שבועת הדיינין פרק ששי

(fol. 36c) משנה א: שְבוּעָת הַדִּינִין הַשְּעָנָה שְׁתֵּי כֶּסֶף וְהַהוֹנְדָיָה בְּשָׁוֹה פְרוּטָה. וְאָם אֵין הַחוֹנְדִיָּה מִמִּין הַשַּעָנָה פָּמוּר. בִּיצִד שְׁתֵּי כֶּסֶף לִי בְּיָדָּךְ אֵין לְּדְּ בְיָדִי אֶלֶּא פְרוּטָה פָּמוּר. שְׁתֵּי כֶּסֶף וּפְרוּטָה לִי בְיָדָדְּ אֵין לְדְּ בְיָדִי אֶלֶּא פְרוּטָה חַייָב. מְנָה לִי בְיָדֶדְ אֵין לְדְּ בְיָדִי שְּלֵּא הַמִשִּים לִי בְיָדֶדְ אֵין לְדְּ בְיָדִי אֶלֶּא הַמִשִּים דֵּינָר חַייָב. מְנָה לְאַבָּא בְיָדֶדְ אֵין לְדְּ בְיָדִי אֶלֶא הַמִשִּים פַּמוּר מִפְנֵי שָהוּא כְּמִשִּיב אֲבָדָה:

Mishnah 1: A judicial oath¹ is about a claim of two silver coins² and the acknowledgment of one *perutah*³. If the acknowledgment is not of the kind of the claim he is not liable⁴. How is this? "You are holding two silver coins for me;" "I am holding only one *perutah*." He is not liable⁵. "You are holding two silver coins and a *perutah* for me;" "I am holding only one *perutah*." He is liable⁶. "You are holding a *mina* for me," "I am not holding anything for you," he is not liable⁷. "You are holding a *mina* for me," "I am holding only 50 *denar* for you," he is liable. "You are holding a *mina* for my father," "I am holding only 50 *denar* for you," he is not liable since he is like one returning a lost object⁸.

- 1 In the case of a claim not proven by witnesses or documents where the defendant disputes part of the claim, the judges will impose an oath on the defendant that he owes not more than he admitted. The basis is Ex. 22:8, where the expression where he says, this is it is read as partial admission on the part of the defendant. The oath cannot be required by biblical standards if the defendant rejects the claim in its entirety; it cannot be administered by rabbinical standards if the amount in dispute or the amount admitted are below a certain threshhold.
- 2 "Silver" denotes the smallest silver coin struck in Hasmonean times, the *obolos*, ¹/₆ of a *denar*. The silver half- *oboloi* minted

- in Yehud in Persian times had long disappeared when the Mishnaic system of currency was formulated.
- 3 A copper coin of Hasmonean times, of varying weight, but in the Mishnah assumed to be $^{1}/_{32}$ of an *obolos*. Half- *perutot* have been found
- 4 This is explained in Mishnaiot 3 ff.
- 5 Since the claim to be adjudicated is 2 *oboloi* minus 1 *perutah*, i. e., 63 *perutot*, the statutory minimum of 64 *perutot* is not reached; the oath cannot be imposed by rabbinic rules.
- 6 Since the claim in dispute is a full two *oboloi*.
- 7 Since the claim is rejected in its entirety, it must be proven by documents or

witnesses; the oath cannot be imposed by biblical standards.

8 Since a son cannot swear in place of his father, the son would have to accept a declaration by the defendant that he had

owed to the father but returned everything to the latter during his lifetime; the defendant has to be believed if he admits part of the

(21) מלכה אי שְׁבוּעַת הַדִּייָנִין כול'. הַטַּעֲנָה. בֵּית שַׁמֵּי אוֹמְרִים. מָעָה כֶּסֶף. וּבִית הְלֵּל אוֹמְרִים. שְׁתֵּי מָעִין. מִחְלְּבָּה שִׁישָׁתִין דְּבֵית שַׁמֵּי. תַּמָּן אֲמְרִין. כֶּסֶף דִּינָר. וְהָכָּא אֲמְרִין. כֶּסֶף אַוֹּמְרִים. שְׁתַּי מָעִין, הָלָּבָה שִׁישָׁתִין דְּבֵית שְׁמֵּי אוֹמְרִים. מִתְּחִילֶּת מְכִירָת הָעַבְרָיָה. מַה תְּחִילֵּת מְכִירָת הָעַבְרָיָה. מַה חוֹף גִּירוּעֶיהָ בְּרִיּטָה אַף קִידּוּשֶׁיהָ בְדִיעָר. וּבֵית הַלֵּל לְמֵידִין מִסוֹף גֵּירוּעֶיהָ. מַה חוֹף גִּירוּעֶיהָ בְּבְרוּטָה אַף קִידּוּשֶׁיהָ בִּבְרוּטָה. וּמָה טַעֲמָא דְבֵית שַׁמֵּי. וְיֵצְאָה חָנֶּם אֵיִן כְּסֶף. וְכִי אֵין אָנוּ בְּבְרוּטָה אַף קִידּוּשֶׁיהָ בִּבְרוּטָה. וּמָה טַעֲמָא דְבֵית שַׁמֵּי. וְיֵצְאָה חָנֶּם אֵיִן כְּסֶף. וְכִי אֵין אָנוּ בְּבְרוּטָה אַף פְרוּטָה. וֹתַר מִכֶּסֶף שְׁתָּי בְּרְוּטִה. חוֹנָם אַיִּן בְּטֶף. וְכִי אִין אָנוּ בְּבְרוּטָה אַף בְּרוּטָה. וֹתַר מִכֶּסֶף שְׁתָּי בְּרוּטָה. וֹתְרָב מְּלְּבִית מְעָבְרַע מִתְּחִילַת מַשְּׁה בְּכָל-שָׁנָה וְיוֹצְאָה. וְתְּבָּעף בְּבְּרוּטָה. אָמְר רְבִּי אָבִין. הַנְּע עַצְּמְךּ שֶׁאָה בְּיִקְשָׁה לִיגְּרַע מִתְּחִילַת מַשְּנָה הָשְּשִׁת. מִה וְּחִבּית הַלָּל שִׁבְיוּ שְׁמָּית בְבְּרוּטָה. אָבְין הִישְׁה בַּרוּטָה אַף קִידּוּשְׁיה בְּבְרוּטָה. אֶבְּין הִישְּשָׁת דְבִּית הְלֵּל. מִמְּה שְׁעָה דְּבְיוּה הַשְּשִׁת בְּבְרוּטָה אַבְּין שְּנָת וְשְׁה שְׁנָה בְּרוּטָה שְׁנָת בְּבְרוּטָה בָּבְ מִידּוּשְׁיהָ בְּבְרוּטָה שָׁנָה בְּיִרוּשְה שְּבָּי בְּיִרּוּחָה.

מְּחְלְפָה שִׁישִּׁתְהוֹן דְּבֵית הַלֵּל. כְּי־ִוּמֵן אַׁישׁ אֶל־רֵעֲהוּ וגוֹ. אָם לְלַמֵּד שָׁאֵין בֵּית דִּין נִוְּקָקִין לְּפָחוֹת מִשְּׁוֶה פְּרוּטָה. כְּבָר כָּתוּב לְאַשְׁמֶה בַהּ: פְּרָט לְפָחוֹת מִפְּרוּטָה. מִיכָּן שָׁיֵשׁ כָּאן יוֹתֵר מִכֶּסֶף. וְכָמָה הוּא. שְׁתֵּי מְעִין. אוֹ כֶּסֶף פְּרוּטָה. יוֹתֵר מִכֶּסֶף ב' פְרוּטוֹת. סוֹף מִיסְבֵּע כָּסֶף מְעָה. וּוְּתְבֵּי מְעָין. אוֹ כֶּסֶף פְּרוּטָה. יוֹתֵר מִכֶּסֶף ב' פְרוּטוֹת. סוֹף מִיסְבֵּע כָּסֶף מְתָּהֵא מְעָה. אְוֹ־כֵלִים. מָה כֵלִים ב' אַף כֶּסֶף ב'. מַה מְקִייְמִין דְּבֵית שַׁמִּי אְוֹ־כֵלִים. לְהָבִיא כְלִי חֶרֶס. שְׁמוּאֵל אָמֵר. טְעְנוֹ שְׁנֵי מְחָטִין וְהוֹדָה לוֹ בְאַחַת מֵהֶן חַיִּיב. אָמֵר רְבִּי חִינְנָא. וְהֵן שָׁיְהוּ יָּפוֹת שְׁתֵי פְרוּטוֹת. שָׁיְהָא הְשַּעֲנָה פְרוּטָה וְהַהוֹדְייָה פְרוּטָה. מַה כַלִים שְׁנֵים בְּרִם כְּבֵית הַלֵּל דְּיַלְפֵי כֶּסֶף מִכֵּלִים. מַה כַּלִים שְׁתֵּי מַעִין אַף כֵּלִים שְׁתֵּי מָעין. אַף כֵּסֶף שִׁתֵּי מַעִין אַף כֵּלִים שִׁתִּי מָעין.

Halakhah 1: "A judicial oath," etc. ⁹The claim, the House of Shammai say, an *obolos*, but the House of Hillel say, two *oboloi*. The argument of the House of Shammai seems inverted. There, they say, "silver" is a *denar*, but here, they say that "silver" is an *obolos*. The argument of the House of Hillel seems inverted. There, they say that "money" is a *perutah* but here, they say that "money" is two *oboloi*. Rebbi Jacob bar Aha in the name of Rebbi

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Hanina: The House of Shammai learn from the initial sale of a Hebrew girl. Since her initial sale was by [at least] a *denar*, so her preliminary marriage is by [at least] a denar. The House of Hillel learn from the end of her diminution. Since the end of her diminution is a *perutah*, so her preliminary marriage is by a perutah. What is the reason of the House of Shammai? As it is said, she leaves gratis, without silver¹⁰. Would we not know that it is without money? Why does the verse say, without silver? From there, that she is sold for more than silver. And what is more than silver? A denar. But maybe "silver" is a *perutah*, more than silver two *perutot*. The smallest silver coin is an obolos². So why is it not an obolos? Rebbi Abun in the name of Rebbi Judah bar Pazi: For if she wants to diminish, she diminishes every year by an obolos and leaves. Could she not diminish by a perutah? Rebbi Abun said, think of it. If she wanted to compute the diminution at the start of the sixth year, there would be a *perutah* left. But the start of the diminution must be an obolos, the end of the diminution a perutah. If there is only one perutah left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage should be a perutah! What is the reason of the House of Hillel? Since her last diminished amount is a *perutah*, you know that her preliminary marriage is by a *perutah*. Think of it, if there is only one *perutah*'s worth left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage is by a perutah.

The argument of the House of Hillel seems inverted. If a person give to his neighbor, 11 etc. If to teach that the court will not act on less than a perutah's worth, is it not already written, to incur liability for it? To exclude anything not worth a perutah. From here, that it should be more than silver. And what is more than silver? Two oboloi. But maybe "silver" is a perutah, more than silver two perutot. The smallest silver coin is an obolos. So why is it not an obolos? Or vessels; since vessels are two, also "money" is two. How do the House of Shammai interpret or vessels? Following what Rebbi Nathan stated, or vessels, including clay vessels¹². Samuel said, if he claimed from him two needles and he admitted to one, he is liable. Rebbi Hinena said, only if they are worth two perutot, that the claim should be about a perutah's worth and

the confession about a *peruṭah*'s worth¹³. This follows the House of Shammai who do not learn money's worth from "vessels". But following the House of Hillel who learn money's worth from "vessels", since vessels are two, also "money" is two. Similarly, since "money" means two *oboloi*, also "vessels" means two *oboloi*'s worth.

9 This text is copied in *Qiddušin* 1:1, explained there in detail in Notes 77-98. Parallels are in the Babli *Qiddušin* 11b.

The question is, why do the House of Hillel require a larger minimal amount for litigation before a court than the House of Shammai but a much smaller sum than the House of Shammai for legal marriage by symbolic acquisition. The answer is that different biblical verses are the basis. Since a Hebrew slave girl is a minor sold by her father for a maximum of 6 years, or until she reaches the age of 12, or until she is married by the person who buys her or one of his sons. In order to get the maximum for his money, the man buying her might use her as

a servant up to the last day of her servitude and then marry her on that day. Since if the original price is divided by the sum of all days of her servitude and only pennies pay for the service of one day, only pennies are left on the last day but nevertheless the marriage is legal. Therefore only pennies are needed for a legal marriage ceremony.

- 10 Ex. 21:10.
- 11 Ex. 22:6.
- 12 Cf. *Qiddušin* 1:1 Note 96 for the arguments which show that this reading is impossible.
- 13 Quoted in Tosaphot 39b, s.v. מה.

(36d line 50) רְבִּי בָּא רַב יְהוּדָה בְּשֶׁם שְׁמוּאֵל. כֶּל־שֶׁשְׁנֵיִם מְחַיִּבְין אוֹתוֹ מָמוֹן עֵד אֶחָד וֹזֹקְקוֹ לְשְׁבוּעָה. וַהֲרִי שְׁנֵיִם מְחַיִּבְין אוֹתוֹ בְּקַרְקָעוֹ. וַבְּרָי שְׁנֵיִם מְחַיִּבְין אוֹתוֹ בְּקְרָקע. שַׁנְיָא הִיא שָׁאֵין נִשְׁבָּעִי הַיִּא שָׁאֵין נִשְׁבָּעִי הַיָּא שָׁאֵין נִשְׁבָּעִי בַּקְּנָס. וַהֲרֵי שְׁנֵיִם מְחַיִּבְין אוֹתוֹ פְרוּטָה. וְכֵן הִיא דְתַנִינֶן. שְׁבִּיעִ הַדְּייָנִין. הַטַּעֲנָה שְׁתֵּי כֶּסֶף וְהַהוֹדְייָה שְׁנֶה פְרוּטָה. מַתְנִיתָא בְּשֶׁנְּשְׁבָּע מִפִּיו. מַה דְּתַנִין. שְׁבּוּעְתָה בְּנִשְׁבָּע מִפִּיו. רַב חִסְדָּא וַחֲבֵרוּתִיה פְּלִיגְי. שְׁבוּעַת הַדִּייָנִין. כַּשְׁבָּע מִפִּי אֲחֵרִים. רַב חִסְדָּא וַחֲבֵרוּתִיה פְּלִיגְי. שְׁבוּעַת הַדִּייָנִין. כֵּא שְׁנִינָא בֵּין מִפִּי אֲחֵרִים. רַב חִסְדָּא וֹחֲבֵרוּתִה בְּדִינָנִין. לָא שַׁנִינָא בָּין מִפִּיוֹ מִפִּי אֲחֵרִים לְעוֹלְם אֻינוֹ חַיָּב עַד שְׁתְּהָא הַשַּעֵנָה. כַּלִּי שְׁבִּינִת הַדְּייַנִין. לְא שִׁנְיִיָּא בָּין מִפִּין מִפִּין מָפִּי אֲחָרִים לְעוֹלְם אֵינוֹ חַיְּבִי בְּד שְׁתָּהָא הַשְּעָרָה.

Rebbi Abba, Rav Jehudah in the name of Samuel: In any case where two [witnesses] make him liable to pay money, a single witness sets him up for an oath¹⁴. But do not two [witnesses] make him liable for real estate¹⁵? It is a difference since one does not swear about real estate. But do not two [witnesses] make him liable for a fine? There is a difference since one does not swear about a fine. But do not two [witnesses] make him liable for a *perutah*? Is it so? Have we not stated: "A judicial oath is about a claim of

two silver coins and the acknowledgment of one *perutah*." Our Mishnah, when he swears by his own formulation. What (Rebbi)¹⁶ Samuel said, when he swears by the formulation of others. Rav Ḥisda and his group disagree. "A judicial oath", any judicial oath. There is no difference whether he swears by his own formulation or he swears by the formulation of others, he cannot be liable except for a claim¹⁷.

14 In the Babli, 40a, this is a tannaitic statement commented upon by Samuel.

15 Since anything can be decided upon the testimony of two witnesses, possession of real estate can be transferred without documentary proof by the testimony of witnesses. Similarly, real estate can be attached in foreclosure for unpaid fines upon the testimony of two witnesses.

16 A slip of the scribe's pen; the first generation Samuel only had a medical, not a

rabbinic degree.

17 It is not clear whether the sentence is incomplete and one should add "of at least two *oboloi*", or that only the situation of monetary claim and denial can be adjudicated by judicial oath, to support the opponents of R. Johanan in the next paragraph. The interpretation of the statement in the Babli has no relation to the discussion here.

(36d line 58) וְהַהוֹדָייָה שָׁנֶה פְרוּטָה. רְבִּי יוֹחָנֶן אָמַר. הַטּוֹעֵן לַחֲבֵירוֹ טַעֲנַת גַּנָּב אֵינוֹ חַייָב עַד שָׁיּוֹדֶה מִקְצָת. וְכָל־חֲבֵרוֹי פְּלִיגִין עֲלוֹי. מַה מְקַיִּמִין כָּל־חֲבֵרוֹי כִּי־הַוּא זֶּה. בְּטוֹעֲנוֹ מָמוֹן. אִם בָּטוֹעֵנוֹ מַמוֹן בִּדָא יִשְׁלֶם שִׁנָיֵם לְרֵעֲהוּ: וְעֵירוֹבֵי פַּרְשִׁיּוֹת יֵשׁ כָּאן.

אָמַר רָבִּי זֵירָא. אֵינוֹ חַייָב עַד שָּׁיְהֵא בַּכְּפִירָה שְׁתֵי כֶּסֶף חוּץ מֵהַהוּדָייָה. אַתְיָא כַחֲבֵרוֹי דרבּי יוֹחַנוְ.

"And the acknowledgment of one *perutah*." Rebbi Johanan said, if somebody claims that another had stolen¹⁸, the latter is not liable unless he partially admit. But all his colleagues¹⁹ differ from him. How do the colleagues uphold *for this is it*²⁰? If he claims money from him, is that *double he shall pay to his neighbor*²¹? But this is a mixture of paragraphs.

Rebbi Ze`ira said, he is not liable unless the denial be of two silver coins not counting the acknowledgment of one *perutah*²². This follows Rebbi Joḥanan's colleague.

18 The argument is about *Ex.* 22:8, the basis of the Mishnah. A deposited something with B. B claims that the item was lost and as unpaid trustee he is not liable for damages. A accuses B of having appropriated the item for himself, i. e., to have stolen it. R. Joḥanan holds that this claim is no different from all other claims adjudicated under the rules of *Ex.* 22:6-8 and, therefore, an oath can be imposed on B only if the latter acknowledges liability for part of the claim.

19 According to the Babli (*Bava qamma* 106b, bottom) he is R. Ḥiyya bar Joseph, a student of Rav and member of R. Joḥanan's court.

20 Ex. 22:6 reads: About anything criminal, about an ox, about a donkey, about a sheep, about a garment, about anything lost, if he says, for this is it, the suit of them shall come before the Elohim, he whom the Elohim find guilty shall pay double to his neighbor. Elohim means "the powerful," it can be applied both to God and to judges. From this double meaning it is inferred that judges impose an oath before

God on the accused if the latter has acknowledged for this is it, i. e., a partial admission. On the other hand, double restitution is the fine for the thief. Therefore R. Johanan is justified in his conclusion that since v.6 declares the entire paragraph to be about deposits, the entire sentence deals with the case of A accusing B of theft of the deposit.

21 The colleagues agree that a fine can be imposed only for theft, but they hold that the clause *for this is it* does not apply to deposits but to repayment of loans and debts (*Lev.* 5:24). They have to take the position that this very long sentence deals with different subjects in different parts and that an oath is due on demand of the claimant for any accusation that a deposit was stolen.

22 As explained in the Mishnah, after partial admission of any claim, the amount in dispute must be at least two *oboloi*. In the Babli, 39b, this is the position of Rav, R. Ḥiyya bar Joseph's teacher, disputed by Samuel who only requires the total claim to be for at least two *oboloi*.

(36d line 62) מְנָה לִי בְּיָדֶדְ. אֵין לְּדְּ בְיָדִי, פָּטוּר. אֲפִילוּ. פַּמָה לִי בְיָדָדָ. אֵין לְדְּ בְיָדִי, פָּטוּר. אֶפִילוּ. כַּמָה לִי בְיָדָדְ. אֵין לְדְּ בְיָדִי אֶלֶא פְרוּטָה. חֵינָב. רַב וְרְבִּי יוֹחָנֶן תְּרַוִּיהוֹן אֶמְרִין. וְהוּא אֶלֶא בִינִי. מְנָה לִי בְיָדֶדְ. אֵין לְדְּ בְיָדִי אֶלֶא בְעִדִים יְכִיל מֵימֵר לֵיהּ. הְלְוִיתָנִי וְנָתַתִּי לְּדְּ מְחֵצְה. שָׁאַחַר. מֵאַחַר דִּיכִיל לְמֵימֵר לֵיהּ. לֹא הִלְוִיתָנִי וְנָתַתִּי לְדְּ חֶצְיִים. מַתְנִיתָה פְּלִינָה בְרבִּי יוֹחָנָן. מְנָה לִי בְיָדֶךְ אָמֵר לוֹ. הֵין. לְמָחָר לִי הִנְיָדְ הְּמָר לוֹ. הֵין לְדְּ בְיָדִי. חַיָּיב. אָיִן לְדְּ בְּיָדִי. חַיָּיב.

"You are holding a *mina* for me', 'I am not holding anything for you', he is not liable⁷." Even "you are holding a lot for me," "I am not holding anything for you", he is not liable? But the following: "You are holding a *mina* for me." "I am holding only a *perutah* for you." He is liable²³.

Rav and Rebbi Johanan both are saying: Only if he made the loan in the presence of witnesses²⁴. But if he made the loan not in the presence of witnesses, he could tell him, you gave me a loan but I returned half of it. Rebbi Yudan said, in money matters one does not argue "because." Because he could have told him, you did not give me a loan, he could tell him, you gave me a loan but I returned half of it²⁵? The Mishnah²⁶ disagrees with Rebbi Johanan: "'You are holding a *mina* for me;' he said 'yes'²⁷. The next day he said, 'return it to me,' 'I returned it to you;' he is not liable. 'I am not holding anything for you,' he is liable²⁸."

- 23 In Mishnah 1, the sentence about the person who claims he owes only 50 denar seems redundant. It only is inserted to indicate that for the liability to swear, a *mina* is no different from two *oboloi*. If the defendant admits to owing a *perutah* and the claim is at least 2 *oboloi*, there is liability. The lower bound is not a function of the size of the claim.
- 24 They hold that undocumented loans never can trigger liability for an oath. Babli 41a (in the name of Rav only.)
- 25 In the Babli, such an argument is called מגו "because". In the absence of witnesses or documents, if the defendant presents an argument which is less favorable to him than another argument which he

could have advanced, the court is forced to give him the benefit of doubt and free him from the oath. It will be seen in Halakhah 7:1 that such arguments are acceptable in general, supporting Rav and R. Johanan against R. Yudan.

- 26 Mishnah 2.
- 27 In front of witnesses.
- 28 Since he had agreed in the presence of witnesses that he owes the money, he cannot change his confession later; he does not swear but has to pay. This last sentence is not in the Mishnah of the Yerushalmi but appears in the Babli and the independent Mishnah mss., including Maimonides's autograph. The Halakhah shows that it should also be read in the Mishnah.

(36d line 70) מְנָה לִי בְיָדֶךְ. אֵין לְךְּ בְיָדִי. אִפִּי אָמֵר. הַמַּלְוֶה לַחֲבֵירוֹ בָעֵדִים לֹא יִפְּרָעֶנּוּ אֶלֶּא בָעֵדִים. אָמֵר רְבִּי אָבִין. מִילְתֵיהּ דְּאִפִּי הַמַּלְוֶה לַחֲבֵירוֹ בָעֵדִים לֹא יַחֲזִיר לוֹ אֶלֶּא בָעֵדִים. בְּעֵדִים. אָמֵר רְבִּי אָבִין. מִילְתֵיהּ בְּלִינֶה צְלוֹי. מְנָה לִי בְיָדֶךְ. אָמֵר לוֹ הֵין. לְמָחָר אָמֵר לוֹ. תְּנֵיהוּ לִי. נְתַתִּיו לָךְּ. פָּטוּר. אֵין לַךְּ בְיָדִי. חַייָב.

"You are holding a *mina* for me,' 'I am not holding anything for you." Issy²⁹ said, one who gives a loan to another in the presence of witnesses should claim repayment only in the presence of witnesses. Rebbi Avin said, the word of Issy: If one gives a loan to another in the presence of witnesses,

[the debtor] should not repay except in the presence of witnesses³⁰. The Mishnah disagrees with him: "You are holding a *mina* for me;' he said 'yes'²⁷. The next day he said, 'return it to me,' 'I returned it to you;' he is not liable. 'I am not holding anything for you,' he is liable^{28,31}."

- 29 Babli 41a. In the Babli, he always appears as Rav Assi even though his ordination preceded that of Rav for whom the title "Rav" was invented.
- 30 This is not an obligation of the lender's as implied by Issy's formulation, but advice to the borrower to protect himself from double claims by the lender.
- 31 Since the second part of the Mishnah explicitly mentions payment in front of

witnesses, the first part must assume that payment was not made before witnesses, even though the admission of the debt before witnesses is equivalent to a loan given before witnesses. The Mishnah contradicts Issy's formulation; it is compatible with R. Avin's. The Babli, 41a and *Ketubot* 18a, explicitly notes that repayment in the presence of witnesses is not a legal requirement.

(fol. 36c) **משנה ב**: מָנָה לִּי בְיֶדֶךְ אָמַר לוֹ הֵין וּלְמָחֶר אָמֵר לוֹ הְנֵיהוּ לִי נְתַתִּיו לֶךְ פָּמוּר. מְנָה לִי בְיֶדֶךְ אָמֵר לוֹ הֵין אַל הְתְנֵיהוּ לִי אֶלָא בִפְנֵי עֵדִים. לְמָחָר אָמֵר לוֹ הְנַהוּ לִי נְתַתִּיו לֶךְ חַײֶב מִפְּנֵי שֶאָרִיךְ לִיתְנֵם בִּפְנֵי עֵדִים:

Mishnah 2: "You are holding a *mina* for me;" he said "yes"²⁶. The next day he said, "return it to me," "I returned it to you;" he is not liable³². "You are holding a *mina* for me;" he said "yes." "Return it to me only in the presence of witnesses." The next day he said, "return it to me," "I returned it to you;" he is liable³³ since he is required to return it in the presence of witnesses.

32 Since he already admitted his entire obligation in the presence of witnesses, there is no occasion for an oath. It is up to the claimant to prove the defendant's guilt

by witnesses or documents.

33 To pay the entire sum, see the preceding Note.

(36d line 75) **הלכה ב**ּ מְנָה לִי בְיָדֶדְּ כול'. אָמֵר רְבִּי בּוּן. דֶּרֶדְּ בְּנֵי אָדָם לְהַלְווֹת לַחֲבֵירִיהֶן שֶׁלֹא בַּעֵדִים וּלְתוֹבִעַן בָּעֵדִים. HALAKHAH 2 161

Halakhah 2: "You are holding a *mina* for me;" etc. Rebbi Abun³⁴ said, it is usual for people to give loans to others not in the presence of witnesses but to ask for repayment in the presence of witnesses³⁵.

- 34 He seems to be identical with R. Avin quoted in the preceding paragraph (which also refers to Mishnah 2) and the father of R. Yose ben R. Bun.
- 35 Even though it is not legally necessary,

it is recommended that requests for repayment be made in front of witnesses to obtain admission by the debtor of the existence of the debt as presupposed in the Mishnah.

קנָה לִי בְּנֶדְךּ. אָמַר לוֹ. הֵין. אַל תְּתְּנֵיהוּ לִי אֶלֶא בִּפְנִי פְלוֹנִי וּפְלוֹנִי. לְמָחָר אָמַר לוֹ. הַיּנְע עַצְמָדְ דְּאָמֵר לִיה. נְתַתִּיו לְדְּ לֹּהְחָזִיר לוֹ בָּעַדִים: הַגָּע עַצְמָדְ דְּאָמֵר לִיה. נְתַתִּיו לְדְּ בִּיִרִים. תַּנֵי בַּר קַפָּרָא. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. הַגַּע עַצְמָדְ דְּאָמֵר בְּלוֹנִי וּפְלוֹנִי. רְבִּי בְּעִדְים. תַּנֵי בַּר קַפְּרָא. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. הַגַּע עַצְמָדְ דְּאָמֵר בְּלוֹנִי וּפְלוֹנִי. רְבִּי בְּעִים. תַּנֵי בַּר קַפְּרָא. בְּמְעַמֶּד בְּלוֹנִי וּפְלוֹנִי. הַגַּע עַצְמָדְ דְּאָמֵר. יָבוֹאוּ פְּלוֹנִי וּפְלוֹנִי. רְבִּי אָרָא בַּר אַהֲבָה בְּשִׁם רְב. מַעֲשֶׂה בָּא לְפְנֵי רְבִּי וְאָמֵר. יָבוֹאוּ פְּלוֹנִי וּפְלוֹנִי. רְבִּי אָרָא בַּר אַהְבָּה בְּשִׁם רְב. מַעֲשֶׂה בָּא לְפְנֵי רְבִּי וְאָמֵר. יָבוֹאוּ פְּלוֹנִי וּפְלוֹנִי. רְבִּי אָרָא בָּר אַהְבָּה בְּשִׁם רְב. מְעֵשֶּׁה בָּא לְפְנֵי רְבִּי וְאָמֵר. יָבוֹאוּ פְּלוֹנִי וּפְלוֹנִי. רְבִי אָרָא בַּר אַהְבָּה בְּשִׁם רְב. מִעֲשֶּׁה בָּא לְפְנֵי רְבִי וְאָמֵר. יְבִי אָרָא בַּר אַהְבָּה בְּשִׁם רְב. מִעְשֶּׁה בָּא לְנִי וּפְלוֹנִי וּפְלוֹנִי וּפְלוֹנִי וּבְּלוֹנִי וּפְלוֹנִי וּבְּלוֹנִי וּבְּלוֹנִי וּבְּלוֹנִי וּבְּעִים רְבִּי אָנָא בְּב רְבִי אָרָא בָּר אַהְבָּה בְּשִׁם רְב. מְעֵשְׁר בְּב הַמְנוּנָא רְבִּי אָבְיּ בְּיוֹי וּבְּלוֹנִי רְבָּיוֹי בְּבּוּ בְּנִיתְיוּ לְּוֹי וּבְּלוֹנִי רְבָּיוֹי לְּיוֹי וּבְּלוֹנִי וּבְּלוֹנִי וּבְּלוֹנִי וּבְּיוֹנְיוֹי בְּיוֹיוּנִי וְּנְבּוֹנִי וּבְּיוֹנְיוֹי רְבְּיוֹנְיוֹנְיוּתְיוּ וּבְּיוֹנְיוֹנְיוּ וּבְּלוֹנִי וּבְּיוֹנְיוּי וּבְּלוֹנְיוּי וּבְּלוֹנִי וּבְּיוֹנְיוֹנְיי וּבְּיוֹנְיוֹנְיוּ בְּבְיוֹנְיוֹי וּבְּיוֹנְיוֹי וּבְּלוֹנִיי וּבְּלוֹנִי וּבְּלוֹנִי וּבְּלוֹי וּבְּיוֹי וּבְיוֹי וּנְיוֹי וּבְּיוֹי וּבְּיוֹי וּבְּיוֹנְיי וּבְּיוֹנְיוֹי וּבְּבְּעוֹי וּבְּבְיוֹי וּבְּבְיוֹי וּבְּבְּיוֹי וּבְּבְיוֹי וּבְּנִי וּבְּבְיוֹי וּבְּיוֹבְיוֹי וְבְּבְּבְיוֹי וּבְּבְּבְיוֹי

35 The Babylonian form of his name.

let X and Y come³⁶

36 The questions are besides the point. If there were witnesses, it is not a question of whether a statement of the defendant can be believed, nor whether he should swear; it is up to the court to listen to the witnesses. In the Babli, 41b, the question is raised if the return was made in the presence of witnesses but not those specified by the lender. It seems that the formulation by Bar Kappara requires return only in the presence of the specified witnesses.

(37a line 5) הַרִי שְׁבָּא בְשְׁטֶר וּבַחֲזָקָה. רְבִּי אוֹמֵר. יִדּוֹן בְּשְׁטֶר. רַבְּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר. יִדּוֹן בַּשְׁטֶר. רַבִּי יְהוּדָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל. יִדּוֹן בַּחֲזָקָה. רְבִּי זַיִּרָא בְּשֶׁם רַב יִּרְמְיָה. מַעֲשֶׂה בָּא לִפְנֵי רְבִּי יְהוּדָה כְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל. רְבִי יִרְמְיָה בְּעֵי קַמֵּי רְבִּי זַיִּרָא. מַה. מִחְלְפָה שִׁישָׁתֵיה דְּרְבִּי. תַּמֶּן אָמֵר. יִדּוֹן בִּשְׁטֶר. וָכָא אָמֵר. יִדּוֹן בַּחֲזָקָה. נֵימֵר. עֵד דְּלֹא יַחְזוֹר בֵּיה. וְאֲפִילוּ תֵימֵר מְדְּחָזֵר בִּיה. לֹא בִּיקשׁ רְבִּי אֶלָּא לְעֲמוֹד עַל אֲמִיתן שֶׁלְּדְבָרִים. הַפַּחֲזִיק מַחֲמַת אוֹנוֹ וְנִמְצֵאת פְּסוּלָה אֵינָה חָזֶקָה. רְבִּי יִרְמִיָּה אָמֵר. בְּי יִבְּינִה הָבֹּל הִיא. בְּבַרִי הַכּּל הִיא. בְּבֵי הַכֹּל הִיא. בְּבֵי הַכִּל הִיא.

אָמֵר רְבִּי יוֹסֵי. תַּמָּן בְּבָא בִשְׁטֶר וּבַחֲזָקָה. הָכָא בָּבָא בִשְׁטֶר. אָמֵר רְבִּי יוּדָן. תַּמָּן בְּבָא בִשְׁתֵּי כיתִּי עדים. הַכָא בכוֹפר בּראיוֹתִיו.

³⁷If somebody produced both a document and *hazaqah*³⁸. Rebbi says, it should be judged by the document. Rabban Simeon ben Gamliel says, it should be judged by *hazaqah*³⁹. Rebbi Ze'ira in the name of Rav Jeremiah: A case came before Rebbi Jehudah following Rabban Simeon ben Gamliel⁴⁰. Rebbi Jeremiah asked before Rebbi Ze'ira: How? Did Rebbi switch his opinion? There he said, it should be judged by the document. But here he said it should be judged by *hazaqah*. Would we say, before he changed his opinion⁴¹? Even if you say, after he changed his opinion. Rebbi only wanted to determine the truth of the matter⁴².

"If somebody occupied real estate on the basis of a document of sale⁴³ and it was found invalid, this is not *hazaqah*⁴⁴."⁴⁵ Rebbi Jeremiah said, in dispute⁴⁶. Rebbi Samuel said, Rebbi Ze'ira, Rebbi Jacob bar Aha in the name of Rebbi Abinna: it is everybody's opinion⁴⁷. Rebbi Yose said, there if one produced both a document and *hazaqah*. Here if he came with a document⁴⁸. Rebbi Yudan said, there if he presented two groups of witnesses; here one who contradicts his own proofs⁴⁹.

- 37 The following does not concern oaths but judicial rules concerning real estate. Babli *Bava batra* 169b.
- 38 "Grasping", a legal term with different meanings in different domains of law (cf. *Ketubot* 5:5 Note 100, *Qiddušin* 1:1 Note 30.) It can mean taking possession by active use, but here it means a presumption of permanence of an established *status quo ante*. The particular application meant here is validation of squatter's rights after three years of uncontested occupation (which must be combined with a claim, not necessarily proven, of rightful acquisition, *Bava gamma* 7:4 Note 49.)
- 39 Obviously all means of proof should be admitted; the question is which should be

- given the greater weight in the judges' deliberations.
- 40 The text is questionable since "R. Jehudah" clearly is Rebbi, (R. Jehudah ben Simeon) as follows from the sequel, and the sentence is missing a verb. Probably one should read: Rebbi judged following Rabban Simeon ben Gamliel.
- 41 Since Rebbi was a student of his father Rabban Simeon, he certainly started out following the latter's opinion and only later developed his own, differing, approach.
- 42 Theoretical preferences should never impede the search for the truth. Babli *Bava batra* 170a/b.
- 43 Greek ἀνή "document of sale".
- 44 As mentioned in Note 38, proof of

legal possession by proof of undisturbed occupation is admissible only if based on a claim of legal acquisition. This claim does not necessarily have to be proven; the person in possession might claim, e. g., either that he inherited under intestate rules or that the sale document was eaten by the rats. But if he tries to prove his claim by presenting a forged document, any claim of hazaqah based on the document must be thrown out by the court. The only problem is whether he should be allowed to plead a substitute claim.

45 Tosephta Bava batra 2:2.

46 R. Jeremiah (the fourth generation Amora, not the first generation Rav Jeremiah) thinks that Rebbi would prohibit any substitute claim while Rabban Simeon would allow an examination of proof of undisturbed occupation even after rejection of the document.

47 If the document proving the claim is found invalid, the claim of squatter's rights is also invalidated. In this Rebbi and Rabban Simeon agree.

48 The difference between Rebbi and his father is about a case where both a document and a claim of *hazaqah* are presented to the court, where either one alone would be sufficient. The Tosephta deals with a case where a forged document was produced and only after it was rejected a claim of *hazaqah* was entered.

49 Rebbi and Rabban Simeon disagree on how to handle a case where the claimant produces two sets of witnesses testifying to different aspects of the case. The Tosephta states that after a claim of documentary proof has been rejected, a subsequent claim which is logically inconsistent with the first one will not be considered by the court.

(37a line 15) רְבִּי מֶרִינוּס הֲוָה עָרֵב לְכַלְתֵיה וָהֲוּוּ דַיִּינִין לְמֵי רְבִּי חָמָא אֲבִי בַּר קַפְּרָא וְרְבִּי הוֹשְׁעְיָה. מְדְּהוֹדָה אָמֵר לִיהּ. יְהָבִית. שְׁאֲלוֹן לְרְבִּי חִייָה רוֹבָה. שְׁאֵל רְבִּי חִייָה לְרְבִּי. הַמִּתְחַייֵב בְּבִּית דִּין לֹא כָל־הֵימֵינוּ. מֵאי לֹא כָל־הֵימֵינוּ. רְבִּי אַבְּהוּ בְשַׁם רְבִּי יוֹחָנֶן. אִם מֵעַצְמוֹ מְשַׁלֵּם בְּבִית דְּין לֹא כָל־הֵימֵינוּ. מֵאי לֹא כָל־הֵימֵינוּ. רְבִּי אַבְּהוּ בְשַׁם רְבִּי יוֹחָנֶן. אָם מִעַצְמוֹ הְשָׁבְּעוֹת בֵּן. עָתִּינִי וְאָם מִפִּי אֲבָּחוּ בְשֵׁם רְבִּי יוֹחָנֶן. אִם מֵעַצְמוֹ נִשְׁבָּע נָאֱמֶן לוֹמֵר נִשְׁבַּעְתִּי. וְאִם מְהוּ אַף בִּשְׁבוּעוֹת בֵּן. רְבִּי אַבָּהוּ בְשֵׁם רְבִּי יוֹחָנֶן. אִם מֵעַצְמוֹ נִשְׁבְּע נָאֱמֶן לוֹמֵר נִשְׁבַּעְתִּי. וְאִם מְפִּי אֲהָרִים לֹא כַל־הֵימֵינוּ. מְבִּי מַבְּיִם לֹא כַל־הֵימֵינוּ.

Rebbi Marinus was guarantor for his daughter-in-law⁵⁰. They went to court before Rebbi Hama the father of Bat Qappara and Rebbi Hoshaia⁵¹. After he had admitted he said to him, I gave. They asked the Elder Rebbi Hiyya; Rebbi Hiyya asked Rebbi: One who became liable in court cannot be trusted. What is the meaning of "he cannot be trusted"? Rebbi Abbahu in the name of Rebbi Johanan: If he pays on his own initiative, he is trusted when he says, I gave. But from the orders of others, he cannot be trusted⁵². Rebbi Abun bar Cahana said, also for oaths it is the same. What is the meaning of "also for oaths it is the same"? Rebbi Abbahu in the name of Rebbi Johanan:

If he swears on his own initiative, he is trusted when he says, I swore. But from the orders of others, he cannot be trusted.

- 50 He warranted all claims she might have against her husband from the marriage contract; Babli *Bava mesia*` 17a.
- 51 This must read: R. Ḥama the father of R. Hoshaia and Bar Qappara. The latter's father was R. Eleazar haQappar.
- 52 The question here and in the next case is, on whom is the burden of proof. Even

though the rule is that "the burden of proof is on the claimant," since his daughter-in-law had to go to court against him, he has to prove (by witnesses or a receipt) that he paid. Had he not initially denied his responsibility, the burden of proof would have been on the daughter-in-law.

(fol. 36c) משנה ג: לְמְרָא זָהָב לִּי בְיֶדֶךְ אֵין לְדְּ בְיָדִי אֶלָּא לְמְרָא כֶּסֶף פָּמוּר. דֵּינַר זָהָב לִי בִידֵךְ אֵין לְדְּ בִיָדִי אֱלָּא דֵינַר כֵּסֶף קטְרֵיסִית וּפוּנִדִּיוֹן וּפְרוּטָה חַיַּב שֲהַכּּל מִין מַמְבַּע אֲחַד.

Mishnah 3: ⁵³"You are holding for me a pound⁵⁴ of gold," "I am holding for you only a pound of silver;" he is not liable. "You are holding for me a gold *denar*," "I am holding for you only a silver *denar*, or a *tressis*⁵⁵, or a *dupondius*⁵⁶, or a *peruṭah*," he is liable since all kinds of coin⁵⁷ are one.

- 53 Here starts the discussion of the condition that "the acknowledgment must be of the kind of the claim."
- 54 Greek λίτρα, a Roman *libra* of twelve (Troy) ounces.
- 55 With the good Mishnah mss. (Kaufmann ms. and Maimonides's auto-
- graph) read: וטריטית. *Tressis* "three *as;* something of little value.".
- 56 "Two as; two bits".
- 57 Even if for a claim of a gold *denar* the defendant admits only a debt of one *perutah*, 1/4800, it is a valid admission which makes the defendant liable for an oath.

(37a line 22) **הלכה ג**: לְּטְרָא זָהָב לִי בְיֶדֶּךְ כול'. שְׁמוֹנֶה שְׁלְזָהָב יֵשׁ לִי בַּכִּיס. וְנִמְצְאוּ שְׁמוֹנֶה דִינֶרִי זָהָב. אוֹ חֲמִשִּׁים סֶלַע. וְנִמְצְאוּ רִ' דִּינֶר. אוֹ ר' דֵּינֶר. אוֹ ר' דִּינֶר. אוֹ ר' דִינֶר. וְנִמְצְאוּ חֲמִשִּׁים סֶלַע. הַרִי אֵילּוּ חוּלִין. שְׁמוֹנֶה דִינֶרִי זָהָב יֵשׁ לִי בַּכִּיס. וְנִמְצְאוּ חֲמִשִּׁים סֶלַע. אוֹ ר' דִינֶר. וְנִמְצְאוּ נ' סֶלַע. הֲרִי אֵילּוּ שִׁינִי. לְטְרָא זָהָב יִשׁ לִי בְּיָדֶךְ אֵין לְךְּ בְּיָדִי אֶלֶא לְטְרָא כֶּסֶף פְּטוּר. דִּינֶר זָהָב יֵשׁ לִי בְּיָדֶךְ. אֵין לְּךְּ בְּיָדִי אֶלֶא לְטְרָא כֶּסֶף פְּטוּר. דִּינֶר זָהָב יֵשׁ לִי בְּיָדֶךְ. אַמְרִין. דִּינֶר זָהָב לְּדְּ בְּיִדִי אָלֶא דִינֶר כֶּסֶף. אָמֵר רְבִּי יַנְקֹב בַּר אַבִּינָא. בְּקַדְמִיתָא הֲוֹינֶן אֲמְרִין. דִינֶר זָהָב בְּרוֹטְרוּט. אִילּוּ מֵר. דִּינֶרְי זָהָב זָהוּב. יֵאוּת. אַשְׁבָּח תַּנֵּי. דִינֶר זָהוּב פַּטוּר.

Halakhah 3: "You are holding for me a pound of gold," etc. ⁵⁸"Eight of gold⁵⁹ I have in the wallet and one finds there eight gold *denarii*; or fifty tetradrachmas and one finds 200 denar; or 200 denar and one finds 50 tetradrachmas; these are profane. Eight gold denarii I have in the wallet and one finds fifty tetradrachmas⁶⁰; or 200 denar and one finds 50 tetradrachmas, these are Second [Tithe]."

"You are holding for me a pound of gold,' 'I am holding for you only a pound of silver;' he is not liable. 'You are holding for me a gold *denar*,' 'I am holding for you only a silver *denar*.' Rebbi Jacob bar Abinna said, earlier, we were saying, "a gold *denar*" is a detail; "gold *denarii*" are not detail. If he had said, "a gold *denar*, a gold coin" it would have been correct⁶². It was found stated, "a gold coin of a *denar*," he is not liable⁶³.

58 Tosephta Ma'aser šeni 5:5. In the opinion of S. Lieberman, the Tosephta is quoted here to indicate that the rules for Second Tithe and judicial oaths are different.

Second Tithe is the part of the harvest which the farmer should eat with his family at the place of the Sanctuary. If this is not practical, the crop can be redeemed and the sanctity transferred to the coins which then have to be spent in purity at the place of the Sanctuary. Problems arise when in the wallet chosen for the sanctified coins other coins are found which do not directly correspond to the farmer's memory.

- 59 Gold coins, but seemingly different from the standard gold *denar* (or, after Diocletian's currency reform, the *solidus*.)
- 60 A gold *denar* usually is counted as 25 silver *ii*. 8 gold *denarii* are 200 silver *denarii* or 50 *tetradrachmas*.
- 61 This seems to be not a copy of the Mishnah but a text similar to Tosephta Ševuot 5:8,9. The background text is from

Tosephta 5:9: "You are holding for me a gold denar as gold coin," 'I am holding for you only a silver denar, or a tressis, or a dupondius, or a perutah,' he is liable." The incomplete sentence in the Halakhah seems to be a text, not found in the Tosephta, "You are holding for me a gold denar," 'I am holding for you only a silver denar,' he is not liable." The formulation of the text points to the first two Amoraic generations during the military anarchy in the Roman Empire, when the gold denar was a unit of accounting but not an actual coin. Then the status of a claim for a gold denar is similar to the claim for a pound of gold; if it is answered by an admission of silver units it is not an admission of the kind of the claim. But a claim for an actual gold coin which is answered by an admission of silver or bronze coins is an admission of the kind of the claim. In the rabbinic literature of the Middle Ages, אוויב is the name of the standard gold coin of the author's country.

62 To hold the person liable who admits

owing a silver *denar* when a gold coin was claimed.

63 In the Tosephta: He is liable; the same in the Babli, 40a.

(fol. 36c) משנה ד: פוֹר תְּבוּאָה לִי בְיָדֶךְ אֵין לְךְּ בְיָדִי אֶלָּא לֶתֶךְ קִּטְנִית פָּמוּר. פּוֹר פֵּרוֹת לִי בְיָדֶךְ אֵין לְךְּ בְיָדִי אֶלָּא לֶתֶךְ קִטְנִית הַיָּב שְׁהַפִּיטְנִית בְּכְלָל פַרוֹת. טְעֵנוֹ חִישִׁים וְהוֹדָה לוֹ בְקַנְקַנִּים אָּקְמוֹן בְּיַבְי שָׁמֶן וְהוֹדָה לוֹ בְקַנְקַנִּים אַדְמוֹן בְשָׁעוֹרִים פָּמוּר. וְרְבִּי שִׁמְעוּן מְחַיֵּב. הַפּוֹעֵן לַחֲבֵרוֹ בְּכַדִי שֶׁמֶן וְהוֹדָה לוֹ בְקַנְקַנִּים אַדְמוֹן אוֹמֶר הוֹאִיל וְהוֹדָה לוֹ מִקְצָת מִמִין הַפַּעֲנָה יִשְּבֵע. וַחֲכָמִים אוֹמְרִים אֵין הַהוֹדְייָה מְמִין הַפַּעֲנָה. אָמֶר רַבָּן נַּמְלִיאֵל רוֹאָה אֲנִי אֶת דְּבָרִי אַדְמוֹן.

Mishnah 4: "You are holding for me a *kor*⁶⁴ of grain;" "I am holding for you only a *letek*⁶⁵ of legumes;" he is not liable. "You are holding for me a *kor* of produce;" "I am holding for you only a *letek* of legumes;" he is liable since legumes are subsumed under produce. If one sued for wheat and the other acknowledged barley, he is not liable, but Rebbi Simeon⁶⁶ declares him liable. Somebody who sued for amphoras of oil and the other admitted to pitchers, Admon says since he admitted of the kind of the claim he has to swear. But the Sages say, the admission is not of the kind of the claim⁶⁷. Rabban Gamliel said, I see⁶⁸ the words of Admon.

משנה ה: מְעָנוֹ כַּלִּים וְקַרְקְעוֹת הוֹדָה כַבֵּלִים וְכָפַר כַּפַּרְקְעוֹת בַּפַּרְקְעוֹת וְכָפַר בַּבּּלִים מְשָׁנִה הּי מְעָנוֹ בַּקּרְקְעוֹת בְּמוּר. בְּמִקְצָת הַבָּלִים הַיִּב שֶׁהַנְּכָסִים שֶׁאֵין לָהֶם אַהַרְיוּת פָּמוּר. בְּמִקְצָת הַבְּלִים הַיִּב שֶׁהַנְּכָסִים שֶׁאֵין לָהֶם אַהַרִיוּת לִישָּבֶע עֵלִיהֵן:

Mishnah 5: If somebody sued for both vessels and real estate; if [the other] admitted the vessels but denied the real estate, or the real estate and denied the vessels, he is not liable⁶⁹. If he admitted part of the real estate he is not liable⁶⁹. Part of the vessels he is liable since non-guaranteed property obligates guaranteed property to be sworn about⁷⁰.

- 64 Biblical and Accadic measure of volume, 30 seah.
- 65 A biblical measure of volume, half a *kor*.
- 66 In all other sources, including the following Halakhah: Rabban Gamliel. He considers all grain to be of related kind.
- 67 Admon (an authority of pre-rabbinic times) holds that the content of the vessels is determining; the Sages give preference to the determination of the vessels of storage.
- 68 To see = to accept as obvious.
- 69 One does not swear on claims of real estate (Mishnah 1). Therefore if the de-

fendant acknowledged his debt of vessels, there is nothing left to take the oath. If he disputes all claims to vessels, there is no acknowledgment since admission of the duty to hand over real estate does not count. 70 Mishnah *Qiddušin* 1:5, Note 474. If the defendant is liable to take an oath, the claimant can add to the oath all of his

outstanding claims even if they in themselves would not force an oath. This is known as "rolling over of oaths."

A property is guaranteed if the seller as a matter of routine must guarantee the title to the property; this is the case with real estate.

(37a line 31) **הלכה ד**: כור תבואה לי בידד כול. רבי אמי בשם רבי יותנו. מתניתה בטענו חיטים והודה לו בשעורים. אבל טענו שני מינין והודה לו באחד מהן דברי הכל פטור. אמר רָבִּי אַבַּהוּ בָּהַדָא דָרְבִּי אָמִי. מַאי דָא דָתַנִּינַן. רַבַּן גַּמְלִיאֵל מְחַייֵב. בַּא לְהוֹדִיעַדְּ כֹּח רַבַּן גַּמליאַל עד הַיכַן מַחַייַב. רַבִּי חִייַה בשם רבִּי יוֹחַנַן. לֹא סוֹף דַבַר בַּטענוֹ חִיטִים וְהוֹדַה לוֹ בשעורים. אַבַל אָם טענו שני מִינִין והוֹדָה לוֹ בַּאַחַד מַהן דַּבַרִי חַכַמִים פַּטוּר. רִישׁ לַקִּישׁ אַמֵּר. לֹא יָהֶא דַבַר בָּשֶׁטְעַנוֹ שָׁנֵי מִינִין וָהוֹדָה לוֹ בָּאֶחַד מֵהֶן. אূבַל אָם טָעַנוֹ חָטִים וָהוֹדָה לוֹ בָשְׁעוֹרִים דברי הכל חייב. כהדא דריש לקיש. חד בר נש אזל בעי מידן קמי רב דהוה מטען לחבריה חַיטִין שעוּרין וכוּסמין. אַמַר לִיהּ רֶב. הַמתּן עד דִּיגַלגַל עַלדְּ כֵּל־דַבַעִי וּבַסוֹפַא תִּישׁתַבַע עַל כּוּלָן. אַמַר רָבָּי אַבַּהוּ. כַּדְ מֶשִׁיב רָישׁ לָקִישׁ לְרָבִי יוֹחַנַן. עַל דַעִתַּדְ דְּתֵימֵר טְעַנוֹ שָׁנֵי מִינִין וָהוֹדָה לוֹ בָּאֶחַד מֵהֶן דָּבָרִי חַכָּמִים פַּטוּר. וְהַתַנִּינַן. טְעַנוֹ חָטִים וְקַרְקַעוֹת. וְהוֹדָה לוֹ בַכֵּלִים וְכַפַּר בַּקּרַקְעוֹת. בַּקָּרַקְעוֹת וְכַפַּר בַּכָּלִים. כַּלִים וְכֵלִים חַיִיב. כַּלִים וְקַרַקְעוֹת לֹא כַּל־שַׁכַּוְ. אַמֵר לִיהַ. לזוֹקקוֹ לשבועה דוּ מַתניתַה. שהנכסים שיַשׁ להו אַחַריוּת זוֹקקין הנכסים שאַין לָהָן אָחֶרִיוּת לִישָּׁבַע עַלֵיהָן: וַאָפִילוּ עַל דְּרֵישׁ לַקִּישׁ לֵית הִיא פָלִיגַא. דְתַנִּינַן. הַטּוֹעֵן לַחַבֵּרוֹ בַדִּי שָׁמֵן וָהוֹדָה לוֹ בִקַנִקנִים. בַּה נַן קַייַמִין. אָם בַּשָּׁטְעַנוֹ קַנְקַנִים וְשֵׁמֵן. כַּל־עַמַא מוֹדֵיי שֵׁיֵשׁ הודַייַה מַהַטַעַנָה. אָם בַּשַּׁטַעַנוֹ קַנַקַנִּים וַלֹא הוֹדָה בַשַּׁמַן. כַּל־עַמַא מודוּ שַאֵין הודַייַה מָהַטַעַנָה. רָבִּי זֶירָא וָרְבִּי אַבַּהוּ בִשְׁם שְׁמוּאֵל. בְּשֵׁטְעַנוֹ קַנָקנִים שְׁמֵן. אָהֶן אַמַר. קַנְקנִים ָולא שֶׁמֶן. וְאַהֶן אַמֶּר. שֶׁמֶן וָלֹא קַנָקַנִּים. נִידָּה קַנָקנִים וָלֹא שֶׁמֶן. שֶׁמֶן וָלֹא קַנְקַנִּים. רְבִּי לעזר בשם רבי אבין מפיק לישנא מחצין דמשח. וישאלוניה. בהוא דאישתתק.

Halakhah 4: "You are holding for me a *kor* of grain;" etc. ⁷¹Rebbi Immi in the name of Rebbi Johanan: Our Mishnah if he sued him for wheat and he admitted barley; but if he sued him for two kinds⁷² and he admitted one of them, everybody agrees that he is not liable. Rebbi Abbahu said about that of Rebbi Immi: Why did we state, "Rabban Gamliel declares him liable"? It comes to inform you of the power of Rabban Gamliel, how far he declares liable. Rebbi Hiyya in the name of Rebbi Johanan: Not only if he claimed wheat and he admitted barley to him, but if he claimed two kinds and he

admitted one of them, the words of the Sages are that he is not liable. Rebbi Simeon ben Lagish said, it is only if he claimed two kinds and he admitted one of them, but if he sued for wheat and he admitted barley according to everybody he is liable. Following Rebbi Simeon ben Lagish: A person went to court before Ray: When he claimed from another wheat, barley, and spelt. Ray told him, wait until he charged you with anything he has to charge, and in the end you will swear one oath about everything. Rebbi Abbahu said, so argued Rebbi Simeon ben Laqish against Rebbi Johanan: In your opinion, since you say that if he claimed two kinds and he admitted one of them, according to the Sages he is not liable, did we not state "if he claimed vessels and real estate; if he admitted the vessels and denied the real estate, the real estate and denied the vessels"? For vessels about vessels he is liable, not so much more for vessels and real estate? He answered him, to transfer an oath to him by the following Mishnah, "since guaranteed property obligates nonguaranteed property to be sworn about." This does not even disagree with Rebbi Simeon ben Lagish. But did we not state: "Somebody who sued for amphoras of oil and he admitted to vessels"? How do we hold? If he sued him for vessels and oil, and he admitted one of them, everybody agrees that this refers to the claim. But if he sued him for vessels and he did (not)⁷³ admit oil, everybody agrees that what he admitted did not refer to the claim. Rebbi Ze'ira and Rebbi Abbahu in the name of Samuel: If he sued for vessels full of oil, one said vessels but not oil, the other said oil but not vessels. (Thrown)⁷⁴ vessels but not oil. Oil but not vessels⁷⁵? Rebbi Eleazar in the name of Rebbi Abin formulates it as oil buckets. Can one not ask him? If he was paralyzed⁷⁶.

- 71 A copy of this Halakhah is *Ketubot* 13:4, fully explained there in Notes 79-89. A parallel is in the Babli 40a, *Ketubot* 108b.
- 72 Unrelated matters.
- 73 This has to be deleted.
- 74 For the inappropriate נידוא read יינדה "it is understandable".
- 75 Oil not in vessels is lost.

76 The difference between Admon and the Sages is one of semantics; any judge could immediately resolve the question by asking the parties what they meant. The only occasion for the disagreement is if one of the parties cannot be interrogated since he became paralyzed.

(37a line 55) בֵּינִי מַתְנִיתַה. כַּפַר בִּמְקָצֶת קַרְקַעוֹת חַייַב. בִּמְקָצֶת כֵּלִים פַּטוּר.

So is the Mishnah: If he denied part of the real estate he is liable, part of the vessels he is not liable⁷⁷.

77 It is obvious that the mentions of "real estate" and "vessels" have to be switched since one does not swear about claims to real estate. It is pointed out that the entire

suit is not about what the defendant admitted but what he denied. There is an oath if the denial is partial, not if it is complete.

(fol. 36c) משנה וּ: אֵין נִשְּבָּעִין עֵל מַעֲנַת חֵרֵשׁ שוֹמֶה וְקְטָן וְאֵין כַוּשְׁבִּיעִין אֶת הַקּטָן אֲבֶל נשבעים לקטן ולהקדש:

Mishnah 6: One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor⁷⁸. One does not put an oath on a minor but one swears for a minor⁷⁹ and the Temple⁸⁰.

- 78 These persons have no standing in court; they cannot bring any action.
- 79 This oath is not the judicial oath based on a biblical decree but the rabbinic oath (Mishnah 7:8) instituted for creditors of orphans who want to collect debts incurred by their deceased father. They have to swear that the debt was not paid.

80 The Temple is not a person, cannot bring a suit, or be sued. But if a person dedicates all his property to the Temple, then the creditor can claim to be paid before the Temple may take possession. He has to swear an oath similar to that instituted for creditors of orphans.

66 ווה 56) הלכה זי אֵין נִשְׁבָּעִין עַל טַעֲנַת חֵרשׁ שׁוֹטֶה וְקָטֶן כול'. כְּתִיב כְּי־יִתֵּן אִשׁ שׁוֹטֶה וְקָטֶן כול'. כְּתִיב כְּי־יִתֵּן אִשׁ שֹׁנְתַ חָרשׁ שׁוֹטֶה וְקָטֶן וּתְבָעוֹ נְּדוֹל. תַּלְמוּד אֶל־רֵצְׁהוּ. פְּרָט לְקָטֶן. עַד כְּדוֹן בְּשֶׁנָתוֹ שְׁוִין. אָמֵר רְבִּי בָּא בַּר מְמָל. לֵית הָדָא פְשִׁיטָא עַל דְּרְבִּי לֹמֵר רֻצִׁהוּ. עַד שְׁיְהֵא נְתִינְתוֹ וּתְבִיעְתוֹ שְׁוִין. אָמֵר רְבִּי בָּא בַּר מְמָל. לֵית הָדָא פְשִׁיטָא עַל דְּרְבִּי יוֹחָנֶן דְּאָמֵר. הַטּוֹעֵן לַחֲבִירוֹ טַעֲנַת נַּנָּב בְּאֲבִידָה חֵייָב. אֵיכֶן אֲבֵידְתִי. אָמֵר לוֹ. נְגְנָבָה. אָמֵר רְבִּי בָּא בְּשִׁתְ דְּי מְשְׁבוּעְתָּדְ. שְׁבוּעַת יְי תְּהְיֶהֹ בַּין רְבִּי בָּא. בִּיֹרְשְׁתִיך. שְׁבוּעַת יְי תְּהְיֶהֹ בַּיְן שִׁנְתַבְּע מִשְׁבוּעִת יְי תְּהְיֶהֹ בַּין שְׁנַתְיֹם. לְהוֹצִיא הַיּוֹרָש. רְבִּי אִילָא בְשָׁם רְבִּי יָסָא. בִּיֹרְשִׁי הִיא מַתְנִיתַה.

Halakhah 6: "One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor," etc. It is written: *If a man give to his neighbor*⁸¹, to exclude the minor⁸². So far if a minor gave to him and the minor requested from him. If he gave it as a minor and requested it as an

adult? The verse says, *his neighbor*; only if giving and requesting are equal⁸³. Rebbi Abba bar Mamal said, is that not obvious by what Rebbi Joḥanan said, one who claims a claim of theft in respect of his neighbor's lost object is liable? "Where is my lost object?" He told him, it was stolen⁸⁴. Rebbi Abba said, explain it if he told him, you already asked me when you were underage and I was freed from swearing for you⁸⁵. *An oath of the Eternal shall be between both of them*⁸⁶, to exclude the heir⁸⁷. Rebbi Illa in the name of Rebbi Yasa: The *baraita* is about the heir⁸⁸.

81 Ex. 22:6.

82 Since a minor is not able to act in law, anything the minor may give does not leave his guardian's power. Since a minor cannot legally give a deposit, he cannot reclaim it nor ask for an oath in connection with such a deposit. The Yerushalmi *Ma'aser šeni* 4:4 (Note 67, *Eruvin* 7:6) finds this in the first words of v. 6, *if a man give*. Babli 42a; *Mekhilta dR. Simeon ben Iohai* 22:6.

If the giving is legal, the request for an oath is legal; this excludes the giving of a deposit by a minor, which is not legal. The Babli (Bava gamma 106b) and the Mekhilta derive this from v. 8, before the judges shall come their mutual affair; the oath is possible only if both parties have the same standing. 84 Halakhah 8:7; Babli Bava gamma 106b. A lost an object with enough unique features that the finder would have been required to publicly ask for its owner to come and reclaim it. B found the object. A has witnesses who saw B taking the object. When A comes to ask B, the latter claims that it was stolen. Since Ex. 22:8 lists lost objects as subjects of judicial oaths, it is clear that B has to swear upon A's request even though A never handed the object to B. This excludes an interpretation like that given in Note 83. (Babli *Yoma* 79b, *Yebamot* 48b, *Soṭah* 8a, *Zevaḥim* 17a,90a,94b, *Menahot* 69b, *Keritut* 3b).

85 An adult can ask for an oath regarding a deposit which he made underage only if the respondent does not claim that he already asked for the deposit back when he was still underage and unable to force an oath.

86 Ex. 22:10.

87 Only the original parties have enough knowledge of the transaction to be able to swear. Heirs can only swear rabbinic oaths, to state that their father did not inform them that the claims were moot or similar formulations. *Mekhilta dR. Ismael Mišpaţim* 16.

88 The *baraita* explaining the verse *between them* is directed also to the heirs. Since normally only the defendant has to swear, the expression *between them* is interpreted as biblical endorsement of the rule that if the defendant is disqualified as a witness he also is disqualified from swearing; in that case the claimant has to swear that he is entitled to the money. Heirs, who cannot swear in cases of claims against the father's estate, can as claimants force oaths of debtors to the estate. Babli

47b.

(37a line 63) בֵּין שְׁנִיהֶּם. אֵינָה זָזָה מִבִּין שְׁנֵיהֶן לְעוֹלְם. אִם הַמַּשְׁבִּיעַ מַשְׁבִּיעַ לְשֶׁבֶּר סוֹף לָצֵאת עָלְיוֹ. אַם הַנִּשְׁבָּיעַ מַשְׁבָּיעַ לְשָׁבֶּר סוֹף לָצֵאת עָלְיוֹ. אַם הַנִּשְׁבָּע נִשְׁבָּע לַשֶּׁבֶּר סוֹף לָצֵאת עָלְיוֹ. אַמִּר רְבִּי שְׁמוּאֵל בַּר נַחְמָן. מֵלְאַבֵי חַבָּלְה אִין אֶלִי בְּעָם הָנִשְׁבָּע בִשְׁמָי לַשְּׁבֶּר וֹגוֹי. אָמֵר רְבִּי שְׁמוּאֵל בַּר נַחְמָן. מִלְאַבֵי חַבָּלְה אִין לָהֶן קְפִיצִין. וּמָה טַעֵם. מִשִּׁנִּי בְּשְׁמֶי לַשְּׁבֶּר וֹגוֹי. אָמֵר רְבִּי שְׁמוּאֵל בַּר נַחְמָן. מִלְאַבֵי חַבָּלְה אִין בְּנִיה הָבְּי וֹמְה בְּחָבָּא הְרָאָה. דְּבְרִים שָׁאֵין הָאֵשׁ שוֹּרְפָן שְׁבּוּעֵת שְׁיו מְכַלְתָן. רְבִּי יוּנָה אָמֵר. עַל שֶׁקָר. רְבִּי יוֹמָה בְּחָבָּא הִרְבִי שִׁיִּה דְּקוֹלַסְתֵּיה הְּנִרין דִּינְרִין. נֵפְלוּ לָה וְאִיעֵרְכוּ נֵּוֹ עִיאִרְּבָּר בְּשִׁימּ הְלָבָר תְּהָב בְּחָבָּא הְרָבִי יוֹפִי. עוֹבְּדָא הְתָה בְּחָדָא אִיתָא דְּאָזְלַת מִיעְרוֹדְּ נָּב חְתוּן הַנְיִלְם בְּעִייִא לְהוּ נֵּו בִיתָא וְלָא אֵשׁבַּחְתוֹן. חֶזְּרַת לְגָבָּה אֲמְרָה לָּה. הְבִילִי לִי בְּלִבר בְּחֹל לִי נֵּו בִּיתִידְ אְבְּרְתִּה בְּחוֹן לָא אְבַרְתֵּיה. אִמְרָה לָּה. לְהִי לִינְ בְּבְרְתִּיה. מִי עָלוּן מְנַחָפִתָּא וְקבּצוֹן חָד עִיגּוֹל וְאַשְּבְּרתִיה אַמְרָה לָּה. אִילְלָא דַבְּנִית הָּנְלְא אַבְּרְתִּיה בְּחוֹ לָע אְ קְבַרְתֵּיה. אֵמְלָרה בְּחוֹ וְלָנִי בְּעִבְּן לְּשְׁבְּעִוּן לְעִבְּבְרְתִּיה. אִינִריי, בְּיוֹלְיבָא דְבָנְתִי בְּוֹל מְנִים בְּעִבּי וֹנְשְׁבְּי בְּעִבּי לְּעָבּיי בָּין חַיִּיב לְשָׁבּוּעָה לָא תַּיעוֹל.

Between both of them⁸⁶ it will never move from between them. If the one forcing the oath forces the oath lying, at the end it ⁸⁹ will come over him. If the one swearing swears lying, at the end it will come over him. What is the reason? I shall take it out, oracle of the Eternal Sabaot, and it will come into the house of the thief and the house of him who swears falsely in My Name⁹⁰, etc. Rebbi Samuel bar Naḥman said, destructive angels have no joints. What is the reason? From roving about the Earth and walking there⁹¹. But here, it will destroy its wood and its stones⁹⁰. Come and see, things which the fire will not burn, a vain oath will destroy. Rebbi Jonah said, about falsehood. Rebbi Yose said, even on truth.

⁹²Haggai was preaching following Rebbi Yose. There was a case about a woman who went to knead dough with another and had two *denarii* bound into the seam of her head cover. These fell out and were rolled into a loaf. She went back to he house, wanted them and did not find them. She returned to her and said to her, give me the two denarii which fell from me in your house. She told her, I do not know. If she⁹³ would know of it, she should bury her son. She buried him. When they returned from his grave, she heard a voice saying, if she had not known about them she would not have buried him. She said, if this woman⁹³ knows about them, she should bury her other

son. She buried him. They came to console her and cut one loaf and found two denarii rolled into the loaf. This says, whether innocent or guilty, never swear an oath⁹⁴.

- 89 The oath will destroy him.
- 90 Sach. 5:5. "It" is the curse mentioned in v. 4.
- 91 Job 2:2, Satan's answer. Having no joints at knees or ankles, he could never sit down. The order of topics is better in Lev. rabba 6(1) where it is explained that the Satan has to move perpetually because he has no joints but the curse of a false oath comes and dwells at length in the house of the swearer.
- 92 The Aramaic of the following

- paragraph shows that this is a sermon, rather than a halakhic discussion. In slightly different form *Lev. rabba* 6(1).
- 93 As always in rabbinic literature, in relating bad things about oneself one always used the third person ("this man, this woman") instead of the first. The woman must have used an oath formula to be punished for vain oaths.
- 94 It is better to pay, or not to sue and not collect money, than force or swear any oath.

(60. 36c) **משנה זי** אֵילּוּ דְבָרִים שֶׁאֵין נִשְּבֶּעִין עֲלֵיהֶם הָעֲבָדִים וְהַשְּׁטְרוֹת וְהַקַּרְקָעוֹת הָהַ, (бо! 36c) משנה זי אַילּוּ דְבָרִים שֶׁאֵין נִשְּׂבָּעוּ וַחֲמִשָּׁה. שוֹמֵר הָנָּם אֵינוֹ נִשְּבָּעוּ וַחֲמִשָּׁה. שוֹמֵר הָנָּם אֵינוֹ נִשְּבָּעין עֻלֵיהָן. וְשָאֵינוֹ נוֹשֵּא שָׁבָר אֵינוֹ מְשַׁלֵּם. רְבִּי שָׁמְעוֹן אוֹמֵר דְּבָרִים שֶׁחַיִּב בְּאַחַרִיוֹתוְ נִשְׁבָּעִין עֲלֵיהָן: חִייֵב בְּאַחַרִיוֹתוְ אִין נִשְּבָּעִים עַלִיהָן:

Mishnah 7: About the following one does not swear: slaves, and documents⁹⁴, and real estate, and gifts to the Temple⁹⁵. Not about double restitution, nor quadruple or quintuple; the unpaid trustee does not swear, the paid trustee does not pay⁹⁶. Rebbi Simeon says, one swears about things⁹⁷ for which he is responsible if they be alienated, but does not swear if he is not responsible if they be alienated.

משנה ח: רָבִּי מֵאִיר אוֹמֵר יֵשׁ דְּבָרִים שֶׁהַן כַּפַּרְקַע וְאֵינָן כַּפְּרְקַע וְאֵין הַכְּמִים מוֹדִים לוֹ. בִּיצַד עֲשֶׂר גְּפָנִים מְעִוּנוֹת מָסַרְתִּי לְדְּ וְהַלָּה אוֹמֵר אֵינָן אֶלֶּא חָמֵשׁ רַבִּי מֵאִיר מְחַיֵּב שְׁבוּעֲה הַבָּמִים אוֹמָרִין כָּל הַמְחוּבָּר לַפַּרְקַע הַרִי הוּא כַּפַּרְקַע.

Mishnah 8: Rebbi Meïr says, there are things which are like real estate and they are not like real estate but the Sages do not agree with him. How is this? "Ten bearing vines⁹⁸ did I hand over to you," but the other says, "they

are only five." Rebbi Meïr declares liable for an oath but the Sages say, anything connected to the ground is like ground.

משנה טּ: אֵין נִשְּבָּעִין אֶלָּא עֵל דָּכָר שֶׁבַּמִידָה וְשֶׁבַּמִּשְׁקֵל וְשֶׁבַּמִינְיִין. כֵּיצֵד בַּיִת מְלֵא מָסַרְתִּי לְדְּ וְכִים מָלֵא מָסַרְתִּי לְדְּ וְחַלָּה אוֹמֵר אֵינִי יוֹדֵע אֶלָּא מַה שֶּׁהִינַחְתָּ אַתָּה נוֹמֵל פָּמוּר. זה אוֹמר עד הזיז זזה אוֹמר עד החלוֹן חייב:

Mishnah 9: One swears only on matters of measure, or weight, or count. How is that? "I handed over to you a full house; or I handed over to you a full wallet," But the other says, "I do not know; take what you left with me;" he is not liable. One says, up to the gutter; the other says, up to the window; he is liable 99.

משנה יי הַפַּלְוָה אֶת הֲבֵרוֹ עֵל הַפַּישְׁכּוֹן וְאָבֵד הַפַּישְׁכּוֹן אָבָר לוֹ סֶלַע הִלְוִיתִיךּ עָלָיו וְשֶׁכֶל הַיָּה שָׁוָה וְהַלָּה אוֹמֵר לֹא כִי אֵלָא כָּלָע הָלִוִיתַנִי עַלִּיו וְכַלַע הַיָּה שַׁוֹה פַּמוּר.

Mishnah 10: One gave a loan to another on a pledge and the pledge was lost. He told him, "I loaned you a *tetradrachma* and it was worth a šeqel," but the other one says "no, a *tetradrachma* you loaned me and it was worth a *tetradrachma*"; he is not liable ¹⁰⁰.

משנה יא: סָלַע הַלְוִיתִיךּ עָלָיו וְשֶׁקֶל הָיָה שָׁוֶה וְהַלָּה אוֹמֵר לֹא כִי אֶלָּא סֶלַע הִלְוִיתַנִי עַלַיו וּשָלשַה דִינַרִים הַיָּה שַׁוֶּה חַיֵּב.

Mishnah 11: "I loaned you a *tetradrachma* and it was worth a šeqel," but the other one says "no, a *tetradrachma* you loaned me and it was worth three *šeqel*;" he is liable¹⁰¹.

משנה יב: סֶלַע הְלְוִיתַנִּי עָלָיו וּשְׁתַּיִם הָיָה שָׁוֶה וְהַלְּה אוֹמֵר לֹא כִי אֶלָּא סֶלַע הִלְוִיתִידּ עַלִיו וְסֵלַע הַיָּה שֵׁוָה פָּמוּר.

Mishnah 12: "You loaned me a *tetradrachma* on it but it was worth two," and the other says "no, but I loaned you a *tetradrachma* and it was worth a *tetradrachma*;" he is not liable¹⁰².

משנה יג: סָלַע הִלְּוִיתַנִּי עֻלָּיו וּשְׁתַּיִם הָיָה שָׁוֶה וְהַלָּה אוֹמֵר לֹא כִי אֶלָּא סֶלַע הִלְוִיתִּיך עָלִיו וְחַמִשָּה דִינָר הָיָה שָׁוֶה חַיִּב. וּמִי נִשְבָּע מִי שֶהַפְּקֵדוֹן אֶצְלוֹ שֶׁמָּא יִשְּׁבַע זֶה וְיוֹצִיא הַלָּה אֵת הַפְּקַדוֹן:

Mishnah 13: "You loaned me a *tetradrachma* on it but it was worth two," and the other says "no, but I loaned you a *tetradrachma* and it was worth five

denar;" he is liable¹⁰³. Who has to swear? The one who holds the pledge, lest one swear and the other produce the pledge¹⁰⁴.

- 94 Mostly IOU's. Even though they are money's worth, they do not fulfill the biblical criteria for a judicial oath.
- 95 Most of these will be shown in the Halakhah to be outside the biblical criteria. The Temple cannot ask for an oath since *Ex*. 22:6 restricts the judicial oath to transactions between human persons.
- 96 The statements (also in Mishnah *Bava mesi a* 4:8) refer to the subjects about which one does not swear. Cf. Mishnah 8:1.
- 97 In all other sources, including *Šeqalim* 2:1, the reading is: sacrifices. If a person makes a vow "to sacrifice *an* animal", and if then the designated animal is lost or develops a defect, he has to provide a replacement; this is a vow implying a guarantee. But if he vowed "to sacrifice *this* animal," and anything happens to the designated animal, he does not have to provide a substitute; there is no guarantee.
- 98 To be harvested. R. Meïr considers

- ripe fruit as already harvested and therefore movable, the Sages as part of the tree as long as they are hanging on the tree.
- 99 Since this is a measurable difference.
- 100 The creditor asks for a *šeqel* (half a *tetradrachma*), the debtor refuses. He denies the entire claim; the burden of proof is on the claimant.
- 101 The debtor agrees that he owes a *denar*; he admits part of the claim and has to take the oath.
- 102 The debtor asks for a *tetradrachma*, the creditor denies it completely; the creditor does not have to swear.
- 103 The creditor admits that he owes 3 *denarii* for the pledge, the debtor asks for four. The creditor has to swear.
- 104 The court has to be careful to avoid pushing people into perjury. The oaths always have to be formulated to minimize the possibility of public perjury. Cf. *Bava mesi* a 1:1, Note 3.

(4) הוכה (37) הלכה זי אֵילוּ דְבָרִים שְׁאֵין נְשְׁבָּעִין אֲלֵיהָן כול. עָבַר וְנִשְׁבָּע. רְבִּי יוֹחָנֶן אָמַר. מֵבִיא קַרְבָּן עַל הַשְּׁבוֹעָה. רְבִּי לְעָזָר אוֹמֵר. אֵינוֹ מֵבִיא. אָמַר רְבִּי אָבוּן בַּר חִייָה. כֵּן מֵשִׁיב רְבִּי יוֹחָנֶן לְרְבִּי לְעָזָר. לֹא. אִם אָמַרְתָּ בִּשְׁבוּעַת הָעֵדוּת שְׁנּוֹהֶגֶת בְּעֲבָדִים וּבִשְּטְרוֹת וּבְקַרְקֵעוֹת. וּשְׁבוּעַת הָעֵדוּת לָאו תּאֹמֵר בִּשְׁבוּעַת הַפְּקָדוֹן שָׁאֵינָהּ נוֹהֶגֶת בָּעֲבָדִים וּבִשְּטְרוֹת וּבְקַרְקֵעוֹת. וּשְׁבוּעַת הָעֵדוּת לָאו בְּעָבִית דִּין. וּבִית דִּין מוֹסְרִין שְׁבוּעָה לְחָשׁוּד. אֶלֶא בְּשֶׁעָבַר וְנִשְׁבָּע. וְתִימֵר. מֵבִיא קַרְבָּן עַל הַשְּבוֹעָה. הַשְּׁבוֹעָה. רָכָא עַבַר וְנִשְׁבַּע מֵבִיא קַרְבַּן עַל הַשְּׁבוֹעָה.

Halakhah 7: "About the following one does not swear," etc. If he transgressed¹⁰⁵ and swore, Rebbi Johanan said he brings a sacrifice for the oath¹⁰⁶; Rebbi Eleazar says, he does not bring. Rebbi Abun bar Hiyya said, so does Rebbi Johanan answer Rebbi Eleazar. No. If you pronounced about an oath about testimony which may apply to slaves, documents, and real estate,

what can you say about oaths concerning deposits which do not apply to slaves, documents, and real estate¹⁰⁷? But an oath for testimony is not in court¹⁰⁸. Would the court admit an oath of a suspect person¹⁰⁹? Only when he transgressed and swore, you say that he brings a sacrifice for his oath¹⁰⁶; here also if he transgressed and swore, you say that he brings a sacrifice for his oath¹⁰⁶.

105 He swore about a claim to one of the items excluded by Mishnah 7 from being settled by oaths.

106 Since the oath was illegitimate, it is treated as "blurted oath".

107 This argument is very elliptic. Tosephta 4:1 notes that oaths about testimony have no restrictions on the topics covered, whereas oaths about deposits have almost no restrictions on the people subject to the oath. Where they are equal is that people suspected of perjury are not allowed to swear (Mishnah 7:4).

108 Mishnah 4:3. On the other hand, an

oath about deposits is possible only in court. 109 Since oaths for testimony are not administered by the court, it may easily happen that the oath is wrongly applied to a person either disqualified as a relative or as a suspect (Mishnah Sanhedrin 3:6). But how could an oath about deposits be administered by the court to a disqualified person or about a disqualified subject? It can only happen if the person swears without waiting for instructions from the court, which characterizes his action as a blurted oath subject to all its rules.

(37b line 12) וְאִת דְּבָעֵי נִשְּׁמְעִינָה מֵהָדָא. חֲמֹוֹר אוֹ־שָׁוֹה. מָה אֵילּוּ מְיוּחָדוֹן שֶׁיֶשׁ בָּהֶן שְׁבָר וּשְׁבוּיָה וָמֵתָה. אוֹצִיא קַרְקַעוֹת שְׁאֵין בָּהּ שֶׁבֶר וּשְׁבוּיָה וָמֵתָה. אוֹצִיא קַרְקַע וְלֹא אוֹצִיא עֲבָדִים. מָה אֵילּוּ מְיוּחָדִין שֶׁיֶשׁ לָהֶן קְנֶס. יִצְאוֹ עֲבָדִים שְׁאֵין לָהֶן קְנָס. אוֹצִיא עֲבָדִים וְלֹא אוֹצִיא שְׁטָרוֹת שֶׁיֶשׁ לָהֶן קְנָס. מָה אֵילּוּ מְיוּחָדִין שֻׁיֶשׁ לָהֶן אוֹנָאָה. יֵצְאוֹ שְׁטָרוֹת שֶׁיֶשׁ לָהֶן קְנָס. מָה אֵילּוּ מְיוּחָדִין שֻׁיֶשׁ לָהֶן אוֹנָאָה. רְבִּי יִשְׁמָעֵאל דְּרַשׁ. אוֹ נֶּשֶׁה תִּשְׁבַל בְּלָל. כְּלָל וּפְרָט וּכְלָל אֵין אַהָּה דְּן תִשְּׁבַע בְּלָל. כְּלָל וּפְרָט וּכְלָל אֵין אַהָּה דְן תִשְׁבַע בְּלְל. כְּלָל וּפְטוֹר עַל הָעוֹנֶשׁ וְעַל הַפְּרֶט. לְכֹל אֲשֶׂר יְבַשֵּא חָזֵר וְכָלַל. כְּלָל וּפְּטוּ וּכְלָל אֵין אַהָּה דְן אַאָּלְא כְּצֵין הַפְּרָט. מָה הַפְּרָט בְּתְבִיעַת מָמוֹן וּלְעֵצְמוֹ וּמוֹצִיא בַדִּין וְיֵשׁ לוֹ דְמִים וְדָמִיו קְצוּבִין וּבְּטְעליִילִין וּפְטוֹר עַל הְעוֹנֶשׁ וְעַל הַקְּנֶס. בְּתְבִיעַת מָמוֹן. פְרָט לָאוֹמֵר לַחֲבִירוֹ. מֵילְלְתָנִי וּבְיִשְׁתָּנִי. שְׁפָּטוֹר. בְּרְט לְאוֹמָר לְחֲבִירוֹ. מִּן לִי וְלֹא נָתַדָּה. לְעֲבְמוֹ. פְּרָט לָאוֹמֵר לְחֲבִירוֹ. בְּילְלְתָנִי וּבְיִשְׁתָּנִי בְּיְשׁבְּהוֹ וּפְטוֹר. וְבִשְׁלְתִּנִי וֹבְיִשְׁתָּנִי בּבְישְׁתְּי, בְּרִשׁ לְאָבְיוֹן וּפְטוֹר עַל הְעוֹנְשׁ בְּיִם לִּאבְרִים. וּבְּעְטִלְילִין. פְּטוֹר לַעְלְכִיל וֹבְּישׁלְיכִי. בְּבְעם לְעֲבְקוֹה. וְבְשִׁלּשְׁרוֹת בְּבִיים בְּבְּישׁ בָּשְׁבָּת. שְׁבְּילִים. וְבִשְׁלִיתִי בְּרָשְׁ בְּיִם לְאוֹנִישׁ בַּשְּׁבָּחוֹ בְּיִשְׁלְבִּיתוֹ בְּיִשְׁבְּיוֹי בְּשָׁבְירוֹ. וּבְעִילְילִין. בְּנְישׁ בְּעִילְ בְּיִים בּיוֹ בְּעִילְּלִין. בְּנְטוֹל עְלְבְיִים בּיוֹבְישׁ בְּעִים לְעִבְּיִים וּבְישְׁבְּיוֹי בְּנְעְלְילִין. בְּנְטוֹל עִילְילִיל בְּעְלְבְיִים וּבְּבְילְילִין. בְּנְטוֹל בְיִילְילְי בְּּטְרֹיך וְ בְּנִילְיתְ בְּבְייִים וְלִבּיי בְּמְעְלְילִין. בְּיְטוֹל בְיוֹי בְּיִבְילְילְין בְּנְילְילִין בְּיְבְּיִים בְּילּי בְּיִים לְבְּשְׁיוֹים בְּיִנְים בְּיִבּיִים בְּיִילְיִים בְּיִבּים בְּיִבְים בְּיִבּילְייִים וְלִייִים בְּיִּים בְּיִ

Some want to understand it from here¹¹⁰: An ox, or a donkey, or a sheep¹¹¹. Since these are particular in that they are subject to breaking, kidnapping, and dying, this excludes real estate which is not subject to breaking, kidnapping, and dying. I shall exclude real estate but shall not exclude slaves. Since these are particular in that they are subject to a fine, this excludes slaves which are not subject to a fine¹¹². I shall exclude slaves but shall not exclude documents since they are subject to fines. Since these are particular in that they are subject to overcharging, this excludes documents which are not subject to overcharging¹¹³. From here they say, if somebody sells documents to the spice trader¹¹⁴, it is subject to claims of overcharging.

Rebbi Ismael explained: Or a person, if he would swear, a general statement. To cause evil or cause good, a detail. Anything which a person will blurt out, a repeat general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail¹¹⁵. Since the detail¹¹⁶ is about monetary claims, [originating] from himself, which can be collected by court order, having monetary value, which is a fixed value, and are movables, and one is not liable for punishment and fines. Monetary claims, excluding one who said to another, give me the 200 denar which you promised me but never gave¹¹⁷. [Originating] from himself, excluding one who said to another, you cursed me and shamed me, who is not liable¹¹⁸. Which can be collected by court order, excluding one who said to another, you raped or seduced X's daughter¹¹⁹. It has monetary value, excluding documents¹²⁰. Which is a fixed value, excluding slaves¹²¹. Movables, excluding real estate. One is not liable for punishment, excluding one who said to another, you set fire to my grain stack on the Sabbath; who is not liable 122. One is not liable for fines, excluding double, quadruple, or quintuple restitution which are fines¹²³.

110 The exclusions from oaths about deposits enumerated in the Mishnah.

111 *Ex.* 22:9, about the oath of the paid trustee. Breaking, kidnapping, and dying are all mentioned in the verse.

112 The person who kidnaps a slave does

not have to pay the double restitution exacted from a thief.

113 The thief of documents has to pay double restitution for the value of the paper on which the documents are written. On the other hand, documents are not traded as

commodities but for the financial values of the contracts written on them. Commodities are subject to the rules of overcharging or underpaying; a transaction which differs more than +/- 16 ²/₃% from the going market rate can be voided on the request of the injured party. Financial speculation, such as over the counter stock or bond trades, are not protected by this law (which is based on *Lev.* 25:14.)

114 If an IOU has been paid, it can be sold as packaging material; then it is a commodity. Babli *Bava meşi a* 56b, where the *baraita* is quoted as proof that the laws of overcharging apply to penny matters.

115 Halakhah 8:3, Note 83. However, this reference to Lev. 5:4 is out of place since the argument is about Ex. 22:9. The text should be similar to that of Mekhilta dR. Ismael Mišpatim 15 (pp. 300-301): About anything criminal, a general statement. About an ox, or a donkey, or a sheep, detail. About anything lost, a repeat general statement.

116 In Ex. 22:9.

117 A promise does not generate an

enforceable claim.

118 Since the paradigm is a deposit made by the claimant, the defendant's oath is only about actions initiated by the claimant. Suits about matters initiated by the defendant's actions cannot be settled by oaths

119 The only persons who can go to court are the woman or her father.

120 Since the value of the document is not determined by the cost of the paper on which it is written.

121 The value of the slave largely depends on his education, which has no standard value attached to it.

122 No money can be recovered for actions which carry the death penalty, even if there are no eye witnesses and therefore no court procedures are possible.

123 Only simple restitution of stolen property is within the purview of a civil court. Fines can be imposed only by a duly authorized criminal court where trials by oath are impossible.

(37b line 28) הַמְקֶּרְעַ שְׁטָרוֹת חֲבֵירוֹ חוֹץ מִדְּעְתּוֹ. רְבִּי חֲנַנְיֶה וְרְבִּי מָנָא. חֵד אָמַר. חַיּיָב. וְחַד אָמֵר. פָּטוּר. מָאן דְּאָמַר חַיִּב. מִשּׂוּם קְנָס. וּמָאן דְּאָמַר פָּטוּר. כְּסוֹתֵם פִּי עִידִי חֲבֵירוֹ. וְדָא אַרְמַלְתָא דְתַבְּשָׁה שַׁטַרִינִא כָּאִינַּשׁ דְּצִיֵּר פּוּמָהוֹן דְּשֶׁהַדִייַא דְלָא יִשְׂהַדוּוֹ.

אָמַר רָבִּי אָמִי. אִילֵין דְּכֶתְבִין. עַל מְנֶת שֶׁיֵּשׁ לִי רְשׁוּת לגְבוֹת מִמְּטַלְטְלִין. לֹא גֶבֵי. אָמַר רְבִּי מַנָא. אִין כַתָּב וַמַר. אַף עַל גַּו דְּלֵית בֵּי דִינָא יָהִיב. גַּבֵי.

Somebody tears up another's documents without the latter's agreement. Rebbi Hanania and Rebbi Mana¹²⁴, one said, he is liable; the other said, he is not liable¹²⁵. The one who said he is liable, as a fine¹²⁶. The one who said he is not liable: he is like one who obstructs the depositions of witnesses. A widow who grabs documents is like a person who ties up the mouths of witnesses¹²⁷.

Rebbi Immi said, those who write, "on condition that I have the right to seize movables," cannot collect¹²⁸. Rebbi Mana said, if he writes and declares, "even though the Court will not enforce," he collects¹²⁹.

124 These are either R. Hanina of Sepphoris and R. Mana I or R. Hinena and R. Mana II. In the next paragraph appears R. Mana II, two generations after R. Immi. The rule is attributed in the Babli, *Bava qamma* 98a/b, to Rava who is a known adaptor of Galilean rules and an older contemporary of R. Mana II.

125 Everybody agrees that he has to pay for the value of the paper or parchment which he destroyed. The problem is whether he has to pay for the mortgages for which the documents were written (assuming that there are no witnesses available who could write a replacement document.)

126 Since destruction of the document involves both the destruction of the writing material (for which payment can be forced in court if the value was more than a *perutah*) but also the lien on the debtor's property which is not something recoverable in biblical law. It has to be dealt with in local police law.

127 Since even an existing mortgage document can be used for foreclosure only if

in court it can be proven to be genuine by the witnesses to the document or witnesses to the identities of the signatures affixed to it. While suborning perjury is criminal, we find no statute against physically preventing witnesses from appearing in court.

128 While there is freedom in stipulating money terms in contracts (*Ketubot* 5:10, Note 227), this is valid only in matters that do not involve court actions. In both Talmudim, court-ordered foreclosures are restricted to real estate. Therefore, a contract which provides foreclosure of movables, while valid, cannot be enforced. Only in the Middle Ages, when Jews in many cases could not hold real estate, was the restriction to real estate lifted by Gaonic decree.

129 If the involvement of the court is denied, there remains a private contract in money matters with unlimited powers of stipulation. While no foreclosure can be obtained from any court, the delinquent party can be judicially censured for not keeping his word (*Bava mesi* 'a 4:2).

(36b line 34) רְבִּי שִׁמְעוֹן אוֹמֵר. אֶחָד קַדְשִׁי קַדְשׁים וְאֶחָד קַדְשׁים קַלּין שֶׁחַינִב בָּאֲחַרִיוּתָן קוֹרֵא אֲנִי בָהֶן בַּיִי וְכָהֵשׁ בַּעֲמִיתוֹ. וְשָׁאֵין חַייָב בְּאֲחַרְיוּתָן קוֹרֵא אֲנִי בָהֶן בַּיִי וְכָהֵשׁ בַּעֲמִיתוֹ. וְשָׁאֵין חַייָב בְּאֲחַרְיוּתָן קוֹרֵא אֲנִי בָהֶן בַּיִי וְכָהֵשׁ לֵיִי קוֹרֵא אֲנִי בָהֶן אֶחָד קַדְשׁיר בְּשָׁירון וְאֶחָד קֻדָשׁים בְּסוּלִין שְׁחַייָב בָּאֲחַרְיוּתָן אַף עַל בִּי שְׁהֵן לֵיי קוֹרֵא אֲנִי בָהֶן נְיִי וְכָהֵשׁ בְּעָמִיתוֹ וְכָחֵשׁ נְיִב בְּאֲחַרְיוּתָן קוֹרֵא אֲנִי בָהֶן בַּיִי וְכָהֵשׁ וְלֹא בַּעֲמִיתוֹ וְכָחֲשׁ.

1 שחייב 1 בּיִחש בעמיתו | ק בעמיתו | ק אפי' הן שחייב שחייב אע"פּ שהן | ק אפי' הן שואין | ק ורחש בעמיתו בפּקדון | ק בעמיתו וכיחש ושאין | ק ושאינו וכחש | ק וכיחש | 3

¹³⁰ Rebbi Simeon says, both most holy and simple *sancta*; about any *sancta* for which he is responsible if alienated, I am reading *against his neighbor and he lied*; but about any *sancta* for which he is not responsible if alienated, I am reading *against the Eternal and he lied*." Ray Huna said, both qualified and disqualified *sancta*, if he is responsible if alienated, even if they are for the Eternal, I am reading *against his neighbor and he lied*; but if he is not responsible if alienated, I am reading *against the Eternal and he lied* but not *against his neighbor and he lied*.

130 This has a parallel in *Bava qamma* 1:2, Notes 118-122 (p). The Mishnah has to be understood that R. Simeon only frees from liability for an oath which is applicable only to disagreements between humans, but not

for payment which was fixed at 125% for concealed debts against humans in *Lev*. 5:20-25, and for amounts due to God in *Lev*. 5:14-15. (Babli *Baya mesi* 'a 25a/b).

(36b line 39) אָמַר רְבִּי חֲנִינָה. זֶה אוֹמֵר. מְנוֹרָה נְדוֹלָה. וְזָה אוֹמֵר. מְנוֹרָה קְטַנָּה. חַיִּיב. דְּתְנָן. אֵין נִשְׁבָּעִין אֶלֶא עַל דָּבָר שְׁבַּמִידָּה וְשְׁבַּמִשְׁקָל וְשֶׁבַּמִינְיָין. אָמֵר רְבִּי בָּא בַּר מָמָל. תִּיפְתָּר אֵין נִשְׁבָּעִין אֶלֶא עַל דָּבָר שְׁבַּמִידָּה וְשְׁבַּמִשְׁקָל בְּמִינְיָר, אָטוֹן. תַּנֵי רְבִּי חִיָּה וְלָא יְדַעִין מַה תַנֵּי. אִין תִּימֵר חֵייָב. מַתְנִיתָא פְלִיגָא. דְּתְנָן. אֵין נִשְׁבָּעין אֶלֶא עַל דָּבָר שְׁבַּמִידָּה וְשֶׁבַּמִשְׁקָל וְשָׁבַּמִינְיוֹ, אִין תַּיִמֵר פָּטוּר. מַתְנִיתָא פְלִיגָא. דְּתְנָן. זֶה אוֹמֵר. נְדוֹל. וְזֶה אוֹמֵר. קְטוֹן. יִשְּׁבַע וְנָה אוֹמֵר. לְטִרֹן שַּׁבַּמִינְיִין. זְהָה אוֹמֵר. בְּטוֹן. יִשְּׁבַע הַמֹּוֹכְר שְׁהַקְּטֵן מַכְר. זֵה אוֹמֵר. אֵינִי יוֹדָע. וַזָּה אוֹמֵר. אֵינִי יוֹדֶע. יַחַלוֹקהּיּ

¹³¹Rebbi Ḥanina said, One says, a large candelabra, but the other says, a small candelabra; he is liable¹³² since we have stated: "One swears only on matters of measure, or weight, or count." Rebbi Abba bar Mamal said, explain it if it was a candelabra composed of sections¹³³.

One says, a large belt; the other says, a small belt. Rebbi Ḥiyya stated something but we do not know what he stated. If you say "liable", a Mishnah disagrees, as we have stated: "One swears only on matters of measure, or weight, or count.¹³⁴" If you say "not liable", a Mishnah disagrees, as we have stated: "If one says the adult one and the other says the underage one, let the seller swear that he sold the underage one. If both say that they do not know, they shall split.¹³⁵"

- 131 Discussion of Mishnah 9.
- 132 Since "large" and "small" are

properties defined by measurement, the claim was a claim by measure. On the other

hand, since a candelabra cannot be partially small or large, the admission was not of the kind of the claim.

133 The candelabra can be disassembled and reassembled in different sizes; the admission was of the kind of the claim; R. Ḥanina's statement is unquestionably correct. Babli 43a.

134 In this case, "small" and "large" do refer to two substantially different entities; the admission is partial admission of a claim referring to things measurable.

135 Mishnah *Bava meşi`a* 8:5. The buyer bought one of two slaves, one adult and one underage, with their garments or other property. There is a dispute about which slave was sold. Even though there is no oath about sales of slaves, there is an oath about their garments or other possessions, and an oath about the sale of the slave can be attached to that oath by rollover (Note 70.) We found a case where Mishnaiot *Ševuot* 6:9 and *Bava meşi`a* 8:5 present an irreconcilable contradiction.

(37a line 46) אָמַר רְבִּי יוֹחָנָן. נֶאֱמָן הַמַּלְּוֶה לוֹמַר. עַד כְּדֵי הַמַּשְׁכּוֹן הַלְּוִיתִּיּף. מֵתְנִיתָּא אֶמְרָה. אַף הַלֹּוֶה נֶאֱמָן. דְּתַנִּינֶן. טֶלַע הָלְוִיתִיךּ עָלָיו וְשֶׁקֶל הָיָה שָׁוֶה. וְהַלָּה אוֹמֵר. לֹא כִי אֶלָא טֶלַע אַף הַלְּוִיתִנִי עָלָיו וְשֶׁקֶל הָיָה שָׁוָה. פְּטוּר. חַד בַּר נַשׁ קָם עִם חַבְּרִיה בַּשּׁוּקָא. אֲמֵר לֵיה. תְּרִין דִּינָרין לְי בְּיָדְדְּ וּמַשְׁכּוֹנָדְ שְׁוִי תְּרֵין דִּינֶרין. אֲמֵר לֵיה. חַד דִּינֶר נָא בְּעֵי לְמִיתַּן לְדְּ וּמַשְׁכּוֹנִי טֵב תְּרִין לִי בְּיִרְין. אֲמֵר לֵיה. אֱמְר. כֵּיוָן דְּכָל־עַמָּא מוֹדוּ דְמַשְׁכּוֹנָא טֵב תְּרִין דִּינֶרין. אַתְא עוֹבְדָא קוֹמֵי דִיינָנ וַהַרִּעָא. אֱמְר. כֵּיוֹן דְּכָל־עַמָּא מוֹדוּ דְמַשְׁכּוֹנָא טֵב תְּרִין דִּינָרון אוֹחָרְנֵא צִיתַי עַלוֹי שַׁהַדִי. וְלֹא שַׁמֵע דָּמֵר רְבִּי יוֹחָנַו. נַאֲמֵן הַמַּלְהַ עַד כְּדִי הַפְּשְׁכּוֹנִי.

חַד בַּר נַשׁ קָם עִם חַבְרֵיהּ בַּשּׁוּקָא וָאַרִים סְבִינְתֵיהּ. אֲמֵר. לֵית הָדֵין סַדִּינָא נְפִיק מִן יָדי עַד דְּתִתֵּן לִי מַה דְאִית לִי בְּיָדְדְּ. אֲתַא לְקַמֵּי שְׁמוּאֵל. אֲמֵר לֵיהּ. הַב לֵיהּ סְבִינְתֵיהּ וִזִּיל דּוֹן עִמֵּיהּ. מַה. שְׁמוּאֵל כְּדַייָנֵי נַהַרְדַּעָא. אֵמְרוּ. תַּמֶּן הוּחְזָק הַמַּשְׁכּוֹן בְיָדוֹ. הָכָא לֹא הוּחְזָק הַמֵּשִׁכּוֹן בָיָדוֹ.

Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge¹³⁶. The Mishnah says, also the borrower can be believed, as we have stated: "He told him, 'I loaned you a *tetradrachma* and it was worth a *šeqel*,' but the other one says 'no, a *tetradrachma* you loaned me and it was worth a *tetradrachma*'; he is not liable. 137"

A person encountered another in the market and said, you owe me two *denarii* and your pledge is worth two *denarii*. He answered, I owe you one *denar* but my pledge is worth two *denarii*. The case came before the judges of Nahardea. They said, since everybody agrees that it is worth two *denarii*, he has to bring witnesses on the other [*denar*]¹³⁸. They had not heard that Rebbi Joḥanan said, the lender can be believed if he said, I lent to you up to the value of the pledge.

A person encountered another in the market and took away his linen cloth¹³⁹ saying, "this sheet will not leave my hand until you give me what you are holding for me." It came before Samuel. He told him, return his linen cloth to him and sue him. Does Samuel follow the judges of Nahardea? There, the pledge was held by him, here the pledge was not held by him¹⁴⁰.

136 Here starts the discussion of Mishnaiot 10-13 (which in most Mishnah texts form a single Mishnah.) The statement of R. Johanan explains Mishnah 12, where the creditor claims that the amount of the loan does not exceed the value of the pledge.

137 If the borrower disputes the claim, the burden of proof is on him.

138 They put the burden of proof on the creditor for the amount disputed by the debtor.

139 Greek σάβανον, Latin sabanum.

140 If the pledge was handed over by the debtor to the creditor, practice has to follow R. Johanan against the judges of Nahardea. But if a pledge was taken by force, it has to be returned before the case can be heard in court. (*Sefer Ha`Ittur* II ¬Db reads R. Ze`ira instead of Samuel. This reading is not likely to be correct.)

(37b line 58) שְׁמוּאֵל אָמַר. שֶׁאֵין הַשְּׁבוּעָה זָזָה מִבּינֵיהוֹן. אִם יִשְׁבַּע הַמַּלְוֶה הֲרֵי זֶה נִשְׁבַּע וְנוֹטֵל. וְאָם נִשְׁבַּע הָלֹוֶה. מוֹצִיא הַלָּה אֶת הַפִּּקְדוֹן: מִי הוּא הַנִּשְׁבָּע. מִי שֶׁהַפִּקְדוֹן אֶצְלוֹ. רַב וְרֵישׁ לֶקִישׁ אֱמְרֵי עַל רֵישָׁא. סֶלַע הָלְוִיתַנִּי עֶלָיו וּשְׁתַּיִם הָיָה שָׁוֶה. וְהַלָּה אוֹמֵר. לֹא כִי אֶלָּא סֶלַע הָלְוִיתִידְ עֶלִיו וְסֶלֶת הְוֹמֵר עָלִיו וְסֶלֵע הָיָה שְׁנֵה. פָּטוּר. סֶלַע הְלְוִיתַנִי עֶלָיו כול'. וְהַלָּה אוֹמֵר. אֵינִי יוֹדֵע. רְבִּי בָּא הָלְוִיתִנִי עְלִיו כול'. וְהַלָּה אוֹמֵר. אֵינִי יוֹדֵע. רְבִּי בָּא רַב הוּנָא בְשָׁם רַב אָמֵר. אַנְתְּ לֵית יְדַע אָהֵן יְדַע. רְבִּי יְהוֹשֶׁעַ דיומא בְעָא קּוֹמֵי רְבִּי יוֹנָה. תַּמָּן אַתְּ אָמֵר. לִית אַתְּ יְדַע אָהֵן יְדַע. וָכָא אַתְּ מַר הָכֵין. תַּפָּן גֵשׁ חִילוּלּ שְׁבוּעָה. הָכָא לֵית חִילּוּל שְׁבוּעָה.

later 141 Samuel says, the oath does not move away from between them. If the lender swears, he swears and takes. But if the borrower swears, the other will present the pledge. "Who has to swear? The one who holds the pledge. 142" Ray and Rebbi Simeon ben Laqish say, about the first part: "You loaned me a *tetradrachma* on it but it was worth two," and the other says 'no, but I loaned you a *tetradrachma* and it was worth a *tetradrachma*; he is not liable. 'You loaned me a *tetradrachma* on it," etc. "And the other says, 'I do not know'. 143" Rebbi Abba, Ray Huna in the name of Ray: You do not know, the other knows 144. Rebbi Joshua [the Southerner] 145 asked before Rebbi Jonah:

There you say, you do not know, the other knows; but here you say so? There is desecration of an oath, here there is no desecration of an oath 146.

141 This refers to Mishnah 12, where the creditor swears to free himself from paying.' 142 As the Babli explains, 43b, if both have to swear, the holder of the pledge always has to swear first.

143 What is the rule if in any of the situations of Mishnaiot 10-13 the defendant claims ignorance?

144 If the answer is taken as partial admission, the person would have to swear. Since by his own testimony he is unable to swear, he has to pay. If the answer is not taken as partial admission, then by the rule that in a case of a defense of "perhaps" against a claim of "certain" judgment has to

be given for the certain claim (cf. Chapter 5, Note 72), he has to pay.

145 Read דרומאי as quoted in Rosh (Chapter 6, No. 28) in a reference from Nahmanides's commentary on this paragraph from the Yerushalmi.

146 In the case of Mishnaiot 11 and 13 there is an oath to be imposed and it is up to the court to devise procedures which make sure that the court does not become a party to perjury. But in the case of "perhaps" against "certain", no oath can be imposed and there is no need for rules of precedence.