

VIII

BAVLI TRACTATE SHEBUOT CHAPTER EIGHT

FOLIOS 49A-49B

8:1

- A. There are four kinds of guardians: (1) an unpaid bailiff, (2) a borrower, (3) a paid bailiff, and (4) a renter.
- B. (1) An unpaid bailiff takes an oath under all circumstances.
- C. (2) A borrower pays compensation for damages in all circumstances.
- D. (3) A paid bailiff and (4) a renter take an oath on account of a beast which is lamed, driven off, taken for ransom, or deceased, but they pay compensation for what is lost or stolen.

8:2

- A. [If] one said to an unpaid bailiff, "Where is my ox?"
- B. (1) he said to him, "It died," but in fact it had been lamed, driven off, stolen, or lost,
- C. (2) "It was lamed," but in fact it had died, or been driven off, stolen, or lost,
- D. (3) "It was driven off," but in fact it had died, been lamed, stolen or lost,
- E. (4) "It was stolen," but in fact it had died, or been lamed, driven off, or lost,
- F. (5) "It was lost, "but in fact it had died, been lamed, driven off, or stolen,
- G. "I impose an oath on you,"
- H. and he said, "Amen" — he is exempt.

8:3

- A. "Where is my ox?"
- B. (1) and the bailiff said to him, "I have no idea what you're talking about" — but in fact it had died or been lamed or driven off or stolen or lost —
- C. "I impose an oath on you,"
- D. and he said to him, "Amen" —
- E. he is exempt.
- F. (2) "Where is my ox?"
- G. He said to him, "It got lost" —
- H. "I impose an oath on you" —

- I. and he said, “Amen” —
- J. and witnesses testify against him that he had eaten it —
- K. he pays him compensation for the principal.
- L. If he conceded on his own, he pays compensation for the principal, the added fifth, and a guilt offering.
- M. (3) “Where is my ox?”
- N. he said to him, “It was stolen”
- O. “I impose an oath on you”
- P. he said, “Amen” —
- Q. and witnesses testify against him that he had stolen it —
- R. he pays twofold compensation.
- S. [If] he confessed on his own, he pays the principal, an added fifth, and a guilt offering [but not twofold compensation (M. 5: 4)].

8:4

- A. (4) He said to someone in the market, “Where is my ox which you stole?”
- B. and he says, “I never stole it,”
- C. but witnesses testify against him that he had stolen it —
- D. he pays twofold restitution.
- E. [If] he had slaughtered and sold it, he pays fourfold or fivefold restitution.
- F. [If] he saw witnesses [to what he had done] coming along and said, “I stole it, but I never slaughtered or sold it,”
- G. he pays only the principal.”

8:5

- A. He said to a borrower [M. 8:1A2], “Where is my ox?”
- B. [49B] (1) He said to him, “It died,” but in fact it had been lamed or driven away, stolen, or lost —
- C. (2) “It was lamed,” but in fact it had died or been driven off or stolen or lost —
- D. (3) “It was driven off,” but it had died or been lamed or stolen or lost —
- E. (4) “It was stolen,” and in fact it had died or been lamed or driven off or lost —
- F. (5) “R was lost,” and in fact it had died or been lamed, driven off, or stolen —
- G. “I impose an oath on you”
- H. and he said, “Amen” —
- I. he is exempt.

8:6

- A. “Where is my ox? “ —
- B. He said to him, “I have no idea what you’re talking about” —
- C. and it had in fact died or been lamed or driven off or stolen or lost —

- D. "I impose an oath on you"
- E. and he said, "Amen" —
- F. he is liable.
- G. If he said to a paid bailee or a renter [M. 8:1A3,4], "Where is my ox?"
- H. (1) he said to him, "It died," but in fact it had been lamed or driven off —
- I. (2) "It has been lamed," but in fact it had died or been driven off —
- J. (3) "It has been driven off," and in fact it had died or been lamed —
- K. (4) "It has been stolen," and in fact it had been lost —
- L. (5) "It has been lost," and in fact it had been stolen —
- M. "I impose an oath on you," —
- N. and he said, "Amen" —
- O. he is exempt.
- P. "It died or was lamed or driven off," and in fact, it had been stolen or lost —
- Q. "I impose an oath on you,"
- R. and he said, "Amen" —
- S. he is liable.
- T. "It was lost or was stolen," but in fact it had died or been lamed or been driven off —
- U. "I impose an oath on you,"
- V. and he said, "Amen" —
- W. he is exempt.
- X. This is the governing principle: Whoever [by lying] changes [his claim] from one sort of liability to another sort of liability, from one count of exemption to another count of exemption, or from a count of exemption to a reason for liability, is exempt.
- Y. [If he changed his claim, by lying] from grounds for liability to a reason for exemption [from having to make restitution], he is liable.
- Z. This is the governing principle: Whoever [falsely] takes an oath so as to lighten the burden on himself is liable.
- AA. Whoever takes an oath so as to make more weighty the burden on himself is exempt.
- I.1.** A. [There are four kinds of guardians: (1) an unpaid bailiff, (2) a borrower, (3) a paid bailiff, and (4) a renter:] *Who is the Tannaite authority who holds that there are four classes of guardians?*
- B. Said R. Nahman said Rabbah bar Abbuha, "It is R. Meir."
- C. *Said Raba to R. Nahman, "So is there any Tannaite authority who does not hold that there are four classes of guardians?"*
- D. *He said to him, "This is what I meant to say: Who is the Tannaite authority who holds that one who rents something is in the classification of a paid bailiff?"*
- E. Said Rabbah bar Abbuha, "It is R. Meir."
- F. *But lo, we have heard that the opposite is the opinion of R. Meir, for it has been taught on Tannaite authority:*

- G. One who rents a beast — under what classification does he pay restitution [if the beast is damaged or lost]?
- H. R. Meir says, “He is in the status of an unpaid bailee.”
- I. R. Judah says, “He is in the status of a paid bailee.” [Freedman: Since the man pays for the benefit he receives, he is taking care of the beast gratuitously, while Judah holds that since the beast benefits the man, he is a paid bailee, even though he is paying for the benefit.]
- J. *Rabbah bar Abbuhu learned it the other way around.*

I.2. A. *Are these then four? They are three [for the one who rents is either classified as a paid or an unpaid bailee].*

- B. Said R. Nahman bar Isaac, “There are indeed four classes of bailees, but the regulations governing them are only of three types.”

II.1 A. [If one said to an unpaid bailiff, “Where is my ox?” he said to him, “It died,” but in fact it had been lamed, driven off, stolen, or lost, “It was lamed,” but in fact it had died, or been driven off, stolen, or lost, “It was driven off,” but in fact it had died, been lamed, stolen or lost, “It was stolen,” but in fact it had died, or been lamed, driven off, or lost, “It was lost,” but in fact it had died, been lamed, driven off, or stolen, “I impose an oath on you,” and he said, “Amen” — he is exempt. “Where is my ox?” and the bailiff said to him, “I have no idea what you’re talking about” — but in fact it had died or been lamed or driven off or stolen or lost — “I impose an oath on you,” and he said to him, “Amen” — he is exempt. “Where is my ox?” He said to him, “It got lost” — “I impose an oath on you” — and he said, “Amen” — and witnesses testify against him that he had eaten it — he pays him compensation for the principal. If he conceded on his own, he pays compensation for the principal, the added fifth, and a guilt offering. “Where is my ox?” he said to him, “It was stolen” “I impose an oath on you” he said, “Amen” — and witnesses testify against him that he had stolen it — he pays twofold compensation. [If] he confessed on his own, he pays the principal, an added fifth, and a guilt offering. He said to someone in the market, “Where is my ox which you stole?” and he says, “I never stole it,” but witnesses testify against him that he had stolen it — he pays twofold restitution. [If] he had slaughtered and sold it, he pays fourfold or fivefold restitution. [If] he saw witnesses [to what he had done] coming along and said, “I stole it, but I never slaughtered or sold it,” he pays only the principal.” He said to a borrower [M. 8:1A2], “Where is my ox?” He said to him, “It died,” but in fact it had been lamed or driven away, stolen, or lost — ““It was driven off,” but it had died or been lamed or stolen or lost — “It was stolen,” and in fact it had died or been lamed or driven off or lost — “It was lost,” and in fact it had died or been lamed, driven off, or stolen — “I impose an oath on you” — and he said, “Amen” — he is exempt. “Where is my ox? “ — He said to him, “I have no idea what you’re talking about” — and it had in fact died or been lamed or driven off or stolen or lost — “I impose an oath on you” — and he said, “Amen” — he is liable:]

- B. Said Rab, “In all of these cases listed in the Mishnah, they are exempt from having to take an oath of bailment, but they are liable for the rash oath.”

- C. Samuel said, "They are exempt also in regard to the rash oath."
- D. *What is at issue between them?*
- E. *Samuel maintains that an oath cannot cover what is going to happen in the future* [Silverstone: he holds that an offering of variable value for a rash oath that is false is required only if the oath applies to the future, but if the oath pertains to what has happened in the past, such an offering is not at issue]/
- F. *Rab maintains that it is possible to apply such an oath both positively and negatively* [so the issue of the oath's applying in the future is not required, so long as the oath has a positive and a negative side, e.g., the animal died or did not die (Silverstone)].
- G. *But if that is so, then they already have set forth this same point of disagreement on another occasion, for it has been stated:*
- H. "By an oath, I swear that so-and-so threw a stone into the sea..." or, "...did not throw..." —
- I. Rab said, "He is liable."
- J. Samuel said, "He is exempt from all penalty."
- K. Rab said, "He is liable:" [in line with Lev. 5: 4, "to do evil or to do good"] *the oath may be formulated both negatively and positively* [not eat, eat].
- L. Samuel said, "He is exempt from all penalty:" *it has no standing in the future* [and because the oath cannot apply in the future, since the man cannot force the other to throw the stone, it also imposes no liability when it is formulated in the past tense either].
- M. *It was necessary to set forth both disputes, for if we had not been informed of the dispute in the present case as well, we might have drawn the conclusion that, in that case, Rab says he is liable, since he takes the oath of his own accord, while in the present case, in which the court adjures him, we might have thought that he concurs with Samuel* [that if he swore falsely, he is not liable to the offering of variable value, since this oath he did not take on his own accord (Silverstone)].
- N. *That would be in line with what R. Ammi said, for said R. Ammi, "On account of no oath that is imposed by the judges does one bear responsibility by reason of the count of 'an oath of utterance,' because it is said, 'or if a soul swear, uttering with his lips' (Lev. 5: 4, referring to an oath of utterance), referring then to an oath that one takes on his own initiative."*
- O. *And, furthermore, if the dispute had been expressed only in this case, we might have drawn the conclusion that in this case in particular Samuel rules that he is exempt* [the court having administered the oath], *but in that other case, he would concur with the view of Rab.*
- P. *So it was necessary to set forth the dispute in both cases.*

II.2. A. *Reverting to the body of the foregoing:*

- B. Said R. Ammi, "On account of no oath that is imposed by the judges does one bear responsibility by reason of the count of 'an oath of utterance,' because it is said, 'or if a soul swear, uttering with his lips' (Lev. 5: 4, referring to an oath of utterance), referring then to an oath that one takes on his own initiative."

- C. *That is in line with what R. Simeon b. Laqish said, for* said R. Simeon b. Laqish, “The word ‘ki’ may be translated if, perhaps, but, or because.” [Silverstone: Lev. 5: 4, “if one may swear,” meaning, of his own accord; and Rab holds “if” here to mean “because,” because he swears of his own accord or not.]

II.3. A. R. Eleazar says, “All of them are exempt from the oath of bailees but are liable on account of a rash oath, except for the one who says, **I have no idea what you’re talking about.** If the borrower makes that statement, or in the case of theft or loss, if the paid bailee or renter make that statement, where they must take the oath, for they have made a denial of a monetary claim.”

I.1 asks a standard question of Mishnah-exegesis. No. 2 carries forward the result.

II.1 amplifies the law of the Mishnah. No. 2 provides a footnote. No. 3 continues the inquiry of No. 1.