שבועת העדות פרק רביעי

(fol. 35a) משנה א: שְבוּעָת הָעֵדוּת נוֹהֶגֶת בָּצֻּנָשִים וְלֹא בַנָּשִׁים בָּרְחוֹקִין וְלֹא בַקְּרוֹבִין (fol. 35a) בַּכְּשִׁים וְלֹא בַבְּסוּלִין. וְשֵׁינָה נוֹהֶגֶת אֶלָּא בַרְאוּיִין לְהָעִיד בָּפְנֵי בֵית דִּין וְשֶׁלֹא בִפְנֵי בִית דִּין מְפָּי בִית דִּין הָשֶׁלֹא בִפְנֵי בִית דִּין הָשָׁלֹא בִפְנִי בִית דִין הָשָׁירִים אָין חַיָּבִין עַד שֶּיִּכְפְרוּ בוֹ בְּבֵית דִּין בִּי מֵאִיר. וַחֲכָמִים אוֹמָרִים בֵּין מָפִּי אֲהַרִים אָינָן חַיַּבִין עַד שֻיִּכְפְרוּ בוֹ בְּבֵית דִּין:

Mishnah 1: An oath about testimony¹ applies to men but not to women², to unrelated persons but not to relatives³, to qualified but not to disqualified ones⁴; it applies only to those admitted to testify⁵, in court and out of court, and by the person's own words. By the words of others they only become liable if they renege before a court, the words of Rebbi Meïr. But the Sages say, whether by the person's own words or by the words of others they only become liable if they renege before a court⁶.

- 1 Lev. 5:1 requires a variable value sacrifice by a person who heard an imprecation when he had knowledge and refuses to testify. This is read to mean that a person is approached by a party in a civil suit and asked to testify in their behalf. If then either he swears an oath that he will testify in court ("by his own word") or the party asks him to swear that he will appear ("by the word of others") while he answers "Amen" but does not utter an oath by himself, he becomes liable for the sacrifice if he reneges on his commitment.
- 2 Since women are not admitted as formal witnesses in court, the rule of an oath

- of testimony cannot apply to them.
- 3 Since relatives are barred from appearing as witnesses in court, the rule of an oath of testimony cannot apply to them.
- 4 Felons are not permitted to appear as witnesses in court; the rule of an oath of testimony cannot apply to them.
- 5 Even if their disability only is a rabbinic tradition they will not be heard and the rule of an oath of testimony cannot apply to them
- 6 Since testimony is used only in court, a refusal to testify outside of court is irrelevant and cannot trigger liability.

(35b line 24**) הלכה א**: שְׁבוּעַת הָעֵדוּת כול'. שְׂעִירִים. מִיעוט שְׂעִירִים שְׁנַיִּם. מַה תַּלְמוּד לוֹמֵר שָׁצֵי שִׁיָּהוּ שַׁוּיִן. ּכְּבָשִׂים. מִיעוט כְּבָשִׂים שְׁנַיִם. אִם כֵּן מַה תַלְמוּד לוֹמַר שְׁנֵי. שֶׁיְהוּ שְׁנֵיהֶן שָׁויִן. צִפִּׂרִים. מִיעוט צִפּׂרִים שְׁנַיִם. אָם כֵּן מַה תַלְמוּד לוֹמַר שְׁתֵּי. שֶׁיְהוּ שְׁנֵיהֶן שְׁוִין.

ָחֲצוֹצְרוּת. מִיעוט חֲצוֹצְרוֹת שְׁתַּיִם. אִם כֵּן מַה תַלְמוּד לוֹמֵר שְׁתֵּי. שֶׁיְהוּ שְׁתַּיהֵן שָׁווֹת.

הָתִיב רְבִּי חַנֵּיי קּוֹמֵי רְבִּי יוּסֵי. וְהֶכְתִיב וְעֵמְדְוּ שְׁנֵי־הֵאֲנָשְׁים. מִיעוט אֲנָשִׁים שְׁנַיִם. וּמַה תַּלְמוּד לוֹמֵר שְׁנֵי. שֶׁיְהוּ שְׁנִין. וְהֶכְתִיב לְא תַשֶּׁה מִשְׁבֵּט גַּר יָתִוֹם. הֲרִי מָצִינוּ גֵּר דְּן עִם מִי שְׁאֵינוֹ יָתוֹם. אַלְמָנָה עִם בְּעוּלַת בַּעַל. אִם כֵּן לָמָה נָאֱמֵר שְׁנֵי. שְׁאֵינוֹ יָתוֹם. אַלְמָנָה עִם בְּעוּלַת בַּעַל. אִם כֵּן לָמָה נָאֱמֵר שְׁנֵי. מוּבְּנָה לְהַקִּישׁ וְלָדוּן הִימֶּינוּ גְּזֵירָה שָׁנָה. נָאֱמֵר כָּאן שְׁנֵי וְנָאֱמֵר לְהַלָּן וִיּשְּׁאֲרָוּ שְׁנִי־ אֲנָשִׁים וְלֹא קְטַנִּים וְלֹא לְשִׁים וְלֹא לְשִׁים וְלֹא לְשִׁים וְלֹא לְשִׁים וְלֹא לְשִׁים וְלֹא קְטַנִּים וְלֹא קְטַנִּים אָף כָּאן אֻנָשִׁים וְלֹא נְשִׁים וְלֹא קְטַנִּים. הֲרִי לַמָּל וְאָנִשִּׁים וְלֹא מָשִׁרָה אֵין הָאִשָּׁה דָנָה. מֵעַתָּה אֵין הָאִשָּׁה הַמִּיִרה.

רְבִּי יוֹסֵי בֵּי רְבִּי בּוּן רְבִּי הּוּנָא בְּשֵׁם רְבִּי יוֹסֵי. נָאֶמֵר כָּאן שְׁנֵי וְנֶאֱמֵר לְהַלֶּן עַל־פְּי | שְׁנֵיִם עֵדִים. מָה לְהַלֶּן עַל־פִּי | שְׁנֵיִם עֵדִים אַף כָּאן עַל־פִּי שְׁנִיִם עִדִים. אִם כֵּן לָמָה נָאֲמֵר שְׁנֵי. שֶׁלֹא יְלֵהָם מָה לְהַלֶּן עַל־פִּי שְׁרָבִי שְׁרָבִי שְׁרָבִי שְׁרָבִי שְׁלָה בְּעָבִי שְׁרָבִי שְׁרָדִּ הַעְּיִם עִּיִם. אָחָד עוֹמֵד וְאֶחָד יוֹשֵׁב. אָחָד מְעִיז פַּנִים. בְּל־צוֹרְכוֹ וּלְאֶחָד אוֹמֵר לוֹ. קַצֵּר דְּבָרֶיךְּ. כְּנֶגֶד אֶחָד מַמֵּי וּכְנֵגֵד אָחָד מֵעִיז פַּנִים.

אָמַר רְבִּי יוּדָן. שָׁמַעְתִּי שָׁאָם רָצָה הַדַּייָן לְהוֹשִׁיב אֶת שְׁנֵיהֶן מוֹשִׁיב. הָאָסוּר שָׁלֹא יְהֵא זֶה עוֹמֵד וְזֶה יוֹשֵׁב. זֶה מְדַבֵּר כָּל־צוֹרְכוֹ וְזֶה אוֹמֵר לוֹ. קַצֵר דְּבָּרִידְּ. רְבִּי יִשְׁמָעֵאל אוֹמֵר. אוֹמְרין לוֹ. לְבוֹשׁ בִּשֶׁלוֹבַשׁ. אוֹ הַלְבִּישָׁהוּ רָשֵׁאַתָּה לוֹבַשׁ.

רְבִּי בָּא בְשָׁם רַב הוּנָא. צְרִיכִּין הָעֵדִים לְהְיוֹת עוֹמְדִין בְּשָׁעָה שָׁמֵּעִידִין. מַה טַעֲם. וְעֶמְדַּוּ שְׁנֵי־הָאֲנָשִׁים. רְבִּי יִרְמְיָה בְשָׁם רְבִּי אַבָּהוּ. אַף הַנִּידּוֹנִין עוֹמְדִין בְּשָׁעָה שֶׁמְקַבְּלֵין עֵדוּתָן. מַה טַעֵם. אַשִּׁר־לָהֵם הַרִיב לִפְּנֵי יי.

Halakhah 1: "An oath about testimony," etc. ⁷Rams⁸, the minimum of rams are two. Why does the verse say *two*? That they be equal.

Sheep, the minimum of sheep are two. Then why does the verse say *two*? That both be equal⁹.

The minimum of *birds* are two. Then why does the verse say *two*? that both be equal 10 .

The minimum of *trumpets* are two. Then why does the verse say *two*? that both be equal¹¹.

Rebbi Haggai objected to Rebbi Yose¹². Is there not written: *The two men shall stand*¹³? Now, is not two the minimum of "men"? Why does the verse say *two*? That both be equal? But it is written¹⁴: *Do not bend the lawsuit of the proselyte, the orphan, . . .* That means that a proselyte can have a lawsuit against one who is not a proselyte, an orphan may have a lawsuit against one who is not an orphan, a widow against a married woman. Then why is there

written *two*? It is free to be combined and to infer from it an *equal cut*. It is said here *two* and it is said there *two men were left*¹⁵. Since there one speaks of men but not women nor underaged, also here men but not women nor underaged. From this we learn that a woman may not be a judge; consequently a woman may not be a witness.

Rebbi Yose ben Rebbi Abun, Rebbi Huna in the name of Rebbi Yose¹⁶. It is said here *two* and it is said there¹⁷ by the mouth of two witnesses. Since there it must be by the testimony of two witnesses, also here by the testimony of two witnesses. Then why does the verse say *two*¹³? Lest one of them be standing while the other be sitting; one says everything he has to say, but to the other one says, make your statement short. With one he puts up, to the other he is unfriendly.

Rebbi Jehudah said, I heard that if the judge wants to let both of them sit, he may tell them to sit down. What is forbidden is that not one be standing and the other sitting; one says everything he has to say, but to the other one says, make your statement short. Rebbi Ismael says, one says to him, either you dress as he is dressed or pay him to be dressed as you are.

Rebbi Abba said in the name of Rav Huna: The witnesses have to stand while testifying. What is the reason? *The two men shall stand*¹³. Rebbi Jeremiah in the name of Rebbi Abbahu: Also the parties have to stand at the moment the verdict is given. What is the reason?: *Who have the quarrel before the Eternal*¹³.

- 7 This text essentially is *Sanhedrin* 3:10, Notes 150-165, with a related text in *Yoma* 6:1. The many parallels in Babli (30a,b, *Yoma* 62b), Tosephta, and halakhic Midrashim are indicated in Sanhedrin.
- 8 *Lev.* 16:5,7,8. Any indeterminate plural means 2, the minimum of many.
- 9 Ex. 27:38, Num. 28:3.
- 10 Lev. 14:4.

- 11 Num. 10:1.
- 12 This is the correct reading, also given in *Yoma*, not R. Yasa as in *Sanhedrin*.
- 13 Deut. 19:17.
- 14 Deut. 24:17.
- 15 Num. 11:26.74
- 16 Here it seems better to read "Rav Joseph" with the other two sources.
- 17 Deut. 19:15.

מה (35b line 47) פְּתִיב לֹא־יְוּמְתַּוּ אָבוֹת עַל־בָּנִּים וגו'. וַהֲלֹא כְּבָר נֶאֶמֵר אִישׁ בְּחֶטְאוֹ יוּמָת: מַה תַּלְמוּד לוֹמֵר לֹא־יְוּמְתַּוּ אָבוֹת עַל־בָּנִים. אָלָא שֶׁלֹא יוּמְתוּ בָנִים בְּעֵדוּת אָבוֹת וְאָבוֹת בְּעֵידוּת בָּנִים. מִיכֵּן שֵׁלֹא יָהוּ הַעֵּדִים קָרוֹבִין שֻׁלַנִּידוֹנִין.

וּמְנַיִּין שֶׁלֹא יְהוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הַגַּע עַצְמָךְ שֶׂהוּזְמוּ לֹא מִפִּיהֶן נֶהֶרְגִין. וּמְנַיִין שֶׁלֹא יְהוּ הָעֵדִים קְרוֹבִים שֶׁלַדִּייָנִים. הַגַּע עַצְמָךְ שֶׂאִם הוּזָּם אֶחָד מֵהֶם אֵינוֹ נֶהֶרֵג עַד שֶׁיּוּזֶם חֲבֵירוֹ. אם אוֹמר אתּ כֹּן נמצא נהרג על פֿיו.

וּמְנַיִּין שָׁלֹא יְהוּ הַדַּיּנָיִן קְרוֹבִין זֶה לָזֶה. אֲמְרָה תוֹרָה. הֲרוֹג עַל פִּי עֵדִים. הֲרוֹג עַל פִּי דַינָיִם. מָה הָעִדִים אֵינָן קְרוֹבִין זֶה לָזֶה. אַף הַדַּינָיִן כֵּן.

אָץר קְרוֹבִין. אָמֵר רְבִּי זֵירָא. וּבָנִים. לְרַבּוֹת שְׁאָר קְרוֹבִין מְנַיִין. אָמֵר רְבִּי זֵירָא. וּבָנִים. לְרַבּוֹת שְׁאָר קְרוֹבִין. עַד כִּדוֹן כִרְבִּי עֵקִיבַה.

¹⁸It is written¹⁹: Fathers shall not be killed because of sons. Is it not already written, each one should be killed for his own crime? Why does the verse say, fathers shall not be killed because of sons? Fathers shall not be killed on the testimony of sons, and sons shall not be killed on testimony of fathers¹⁶⁹. From here that witnesses shall not be relatives of the accused.

From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would each of them not be killed by the other's testimony? From where that witnesses may not be relatives of the judges? Think of it, if one of them be found perjured, he could not be killed unless the other also was found perjured. If you say so, would he not be killed by the other's sentencing?

From where that judges may not be relatives of one another? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since witnesses may not be relatives of one another, neither may judges be relatives of one another.

So far only fathers and sons; from where the other relatives? Rebbi Ze`ira says, *and sons* includes the remaining relatives.

So far according to Rebbi Aqiba.

18 This and the following paragraphs also have an almost identical copy in *Sanhedrin* 3:10. Notes 166-200. (Babli *Sanhedrin*

27b,28a).

19 Deut. 24:16.

(35b line 58) כְּרְבִּי יִּשְׁמָעֵאל. תַּנֵּי רְבִּי יִשְׁמָעֵאל. וְשֶׁבְּטוּ ֹחֲעַדְּׁה בֵּין הַמַּכֶּה וֹגוֹ'. שֻׁלֹּא תְהָא הָעֵדָה קְרוֹבָה לֹא לַמַּכָּה וְלֹא לַמּוּכָּה. אָמֵר רְבִּי יוֹסֵי. אִם אוֹמֵר אַתְּ כֵּן קְרוֹבִין לַנִּיכָּה נִמְצְאוּ בָּית דִּין גוֹאֲלֵי הַדָּם. מִיכָּן שֻׁלֹא יְהוּ הַדִּייָנִין קְרוֹבִין לַנִּידּוֹנִין. וּמְנַיִין שֻׁלֹא יְהוּ הָעַדִים קְרוֹבִים לְנִידּוֹנִין. וּמְנַיִין אֵינָן קְרוֹבִין לַנִּידּוֹנִין לַנִּידּוֹנִין. אַמְרָה תוֹרָה. הֲרוֹג עַל פִּי עֵדִים. הֲרוֹג עַל פִּי מֵשִין. מַה הַדִּייָנִין אֵינֶן קְרוֹבִין לַנִּידּוֹנִין אַף לְיָה. הַנַּע עַצְמָךְ שֶׂהוּוְמוּ לֹא מִפִּיהֶן הֵן צְּמִדְּים כְּרוֹבִין זֶה לָזָה. הַנַּע עַצְמָךְ שֶׂהוּוְמוּ לֹא מִפִּיהֶן הַן נְתַּבּינִין הַעָּלִים. בְּרוֹבִין לָּה לָזָה. הַנָּע עַצְמָךְ שֶׂהוּוְמוּ לֹא מִפִּיהֶן הַן נְּהַנְּיִנִין שְׁלֹא יְהוּ הָעֵדִים קְרוֹבִין זֶה לָזָה. הַנַּע עַצְמָךְ שֶׂהוּוְמוּ לֹא מִפִּיהֶן הַן נְּהַנִּיוֹן הַעַּנִין שְׁלֹא יְהוּ הָעֵדִים קְרוֹבִין זְה לָזָה.

From where following Rebbi Ismael? Rebbi Ismael stated: *The congregation shall judge between the beater*, etc²⁰. The congregation be neither relatives of the murderer nor relatives of the murdered. Rebbi Yose said, otherwise you would say that the court is engaged in vendetta. This implies that the judges may not be related to the accused. And from where that the witnesses may not be related to the accused? The Torah said, kill on the testimony of witnesses, kill on the sentence of those who vote²¹. Since judges may not be related to the accused, neither may witnesses be related to the accused. From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would they not be killed by each other's testimony?

20 Num. 35:24; between the slayer and 21 I. e., the judges; the expression is from the avenger of the blood. Ex. 23:2.

(35b line 65) וּמְנַיִּין שֶׁלֹּא יְהוּ הָעֵדִים קְרוֹבִין לַדִּייָנִים. הַגַּע עַצְמָדְ שֶׂהוּזָם אֶחָד מֵהֶן. כְּלוּם נַהַרג עַד שִׁיּוּזָם חֲבֵירוֹ. אָם אוֹמֵר אַתִּ כֵּן לֹא נִמָצֵא נָהַרג עַל פִּיו.

ַבְּכְּשֵׁרִין וְלֹא בִפְסוּלִין. מְנַיִּין. אָם לֹא יַגְּיֶד וְנָשָׂא עֲווֹנוֹ: אֶת שֶׁמַגִּיד וַחֲבֵירוֹ מְשַׁלֵם מָמוֹן. יצא פסוּל שׁמִּגִיד ואִין חָבִירוֹ משׁלֹם ממוֹן.

בְּפְנֵי בֵּית דִּין. לְהוֹצִיא עֵד אֶחָד. בְּשֶּׁאֲמְרוּ לוֹ. הֲרֵי אַתְּ מְקוּבָּל עָלֵינוּ כִּשְׁנֵי עַדִים. יְהַא חַייָב. תַּלְמוּד לוֹמֵר וְהָוּא עֵׁד אָוֹ רָאָה אַוֹ יָדֶע אִם לֹא זַנְּיֶד וְנָשֶׂא עֲוֹנְוּ. אֵת שֶׁבֶּשׁׁר לָהָעִיד עֵדוּת תּוֹרָה. יָצָא אֵחָד שֵׁאֵינוֹ כָּשִׁר לָהָעִיד.

שֶׁלֹּא בִּפְנֵי בֵית דִּין. אָם־לֹא יַגִּיֶד וְנָשֶׂא עֲווֹנוֹּ מָקוֹם שֶׁמַגִּיד וַחֲבֵירוֹ מְשַׁלֵם מָמוֹן. יָצָא חוּץ לְבֵית דִּין אֵפִּילוּ מַגִּיד אֵין חַבֵּירוֹ מִשַּׁלֵם.

From where that witnesses may not be relatives of the judges? Think of it, if one of them be found perjured, he could not be killed unless the other also was found perjured. If you say so, would he not be killed by his sentence?

"To qualified but not to disqualified ones." For it is said, *if he does not tell, he has to bear his punishment*^{21a}. If he told, the other would have to pay money. This excludes one where the other would not have to pay money even if he told.

"Before the court." To exclude a single witness. If they told him that they would accept his word as if there were two witnesses, from where? The verse says, if he was a witness, had seen or known; if he does not tell he shall bear his punishment^{21a}. One who is qualified to testify according to biblical standards; this excludes a single witness who is not qualified to testify.

"Outside of court." *If he does not tell, he has to bear his punishment.* If he told, one would have to pay money. This excludes outside of court where the other would not have to pay money even if he told.

(35b line 74) וּמְנַיִּין לִשְׁנֵי עֵדִים. תַּלְמוּר לוֹמֵר. וְהַוּא עֵׁד. הֲרִי כָּאן שְׁנַיִם. כְּרְבִּי יִשְׁמָעֵאל. דְּאָמֵר. כָּל־מָקוֹם שֶׁנָּאֱמֵר עֵד סְתָם הֲרִי הוּא בִכְלָל שְׁנֵים עֵד שֻׁיּוֹדִיעֲךְ הַכָּתוּב אֶחָד. אֵשְׁכַּח תַּנֵּי דְּאָמֵר. שְׁכִּימוּם שֶׁבוּעֵת בִּיטוּי. אֶיפְשַׁר לוֹמֵר. רְבִּי יִשְׁמָעֵאל. שְׁנֵי עֵדִים. אֶחָד מָהוּ שֶׁיְּהוּ חֵייָבִין עֶלָיו מִשׁוּם שְׁבוּעַת בִּיטוּי. אֶיפְשַׁר לוֹמֵר. אֶחָד רָאוּי לְצוֹרְפוֹ וּלְחַיִיְבוֹ מִשׁוּם שְׁבוּעַת עֵדוּת וְאַתְּ מְחִייְבוֹ מִשׁוּם שְׁבוּעַת עֵדוּת וְאַתְּ מְחִייְבוֹ מִשׁוּם שְׁבוּעַת בִּיטוּי. מְשׁוּם שְׁבוּעַת בִּיטוּי.

קָרוֹב מָהוּ שֶׁיְּהוּ חַיָּבִין עֶלָיו מִשׁוּם שְׁבוּעַת בִּיטוּי. ייָבֹא כְהָדָא. דָּמַר רְבִּי בָּא בְשֵׁם שְׁמוּאֵל. שְׁבוּעַת בְּיטוּי. ייָבֹא כְהָדָא. דָּמַר רְבִּי בָּא בְשֵׁם שְׁמוּאֵל. שְׁבוּעָת שְׁנָּתַן פְּלוֹנִי לְפְלוֹנִי לְפְלוֹנִי לְנִאְשָׁלֹא נָתַן. מֵאַחַר שָׁאֵין בְּיָדוֹ לְבֹא אֵין בְּיָדוֹ לְשֶׁעֶבַר. וּכְּהָדָא אֵיכָן שׁוֹרִי. אָמֵר לוֹ. אֵינִי יוֹדֵע מָה אַתָּה סְח. רְבִּי פּוֹטֵר מִשׁוּם שְׁבוּעַת הַפִּיקּדוֹן וּמְחַיִיבַ מִשׁוּם שְׁבוּעַת בִּיטוּי. עַל שְׁבוּעַת בִּיטוּי. אָמֵר רְבִּי יוֹחָנָן. מֵאַחַר שֶׁמִּצְוָה לְהַפִּיסוֹ אֵל הַאָּמֶת וְאִינוֹ מִפִּיִסוֹ עַל הַאָּקָר. דְּבִיּין אֵין מִצְוָּה לְהַפִּיסוֹ. מִפְּיִיסוֹ עַל הָאֵמֶת וְאִינוֹ מִפִּיִסוֹ עַל הַשְּׁקַר.

תַּנֵי רְבִּי יִשְׁמָעֵאל. וְנָשָׂא עֲווֹנוֹ. קֶרְבָּן. מְנָלֵן בִּית דִּין. הַגָּדָה הַגָּדָה שָׁנֶּאֶמֵר לְהַלֶּן בִּית דִּין אַף כַּאן בֵּית דִּין.

From where two witnesses? *And he is a witness*, this makes two. Following Rebbi Ismael, who said, any place where the Torah mentions a witness without further determination it implies two witnesses; unless the verse informs you that a single witness is meant. It was found stated in the name of Rebbi Ismael: "Two witnesses." Can a single witness be found guilty of a blurted oath? Since it is possible to say that one person could team up with him, then he would be subject to the oath of testimony, you could find

him liable for an oath of testimony. How could you find him guilty of a blurted oath?

Should a relative be found guilty of a blurted oath? Does it follow what Rebbi Abba said in the name of Samuel²²: "An oath that X gave to Y," and it turns out that X had not given; since there is nothing in the future there is nothing in the past. Or the following: "Where is my ox?" He responded, "I do not know what you are referring to." Rebbi declares him not liable for a keeper's oath but liable because of a blurted oath. Rebbi Johanan said, since it is a religious duty to appease him, he is not liable because of a blurted oath. In the rabbis' opinion, is there no religious duty to appease him? One appeases with truthful statements, not with lies.

Rebbi Ismael stated: *He has to bear his punishment*²¹, a sacrifice. From where that one needs a court? "Telling, telling". Since *telling* mentioned there is before a court, also telling here is before a court.

21a Lev. 5:1

22 Chapter 3:6, Note 75. Babli 49b.

(35c line 13) כָּהָדָא. אֵין מִקַבָּלִין הָעֶדִים אֶלָּא אָם רַאוּ שְׁנֵיהֵן כְּאַחַת. רְבִּי יִהוֹשָׁעַ בֵּן קַרְחַה אומר. אפילו זה אחר זה. רבי ירמיה רבי שמואל בר רב יצחק בשם רב יצחק שאמר בשם רב. מודין חַכַּמִים לַרְבִּי יָהוֹשָׁעַ בָּעִידֵי בָכוֹרָה וְעֵידֵי חַזַקָה. רְבִּי בַּא בָשֶׁם רְבִּי יָרְמַיָּה. אַף בְּעֵידֵי סימנין כַּן. מהַדָא פַשִּׁיטָא בּשׁזָה אוֹמר. רָאִיתִי שׁתַּי שערוּת בַּגְבּוֹ. וְאַחַד אוֹמַר. רָאִיתִי שערה אַחַת בָּגָבּוֹ. וְאֶחָד אוֹמֶר. רָאִיתִי אַחַת בָּכָרֵיסוֹ. לֹא כָלוֹם הִיא. כָּל־שַׁכֵּן גַּבּוֹ וְגַבּוֹ. שְׁנַיִם אוֹמָרִים. רַאִינוּ שָּׁעַרָה אֲחַת בָּגָבּוֹ. וְאֶחַד אוֹמֶר. רַאִיתִי שָּׁעַרָה אֲחַת בָּכָרִיסוֹ. רְבִּי יוֹסֵי בֵּירְבִּי בּוּן רָבִּי הוֹשַׁעַיָה בַּר רָבִי שַׁמֵּי. חַד אַמַר. פַּסוּל. וְחַד אַמַר. כַּשֵׁר. מַאן דָּאַמַר פַּסוּל. בָּמֵעִיד בַּחַצִי סִימַן. וּמַאן דַּאַמַר כַּשר. אַני אומר. שַּמַא נשרה. אחד אומר. ראַיתי שתי שערות בַּגבּוֹ. ואחד אומר. ראיתי שנים בכריסו. רבי בא אמר. דברי הכל כשר. רבי חגיי אמר. דברי הכל פַסוּל. רָבִּי יוֹסֵי אוֹמֵר. בָּמַחַלוֹקָת. רָבִּי יווּדָן אַמֵּר. בִּמַחַלוֹקָת. אַמַר לֵיהּ רְבִּי יוֹסֵי לָרְבִּי חַגַּיי. הא רבי יודן סבר כוותי. אמר ליה. על דרביה אנא פליג כל־שכן עלוי. אמר רבי מנא. יאות אַמֶּר רָבִּי חַגִּיי. אִילוּ שׁטַר שִׁמְחוּתָם בַּאַרבַּעָה חוֹתַמוֹת זָה מַתִּיר עַל ב' וזָה מעורר עַל ב' וקרא עַלַיו עָרַר. שַׁמַא כָלוּם הוּא. וָאֵין כַּל־חַתִּימַה צָרִיכַה שָׁנֵי עַדִים. וַכַא כִּל־סֵימַן וְסֵימַן צַרִידְ שָׁנֵי עָדִים. רָבִּי חַנִינַה שַׁמַע לַהּ מִשָּׁנֵי חַזָּקָה. אִילּוּ אֶחַד מֵעִידוֹ שָׁאֲכַלָּה שַׁנַה אַחַת וּב' וְג'. וְאָחַד ָמַעִידוֹ שַׁאֱכַלָה ד' וָה'. שַׁמַּא כָלוּם הוּא. וְאֵין כַּל־חַזָּקָה צְרִיכַה שָׁנֵי עֲדִים. הַכָּא כַּל־סִימַן וְסֵימַן צַרידְ שָׁנֵי עֲדִים.

²³Or like the following. "One accepts the witnesses' testimony only if they saw it together. Rebbi Joshua ben Qorha says, even if they saw it one after the other." Rebbi Jeremiah, Rebbi Samuel ben Rav Isaac in the name of Ray Isaac who said in the name of Ray: The Sages agree with Rebbi Joshua ben Qorha with regard to witnesses of firstlings and witnesses of squatters' rights. Rebbi Abba in the name of Rebbi Jeremiah: the same holds for testimony regarding signs. In that case, it is obvious if one says, I saw two hairs on his back²⁴ and one says, I saw one hair on his back and the other says, I saw one hair on his belly, that is nothing; so much more his back and his back²⁵. Two are saying, we saw one hair on his back; and one is saying, I saw one hair on his belly. Rebbi Yose ben Rebbi Bun and Rebbi Hoshaia ben Rebbi Shammai, one said, it is invalid, but the other said, it is valid. He who says it is invalid considers him as one who testifies to half a sign. He who says it is valid? I say, maybe it was rubbed off. One says, I saw two hairs on his back; and one says, I saw two on his belly. Rebbi Abba said, everybody agrees that this is valid. Rebbi Haggai said, everybody agrees that this is invalid [testimony]. Rebbi Yose says, this is in disagreement. Rebbi Yudan said, this is in disagreement. Rebbi Yose said to Rebbi Haggai, does not Rebbi Yudan follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rebbi Mana said, Rebbi Haggai was correct. If a document was signed by four seals, if one person (permitted)²⁶ two, and another (questioned)²⁶ the other two, and the document was attacked, is that worth anything? Does not every single signature need two witnesses? And here, every single sign needs two witnesses. Rebbi Hanina learns it from the years of squatting rights. If one [witness] testified that he ate from the property the first, second, and third years and another testified that he ate it the fourth and fifth years, is that worth anything? Does not every single year need two witnesses? And here, every single sign needs two witnesses.

²³ This is a careless copy of a text in *Sotah* 1:1 Notes 56-71, *Ketubot* 2:4 Note 87, *Sanhedrin* 3:10 Note 197.

²⁴ There is a sentence missing: "the other

says, I saw two hairs on his side. If".

²⁵ It should read: "back and side".

²⁶ This clearly is corrupt. In both cases, read: "testified to".

(fol. 35) משנה בּ וְחַיֶּבִין עַל זְדוֹן שְבוּעָה וְעַל שִּגְנָתָהּ. וְעַל זְדוֹן הָעֵדוּת וְאֵינוֹ חַיֶּב עַל שָּגְנָתָהּ. וּמַה הוּא חַיַּב עַל זְדוֹנָה קַרְבָּן עוֹלַה וִיוֹרֵד:

Mishnah 2: They are liable both for intentional [violation of the] oath and for erroneous one²⁷, and for intentional [refusal of] testimony, but one is not liable unintentionally²⁸. What is one liable for if intentional? A variable value sacrifice

משנה גי שְבוּעַת הָעֵדוּת בֵּיצַד. אָמֶר לָעֵדִים בּוֹאוּ וְהַעִידוּנִי. שְבוּעַת הָעֵדוּת בַּיצַד. אָמֶר לָעֵדִים בּוֹאוּ וְהַעִידוּנִי. שְבוּעָת הָעֵדוּת בִּיצַד. אָמֶר לָעֵדִים בּוֹאוּ וְהַעִידוּנִי. שְבוּעָת הָאֵן אָנוּ יוֹדְעִין לְּךְ עֵדוּת. כַּשְׁבִּיע עֲלֵיהֶם חֲמִשָּה פְּעָמִים חוּץ לְבֵית דִּין וֹבָאוּ לְבֵית דִּין וְהוֹדוּ בְּמוּרִים. כַּפְרוּ חַיִּבִין עֵל כָּל אַחַת. הִשְׁבִּיע עַלִּיהֶן חֲמִשָּה בְּעָמִים בּבְּנֵי בֵית דִּין וְבֵבְּרוּ אֵינָן חַיָּבִין אֶלָּא אַחַת. אָמָר הַבִּי שִׁמְעוֹן מַה הַפַּעָם הוֹאִיל וְאֵינָם יְכוֹלִין לַחֲזוֹר וּלְהוֹדוֹת:

Mishnah 3: What is an oath about testimony? One said to witnesses, come and testify for me. "An oath that we do not know testimony for you," or they said to him, we do not know any testimony for you, "I am asking you to take an oath upon this;" if they said "Amen", they are liable¹. If he asked them five times outside of court to take an oath; when they came to court and admitted it they are not liable²⁹. If they deny, they are liable for each single one. If he asked them five times in court to take an oath and the refused, they are liable only once. Rebbi Simeon said, what is the reason? Because they cannot come back and admit³⁰.

- 27 If he swore falsely that he did not know testimony but did not know that this makes him liable for a sacrifice.
- 28 If honestly he was erroneously thinking that he did not know testimony.
- 29 Since refusal of testimony outside of court is irrelevant (Note 6).
- 30 Since the courts operate on the principle that a witness can testify only

once, i. e., he cannot change his testimony, after a first refusal in court the witness would not be permitted to change his statement. The additional oaths put on the witnesses are pointless; the court should prohibit them. In the language of the Babli, ביון שְׁהֹגִיד אֵינוֹ חוֹצֵר וּמַגִּיִר (שְׁנָגִיד אֵינוֹ חוֹצֵר וּמַגִּיִר (שְׁנָגִיד אֵינוֹ חוֹצֵר וּמַגִּיִר (שְׁנָגִיד אַינוֹ חוֹצֵר וּמַגִּיִר (שְׁנַגִּיִר).

(35c line 34**) הלכה ג**: שְׁבּוּעַת הָעֵדוּת כֵּיצַד כול'. נֶבֶּשׁ נֶפֶשׁ. מַה לְהַלֶּן מִפִּי עַצְמוֹ אַף כָּאן מִפִּי עַצְמוֹ. מַה כָּאן מִפִּי אֲחֵרִים אַף לְהַלֶּן מִפִּי אֲחֵרִים. רְבִּי מֵאִיר דָּרַשׁ גְּיַיָּה שָׁנָה הָאֲמוּרָה בָהּ. מַה מִפִּי עַצְמוֹ שַׁנֵּאֲמֵר לָהַלֶּן חוּץ לִבֵּית דִּין אַף מִפִּי עַצְמוֹ שַׁנֵּאֲמֵר כָּאן חוּץ לִבֵּית דִּין. וְרַבְּנֵן דַרְשֵׁי גְּזֵירָה שָׁנָה הָאֲמוּרָה בָהּ. מַה מִפִּי אֲחֵרִים שֶׁנֶּאֱמַר לְהַלָּן בְּבֵית דִּין אַף מִפִּי אֲחֵרִים שֶׁנֶּאֱמַר כַּאו בּבית דִּין.

Halakhah 3: "What is an oath about testimony," etc. *A person, a person*³¹. Since there it is from his own words, also here from his own words. Since here it is from others' words, also there it is from others' words³². Rebbi Meïr explains the equal cut which was said here: Since there it is said about his own words, so also here about his own words. Also the rabbis explain the equal cut which was said here. Since others' words said there are in court, also others' words said here are in court, also others' words said here are in court.

- 31 A comparison of *Lev.* 5:1 about oaths concerning testimony and 5:21 about the person accused of larceny who swears falsely in purgation by oath; cf. Chapter 3:12, Note 165. The parallel use of identical terms is an *equal cut* which allows transfer of rules from one occurrence to the other.
- 32 In v. 5:1 the potential witness hears the sound of an imprecation; others formulate the oath to which he is asked to assent. In 5:21 he himself formulates the oath to deny a deposit, or a loan, or robbery. The equal cut allows one to transfer one situation to the other; oaths about testimony may be formulated by the potential witness himself; oaths of a person accused of larceny may be formulated by the aggrieved party.
- 33 This paragraph refers to the disagreement between R. Meïr and the rabbis in Mishnah 1.

The formulation here presupposes that one knows what was explained elsewhere about interpretation of equal cuts [Yebamot

11:1 Notes 30,34 (*Sanhedrin* 9:1); Chapter 5:2]. R. Meïr holds that the laws to be transferred are what can be read off the corresponding verses; the rabbis transfer laws only in the context of the verses on both sides.

Verse 5:21 reads, to deny a deposit . . . and he swears to a lie; it is understood that this creates guilt whether or not it was before a court. But testimony is before a court; therefore v. 5:1 only speaks of guilt incurred in a court trial. R. Meïr holds that an oath formulated by another person following the situation of v. 1 transferred to v. 21 cannot create liability for a sacrifice outside of court, but an oath pronounced by himself (v. 21) always creates such a liability. The rabbis hold that while we accept that the equal cut shows that oaths formulated by himself are covered by v. 1, the context of that verse forces the conclusion that one refers to court proceedings only.

(35c line 39) רְבִּי יִרְמְיָה בָעֵי. קָרוֹב מִפִּי עַצְמוֹ בִשְׁבוּעַת הָעֵדוּת מָהוּ שֶׁיְהֵא חֵייָב. נִישְׁמְעְינָהּ מִן הָדָא. הוֹאִיל וְלֹא לָמֲדוּ מִפִּיו מִשְּׁבוּעַת הָעֵדוּת אֶלֶּא מִשְׁבוּעַת הַפִּיקְדוֹן. מַה לְהַלֶּן קְרוֹבִין חַינִבִין אַף כָּאן כֵּן. אַמַר רְבִּי יוֹסֵי. קרוֹבִין שַׁכָּאן לְמֵידִין מִקְּרוֹבִין שַׁלָּהַלָּן.

Rebbi Jeremiah asked: Is a relative liable for an oath about testimony formulated by himself? Can we hear it from the following: since they inferred formulation by himself for an oath about testimony only from oaths about deposits, and since there relatives are liable, so they also are here³⁴? Rebbi Yose said, can relatives here be inferred from relatives there³⁵?

34 This question makes sense only according to R. Meïr who disregards context. Relatives are barred as witnesses and judges; they are not barred as claimants. If somebody embezzled the property of a relative, that relative can go to court. Therefore, oaths about deposits can be sworn to relatives. Would R. Meïr agree that oaths about testimony, even though they

cannot be enforced in court, create liabilities for sacrifices?

35 Even R. Meïr will agree that an equal cut allows one to transfer only rules that make sense in the new context. Since oaths about testimony are void among relatives, they may create liabilities for "vain" oaths but no liability for variable sacrifices.

(35c line 43) רְבִּי יוּדָן קַפּוֹדַקֶּייָא בָעֵי. הָשְׁבִּיעַ עָלֶיו ה' פְּעָמִים מִפִּי עַצְמוֹ בְבֵית דִּין שְׁמָא אֵינוֹ חָייָב עַל כֶּל־אַחַת וְאַחַת. אָמַר רְבִּי יוֹסֵי. וְלֹא מַתְנִיתָה הִיא. אָמַר רְבִּי שִׁמְעוֹן. מַה טַעַם. מִפְּנֵי שֵׁאִינַן יִכוֹלִין לַחֲזוֹר וּלָהוֹדוֹת: וָכָאן הוֹאִיל וִיכוֹלִין לַחֲזוֹר וּלָהוֹדוֹת חַיִיַבִין בַּכַּל־אַחַת וְאַחַת.

Rebbi Yudan the Cappadocian asked: He made him swear five times by his own formulation before the court: would he not be liable for each instance separately? Rebbi Yose said, is this not the Mishnah: "Rebbi Simeon said, what is the reason? Because they cannot come back and admit³⁰?" But here, since they can come back and admit, they are liable for each single instance³⁶.

36 Since it is his own oath, it is not testimony and not under the rule that nobody

can testify twice in the same case.

(35c line 46) רְבִּי יִרְמְיֶה בָעֵי. הָשְׁבִּיעַ עֶלֶיו חֲמִשָּׁה פְעָמִים מִפִּיו וְחָזַר וְהִשְׁבִּיעוֹ חֲמִשָּׁה פְעָמִים מִפִּיו בְּחָזַר וְהִשְׁבִּיעוֹ חֲמִשָּׁה פְעָמִים מִפִּיו בְּיַבִּית דְּין מָהוּ שֶׁיִּקְבְּעֵם לְקָּרְבָּן וּלְחַיִיְבֵם מָפִּי מָהִיּי בְּבִית דְּין מָהוּ שֶׁיִּקְבְּעֵם לְקָּרְבָּן וּלְחַיִיְבַם בָּרְאשׁוֹנֶה בְּלֹא תְּבִיעָה. ייָבֹא כְהָדָא. מָה אַתְּ בָּא אַחֲרֵינוּ. שְׁבוּעָה שֶׁאֵין אָנוּ יוֹדְעִין לְדְּ עֵדוּת. יִבֹּא הְמִלוּ שַׁאֵין שׁוֹמְעִין יִיבּי תַּבְאוּ אֵילוּ שַׁאֵין שׁוֹמְעִין יִּהוּ חַיִּבִין. תַּלְמוּד לוֹמַר. וִשְׁמִעְה ֹקוֹל אָלֶה. אֶת שְׁשׁוֹמְעִין קוֹל חַיַּב. יַצְאוּ אֵילוּ שַּׁאֵין שׁוֹמְעִין

קוֹל. מִפִּיו בְּקַרְקָעוֹת מָהוּ שֶׁיְהֵא חַייָב. מִפִּיו בִּקְנָסוֹת מָהוּ שֶׁיְהֵא חַייָב. מִפִּיו מָהוּ שֶׁיְהֵא חַייָב בִּקַרַבַּן עוֹלָה וְיוֹרֵד.

Rebbi Jeremiah asked: If he made him swear five times in his own words and let him swear five times by the mouth of others, what³⁷? Since Rebbi Meïr considered "in his own words" as if in court, would they determine the sacrifice on the first occasion, even without request? It should come like the following:³⁸ "Why do you go after us? An oath that we do not know any testimony relevant for you. Should they be liable? The verse says, *and he heard the voice of an imprecation*³⁹. Only one who hears an imprecation⁴⁰. This excludes those who did not hear a voice."

Would he be liable from his own mouth for real estate⁴¹? From his own mouth would he be liable for fines⁴²? From his own mouth would he be liable for a variable value sacrifice⁴³?

- 37 Again this is a question following R. Meïr. It is clear that the demand that they answer to an oath formulated by the person who wants to force testimony must be made in court. Therefore, one has to assume that the first five oaths were made outside of court. Then they are not subject to the rule that there can be only one testimony. The next question is about the status of an oath of denial of knowledge before the other even had asked for their testimony.
- 38 Cf. Tosephta 2:11 (Babli 31b). The *baraita* is formulated independently from the Babylonian Tosephta.
- 39 Lev. 5:1.
- 40 The Tosephta states clearly, "they are not liable unless he requested [the testimony]".
- 41 All examples in *Lev.* 5:21-22 (a deposit, a loan, extortion and robbery, a

- find) refer to monetary claims about movables. Since there can be no sacrifice for an oath about deposits relating to real estate, one might argue that there can be no sacrifice for an oath about testimony involving real estate, asserted in Tosephta 4:1.
- 42 These fines are biblically imposed for misdeeds. Whether there can be an oath about these is in dispute between the majority and R. Simeon, Mishnah 5:6.
- 43 From the equal cut (Note 32) we know that for a false oath regarding testimony formulated by the potential witness he is liable for a sacrifice. Is that the variable value sacrifice for a false oath regarding testimony or a fixed value sacrifice required for a false testimony about deposits?

(35c line 54) רָבִּי בָּא רַב יְהוּדָה בְשׁם רַב. בְּשׁוֹנֵג בְּקַרְבָּן בְּמֵיִיד בְּקַרְבָּן. אֲבָל אָמַר. סְבוּר הָיִּתִי שֶׁאֵין שְׁבוּעָה זוֹ. מוּתָּר. תַּנֵּי חִזְקַיָּה. כָּל־מָקוֹם שֶׁנֶּאֱמֵר בַּתּוֹרָה חֵט סְתָם אַתּ תּוֹפֵשׁ הַזָּדוֹן בִשְׁנֵגָה עַד שִׁיּוֹדִיעֵךְ הַכַּתוּב שָׁהִיא שְׁנֵגָה.

Rebbi Abba, Rav Jehudah in the name of Rav: in error, a sacrifice; intentional, a sacrifice. But if he said, I was of the opinion that this oath does not exist, he is free⁴⁴. Hizqiah stated: At any place where the Torah mentions *sin* without attribute you include intentional equally with unintentional unless Scripture inform you that it is unintentional⁴⁵.

44 This now refers to Mishnah 2. The only case in which one is not liable is if he was of the opinion that swearing to evade appearing as a witness was not forbidden. Then his action is without criminal intent.
45 In all cases of purification sacrifices mentioned in *Lev.* 4 it is emphasized that

these apply only to atone for חֵשָא בְּשָׁנְהֶּה "sins in error." In most cases of reparation sacrifices described in Chapter 5, there is no mention of error. It follows that the word איס alone covers both intentional and unintentional sins.

(fol. 35a) משנה ד: בֶּפְרוּ שְׁנֵיהֶם כְּאֲחַת שְׁנֵיהֶן חַיֶּבִין. בָּזֶה אָחַר זֶה הָרִאשׁוֹן חַיֶּב וְחַשְּׁנִי בְּמוֹר. כָּפַר אֶחָד וְהוֹדָה אֶחָד הַבּוֹפֵר חַיֵּב. הִיוּ שְׁתֵּי כְתֵּי עֻדִים בַּפְּרָה הָרִאשׁוֹנָה וְאַחַר כָּדְ בְּפְרָה הַשְּׁנִיהָן הַיֶּבוֹת מִבְּנֵי שֶׁהָעֲדוֹת יְכוֹלְה לְהַתְּכַנֵם בִּשְׁתֵּיהֶן:

Mishnah 4: If both of them disavowed simultaneously, both of them are liable; one after the other, the first is liable but the second is not liable⁴⁶. If one reneged but one confessed, the one who disavowed is liable⁴⁷. If there were two groups of witnesses, if the first group disavowed and after this the second, both are liable since testimony could be upheld by either one of them⁴⁸.

46 If there are only two witnesses and one refuses to testify even though he had assented to an oath that he would testify, the second witness becomes a single witness whose testimony cannot compel the defendant in a civil suit to pay money. All the testimony of a single witness in a civil

suit can do is force the defendant to swear that he does not owe money. Since the refusal of the second witness to testify does not inflict a monetary loss on the claimant, he is not liable for a sacrifice unless he disavowed simultaneously with the first.

47 The action of the first witness deprived

the claimant also of the testimony of the second; this triggers liability.

48 Only two witnesses are needed for

conviction; the two groups of witnesses are independent of one another and the order of their appearance is irrelevant.

(35c line 57) **הלכה ד**: בֶּפְרוּ שְׁנֵיהֶן בְּאַחַת כול'. הָבְּרִשׁוּ קֶרְבָּן וְאֵמְרוּ. הֲרֵי אָנוּ הוֹלְכִין לְכְפוֹר בְּבֵית דִּין. הָדָא הִיא דְתַנֵּי רְבִּי חִייָה. קֶרְבְּנָוֹ לִיי עַל־נִוְּדֹוֹ. שְׁיַּקְדִּים נְוְרוֹ לְקְרְבָּנוֹ וְלֹא שִׁיּקְדּוֹם קָרְבָּנוֹ לְנִיְרוֹ. נִשְׁבְּעוּ חוּץ לְבֵית דִּין הִפְּרִישׁוּ קֶרְבָּנָן וְאֵמְרוּ. הֲרִי אָנוּ הוֹלְכִין לְכְפוֹר בְּבֵית דִּין. מָה אַתְּ עֲבִיד לֵיִה. נְּמִי שֶׁקָדַם חֶטְאוֹ לְקָרְבָּנוֹ אוֹ מֵאַחַר שְׁאֵין חַייָבִין אֶלָא בְבֵית דִּין כְּמִי שֶׁקָדַם אָמְאוֹ לְקָרְבָּנוֹ אוֹ מֵאַחַר שְׁאֵין חַייָבִין אֶלָא בְבֵית דִּין כְּמִי שֶּקְדַם קָטְאוֹ לְקָרְבָּנוֹ אוֹ מֵאַחַר שְׁאֵין חַייָבִין אֶלָא בְבֵית דִּין כְּמִי שֶּקְדַם קָטְאָה. קּרְבָּנוֹ בּוֹ בְּרָבְיִם לַחַטְאָהם.

Halakhah 4: "If both of them disavowed simultaneously," etc. If they dedicated a sacrifice and said, we are going to disavowe in court. This is what Rebbi Hiyya stated, his sacrifice for the Eternal for his vow of nazir; that his vow of nazir precede his sacrifice, not that his sacrifice precede his vow of nazir⁴⁹. If they were sworn to out of court, dedicated a sacrifice and said, we are going to renege in court, how do you treat this? As if his sin did precede his sacrifice or since the are liable only in court as if their sacrifice did precede their sin⁵⁰?

49 Num. 6:21. An obligatory sacrifice cannot be brought voluntarily. Therefore it cannot be dedicated before the obligation exists. The dedication cannot be undone (Lev. 27:9). Therefore, the original sacrifice has to be rededicated as voluntary offering and a new sacrifice be given as obligatory

sacrifice. *Nazir* 2:9 (Note 118), 3:2 (Note 32), Tosephta *Nazir* 2:6, *Num. rabba* 10(42). 50 The question is not answered. Possibly it is a sequel to R. Jeremiah's questions in the preceding Halakhah; cf. *Terumot* 10:11 Note 110.

(35c line 62) כֵּינִי מַתְּנִיתָּה. כָּפַר אֶחָד וְהוֹדָה אֶחָד הַכּוֹפֵר חַינָב. אָמַר רָבִּי יוֹסֵי. מַתְנִיתָּה וְהוּא שָׁצַחֲזוֹר בּוֹ שֵׁינִי בְתוֹךְ כְּדֵי דִיבּוּר הָרָאשׁוֹן. שֶׁאִים יַחֲזוֹר בּוֹ רָאשׁוֹן מְקַבְּּלִין אוֹתוֹ. נַעֲשֶׂה שֵׁינִי רָאשׁוֹן.

So is the Mishnah: "If one disavowed but one confessed, the one who disavowed is liable.⁵¹" Rebbi Yose said, our Mishnah if the second changed his opinion immediately after the speaking of the first. Because if the first changed his opinion, one would accept him; then the second would become the first ⁵².

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- 51 The question is why does the Mishnah speak of "one" and not "first" or "second"? The sentence must refer to the first clause in the Mishnah, that both disavowed together but then one of them changed his mind.
- 52 "Immediately" is defined either as the time needed to say "peace upon you" or

"peace upon you, my master" [Berakhot 2:1 (Notes 50-52), Mo'ed qaṭan 3:7 (83c l. 37), Nazir 4:1 Note 12]. Anything said immediately following testimony is part of the testimony. The rule that a witness cannot change his testimony does not apply to corrections made immediately. Babli 32a.

(35c line 65) הָיוּ צְשֶׁרָה. אִית תַּנָיֵי תַנֵּי. הָרְאשׁוֹן חַייָב וְכוּלְן פְּטוּרִין. אִית תַּנָיֵי תַנֵּי. הָאַחְרוֹן פְּטוּרִין. פְּמָאן דָּמֵר. תִּתְּקִייֵם עִדוּת בַּשְּׁאָר. פְּטוּר וְכוּלְן חִייָבין. פְּמָאן דָּמֵר. תִּתְּקִייֵם עִדוּת בַּשְּאָר. מָמְצְתָה בַּטְלָה כוּלְה. אָמֵר מָאן דָּמֵר. אַחֲרוֹן פְּטוּר וְכוּלְן חַייָבִין. פְּמָאן דָּמֵר. עֵדוּת שֶׁבְּטְלָה מִקְצָתָה בַּטְלָה כוּלְה. אָמֵר רְבִּי יוֹטֵי. מַתְנִיתָה אֱמְרָה כֵּן. הָיוּ שְׁתֵּי כִתִּי עַדִים. לֹא מֵר אֶלֶּא שְׁתַּיִם. הָא אַחַת עֵדוּת שֶׁבְּטְלָה מִקְצָתָה בַּטְלָה כוּלָה.

If they were ten⁵³. There are Tannaïm who state, the first one is liable and all the rest are not liable. There are Tannaïm who state, the last one is not liable and all the rest are liable. The one who said, the first one is liable and all the rest are not liable, holds with him who said, the testimony can be verified by the remaining [witnesses]. The one who said, the last one is not liable and all the rest are liable, holds with him who said, testimony that was partially invalidated is totally invalidated⁵⁴. Rebbi Yose said, the Mishnah says so: "if there were two groups of witnesses." He only said "two". Therefore if there had been one⁵⁵, testimony that was partially invalidated it is totally invalidated.

- 53 Ten witnesses asked as a group to testify.
- 54 Both opinions are expressed in Mishnah *Makkot* 1:12-13 (in most Mishnah editions, Mishnah 1:8). It is obvious that the attributions have to be switched. If in civil suits any testimony supported by 2 witnesses is acceptable then only the last, single, remaining witness is not liable (Note
- 46). But if the testimony of a group is only acceptable if all witnesses are qualified and testify in parallel then the first disqualification disqualifies the group and only the first witness is liable.
- 55 The formulation of the Mishnah is "two groups of two witnesses" and not "four witnesses".

(fol. 35a) משנה הּ: מַשְּבֶּיעַ אֲנִי עֲלֵיכֶם אָם לֹא תָבוֹאוּ וּתְעִידוּנִי שֶׁיֶשׁ לִּי בְיַד פְּלוֹנִי פִּיקֶדוֹן וֹתְשׁוּמֶת יָד וְנָזֵל וַאֲבַדָּה. שְבוּעָה שָאֵין אָנוּ יוֹרְעִין לְּךּ עֵדוּת אֵין חַיִּבִין אֶלָּא אָחַת. שְבוּעָה שֶׁאֵין אָנוּ יוֹרְעִין לְּדְּ עַדוּת הַיִּבִין עֵל כָּל אַחַת שֶׁאֵין אָנוּ יוֹדְעִין שֶׁיֶּשׁ לְךְּ בְּיַד פְּלוֹנִי פִּיקּדוֹן וּתְשׁוּמֶת יָד וְנָזֵל וַאֲבַדְה חַיִּבִין עַל כָּל אַחַת וַאָּחַת.

Mishnah 5: "I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit, and a loan, and robbery, and a lost object." "An oath that we do not know testimony for you;" they are liable only once. "An oath that we do not know that you have a claim against X for a deposit, and a common venture, and robbery, and a lost object;" they are liable for each single one⁵⁶.

56 Since each single item mentioned oath counts as a separate oath for each would need separate testimony, the detailed detail. The list is taken from *Lev*. 5:21-22.

(35c line 71) **הלכה ה**: מַשְׁבִּיעְ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וּתְעִידוּנִי כול'. וּמְנֵיון שָׁאֵינוֹ מְדַבַּר אֶלֶא בִּתְבִיעַת מָמוֹן. אָמַר רְבִּי לִיעֶזֶר. נָאֱמַר כָּאן אוֹיִים וְנֶאֱמַר אוֹיִים בְּפָקָדוֹן. מָה אוֹיִים הָאֲמוּרִים בְּפָקָדוֹן אֵינוֹ מְדַבֵּר אֶלֶא בִתְבִיעַת מָמוֹן. אַף אוֹיִים הָאֲמוּרִים בְּפָקָדוֹן אֵינוֹ מְדַבֵּר אֶלֶא בִתְבִיעַת מָמוֹן. אַנִּין אוֹיִין שְׁיֵּשׁ עִמְּהֶן שְׁבּוּעָה בְּתְבִיעַת מָמוֹן. אָנִי אוֹיִין שְׁיֵּשׁ עִמְהֶן שְׁבּוּעָה בְּתְבִיעַת מָמוֹן. אַנִי וֹבְיח אוֹיִין שְׁיֵשׁ עִמְהֶן שְׁבוּעָה. אוֹיֵי סוֹטָה וֹלִיחוּ שִׁיֵּשׁ עִמְהֶן שְׁבוּעָה. אוֹיִי סוֹטָה וֹלִיחוּ שְׁיֵשׁ עִמְהֶן שְׁבוּעָה וְאֵיוֹ עְמָהֶן שְׁבּהֹי מֹכִיחוּ שְׁאֵינִן בְּמָהְן שְׁבוּעָה וְאֵל יוֹכִיחוּ אוֹיִין שְׁיֵשׁ עִמְהֶן שְׁבוּעָה וְאֵינִן עִמְהָן בֹּתְבִיעַת מָמוֹן. דְּנִין אוֹיִין שְׁיֵשׁ עִמְהֶן שְׁבוּעָה וְאֵל יוֹכִיחוּ אוֹיִין שְׁעָשׁ עִמְהֶן אַף כֹּהָן. אוֹיִין שְׁבָּתְים יוֹכִיחוּ שְׁצֵּישׁ עִמְהָן אַף כֹּהָן. אוֹיִי בִיטּוּי שְׁבָּתִים יוֹכִיחוּ שֹׁצֵישׁ עִמְהָן אַף כֹּהָן. אוֹיִין בְּשְׁבִּית מָמוֹן. דְּיִנִין אוֹיִין שְׁעָשָׁה בָהֶן זָדוֹן בִּשְׁנָשְׁ עִמְהָן אַף בִּלְבִית מָמוֹן חַיִיב בְּעָּלְיה בְּהוֹין שְּבִּים שְׁלְּא בְּתְבִיעַת מָמוֹן חַיִיב וְשְׁאֵינוֹ מְמוֹן פָּטִבּר אוֹמִר. חִבּי שְׁמְעוֹן אוֹמֵר. חִבִּי שְׁמְעוֹן מִיב בְּשִּלְשְׁה בָּהָן זְדוֹן בָּשְבִיעת מָמוֹן חַיִיב וְשְׁאֵינוֹ מְמוֹן פְּטוּר. רְבִי שְׁמְעוֹן אוֹמֵר. חִיבֵב בָּאן וְחִייֵב בְּפִקּקוֹן. מִה בְּלִי בְּישׁ בְּקִיל מָלוֹ מִינִב בְּפִּקְדוֹן. מִמוֹן אַף בָּא בְּתִבִיעת מָמוֹן אַף בָּא בְּיִבְּית מְמוֹן חֵייָב וְשִׁבְּית מְמוֹן אַפְּיִב בְּשִׁ אַנִּים מְבִּיל אִנִין מִיבָּן אַנִין מָבּיל בְּבִיעת מָמוֹן אַנִים בְּבִּיל בְּיל בְּבִיעת מְמוֹן.

Halakhah 5: "I am putting an oath on you that you should come and testify for me," etc. ⁵⁷From where that this only refers to monetary claims? Rebbi Eliezer said, it uses here "or" and it uses "or" with a deposit⁵⁸. Since the "or" used with a deposit only refers to monetary claims, also the "or" used here only refers to monetary claims. The "or" of the homicide will disprove⁵⁹ since they do not refer to monetary claims. One argues about "or" accompanied by an oath from "or" accompanied by an oath; the "or" of the homicide cannot disprove since they are not accompanied by an oath. The "or" of the deviant woman will disprove⁶⁰ since they are accompanied by an

oath and do not refer to monetary claims. One argues about "or" accompanied by an oath not accompanied by a Cohen from similar "or"; the "or" of the deviant woman cannot disprove since they are accompanied by a Cohen. The "or" of blurting lips will disprove⁶¹ since they do not refer to monetary claims. One argues about "or" where He made intent equal to error⁶² from similar "or"; the "or" of blurting lips cannot disprove since there He did not make intent equal to error.

Rebbi Aqiba says, for some of these one is liable, for some one is not liable. For monetary claims one is liable; for non-monetary claims one is not liable⁶³

Rebbi Simeon says, He made liable here and he made liable for a deposit. Since deposits only refer to monetary claims, so here also it only refers to monetary claims^{41,64}.

- 57 Babli 33b, *Sifra Ḥova (Wayyiqra 2) Parashah* 8(8-10).
- 58 In *Lev.* 5:1, "or" is used twice, in vv. 21-22 four times.
- 59 *Num.* 35:22-23, in the description of accidental homicide, "or" is used twice.
- 60 *Num.* 5:14, the presumption of innocence of the deviant woman is introduced by "or". The imprecation is not the woman's but the Cohen's, v. 19.
- 61 Lev. 5:4, "or" is used twice.
- 62 As explained in the preceding Chapters, blurted oaths create a liability for a sacrifice only if they were broken in a

- period of forgetting, i. e., unintention- ally. There is no mention of unintentional sin for liability in cases of oath about testimony or monetary damages.
- 63 He refers to Lev. 5:5: It shall be if he causes damage by some of these; some will require a sacrifice but not others. The decision what to include is left to the religious authorities guided by the hermeneutical principle of "equal cut". Babli 33b, Sifra Hova (Wayyiqra 2) Pereq 17(1).
- 64 Babli 33b, Sifra Ḥova (Wayyiqra 2) Pereq 17(2).

(fol. 35a) משנה וּ מַשְּבָּיעָ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וֹתְעִידוּנִי שֶׁיֶשׁ לִי כְיַד פְּלוֹנִי פְּקְדוֹן הִמִּין וּמְעוֹרִין וְכוּסְּמִין. שְׁבוּעָה שֶׁאֵין אָנוּ יוֹדְעִין לְךְּ עֵדוּת. אֵין חַיִּבִין אֶלָּא אֶחָת. שְבוּעָה שֶאֵין אָנוּ יוֹדְעין לְךְּ עֵדוּת. אֵין הַיִּבִין עֵל כַּל אֲחַת וְאחַת: יוֹדְעין לְדָּ עִדוּת שׁיִּשׁ לְדָּ בִּיִד פְּלוֹנִי חִפִּין וְבוּסְמִין, חִייבִין עֵל כַּל אֲחַת וְאחַת:

Mishnah 6: "I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit of wheat, and barley,

and spelt." "An oath that we do not know testimony for you;" they are liable only once. "An oath that we do not know that you have a claim against X for a deposit of wheat, and barley, and spelt;" they are liable for each single one 56,65.

65 Since a claim to money's worth is equal to a claim to money.

(35d line **) הלכה ו**: מַשְׁבִּיעַ אֲנִי עֲלַיְכֶם כול'. תַּנֵי. רְבִּי יוֹסֵי הַנְּלִילִי אוֹמֵר. מָה תַּלְמוּד לוֹמֵר וָהָוּא עֵּׁד אָוֹ רָאָה אָוֹ יַדַע וגו'. לא אַמַרתִּי אֶלָּא בְעָדוּת שָׁאֵיפְשַׁר לְהָתָקַייֵם בִּיִדִיעָה וְשָׁלֹא בראייַה. בּראִייַה וִשׁלֹא בִידִיעָה. בִּידִיעָה שׁלֹא בַרְאִייַה בַּמְמוֹן הֵידָ עֲבִידַה. תַּן לִי מַאתַיִם זוז שַׁיֵשׁ לִי בַיַדְדָּ. אֵין לַדְּ בַּיָדִי. וַלֹא הוֹדִיתָה לִי בַּפְנִי פָלוֹנִי וּפָלוֹנִי. יֹאמְרוּ וַאַנִי נוֹתָן. זוֹ הִיא יִדִיעָה שָׁאֵין עְמָהַ רָאִייָה. אֲתוֹן וָאַמְרוֹן. אָין דָּאוֹדִי לֵיהּ וָאִין דְּגַּזַלֵיהּ לֵית אַנַן יַדְעִין. וָאִין דָאוֹזְפֵיהּ לֵי ַנן יַדעין. בּראײַה בלא ביִדיעה בממון הִידִּ עבידַה. תו לי מַאתיַם זוז שׁיַּשׁ לי ביַדַדָּ. אַין לדְּ בָּיָדִי. וְלֹא מַנִיתִי לַדְ בִּמוֹשָׁב פָּלוֹנִי וּפָלוֹנִי. יֹאמְרוּ וַאֲנִי נוֹתֵן. זוֹ הִיא רְאִייָה שֵׁאֵין עִמַּהּ יִדְיעַה. אַתוֹן ואַמַרין. אִין מַנַה וָאִין דּגַזלֵיהּ לִי נַן יַדעין. וָאִין מִישָׁאַל לַיהּ לֵי נַן יַדעין. תַּן לִי קנַס בָּתִּי שָׁהוֹא בְיַדַדְ. וָהוֹא אוֹמֶר. לֹא נָתָחַײַבִּתִּי קְנָס מִיַּמֵיי. וָהַעַדִים מֵעִידִין שָׁנָּתְחַייַב קְנַס. וְלִי נַן ַיַדְעִין אִין קַנָס בָּרַתֵּיה אִין קָנַס אִיתַא אוֹחֵרִי. אַנַסְתָּה וּפִיתִיתָה אֵת בִּתִּי. וְהוּא אוֹמֵר. לא אָנַסִתּי וּפִיתִיתִי אָשָּׁה מִיָּמַיי. וְעֵדִים מֵעִידִין שֶׁאַנַס אָשַּׁה. וְלֵי נַן יַדְעִין אִין בָּרַתִּיה הַוָה אִין אָיתָא חוֹרִי. הַרַגְתָּ שׁוֹרִי קִיצַצְתָּה נְטִיעוּתַיי. וְהוּא אוֹמֶר. אֵינִי יוֹדֶעַ. חַייַב. אַתַּה אַמַרתַּ לִי להַרוֹג וַלְקּוּץ. הוֹלְכִין אֲחַר רוֹב נָטִיעוֹת. מַה הוֹא. הוֹלְכִין אַחַר רוֹב נָטִיעוֹת. אַמַר רבִּי חַגִּיי. אין הַוָה תוֹרֵיה נַגָחָן הוּא מֵר לֵיהּ. אָם הָיוּ נְטִיעוֹתֵיו בְּטֵילוֹת הוּא מֵר לֵיהּ. אַמַר רְבִּי יוּדַן. אִין אוֹמֶר בָּמַמוֹן. מֵאַחַר דּוּ יָכִיל מִימַר לֵיהּ. אַתָּה אַמַרתַּ לִי לַהַרוֹג וְלַקוּץ. אַף עַל גַּו דּוּ אַמַר לֵיהּ. לא הַרַגִּתִּי וָלֹא קַצֲצְתִּי. פַּטוּר.

Halakhah 6: "I am putting an oath on you," etc. ⁶⁶It was stated: Rebbi Yose the Galilean says, why does the verse say, *and he is a witness, or saw, or knew*⁶⁷, etc.? I said this only for testimony which may be accepted about knowing without seeing, or seeing without knowing.

⁶⁸How is knowing without seeing in monetary claims? "Give me my 200 *zuz* which you are holding." "I do not have anything of yours." "But did you not confess before X and Y"? "They should testify and I shall pay." This refers to knowing without seeing. They came and said, whether he confessed to him or whether he robbed him, we do not know. Whether he gave him a loan we do not know⁶⁹.

How is seeing without knowing in monetary claims? "Give me my 200 zuz which you are holding." "I do not have anything of yours." "But did I not count them for you in a meeting with X and Y"? "They should testify and I shall pay." This refers to seeing without knowing. They came and said, whether he counted for him or whether he robbed him, we do not know. Whether he took a loan from him, we do not know.

"Give me the fine for my daughter which you owe me⁷⁰." But he says, "I never in my life was found liable for a fine." Witnesses testify that he was found liable for a fine⁷¹, but we do not know whether the fine was for his daughter or the fine for another woman.

"You raped or you seduced my daughter." But he says, "I never in my life did rape or seduce a woman." Witnesses testify that he raped a woman⁷¹, but we do not know whether it was his daughter or another woman.

"You killed my ox and cut down my orchard." But he says, "I do not know." He is liable⁷². "You told me to kill and cut down," one follows the majority of orchards. What means, one follows the majority of orchards? Rebbi Ḥaggai said, if his ox was goring, he would have told him; if the orchard was barren, he would have told him⁷³. Rebbi Yudan said, in matters of monetary claims, since he may tell him, you told me to kill and cut down, even if he told him "I did not kill, I did not cut down," he is not liable⁷⁴.

- 66 Babli 33b, *Sifra Ḥova (Wayyiqra 2) Pereq* 17(1).
- 67 Lev. 5:1.
- 68 Babli 33b, Tosephta 2:5.
- 69 The witnesses came and testified that they saw a transaction but they have no knowledge about the kind of transaction it was. Had the debtor not said that he would pay if the witnesses came, that testimony would be worthless, but now he has to pay. The Babli assumes that the testimony is without a disclaimer.
- 70 The biblical fines for seducing a virgin (Ex. 22:16) or raping her (Deut. 22:29).

- 71 Since he is found in court to be a liar he is barred from swearing to clear himself from the claim. Therefore even a weak testimony will buttress the claim against him
- 72 In the Babli, e. g., *Ketubot* 12b, פְּרִי עְדִיץ "between certain and perhaps, certain is preferred." If a claim is asserted as certain but the defense is that possibly it is false, there is no defense.
- 73 Babli Bava qamma 91b.
- 74 Since the burden of proof is on the claimant.

(fol. 35a) **משנה זּ:** מַשְּבָּיעַ אָּנִי עֲלֵיכֶם אָם לֹא תָבוֹאוּ וּתְעִידוּנִי שֶׁיֶשׁ לִּי בְיַד פְּלוֹנִי נֶזֶק וַחֲצִי נֶזֶק תַשְׁלוּמֵי כֶפֶל תַשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה שֶׁאָנֵם אִישׁ פְּלוֹנִי וּפְתָּה אֶת בִּתִי וְשֶׁהְכַּנִי בְנִי וְשֶּחְבַל בִּי חַבֵּרִי וְשֵּהַדְלִיק אֶת נִּדִישִׁי בִיוֹם הַכִּפּוּרִים הַרֵי אֵילוּ חַיַּבִּין:

Mishnah 7: "I am putting an oath on you that you should come and testify for me that X owes me full damages or half damages⁷⁵, double restitution or quadruple and quintuple restitution⁷⁶, that X raped or seduced my daughter⁷⁰, or that my son hit me⁷⁷, or that my neighbor injured me⁷⁸, or that he set fire to my grain stack on the Day of Atonement⁷⁹;" these are liable.

משנה חּ מַשְּבָּיעַ אֲנִי עֲלֵיכֶם אָם לֹא תָבוֹאוּ וּתְעֵידוּנִי שֶּאֲנִי כֹחֵן שֶאָנִי לֵוִי שֶאֵינִי כֶן גְּרוּשָה שֶאֵינִי כֶן חֲלוּצָה שָאִיש פְּלוֹנִי כֹחֵן שָאִיש פְלוֹנִי לֵוִי שֶאֵינוֹ כֶן הֲלוּצָה שָאָנַם אִיש פְלוֹנִי וּפִתָּה אֶת בָּתוֹ וְשֶׁחָבַל בִּי בְנִי וְשֶׁחָבַל בִּי חֲבֵרִי וְשֶּחִדְלִיק גְּדִישִׁי בַשַּבָּת חֲרֵי אילוּ פּמוּריו:

Mishnah 8: "I am putting an oath on you that you should come and testify for me that I am a Cohen⁸⁰, that I am a Levite⁸¹, that I am not the son of a divorcee, that I am not the son of a woman having received *halîşah*⁸², that X raped or seduced his daughter⁸³, or that my son injured me⁷⁷, or that my neighbor injured me or set fire to my grain stack on the Sabbath⁸⁴:" these are not liable⁸⁵.

- 75 For damage caused by another's animals to the claimant's animals, *Ex.* 21:35-36.
- 76 The punishment of the thief, *Ex.* 22:3; 21:37.
- 77 If the son hit his parents without causing a wound, they can sue him for damages; it is a monetary claim. But if he injured them it is a capital crime (*Ex.* 21:15).
- 78 He has to pay, Ex. 21:18; Mishnah Bava qamma 8:1.
- 79 Even though it is a deadly sin punishable by extirpation, the desecration is not a case for the earthly court and has no influence on a possible damage suit. Cf. *Gittin* 5:4 Notes 138-139.
- 80 Even though the claimant may bring

- the suit in order to be recognized as a Cohen because he wants to receive a priest's prebends, the suit is classified as one for status, not for money.
- 81 The same holds for a Levite who may receive tithe.
- 82 The last two cases are suits to be declared a qualified priest, not directly for monetary claims.
- 83 Capital crimes; the deflowered daughter cannot sue for damages since a possible death sentence precludes damage suits (*Terumot* 7:1, Notes 19-70).
- 84 A capital crime.
- 85 All these suits are not for monetary claims; even though there may be a duty for witnesses to testify, no sacrifice is due for a

refusal to obey a summons under oath in a claims. case which never can result in monetary

(35d line 31) **הלכה ז**י מַשְׁבִּיעַ אֲנִי עֲלֵיכֶם כול'. **הלכה ח**י מַשְׁבִּיעַ אֲנִי עֲלֵיכֶם כול'. נְבֶּשׁ כִּי־תֵחֱטָׂא נָבֶשׁ כִּי תֵחֱטָׂא לֹגְזִירָה שָׁוָה. מַה נָבֶשׁ כִּי תֵחֱטָׂא שְׁנָּאֲמַר לְהַלֹּן תְּבִיעַת מָמוֹן וְנֵשׁ לוֹ. אַף נָבֶּשׁ כִּי־תֵחֱטָׂא שָׁנָּאֱמַר לְהַלָּן כָּאן תִּבִיעַת מָמוֹן וְנֵשׁ לוֹ.

Halakhah 7: "I am putting an oath on you," etc. **Halakhah 8**: "I am putting an oath on you," etc. ⁸⁶A person who would sin, a person who would sin as an equal cut³¹. Since a person who would sin which was said further on refers to an active monetary claim⁸⁷, also a person who would sin must refer to an active monetary claim.

86 Babli 35a, Sifra Ḥova (Wayyiqra 2) Pereq 11(4).

87 There is liability for a sacrifice only if the requested testimony was for the claimant

in a suit under the law of obligations. This excludes testimony for the defendant or for the claimant in a suit for breach of promise.

(fol. 35b) **משנה ט**: מַשְּׁבָּיעַ אֲנִי עֲלֵיכֶם אָם לֹא תָבוֹאוּ וּתְעִידוּנִי שֶׁאָמַר אִישׁ פְּלוֹנִי לִיתֶן לִי מָאתִים זוּז וְלֹא נָתַן לִי חֲרֵי אֵילֹּוּ פָמוּרִים שֶׁאֵין חַייָבִין אֶלָּא עַל שְׁבוּעַת מְמוֹן בַּפְּקּדוֹן:

Mishnah 9: "I am putting an oath on you that you should come and testify for me that Mr. X promised to give me 200 zuz⁸⁸ but did not give them to me." These are not liable⁸⁷ since one is liable only for an (oath about)⁸⁹ money similar to a deposit.

88 The Babylonian half-sheqel, identified with the Roman denar.

Mishnah sources on has to read תְּבִיעַת "claim of."

89 This is a scribal error. With all other

(35d line 35) **הלכה ט**ּ: מַשְׁבִּיעַ אֲנִי עֲלֵיכֶם וכול'. לֵית הָדָא פְליגָא עַל רֵישׁ לָקִישׁ דְּאָמֵר. אֵין מָמוֹן אֵצֶל מַכּוֹת. פָּתַר לָהּ כְּרַבִּי מֵאִיר דְּאָמֵר. לוֹקֶה וּמְשַׁלֵם. מִכֶּל־מָקוֹם לֹא הִפְּסִידוֹ מָמוֹן. כֵּיוַן דְּלָא הַוָּה בָּעִי מִיתַּן לֵיהּ וְלָא יָהַב לֵיהּ כִּמִי שֶׁהִבְּסִידוֹ מָמוֹן.

Halakhah 9: "I am putting an oath on you," etc. Does this not disagree with Rebbi Simeon ben Laqish who said, there is no money when there is

flogging⁹⁰. He explains it following Rebbi Meïr who said, he is flogged and he pays⁹¹.

In any case he did not make him lose money. Is it not that since he wanted to give him but did not give to him; it is as if he made him lose money⁹².

90 It seems that this paragraph refers to Mishnah 7 (and in the Leiden ms. Halakhah 9 precedes Halakhot 7 and 8) declaring that a claim about damage on the Day of Atonement is a monetary claim which according to *Terumot* 7:1 Note 51 is true only for R. Johanan but not for R. Simeon ben Laqish. The latter holds that since a violation of the Day of Atonement in front of witnesses after due warning will expose the perpetrator to flogging, there can be no

monetary claim even if there are no witnesses and the case of desecration is not one for the courts.

91 The same explanation is given in *Terumot* 7:1 Note 7. Cf. Babli *Ketubot* 33b. 92 This now refers to Mishnah 9. The formulation of the Mishnah is necessary since a breach of promise could be considered inflicting monetary loss. It is necessary to state that this loss does not qualify under the rules of equal cut.

(fol. 35b) **משנה י**. מַשְּבִּיעָ אֲנִי עֲלֵיכֶם כְּשֶּׁתֵּדְעוּזְ לִי עֲדוּת שֶׁתָּבוֹאוּ וּתְעִידוּנִי הֲרֵי אֵילּוּ פִּמוּרִים מִפְנֵי שֲקַדְמָה שָׁבוּעָה לָעֲדוּת:

Mishnah 10: "I am putting an oath on you, that you shall come and testify for me when you know testimony for me." These are not liable ⁹³ since the oath preceded the testimony ⁹⁴.

משנה יא: עָמַד בְּבֵית הַבְּנֶסֶת וְאָמֵר מַשְּבִּיע אֲנִי גַעַיֵּכֶם שֶאָם אַהֶּם יוֹדְעִים לִי עֵדוּת שֻׁתַּבוֹאוּ וּתַעִידוּנִי הֵרִי אֵילוּ פִּטוּרִין: שַׁתַּבוֹאוּ וּתַעִידוּנִי הֵרִי אֵילוּ פִּטוּרִין:

Mishnah 11: If he stood in the synagogue and said, "I am putting an oath on you, that you shall come and testify for me if you know testimony for me." These are not liable 95.

93 If they disobey the imprecation. *Lev.* 5:1 is quite explicit that it applies only to persons who already know the testimony.

94 This sentence is elliptic. The oath

preceded the possibility of testimony.

95 Since the imprecation is not directed at any specific persons.

(35d line 38**) הלכה י:** מַשְׁבִּיעַ אֲנִי עֲלֵיכֶם כול'. רְבִּי יוֹסֵי רְבִּי יַעֲקֹב בַּר זַבְדִּי רְבִּי אַבָּהוּ בְשֵׁם רְבִּי יוֹחָנֶן. אָמֵר לִיתֵּן מַתָּנָה לָחֲבֵירוֹ וּבִיקּשׁ לַחֲזוֹר בּוֹ חוֹזֵר. רְבִּי יַעֲקֹב בַּר זַבְדִּי בְּעָא קוֹמֵי רְבִּי אַבָּהוּ. וִאָהֵן הֵן לֹא בָצֶדָק הוּא. וְהֵין צֵדֵק אַמֵר. בִּשְׁעַה שָׁאַמֵּר הִין שֻׁלְצֵדָק הַוָה.

Halakhah 10: "I am putting an oath on you," etc. ⁹⁶Rebbi Yose, Rebbi Jacob bar Zavdi, Rebbi Abbahu in the name of Rebbi Johanan: If somebody wanted to change his mind after he had promised a gift to another person, he may change his mind. Rebbi Jacob bar Zavdi asked before Rebbi Abbahu: Did He not say "a true yes". At the moment when he said it, it was a true yes.

96 Ševi`it 10:9 Notes 133-134; Gittin 6:1 Note 39, Bava meși`a 4:2 Note 49; Babli Bava meși`a 49a, Bekhorot 13b; Sifra Qedošim Pereq 8(7).

97 Lev. 19:36. The pun identifies the measure שָׁל with the Aramaic equivalent הַן

of the Hebrew \mathfrak{I}_2 "yes". It shows that $\underline{\cdot}$ was pronounced like \mathfrak{I}_2 (Itacistic $\eta = \overline{\iota}$). The verse is read as exhortation to be honest in business dealings.

(35d line 42) לָמָה. מִשׁוּם שֶׁאֵינוֹ יוֹדֵעַ בָּהֶן אוֹ מִשׁוּם שֶׁאֵין מִתְכַּוֵּין לָהֶן. מַה נְפַק מְבֵּינֵיהוֹן. מִשְׁכֵּן שְׁנַיִם שְׁנַיִם. אִין תִּימֵר מִשׁוּם שֶׁאֵינוֹ יוֹדֵעַ בָּהֶן. יוֹדֵעַ בָּהֶן. הֲוֵי לֵית טַעֲמָא דְלָא מִשׁוּם שַׁאִין מִתְכַנִּין לָהָן.

Why⁹⁸? Because he does not know them, or because he does not intend to ask them⁹⁹? What is the difference between them? If he obligated them in pairs of two. If you would say because he does not know them, he knows them. Therefore the reason only can be that he does not intend to ask them¹⁰⁰.

98 This refers to Mishnah 11, that a wholesale imprecation is invalid.

99 Is it because the person demanding testimony does not know the identity of the person whom he is asking to testify or does he not know whom to ask to testify because he does not know who would be able to testify.

100 In the Sephardic tradition of the Mishnah, independent and in the Babli, including Maimonides's autograph, this statement is part of the Mishnah. In the

Ashkenazic tradition of the Babli, as exemplified by the Munich ms., the Mishnah is identical with the version given in the Yerushalmi. In Sifra Hova (Wayyiqra 2) Parashah 8(6) the language is that of the Sephardic Mishnah, based on the expression and he is a witness of Lev. 5:1. The Babli (35a) infers from this verse that the demand for testimony must be personal; it is not enough that the claimant know the identity of the witness, the request must be delivered individually. If the claimant sees a group of

people which includes the two whom he wants as his witnesses, he may not address

the group collectively; he must summon them personally.

(fol. 35b) **משנה יב: אָמַר לִּשְנֵיִם מַשְּבִּיע אֲנִי עֲלֵיכֶם אִישׁ פְּלוֹנִי שֶּאָם אַתֶּם יוֹדְעֵין לִי עדוּת שֶׁתָּבוֹאוּ וּתְעִידוּנִי וְהֵם שֶּׁיּּדְעֵין לוֹ עֵדוּת עֵד מָפִּי עֵד אוֹ שֶׁתָיָה אֶחָד מֵהֶן קְרוֹב אוֹ פְּסוּל הַרי אִילּוּ פַּטוּרִין:**

Mishnah 12: If he said to two persons, I am putting an oath on you, X and Y, that you shall come and testify for me if you know testimony for me, but they knew from another witness¹⁰¹, or one of them was a relative or disqualified. These are not liable.

101 This is hearsay evidence inadmissible in court. If one of a group of witnesses is disqualified, the other one at most could force the defendant to swear; he never could

force him to pay money. Therefore the oath is invalid also for the party which would be qualified.

(35d line 45) **הלכה יב:** אָמָר לּשְׁנַיִּם מַשְׁבִּיעַ אֲנִי עֲלֵיכֶם כוּל'. רְבִּי טָנֶא שָׁמַע מִדְּבַתְּרֵיהּ אוֹ שְׁהָי, הֹא לֹא הָיָה אֶחָד מֵהֶן קָרוֹב אוֹ פָסוּל חַיִּיבִין. וְיוֹדֵע הוּא בְהוֹן. שְׁהָיָה אֶחָד מֵהֶן קָרוֹב אוֹ פָסוּל חַיִּיבִין. וְיוֹדֵע הוּא בְהוֹן. הַנִּי לֹתְ טַעֲמָא דְלָא מִשׁוּם שָׁאֵין מִתְּבֵּוִּין לָהֶן. רְבִּי יוֹסֵי שְׁמַע לָהּ מִקְּדְמִיתָא. מִפְּנֵי שְׁקַדְמָה שְׁבוּעָה לָעֲדוּת חַיִּבִין. וְיוֹדֵע הוּא בְהוֹן. הֲוִי לֵית טַעֲמָא דְלָא מְשׁוּם שָׁאֵין מִתְּבֵּנִין לָהֶן. מִשׁוּם שְׁאֵין מִתְּבַּנִין לָהֶן.

Halakhah 12: "If he said to two persons, I am putting an oath on you," etc. Rebbi Mana understood it from the following, "or one of them was a relative or disqualified." Therefore, unless one of them was a relative or disqualified, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them.

Rebbi Yose understood it from the preceding, "since the oath preceded the testimony." Therefore, if the oath did not precede the testimony, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them¹⁰².

102 This again refers to Mishnah 11, it is a continuation of the preceding Halakhah. All

the Mishnaiot quoted presuppose that the claimant knows exactly whom he wants as

witness; nevertheless his imprecation is ineffective. Therefore it may be assumed that also in the case of Mishnah 11 it would

be ineffective even if he knew exactly whom he intended.

(fol. 35b) משנה יג: שִׁילַח בְּיַד עַבְדּוֹ אוֹ שֶאָמֵר לָהֶן הַנְּתְבֶּע מַשְבִּיעַ אֲנִי עֲלֵיכֶם שֶאִם אַתֶם יוֹדְעין לוֹ עָדוֹת שַתַבוֹאוּ וּתַעִידוּהוּ הַרי אִילוּ פַמוּרִין עַד שִּישִמעוּ מפִּי הַתּוֹבַעַ:

HALAKHAH 13

Mishnah 13: If he sent through his slave¹⁰³ or the defendant said to them, "I am putting an oath on you that you shall come and testify for him," they are not liable unless they hear from the mouth of the claimant¹⁰⁴.

103 To ask the witnesses to testify. Even though the slave is his personal property and acts as his messenger he is disqualified since he is not the claimant and has no *persona* in law.

104 To create liability, the oath must be delivered directly by the claimant asking for the testimony. Cf. Note 87. *Sifra Ḥova (Wayyiqra 2) Parashah* 8(4).

(35d line 51) **הלכה יג**: שׁילַח בְּיֵד עַבְדּוֹ כול'. אָמֵר רְבִּי לֶעְזֶר. מַה תַּלְמוּד לוֹמֵר אִם־לֹא יַגְּיִד וְנָשָׂא אֲווֹנוֹ: לֹא. מִפִּי הַתּוֹבֵע. מַתְנִיתִין צְרִיכָה לְמֵה דְאָמֵר רְבִּי לֶעְזֶר וּמֵה דָמֵר רְבִּי לֵעְזֶר צְּרִיכָה לְמֵה דְאָמֵר רְבִּי לֵעְזֶר וּמֵה דָמֵר רְבִּי לֵעְזֶר צְּרִיכָה לְמַתְנִיתִין. אִילּוּ תַנִּינָן וְלֹא תִּנָּא רְבִּי לְעָזֶר. אִילּוּ תַנָּא רְבִּי לֵעְזֶר וְלֹא תַנִּינָן הַוֹינֶן מָרִין. יִשְׁמְעוּ מַבִּי הַנֵּינָן הַוֹינֶן מָרִין. יִשְׁמְעוּ מַבּי הַנֵּינָן הַוֹינֶן מָרִין. יִשְׁמְעוּ מַבִּי הַנִּינָן הַוֹינֶן מָרִין. יִשְׁמְעוּ מַבִּי הַנַּיְבָּע וְלֹא נִשְׁבְּעוֹ לַתּוֹבֵע חֵייִבִין. הַוִי צוֹרְכָה לְמַתְנִיתִין וּצְרִיכָה לְמַה דָמַר רְבִּי לֶעְזֶר עַד שְׁנִי הַנֹּינָם וְיִשְׁבְּעוּ לַתּוֹבֵע חֵייִבִין. הַוִי צוֹרְכָה לְמַהְנִיתִין וּצְרִיכָה לְמֵה דָמֵר רְבִּי לֶעְזֶר עַד שְׁיִּשְׁנִי הַתּוֹבֵע וְיִשְׁבְּעוּ לַתּוֹבֵע.

Halakhah 13: "If he sent through his slave," etc. Rebbi Eleazar said, why does the verse say, if he does not tell, he has to carry his iniquity? Not¹⁰⁵, from the mouth of the claimant. Our Mishnah needs what Rebbi Eleazar said, and what Rebbi Eleazar said needs our Mishnah. If we had stated but Rebbi Eleazar had not stated, we would have said that they are liable if they had heard from the claimant but had sworn to the defendant. Therefore what Rebbi Eleazar said is necessary. If Rebbi Eleazar had stated but we had not stated, we would have instructed that they are liable if they heard it from the defendant but had sworn to the claimant. Therefore one needs our Mishnah and needs what Rebbi Eleazar said, only if they heard from the claimant and swore to the claimant.

105 This is a misquote which makes the text unintelligible. The masoretic text of Lev. 5:8*1 writes the negation as אט which is read both as לא and as לא. In the first version, אַם לוֹ אַנִּיל, the liability may only be triggered if he told him, if the claimant

personally challenged the witness and if the witness personally accepted the challenge (Babli 35a). In the second version, אָם לא, the liability is triggered if he does not testify.

(60. 35b) משנה יד: מַשְּבָּיעַ אֲנִי עֲלֵיכֶם מְצַוֶּה אֲנִי עֲלֵיכֶם אוֹסֶרְכֶם אָנִי הֲהֵי אֵלוּ חַיִּבִיזְ. בּאל"ף דל"ת, ביו"ד ה"א בְּשַדִּי בִּצְבָאוֹת בְּחַנּוּזְ וְרְחוּם בַּשְּׁמַיִם וּבָאֶרֶן הֲהֵי אֵלּוּ פְּטוּרִיזְ. בּאל"ף דל"ת, ביו"ד ה"א בְּשַדִּי בִּצְבָאוֹת בְּחַנּוּזְ וְרְחוּם בְּאֶרֶךְ אַפִּים וְרָב חֶסֶד וּּבְכָל הַבְּנוּיִין הֲרִי אֵלּוּ חַיָּבִין. הַמְּקַלֵּל בְּכוּלְּן חַיָּב דְּבְרִי רְבִּי מֵאִיר וַחֲכָמִים פּוֹטְרִיזְ. הַמְקַלֵּל עִבְר בְּלֹא תַּעֲשֶׁה. יַבְּכָה אֱלֹהִים וְכַן יַבְּכָה אֱלֹהִים זוֹ הִיא אָלָה הַבְּתוּבָה עַצְמָּה הַנְּתוּבְה פּוֹטְרִין. בּקֹמְלֵיה בַּלְא תַּעֲשֶׂה. יַבְּכָה אֱלֹהִים וְכֵן יַבְּכָה אֱלֹהִים זוֹ הִיא אָלָה הַבְּתוּבָה בַּתְוֹרָה. וְיבִירָה וַיִּיִיב לְּךְ רְבִּי מַאִּיר מְחַיֵּיב וְרְבִּי יְהוּדָה פּוֹמְר:

Mishnah 14: "I put an oath upon you, I command you, I bind you," these are liable 106. "By Heaven and Earth," they are not liable 107. "By א־-י, by the Almighty, by Sabaoth, by the Gracious and Merciful, by the Forbearing and Most Benevolent," and all substitute names 108, they are liable. One who curses by any of these is liable, the words of Rebbi Meïr; but the Sages declare him not liable 109. One who curses his father or mother by any of these is liable, the words of Rebbi Meïr; but the Sages declare him not liable 110. One who curses himself or another person by any of these violates a prohibition 111. "May God punish you, so may God punish you," this is the imprecation mentioned in the Torah 167. "May He not punish you, may He bless you, may He do well with you," Rebbi Meïr declares liable 112 but Rebbi Jehudah declares not liable 113.

106 These are valid versions of a summons to testify.

107 "Heaven" is not a sobriquet of God's Name.

108 א-ד stands for Adonay, ה- for YHWH. A substitute name is any translation of any Name of Attribute of God in any vernacular. 109 The crime of blasphemy (*Lev.* 24:15) refers only to blaspheming the Name (*Sanhedrin* 7:14).

110 The same holds for cursing father and mother (Ex. 21:17).

111 Lev. 19:14; Sifra Qedošim Parashah 2(13).

112 If the claimant says "may He not punish you if you come to testify", or "may He bless you if you come to testify", for R. Meïr this implies the opposite, i. e., "may he punish you if you do not come to testify" etc.

113 For R. Jehudah, what has been said explicitly is the only thing that counts.

The Mishnah versions in the Babli and in the independent Mishnah mss. all read "but the Sages declare not liable." It is clear from the Halakhah that this also was the reading in the Yerushalmi underlying the Halakhah since it was necessary to state that the Mishnah represents R. Jehudah's opinion.

(35d line 58) **הלכה יד**: מַלְּשָּבִּיעַ אֲנִי עֲלֵיכֶם כול' עַד סוֹפָהּ. מַלְּשָּבִיעַ אֲנִי עֲלֵיכֶם סְתָם. חַייָבִין. אוֹסֵרְכֵם אַנִי כּוּבַלְכֵם אַנִי. חַייַבִּין.

Halakhah 14: "I put an oath upon you," etc. to the end. "I put an oath upon you" without addition¹¹⁴, they are liable. "I am binding you, I am roping you in," they are liable.

114 Obviously he has to add what he actually demands from them but he does not have to invoke the Name, neither does he

have to state that this is an oath; the verb alone is sufficient.

(35d line 60) רָבִּי יֹזֹחָנֶן בְּשֶׁם רְבִּי יַנַּאִי פְּמַתְנִיתִּין. וְאִית דֶּמְרִין רְבִּי אַבָּהוּ בְשַׁם רְבִּי יוֹחָנֶן. כֵּינִי מַתְנִיתִין. רְבִּי מֵאִיר מְחַייֵב וְרְבִּי יְהוּדָה פּוֹטֵר. רְבִּי מֵאִיר כְדַעְתֵּיהּ וְרְבִּי יוּדָה כְדַעְתֵּיהּ. דְּתַנִּינֶן תַּמָּן. קַלְּלֶם בְּכָנוּי רַבִּי מֵאִיר מְחַייִב וַחֲכָמִים פּוֹטְרִין:

Rebbi Johanan in the name of Rebbi Yannai, as our Mishnah¹¹⁵. But some say, Rebbi Abbahu in the name of Rebbi Johanan, so is our Mishnah: "Rebbi Meïr declares liable but Rebbi Jehudah declares not liable.¹¹³" Rebbi Meïr follows his own opinion and Rebbi Jehudah follows his own opinion, as we have stated: "If he cursed them by a substitute name, Rebbi Meïr declares him guilty but the Sages free him from prosecution.¹¹⁶"

115 This seems to be a scribal error; one should read as in the next sentence בָּעִי "so is our Mishnah."

116 Mishnah Sanhedrin 7:14. Only here is

opinion of the Sages attributed to R. Jehudah; in the Babli (Sanhedrin 66a) it is attributed to R. Menahem ben R. Yose.

(35d line 63) הַמְקַלֵּל עַצְמוֹ וַחֲבִירוֹ בְּכוּלָן עוֹבֵר בְּלָאוֹ. מָהוּ לֹלְקוֹת. חֲבַרַייָא אֶמְרי. אֵין לוֹקֶה. אֲמֵר לוֹן רְבִּי יוֹסֵי. לָפָה. שָׁהוּא לֹא תַעֲשֶׂה שָׁאֵין בּוֹ מַעֲשֶׂה. וַהֲרֵי הַמֵּמִיר וְהַנְּשְׁבָּע לַשֶּׁקֶר לָאוּ שְׁאֵין בּוֹ מַעֲשֶׂה. וֹהֲרִי הַמִּמִיר וְהַנִּשְׁבָּע לַשֶּׁקֶר לָאוּ שַׁאִין בּוֹ מַעֲשֶׂה הוּא.

"One who curses himself or another person by any of these violates a prohibition." What about flogging? The colleagues say, he cannot be flogged. Rebbi Yose said to them, why? Because it is a prohibition not involving an action. But is not one who substitutes and one who swears falsely also a prohibition which involves no action¹¹⁷?

117 Cf. Chapter 3:11, Notes 166-168, and the parallels indicated there. It seems that R. Yose considers any speech as an

action, against the consensus that speech can be considered action only if recognized as such by a verse.

(35d line 66) רְבִּי יָסֶא בְשַׁם רְבִּי יֹזְחָנָן. רְבִּי מֵאִיר הִיא דְאָמַר. מְמַשְׁמֵע לָאו אַתָּה שׁוֹמֵע הֵין. אַל יַכֶּכְּךְּ אָם תָּבוֹא וּתְעידִינִי. הָא אִם לֹא תָבוֹא וּתְעידִינִי יַכֶּכְּךְ. אֵין לִי אֶלָּא אָלָה שְׁיֵּשׁ עִמָּהּ שְׁבוּאָה כְּשְׁיֵּשׁ עִמָּהּ שְׁבוּאָה. תַּלְמוּד לוֹמֵר וְשֵׁמְעָה אָלָה וְשְׁמְעָה קוֹל. לְשְׁבוּעָה. מְלִמוּד לוֹמֵר וְשְׁמְעָה אָלָה וְשְׁמְעָה קוֹל. לְעַשׁוֹת שָׁאֵין עִמָּהּ אָלָה בְּשָׁיֵשׁ עִמָּהּ אָלָה. הָא אָלָה בְלֹא שְׁבוּעָה לֹא. רְבִּי יָסָי בְשַׁם רְבִּי יוֹחָנָן. לֹא שַׁנִייָא. הִיא אַלָה בְלֹא שָׁבוּעָה הִיא שִׁבוּעָה בְּלֹא אַלָה.

Rebbi Yasa in the name of Rebbi Joḥanan: Rebbi Meïr is the one who says that out of a negative one understands a positive¹¹⁸. "May He not punish you if you come and testify for me." Therefore, if you do not come and testify for me He shall punish you.

There is not only an imprecation accompanied by an oath. From where one not accompanied by an oath be like one which is accompanied by an oath? The verse says, and heard an imprecation, and heard a voice¹¹⁹, to make one without imprecation like one with an imprecation. Therefore not an imprecation without an oath. Rebbi Yasa in the name of Rebbi Johanan: There is no difference; an imprecation without oath is the same as an oath without an imprecation¹²⁰.

118 This is the position of the Yerushalmi here and in 7:1 (Note 11), Eruvin 3 (21b l. 24), *Qiddušin* 3:4 Note 136, *Nedarim* 1:4

Note 158. (The explanation given there that the statement of R. Yasa in the name of R. Johanan is a rhetorical question is incorrect;

the statement is a straightforward declarative sentence.) The Babli (36a, Nedarim 11a,13b, Sotah 17a) is totally opposed; it proposes to switch the attributions in the Mishnah between R. Meïr

and the Sages.

119 Lev. 5:1.

120 Babli 36a, *Sifra Ḥova (Wayyiqra 2)* Parashah 8(2).

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