

IV

BAVLI TRACTATE SHEBUOT CHAPTER FOUR

FOLIOS 30A-36B

4:1-2

4:1

- A. [The law governing] an oath of testimony (Lev. 5: 1) applies (1) to men and not to women, (2) to those who are not related and not to those who are related, (3) to those who are suitable [to bear witness] and not to those who are not suitable [to bear witness],
- B. and it applies only to those who are suitable to bear witness,
- C. before a court and not before a court,
- D. [and it must be stated] by a man out of his own mouth.
- E. “[If it was imposed] out of the mouths of others, they are liable only when they will have denied [their knowledge in court],” the words of R. Meir.
- F. And sages say, “Whether it is from one’s own mouth or from the mouths of others, they are liable only when they will have denied [their knowledge] in court.”

4:2

- A. They are liable if they deliberately took a [false] oath or took a [false] oath in error along with deliberately denying their testimony.
- B. But they are not liable if they inadvertently denied [their testimony].
- C. And for what are they liable on account of deliberate violation?
- D. An offering of variable value.

I.1 A. [The law governing an oath of testimony (Lev. 5: 1) applies (1) to men and not to women:] *what is the source in Scripture of this statement?*

- B. *It is in line with that which our rabbis have taught on Tannaite authority:*
- C. “...the two parties [men] to the dispute shall appear [stand] before the Lord, before the priests or magistrates in authority at the time, and the magistrates shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he schemed to do to his fellow. Thus you will sweep out evil from your midst; others will hear and be

afraid, and such evil things will not again be done in your midst. Nor must you show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deu. 19:15-21):

- D. In stating, “...shall appear,” Scripture speaks of the witnesses to the event.
- E. You say that Scripture speaks of the witnesses to the event. But perhaps it speaks only of the litigants?
- F. When Scripture says, “...parties [men] to the dispute,” no reference is made to the parties to the dispute.
- G. So how am I to interpret, “shall appear [stand]”? Scripture speaks of the witnesses to the event.
- H. If you prefer:
- I. Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

I.2. A. *What’s the point of* If you prefer?

- B. *Should you say, had Scripture not stated, “...parties [men] to the dispute,” the entire verse would have spoken concerning the litigants, then* — Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

I.3. A. *It has further been taught on Tannaite authority:*

- B. “...the two parties [men] to the dispute shall appear [stand] before the Lord, before the priests or magistrates in authority at the time, and the magistrates shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he schemed to do to his fellow. Thus you will sweep out evil from your midst; others will hear and be afraid, and such evil things will not again be done in your midst. Nor must you show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deu. 19:15-21):
- C. In stating, “...shall appear,” Scripture speaks of the witnesses to the event.
- D. You say that Scripture speaks of the witnesses to the event. But perhaps it speaks only of the litigants?
- E. State as follows: is it then the fact that only two persons come to court, but three do not come to court? [There can be more than two litigants, so “two” here speaks of the necessary number of witnesses.]
- F. If you prefer:
- G. Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

I.4. A. *What’s the point of* If you prefer?

- B. *Should you propose that Scripture refers to the plaintiff and the defendant, then I provide a further demonstration:* Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”]. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

I.5. A. *It has further been taught on Tannaite authority:*

- B. “...the two parties [men] to the dispute shall appear [stand] before the Lord, before the priests or magistrates in authority at the time, and the magistrates shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he schemed to do to his fellow. Thus you will sweep out evil from your midst; others will hear and be afraid, and such evil things will not again be done in your midst. Nor must you show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deu. 19:15-21):
- C. In stating, “...shall appear,” Scripture speaks of the witnesses to the event.
- D. You say that Scripture speaks of the witnesses to the event. But perhaps it speaks only of the litigants?
- E. State as follows: is it then the fact that only men come to court, but women do not come to court? [Obviously they do, and hence Scripture speaks of witnesses to the event.]
- F. If you prefer:
- G. Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”]. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

I.6. A. *What’s the point of* If you prefer?

- B. *Should you propose that it is not routine for a woman to come to court, on the grounds of* “all glorious is the king’s daughter when she stays home” (Psa. 45:14),
- C. Here we find a reference to “two” [“...the two parties [men] to the dispute shall appear”], and elsewhere we find a reference to “two:” Deu. 19:15: “at the testimony of two witnesses”]. Just as in the latter passage, reference is made to witnesses, so here too reference is made to witnesses.

Court Procedures Must be Scrupulously Fair to All Concerned; The Special Status of Sages and their Disciples

From the specific rule of the Mishnah, that all relevant testimony is owing, we shade over to a broad discussion of the requirements of perfect fairness in court procedures. This underscores the point of the Mishnah’s rule, that all who bear witness must give testimony in court.

I.7. A. *Our rabbis have taught on Tannaite authority:*

- B. “...the two parties [men] to the dispute shall appear [stand] before the Lord, before the priests or magistrates in authority at the time, and the magistrates shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he

schemed to do to his fellow. Thus you will sweep out evil from your midst; others will hear and be afraid, and such evil things will not again be done in your midst. Nor must you show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deu. 19:15-21):

- C. [Use of the word “stand” indicates that] it is a religious duty of parties to the suit to stand [Sifré Deu. CXC:I.1].

I.8. A. [“...the two parties [men] to the dispute shall stand:”] said R. Judah, “I have a tradition that if they wanted to seat both of them equally, they seat them, and there is no objection to such a procedure. What is prohibited? It is that one of them should sit while the other is standing [T. San. 6:2H-I].

- B. “Nor may one be allowed to speak all he wishes, while to the other is said, “Cut it short.”

I.9. A. *Our rabbis have taught on Tannaite authority:*

- B. “In righteousness you shall judge your neighbor” (Lev. 19:15) —

C. It means that one should not be sitting while the other standing, one talking all he needs to, while to the other they say, “Cut it short” [T. San. 6:E-G].

- D. Another matter concerning the verse, “In righteousness you shall judge your neighbor” (Lev. 19:15):

E. Give everybody the benefit of the doubt [M. Abot 1:6].

I.10. A. R. Joseph taught as a Tannaite formulation: “‘In righteousness you shall judge your neighbor’ (Lev. 19:15): to one who is with you in Torah and in the religious duties should you try to give the benefit of the doubt.”

I.11. A. R. Ulla b. R. Ilai had a case before R. Nahman. R. Joseph sent word to him, “Ulla, our colleague, falls into the category of one who is with you in Torah and in the religious duties.”

- B. He said, “For whatever purpose has he sent me such a message? Should I be flattered by him [and favor his pal]?” Then he said, “He probably means that I should deal with his case first [not keeping him waiting] [30B] or use my discretionary powers in his favor if I can.”

I.12. A. Said Ulla, “The dispute [between Judah and sages on whether litigants may sit down] has to do only with the litigants, but as to witnesses, all parties concur that they are to stand, for it is written, ‘and the two men shall stand.’”

- B. Said R. Huna, “The dispute pertains to the time of the debate, but as to the time that the judgment has been reached, all parties concur that the judges are to be sitting and the litigants standing, as it is written, ‘And Moses sat to judge the people and the people stood’ (Exo. 18:13).”

I.13. A. *Another version:*

- B. “The dispute pertains to the time of the debate, but as to the time that the judgment has been reached, all parties concur that the judges are to be sitting and the litigants standing, for lo, the witnesses are classified as part of the conclusion of the case, and it is written in their regard, ‘And the two men shall stand.’”

I.14. A. *The widow of R. Huna had a case before R. Nahman. He said, “What should we do? Should I stand up before her? Then the claim of her adversary will be*

impeded. Should I not stand up before her? But she is the wife of an associate, and lo, she is in the classification of an associate herself [to whom such honor is due]". He then said to his servant, "Go and have a duck fly by me and throw it toward me, so that I will stand up."

- B. But has not a master said, "The dispute pertains to the time of the debate, but as to the time that the judgment has been reached, all parties concur that the judges sit and the litigants stand"?
- C. *He sits in such a position as does one who unties his shoe laces [half sitting, half standing] and says, "You, Mr. So-and-so, are innocent, and you, Mr. Such-and-such, are guilty."*
- I.15.** A. *Said Rabbah bar R. Huna, "A neophyte rabbi and a layman who had a court case with one another — they seat the neophyte rabbi, and to the layman they say, 'So sit down.' If he remains standing, so what!"*
- I.16.** A. *Rab bar Sherabbayya had a case before R. Pappa. He had him seated, and he also seated his opponent. The bailiff came and nudged him to stand up, and R. Pappa did not tell him, "Sit."*
 - B. *But how could he have acted in such a way? And lo, he blocks the other's plea?*
 - C. *Said R. Pappa, "He can claim, 'He asked me to sit, but the bailiff is the one who was not pleased to let me sit.'"*
- I.17.** A. *And said Rabbah bar R. Huna, "A neophyte rabbi and a layman who had a court case with one another — the neophyte rabbi should not come in first and take his seat, because it will give the appearance of setting forth his case.*
 - B. *"And we say this only in a situation in which he does not have a set time [for study] with [the judge], but if the neophyte has a set time for study with the judge, then so what! for the other party will say, 'he is busy with his lesson.'"*
- I.18.** A. *And said Rabbah bar R. Huna, "A neophyte rabbi who has testimony to give in a case, but for whom it is beneath his dignity to go to a judge who is inferior to him in status and give such testimony, does not have to go."*
 - B. *Said R. Shisha b. R. Idi, "So we too have learned that fact in a Tannaite formulation as follows: **[If] he found a sack or large basket or anything which he would not usually pick up, lo, this one does not [have to lower himself and] pick it up [M. B.M. 2:8K=L].**"*
 - C. *And that [=A] is the case involving property. But if it has to do with a prohibition [e.g., testimony for a married woman that her husband is dead], he must give evidence: "There is no wisdom nor understanding nor counsel against the Lord" (Pro. 21:30) — in any situation in which there is the possibility of the profanation of God's name, no honor is paid to a master's status.*
- I.19.** A. *Rab Yemar knew evidence in behalf of Mar Zutra and he appeared before Amemar. He seated them all. Said R. Ashi to Amemar, "But did not Ulla say, 'The dispute [between Judah and sages on whether litigants may sit down] has to do only with the litigants, but as to witnesses, all parties concur that they are to stand'?"*
 - B. *He said to him, "The one represents a commandment involving affirmative action ['the two men shall stand'], and the other involves a commandment involving*

affirmative action [‘you shall fear the Lord your God’ (Deu. 10:20), extending also to disciples of sages]. The commandment involving affirmative action concerning the Torah takes precedence.”

I.20. A. Our rabbis have taught on Tannaite authority:

- B. How on the basis of Scripture do we know that a judge should not erect an elaborate defense for his statements?
- C. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- D. And how do we know that a judge should not seat a disciple who has poor judgment before him?
- E. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- F. And how do we know that if a judge knows his colleague to be a robber, or a witness knows that his colleague is a robber, he should not join forces with him?
- G. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- H. And how do we know that if a judge knows as a matter of fact that the case is phoney, he should not say, “Well, since the witnesses are the ones who give the testimony, I’ll decide the case and let **[31A]** a necklace of guilt choke the witnesses?
- I. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- J. How do we know that, if a disciple was sitting before his teacher [who was acting as a judge] and knew something for the case of the poor man and something against the case of the rich man, he is not free to keep silent?
- K. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- L. How do we know that if a disciple sees his master err in judgment, he may not say, “I shall wait on him until he finishes, then I’ll reverse the decision and compose another in accord with my view, so that the decision will register in my name?”
- M. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- N. How do we know that if the master says to a disciple, “You know me, if people gave me a hundred manehs, I wouldn’t lie, now So-and-so owes me a maneh, but I have only one witness against him to that effect,” the disciple should not join forces with the single witness?
- O. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- P. *Does that ruling really derive from, “From a false matter keep your distance” (Exo. 23: 7)? Surely this is a bold-faced lie, and the All-Merciful has said, “You shall not bear false witness against your neighbor” (Exo. 20:13)! Rather, the case is one in which he said to him, “I have one reliable witness, and you come and stand right there but don’t have to say a thing, so you won’t actually be lying by anything you say,” even that is prohibited. [How do we know that one may not do so?]*
- Q. Scripture states, “From a false matter keep your distance” (Exo. 23: 7).
- R. How do we know that one who has a claim against his fellow of a maneh [a hundred zuz] should not say, “I shall lay claim for two hundred, so that he’ll concede me a maneh, and so will be liable to take an oath to me, so I’ll bring upon him an oath deriving from another source” [Silverstone: in connection with another claim that the man totally denied, and for which no oath could be imposed; since

he has to take an oath in this case, the court at the same time will include the prior claim within the oath]?

- S. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- T. How do we know in the case of one who had a claim against his fellow for a maneh [a hundred zuz] and laid claim for two hundred, the debtor should not then say, "I shall deny the debt entirely in court and concede it out of court, so that he shall not owe him an oath, and he may not then impose on me an oath deriving from another source?"
- U. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- V. How do we know that in the case of three who have a claim against someone for a maneh, one should not set himself up as the plaintiff, with the other two as witnesses, so that they may then collect the maneh and divide it up?
- W. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- X. How do we know that, if two came to court, one dressed in rags, the other in a fine cloak worth a hundred manehs, they should say to the dandy, "Either dress like him or dress him up like you"?
- Y. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- Z. *When they would come before Raba b. R. Huna, he would say to them, "Take off your fine shoes and then come to court."*
- AA. How do we know that a judge should not hear the claim of one litigant before the other litigant comes to court?
- BB. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- CC. Now do we know that a litigant should not explain his case to the judge before the other litigant comes?
- DD. Scripture states, "From a false matter keep your distance" (Exo. 23: 7).
- EE. *R. Kahana repeated as Tannaite formulation the proof, "'You shall not utter a false report' (Exo. 23: 1), meaning, you shall not bring about the utterance of a false report."*
- FF. "And did that which is not good among his people" (Eze. 18:18) —
- GG. Rab said, "This refers to one who comes with power of attorney."
- HH. Samuel said, "This is one who purchases a field that is subject to prior claims [and so a disputed title]."

II.1 A. and it applies only to those who are suitable to bear witness:

- B. *Excluding what class of persons?*
- C. *Said R. Pappa, "Excluding the king."*
- D. *And R. Aha bar Jacob said, "Excluding a gambler."*
- E. *One who says it excludes a gambler would all the more so exclude the king, but one who says it excludes the king would say, "On the strength of the law of the Torah, such a one is suitable for giving testimony, and it is merely the rabbis who have invalidated him as a witness."*

III.1 A. before a court and not before a court, [and it must be stated] by a man out of his own mouth. "[If it was imposed] out of the mouths of others, they are liable only when they will have denied [their knowledge in court]," the words

of R. Meir. And sages say, “Whether it is from one’s own mouth or from the mouths of others, they are liable only when they will have denied [their knowledge] in court:”

- B. *What is at issue [between Meir and sages]?*
- C. *Rabbis stated before R. Pappa, “At issue between them is the principle, ‘[Freedman, Zebahim:] judge from it and all from it, or judge from it but place the deduction on its own basis.’ [Freedman: whether an analogy must be carried through on all points, so that the case deduced agrees throughout the the case from which the deduction has started; or whether the deduction won by analogy be regulated by the rules of the original case.] R. Meir takes the view, ‘judge from it and all from it,’ thus, ‘judge from it,’ just as in the case of a bailment, if he swears on his own volition, he is liable, so in the case of testimony, if he swears on his own volition, he is liable [Lev. 5:24: “about which he has sworn falsely” of his own accord], ...and all from it, thus: just as in the case of a bailment, the oath is valid whether taken in court or not taken in court, so in the matter of the oath of testimony, the oath is valid whether it is given in court or not given in court. And rabbis derive their position from the exegetical principle, ‘judge from it but place the deduction on its own basis.’ Thus they maintain judge from it:’ just as in the case of a bailment, if one takes an oath on his own volition he is liable, so in the matter of the oath of testimony, if one takes the oath on his own volition he is liable. ‘...but place the deduction on its own basis: ‘just as in the case of one who is adjured by others, he is liable only if he swears before a court but not if it is not before a court, so if he takes the oath of his own volition, if he does so before the court he is liable, but if it is not before the court, he is exempt.’”*
- D. **[31B]** *Said to them R. Pappa, “If it is from the case of the bailment that rabbis derive their position, all will concur on the view, judge from it but place the deduction on its own basis. [Silverstone: and sages would therefore hold that if he swore of his own volition even outside of court he would be liable.] But this is the operative consideration of rabbis: they derive the rule from an argument a fortiori [resting on the traits of the oath of testimony, not on the analogy to the rule of the oath covering a bailment:] if one is liable when adjured by others, he is liable for the oath, if it is of his own volition, all the more so! And, since they derive their position from an argument a fortiori, they further invoke the principle that it suffices to derive from such an argument what is subject to the argument and analogous to what is at stake in the argument, namely: just as the oath that is imposed by others in court is valid, but not in court is not valid, so if one takes the oath on his own volition, if this is before the court, it is valid, but if it is not before the court, it is not valid.”*
- E. *Said rabbis to R. Pappa, “But can you really say that at issue between them is not the principle, ‘judge from it and all from it, or judge from it but place the deduction on its own basis.’ For have we not learned in the Mishnah with reference to a bailment: **An oath concerning a bailment (Lev. 6: 2ff.) applies to men and to women, to relatives and to strangers, to people suitable to give testimony and to people not suitable to give testimony, before a court and not before a court, from one’s own mouth. “But as to one from the mouth of others, “he is liable only when he will deny [the claim] in court,” the words of***

R. Meir. And sages say, “Whether it is from his own mouth or from the mouth of others, once he has denied him, he is liable” [M. 5:1]. *Now how do rabbis ever know that in reference to an oath concerning a bailment, if one is adjured by others, he is liable? Is it not that they have derived the rule from the oath of testimony? And then it must follow that at issue between sages and R. Meir really is the principle, ‘judge from it and all from it, or judge from it but place the deduction on its own basis.’*” [Silverstone: since they hold that in the case of a bailment even where adjured by others he is liable even outside of court, obviously they deduce liability for adjuration by others from the case of testimony, though they do not treat the case of the bailment entirely in the way in which they treat the oath of testimony, for in the latter they hold that the denial must always be before the court, while in the case of a bailment, once they have dedicated that there is liability for adjuration by others, they hold, treat the law of adjuration by others as equivalent to the law of taking an oath on one’s own volition, which in the case of a deposit does not need to be before the court.]

F. *Well, true enough there, but in this case that inference is hardly to be drawn.*

IV.1 A. They are liable if they deliberately took a [false] oath or took a [false] oath in error along with deliberately denying their testimony:

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

C. *It is in accord with that which our rabbis have taught on Tannaite authority:*

D. In connection with other laws involving an offering of variable value [Lev. 5:1ff.], “it being hidden from him” is used [which therefore speaks of a violation committed in error], but here, that language is not used,

E. which indicates that he who utters a false oath of testimony is liable for an offering whether the transgression is willful or inadvertent [since he may well believe what he says is true, but turn out to have misrepresented the facts].

V.1 A. But they are not liable if they inadvertently denied [their testimony]:

B. *How can we imagine a case in which there is an inadvertent transgression that is joined with a deliberate denial of knowledge of testimony?*

C. Said R. Judah said Rab, “It would involve one who says, ‘I know that this oath is binding, but I do not know whether or not one is liable to present an offering on that account.’” [Silverstone: although it is a willful transgression, it is counted as unwitting, because he did not know about liability to the offering.]

VI.1 A. But they are not liable only if they inadvertently denied [their testimony]:

B. *May we say that that is in line with what R. Kahana and R. Assi were given as a Tannaite statement?* [It would be like the case involving R. Kahana and R. Assi, who stood up after a session before Rab. One said, “I swear that this is what Rab said,” and the other said, “I swear that that is what Rab said.” When they came before Rab, he made his statement in accord with one of them, and the other would say to him, “So did I take a false oath?” And he would reply, “Your heart has fooled you” you thought it was a valid statement, so it was a false oath under constraint? Is the upshot not that one is not liable for utterly inadvertent transgression? (Silverstone)]

C. *No, not at all. Even though we have learned the rule in the Mishnah here [in the case of the oath of testimony], it was necessary [for Rab to give reassurance in*

any event], for I might have supposed that in the case of the oath of testimony, it was necessary to give reassurance, for it is not written, “and it be hid,” and hence we should require an inadvertent violation of the oath to be treated like a deliberate one, but in the case of the rash oath, since it is written, “and it be hid,” I might have supposed that even if the transgression in any slight degree is inadvertent, one still would be liable [Silverstone: Scripture says he must bring an offering even if it be hid from him, meaning, even if it was a mistake], therefore Rab, assuring the disciples, teaches us that that is not the case [Silverstone: but even in the case of a rash oath, there is no liability for a genuine mistake].

I.1 asks the predictable question in the anticipated mode of response. No. 2 supplies a talmud to the foregoing, and No. 3+4, 5+6 complement it. Nos. 7-10, supplemented by Nos. 11-12+13, provide further Tannaite materials, in what is now a thematic anthology. No. 14-18 complete the anthology. No. 19, a vast composition formed in its own terms and parachuted down here, then presents a further entry into the thematic composite. II.1 answers a necessary question of Mishnah-exegesis. III.1 explains the exegetical principle that leads to the dispute presented in the Mishnah. IV.1 provides a scriptural basis for the rule of the Mishnah. V.1 amplifies the Mishnah’s rule in another way, and VI.1 then tests the proposition that the Mishnah’s author makes needless statements and so repeats himself and proves that he does not.

4:3-4

4:3

- A. An oath of testimony — how so?
- B. [If] one said to two people, “Come and testify about me,”
- C. [and they replied,] “We swear that we don’t know any testimony about you”
—
- D. for if they said to him, “We don’t know any testimony concerning you,” [and he said to them], “I impose an oath upon you,” and they said to him, “Amen,” —
- E. lo, these are liable [if they did have testimony to present and thus swore falsely].
- F. [If] one imposed an oath on them five times outside of court, and then they came to court and confessed [that they did have testimony to offer, which they now are willing to offer], they are exempt.
- G. [If] they denied [that they had testimony to offer, and turned out to have violated their oaths], they are liable on each and every count.
- H. [If] he imposed an oath on them five times before the court and they denied [having testimony, and then turned out to have sworn falsely], they are liable on only one count.
- I. Said R. Simeon, “What is the reason? Because [in court] they do not have the power to retract and to confess.”

- A. [If] both of them denied at the same time [that they had testimony], both of them are liable.
 - B. [If they made their denials] one after the other, the first is liable, but the second is exempt.
 - C. [If] one denied and one confessed, the one who denies is liable.
 - D. [If] there were two groups of witnesses, [and] the first group denied [having testimony] and then the second group denied,
 - E. both of them are liable —
 - F. because the testimony in any event can be confirmed by the testimony of either one of them.
- I.1** A. Said Samuel, “If they saw someone running after them and they said to him, ‘How come you’re pursuing us? We swear we don’t know any testimony to help you out,’ they are exempt, for they are liable only if [before they falsely articulate their denial of possessing evidence for the man,] they hear the oath stated by him.”
- B. *So what else is new? We have in point of fact learned the rule: [If] he had sent through his slave [to impose the oath on the witnesses], or if the defendant had said to them, “I impose an oath on you, that if you know testimony concerning him, you come and give evidence concerning him,” they are exempt, [32A] unless they hear [the oath] from the mouth of the plaintiff [M. 4:12]!*
 - C. *It was necessary to encompass the detail, “If they saw someone running after them...,” for you might have thought that, since he was running after them, he is equivalent to one who had made the statement to them [if they then falsely deny knowledge of testimony], and so we are informed that that is not the case [and the statement must be explicit].*
 - D. *But lo, this too we have already learned in the Mishnah: An oath of testimony — how so? If one said to two people, “Come and testify about me...” — thus if he made the statement to him, the oath is in place, but if he made no such statement, it is not in place!*
 - E. *But the usage, If one said, is not meant to be so literal as all that! And if you do not concur, then, with reference to the oath of bailment, in which we regard we have learned, An oath concerning a bailment — how so? He said to him, “Give me my bailment which I have in your hand” — “I swear that you have nothing in my hand” — or if he said to him, “You have nothing in my hand,” “I impose an oath on you”, and he said, “Amen” — lo, this one is liable [M. 5:2], will you also take the position, if he made the statement to him, the oath is in place, but if he made no such statement, it is not in place? But that is impossible, since Scripture has said, “and deal falsely with his neighbor” (Lev. 5:21) means, in any measure whatsoever [he is liable so long as he deals falsely and denies the deposit]. So, just as the language, If one said, is not meant to be so literal as all that in that passage, so If one said, is not meant to be so literal as all that in the present passage!*
 - F. *What’s going on here! True enough, if you say that in our Mishnah, If one said, is meant to be literal, then when the framer of the other passage uses that same*

language, he does so because of its usage here [and in our passage it is required and is to be taken literally]. But if you say that the language, **If one said**, in that other passage is not meant to be taken literally, and **If one said** in the present passage also is not meant to be taken seriously, then why does the Mishnah uses in both languages the formulation, **If one said**?

- G. *Maybe it's because that's how things are ordinarily set forth? And therefore Samuel means to teach us that it really is meant to be taken literally.*
- H. *In accord with the position of Samuel it has been taught on Tannaite authority:*
- I. *If they saw someone coming after them and they said to him, 'How come you're coming after us? We swear we don't know any testimony to help you out,' they are exempt, but in the case of a bailment, they are liable.*

II.1 A. [If] one imposed an oath on them five times outside of court, and then they came to court and confessed [that they did have testimony to offer, which they now are willing to offer], they are exempt:

- B. *How on the basis of Scripture do we know that if they denied the oath in court, they are liable, but if it was outside of the court, they are not liable?*
- C. *Said Abbaye, "Said Scripture, 'If he tell it not, he shall bear his iniquity' (Lev. 5: 1) — I have said to you that that is the case only in a situation in which, if he had told it, the other party would have become liable for monetary compensation [to be paid to the claimant whom the witness supported]."*
- D. *Said R. Pappa to Abbaye, "If so, then I should say that as to the oath itself, if it is stated before a court, liability is incurred, but if not before a court, liability for the falsity of the oath is not incurred?"*
- E. *[He said to him,] "But that cannot be entertained as a serious possibility, for it has been taught on Tannaite authority: "when he shall be guilty in one of these things" (Lev. 5: 5) — to impose liability for each oath on its own.' Now if it should enter your mind that to be enforceable the oath must be stated before a court, he is liable for each one? But surely we have learned in the Mishnah: [If] he imposed an oath on them five times before the court and they denied [having testimony, and then turned out to have sworn falsely], they are liable on only one count. Said R. Simeon, 'What is the reason? Because [in court] they do not have the power to retract and to confess.' So does that not imply that the oath is what must be stated outside of the court, but the act of denial must be before the court."*

III.1 A. [If] both of them denied at the same time [that they had testimony], both of them are liable:

- B. *But it really is never possible to be so exact about matters!*
- C. *Said R. Hisda, "Lo, who is the authority behind this passage? It is R. Yosé the Galilean, who has said, 'It is possible to determine exactly.'"*
- D. *R. Yohanan said, "You may even maintain that it accords with the position of rabbis, but the case involves a situation in which both of them issued their denials within a span of time sufficient for a single act of speech, and what is said within that brief span of time that is sufficient for a single act of speech is classified as a single act of speech."*

- E. *Said R. Aha of Difti to Rabina, "So how long, in fact is that brief span of time that is sufficient for a single act of speech?"*
- F. *"It is as long as it takes a disciple to greet the master."*
- G. *"But the spell of time that it takes to say, We swear we know no testimony for you lasts longer!"*
- H. He said to him, "The interval between the denials of the two witnesses [must be no longer than the time it takes to greet his neighbor]."

IV.1 A. [If they made their denials] one after the other, the first is liable, but the second is exempt. [If] one denied and one confessed, the one who denies is liable:

- B. *The rule of the Mishnah does not accord with the principle of the following Tannaite authority, for it has been taught on Tannaite authority:*
- C. If one imposed an oath on a single witness [who turns out to have sworn falsely that he has testimony to offer], he is exempt.
- D. But R. Eleazar b. R. Simeon declares him liable.
- E. *May we then say that this is what is at issue: the anonymous authority takes the view that even a single witness, when he comes to bear testimony, comes to make the defendant liable for an oath, while the other authority [Eleazar] maintains that the single witness, when he comes to bear testimony, comes to make him liable to pay compensation? [Silverstone: though Scripture says, "One witness shall not rise up against a man for any iniquity or for any sin" (Deu. 19:15), Eleazar says this refers to flogging, but one witnesses suffices in money matters; therefore if one witness denies knowledge of the testimony, he is liable; our Mishnah, in exempting the second witness, is therefore not in accord with the view of Eleazar.]*
- F. *But does that seem so reasonable to you? Did not Abbayye say, "All concur in the case in which there is a single witness against the accused wife, all agree in the case of witnesses against the accused wife, and they differ in the case of witnesses against the accused wife"? [Silverstone: all concur that in certain circumstances even if one witness against the accused wife is adjured and denies knowledge, he is liable; in some, even if two witnesses are adjured and deny knowledge, they are exempt; and in certain circumstances if two witnesses are adjured, there will be a difference of opinion between Eleazar b. R. Simeon and sages, the former holding them liable, the latter exempt.]*
- G. "All agree in the case of one witness [that in certain circumstances, he is liable, if he denies on oath knowledge of testimony], and all agree in the case of the witness where the adversary is suspect of swearing falsely [that he is liable]." [Silverstone: the reason for Eleazar's view that in certain circumstances witnesses against the accused wife who are adjured are liable, is 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 many, is liable for an oath, because he is the cause of pecuniary loss, for he makes the defendant take an oath to deny liability, and then the defendant would have to pay. The witness by denying knowledge of testimony causes pecuniary loss to the plaintiff. This shows that even according to

Eleazar no money can be extracted on the strength of the evidence of only one witness.]

- H. *So all parties concur that when a single witness comes to bear witness, he comes to impose on the defendant liability for an oath; here they disagree in the following matter: one party holds that what might cause extraction of money is classified as if it had actually led to the extraction of money, and the other holds that it is not classified as if it had actually extracted the money.*

IV.2. A. *Reverting to the body of the prior composition:*

- B. Said Abbaye, “All concur in the case in which there is a single witness against the accused wife, all agree in the case of a witness against the accused wife, and they differ in the case of witnesses against the accused wife:”
- C. “All concur in the case in which there is a single witness against the accused wife:” “all agree in the case of the witness where the adversary is suspect of swearing falsely [that he is liable].”
- D. “all agree in the case of a witness against the accused wife:” “all agree in the case of a witness against the accused wife who is liable when he is a witness of her having been made unclean [after two witnesses attested that the husband had warned his wife, so now the husband does not have to pay off the marriage settlement]; *for Scripture places credence in him*: “And there be no witness against her” (Lev. 5:13), meaning, so long as there is some sort of evidence against her.
- E. “all agree in the case of witnesses against the accused wife:” “all agree in the case of witnesses against the accused wife that they are exempt,” *the witnesses are those who present a cause for jealousy, since all they are is subsidiary causes.*
- F. **[32B]** “and they differ in the case of witnesses against the accused wife:” these are the witnesses that there has been a clandestine meeting; *here they disagree in the following matter: one party holds that what might cause extraction of money is classified as if it had actually led to the extraction of money, and the other holds that it is not classified as if it had actually extracted the money.*

IV.3. A. “all agree in the case of the witness where the adversary is suspect of swearing falsely [that he is liable]:” *along the lines of the case that came to R. Abba.*

IV.4. A. “all agree in the case of the witness where the adversary is suspect of swearing falsely [that he is liable]:”

- B. *Now who is subject to suspicion here? Should we say that the borrower is suspect, so that the creditor could say to the witness, “If you had come to give testimony in my behalf, I would have taken an oath and collected what is owing to me”? But the prospective witness can reply, “Who can say you really would have taken an oath at all [and maybe you would not have taken an oath and gotten your money]!”* [The witness is a possible cause of loss, and sages would not hold him liable, so how can all concur here? (Silverstone)]
- C. *So they are both suspect, in which case, a master has said, the oath reverts to the one who is liable to take the oath [that is, the debtor], and since he cannot take an oath, he is going to have to pay [and the witness by not testifying has definitely deprived the creditor, and all concur the witness is liable].*

- IV.5.** A. “All concur in the case in which there is a single witness:” *along the lines of the case that came to R. Abba.*
- B. *Somebody grabbed a bar of silver from his fellow. The case came before R. Ammi. R. Abba was in session before him. The owner of the silver brought a single witness to the effect that the other had grabbed the bar. The other said, “Well, yes, I grabbed it, but I grabbed what is mine.”*
- C. *Said R. Ammi, “How should the judges decided this case? Shall he pay? But there are not two witnesses. Shall he be exempt? But there is a witness to the effect that he grabbed it. Shall he take an oath? Well, since he has conceded, ‘Yes, I grabbed it, but I grabbed what is mine,’ he is classified as a robber [who is not subject to an oath].”*
- D. *Said to him R. Abba, “You have a case in which the oath reverts to the one who is liable to take the oath [that is, the debtor], and since he cannot take an oath, he is going to have to pay [and the witness by not testifying has definitely deprived the creditor, and all concur the witness is liable].” [Silverstone: if the witness had withheld his evidence, he would have deprived the man of his silver, so all concur he must bring an offering for taking a false oath.]*
- IV.6.** A. Said R. Pappa, “All concur in the case of a witness that a woman’s husband has died that he is liable for violating an oath of testimony, and all agree in the case of a witness that a woman’s husband has died that he is exempt.
- B. “All concur in the case of a witness that a woman’s husband has died that he is liable for violating an oath of testimony: *if the man told her but did not tell it to the court* [that is, he told the woman the husband died overseas, but when he adjured him to testify in court, he denied knowing it; he is not liable, because she can go to court herself and claim the husband is dead and she need not produce a witness, so he has not caused her any monetary loss by withholding his evidence], *for we have learned in the Mishnah: [The woman who went, she and her husband, overseas — there was peace between her and him, and the world was at peace —] and she came and said, “My husband died” — she may remarry. “My husband died” — she may enter into levirate marriage [M. Yeb. 15:1A-F].*
- C. “and all agree in the case of a witness that a woman’s husband has died that he is exempt: *if he told the facts to neither her nor the court [in which case he has caused her financial loss].”*
- D. *May one then infer that if one adjures witnesses in a real estate case [e.g., the collection of the marriage settlement] they are liable?*
- E. *But perhaps the woman had seized movables [which she could have retained in settlement of the marriage contract].*

V.1 A. [If] one denied and one confessed, the one who denies is liable:

- B. *Now if you hold that, [If they made their denials] one after the other, in which case both parties deny, you have maintained that the first is liable, but the second is exempt, now what question can there be in a case in which one denied and one confessed? [Surely it is obvious that the first is liable, for the second admits knowing testimony, so the first has deprived the claimant of his money by withholding his testimony (Silverstone).]*

- C. *It is necessary to state the rule to cover a case in which both of them initially denied having testimony, then one of them retracted and confessed to having testimony, doing so within the spell of time required for the act of speech of the other. What the framer of the passage then tells us is the rule for a case where there are two statements in sequence, each within the spell of time required for a single act of speech. This constitutes a single act of speech.*
- D. *Well, within the position of R. Hisda, who explains the case in which both denied together in terms of the position of R. Yosé the Galilean, that it is possible to be exact about the matter, the first of the two clauses of the Mishnah then shows that it is indeed possible to ascertain simultaneity, and the second clause [one denied, the other conceded] shows that two statements in such close succession that they are made within the interval of time of a single act of speech are classified as one act of speech. But within the position of R. Yohanan, the first clause tells us that the law on statements set forth within the interval of time of a single act of speech, and the second statement teaches us the law on statements uttered within the span of time required for a single act of speech. So what in the world do I need two such declarations?*
- D. *What might you otherwise have thought? That rule pertains where there are two denials [If they made their denials one after the other], and then we say that the two statements in a time required for a single act of speech are deemed equivalent to one; but in a case of denial and admission, [one denied and one confessed], that is not the case. So we are informed that that too is the case.*

VI.1 A. **[If] there were two groups of witnesses, [and] the first group denied having testimony and then the second group denied, both of them are liable, because the testimony in any event can be confirmed by the testimony of either one of them:**

- B. *Well, there is no difficulty understanding why the second set should be liable, because the first set has denied having testimony. But why in the world should the first group be liable? [33A] Lo, the second set is still standing there [and is ready to bear witness, so the first set of witness has not caused any loss by refusing to testify]!*
- C. *Said Rabina, "With what sort of case do we deal? It is one in which at the time that the first set of witnesses denied having testimony, the first set of witnesses were related through their wives [being married to sisters, so they could not testify together in the same case], and the wives were dying. You might have thought that, since the majority of people who are dying really do die, the second set will be eligible; therefore we are informed that they are not eligible to testify, because the wives have not yet died."*

I.1 works on Mishnah-exegesis, clarifying the relationship between two classifications of oath. II.1 works on the scriptural foundations of the Mishnah's rule. III.1 conducts a different kind of Mishnah-exegesis. IV.1 conducts the Mishnah-exegesis involving the investigation of authorities behind anonymous formulations of rules. Nos. 2-5+6 form a talmud to No. 1. V.1 conducts a classical exercise of Mishnah-exegesis. VI.1 explains the logic of the rule of the Mishnah.

4:5-6

4:5

- A. “I impose an oath on you that you come and testify about me, that in the hand of Mr. So-and-so there are a bailment, a loan, stolen goods, and lost property of mine,”
- B. “We swear that we do not know any testimony concerning you” —
- C. they are liable on only one count,
- D. “We swear that we know nothing about your having in Mr. So-and-so’s hand a bailment, a loan, stolen goods, and lost property,”
- E. they are liable on each and every count.
- F “I impose an oath on you that you come and testify about me that I have a bailment in the hand of Mr. So-and-so: wheat, barley, and spelt,”
- G. “We swear that we know no testimony about you” —
- H. they are liable on only one count.
- I. “We swear that we know no testimony about you, that you have a bailment in the hand of Mr. So-and-so wheat, barley, and spelt”
- J. they are liable on each and every count.

4:6

- A. “I impose an oath on you that you come and testify about me that I have in the hand of Mr. So-and-so a claim for damages, half-damages, twofold restitution, fourfold and fivefold restitution,
- B. “and that Mr. So-and-so raped my daughter,” “seduced my daughter,”
- C. “and that my son hit me,” “that my friend injured me,” and “that he set fire to my grain on the Day of Atonement” —
- D. lo, these are liable [on any of these counts].

- I.1** A. *The question was raised:* if one imposed an oath on witnesses in a case in which a fine would be imposed if the accused is proved guilty [a fine, not a real liability], what is the rule?
- B. *From the perspective of R. Eleazar b. R. Simeon, there is no problem for you, for he has said, “Let the witnesses come and bear witness.”* [Silverstone: he who admits an act for which a fine is imposed is exempt, but if after his confession witnesses give evidence, Eleazar b. R. Simeon holds he is liable. If the witnesses withhold their testimony, they cause a pecuniary loss to the injured party. They therefore are liable.]
 - C. *Where there is a problem it is from the perspective of rabbis, who say, “If someone concedes to an act upon which a fine is imposed, and then witnesses come and give testimony, he remains exempt from having to pay compensation.”* [Silverstone: 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 the confession, he would have been liable, they are causing a loss to the claimant by withholding evidence and so should be liable?]

- D. *Now as to the rabbis of that case, [who hold that if witnesses come after his confession, he is still exempt,] with whom do they accord? Shall we say that the concur with R. Eleazar b. R. Simeon here [If one imposed an oath on a single witness who turns out to have sworn falsely that he has testimony to offer, he is exempt. But R. Eleazar b. R. Simeon declares him liable]? But surely he also takes the position that that which brings about the requirement to pay out money is classified as though it had indeed imposed the requirement of paying out money! [Silverstone: 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 a loss to the claimant].*
- E. *And as to rabbis of that case [with whom do they concur? Shall we say they agree with R. Eleazar b. R. Simeon here? But he says But surely he also takes the position that that which brings about the requirement to pay out money is not classified as though it had indeed imposed the requirement of paying out money!]*
- F. *When then is the ruling? Since if the accused had conceded the claim of an extrajudicial sanction or fine, he would have been exempt from having to pay, this is not classified as a case in which he has denied a monetary claim [and therefore the witnesses, adjured before the confession, are not liable, though by withholding testimony, they cause a loss to the claimant (Silverstone)]? Or perhaps in any event at this point in time, he has not confessed?*
- G. *Come and take note: “**I impose an oath on you that you come and testify about me that I have in the hand of Mr. So-and-so a claim for damages, half-damages, twofold restitution, fourfold and fivefold restitution...**” Now half-damages are classified as a fine [so if witnesses for a fine are adjured and fail to testify, they are liable (Silverstone)].*
- H. *The passage accords with the position of him who maintains that the half-damages that are paid under certain circumstances [Exo. 21:35] are classified as a monetary payment [not as a fine].*
- I. *That poses no problem, then, from the perspective of him who maintains that the half-damages that are paid under certain circumstances [Exo. 21:35] are classified as a monetary payment [not as a fine]. But from the perspective of him who holds that him who maintains that the half-damages that are a fine, what is to be said?*
- J. *The Mishnah speaks in particular of half damages caused by pebbles scattered as an animal walks [so that the animal is not the direct cause of damages], in which matter there is a received law that this is classified as monetary damages.*
- K. *Come and take note: ...**twofold restitution....***
- L. *Twofold restitution counts because of the principal [since the witnesses have withheld evidence, they deprive the claimant of the principal, not the fine of twice the value of the principal].*
- M. *...**fourfold and fivefold restitution...***
- N. *Fourfold and fivefold restitution count because of the principal.*
- O. *“and that Mr. So-and-so raped my daughter,” “seduced my daughter...”*

- P. The consideration here is because of shame and also the deterioration of the value of the daughter.
- Q. *So if all of the clauses deal with monetary liability, what do they all tell us [that each is required]?*
- R. *The opening clause teaches us one thing, the closing, another.*
- S. *The opening clause teaches us one thing: that the payment of half damages caused by pebbles scattered as an animal walks [so that the animal is not the direct cause of damages], is classified as monetary damages.*
- T. *the closing, another: the claim “that he set fire to my grain on the Day of Atonement.”*
- U. *What then is excluded by that clause?*
- V. *It excludes the position of R. Nehunia b. Haqqanneh, as has been taught on Tannaite authority:*
- W. **R. Nehuniah b. Haqqanneh says, “As to the Day of Atonement, lo, it is in the classification of the Sabbath so far as making restitution is concerned” [T. B.Q. 7:18G].** [Because one incurs the death penalty for setting a haystack on fire, he does not have to pay for the damage, so on the Day of Atonement, because he incurs the penalty of extirpation, he does not have to pay. Our Mishnah requires the witnesses to be liable if they withhold evidence that someone has set fire to a haystack on the Day of Atonement, so if they had given evidence they would have had to pay, contrary to this view, and the last clause makes that point (Silverstone)].
- X. *Come and take note: “I adjure you to come and testify concerning So-and-so, [33B] that he has defamed my daughter” [if the witnesses deny they have evidence but do,] they are liable. If the accused himself had confessed, they would have been exempt [even if the witnesses came later, even though they were adjured before the confession. Therefore if witnesses for a fine are adjured and do not testify, they are liable (Silverstone)].*
- Y. *Lo, who is the authority behind that formulation? It is R. Eleazar b. R. Simeon, who has said, “Let the witnesses come and bear witness [even after the confession].”*
- Z. *But note the concluding clause: If the man confessed, he is exempt [even if witnesses come later]! And that represents the view of rabbis [not Eleazar]!*
- AA. *Not at all, the entire formulation accords with the position of R. Eleazar b. R. Simeon, and this is the sense of the matter: “We find no case in which, if he himself confessed, he should be exempt, except when there are no witnesses at all and he himself confessed.”*
- I.1 raises a subsidiary question, advancing the inquiry into the Mishnah’s principle. The intersection with our Mishnah comes at I.1.Gff.

4:7

- A. **“I impose an oath on you that you come and testify about me that I am a priest,” “that I am a Levite,” “that I am not the son of a divorcée,” “that I am not the son of a woman who has performed the rite of removing the shoe,”**

- B. “that Mr. So-and-so is a priest,” “that Mr. So-and-so is a Levite,” “that he is not the son of a divorcée,” that “he is not the son of a woman who has performed the rite of removing the shoe,”
- C. “that Mr. So-and-so raped his daughter,” “seduced his daughter,” “that my son injured me,” “that my friend injured me,” “that someone set fire to my grain on the Sabbath” —
- D. lo, these are exempt.

I.1 A. *The operative consideration behind the exemption is that the oath was, “that Mr. So-and-so is a priest,” “that Mr. So-and-so is a Levite.”* But if the oath was, “Mr. So-and-so owes Mr. Such-and-such a hundred zuz,” they would have been liable. *And yet later on he says, they are exempt, unless they hear [the oath] from the mouth of the plaintiff.* [But here the oath is imposed not by the claimant.]

- B. Said Samuel, “The case is one in which the one who imposes the oath has a power of attorney.”
- C. *But did not the Nehardeans say, “We do not write an authorization on movables”?*
- D. *That would apply when he denies it, but when he does not deny it, we do write such a document.* [Silverstone: should the debtor deny the claim after the authorization was given, by withholding their testimony the witnesses would cause a loss to the claimant and therefore be liable].

I.2. A. *Our rabbis have taught on Tannaite authority:*

- B. [“If a person incurs guilt — when he has heard a public imprecation and, although able to testify as one who has either seen or learned of the matter, he does not give information, so that he is subject to punishment; or when a person touches any unclean thing, be it the carcass of an unclean beast or the carcass of unclean cattle or the carcass of an unclean creeping thing, and the fact has escaped him, and then, being unclean, he realizes his guilt; or when he touches human uncleanness, any such uncleanness whereby one becomes unclean, and though he has known it, the fact has escaped him, but later he realizes his guilt;] or when a person utters an oath to bad or good purpose, whatever a man may utter in an oath, and though he has known it, the fact has escaped him, but later he realizes his guilt in any of these matters — when he realizes his guilt in any of these matters, he shall confess that wherein he has sinned. He shall bring as his penalty to the Lord, for the sin of which he is guilty, a female from the flock, sheep, or goat, as a sin offering; and the priest shall make expiation on his behalf for his sin” (Lev. 5:1-6)]: And how do we know that at issue in this verse of Scripture is only a monetary claim?
- C. Said R. Eliezer, “Here the use of ‘or’ occurs several times, and elsewhere [at Lev. 5:21], with regard to a bailment, the use of ‘or’ occurs several times.
- D. “Just as, with reference to a bailment, in which the use of ‘or’ occurs several times, at issue is only a monetary claim, so here, where the use of ‘or’ occurs several times, at issue is only a monetary claim.”

- E. But the matter of the manslayer will prove to the contrary, for there [at Num. 35:20-21], the use of ‘or’ occurs several times [“So too if he pushed him in hate or hurled something on him..or if he struck him...”], yet at issue is hardly a monetary claim.
- F. We must then draw an analogy from a case involving an oath in which the word “or” occurs several times to another case involving an oath in which the word “or” occurs several times, but let not the use of the word “or” several times in connection with the manslayer prove the case, for in that case there is no consideration of an oath at all.
- G. Then the case of the accused wife, in which the word “or” occurs several times [Num. 5:14: but a fit of jealousy comes over him...or if a fit of jealousy comes over one...] will prove to the contrary, for there too there is such a usage and yet no consideration of a monetary claim.
- H. We draw an analogy from a case in which the word “or” occurs several times and in which there is an oath, but in which there is no engagement of a priest, for another case in which the word “or” occurs several times and in which there is an oath, but in which there is no engagement of a priest, but the case of the multiple appearance of “or” in connection with the manslaughterer cannot prove the matter, since in that case there is no consideration of an oath,
- I. and the case of the recurrent “or” in connection with the accused wife should not prove matters, for even though there is a consideration of an oath, there also is the engagement of a priest [which is not pertinent in either the bailment or the monetary claim subject to an oath in the matter at hand] [Sifra LII:I.8].
- J. R. Aqiba says, “...in any of these matters...:’ some of these produce liability, and some do not.
- K. “How so? In a matter involving a monetary claim, one is liable, but in a matter that does not involve a monetary claim, one is exempt.”
- L. R. Yosé the Galilean says, “Lo, Scripture says, ‘...as one who has either seen or learned of the matter, he does not give information, so that he is subject to punishment:’
- M. “I refer only to the withholding of testimony of a sort that can be conferred through knowledge without actual sight of what has happened.
- N. “As to testimony that can be confirmed on the basis of what one has seen without knowing it, what might such a case involve? It involves a claim for money.” [T. [Shebu. 2:5](#):] “Give me two hundred zuz which I have in your possession” “You don’t have such money in my possession” “Did I not count out for you exactly that sum of money in the presence of Mr. So-and-so and Mr. Such-and-such?” “Let them so state and I’ll pay you” — this is evidence based on what people have seen without knowing the meaning of what they have seen.”
- O. R. Simeon says, “There is liability pertaining here and there is liability concerning a bailment. Just as in liability concerning bailments what is at

issue is only a monetary claim, so the liability here what is at issue is only a monetary claim.

P. “Furthermore, there is an argument a fortiori:

Q. “If in the case of a bailment, in which the law has treated women as equivalent to men, relatives as equivalent to strangers, people invalid to testify as equivalent to people valid to give testimony, and imposed liability [34A] for each imposed oath one by one, as well as for an oath imposed in the presence of the court as well as one not imposed in the presence of a court, what is at issue is only a monetary claim, here, in which the law has not treated women as equivalent to men [but encompassed only men, suitable to give testimony, omitting women, not suitable], relatives as equivalent to strangers [for the same reason], people invalid to testify as equivalent to people valid to testify, and has imposed liability only for a single oath [however many are imposed], and that is, further, an oath taken before a court, is it not reasonable to suppose that the law should speak only of a monetary claim?”

R. No, not at all. For if you have stated the rule in the case of a bailment, in which the law has not treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath [in an oath of bailment, one is liable only if he himself takes the oath or answers ‘amen’ after the oath stated by the plaintiff, but in the oath of testimony, with which we deal, one is liable only if he has heard the oath from the plaintiff without even answering ‘amen,’] or treated as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently, will you say the same here, in which case the law has treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath, and likewise as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently?

S. Here therefore under discussion should be both a monetary claim and a claim of another order than a monetary claim.

T. [Accordingly, we have to turn to Scripture to settle the issue, which it does when] it says here, “If a person incurs guilt,” and elsewhere, “If a person incurs guilt” [Lev. 5:21].

U. Just as when the phrase, “If a person incurs guilt” elsewhere occurs, it means that at stake is only a monetary claim, so too, when the phrase, “If a person incurs guilt” occurs here, it means that at stake is only a monetary claim [Sifra LIII:I.1].

I.3. A. [To the proof presented by Eliezer, “‘Here the use of “or” occurs several times, and elsewhere [at Lev. 5:21], with regard to a bailment, the use of “or” occurs several times. Just as, with reference to a bailment, in which the use of ‘or’ occurs several times, at issue is only a monetary claim, so here, where the use of ‘or’ occurs several times, at issue is only a monetary claim:’”] *objected Rabbah bar Ulla*, “The use of several ‘ors’ with reference to the rash oath [at Lev. 5:4] will prove to the contrary, for there too were have several ‘ors,’ and there is an oath, and there is no engagement of a priest, and yet liability is incurred for something other than a monetary claim!”

- B. *It is more logical to deduce the rule on the analogy drawn from the bailment, because there we may introduce the deduction from the use of the word “sin” in both contexts [Lev. 5:1, Lev. 5:21].*
- C. *To the contrary! The more logical analogy is that of the rash oath, for we deduce the rule in which the sanction is a sin offering from another rule in which the sanction is the sin offering [for inadvertent violation of the oath]!*
- D. *Rather, it is more logical to invoke the analogy of the bailment, for they share the traits involving the use of the word “sin,” the deliberate character of the action producing the same sanction [in both cases one presents an offering for a deliberate violation of the law, while in the case of a rash oath, the offering is presented only for an unwitting transgression], both involve a claim and a denial of the claim, and both involve what has happened in the past.*
- E. *To the contrary, it would have made more sense to derive the rule from the analogy to the rash oath, for the cases are equal in respect to offering the sin offering, the offering of variable value, and neither involve the added fifth [as further compensation for violation of the oath, while violating an oath of bailment involves a guilt offering].*
- F. *The former are more numerous. [Silverstone: the oath of testimony is equal to the oath of bailment in four traits and equal to the rash oath in three.]*

I.4. A. R. Aqiba says, “...in any of these matters...:’ some of these produce liability, and some do not. How so? In a matter involving a monetary claim, one is liable, but in a matter that does not involve a monetary claim, one is exempt:”

- B. *Can’t I turn it on its head? [The verse does not mention monetary claims, so why deduce that if the claim is for money, they are liable, and if not, they are exempt? (Silverstone)]*
- C. *R. Aqiba invokes the argument from the use of several “or”s that R. Eliezer has presented.*
- D. *So what’s the difference between R. Eliezer and R. Aqiba [is there a monetary claim that Aqiba would exempt]?*
- E. *At issue between them is a case in which one adjured witnesses in a real estate case. According to R. Eliezer, they are liable, according to R. Aqiba, they are exempt.*
- F. *But in the opinion of R. Yohanan, who has said in that matter, “If one adjures witnesses in a real estate case, even in the opinion of R. Eliezer, they are exempt,” what will mark the difference here between R. Eliezer and R. Aqiba?*
- G. *At issue between them is the case of witnesses in a case involving a fine [in which case Eliezer holds them liable for not testifying, and Aqiba exempts them].*

I.5. A. R. Yosé the Galilean says, “Lo, Scripture says, ‘...as one who has either seen or learned of the matter, he does not give information, so that he is subject to punishment:’ I refer only to the withholding of testimony of a sort that can be conferred through knowledge without actual sight of what has happened. As to testimony that can be confirmed on the basis of what one has seen without knowing it, what might such a case involve? It involves a claim for money.” [T. [Shebu. 2:5](#):] “Give me two hundred zuz which I have in your

possession” “You don’t have such money in my possession” “Did I not count out for you exactly that sum of money in the presence of Mr. So-and-so and Mr. Such-and-such?” “Let them so state and I’ll pay you” — this is evidence based on what people have seen without knowing the meaning of what they have seen:”

- B. *Said R. Pappa to Abbaye, “May we then draw the conclusion that R. Yosé the Galilean would not concur with the view of R. Aha? For it has been taught on Tannaite authority: R. Aha says, ‘A camel which was covering females among the camels, and one of the camels was found dead [the owner of the one in heat] is liable, in the certainty that this one killed it’ [T. B.Q. 3:6Q-R]. Now if he held the view of R. Aha, he would also be able to find an appropriate instance among capital cases, in accord with the following case involving R. Simeon b. Shatah, as has been taught on Tannaite authority: Said Simeon b. Shatah, ‘May I [not] see consolation, if I did not see someone run after his fellow into a ruin, [with a sword in his hand, and the pursued man went before him into a ruin, and the pursuer ran in after him,] and then I came in right after him, and saw [the victim] slain, with a knife in the hand of the murderer, dripping blood, and I said to him, “You evil person! Who killed this one? [May I [not] see consolation if I did not see him [run in here].] Either you killed him or I did! But what can I do to you? For your blood is not handed over to me, For lo, the Torah has said, ‘At the testimony of two witnesses or at the testimony of three witnesses shall he who is on trial for his life be put to death’ (Deu. 17: 6). But He who knows the thoughts of man will exact punishment from that man.”’ They say that he did not move from the spot before a snake bit him, and he died [T. San. 8:3].” [Silverstone: if Yosé were to agree with Aha that circumstantial evidence is as good as definite knowledge, why does he say only in money matters is it possible to have testimony based on knowing without seeing? So he does not agree with Aha.]*
- C. *You may even say that he accords with the position of R. Aha. You can certainly find a case of knowing without seeing [as in Simeon b. Shatah’s case of circumstantial evidence], but how about seeing without knowing? Does the witness not have to know if he man killed a gentile or a Jew, someone dying or a healthy person? [Obviously he does. Therefore Yosé is right in saying only in monetary matters is such a thing possible.]*
- D. *We may then infer that R. Yosé the Galilean takes the position that if one imposes an oath of testimony on witnesses in a case in which a fine is at issue, they are exempt if they fail to testify, for if you should suppose that they are liable, then, granted that we can find a case of knowing without seeing [where there is circumstantial evidence] where would you find a case in which there is seeing without knowing? Does the witness not have to know whether the man had sexual relations with a gentile or an Israelite, a virgin or a non-virgin? [Silverstone: since testimony cannot be established by seeing without knowing, Yosé must hold that when witnesses are adjured in the case of a fine and 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.]*

I.6. A. *When R. Hamnuna was in session before R. Judah, in session R. Judah raised this question: “I counted out to you a maneh before Mr. So-and-so and Mr. So-and-so, [34B] and witnesses were watching from the outside [but the debtor did not know it], what is the law?” [Here is an instance in which a case where testimony may be established by seeing without knowing.]*

B. *Said to him R. Hamnuna, “But what does the debtor plead? If he should say, ‘Such a thing never happened,’ he is a manifest liar [and may not take an oath but must pay]. If he claimed, ‘Yes, I took money, but it was my own money,’ and if witnesses come, so what difference does it make [since the witnesses saw the exchange of money but did not know the reason for it anyhow]?”*

C. *He said to him, “Hamnuna, you come in and take your place [since you have proved your knowledge of the law.]”*

I.7. A. *Somebody said to his fellow, “I counted out to you a maneh by this pillar,” and the other said, “I have never walked by this pillar.” Came two witnesses and testified against him that once he pissed by this pillar —*

B. *said R. Simeon b. Laqish, “He is a manifest liar.”*

C. *Objected R. Nahman, “Hey, that’s how the Persians make their rulings! Did the man say, ‘never’? All he said had to do with the case at hand!”*

I.8. A. *There are those who state the case in this way:*

B. *Somebody said to his fellow, “I counted out to you a maneh by this pillar,” and the other said, “I have never walked by this pillar.” Came two witnesses and testified against him that once he pissed by this pillar —*

C. *said R. Simeon b. Laqish, “He is a manifest liar.”*

D. *Said Raba to R. Nahman, “Anything that people do not force someone to do someone will do without realizing it” [so he didn’t notice that he pissed near that pillar and is not a liar].”*

I.9. A. **R. Simeon says, “There is liability pertaining here and there is liability concerning a bailment. Just as in liability concerning bailments what is at issue is only a monetary claim, so the liability here what is at issue is only a monetary claim:”**

B. *In the West they laughed at this.*

C. *Why the laughter?*

D. *Because he teaches: For if you have stated the rule in the case of a bailment, in which the law has not treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath [in an oath of bailment, ...treated as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently, [will you say the same here, in which case the law has treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath, and likewise as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently?] Now as to him who swears of his own volition in the matter of an oath of testimony — how does R. Simeon know*

that he is liable [for Scripture speaks only of an oath of testimony imposed by others, so Lev. 5:1]? It is because he draws an analogy to the oath of bailment. But then he should in the case of an oath of bailment deduce the rule governing an oath imposed by others from the rule governing the oath of testimony [that is, reciprocally]? [What caused the laughter was the assumption that in the case of an oath of bailment, adjuration by others does not impose liability.]

- E. *So what's the laughing anyhow! Perhaps R. Simeon proves his point by an argument a fortiori: if he is liable when adjured by others, when he swears of his own volition all the more so he should be liable! [He does not then appeal to the analogy of the oath of bailment, but rather by analogy to the oath of testimony, in which Scripture says adjuration by others makes one liable; so he should certainly be liable if he swears of his own volition, and since he does not appeal to the analogy, he also does not have to use that analogy for deducing the rule governing the oath of bailment from the oath of testimony (Silverstone).]*
- F. *So what they were laughing about was his reference to deliberate and inadvertent violation of the law, when he says, **For if you have stated the rule in the case of a bailment, in which the law has not treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath [in an oath of bailment, ...treated as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently, will you say the same here, in which case the law has treated the one upon whom the oath is merely imposed without his affirming it as equivalent to the one who affirms the oath, and likewise as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently? Now if one deliberately swears falsely an oath of testimony, how do we know that he is liable? Because it is not written, "...and it be hidden..."** Here [in the case of an oath of bailment], it also is not written, "and it be hidden" [Silverstone: therefore let us say that for swearing falsely by deliberation, he is liable to bring an offering, and because Simeon did not see this they laughed.]*
- G. *Said to them R. Huna, "So what's this laughing all about? Perhaps R. Simeon derives the proposition that deliberate violation of the law is not classified as inadvertent violation in the law in the case of a bailment from the law of sacrilege?" [As in the case of sacrilege an offering is brought only for inadvertent action, so in the case of an oath of bailment (Silverstone).]*
- H. *So that's just why they were laughing at him! For instead of deriving his rule by analogy to the matter of sacrilege [with the result that a deliberate violation of the law is exempt], he should have derived it from the matter of the oath of testimony [with the result that a deliberate action is liable[]?]*
- I. *It is more logical to derive the law from the rule governing sacrilege [Lev. 5:15, sacrilege; Lev. 5:21, bailment], for what we are dealing with is the use of the word "sacrilege" in both contexts ["If any one commit sacrilege and sin through error in Holy Things," Lev. 5:15; "if anyone sin and commit a sacrilege" in the context of a bailment, Lev. 5:21].*
- J. *To the contrary, he should deduce the rule from the statements of Scripture that deal with an oath of testimony, in which we find recurrent reference to the word "sin."*

- K. *It is more logical to invoke the analogy of sacrilege, because they are equal in the matters of the use of the word "sacrilege," they are equal in that the law pertains to everybody, while the oath of testimony is limited to those who can give testimony; they share the fact that in the case of both the one who violates the rule gets benefit from his violation, whether from the bailment or from holy things, while in the case of testimony the witnesses get nothing out of not testifying; in both of the former an offering of fixed value is required; in the case of both an added fifth is imposed as a fine; and in the case of both, it is a guilt offering that is presented.*
- L. *To the contrary, he should draw the analogy from testimony, for both matters share the traits that, first, the word "sin" occurs in both contexts; second, only non-priests are involved in both [while the Temple is the claimant in a case of sacrilege]; in both cases an oath is involved [in bailment and testimony the issue is swearing falsely, but sacrilege has nothing to do with an oath]; there are the traits of a claim and a denial of the claim; and in both, we find repeated usage of "or."*
- M. *The former list is longer.*
- N. *So, [since it really is more reasonable to invoke the rule governing the bailment from the one governing sacrilege, and therefore to exempt one who deliberately violates the law from having to present an offering], why the laughter [if it was not merely routine discourtesy at that time characteristic of the scholars of the Land of Israel]?*
- O. *When R. Pappa and R. Huna b. R. Joshua came from the household of the master, they said, "This is why they roared — it is because R. Simeon draws the analogy governing the oath of testimony from the rule governing the oath of bailment. [Accordingly, we have to turn to Scripture to settle the issue, which it does when] it says here, "If a person incurs guilt," and elsewhere, "If a person incurs guilt" (Lev. 5:21). Just as when the phrase, "If a person incurs guilt" elsewhere occurs, it means that at stake is only a monetary claim, so too, when the phrase, "If a person incurs guilt" occurs here, it means that at stake is only a monetary claim]. If that is the case, then why does he then argue, For if you have stated the rule in the case of a bailment, in which the law has not treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath [in an oath of bailment, one is liable only if he himself takes the oath or answers 'amen' after the oath stated by the plaintiff, but in the oath of testimony, with which we deal, one is liable only if he has heard the oath from the plaintiff without even answering 'amen,'] or treated as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently, will you say the same here, in which case the law has treated the one upon whom the oath is merely imposed [without his affirming it] as equivalent to the one who affirms the oath, and likewise as equivalent the one who acts deliberately as equivalent to the one who acts inadvertently?" [Silverstone: since he deduces the rule governing the oath of testimony from the oath of bailment by means of the verbal intersection, let him use the same proof to deduce the rule governing the oath of*

bailment from the rule governing the oath of testimony for liability in the case of adjuration by others and for willful as for unwitting transgression].

- P. *So what's the laughing all about anyhow?! Perhaps when he presented that argument, it was prior to his setting forth the verbal analogy, while after he set forth the verbal analogy, he does not argue in such wise [but would then agree that the rule governing the oath of bailment may be deduced from the rule governing the oath of testimony, to impose liability in the case of adjuration by others and in the case of a willful transgression of the oath (Silverstone)]?*
- Q. *So he doesn't, doesn't he? Well, did not Raba b. Iti say to sages, "Who is the Tannaite authority who maintains that in the case of the violation of an oath of bailment, willful violation of the oath is not atoned for by an offering? It is R. Simeon" [which proves that Simeon does not invoke the argument by verbal analogy to deduce the rule governing the oath of bailment from the rule governing the oath of testimony, hence the laughter (Silverstone)]?*
- R. *But perhaps in the case of an oath of bailment he maintains that willful violation of the law is not comparable to inadvertent violation of the law because he invokes the analogy of sacrilege, since it is equal to it in more respects; but then he would not take the position that adjuration by others is not comparable to taking the oath of his own volition [Silverstone: after having established the verbal analogy, but he deduces the rule of the oath of bailment from the rule of the oath of testimony that adjuration by others makes him liable. There is then no cause for laughter, for he likens the oath of bailment to the case of sacrilege to exempt deliberate violation from the requirement of an offering, for deposit is like sacrilege in more respects than it is like testimony and he compares the oath of bailment to the oath of testimony, by reason of the verbal analogy, 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].*
- S. *Well, why not now go back and allow the rule governing the oath of testimony to be deduced by analogy to the rule governing the oath of bailment, with the result that what is done deliberately will not be treated as equivalent to what is done inadvertently: just as, in the case of an oath of bailment, one is liable for inadvertent but not deliberate violation of the law, so in the case of an oath of testimony, let one be liable for inadvertent but not for deliberate violation of the law, just as the analogy is drawn from the rule governing sacrilege to the rule governing the oath of bailment! [Silverstone: since he has already deduced the rule governing the oath of bailment from the rule governing the oath of sacrilege, that one is not liable for deliberate violation, and since he has the verbal analogy that permits equating the rule governing the oath of testimony and the rule governing the oath of bailment, let him say that in the case of the oath of testimony he is not liable for deliberate violation of the oath; so why does he say that in the oath of testimony the deliberate action is equivalent to the inadvertent one? Hence the laughter.]*
- T. **[35A]** *And that is precisely why Scripture placed its statements on the oath of testimony alongside its statements on the rash oath and the laws of uncleanness in connection with the Temple and its Holy Things, for of all of them it is said, "...and it be hidden," and here [in the oath of testimony] it is not said, "...and it*

be hidden,” which serves to impose liability for deliberate as much as for inadvertent violation of the law. [Silverstone: therefore we do not deduce the rule of the oath of testimony from the rule of the oath of bailment even though there is a verbal analogy, for it is as though Scripture had expressly sated, by omitting “and it be hidden,” that in the case of testimony he is liable also for willful violation of the law.]

I.1 harmonizes the implications of the rule at hand with another Mishnah-rule. No. 2 provides a Tannaite exegesis of Scripture that pertains to the more general traits of the oath under discussion. But in a general way it is relevant in particular to the rule before us. Then Nos. 3-9 provide a talmud to the passage of Sifra. None of this contributes to Mishnah-exegesis in any way; let alone to secondary expansion of the Mishnah-law; rather, the entire composite serves only the Sifra-composition. For further discussion of this same phenomenon elsewhere — a talmud to a document other than the Mishnah — see *How the Bavli Shaped Rabbinic Discourse*. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

4:8-12

4:8

- A. “I impose an oath on you that you come and testify about me that Mr. So-and-so promised to give me two hundred zuz and has not given it” —
- B. lo, [if, despite taking the oath, they fail to testify,] these are exempt,
- C. for they are liable only in the case of a monetary claim which is equivalent to a bailment.

4:9

- A. “I impose an oath on you that when you have evidence to give in my behalf, you come and testify about me” —
- B. lo, [if, despite taking the oath, they fail to testify,] these are exempt,
- C. for the oath has come before the matter about which testimony is to be given.

4:10

- A. [If] one has gotten up in the synagogue and said, “I impose an oath on you that if you know any evidence concerning me, you come and give testimony about me” —
- B. lo, [if, despite taking the oath, they fail to testify,] these are exempt,
- C. unless he address himself to [some] of them in particular.

4:11

- A. [If] he said to two people, “I impose an oath on you, Mr. So-and-so and Mr. So-and-so, that if you know evidence concerning me, you come and testify about me” —
- B. “We swear that we know no evidence about you”
- C. but they do have evidence concerning him, consisting of what they have heard from a witness [M. San. 4:5],

- D. or one of them is a relative or otherwise invalid to testify [M. 4:1]
- E. lo, these are exempt.

4:12

- A. [If] he had sent through his slave [to impose the oath on the witnesses],
- B. or if the defendant had said to them, “I impose an oath on you, that if you know testimony concerning him, you come and give evidence concerning him,”
- C. they are exempt,
- D. unless they hear [the oath] from the mouth of the plaintiff.

- I.1 A. [“I impose an oath on you that you come and testify about me that Mr. So-and-so promised to give me two hundred zuz and has not given it” — lo, [if, despite taking the oath, they fail to testify,] these are exempt, for they are liable only in the case of a monetary claim which is equivalent to a bailment:] *our rabbis have taught on Tannaite authority:*
- B. “I impose an oath on you that you come and testify about me that Mr. So-and-so promised to give me two hundred zuz and has not given it” — might one suppose that these are liable?
- C. Scripture says, “...if any one sin...,” (Lev. 5: 1) and the same language occurs [at Lev. 5:21]. This establishes a verbal analogy. With reference to the oath of testimony, it is said, “if any one sin,” and with reference to the oath of bailment, it is said, “if any one sin.”
- D. Just as in the latter case, the claim for which the oath is imposed involves money that is owing, so in the case of the oath of testimony, the claim must involve money that is owing.

- II.1 A. “I impose an oath on you that when you have evidence to give in my behalf, you come and testify about me” — might one suppose that these are liable?
- B. *Our rabbis have taught on Tannaite authority:*
- C. “...and heard the voice of adjuration, he [already] being a witness, whether he has seen or known” (Lev. 5: 1) —
- D. that is, where that concerning which testimony is to be given has already taken placed prior to the administration of the oath, and not in a case in which the oath has come up prior to the advent of the matter about which testimony is to be given,

- III.1 A. [If] one has gotten up in the synagogue and said, “I impose an oath on you that if you know any evidence concerning me, you come and give testimony about me” — lo, these are exempt, unless he address himself to [some] of them in particular:
- B. Said Samuel, “That is the case, even though actual witnesses should be among the assembly.”
- C. *So what else is new?!*
- D. *Not at all, it was necessary to state that qualification to deal with a case in which he is standing right next to the putative witnesses. Then you might have thought*

that it is as though he had made the statement in particular to them. So we are informed that that is not the case.

- E. *So too it has been taught on Tannaite authority:*
- F. If one saw a bunch of people standing, and those who were witnesses [for] his [case] were among them, and he said, “I impose an oath upon you people, if you have evidence to give in my behalf, that you come and give evidence in my behalf,” — is it possible to suppose that [all of them] would be liable for the oath at hand?
- G. Scripture says, “If he being a witness” (Lev. 5: 1). [The oath applies only to specified persons but not to an amorphous group.]
- H. And lo, the man has not specified which of the persons are to serve as his witnesses.
- I. Is it possible to maintain that even if the man had said, “Whoever [knows testimony to serve in my behalf,” without specifying whom he means], [the oath would still be valid?]
- J. Scripture states, “And *he* being a witness...”
- K. So lo, he must single them out. [A definite person must be specified as the witness who is to be subjected to the oath of testimony.]

IV.1 A. [If] he said to two people, “I impose an oath on you, Mr. So-and-so and Mr. So-and-so, that if you know evidence concerning me, you come and testify about me” — “We swear that we know no evidence about you” but they do have evidence concerning him, consisting of what they have heard from a witness, or one of them is a relative or otherwise invalid to testify — lo, these are exempt:

- B. *Our rabbis have taught on Tannaite authority:*
- C. [If] he said to two people, “I impose an oath on you, Mr. So-and-so and Mr. So-and-so, that if you know evidence concerning me, you come and testify about me” — “We swear that we know no evidence about you” but they do have evidence concerning him, consisting of what they have heard from a witness, or one of them is a relative or otherwise invalid to testify — might one suppose that they should be liable?
- D. Scripture states, “If he do not tell it, then he shall bear his iniquity” (Lev. 5: 1) — Scripture speaks of those who are suitable for telling what they have seen [and those listed may not give testimony before a court].

V.1 A. [If] he had sent through his slave [to impose the oath on the witnesses], or if the defendant had said to them, “I impose an oath on you, that if you know testimony concerning him, you come and give evidence concerning him,” they are exempt, unless they hear [the oath] from the mouth of the plaintiff:

- B. *Our rabbis have taught on Tannaite authority:*
- C. [If] he had sent through his slave [to impose the oath on the witnesses], or if the defendant had said to them, “I impose an oath on you, that if you know testimony concerning him, you come and give evidence concerning him,” might one suppose that they should be liable?
- D. Scripture states, “If he do not tell it, then he shall bear his iniquity” (Lev. 5: 1).
- E. *So what’s the exegesis that makes that point?*

- F. Said R. Eleazar, “‘if he do not tell it’ — what is written is, ‘if to him [the claimant] he tell it not’ then he shall bear his iniquity, but if he will not tell it to a third party, he is exempt from guilt of any kind.
I.1, II.1, IV.1, V.1 go over the ground of the Mishnah’s rule and provides it with a scriptural foundation. III.1 provides an important clarification, yielding the same result as the foregoing.

4:13

- A. (1) “I impose an oath on you,” (2) “I command you,” (3) “I bind you,” — lo, these are liable.
- B. [If he used the language,] “By heaven and earth,” lo, these are exempt.
- C. (1) “By [the name of] Alef-dalet [Adonai]” or (2) “Yud-he [Yahweh],” (3) “By the Almighty,” (4) “By Hosts,” (5) “By him who is merciful and gracious,” (6) “By him who is long-suffering and abundant in mercy,” or by any other euphemism —
- D. lo, these are liable.
- E. “He who curses making use of any one of these is liable,” the words of R. Meir.
- F. And sages exempt.
- G. “He who curses his father or his mother with any one of them is liable,” the words of R. Meir.
- H. And sages exempt.
- I. He who curses himself and his friend with any one of them transgresses a negative commandment.
- J. [If he said,] (1) “May God smite you,” (2) “So may God smite you,” this is [language for] an adjuration [conforming to] which is written in the Torah (Lev. 5: 1).
- K. (3) “May he not smite you,” (4) “may he bless you,” (5) “may he do good to you” —
- L. R. Meir declares liable [for a false oath taken with such a formula].
- M. And sages exempt.
- I.1** A. “I impose an oath on you,” — *what is the sense of this statement?*
- B. Said R. Judah, “This is the sense of the statement: “**I impose an oath on you,**” by the oath that is stated in the Torah; **I command you,**” by the commandment that is stated in the Torah; **I bind you,**” by the binding that is stated in the Torah.”
- C. Said to him Abbayye, “But then what about what R. Hiyya repeated as a Tannaite formulation: ‘[If one used the language,] “I chain you,” they are liable.’ But is the word ‘chain’ used in the Torah [that the explanation should be as you have proposed]?” [In fact, the language of the Torah is not what governs here.]
- D. Rather, said Abbayye, “This is the sense of the statement: **I impose an oath on you,** by oath; **I command you,**” by oath; **I bind you,** by oath.’ ‘I chain you, by oath.”

II.1 A. (1) “By [the name of] Alef-dalet [Adonai]” or (2) “Yud-he [Yahweh],” (3) “By the Almighty,” (4) “By Hosts,” (5) “By him who is merciful and gracious,” (6) “By him who is long-suffering and abundant in mercy,” or by any other euphemism — **lo, these are liable:**

- B. *Does this formulation bear the implication that “merciful and gracious” are also valid names of God? But note the following contradictory statement:*
- C. There are names of God that may be erased [not referring only to God] and there are names that may not be erased. These are the names that may not be erased: El, Eloha, Elohim, your God, I am that I am, Alef Dalet, Yod He, Shaddai, Sebaot — these may not be erased. But Great, Might, Awesome, Majestic, Strong, Powerful, Potent, Merciful, Gracious, Long Suffering, Abounding in Kindness — these may be erased.
- D. *Said Abbaye, “The Mishnah refers to the formulation, ‘I adjure you by the One who is Gracious, [35B] the One who is Merciful.’”*
- E. *Said to him Raba, “If so, how about [If he used the language,] ‘By heaven and earth,’ lo, these are exempt. By your reasoning, here too he should be liable, in the formulation, ‘By him to whom heaven and earth belong’!”*
- F. *That’s nonsense! There, since there is nothing else that can be classified as ‘merciful and gracious,’ it is obvious that the intent can only be, ‘by the One who is gracious, by the one who is merciful,’ but here, since there really are heaven and earth, the meaning can only be, ‘by heaven and earth.’”*

Euphemisms for the Divine Name

II.2. A. *Our rabbis have taught on Tannaite authority:*

- B. If one wrote alef lamed of elohim and yod he of the Tetragrammaton, they may not be erased; shin daled of Shaddai and alef daled of Adonai, saddi bet of Sebaot may be erased.
- C. R. Yosé says, “The whole word, sebaot, may be erased, since sebaot refers to Israel alone: ‘And I will bring forth my hosts, my people, the children of Israel, out of the land of Egypt’ (Exo. 7: 4).
- D. Said Samuel, “The decided law does not accord with the position of R. Yosé.”

II.3. A. *Our rabbis have taught on Tannaite authority:*

- B. Whatever is secondary to the inscription of the divine name, whether before or after [as prefix or suffix (Silverstone)] may be erased.
- C. Before it — how so?
- D. in the phrase, “in the Lord,” the bet that stands for in may be erased; in the phrase, “and the Lord,” the V that stands for and may be erased; in the phrase “from the Lord,” the M that stands for from may be erased; “that the Lord,” the SH that stands for that may be erased; if there is an interrogative H before the Lord, that may be erased; “as the Lord,” the K that stands for as may be erased.
- E. After it — how so?
- F. in the phrase “our God,” the N that stands for “our” may be erased; “their God,” the HM that stand for their may be erased; “your God,” the KM that stand for your may be erased.

G. Others say, "The suffix may not be erased, for the Name that has already been written down has sanctified the additional letter."

H. Said R. Huna, "The decided law accords with the position of 'others say.'"

II.4. A. All representations of the divine name stated with reference to Abraham in the Torah are holy except for this one that is secular:

B. "And he said, My Lord, if now I have found favor in your sight" (Gen. 18: 3).

C. Hanina, R. Joshua's nephew, and R. Eleazar b. Azariah in the name of R. Eliezer of Modiin said, "This one too is holy."

D. *In accord with whom is the following statement which R. Judah said Rab said, "Greater value attaches to hospitality to travelers than receiving the presence of God"?*

E. *With whom?* With this pair [Hanina, R. Joshua's nephew, and R. Eleazar b. Azariah].

II.5. A. All representations of the divine name stated with reference to Lot in the Torah are secular except for this one that is secular:

B. "And Lot said to them, O not so, my Lord, behold now, your servant has found grace in your sight, and you have magnified your mercy that you have shown to me in saving my life" (Gen. 19:18-19).

C. It is the one who has the power to kill and resurrect, namely, the Holy One, blessed be he.

II.6. A. All representations of the divine name stated with reference to Naboth [1Ki. 21:10-13] in the Torah are holy, in connection with Micah [Judges 17-18] are secular.

B. R. Eliezer says, "Those used in connection with Nabot are sacred, with reference to Micah, there are some of them that are secular and some of them that are sacred; alef lamed is secular, yod he is sacred; except for the following, which is alef lamed but is sacred: 'all the time that the house of God was in Shilo' (Jud. 18:31)."

II.7. A. All representations of the divine name stated with reference to Gibeah of Benjamin in the Torah —

B. R. Eliezer says, "They are secular."

C. R. Joshua says, "They are sacred."

D. Said to him R. Eliezer, "Then does God promise but not carry out what he says?" [Silverstone: if as you say God is meant, why did he tell the other tribes to make war on Benjamin and allow them to be defeated?]

E. Said to him R. Joshua, "What he promised he delivered, but they did not discern whether it was to be victory or defeat [but only asked whether they should go to war and which should go first]. In the end, when they did inquire properly [with the Urim and Tummim], what they had done was approved: 'And Phineas son of Eleazar son of Aaron stood before it in those days, saying, Shall I yet again go out to battle against the children of Benjamin my brother, or shall I cease? And the Lord said, Go up for tomorrow I will deliver them into your hand' (Jud. 20:28)."

II.8. A. All representations of Solomon stated in the Song of Songs are holy to Him to whom belongs peace, except for this one that is secular: "My vineyard, which is

mine, is before me; you Solomon shall have the thousand” (Son. 8:12), *Solomon for himself*, “and two hundred for those who keep the fruit thereof” (Son. 8:12), — *sages*.

- B. Some say, “This too is secular: ‘Behold the bed of Solomon’ (Son. 3: 7).”
- C. “This too is secular” — *then is the other cited verse [Son. 8:12] assuredly secular? Then what about what Samuel said, “A government that kills only one out of every six [in war] in general is not going to be punished, for it is said, “My vineyard, which is mine, is before me; you Solomon shall have the thousand’ (Son. 8:12) — ‘you Solomon shall have the thousand’ for the kingdom of heaven; ‘and two hundred for those who keep the fruit thereof’ (Son. 8:12), — for the kingdom down here on earth.”*
- D. [Then shall we conclude that] *Samuel does not accord with the view of the initial Tannaite authority nor with some say?*
- E. This is the sense of the matter:
- F. Some say, “This is sacred, the other secular, namely, the verse about the bed,” *and Samuel concurs with some say.*

II.9. A. All representations of a king stated in Daniel are secular except for this one that is secular:

- B. “You, king, king of kings, unto whom the God of heaven has given the kingdom, the power, the strength and the glory” (Dan. 2:37).
- C. Some say, “This too is sacred: ‘My Lord, the dream be to them that hate you and the interpretation thereof to your enemies’ (Dan. 4:16). *Now to whom can he have made that statement? Then if you should imagine that he is addressing Nebuchadnezzar, who then are those who hate him if not Israel! Then he is cursing Israel!*”
- D. *And the initial Tannaite authority?*
- E. *He takes the view, “Are Nebuchadnezzar’s enemies only Israelites? Did not gentiles hate him too?”*

III.1 A. **or by any other euphemism — lo, these are liable:**

- B. *An objection was raised [to the proposition that an oath may be taken by any other euphemism]:*
- C. **“...’the Lord make you an execration and an oath among your people:”**
- D. **Why is this statement made? Is it not already said, “The priest shall cause the woman to swear with the oath of cursing” (Num. 5:21)?**
- E. **Because it is said, “If a person hears a execration to give evidence as a witness” (Lev. 5: 1),**
- F. **Here there is reference to “execration” and there too [at Lev. 5: 1]. Just as here, an oath is involved, so there, an oath is involved. Just as here, there that the oath is taken only with the expression of the Holy Name of God beginning with Y H, so I impose that same detail on all oaths that are listed in the Torah, which are to be taken only with the expression of the Holy Name of God beginning with Y H. [Sifré to Numbers XIV:II.1].**

- G. *Said Abbaye, "There is no contradiction. The one represents the position of R. Hanina bar Idi, the other, of rabbis, in line with that which has been taught on Tannaite authority."*
- H. R. Hanina bar Idi says, "Since the Torah has said, 'You shall swear' (Exo. 22:10, where an oath is required), and the Torah also has said, 'You shall not swear' (Lev. 19:12), 'You shall curse' (Num. 5:21), and 'you shall not curse' (Lev. 19:14), just as 'you shall swear' means by the divine name, so 'you shall not swear' means by the divine name; 'you shall curse' means by the divine name,' so 'you shall not curse' means by the divine name."
- I. *And as to rabbis, if they had a tradition involving a verbal analogy linking the one to the other, they should require use of the divine name, and if they had no such tradition of a verbal analogy, then how do they know that the use of "execration" involves the taking of an oath?*
- J. *The answer is in line with that which has been taught on Tannaite authority:*
- K. When Lev. 5:1 refers to "execration," [without an allusion to an oath], "execration" can only bear the meaning of "an oath," in line with the usage, "And the priest shall cause the woman to swear with the oath of execration" (Num. 5:21) [so "execration" involves an oath].

III.2. A. *Now there the language that is used is, "the oath of execration"! [So "execration" involves an oath, but then, how do we know that an oath without an execration qualifies as well (Silverstone)?]*

- B. *It is written, "the oath of execration" and this is the sense of the statement: When Lev. 5:1 refers to "execration," [without an allusion to an oath], "execration" can only bear the meaning of "an oath," in line with the usage, "And the priest shall cause the woman to swear with the oath of execration" (Num. 5:21) [so "execration" involves an oath].*
- C. **[36A]** And how on the basis of Scripture do we know to treat an oath that has no execration like an oath that has one? Because it is said, "And hears the voice of execration" — and hears the execration and hears the voice.

III.3. A. Said R. Abbahu, "How do we know that 'an execration' is the same as an oath? As it is said, 'And brought him under a curse' (Eze. 17:13), and further, 'And he also rebelled against king Nebuchadnezzar who made him swear by God' (2Ch. 36:13)."

III.4. A. *A Tannaite statement:*

- B. The language "cursed" may bear the meaning of excommunication, curse, or oath —
- C. excommunication: "curse you Meroz, said the angel of the Lord, curse you bitterly the inhabitants thereof" (Jud. 5:23), and said Ulla, "With four hundred blasts of the ram's horn Barak excommunicated Meroz."
- D. curse: "And these shall stand for the curse" (Deu. 27:13), "Cursed be the man who makes a graven image" (Deu. 27:15).
- E. oath: "And Joshua adjured them at that time saying, Cursed be the man before the Lord" (Jos. 6:26).
- F. *But perhaps he did two things to them, adjured them and also cursed them?*

- G. *Rather, here is the evidence:* “And the men of Israel were distressed that day, but Saul adjured the people saying, Cursed be the man who eats” (1Sa. 14:24), and further, “But Jonathan did not hear when his father adjured the people” (1Sa. 14:27).
- H. *But perhaps here too he did two things to them, that is, he may have adjured them and also cursed them?*
- I. *But is it then written, “and cursed”?* [The language he did use can only mean, he adjured the people.]
- J. *Well, if that’s the way you want to go, you may say, there also [at Jos. 6:26] it also is not written, “and cursed.”*

- III.5.** A. Said R. Yosé b. R. Hanina, “The word ‘amen’ bears the meaning of oath, acceptance of a statement, and confirmation of a statement.
- B. “oath: ‘And the woman shall say, amen, amen’ (Num. 5:22).
 - C. “acceptance of a statement: ‘Cursed be he who confirms not the words of this Torah to do them and all the people shall say, amen’ (Deu. 27:26).
 - D. “and confirmation of a statement: ‘And the prophet Jeremiah said, Amen, the Lord so so, the Lord perform your words’ (Jer. 28: 6).”

- III.6.** A. Said R. Eleazar, “The word ‘no’ stands for an oath, and the word ‘yes’ stands for an oath.”
- B. *Well, that the word “no” stands for an oath is no problem:* “And the waters shall no more become a flood” (Gen. 9:15), and further, “For this is as the waters of Noah unto me, for as I have sworn the the waters of Noah should no more go over the earth” (Isa. 54: 9). *But that “yes” also is an oath — how do we know that?*
 - C. *Well, it’s perfectly reasonable, for if “no” stands for an oath, “yes” also should stand for an oath.*
 - D. *Said Raba, “But that is on condition that he said, ‘no, no,’ twice, or ‘yes, yes,’ twice, as it is written: ‘And all flesh shall not be cut off any more by the waters of the flood’ (Gen. 9:11) and also ‘and the waters shall no more become a flood’ (Gen. 9:15). And, then, since ‘no’ has to be said twice to mean an oath, so too ‘yes’ must be said twice to mean an oath.”*

IV.1 A. **“He who curses making use of any one of these is liable,” the words of R. Meir. And sages exempt:**

- B. *Our rabbis have taught on Tannaite authority:*
- C. ““Any man who curses his God shall bear his sin’ (Lev. 24:15).
- D. “Why is this passage stated? Is it not already said, ‘And he who blasphemes the name of the Lord shall surely be put to death’ (Lev. 24:16)?
- E. “Since that passage specifies, ‘...blasphemes the Name....,’ one might think that a person is liable only on account of cursing the ineffable Name. How do I know that encompassed within the prohibition are also euphemisms?
- F. “Scripture states, ‘Any man who curses his God’ — in any manner whatsoever,” the words of R. Meir.
- G. And sages say, “On account of using the ineffable Name, one is subject to the death penalty, but as for euphemisms, one is subject to the admonition [not to do so, but not to the death penalty if he does so].”

V.1 A. “He who curses his father or his mother with any one of them is liable,” the words of R. Meir. And sages exempt:

- B. *Who are sages here? It is R. Menahem b. R. Yosé, for it has been taught on Tannaite authority:*
- C. R. Menahem b. R. Yosé says, “‘When he blasphemes the name, he shall be put to death’ (Lev. 24:16) — why specify ‘the name’? It teaches that if one curses his father or mother, he is liable only if he curses them by the divine name.”

VI.1 A. He who curses himself and his friend with any one of them transgresses a negative commandment:

- B. *Said R. Yannai, “Now here we have the view of all authorities [Meir and sages]: ‘Only take heed to yourself and keep your soul diligently’ (Deu. 4: 9), read in line with what R. Abin said R. Ilai said, ‘In any passage in which you find the language, “take heed,” “lest,” or “not,” what you have is only a negative commandment.”’*

VII.1 A. and his friend:

- B. “You shall not curse the deaf” (Lev. 19:14).

VIII.1 A. [If he said,] “May God smite you,” “So may God smite you,” this is [language for] an adjuration [conforming to] which is written in the Torah:

- B. *In session before R. Judah, R. Kahana was in session and reciting this Mishnah as we have learned it.*
- C. *He said to him, “Clean up your language [so that it does not appear that you are cursing me in particular]!”*
- D. *One of the rabbis in session before R. Kahan was saying, “‘God will likewise break you for ever, he will take you up and pluck you out of your tent and root you out of the land of the living, selah’ (Psa. 52: 7).”*
- E. *He said to him, “Clean up your language [so that it does not appear that you are cursing me in particular]!”*
- F. *So what do I need both stories that make the same point?*
- G. *What might you otherwise have thought? The initial statement concerns citations from our Mishnah, but as to what we recite from Scripture, I might have said that in such a case we cannot clean up the language anyhow. So we are informed that that is not the case [but we may revise the language of Scripture to conform to the proprieties of context].*

IX.1 A. “May he not smite you,” “may he bless you,” “may he do good to you” — R. Meir declares liable [for a false oath taken with such a formula]. And sages exempt:

- B. *So does R. Meir not take the position that out of a negative statement you may derive an affirmative one? [“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...,” and yet Meir makes the witnesses liable, even though he does not hold that the positive may be derived from the negative (Silverstone)].*
- C. *Reverse the attributions.*
- D. *When R. Isaac came, he stated the Mishnah’s rule in the way in which we have learned to repeat it. Said R. Joseph, “Now that we have learned the Mishnah in*

this wise, and since when R. Isaac came, he also stated it in the same way, we have to draw the conclusion that it is definitely to be memorized in the form in which we have it.”

- E. *But then what about that question!*
- F. *He does not maintain that from the negative we derive the affirmative in money matters, but he does when it comes to other kinds of prohibitions.*
- G. *Yeah, well the case of the wife accused of adultery, we deal with a prohibition, and yet, R. Tanhum b. R. Hakhinai said, “‘What is written is ‘be you free,’” [with the further implication, if you have gone aside, be not free,’ so we deduce from the fact that Scripture does not state the affirmative but we may derive the affirmative from the negative, and this argument against Meir is answered by Tanhum when he says, ‘be clear’ can be read ‘be choked’ and taken with the next verse, in which case Scripture gives both negative and positive, and it must follow that even with regard to a prohibition we cannot derive the affirmative from the negative (Silverstone)]. So the operative consideration is that the word “be clear” can be read “be choked,” but if it were not so, we should not know the contrary, for we do not maintain that we may derive the affirmative from the negative.*
- H. **[36B]** *Well, reverse matters in such a way that will affirm that even in a matter of a prohibition he does not hold that view.*
- I. *Objected Rabina, “And when it comes to a prohibition does he not maintain that view? Then what about the following:*
- J. *“In the case of priests who minister at the altar when they are drunk, or when they are not properly groomed, in which case they are subject to the death penalty, will you maintain that in such cases R. Meir does not hold that principle [Silverstone: In these cases we derive the affirmative from the negative in order to impose the penalty]? But surely we have learned: **The following priests are subject to the death-penalty [if they participate in the cult]: those who have excessively long hair and those who are drunk [T. Ker. 1:5C].”***
- K. *Rather, in point of fact, you do have to reverse the attributions. But where he does not maintain that view, it is in monetary cases, but in cases involving a prohibition, he does hold that view, and the case of the accused wife is exceptional, for in her case we deal with a prohibition that involves also a matter of money [for she will lose her marriage contract].*

I.1 sets forth the unstated premises of the language presented by the Mishnah. II.1 goes over the details of the Mishnah. Nos. 2, 3 provide a Tannaite complement, which forms the head of a thematic anthology, running through Nos. 4-9. III.1 harmonizes the Mishnah’s conception with another presented on Tannaite authority. Nos. 2-6 form an anthology that is tacked on. IV.1, V.1 complement the Mishnah with a Tannaite formulation. VI.1, VII.1, VIII.1, IX.1 provide light glosses for the Mishnah’s statement.