

# IX

## THE STRUCTURE AND SYSTEM OF BABYLONIAN TALMUD SHEBUOT

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here.

By “structure” I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By “system,” I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further identify the purpose and perspective, the governing system of thought and argument, of

those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.\* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the document exhibits a structure and realizes a system. So everything depends upon the

possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Hagigah derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-paragraphs of our tractate are discussed in no other place in the entire Talmud of Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Hagigah is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions\* what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

\*This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites — footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining.

Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the re-presentation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

[1] the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose, or

[2] the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

## **I. Mishnah-Tractate Shebuot 1:1-7**

### **A. GENERAL OBSERVATIONS CONCERNING THE COMPARISON OF MISHNAH-TRACTATES.**

1. I:1: The connection between the immediately-preceding tractate, Makkot, and the present one: Now that the Tannaite authority has completed his presentation of

tractate Makkot, why does he turn to the study of tractate Shebuot? It is because, in the earlier tractate, it is stated as a Tannaite teaching: For [cutting off the hair of] the head, he is liable on two counts, one for each side of the head. For cutting off the beard, he is liable on two counts for one side, two counts for the other side, and one count for the lower part [M. **Mak. 3:5D-E**], what we are dealing with is a single action on account of which one may incur liability on two or more counts. So it was quite natural to proceed with other cases of a single action on account of which one may incur liability on two counts, thus: Oaths are of two sorts, which yield four subdivisions [on account of each of which one may be liability on one count].

2. I:2: And how come the Tannaite framer of our passage has spelled out all of the instances in which a single action involves liability on two counts, each of which further imposes liability, hence on four counts, while when he treated the Sabbath, in the context of the laws of transporting objects on the Sabbath from private to public domain, and when he treated the tractate of Negaim, dealing with the shades that connote the presence of the skin ailment, he did not spell out matters in this same manner?

3. I:3: How come the framer of the passage commences with the laws of oaths but then in his exposition begins by treating the laws of uncleanness?

**B. [GLOSSING OF THE OPENING PHRASES IN SEQUENCE:] OATHS ARE OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS [ON ACCOUNT OF EACH OF WHICH ONE MAY BE LIABILITY ON ONE COUNT].**

1. II:1: Two sorts: “By an oath, I shall eat,” “by an oath, I shall not eat,” which yield four subdivisions: “I ate, I did not eat.”

**C. [GLOSSING OF THE OPENING PHRASES IN SEQUENCE:] AWARENESS OF UNCLEANNESS IS OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS.**

1. III:1: Awareness of [having sinned through] uncleanness is of two sorts: awareness of having been unclean and eaten Holy Things, awareness of having been unclean and entered the Temple, which yield four subdivisions: awareness that he had eaten Holy Things while he was unclean, and awareness that it was the Temple that he had entered while he was unclean.

**D. [GLOSSING OF THE OPENING PHRASES IN SEQUENCE:] TRANSPORTATION OF OBJECTS FROM ONE DOMAIN TO THE OTHER ON THE SABBATH IS OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS.**

1. IV:1: Transportation [of objects from one domain to the other] on the Sabbath is of two sorts: the transportation from one domain to the other by the poor man, the transportation from one domain to the other by the householder; which yield four subdivisions: the transportation into one domain from the other by the poor man, the transportation into one domain from the other by the householder.

**E. [GLOSSING OF THE OPENING PHRASES IN SEQUENCE:] THE SYMPTOMS OF THE PRESENCE OF THE SKIN DISEASE ARE OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS.**

1. V:1: The symptoms of the presence of the skin disease [negaim] are of two sorts: a white shade like the plaster of the Temple walls, a white shade like snow,

which yield four subdivisions: the shade that is secondary to the white shade like the plaster of the Temple walls, the shade that is secondary to the white shade like snow.

#### **F. EXPOSITION OF THE MISHNAH SEEN IN THE AGGREGATE**

1. V:2: Who is the authority behind our Mishnah's rule? It is neither R. Ishmael nor R. Aqiba. It cannot be R. Ishmael, for has he not said, "[While our Mishnah's rule encompasses oaths taken as to the past tense,] one may incur liability for a false oath only if it is framed in the future tense." It also cannot be R. Aqiba, for has he not said, "One is liable only if he is unaware that he is unclean while he is eating holy food or entering the Temple, but he is not liable if he forgets that it is the Temple that he has entered or Holy Food that he has eaten while he is unclean." We see that the several paragraphs are subject to discussion, not only a given rubric, e.g., oaths or contamination of the Temple.

2. V:3: Continuation of foregoing.

3. V:4: As above.

4. V:5: In connection with carrying something from one domain to another on the Sabbath, what is the occasion for a flogging? Further inquiry into the authority behind the anonymous, authoritative Mishnah-statement.

a. V:6: Secondary exposition of a detail of the foregoing.

#### **G. TRANSPORTATION OF OBJECTS FROM ONE DOMAIN TO THE OTHER ON THE SABBATH IS OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS:**

1. VI:1: Systematic comparison of this statement with its counterpart at M. Shab. 1:1: Now what differentiates the present case, in which case we are given, two sorts, which yield four subdivisions, without further elaboration, from the other case, in which we are given, Acts of transporting objects from one domain to another which violate the Sabbath (1) are two, which indeed are four for one who is inside, (2) and two which are four for one who is outside?

#### **H. THE SYMPTOMS OF THE PRESENCE OF THE SKIN DISEASE ARE OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS:**

1. VII:1: Systematic comparison of this statement with its counterpart at M. Neg. 1:1: Who formulated the rule concerning the shades of white that indicate that a spot on the skin is the mark of the skin disease? It cannot accord with R. Aqiba's position.

a. VII:2: appendix, supplying information to the foregoing.

b. VII:3: as above.

c. VII:4: as above.

#### **I. IN ANY CASE IN WHICH THERE IS AWARENESS OF UNCLEANNESS AT THE OUTSET AND AWARENESS [OF UNCLEANNESS] AT THE END BUT UNAWARENESS IN THE MEANTIME — LO, THIS ONE IS SUBJECT TO BRINGING AN OFFERING OF VARIABLE VALUE:**

1. VIII:1: How on the basis of Scripture's own evidence do we know that in requiring an offering of variable value for uncleanness, Scripture speaks only concerning imparting uncleanness to the sanctuary and its holy things?

2. VIII:2: Rabbi's proof out of Scripture for the same propositions.

**J. IF THERE IS AWARENESS OF UNCLEANNESS AT THE OUTSET BUT NO APPREHENSION OF UNCLEANNESS AT THE END, A GOAT WHICH YIELDS BLOOD TO BE SPRINKLED WITHIN IN THE HOLY OF HOLIES, AND THE DAY OF ATONEMENT SUSPEND THE PUNISHMENT, UNTIL IT WILL BE MADE KNOWN TO THE PERSON, SO THAT HE MAY BRING AN OFFERING OF VARIABLE VALUE:**

1. IX:1: Tannaite proof from Scripture for this proposition.

a. IX:2: Gloss of foregoing.

b. IX:3: Gloss of foregoing.

c. IX:4: Gloss of foregoing.

d. IX:5: Gloss of foregoing.

e. IX:6: Gloss of foregoing.

**K. [IF] THERE IS NO APPREHENSION [OF UNCLEANNESS] AT THE OUTSET BUT THERE IS APPREHENSION [OF UNCLEANNESS] AT THE END, A GOAT WHICH [YIELDS BLOOD TO BE SPRINKLED] WITHOUT [ON THE OUTER ALTAR], AND THE DAY OF ATONEMENT EFFECT ATONEMENT, AS IT IS SAID, "BESIDE THE SIN OFFERING OF ATONEMENT" (NUM. 29:11). FOR THAT WHICH THIS [GOAT, PREPARED INSIDE] MAKES ATONEMENT, THE OTHER [THE GOAT PREPARED OUTSIDE] MAKES ATONEMENT. JUST AS THE GOAT PREPARED INSIDE MAKES ATONEMENT ONLY FOR SOMETHING FOR WHICH THERE IS CERTAIN KNOWLEDGE, SO THAT WHICH IS PREPARED OUTSIDE EFFECTS ATONEMENT ONLY FOR SOMETHING FOR WHICH THERE IS CERTAIN KNOWLEDGE:**

1. X:1: Since the goats prepared on the inner altar and the outer altar are treated as comparable, let the goat prepared at the inner altar atone for its own case [the one in which there is knowledge at the beginning and not at the end] and also for that for which the outer goat atones, which is the case in which there is no knowledge at the beginning but there is at the end, with the result that there would be atonement even where the goat to be prepared at the outer altar was not presented, e.g., by reason of a shortage of goats?

2. X:2: And from the perspective of R. Ishmael, who takes the view that, when there is no awareness at the beginning of the matter but there is at the end, one must bring an offering of variable value, for which sin will the goat offered on the outer altar atone?

**L. AND FOR THAT [UNCLEANNESS] FOR WHICH THERE IS NO AWARENESS [OF UNCLEANNESS] EITHER AT THE BEGINNING OR AT THE END, "THE GOATS OFFERED ON FESTIVALS AND THE GOATS OFFERED ON NEW MONTHS EFFECT ATONEMENT," THE WORDS OF R. JUDAH.**

1. XI:1: What is the Scriptural basis for the position of R. Judah?



2. XI:2: And might not the same goat effect atonement also even for other sins known only to the Lord and not to the sinner?

3. XI:3: We therefore have found the rule governing goats offered at the New Moon [that is, that they effect atonement for the specified class of sins]. How do we know that the goats offered at the festival atone for the same?

4. XI:4: when R. Judah said that the goats offered at the New Moon and festival atone for sins where there is no awareness either at the beginning or at the end, does this speak only to the case of a sin that will always remain unknown to the sinner, but in the case of a sin that ultimately will become known, that ultimate knowledge classifies the sin as one in which there was awareness at the end, in which case the goat offered at the outer altar on the Day of Atonement together with the Day of Atonement effect atonement for such a sin? Or does the statement include even one that ultimately will become known, though it is not now known, since at this moment in particular it is not one of which the sinner is aware in which case it is classified as a sin that is open only to the Lord?

**M. R. SIMEON SAYS, “THE GOATS OFFERED ON FESTIVALS EFFECT ATONEMENT BUT NOT THE GOATS OFFERED ON NEW MONTHS. AND FOR WHAT DO THE GOATS OFFERED ON NEW MONTHS EFFECT ATONEMENT? FOR A CLEAN PERSON WHO ATE SOMETHING UNCLEAN.”**

1. XII:1: What is the Scriptural basis for the position of R. Simeon?

2. XII:2: Thus we have found that the goats that are offered at the New Moon effect atonement in the case of a clean person who inadvertently ate unclean Holy Things. How on the basis of Scripture do we know that the goats that are offered at festivals effect atonement for a case in which there is no awareness of one's having sinned either to begin with or at the end?

**N. R. MEIR SAYS, “THE ATONING EFFECTS OF ALL GOATS ARE THE SAME: FOR IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS.”**

1. XIII:1: What is the Scriptural basis for the position of R. Meir?

2. XIII:2: R. Meir concurs in the case of the goat that is prepared on the inner altar that it does not atone for the sins for which the goat offered at the outer altar on the Day of Atonement, festivals, and New Moon atone, and they do not atone for the sins for which it atones.

**O. R. SIMEON DID SAY, “THE GOATS OFFERED ON THE NEW MONTHS EFFECT ATONEMENT FOR A CLEAN PERSON WHO HAS EATEN SOMETHING UNCLEAN. AND THOSE OF THE FESTIVALS EFFECT ATONEMENT FOR A CASE IN WHICH THERE IS NO AWARENESS [OF UNCLEANNESS] EITHER AT THE BEGINNING OR AT THE END [OF THE SEQUENCE OF EVENTS]. AND THOSE OF THE DAY OF ATONEMENT EFFECT ATONEMENT FOR A CASE IN WHICH THERE IS NO AWARENESS [OF UNCLEANNESS] AT THE BEGINNING BUT THERE IS APPREHENSION [OF UNCLEANNESS] AT THE END” [= M. 1:3]. THEY SAID TO HIM, “WHAT IS THE LAW AS TO OFFERING UP THIS ONE [SET ASIDE FOR THE DAY OF ATONEMENT] ON THE OCCASION OF THE OTHER [THE NEW MONTH]?” HE SAID TO THEM, “LET THEM BE OFFERED UP.” THEY SAID TO HIM, “SINCE THEIR POWER OF EFFECTING ATONEMENT IS NOT THE SAME, HOW MAY ONE BE OFFERED ON THE OCCASION SUITABLE FOR THE OTHER?” HE SAID TO**

**THEM, “ALL OF THEM ARE OFFERED UP TO EFFECT ATONEMENT FOR IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS.”**

1. XIV:1: Now there is no problem in understanding why the goats that are offered at the New Moons do not effect atonements for sins for which the goats offered at the Festivals atone, since Scripture says, “it ha But the goats that are offered at Festivals should atone for the sins for which the goats that are offered on the New Moons atone!

**P. R. SIMEON B. JUDAH SAYS IN HIS NAME, “GOATS OFFERED UP ON THE NEW MONTHS EFFECT ATONEMENT FOR A CLEAN PERSON WHO HAS EATEN SOMETHING UNCLEAR. ADDED TO THEM ARE THOSE OF THE FESTIVALS, WHICH EFFECT ATONEMENT FOR A CLEAN PERSON WHO HAS EATEN SOMETHING UNCLEAR, AND FOR THE CASE IN WHICH THERE IS NO APPREHENSION [OF UNCLEANNESS] EITHER AT THE BEGINNING OR AT THE END. ADDED TO THEM ARE THOSE OF THE DAY OF ATONEMENT, WHICH EFFECT ATONEMENT FOR A CLEAN PERSON WHO HAS EATEN SOMETHING UNCLEAR, FOR A CASE IN WHICH THERE IS NO APPREHENSION [OF UNCLEANNESS] EITHER AT THE BEGINNING OR AT THE END, AND FOR A CASE IN WHICH THERE IS NO APPREHENSION [OF UNCLEANNESS] AT THE BEGINNING BUT IN WHICH THERE IS AN APPREHENSION [OF UNCLEANNESS] AT THE END.”**

**THEY SAID TO HIM, “WHAT IS THE LAW AS TO OFFERING UP THIS ONE ON THE OCCASION OF THE OTHER?” HE SAID TO THEM, “YES.” THEY SAID TO HIM, “IF SO, LET THOSE [SET ASIDE FOR USE ON] THE DAY OF ATONEMENT BE OFFERED UP ON THE NEW MONTHS. BUT HOW ARE THOSE OF THE NEW MONTHS GOING TO BE OFFERED ON THE DAY OF ATONEMENT, TO EFFECT ATONEMENT WHICH DOES NOT APPLY TO THEM [AN UNCLEAR PERSON WHO ATE SOMETHING CLEAR OR WENT INTO THE SANCTUARY]?” HE SAID TO THEM, “ALL OF THEM ARE OFFERED UP TO EFFECT ATONEMENT FOR IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS.”**

1. XV:1: How come the goats that are offered on the New Moons do not effect atonement for the sins for which the goats offered at the festivals atone?

**Q. THE STATUS OF A COURT-IMPOSED STIPULATION UPON THE ACTS OF CONSECRATION OF AN INDIVIDUAL: DO WE INVOKE SUCH A STIPULATION.**

2. XV:2: Animals designated for use as daily whole offerings that turn out not to have been required in fulfillment of the obligations of the community may be redeemed when unblemished, for we assume a tacit stipulation of the court that it is permitted to redeem them even when they are not blemished.

a. XV:3: Secondary analysis of the foregoing.

3. XV:4: In the context of XV:2, why is Simeon’s position in the present debate not cited in evidence that the court makes a mental stipulation? Daily whole offerings which turn out not to have been required in fulfillment of the obligations of the community in the opinion of R. Simeon may not be redeemed when they are unblemished; in the opinion of sages they may be redeemed when unblemished, for we assume a tacit stipulation of the court that it is permitted to redeem them even when they are not blemished. Simeon rejects this assumption and holds they cannot be redeemed.

4. XV:5: Who are the rabbis who differ from R. Simeon in this matter and maintain that such a mental stipulation is made by the court?

a. XV:6: Complement to the foregoing.

b. XV:7: As above.

5. XV:8: In the case of offerings in behalf of the community, the knife is what classifies their purpose [that is, the moment of slaughtered]. Before they are slaughtered, they may be designated for some other purpose from the one for which they were originally meant, e.g., from regular burnt offerings to those offered at the time the altar is otherwise vacant; according to rabbis, who hold that the court has the power to make a mental stipulation, the surplus of regular offerings may be redeemed unblemished and later repurchased and sacrificed as regular offerings in the coming year.

**R. AND FOR A DELIBERATE ACT OF IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS, A GOAT [WHOSE BLOOD IS SPRINKLED] INSIDE AND THE DAY OF ATONEMENT EFFECTS ATONEMENT.**

1. XVI:1: What is the scriptural basis for this rule?

**S. AND FOR ALL OTHER TRANSGRESSIONS WHICH ARE IN THE TORAH — THE MINOR OR SERIOUS, DELIBERATE OR INADVERTENT, THOSE DONE KNOWINGLY OR DONE UNKNOWNLY, VIOLATING A POSITIVE OR A NEGATIVE COMMANDMENT, THOSE PUNISHABLE BY EXTIRPATION AND THOSE PUNISHABLE BY DEATH AT THE HANDS OF A COURT, THE GOAT WHICH IS SENT AWAY [LEV. 16:21] EFFECTS ATONEMENT.**

1. XVII:1: Now why does the Mishnah's framer repeat himself? For: minor is the same as violating a positive or a negative commandment, serious is the same as those punishable by extirpation and those punishable by death at the hands of a court, those done knowingly is the same as deliberate, or done unknowingly is the same as inadvertent!

2. XVII:2: Continuation of the foregoing: As to the violation of a positive commandment, what would be such a case?

3. XVII:3: Continuation of foregoing: But then can you really maintain that the Mishnah accords with the position of Rabbi, that for all sins except the specified three, the Day of Atonement atones, even without repentance, and the Mishnah, in stating that the scapegoat of the Day of Atonement atones for the transgression of positive precepts, refers to cases of non-repentance, in accordance with Rabbi's view?

**T. [IT EFFECTS ATONEMENT] ALL THE SAME, FOR ISRAELITES, PRIESTS AND THE ANOINTED PRIEST. WHAT IS THE DIFFERENCE BETWEEN ISRAELITES, PRIESTS, AND THE ANOINTED PRIEST? BUT: THE BLOOD OF THE BULLOCK EFFECTS ATONEMENT FOR PRIESTS FOR IMPARTING UNCLEANNESS TO THE SANCTUARY AND ITS HOLY THINGS.**

**R. SIMEON SAYS, "JUST AS THE BLOOD OF THE GOAT WHICH IS [SPRINKLED] INSIDE EFFECTS ATONEMENT FOR ISRAELITES, SO THE BLOOD OF THE BULLOCK EFFECTS ATONEMENT FOR PRIESTS. JUST AS THE CONFESSION SAID OVER THE**

## **GOAT WHICH IS SENT FORTH EFFECTS ATONEMENT FOR ISRAELITES, SO THE CONFESSION SAID OVER THE BULLOCK EFFECTS ATONEMENT FOR PRIESTS:"**

1. XVIII:1: The statement itself bears an obvious contradiction. On the one side, we have, [It effects atonement] all the same, for Israelites, priests and the anointed priest but on the other hand, What is the difference between Israelites, priests, and the anointed priest!
2. XVIII:2: Who is the authority behind the anonymous, authoritative rule?
3. XVIII:3: Analysis of the foregoing demonstration.
4. XVIII:4: What is the scriptural foundation for the position of R. Simeon?
5. XVIII:5: Who is the Tannaite authority behind the flowing, which our rabbis have taught on Tannaite authority: "Then he shall kill the goat of the sin offering which is for the people, [and bring its blood within the veil and do with its blood as he did with the blood of the bull, sprinkling it upon the mercy seat and before the mercy seat]" (Lev. 16:15) — for his brothers, the other priests, would not atone through that offering. And through which one do they atone? Through the young bull of Aaron of their brother the high priest. It is not in accord with R. Judah, for if it were R. Judah, has he not said, 'Priests attain atonement for other sins through the scapegoat' [while what is before us says that atonement depends entirely on Aaron's bullock
  - a. XVIII:6: Analysis of foregoing.
  - b. XVIII:7: As above.
  - c. XVIII:8: Now from the perspective of R. Simeon, we can well understand why there are two references in Scripture to confessions [Lev. 16:6, 11] and the blood of the bullock [Lev. 16:14], one for the goat that is offered on the inner altar, one for the goat that is offered outside. But from the perspective of R. Judah, why are there two references in Scripture to confessions [Lev. 16:6, 11] and the blood of the bullock [Lev. 16:14]? One confession and the blood should be sufficient [one for the goat offered on the inner altar, the other for the goat offered on the outer altar].

## **II. Mishnah-Tractate Shebuot 2:1-5**

**A. AWARENESS OF UNCLEANNESS IS OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS. (1) [IF] ONE WAS MADE UNCLEAR AND KNEW ABOUT IT, THEN THE UNCLEANNESS LEFT HIS MIND, BUT HE KNEW [THAT THE FOOD HE HAD EATEN WAS] HOLY THINGS, (2) THE FACT THAT THE FOOD HE HAD EATEN WAS HOLY THINGS LEFT HIS MIND, BUT HE KNEW ABOUT [HIS HAVING CONTRACTED] UNCLEANNESS, (3) BOTH THIS AND THAT LEFT HIS MIND, BUT HE ATE HOLY THINGS WITHOUT KNOWING IT AND AFTER HE ATE THEM, HE REALIZED IT — LO, THIS ONE IS LIABLE TO BRING AN OFFERING OF VARIABLE VALUE. (1) [IF] HE WAS MADE UNCLEAR AND KNEW ABOUT IT, AND THE UNCLEANNESS LEFT HIS MIND, BUT HE REMEMBERED THAT HE WAS IN THE SANCTUARY; (2) THE FACT THAT HE WAS IN THE SANCTUARY LEFT HIS MIND, BUT HE REMEMBERED THAT HE WAS UNCLEAR, (3) BOTH THIS AND THAT LEFT HIS MIND, AND HE ENTERED THE SANCTUARY**

**WITHOUT REALIZING IT, AND THEN WHEN HE HAD LEFT THE SANCTUARY, HE REALIZED IT — LO, THIS ONE IS LIABLE TO BRING AN OFFERING OF VARIABLE VALUE.**

1. I:1: Said R. Pappa to Abbayye, “How can you say two sorts, which yield four subdivisions, when in fact there are six! These involve awareness of uncleanness beginning and end; awareness of Holy Things beginning and end; awareness of the Temple beginning and end!”

2. I:2: If the person was unaware of the laws of uncleanness, what is the law?

3. I:3: A Babylonian who went up to the Land of Israel and was unaware of the place in which the Temple was located [that is, when unclean, he went into the Temple but did not realize that it was the Temple] — what is the law?

**B. ALL THE SAME ARE HE WHO ENTERS THE COURTYARD AND HE WHO ENTERS THE ADDITION TO THE COURTYARD FOR [THE LATTER IS IN THE SAME CLASSIFICATION AS THE FORMER, SINCE] THEY ADD TO THE CITY, AND COURTYARDS ONLY ON THE INSTRUCTIONS OF THE KING AND PROPHET, THE URIM AND THUMMIM, AND THE SANHEDRIN OF SEVENTY-ONE MEMBERS,**

1. II:1: What is the scriptural basis for this rule?

**C. WITH TWO THANK OFFERINGS:**

1. III:1: The two thank offerings of which they have spoken refers to the bread but not the meat: the source in Scripture for this rule.

2. III:2: The courtyard is sanctified only through the eating of the residue of meal offerings there.

**D. AND SINGING:**

1. IV:1: The thanksgiving song [Psa. 100] was accompanied by lutes, lyres, and cymbals at every corner and upon every great stone in Jerusalem, and this is what is sung: “I will extol you O Lord for you have raised me up” (Psa. 30).

a. IV:2: Gloss of foregoing.

**E. THE COURT GOES ALONG WITH THE TWO THANK OFFERINGS BEHIND THEM, AND ALL THE ISRAELITES AFTER THEM. THE ONE OFFERED INSIDE IS EATEN, AND THE ONE OFFERED OUTSIDE IS BURNED:**

1. V:1: Does this then imply that the court precedes the thank offering bread? Is it not written, “And after the two loaves went Hoshai and half of the princes of Judah” (Neh. 12:32)?

2. V:2: How do they go along?

3. V:3: Continuation of foregoing.

**F. AND ANY AREA WHICH IS NOT TREATED WHOLLY IN THIS WAY [WITH THE PROPER RITES] — HE WHO ENTERS THAT AREA — THEY ARE NOT LIABLE ON ITS ACCOUNT:**

1. VI:1: The diverse traditions on the wording of the Mishnah’s rule.

**G. (1) [IF] HE WAS MADE UNCLEAN IN THE COURTYARD, AND THE UNCLEANNESS LEFT HIS MIND, BUT HE REMEMBERED THE SANCTUARY — (2) [IF] THE SANCTUARY LEFT HIS MIND, BUT HE REMEMBERED THE UNCLEANNESS:**

1. VII:1: How on the basis of Scripture do we know that one is liable on account of uncleanness in the Temple court [that is, if someone enters the Temple clean but becomes unclean in the Temple itself, how do we know that he is obligated to an offering of variable value]?

a. VII:2: Secondary amplification.

**H. (3) [IF] THIS AND THAT LEFT HIS MIND, AND HE PROSTRATED HIMSELF OR REMAINED THERE FOR AN INTERVAL SUFFICIENT FOR PROSTRATING HIMSELF,**

1. VIII:1: Said Raba, “They taught the rule [and he prostrated himself, meaning that if one prostrated himself rapidly, less than the required time, he is liable] only if he did so facing inward. But if he prostrated himself facing outward, but then remained sufficient time, he is liable; if he did not remain sufficient time, he is not liable.”

2. VIII:2: What is the definition of a prostration that is for a sufficient interval, and what is the definition of a prostration that is not for a sufficient interval?

3. VIII:3: And what is the definition of tarrying?

4. VIII:4: Tannaite proof from Scripture.

5. VIII:5: If one inadvertently became unclean in the Temple and was warned to leave but remained, to be subject to the penalty of a flogging, must one have tarried, or need one not have tarried?

6. VIII:6: If] one suspended himself, while unclean, in the contained airspace of the courtyard, what is the law?

7. VIII:7: If one deliberately made himself unclean what is the law?

8. VIII:8: What is the law concerning a Nazirite at a grave?

**I. [IF] HE WENT OUT BY THE LONGER WAY, HE IS LIABLE. [IF HE WENT OUT] BY THE SHORTER WAY, HE IS EXEMPT.**

1. IX:1: “...**the shorter way**... of which they have spoken means, even if he walked heel to toe [taking very short steps], and even if it took him all day long [he is exempt].”

2. IX:2: “[If one was walking out the shortest way but paused, then walked, then paused, and no pause constituted a sufficient interval to qualify as tarrying, but all of the intervals all together did, then] what is the law as to joining together the various intervals of pause?”

3. IX:3: If one left by the longer way, but did so in the span of time that it would have taken to go out by the shorter way, what is the law?

a. IX:4: Secondary augmentation of the foregoing.

4. IX:5: He who enters a house afflicted with the skin ailment walking backward, and even if his whole body is inside except for his nose, he remains clean, in line with the verse, ‘He who comes into the house...shall be unclean’ (Lev. 14:46).

5. IX:6: Continuation of the foregoing.

**J. THIS IS A POSITIVE COMMANDMENT REGARDING THE SANCTUARY ON ACCOUNT OF WHICH [A COURT] IS NOT LIABLE [TO A SIN OFFERING].**

1. X:1: On what basis does the framer of the passage state, This [in particular] is a positive commandment regarding the sanctuary on account of which [a court] is not liable [to a sin offering]?

**K. AND WHAT IS A POSITIVE COMMANDMENT CONCERNING THE MENSTRUATING WOMAN, ON ACCOUNT OF WHICH [A COURT] IS LIABLE? [IF] HE WAS HAVING SEXUAL RELATIONS WITH A CLEAN WOMAN, AND SHE SAID, “I HAVE BECOME UNCLEAN ,” [EVEN IF] HE SEPARATED FORTHWITH, HE IS LIABLE:**

**FOR THE GOING OUT IS JUST AS MUCH A PLEASURE FOR HIM AS THE GOING IN.**

1. XI:1: One who withdraws immediately] is liable to present sin offerings on two counts.

a. XI:2: Secondary clarification of a detail of the foregoing.

**L. THE PROHIBITION OF HAVING SEXUAL RELATIONS WITH A MENSTRUATING WOMAN**

1. XI:3: Where in the Torah do we find an admonition against having sexual relations with a menstruating woman?

2. XI:4: “Thus shall you separate the children of Israel from their uncleanness” (Lev. 15:31) — “This is an admonition to the children of Israel to separate from their wives near their periods.”

3. XI:5: Whoever does not separate from his wife near her fixed period, if he has sons such as those of Aaron, they will die.

4. XI:6: Whoever separates from his wife near her fixed period will have male children

5. XI:7: Whoever recites the prayer that separates the Sabbath from the weekday at the end of the Sabbath will have male children

6. XI:8: Whoever sanctifies himself when he has sexual relations will have male children

**M. R. ELIEZER SAYS, “A CREEPING THING ... AND IT BE HIDDEN FROM HIM [LEV. 5:2] — ONE IS LIABLE IF THE CREEPING THING GOES OUT OF MIND, BUT HE IS NOT LIABLE IF THE FACT THAT HE WAS IN THE SANCTUARY GOES OUT OF MIND.” R. AQIBA SAYS, “AND IT BE HIDDEN FROM HIM AND HE BE UNCLEAN — “ON ACCOUNT OF THE UNCLEANNESS’S PASSING OUT OF MIND HE IS LIABLE, BUT HE IS NOT LIABLE ON ACCOUNT OF THE SANCTUARY’S PASSING OUT OF MIND.” R. ISHMAEL SAYS, ““SHALL BE HIDDEN...” [LEV. 5: 2]...’SHALL BE HIDDEN...”[LEV. 5: 3], TWO TIMES: TO IMPOSE LIABILITY FOR THE UNCLEANNESS’S PASSING OUT OF MIND, AND FOR THE SANCTUARY’S PASSING OUT OF MIND.”**

1. XII:1: what can possibly be at issue between Eliezer & Aqiba?

2. XII:2: Another answer to the same question.

3. XII:3: In light of the position of Eliezer and Aqiba, who impose the requirement of an offering only if the unawareness concerns uncleanness and not the Temple,

what is the ruling if the unclean person was unaware of both uncleanness and the Temple, if one is responsible for forgetting the principle of both, what is the law?

4. XII:4: Tannaite case illustrative of the issues at hand.

### III. Mishnah-Tractate Shebuot 3:1

**A. OATHS ARE OF TWO SORTS, WHICH YIELD FOUR SUBDIVISIONS [M. 1:1A]. (1) “I SWEAR I SHALL EAT,” AND (2) “...I SHALL NOT EAT,” (3) “...THAT I ATE,” AND (4) “...THAT I DIDN’T EAT:”**

1. I:1: [“I swear I shall eat”:] does this formulation, “I shall eat,” bear the sense, “I shall eat in the future” [as a positive action]? But there is this contradictory formulation: “By an oath, I shall not eat with you!” “By an oath, if I shall eat with you,” “Not by an oath I shall not eat with you,”— he is bound by the oath [“prohibited”] [M. **Ned. 2:2C-D**].

2. I:2: The language “utterance” [as at Num. 30: 7: the utterance of her lips] refers to an oath; the language “bind” [Num. 30: 3: “to bind his soul with a bond”] refers to an oath. What is the effect of using the language of “binding”? If you say that it has the standing of an oath, then one is liable [for violating it], but if you say that it is not an oath, he is not liable.

3. I:3: If someone said, ‘I swear that I shall eat,’ or ‘I swear I shall not eat,’ and violates the statement, it is a false oath. The admonition concerning it derives from this verse: ‘You shall not swear falsely by my name’(Lev. 19:12) If one says, ‘I swear I have eaten,’ ‘I swear I have not eaten,’ and that was not the case, that is a vain oath, and it is subject to an admonition by the language, ‘You shall not take the name of the Lord your God in vain’ (Exo. 20: 7). Vows that use the formula, *qonam*, fall under the prohibition of ‘he shall not break his word’ (Num. 30: 3).”

4. I:4: Secondary development of foregoing.

**B. “[IF ONE SAID], ‘I SWEAR I WON’T EAT,’ AND HE ATE ANYTHING [IN ANY VOLUME] WHATSOEVER, HE IS LIABLE,” THE WORDS OF R. AQIBA.**

1. II:1: The question was raised: in the rest of the entire Torah does R. Aqiba concur with R. Simeon in imposing liability for a minute volume?

**C. THEY SAID TO R. AQIBA, “WHERE HAVE WE FOUND THAT SOMEONE WHO EATS ANYTHING IN ANY NEGLIGIBLE VOLUME IS LIABLE, THAT THIS ONE SHOULD BE DEEMED LIABLE?”**

1. III:1: So we don’t find such a case, don’t we? But what about an ant [which is less than the legal minimum, yet on account of which one is liable for a flogging?

**D. SAID TO THEM R. AQIBA, “AND WHERE HAVE WE FOUND THAT ONE WHO MERELY SPEAKS HAS TO BRING AN OFFERING?”**

1. IV:1: So we don’t find such a case, don’t we? But what about one who blasphemes?

2. IV:2: The dispute between R. Aqiba and sages involves vows that are not spelled out. But in the case of vows that are fully articulated, all -parties concur that the minimum measure for violating the vow is any amount at all.



3. IV:3: The dispute between R. Aqiba and sages involves oaths. But in the case of vows that involve the language of *qonam*, all -parties concur that the minimum measure for violating the vow is any amount at all.

4. IV:4: “‘By an oath, I shall not eat dirt,’ what amount forms the minimum for incurring liability? Since he said, ‘...that I shall not eat...,’ his intention concerning an olive’s bulk? Or perhaps, since this is not something that people eat, any amount at all would be at issue?”

5. IV:5: “‘By an oath, I shall not grape pits,’ — what amount forms the minimum for incurring liability? Since pits can be eaten in a mixture with grapes, the intention pertains to an olive’s bulk? Or since on its own the pit is not eaten, the intention concerned no minimum at all?”

6. IV:6: “A Nazirite who said, ‘By an oath, I shall not eat grape pits,’ — what amount forms the minimum for incurring liability? Since the volume that is prohibited by the Torah is an olive’s bulk in any event, then, when he took his oath, it pertains only to that volume that would otherwise have been permitted, so his intention concerned any minimum volume whatsoever? Or, since he says, ‘I shall not eat,’ his intention concerned an olive’s bulk?”

#### **IV. Mishnah-Tractate Shebuot 3:1G-H, 2-4**

**A. “I SWEAR THAT I WON’T EAT,” AND HE ATE AND DRANK — HE IS LIABLE ON ONLY ONE COUNT. “I SWEAR THAT I WON’T EAT AND DRINK,” AND HE ATE AND DRANK — HE IS LIABLE ON TWO COUNTS.**

1. I:1: “‘By an oath, I shall not eat,’ and he drank, he is liable.’ If you wish, I may propose that at issue is the exegesis of a verse of Scripture, and if you wish, I shall propose that it is a point of reasoning.”

**B. “I SWEAR I WON’T EAT,” — AND HE ATE A PIECE OF BREAD MADE OF WHEAT, A PIECE OF BREAD MADE OF BARLEY, AND A PIECE OF BREAD MADE OF SPELT, HE IS LIABLE ON ONE COUNT ONLY. “I SWEAR THAT I WON’T EAT A PIECE OF BREAD MADE OF WHEAT, A PIECE OF BREAD MADE OF BARLEY, AND A PIECE OF BREAD MADE OF SPELT,” AND HE ATE — HE IS LIABLE ON EACH AND EVERY COUNT.**

1. II:1: But perhaps his intention was to exempt himself from liability for eating the other kinds?

**C. “I SWEAR I WON’T DRINK,” AND HE DRANK MANY DIFFERENT BEVERAGES — HE IS LIABLE ON ONE COUNT ONLY. “I SWEAR THAT I WON’T DRINK WINE, OIL, AND HONEY,” AND HE DRANK — HE IS LIABLE ON EACH AND EVERY COUNT.**

1. III:1: Well, I can understand that in the case of enumerating different kinds of bread, repeating the word bread, his is not necessary, imposes liability on each count, but in this case, in enumerating different kinds of liquid, with the consequence that he is liable for each count, what ought he to have said? Perhaps he wishes to exempt himself from a prohibition on all other liquids but the ones he has listed?

2. III:2: Continuation of foregoing: we deal with a case in which his fellow was pressuring him, saying, ‘Come and drink with me some wine, oil, and honey.’ He

could have replied simply, ‘By an oath, I’m not going to drink with you.’ Why then add: ‘wine, oil, and honey? It was to impose liability on each count.’

3. III:3: Continuation of foregoing.

**D. “I SWEAR I WON’T EAT,” AND HE ATE FOOD WHICH IS NOT SUITABLE FOR EATING, OR DRANK LIQUIDS WHICH ARE NOT SUITABLE FOR DRINKING — HE IS EXEMPT.**

**“I SWEAR THAT I WON’T EAT,” BUT HE ATE CARRION AND *TEREFAH*-MEAT, ABOMINATIONS AND CREEPING THINGS — HE IS LIABLE. R. SIMEON DECLARES HIM EXEMPT.**

**[IF] HE SAID, “QONAM BE BENEFIT THAT I GIVE TO MY WIFE, IF I ATE ANYTHING TODAY” AND HE HAD EATEN CARRION, *TEREFAH*-MEAT, ABOMINATIONS AND CREEPING THINGS — LO, HIS WIFE IS PROHIBITED [TO GIVE BENEFIT TO HIM].**

1. IV:1: Well, the formulation itself is contradictory. To begin with, you say, I swear I won’t eat,” and he ate food not suitable for eating, or drank liquids not suitable for drinking — he is exempt. And then you go and say, “I swear that I won’t eat,” but he ate carrion and terefah-meat, abominations and creeping things — he is liable! So how come in the first of the two clauses he is exempt from liability, while in the second he is liable?

2. IV:2: Continuation of foregoing: as to carrion and terefah-meat, abominations and creeping things, in the case of an oath that is articulated, there still is a problem, namely, Why should he be liable? One is subject to a standing oath from Mount Sinai so this new oath cannot take effect!

3. IV:3: Further inquiry into the principle invoked in the foregoing: What is the operative consideration behind the position of him who holds that a more inclusive prohibition takes effect over a prohibition that is already in place? It is because it may be compared to a prohibition that adds to the list more things than already are under the existing prohibition. And he who exempts one does not take that position, because he takes the view that an augmentative prohibition pertains to only one piece, but not to two pieces.

## **V. Mishnah-Tractate Shebuot 3:5**

**A. IT IS ALL THE SAME [WHETHER THE OATH PERTAINS TO] THINGS WHICH BELONG TO HIMSELF, THINGS WHICH BELONG TO OTHERS, THINGS WHICH ARE OF SUBSTANCE, AND THINGS WHICH ARE NOT OF SUBSTANCE.**

1. I:1: Tannaite complement.

**B. HOW SO? [IF] HE SAID, “I SWEAR THAT I SHALL GIVE [THIS] TO MR. SO-AND-SO,” “... THAT I SHALL NOT GIVE ...,” “... THAT I GAVE ...,” “... THAT I DID NOT GIVE ...,”**

1. II:1: What is the meaning of the formulation, **shall give**?

**C. “... THAT I SHALL GO TO SLEEP,” “... THAT I SHALL NOT GO TO SLEEP,” “... THAT I SLEPT,” “... THAT I DIDN’T SLEEP,”**

1. III:1: Can this be so? But has not R. Yohanan said, “He who says, ‘By an oath, I shall not sleep for three days,’ is flogged and may go to sleep then and there”!

**D. “... THAT I’LL THROW A STONE INTO THE SEA,” “... THAT I WON’T THROW ...,” “... THAT I THREW ...” “... THAT I DIDN’T THROW ...”...**

1. IV:1: “By an oath, I swear that so-and-so threw a stone into the sea...,” or, “...did not throw...,” — Rab said, “He is liable.” Samuel said, “He is exempt from all penalty.” Various candidates for inclusion in the principle under dispute here.

2. IV:2: Continuation of secondary analysis of the foregoing.

**E. R. ISHMAEL SAYS, “HE IS LIABLE ONLY CONCERNING WHAT HAPPENS IN THE FUTURE [WHICH HE STATES IN THE FORM OF AN OATH], FOR IT IS SAID, ‘TO DO EVIL OR TO DO GOOD’ (LEV. 5: 4).” SAID TO HIM R. AQIBA, “IF SO, I KNOW ONLY ABOUT OATHS WHICH INVOLVE DOING EVIL OR DOING GOOD. HOW DO WE KNOW THAT THE RULE CONCERNING OATHS INVOLVES STATEMENTS WHICH ARE NOT ABOUT DOING EVIL OR DOING GOOD?” HE SAID TO HIM, “FROM AN EXTENSION SUPPLIED BY SCRIPTURE.” HE SAID TO HIM, “IF SCRIPTURE HAS ENCOMPASSED THESE MATTERS, SCRIPTURE ALSO HAS ENCOMPASSED THOSE MATTERS [GOVERNING WHAT HAS HAPPENED IN THE PAST].”**

1. V:1: Tannaite complement, yielding the question, did R. Aqiba give R. Ishmael a good answer? Ishmael expounds by the principle of ‘encompassing rule and particularization thereof.’ Aqiba expounds by the principle of extension and limitation.”

a. V:2: Now what would be an example of how Aqiba expounds by the principle of extension and limitation?

b. V:3: And what would be an example of how Ishmael expounds by the principle of ‘encompassing rule and particularization thereof’?

2. V:4: Tannaite complement: “Whatsoever it be that a man shall utter clearly with an oath” (Lev. 5: 4) — whatever a man may utter in an oath excludes one who is subject to constraint [and not one who is forced to take the oath. He is not liable if he violates the imposed oath.] “the fact has escaped him.” excludes the case of one who deliberately takes a false oath.

a. V:5: Secondary expansion of the foregoing.

b. V:6: As above.

3. V:7: If the man is subject to unawareness of both [the oath and the facts of the matter], what is the law?

4. V:8: With reference to the formulation, “whatever a man may utter in an oath:” this excludes one who is subject to constraint and not one who is forced to take the oath. He is not liable if he violates the imposed oath, for what sort of inadvertent transgression of an rash oath framed concerning the past would someone be liable?

5. V:9: If someone took an oath not to eat a loaf of bread and endangered his life because of not being able to eat it, what is the law?

6. V:10: “If one has made a decision in his heart to take an oath, for the oath to take effect, he must express it with his lips, for it is said, ‘to utter with the lips’ (Lev. 5: 4).”

## **VI. Mishnah-Tractate Shebuot 3:6**

**A. [IF] HE TOOK AN OATH TO NULLIFY A COMMANDMENT, BUT HE DID NOT NULLIFY IT, HE IS EXEMPT [FROM PENALTY FOR VIOLATING THE OATH]. [AND IF HE TOOK AN OATH TO] CARRY OUT [A COMMANDMENT] AND DID NOT CARRY IT OUT, HE IS EXEMPT. IT IS LOGICAL THAT HE SHOULD BE LIABLE, IN ACCORD WITH THE WORDS OF R. JUDAH B. BETERA:**

**1. I:1:** Tannaite proof from Scripture for the proposition.

**a. I:2:** Secondary clarification of the foregoing.

**b. I:3:** As above. But on what basis do you assume that the cited verses refer to optional matters? Perhaps they refer to carrying out religious duties?

**B. SAID R. JUDAH B. BETERA, “NOW IF CONCERNING MATTERS OF FREE CHOICE, ABOUT WHICH ONE HAS NOT BEEN SUBJECTED TO AN OATH AT MOUNT SINAI, LO, ONE IS LIABLE ON THAT ACCOUNT [IF HE SWORE TO DO A DEED BUT DID NOT DO IT] — MATTERS CONCERNING A RELIGIOUS DUTY, ABOUT WHICH ONE HAS BEEN SUBJECTED TO AN OATH AT MOUNT SINAI — IS IT NOT LOGICAL THAT ONE SHOULD BE LIABLE ON ITS ACCOUNT?” THEY SAID TO HIM, “NO. IF YOU HAVE STATED THE RULE IN REGARD TO AN OATH CONCERNING A MATTER OF FREE CHOICE, IN WHICH A ‘NO’ IS TREATED AS NO DIFFERENT FROM A ‘YES,’ WILL YOU SAY THE SAME CONCERNING AN OATH INVOLVING A RELIGIOUS DUTY, IN WHICH A ‘NO’ IS ASSUREDLY NOT TREATED AS NO DIFFERENT FROM A ‘YES’! FOR IF ONE HAS TAKEN AN OATH TO NULLIFY [A RELIGIOUS DUTY] BUT DID NOT NULLIFY THE RELIGIOUS DUTY, HE IS EXEMPT:”**

**1. II:1:** R. Judah b. Betera may say, “Isn’t there the case of doing good to others? Even though by definition that does not encompass doing evil to others, it still is included by the All-Merciful. Here too, in the case of carrying out a religious duty, even though that would not apply to violating a religious duty, it still may be included by the All-Merciful as a valid vow.”

## **VII. Mishnah-Tractate Shebuot 3:7**

**A. “I SWEAR THAT I WON’T EAT THIS LOAF OF BREAD,” “I SWEAR THAT I WON’T EAT IT,” “I SWEAR THAT I WON’T EAT IT” — AND HE ATE IT — HE IS LIABLE ON ONLY ONE COUNT. THIS IS A RASH OATH (LEV. 5: 4). ON ACCOUNT OF DELIBERATELY [TAKING A RASH OATH] ONE IS LIABLE TO FLOGGING, AND ON ACCOUNT OF INADVERTENTLY [TAKING A RASH OATH] HE IS LIABLE TO BRING AN OFFERING OF VARIABLE VALUE. AS TO A VAIN OATH, THEY ARE LIABLE FOR DELIBERATELY [TAKING A VAIN OATH] TO FLOGGING, AND FOR INADVERTENTLY [DOING SO], THEY ARE EXEMPT.**

1. I:1: Why does the Tannaite framer have to encompass in his formulation all these cases, namely, “I swear that I won’t eat this loaf of bread,” “I swear that I won’t eat it,” “I swear that I won’t eat it”?

**B. “I SWEAR THAT I WON’T EAT THIS LOAF OF BREAD,” “I SWEAR THAT I WON’T EAT IT,” “I SWEAR THAT I WON’T EAT IT” — AND HE ATE IT — HE IS LIABLE ON ONLY ONE COUNT.**

2. II:1: Clearly, the liability is only on account of the first loaf, so] why does the Mishnah’s framer find it necessary to list the third oath? In this way he informs us that there is no liability [to present an offering], but the oath remains so that if grounds for absolution of the first or second oath should be found, it does take effect. That is for the purpose of which Raba spoke, for said Raba, “If he got remission for the first oath, the second takes effect in its stead.”

a. II:2: Does the following support the opinion of Raba?

3. II:3: Said Raba, “If one took an oath concerning not eating a loaf of bread and was eating it but left an olive’s bulk of it, he can then seek remission from the vow. If he ate the whole of it, he cannot then seek remission of the vow.”

4. II:4: Said Raba, “‘I swear I shall not eat this loaf if I eat that one,’ and he ate the first [the one subject to the oath] inadvertently but the second [subject to the stipulation] deliberately, he is exempt.”

a. II:5: So too have we learned in the Mishnah that in the case of a conditional oath, the person must remember the oath at the time he meets the condition that in the case of a conditional oath, the person must remember the oath at the time he meets the condition.

5. II:6: “I swear I have not eaten, I swear I have not eaten,” but the man did eat — what is the law?

6. II:7: Continuation of foregoing.

## **VIII. Mishnah-Tractate Shebuot 3:8-9**

**A. WHAT IS THE DEFINITION OF A VAIN OATH? [IF] ONE HAS TAKEN AN OATH TO DIFFER FROM WHAT IS WELL KNOWN TO PEOPLE. IF HE SAID**

**(1) CONCERNING A PILLAR OF STONE THAT IT IS MADE OF GOLD, (2) CONCERNING A MAN THAT HE IS A WOMAN, (3) CONCERNING A WOMAN THAT SHE IS A MAN —**

1. I:1: And that is the rule if it [a pillar of stone] was already known to three men [that it was of stone,

**B. [IF] ONE HAS TAKEN AN OATH CONCERNING SOMETHING WHICH IS IMPOSSIBLE — (1) “... IF I DID NOT SEE A CAMEL FLYING IN THE AIR:”**

1. II:1: He doesn’t say, “I swear that I have seen”! What is the sense of, if I did not see? Abbayye said, “Repeat it as, ‘I swear that I have seen....’”

2. II:2: Continuation of foregoing.

**C. “IF I DID NOT SEE A SNAKE AS THICK AS THE BEAM OF AN OLIVE PRESS:”**

1. III:1: But is such a thing not possible? Lo, in the time of King Shapur there was one that swallowed thirteen hides stuffed with straw.

**D. [IF] HE SAID TO WITNESSES, “COME AND BEAR WITNESS OF ME,” [AND THEY SAID TO HIM,] “WE SWEAR THAT WE SHALL NOT BEAR WITNESS FOR YOU,”**

**[IF] HE TOOK AN OATH TO NULLIFY A COMMANDMENT — (1) NOT TO BUILD A *SUKKAH*, (2) NOT TO TAKE *LULAB* AND (3) NOT TO PUT ON PHYLACTERIES — THIS IS A VAIN OATH, ON ACCOUNT OF THE DELIBERATE MAKING OF WHICH ONE IS LIABLE FOR FLOGGING, AND ON ACCOUNT OF THE INADVERTENT MAKING OF WHICH ONE IS EXEMPT [FROM ALL PUNISHMENT].**

**“I SWEAR THAT I SHALL EAT THIS LOAF OF BREAD,” “I SWEAR THAT I SHALL NOT EAT IT,” — THE FIRST STATEMENT IS A RASH OATH, AND THE SECOND IS A VAIN OATH. [IF] HE ATE IT, HE HAS VIOLATED A VAIN OATH. [IF] HE DID NOT EAT IT, HE HAS VIOLATED A RASH OATH.**

1. IV:1: So for a rash oath he is liable, but for a vain oath not? But the oath was taken in vain!

## **IX. Mishnah-Tractate Shebuot 3:10-11**

**A. [THE LAW GOVERNING] A RASH OATH APPLIES (1) TO MEN AND WOMEN, (2) TO THOSE WHO ARE NOT RELATED AND TO THOSE WHO ARE RELATED, (3) TO THOSE WHO ARE SUITABLE [TO BEAR WITNESS] AND TO THOSE WHO ARE INVALID [TO BEAR WITNESS], (4) BEFORE A COURT AND NOT BEFORE A COURT. (5) [BUT IT MUST BE STATED] BY A MAN OUT OF HIS OWN MOUTH. AND THEY ARE LIABLE FOR DELIBERATELY TAKING SUCH AN OATH TO FLOGGING, AND FOR INADVERTENTLY TAKING SUCH AN OATH TO AN OFFERING OF VARIABLE VALUE.**

**[THE LAW GOVERNING] A VAIN OATH APPLIES (1) TO MEN AND WOMEN, (2) TO THOSE WHO ARE NOT RELATED AND TO THOSE WHO ARE RELATED, (3) TO THOSE WHO ARE SUITABLE [TO BEAR WITNESS] AND TO THOSE WHO ARE NOT SUITABLE [TO BEAR WITNESS], (4) BEFORE A COURT AND NOT BEFORE A COURT. (5) [BUT IT MUST BE STATED] BY A MAN OUT OF HIS OWN MOUTH.**

**AND THEY ARE LIABLE FOR DELIBERATELY TAKING SUCH AN OATH TO FLOGGING, AND FOR INADVERTENTLY TAKING SUCH AN OATH, ONE IS EXEMPT [FROM ALL PUNISHMENT].**

**ALL THE SAME ARE THIS OATH AND THAT OATH: HE WHO WAS SUBJECTED TO AN OATH BY OTHERS IS LIABLE. HOW SO? [IF] ONE SAID, “I DID NOT EAT TODAY, AND I DID NOT PUT ON PHYLACTERIES TODAY,” [AND HIS FRIEND SAID,] “I IMPOSE AN OATH ON YOU [THAT THAT IS SO],”**

**AND HE SAID, “AMEN,” HE IS LIABLE.**

1. I:1: “Whoever replies, ‘Amen,’ after an oath is as though he had personally expressed the oath [and is liable for it], as it is written, ‘And the woman shall say, “Amen, amen”’ (Num. 5:22).”

## **X. Mishnah-Tractate Shebuot 4:1-2**

### **A. [THE LAW GOVERNING] AN OATH OF TESTIMONY (LEV. 5:1) APPLIES (1) TO MEN AND NOT TO WOMEN,**

- 1. I:1:** What is the source in Scripture for this rule?
  - a. I:2:** Gloss on foregoing.
- 2. I:3:** Further proof from Scripture.
  - a. I:4:** Gloss on foregoing.
- 3. I:5:** Further proof from Scripture.
  - a. I:6:** Gloss on foregoing.

### **B. COURT PROCEDURES MUST BE SCRUPULOUSLY FAIR TO ALL CONCERNED**

- 1. I:7:** It is a religious duty to testify standing.
- 2. I:8:** “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.”
- 3. I:9:** One should not be sitting while the other standing, one talking all he needs to, while to the other they say, “Cut it short.”
- 4. I:10:** “‘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.”
- 5. I:11:** A case involving sages.
  - a. I:12:** Gloss on I:8.
  - b. I:13:** Gloss on I:8.
- 6. I:14:** 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].”
- 7. I:15:** 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!”
- 8. I:16:** 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.”
- 9. I:17:** 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.
- 10. I:18:** 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.

11. I:19: Yemar knew evidence in behalf of Mar Zutra and he appeared before Amemar. He seated them all.

12. I:20: How on the basis of Scripture do we know that a judge should not erect an elaborate defense for his statements?

**C. (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],**

**AND IT APPLIES ONLY TO THOSE WHO ARE SUITABLE TO BEAR WITNESS:**

1. II:1: Excluding what class of persons?

**D. 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.”**

1. III:1: What is at issue [between Meir and sages]? At issue between them is 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.

**E. THEY ARE LIABLE IF THEY DELIBERATELY TOOK A [FALSE] OATH OR TOOK A [FALSE] OATH IN ERROR ALONG WITH DELIBERATELY DENYING THEIR TESTIMONY.**

1. IV:1: What is the source in Scripture for this proposition?

**F. BUT THEY ARE NOT LIABLE IF THEY INADVERTENTLY DENIED [THEIR TESTIMONY].**

**AND FOR WHAT ARE THEY LIABLE ON ACCOUNT OF DELIBERATE VIOLATION? AN OFFERING OF VARIABLE VALUE.**

1. V:1: How can we imagine a case in which there is an inadvertent transgression that is joined with a deliberate denial of knowledge of testimony?

**G. BUT THEY ARE NOT LIABLE ONLY IF THEY INADVERTENTLY DENIED [THEIR TESTIMONY]:**

1. VI:1: 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?

## **XI. Mishnah-Tractate Shebuot 4:3-4**

**A. AN OATH OF TESTIMONY — HOW SO? [IF] ONE SAID TO TWO PEOPLE, “COME AND TESTIFY ABOUT ME,” [AND THEY REPLIED,] “WE SWEAR THAT WE DON’T**



**KNOW ANY TESTIMONY ABOUT YOU” — 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,” — LO, THESE ARE LIABLE [IF THEY DID HAVE TESTIMONY TO PRESENT AND THUS SWORE FALSELY]:**

1. I:1: 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 they hear the oath stated by him.

**B. [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. [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.**

**[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.”**

1. II:1: 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. [IF] BOTH OF THEM DENIED AT THE SAME TIME [THAT THEY HAD TESTIMONY], BOTH OF THEM ARE LIABLE.**

1. III:1: But it really is never possible to be so exact about matters!

**D. [IF THEY MADE THEIR DENIALS] ONE AFTER THE OTHER, THE FIRST IS LIABLE, BUT THE SECOND IS EXEMPT:**

1. IV:1: The rule of the Mishnah does not accord with the principle of what has been taught on Tannaite authority: 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.

2. IV:2: Gloss of foregoing.

3. IV:3: Gloss of foregoing.

4. IV:4: Gloss of foregoing.

5. IV:5: Gloss of foregoing.

6. IV:6: Gloss of foregoing.

**E. IF ONE DENIED AND ONE CONFESSED, THE ONE WHO DENIES IS LIABLE:**

1. V:1: 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.

**F. [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.**

1. VI:1: 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? 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!

## **XII. Mishnah-Tractate Shebuot 4:5-6**

**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,” “WE SWEAR THAT WE DO NOT KNOW ANY TESTIMONY CONCERNING YOU” —THEY ARE LIABLE ON ONLY ONE COUNT.**

**“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,” THEY ARE LIABLE ON EACH AND EVERY COUNT.**

**“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,” “WE SWEAR THAT WE KNOW NO TESTIMONY ABOUT YOU” — THEY ARE LIABLE ON ONLY ONE COUNT.**

**“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” THEY ARE LIABLE ON EACH AND EVERY COUNT.**

**“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,**

**“AND THAT MR. SO-AND-SO RAPED MY DAUGHTER,” “SEDUCED MY DAUGHTER,”**

**“AND THAT MY SON HIT ME,” “THAT MY FRIEND INJURED ME,” AND “THAT HE SET FIRE TO MY GRAIN ON THE DAY OF ATONEMENT” —**

**LO, THESE ARE LIABLE [ON ANY OF THESE COUNTS].**

1. I:1: 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? From the perspective of R. Eleazar b. R. Simeon. 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.”

## **XIII. Mishnah-Tractate Shebuot 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,”**

**“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,”**

**“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” —**

**LO, THESE ARE EXEMPT.**

**1. I:1:** *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.*

**2. I:2:** Scriptural proof that the oath of testimony applies only to a monetary claim.

**a. I:3:** Amplification of a clause of the foregoing.

**b. I:4:** As above.

**c. I:5:** As above.

**I. I:6:** Case illustrative of foregoing: “I counted out to you a maneh before Mr. So-and-so and Mr. So-and-so,” and witnesses were watching from the outside [but the debtor did not know it], what is the law?

**II. I:7:** As above. 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.

**III. I:8:** As above. Continuation of foregoing.

**d. I:9:** Continuation of the amplification of I:2. Simeon’s statement is analyzed.

#### **XIV. Mishnah-Tractate Shebuot 4:8-12**

**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.**

**1. I:1:** Tannaite proof from Scripture for this proposition.

**B. “I IMPOSE AN OATH ON YOU THAT WHEN YOU HAVE EVIDENCE TO GIVE IN MY BEHALF, YOU COME AND TESTIFY ABOUT ME” — LO, [IF, DESPITE TAKING THE OATH, THEY FAIL TO TESTIFY,] THESE ARE EXEMPT, FOR THE OATH HAS COME BEFORE THE MATTER ABOUT WHICH TESTIMONY IS TO BE GIVEN.**

**1. II:1:** Tannaite proof from Scripture for this proposition.

**C. [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, [IF, DESPITE TAKING THE OATH, THEY FAIL TO TESTIFY,] THESE ARE EXEMPT, UNLESS HE ADDRESS HIMSELF TO [SOME] OF THEM IN PARTICULAR.**

1. III:1: That is the case, even though actual witnesses should be among the assembly. Tannaite proof that a definite person must be specified as the witness who is to be subjected to the oath of testimony.

**D. [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 [M. SAN. 4:5], OR ONE OF THEM IS A RELATIVE OR OTHERWISE INVALID TO TESTIFY [M. 4:1] — LO, THESE ARE EXEMPT.**

1. IV:11: Tannaite proof from Scripture for this proposition.

**E. [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.**

1. V:11: Tannaite proof from Scripture for this proposition.

## **XV. Mishnah-Tractate Shebuot 4:13**

**A. (1) “I IMPOSE AN OATH ON YOU,” (2) “I COMMAND YOU,” (3) “I BIND YOU,” — LO, THESE ARE LIABLE. [IF HE USED THE LANGUAGE,] “BY HEAVEN AND EARTH,” LO, THESE ARE EXEMPT:**

1. I:1: what is the sense of this statement? 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.””

**B. (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,”**

1. II:1: Does this formulation bear the implication that “merciful and gracious” are also valid names of God?

**C. EUPHEMISMS FOR THE DIVINE NAME**

1. II:2: 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.

2. II:3: Whatever is secondary to the inscription of the divine name, whether before or after [as prefix or suffix] may be erased.

3. II:4: All representations of the divine name stated with reference to Abraham in the Torah are holy except for this one that is secular: And he said, My Lord, if now I have found favor in your sight” (Gen. 18:3).

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

5. II:6: 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.

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

7. II:8: 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.

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

**D. OR BY ANY OTHER EUPHEMISM — LO, THESE ARE LIABLE:**

1. III:1: Conflicting Tannaite statement is harmonized.

2. III:2: Continuation of foregoing. 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?

3. III:3: How do we know that ‘an execration’ is the same as an oath?

4. III:4: The language cursed may bear the meaning of excommunication, curse, or oath.

5. III:5: The word ‘amen’ bears the meaning of oath, acceptance of a statement, and confirmation of a statement.

6. III:6: The word ‘no’ stands for an oath, and the word ‘yes’ stands for an oath.

**E. “HE WHO CURSES MAKING USE OF ANY ONE OF THESE IS LIABLE,” THE WORDS OF R. MEIR. AND SAGES EXEMPT.**

1. IV:1: Tannaite proof from Scripture for the several positions here.

**F. “HE WHO CURSES HIS FATHER OR HIS MOTHER WITH ANY ONE OF THEM IS LIABLE,” THE WORDS OF R. MEIR. AND SAGES EXEMPT.**

1. V:1: Who is the authority behind sages’ position?

**G. HE WHO CURSES HIMSELF**

1. VI:1: Now here we have the view of all authorities.

**H. AND HIS FRIEND WITH ANY ONE OF THEM TRANSGRESSES A NEGATIVE COMMANDMENT.**

1. VII:1: Proof-text.

**I. [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).**

1. VIII:1: Story illustrative of the rule.

**J. (3) “MAY HE NOT SMITE YOU,” (4) “MAY HE BLESS YOU,” (5) “MAY HE DO GOOD TO YOU” — R. MEIR DECLARES LIABLE [FOR A FALSE OATH TAKEN WITH SUCH A FORMULA]. AND SAGES EXEMPT.**

1. IX:1: So does R. Meir not take the position that out of a negative statement you may derive an affirmative one?

## **XVI. Mishnah-Tractate Shebuot 5:1-5**

**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, 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.”**

**[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. BUT ONE IS NOT LIABLE [IF HE] INADVERTENTLY [TOOK A FALSE OATH IN REGARD TO A BAILMENT].**

**AND FOR WHAT ARE THEY LIABLE ON ACCOUNT OF DELIBERATE VIOLATION? A GUILT OFFERING WHICH IS WORTH [TWO] SHEKELS OF SILVER (LEV. 5:15).**

1. I:1: 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? 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?

2. I:2: 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.

3. I:3: He who imposes an oath upon witnesses in connection with a real estate claim of his—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.

a. I:4: Secondary development of the foregoing.

**B. 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].**

1. II:1: Tannaite expansion and analysis of the several positions concerning the Mishnah’s case. “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. R. Judah says, “‘By an oath, I do not owe you, you, or you,’ — he is liable on each count.” R. Eliezer says, “‘Not to you nor to you nor to you, by an oath,’ — he is liable on each count.” R. Simeon says, “He is liable on each count only if he will say to each one individually, ‘By an oath.’” With secondary and tertiary analysis.

**C. [IF] FIVE PEOPLE LAID CLAIM ON HIM AND SAID TO HIM, “GIVE US THE BAILMENT WHICH WE HAVE IN YOUR HAND” — “I SWEAR THAT YOU HAVE NOTHING IN MY HAND” — HE IS LIABLE ON ONLY ONE COUNT. “I SWEAR THAT YOU HAVE NOTHING IN MY HAND, NOR YOU, NOR YOU” — HE IS LIABLE ON EACH AND EVERY COUNT. R. ELIEZER SAYS, “[THIS IS SO] ONLY IF HE STATES THE OATH AT THE END.” R. SIMEON SAYS, “[THIS IS SO] ONLY IF HE WILL STATE AN OATH FOR EACH AND EVERY [CLAIM].”**

**“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.”**

1. III:1: [If someone said,] “Give me wheat and barley” — even if there were only a penny’s worth of all of them together, they combine” [to impose liability for an offering. This carries a secondary development.

a. III:2: Tertiary development of foregoing. 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, or is he liable on account of each one?

**D. “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.”**

**“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. “I STOLE IT, BUT I DID NOT SLAUGHTER IT, AND I DID NOT SELL IT” — “I IMPOSE AN OATH ON YOU” — AND HE SAID, “AMEN” — HE IS EXEMPT. “YOUR OX KILLED MY OX” — AND HE SAID, “IT DID NOT KILL” — AND HE SAYS, “I IMPOSE AN OATH ON YOU” — AND HE SAID, “AMEN” — HE IS LIABLE. “YOUR OX KILLED MY SLAVE” — AND HE SAYS, “IT DID NOT KILL” — “I IMPOSE AN OATH ON YOU” — AND HE SAID, “AMEN,” — HE IS EXEMPT.**

**[If] HE SAID TO HIM, “YOU INJURED ME AND MADE A WOUND ON ME,” AND HE SAID, “I DID NOT INJURE YOU AND I DID NOT MAKE A MARK ON YOU,” “I IMPOSE AN OATH ON YOU” — AND HE SAID, “AMEN” — HE IS LIABLE. [If] HIS SLAVE SAID TO HIM, “YOU KNOCKED OUT MY TOOTH AND YOU BLINDED MY EYE,” AND HE SAID, “I DID NOT KNOCK OUT YOUR TOOTH OR BLIND YOUR EYE,” AND HE SAID TO HIM, “I IMPOSE AN OATH ON YOU,” — AND HE SAID TO HIM, “AMEN” — HE IS EXEMPT.**

**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].**

1. IV:1: 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” 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.

## **XVII. Mishnah-Tractate Shebuot 6:1-4**

### **A. THE OATH IMPOSED BY JUDGES**

1. I:1: What sort of oath is imposed? We impose upon him the oath that is specified in the Torah, for it is written, ‘I will make you swear by the Lord, the God of heaven’ (Gen. 24: 3).”

2. I:2: The oath is taken standing. A disciple of a sage may remain seated. An oath is taken with a scroll of the Torah.

3. I:3: Tannaite rule: The oath of witnesses and judges is said also in any language. They say to him, “Know that the whole world trembled on the day on which it was said, “You shall not take the name of the Lord your God in vain” (Exo. 20: 7).

a. I:4: Gloss of foregoing.

b. I:5: As above.

c. I:6: As above.



d. I:7: As above.

e. I:8: As above.

f. I:9: As above.

**B. THE OATH IMPOSED BY JUDGES [IS REQUIRED IF] THE CLAIM IS [AT LEAST] TWO PIECES OF SILVER, AND THE CONCESSION [ON THE PART OF THE DEFENDANT IS THAT HE OWES] AT LEAST A PENNY'S [PERUTAH'S ] WORTH.**

**BUT IF THE CONCESSION IS NOT OF THE SAME KIND AS THE CLAIM, [THE DEFENDANT] IS EXEMPT [FROM HAVING TO TAKE THE OATH]. HOW SO? “TWO PIECES OF SILVER I HAVE IN YOUR HAND” — “YOU HAVE IN MY HAND ONLY A PERUTAH” — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. “TWO PIECES OF SILVER AND A PERUTAH I HAVE IN YOUR HAND” — “YOU HAVE IN MY HAND ONLY A PERUTAH” — HE IS LIABLE.**

1. II:1: Said Rab, “What is covered by the denial is what must be worth two pieces of silver.” And Samuel said, “What is covered by the claim itself must be worth two pieces of silver, so that, even if he denied owing only a perutah or admitted owing only a perutah, he is liable to take the oath imposed by the judges.”

2. II:2: Continuation of the foregoing. We have learned in the Mishnah: “Two pieces of silver I have in your hand” — “You have in my hand only a perutah” — he is exempt [from having to take the oath]. Is the operative consideration not that what is subject to the claim is now too little, a refutation of the position of Samuel?

3. II:3: Samuel: This rule was taught only when the claim came from the creditor and the admission came from the debtor. But if the claim came from the creditor with the testimony of a single witness in support, even if the claim was only a perutah, [and the debtor denies the whole claim], he is obligated to take an oath.

4. II:4: Samuel: If he claimed wheat and barley and the other conceded one of them, he is liable.

a. II:5: Secondary development of foregoing: If the one laid claim for wheat and barley and the other conceded the claim for one of them, he is exempt.

5. II:6: If the plaintiff claimed wheat and the other then went and immediately conceded barley, if this seems to be deceit, he is still liable for an oath, but if it is merely an intention to respond to the claim, he is exempt.

6. II:7: If he claimed utensils and a perutah, and the other conceded utensils but denied the perutah, he is exempt. If he conceded the perutah but rejected the claim for utensils, he is liable to take an oath.

**C. “A MANEH I HAVE IN YOUR HAND” — “YOU HAVE NOTHING AT ALL IN MY HAND” — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH].**

1. III:1: Said R. Nahman, “Nonetheless, by reason of custom they impose on him the oath [that is, an ‘oath that is imposed by reason of custom’ even though it is not required by statute].”

2. III:2: R. Habiba repeated this statement of R. Nahman with respect to the later clause of the same passage: "I have a maneh in your hand" — before witnesses he said to him, "Yes" — On the next day he said to him, "Give it to me" — "I already gave it to you" — he is exempt [from having to take the oath]. Said R. Nahman, "Nonetheless, they impose on him the oath by reason of custom [though not required by statute]."

3. III:3: What is the difference between an oath that is imposed by reason of the law of the Torah and an oath that is imposed by the rabbis [e.g., a customary oath]?

4. III:4: Said R. Pappa, "Someone who produces a bond against his fellow and the other said to him, 'So it's a bond that's already been paid off,' we say to him, 'You don't have the power to deny the document, go, pay.' And if he said, 'Then let him take an oath to me,' we say to him, 'You take an oath to him.'"

**D. "I HAVE A MANEH IN YOUR HAND" — "YOU HAVE NOTHING IN MY HAND EXCEPT FOR FIFTY DENARS" — HE IS LIABLE.**

**"A MANEH BELONGING TO MY FATHER YOU HAVE IN YOUR HAND" "HE HAS NOTHING IN MY HAND BUT FIFTY DENARS" — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH], FOR HE IS IN THE STATUS OF ONE WHO RETURNS LOST PROPERTY**

**"I HAVE A MANEH IN YOUR HAND" — BEFORE WITNESSES HE SAID TO HIM, "YES" — ON THE NEXT DAY HE SAID TO HIM, "GIVE IT TO ME" — "I ALREADY GAVE IT TO YOU" — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH].**

**"YOU DON'T HAVE ANYTHING IN MY HAND" — HE IS LIABLE [TO PAY].**

**"I HAVE A MANEH IN YOUR HAND," AND HE SAID TO HIM, "YES," — "DON'T GIVE IT TO ME EXCEPT BEFORE WITNESSES" — ON THE NEXT DAY, HE SAID TO HIM, "GIVE IT TO ME" — "I ALREADY GAVE IT TO YOU" — HE IS LIABLE [TO PAY], BECAUSE HE HAS TO HAND IT OVER TO HIM BEFORE WITNESSES.**

**"I HAVE A LITRA OF GOLD IN YOUR HAND" — "YOU HAVE IN MY HAND ONLY A LITRA OF SILVER" — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. "A DENAR OF GOLD I HAVE IN YOUR HAND" — "YOU HAVE IN MY HAND ONLY A DENAR OF SILVER, A TERISIT, A PONDION, AND A PERUTAH, " — HE IS LIABLE, FOR ALL OF THEM ARE KINDS OF A SINGLE COINAGE.**

**"I HAVE A KOR OF GRAIN IN YOUR HAND" — "YOU HAVE IN MY HAND ONLY A LETEKH OF PULSE" — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH].**

**"A KOR OF PRODUCE I HAVE IN YOUR HAND" — "YOU HAVE IN MY HAND ONLY A LETEKH OF PULSE" — HE IS LIABLE, FOR PULSE FALLS INTO THE CATEGORY OF PRODUCE.**

**[If] HE CLAIMED WHEAT AND THE OTHER ADMITTED TO HAVING BARLEY, HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. AND RABBAN GAMALIEL DECLARES HIM LIABLE.**

**HE WHO CLAIMS JARS OF OIL FROM HIS FELLOW, AND THE OTHER CONFESSED TO HAVING FLAGONS — ADMON SAYS, "SINCE HE HAS CONFESSED TO HIM PART OF THE CLAIM IN THE SAME KIND, HE SHOULD TAKE AN OATH TO HIM." AND SAGES**

SAY, “THIS CONFESSION IS NOT OF THE SAME KIND AS THAT WHICH IS SUBJECT TO CLAIM.” SAID RABBAN GAMALIEL, “I PREFER THE OPINION OF ADMON.”

[IF] ONE LAID CLAIM AGAINST HIM FOR UTENSILS AND REAL ESTATE, AND THE OTHER PARTY CONCEDED THE CLAIM FOR UTENSILS BUT DENIED THE CLAIM FOR REAL ESTATE, OR CONCEDED THE CLAIM FOR REAL ESTATE AND DENIED THE CLAIM FOR UTENSILS, HE IS EXEMPT [FROM HAVING TO TAKE THE OATH].

[IF] HE CONCEDED PART OF THE REAL ESTATE, HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. [IF] HE CONCEDED PART OF THE UTENSILS, HE IS LIABLE [TO TAKE AN OATH]. FOR PROPERTY FOR WHICH THERE IS NO SECURITY IMPOSES THE REQUIREMENT OF AN OATH IN REGARD TO PROPERTY FOR WHICH THERE IS SECURITY.

1. IV:1: Said R. Judah said R. Assi, “‘He who lends money to his fellow before witnesses has to collect the money before witnesses as well.’ *When I said this before Samuel, he said to me, ‘He may say to him, ‘I paid you before so-and-so and so-and-so, but they went overseas.’”*” The borrower is then exempt from having to take an oath.

2. IV:2: Further version of the same matter.

c. IV:3: Illustrative case.

d. IV:4: Illustrative case.

e. IV:5: Illustrative case.

f. IV:6: Illustrative case.

g. IV:7: Illustrative case.

h. IV:8: Illustrative case.

i. IV:9: Illustrative case.

j. IV:10: Illustrative case.

**E. THEY DO NOT TAKE AN OATH IN THE CASE OF A CLAIM MADE BY A DEAF-MUTE, AN IDIOT, OR A MINOR. AND THEY DO NOT IMPOSE AN OATH UPON A MINOR.**

1. V:1: What is the scriptural basis for this ruling?

**F. BUT AN OATH IS IMPOSED IN THE CASE OF A CLAIM AGAINST [THE PROPERTY OF] A MINOR, AND AGAINST PROPERTY WHICH HAS BEEN CONSECRATED.**

1. VI:1: Now in the prior clause you have said, They do not take an oath in the case of a claim made by a deaf — mute, an idiot, or a minor. And they do not impose an oath upon a minor! Said Rab, “This refers to a case in which the minor comes bearing the claim of his father.”

2. VI:2: Samuel said, “The language, against [the property of] a minor, means, to collect payment from the estate of a minor; and the language, and against property which has been consecrated, means, to collect payment from the sanctuary.”

## **XVIII. Mishnah-Tractate Shebuot 6:5-6**

**A. AND WHAT ARE MATTERS ON ACCOUNT OF WHICH AN OATH IS NOT IMPOSED? [CLAIMS INVOLVING] SLAVES, BONDS, REAL ESTATE, AND CONSECRATED PROPERTY.**

**TO THESE ALSO DO NOT APPLY THE RULES OF TWOFOLD RESTITUTION:**

1. I:1: What is the source in Scripture for this rule?

**B. OR FOURFOLD OR FIVEFOLD RESTITUTION.**

1. II:1: How come? Scripture has required fourfold and fivefold repayment, not threefold or fourfold.

**C. [IN THE CASE OF THESE] AN UNPAID BAILIFF IS NOT SUBJECTED TO AN OATH.**

1. III:1: What is the source in Scripture for this rule?

**D. [IN THE CASE OF THESE] A PAID BAILIFF DOES NOT PAY COMPENSATION.**

**R. SIMEON SAYS, “ON ACCOUNT OF HOLY THINGS WHICH ONE IS LIABLE TO REPLACE [SHOULD THEY BE LOST OR STOLEN], AN OATH IS IMPOSED, AND ON ACCOUNT OF THOSE WHICH ONE IS NOT LIABLE TO REPLACE, AN OATH IS NOT IMPOSED.”**

1. IV:1: What is the source in Scripture for this rule?

**E. R. MEIR SAYS, “THERE ARE THINGS WHICH ARE TANTAMOUNT TO BEING IN THE GROUND BUT STILL ARE NOT DEEMED TO BE IMMOVABLE PROPERTY IN THE CLASSIFICATION OF REAL PROPERTY.” AND SAGES DO NOT CONCUR WITH HIS VIEW. HOW SO? “TEN FRUIT-LADEN VINES I HANDED OVER TO YOU” — AND THE OTHER SAYS, “THEY WERE ONLY FIVE” — R. MEIR IMPOSES AN OATH. AND SAGES SAY, “WHATEVER IS ATTACHED TO THE GROUND IS CLASSIFIED AS REAL PROPERTY.”**

1. V:1: So it follows that R. Meir takes the view that whatever is attached to the ground is not on that account classified as real property [Silverstone: since he says that in a claim for ten vines, an oath is imposed]. In that case, why specify that the vines are fruit-laden? The dispute could as well concern trees that bear no fruit!

**F. THEY ARE FORCED TO TAKE AN OATH ONLY IN A MATTER INVOLVING A CLAIM WHICH SPECIFIES A CONCRETE MEASURE, WEIGHT, OR NUMBER. HOW SO? “A ROOM FULL OF GOODS I GAVE YOU,” “A WALLET FULL OF MONEY I GAVE TO YOU,” AND THIS ONE SAYS, “I DON’T KNOW — BUT WHATEVER YOU LEFT IS WHAT YOU CAN TAKE” — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. THIS ONE SAYS, “[I GAVE YOU A HEAP OF PRODUCE] AS HIGH AS THE PROJECTION,” AND THAT ONE SAYS, “IT WAS ONLY AS HIGH AS THE WINDOW,” HE IS LIABLE [TO TAKE AN OATH FOR DENYING THE BAILMENT].**

1. VI:1: This rule has been repeated only in a case in which he has said to you, ‘a roomful,’ without further amplification. But if he said to him, ‘this roomful,’ then he has laid claim for something that is fully known and defined.

2. VI:2: Tannaite formulation on the same issue.

## **XIX. Mishnah-Tractate Shebuot 6:7**

**A. HE WHO LENDS MONEY TO HIS FELLOW ON THE STRENGTH OF A PLEDGE, AND THE PLEDGE GOT LOST — [THE CREDITOR] SAID TO HIM, “I LENT YOU A SELA ON THE STRENGTH OF IT, BUT IT WAS WORTH ONLY A SHEKEL, “ AND [THE DEBTOR] SAYS TO HIM, “NOT SO. BUT YOU LENT ME A SELA ON THE STRENGTH OF IT, AND IT WAS WORTH A SELA” — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. “A SELA I LENT YOU ON THE STRENGTH OF IT, AND IT WAS WORTH A SHEKEL, “ AND THE OTHER SAYS, “NOT SO. BUT A SELA YOU LENT TO ME ON THE STRENGTH OF IT, AND IT WAS WORTH THREE DENARS” — HE IS LIABLE. “A SELA YOU LENT TO ME ON THE STRENGTH OF IT, AND IT WAS WORTH TWO,” AND THE OTHER SAYS, “NOT SO. BUT I LENT YOU A SELA ON THE STRENGTH OF IT, AND IT WAS WORTH A SELA” — HE IS EXEMPT [FROM HAVING TO TAKE THE OATH]. “A SELA YOU LENT ME ON THE STRENGTH OF IT, AND IT WAS WORTH TWO,” AND THE OTHER SAYS, “NOT SO, BUT A SELA I LENT TO YOU ON THE STRENGTH OF IT, AND IT WAS WORTH FIVE DENARS” — HE IS LIABLE. AND UPON WHOM IS THE OATH IMPOSED? UPON HIM WITH WHOM THE BAILMENT WAS LEFT, LEST THIS ONE TAKE AN OATH, AND THE OTHER ONE THEN PRODUCE THE BAILMENT.**

1. VII:1: Now to what does this final clause refer? Shall I say it is to the second clause? You may derive that fact from the simple rule that the oath is required from the lender, since the fact that the oath must be taken by the creditor is because he has conceded part of the claim [and has to take an oath for the rest of it.. Why then give a different reason?

2. VII:2: One who lent a thousand zuz to his fellow, and the other left him the handle of a saw against the loan, if the handle of the saw should be lost, the thousand zuz are also lost. But in the case in which two handles were involved, we do not make such a ruling. This substantial discussion is inserted only because it utilizes our Mishnah-paragraph for the solution of the problem at hand.

## **XX. Mishnah-Tractate Shebuot 7:1-8**

**A. ALL THOSE WHO ARE SUBJECTED TO OATHS [THAT ARE REQUIRED] IN THE TORAH TAKE [SAID] OATHS AND DO NOT PAY [THE CLAIM AGAINST THEM].**

1. I:1: How do we know this on the basis of Scripture?

**B. AND WHO ARE THEY WHO TAKE AN OATH AND COLLECT [WHAT THEY CLAIM IS OWING TO THEM]? (1) A HIRED HAND...**

**A HIRED HAND [C1] — HOW SO? [IF] HE SAID TO HIM, “GIVE ME MY WAGE, WHICH YOU HAVE IN YOUR HAND” — HE SAYS TO HIM, “I ALREADY GAVE IT TO YOU,” — AND THIS ONE SAYS, “I NEVER GOT IT” — HE TAKES AN OATH AND COLLECTS [WHAT HE CLAIMS]. R. JUDAH SAYS, “[THAT IS SO] ONLY IF THERE IS A CONCESSION OF PART OF THE CLAIM. “HOW SO? IF HE SAID TO HIM, ‘GIVE ME MY SALARY OF FIFTY DENARS WHICH I HAVE IN YOUR HAND,’ AND THE OTHER PARTY SAYS, ‘YOU ALREADY RECEIVED A GOLD DENAR [HALF OF WHAT IS OWING TO YOU].’”**

1. II:1: What distinguishes the hired hand that rabbis ordained for him the right to take an oath and collect his wages?

2. II:2: They repeated this rule only in a case in which the householder hired the worker in the presence of witnesses. But if he hired him not in the presence of witnesses, since he can say to him, "I never hired you," he can plead, "I hired you but I've already paid you your wages."

a. II:3: Recapitulation of the foregoing.

3. II:4: Analysis of a Mishnah-paragraph that intersects with the one at hand, on the oath of a hired hand.

4. II:5: The craftsman says, "You agreed to pay me two," and the other says, "I agreed to pay you only one," who is required to take the oath? In this case the householder takes the oath, and the craftsman loses out. This shades over into an analysis of the illustrative materials containing Judah's position, above.

**C. (2) THE VICTIM OF A THEFT, (3) THE VICTIM OF A BEATING, (4) HE WHOSE CONTRARY LITIGANT IS NOT TRUSTED [EVEN IF HE TAKES] AN OATH, (5) AND A SHOPKEEPER CONCERNING [WHAT IS WRITTEN IN] HIS ACCOUNT BOOK.**

**THE VICTIM OF A THEFT [M. 7:1C2] — HOW SO? [IF PEOPLE] WERE GIVING TESTIMONY AGAINST A PERSON THAT HE HAD GONE INTO HIS HOUSE TO EXACT A PLEDGE WITHOUT PERMISSION, AND [THE VICTIM OF THE THEFT] SAYS, "YOU TOOK MY UTENSILS," — AND THE OTHER PARTY SAYS, "I NEVER TOOK THEM" — LO, THIS ONE TAKES AN OATH AND COLLECTS [WHAT HE CLAIMS]. R. JUDAH SAYS, "[THAT IS SO] ONLY IF THERE WILL BE A CONCESSION OF PART OF THE CLAIM. HOW SO? HE SAID TO HIM, 'TWO UTENSILS OF MINE DID YOU TAKE,' AND THE OTHER PARTY SAYS, 'I TOOK ONLY ONE OF THEM.'"**

1. III:1: Since all the witnesses saw is that the creditor went in to seize the pledge, but they did not see him actually take it, perhaps he never seized the pledge? For did not R. Nahman say, "If someone held an ax in his hand and said, 'I'm going to go and chop down Mr. So-and-so's palm tree,' and it was found cut down and thrown onto the ground, he do not rule that this man actually has cut it down"? It follows that people can boast but not do a thing. Here too, maybe the man made a boast but did nothing!

a. III:2: Secondary development of the foregoing.

2. III:3: With reference to If people were giving testimony against a person that he had gone into his house to exact a pledge without permission, and the victim of the theft says, "You took my utensils," and the other party says, "I never took them" — lo, this one takes an oath and collects what he claims, said Raba, "Even a guard may take such an oath [if the householder was absent, then the caretaker takes the oath], and even the guard's wife may take the oath to the same effect."

3. III:4: Continuation of foregoing.

**D. THE VICTIM OF A BEATING [M. 7:1C3] — HOW SO? [IF PEOPLE] WERE GIVING TESTIMONY AGAINST A PERSON THAT [THE PLAINTIFF] HAD GONE INTO HIS [THE DEFENDANT'S] HAND WHOLE AND CAME FORTH INJURED, AND HE SAID, "YOU BEAT ME UP," — AND HE SAYS, "I NEVER BEAT YOU UP" — LO, THIS ONE TAKES AN OATH**

**AND COLLECTS [COMPENSATION]. R. JUDAH SAYS, “[THAT IS SO] ONLY IF THERE WILL BE A CONCESSION OF PART OF THE CLAIM. HOW SO? IF HE SAID TO HIM, ‘YOU MADE TWO WOUNDS ON ME,’ AND THE OTHER PARTY SAID, ‘I MADE ONLY ONE ON YOU.’”**

1. IV:1: That is the case only in a situation in which the injury was somewhere where the injured party could have made it himself, but if it were in a spot in which the injured party could never have made it himself, he collects without taking an oath.

**E. HE WHOSE CONTRARY LITIGANT IS NOT TRUSTED [EVEN IF HE TAKES] AN OATH [M. 7:L C4] — HOW SO? ALL THE SAME ARE AN OATH REGARDING TESTIMONY, AN OATH REGARDING A BAILMENT, AND EVEN A RASH OATH —**

1. V:1: What is the meaning of and even a rash oath?

**F. [IF] ONE OF THE LITIGANTS WAS A DICE PLAYER, GAVE OUT LOANS ON USURY, [WAS] A PIGEON RACER, OR A DEALER IN SEVENTH-YEAR PRODUCE [M. San. 3:3], THE OTHER LITIGANT TAKES AN OATH AND COLLECTS [HIS CLAIM].**

1. VI:1: Why inflate the list?

**G. “[IF] BOTH OF THEM WERE SUSPECT [IN THE MATTERS JUST NOW LISTED], THE OATH RETURNS TO ITS NORMAL PLACE [AND IS TAKEN BY THE ONE AGAINST WHOM THE CLAIM IS MADE],” THE WORDS OF R. YOSÉ. R. MEIR SAYS, “LET THEM DIVIDE UP [THE CLAIM AT ISSUE].”**

1. VII:1: What is the decided law?

**H. THE OATH RETURNS TO ITS NORMAL PLACE [AND IS TAKEN BY THE ONE AGAINST WHOM THE CLAIM IS MADE],” THE WORDS OF R. YOSÉ. R. MEIR SAYS, “LET THEM DIVIDE UP [THE CLAIM AT ISSUE].”**

1. VIII:1: Where does it revert?

2. VIII:2: Gloss and continuation of the foregoing.

3. VIII:3: As above.

**I. SAYINGS OF SIMEON B. TARFON**

1. VIII:4: A saying attributed to the named authority.

2. VIII:5: As above.

3. VIII:6: As above.

**J. A STOREKEEPER CONCERNING [WHAT IS WRITTEN IN HIS] ACCOUNT BOOK [M. 7:L C5] — HOW SO? IT IS NOT THAT HE MAY SAY TO HIM, “IT IS WRITTEN IN MY ACCOUNT BOOK THAT YOU OWE ME TWO HUNDRED ZUZ.” BUT [IF THE HOUSEHOLDER] SAID TO HIM, “GIVE MY SON TWO SEAHs OF WHEAT,” [OR] “GIVE MY WORKER CHANGE FOR A SELA,” AND HE SAYS, “I ALREADY GAVE IT TO HIM,” — AND THEY SAY, “WE NEVER GOT IT” — [THE STOREKEEPER] TAKES AN OATH AND COLLECTS WHAT IS OWING TO HIM, AND [THE WORKERS] TAKE AN OATH AND COLLECT WHAT THEY CLAIM FROM THE HOUSEHOLDER.**

1. IX:1: What’s the point of this oath?

**K. SAID BEN NANNOS, “HOW SO? BUT [EITHER] THESE OR THOSE THEN ARE TAKING A VAIN OATH!**

**RATHER, [THE STOREKEEPER] COLLECTS WHAT IS OWING TO HIM WITHOUT TAKING AN OATH AT ALL, AND [THE WORKERS] COLLECT WHAT THEY CLAIM [NOT TO HAVE RECEIVED] WITHOUT TAKING AN OATH.”**

1. X:1: Two pair of witnesses contradict one another — said R. Huna, “This one may come and give testimony by itself, and that one may come and give testimony by itself.”

**L. [IF] ONE SAID TO THE STOREKEEPER, “GIVE ME PRODUCE FOR A DENAR,” AND HE GAVE IT TO HIM — HE SAID TO HIM, “GIVE ME THE DENAR, “ — HE SAID TO HIM, “I ALREADY GAVE IT TO YOU, AND YOU PUT IT IN THE TILL” — LET THE HOUSEHOLDER TAKE AN OATH. IF HE GAVE HIM A DENAR AND SAID TO HIM, “GIVE ME PRODUCE” — HE SAID TO HIM, “I ALREADY GAVE IT TO YOU AND YOU BROUGHT IT HOME” — LET THE STOREKEEPER TAKE AN OATH. R. JUDAH SAYS, “WHOEVER HAS THE PRODUCE IN HAND — HIS HAND IS ON TOP.”**

1. XI:1: Under what conditions [does the storekeeper take an oath]? It is if the fruit is heaped in a pile and lying there and the litigants are contesting them. But if he has thrown the fruit into the basket on his shoulder, then he who wants to collect from the other [the storekeeper] has to prove his case that the storekeeper has not been paid.

**M. [IF] HE SAID TO THE MONEY CHANGER, “GIVE ME SMALL COINS FOR A DENAR,” AND HE GAVE THEM TO HIM — HE SAID TO HIM, “GIVE ME THE DENAR” — HE SAID TO HIM, “I ALREADY GAVE IT TO YOU, AND YOU PUT IT IN THE TILL” — LET THE HOUSEHOLDER TAKE AN OATH. IF HE GAVE HIM A DENAR AND SAID TO HIM, “GIVE ME SMALL CHANGE,” HE SAID TO HIM, “I ALREADY GAVE THEM TO YOU, AND YOU TOSSED THEM INTO YOUR WALLET,” LET THE MONEY CHANGER TAKE AN OATH. R. JUDAH SAYS, “IT IS NOT CUSTOMARY FOR A MONEY CHANGER TO HAND OVER EVEN AN ISSAR BEFORE HE COLLECTS HIS DENAR!”**

1. XII:1: It is necessary to set forth both cases [the fruit-seller, the money changer].

**N. JUST AS THEY HAVE SAID [M. KET. 9:7], (1) A WOMAN WHO IMPAIRS HER MARRIAGE SETTLEMENT COLLECTS ONLY BY TAKING AN OATH, [AND] (2) [IF] A SINGLE WITNESS TESTIFIES THAT IT HAS BEEN COLLECTED, SHE COLLECTS IT ONLY BY TAKING AN OATH; [AND] (3) SHE COLLECTS FROM INDENTURED PROPERTY AND FROM PROPERTY BELONGING TO THE ESTATE ONLY BY TAKING AN OATH; [AND] (4) SHE WHO COLLECTS HER MARRIAGE SETTLEMENT NOT IN HER HUSBAND’S PRESENCE COLLECTS IT ONLY BY TAKING AN OATH, SO (5) HEIRS OF AN ESTATE COLLECT [DEBTS OWING TO THE DECEASED] ONLY THROUGH AN OATH: “(1) WE SWEAR THAT FATHER GAVE US NO INSTRUCTIONS [IN THIS MATTER], (2) FATHER SAID NOTHING TO US ABOUT IT, AND (3) WE DID NOT FIND AMONG HIS BONDS EVIDENCE THAT THIS BOND HAD BEEN PAID OFF.” R. YOHANAN B. BEROQAH SAYS, “EVEN IF THE SON WAS BORN AFTER THE DEATH OF THE FATHER, LO, THIS ONE MUST TAKE AN OATH BEFORE HE COLLECTS [WHAT IS OWING TO THE ESTATE].” SAID RABBAN SIMEON B. GAMALIEL, “IF THERE ARE WITNESSES THAT**



**THE FATHER HAD STATED WHEN HE WAS DYING, ‘THIS BOND HAS NOT YET BEEN PAID OFF,’ [THE SON] MAY COLLECT [THE DEBT] WITHOUT TAKING AN OATH.”**

1. XIII:1: From whom is the debt collected? Should we say from the borrower? The father could have gotten back his money without an oath, and should they have to take an oath? Rather, it means, And so also orphans cannot collect payment from orphans without taking an oath.

2. XIII:2: Same issue as above: what is the character of this oath? The heirs take the oath of heirs and collect what is coming to them.

3. XIII:3: Continuation of foregoing: can someone leave to his heirs the requirement to take an oath?

a. XIII:4: Illustrative case.

b. XIII:5: As above.

4. XIII:6: Decided law.

5. XIII:7: Said R. Pappa, “As to a bond in the hands of an estate [in a case in which the borrower has died during the lifetime of the lender, then the lender has died (Silverstone)], we do not tear it up, but we also do not collect the loan on the strength of it.

a. XIII:8: Illustrative case.

**O. AND THESE [MUST] TAKE AN OATH EVEN WHEN THERE IS NO CLAIM [LAID AGAINST THEM]: (1) PARTNERS, (2) TENANTS, (3) GUARDIANS, (4) A WOMAN WHO MANAGES HER HOUSEHOLD, AND (5) A MANAGER OF A COMMON LEGACY (“SON OF THE HOUSEHOLD”). [IF] HE SAID TO HIM, “WHAT IS YOUR CLAIM AGAINST ME?” “I WANT YOU TO TAKE AN OATH TO ME” — HE IS LIABLE:**

1. XIV:1: [If we maintain that people have to take an oath even when there is no claim against them,] so are we dealing with total idiots? Clarification of the wording of the rule.

2. XIV:2: Tannaite gloss: The manager of a common legacy of whom they have spoken refers not merely to somebody who comes and goes at will, but someone who hires and fires workers, buys and sells produce.

3. XIV:3: And what differentiates the named parties that they have to take an oath when the claim is subject to doubt?

**P. ONCE THE PARTNERS HAVE DIVIDED UP THE PROPERTY, OR THE TENANT FARMERS, THEN ONE CANNOT IMPOSE AN OATH UPON THE OTHER.**

**[IF THE REQUIREMENT TO TAKE] AN OATH HAPPENED TO COME UPON HIM FROM SOME OTHER SOURCE [CAUSE], THEY IMPOSE UPON HIM AN OATH COVERING THE ENTIRE ENTERPRISE.**

1. XV:1: The question was raised: What is the law on superimposing upon an oath taken on the authority of rabbis this further, supererogatory oath?

2. XV:2: On the occasion of the required swearing of all classifications of oaths we superimpose supererogatory oaths, except on the occasion of the oath taken by the hired hand, on which we do not impose supererogatory oaths.

## **Q. THE ADVENT OF THE SABBATICAL YEAR RELEASES THE REQUIREMENT TO TAKE AN OATH.**

1. XVI:1: What is the scriptural basis for the rule?

### **XXI. Mishnah-Tractate Shebuot 8:1-6**

**A. THERE ARE FOUR KINDS OF GUARDIANS: (1) AN UNPAID BAILIFF, (2) A BORROWER, (3) A PAID BAILIFF, AND (4) A RENTER.**

1. I:1: Who is the Tannaite authority who classifies guardians in four categories?

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

**B. AN UNPAID BAILIFF TAKES AN OATH UNDER ALL CIRCUMSTANCES. (2) A BORROWER PAYS COMPENSATION FOR DAMAGES IN ALL CIRCUMSTANCES. (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.**

[IF] ONE SAID TO AN UNPAID BAILIFF, “WHERE IS MY OX?” (1) HE SAID TO HIM, “IT DIED,” BUT IN FACT IT HAD BEEN LAMED, DRIVEN OFF, STOLEN, OR LOST, (2) “IT WAS LAMED,” BUT IN FACT IT HAD DIED, OR BEEN DRIVEN OFF, STOLEN, OR LOST, (3) “IT WAS DRIVEN OFF,” BUT IN FACT IT HAD DIED, BEEN LAMED, STOLEN OR LOST, (4) “IT WAS STOLEN,” BUT IN FACT IT HAD DIED, OR BEEN LAMED, DRIVEN OFF, OR LOST, (5) “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?” (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 — “I IMPOSE AN OATH ON YOU,” AND HE SAID TO HIM, “AMEN” — HE IS EXEMPT. (2) “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. (3) “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 [BUT NOT TWOFOLD COMPENSATION (M. 5:4)].

(4) 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, “WHERE IS MY OX?” (1) HE SAID TO HIM, “IT DIED,” BUT IN FACT IT HAD BEEN LAMED OR DRIVEN AWAY, STOLEN, OR LOST — (2) “IT

WAS LAMED,” BUT IN FACT IT HAD DIED OR BEEN DRIVEN OFF OR STOLEN OR LOST — (3) “IT WAS DRIVEN OFF,” BUT IT HAD DIED OR BEEN LAMED OR STOLEN OR LOST — (4) “IT WAS STOLEN,” AND IN FACT IT HAD DIED OR BEEN LAMED OR DRIVEN OFF OR LOST — (5) “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. IF HE SAID TO A PAID BAILEE OR A RENTER, “WHERE IS MY OX?” (1) HE SAID TO HIM, “IT DIED,” BUT IN FACT IT HAD BEEN LAMED OR DRIVEN OFF — (2) “IT HAS BEEN LAMED,” BUT IN FACT IT HAD DIED OR BEEN DRIVEN OFF — (3) “IT HAS BEEN DRIVEN OFF,” AND IN FACT IT HAD DIED OR BEEN LAMED — (4) “IT HAS BEEN STOLEN,” AND IN FACT IT HAD BEEN LOST — (5) “IT HAS BEEN LOST,” AND IN FACT IT HAD BEEN STOLEN — “I IMPOSE AN OATH ON YOU,” — AND HE SAID, “AMEN” — HE IS EXEMPT. “IT DIED OR WAS LAMED OR DRIVEN OFF,” AND IN FACT, IT HAD BEEN STOLEN OR LOST — “I IMPOSE AN OATH ON YOU,” AND HE SAID, “AMEN” — HE IS LIABLE. “IT WAS LOST OR WAS STOLEN,” BUT IN FACT IT HAD DIED OR BEEN LAMED OR BEEN DRIVEN OFF — “I IMPOSE AN OATH ON YOU,” AND HE SAID, “AMEN” — HE IS EXEMPT.

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. [IF HE CHANGED HIS CLAIM, BY LYING] FROM GROUNDS FOR LIABILITY TO A REASON FOR EXEMPTION [FROM HAVING TO MAKE RESTITUTION], HE IS LIABLE. THIS IS THE GOVERNING PRINCIPLE: WHOEVER [FALSELY] TAKES AN OATH SO AS TO LIGHTEN THE BURDEN ON HIMSELF IS LIABLE. WHOEVER TAKES AN OATH SO AS TO MAKE MORE WEIGHTY THE BURDEN ON HIMSELF IS EXEMPT.

1. II:1: 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.” Samuel said, “They are exempt also in regard to the rash oath.”

a. II:2: Gloss of foregoing.

2. II:3: Continuation of II:1.

## Points of Structure

### **1. DOES BABYLONIAN TALMUD-TRACTATE SHEBUOT FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?**

While the Bavli to tractate Shebuot includes a few important essays that do not conduct word-for-word exegesis of the Mishnah, the Bavli overall comprises a systematic commentary to the Mishnah and little else. The tractate commences with some general observations that compare Mishnah-tractates, asking why two tractates are juxtaposed, this one ant Makkot. There are some further, broad-brush comparisons, e.g., with counterpart passages in Mishnah-tractate Shabbat and Negaim. But these rather engaging discussions focus our attention on our tractate in its own context and do not constitute Mishnah-criticism of a systematic order. So too at I.F, we find a systematic discussion of the Mishnah seen whole.

### **2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?**

The outline of the Talmud-tractate follows the outline of the Mishnah-tractate. We note that important statements of the Mishnah-tractate are not analyzed at all. There is no accounting for the omissions. But these do not materially change the picture of the Bavli-tractate as a commentary to the Mishnah-tractate to which it is attached. As we shall note, to be sure, important propositions not set forth in the Mishnah-tractate are examined. But these respond to the Mishnah-tractate's own program or to form secondary expansions of the Bavli's reading thereof. In examining any sentence of the Mishnah or of a comparable Tannaite document, [1] the compilers first discuss the formulation, authorities, or scriptural foundations for the Mishnah's or other Tannaite document's statement. Then [2] secondary augmentation will begin, whether through an extension of the rule to other cases, or an investigation of the implicit principle of the rule and its intersection with other types of cases altogether. Following comes [3] the consideration of Tannaite formulations of rules that pertain in theme or problem or principle, and these will be subjected to the same sequence and type of analytical questions that have already been brought to bear upon the Mishnah.

### **3. WHAT IS THE RATIONALITY OF THE STRUCTURE?**

We proceed from the particular — the Mishnah's rule — to the general. We first deal with the details of the particular, then we move outward to theoretical considerations. We deal with rules accorded Tannaite origin or sponsorship, first found in the Mishnah, then found in the Tosefta (not so firm a rule), and finally given a signal of Tannaite but not found in a compilation of Tannaite statements now in our hands (e. g., Tenno rabbanon, Tanné and the like).

### **4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE?**

Nearly every principal rubric of our outline finds its definition in the Mishnah's statements. By way of exceptions, I find the following items demanding attention: I.Q, II.L, X.B, XV.C, and XX.I.

## Points of System

### **1. DOES THE BABYLONIAN TALMUD-TRACTATE SHEBUOT SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?**

Because of the omissions of various Mishnah-paragraphs, the answer must be negative. But because of the absence of large-scale miscellanies that materially change the proportions or shape of the Mishnah-tractate, the negative answer is reenforced.

### **2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE SHEBUOT AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?**

Unlike many other important tractates, I see no point at which the large-scale composites that form rubrics unto themselves and in no way serve as Mishnah-commentary redefine the shape and structure of the tractate. On the contrary, the rather negligible selection of free-standing composites fit well into the larger program of Mishnah-exegesis.

I.A: As noted earlier, the impressive composite that views our tractate whole in relationship to its neighbors, and that further compares our tractate's formulation of matters with the counterpart formulation of the same matters elsewhere, takes an integral place in the exposition of the Mishnah-tractate. The issues in no way introduce fresh subjects or perspectives into the topic at hand, as distinct from the Mishnah-tractate. All we have is a different kind of Mishnah-criticism, not the exegetical kind that predominates, but still, a form of exegesis.

I.Q: Since the premise of the discussion in context is the conception of a court-imposed stipulation that governs the conditions under which an individual may act, e.g., an individual's act of consecration is subject to the unarticulated stipulations that the court imposes, willy-nilly, upon all such actions, the extensive and excellent discussion of this principle in its own terms flows directly from the work of Mishnah-exegesis. Indeed, this is articulated in so many words when I.Q.3 explicitly reverts to Simeon's position in the Mishnah itself. So while we take up the matter of mental stipulations and unstated conditions imposed by the court, in fact this excellent composite forms an integral chapter in the exegesis undertaken at I.P.

II.L: The systematic exposition of the topic at hand — not having sexual relations with a menstruating woman — is set forth because the immediately prior Mishnah-clause has referred to such an action. So the topical composite is tacked on essentially to develop the point, introduced by the Mishnah itself, that such sexual relations are forbidden. Not only is the face of the Mishnah not vastly changed, but the intention of the Mishnah's rule is reenforced.

X.B: The oath of testimony serves all parties to a court proceeding, and the secondary exposition on how court procedures must be scrupulously fair to all parties simply enriches the basic point with which the Mishnah-chapter is occupied. Once we say that all who have testimony to give are adjured to give it, we proceed quite naturally to other ways in which we attempt to insure a fair adjudication of conflicting claims. Distinctive to the Talmud, as expected, is the special problem

of how the superior status of the sage and his disciple is taken into account; that forms a subdivision of the composite. If I had to specify a single composite that does materially deepen the consideration of the Mishnah-paragraph, it would be this one, since it makes articulate the premise of the Mishnah-chapter as a whole. But then all we have are more details pointing to the same generalization.

XV.C: The Mishnah-paragraph deals with euphemisms for the divine name, and the further discussion simply amplifies that subject; all we have is a topical appendix.

XX.I: A set of sayings in the name of a given authority is inserted whole, even though some contribute nothing to the problem at hand; this is typical of the Talmud's use of what clearly are received composites formulated along lines other than those that generally govern in the Talmud itself.

### **3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?**

I see no way in which the framers of Bavli Shebuot signalled an intention to do other than systematically expound the Mishnah, first its language, then its themes or principles or main ideas, as the context may indicate. Apart from a modest effort at broadening the scope of discussion of the oath of testimony to encompass the larger rules of fairness in court procedure, I cannot even find in the composites that fall outside the framework of Mishnah-commentary the slightest interest in reshaping or broadening the topic at hand. The Mishnah-tractate is set forth in a clear and systematic way, and that is precisely what the framers of the Talmud have wished to accomplish. Can we classify the main types of Mishnah-commentary? These seem to me to form a representative sample of the whole:

**1.** GLOSSING OF THE LANGUAGE OF THE MISHNAH: I.S.1, 2, 3; T. 1; II.F.1; I.1; III.A.1-3; V.B.1; VII.A.1

**2.** THE SOURCE IN SCRIPTURE OF THE MISHNAH'S RULE: I.J.1+a-e; L.1-3; M.1-2; N.1; R.1; T.4; II.B, G.1, H.4; V.A.1, E.2; VI.A.1+a-b

**3.** THE NAME OF THE AUTHORITY BEHIND AN ANONYMOUS AND AUTHORITATIVE STATEMENT OF THE MISHNAH: I.T.2-3; T.5+a-c

**4.** THE FURTHER AMPLIFICATION OF THE MISHNAH'S RULE AND THE PRINCIPLES INHERENT THEREIN: I.B.1, C.1, D.1, E.1 [F.1-4], G.1, H.1, I.1-2, K.1, 2; L.4; N.2. O.1. P.1 [+Q.1-5]; II.A.1-3; C.1, 2; D.1+a, E.1-3, H.1-3 (systematic glossing), H5-8; I.2-5. J.1; K.1 (+L.1-6, topical appendix); M.1-4; III.B.1, C.1, D.1-6 (amplification of what is at issue in the disputes; amplification of the rules; provision of answers to subsidiary problems); IV.A.1, B.1, C.1-3; D.1-3; V.C.1, D.1-2. E.1, 3-6 (plus secondary amplifications); VI.B.1; VII.B.1-6; VIII.A.1; B.1, 2; C.1, D.1; IX.A.1

These four rubrics turn out to encompass every composite, and most of the compositions, of Chapters One through Three. And of them, the one we should predict would constitute the single largest rubric, the fourth, turns out to predominate throughout.

A review of the systematic program of augmentation of the law of the tractate, not only its language, will show that that enterprise not only predominates but also imposes its character upon the tractate as a whole. The Bavli's treatment of Mishnah-tractate Shebuot is highly speculative and theoretical, working within the framework of the rules of the Mishnah-tractate but translating the rules into principles for exploration in their own

terms. If I had to define the achievement of the framers of the tractate's compositions and most of its composites, it would identify as principal this transformation of rules into principles and cases into laws. The Talmud is talmudic at just this point, at the fourth of the four rubrics. This tractate defines the Talmud of Babylonia as a commentary to the Mishnah — and little else. But, as others indicate, for that reason it also forms an anomaly in the Talmud.