

VI

BAVLI TRACTATE SHEBUOT CHAPTER SIX

FOLIOS 38B-44B

6:1-4

6:1

- A. 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.
- B. But if the concession is not of the same kind as the claim, [the defendant] is exempt [from having to take the oath].
- C. How so?
- D. "Two pieces of silver I have in your hand" —
- E. "You have in my hand only a perutah" —
- F. he is exempt [from having to take the oath].
- G. "Two pieces of silver and a perutah I have in your hand" —
- H. "You have in my hand only a perutah" —
- I. he is liable.
- J. "A maneh I have in your hand" —
- K. "You have nothing at all in my hand" —
- L. he is exempt [from having to take the oath].
- M. "I have a maneh in your hand" —
- N. "You have nothing in my hand except for fifty denars" —
- O. he is liable.
- P. "A maneh belonging to my father you have in your hand"
- Q. "He has nothing in my hand but fifty denars" — he is exempt [from having to take the oath],
- R. for he is in the status of one who returns lost property

6:2

- A. "I have a maneh in your hand" —
- B. before witnesses he said to him, "Yes" —

- C. On the next day he said to him, "Give it to me" —
- D. "I already gave it to you" —
- E. he is exempt [from having to take the oath].
- F. "You don't have anything in my hand" —
- G. he is liable [to pay].
- H. "I have a maneh in your hand,"
- I. and he said to him, "Yes," —
- J. "Don't give it to me except before witnesses" —
- K. On the next day, he said to him, "Give it to me" —
- L. "I already gave it to you" —
- M. he is liable [to pay],
- N. because he has to hand it over to him before witnesses.

6:3

- A. "I have a litra of gold in your hand" —
- B. "You have in my hand only a litra of silver" —
- C. he is exempt [from having to take the oath].
- D. "A denar of gold I have in your hand" —
- E. "You have in my hand only a denar of silver, a terisit, a pondion, and a perutah, " —
- F. he is liable,
- G. for all of them are kinds of a single coinage.
- H. "I have a kor of grain in your hand" —
- I. "You have in my hand only a letekh of pulse" —
- J. he is exempt [from having to take the oath].
- K. "A kor of produce I have in your hand" —
- L. You have in my hand only a letekh of pulse" —
- M. he is liable,
- N. For pulse falls into the category of produce.
- O. [If] he claimed wheat and the other admitted to having barley, he is exempt [from having to take the oath].
- P. And Rabban Gamaliel declares him liable.
- Q. He who claims jars of oil from his fellow, and the other confessed to having flagons —
- R. Admon says, "Since he has confessed to him part of the claim in the same kind, he should take an oath to him."
- S. And sages say, "This confession is not of the same kind as that which is subject to claim."
- T. Said Rabban Gamaliel, "I prefer the opinion of Admon."
- U. [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,
- V. or conceded the claim for real estate and denied the claim for utensils,
- W. he is exempt [from having to take the oath].

- X. [If] he conceded part of the real estate, he is exempt [from having to take the oath].
- Y. [If] he conceded part of the utensils, he is liable [to take an oath].
- Z. For property for which there is no security imposes the requirement of an oath in regard to property for which there is security.

6:4

- A. They do not take an oath in the case of a claim made by a deaf — mute, an idiot, or a minor.
- B. And they do not impose an oath upon a minor.
- C. But an oath is imposed in the case of a claim against [the property of] a minor,
- D. and against property which has been consecrated.

- I.1** A. *What sort of oath do we impose upon him?*
- B. Said R. Judah said Rab, “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).”
 - C. *Said Rabina to R. Ashi, “In accord with whom is this opinion? It is accord with R. Hanina bar Idi, who has said, ‘We require that the Tetragrammaton be used in the expression of an oath.’”*
 - D. *He said to him, “You may maintain that the rule is even in accord with the opinion of rabbis, who say he may be adjured with a euphemism. But the upshot is that he has to hold something in his hand [that is holy, in which the divine name appears].”*
 - E. *That is in line with what Raba said, for said Raba, “A judge who imposes an oath using the language ‘the Lord, God of heaven’ [but without placing in the hands of the adjured a holy object] is regarded as having erred in a ruling that is as well known as one that appears in the Mishnah and so must repeat the rite in the proper manner.”*
 - F. *And said R. Pappa, “A judge who imposes an oath using prayer boxes containing scriptural passages is regarded as having erred in a ruling that is as well known as one that appears in the Mishnah and so must repeat the rite in the proper manner.”*
 - G. *And the decided law accords with Raba, but the decided law does not accord with R. Pappa.*
 - H. *And the decided law accords with Raba: for he did not hold a sacred object in hand.*
 - I. *...but the decided law does not accord with R. Pappa: for lo, he held a sacred object in his hand.*

- I.2.** A. The oath is taken standing.
- B. A disciple of a sage may remain seated.
 - C. An oath is taken with a scroll of the Torah.
 - D. A disciple of a sage to begin with may take it wearing prayer boxes containing phylacteries [which disciples wore all day long].

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

- B. The oath of witnesses and judges is said also in any language.
- C. They say to him, “Know that **[39A]** 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).
- D. And with reference to all transgressions that are listed in the Torah, it is written, “And he shall be acquitted,” but with reference to this one it is written, “And he shall not be acquitted.”
- E. In regard to all the transgressions that are mentioned in the Torah, they exact retribution from the man himself, but in this case they exact retribution from him and from his relatives, as it is said, “Suffer not your mouth to bring your flesh into guilt” (Qoh. 5: 5), and “flesh” refers only to a relative, as it is said, “From your flesh do not hide yourself” (Isa. 58: 7).
- F. In regard to all transgressions that are mentioned in the Torah, they exact retribution from the man himself, but with reference to this one, they exact retribution from the man and from the entire world, so that the transgression of the entire world is blamed on him, since it is said, “Swearing and lying...therefore does the land mourn, and every one who dwells therein does language” (Hos. 4: 2-3).
- G. *But might one suppose that that is the case only if he does all of them [killing, stealing, committing adultery]?*
- H. *Perish the thought! For it is written, “Because of wearing the land mourns” (Jer. 23:10) and further, “therefore does the land mourn and every one that dwells therein does languish” (Hos. 4: 3) [because of swearing the land mourns, therefore every inhabitant languishes because of swearing (Silverstone)].*
- I. All transgressions that are mentioned in the Torah do they suspend punishment for two or three generations, but in this case they impose punishment forthwith, since it is said, “I cause it to go forth, says the Lord of hosts, and it shall enter into the house of the thief and into the house of him who swears falsely by my name and it shall abide in the midst of this house and shall consume it with the timber thereof and the stones thereof” (Zec. 5: 4).
- J. “I cause it to go forth” — forthwith.
- K. “And it comes into the house of the thief” — this one who swears falsely knowing that he does not have the object and who deceives people.
- L. “And into the house of him who swears falsely by my name” — literally.
- M. All transgressions that are mentioned in the Torah apply to one’s property, but this one applies to property and to his own person: “And it will abide.”
- N. Come and see how things that fire or water cannot consume a false oath destroys [T. **Sot. 7:1A, 7:2A-M**].
- O. If one said, “I am not going to take an oath,” they dismiss him forthwith.
- P. But if he said, “I am going to take an oath,” the bystanders then say to one another, “‘Depart, I pray you, from the tents of these wicked men’ (Num. 16:26).”
- Q. They impose on him the oath that is stated in the Torah: “And I will make you swear by the Lord, the God of heaven” (Gen. 24: 3).

- R. They say to him, “Know that it is not according to what is in our mind [heart] that we adjure you, but in accord with what is in our minds, and so we find that when Moses adjured the Israelites in the plains of Moab, he said to them, ‘Not according to what is in your hearts do I adjure you, but according to what is in my heart.’ That is in line with this verse: ‘Nor is it with you only that I make this sworn covenant, but with him who is not here with us this day as well as with him who stands here with us this day before the Lord our God’ (Deu. 29:13-14)” [T. **Sot. 7:(3)4A-E**].
- S. Thus far we know only that he spoke with them. How do we know that he spoke for generations to come after them and to proselytes who would join them in time to come?
- T. As it is said, “And now with you alone...but with him who is not here with us this day” (Deu. 29:14) [T. **Sot. 7:5A-B**].
- U. I know only that this refers to the commandments that had already been commanded to the Israelites on Mount Sinai. How do we know that this included the commandments that would be given only later on, for example, even the reading of the Scroll of Esther?
- V. Scripture says, “They confirmed and took upon them...” (Est. 9:27). They confirmed then what they had long ago accepted.
- I.4.** A. *What is the meaning of, The oath of witnesses and judges is said also in any language?*
- B. *It is in line with that which we have learned in the Mishnah: These are said in any language: (1) the pericope of the accused wife [Num. 5:19-22], and (2) the confession of the tithe [Deu. 26:13-15], and (3) the recital of the Shema, [Deu. 6:4-9], and (4) the Prayer, (5) the oath of testimony, and (6) the oath concerning a bailment [M. **Sot. 7:1**].*
- C. *And now it is also stated, The oath of judges is said also in any language.*
- I.5.** A. The master has said: 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):
- B. *What is the basis for this statement? Should we say that it is because it was given at Sinai? But the Ten Commandments were also given there.*
- C. *Then maybe because it is a weightier matter than any other?*
- D. *But is it a more weighty matter? And lo, it has been taught on Tannaite authority:*
- E. [Repentance effects atonement for minor transgressions of positive and negative commandments [M. **Yoma 8:8B-C**], except for a violation of the commandment not to take the name of the Lord in vain. And what are major transgressions? Those punishable by extirpation and death at the hands of an earthly court, and not taking the name of the Lord in vain does count with them.[T. **Yoma 4:5N-O**]. [Silverstone: hence “you shall not take” is the same as, but not more serious than, the sins for which the penalty is extirpation or death].
- F. *Rather, the reason is the one that is stated: And with reference to all transgressions that are listed in the Torah, it is written, “And he shall be*

acquitted,” but with reference to this one it is written, “And he shall not be acquitted.”

- G. But with reference to all other transgressions in the Torah, is the language “will not hold guiltless” not used? Surely it is written, “and will be no means hold guiltless” (Exo. 34: 7)!
- H. *That is required in line with what R. Eleazar said. For it has been taught on Tannaite authority:*
- I. R. Eleazar says, “It is not possible to say ‘holding guiltless,’ for it is in fact said, ‘will not hold guiltless.’ It is not possible to say, ‘will not hold guiltless,’ for it is in fact stated, ‘holding guiltless.’ So how reconcile? He holds guiltless those who repent, but does not hold guiltless those who do not repent.”

I.6. A. In regard to all the transgressions that are mentioned in the Torah, they exact retribution from the man himself, but in this case they exact retribution from him and from his relatives, as it is said, “Suffer not your mouth to bring your flesh into guilt” (Qoh. 5: 5), and “flesh” refers only to a relative, as it is said, “From your flesh do not hide yourself” (Isa. 58: 7):

- B. *But is it the fact that in the case of all other transgressions, they do not exact retribution from his relatives? Lo, it is written, “And I will set my face against that man and against his family” (Lev. 20: 5) [in the context of idolatry].*
- C. *And it has been taught on Tannaite authority:*
- D. Said R. Simeon, “If he sinned, what sin did his family do? But the verse intends to tell you, you have no family in which is found one tax collector that really is not entirely made up of tax collectors, or in which is found one robber that really is not entirely made up of robbers, because they afford protection to the one who is a tax collector or robber.”
- E. *Well, in such a case they are punished by a different, and lesser penalty, while in this case, they suffer from the penalty that is coming to him, in lien with that which has been taught on Tannaite authority:*
- F. Rabbi says, ““And I will cut him off” (Lev. 20: 3) — why so? Because it is said, ‘And I will set my face against that man and against his family’ (Lev. 20: 3), so I might have thought that the whole of the family will suffer extirpation. Therefore the verse says, ‘him,’ meaning, ‘him will I cut off, but not the whole family shall I punish with extirpation.’”

I.7. A. In regard to all transgressions that are mentioned in the Torah, they exact retribution from the man himself, but with reference to this one, they exact retribution from the man and from the entire world, so that the transgression of the entire world is blamed on him, since it is said, “Swearing and lying...therefore does the land mourn, and every one who dwells therein does language” (Hos 4: 2-3):

- B. Well, is it really the fact that for all of the transgressions of the Torah the whole world is not punished? But is it not written, “And they shall stumble one on the other” (Lev. 26:37) — one stumbles by reason of the sin of his fellow, teaching that every Israelite bears responsibility for one another.

- C. **[39B]** That refers to a case in which they have the power to prevent the sin and did not prevent it. [Silverstone: but swearing falsely involves destruction even of the wholly righteous.]
- D. *What differentiates the wicked of his family from the wicked in general, the righteous of his family from the righteous in general?*
- E. *In the case of other transgressions, he is subject to the penalty coming to him, and the wicked of his family are subjected to a severe penalty, while the wicked in general are subjected to a light penalty. As to the righteous in both classifications, they are exempt from all penalty. But in the case of a false oath, he and the wicked of his family are subjected to the penalty that is coming to him, and the wicked in general are subjected to a severe penalty, and the righteous in both classifications are penalized in a light way.*

I.8. A. If one said, “I am not going to take an oath,” they dismiss him forthwith. But if he said, “I am going to take an oath,” the bystanders then say to one another, “‘Depart, I pray you, from the tents of these wicked men’ (Num. 16:26):”

- B. *Well, with reference to the one who is taking the oath, he is standing under a prohibition, but as to the one who adjures him, why should he be regarded as a wicked person?*
- C. *It is in accord with that which has been taught on Tannaite authority:*
- D. R. Simeon b. Tarfon says, “‘The oath of the Lord shall be between them both’ (Exo. 22:10) — teaching that the oath falls upon them both.”

I.9. A. They say to him, “Know that it is not according to what is in our mind [heart] that we adjure you, but in accord with what is in our minds, and so we find that when Moses adjured the Israelites in the plains of Moab, he said to them, ‘Not according to what is in your hearts do I adjure you, but according to what is in my heart.’ That is in line with this verse: ‘Nor is it with you only that I make this sworn covenant, but with him who is not here with us this day as well as with him who stands here with us this day before the Lord our God’ (Deu. 29:13-14):”

- B. *Why do they have to say this to him?*
- C. *It is because of the cane in the case before Raba* [Reference is made to a case that came before Raba. The debtor was ordered to take an oath and handed the creditor a cane to hold while he took the oath. He then said, “I swear I have given the money to the creditor.” The creditor broke the cane and money fell out to the amount of the debt. The debtor had put the coins in a hollow cane, so the oath was true, he had given the money to the creditor. To avoid such a thing, the court warns the debtor that the oath is in accord with what is on their mind, not his. So the warning is necessary not because the man may have a mental reservation, but because he may take a true oath with trickery. So in an oath we may well go according to what is said and not what is intended.]

II.1 A. The oath imposed by judges [is imposed 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 perutah’s worth:

- B. Said Rab, "What is covered by the denial is what must be worth two pieces of silver."
- C. 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."
- D. *Said Raba, "A close reading of our Mishnah will produce a result in accord with the position of Rab, while verses of Scripture produce a result in favor of the position of Samuel."*
- E. *"A close reading of our Mishnah will produce a result in accord with the position of Rab: **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 perutah's worth. But the passage does not state that the denial of the claim must be of a sum at least of a perutah. And we have furthermore learned in the Mishnah: the concession [on the part of the defendant is that he owes] at least a perutah's worth the concession [on the part of the defendant is that he owes] at least a perutah's worth. But the passage does not state that the denial must be of a sum at least a perutah.***
- F. *"...while verses of Scripture produce a result in favor of the position of Samuel: 'If a man give to his neighbor silver or utensils to keep' (Exo. 22: 6) — just as utensils is plural, hence at least two, so silver must be at least two pieces; just as silver is something of value, so anything of value is included, and Scripture then specifies, 'This is it' (Exo. 22: 8)" [for any claim about which the debtor says, 'I do not owe you the whole amount but 'this is it,' meaning, 'I admit owing you this portion only,' he takes an oath; hence the admission may be part of the two maahs, leaving less than two maahs for a denial; and Scripture supports Samuel (Silverstone)].*
- G. *And how does Rab deal with this challenge?*
- H. *We require that verse to cover the case in which the defendant admits a portion of what is claimed [Silverstone: "this is it" teaches us that the oath is imposed only when a portion of the claim is admitted, but it does not necessarily refer to the claim of two maahs mentioned in Exo. 22:6; there must always be a denial of two maahs apart from what the bailee admits having].*
- I. *And how does Samuel deal with this challenge?*
- J. *We find written, "it," and "this," to teach us: if he denied part of the claim and admitted part of the claim, he is liable to an oath [so if the denial is only a perutah, he is liable].*
- K. *And how does Rab deal with this?*
- L. One word indicates that there must be concession of part of what is claimed, the other, that there must be admission of the same kind as what is claimed [Silverstone: "it" a portion of the claim, I admit; "this" of this very kind I concede].
- M. *And how does Samuel deal with this?*
- N. *Will it not be inferred en passant that the amount of the claim is diminished? [Silverstone: assuming even as you say that the verse refers to admission only, that it must be a portion and of the same kind, it is still obvious that what is denied is*

less than two maahs, for the only claim mentioned by Scripture is two maahs, and of this Scripture says he admits a portion, hence he denies a portion clearly less than two maahs, so Scripture appears to be opposed to Rab's view].

- O. *But Rab will say to you, "When 'silver' is initially mentioned, it pertains to the denial of the claim, for if that were not the case, then Scripture could as well have stated, 'If a man give to his neighbor utensils to keep,' and I would have concluded, just as utensils is plural, hence at least two, so everything must be at least two [including silver]. Now what need do I have for Scripture's explicit reference to silver? Since it cannot pertain to the character of what is claimed, then apply it to the character of what is denied."*
- P. *And Samuel will say to you, "If Scripture had made reference to 'utensils' but not silver,' I might have supposed, just as utensils is plural, hence at least two, so everything must be at least two, but we do not require that it be something worth consideration. Therefore Scripture is so formulated as to tell us that we do require something worth consideration."*

II.2. A. 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?*

- B. *Samuel may say to you, "Do you think that the sense of the passage is 'the value of two manehs'?" [Silverstone: one claimed goods to the value of two maahs, the other admitted them to the value of a perutah? If so, he would be liable, though the claim is now less than two maahs.] Not at all, the meaning is literally two maahs [Silverstone: one claimed two maahs of silver, the other admitted to having a perutah of copper; he is exempt, because the admission is not of the same kind as the claim]. So that which the one claimed, the other did not concede, and that which the other conceded, the one had not claimed."*
- C. *If that were the case, then note what follows: "Two pieces of silver and a perutah I have in your hand" — "You have in my hand only a perutah" — he is liable. Now, if you maintain that the Mishnah refers to the value of two maahs and a perutah and therefore he is liable [admitting a portion of the claim, admitting to a claim of the same kind], then there is no problem, and that is why he is liable. But if you say that the Mishnah is to be read literally, why is he liable at all? That which the one claimed, the other did not concede, and that which the other conceded, the one had not claimed.*
- D. *Do you present this as an argument against Samuel? But has not R. Nahman said Samuel said, "If he claimed wheat and barley and the other conceded one of them, he is liable"? And that stands to reason, since the further clause of the same passage states, "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]. Now, if you maintain that the Mishnah means these things literally, that explains why he is exempt [the one claims gold, the other concedes silver]. But if you maintains it means the value, why should he be exempt? A litra is a lot!*
- E. *Then, since the latter clause is meant literally, so the opening clause is intended to be read literally, and may we then say that this refutes the position of Rab? [Silverstone: the first clause states that if he claims two maahs and the other admits*

a perutah, he is exempt, because he claims silver and the other admits copper; but if he claimed goods to the value of two maahs and the other admitted goods to the value of a perutah, he would be liable, although the claim was originally only two maahs, and was, after the admission of a perutah, diminished from two maahs.]

- F. *Rab may say to you, “The entire Mishnah speaks of what is worth the stated amount, not what is literally specified, but the matter of the litra of gold is exceptional [and is meant literally]. [40A] You may know that that is the case, for lo, it states later on, “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. Now if you maintain that at issue is the value but not the literal coinage, that explains why he is liable, but if you maintain that the passage speaks literally of those coins in particular, why should he be liable?”*
- G. Said R. Eleazar, “The meaning is that he laid claim for a denar in coins, and he thereby indicates that a perutah is classified as a coin. A close reading of the Mishnah yields that conclusion: **for all of them are kinds of a single coinage.**”
- H. And Rab?
- I. The meaning of **for all of them are kinds of a single coinage** is that all of them are subject to the same law.
- J. *And as to R. Eleazar, may we say that, since he expounds the latter clause along the lines of Samuel’s view [the Mishnah means coins not value], he concurs with Samuel in reading the first clause of the Mishnah as well [if one claimed two maahs in silver and the other admitted a perutah in copper, he is exempt, but if he claimed goods to the value of two maahs and the other admitted goods to the value of a perutah, he would be liable, although the claim was only two maahs, not two maahs and a perutah, and after the admission that is less than two maahs (Silverstone)]?*
- K. *No, the latter clause is clearly intended to be read literally, for it says, **for all of them are kinds of a single coinage**, but the opening clause may be read in accord with either Rab [value, so one is exempt, the denial now being less than two maahs] or Samuel [coin literally, he is liable because the admission, a coin, is the same kind as the claim of a coin].*
- L. *Come and take note: “A gold denar of mine is in your possession” — “You have in my possession only a silver denar” — he is liable. The operative consideration is that he specified a golden coin, but if he had said simply, a gold denar, he would have been read to be claiming only the value.*
- M. *Said R. Ashi, ‘This is the sense of the statement: ‘Whoever lays claim to a gold denar is as though he laid claim to a denar of gold.’”*
- N. *R. Hiyya repeated as a Tannaite formulation in support of the position of Rab: “You have a sela of mine in your possession” — “You have in my possession only a sela less two maahs” he is liable; “less one maah” — he is exempt. [The denial must be at least two maahs, as Rab holds (Silverstone).]*

II.3. A. Said R. Nahman bar Isaac said Samuel said, “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" [even if the claim is only for a perutah, for if there had been two witnesses the debtor would have had to pay, and wherever two witnesses have the power to impose the requirement of paying off, the presence of one witness imposes the requirement of taking an oath (Silverstone).]

- B. *What is the basis in Scripture?*
- C. As it is written, "One witness shall not rise up against a man for any iniquity or for any sin" (Deu. 19:15) — "for any iniquity or for any sin" he does not rise up, but he rises up to impose liability to an oath.
- D. *And it has been taught on Tannaite authority:*
- E. Wherever two witnesses have the power to impose the requirement of paying off, the presence of one witness imposes the requirement of taking an oath.

II.4. A. And said R. Nahman said Samuel said, "If he claimed wheat and barley and the other conceded one of them, he is liable."

- B. Said to him R. Isaac, "Right on! And that is just what R. Yohanan said."
- C. *Does then that statement bear the implication that R. Simeon b. Laqish would disagree?*
- D. *There are those who say that he was holding off and kept silence, and there are those who say, he went out for a drink and kept silent.*
- E. *May we say that the following supports the stated position: [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? The operative consideration then is that he laid claim for wheat and the other conceded a debt of barley, but if he had claimed both wheat and barley and the other conceded one of them, he would have been liable to take an oath.*
- F. *No, the sense is, that is the rule covering even the case in which he claimed both wheat and barley; here too he would have been liable. And the reason that the dispute is framed in terms of wheat is to tell you how far Rabban Gamaliel is prepared to go.*
- G. *Come and take note: [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]. [40B] [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.] Now the operative consideration that he is exempt in the case of the claim involving utensils and real estate is that for real estate no oath may be imposed; but if the claim were for utensils and utensils similar to utensils and real estate, he would have had to take an oath. [If he claimed two different utensils and the other admitted to possessing one, which is similar to claiming utensils and real estates, the other admitting one, he is liable, and that supports the view of Nahman (Silverstone).]*
- H. *No, the same rule pertains: even in the case of utensils and utensils, he is exempt from having to take an oath. The reason the formulation alludes to utensils and*

real estate is that the framer of the passage wants to let us know that if the defendant concedes a portion of the utensils, he is liable also for the real estate.

I. *So what does he want to tell us? That utensils bind the lands [so that if one has to take an oath covering utensils, the lands are covered by the oath]? We already know that: **And property for which there is no security imposes the need for an oath on property for which there is security [M. Qid. 1:5D].***

J. *This is the principal locus for the presentation of that rule, while in the other passage we deal with the same rule only tangentially and en passant.*

II.5. A. And R. Hiyya bar Abba said R. Yohanan [said], “If the one laid claim for wheat and barley and the other conceded the claim for one of them, he is exempt.”

B. But did not R. Isaac say, “Right on, and so said R. Yohanan”? [And said R. Nahman said Samuel said, “If he claimed wheat and barley and the other conceded one of them, he is liable.” Said to him R. Isaac, “Right on, and so said R. Yohanan.”]

C. *What we have is Amoraim who differ about the position of R. Yohanan.*

D. *Come and take note: **[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.** So the operative consideration is that he laid claim for wheat and the other conceded barley. Lo, if he had claimed wheat and barley and the other had conceded one of them, he would have been liable [as against the position of Hiyya bar Abba].*

E. *No, that is the same rule as would apply: even if he claimed wheat and barley and the other admitted one he would have been exempt, and the reason the passage is set forth is to show you the full extent to which R. Gamaliel is willing to go.*

F. *Come and take note: **[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.** The operative consideration for the exemption in the case of utensils and real estate is that for a claim on real estate no oath is imposed; but for a claim for utensils and utensils similar to utensils and lands, he would be liable!*

G. *No, the same rule pertains: even in the case of utensils and utensils, he is exempt; but here the passage teaches us that, if he admits a portion of the claim for utensils, he is liable also for an oath concerning lands.*

H. *Yeah, well then what’s his point? That the one is linked to the other? We already have a statement of linkage: **And property for which there is no security imposes the need for an oath on property for which there is security [M. Qid. 1:5D].***

I. *This is the principal locus for the presentation of that rule, while in the other passage we deal with the same rule only tangentially.*

- J. *R. Abba bar Mammel objected to R. Hiyya bar Abba, “If he laid claim for an ox and the other conceded a lamb, or he claimed a lamb and the other conceded an ox, he is exempt; if he claimed an ox and a lamb and the other conceded one of them, he is liable’!”*
- K. *He said to him, “Who is speaking here? This represents the position of R. Gamaliel.”*
- L. *If it is Rabban Gamaliel, then even in the first clause too he should be liable?*
- M. *Rather, who is speaking here? The passage represents the position of Admon [Admon says, “Since he has confessed to him part of the claim in the same kind, he should take an oath to him”], and I am not dismissing you, for it is a well-framed amplification set forth by R. Yohanan himself: ‘who is speaking here? The passage represents the position of Admon.’”*

II.6. A. Said R. Anan said Samuel, “If the plaintiff claimed wheat and the other then went and immediately conceded parley, 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.”

B. And said R. Anan said Samuel, “If the plaintiff claimed two needles and the defendant conceded one of them, he is liable, for that is why ‘utensils’ was articulated, that is, whatever the value of what is claimed or conceded].”

II.7. A. Said R. Pappa, “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.”

B. *In one statement he concedes the position of Rab, in the other, of Samuel.*

C. *In one statement he concedes the position of Rab: “What is covered by the denial is what must be worth two pieces of silver.”*

D. *in the other, of Samuel: “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.”*

III.1 A. **“A maneh I have in your hand” — “You have nothing at all in my hand” — he is exempt [from having to take the oath]:**

B. 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].

C. *“How come? Because we assume that someone will not lay claim on another unless there is some sort of valid basis for that claim.”*

D. To the contrary, we should assume that someone will not brazenly deny a claim made by an actual creditor [Silverstone: and since he does deny the whole claim, he probably is telling the truth, so why the customary oath]?

E. *Well, he’s just trying to put him off, thinking, “When I get the money, I’ll pay up.”*

F. *You should know that that is so, for said R. Idi bar Abin said R. Hisda, “He who denies owing money is suitable to give testimony, if he denies possessing a bailment, he is unfit to give testimony.”*

III.2. A. 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].

- B. And said R. Nahman, “Nonetheless, they impose on him the oath by reason of custom [though not required by statute.]”
- C. *One who repeats R. Nahman’s provision in connection with the first clause [in which case even if he never conceded the claim at all, he must take the customary oath] all the more so will repeat it in connection with the latter clause. [41A] But one who applies it to the latter clause will take the view that here in particular that oath pertains, because implicitly there is money at issue, but there, where there is no money at stake, that is not the case.*

III.3. A. *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 imposed by rabbis even though the law does not require it]?*

- B. *At issue between them is the transfer of the oath. Oaths imposed by the Torah we do not transfer, but oaths imposed by rabbis we do transfer. [The debtor takes the oath and does not have to pay. If he says to the claimant, “You take the oath,” and if you do, I shall then pay up, the court will not permit the transfer of the oath from debtor to creditor where an oath is imposed by the Torah, e.g., partial concession, but they do permit it in the case of a rabbinic oath, e.g., denial of the entire claim, where a customary oath is imposed by rabbis (Silverstone).]*
- C. *And to Mar b. R. Ashi, who has said, “In connection with oaths imposed by the Torah we also permit the transfer of the oath from one party to the other, what is the difference between an oath imposed by the Torah and one imposed by rabbis?”*
- D. *The difference between them is, if the person does not pay up, whether or not we seize the property of a debtor whom the court has ordered to pay. In the case of an oath imposed by the Torah, we do collect what is owing by seizing the property of the debtor, but in the case of an oath imposed by rabbis, we do not seize property in payment of what is owing.*
- E. *And from the perspective of R. Yosé, who has said, “With respect to an oath imposed by rabbis, we also seize property in payment of a debt,” as we have learned in the Mishnah, **Something found by a deaf-mute, idiot, or minor is subject to the rule against stealing, in the interests of peace. R. Yosé says, “It is stealing beyond any doubt [and not merely in the interests of good social order]” [M. Git. 5:8G-H].** [Therefore the object found by a minor is fully possessed by him, and not merely assigned to him to as a concession.] But R. Hisda has said, “**It is stealing beyond any doubt** [so far as Yosé is concerned] only on the authority of scribes [but not by the law of the Torah], *with the concrete result that the object is seized by action of the court,*” what is the difference between the oath taken on the authority of the Torah and one taken on the authority of rabbis?*
- F. *The difference between them is the case in which the contrary litigant is suspect of taking oaths dishonestly. If the oath is imposed by heaven, then if the opposing party is suspect of lying under oath, we transfer the oath to him. Then the other party collects what is owing. But in the case of an oath imposed by rabbis, such a*

transfer represents only an ordinance of rabbis, and we will not impose one such an ordinance on top of another.

- G. *And with respect to rabbis who differ from R. Yosé and take the position that, in the case of a rabbinic ruling, we do not seize the property of the other to exact from the thief has stolen from the deaf mute the object the latter has found, what do we do to him?*
- H. *We excommunicate him.*
- I. *Said Rabina to R. Ashi, "So that's like holding him by the balls until he gives up his cloak."*
- J. *So what do we do to him?*
- K. *He said to him, "We excommunicate him until the time comes for him to be flogged [for not acting to remove the ban from himself by obeying rabbis], then we flog him, and then leave him alone."*

III.4. A. *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.'"*

- B. *Said R. Aha b. Raba to R. Ashi, "So what's the difference between this case and someone who impairs the validity of his document?" [A creditor produces a bond for his claim but says he has been paid in part; he then impairs the document, for the amount on the document on his own admission is no longer accurate, he may have received more than he admits; he therefore cannot get the rest without an oath; but Papa's example does not involve admission of partial repayment, therefore he has not impaired the validity of the document he has produced, so why should he have to take an oath? (Silverstone)]*
- C. *He said to him, "There, even though the debtor does not make the demand of an oath, we make the demand for him. Here we say to him, 'Go, pay,' but if he insists and says, 'Let him take an oath to me,' we say to the creditor, 'Go take an oath to him.'"*
- D. *But if he is a neophyte rabbi, we do not impose an oath on him.*
- E. *Said R. Yemar to R. Ashi, "Then can a neophyte rabbi may strip a cloak of someone's back [without even backing up his claim by taking an oath]?"*
- F. *In fact, we do not address his case. [Silverstone: we do not make him swear, because it would appear that we suspect him of attempting to claim money on a paid document but he cannot receive his money, for the debtor demands an oath. But what is the difference between a rabbi and a commoner? A commoner also need not swear and loses his money. If a rabbi has obtained his money by force from the debtor, he can keep it; an ordinary person has to return it.]*

IV.1 A. **"I have a maneh in your hand" — "You have nothing in my hand except for fifty denars" — he is liable:**

- B. *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.]*

- C. *We have learned in the Mishnah: “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]. Now here is a case in which, because he has laid claim for the money before witnesses, it is as though he had borrowed the money before witnesses, and yet it is taught that he is exempt from having to take another. [41B] So that is a refutation of R. Assi’s statement [Silverstone: for he says he must repay the loan before witnesses, and if he cannot produce the witnesses, he is liable to take an oath.]*
- D. *R. Assi may say to you, “When I said that he has to repay the loan before witnesses, that was only if to begin with he lent the money before witnesses, which then shows he did not trust him. But here he has trusted him [having lent the money without witnesses, and only when he claimed the loan later did he have witnesses on hand].”*

IV.2. A. *This is how R. Joseph repeated the same matter:*

- B. Said R. Judah said R. Assi, “He who lends money to his fellow before witnesses does not have to collect the money before witnesses as well.’ But if he said, ‘Pay me back only before witnesses,’ then he has to pay him back before witnesses.’ *When I said this before Samuel, he said to me, ‘He may say to him, “I paid you before so-and-so and so-and-so, but they went overseas.”’*” [The borrower is then exempt from having to take an oath.]
- C. *We have learned in the Mishnah: “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.. Now here is a case in which, because he has laid claim for the money before witnesses, it is as though he had borrowed the money before witnesses, and yet it is taught that he is exempt from having to take another. So that is a refutation of Samuel’s statement [Silverstone: for Samuel says the borrower may always contend that he did repay before witnesses, who are no longer around.]*
- D. *Samuel may say to you, “This in fact represents a conflict among Tannaite formulations, for it has been taught on Tannaite authority:*
- E. *“Before witnesses I lent you money, pay me before witnesses,’ — he has either to pay or present proof that he has paid [but he cannot just claim that the witnesses are no longer around].*
- F. *“R. Judah b. Batera says, ‘He may say to him, “I paid you before so-and-so and so-and-so and they have gone overseas”’*” [and Samuel concurs with this authority].
- G. *[With reference to the statement of the lender, “I lent you before witnesses, pay me before witnesses,] asked R. Aha, “How do we know that that statement refers to the time at which the loan was made? Maybe it speaks of the time at which the claim for repayment was made? And this is what he said to him, ‘Did I not lend you before witnesses? So you should have repaid me before witnesses.’ But if it were at the time of the loan, all agree that he is liable” [if the lender definitely stipulated at the time of the loan that he must repay him before witnesses, then*

Judah will concur that he cannot claim the witnesses have gone abroad, so Samuel has no Tannaite support, and the Mishnah refutes him (Silverstone)].

- H. *Said R. Pappi in the name of Raba, "The decided law is this: he who lends money to his fellow before witnesses — the latter must repay before witnesses."*
- I. *And R. Pappa in the name of Raba said, "He who lends money to his fellow before witnesses — the latter does not have to repay before witnesses. But if he said to him, 'Pay me back only before witnesses,' then he has to pay him back before witnesses. And if he said to him, 'I paid you back before Mr. So-and-so and Mr. So-and-so, who have gone overseas,' he is then believed."*

IV.3. A. *Somebody said to his neighbor, "When you pay me back, pay me before Reuben and Simeon."*

- B. *He went and paid him back before two other people.*
- C. *Said Abbaye, "What he said to him was, 'before two witnesses,' and he has repaid him before two witnesses."*
- D. *Said to him Raba, "It was for precisely that reason that he specified Reuben and Simeon, so that he should not be able to dismiss him [by claiming he had paid before two others, who had gone overseas]."*

IV.4. A. *Somebody said to his neighbor, "When you pay me back, pay me back before two men who have repeated Tannaite laws."*

- B. *He went and paid him back privately. The money was lost [by the creditor]. The case came before R. Nahman.*
- C. *He said to him, "Yes indeed, I got the money from him, but it was only as a deposit [not a repayment, which could only be before two disciples, and I was only an unpaid bailee]. So I said, 'Let it stay with me as a bailment until we get the two witnesses who have repeated Tannaite laws, so that my stipulation may be fulfilled.'"*
- D. *He said to him, 'Since you concede that you certainly received the money from him, it is an entirely valid repayment; if you want your stipulation to be carried out, go and bring the money, for here I am, and here is R. Sheshet, and we have repeated Tannaite laws, Sifra, Sifré, Tosefta, and the whole of the Gemara.'*

IV.5. A. *Somebody said to his neighbor, "Give me the hundred zuz that I lent you."*

- B. *He said to him, "You're making it up as you go along."*
- C. *He went and produced witnesses that he had lent him money, but that he had also paid him back."*
- D. *Said Abbaye, "What shall we do? The ones who say he lent him the money are the ones who say he paid him back."*
- E. *Raba said, "'Whoever claims, I did not borrow' is as though he had said, 'I did not pay back the money anyhow.'" [Silverstone: for if he did not borrow, he certainly did not repay. The witnesses confirm the loan, and are believed, but are not believed when they say he repaid, for he himself admits he did not repay; he has to pay.]*

- IV.6.** A. *Somebody said to his neighbor, "Give me the hundred zuz that I claim from you." He said to him, "Didn't I pay you back before Mr. So-and-so and Mr. So-and-so?"*
- B. *The two named parties came and said, "He's making it up as he goes along."*
- C. *R. Sheshet considered ruling that he was therefore proved simply a brazen liar.*
- D. *Said Raba to him, "Whatever someone does not have to remember, he will do without guile" [Silverstone: he did not have to remember whether he paid before witnesses or not, for the lender had not stipulated that he must repay him before witnesses. When, therefore, he said he had repaid before witnesses, his memory was at fault, but he is not thereby accounted a liar, and make take an oath that he has repaid the loan.]*
- IV.7.** A. *Somebody said to his neighbor, "Pay me the six hundred zuz that I claim from you."*
- B. *He said to him, "Didn't I pay you a hundred qabs [42A] of gallnuts, which are worth six zuz per qab."*
- C. *He said to him, "No, they were then selling for four zuz per qab."*
- D. *Came along two witnesses who said, "Yes, they were worth four zuz per qab."*
- E. *Said Raba, "This one has been proved a brazen liar."*
- F. *Said Rami bar Hama, "Lo, you are the one who has said, 'Whatever someone does not have to remember, he will do without guile.'"*
- G. *Said to him Raba, "Someone is going to remember the fixed market price."*
- IV.8.** A. *Somebody said to his neighbor, "Give me the hundred zuz that I claim from you, and here's the bond!"*
- B. *He said to him, "I paid you."*
- C. *He said to him, "That was to pay off a different claim [so you paid me a hundred zuz for something else]."*
- D. *Said R. Nahman, "He has impaired his bond."*
- E. *R. Pappa said, "He has not impaired his bond."*
- F. *And from the perspective of R. Pappa, how is this case different from the one in which someone said to his neighbor, "Give me the hundred zuz that I claim from you, and here's the bond!" and the other said to him, "Didn't you give the money to me to buy oxen, and didn't you come and sit by the butcher's stall and receive your money?" and the other said, "That money was for a different deal," and R. Pappa said, "He has impaired his bond"?*
- G. *In that case, once he said to him, "Didn't you give the money to me to buy oxen, and didn't you come and sit by the butcher's stall and receive your money?" he has impaired his bond. But here, perhaps the money really was for a different claim [Silverstone: since the claimant admits all the circumstances mentioned by the*

debtor and also having received the money from the sale of the oxen, we may assume that this was the very transaction for which he produces the document, and he cannot say that the claim on this document is still unsettled and that the transaction with the oxen, for which there is no document, is the one that is settled; but where he claims on a document, the debtor saying he has paid, without giving any concrete details, the claimant may say the payment was for another debt, but the document still holds good.]

- H. *So what's the upshot?*
 - I. *R. Pappi said, "He has not impaired his bond."*
 - J. *R. Sheshet b. R. Idi said, "He has impaired his bond."*
 - K. *The decided law is that he has impaired his bond. And that is the case in which he has paid before witnesses and did not remember to get the document back. But if he paid him in private, since he could have claimed, "He's making it up as he goes along," he also can claim, "The money was for a different purpose." And that ruling follows the one in the case involving Abimi b. R. Abbahu.*
- IV.9.** A. *Somebody said to his neighbor, "Any time you say to me that I have not paid you,' I shall believe what you say."*
- B. *The other went and paid him before witnesses.*
 - C. *Both Abbayye and Raba ruled, "So anyhow, he believes him" [one way or the other. The debtor stipulated he would always believe the creditor if he denied getting paid, so he has to pay again (Silverstone)].*
 - D. *Objected R. Pappa, "So while he may believe him more than he would himself, does he believe him more than he believes actual witnesses?"*
- IV.10.** A. *Somebody said to his neighbor, "You will be believed be me as a set of two witnesses whenever you say that I have not paid you." The debtor then went and paid him before three witnesses.*
- B. *Ruled R. Pappa, "What he said was that he would believe him as he would two witnesses, but as to believe him as he would three witnesses, that he did not stipulate."*
 - C. *R. Huna b. R. Joshua objected to R. Pappa, "When is it that rabbis rule we are guided by the majority of opinions? It is only in the case of making an estimate as to the value of something. In that case, the more estimates, the more experts. But where it comes to testimony, a hundred are treated as equivalent to two, and two, to a hundred."*
 - D. *Another version:*
 - E. *Somebody said to his neighbor, "You will be believed be me as a set of two witnesses whenever you say that I have not paid you." The debtor then went and paid him before three witnesses.*
 - F. *Ruled R. Pappa, "What he said was that he would believe him as he would two witnesses, but as to believe him as he would three witnesses, that he did not stipulate."*

- G. *R. Huna b. R. Joshua objected to R. Pappa, "A hundred are treated as equivalent to two, and two, to a hundred. But if he had said to him, 'like three,' and he went and paid him off before four, the other would not be believed, since he has taken the trouble to stipulate the number, he really means that number of opinions."*

V.1 A. 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:

- B. *What is the scriptural basis for this ruling?*
C. "If a man give to his neighbor silver or utensils to keep" (Exo. 22: 6) [in which case there can be an oath].
D. [The stress is on man, meaning] the act of transfer of a minor is null.

VI.1 A. But an oath is imposed in the case of a claim against [the property of] a minor:

- B. *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!*
C. Said Rab, "This refers to a case in which the minor comes bearing the claim of his father. [Silverstone: the original bailment or loan was by an adult, who is now dead; the claim is valid, though presented by a minor.] *And it represents the position of R. Eliezer b. Jacob, in line with that which has been taught on Tannaite authority:*
D. "R. Eliezer b. Jacob says, 'There are occasions on which someone has to take an oath on his own claim [Silverstone: on his own admission that the other has a valid claim against him, though the other does not even know it]. How so? If he said to him, "In my possession is a maneh belonging to your father, of which I have paid back half," he takes an oath to that effect. This is then a case in which someone has to take an oath on his own claim.'
E. "And sages say, 'He is only in the status of returning a lost object and is exempt from having to take an oath.'"
F. *But does not R. Eliezer b. Jacob also maintain that one who is in the status of returning a lost object is exempt from having to take an oath?*
G. Said Rab, "He imposes the oath only if it is a minor who makes the claim."
H. A minor? But have you not 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!**
I. *In point of fact, it is an adult, but why is he called a minor? It is because in relationship to his father's business, he is a minor [since he may not know the business affairs of the deceased parent].*
J. *Well, if that's the case, how can [Eliezer] regard it as his own claim, since it's the claim of others?*
K. *True enough, it's the claim of others, but it contains also his own admission [admitting as he does that he owes half] on the matter.*
L. **[42B]** *But all of them also fall into the category of a claim of others and an admission on one's own part!*

- M. *Rather, what is at issue is the statement of Rabbah. For said Rabbah, “On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently deny the truth about the whole of a loan in the very presence of the creditor and so entirely deny the debt. [He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.]” Now this one really wanted to deny the whole claim of the creditor but did not have the balls to deny it in front of the creditor, and he really wanted to concede it all, but he did not admit it, trying to evade him with the notion, “When I’ve got the money, I’ll pay him,” so the All-Merciful has said, “Impose an oath on him so that he will admit to the whole truth.” Now, R. Eliezer b. Jacob takes the view that there is no difference whether the claim is against him or against his son, he hasn’t got the balls, and therefore he is not in the category of someone who returns a lost object [Silverstone: therefore when the minor makes the claim, it is as if the father is doing so, and since the defendant admits half, he takes an oath as would anybody else who admits part of a claim]. And rabbis maintain that, while if it were against the creditor himself he wouldn’t have the balls, against the son he does, and since he is not being brazen, he is in the status of giving back something that is lost.*
- N. *But can you really assign the authorship of the [anonymous Mishnah-passage to R. Eliezer b. Jacob? Lo, the opening clause states: “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.*
- O. *In that first clause, the minor did not say, “I am certain [you owe the hundred denars but I think you do,]” in which case the defendant admits half and is exempt, in the status of returning a lost object. But here [in the later clause, where an oath is imposed,] he said, “I know what I’m talking about.”*

- VI.2.** A. **[But an oath is imposed in the case of a claim against [the property of] a minor, and against property which has been consecrated:]** 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.”
- B. **...against [the property of] a minor**, means, to collect payment from the estate of a minor? *We have learned that already as a Tannaite statement [so why does the Mishnah have to go over the same ground here]: she collects from indentured property and from property belonging to the estate only by taking an oath [M. Ket. 7:7B]. So how come we have the same thing twice?*
- C. *In this way we are informed of the rule put forth by Abbayye the Elder. For Abbayye the Elder repeated as a Tannaite formulation: [The rule that payment claimed from orphans on the father’s debt requires the claimant to take an oath refers] to adult [heirs], and it is hardly required to say that it covers minors as well, and that is the case whether in respect to an oath or in respect to getting paid from land of the lowest quality.*
- D. **...and against property which has been consecrated**, means, to collect payment from the sanctuary? *We have learned that already as a Tannaite*

statement [so why does the Mishnah have to go over the same ground here]: she collects from indentured property and from property belonging to the estate only by taking an oath [M. Ket. 7:7C]. Now what difference does it make to me whether the property is indentured to a common person or to the Most High?

- E. *It is necessary to indicate that the law pertains also to property indentured to the Temple. For otherwise I might have thought that in the case of property indentured to a common person, it is necessary to take an oath, because one might enter a conspiracy to defraud a common person, but in the case of the Temple an oath would not be required, for someone is not going to conspire to defraud the Temple. So we are informed that it is necessary to take such an oath.*
- F. But has not R. Huna said, “A dying man who consecrated all his property to the Temple and said, ‘In my possession is the sum of a hundred denars that belong to Mr. So-and-so,’ he is believed, since we assume that someone will not conspire to defraud the Temple”?
- G. *Say this: that is the rule in the case of a dying man, because such a person will not sin when it is not to his advantage, but as to a healthy man, we most certainly do take into account that possibility.*

I.1 provides a generalized piece of information, clearly appropriate but not precipitated by any statement of the Mishnah-rule. Nos. 2, 3+4-9, a talmud to No. 3, continue the exposition on the stated theme, not on the Mishnah paragraph's proposition, the whole a thematic anthology that sets forth refinements of the law of considerable weight. II.1, 2+3-7 then clarify the sense of the Mishnah's rule: to what is reference made therein? The effect of this exposition is to draw our attention to most of the clauses of the Mishnah, requiring us to read them in light of the issue that our exegete finds paramount throughout. III.1 provides an important point of clarification; the oath under discussion is not required by law but is customary, for the reasons set forth. No. 2 complements the foregoing. No. 3 then clarifies the difference between the customary and the statutory oath. No. 4 is a footnote to the foregoing. IV.1, 2 ask a secondary question about the role of witnesses in the requirement of taking an oath. An anthology supplementing Nos. 1-2 is at Nos. 3-10. V.1 goes through a routine inquiry. VI.1 examines the language of the Mishnah's rule, pointing to an internal contradiction and resolving it. No. 2 proposes a different solution to the same problem.

6:5-6

6:5

- A. **And what are matters on account of which an oath is not imposed?**
- B. **[claims involving] slaves, bonds, real estate, and consecrated property.**
- C. **To these also do not apply the rules of twofold restitution or fourfold or fivefold restitution.**
- D. **[In the case of these] an unpaid bailiff is not subjected to an oath.**
- E. **[In the case of these] a paid bailiff does not pay compensation.**

- F 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.”

6:6

- A. 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.”
- B. And sages do not concur with his view.
- C. How so?
- D. “Ten fruit-laden vines I handed over to you” —
- E. and the other says, “They were only five” —
- F. R. Meir imposes an oath.
- G. And sages say, “Whatever is attached to the ground is classified as real property.”
- H. They are forced to take an oath only in a matter involving a claim which specifies a concrete measure, weight, or number.
- I. How so?
- J. “A room full of goods I gave you,” “A wallet full of money I gave to you,”
- K. and this one says, “I don’t know — but whatever you left is what you can take” —
- L. he is exempt [from having to take the oath].
- M. 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,”
- N. he is liable [to take an oath for denying the bailment].

I.1 A. To these also do not apply: twofold restitution:

- B. *What is the source in Scripture for this rule?*
- C. *It accords with that which our rabbis have taught:*
- D. “For all manner of trespass, for ox, for ass, for sheep, for garment, for every manner of lost thing which another challenges to be his, the cause of both parties shall come before the judges, and the one whom the judges shall condemn shall pay double to his neighbor” (Exo. 22:88).
- E. “For all manner of trespass:” — here we have a generalization.
- F. “for ox, for ass, for sheep, for garment:” — here we have the particularization.
- G. “for every manner of lost thing which another challenges to be his:” — here we find Scripture reverting and offering a generalization.
- H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered by the law of an oath for a bailment,
- J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category]

within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.

- K. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22:88) — to his neighbor, but not to the sanctuary.

II.1 A. or fourfold or fivefold restitution:

- B. How come?
- C. *Scripture has required* fourfold and fivefold repayment, not threefold or fourfold [there being no double payment here, we are left with only the three- or fourfold repayment, and Scripture knows no such arrangement].

III.1 A. [In the case of these] an unpaid bailiff is not subjected to an oath:

- B. *What is the source in Scripture for this rule?*
- C. *It accords with that which our rabbis have taught:*
- D. **[43A]** “If a man shall deliver to his neighbor money or goods and it be stolen out of the man’s house” (Exo. 22: 6):
- E. “If a man shall deliver to his neighbor:” — here we have a generalization.
- F. “money or goods:” — here we have a particularization.
- G. “and it be stolen out of the man’s house:” — here we have a generalization.
- H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
- J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.
- K. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22:88) — to his neighbor, but not to the sanctuary.

IV.1 A. [In the case of these] a paid bailiff does not pay compensation:

- B. *What is the source in Scripture for this rule?*
- C. *It accords with that which our rabbis have taught:*
- D. “If a man deliver to his neighbor an ass or an ox or a sheep or any beast to keep” (Exo. 22: 6):
- E. “If a man deliver to his neighbor:” — here we have a generalization.
- F. “an ass or an ox or a sheep: “ — here we have a particularization.
- G. “or any beast to keep:” — here we have a generalization.
- H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
- J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category

within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.

- K. As to consecrated things, Scripture says, "He shall pay double to his neighbor" (Exo. 22:88) — to his neighbor, but not to the sanctuary.

V.1 A. 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:"

- B. *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!*

- C. *Said R. Yosé b. R. Hanina, "The dispute concerns vines that are ready to be cut. [Maintaining that what is attached to the ground is classified as real property, nonetheless R. Meir treats them as if they already have been cut, and rabbis hold that they are not classified as though they had already been cut.]"*

VI.1 A. They are forced to take an oath only in a matter involving a claim which specifies a concrete measure, weight, or number:

- B. *Said Abbaye, "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."*

- C. *Said to him Raba, "Then how come matters are formulated later on in this language: 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]? Let them rather introduce that distinction in the opening clause itself, along these lines: Under what circumstances is an oath not imposed? If he said, 'a houseful,' but if he said, 'this houseful,' he is liable."*

- D. Rather, said Raba, "In point of fact the rule is that **They are forced to take an oath only in a matter involving a claim which specifies a concrete measure, weight, or number**, and in which he concedes **a claim which specifies a concrete measure, weight, or number.**"

VI.2. A. *It has been taught on Tannaite authority in accord with the position of Raba:*

- B. "A kor of wheat of mine is in your possession," and the other says, "You have nothing at all in my possession," the latter is exempt from taking an oath.

- C. "A large candelabrum of mine is in your possession" — "You have nothing in my possession except for a small candelabrum" — the latter is exempt from taking an oath.

- D. "A large girdle of mine is in your possession" — "You have nothing in my possession except for a small girdle" — he latter is exempt from taking an oath.

- E. But if he said to him, “A kor of wheat of mine do you have in your possession,” and the other says, “You have in my possession not so much as a kor but only a letekh,” he is liable.
- F. “A candelabrum of ten liters of mine is in your possession,” “you have in my possession one of only five liters [in weight],” he is liable.
- G. The governing principle of the matter is this: one is liable to take an oath only in a matter involving a claim which specifies a concrete measure, weight, or number, and in which he concedes a claim which specifies a concrete measure, weight, or number [T. Sheb. 5:13-15].
- H. *So what is the language, The governing principle of the matter, meant to encompass? Is it not to encompass the language “this room full”? And then what differentiates the claim of a large and a small candelabrum?*
- I. *The answer is very simple. What this one claimed the other did not concede, and what that one conceded this one did not claim!*
- J. *Then in the case of the claim of ten and five liters, he also should be exempt from the oath, because of the same consideration: What this one claimed the other did not concede, and what that one conceded this one did not claim!*
- K. *Said R. Samuel b. R. Isaac, “Here we deal with a case of a candelabrum that is made up of pieces and dismantled. He then has conceded to him a portion of it.”*
- L. *If so, in the case of the girdle, he can present the same law, applying the rule to a case in which it was made up of pieces that were sown together! But you have to conclude that the case of the girdle made up of pieces sewn together has not come under discussion, and here too, we cannot be dealing with the case of a candlestick that is made up of separate sections.*
- M. *Rather, said R. Abba bar Mammel, “The case of the candelabrum is exceptional, since one can scrape it and cut it down to five liters [in weight].”*
I.1, II.1, III.1, IV.1 all provide the scriptural basis for the specified exclusions of the Mishnah’s rule. V.1, VI.1+2 provide a close reading of the formulation of the statements of the Mishnah.

6:7

- A. He who lends money to his fellow on the strength of a pledge, and the pledge got lost —
- B. [The creditor] said to him, “I lent you a sela on the strength of it, but it was worth only a shekel, “
- C. 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” —
- D. he is exempt [from having to take the oath].
- E. “A sela I lent you on the strength of it, and it was worth a shekel, “
- F. and the other says, “Not so. But a sela you lent to me on the strength of it, and it was worth three denars” —
- G. he is liable.
- H. “A sela you lent to me on the strength of it, and it was worth two,”
- I. and the other says, “Not so. But I lent you a sela on the strength of it, and it was worth a sela” —

- J. he is exempt [from having to take the oath].
- K. “A sela you lent me on the strength of it, and it was worth two,”
- L. and the other says, “Not so, but a sela I lent to you on the strength of it, and it was worth five denars” —
- M. he is liable.
- N. And upon whom is the oath imposed?
- O. Upon him with whom the bailment was left,
- P lest this one take an oath, and the other one then produce the bailment.

I.1 A. [43B] [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. “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. “A *sela* you lent me on the strength of it, but 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 then the other produce the bailment]. 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?]

- B. Rather, said Samuel, “It refers to the first clause [since there is no requirement of an oath there]!”
- C. And so too said R. Hiyya bar Rab, “It pertains to the first clause.”
- D. And so too said R. Yohanan, “It pertains to the first clause.”
- E. What is the meaning of “the first clause?”
- F. He means, the second subsection of the first clause: “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**.” Now the debtor is the one who has to take the oath, but the rabbis have removed it from the debtor and have imposed upon the creditor the obligation to take the oath, [lest this one take an oath, and then the other produce the bailment].
- G. But now that R. Ashi has said, “This one takes an oath and that one takes an oath. This one takes an oath that it is not within his domain, and that one takes an oath as to its value,” *this is the sense of the statement*: **who takes the oath first? The creditor takes the oath first, lest the other take the oath and then this one produce the bailment.**

I.2. A. Said Samuel, “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" [and we do not maintain that he accepted each one as security for 500 zuz, so if he loses one handle, he loses 500 zuz. He did not explicitly state that he accepted each handle as security for half the loan, and we say both handles together are pledge for the loan, and if he loses one, as long as the other is left, he may give it back to the borrower, and he deducts from the loan merely the value of the lost handle, not 500 zuz (Silverstone)].

- B. *And R. Nahman said, "Even in the case of two handles, if he lost one, he loses five hundred zuz, if he lost the other, he loses the whole of the loan. But in the case of a handle and a bar of silver, we do not invoke this ruling."*
- C. *The Nehardeans say, "Even in the case of a handle and a silver bar, if he lost the silver bar, he lost half the loan; if he lost the handle in addition, he loses the whole loan."*
- D. *We have learned in the Mishnah: "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." Now why should this be the case? Let him claim, "But you accepted it as security for the [whole] loan."*
- E. *Our Mishnah speaks of a case in which the condition was stated explicitly, and Samuel speaks of one in which this was not said in so many words.*
- F. *May we say that at issue is what is involved in the following Tannaite dispute, for it has been taught on Tannaite authority:*
- G. *"He who lends his fellow money against a pledge, which was lost, must swear [that the loss of the pledge was not due to his negligence] and then may collect the money that is owing to him," the words of R. Eliezer. [When the money is lent on a pledge without a bond, it is not security for the money in case the debtor defaults but merely proof for the loan. If the debtor does not pay up, other property may be seized by the creditor. The creditor is a bailee. He is not responsible for the loss, so he is an unpaid bailee.]*
- H. *R. Aqiba says, "The debtor may say to him, 'Did you lend me anything except on the strength of the pledge? [Obviously not!] Now that the pledge has been lost, so your money has been lost.'" [The pledge is security for the money.]*
- I. *But if he lent him a thousand zuz on the strength of a bond, and the pledge was deposited for it, all parties concur that if the pledge is lost, the money is lost. [If there is a bond, the pledge is not mere proof, so all — even Eliezer — concur, if the pledge is lost, the money is lost.]*
- J. *Now with what sort of a case do we deal? If the pledge is equivalent in value to the loan, [44A] then what can be the reasoning behind the position of R. Eliezer? [Silverstone: that the lender merely takes an oath that he has lost it and still claims his loan? If the pledge equals the amount of the loan, it was intended as full security, so the loan is lost.] So it is not equal to the amount of the loan, and the disagreement concerns the position set forth in Samuel's ruling.*
- K. *No, if it is not equal to the amount of the loan, neither one of them would concur with Samuel's position [in such a case, the lender obviously did not accept it as security but merely as a reminder, so if he loses the pledge, he does not lose his*

money]. But here, the case involves a pledge that is worth the money involved in the loan, but they differ in regard to the principle of R. Isaac.

- L. For R. Isaac said, “How on the basis of Scripture do we know that the creditor acquires title to the pledge [while it is in his possession and so is responsible for any accident that occurs]? Scripture states, ‘In any case you shall deliver the pledge again when the sun goes down...and it shall be righteousness for you’ (Deu. 24:13). Now if the creditor does not acquire title to the pledge, whence the righteousness that is supposed to come to his credit? On this basis we know that the creditor acquires title to the pledge.” So may we then say that the Tannaite authorities disagree concerning the position of R. Isaac? [Eliezer rejects this view, Aqiba accepts it.]
- M. But do you really think so? Granted that what R. Isaac has said applies to the case of a pledge that was taken not when the loan was made [but afterward, as surety for the money]. But in the case of a pledge that was taken at the time of the loan, will he take the same view?
- N. Rather, as to a pledge taken not at the time of the loan, all parties concur with the position of R. Isaac. But here what is at stake is a pledge taken at the time of the loan, and they differ as to the guardian of lost property.
- O. For it has been stated:
- P. One who is bailee for lost property —
- Q. Rabbah said, “He is in the category of an unpaid bailee.”
- R. [44B] R. Joseph said, “He is in the category of a paid bailee.”
- S. Now may we then say that the Tannaite authorities differ as to the position of R. Joseph? [Aqiba concurs with Joseph and regards the creditor as a paid bailee, since it is his duty to assist the other with a loan, and Eliezer regards him as an unpaid bailee (Freedman).]
- T. No, as to one who is bailee for lost property, all parties concur with R. Joseph. But here they differ as to where the creditor needs the pledge [for use, and he remits a portion of the debt in exchange]. One authority [Aqiba] takes the view that it is a religious obligation that he is carrying out in that he has lent him money, and therefore he is in the category of a paid bailee, and the other authority [Eliezer] maintains that it is not a religious obligation that he has carried out in lending the money, for he has his own benefit in mind, and hence he is an unpaid bailee.
- U. May we then say that the following Tannaite dispute concerns the issues raised in the ruling of Samuel? For it has been taught on Tannaite authority:
- V. “He who makes a loan to his fellow on the security of a pledge, and the year of release arrived — even if the pledge is worth only half the value of the loan, the year of release does not remit the loan,” the words of Rabban Simeon b. Gamaliel.
- W. R. Judah the Patriarch says, “If the value of the pledge was the same as the value of the loan, then the loan is not remitted by the year of release, but if not, it is remitted.”

- X. *What is the meaning of Rabban Simeon b. Gamaliel's statement, "The loan is not remitted"? If we say that he means, only up to the value of the pledge, then, in the view of R. Judah the Patriarch, the half of the loan that is covered by the pledge also is remitted by the advent of the Sabbatical year [and that is contrary to the law]! Then what is the purpose of holding on to the pledge at all? But does the dispute not lead to the inference that the sense of, "The loan is not remitted" in Rabban Simeon b. Gamaliel's view is, the whole of the loan is not remitted? And what is the sense of, "it is remitted" in the opinion of R. Judah the Patriarch? It is to the half of the loan against which the lender holds no pledge. And what is at stake in the dispute is what is at issue in the state of Samuel [Rabban Simeon b. Gamaliel takes the view that even if the pledge is worth only half the debt, the Sabbatical year does not cancel any part of the debt at all, and Judah holds that it does not cancel that portion that is covered by the pledge.]*
- Y. *No, in point of fact, the difference of opinion concerns the portion of the debt to the value of the pledge, and this is what is at issue: the first Tannaite authority holds that the advent of the Sabbatical year does not cancel the half of the loan that is covered by the pledge. And R. Judah the Patriarch maintains that the half of the loan that is covered by the pledge also is remitted. And as to your question, if that is the law, then why get the pledge at all, it is only as a reminder [that the loan is outstanding].*
- I.1 clarifies the sense of the language of the Mishnah. No. 2 then is inserted only because it draws upon our Mishnah-paragraph as evidence in the solution of its problem.