

V

BAVLI TRACTATE SHEBUOT CHAPTER FIVE

FOLIOS 36B-38B

5:1-5

5:1

- A. 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,
- B. before a court and not before a court,
- C. from one's own mouth.
- D. "But as to one from the mouth of others,
- E. "he is liable only when he will deny [the claim] in court," the words of R. Meir.
- F. And sages say, "Whether it is from his own mouth or from the mouth of others, once he has denied him, he is liable."
- G. [If one took a false oath,] one is liable if he deliberately took a [false] oath, or [if he took one] in error, while deliberately [denying] bailment.
- H. But one is not liable [if he] inadvertently [took a false oath in regard to a bailment].
- I. And for what are they liable on account of deliberate violation?
- J. A guilt offering which is worth [two] shekels of silver (Lev. 5:15).

5:2

- A. An oath concerning a bailment — how so?
- B. He said to him, "Give me my bailment which I have in your hand"
- C. "I swear that you have nothing in my hand" —
- D. or if he said to him, "You have nothing in my hand," "I impose an oath on you", and he said, "Amen"
- E. lo, this one is liable.
- F. [If] he imposed an oath on him five times, whether this is before a court or not before a court, and the other party denied it,
- G. he is liable for each count.

- H. Said R. Simeon, “What is the reason? Because [on each count] he has the power to retract and to confess [that he does have the bailment and will now return it].

5:3

- A. [If] five people laid claim on him and said to him, “Give us the bailment which we have in your hand” —
B. “I swear that you have nothing in my hand” —
C. he is liable on only one count.
D. “I swear that you have nothing in my hand, nor you, nor you” —
E. he is liable on each and every count.
F. R. Eliezer says, “[This is so] only if he states the oath at the end.”
G. R. Simeon says, “[This is so] only if he will state an oath for each and every [claim] .”
H. “Give me my bailment, loan, stolen goods, and lost property [Lev. 6: 2] which I have in your hand” —
I. “I swear you have nothing in my hand” —
J. he is liable on only one count.
K. “I swear that you do not have in my hand a bailment, loan, stolen goods, or lost property” —
L. he is liable for each and every count.
M. “Give me the grain, barley, and spelt, which I have in your hand” —
N. “I swear you have nothing in my hand” —
O. he is liable on only one count.
P. “I swear that you have not got in my hand wheat, barley, or spelt” —
Q. he is liable for each and every count.
R. R. Meir says, “Even if he had said, ‘Wheat, barley, and spelt’ [Exo. 9:31-32] he is liable on each and every count.”

5:4

- A. “You raped and seduced my daughter” —
B. and he says, “I did not rape and I did not seduce”
C. “I impose an oath on you” —
D. and he said, “Amen” —
E. he is liable.
F. R. Simeon declares him exempt,
G. “since he does not pay a fine on the basis of his own testimony.”
H. They said to him, “Even though he does not pay a fine on the basis of his own testimony,
I. “he does pay for humiliation and damages on the basis of his own testimony.”

- A. “You stole my ox” —
- B. and he says, “I did not steal it” —
- C. “I impose an oath on you,” —
- D. and he said, “Amen” —
- E. he is liable.
- E “I stole it, but I did not slaughter it, and I did not sell it” —
- G. “I impose an oath on you” —
- H. and he said, “Amen” —
- I. he is exempt.
- J. “Your ox killed my ox” —
- K. and he said, “It did not kill” —
- L. and he says, “I impose an oath on you” —
- M. and he said, “Amen” —
- N. he is liable.
- O. “Your ox killed my slave” —
- P. and he says, “It did not kill” —
- Q. “I impose an oath on you” —
- R. and he said, “Amen,” —
- S. he is exempt.
- T [If] he said to him, “You injured me and made a wound on me,”
- U. and he said, “I did not injure you and I did not make a mark on you,”
- V. “I impose an oath on you” —
- W. and he said, “Amen” —
- X. he is liable.
- Y. [If] his slave said to him, “You knocked out my tooth and you blinded my eye,”
- Z. and he said, “I did not knock out your tooth or blind your eye,”
- AA. and he said to him, “I impose an oath on you,” —
- BB. and he said to him, “Amen” —
- CC. he is exempt.
- DD. This is the governing principle: Whoever pays compensation on the basis of his own testimony is liable.
- EE. And whoever does not pay compensation on the basis of his own testimony is exempt [in the case of these oaths].

I.1 A. [And for what are they liable on account of deliberate violation? A guilt offering which is worth [two] shekels of silver (Lev. 5:15):] *R. Aha bar Huna and R. Samuel b. Rabbah bar bar Hannah and R. Isaac b. R. Judah studied the Tannaite rules of oaths in the household of Rabbah. R. Kahana met them. He said [37A] to them, “If someone deliberately violated an oath of bailment, and witnesses had admonished him not to do so and informed him of the consequences, what is the law? [Does he have to bring an offering, is he flogged, or does he*

suffer both sanctions (Silverstone)?] *Since in the rest of the Torah we find no case in which a deliberate law-violator presents an offering, while in the present matter, he presents an offering, then there would be no difference if he was subjected to an admonition or not subjected to an admonition [and even if he is admonished, he presents an offering but is not flogged]? Or perhaps that is the case only when he has not been admonished, but when he has been admonished and acts in any event, he is flogged but does not present an offering? Or perhaps we inflict both punishments?"*

- B. *They said to him, "We have learned in a Tannaite formulation: **The oath of bailment is subject to a more strict rule than [the oath of testimony], for on account of deliberately violating the oath of bailment one is liable to a flogging, and for unwittingly violating it, a guilt offering worth two silver sheqels [cf. T. Sheb. 4:1A-B, H-I].** Now, since the passage is formulated in the language, for on account of deliberately violating the oath of bailment one is liable to a flogging, it must follow that there has been admonition [on which basis we know the difference between inadvertent and deliberate action], and the statement is clear that a flogging is inflicted, but not an offering. And in what way is this a more stringent rule? Because anybody would rather present an offering than get flogged."*
- C. *Said to them Raba bar Iti, "But who is the Tannaite authority who takes the view 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, but in the view of rabbis, he also presents an offering."*
- D. *Said to them R. Kahana, "Except that formulation! For I have learned to repeat that matter as a Tannaite formulation, and this is the version I have as the Tannaite formulation: All the same are deliberately violating the law and inadvertently doing so, the penalty is a guilt offering worth two silver sheqels. And in what way is this a more stringent rule? Because in the case of an oath of testimony that has been violated, one presents a sin offering worth a mere danqa, while here he presents a guilt offering worth two sheqels of silver."*
- E. *Then why not solve the problem [of Kahana] on this basis [that he presents an offering and is not flogged]?*
- F. *Maybe it refers to a case in which there was no admonition [and therefore no flogging].*
- G. *Another version: Come and hear — [If one inadvertently took a false oath], one is not liable for inadvertently violating the oath. And if one deliberately violates the oath, what is one's obligation? It is a guilt offering worth two silver sheqels. Does this not refer to a case in which they warned him [and even if he was admonished, he still brings only an offering but is not flogged]?*
- H. *Here too it refers to a case in which there was no admonition [and therefore no flogging].*
- I. *Come and hear: [We now cite a fragment of an argument:] No, if you have made that statement in the context of a Nazirite who has become unclean, who certainly is flogged, will you say the same in the case of an oath of bailment, since one who violates it does not get flogged? Now since there is a clear reference here to a flogging, it must follow that there has been an admonition, and the statement is*

made, will you say the same in the case of an oath of bailment, since one who violates it does not get flogged? — but he does present an offering?

- J. *What is the meaning of does not get flogged? It means that he is not dismissed after being flogged [but presents an offering as well].*
- K. *So if a Nazirite becomes unclean, would he be dismissed after a flogging? Surely he is explicitly required to present an offering as well [at Num. 6:12]!*
- L. *Well, the reason that he presents an offering is so that his spell as a Nazirite should start once more, now in a state of cleanness.*
- M. *So rabbis repeated this colloquy before Rabbah. He said to him, “Well then, does it follow [from Kahana’s asking for a ruling only in the case in which he was warned, which would follow that, if not warned, he presents an offering, even though witnesses know that he really does have the bailment] that, if there was no admonition, but there are witnesses nonetheless, he would be liable? All he has done is issue a generalized verbal denial [but the oath is nothing, since witnesses know he has the bailment]!”*
- N. *It then follows that Rabbah takes the view :He who denies a claim for money in a case in which there are witnesses is exempt [from presenting an offering, in line with Lev. 5:22].*
- O. *Said R. Hanina to Rabbah, “There is a Tannaite formulation that supports your view:*
- P. *““...and denies it” (Lev. 5:22) — excluding one who concedes the claim to one of the brothers or partners [for this is then not a complete denial that he has the bailment, only denial to the claim of one of the parties to the bailment, and in that case, if the oath is false, he does not have to present an offering].*
- Q. *““...and swears falsely” — excluding a case in which he borrowed on the strength of a bond or borrowed in the presence of witnesses” [in which case the denial can achieve nothing, and he does not present an offering for the oath (Silverstone)].*
- R. *He said to him, “On this basis there is really nothing that sustains my position. For the passage speaks of a case in which he says, ‘I borrowed but I did not borrow before witnesses,’ ‘I borrowed, but I did not borrow on the strength of a written out bond’ [Silverstone: he does not deny he owes the money, merely that there were witnesses or a bond; therefore he does not bring an offering for the oath, because his denial is of no material consequence; but he who denies money though there are witnesses would be liable to an offering]. And how do we know that that is the case? Since it is stated as part of the Tannaite formulation, . ““...and denies it” (Lev. 5:22) — excluding one who concedes the claim to one of the brothers or partners. Now as to the case of conceding the claim to one of the brothers, what sort of a case would be involved? If it is one in which he concedes to him that he has his half, then there is a denial of the remainder, belonging to the other brother. So is it not a case in which he said to him, ‘From both of us you borrowed,’ in which case he replied, ‘No, from one of you I borrowed,’ and that constitutes mere verbal bluster [and is not an actionable oath, since the money is not involved, so he is not liable to an offering]. And since the opening clause speaks of a case of mere verbal bluster, the second clause likewise refers to a case of mere verbal bluster.”*

- S. *Come and take note:* He is not liable for inadvertently violating the oath. And to what he is liable for deliberately violating the oath? A guilt offering worth two silver sheqels. *Does this not refer to deliberate violation of the oath after an admonition by witnesses? [He is liable to present an offering, contrary to Rabbah's view that, where someone has denied owing money and the case involves witnesses, the oath is null so he does not have to bring an offering]?*
- T. No, it is deliberate violation of the law on his own [without witnesses, e.g., he said, "I know just what I'm doing, and I know the consequences"].
- U. *Come and take note:* **[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.** *Now 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? [37B] 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]!*
- V. *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."*
- W. *Come and take note:* A householder who in the case of a bailment lodged with him claimed that it had been stolen [and so is not responsible, being an unpaid bailee], took an oath, and then confessed that he really had the object, and witnesses to the facts came along — if he had confessed before the witnesses came along, he pays the principal, the added fifth, and presents a guilt offering; if this was the case after the witnesses came along that he confessed, he [being classified now as a thief] pays double and presents a guilt offering [even though there are witnesses, contrary to Rabbah's view].
- Y. *Here too, we can explain the case in line with Rabina's explanation above [the witnesses were at that point unable to testify jointly, because they were related through marriage].*
- Z. *Said Rabina to R. Ashi, "Come and take note:* The penalty for the violation of an oath of bailment is more severe than the one attached to the oath of testimony, for one is liable for deliberately violating the oath to a flogging and for inadvertently doing so to a guilt offering worth two silver sheqels. *Now, since the rule is that one is flogged, it must follow that there are witnesses, and yet the passage states, for inadvertently doing so to a guilt offering worth two silver sheqels [so an offering for guilt is presented even where there are witnesses]!"*
- AA. *He said to them, "Except that formulation! For did not R. Kahana say to them, 'I have learned to repeat that matter as a Tannaite formulation, and this is the version I have as the Tannaite formulation: All the same are deliberately violating the law and inadvertently doing so, the penalty is a guilt offering worth two silver sheqels.'"*

BB. *Come and take note:* No, if you have made that statement in the context of a Nazirite who has become unclean, who certainly is flogged, will you say the same in the case of an oath of bailment, since one who violates it does not get flogged? *Now to what sort of a case is reference made? If there are no witnesses, then how can there be a flogging? So it is obvious that there are witnesses. And yet, the statement is made, will you say the same in the case of an oath of bailment, since one who violates it does not get flogged? — so it is obvious that it is a flogging that he does not get, but he does present an offering! Is this not a refutation of the position of Rabbah?*

CC. *It is a genuine refutation.*

I.2. A. [In the context of Rabbah's position, that he who denies a claim for money in a case in which there are witnesses is exempt from presenting an offering, in line with Lev. 5:22], R. Yohanan said, "He who [on oath] denies a monetary claim in a case in which there are witnesses is liable to present an offering. But if the loan is attested by a bond, he is exempt."

B. *Said R. Pappa, "What is the operative consideration behind R. Yohanan's position? It is because, while witnesses will ultimately die [and the denial would carry weight without them, so he presents a guilt offering for the false oath, which ultimately can have profited him], the bond is never going to disappear."*

C. *Said R. Huna b. R. Joshua to R. Pappa, "So a bond will ultimately disintegrate."*

D. *Rather, said R. Huna b. R. Joshua, "This is the operative consideration behind the position of R. Yohanan: It is because it is because a mortgage deed covers real estate, and an offering is not presented [through one's having taken a false oath] because of a mortgage on real estate. [Daiches, Baba Mesia: Seeing that "two" is corroborated by the written document, no oath can be imposed, either in a case of denial or in one of admission, because the document puts the debtor's landed property under a bond, and...no oath is administered in connection with mortgaged property. But when the debtor says "three," the dispute about the remainder as well as the admission of the third sela concerning something that is not mentioned in the document, and which does not therefore affect the debtor's landed property.]*

I.3. A. *It has been stated:*

B. He who imposes an oath upon witnesses in connection with a real estate claim of his —

C. *there is a dispute between R. Yohanan and R. Eleazar —*

D. *One said, "They are liable [if they deny on oath that they have testimony to offer but turn out to be lying, then presenting an offering of variable value."*

E. *They other said, "They are exempt."*

F. *May you draw the conclusion that it is R. Yohanan who has said they are exempt, since R. Yohanan has said, "He who [on oath] denies a monetary claim in a case in which there are witnesses is liable to present an offering. But if the loan is attested by a bond, he is exempt," and this would further accord with the explanation of that position given by R. Huna b. R. Joshua?*

G. *Yes, you may draw that conclusion.*

- I.4.** A. *Said R. Jeremiah to R. Abbahu, “May we say that at issue between R. Yohanan and R. Eleazar is what is at issue between R. Eliezer and rabbis, as has been taught on Tannaite authority: He who steals a field from his fellow and the river swept it away ‘is liable to provide him with a field,’ the words of R. Eliezer. And sages say, ‘He may say to him, “‘Lo, there is yours before you.”” [Cf. M. B.Q. 10:5A, G: He who stole a field from his fellow, and a river swept it away, may say to him, “Lo, there is yours before you”]. And in that connection we said, ‘What is at issue between the two opinions? R. Eliezer interprets scriptural evidences of inclusionary and exclusionary usages, and sages expound the law in accord with the principle of an encompassing principle and its associated particularization [in which case the encompassing principle is limited by what is covered by the particularization thereof.]’*
- B. *“R. Eliezer interprets scriptural evidences of inclusionary and exclusionary usages, as follows: ‘and lie to his neighbor’ (Lev. 5:21) — this forms an inclusionary clause. ‘in a bailment of a loan’ — this forms an exclusionary clause. ‘...or any thing about which he has sworn’ — this forms another inclusionary clause. Thus we have an inclusionary, exclusionary, and inclusionary clause, in which case the final clause encompasses everything. What then does it encompass? Everything. So what is excluded? Only bonds.*
- C. *“Sages expound the law in accord with the principle of an encompassing principle and its associated particularization [in which case the encompassing principle is limited by what is covered by the particularization thereof]: ‘and lie to his neighbor’ (Lev. 5:21) — this forms an encompassing principle. ‘in a bailment of a loan’ — this forms a limiting particularization. ‘...or any thing about which he has sworn’ — this forms another encompassing principle. Thus we have an encompassing principle, limiting particularization, and an encompassing principle. You may encompass under the rule only what conforms to the traits of the limiting particularization. Just as what is covered by the particularization is certainly movable and intrinsically monetary, so whatever is movable and intrinsically monetary is included, excluding lands, which are immovable, and excluding slaves, which are treated by the law as comparable to real estate, and excluding bonds, which, though movable, are not in themselves monetary.*
- D. *“Now shall we say that the party who imposes liability concurs with R. Eliezer [Eleazar holds witnesses who are adjured to bear witness in a real state case and deny to be liable to present an offering, concurring with Eliezer, who holds that land may be stolen and is in the same category as other goods (Silverstone)], and that the party who exempts them agrees with rabbis [Yohanan exempts witnesses concur that land cannot be stolen]?”*
- E. *[Abbahu] said to [Jeremiah], “Not at all! He who imposes liability concurs with R. Eliezer, but he who exempts them from liability may reply to you that, here too even R. Eliezer would concur, for Scripture says, ‘of*

all,’ and not ‘all’ (Lev. 5:24) [thus leaving room for the exclusion of real estate].”

- F. *Said R. Pappa in the name of Raba, “The Mishnah-passage before us also sustains that position [of Yohanan, that there is no requirement to present an offering for a false oath concerning a real estate case], for a close reading yields the following: “You stole my ox” — and he says, “I did not steal it” — “I impose an oath on you,” and he said, “Amen” — he is liable. The passage does not specify the case, ‘You have stolen my slave,’ and why not? Is it not because a slave is comparable to land, and an offering is not brought for denying that there is a mortgage covering land?”*
- G. *Said R. Pappi in the name of Raba, “But then note what concludes the passage: **This is the governing principle: Whoever pays compensation on the basis of his own testimony is liable. And whoever does not pay compensation on the basis of his own testimony is exempt [in the case of these oaths].** Now what is the language, **This is the governing principle**, meant to encompass? Is it not to encompass the claim, ‘You have stolen my slave’? [38A] So from this passage there is no possibility of deducing pertinent evidence.”*

II.1 A. 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. [If] he imposed an oath on him five times, whether this is before a court or not before a court, and the other party denied it, he is liable for each count. Said R. Simeon, “What is the reason? Because [on each count] he has the power to retract and to confess [that he does have the bailment and will now return it]:”

- B. *Our rabbis have taught on Tannaite authority:*
- C. “If one made a generalized claim, he is liable on only a single count. But if he made a particularized claim [‘you’ ‘and you’ ‘and you’], he is liable on each count,” the words of R. Meir.
- D. R. Judah says, “‘By an oath, I do not owe you, you, or you,’ — he is liable on each count.”
- E. R. Eliezer says, “‘Not to you nor to you nor to you, by an oath,’ — he is liable on each count.”
- F. R. Simeon says, “He is liable on each count only if he will say to each one individually, ‘By an oath.’”
- G. Said R. Judah said Samuel, “The generalized claim defined by R. Meir is comparable to the particularized claim of R. Judah, the generalized claim of R. Judah is the particularized claim of R. Meir.” [Silverstone: Judah says, “I swear I do not owe you and not you,” is a particularization, and this is response to Meir’s insistence that it is a single, generalized statement, because of the use of the and, which is equivalent to “I do not owe all of you.” Meir’s particular statement can only be, “I do not owe you not you not you,” without the and, each then being

treated as a distinct claimant. The “not you not you” is treated by Judah as a general statement, for he insists, “and not you” is a particularization.]

H. And R. Yohanan said, “All concur that the language, ‘and not you,’ is a particularization of the oath [and on each such count, one would be liable]. Where they differ is only where he said, ‘not you.’ R. Meir treats it as a particularization of the oath, and R. Judah treats it as a generalized statement. And what is a generalized formulation in the view of R. Meir? It is, ‘I swear that I have nothing belong to any of you [plural] in my position.’”

I. *What is at issue between the two authorities [Samuel, Yohanan]?*

J. *Samuel derives his conclusion from a close reading of the just-now cited Tannaite formulation, while R. Yohanan derives his conclusion from a close reading of the Mishnah-passage before us.*

K. *Samuel derives his conclusion from a close reading of the just-now cited Tannaite formulation:*

L. *since R. Judah has said, ‘and not you’ is a particularization, it is to be inferred that he responds to R. Meir’s judgment that it forms a generalization, and so he disagrees and says to him it is a particularization.*

M. *And R. Yohanan?*

N. *He says, “In R. Meir’s view, both formulations, ‘not you’ and ‘and not you,’ are a particularization, and R. Judah said to him, ‘As to “and not you” I agree with you, but as to “not you” I differ from you.’”*

O. *And Samuel?*

P. *If so, why take note of that in which he agrees with him; let him make mention only of that in which he disagrees with him. [Silverstone: in stating his view in the cited Tannaite formulation, Judah should say, “not you” is a general formulation, in which he differs from Meir who holds it is a particularization; and not “and not you” is a particularization, for with that view Meir concurs].*

Q. *...while R. Yohanan derives his conclusion from a close reading of the Mishnah-passage before us [the anonymous components of which are routinely assumed to belong to Meir]:*

R. *Since R. Meir says that **“I swear that you [plural] have nothing in my hand”** forms a generalized statement, we must infer that, “and not with you” is a particularization. For if you should imagine that, “and not you” is a generalization,” then why does he formulate the rule as **“I swear that you [plural] have nothing in my hand”**? Let him formulate it as, “I swear I do not owe you [sing.] and not you and not you,” and it would be self evident that the language, **“I swear that you [plural] have nothing in my hand”**, is a general statement.*

S. *And Samuel?*

T. *He will say to you, “Whoever says, ‘and not you,’ is as though he said, **“I swear that you [plural] have nothing in my hand.”**”*

U. *We have learned in the Mishnah, **Not you and not you and not you** [Silverstone: he is liable for each one, and then Meir would hold that “and*

not you” is a particularization, which refutes Samuel’s reading of his opinion].

- V. *Repeat it as* **Not you**.
- W. *Come and take note:* **“I swear that you do not have in my hand a bailment, or loan, or stolen goods, or lost property” — he is liable for each and every count** [hence enumerating the objects with the word “or=and” makes the statement particular, against Samuel (Silverstone)].
- X. *Repeat it as* **a bailment, loan, stolen goods, lost property**.
- Y. *Come and take note:* **I swear that you have not got in my hand wheat, or barley, or spelt” — he is liable for each and every count**.
- Z. *Repeat it as* **wheat, barley, spelt**.
- AA. *Boy, this Tannaite authority sure makes mistakes as he goes along! [Do we have to assume that the Tannaite authority memorizes in a consistently inaccurate way? That sort of slovenliness surely should not be taken as exegetical premise.]*
- BB. *Rather, who is the authority behind our passage [since it obviously cannot be Meir]? It is Rabbi, who has said, “There is no difference between the formulation, ‘as much as an olive, as much as an olive,’ and ‘as much as an olive and as much as an olive,’ — in either case, the language is to be interpreted as a particularization.” [Whether or not the ‘and’ is used or not, the thoughts are distinct. Here too, the ‘and’ is taken to be present whether used or not.]*
- CC. *Come and take note of R. Meir’s own, explicitly stated opinion:* **R. Meir says, “Even if he had said, ‘Wheat, and barley, and spelt’ — he is liable on each and every count.”**
- DD. *Repeat it as* **Wheat, barley, spelt**.
- EE. *What is the meaning of* “even”?
- FF. Said R. Aha b. R. Iqa, “Even though ‘a grain of wheat’ is encompassed in the language ‘wheat,’ or a grain of barley in barley, or a grain of spelt in spelt” [it makes no difference; all are the same and the bailee in this language denies on oath precisely the claim of the other (Silverstone)].

III.1 A. “Give me my bailment, loan, stolen goods, and lost property [Lev. 6: 2] which I have in your hand” — “I swear you have nothing in my hand” — he is liable on only one count. “I swear that you do not have in my hand a bailment, loan, stolen goods, or lost property” — he is liable for each and every count. “Give me the grain, barley, and spelt, which I have in your hand” — “I swear you have nothing in my hand” — he is liable on only one count. “I swear that you have not got in my hand wheat, barley, or spelt” — he is liable for each and every count. R. Meir says, “Even if he had said, ‘Wheat, barley, and spelt” [Exo. 9:31-32] he is liable on each and every count:”

- B. [If someone said,] “Give me wheat and barley” —
- C. Said R. Yohanan, “Even if there were only a penny’s worth of all of them together, they combine” [to impose liability for an offering.”

- D. *There was a dispute in this matter between R. Aha and Rabina. One said, "For the particularizations, one is liable, but for the generalizations not," and the other says, "He also is liable for the generalizations."* [Silverstone: when he says, "I swear I have nothing of yours in my possession, wheat, barley, spelt," the first part is a generalization, then there are three particularizations. When the Mishnah says he is liable on each count, is it three trespass offerings or four? Aha and Rabina differ, one says, three, the particularizations alone, not for the generalization,, and the first part is not an additional youth, and Yohanan's comment that they combine to the value of a penny refers to the prior statement in the Mishnah, "I swear there is nothing of yours in my possession," without particularization; but where there are particulars, they do not combine. The other maintains that when the Mishnah states he is liable on each count, it means four; the generalization is also taken as an oath, and Yohanan refers to this too; for the first of the four oaths, the generalization, he is liable to bring an offering even if there is only the value of a penny in the wheat, barley, and spelt combined.]
- E. *But did not R. Hiyya repeat as a Tannaite statement, "Here there are fifteen sin offerings to be presented"? But if it were as you say, there should be twenty!* [Silverstone: if five persons claimed, each one, wheat, barley, and spelt, and he denied the claim of each, he is liable to bring fifteen sin offerings; so Hiyya is counting the particulars only, for if he counted the general statements as well, there would be four for each, thus twenty.]
- F. *That Tannaite authority [Hiyya] counts the particulars but is not toting up the general statements in any event* [though he may concur that there should be four, hence twenty (Silverstone)].
- G. *But did not R. Hiyya teach as a Tannaite formulation, "There are here twenty sin offerings"?*
- H. That refers to a bailment, loan, theft, and lost object [where there are four particulars for five claimants, but he ordinarily does not reckon the general statements (Silverstone)].

III.2. A. *Raba asked R. Nahman, "If five people laid claim on him, saying to him, 'Give us the bailment, loan, theft, and lost object of ours that are in your possession,' if he then said to one of them, 'I swear I have nothing of yours in particular in my hand, the bailment, loan, theft, and lost object, nor of yours, nor of yours, nor of yours, nor of yours,' what is the law? Has he become liable on account of one of them [38B], or is he liable on account of each one?"*

- B. *Come and take note: R. Hiyya taught as a Tannaite formulation, "There are here twenty sin offerings"! Now how is that the case? If the man spelled out the statement to each claimed [the bailment, loan, theft, and lost object], then what else might be new? Does he come to tell us how to do arithmetic? Obviously, therefore, the man did not spell out the matter in detail, and we derive from this case the inference that they are particulars* [even though not fully spelled out to each claimant; when he says 'and you do not have in my possession' he is referring to particulars already enumerated to the first claimant, therefore twenty offerings (Silverstone)].

IV.1 A. “You raped and seduced my daughter” — and he says, “I did not rape and I did not seduce” — “I impose an oath on you” — and he said, “Amen” — he is liable. R. Simeon declares him exempt, since he does not pay a fine on the basis of his own testimony.” They said to him, “Even though he does not pay a fine on the basis of his own testimony, he does pay for humiliation and damages on the basis of his own testimony:”

- B. *Said R. Hiyya bar Abba said R. Yohanan, “What is the operative consideration behind the ruling of R. Simeon? It is that it is principally the fine that is subject to the claim” [Deu. 22:29, and for denying a fine under oath, one is not liable, though for seduction there is liability for humiliation and damage, the father of the girl is concerned with the fine (Silverstone)].*
- C. *Said Raba, “A parable for the position of R. Simeon: to what may the matter be compared? To the case of a man who said to his fellow, ‘Hand over to me the wheat and barley and spelt that I have in your possession.’ The other said to him, ‘Do you swear that you do not have in my possession wheat.’ And it turned out that, while he did not have the wheat, he did have the barley and spelt. He is exempt, for when he took the oath, it was with the wheat in mind that he took the oath, so he took the oath concerning what in fact was the truth.”*
- D. *Said to him Abbaye, “What sort of a comparison is this! There the man explicitly denies having wheat, but he does not make a denial concerning barley and spelt. Here he denies everything [he denies the seduction, which by the way also involves denying liability to humiliation and personal injury (Silverstone). Rather, this may be compared only to a case in which he says to his fellow, ‘Give me the wheat and barley and spelt that I have in your possession, ‘ ‘I swear that you have not got anything at all in my possession,’ and it turns out that it is wheat they he did not have, but barley and spelt he did have, in which case, he is liable.” [Silverstone: he denied barley and spelt; here too Simeon should make him liable, for he denied humiliation and personal injury].*
- E. *Rather, when Rabin came, he said R. Yohanan said, “In the opinion of Rabban Simeon [ben Gamaliel], it is the fine to which he lays claim, not to the payment for humiliation and personal injury; in the opinion of sages, he is also laying claim to the compensation for humiliation and personal injury.”*
- F. *What is at issue between them?*
- G. *Said R. Pappa, “R. Simeon takes the view that someone is not going to neglect something that is fixed in its compensation [the fine] to lay claim for something which is not of fixed value [where he does not know what he is going to get], while rabbis take the view that the claimant will not abandon that which, if the accused were to concede the claim, he would not be exempt [that is, for the monetary damages] in favor of that which, if the accused were to admit the claim, he would be exempt.” [This way the claimant knows he will get something, whatever the other may do.]*

I.1 opens with a question that addresses the status of the sanction accompanying the Mishnah's law. The clarification of the Mishnah's statement hardly requires this composition, but the amplification of it does. So we have one kind of Mishnah-commentary. But, it is clear, the elegant composition has taken shape within its own terms and interests and not in response to the requirement of

Mishnah-commentary. Nos. 2, 3+4 carry forward the discussion, forming an autonomous appendix. The point of intersection, we see, comes only at 4.F-G. II.1 vastly refines the rather generalized formulation of the rule in the Mishnah. Once more, the intersection with the Mishnah is tangential to the composition. III.1+2 raises a secondary but pertinent issue. IV.1 clarifies the operative consideration in the Mishnah's authority's ruling.