כל הנשבעין פרק שביעי

(fol. 37b) משנה א: כָּל־הַנְּשְּׁבָּעִיז שֶׁבַּתּוֹרָה נִשְּבָעִיז וְלֹא מְשַׁלְּמִיזְ. וְאֵילֹּו נִשְּׁבָעִים וְנוֹמְלִּזְ הַשָּׁבְּעִיז וְהַהָּנְוְנִי עַל פִּינְקָסוֹ. הַשָּׁבְּעִיז וְהַהָּנְנְי עַל פִּינְקָסוֹ. הַשָּׁבִיר כֵּיצֵד אָמֵר לוֹ תֶּן לִי שְׁבָרִי שֶׁיֶשׁ לִי בְּיָדָךְ הוּא אוֹמֵר נָתַתִּי וְהַלָּה אוֹמֵר לֹא נָפַלְתִּי הוּא נִשְׁבָּע וְנוֹמֵל. רְבִּי יְהַנָּה אוֹמֵר עַד שֶׁהָהֵא שָׁם מִקְצָת הוֹדְיָה. כֵּיצֵד אָמֵר לוֹ תֶּן לִי שְּׁבָרִי הַמִשִּׁים דֵּינָר שֶּׁיֶשׁ לִי בְּיֵדְ וְהוֹא אוֹמֵר הַתְּקַבְּלְתָּ מֵהֶם דֵּינַר זָהָב:

Mishnah 1: All who must swear by Torah standards do swear not to pay. The following do swear¹ and collect: The journeyman, a person robbed or injured, and one whose opponent is suspected of perjury, and the grocer on his account book². How does the journeyman do it? He tells him, "give me my wages which you are holding;" he says, "I gave." He swears and collects³. Rebbi Jehudah says, only if there is partial admission. How is this? He tells him, "give me my wages of fifty *denarii* which you are holding;" but he says, "you received from these a gold *denar⁴*."

- 1 By rabbinic (popular) standards.
- 2 These will be explained in the following Mishnaiot.

Probably one should vocalize פָּתַבְּקּטוּ, Greek πίναξ "wooden (wax covered) writing tablet."

- 3 Since one assumes that the employer is occupied with many things while the journeyman has only his wages on his mind.
- 4 25 silver *denarii*. By biblical law, the employer would have to swear since he partially denied the journeyman's claim.

(37c line 45) הלכה א: כֶּל־הַנְּשְׁבָּעוֹ שֻׁבַּתּוֹרָה כול'. מִמַּשְׁמֵע שֻׁנָּאֱמֵר שְׁבוּעַת יְי תְּהְיֶה ֹבְיַן שְׁנֵה וֹה בֹּלְ וֹבְלְא יְשׁבָּם: אֶלָא שְׁנָה אֵין אָנוּ יוֹדְעִין שָׁאִם לֹא יִשְׁבַּע יְשׁלֵם. מַה תַּלְמוּד לוֹמֵר וְלַקָּח בְּעָלָיו וְלָא יְשׁלֵם: אֶלֶא מְּנִילָּה אֵין אָנוּ יוֹדְעִין שָׁאִם לֹא יִשְׁבַּע יְשׁלֵם. רְבִּי חַנִּיי בְּעָא קּוֹמֵי רְבִּי יוֹסֵי. וְלָמָה לִי רְבִּי מַמִּיל בְּעָה הוּא בָּטוּר מִלְּשְׁלֵם. רְבִּי חַנִּיי בְּעָא קּוֹמֵי רְבִּי יוֹסְנָן. אַמָּר בְּנִי מִאִיר מְמַשְּׁמֵע לָאו אַתָּה שׁוֹמֵר. אֲפִילוּ הְלָא יְשַׁלֶּם. הָא אִם לֹא יִשְׁבַּע יְשַׁבַּע יְשָׁבַּע לָאו אַתָּה שׁוֹמֵר שָּׁכָּר לְהְיוֹת בְּשׁוֹאֵל. אָמֵר רְבִּי חֲנִינָה. הַכֹּל מוֹדִין בְּלְשׁוֹן תּוֹרָה מִמֵּשִׁעְמע לָאו אַתָּה שׁוֹמֵע הֵין. מָה בִּלִינִו בְּלְשוֹן בְּיִ אָדָם.

Halakhah 1: "All who must swear by Torah standards," etc. One understands from what is said, an oath before the Eternal shall be between them⁵, would we not know that if he does not swear, he has to pay⁶? Why

does the verse say, *its owner shall take it, and he does not have to pay*? But from the moment the owner accepted his oath, he does not have to pay⁷. Rebbi Haggai asked before Rebbi Yose: Is this only following Rebbi Meïr or even following the rabbis? Did not Rebbi Assi⁸ say in the name of Rebbi Johanan: Rebbi Meïr is the one who says that out of a negative one understands a positive? *Its owner shall take it, and he does not have to pay*, therefore if he does not swear, he has to pay⁹. Rebbi Hiyya stated: The unpaid and the paid trustees may stipulate to be like a borrower¹⁰. Rebbi Hanina said, everybody agrees that in the language of the Torah out of a negative one understands a positive; where do they disagree? In everyday speech¹¹.

- 5 Ex. 22:10.
- 6 Since the entire paragraph is about the obligations of the paid trustee in case the deposit was lost. Only the case in which he does not have to pay is described; from this it follows that in all other circumstances he has to pay.
- 7 Babli 45a, *Bava qamma* 107a; *Mekhilta dR. Ismael Neziqin* 16, *dR. Simeon ben Iohai ad loc.*, (Tosephta 6:7.)

Probably this statement has to be interpreted following the parallels in the Babli and the *Mekhilta dR. Simeon ben Iohai*: The oath grants the trustee absolute immunity. Even if afterwards witnesses are found who prove that the trustee stole the deposit, he cannot be made to pay. This cannot be inferred from the first part of the verse quoted earlier.

Mekhilta dR. Ismael Neziqin treats the statement as paradigm for all oaths prescribed in the Torah and sees in it proof for the statement that "All who must swear

by Torah standards do swear not to pay."

- 8 The Babylonian name of R. Yasa who is named correctly in the parallel, Halakhah 4:14 (Note 118).
- 9 Why should this simple inference be particular to R. Meïr and require R. Johanan's statement?
- 10 It really should read: The depositor may stipulate with a paid or unpaid trustee that they should be strictly responsible for the deposit like a borrower (Mishnah 8:1). Since this is a money matter, the biblical conditions are only valid if there are no explicit dispositions for deviations from these standards (*Bava mesi`a* 5:5 Note 81). The verse may be read: If the owner accepts the oath, the trustee does not pay; this leaves open the option that the owner stipulated that he would not accept the oath.
- 11 There is no disagreement with R. Meïr in the interpretation of scriptural verses but there is much disagreement in the interpretation of vows and informal texts.

HALAKHAH 1 185

(37d line 53) אָמַר רְבִּי אַבִּין. עַל יְדֵי שָׁבַּעַל הַבַּיִת עֲסָקִיו מְרוּבִּין תִּיקְנוּ בְשָׁכִיר לִישָּׁבַע וְלִיטוֹל. [אָמר רְבִּי יוּסָה בֵּירְבִּי בּוּן. תַּמֶּן תִּיקְנוּ בְשָׂכִיר שֻׁיְהֵא נִשְׁבָּע וְנוֹטֵל.] וְדְכְוָוָתָהּ תִּיקְנוּ בְבַעַל הַבַּיִת שְׁאָם עָבַר זְמַנּוֹ שֶׁלֹא יִשְׁבָּע וְנוֹטֵל. תַּנֵּי רְבִּי חִייָה. אִם יֵשׁ עֵדִים שְׁתְּבָעוֹ בְּזְמֵנוֹ אֲפִילוּ הַבִּי חִנְינָה וְבִישׁ לְקִישׁ. תַּיִּ אְמֵר. תְּבָעוֹ בִּיוֹם אֵין לוֹ אֶלֶא אוֹתוֹ הַיּוֹם בִּלְבַד. רְבִּי יוֹנָה אָמֵר. בְּשָׁבְע וְנוֹטֵל. אָמר רְבִּי יוֹמֵי. מֵין לוֹ אֶלֶא אוֹתוֹ הַיּוֹם בִּלְבָּד. רְבִּי יוֹנָה אָמֵר. אְתַּבְּלְגוֹן רְבִּי יוֹמֵי בִּירְבִּי חֲנִינָה וְרִישׁ לְקִישׁ. תַּד אָמֵר. תְּבָעוֹ בִּיוֹם אֵין לוֹ אֶלֶּא יוֹם. לַיְלָה אַמְר דָא. מִמֶּה דְמֵר רְבִּי חָמָא בַּר עוּקבָּא בְשָׁם רִישׁ לְקִישׁ. תְּבָעוֹ בִּיוֹם אֵין לוֹ אֶלֶא יוֹם. לַיְלָה אֵין לוֹ אֶלֶא לַיְלָה. הֲנֵי רְבִּי חָמָא בָּר עוּקבָּא בְשָׁם רִישׁ לְקִישׁ. תְּבָעוֹ בִּיוֹם בִישׁ לְקִישׁ. תְּבָעוֹ בְּיוֹם. לַיְלָה אֵין לוֹ אֻלָּא לַיְלָה. הֲנֵי רְבִּי יוֹמֵי בֵּירְבִּי חֲנִינָה דְאָמֵר. בְּשֶׁתְּבְעוֹ אַחֵר, וְמָנוֹ לֵי אָשָׁת לֹוֹ אָשְׁלְתִי לִוֹ אָבְעוֹ בְּשִׁתְ מִוֹ לְּתְּנִינִי בְּעִי לְּמִבּעוֹ בִּיתְר. בְּשָׁת בְּעוֹ בְּעוֹה בְּעוֹ בְּעוֹ בְּעוֹ בְּיוֹ תְבָעוֹ בְּבִין אִנִינָה דְאָמֵבר. בְּשְׁתְּבְעוֹ אַחָבּן לוֹ אַשְׁר לְנוֹ שְׁנִילוֹ הָבְּעוֹ עָתִים שְׁתְּבְעוֹ אַחָר לְנִי שְׁרִבּי לוֹתָן לוֹ שִׁיעוּר אֶחָך.

Rebbi Abin said, since the householder has many occupations they instituted that the journeyman should swear and collect¹². [Rebbi Yose ben Rebbi Abun said, there 13 they instituted that the journeyman should swear and collect;] similarly they instituted for the householder that if its deadline had elapsed, he cannot swear and collect¹⁴. Rebbi Hiyya stated, if there are witnesses that he claimed it in time, he swears and collects¹⁴ even after a year. Rebbi Yose said, he has only that single day¹⁵. Rebbi Jonah said, Rebbi Yose ben Rebbi Hanina and Rebbi Simeon ben Laqish disagreed. One said, if he claimed from him during daytime, he has only that day; if in the night he has only that night¹⁶. But the other said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave¹⁷. We do not know who said what. Since Rebbi Hama bar Ugba said in the name of Rebbi Simeon ben Lagish: if he claimed from him during daytime, he has only that day; if in the night he has only that night, therefore Rebbi Yose ben Rebbi Haning is the one who said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. Rebbi Mana said, sometimes he claims after its time and it is considered as in time. How is this? He claimed from him and he18 said to him, did I not say to you that I gave at that date? That date becomes as if it were yesterday; one gives him one measure¹⁹.

- 12 In the Babli, 45a, this is an anonymous statement. Since it comes at the end of a lengthy discussion, it is Amoraic.
- 13 The insert is from a Genizah text; it is superfluous and questionable in that it fixes the origin of the institution in Babylonia ("there").
- 14 Mishnah Bava meşi'a 9:13, Tosephta Bava meşi'a 10:5. The journeyman is hired for the day. It is sinful not to pay the journeyman immediately after his work is done (Deut. 24:15). Therefore one may assume that the laborer asked for his wages immediately and that he was paid since it is difficult to assume that the householder would sin in withholding the wages. But if there are witnesses that the laborer asked and was not paid, the presumption of permanence of the status quo ante requires one to assume that he was not paid until the opposite is proven.
- 15 He disagrees with the Tosephta and holds that the inversion on the rules of oaths is valid only for 12 hours after the end of the working day. Later the householder would have the option to swear and to free himself

- from paying since it must be assumed that the laborer would have gone to court immediately had he not been paid. This opinion has no parallel elsewhere.
- 16 The hours worked by a laborer hired for the day are set by communal standards (Mishnah *Bava meşi'a* 7:1) but at most are from daybreak to nightfall. Therefore, a day laborer must be paid between the end of his working day and the end of the following night; a worker hired for the night must be paid before the end of the next day.
- 17 If the laborer claims that he was not paid and his employer says that he was paid, this is a situation analogous to that of an oath about a deposit and the laborer swears and collects. But if the householder agrees that he has to pay, the court has to assume that he will keep his word and fulfill his religious duty in paying promptly.
- 18 The laborer claimed and the employer said.
- 19 The 12 hours of the next day to claim, swear, and collect under the rules of the day-laborer.

(37c line 65) הַקְדִּים לוֹ שְׁכָרוֹ. בְּדָא נִשְׁבָּע וְנוֹטֵל. הָיָה הַמַּשְׁכּוֹן בְּיָדוֹ. בְּדָא נוֹטֵל בְּלֹא שְׁבוּעָה. הָיָה הַמֵּשְׁכּוֹן בְּיָדוֹ. בְּדָא נוֹטֵל בְּלֹא שְׁבוּעָה. הָיוּ הָיוּ עֶבֶד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְטָבֶּד. הָיוּ הְשׁוּד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְמְקוֹמָה. שְׁנִיהֶן חֲשׁוּדִין. תַּפְלוּגְתָא דְרְבִּי מֵאִיר וְרְבִּי יוֹסֵי. הָיוּ שְׁנֵיהֶן חֲשׁוּדִין חֵזְרָה שְׁבוּעָה לְמְקוֹמָה. דְּבְי יוֹסֵי. רְבִּי מִאִיר אוֹמֵר. יַחֲלוֹקוּ

If he paid him in advance; in that case he swears and collects²⁰. If a pledge was in his hand; in that case he collects without swearing²¹. If he was a slave. Would the court admit a slave to an oath²²? If he was suspect? Would the court admit a suspect person to an oath²³? If both were suspect, it is the dispute between Rebbi Meïr and Rebbi Yose: ²⁴"If both were suspect,

the oath returns to its origin, the words of Rebbi Yose²⁵; Rebbi Meïr says, they shall split the difference²⁶."

- 20 The employer claims that he paid the day laborer in advance but he has no witnesses and no receipt. The law is not changed; the laborer swears and collects.
- 21 If the laborer had been paid, he would have returned the pledge.
- 22 Since the slave has no standing in court, he could not be punished for perjury. An oath sworn by someone exempt from the sanctions for perjury is worthless and an insult to the court.
- 23 Either he is suspected of a false or vain

oath or he gains his livelihood by fraud, as explained in Mishnah 4.

- 24 Mishnah 4.
- 25 The meaning of his words is in dispute between Babylonians and Galileans; cf. Halakhah 4, end.
- 26 Since neither party can swear or has proof; the claim is classified as "money in doubt" which is split evenly between the parties (*Ketubot* 2:1 Note 9, *Bava qamma* 5:1 Note 4).

(37c line 70) פְּשִׁיטָא. מֵת בַּעַל הַבַּיִת הַשְּׂכִיר נִשְׁבָּע לְיוֹרְשִׁיוּ. וַאֲפִילוּ מֵת הַשָּׂכִיר יוֹרְשִׁיוּ נִשְׁבָּעיוֹ לְיוֹרְשִׁי בַעַל הַבַּיִת. כְּלוּם תִּיקְנוּ אֶלֶא בְשָׁכִיר. שְׁמָא בְיוֹרְשִׁיוּ. אָמֵר רְבִּי לֵעְזֶר. בְּשֶׁתְּבְעוֹ לְיוֹרְשֵׁי בַעַל הַבַּיִת. כְּלוּם תִּיקְנוּ אֶלֶא בְשָׁכִיר. שְׁמָא בְיוֹרְשִׁיוּ. אָמֵר רְבִּי יֹחָעָן. אֵיוּ בְּעִדִים. [אֲבָל אִם תְּבָעוֹ שְׁלֹא בָעִידִים.] יְכִיל מֵימֵר לֵיהּ. לֹא שְׂכַרְתִּיךּ. יְכִיל מֵימֵר לֵיהּ. שְׁכַרְתִּיךּ. יְכִיל מֵימֵר לֵיהּ. שְׁכַרְתִּיךּ וְנְיִלְּא עַל רְבִּי לֵעְזֶר. בַּמֶּה דְּבָרִים אֲמוּרִים. בְּשֶׁזֶּה אוֹמֵר. נְתַתִּי וְוֶה עְּלַבְּדְּ שְׁכֵּרְדְּ. וְהוּא אוֹמֵר. לֹא שָׁכַרְתִּיךָ. אוֹמֵר. לֹא נָטַלְתִּי. שְׂכַרְדְּ. וְהוּא אוֹמֵר. לֹא שְּׂכַרְדְּ. וְהוּא אוֹמֵר. לֹא שָּׁכַרְתִּירָ. אִם בָּאוֹמֵר. בָּעִדִים שְּׂכַרְדְּ. וְהוּא אוֹמֵר. וְהַלְּה אוֹמֵר. לִי עַלִיו הָרְאִייָה. וְקַשְּׁייִא עַל דְּרְבִּי לֵעְזֶר. אִם בָּאוֹמֵר. בָּעִדִים שְּׁכַרְתָּיִי. וְהַלָּה אוֹמֵר. לֹא שַׂכַרְתִּיִר. וְהַלָּה יִשְׁכֵּרְדִּים שְּׁכַרְתִּי. וְהַלְּיִבִּי לְעָלִיו הָרְאָייָה. וְקַשְּׁייִא עַל דְּרְבִּי לְעֶזֶר. אִם בָּאוֹמֵר. בָּאוֹמֵר. בָּבְרִתִּיי, וְהַלְּיִי מְּלְבִילְיה. וְהַלְּיִי, וְבְּלִייִי, וְהַלְּיִי, וְהַלְּעִיים שְּׁכַרְדְּים שְׁכַרְתִּירָ. וְהַלְּעִיים אְּבָּלְתִים בְּמִילִי בְּלְבְיִילְ אִייָּה. עְלִי הָּיִי, וְבְּלִיי, וְבְּלִייִי, לְּבְּי לְעָלִיו הָרְבָּי לְעָלִיו הָרְאִייָה. וְקִבּי לְעִיים שְּׁכְרְתִּיִי. וְהַלְּייִיה. וְהַלְּשִׁייִא עַל דְּרְבִי לְעָזֶר. אִם בָּאוֹמֵר. בָּאוֹבְר. בְּעִדִים שְּׁכַרְתִּיִי. וְהַלְּעִיים שְׁבִּי לִיבְיִים שְׁבִּבְיִים בְּעִיים בְּיִבּיל בִּתְּיִים.

ְרְבִּי בָּא קַרְתִּיגָנָא בָעֵי. יוֹם אֶחָד עָשִּׁיתָ עִמִּי וְנָתַתִּי לָדְּ. וְהַלָּה אוֹמֵר. ב' יָמִים עָשִּׁיתִי עִמְּד וְלֹא נָתַתָּ לִי כְלוּם. פְּשִׁיטָא יוֹם רָאשׁוֹן נוֹטֵל בְּלֹא שְׁבוּעָה. שְׁנִיָּה תַפְלוּגְתָא דְּרְבִּי יוֹחָנָן וְרְבִּי לֶעְזָר. סֶלַע אֶחָד פָּסַקְתִּי לְדְּ וְנָתַתִּי לָדְּ. וְהַלָּה אוֹמֵר. ב' סְלָעִים פָּסַקְתָּה לִי וְלֹא נָתַתָּה לִי כְלוֹם. פִּשִּׁיטֵא סֵלַע רָאשׁוֹנָה נוֹטֵל בָּלֹא שְׁבוּעָה. שְׁנִינָה תַפְלוּגְתָא דְּרְבִּי יוֹחַנַן וְרְבִּי לַעְזַר.

It is obvious: If the householder dies, the journeyman swears to his heirs²⁷. Even if the journeyman dies, do his heirs swear to the householder's heirs? They made this ordinance only for the journeyman. Maybe for his heirs?

Rebbi Eleazar said, if he claimed²⁸ before witnesses. [But if he claimed without witnesses²⁹, he can tell him,] I paid your wages. Rebbi Joḥanan said, does one not in money matters argue "because³⁰?" Because he can say to him, I did not hire you, he can tell him, I hired you and paid your wages³¹. A

baraita³² disagrees with Rebbi Eleazar³³: "When was this said? If he said, I gave, but the other said, I did not take; I gave you your wages, but he says, I did not take. You hired me, but he says, I did not hire you. The burden of proof is on the claimant.³⁴" It is difficult for Rebbi Eleazar³³, if he hired him before witnesses, how can this one say, I did not hire you?

Rebbi Abba from Carthage asked: "You worked for me one day and I paid you." But the other says, "I worked for you for two days and you did not give anything to me." It is obvious that he takes for the first day without³⁵ oath. The second is the disagreement between Rebbi Joḥanan and Rebbi Eleazar³⁶. "I hired you for a *tetradrachma* and gave it to you." But the other says, "you hired me for two *tetradrachmas* and did not give me anything." It is obvious that he takes the first *tetradrachma* without³⁵ an oath. The second is the disagreement between Rebbi Johanan and Rebbi Eleazar³⁶.

- 27 And collects his wages. Since the Babli does not mention the topic, this is accepted practice. If the day laborer dies, the employer swears to free himself from payment.
- 28 Since the text is confirmed by a Genizah fragment, it cannot be amended to read "if he hired him before witnesses" as seems to be implied later in the text. R. Eleazar restricts the possibility of the laborer to swear and collect to the situation when he requested payment before witnesses and afterwards comes to court. But if there are no witnesses to the fact that he was not paid on the spot when he requested payment, i. e., there is *prima facie* evidence that the employer did not fulfill the commandment "to pay on his day", the employer must be given the benefit of doubt and the option of swearing to deny his debt.
- 29 The text in brackets is added from a Genizah fragment. It is necessary; its existence was conjectured by some

- commentaries (*Ridbaz* and *Noam Yerushalmi*).
- 30 Cf. Halakhah 6:1, Note 25. The later R. Yudan denies the legal validity of "because" arguments in court but R. Johanan is quoted in the Babli 45b to agree with Samuel that this kind of argument is valid.
- 31 If the laborer was hired without witnesses or contract, he has no way to establish the fact that he was a day laborer in the service of the person from whom he claims wages and cannot request the court to admit his oath.
- 32 Tosephta 6:1.
- 33 It seems that in this text, "Eleazar" should everywhere be replaced by "Johanan" since only R. Johanan requires that the hiring be documented.
- 34 There is a word missing in the text of the Tosephta, which makes the text incomprehensible. The Tosephta notes that the special rule which allows the laborer to

swear and collect is restricted to the case of the Mishnah, where there is no dispute about the relation of employer and employee, only whether the latter had been paid or not; *but* a dispute whether such a relationship existed at all must be adjudicated by the general principle that the burden of proof is on the claimant. It seems clear that this situation cannot occur if the hiring was documented.

35 This must read "with". Since the employer asserts the existence of the hire,

the rule of the Mishnah applies.

36 According to R. Joḥanan, if the hire was not documented the employer must be believed and any additional claim by the laborer has to be proven (e. g., by witnesses). There is no occasion for an oath about the additional sum. According to R. Eleazar, if the claim was made before witnesses, there is no limit to the right of the laborer to swear and collect.

(9 line 9) רַב הוּנָא אָמֵר. אָם בְּשֶׁנִּשְׁבָּע הֵבִיא עֵדִים. הֶיְתָה עוֹמֶדֶת בָּאֵבוּס. כְּבָר נָּזִלַּתּוּ שְׁבוּעָה. מַתְנִיתָא פְלִינָא עַל רַב הוּנָא. אֵיכָן שׁוֹרִי. אָמֵר לוֹ. אָבַד. מַשְׁבִּיעָך אֲנִי. וְאָמֵר אָמֵן. שְׁבִּוּעָה. מֵתְנִיתָא פְלִינָא עַל רַב הוּנָא. אֵיכָן שׁוֹרִי. אָמֵר לוֹ. אָבַד. מַשְׁבָּיעִך אָנָי. וְאָשֶׁם. מַתְנִיתָא רְעַבִּים מְעִידִין שָׁאֲכָלוֹ. מְשַׁלֵם הַקָּרָן. הוֹדָה מֵעַצְמוֹ מְשַׁלֵם קֶּרָן וְחוֹמֶשׁ וְאָשֶׁם. מַתְנִיתָא בְּשָׁנִּשְׁבָּע לוֹ וְאַחֵריכֵן אֲכָלוֹ. בְּמָה דָּמֵר רַב הוּנָא בְּשָׁנִּשְׁבָּע לוֹ וְאַחֵריכֵן אֲכָלוֹ.

Rav Huna said, if after he swore he brought witnesses that it was standing at the feeding trough, the oath already had robbed it³⁷. A Mishnah disagrees with Rav Huna: ³⁸"Where is my ox?' He told him, it was lost. 'I am putting an oath on you,' and he said Amen. But witnesses testify that he ate it. He has to pay the value. If he confessed on his own, he pays the value, an additional fifth, and a reparation offering". The Mishnah if he ate it and only later swore to him. What Rav Huna said, it he swore to him and only later ate it.

37 This paragraph is not a continuation of the preceding but refers to the first paragraph of the Halakhah where it was stated that if the claimant accepted the defendant's oath, the latter does not have to pay (Note 7). Rav Huna [in the Babli, *Bava qamma* 106a, a statement of Ilfa (Hilfai) endorsed by Rav Huna in the name of Rav] holds that the oath effects a transfer of property rights; if the claimant accepts the

oath, the defendant later ate his own animal, not the claimant's. However, since here the acquisition is qualified as robbery the claimant can bring a new action for robbery whereas in the Babli Rav Huna in the name of Rav qualifies this as acquisition and denies any obligation on the part of the defendant.

38 Mishnah 8:4.

(37d line 14) מָחְלְּפָה שִׁיּטָתֵיהּ דְּרִבִּי יְהוּדָה. תַּמָּן אָמֵר. אֲפִילוּ לֹא יָדַע. וְהָכָא אָמֵר. עַד שְׁיֵדַע. תַּמָּן עַל יְדֵי שֶׁאֵינוֹ כְעֵין שְׁבוּעַת תּוֹרָה אֲפִילוּ שְׁבוּעַת תּוֹרָה לֹא יָדַע. בְּרַם הָכָא עַל יְדֵי שֶׁהֵן כְּעֵין שָׁבוּעַת תּוֹרָה.

מָהוּ לְגַלְגָּל שְׁבוּעַת תּוֹרָה עַל שְׁבוּעַת תּוֹרָה. נִישְׁמְעִינָהּ מָן הָדָא. מְגַלְגְּלִן שְׁבוּעַת תּוֹרָה עַל שְׁבוּעַת תּוֹרָה. שְׁבוּעַת תִּקָּנָה עַל שְׁבוּעַת תִּקָּנָה. שְׁבוּעַת תּוֹרָה עַל שְׁבוּעַת תִּקּנָה. שְׁבוּעַת תּוֹרָה. תָּפָן זֶה נִשְׁבָּע וְזֶה מְשַׁלֵם. בְּרַם הָכָא זֶה נִשְׁבָּע וְנוֹטֵל. וְזֶה נִשְׁבָּע וְאֵינוֹ משׁלם.

Rebbi Jehudah's argument seems inverted. There³⁹ he says, even if he does not know. But here he says, not unless he knows⁴⁰. There since it is not in the form of a biblical oath even (about a biblical oath)⁴¹ he does not know. But here it is in the form of a biblical oath⁴².

May one roll over a biblical oath on a biblical oath ⁴³? Let us hear from the following: One rolls over a biblical oath on a biblical oath, an instituted oath on an instituted oath, a biblical oath on an instituted oath. An instituted oath on a biblical oath? There, one swears and pays, but here in one case he swears and collects, in the other he swears and does not pay⁴⁴.

- 39 Mishnah *Bava qamma* 6:7. In R. Jehudah's opinion an arsonist has to pay for everything he destroyed even if he could not have known of its value.
- 40 Since in this and the following Mishnaiot R. Jehudah always requires partial admission by the debtor, information of the debtor is assumed. (Since the reading "knows" is confirmed by the Genizah fragment, the word cannot be emended to "admits".)
- 41 These words are not in the Genizah text, do not make any sense here, and have to be deleted.
- 42 In *Bava qamma* there is no oath. Here R. Jehudah requires partial admission to base the administration of an oath on biblical grounds even though the oath itself is a rabbinic institution.
- 43 Sotah 2:6 Note 167, Qiddušin 1:5 Note

- 520. If a person is required to swear in court, the opposing party can add to the text of the oath any other oath he might have cause to let the other party swear without having to prove every case separately. For biblical oaths this is proven from biblical texts in the places quoted. For an obligation to swear by biblical standards to add an oath which is a rabbinic institution seems to be a natural consequence. The only problem is whether the obligation to swear a rabbinic oath is cause for the opposing party to add biblical oaths without presenting sufficient proof for that obligation.
- 44 The question is answered in the negative. The rabbinic oaths mentioned in this Chapter (and probably also the one in *Bava qamma* 10:3) are not obligations but privileges; there is no reason to pile obligations on top of these.

The Babli (49a, top) agrees for the oaths described in the Mishnah. The answer of the Babli has to be more nuanced since it introduces an Amoraic institution of שְׁבִּוּעַח "an oath of instigation". unknown to

the Yerushalmi, if judgment is given by a preponderance of evidence but not beyond a reasonable doubt. These rabbinically instituted oaths are obligations and can be used as pegs to pile on other obligations.

(fol. 37c) **משנה ב**: הַנְּגְזָל כֵּיצַד הָיוּ מְעִידִין אוֹתוֹ שֶנְּכְנַס לְבֵיתוֹ לְמַשְּכְּנוֹ שֶלֹא בִּרְשוֹת. אָמַר לוֹ תֵּן לִי כֵּילֵי שֶנָּטַלְתָּה וְהוּא אוֹמֵר לֹא נָטַלְתִּי הֲרֵי זֶה נִשְׁבָּע וְנוֹמֵל. רְבִּי יְהוּדָה אוֹמֵר עֵד שֶׁהָהֵא שָׁם מִקְצָת הוֹדָיָה. כֵּיצַד אָמֵר לוֹ שְנֵי כִילַיי נָטַלְתָּה וְהוּא אוֹמֵר לֹא נָטַלְתִּי אֶלָּא אֶחָד:

Mishnah 2: How about a person robbed? There were witnesses that he entered another's house to take a pledge without authorization⁴⁵. He said to him, give me my vessels which you took but he answers I did not take; this one swears and takes. Rebbi Jehudah says, only if there is partial admission. How is this? He tells him, you took two of my vessels but he says, I took only one.

45 Either by the debtor or by the court. This in itself is a sin (*Deut*. 24:10-11). The witnesses did not see what he took. The

debtor swears and takes based on this *prima* facie evidence of wrongdoing by the creditor.

(37d line 22) **הלכה בּ**: הַנְּגְזֶל כֵּיצֵד כול'. לְתוֹךְ בֵּיתוֹ. לֹא לְתוֹךְ חֲצֵירוֹ. לְמִשְׁכְּנוֹ. לֹא מִשּׁוּם דָּבָר אַחֵר. אָמֵר רִבִּי יִצְחָק. וּבִלְבַד בָּצֵדִים. נִכְנְסוּ שְׁנַיִם לְמַשׁכְּנוֹ. יָבֹא כְהָדָא. יָצָא חָבוּל מִבֵּין שְׁצֵיהֶן. שְׁצֵיהֶן רְאוּיִין לְמַשְׁכְּנוּ. וּמַה חֲמֵי לֵיהּ. בְּשֶׁרָאוּ שְׁנַיִם חוֹבְטִין לִיהּ בְּמַקְלוֹת. רָאוּהוּ זוֹרֵק צְרוֹרוֹת וְנָמָצְאוּ שָׁם כֵּלִים שְׁבוּרִין נוֹטֵל בָּלֹא שָׁבוּעָה.

Halakhah 2: "How about a person robbed," etc. "In another's house," not in his courtyard⁴⁶. "To take a pledge," not for another purpose⁴⁷. Rebbi Issac said, and only by witnesses⁴⁸. If two entered to take pledges from him? It should come like the following: "If he was injured between the two . . .⁴⁹" But if both were entitled to take pledges? What should be seen there? If they saw two [men] hitting him with sticks⁵⁰.

If they⁵¹ saw him throwing pebbles and broken vessels were found there, he⁵² collects without oath.

- 46 Since *Deut*. 24:10 only forbids to enter the debtor's house to take a pledge. This condition does not appear in the Babli; in *Tur Ḥošen Mišpaṭ* 90 (*Bet Yosef* Note 9) there is an extended discussion about the validity of this statement.
- 47 Since the rules of the Mishnah imply a suspension of ordinary rules of evidence, they have to be followed to the letter.
- 48 While the crime does not have to be proven, the *prima facie* evidence of illegal entry has to be established beyond a reasonable doubt.
- 49 A sentence is missing here as indicated in the not well legible Genizah text. It was omitted by the scribe from the word to the next occurrence of the same word. But the meaning of the missing sentence is easily reconstructed. If a person was injured when attacked before witnesses by two people, but the witnesses cannot identify the

- person who actually injured him, he has no civil claim against any of them. Similarly, if witnesses saw two people entered but they did not see which of them actually took something, the rule of the Mishnah cannot be applied.
- 50 If two creditors were seen entering together it can be compared to the case that witnesses actually saw both perpetrators hitting their victim with sticks. Then the victim can successfully sue both and the debtor can invoke the Mishnah against both creditors.
- 51 Witnesses saw a man throwing pebbles onto another's property but they did not see the damage done.
- 52 The owner of the property can collect damages even though he has no proof that the pebbles actually did the damage. The proof of criminal behavior by the stone thrower is enough.

לְּכֵל line 27) מָהוּ מִיסְעֵנִינֵיהּ מִילִּין מַפְּלְּגִין. ייָבֹא כִדְאָמֵר רְבִּי יוֹחָנֶן. בַּר נַשׁ עֲתִיר נֵּו בִּיתָא וּמִסְכֵּן נֵּו שׁוּקָא. לֵשׁ מִתְעַשֵּׁר וְאַיִן כֵּל מִתְרוֹשַׁׁשׁ וְהַוֹן רֲב: רְבִּי וּמְסְכֵּן נֵּו שׁוּקָא. לֵשׁ מִתְעַשֵּׁר וְאַיִן כֵּל מִתְרוֹשַׁׁשׁ וְהַוֹן רֲב: רְבִּי נִּמְסְכֵּן נֵּו שׁוּקָא. לֵשׁ מִתְעַשֵּׁר וְאַיִן כֵּל מִתְרוֹשַׁשׁ וְהַוֹן רְב: רְבִּי בָּא מִשְׁתָּעֵי. עוֹבְדָא הְוֹה בָאָרִיסִיהּ דְּבַר זִּיזָא. אֲתַא עוֹבְדָא קוֹמֵי רְבִּי יִשְׁמָצאל בֵּירְבִּי יוֹסֵי. אָמֵר. וּמָאן לֵימָא לֵן דְּכָל־מַה דְבֵּר זִּיזָא. אֲתוֹן בְּנוֹי דְּבַר זִּיזָא אִינּוּן. יִתְייְהָבוּן לְבְנוֹי דְּבַר זִיזָא. אֲתוֹן בְּנוֹי דְּבַר זִיזָא אִינּוּן. יִמְיִיהְבוּן לַבְנוֹי דְבַר זִיזָא. אֲתוֹן בְּנוֹי דְּבָר זִיזָא אִינּוּן. יִמְהָין רְבּוֹן יִסְבּוֹן פַּלְגָּא וּמִן דְּקִּיקִין רְבּוֹן יִסְבּוֹן פַּלְגָּא וּמִן דְּקִּיקִין רְבּוֹן יִסְבּוֹן פַּלְגָּא וּמִן דְבִּין יִבְּלְבְנִי הְיִבְיה רְבִּי יִשְׁמֵצאל בִּירְבִי יוֹסֵי. אָתַת עוֹבְּדְא קוֹמֵי רְבִּי חִייָה רוֹבָה. אֲמֵר לִיהָ אֵמְר לֵיה עָּבִיקְדוֹנָא. בְּכִיקְדוֹנְא. בְּנִי הְנִילְהָי, בְּבְּר יְיִהָא לְּבְנוֹי דְבְּנִית בְּלְנִי בְּבְייִם וְּמְבָּת בְּלְנָי בְּבְר יִיִישְׁא. אֲמֵב לִיהּ מָרִיהּ דְּנִיקְרוֹן מִימֵר לוֹן. מִה דִּין נָתָתָּה. וּמְח לְּבְּנִי בְּר זִילָא. לְבְנִי בְּר זְיִילָא. נַבְלּין מֵימָר לוֹן. מֵבּל בְּיוֹ בְּעַשְׁה עֹלְבָּי בְּיִילְ נַעֲשָּׁה נֹבְנִי בְּר זִילָא. לְבְנִי בָּר זְיִלָא. נְבְילִייְ בְּיִלְין מִימָר לוֹן. מֵימֵר לוֹן בִּיבְּרוֹ בִיּעְלְין מִימָר לוֹן. מֵבְלּין מֵימֵר לוֹן. מֵימֵר לוֹן. מִבּיל בְּיִא אַרְים שִּנִילָּי מִינִר לוֹן בִימָרוּן בִּינְבּי, אַרְים, אֵיל בְּיִי בְּרְרבִייָּא לְרָבְרְיִיִיּא לְּרְבְייָא, אַבְּר זִייְאָר.

⁵³May one claim extraordinary things? One may, following what Rebbi Johanan said, a person may be rich on the market place and poor in his house; rich in his house and poor in the market place. *There is one who poses as rich*

and has nothing, poses as poor and has great wealth⁵⁴. Rebbi Abba told⁵⁵: Bar Ziza's sharecropper deposited a pound of gold⁵⁶ with somebody. Bar Ziza and Bar Ziza's sharecropper died; the case came before Rebbi Ismael ben Rebbi Yose. Would one not say that all that Bar Ziza's sharecropper had was Bar Ziza's property? It should be given to Bar Ziza's sons. Bar Ziza's sons came. He said, the adult ones should take half and when the underage grow up they should take half. Rebbi Ismael ben Rebbi Yose died; the case came before the Elder Rebbi Hiyya who said, that argument means nothing since there are people who do not advertise themselves. It should be given to the sharecropper's sons. The trustee told him, I already disbursed half of it. He told him, what you gave, you gave by court order and what you will give, you will give by court order. May the sharecropper's sons say to Bar Ziza's sons, give us what you took? They can tell them, what was done was done by court order. May the underage ones say to the adult, let us share with you? May they tell them, we found a find? Rebbi Isaac said, the case between the adult and underage ones is only comparable to a gift given to them.

- 53 A slightly reduced form of this text is in *Bava qamma* 6:7 (Notes 111-115) and Alfasi *Bava qamma* No. 125. It is clear that R. Johanan and the editors of the Yerushalmi endorse R. Hiyya's judgment and reject R. Ismael ben R. Yose's.
- 54 Prov. 13:7.

- 55 This introduction, missing in both *Bava qamma* texts, makes it questionable whether a real case is recounted here.
- 56 An enormous fortune, under the Severan emperors the equivalent of 900 *ketubot*.

(fol. 37c) **משנה ג**: הַנֶּחְבָּל בֵּיצֵד הָיָה מְעִידִין אוֹתוֹ שֶּנְּכְנַם לְתוֹךְ יָדוֹ שֶׁלֵם וְיָצָא הָבוּל וְאָמֵר לוֹ הָבַלְתָּה בִי וְהוּא אוֹמֵר לֹא חָבַלְתִּי הֲרֵי זֶה נִשְׁבָּע וְנוֹמֵל. רְבִּי יְהוּדָה אוֹמֵר עַד שֶׁתְהֵא שָׁם מִקצָת הוֹדִייָה. בִּיצֵד אָמֵר לוֹ חָבַלְתָּ בִי שְׁתִּים וְהַלָּה אוֹמֵר לֹא חָבַלְתִּי אֶלָא אַחַת:

Mishnah 3: The injured one, how? They were testifying against him that one came to his hand whole and left injured⁵⁷. He says, you injured me, but the other says, I did not injure; this one swears and collects. Rebbi Jehudah

says, only if there was a partial admission. How is this? He said to him, you injured me twice but the other says, I injured you only once.

57 And it is a reasonable inference that the second person was injured by the first.

(37d line 44) **הלכה ג**: הַנְּחָבָּל כֵּיצֵד כול'. רְבִּי יְהוּדָה הָיָה קוֹרָא חֲבָטִי. כָּל־זְמֵן שְׁהֵן חוֹכְכִין זֶה בָּיֶה נִשְׁבָּע וְנוֹטֵל. הָיָה נָשׁוּךְ בְּמָקוֹם שְׁאֵינוֹ יָכוֹל לִישׁוֹךְ עַצְמוֹ נוֹטֵל בְּלֹא שְׁבוּעָה. לְאַחַר בָּיֶה הָשְׁבָּע וְנוֹטֵל. הָיָה נָשׁוּךְ בְּמָקוֹם שְׁאֵינוֹ יָכוֹל לִישׁוֹךְ עַצְמוֹ נוֹטֵל בְּלֹא שְׁבוּעָה. לְאַחַר זְּמֵן זֶה אוֹמֵר. חַבַּלְתַּ בִּי. וְזֶה אוֹמֵר. לֹא חַבַּלְתָּי. הֵרִי זֶה כִּשְׁאֵר הַטַּשְׁנוֹת.

Halakhah 3: "The injured one, how," etc. ⁵⁸ "Rebbi Jehudah was calling them beaters⁵⁹. Any time they are rubbing⁶⁰ one another, he swears and collects⁶¹. If he was bitten at a place where he could not bite himself, he collects without oath⁶². At a later time if one says, you injured me, but the other says, I did not injure, this is like any other claim⁶³."

- 58 Tosephta 6:2, *Bava qamma* 9:28 (S. Lieberman *Tosefta kiFshutah Bava qamma* p. 109.)
- 59 In the parallel sources חביבאי, חבבאי, א mich might support a reading cwrestlers".
- 60 Or "wrestling".
- 61 If there are witnesses for a physical altercation but no witnesses for any detailed happening.

- 62 Babli 46b, an Amoraic statement in the name of Samuel.
- 63 This refers to the Mishnah. If the witnesses saw him whole and immediately after he was seen in an altercation he was seen injured, he swears and collects. But if the injury was only certified later, the general rules of evidence will apply to any claim.

(fol. 37c) משנה ד: רְשֶׁכְּנֶגְדּוֹ חָשוּד עֵל הַשְּׁבוּעָה בֵּיצֵד אַחַת שְׁבוּעַת הָעֵדוּת וְאַחַת שְׁבוּעַת הַבּוּעַת הַבּפָּקדוֹן וַאֲפִילוּ שְבוּעַת שָוְא. הָיָה אֶחָד מֵהֶן מְשַׁחֵק בַּקּוּבְיָא מֵלְוֶה בָּרִיבִּית מַפְּרִיחַ יוֹנִים וְסוֹחֵר שְׁבִּיעִית שֶׁכְּנֶגְדּוֹ נִשְׁבָּע וְנוֹמֵל. הָיוּ שְׁנֵיהֶן חֲשוּדִין חֲזְרָה שְׁבוּעָה לְמְקוֹמָה דְּבְרֵי רְבִּי יוֹמֵי. רְבִּי שְׁבִיעִית שֶׁכְּנֶגְדּוֹ נִשְׁבָּע וְנוֹמֵל. הָיוּ שְׁנֵיהֶן חֲשוּדִין חֲזְרָה שְׁבוּעָה לְמְקוֹמָה דְּבְרֵי רְבִּי יוֹמֵי. רְבִּי מֹאִיר אוֹמֵר יַחֲלוֹקוּ:

Mishnah 4: And if the opposing party was suspect of perjury, how? Equally oaths about testimony, or oaths about deposits, or even vain oaths, if one of them was a dice-player, a lender on interest, a participant in pigeon contests, or a dealer in sabbatical produce⁶⁴, the opposing party swears and

collects. If both of them were suspect, the oath returns to its place, the words of Rebbi Yose. Rebbi Meïr says, they shall split²⁵.

64 This list of people not admitted as Sanhedrin 3:6 (Notes 44-47.) witnesses nor credible in their oaths is from

(37d line 47) **הלכה ד**ּ: וְשֶׁפְנֶגְדּוֹ חָשׁוּד עַל הַשְּׁבוּעָה כול'. אֵילוּ הֵן הַפְּסוּלִין. הַמְשַׂחֵק בַּקּוּבְיָא. זֶה הַמְשַׂחֵק בִּפְסֵינְסִין. אֶחָד הַמְשַּׁחֵק בִּפְסֵינָסִין וְאֶחָד הַמְשַּׁחֵק בִּקְלִיפֵּי אֱגוֹזִים וְרִימּוֹנִים לְעוֹלָם אֵין מְקַבְּלִין עֵדוּתָן עַד שֶׁיְּשַׁבֵּר פְּסֵינָּסִיו וְיִבָּדֵק וְיַחֲזוֹר בָהֶן חֲזָרָה גְמוּרָה. הַמַּלְוֶה בָרִיבִּית אֵין מְקַבְּלִין אוֹתוֹ עַד שָׁיִּקְרַע שְׁטָרוֹתָיו וְיִבָּדֵק וְיָחֲזוֹר בָהֶן חֲזָרָה גְמוּרָה.

Halakhah 4: "And if the opposing party was suspect of perjury," etc. ⁶⁵The dice player is the one who plays with small stones ⁶⁶. "Not only the player with stones, even one who plays with shells of nuts or pomegranates ^{66a} one does not accept unless he break his stones, and be checked out, and repent in complete repentance." One who lends on interest one does not accept unless he tear up his IOU's, and be checked out, and repent in complete repentance.

- 65 This and the following paragraphs are found in *Roš Haššanah* 1:9 and *Sanhedrin* 3:6, explained in Sanhedrin Chapter 3, Notes 51-69
- 66 Greek ψῆφος "pebble, cube; the stones used for mosaics and tokens used in elections" Rashi defines as "marbles"

66a Pomegranates (rimmonim) do not have shells but skins. Perhaps the reference is to Greek ῥύμβος, ῥόμβος, "magic wheel, instrument used in pagan mysteries; rhomb", from ῥόμβέω "to spin, cause to whirl" (E. G.)

(37d line 53) וּמַפְרִיחֵי יוֹנִים. זֶה הַמַּמְרֶה יוֹנִים. אֶחָד הַמַּמְרֶה יוֹנִים וְאֶחָד הַמַּמְרֶה בְּהֵמָה חַיָּה וַעוֹף אִין מקבלין אוֹת עד שׁיּשׁבּר פגימיו וִיחַזוֹר חַזֵּרה גמוּרה.

Participants in pigeon contests, that is one who bets on pigeons. Whether one bets on pigeons or bets on any domesticated animal, wild animal, or bird, he is not accepted unless he break his tools of the catch and repent in complete repentance.

סוֹחֲרֵי שְׁבִיעִית. זֶהוּ תַּגָּר שְׁבִיעִית. אֵי זֶהוּ תַּגָּר שְׁבִיעִית. יָשֶׁב לוֹ כָּל־שְׁנֵי שְׁבִיעִית וּבַשְּׁבִיעִית הָתְחִיל נוֹשֵׂא וְנוֹתֵן בְּפֵירוֹת שְׁבִיעִית. אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁתַּגִּיעַ שְׁבִיעִית אֲחֶרֶת וְיִבָּדֵק וְיַחְזוֹר חַזֵּרָה גִמוּרָה. תַּנֵי רְבִּי יוֹסֵי. שְׁנֵי שִׁבִיעִיוֹת. רְבִּי וְחֵמִיָה אוֹמֵר. חַזָּרַת מְמוֹן לֹא חַזֵרַת דְּבָּרִים. שָׁאָמֵר לָהֶם. הֵא לָכֶם מָאתַיִם זּוּזּ וְחִלְקוּם לָצֵנִייִם שֶׁכָּנַסְתִּי מִפֵּירת עֲבֵירָה. הוֹסִיפּוּ עֲלֵיהֶן הָרוֹעִין וְהַחַמְסָנִין וְהַגַּזְּלָנִין. וְכָל־הַחֲשׁוּדִין בְּמָמוֹן עֵדוּתָן בְּטֵילָה. אָמֵר רְבִּי אַבָּהוּ. בְּרוֹעֵי בְּהַמָּה דקה.

Dealers in sabbatical produce, that is the sabbatical trader. "Who is a sabbatical trader? One who sits idle all the years of a sabbatical cycle. In the sabbatical year he becomes active and trades in sabbatical produce. One does not accept him before another sabbatical year starts and he can be checked out that he repented in complete repentance." Rebbi Yose stated, two sabbatical periods. "Rebbi Nehemiah says, repentance in money, not repentance in words; that he say to them, here are 200 denars, distribute them to the poor, for I earned them from forbidden produce." They added shepherds, extortionists, and any who are suspect in money matters, that their testimony be invalid. Rebbi Abbahu said, shepherds of small animals.

רַבּ הוּנָא אָמֵר. מָאן תַּנִּיתָהּ מַפְּרִיחֵי יוֹנִים. רְבִּי לִיעֶזֶר. דְּתְנֶן. מַפְּרִיחֵי יוֹנִים פְּסוּלִין לָעֵדוּת. אָמֵר רְבִּי מָנָא קוֹמֵי רְבִּי יוֹסֵי. וְעוֹד מֵהָדָא דְסְנְהֶדְרִין כְּרְבִּי לִיעֶזֶר. אָמֵר לֵיהּ. דְּבְרִי הַכֹּל הִיא. הָכָּא אָמֵר רְבִּי יוֹסֵי. יוֹדְעִין הָיוּ שֶׁהָיָה פָסוּל מֵעֵדוּת מָמוֹן. וּמֵה בָּא לְהָעִיד. אֶלָּא כְשְׁם שְׁפָּסוּל מֵעֵדוּת מָמוֹן כָּדְּ פָּסוּל מֵעֵדוּת נְמָשוֹת. וְעִידִי הַחוֹדֶשׁ כְּעִידִי וְּכְשׁוֹת. דְתַנִּיִן הָּאשְׁה כְשִׁירָה לָה אַף הֵן אֵינֶן כְשִׁירִו לָהְ. מָאן תַּנִּיתָהּ. רַבְּנִין. רַבְּנִין כְּרְבִּי לִיעֶזֶר. מוֹדִיין לָה. מָאן תַּנִּיתָהּ. רַבְּנִין כְּרְבִּי לִיעֶזֶר. מוֹדִיין לֵיהּ וּפְלִיגִין עֲלוֹי. רְבִּי הוּנָא בְשׁם רְבִּי יוּנָה. כּוּלְהוֹן כְּרְבִּי לִיעֶזֶר. וְאַתְיִן אִילִין פּלוּגְוֹוָתָא כְּאִילֵין לֵּלוֹי, רְבִי הוּנָא בְשׁם רְבִּי יוּנָה. כּוּלְהוֹן הָא בְּשׁם רְבִּי יוֹנָה. פָּלֹּרְבִיוֹת שְׁבּתּוֹרָה. דְּבְרִי רְבִּי מֵאִיר. אָמֵר רְבִּי יוֹסֵי. אִימָם בְּעֵדוּת נְמִנוֹן שָׁנִמְצָא זוֹמֵם בְּעֵדוּת נְפָשׁוֹת. אֲבָל אִם נִמְצָּא זוֹמֵם בְּעֵדוּת מְמוֹן אֵינוֹ פָסוּל אֶלֶא אוֹתָה בָּלְבָּד. וַתִּייָא דְּרִבִּי יוֹסִי כִרְבָּנָן וּדְרְבִּי מֵאִיר כְּבְּי לִיעֻזֶר.

Rav Huna said: Who is the Tanna of "participants in pigeon contests"? Rebbi Eliezer, as we have stated there: "Participants in pigeon contests are disqualified from testimony." Rebbi Mana said before Rebbi Yose: Is that statement in *Sanhedrin* Rebbi Eliezer's? He told him, it is everybody's opinion. So said Rebbi Yose: We knew that he was disqualified for testimony in money matters. What does he come to testify about? For as he is disqualified in money matters, so he is disqualified to testify in criminal trials. The witnesses for the New Moon are held to the standards of criminal trials, as we have stated: "Any testimony for which a woman is not qualified, they are not qualified for." Who stated this? The rabbis! Do the rabbis follow Rebbi Eliezer? They agree with him and disagree with him. Rebbi

Huna in the name of Rebbi Jonah said: It follows Rebbi Eliezer in everything. It turns out that this disagreement parallels another disagreement, as it was stated: A perjured witness is disqualified for any and all testimony required by the Torah, the words of Rebbi Meïr. Rebbi Yose said, when has this been said? When he was found perjured in criminal matters. But if he was found perjured in money matters, he is disqualified only from that particular testimony. It turns out that Rebbi Yose parallels the rabbis and Rebbi Meïr Rebbi Eliezer.

(37d line 74) הֶּחָשׁוּד בִּשְׁבוּעָה מֵאֵימָתַי מְקַבְּלִין אוֹתוֹ. מִשֶּׁיָבוֹא בְבֵית דִּין וְיֹאמֵר. חָשׁוּד אָנִי. מַה נָן קַייָמִין. אִם בָּהוּא דְקָאִים חַיִּיב לְחַבְרֵיה שְׁבוּעָה. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לֶחָשׁוּד. אֶלֶא כֵן אֲנֶן קַייָמִין בָּהוּא דַאֲזַל מֵדוֹן בְּבֵית דִּין דְּלָא חֲכְמִין לֵיהּ וְיֵימֵר לוֹן. הַהוּא גַבְרָא חָשׁוּד הוּא. אַף בָּהוּא דְקָאִים וְחַיִּב לֵיהּ שְׁבוֹעָה וּמְחָלֵיהּ עֲלֵיהּ.

When does one accept one who is suspect in matters of oaths⁶⁷? From when he comes to the court and says, I am suspect. Where do we hold? If one who stands here and is obligated to swear for another, does the court deliver an oath to a suspect person⁶⁸? But we must hold about one who has a suit at a court where he is unknown and tells them, this man⁶⁹ is suspect. Also about one who stands and another owes him an oath and he forgives it⁷⁰.

- 67 Even though the Tosephta quoted in the preceding paragraphs has very stringent conditions, in practical cases the court may apply a more lenient standard.
- 68 If he is a known suspect, what difference does it make if he declares what the court already knows?
- 69 This is himself. Since the statement is derogatory, one uses the third person instead of the first.
- 70 If he is ready to pay rather than have another person (who is not suspect) swear an oath on his demand.

(38a line 3) רַב השַּׁעְיָה אָמֵר קַמֵּי רְבִּי אִמִּי בְשֵׁם רַבָּנִו דְּתַמֶּן. חֱזֶרָה שְׁבוּעָה לְסִינֵי. רְבִּי יוֹחֶנֶן בְּשֵׁם רָבִּי יַנַּאִי. חֱזְרָה שְׁבוּעָה לְסִינַי. כְּמִי שָׁאֵין כָּאן צַדוּת. בְּשֵׁם רְבִּי יַנַּאי. חֱזְרָה שְׁבוּעָה לְבְעָלִין. מָמֵה דַהוּא גַבְרָא חָשוּד וְלָא הַמּוֹצִיא מֵחֲבֵירוֹ עָלָיו הֶרְאִייָה. וּמָאן דָּמַר. חֱזְרָה שְׁבוּעָה לְבְעָלִין. מִמֵּה דַהוּא גַבְרָא חָשוּד וְלָא יִכִיל מִישִׁתְּבַע לִי קּוּם שָׁלֵם לִי.

⁷¹Rav Hoshaia said before Rebbi Immi in the name of the rabbis there: the oath returned to Sinai. Rebbi Joḥanan in the name of Rebbi Yannai: the oath returned to the parties. He who said, the oath returned to Sinai, it is as if there

was no testimony; the burden of proof is on the claimant⁷². He who said, the oath returned to the parties, since that man is suspect and cannot swear for me, get up and pay me⁷³.

- 71 Discussion of the statement of R. Yose in the Mishnah (whom practice has to follow in preference to R. Meïr.) Babli 47a.
- 72 If the parties are not able to swear, the special rules of the Mishnah cannot be applied and the suit has to be settled by the regular standards for civil suits.
- 73 This does not apply to the oaths which

are the topics of the present Chapter, where the claimant swears and collects, but to the biblical oaths of trustees who swear in order to be freed from payment (Mishnah 1). If such a trustee is barred from swearing, he has to pay. In fact, the opposing party has to swear to collect; cf. Halakhah 6:6, Note 88.

(fol. 37c) משנה הּ: וְהַהֶּנְוֶנָי עֵל פִּינְקָסוֹ בֵּיצֵד לֹא שֶׂיֹאמֵר לֹוֹ כָּתוּב עֵל פִּינְקָסִי שֶׁאֵתְּ חַיִּב לִי מָאתֵים זוּז אֶלָּא אָמֵר לוֹ תֵּן לְבְנִי סָאתִים חִמִּים וּלְפוֹעֲלִי בְּסֶלַע מָעוֹת הוּא אוֹמֵר נָתַתִּי. וְהַן אוֹמְלִין וְנוֹמְלִין. אָמַר בֶּן נַנָּס בֵּיצַד אֵילוּ וָאֵילּוּ בָאִין אוֹמְלִין שָׁבֹּא נָשַלְנוּ הוּא נִשְׁבָּע וְנוֹמֵל וְהַוֹּ נְשָׁבָּעין וְנוֹמְלִין. אָמַר בֶּן נַנָּס בֵּיצַד אֵילוּ וְאֵילּוּ בָאִין לְיִיִי שְׁבוּעָה:

Mishnah 5: The grocer on his account book, how? Not that he says to him, it is written in my account book that you owe me 200 denars⁷⁴, but he said to him, give my son two *se'ah* of wheat, or my worker small change for a tetradrachma⁷⁵. He says, I gave, but they say, we did not take. He swears and collects, and they swear and collect. Ben Nannas said, how? Both are induced to swear falsely⁷⁶! But he takes without an oath and they take without an oath⁷⁷.

- 74 If the trader claims that the customer received the merchandise but did not pay, he has to prove his claims in court according to local standards; there is no proviso for an oath in the proceedings.
- 75 Because most people are illiterate, there is no standard requirement for a receipt.
- 76 The formulation of the oaths is in the hands of the judges; they have to be careful

not to create a situation in which they are seen to cause perjury (cf. *Neziqin Bava Meşi'a* 1, Note 3.) Since the person who gave the instructions incurred a liability both with the grocer and the workers, both parties can collect since both offer to swear but under the circumstances cannot be allowed to.

77 This is the reading in all sources except for R. Nissim in his commentary to

Rif; his reading has to be considered an unjustified emendation. Practice has to

follow the anonymous Tanna.

(38a line 8) **הלכה ה**: וְהַחֶנְנְנִי עַל פִּינְקֶסוֹ כול'. חֶנְנְנָי עַל פִּינְקֶסוֹ לֹא בְמַקִּיף אֱמְרוּ. שֶׁהוּא אוֹמֵר לוֹ. כַּתַבְתַּ בָּזֶה מְחוֹק בָּזֶה.

Halakhah 5: "The grocer on his account book," etc. "Was 'the grocer on his account book' not said about one extending credit? For he can tell him, you wrote with this [hand], erase with the other [hand]".

78 Tosephta 6:4. In the absence of proofs, the customer can always claim that he paid his debt but the seller failed to update his books. The customer is not

required to preserve the receipt for his payment; the seller has to organize his accounts so that open accounts can be used as proof in court.

(38a line 10) רָבִּי אוֹמֶר. אוֹמֶר אָנִי שֵׁיָהוּ אֵילוּ נִשְׁבַּעִין בִּפְנֵי אֵילוּ מִפְנֵי הַבּוּשַׁה.

Rebbi says, I am saying that these have to swear in the presence of those because of the embarrassment.⁷⁹

79 Babli 47b. He takes care of Ben Nannas's objection by requiring both parties to swear in the presence of the other (and, in the Babli's version, in the presence also of

the person who has to pay). It can be expected that in this case the party not entitled to payment will not dare to swear falsely.

(38a line 11) הָדָא דְתֵּימֵר בְּשֶׁלֹּא הֶעֲמִידוֹ עִמוֹ. אֲבָל הֶעֲמִידוֹ עִמוֹ אֵין בַּעַל הַבַּיִת חַייָב כְּלוּם. כְּהָדָא דָמֵר רְבִּי יוּדָה בַּר שָׁלוֹם. סֲמְכוֹן כַּתָּבַייָא גַבֵּי קַבְּילַייָא. אֲתוֹן. וְאַבְּקוֹן דְּלָא יְהַב לְהוֹן. אֲתַא עוֹבְדָא קוֹמֵי רְבִּי שַׁמֵּי. מִמֶּה דְאִילוּ הֲווֹן קַבּילַייָא יֵימֵר מְסַבּוֹת לֵית סוֹפֵיהוֹן דְּאִילֵין אֲתָא עוֹבְדָא קוֹמֵי רְבִּי שַׁמֵּי. מִמֶּה דְאִילוּ הֲווֹן קַבּילַייָא יֵימֵר מְסַבּוֹת לֵית סוֹפֵיהוֹן דְּאִילֵין הְיִּאִילִין מֵיסָב אֵלֶא יִסְבּוֹן מִכְּבָר.

That is to say, only if he did not introduce them⁸⁰. But if he introduced them, the householder has no liability, following what Rebbi Jehudah bar Shalom said: One did introduce the porters to the food merchants⁸¹. They came, but they sent them away without giving them anything. The case came before Rebbi Shammai. Since if the food merchants had said that they took, would at the end not these and those collect? Therefore, they shall collect immediately⁸².

80 If the employer directs his employees to the grocer and separately instructs the grocer to give them merchandise on his behalf, he becomes liable to both parties. But if he instructs the grocer in the presence of his employees, he has discharged his duty towards his employees; his debt to the grocer is treated by the general rules of obligations.

81 Greek κάπηλος "(raw or cooked) food merchant; tavern keeper".

82 In the case of the Mishnah, the

merchants incur no risk since they have regress on the employer. But in the case here, the merchants admit that they did not deliver; the employees have the right to demand immediate payment. Since they were directed to the merchants and these agreed to the order, the merchants have immediately to deliver to the employees, who have no regress on their employer, but the merchants can later bill the employer and collect.

(fol. 37c) משנה וּ אָמַר לַחָבְעָנָי הֶן לִי בְדֵינָר פֵּירוֹת וְנָתַן לוֹ אָמַר לוֹ הֶן לִי הַדֵּינֶר אָמַר לוֹ הָן לִי הַדֵּינֶר אָמַר לוֹ הָן לִי אָת הַפֵּירוֹת נְתָתִיו לְךְּ וּנְתַתּוֹ בְאָנְפָלֵי יִישָּׁבַע בַּעֵל הַבָּיִת. נָתַן לוֹ אֶת הַדֵּינֶר אָמֵר לוֹ הֶן לִי אֶת הַפֵּירוֹת בְּיָדוֹ אָמַר לוֹ נְתַתִּים לְךְּ וְחוֹלַכְתָּן לְתוֹךְ בֵּיתֶךְ יִישֶּׁבַע הַחְנְעָנִי. רְבִּי יְחוּדָה אוֹמֵר כָּל שֶׁהַיפֵּרוֹת בְּיָדוֹ עֵל הַעֵּלִינָה.

Mishnah 6: He said to the grocer, give me produce for a denar; that one delivered and said, give me the denar. He said to him, I gave it to you and you put it into $anpal\overline{e}^{83}$: the householder has to swear⁸⁴. If he gave him the denar and said, give me the produce; he said to him I delivered them to you and you brought then to your house: the grocer has to swear. Rebbi Jehudah says, the one in possession of the produce is advantaged⁸⁵.

משנה זּ אָמַר לַשּוּלְחָנִי תֶּן לִי בְדֵינָר מָעוֹת וְנָתַן לוֹ אָמַר לוֹ תֶּן לִי אֶת הַדֵּינֶר אָמַר לוֹ נְתַתְּיוֹ לְּדָּ וּנְתַתִּיוֹ בְאָנְפָּלִי יִשְּׁבַע בַּעַל הַבָּיִת. נָתַן לוֹ אֶת הַדֵּינֶר אָמַר לוֹ תֶן לִי אֶת הַמָּעוֹת אָין דְּרָדְּ אָמַר לוֹ נְתַתִּים לְךְּ וְהִשְּׁלַכְתָּם לְתוֹךְ כִּיּטֶךְ יִישָּבַע הַשּוּלְחָנִי. רְבִּי יְהוּדָה אוֹמֵר אֵין דֶּרֶךְ אָמַר לוֹ נְתַתִּים לְךְ וְהִשְּׁלַכְתָּם לְתוֹךְ כִּיטֶךְ יִישָּׁבַע הַשּוּלְחָנִי לִיתֵן אִיפֵר עָד שֻׁיָּמוֹל אֵת הַדִּינָרִין:

Mishnah 7: He said to the money changer, give me *oboloi* for a *denar*; that one delivered and said, give me the *denar*. He said to him, I gave it to you and you put it into *anpale*: the householder has to swear. If he gave him the *denar* and said, give me the *oboloi*; he said to him I delivered them to you and you threw them into you wallet: the money changer has to swear. Rebbi

Jehudah says, it is not the practice of money changers to give an *as* before he took the *denarii*⁸⁶.

83 According to Rashi "a wallet for coins." No etymology for this word has been given. At other occurrences in the Talmudim, the word seems to stand for ἐμπίλιον, *impilia* "felt socks." This meaning is inappropriate here. A better explanation is ἀμφελόνη "garment, throw-around" (E. G.) or one might read with the Tosephta (6:4) κιστός [χιτωνίσχος] "a short sleeved outer garment."

84 The simple statement, "I gave it to you," is insufficient. The manner of

delivery must be described.

85 Since both parties agree that the transaction was not on credit, in his opinion the buyer does not have to swear since in his place cash transactions always implied delivery after payment. If the grocer claimed that the transaction did not follow the norm, the full burden of proof is on him as claimant.

86 This is the same argument as in the preceding Mishnah. The money changer will not give out even an *as*, a quarter (or fifth) of an *obolos*, without first being paid.

משנה הי בְּשֵׁם שֶׁאֲמֶרוּ הַפּוֹנֶמֶת בְּתוּבֶּתָה לֹא תִיפָּרַע אֶלָּא בִשְׁבוּעָה. וְעֵד אֶהָד מְעִידָה שֶׁהִיא בְּרוּעָה לֹא תִיפָּרַע אֶלָּא בִשְׁבוּעָה. מִנְּכָסִים מְשׁוּעְבָּדִים וֹמִנְּכְסֵי יְתוֹמִין לֹא תִיפָּרַע אֶלָּא בִשְׁבוּעָה. וְהַנִּפְרַעַת שֵׁלֹא בָפָנָיו לֹא תִיפָּרַע אֶלָּא בִשְׁבוּעָה.

Mishnah 8: ⁸⁷If she had compromised her *ketubah*, she shall not be able to collect without an oath. If one witness testifies that [the *ketubah*] was paid, she shall not be able to collect without an oath. From encumbered property, or from orphans' property, she shall not be able to collect without an oath. If she collects in his absence, she shall not be able to collect without an oath.

87 This is Mishnah Ketubot 9:7. explained there in Notes 159-163. The ketubah (the marriage contract intended to provide financial support for the woman if the marriage is dissolved by divorce or the husband's death) is compromised if not the full amount is due since the wife has signed a receipt for partial payment. The testimony of a single witness can be contradicted by an oath of the opposing party by biblical rule.

If the *ketubah* has to be paid by the heirs from the estate, the estate is diminished; one requires the widow to swear that the entire amount is due her. The same holds if the rights of a mortgage holder whose claim is posterior to the lien created by the *ketubah* are diminished by the payment, or if a divorcee claims payment from the property of her absentee former husband.

(38a line 15**) הלכה וּ**: אָמַר לֶחֶנְוּנִי תֶּן לִי בְדֵינָר פֵּירוֹת כול'. רְבִּי חֲנִינָא אָמַר. בְּמַחֲלוֹקֶת. אָמַר רְבִּי יוּדָה. אֵימָתֵי. בִּזְּמַן שֶׁהֶיְתָה הַקּוּפָּה מוּנַחַת בֵּין שְׁנֵיהֶן. אֲבָל אִם הֵיְתָה יוֹצְאָה מִתַּחַת יְדֵי אֵחַד מַהָן.

Ha;lakhah 6: "He said to the grocer, give me produce for a *denar*;" etc. Rebbi Ḥanina said, it is to be differentiated: "Rebbi Jehudah said, when? If the container was lying between them. But if it was in the possession of one of them . . . 88"

The statement of R. Jehudah in 88 Mishnah 6 is not a statement flatly denying the opinion of the anonymous Tanna in the first case, but it has to be read in the light of a text close to Tosephta 6:4: "Rebbi Jehudah said, when has this been said? At a time when the container was lying (in houses) [between them], but if it was in the possession of either of them, the burden of proof is on the claimant." incomprehensible text in parentheses is from the Erfurt ms. (Zuckermandel), the text in brackets from the editio princeps. A similar text is quoted in the Babli, 48a. different explanations of the text are offered by the commentary Sifte Cohen (Šulhan Arukh Hošen Mišpat 91:1, Note 33) in more than 4 folio pages. Rashi does not comment on the text; the author of Šulhan Arukh follows Maimonides who explains the

expression "at a time when the container was lying between them" to mean that the transaction occurred in the public domain. If the container full of produce was in a private domain, the owner of that domain is in possession and there can be no oath; any claimant will have to produce proof according to the regular standards of civil Sifte Cohen disagrees with this explanation since he reads בַּמְחַלוֹקַת as "in dispute"; meaning that R. Jehudah disagrees with the anonymous Tanna. But this is the simple meaning of the Mishnah; if R. Hanina notes that the statement of R. Jehudah has to be interpreted following the Tosephta, he clearly states that the text has to be read as an explanation of the opinion of the anonymous Tanna as given in the translation.

עוֹד הָיא בַּמַּחֲלוֹקֶת. הָדָא דַּתָּ מַר בָּאַכְסְנַאי. אֲבָל בְּבֶן עִיר דַּרְכּוֹ לִיתֵן אִיסָּר עַד (38a line 18) שׁלֹא יטוֹל דּינרוֹ. שׁלֹא יטוֹל דּינרוֹ.

Also this⁸⁹ needs to be differentiated. It is said about a stranger⁹⁰. But to a fellow town dweller he will give an *as* before he takes his *denar*⁹¹.

89 Also in Mishnah 7 does R. Jehudah point out a case where the anonymous Tanna will not follow the rules of his own Mishnah

- 90 Greek ξένος.
- 91 With people known to him the money-changer will not refrain from deals involving credit.

(38a line 19) אָמַר רְבִּי זֵירָא. כּוּלְהוֹן כְּעֵין שְׁבוּעַת תּוֹרָה יֶרְדוּ לָהֶן. וּכְתוּבַּת אִשְּׁה לֹא הוּחְזְּקָה בְּיָדָה לְהַגְּבוֹת. אֶלֶּא כְמִי שֻׁנֶּבַת מִיבֶּן וָהֵילְדְּ. וְהוּא בְתוֹּבְעָה שְׁטֶר שֶׁלְמָאתַיִם פָּרוּע וְאוֹמֶלֶרת. אֵינָה אֶלֶא מְנָה. נִפְרַעַת בְּלֹא שְׁבוּעָה. תַּמָן תַּנִּינֶן הַפּוֹגֶמֶת כְּתוּבְּתָה לֹא תִיפָּרַע אֶלֶּא בִשְׁבוּעָה. בַּיִּצְד. הַיְּתָה כְתוּבָּתָה אָלֶף זוּז וְאָמֵר לָה. הִתְקַבַּלְתְּ כְּתוּבָּתִידְּ. וְהִיא אוֹמֶלֶרת. לֹא הִתְּקַבַּלְתִּי אֶלָא מְנָה. לֹא תִיפָּרַע אֶלֶא בִשְׁבוּעָה. תְּנֵי. הַפּוֹנֶמֶת וְלֹא הַפּוֹחֶתֶת. רַב חִסְדָּא בָעֵי. בְּגִין דְּהָלֹדְּ אֶלֶא מְנָה. לֹא תִיפָּרַע אֶלֶא בִּשְׁבוּעָה. תְּנֵי. הַפוֹנֶמֶת וְלֹא הַפּוֹחֶתָת. רַב חִסְדָּא בָעֵי. בְּגִין דְּהָלֹדְ מָּרַתְּיִן בְּסִיעַתָּא הוֹא. מִפְּנֵי שָׁפָּנָמוֹ בְּבֵית דִין אָתַ מַר. אֵינוֹ גוֹבָה.

Rebbui Ze`ira said, this came down in the manner of biblical oaths. And a woman's *ketubah* is not from the start in her hand for collection, but only for collection from now on and in the future. Since she claims a document about 200 paid and she says, it is only one *mina*, she collects without oath⁹².

There, we have stated⁹³: "If she had compromised her *ketubah*, she shall not be able to collect without an oath. How is this? If her *ketubah* was a thousand *denars* and he says to her, you received your *ketubah*, but she says, I received only one *mina*, she cannot collect without an oath." It was stated, one who had compromised, not one who had diminished⁹⁴.

⁹⁵Rav Ḥisda said, because he went two steps . . . Because he compromised it in court you say, he cannot collect?

92 This paragraph refers to Mishnah 8 and is a reworking of one in *Ketubot* 9:7, Note 166, in a number of details opposing the opinions given there.

As explained in Note 87, the oath of a woman who wants to collect her *ketubah* when a single witness asserts that it already was paid is biblical. R. Ze'ira notes that the oaths required in the other cases are formulated on the model of that oath.

The rules for collecting a *ketubah* are not identical with the rules for enforcing an IOU since it may be assumed that a woman does not marry in order to be divorced or become widowed; if she is widowed she may prefer not to claim the *ketubah* but to be permanently supported by the heirs. This means that the woman acquires the *ketubah* not with the intent of presenting it for

collection. The *ketubah* becomes an enforceable claim only by the owner presenting it for collection.

In *Ketubot*, it is stated that if the *ketubah* is presented with an attached receipt, and the woman claims that the receipt is only for half of the amount and the other half is still due her, this is a compromised *ketubah* and she may collect only by swearing to the validity of her claim. But here she presents a *ketubah* for the standard 200 *denars* but declares that she only claims 100 *denars* (a *mina*); therefore she collects without an oath. This is not a compromised but a diminished *ketubah* (Note 94).

93 Mishnah Ketubot 9:9.

94 Ketubot 9:7 Note 167, Sanhedrin 8:6 Note 69: Babli Ketubot 87b.

95 This is a fragment from *Ketubot* 9:7 (Note 185) *Sanhedrin* 8:6 (Note 72): "Rav Hisda asked: Because he walked two steps, does he lose? If he compromised it outside the court, he collects. Because he

compromised it in court, he cannot collect?" It refers to a statement by R. Abin (or Ba) not quoted here and not related to the topics of the Mishnah.

(fol. 370) משנה טּי וְכֵן הַיְתוֹמִים לֹא יִפֶּרְעוֹ אֶלָּא בִשְׁבוֹעָה שְׁבוּעָה שֶׁלֹא פִיקְדְנוּ אַבּא וְלֹא אָפָּא וְשֶׁלֹא מָצִינוּ בֵּין שְׁטָרוֹתִיו שֶׁל אַבָּא שֻׁשְׁטָר זֶה פָּרוּעַ. הַעִיד רְבִּי יוֹחָנָן בֶּן אָמֵר לְנוּ אַבָּא וְשֶׁלֹּא מָצִינוּ בֵּין שְׁטָרוֹתִיו שֶׁל אַבָּא שֻׁשְׁטָר זֶה בָּיִלוּ נוֹלֵד הַבֵּן לְאַחַר מִיתַת הָאָב הָרֵי זֶה נִשְׁבָּע וְנוֹטֵל. אָמַר רַבָּן שִׁמְעוֹן בֶּן בַּלְיאֵל אָם רֵשׁ עֵדִים שֶׁאָמֵר הָאָב בִּשְׁעַת מִיתָה שְׁטָר זֶה אֵינוֹ פָּרוּעַ הוּא נוֹמֵל שֶׁלֹא בָּשְׁבוּעה:

Mishnah 9: Similarly, the orphans can collect only by an oath; "an oath that our father did not instruct us⁹⁶, our father did not tell us⁹⁷, and we found nothing in our father's documents⁹⁸ that this note of indebtedness was paid." Rebbi Johanan ben Beroqa testified⁹⁹ that even if the son was born after the father's death he swears and collects. Rabban Simeon ben Gamliel said, if there are witnesses that the father said on his death bed that this note of indebtedness was not paid, he collects without oath.

- 96 On his death bed.
- 97 Before this time.
- 98 No receipt was found.
- 99 All statements of testimony in the Mishnah are practice. In the known Babli

mss., the formulation is an noncommittal "said" instead of "testified." But since the Yerushalmi version is also that of Rif and Rosh, it must have been the Babli version of their texts.

(38a line 27) **הלכה ט**: וְכֵן הַיְּתוֹמִים לֹא יִפֶּרְעוּ אֶלֶא בִּשְׁבוּעָה כול'. רְבִּי יוּחָנֶן בְשָׁם רְבִּי יַנֵּאי. אֵין נִפְּרָעִין מִנִּיכְסֵי יְתוֹמִין קְּטַנִּים אֶלֶא בְשֶׁרִיבִּית אוֹכֶלֶת בּוֹ. רְבִּי נָתָן אוֹמֵר. אַף לְכְתוּבַּת אִשֶּׁה. אֵין נִפְּרָעִין מִנִּיכְסִי יְתוֹמִין קְּטַנִּים אֶלֶא בְשֶׁרִיבִּית אוֹכֶלֶת בּוֹ. רְבִּי נָתָן אוֹמֵר. רַבִּי שִׁמְעוֹן. דְּרְבִּי שִׁמְעוֹן אָמֶר. בְּנְקִיבָה הַדְּבָּר תָּלוּי. מַאִי כְדוֹן. מִשׁוּם חֵינָא. כְּדֵי שִׁיְּהוּ קּוֹפְצִין עָלֶיהָ לִישְּׂאֶנָה. רְבִּי יְּמָר רָבִּי יֹּחֵי. אַף נָן תַּנִינֶן תַּרְתִּיהוֹן. לְגָזִילָה מַהָּכָא. אִם הָיָה דְּבָּר שָׁעְּשׁ בּוֹ אַחַרְיוֹת חַייָב לְשַׁלֶּם. לְנְזְקִין מַהָּכָא. אֵין נִפְּרָעִין מִנִּיכְסִי יְתוֹמִין קְטַנִּים לְנְזִקִין אֶלָּא מִזְּבּוּרִית. וְהָתַנֵּית וְפְלֵּא מִזְּבּוּרִית. וְהָתַנֵּי בְּעָלו מִנְּכְּסֵי יְתוֹמִין קְּטַנִּים לְנְזְקִין אֶלָא מִזְּבּוּרִית. וְהָתַנֵּית. וְמָנִיךְ מִנְּרְעִין מִנְּכְּסֵי יְתוֹמִין קְּטַנִּים לְנְזִקִין אֶלָּא מִזְּבּוּרִית. וְהָתַנֵּי. אַשְׁר רְבִּי יוֹמִי הָבַעֵל חוֹב בְּבֵינוֹנִית וּכְתוּבַת אִשָּׁה בְּזִיבּוּרִת. אָמָר רְבִּי יֹתִכֹּל בְּתִדְא דִּינִתְנִית. אָּמִין לְהָן בְּעִידִית וּבַעֵל חוֹב בְּבֵינוֹנִית וּכְתוּבַּת אִשְּה בְּזִיבּרִית. אָמֵר רְבִּי יוֹמֵיל. בָּילְ בְּיִבְיּים הָבְּיִרִית. הָכֹל בְּבָּל חוֹב בְּבֵעל חוֹב בְּבֵינוֹנִית וּכְתִנְבָּת הִפּּרְרִית. מִנְנִתְר. דְּבֵּרְי הָכֹל בְּבָּל חוֹב בְּבֵעל חוֹב בְּבִינוֹנִית וּכְתִּבּת בְּיִבְירִוּ הַכֹּל בְּבָּי הָהֹכֹל בְּחָדְא דִּיתֵרָים.

HALAKHAH 9 205

Halakhah 9: "Similarly, the orphans can collect only by an oath;" etc.

100 Rebbi Johanan in the name of Rebbi Yannai: One pays from an orphan's property only if interest is due; Rebbi Nathan says, also a woman's *ketubah*

101 Rebbi Mana said, because of her sustenance. Rebbi Mattania said, who is worried about sustenance? Rebbi Simeon! Since Rebbi Simeon said, all depends on the female
102 What about it? For attraction
103, that everybody should jump to marry her. Rebbi Nathan said, also for robbery and torts. Rebbi Yose said, we stated both of these. Robbery from the following: "If it was mortgageable, he has to pay.
104" For torts from the following: "One pays from minor orphans' property only from the least valuable.
105" So is the Mishnah: One pays for torts from minor orphans' property only from the least valuable. But was it not stated, the son shall stand in the father's place; one estimates torts from the most valuable land, creditors from average quality, and a woman's *ketubah* from the least valuable? Rebbi Yose ben Rebbi Abun said, explain it as everybody's opinion about testamentary dispositions
105.

הָכָא אַתָּ מַר. אֵין נִשְׁבָּעִין עַל טַעַנַת חֵרשׁ שׁוֹטֶה וְקָטֶן. וְהָכָא אַתָּ מַר. אֲבָל נִשְׁבָּעִין לַקָּטֶן וְלַהֶקְדֵּשׁ. בְּנִפְּרָעִין מִנִּיכְסֵי קָטֶן. וְנִבְּרָעִין מֵאָדָם שֶׁלֹא בְפָנָיו. אָמַר רִבִּי יִרְמְיָה. תִּיפְתָּר בְּשֵׁרִיבִּית אוֹכֵלֶת בּוֹ. וּבֵית דִּין גּוֹבִין רִיבִּית. תִּיפְתַּר בְּעָרֵב לוֹ מִגּוֹי.

Here you say, "one does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor." But there you say, "one swears for a minor and the Temple. 107" If one pays from the minor's property. 108 But can one collect from a person in his absence? Rebbi Jeremiah said, explain it about a contract for which interest is due. Would the court collect interest? Explain it that it was guaranteed for a Gentile 109.

לֶיכְסָה אָמַר קּוֹמֵי רְבִּי מָנָא. אֲנָן עֲבְדִין טָבוֹת סַגִּין מִינְכוֹן. אֲנָן מְשַׁלְּחִין דְּיָאטַיגְּמָטִּן. אָנן אֲתַא הָא טַבּוֹת. וְאִין לֶא אֲתַא מַחְלְטִין נִּכְסוֹי. אֲמַר לֵיהּ. אוֹף אֲנֶן עֲבְדִין כֵּן. מַכְרְזִינֶן לֹ" אִין אֲתַא טַבּוֹת. וְאִילָא מַחְלְטִינֶן נִּכְסוֹי. אֲמַר לֵיהּ. הַגַּע עַצְמָדְ דַּהַוָּה בְּזָווִי רְחִיקֵי. אֲמַר יוֹמִין. אִין אֲתַא טַבּוֹת. וְאִילָא מַחְלְטִינֶן נִכְסוֹי. אֲמֵר לֵיהּ. אֲנֶן מְשַׁלְּחִין ג' אִיגְרוֹת. חָדָא גַּו ל' יוֹמִין. וְחָדָא גַּו ל' יוֹמִין. וְחָדָא גַּו ל' יוֹמִין. וְאִילָא מַחְלִטִינֶן נִכְסוֹי. אָמֵר רְבִּי חֲנִינָה. וְשֶׁעָמֵד בַּדִּין וּבָרַח. אֲבָל אִם לֹא עָמַד בַּדִּין לֹא טֵבּוֹת. וְאִילָא מַכְּרְזִינֵן.

¹¹⁰Alexis said before Rebbi Mana: We act much better than you do. We send edicts¹¹¹. If he comes, it is good. If he does not come, we irrevocably give away his properties. He answered him, we also act in this way; we have

the heralds announce for thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. He said to him, think of it, if he was in a distant place. He said to him, we send three letters¹¹², one after thirty days, one after the next thirty days, and one after the next thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. Rebbi Ḥanina said, that is, if he was present at the trial and then fled. But if he was not present at the trial, we cannot irrevocably give away (nor)¹¹³ announce.

אַשְׁכָּחַ תִּימֵר. חָנֶן וְרְבִּי שִׁמְעוֹן שְׁנֵיהֶן אֲמְרוּ דָבָר אֶחָד. הֵידְ מַה דְתִימַר. הַלָּכָה כְחָנֶן. וְדְכַווַתַהַּ הַלָּכָה כִּרְבִּי שִׁמְעוֹן.

¹¹⁴You find that one may say that Ḥanan and Rebbi Simeon said the same thing ¹¹⁵. Just as you say that practice follows Ḥanan, so practice follows Rebbi Simeon.

100 The entire Halakhah is from *Ketubot* Chapter 9. The first paragraph is from 9:8, Notes 185-197 (and *Gittin* 5:3 Note 52.).

101 Babli Arakhin 22a.

102 The text in *Ketubot* and *Gittin* reads: "on the collection," i. e., on the woman's decision whether to ask for payment of the *ketubah* or for upkeep (lodging, food, and clothing) from the estate.

103 Babli Ketubot 84a.

104 Mishnah Bava gamma 10:1.

105 Mishnah Gittin 5:3.

106 In the other two sources correctly: "R. Yose ben R. Abun said, here about an adult orphan, there about an underage orphan." The sentence here intruded from Halakhah 10 where it belongs. The word used here is Greek, διαθήκη "written will". Cf Mishnah Bava meşi a 1:7.

107 Both quotes are from Mishnah 6:6.

108 From here on the text is in *Ketubot* 9:9-10. Notes 201-204.

109 Quoted in Tosaphot *Gittin* 50b *s.v.* יתומין.

110 Ketubot 9:9-10, Notes 205-212.

111 Greek διατάγματα.

112 Quoted in Tosaphot *Ketubot* 88a, s. v. ורבא.

113 One has to read with *Ketubot* "but only". This reading is confirmed by a Geonic responsum (S. Assaf, *Responsa Geonica*, Jerusalem 1942, p. 103) which declares the statement to represent (Babylonian) general practice.

114 A shortened version of *Ketubot* 9: 9-10, Notes 213-216.

115 Ketubot 88b.

(601. 37c) משנה יּ וְאֵילּוּ נִשְּבָּעִין שֶׁלֹּא בְטַעֲנָה הַשּוּתָפִין וְהָאֲרִיסִין וְהָאֶפִּיטְרוֹפִּין וְהָאָשָּה הַנוֹשְׁאָה וְנוֹתֶנֶת בְּתוֹדְ הַבַּיִת וּבָן הַבָּיִת. אָמֵר לוֹ מָה אַתָּה מוֹעֲנֵינִי רְצוֹנִי שֶׁתִּישָּׁבַע לִי חַיֶּב. הַנּוֹשְׁאָה וְנוֹתֶנֶת בְּתוֹדְ הַבַּיִת וּבָן הַבָּיתוֹ. נְתְנַּלְּגְּיָה לוֹ שְׁבוּעֲה מִשְּׁמְוֹם אַחֵר מְנַלְּגְּלִין עֵלָיו הָקְבִּי הַשְׁבִּיעִית מְשַׁמֶּטֶת אֶת הַשְּׁבוּעָה:

Mishnah 10: The following have to swear without a claim: Partners¹¹⁶, and sharecroppers¹¹⁷, and trustees¹¹⁸, and a wife trading in the house¹¹⁹, and a family member¹²⁰. If he says, what do you claim from me? "I want you to swear to me," he is liable¹²¹. After partners or sharecroppers distributed, he cannot force them to swear. If an oath was rolled over to him for another cause, one may roll everything over to him¹²². The Sabbatical year remits an oath¹²³.

116 If a partnership is dissolved, each partner has to swear that he did not retain any common property.

117 The owner may ask the sharecropper to swear that he delivered the entire crop to the landlord who then will return his share to him

118 Greek ἐπίτροπος. He administers the estate of another person and at the end of his tenure has to swear that he did not illegally take anything for himself.

119 If the husband gives her capital which she uses for trade, he is entitled to the entire gain and can demand that his wife swear that she did not retain anything of the net gain.

120 One of the brothers who acts as managing trustee for an undistributed inheritance. If the inheritance is distributed, he has to swear that he did not illegally take anything for himself.

121 The person obligated to swear cannot ask the person demanding the oath whether

he suspects him of any dishonesty.

122 Note 43, cf. *Sotah* 2:6, Notes 166-168. If a person is required to swear, the one demanding the oath can add to the text of the oath any claim he might have against the person swearing even if totally unrelated to the matter before the court and for which he could not force a separate oath.

A precondition for rollover, which is a biblical rule, is that the original oath must be by biblical standards; a purely rabbinic oath cannot be extended. This implies that the oath required by the Mishnah is considered biblical since the person acting for others in money matters automatically agrees that he is responsible and thereby fulfills the requirement of partial admission (Mishnah 6:1).

123 Since the Sabbatical remits debts (Mishnah Ševi`it 10:1), the creditor cannot after the Sabbatical year ask for any oath regarding the remitted debt (Tosephta Ševi`it 8:6).

(38a line 53) **הלכה י**ּ וְאֵילּוּ נִשְׁבָּעִין שָׁלֹּא בְטַעֲנָה כול'. רַב אָמַר. מֵת הַלֹּוֶה הַמַּלְוֶה נִשְׁבָּע לְיוֹרְשִׁיוּ. וַאֲפִילוּ מֵת הַמַּלְוֶה יוֹרְשֵׁי מַלְוֶה נִשְׁבָּעִין לְלוֹוֶה. אֲבָל אִם מֵת לֹוֶה תְחִילָּה וְאַחֵר כָּדְ הַמַּלְוֶה כְּבָר נִתְחַייָב הַמַּלְוֶה לִבְנִי לֹוֶה שְׁבוּעָה וְאֵין אָדָם מוֹרִישׁ שְׁבוּעָתוֹ לְבָנָיוּ. שָׁמַע רְבִּי יוֹחָנֶן וְאַמַר. יֹאַכָל הַלָּה וַחַדְי.

Halakhah 10: Rav said, if the debtor died, the creditor swears to his heirs. Even if the creditor died, the creditor's heirs swear to the debtor. But if the debtor died first and after him the creditor, the creditor already was obligated for an oath to the debtor's sons and nobody makes his sons inherit his oath¹²⁴. Rebbi Johanan heard and said, should that one eat and enjoy it¹²⁵?

124 Babli 48a. Since the sons cannot inherit the father's oath they cannot swear and the borrower's estate does not have to pay.

125 Since there is little doubt that there

was a loan, the creditor's sons can swear the orphans' oath (Mishnah 9), which is not the father's oath, and collect on basis of that oath. In the Babli, this opinion is ascribed to R. Eleazar.

ַרַב חִייָה בַּר אַשִּׁי בְשָׁם רַב. שְׁטָר הַיּוֹצֵא מִתַּחַת יְדֵי הַמֵּלְוֶה בִּּלְתֵב יָדוֹ פָּסוּל. אֲנִי אוֹמֵר. מְתְעַפֵּק הָיִיתָ בִשְׁטָרוֹתֶיךְ. הָא מִתַּחַת יְדֵי אַחֵר כָּשֵׁר. רְבִּי אַבִּינָּא בְשָׁם שְׁמוּאֵל. לְעוֹלֶם פָּסוּל עַד שְׁיֵצֵא מִידֵי הַמַּלְוֶה בִּלְתַכ יְדֵי לֹֹנֶה. מַאי כְדוֹן. אָמֵר רְבִּי יוֹסֵי בִּירְבִּי בּוּן. תִּיפְתָּר דְּבְרֵי הַכֹּל בְּדִיתְתִיקִי.
בְּדִיתָתִיקִי.

¹²⁶Rav Hiyya bar Ashi in the name of Rav: A document ¹²⁷ produced by the creditor in the creditor's handwriting is invalid, for I am saying that he has practiced writing documents. This implies that in the hand of another it would be valid. Rebbi Abinna in the name of Samuel: It is always invalid unless it be in the creditors's possession but in the debtor's handwriting ¹²⁸. What about this? Rebbi Yose ben Rebbi Bun said, explain it according to everybody about a testamentary gift ¹²⁹.

126 This is a shortened version of a paragraph in *Bava meşi`a* 1:8 (Notes 113-115); two different name traditions are reported in *Sefer Ha`iţtur* 1, 41b (Notes 49-51).

127 A term derived from Accadic šaṭaru "to write", usually used for documents of

indebtedness. The statement is in the Babli, *Bava mesi* 'a 20b.

128 A document not signed by outside witnesses.

129 A codicil in the testator's handwriting attached to a will always is valid.

(38a line 61) אָמַר רְבִּי יוּסֵי. הָדָא אָמָרָה בְּנוֹשֵׁא וְנוֹתֵן שְׁלֹא בְחֶשְׁבּוֹן. אֲכָל בְּחֶשְׁבּוֹן לֹא בְדָא. אָמָר רְבִּי זִירָא רְבִּי זִירָא דְרְבִּי יוֹסֵי. חַד בַּר נַשׁ אֲזַל וְאָהֵן בֶּן בַּיִת עוֹד הוּא בְּנוֹשֵׁא וְנוֹתֵן שְׁלֹא בְחֶשְׁבּוֹן. רְבִי זֵירָא רְרְבִּי יוֹסֵי. חַד בַּר נַשׁ אֲזַל לְמֵידְן קַבֵּי רְבִי זִירָא וְחִייְבוֹ שְׁבוּעָה עַל תְּבִין דִּינֶרין. אֲמֵר לֵיה. לְהוֹ דִּינֶרין אֲנִי חַייָב לְדְּ אוֹ הָב לֵיה כָּל־דִּתְבַע לְדְּ אוֹ הַב לֵיה כָּל־דְּתְבַע לְדְּ אוֹ אֵמֵר רְבִּי יוֹחָנָן. עַד כְּדִי שִׁיּאמֵר לוֹ. עַדְדִּי אִשְׁיּאמֵר לוֹ. עַדְדִי אַשְׁיּאמֵר לוֹ. עַדְדִי אַשְּׁתְּב. הַגַּע עַצְבְּרִי וְכָי זֵשׁ עָבֶד בּזְמֵן הַזֶּה. הַגַּע עַצְבְּרְי שְׁלָיו. הָגַע עַצְבְרִי וְכִי זַשׁ אָבָרי. וְכִי זֵשׁ עָבֶד בּזְמֵן הַזֶּה.

Rebbi Yose¹³⁰ said, this means if he trades without account; it does not apply if there are accounts. Also the family member trades without accounts¹³¹.

Rebbi Ze'ira agrees with Rebbi Yose¹³². A man came for judgment before Rebbi Ze'ira who required him to swear for two *denars*¹³³. He told him¹³⁴, do I not owe you two *denars*? Here they are thrown to you. He¹³⁴ answered him, and cloth of fine wool X and Y. Rebbi Ze'ira said, either you give him everything he claims from you or you swear to him everything which he rolls over to you¹²².

How far does one roll over? Rebbi Johanan said, until he say to him, you are my slave¹³⁵. Think of it, could he be Cohen and Hebrew slave¹³⁶? Is there such a slave today¹³⁷?

130 In *Sefer Ha`ittur* 1, 43a (Note 81): R. Yose bar Bun.

131 If there is a regular account book which lists all transactions, the person trading can open his book for inspection instead of swearing, and therefore avoid the impression that he admits part of the claim. This rule is not in the Babli, nor in Rif or Maimonides.

132 This does not refer to the preceding paragraph; the third generation R. Ze'ira cannot be said to be dependent on the fifth generation R. Yose or R. Yose ben R. Bun. The reference is to a statement in *Bava meși* 'a 3:1 Note 20, that it is the free choice of a person to swear or to pay up and that a person willing to swear is free to change his

opinion if too many other items are added to the oath.

133 A very minor sum.

134 The opposing party in the suit.

135 Babli Oiddušin 28a.

136 Since a Hebrew slave may have his earlobe pierced if he refuses to leave his state of servitude (*Ex.* 21:6) but a Cohen with a pieced earlobe is barred from service in the Temple; no court could tolerate that a Cohen would be sold as a Hebrew slave.

137 Since the institution of Hebrew slavery was intrinsically intertwined with that of the Jubilee, it was abolished with the Babylonian captivity never to be reinstituted (cf. Introduction to Tractate *Qiddušin* p. 3).

(69) אָמַר רְבִּי שְׁמִּראֵל בַּר רַב יִצְחָק. שְׁמָרָהּ. דְּלֹא כֵן מַה נֶן אֲמְרוּן. שְׁמָרָהּ. לֹא בָטְלֵיהּ. הָא בָּעְל בַּעָל. מַה בַּעַל שֶׁנֶּאֱמֵר לְהַלֶּן מֵשְׁמִיט אַף כָּאן מֵשְׁמִיט. דְּבָרִים שֶׁהַן מַשַּׁה יָדֹּו שְׁבִיעִית מְשַׁמְּטְתוֹ לֹא אוֹתוֹ וְלֹא שְׁבוּעָתוֹ. כָּל־שֶׁשְּׁבִיעִית מְשַׁמְּטָתוֹ לֹא אוֹתוֹ וְלֹא שְׁבוּעָתוֹ. כָּל־שֶׁשְּׁבִיעִית מְשַׁמְּטָתוֹ אֵינָהְ מְשַׁמֶּטֶת שְׁבוּעָתוֹ. וְכָל־שָׁאֵין שְׁבִיעִית מְשַׁמְּטָתוֹ אֵינָהְ מְשַׁמֶּטֶת שְׁבוּעָתוֹ.

Rebbi Samuel ben Rav Isaac said, watch it for it is otherwise¹³⁸. What do we say? Watch it, for it is not negligible. "Owner," "owner.¹³⁹" Since the owner mentioned there is subject to annulment, so also here he is subject to annulment¹⁴⁰. The Sabbatical annuls things which are his hand's loans¹⁴¹ and annuls the corresponding oaths; the Sabbatical does not annul things which are not his hand's loans, nor does it annul the corresponding oaths. "For anything which the Sabbatical annuls it annuls the corresponding oath; anything which the Sabbatical does not annul it does not annul the corresponding oath¹⁴²."

138 From the arrangement of the Mishnah one gets the impression that partner, sharecropper, trustee, etc., are freed from their oath in the Sabbatical year. But the Sabbatical eliminates only oaths referring to loans which are actually annulled in it.
139 In Ex. 24:14 anybody having a law suit is called יבַּעל; in the laws of annulment of debts (Deut. 15:2) the creditor is called בַּעַל This sets up the argument of "equal cut" indicating that the person going to court is one subject to the laws of the Sabbatical.

cannot go to court to collect the debt, neither can he go to court to have an oath imposed on the debtor. (Explanation of the commentary *To'afot Re'em*, R. Abraham Abba Schiff, to *Sefer Yere'im* §164 Note 17). The Babli 49a has a different interpretation of *Deut*. 15:2.

141 The expression used in *Deut.* 15:2. 142 Tosephta *Śevi`it* 8:6. There is no redundancy here. The preceding sentence was the argument, the last sentence is the

tannaitic formulation.