitted things, it falls also on the prohibited, for this oath is more inclusive than the oath taken at Mount Sinai (including as it does even permitted things); and when the second oath is more inclusive than the first, it has the power to fall on the first. R. Simeon, however, holds that even a more inclusive second oath cannot fall on the first.
- (24) Not necessarily half: even a minute quantity.
- (25) According to Resh Lakish, in the case of an oath, even the Rabbis (who disagree here with R. Simeon) do not hold that a more inclusive second oath falls on the first oath; but they make him liable here only if he said: 'I swear I shall not eat a small quantity of carrion', because for a small quantity (less than the size of an olive) there is no previous oath (from Mount Sinai), and this oath therefore takes effect. Only in the case of such an oath will he be liable, according to the Sages (who disagree with R. Akiba). And according to R. Akiba, he is liable even if he says: 'I swear I shall not eat', because he thereby prohibits to himself even a minute quantity of carrion, and for a minute quantity there is no previous oath (from Mount Sinai).
- (26) That he is liable for a minute quantity of any prohibited food.
- (27) That he is liable only when he eats the legal minimum (the size of an olive).
- (28) For eating which, though it is less than the size of an olive, he is liable; *Mak.* 13a.
- (29) Because, though minute, it is a complete creature.
- (30) For which he is liable to bring a trespass offering if he uses for a profane purpose even an amount less than the size of an olive.
- (31) A small coin, (v. *Glos.*). That is the legal minimum for bringing a trespass offering; hence, here also there is a definite minimum.
- (32) 'I swear I shall not eat a minute quantity', and he ate, he is liable, though it is less than the size of an olive.

(33) Just as he is liable on eating a minute creature, because it is important owing to its being complete, so he is liable for a minute quantity, if he expressly states it in the oath, for he has rendered the minute quantity of sufficient importance to prohibit it to himself.

(34) The questioner assumes that if he says: 'I swear I shall not eat dust', he is liable for a minute quantity, because, since it is not edible, the normal minimum for edibles is not applicable.

Talmud - Mas. Shevu'oth 22a

decide that which Raba enquired: "I swear I shall not eat dust", and he ate; what quantity [must he eat to make him liable]? — May you [then] decide that it must be the size of an olive!¹ — [No!] When do we say² [that we do not find liability for a minute quantity,] only in the case of an edible do we say so.³ Is there not the case of vows?⁴ — Vows are like expressly defined oaths.⁵

HE SAID TO THEM: BUT WHERE DO WE FIND THAT HE WHO SPEAKS BRINGS AN OFFERING, THAT THIS ONE SHOULD BRING AN OFFERING?

Do we not [find such a case]? Is there not the blasphemer?⁶ — We mean, speaking and prohibiting; but this one speaks and sins.⁷ Is there not the nazirite?⁸ — We mean, bringing an offering for [breaking] his word,⁹ but this one brings an offering so that wine may again be permitted to him. Is there not sacred property?¹⁰ — We mean, prohibiting to himself only; but this one prohibits to the whole world.¹¹ Is there not the case of vows?¹² — He holds that there is no trespass offering for [breaking] vows.

Raba said: The controversy [between R. Akiba and the Sages] is in the case of an undefined oath, but if he expressly states [a minute quantity], all agree that he is liable for a minute quantity. What is the reason? An expressly defined oath is on a par with a 'creature'.¹³ And Raba said further: The controversy is only where he says, 'I shall not eat,' but if he says, 'I shall not taste, all agree that he is liable for a minute quantity. This is self-evident! — I might have thought that 'to taste' should be taken in the way that people talk,¹⁴ therefore he teaches us [that it is taken literally].

R. Papa said: The controversy is in the case of oaths, but in Konamoth all agree that he is liable for a minute quantity. What is the reason? Vows, since the word 'eating' is not mentioned in them,¹⁵ are like expressly defined oaths.

An objection was raised: Two Konamoth combine; two oaths do not combine.¹⁶ R. Meir says: Konamoth are like oaths. Now, if you say that [in vows] he is liable for a minute quantity, what need is there for combining? — He said, 'Eating of this [loaf] shall be to me konam; and eating of that [loaf] shall be to me konam.'¹⁷ — If so, why do they combine? In any case, if you go here, there is not the legal minimum, and if you go there, there is not the legal minimum.¹⁸ — He said, 'Eating of both [loaves] shall be to me konam.'¹⁹ Now, a similar expression in the case of oaths would be, if he said, 'I swear I shall not eat of both [loaves];' then why do they not combine?²⁰ — R. Phinehas said: Oaths are different; because they are divided in respect of sin offerings, they do not combine.²¹ If so, 'R. Meir says: Konamoth are like oaths.' [Why?] Granted, oaths [do not combine], because they are divided in respect of sin offerings; but konamoth, why not? — Reverse it: R. Meir Says: oaths are like Konamoth [and combine]; and he does not agree with R. Phinehas. Rabina said: That which R. Papa said [that in Konamoth he is liable for a minute quantity] refers only to stripes; and that which we learnt in the Baraitha [that vows combine] refers to an offering, where we require [that the enjoyment should be] the value of a perutah.²²

Shall we say that the Sages hold there is a trespass offering for Konamoth?²³ Yet we learnt: [If he says,] 'This loaf is sacred,' and he eats it — either he or his neighbour — he trespasses; therefore there is redemption for it.²⁴ [If he says,] 'This loaf is to me sacred', he trespasses [by eating it], but

his neighbour does not trespass; therefore there is no redemption for it;²⁵ this is the opinion of R. Meir.

- (1) For our Mishnah says: Where do we find that he who eats a minute quantity is liable? Apparently, therefore, it assumes that in the case of dust there must also be the legal minimum.
- (2) In our Mishnah.
- (3) But in the case of dust he may be liable even for a small quantity, and Raba's query remains.
- (4) If he says: 'This loaf shall be konam (v. p. 106, n. 6) to me', he prohibits himself, thereby, from partaking even of a small quantity of it.
- (5) Because he does not mention the term 'eating', — it is as if he had expressly prohibited even a minute quantity of it. It is only in oaths, where the term 'eating' is mentioned, that the question arises whether even a small amount is prohibited, or only the legal minimum, because elsewhere 'eating' implies a minimum of the size of an olive, **אכילה בכזית**.
- (6) Num. XV, 30; Lev. XXIV, 11; Ker. 7a: R. Akiba says the blasphemer brings an offering.
- (7) The Mishnah means: Where do we find that he, who by speaking, prohibits something to himself, should bring an offering for transgressing his word? But he who blasphemes the name of God, commits a sin by his very utterance.
- (8) Who by his speech (vow) prohibits wine to himself, and brings an offering when the period of his naziriteship is ended; Num. VI. 1-21.
- (9) Where do we find that a man by prohibiting something to himself, and then breaking his word, brings an offering?
- (10) Which is dedicated by his word; and if he breaks his word by making profane use of it, he brings a trespass offering.
- (11) Anything dedicated to the Temple is prohibited to all.
- (12) E.g., by vowing not to partake of food, he prohibits the food to himself only. The questioner assumes that, since he expressed the prohibition in the form of a vow, he must bring a trespass offering also (if he breaks the vow), for vowing is similar to dedicating.
- (13) V. supra 21b.
- (14) Colloquially, 'tasting' means 'eating'; and therefore we may think that if he says, 'I shall not taste,' he should not be liable unless he eats a ka-zayith (the size of an olive), according to the Sages.
- (15) I.e., where a man says: That loaf shall be to me Konam (v. Glos.).
- (16) If he prohibits two loaves to himself by vows, and he eats a small portion of each, the two portions combine to make up the requisite amount of ka-zayith, but if he prohibits them by oaths, they do not combine.
- (17) Although he utters it in the form of a vow, yet, since he mentions the word 'eating', there must be the requisite amount.
- (18) If he mentions the word 'eating' for each loaf, he must eat the legal minimum of each loaf in order to be liable; just as in the case of oaths.
- (19) Therefore if he eats the legal minimum of both together, it suffices for liability.
- (20) Why is it stated that two vows combine, and two oaths do not combine? What is the difference?
- (21) The two loaves are distinct in the case of oaths. If he said, 'I swear I shall not eat of this one and of that one', and he ate a ka-zayith of each in one spell of unawareness, he brings two offerings. Since, therefore, they are counted as separate, they do not combine if he ate less than a ka-zayith of each. But in the case of vows the two loaves are not treated as distinct, for according to the view that a trespass offering must be brought for the enjoyment of that which he prohibits to himself by Konam, he would be liable to only one offering for a number of enjoyments in one spell of unawareness (Rashi). [For a full discussion of this distinction between oaths and Konamoth, v. Mishnah le-Melek on Maim. Yad, Shevu'oth IV, 1.]
- (22) He receives stripes even for a minute quantity; and he brings a trespass offering if his combined enjoyments of the two loaves totalled the value of a perutah.
- (23) For they say that two vows combine for a trespass offering.
- (24) That which is dedicated to the Temple treasury (**קדושת דמים**) may be redeemed; Lev. XXVII, 27.
- (25) For he has not dedicated it to the Temple, but has vowed that it shall be prohibited to him like a sacred thing; and there can be no redemption to permit the prohibited.

Talmud - Mas. Shevu'oth 22b

And the Sages say: Neither he nor his neighbour trespasses [by eating it], for there is no trespass in Konamoth.¹ — Reverse it: Neither he nor his neighbour trespasses, for there is no trespass in Konamoth: this is the opinion of R. Meir. And the Sages say: He trespasses, but his neighbour does not trespass.² If so, 'R. Meir says: Konamoth are like oaths', implying that Konamoth do not combine, but there is trespass in them?³ Yet R. Meir says: There is no trespass in Konamoth at all! — According to the views of the Sages he is replying: As for me, I hold there is no trespass in Konamoth at all; but as for you, admit to me at least that Konamoth are like oaths [and do not combine]. And the Sages? — [They reply:] In oaths there is the reason of R. Phinehas; in Konamoth there is not the reason of R. Phinehas.⁴

Raba said: — [If a man says,] 'I swear shall not eat,' and he ate dust, he is exempt.⁵ Raba inquired: [If a man says.] 'I swear I shall not eat dust,' what amount [must he eat to make him liable]? [Shall we say:] Since he said, 'I shall not eat,' his intention was a kazayith,⁶ or, since it is not something that people eat, [his intention was] a minute quantity? — Let it stand.⁷

Raba inquired: [If a man says,] 'I swear I shall not eat grape stones,' what amount [must he eat to make him liable]? [Shall we say:] Since it can be eaten mixed [with the grapes], his intention was a ka-zayith, or, since, by itself, it is not eaten by people, his intention was a minute quantity?⁸ — Let it stand.

R. Ashi inquired: If a nazirite said, 'I swear I shall not eat grape stones,' what amount [must he eat to make him liable]?⁹ [Shall we say:] Since a ka-zayith is prohibited in the Torah,¹⁰ therefore when he swears, he swears for that which is permitted, and his intention is for a minute quantity; or, since he says, 'I shall not eat,' his intention is a ka-zayith?¹¹ — Come and hear: 'I swear I shall not eat,' and he ate carrion, trefa, forbidden animals, and reptiles, he is liable; and R. Simeon exempts him. And we asked: Why is he liable, since he stands adjured from Mount Sinai? Rab and Samuel and R. Johanan said: Because he included permitted things with the prohibited things. And Resh Lakish said: You cannot find [that he should be liable] except either, if he expressly stated half the legal quantity, in accordance with the view of the Sages, or, if his statement was undefined, in accordance with the view of R. Akiba, who holds that a man [in an undefined oath] prohibits to himself a minute quantity.¹² Now, carrion, for which he stands adjured from Mount Sinai, is like grape stones to a nazirite; and yet, only if he expressly states [less than the legal quantity, is he liable],¹³ but if he does not expressly state this, his intention is for a ka-zayith. — It is proven.

Well then, you may decide that which Raba enquired: [If a man says.] 'I swear I shall not eat dust,' what amount [must he eat to make him liable]? You may decide that it must be a ka-zayith; for carrion is like dust;¹⁴ and yet [he is liable] only if he expressly states [less than the legal quantity], but if he does not expressly state this, his intention is for a ka-zayith. — No! Dust is not edible at all;¹⁵ but carrion is edible, except that a lion is lying on it.¹⁶ MISHNAH. [IF A MAN SAYS,] 'I SWEAR I SHALL NOT EAT' AND HE ATE AND DRANK, HE IS LIABLE ONLY ONCE.¹⁷ 'I SWEAR I SHALL NOT EAT AND I SHALL NOT DRINK,' AND HE ATE AND DRANK, HE IS LIABLE TWICE.¹⁸ 'I SWEAR I SHALL NOT EAT,' AND HE ATE WHEAT BREAD, BARLEY BREAD, AND SPELT BREAD, HE IS LIABLE ONLY ONCE. 'I SWEAR I SHALL NOT EAT WHEAT BREAD, BARLEY BREAD, AND SPELT BREAD,' AND HE ATE, HE IS LIABLE FOR EACH ONE. 'I SWEAR I SHALL NOT DRINK,' AND HE DRANK MANY LIQUIDS, HE IS LIABLE ONLY ONCE. 'I SWEAR I SHALL NOT DRINK WINE, OIL, AND HONEY,' AND HE DRANK, HE IS LIABLE FOR EACH ONE. 'I SWEAR I SHALL NOT EAT,' AND HE ATE FOODS WHICH ARE NOT FIT TO BE EATEN, AND DRANK LIQUIDS WHICH ARE NOT FIT TO BE DRUNK, HE IS EXEMPT.¹⁹ 'I SWEAR I SHALL NOT EAT,' AND HE ATE CARRION, TREFA, FORBIDDEN ANIMALS, AND REPTILES, HE IS LIABLE.²⁰ AND R. SIMEON EXEMPTS HIM.²¹ HE SAID, 'I VOW THAT MY WIFE SHALL NOT BENEFIT FROM ME, IF I HAVE EATEN TODAY,' AND HE HAD EATEN CARRION, TREFA, FORBIDDEN ANIMALS,

OR REPTILES, HIS WIFE IS PROHIBITED TO HIM.²²

GEMARA. R. Hiyya b. Abin said that Samuel said: [If a man says,] 'I swear I shall not eat,' and he drank, he is liable. If you will, it may be deduced by reason; and if you will, it may be deduced from Scripture. If you will, it may be deduced by reason; for a man will say to his friend, 'Let us eat something,' and they go in, and eat and drink.²³ And if you will, it may be deduced from Scripture; drinking is included in eating, for Resh Lakish said: Whence do we know that drinking is included in eating? Because it is said: And thou shalt eat before the Lord thy God, in the place which He shall choose to cause His name to dwell there, the tithe of thy coin, of thy wine . . .²⁴

- (1) This proves that the Sages hold that there is no trespass in vows!
- (2) For the Sages hold there is trespass in vows.
- (3) A trespass offering is brought for breaking a vow, but two vows do not combine for one trespass offering.
- (4) Supra 22a.
- (5) Because dust is not edible, and 'eating' normally refers to edibles.
- (6) Because the legal minimum for eating is a ka-zayith.
- (7) I.e., it remains unsolved.
- (8) Assuming that in the case of dust he is liable for a minute quantity, is he here also liable for a minute quantity, or, since grape stones are not as inedible as dust (because they are eaten mixed with the grapes), a ka-zayith must be eaten for liability.
- (9) Assuming that in the case of other men (not nazirites) a ka-zayith is necessary (counting it as an edible), shall we say that a nazirite, knowing that a ka-zayith is in any case prohibited to him, intends, when taking the oath, to prohibit himself further (i.e., even a minute quantity)?
- (10) Num. VI, 4: from the grape stones even to the grape skin he shall not eat.
- (11) For the term 'eating' denotes the minimum of a ka-zayith.
- (12) V. supra 21b.
- (13) According to the Sages (in Resh Lakish's view); and we do not say, since a ka-zayith is in any case prohibited already by the Torah, his intention when swearing, must have been for a smaller quantity.
- (14) Since it must not be eaten.
- (15) Therefore the legal minimum for edibles is not applicable; and his intention may have been to prohibit even a minute quantity.
- (16) The prohibition of the Torah lies on it like a lion, making it inaccessible.
- (17) Though drink is included in the oath (for drinking is included in eating, as explained in the Gemara; v. infra), yet he is liable for only one punishment (stripes for wilful, and offering for unwitting transgression), for it is as if he had eaten twice in one spell of unawareness.
- (18) Because they are two oaths.
- (19) Because 'eating' implies edibles.
- (20) Because, though prohibited by the Torah, they are edible.
- (21) V. supra 21b.
- (22) R. Simeon agreeing, for he has eaten edibles.
- (23) Hence, drinking is included in eating.
- (24) Deut. XIV, 23.

Talmud - Mas. Shevu'oth 23a

Now, tirosh¹ is wine, and yet it is written, 'thou shalt eat'. Perhaps [Scripture means] when used in elaiogaron?² For Raba b. Samuel said: Elaiogaron contains the juice of beets, oxygaron the juice of all kinds of boiled vegetable! — But, said R. Aha b. Jacob: [We deduce that drinking is included in eating] from the verse, And thou shalt bestow the money for whatsoever thy soul desireth, for oxen, or for sheep, or for wine, or for strong drink . . . [and thou shalt eat there].³ Now, yayin is certainly wine; and yet it is written, 'thou shalt eat'. Perhaps here also [Scripture means] in elaiogaron? — 'Strong drink' is written, implying that which can cause intoxication.⁴ Perhaps pressed figs from

Keilah⁵ [are intended];⁶ for it was taught: If he ate a pressed fig from Keilah, or drank honey, or milk, and entered the Temple, and ministered, he is liable?⁷ — Well then, we deduce [that drinking is included in eating] by analogy from ‘strong drink’ [used here and in connection with a nazirite]: just as there it implies wine, so here it implies wine.⁸

Raba said: We have also learnt thus:⁹ ‘I SWEAR I SHALL NOT EAT,’ AND HE ATE AND DRANK, HE IS LIABLE ONLY ONCE. Granted, if you say that drinking is included in eating, it is necessary for the Tanna to teach us that [nevertheless] he is liable only once.¹⁰ But if you say that drinking is not included in eating,¹¹ [if he says.] ‘I swear I shall not eat,’ and he ate, and did work, would it be necessary [for the Tanna] to teach us that he is liable only once? Abaye said to him: What then, drinking is included in eating! [If so,] read the second clause, ‘I SWEAR I SHALL NOT EAT, AND I SHALL NOT DRINK,’ AND HE ATE AND DRANK, HE IS LIABLE TWICE. Now, since he said, ‘I shall not eat,’ he is already prohibited from drinking;¹² then when he says, ‘I shall not drink,’ why should he be liable? If he had said, ‘I shall not drink’ twice, would he have been liable twice? — He replied to him: There [the Mishnah means] he [first] said, ‘I shall not drink,’ and then he said, ‘I shall not eat;’ for drinking is included in eating, but eating is not included in drinking. But if he said, ‘I swear I shall not eat and I shall not drink,’ and he ate and drank, he would be liable only once? If so, why does he teach in the first clause: ‘I SWEAR I SHALL NOT EAT,’ AND HE ATE AND DRANK, HE IS LIABLE ONLY ONCE? Let him teach: ‘I swear I shall not eat and I shall not drink,’ he is liable only once; and most certainly [we should know, when he says:] ‘I shall not eat’ alone [he is liable only once]! We must therefore read the Mishnah as it stands;¹³ but here it is different.¹⁴ Since he said, ‘I shall not eat,’ and then he said, ‘I shall not drink,’ he revealed his mind that this ‘eating’ that he mentioned meant eating only.¹⁵

R. Ashi said: Our Mishnah also proves it:¹⁶ ‘I SWEAR I SHALL NOT EAT;’ AND HE ATE FOODS WHICH ARE NOT FIT TO BE EATEN, AND DRANK LIQUIDS WHICH ARE NOT FIT TO BE DRUNK, HE IS EXEMPT. [This implies that] if they are fit, he is liable.¹⁷ But why so? Surely he said [merely]: ‘I swear I shall not eat’! — Perhaps he said both: ‘I swear I shall not eat; I swear I shall not drink.’¹⁸ ‘I SWEAR I SHALL NOT EAT,’ AND HE ATE WHEAT BREAD, etc. But perhaps he wished to exempt himself from other kinds?¹⁹ — [In that case,] he should have said: ‘[I shall not eat] wheat, barley, and spelt.’²⁰ But perhaps, [that would have meant] ‘to chew’?²¹ — He could have said, ‘[I shall not eat] the bread of wheat, barley, and spelt.’²² — But perhaps, [that would have meant] the bread of wheat to eat, and barley and spelt to chew? — He could have said: ‘[I shall not eat] the bread of wheat, and of barley, and of spelt’.

(1) Heb. תִּירָשׁ (not the usual תִּירָשׁ) is used in the verse.

(2) A sauce of oil and garum to which wine is sometimes added; this is a food, and therefore Scripture calls it ‘eating’; but drinking is perhaps not included in eating.

(3) Deut. XIV, 26.

(4) ‘Strong drink’ is taken as explanatory of wine; hence it must be taken in its ordinary connotation, and not as an admixture to a sauce.

(5) A town in the lowland district of Judea.

(6) Strong drink may not be explanatory of wine, but a separate noun denoting pressed figs from the town of Keilah, which are intoxicating.

(7) If a priest conducts the service in the Temple when intoxicated, he transgresses the command in Lev. X, 9.

(8) A nazirite must abstain only from wine products (Naz. 4a); the term, ‘strong drink’ in the case of a nazirite (Num. VI, 3) refers only to wine; hence the term ‘strong drink’ in Deut. XIV, 26 refers also to wine; and Scripture says: ‘thou shalt eat’; hence drinking is included in eating.

(9) That drinking is included in eating.

(10) Because he ate and drank in one spell of unawareness.

(11) What need is there for the Tanna to teach us that he is liable only once?

(12) Since drinking is included in eating.

- (13) That he first says, 'I shall not eat', and then, 'I shall not drink,'
- (14) Why he is liable twice, though drinking is already included in eating.
- (15) And he supplemented his oath to include drinking.
- (16) That drinking is included in eating.
- (17) This would prove that drinking is included in eating.
- (18) From this passage there is no proof that drinking is included in eating, for the Mishnah may mean this: 'I swear I shall not eat,' and he ate foods which are not fit,' etc.; and 'I swear I shall not drink,' and he drank liquids which are not fit, etc. But the Mishnah abbreviates.
- (19) If he says, 'I swear I shall not eat wheat bread, barley bread, and spelt bread,' and he ate, he is liable for each one. Why? Perhaps he enumerates these kinds of bread in order to exclude other kinds, such as, bread of oats, rye, or millet, which he does not desire to prohibit; for, if he had said, 'I swear I shall not eat,' without particularising, he would have been prohibited from all kinds. But, in reality, it is only one oath, not three.
- (20) But since he mentions the word BREAD each time, he implies that they are three separate oaths.
- (21) Grains of wheat, barley, and spelt; but bread would not have been prohibited; therefore he must mention the word BREAD.
- (22) But because he mentions the word BREAD on each occasion, he implies that they are three separate oaths.

Talmud - Mas. Shevu'oth 23b

But perhaps [that would have meant] mixed?¹ — Say, [he could have said: 'I shall not eat the bread of wheat,] and also of barley, and also of spelt'. Why is BREAD repeated? Obviously, in order to separate.²

'I SWEAR I SHALL NOT DRINK;' AND HE DRANK MANY LIQUIDS. HE IS LIABLE ONLY ONCE, etc. Granted there,³ as you say, the word BREAD, being superfluous, makes him liable;⁴ but here,⁵ what could he have said? Perhaps he wishes to exempt himself from other liquids?⁶ — R. Papa said: Here we are discussing [the case of] where they are lying before him; so that he could have said: 'I swear I shall not drink these.'⁷ But perhaps [that would have meant], 'These I shall not drink, but others [of the same kind] I shall drink'? — Well, he could have said, 'I swear I shall not drink [liquids] just like these.' Perhaps [that would have meant], 'Just like these⁸ I shall not drink, but less than these, or more than these, I shall drink'? Well then, he could have said, 'I swear I shall not drink of these kinds.' Perhaps [that would have meant], 'These kinds I shall not drink, but these themselves I shall drink'? — Say [he could have said], 'I shall not drink these and their kinds.'

R. Aha the son of R. Ika said: We are discussing [a case] where his friend is urging him, saying to him, 'Come and drink with me wine, oil, and honey;' so that he could have said, 'I swear I shall not drink with you.' What need is there [to enumerate] wine and oil and honey? [Obviously, therefore,] to make him liable for each one.

We learnt there: [If a man says to another.] 'Give me the wheat, barley, and spelt of mine in your possession.'⁹ [and the other replies,] 'I swear that there is nothing of yours in my possession;' he is liable only once.¹⁰ [But if he says,] 'I swear that I have not of yours in my possession wheat, barley, and spelt;' he is liable for each one.¹¹ And R. Johanan said: Even if there is only a perutah of all of them together, they combine.¹² Now, R. Aha and Rabina disagree;¹³ one says, he is liable for the particularisations, but he is not liable for the generalisations; and the other says, he is liable also for the generalisations.¹⁴ Now here,¹⁵ how will it be? — Raba said: How now?¹⁶ There he is liable for the generalisation, and he is liable for the particularisation, for if he swears once, and then swears again, he is liable twice.¹⁷ But here, if it should enter your mind that they are included in the generalisation, why should he be liable for the particularisations, since he already stands adjured?¹⁸

'I SWEAR I SHALL NOT EAT', etc. This itself is contradictory! You say: 'I SWEAR I SHALL

NOT EAT', AND HE ATE FOODS WHICH ARE NOT FIT TO BE EATEN, AND DRANK DRINKS WHICH ARE NOT FIT TO BE DRUNK, HE IS EXEMPT. And then you teach: I SWEAR I SHALL NOT EAT,' AND HE ATE CARRION, TREFA, FORBIDDEN ANIMALS, AND REPTILES, HE IS LIABLE. What is the difference between the first clause, where he is exempt, and the second, where he is liable?¹⁹ — This is no question: the first clause relates to an undefined oath,²⁰ and the second to a defined oath.²¹ [In the case of] a defined oath itself it may also be asked: Why? Surely he is adjured from Mount Sinai!²² — Rab and Samuel and R. Johanan said: Because he included permitted foods with the prohibited foods.²³ And Resh Lakish said: You cannot find [that he should be liable] except either if he expressly states half the legal quantity, in accordance with the view of the Rabbis; or, if his oath is undefined, in accordance with the view of R. Akiba, who says, a man [in an undefined oath] prohibits to himself even a minute quantity.²⁴

Granted, R. Johanan does not agree with Resh Lakish, because he wishes to expound our Mishnah in accordance with the views of all;²⁵ but why does not Resh Lakish agree with R. Johanan? — He may reply to you: We say that a more inclusive prohibition [falls on a less inclusive one]

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- (1) That he should not eat bread made of all three together.
 - (2) Making them into three oaths.
 - (3) In the enumeration of the different kinds of bread.
 - (4) For each kind separately.
 - (5) In the Case where he enumerates the liquids, and is liable for each one separately.
 - (6) That is why he enumerates these; but there is really only one oath.
 - (7) But since he enumerates them, he is swearing three oaths.
 - (8) The same quantity.
 - (9) Deposited temporarily in the other's care.
 - (10) A trespass offering for the false oath (שבועת הפקדון); Lev, V, 21-26.
 - (11) Infra 36b.
 - (12) To make him liable to bring one trespass offering. The oath must be a denial of liability of at least the value of a perutah for a trespass offering to be brought.
 - (13) As to the meaning of the Mishnah and R. Johanan's comment.
 - (14) When he says, 'I swear that I have not of yours in my possession wheat, barley, and spelt,' the first part is a generalisation ('I swear that I have not of yours in my possession'), then there are three particularisations. When the Mishnah says, he is liable for each one, does it mean three trespass offerings or four? R. Aha and Rabina disagree: one says, three; he is liable for the particularisations alone, and not for the generalisation; and we do not say that the first part, 'I swear that I have not of yours in my possession,' should be taken as an additional oath; and R. Johanan's comment that they combine to the value of a perutah refers to the previous statement in the Mishnah: 'I swear that there is nothing of yours in my possession' (with no particulars mentioned at all); but where particulars are mentioned, they do not combine; there must be the value of a perutah in each. And the other Amora says, when the Mishnah states he is liable for each, it means four, the generalisation also being taken as an oath; and R. Johanan's comment refers to this too, that for the first of the four oaths (the generalisation) he is liable to bring a trespass offering even if there is only the value of a perutah in the wheat, barley, and spelt combined.
 - (15) In our Mishnah: 'I swear I shall not eat wheat bread, barley bread, and spelt bread,' he is liable for each one. Will R. Aha and Rabina disagree here also, one of them holding (taking the generalisation as a separate oath) that he is liable for four oaths?
 - (16) There is no comparison at all.
 - (17) In the case of denying a deposit, if the trustee denies it on oath several times, he brings a trespass offering for each denial; infra 36b.
 - (18) If we should assume that the generalisation, 'I swear I shall not eat,' is taken as an additional oath, and as prohibiting all foods, then, when he adds 'wheat, barley, and spelt', these three oaths cannot take effect, for they are already assumed to have been included in the generalisation; and a later oath cannot 'fall' on a previous oath.
 - (19) Is not carrion, etc., food unfit to be eaten?
 - (20) 'I swear I shall not eat' implies only foods which are fit to be eaten, and excludes carrion.

(21) 'I swear I shall not eat carrion, etc.'

(22) His oath cannot take effect, since there is already a previous oath (administered at Mount Sinai) not to eat carrion.

(23) He said: 'I swear I shall not eat properly killed meat and carrion, etc.:' and because the oath can take effect on the permitted food it takes effect also on the prohibited; v. supra 21b.

(24) V. supra 21b.

(25) R. Akiba and the Sages who agree that a more inclusive oath can fall on a less inclusive one.

Talmud - Mas. Shevu'oth 24a

only when the [more inclusive] prohibition comes of its own accord, but when the prohibition is imposed by himself, we do not say this.¹

Granted, according to Resh Lakish, it is for this reason that R. Simeon exempts him,² for we learnt, R. Simeon says: A minute quantity [imposes liability] for stripes; and it was not said that a ka-zayith is necessary except for [imposing liability for] a sacrifice. But, according to R. Johanan,³ what is R. Simon's reason for exempting him? — Is not the reason [that the Sages make him liable] because it is a more inclusive prohibition? R. Simeon is consistent in his view that a more inclusive prohibition cannot take effect; for it has been taught, R. Simeon Says: He who eats carrion on the Day of Atonement is exempt.⁴ Granted, according to Resh Lakish, it is possible to have it negative and positive;⁵ but, according to R. Johanan, granted that negative is possible, but how is positive possible?⁶ — Well then, [the Mishnah may be explained] in accordance with Raba's view, for Raba said: [If a man says,] 'I swear I shall not eat', and he ate dust, he is exempt.⁷

R. Mari said: We have also learnt thus.⁸ 'I VOW THAT MY WIFE SHALL NOT BENEFIT FROM ME IF I HAVE EATEN TO-DAY,' AND HE HAD EATEN CARRION, TREFA, FORBIDDEN ANIMALS, AND REPTILES, HIS WIFE IS PROHIBITED TO HIM. [Hence, eating carrion is also called eating!] — How now? There, since first he ate, and then he swore,

(1) If a man eats carrion on the Day of Atonement, he is liable to bring a sin offering for his transgression of the Day, though carrion was already prohibited to him before the Day, because the prohibition of the Day is more inclusive (including, as it does, also permitted foods). This more inclusive prohibition comes of its own accord, and is therefore powerful enough to fall even on previously prohibited food; but if the more inclusive prohibition comes by the action or word of the man himself (as in the case of an oath), it cannot fall on a previous prohibition. Resh Lakish, therefore, who makes this distinction, cannot explain the Mishnah as R. Johanan does.

(2) In the Mishnah, supra 22b, because R. Simeon holds that for a small quantity he also stands adjured, and consequently the oath cannot fall on a small quantity.

(3) Who explains that the Sages in the Mishnah make him liable because he says: 'I swear I shall not eat properly killed meat and carrion;' why does R. Simeon exempt him?

(4) From a sin offering (for unwitting transgression of the Day), for the prohibition of the Day, though more inclusive, cannot fall on the prohibition of carrion.

(5) A sliding scale sacrifice is not brought for the transgression of an oath unless it is equally punishable when reversed (v. infra 25a). According to Resh Lakish, the oath in the Mishnah for which the Sages make him liable is: 'I swear I shall not eat a small portion of carrion.' This may be reversed: 'I swear I shall eat a small portion of carrion;' and he is liable for transgressing it, for he has not sworn to annul a precept (only a ka-zayith is prohibited in the Torah). Had he sworn to eat a ka-zayith of carrion, i.e., to annul a precept, and transgressed his oath, he would have been exempt; infra 27a.

(6) According to R. Johanan, the oath in the Mishnah for which the Sages make him liable is, 'I swear I shall not eat properly killed meat and carrion.' The positive of this oath is not possible; if he says, 'I swear I shall eat properly killed meat and carrion,' his oath cannot be carried out, so far as the carrion is concerned, because it is an oath to annul a precept (for a ka-zayith of carrion is prohibited by the Torah).

(7) The contradiction in the Mishnah was first explained by saying that the first clause ('I swear I shall not eat', and he ate foods which are not fit, etc., he is exempt) refers to an undefined oath, and the second clause ('I swear I shall not eat', and he ate carrion, etc., he is liable) refers to a defined oath (i.e., 'I swear I shall not eat properly killed meat and carrion,

etc.'). This explanation raises a difficulty for R. Johanan, because the second oath is not reversible. The Gemara now says that both clauses refer to an undefined oath; in the first case he is exempt, because he ate dust (the phrase 'foods not fit to be eaten' refers to dust and similar inedibles); and in the second case he is liable, because he ate carrion (which is edible, but prohibited by the Torah). According to R. Johanan, in the second case when he says, 'I shall not eat,' he is liable if he eats carrion, because his oath is inclusive, including as it does all foods (permitted also); and because it can take effect on the permitted, it takes effect on the prohibited also. This oath (being undefined) is reversible: 'I shall eat', and can be fulfilled by eating permitted food; therefore if he transgresses it, he is liable.

(8) That carrion is counted food fit to be eaten (for, though prohibited, it is edible).

Talmud - Mas. Shevu'oth 24b

he had made it important;¹ but here, did he make it important?

Raba said: What is the reason of the one who holds an inclusive prohibition [can take effect on a previous prohibition]? Because it is analogous to an extensive prohibition.² And [the reason of] the one who exempts him, not holding this? Because he says, an extensive prohibition is applicable only to one piece, but not to two pieces.³

And Raba said further: According to the one who holds an inclusive prohibition [takes effect on a previous prohibition], if one says, 'I swear I shall not eat figs,' and then says, 'I swear I shall not eat figs and grapes,' because it takes effect on the grapes,⁴ it takes effect also on the figs. [But] this is self evident! — I might have thought that [in the case of] a prohibition which comes of its own accord we say it takes effect [on a previous prohibition], but [in the case of] a prohibition which is imposed by himself, we do not say this; therefore he teaches us [that even in this case it takes effect]. Raba the son of Rabbah raised an objection: [We learnt:] One may eat one portion [a ka-zayith] and yet be liable for it four sin offerings and one guilt offering, thus: An unclean person who ate heleb, which was nothar of holy food, on the Day of Atonement.⁵ R. Meir said: Also if it was Sabbath, and he carried it out in his mouth, he is liable.⁶ They [the Sages] said to him: It is not in the same category.⁷ Now, if it is [as you say],⁸ it is possible to have five;⁹ for example, if he said: 'I swear I shall not eat dates and heleb,' because it takes effect on the dates, it takes effect also on the heleb?' — The Tanna mentions only [the case of] a prohibition which comes of its own accord, but a prohibition imposed by himself he does not mention.¹⁰ But [he mentions] holy food!¹¹ — [It refers to] a firstborn, which is holy from the womb.

If you will, you may say, the Tanna mentions only that which does not come within the category of absolution, but an oath which comes within the category of absolution he does not mention.¹² — But [he mentions] holy food!¹³ — Well, we have established that it refers to a firstborn.

If you will, you may say, the Tanna mentions only [the case where] a fixed sacrifice [is brought], but where a sliding scale sacrifice is brought he does not mention.¹⁴ But [he mentions] an unclean person who ate holy food, for which a sliding scale sacrifice is brought! — [It refers to] a prince; and it is in accordance with the view of R. Eliezer, who says a prince brings a goat.¹⁵

R. Ashi said: The Tanna mentions only that which takes effect on the legal minimum,¹⁶ but an oath which takes effect on less than the legal minimum,¹⁷ he does not mention. But [he mentions] holy food!¹⁸ — Because we require that it should be the value of a perutah.¹⁹

And R. Ashi of Avirya said in the name of R. Zera: The Tanna mentions only that for which, for wilful transgression, kareth is inflicted, but that for which, for wilful transgression, there is only a negative prohibition,²⁰ he does not mention. But he mentions a guilt offering, in the case of which, for wilful transgression, there is only a negative prohibition!²¹ —

(1) The fact of having eaten the carrion shows that he deemed it edible and not distasteful to him; but if he swears, 'I shall not eat' (without specifying carrion), and he eats carrion, he may perhaps not be liable for the oath; as he might not have contemplated including carrion in the oath.

(2) An inclusive prohibition (איסור כולל) does not add anything to the previous prohibition, but includes more objects in the present prohibition; e.g., carrion is prohibited; when the Day of Atonement arrives, it prohibits not only carrion, but also previously permitted foods; the incidence of the Day does not make the carrion prohibited in any way except as food, but it includes in its prohibition other foods apart from this carrion. An extensive prohibition (איסור מוסף) adds something to this present prohibited object, making it more extensively prohibited; e.g., heleb (forbidden fat) of an offering is prohibited to be eaten, but may be offered on the altar; when it becomes nothar (by being kept beyond the time limit for its offering), it is prohibited to be offered on the altar. The prohibition of nothar takes effect on the heleb (which was permitted so far as the altar is concerned), so that it may not now be offered on the altar; and since the prohibition of nothar takes effect on the heleb (so far as the altar is concerned), it ipso facto takes effect on it so far as human consumption is concerned also; so that a man eating it now is liable both for heleb and nothar.

(3) An extensive prohibition can take effect on a previous prohibition because it extends the scope of the prohibition of this one piece; e.g., heleb, permitted for the altar, on becoming nothar is prohibited; this same piece of fat is now more extensively prohibited; previously it was prohibited for human consumption only, now it is prohibited for the altar also. But an inclusive prohibition does not add any prohibition to this one piece; it merely includes other pieces in its prohibition; therefore, he holds, it does not take effect on a previous prohibition.

(4) For they were not prohibited by the first oath.

(5) Four sin offerings: (i) for heleb, (ii) for nothar, (iii) for the Day of Atonement, and (iv) for eating holy food while unclean; and one guilt offering for his trespass in deriving enjoyment from holy food. He is liable for all these, if we hold that inclusive and extensive prohibitions can take effect on previous prohibitions. The heleb of an animal is prohibited; when he sanctifies the animal, the whole of it becomes prohibited to him: this second prohibition is an inclusive one, because the permitted portions of the animal are now included in the prohibition; and because the prohibition can take effect on the permitted portions, it takes effect also on the heleb; when it becomes nothar, a further prohibition is extended to this heleb itself, making it prohibited to the altar; this extensive prohibition therefore takes effect on it as far as human consumption is concerned also. When the person becomes unclean, holy foods previously permitted to him now become prohibited; this inclusive prohibition, because it can take effect on previously permitted holy foods, takes effect also on this heleb. The Day of Atonement is another inclusive prohibition (prohibiting all kinds of food), and therefore it takes effect on the heleb also.

(6) Another sin offering for carrying on the Sabbath, as well as for carrying on the Day of Atonement (for carrying is prohibited on the Day of Atonement also); v. Ker. 14a.

(7) As eating; for they are giving examples of liability for eating, and not for carrying. Mishnah Ker. 13b.

(8) That an inclusive prohibition, even if imposed by himself, can take effect.

(9) Sin offerings.

(10) Though he agrees that an inclusive prohibition, even if imposed by himself, can take effect, he wishes to limit his example to a case where four sin offerings are brought, without including any prohibition imposed by himself.

(11) Which is a prohibition imposed by himself, because he made it holy.

(12) An oath or a vow may be absolved in certain circumstances as, for example, if the person uttering the oath or vow explains to the Sage (or three laymen) that, had he known of certain eventualities which later transpired, he would not have uttered it.

(13) Which becomes holy by his vow, and may therefore be absolved.

(14) Therefore he does not mention oath, for the transgression of which a sliding scale sacrifice is brought.

(15) For the transgression of the laws of uncleanness in connection with the Temple and holy food (Hor. 9a, b); but he admits that for transgressing an oath a prince also brings a sliding scale sacrifice.

(16) Ka-zayith.

(17) If he expressly states so in the oath.

(18) A trespass offering is brought even if the holy food from which he derived enjoyment was less than a ka-zayith.

(19) So that this is its legal minimum.

(20) The wilful transgression of an oath is punishable by stripes, but heleb, nothar, Day of Atonement, and eating holy food while unclean, are punishable by kareth.

(21) For wilfully deriving enjoyment from holy food he is punished by stripes, v. Sanh 84a.

Talmud - Mas. Shevu'oth 25a

We mean in the case of a sin offering.¹

Rabina said: The Tanna mentions only that which is applicable to foods, but an oath, which can take effect even on that which is not a food, he does not mention. But [he mentions] holy things, which are applicable also to wood and stone!² — Well then, he mentions only that which is applicable to that which has substance, but an oath, which can take effect also on that which has no substance, as, for example, 'I shall sleep', or, 'I shall not sleep.' he does not mention.³

MISHNAH. IT IS THE SAME [WHETHER HE SWEARS OF] THINGS CONCERNING HIMSELF, OR OF THINGS CONCERNING OTHERS, OR OF THINGS WHICH HAVE SUBSTANCE, OR OF THINGS WHICH HAVE NO SUBSTANCE. HOW SO? [IF] HE SAID, 'I SWEAR THAT I SHALL GIVE TO SO-AND-SO,'⁴ OR, 'I SHALL NOT GIVE;' 'I HAVE GIVEN,' OR 'I HAVE NOT GIVEN;' 'I SHALL SLEEP,'⁵ OR, 'I SHALL NOT SLEEP;' 'I HAVE SLEPT,' OR, 'I HAVE NOT SLEPT;' 'I SHALL THROW A PEBBLE IN THE SEA.'⁶ OR, 'I SHALL NOT THROW;' 'I HAVE THROWN,' OR, 'I HAVE NOT THROWN'; [HE IS LIABLE.] R. ISHMAEL SAYS, HE IS LIABLE ONLY FOR [AN OATH IN] THE FUTURE, FOR IT IS SAID: TO DO EVIL OR TO DO GOOD.⁷ R. AKIBA SAID TO HIM: IF SO,⁸ WE KNOW ONLY SUCH CASES WHERE DOING EVIL AND DOING GOOD ARE APPLICABLE; BUT HOW DO WE KNOW SUCH CASES WHERE DOING EVIL AND DOING GOOD ARE NOT APPLICABLE.? HE REPLIED TO HIM: FROM THE AMPLIFICATION OF THE VERSE.⁹ WHEREUPON HE SAID TO HIM: IF THE VERSE AMPLIFIES FOR THAT, IT AMPLIFIES FOR THIS ALSO.¹⁰

GEMARA. Our Rabbis taught: There is a greater restriction in vows than in oaths [in one respect]; and there is a greater restriction in oaths than in vows [in another respect] — The greater restriction in vows is that vows take effect on a precept as on an optional matter, which is not the case in oaths.¹¹ The greater restriction in oaths is that oaths take effect on a thing which has no substance as on a thing which has substance, which is not the case in vows.¹²

HOW SO? [IF] HE SAID, 'I SWEAR THAT I SHALL GIVE TO SO-AND-SO,' OR, 'I SHALL NOT GIVE.' What is meant by, 'I shall give'? Shall we say, charity to the poor? [For that] he already stands adjured from Mount Sinai, for it is said: Thou shalt surely give him.¹³ — It must therefore mean a gift to a rich man.

'I SHALL SLEEP,' OR, 'I SHALL NOT SLEEP.' This cannot be,¹⁴ for R. Johanan said: He who says, 'I shall not sleep three days,' is given stripes, and he may sleep immediately.¹⁵ — There, he said 'three'; here, he did not say 'three'.¹⁶

I SHALL THROW A PEBBLE IN THE SEA,' OR, 'I SHALL NOT THROW'. It was stated: [If a man says,] 'I swear that So-and-so threw a pebble in the sea,' or, 'that he did not throw,' Rab said, he is liable; and Samuel said, he is exempt. Rab said, he is liable, because it is applicable in both negative and positive [forms];¹⁷ and Samuel said, he is exempt, because it is not applicable in the future.¹⁸ Shall we say that they disagree on the same principle on which R. Ishmael and R. Akiba disagree? For we learnt: R. ISHMAEL SAYS, HE IS LIABLE ONLY FOR [AN OATH IN] THE FUTURE, FOR IT IS SAID: TO DO EVIL OR TO DO GOOD. R. AKIBA SAID TO HIM: IF SO, WE KNOW ONLY SUCH CASES WHERE DOING EVIL AND DOING GOOD ARE APPLICABLE; BUT HOW DO WE KNOW SUCH CASES WHERE DOING EVIL AND DOING GOOD ARE NOT APPLICABLE.? HE REPLIED TO HIM: FROM THE AMPLIFICATION OF THE VERSE. WHEREUPON HE SAID TO HIM: IF THE VERSE AMPLIFIED FOR THAT, IT

AMPLIFIED FOR THIS ALSO. [Shall we say that] Rab agrees with R. Akiba,¹⁹ and Samuel agrees with R. Ishmael?²⁰ — [No!] With reference to R. Ishmael's view they do not disagree; for since even in a case which is [possible of application] in the future,²¹ R. Ishmael does not make him liable for the past, obviously in a case which is not [possible of application] in the future,²² he most certainly [does not make him liable for the past]. But they disagree with reference to R. Akiba's view: Rab agrees with R. Akiba; and Samuel says, R. Akiba makes him liable there²³ for [an oath in] the past, because in a case which is [possible of application] in the future, R. Akiba makes him liable for the past, but in a case which is not [possible of application] in the future, he does not [make him liable for the past].

Shall we say that they disagree on the same principle on which

- (1) He mentions only those for which kareth is inflicted for wilful transgression, and therefore omits an oath, for which stripes are inflicted; all these are sins for which a sin offering is brought for unwitting transgression; but he mentions the case of a trespass offering, through for wilful transgression only stripes are inflicted.
- (2) A man may devote wood and stone for the Temple treasury.
- (3) Sleep is not tangible
- (4) This comes in the category of 'things concerning others'.
- (5) This comes in the category of 'things which have no substance'.
- (6) This also comes in the category of 'things which have no substance', in the sense that no useful purpose is served.
- (7) Lev. V, 4; this implies an oath to do something in the future.
- (8) If you take the verse literally.
- (9) Lev., V, 4: whatsoever it be that a man shall utter with an oath.
- (10) That an oath in the past is also punishable.
- (11) If he says, 'I vow that the sukkah which I make shall be prohibited to me,' it is prohibited, and he may not sit in it; but if he says: 'I swear that I shall not sit in the sukkah,' his oath cannot take effect; v. infra 27a; Ned. 16a, b.
- (12) A vow can take effect only on something tangible. If he says, 'I vow that I shall not sleep,' it has no effect; but if he says, 'I vow my eyes from sleep' (i.e., I condemn my eyes to sleeplessness), the vow takes effect on the eyes (which are tangible). The reason is that uttering a vow (usually expressed by konam) is akin to dedicating to the Temple (konam is a substitute for korban, an offering to the Temple); and just as the korban must be tangible, so must the konam be tangible.
- (13) Deut. XV, 10; and an oath to fulfil a mizwah cannot take effect; infra 27a.
- (14) 'I shall not sleep,' with no time limit imposed, implies 'I shall never sleep,' which is obviously an impossibility.
- (15) Because it is impossible to refrain from sleep for three days; therefore it is a vain oath (i.e., as soon as uttered, its falsity is apparent), and not שבועת בטוי.
- (16) He might therefore have meant a lesser period.
- (17) For Scripture says, to do evil or to do good (Lev. V, 4); to do evil, e.g., 'I shall not eat' = negative; to do good, e.g., 'I shall eat' = positive. An oath, to make the utterer liable, must therefore be applicable both negatively and positively.
- (18) 'I swear that So-and-so will throw (or, will not throw) a pebble in the sea;' this is merely a vain oath, and not an oath of utterance (שבועת בטוי), because he has no power to compel that person to carry out his oath; and because the oath is inapplicable in the future, it imposes no liability when uttered in the past.
- (19) That he is liable for an oath in the past also.
- (20) That he is liable only for an oath in the future. Now, since R. Akiba and R. Ishmael already disagree on this point, why do Rab and Samuel (who are amoraim) state their view's as if they were disagreeing on a new principle? Let Rab say that he agrees with R. Akiba, and Samuel that he agrees with R. Ishmael.
- (21) E.g., 'I shall eat,' or, 'I shall not eat.'
- (22) E.g., 'So-and-so will throw (or, will not throw) a pebble in the sea.'
- (23) In the Mishnah.

Talmud - Mas. Shevu'oth 25b

R. Judah b. Bathyra and the Rabbis disagree? For we learnt: If he swore to annul a precept, and did not annul it, he is exempt; to fulfil a precept, and did not fulfil it, he is exempt; though logically he

should be liable [in the second case] as is the opinion of R. Judah b. Bathyra, [for] R. Judah b. Bathyra said: If, for an optional matter, for which he is not adjured from Mount Sinai, he is liable;¹ for a precept, for which he is adjured from Mount Sinai, he should most certainly be liable! — They replied to him: No! If you say that for an oath on an optional matter [he is liable], it is because [Scripture] has made negative equal to positive;² but how can you say that for an oath [to fulfil] a precept [he is liable], since [Scripture] in that case, has not made negative equal to positive?³ — Now, shall we say that Rab agrees with R. Judah b. Bathyra,⁴ and Samuel agrees with the Rabbis?⁵ — [No!] With reference to R. Judah b. Bathyra's view they do not disagree; since even negative and positive he does not require, will he require future and past?⁶ But they disagree as to the view of the Rabbis: Samuel agrees with the Rabbis, and Rab [says], the Rabbis do not make him liable [unless it is applicable] in both negative and positive [forms], for it is written distinctly: to do evil, or to do good; but for future and past, which is deduced [merely] from the amplification of the verse,⁷ they make him liable [even if the oath is not applicable in both future and past].⁸

R. Hammuna raised an objection: [We learnt: If a man says,] 'I did not eat today', or, 'I did not put of tefillin today.' 'I adjure you;' and he said, 'Amen!' he is liable.⁹ Granted, 'I did not eat' is applicable [in the future]: 'I shall not eat'; but 'I did not put on [tefillin]'- is this applicable [in the future]: 'I shall not put on tefillin'?¹⁰ — He himself put the question, and he himself answered it: The Mishnah means it disjunctively:¹¹ 'I did not eat', [he is liable] for an offering: 'I did not put on [tefillin]', he is liable] for stripes.¹²

Raba raised an objection [We learnt:] 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 was of gold.¹³ And Ulla said: Provided that it was already known to three men [that it was of stone].¹⁴ Now, the reason [that he is liable for a vain oath] is because it is known [to three men that it is of stone], but if it were not known [to three men], he would be transgressing an oath of utterance.¹⁵ Why? It is not [applicable in the future: 'I swear] it will be of gold!'¹⁶ He himself put the question — and he himself answered it: If it is known, he transgresses a vain oath; if it is not known, he transgresses a false oath.¹⁷

Abaye said: Rab admits that he who says to his neighbour, 'I swear that I know some testimony for you,' and it was found that he did not know, is exempt, because it is not applicable [negatively]. 'I do not know any testimony for you.'¹⁸

[If a man says,] 'I did know [testimony for you]', or, 'I did not know;' [in this there is] disagreement [between Rab and Samuel].¹⁹ 'I bore witness [for you],' or, 'I did not bear witness': [in this there is also] disagreement [between them].²⁰

Granted, according to Samuel who says that in a case which is not applicable in the future he is not liable for the past, therefore the Divine Law removed the oath of testimony from the category of the oath of utterance;²¹ but, according to Rab, for what purpose did the Divine Law remove it?²² — The Rabbis said to Abaye: In order to make him liable for it twice.²³ He [however] replied to them: You cannot say [he is liable] twice, for it has been taught: [When he shall be guilty] in one of these things²⁴ — for one you make him liable, but you do not make him liable for two. Well then, according to Abaye, for what purpose did the Divine Law remove [the oath of testimony from the category of the oath of utterance in Rab's view]?²⁵ — [For this purpose:] It has been taught: In all of them it is said, and it was hidden [from him];²⁶ but here,²⁷ it is not said, and it was hidden; in order to make him liable²⁸ for wilful²⁹ as for unwitting [transgression]. The Rabbis said to Abaye: Say that for wilful transgression he is liable one;³⁰ for unwitting, two.³¹ — He replied to them: Is that not what I said: [it is written,] in one [of these things]²⁴ — for one you make him liable, but you do not make him liable for two; and if [it refers to] wilful transgression, are there, then, two?³²

Raba said: Because it was a matter included in a generalisation, and it was singled out [from the

generalisation] in order to introduce an anomaly; therefore, you cannot add anything to this anomaly.³³ — This would imply that Abaye holds that the oath [of utterance] is still in existence.³⁴ But did not Abaye say: Rab admits that he who says to his neighbour, ‘I swear that I know some testimony for you,’ and it was found that he did not know, is exempt, because it is not applicable [negatively], ‘I do not know any testimony for you’!³⁵ — Abaye withdrew from that [statement].³⁶ Or, if you will, you may say,

(1) For not fulfilling his oath.

(2) If he swears not to do a certain action, he is liable if he does not fulfil his oath.

(3) If he swears not to fulfil a precept, he cannot carry out his oath; Mishnah *infra* 27a.

(4) Who does not require that an oath should be applicable in both positive and negative forms, and therefore does not require also that it should be applicable in both past and future forms.

(5) Just as the Rabbis, who oppose R. Judah, hold that it should be possible for an oath to be applied both positively and negatively, so they hold that it should be possible for it to be applied also for past and future; and when it is inapplicable in the future (e.g., ‘I swear So-and-so will throw a pebble’), it cannot be applied in the past (‘I swear So-and-so has thrown’).

(6) Rab and Samuel agree that R. Judah b. Bathyra does not require an oath to be applicable both in the past and the future, for he does not even require it to be applicable both positively and negatively, though Scripture states, to do evil or to do good, which implies negative and positive. He therefore certainly does not require the oath to be applicable in both past and future, for this proviso is not definitely stated in the Scriptures.

(7) *Supra* 25a, *infra* 26a.

(8) Rab, therefore, in accordance with his interpretation of the view of the Rabbis, makes him liable in the case of ‘I swear So-and-so has thrown a pebble in the sea,’ though it is inapplicable in the future.

(9) A second person said to the first, ‘I want you to swear that you did not eat, or did not put on tefillin,’ and the first replied, ‘Amen;’ but he had eaten, or had put on tefillin, he is liable for breaking his oath; for ‘Amen’ in response to an adjuration is equivalent to uttering an oath; Mishnah *infra* 29b.

(10) This is swearing to annul a precept, for which he is not liable. According to the Rabbis (in Samuel's interpretation), if an oath is not applicable in the future he is not liable for it even in the past; then why is he liable for ‘I have not put on tefillin’?

(11) They are two distinct statements.

(12) Fictitiously uttering a false oath, but he is not liable for an offering, if he unwittingly uttered this false oath, because it is inapplicable in the future.

(13) *Infra* 29a.

(14) If a fact is known to at least three men, it is accepted as well established.

(15) **שבועת בטוי**; if it is known to less than three men, his oath is not contrary to the fact known to men (i.e., universally known); and is therefore not a vain oath (the falsity of which is evident to all immediately).

(16) And therefore, according to the Rabbis (in Samuel's interpretation), he should not be liable for it even in the past.

(17) Which need not be applicable in the future to make him liable. It is only in the case of **שבועת בטוי** that the oath must be applicable both for positive and negative and (according to Samuel) also for past and future.

(18) For Rab agrees that though it is not necessary for an oath to be applicable for both future and past, it must be applicable for negative and positive. If he swears, ‘I did not know any testimony for you,’ and it was found that he did know, he is not liable for **שבועת בטוי**, but for **שבועת העדות**, for refusing to bear witness for his neighbour; and for this he is liable only if he swears falsely before the Beth din; *infra* 30a.

(19) According to Rab he is liable, because it is applicable positively and negatively; but according to Samuel he is exempt; because it is not applicable in the future: ‘I swear I shall know (or, shall not know) testimony for you,’ for it is outside his control; v. Maharsha, a.l.

(20) Because it is inapplicable in the future: ‘I swear I shall (or, shall not) bear witness’ is an oath to fulfil (or, annul) a precept, for which he is exempt.

(21) And expressed it clearly in a separate verse (Lev. V, 1); because the oath of testimony, since it is inapplicable in the future (and yet imposes liability), could not be deduced from the oath of utterance (*ibid.* 4), which does not impose liability in the past in a case where the future is inapplicable.

(22) From the category of the oath of utterance, since, according to Rab, he is liable for an oath even if it is not

applicable in the future.

(23) If he is eligible as a witness, and swore before the Beth din that he did not know any testimony, he is liable both for the oath of testimony and oath of utterance.

(24) Lev. V, 5.

(25) V. note 1.

(26) Lev. V, 2, 3, 4; with reference to the laws of uncleanness, and the oath of utterance.

(27) Lev. V, 1; with reference to the oath of testimony.

(28) A sliding scale sacrifice.

(29) In which case there is no sacrifice for the transgression of the oath of utterance, but he brings a sacrifice for the wilful transgression of the oath of testimony.

(30) Sliding scale sacrifice for the oath of testimony.

(31) One for the oath of testimony, and one for the oath of utterance.

(32) The verse, in distinctly limiting liability to one offering, must refer to unwitting transgression (where two offerings are possible), and not to wilful transgression, for here, two are not possible, and there is no need for Scripture's limitation.

(33) Lit., 'You have therein only its anomaly.' Raba maintains that it is not necessary to deduce from the phrase, in one of these things that he is liable for only one offering; without this phrase we know it, for the oath of testimony was included in the oath of utterance (for it is also an utterance); but Scripture singled it out from this generalisation in order to teach us that he is liable to bring an offering even for wilful transgression; therefore, since this is exceptional, we cannot make it more exceptional still by declaring him liable to bring two offerings in certain circumstances.

(34) Abaye holds that the oath of testimony is still an oath of utterance also, for he requires the limitation (in one of these things) to deduce that only one offering is brought. According to him, therefore, in a case where the oath of testimony would not apply (e.g., an ineligible witness), he would be liable on account of the oath of utterance.

(35) The oath of testimony, therefore, cannot create liability on account of its being also an oath of utterance, because it is inapplicable negatively. But if Abaye holds that the oath of testimony is also an oath of utterance, it is possible to find a case where it is applicable negatively, e.g., one who is ineligible as a witness. In such a case, if he says: 'I swear I know some testimony for you', he should be liable on account of the oath of utterance, for it is applicable negatively: 'I swear I do not know any testimony for you;' and if he does know, he should bring an offering for transgressing the oath of utterance (for the oath of testimony does not apply at all, since he is ineligible as a witness).

(36) I.e., changed his opinion, and does not now hold that 'Rab admits that he who says, etc.'

Talmud - Mas. Shevu'oth 26a

one of them was stated by R. Papa.¹

R. ISHMAEL SAYS, HE IS LIABLE ONLY FOR [AN OATH IN] THE FUTURE. Our Rabbis taught: To do evil, or to do good.² [From this] we know only such cases where doing evil and doing good are applicable; but how do we know such cases where doing evil and doing good are not applicable? Because it is said, Or if anyone swear clearly with his lips.³ [From this] we know only [oaths in] the future;⁴ how do we know [oaths in] the past? Because it is said: Whatsoever it be that a man shall utter clearly, with an oath.⁵ This is the opinion of R. Akiba. R. Ishmael says: To do evil, or to do good implies the future. R. Akiba said to him: If so, we know only such cases where doing evil and doing good are applicable; how do we know such cases where doing evil and doing good are not applicable? He replied to him: From the amplification of the verse.⁶ Whereupon he said to him: If the verse amplified for that,⁷ it amplified for this also.⁸ Well did R. Akiba reply to R. Ishmael!⁹ — R. Johanan said: R. Ishmael who ministered to¹⁰ R. Nehunia b. Hakanah, who expounded the whole Torah on the principle of generalisation and specification, also expounded it on the principle of generalisation and specification; R. Akiba who ministered to Nahum of Gamzu,¹¹ who expounded the whole Torah on the principle of amplification and limitation, also expounded it on the principle of amplification and limitation.

How does R. Akiba expound it on the principle of amplifications and limitations? It has been

taught: Or if any one swear [clearly with his lips — this amplifies;¹² to do evil, or to do good — this limits;¹³ whatsoever it be that a man shall utter clearly [with an oath] — this again amplifies: because it amplifies, limits, and amplifies, it includes all;¹⁴ what does it include? It includes all things. What does it exclude? It excludes a precept.¹⁵ And R. Ishmael expounds it on the principle of generalisation and specification: or if any one swear clearly with his lips — this generalises; to do evil or to do good this specifies; whatsoever it be that a man shall utter clearly [with an oath] — this again generalises: because it generalises, specifies, and generalises, you may include in the generalisation only [those oaths which are] similar to the specification: just as the specification is clearly in the future, so all [oaths] in the future [may be included]; the generalisation helping to include even cases where doing evil and doing good are not applicable [as long as they are oaths] in the future; and the specification helping to exclude even cases where doing evil and doing good are applicable [if they are oaths] in the past. Let me reverse it!¹⁶ — R. Isaac said: [We include only oaths] similar to [the oath] to do evil, or to do good, where the prohibition is on account of he shall not break his word,¹⁷ but exclude this [oath] where the prohibition is not on account of he shall not break his word, but on account of ye shall not lie.¹⁸ R. Isaac b. Abin said: Scripture says, Or if any one swear clearly with his lips: the oath must precede the utterance, and not the utterance precede the oath;¹⁹ this excludes ‘I ate’, or, ‘I did not eat,’ where the action precedes the oath.

Our Rabbis taught: [Whatsoever it be that] a man [shall utter clearly] with an oath²⁰ — this excludes [a false oath by] accident; and it be hid — this excludes wilful [transgression of oath]; from him — [this implies that] the oath was hidden from him.²¹ I might think that [even] if the thing be hidden from him [he should be liable], therefore it is said: . . . with an oath, and it be hid . . . for the unawareness of the oath he is liable, and he is not liable for the unawareness of the thing.²² The Master said: ‘. . . a man . . . with an oath — this excludes [a false oath by] accident’. How is this? As the case of R. Kahana and R. Assi: when they rose from [the lecture of] Rab, one said, ‘I swear that thus said Rab,’ and the other said, ‘I swear that thus said Rab.’ When they came [again] before Rab, he would agree with one of them; then the other would say to him, ‘Did I, then, swear falsely?’ He would reply to him, ‘Your heart deceived you.’²³

‘And it be hid from him — [this implies that] the oath was hidden from him. I might think that [even] if the thing be hidden from him [he should be liable], therefore it is said: . . . with an oath, and it be hid . . . for the unawareness of the oath he is liable, and he is not liable for the unawareness of the thing.’ They laughed at this in the West.²⁴ Granted, [unawareness of] oath is possible without [unawareness of] thing; for example, if he said, ‘I swear I shall not eat wheat bread,’ and he thought he had said, ‘I shall eat,’ his oath he forgot, and the thing he remembered. But [unawareness of] thing without [unawareness of] oath — how is that possible? If for example, he said, ‘I swear I shall not eat wheat bread,’ and he thought he had said ‘barley [bread],’ his oath he remembered,²⁵ and the thing he forgot. — Since he forgot the thing, it is [automatically] unawareness of oath!²⁶ — Well then, said R. Eleazar, this and that are one.²⁷

R. Joseph demurred: This means that [unawareness of] thing without [unawareness of] oath is by no means possible? But surely it is possible; for example, if he said, ‘I swear I shall not eat wheat bread,’ and he stretched out his hand to the basket to take barley bread, but wheat [bread] came to his hand, and he, thinking it was barley [bread], ate it: now, his oath he remembered, but it was the thing that he did not know!²⁸ — Abaye said to him: But do you not make him liable for an offering for that which he holds in his hand? It is, therefore, unawareness of oath.²⁹ Another version: Abaye said to R. Joseph: In any case, he should bring an offering for this bread, for it is unawareness of oath. And R. Joseph? — He may reply to you: Since, if he had known that this was wheat, he would have refrained from [eating] it, it is unawareness of thing.

Raba enquired of R. Nahman: If there was unawareness of both, what is the ruling? — He said to him: Since there is unawareness of oath, he is liable. On the contrary, since there is unawareness of

thing, he should be exempt! — R. Ashi said: We observe, if because of the oath he refrains,³⁰ it is [a case of] unawareness of oath, and he is liable; and if because of the thing he refrains,³¹ it is [a case of] unawareness of thing, and he is exempt. Said Rabina to R. Ashi: Does he then refrain because of the oath unless it be also because of the thing, and does he refrain because of the thing unless it be also because of the oath?³² There is really no difference.³³

Raba enquired of R. Nahman:

(1) Who was a disciple of Abaye and Raba. His disciples, in turn, were sometimes not sure whether a statement of his was intended to be his own view or the view of Abaye (or Raba). One of the two statements (which cannot be reconciled with each other) attributed here to Abaye is, in reality, the opinion of R. Papa, his successor.

(2) Lev. V, 4.

(3) Ibid.; apparently any oath.

(4) If any one swear . . . to do evil, or to do good, implies swearing to do something in the future.

(5) Lev. V, 4, whatsoever it be, i.e., even an oath in the past.

(6) Whatsoever it be, etc.

(7) Cases where doing evil and doing good are not applicable.

(8) Oaths in the past.

(9) Why does not R. Ishmael agree with him?

(10) Was a disciple of.

(11) A village in south-western Judea; v. Ta'an. 21a; he was called **אִישׁ גַּם זֶה**, because, whatever evil befell him, he said, **גַּם זֶה לְטוֹבָה** 'this also is for the best'.

(12) All kinds of oaths.

(13) Only oaths where doing evil or good are applicable.

(14) V. p. 12, n. 3.

(15) Swearing to fulfil or annul a precept; infra 27a.

(16) Since the generalisation tends to include, and the specifications to exclude, let us include even oaths in the past which are similar to the specification in that doing evil and doing good are applicable; and exclude even oaths in the future where doing evil and doing good are not applicable.

(17) Num. XXX, 3; this implies that he may keep his word if he wishes, which is possible only in an oath in the future.

(18) Lev. XIX, 11, this implies that at the moment of utterance the oath must not be a lie; this can refer only to an oath in the past.

(19) Lit., 'if any one swear to utter with the lips:' the swearing must precede the utterance, i.e., the action to which the utterance refers; but if the action to which the utterance refers has already preceded the swearing (= oath in the past), the oath is excluded.

(20) Lev. V, 4; **הָאָדָם בְּשִׁבוּעָה**; at the time of the oath he must be a man, i.e., have all his faculties, but if he swears falsely by accident (thinking it is the truth), he is exempt.

(21) Whatsoever . . . a man shall utter with an oath, and it be hid from him; i.e., the oath be hid from him; he forgot, when doing the action, that he had sworn not to do it.

(22) E.g., 'I swear I shall not eat wheat bread,' and he took a loaf which he thought was of barley (but which was really of wheat), and ate it, he is not liable to bring an offering, because it is a case of unawareness of thing (and awareness of oath).

(23) You thought you were swearing the truth; it is a false oath by accident.

(24) In Palestine; v. Sanh. 17b.

(25) He remembered that it was: 'I shall not eat,' but forgot which thing it was he was not to eat.

(26) For the oath was: 'I shall not eat wheat bread,' and if he forgot 'wheat bread,' he forgot an integral part of the oath.

(27) Unawareness of oath and unawareness of thing are the same; unawareness of thing is not possible without unawareness of oath.

(28) He remembered the oath completely, but mistook the object: this then might be the unawareness of thing by itself which is excluded in the Baraita.

(29) He thought that what he held in his hand was barley bread, and therefore he thought that he had not sworn for what he held in his hand; but, in reality, he had sworn not to eat it, for it was wheat bread; he was, therefore, unaware of the

oath with reference to this loaf: hence, it is unawareness of oath.

(30) He is reminded, for example, that he has sworn not to eat wheat bread (and the fact that this loaf is wheat bread is not mentioned to him), and he immediately refrains from eating this loaf; he thus refrains because of the oath. He had already, however, eaten a ka-zayith, before he was reminded, and he is therefore liable to bring an offering, because it is a case of unawareness of oath.

(31) He is reminded that this is wheat bread (and the fact that he has sworn is not mentioned to him), and he refrains from continuing to eat it.

(32) When he is reminded of one of the facts (that he has sworn, or that this is wheat bread), he refrains from eating, because he immediately recollects the other fact. If he did not recollect the other fact, he would not refrain, for the fact that he had sworn not to eat wheat bread would not matter if this loaf were not wheat, and the fact that this loaf is wheat would not matter if he had not sworn not to eat it.

(33) And he is exempt; for he is liable only for unawareness of oath by itself; v. supra 19a for similar discussion.

Talmud - Mas. Shevu'oth 26b

What is unwitting transgression of oath of utterance in the past?¹ If he knew,² it is wilful transgression; if he did not know, it is accidental transgression? — He replied to him: [It is possible in the case of] one who says, 'I know that this oath is prohibited, but I do not know whether one is liable to bring an offering for it or not.'³ According to whom will this be? According to Monobaz, who holds that ignorance of [liability for] an offering is termed ignorance!⁴ — You may [however] say that it will be even in accordance with the view of the Rabbis;⁵ for the Rabbis disagree with Monobaz only in the rest of the Torah where there is no innovation,⁶ but here where there is an innovation — for in the whole Torah we do not find that [the unwitting transgression of] a negative precept [for the wilful transgression of which kareth is not inflicted] should make him liable for an offering, for we deduce it from the ruling concerning idolatry;⁷ yet here, it does make him liable to bring [an offering] even the Sages admit.⁸

Rabina enquired of Raba: If he swore concerning a loaf [not to eat it], and he was dangerously ill on account of [not being able to eat] it, what is the ruling? — If he is dangerously ill, [of course] you may permit it to him!⁹ Well then, if he is distressed,¹⁰ and he ate it, unwittingly transgressing the oath, what is the ruling?¹¹ — He said to him, it has been taught: He who would turn back if he knew¹² brings an offering for his unwitting transgression; he who would not turn back if he knew, does not bring an offering for his unwitting transgression.¹³

Samuel said: If he decided in his mind,¹⁴ he must utter it with his lips,¹⁵ for it is said: to utter with the lips.¹⁶ An objection was raised: with the lips, but not in the mind. If he decided in his mind, how do we know [that he is liable]? Because it is said: whatsoever it be that a man shall utter clearly with an oath.¹⁶ This itself is contradictory! You say, with the lips, but not in the mind; and then you say, if he decided in his mind, how do we know [that he is liable]? — R. Shesheth said: This is no question; thus he means: with the lips, but not if he decided in his mind to utter it with his lips, and did not utter it.¹⁷ If he decided in his mind, simply,¹⁸ how do we know [that he is liable]? Because it is said: whatsoever it be that a man shall utter clearly. But against Samuel the question remains!¹⁹ — R. Shesheth said: Answer it thus: with the lips, but not if he decided in his mind to utter 'wheat bread', and he uttered 'barley bread'.²⁰ If he decided in his mind to utter 'wheat bread', and he uttered 'bread' simply, how do we know [that he is liable]?²¹ Because it is said: whatsoever it be that a man shall utter clearly.²²

An objection was raised: That which is gone out of thy lips thou shalt observe and do;²³ from this we know only, if he uttered it with his lips; if he decided in his mind, how do we know [that he must keep his promise]? Because it is said: all who were willing-hearted [brought . . . an offering of gold unto the Lord].²⁴ — There it is different, because it is written: all who were willing-hearted.²⁵ But let us deduce from it.²⁶ — [No!] because [tabernacle] offerings and holy things are 'two verses which

come as one';²⁷ and all [cases of] 'two verses which come as one' do not teach [for other cases].²⁸ — That is well, according to the one who holds that 'they do not teach'; but according to the one who holds that 'they do teach', what shall we say?²⁹ — This is hullin, and [the others are] holy things; and hullin we cannot deduce from holy things.³⁰

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- (1) Since it has been deduced (from **האדם בשבועה**, supra) that if he swears falsely, thinking it is the truth, it is termed accidental transgression, and he is exempt; how is unwittingly transgression (for which he is liable) possible?
- (2) At the time of the oath that he was swearing falsely.
- (3) Although it is wilful transgression, it is counted as unwitting, because he did not know that he was liable for an offering.
- (4) Shab. 69a; and because of this his wilful transgression of the oath is counted as unwitting transgression.
- (5) Who hold that ignorance of liability for an offering does not make the transgression unwitting.
- (6) Normally, when kareth is inflicted for wilful transgression, an offering is brought for unwitting transgression; it is an innovation in the Torah, in the case of oaths, to make him liable for an offering for unwitting transgression, when for wilful transgression the punishment is merely stripes.
- (7) Shab. 68b, 69a; Scripture says: And if ye err, and do not observe all these commandments . . . (Num. XV, 22); this refers to idolatry (Hor. 8a); an offering is brought for unwitting transgression (verse 27); ye shall have one law for him that doeth aught in error (verse 29): this implies that one law, the same law, applies both to idolatry and to other sins; in idolatry, wilful transgression is punished by kareth: but the soul that doeth aught with a high hand (i.e., wilfully) . . . shall be cut off (verse 30); therefore all sins, for the wilful transgression of which kareth is inflicted, are punished by the bringing of an offering for unwitting transgression.
- (8) That ignorance of liability for an offering is counted as ignorance, and he brings an offering.
- (9) In the case of dangerous illness (**סכנה**) a commandment may be transgressed; even the Sabbath may be desecrated; v. Bez. 22a.
- (10) Not dangerously ill, but sufficiently distressed to have eaten it, even if he had remembered his oath.
- (11) Does he bring an offering, since he transgressed the oath unwittingly: or, since he was prepared to transgress it wilfully, does he not bring an offering?
- (12) I.e., he would not transgress wilfully.
- (13) V. Hor. 20a; in the present instance, since he would have eaten the loaf, even if he had remembered his oath, he does not bring an offering for eating it when he forgot the oath, for it is not absolutely unwitting transgression; it is almost (though not quite) like wilful transgression; and though stripes are not inflicted, for it is not actually wilful transgression, yet he is not allowed to bring an offering (which would serve to cleanse him from his sin): it is not a sufficiently heavy punishment for his sin.
- (14) To swear a certain oath.
- (15) Otherwise it is no oath, and he is not liable.
- (16) Lev. V, 4.
- (17) He decided it should not be an oath unless he uttered it.
- (18) That it should be an oath without uttering it.
- (19) For Samuel said: If he decided in his mind, he must utter it with his lips; apparently it is not counted an oath unless it is uttered. Samuel's statement cannot be explained in the same way as R. Shesheth explains the Baraita, because Samuel, being an amora, should have explained it clearly himself, had he intended it thus; v. Tosaf. a.l.
- (20) It is no oath; and he is exempt if he eats wheat bread, because he did not utter it; and he is exempt if he eats barley bread, because he had not intended it in his mind; v. R. Han. a.l.
- (21) If he eats wheat bread, since his uttered oath does not at least conflict with his intended oath.
- (22) Even if he does not utter his complete intention. And Samuel also means this: If he decided in his mind, he must utter it with his lips, i.e., he must utter at least the main portion of his oath (e.g., 'bread', and not necessarily 'wheat bread'); but if he does not utter it with his lips, it is no oath: an oath in the mind is not an oath.
- (23) Deut. XXIII, 24; promising to bring free-will offering.
- (24) Ex. XXXV, 22; hence, the willing-hearted (those who had only made up their hearts or minds to bring) fulfilled their promise. Why then, does Samuel say, in the case of an oath, that it must be uttered with the lips in order to make him liable?
- (25) But in the case of oaths the expression willing-hearted is not used.

(26) That in the case of an oath also the intention of the mind should be sufficient.

(27) i.e., teach the same thing. In the case of the Tabernacle offerings the phrase willing-hearted is used, and in the case of holy things (when Hezekiah re-consecrated the Temple, and the people brought free-will offerings: 2 Chron. XXIX, 31) the phrase willing-hearted is used. When the same phrase (or, rule) is used in the case of two things, the implications is that only in these two things is this phrase (or, rule) applicable, and in no other, for, if Holy Writ had desired other cases to be the same, then the phrase would have been used only in one case, and all others could have been deduced from it: the fact that it is used in two cases implies that it is limited to these two, and that no others are to be deduced from them.

(28) I.e., we cannot deduce other cases from them.

(29) One authority (R. Judah; v, Kid. 35a) holds that from two similar cases we can deduce for others; and that only when there are three similar cases we cannot deduce others from them. According to him, let us deduce from these two cases the case of oaths that intention should suffice.

(30) Tabernacle offerings and Temple offerings are holy things; and we cannot deduce the case of oaths (which are hullin, dealing with ordinary, unconsecrated objects) from that which obtains in connection with holy things: the law with reference to holy things may be stricter.

Talmud - Mas. Shevu'oth 27a

MISHNAH. IF HE SWORE TO ANNUL A PRECEPT, AND DID NOT ANNUL IT, HE IS EXEMPT; TO FULFIL [A PRECEPT], AND DID NOT FULFIL IT, HE IS EXEMPT; THOUGH LOGICALLY [IN THE SECOND INSTANCE] HE SHOULD HAVE BEEN LIABLE, AS IS THE OPINION OF R. JUDAH B. BATHYRA: [FOR] R. JUDAH B. BATHYRA SAID: NOW, IF FOR AN OPTIONAL MATTER, FOR WHICH HE IS NOT ADJURED FROM MOUNT SINAI, HE IS LIABLE;¹ FOR A PRECEPT, FOR WHICH HE IS ADJURED FROM MOUNT SINAI, HE SHOULD MOST CERTAINLY BE LIABLE!² THEY REPLIED TO HIM: NO! IF YOU SAY THAT FOR AN OATH IN AN OPTIONAL MATTER [HE IS LIABLE]. IT IS BECAUSE [SCRIPTURE] HAS IN THAT CASE MADE NEGATIVE EQUAL TO POSITIVE [FOR LIABILITY];³ BUT HOW CAN YOU SAY THAT FOR AN OATH [TO FULFIL] A PRECEPT [HE IS LIABLE], SINCE [SCRIPTURE] HAS NOT IN THAT CASE MADE NEGATIVE EQUAL TO POSITIVE, FOR IF HE SWORE TO ANNUL [A PRECEPT], AND DID NOT ANNUL IT, HE IS EXEMPT!⁴ GEMARA. Our Rabbis taught: I might think that if he swore to annul a precept, and did not annul it, he should be liable,⁵ therefore it is said: to do evil, or to do good; just as doing good is optional,⁶ so doing evil must be optional;⁷ I must therefore exclude: if he swore to annul a precept, and did not annul it; for which he is exempt. I might think that if he swore to fulfil a precept, and did not fulfil it, he should be liable, therefore it is said: to do evil, or to do good; just as doing evil is optional, so doing good must be optional; I must therefore exclude: if he swore to fulfil a precept, and did not fulfil it; for which he is exempt.⁸

I might think that if he swore to do evil to himself, and did not do so, that he should be exempt, therefore it is said: to do evil, or to do good; just as doing good is optional, so doing evil must be optional; I will therefore include: if he swore to do evil to himself, and did not do so, [that he is liable,] for the option is in his own hands.⁹ I might think that if he swore to do evil to others, and did not do so, that he should be liable, therefore it is said: to do evil, or to do good; just as doing good is optional, so doing evil must be optional. I will therefore exclude: if he swore to do evil to others, and did not do so, [that he is exempt], for the option is not in his hands. Whence do we know to include [an oath] to do good to others?¹⁰ Because it is said: or¹¹ to do good. And what is doing evil to others? 'I shall smite So-and-so, and crack his brain.'

But how do we know that the verses refer to optional matters, perhaps they refer [also] to matters relating to precepts?¹² — That cannot enter our minds, for we require that doing good shall be similar to doing evil, and that doing evil shall be similar to doing good; for [the verse] likens doing evil to doing good: just as doing good cannot refer to the annulling of a precept,¹³ so doing evil

cannot refer to the annulling of a precept;¹⁴ [so that this] doing evil is actually doing good!¹⁵ And it likens doing good to doing evil; just as doing evil cannot refer to the fulfilling of a precept,¹⁶ so doing good cannot refer to the fulfilling of a precept;¹⁷ [so that this] doing good is actually doing evil!¹⁸ If so, even in an optional matter it is not possible!¹⁹ — Well then since [the word] ‘or’ is necessary in order to include doing good to others,²⁰ we deduce that the verses refer to optional matters, for if it should enter your mind that they refer to matters relating to precepts [we would not require the word ‘or’ to include doing good to others for], since doing evil to others is included,²¹ doing good is certainly [included]!

But this [word] ‘or’ is necessary to separate [the phrases]?²² — To separate them the word is not necessary.²³ That is so, according to R. Jonathan, but according to R. Josiah, what is to be said? For it has been taught: A man who curseth his father or his mother [shall surely be put to death];²⁴ from this we know only [if he curses] his father and his mother;²⁵ [if he curses] his father and not his mother, or his mother and not his father, how do we know [that he is liable]? Because it is [also] said: His father or his mother he hath cursed;²⁶ his father he hath cursed, his mother he hath cursed.²⁷ This is the opinion of R. Josiah. R. Jonathan said: It may imply both together, and it may also imply each one alone

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- (1) If he swears to do it, and does not.
 - (2) If he swears to fulfil it, and does not.
 - (3) If he swears to do evil (e.g., not to eat) or, to do good (e.g., to eat), and breaks his oath, he is liable in either case.
 - (4) Annuling a precept being counted negative; and fulfilling, positive. If there is no liability for not fulfilling the negative oath, there is no liability for not fulfilling the positive oath.
 - (5) For it comes under the category of to do evil.
 - (6) It is explained below why the expression to do evil, or to do good is taken to refer to optional matters, and not to annulling (to do evil) or fulfilling (to do good) a precept.
 - (7) The oath to do evil must refer to that which is purely optional (e.g., not to eat), but not to the annulling of a precept (e.g., to eat on the Day of Atonement) which is not optional.
 - (8) For, fulfilling a precept is obligatory, and not optional.
 - (9) A man may do an injury to himself; v. B. K. 91b.
 - (10) That if he swore to do good to others, and did not fulfil his oath, he is liable.
 - (11) וְ is superfluous, for the verse could have said **לֹא תֵעָשֶׂה וְלֹא תֵעָשֶׂה** (vav has the meaning also of ‘or’).
 - (12) Doing good will mean complete good, i.e., to body and soul; e.g., to eat (= good for the body) mazzah on Passover (= good for the soul, in fulfilling the precept); and doing evil will mean complete evil, i.e., to body and soul; e.g., not to eat (= evil for the body) mazzah on Passover (= evil for the soul, in annulling the precept); v. Tosaf. a.l. and Maharsha.
 - (13) E.g., ‘I shall eat (= doing good) hamez on passover’ (= annulling a precept), for this is not a complete good. It must refer, therefore, to the fulfilling of a precept, e.g., ‘I shall eat mazzah on Passover’.
 - (14) E.g., ‘I shall not eat (= doing evil) mazzah on Passover’ (= annulling a precept), but must refer to the fulfilling of a precept, e.g., ‘I shall not eat hamez on passover’.
 - (15) ‘I shall not eat hamez on Passover’ is doing good, for though the first part (‘I shall not eat’) is evil for the body, the oath is good for the soul, and that is the main factor (v. Maharsha). If the verse, then, is concerned with the fulfilling and annulling of precepts, why is this clause (doing evil) mentioned, since it is actually doing good, and that has already been mentioned?
 - (16) E.g., ‘I shall not eat (= doing evil) hamez on Passover’ (= fulfilling a precept); for this is not doing evil so far as the precept is concerned (which is the main factor). It must therefore refer to the annulling of a precept, e.g., ‘I shall not eat mazzah on Passover.’
 - (17) E.g., ‘I shall eat (= doing good) mazzah on Passover’ (= fulfilling a precept); but must refer to the annulling of a precept, e.g., ‘I shall eat hamez on Passover.’ Hence this doing good (‘I shall eat’) is actually doing evil from the point of view of the precept; then why is this clause written, since doing evil is already mentioned?
 - (18) Hence, we must say that the verse is not concerned with precepts, but with optional matters, i.e., doing good or evil simply to the body in matters not affecting the soul.
 - (19) According to your reasoning the verse cannot refer to optional matters either; for, we may say, the verse likens

doing evil to doing good: just as doing good ('I shall eat') means a complete good, and not, e.g., 'I shall eat poison' (for that is not doing good), but means e.g., 'I shall eat bread,' where the result is beneficial; so doing evil ('I shall not eat') must have a beneficial result, e.g., 'I shall not eat poison.' but this doing evil is actually doing good: and that has already been mentioned. Similarly, the verse likens doing good to doing evil: just as doing evil ('I shall not eat') does not refer to injurious foods (for that is not doing evil) but to beneficial foods, so that the result is injurious; so doing good ('I shall eat') must refer to that which is injurious ('I shall eat poison') so that the result is injurious; hence this doing good is actually doing evil; and this has already been mentioned; why does the verse mention it again?

(20) That if he swears to do good to others, and does not fulfil his oath, he is liable.

(21) For if he they refer to precepts, doing evil means annulling a precept, and this includes doing evil to another (for, injuring another is prohibited); and if he is liable for breaking his oath to injure another, he is certainly liable for breaking his oath to benefit another.

(22) To do evil, or to do good; without 'or' we might have assumed that he is liable only if he swears both to do evil and to do good. Since 'or' is necessary, it cannot be said to be superfluous in order to include doing good to others.

(23) Vav is also disjunctive, and וְלֹהֵיטִיב (instead of או) could have been written.

(24) Lev. XX, 9.

(25) For the verse has: אֶת אָבִיו וְאֶת אִמּוֹ (not או אִמּוֹ).

(26) Lev. XX, 9.

(27) Though the verse has: אֶת אָבִיו וְאִמּוֹ (not או), we deduce that it means either father or mother; for in the first half of the verse the verb is contiguous to father (... יִקְלַף אֶת אָבִיו ...), and in the second half it is contiguous to mother (... וְאִמּוֹ קִלְפֵּי ...).

Talmud - Mas. Shevu'oth 27b

unless the verse clearly specifies together.¹ [According to R. Josiah, then, how do we know that the verse concerning oaths refers to optional matters?]² — You may say that it will be even in accordance with the view of R. Josiah.³ He agrees with R. Akiba who expounds [the verse on the principle of] amplification and limitation; so that, granted if you say the verse refers to optional matters, it may exclude a precept; but if you say it refers [also] to precepts, what can it exclude?⁴

R. JUDAH B. BATHYRA SAID: NOW, IF FOR AN OPTIONAL MATTER, etc. Well did the Rabbis reply to R. Judah b. Bathyra.⁵ And R. Judah b. Bathyra? He may reply to you: Is there not [the case of] doing good to others, which, though it is not applicable [negatively] in doing evil to others, is yet included by the Divine Law? Similarly, therefore, in [the case of] fulfilling a precept, though it is not applicable [negatively] in annulling a precept, it may be included by the Divine Law. And the Rabbis? — There⁶ it is applicable [negatively in such a case as], 'I shall not do good [to others];'⁷ but here,⁸ is it applicable [negatively] in, 'I shall not fulfil [the precept]'?

MISHNAH. 'I SWEAR I SHALL NOT EAT THIS LOAF;' 'I SWEAR I SHALL NOT EAT IT;' 'I SWEAR I SHALL NOT EAT IT;' AND HE ATE IT, HE IS LIABLE ONLY ONCE. THIS IS THE OATH OF UTTERANCE, FOR WHICH ONE IS LIABLE, FOR ITS WILFUL TRANSGRESSION, STRIPES; AND FOR ITS UNWITTING TRANSGRESSION, A SLIDING SCALE SACRIFICE. FOR A VAIN OATH ONE IS LIABLE FOR WILFUL TRANSGRESSION, STRIPES; AND FOR UNWITTING TRANSGRESSION ONE IS EXEMPT.

GEMARA. Why does he state: I SWEAR I SHALL NOT EAT [THIS LOAF]; I SWEAR I SHALL NOT EAT IT?⁹ — This he teaches us: The reason is because he said, '[I swear] I shall not eat;' then he said, '[I swear] I shall not eat it,' therefore he is liable only once;¹⁰ but if he said, '[I swear] I shall not eat it;' and then he said, '[I swear] I shall not eat,' he is liable twice;¹¹ as is Raba's view, for Raba said: [If he said,] 'I swear I shall not eat this loaf,' as soon as he ate a ka-zayith of it, he is liable;¹² [but if he said, 'I swear] I shall not eat it,' he is not liable until he eats it all.¹³

'I SWEAR I SHALL NOT EAT IT,' AND HE ATE IT, HE IS LIABLE ONLY ONCE, etc. Why

is this further [oath] necessary?¹⁴ — This he teaches us: that there is no liability,¹⁵ but the oath remains, so that if room is found,¹⁶ it takes effect. For what practical purpose?¹⁷ — For that which Raba said, for Raba said: If he obtained absolution¹⁸ from the first, the second takes effect in its place.¹⁹

Shall we say that [the following] supports him? [For it has been taught:] He who vowed two vows of naziriteship,²⁰ and counted the first, and set apart the offering for it,²¹ and then obtained absolution from the first — then the second [vow] takes the place of the first!²² — How now!²³ There the [second vow of] naziriteship is at least in existence, so that when he would have finished counting for the first, he would have had to begin counting for the second, even if there had been no absolution; but here, would the second oath have any existence at all [were it not for the absolution from the first]?²⁴

Raba said: If he swore concerning a loaf,²⁵ and was eating it; then, if he left a ka-zayith of it, he may obtain absolution from it;²⁶ but if he has eaten it all, he cannot obtain absolution from it. Said R. Aha the son of Raba to R. Ashi: How is this? If he said, ‘I shall not eat,’ then from the first ka-zayith he has already transgressed the prohibition?²⁷ And if he said: ‘I shall not eat it’, then why mention ka-zayith,

(1) From the first half of the verse we know that each one separately is intended; for when Scripture intends the vav as a conjunction the word together (וְיחדוּ) is added; e.g., Thou shalt not plough with an ox and an ass together (Deut. XX, 10). The second half of the verse is, according to R. Jonathan, not necessary for the deduction that each one separately is intended, and is utilised by him for another deduction (cursing after death; v. Sanh. 85b).

(2) According to R. Jonathan, vav may be disjunctive, and וְ is not necessary (in לְהַרְעוּ אִם לְהַיְטִיב) to separate the phrases, so that it may be utilised, because it is superfluous, to include doing good to others; hence, because we require to deduce that doing good to others is included, it follows that the verse refers to optional matters (v. supra). But according to R. Josiah, וְ is necessary to separate the phrases, for vav is conjunctive; so that we cannot deduce the inclusion of doing good to others from וְ; how, then, do we know that the verse refers to optional matters?

(3) That the verse refers to optional matters.

(4) For, on the principle of amplification and limitation, only one thing is excluded; and that which most logically should be excluded is swearing to annul a precept; swearing to fulfil a precept is automatically excluded, because every oath must be possible of application both negatively and positively.

(5) V. Mishnah supra 27a.

(6) In the case of doing good to others.

(7) E.g., ‘I shall not give a present to a wealthy man’ (‘I shall not give charity’ would be annulling a precept).

(8) In the case of fulfilling a precept.

(9) Let him use the same form twice: ‘I swear I shall not eat; I swear I shall not eat.’

(10) Because when he swears, ‘I shall not eat,’ he prohibits even a ka-zayith of it to himself; the second oath, ‘I swear I shall not eat it’ (implying all of it) can therefore not take effect on the first oath.

(11) For the first oath prohibits only the eating of all of it (not a ka-zayith), and the second oath prohibits even a ka-zayith; when therefore he eats a ka-zayith, the second oath takes effect; when he eats it all, the first oath takes effect. He is therefore liable to bring two offerings, if he eats it all.

(12) For the oath implies ‘I shall not eat (i.e., a ka-zayith, for אֲכִילָה בְּכִזַּית) of this loaf.’

(13) For the oath implies ‘I shall not eat it’ (i.e., the whole.)

(14) Why does the Mishnah mention the third oath? From the fact that the second oath does not take effect on the first, we already know that the third also does not take effect.

(15) To bring an offering, because a later oath cannot take effect when a previous oath exists; but the later oath is not wasted; it can take effect when the previous oath is removed.

(16) I.e., if the previous oath is removed.

(17) Does he tell us that the later oath remains?

(18) Lit., ‘allowed himself to be asked,’ v. note 2.

(19) If he explains to a Sage that the first oath was made under a misapprehension, and he expresses regret for it, the

Sage absolves him; so that it is now counted as if he had not sworn the first oath; the second oath therefore takes effect. The Mishnah therefore mentions a third oath to teach us that no matter how many oaths are uttered they all remain, but are merely suspended from taking effect as long as the first oath is in existence.

(20) I.e., vowed to be a nazir for two periods, each of which is for 30 days; v. Naz. I, 3.

(21) Num. VI, 13-21.

(22) And he does not need to be a nazir for another period of 30 days, for, since the first is absolved, the 30 days he has already counted are reckoned for the fulfilment of the second vow, and the offering may also be utilised for it. Similarly, in the case of all oaths, when the first is absolved, the second takes its place. This therefore supports Raba's statement.

(23) There is no similarity, and it does not support Raba.

(24) In the case of the vow of naziriteship, the second vow was not uttered in vain, for it was to be fulfilled in any case, but in the case of oaths, the second oath, when uttered, was in vain, and might possibly never take effect (if the first is not absolved); therefore we may say that, since when uttered, it was in vain, it should not take effect even when the opportunity arises.

(25) Not to eat it.

(26) Then he will not have transgressed the oath, and may also eat the remainder.

(27) Then how can he obtain absolution now?

Talmud - Mas. Shevu'oth 28a

even if only a minute quantity [is left, he should obtain absolution] also?¹ — If you will, you may say [that he said], 'I shall not eat,' and if you will, you may say [that he said], 'I shall not eat it.' If you will, you may say [that he said], 'I shall not eat;' and since absolution is effective for the last ka-zayith, absolution is effective also for the first ka-zayith.² And if you will, you may say [that he said], 'I shall not eat it;' now, if he left a ka-zayith, it is of sufficient consequence to have absolution obtained for it; but if not, it is not of sufficient consequence to have absolution obtained for it.³

An objection was raised: 'He who vowed two vows of naziriteship, and counted the first, and set apart an offering for it, and then obtained absolution from the first — the second [vow] takes the place of the first'.⁴ Here we are discussing the case where he has not yet obtained atonement.⁵ But surely it has been taught: [Even if] he obtained atonement [he can still obtain absolution]! — It refers to the case where he had not yet shaved;⁶ and it is in accordance with the view of R. Eliezer, who holds that shaving is indispensable.⁷ — But surely it has [also] been taught: [Even if] he shaved [he can still obtain absolution]? R. Ashi said: You put a question from that which obtains in the case of naziriteship! [There is no comparison.] What caused the second [vow] not to take effect? The first! Well, it is no more!⁸

Amemar [however] said: Even if he ate it all, he may obtain absolution from it; for, if unwittingly, he lacks an offering; and if wilfully, he lacks stripes;⁹ but if he had already been bound to the pole,¹⁰ no; as Samuel said, for Samuel said: If they bound him to the pole, and he ran away from the Beth din, he is exempt.¹¹ — But it is not really analogous; there he ran; here he did not run.¹²

Raba said: [If he said:] 'I swear I shall not eat this loaf, if I eat that one,' and he ate the first¹³ unwittingly, and the second¹⁴ wilfully, he is exempt;¹⁵ [if he ate] the first wilfully, and the second unwittingly, he is liable;¹⁶ both unwittingly, he is exempt;¹⁷

(1) For as long as he has not eaten it all he has not yet transgressed the oath, and may obtain absolution.

(2) After eating the first ka-zayith he may obtain absolution from the oath to permit him to eat the remainder of the loaf; and since he can obtain absolution for the rest, the oath is thus automatically removed (for the Sage has the power to uproot the oath ab initio), and the first ka-zayith which he has already eaten is therefore now counted as not having been eaten under prohibition.

(3) If he leaves less than a ka-zayith, it is counted as if he had already eaten the whole loaf, and thus transgressed his oath; and he cannot, therefore, obtain absolution; v. Tosaf. 27b, s.v. **DS**.

- (4) This shows that absolution may be obtained from the first vow even after it has been completely fulfilled. Why then, in the case of an oath, should he not be able to obtain absolution even after he has completely eaten the loaf?
- (5) Num. VI, 14-17; if the offerings have not yet been sacrificed, he has not obtained atonement for his vow; it is therefore not yet completed, and he may obtain absolution.
- (6) Cf. Num. VI, 18; the omission of this act invalidates the rite; therefore so long as this has not been done the first vow has not been completed entirely, and he may still obtain absolution.
- (7) Lit., 'restrains'; he must still refrain from drinking wine, until this is completed.
- (8) He vowed two vows, counted 30 days, and now asks for absolution from the first. Why assume that the 30 days that have been counted are for the first vow, and that it has therefore been completed, and absolution should not be possible? Since the Sage has the power to uproot the first vow in its entirety by showing it to have been made under a misapprehension, the result is that we may legitimately assume that the 30 days that have been counted are for the second vow, and the counting for the first vow has not even started, so that when absolution is asked for the first vow, it is still intact, and absolution may therefore be granted; but in the case of an oath, if he has already eaten the loaf completely, he has transgressed the oath; how can he now obtain absolution?
- (9) Since there is something still necessary, he may yet obtain absolution and be exempt from offering or stripes. Amemar disagrees with Raba who holds that only if a ka-zayith is left can he obtain absolution.
- (10) In readiness for receiving the stripes (v. Mak. 22b), he cannot obtain absolution, for it is counted as if he had already received the stripes.
- (11) It is counted as if he had already received the stripes, and he is not brought back.
- (12) By running away he has already suffered degradation (v. Mak. 23a), and it is counted as if he had already received his punishment; but here we may say that even if he has been bound to the pole, it is not yet counted as if he had received his stripes, and he may therefore still obtain absolution from his oath.
- (13) The conditional one.
- (14) The one he prohibited to himself; if he should eat the conditional one.
- (15) An oath which is conditional upon the performing of another act does not take effect at the moment it is uttered, but at the moment the first act is performed; and if at that moment he remembers the oath, it takes effect, but if he has forgotten the oath, it cannot take effect, for it is not counted **האדם בשבועה** (v. supra 26a). If he ate the conditional one unwittingly (having forgotten the oath) and the prohibited one wilfully (remembering the oath), he is exempt from stripes (though he ate the prohibited one wilfully), because at the moment of the first act (eating the conditional one) when the oath was due to take effect, he had forgotten it (and it is not, therefore, **האדם בשבועה**).
- (16) For an offering, because when he ate the conditional one he remembered the oath: he ate it wilfully (it was, of course, permitted to him then); when, therefore, he later ate the prohibited one unwittingly, he became liable for an offering.
- (17) Whether he ate the conditional or the prohibited loaf first, because at the moment he ate the first one he had forgotten the oath, and it cannot, therefore, take effect.

Talmud - Mas. Shevu'oth 28b

both wilfully, then, if he [first] ate the conditional one, and then he ate the prohibited one, he is liable;¹ but if he [first] ate the prohibited one, and then he ate the conditional one, [the ruling depends on] the controversy between R. Johanan and Resh Lakish:² according to the one who holds an uncertain warning is a warning he is liable, and according to the one who holds it is not a warning, he is exempt.³

If he made them conditional upon each other: 'I shall not eat this one, if I eat that one; I shall not eat that one, if I eat this one';⁴ then, if he ate this one wilfully, [mindful of the oath] concerning it, but forgetful [of the oath] concerning the other; and [ate] the other wilfully, [mindful of the oath] concerning it, but forgetful [of the oath] concerning the first, he is exempt;⁵ [if he ate] this one unwittingly, [forgetful of the oath] concerning it, but mindful [of the oath] concerning the other, and [ate] the other unwittingly, [forgetful of the oath] concerning it, but mindful [of the oath] concerning the first, he is liable;⁶ both unwittingly, he is exempt;⁷ both wilfully, then, for the second he is

liable;⁸ but for the first, [the ruling depends on] the controversy between R. Johanan and Resh Lakish.⁹

R. Mari said: We have also learnt thus [in a Mishnah]:¹⁰ Four vows did the Sages permit:¹¹ vows of urging.¹² vows of hyperbole.¹³ vows made unwittingly,¹⁴ and vows accidentally unfulfilled.¹⁵ Vows made unwittingly: how? ‘Konam¹⁶ [this loaf to me], if I ate or drank [today]’, and he remembered that he had eaten or drunk; ‘[konam this loaf to me,] if I eat or drink [today]’, and he forgot, and ate or drank, he is permitted [to eat that loaf]; and it was taught with reference to this: just as vows made unwittingly are permitted, so oaths made unwittingly are permitted.¹⁷

Efa¹⁸ learnt [the laws of] oaths in the school of Rabbah. His brother Abbimi met him, and asked him: [If one said,] ‘I swear I have not eaten; I swear I have not eaten’, [and he had eaten,] what is the ruling? — He replied: He is liable only once. He said to him: You are mistaken, for surely a false oath went forth [from his mouth].¹⁹ — [He asked him again: If one said,] ‘I swear I shall not eat nine [figs; I swear I shall not eat] ten [figs]’, and he ate ten figs], what is the ruling? — He replied: He is liable for each [oath].²⁰ — He said to him: You are mistaken, for if he will not eat nine, he will not eat ten.²¹ [He asked him again: If one said,] ‘I swear I shall not eat ten [figs; I swear I shall not eat] nine [figs,]’ and he ate ten], what is the ruling? — He replied: He is liable only once.²² He said to him: You are mistaken: ten he would not eat, but nine he would eat.²³

Abaye said: Sometimes this ruling of Efa is possible,²⁴ as the Master said, for Rabbah said: [If a man said,] ‘I swear I shall not eat figs and grapes [together in one day],’ then he said, ‘I swear I shall not eat figs;’²⁵

(1) Stripes; provided, before eating the second, he was given the required definite warning: ‘Do not eat this loaf, because you have sworn not to eat it, if you eat the first; and you have already eaten the first.’

(2) V. supra 3b.

(3) The warning, which must be given before the eating of the prohibited loaf, cannot be definite: ‘You must not eat this loaf’ (for it is not prohibited until he eats the conditional loaf). The warning is therefore: ‘You must not eat this loaf, in case you eat the conditional one, and then you will have transgressed the oath in having eaten this prohibited loaf.’ This warning is uncertain, for he may never eat the conditional loaf.

(4) Both loaves are conditional and prohibited.

(5) When he ate the first one, he remembered that he had sworn not to eat it, if he ate the other; but he forgot that he had also sworn not to eat the other, if he ate this one. When he ate the second, he remembered that he had sworn not to eat it, if he ate the first; but forgot that he had also sworn not to eat the first, if he ate this. Now, he is exempt from stripes for the second loaf which he has just eaten wilfully, because at the time the oath has to take effect, i.e., at the moment of the first act (eating the first loaf), he had forgotten that he had sworn not to eat the second loaf, if he ate the first; the second oath, therefore, does not take effect; and he is exempt from stripes or offering for the first, because, though he ate it wilfully, it was permitted at the moment of eating (for he had then not yet eaten the second).

(6) When he ate the first one, he forgot that he had sworn not to eat it, if he ate the second, but remembered that he had sworn not to eat the second, if he ate this; and when he ate the second, he forgot that he had sworn not to eat it, if he ate the first, but remembered that he had sworn not to eat the first, if he ate this. Now, for the second loaf he must bring an offering, for the second loaf took effect at the beginning, at the moment of the first act (eating the first loaf), for at that moment he remembered that he had sworn not to eat the second loaf, if he ate the first. And now when he ate the second loaf (though he forgot this oath now) he is liable, for it is a simple case of unwitting transgression (eating the loaf, having forgotten his oath not to do so). But he is not liable for stripes for the first loaf (though now, when eating the second loaf, he remembers that he had sworn, not to eat the first, if he ate the second, and yet he eats the second wilfully), because at the moment of the first act (eating the first loaf) this oath (not to eat the first, if he ate the second) did not take effect, for he had forgotten it.

(7) For at the moment of the first act, when the oaths are due to take effect, he had forgotten them, and the condition of **האדם בשבועה** is therefore not fulfilled.

(8) Stripes; where he was given a definite warning which, in this case, is possible: ‘Do not eat this loaf, for you have

sworn not to eat it, if you eat the first; and you have already eaten the first.'

(9) For it is an uncertain warning: 'Do not eat this in case you also eat the other, and if you eat the other you will be liable for having eaten this.' It is uncertain, because he may never eat the other.

(10) In support of Raba's statement that in the case of a conditional oath the person must remember the oath at the time of fulfilling the condition.

(11) To be deemed as of no effect even without absolution; Ned. 20b.

(12) Bargaining in business; e.g., the seller says: 'I vow that food shall be prohibited to me today, if I sell you this article for less than 4 denarii', and the buyer vows similarly that he will not give more than 2 denarii; both intend to compromise for 3 denarii; they vow merely to obtain better terms, and do not intend their vows to be taken seriously.

(13) Or exaggeration; e.g., I vow that this loaf shall be prohibited to me, if I did not see 500,000 men pass along this road today.' He knows it is untrue; It is merely exaggerated speech.

(14) E.g., 'I vow that this loaf shall be prohibited to me, if I have drunk wine today.' When uttering the vow he thought he had not drunk, but later reminded himself that he had; the vow is null, and he may eat the loaf.

(15) E.g., 'I vow that enjoyment of my property shall be prohibited to you, if you do not dine with me today,' and illness prevented the acceptance of the invitation, the vow' is null, for the person who made it did not intend it to take effect if accident prevented the fulfilment of the condition.

(16) Prohibited be (v. Glos.).

(17) E.g., 'I swear I shall not eat this loaf, if I drink wine today,' and he forgot and drank wine, he is permitted to eat the loaf; because in order that the oath shall take effect he must remember the oath at the time of fulfilling the condition, but in this case, when fulfilling the condition (drinking the wine), he had forgotten the oath. This, therefore, agrees with Raba's statement.

(18) He and Abbimi were the sons of Rahabah of Pumbeditha.

(19) Only in the case of an oath in the future can you say that the second oath does not take effect, because the first has already prohibited it, and the second is now an oath to fulfil a precept (to fulfil the first oath); but in the case of an oath in the past, which is false immediately when it is uttered, why should he not be liable for the second or any number of subsequent oaths?

(20) He assumed that the second oath is not included in the first, and therefore can take effect.

(21) The second oath is therefore already included in the first, and cannot take effect, for it is now an oath to fulfil a precept.

(22) He assumed that the second oath is included in the first, for 'nine' is included in 'ten'.

(23) The first oath was only for ten, but he was permitted to eat nine; the second prohibited nine. When he ate nine, he transgressed the second oath, and when he ate another one, he transgressed the first.

(24) That if he swore for ten, and then nine; and ate ten, he should be liable only once.

(25) If he would have eaten figs and grapes together in one day, he would have had to bring two offerings: for, as soon as he ate the figs, he is liable for the second oath, and when he eats also the grapes, he is liable for the first.

Talmud - Mas. 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: Fulfil 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: Fulfil the Torah.²⁴ — [That might have implied] one Torah.²⁵ Let him [then] say: Fulfil the two Torah. — [That might have implied] the Torah of sin offering and the Torah of trespass offering.²⁶ [Let him say:] Fulfil 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: Fulfil the precept. — [That would have implied] one precept. [Let him say:] Fulfil the precepts. — [That might have implied merely] two. [Let him say: Fulfil] all the precepts. — [That 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: Fulfil 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 recognised 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 iskudre (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 fulfil 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 החטאת**; 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: 'Fulfil 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 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.

Talmud - Mas. Shevu'oth 29b

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 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.

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 Baraita 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 Baraita 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 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 fulfil the previous oath); and if one swears to annul a precept, would he not be liable even if he fulfils 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 fulfil 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].

Talmud - Mas. Shevu'oth 30a

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.

Our Rabbis taught: In righteousness shalt thou judge thy neighbour: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 neighbour: judge thy neighbour in the scale of merit.²⁴ R. Joseph learnt: In righteousness shalt thou judge thy neighbour- he who is with thee²⁵ in Torah and precepts — endeavour to judge him favourably.

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 neighbour²⁷ in Torah and precepts. Said [R. Nahman]: Why did he send [this message] to me? That I should favour him?²⁸ Then he said: [Probably] that I should settle his case first;²⁹

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- (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 wilfully 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 גזרה שווה, 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 favourable view of his action.
- (25) Taking עמיתך as עם 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.

Talmud - Mas. Shevu'oth 30b

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] 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 honour 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 favour, 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.
- (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' ירא** 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 realising 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.

Talmud - Mas. Shevu'oth 31a

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 neighbour!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 neighbour 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 — 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 neighbour, 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 (מוודה במקצת) takes an oath that he owes no more, and is exempt.
- (8) I.e., in connection with another claim which he totally denied (כופר הכל), and for which no oath could be imposed; but since he has to take an oath 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 favour, 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, תשא, 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 authorised 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 חמם (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 גזרה שוה 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 גזרה שוה: in the case of a deposit it is said תחטא if any one sin (Lev. V, 21), and in the case of the oath of testimony it is also said תחטא (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 גזרה שוה 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.

Talmud - Mas. 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 [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 wilful 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 wilful [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 wilful 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

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- (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.
 - (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 גזרה שוה, 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.

Talmud - Mas. Shevu'oth 32a

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’,] he⁶ 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 neighbour⁸ [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’ 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 neighbour.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; 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

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- (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 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.

Talmud - Mas. 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 neighbour; they came before R. Ammi, and R. Abba was sitting before him. He⁸ 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 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 some one 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 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.

Talmud - Mas. 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 NEIGHBOUR 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

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 (**בושת**), and for the deterioration in her value (**פגום**).
- (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 **בושת**) is not inflicted, but is merged in the larger.
- (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 (**למזון**). 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 **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 (**מיתת 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.

Talmud - Mas. 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 WOMAN, OR, THAT I AM NOT THE SON OF A HALUZAH;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 HALUZAH; THAT SO-AND-SO VIOLATED ANOTHER'S DAUGHTER, OR SEDUCED HIS DAUGHTER; THAT MY SON INJURED ME;⁷ THAT MY NEIGHBOUR INJURED ME,⁸ OR SET FIRE TO MY HAYSTACK ON THE SABBATH,' — 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 authorisation 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.

(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 authorised by the creditor to claim the debt on his behalf.

(13) B.K. 70a.

(14) Should then the debtor deny the claim after the authorisation 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 neighbour.

(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.

Talmud - Mas. 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 wilfully 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 wilfully 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 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 neighbour 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 wilful transgression, whereas in the case of oath of utterance an offering is brought only for unwitting transgression.

(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.

Talmud - Mas. 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 neighbour. ‘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 neighbour. ‘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 man⁸ he will do without being conscious of it.⁹ ‘R. Simeon said: He is liable here, and he is liable 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 wilfully 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 ‘wilful 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 wilfully like him who swears unwittingly.’ Now for swearing wilfully 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 wilful [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 wilfully 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 wilful transgression is not atoned for [by an offering]? It is R. Simeon!³⁸ — Perhaps he argues that wilful 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 wilful is not like unwitting transgression; just as [in the case of] deposit he is liable for unwitting but not for wilful transgression, so [in the case of] testimony let him be liable for unwitting and not for wilful 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.

(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: **תהטא תהטא**.

(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 **תהטא תהטא**; 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 wilfully 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 wilful transgression is exempt.

(20) And say that wilful 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 wilful 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 wilful 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 wilful 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 wilful 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 wilful 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 wilful 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 wilful transgression; why does he say that in testimony wilful is like unwitting transgression? Hence the laughter.

Talmud - Mas. 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 here¹ it is not said, and it be hidden; in order to make him liable for wilful 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 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 NEIGHBOUR 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 גזרה שוה, for it is as though Scripture had expressly stated (by the omission of ונעלם) that in the case of testimony he is liable also for wilful 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, 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 לוא instead of לא; so that we may deduce: אִם לֹא לֹא יגיד.
- (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 some one 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) אֱהִיָּה אֲשֶׁר אֱהִיָּה.
- (42) Hence, Merciful and Gracious are not substitutes for the divine Name.

Talmud - Mas. Shevu'oth 35b

'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 dalet of Shaddai, alef dalet 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 he⁶ 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 favour in thy sight’.⁸ Hanina, the son of R. Joshua's 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 to-morrow 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 — 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, אלה**.

(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 **אד** as well as **יה** 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’ (**שד**), 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’ **דלטיא** 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.
- (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 fall 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 Baraitha 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, 1): 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.]

Talmud - Mas. Shevu'oth 36a

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 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 NEIGHBOUR, 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 NEIGHBOUR; 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

(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 novellae 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 Baraita) 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 שְׁבוּעָה is used; so that אֱלֹהֵי in Ezekiel is equated with שְׁבוּעָה in Chronicles; hence אֱלֹהֵי 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; קִלְלָהּ is used.

- (10) Ibid. 15; אָרָר is used; hence אָרָר implies קָלָלָה.
- (11) Josh. VI, 26; אָרָר is used in the adjuration, hence it is a form of oath.
- (12) And אָרָר 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 (שְׁבוּעָה).
- (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 fulfil a request.
- (20) I.e., prayer for fulfilment: 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 fulfil 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 neighbour 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 neighbour 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 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; הִנְקִי; 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 **הִנְקִי** advisedly, so that it may also be read as **הִנְקִי** ('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 (**הִנְקִי**); and be thou choked (**הִנְקִי**) . . . if thou hast gone aside. But we cannot derive the affirmative from the negative. According to Aruch, s.v. **הִנְקִי**, 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 **הִנְקִי** is employed by him as a mere wordplay.

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

Talmud - Mas. 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

CHAPTER V

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. 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.

(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, ממוץ, he is exempt.

(24) Because these sums are ממוץ; 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., ממוץ.

(29) To bring an offering for his oath.

(30) I.e., קנס.

Talmud - Mas. Shevu'oth 37a

to them: If he wilfully 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 wilful 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 wilful 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 wilful 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] wilful 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 wilful 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 wilful 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 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 Baraita] 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: Liable, 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 wilful transgression? A guilt offering of [the value of] two silver shekels. Does it not mean wilful transgression [after warning by] witnesses?⁴³ — No! [It may mean] wilful 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?

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- (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 wilfully makes himself unclean, where an offering is brought for a wilful 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 wilfully, 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 wilful 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 Baraita, for it may be voicing the view of R. Simeon; but according to the Sages it is possible that for wilful 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 wilful and unwitting transgression.
 - (14) In the case of oath of testimony.
 - (15) Small Persian coin, one sixth of denar.
 - (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.
- (21) The actual reference is not known (Rashi), yet this does not affect the argument; but see R. Han. and Tosaf.
- (22) For wilfully 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 Shebu'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.

Talmud - Mas. 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 wilful 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 [Baraita]; for, lo. R. Kahana said to them: I learnt it, and thus I learnt it: Both for its wilful 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, 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 neighbour 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 ‘generalisations and specifications.’²⁴ R. Eliezer expounds ‘amplifications and limitations’: and lie unto his neighbour²⁵ — this amplifies;²⁶ in deposit or loan — this limits; or any thing 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 ‘generalisations and specifications’: and lie unto his neighbour — this generalises; in deposit or loan or robbery — this specifies; or any thing about which he hath sworn — this again generalises; since it generalises, specifies, and generalises, 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

- (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, wilful transgression need not imply the presence of witnesses; so that we cannot, from this Baraita, 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 אשר 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.

Talmud - Mas. Shevu'oth 38a

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] 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 they⁶ 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

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- (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 particularises, and says, ‘I swear I do not owe you, 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 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.

Talmud - Mas. Shevu'oth 38b

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 neighbour, '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 neighbour, '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 DENARII.’ — ‘I HAVE NOT OF YOURS,’ HE IS EXEMPT.²⁵ — ‘YOU HAVE OF MINE A HUNDRED DENARII.’ — ‘I HAVE OF YOURS ONLY FIFTY DENARII,’ HE IS LIABLE. — ‘YOU HAVE OF MY FATHER’S A HUNDRED DENARII.’²⁶ — ‘I HAVE OF HIS ONLY FIFTY DENARII.’ HE IS EXEMPT, BECAUSE IT IS AS IF HE RESTORES A LOST OBJECT.²⁷ ‘YOU HAVE OF MINE A HUNDRED DENARII.’ 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 HUNDRED DENARII.’ 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 DENAR.’³² — ‘I HAVE OF YOURS ONLY A SILVER DENAR, 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 NEIGHBOUR 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

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- (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 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 **בְּמִזְוֵה**), 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 **בְּמִזְוֵה**.
 - (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 **בְּמִזְוֵה**.
 - (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 denarii; 1 silver denar = 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 (נופר 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) Movable.
- (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.

Talmud - Mas. 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 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 proselytised, 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 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 וְנִקְיָה לֹא יִנְקֶה, and will not hold guiltless; but Scripture of set purpose did not write simply לֹא יִנְקֶה, but wrote וְנִקְיָה 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 לֹא יִנְקֶה, and not נִקְיָה. 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 mist 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.

(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 יִנְקָה**, 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!

Talmud - Mas. 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 neighbour 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 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 neighbour 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. 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 כלי; 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.

Talmud - Mas. Shevu'oth 40a

Know [that this is so],¹ for it states in a later clause: ‘A GOLDEN DENAR OF MINE HAVE YOU IN YOUR POSSESSION.’ — ‘I HAVE OF YOURS IN MY POSSESSION ONLY A SILVER DENAR, 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 denar 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 denar coin of mine you have in your possession.’ — ‘I have of yours in my possession only a silver denar,’ 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 denar’], he would have implied its value!¹² — R. Ashi said: Thus it means: If he says, a golden denar, it is as if he said, a golden denar 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 denar, and the other admits goods to the value of a silver denar, 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 denar or silver denar; 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.

(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 denar) is of the same kind (a coin) as the claim.

(12) Hence our Mishnah which states golden denar (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 Baraita does not mean that he actually said a golden denar coin, but simply golden denar; 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 denar (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.

Talmud - Mas. Shevu'oth 40b

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 amoriam 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 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 DENARII 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 DENARII 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 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 neighbour 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’ (כספִים), 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. מֵה]
- (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 הכל, 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.

Talmud - Mas. Shevu'oth 41a

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 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 neighbour, 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 DENARII,' etc.

R. Judah said: R. Assi said; If one lends to his neighbour 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 DENARII'; 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 (מוֹדָה בְּמִקְצֵת), but permit it in the case of a Rabbinic oath (כּוֹפֵר הַכֶּלִּי), 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, 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 distrain.
- (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 הכר** 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 favoured, 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 **פלפולא הרפתא** 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. **לא**.

Talmud - Mas. Shevu'oth 41b

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 neighbour 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 DENARII'; 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 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 neighbour before witnesses, he must repay him before witnesses. But R. Papa said in the name of Raba: If one lends his neighbour 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 neighbour: '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 neighbour: '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 neighbour: '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 neighbour: '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 neighbour: 'Give me the six hundred zuz that I claim from you.' The other replied to him: 'Did I not repay you a hundred kabs

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- (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 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 memorise 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.

Talmud - Mas. Shevu'oth 42a

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 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 neighbour: '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 neighbour: '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 neighbour: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 neighbour: 'You are believed by me 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 neighbour: '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 neighbour 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 denarii 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

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- (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 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 denarii.'

- (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.

Talmud - Mas. Shevu'oth 42b

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 DENARII OF MY FATHER'S IN YOUR POSSESSION.' — 'I HAVE OF HIS IN MY POSSESSION ONLY FIFTY DENARII'; HE IS EXEMPT, FOR HE IS 'A RESTORER OF A LOST 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 denarii 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 generalisation; for ox, for ass, for sheep, for raiment — are specifications; for any lost thing — is another generalisation: where there is generalisation, specification, and generalisation, 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 neighbour.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 favour 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 denarii,’ 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 denarii 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 wilfully 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 it into the keeping of a neighbour 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 neighbour.

(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.

Talmud - Mas. Shevu'oth 43a

If a man give unto his neighbour¹ — is a generalisation; silver or vessels — are specifications; to keep — is another generalisation: where there is generalisation, specification, and generalisation, 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 neighbour.²

A PAID GUARDIAN DOES NOT PAY. Whence do we know this? — Our Rabbis taught: If a man give unto his neighbour³ — is a generalisation; an ass, or an ox, or a sheep — are specifications; or any beast, to keep — is another generalisation: where there is generalisation,

specification, and generalisation, etc. till: as for dedicated things, it is written, his neighbour.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 yours in my possession only a lethek [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 NEIGHBOUR 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 DENARII,' 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 DENARII,' 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 wilfully 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 moulding' 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.

(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 denarii, so you still owe me two denarii.

(24) Because he denies the whole; therefore he does not take an oath.

(25) Because he admits owing one denar; 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.

Talmud - Mas. 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 DENARII,' 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 neighbour, 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].

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 DENARII,' 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 neighbour [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 denar.

(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 enamoured 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.

Talmud - Mas. 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 [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

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- (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.

Talmud - Mas. 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 neighbour [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 LABOURER,¹⁶ HE WHO HAS BEEN ROBBED, HE WHO HAS BEEN WOUNDED, HE WHOSE OPPONENT IS SUSPECTED OF TAKING A FALSE OATH,¹⁷ AND THE SHOPKEEPER WITH HIS ACCOUNT BOOK.¹⁸ 'THE HIRED LABOURER' — 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 LABOURER] 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 DENARII, WHICH YOU OWE ME,' AND THE OTHER SAYS, 'YOU HAVE RECEIVED A GOLD DENAR.'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 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 **מוֹדֵה בַּמִּקְצֵת**); 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 labourer.

(20) 25 silver denarii.

(21) The robber.

(22) The householder.

Talmud - Mas. 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 LABOURER 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 DENAR,' AND HE GAVE HIM, THEN THE SHOPKEEPER SAID TO HIM, 'GIVE ME THE DENAR'; 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 DENAR, 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 DENAR,' AND HE GAVE HIM; AND SAID TO HIM, 'GIVE ME THE DENAR,' 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 DENAR, AND SAID TO HIM, 'GIVE ME THE SMALL CHANGE,' AND THE OTHER SAID TO HIM, 'I HAVE GIVEN IT 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 DENAR.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 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 labourer 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 labourer for the sake of his livelihood. [But] for the sake of the labourer's livelihood do we fine the householder? — The householder himself is satisfied that the labourer should take the oath and receive [his wages], so that labourers may hire themselves out to him.⁴⁵ On the contrary, the hired labourer 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 [labourers].⁴⁷ The labourer also must of necessity be employed!⁴⁸ — Well, then, the householder is busy with his labourers.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 neighbour'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 labourer.
- (14) The shopkeeper.
- (15) From the householder.
- (16) Also from the householder.
- (17) One of them, either the shopkeeper or the labourer, 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.]
- (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 denar. 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 neighbour'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 labourer, 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 labourer prefers to allow the employer to take the oath (and not pay), so that he may employ him again.
- (47) So the labourer need not fear; and should take the oath.
- (48) Hence employer and labourer are equally dependent upon each other; so that we cannot say the reason why the oath is imposed upon the labourer is because the employer prefers it thus, so that labourers 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 labourers to whom he pays wages, and he may genuinely have made a mistake and thought he had paid this one too; but the labourer has only one employer to deal with, and he remembers whether he has received his wages; therefore the oath is imposed upon the labourer.
- (50) Why should the labourer have to take an oath?
- (51) To satisfy him that he was mistaken, and that he had not really paid the labourer 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 labourer 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 labourer 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 morning; and

the labourer desires to grant this credit, and does not want his money in the morning, in case he spends it.

Talmud - Mas. Shevu'oth 45b

If so,¹ even in the case where he fixed [the wages], also [let the labourer 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 neighbour 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 labourer 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 labourers?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 labourer 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 neighbour 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 labourer? — He replied to him: Yes, we are taught: A hired labourer [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 neighbour 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 labourer takes the oath and receives his wages, because the employer is too busy 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 labourer should swear and receive what he claims.

(3) The artisan who claims an extra one (zuz, denar, 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 labourer, but he remembers the amount he stipulated

to pay; therefore the labourer is not in this case more reliable than the employer, and must bring witnesses.

(5) A day labourer has time to claim his wages during the whole of the succeeding night; and a night labourer, during the whole of the succeeding day (B.M. 110b).

(6) I.e., the labourer claims that the employer has not yet paid him.

(7) Why should not the labourer take an oath and receive his wages? Since we say the employer is busy with his labourers, 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 labourer 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 favour of the householder; i.e., which incline us to the belief that he paid the wages in the proper time.

(12) That the labourer 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 labourer, 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 labourer 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 labourers hired for the day, night, week, month, etc.

(25) In this case, where the dispute is whether he paid him or not, the labourer takes an oath that he has not been paid, and receives his wages.

(26) The labourer 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 labourer 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.

Talmud - Mas. 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 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 neighbour 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 neighbour 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 labourer, 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 denarii which you owe me, and the other says, 'You have already received of it a gold denar',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 neighbour 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 neighbour 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 favour of the hired labourer,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 favour of the hired labourer; 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 fulfil; here also [perhaps] he boasted, and did not fulfil! — 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 labourer power to take an oath.
- (4) And we do not say that because the employer is busy with his labourers he does not remember the amount stipulated, and that therefore the oath should devolve on the labourer; but the employer takes the oath like every one 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 neighbour (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 labourers.
- (15) Supra 44b. Hence R. Judah restricts the labourer, 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 labourer to take an oath and receive his claim, since others hold that in such a case the labourer 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 denarii.
- (19) Hence, even in a case where the amount stipulated is in dispute. R. Judah states clearly that the labourer takes an oath.
- (20) The labourer must bring witnesses, and if not, the employer is exempt, for he denies the whole claim.
- (21) That the labourer 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 labourer 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 labourer to take the oath!
- (26) That in the case where the amount stipulated is in dispute the labourer takes the oath.
- (27) The labourer 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 labourer, 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 labourer.
- (32) And we do not say, because he is busy with his labourers, he forgets; therefore in this case the oath is not transferred to the labourer. 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 labourer 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?

(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.

Talmud - Mas. 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 labourer 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

- (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 favour 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 fulfil 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 fulfil 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.

Talmud - Mas. 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. 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 neighbour; 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 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.

Talmud - Mas. Shevu'oth 47b

Now granted, if you say, that his father in such circumstances, would have been liable [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 souter?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 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. תרגנו (from רגן, to murmur rebelliously) is here divided into תרגנו: 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 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.

Talmud - Mas. Shevu'oth 48a

If one said it was two ox-goads 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 DENAR 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 neighbour 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 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. Hoshaiia 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 denar,' and the shopkeeper gave him; then asked him for the denar; 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 denar, for the money-changer would not have given him the small change before he had received the denar.

(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 denar.

(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 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).

Talmud - Mas. 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 labourers and takes out labourers, 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 — 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.

(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., **מודה במקצת**)?

(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 **מודה במקצת**) 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.

Talmud - Mas. Shevu'oth 49a

On all [oaths] we impose others, except on [the oath of] the hired labourer on which we do not impose others.¹ R. Hisda said: To all we are not lenient,² except a hired labourer 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 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 labourer 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 labourer 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 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.

Talmud - Mas. 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: 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.

(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 wilfully 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.