שבועות שתים פרק שלישי

(fol. 34a) משנה אּ: שְׁבוּעוֹת שְׁתַּיִם שֶׁהֵן אַרְבַּע שְׁבוּעָה שֶׁאוֹכֵל וְשֶׁלֹא אוֹכַל שֻׁאָכַלְתִּי וְשֶׁלֹא אַכַלְתִי שְׁבוּעוֹת שֶׁלֹא אוֹכַל וְאָכַל כָּל־שֶׁהוּא חַייֶב דְּבְרִי רְבִּי עֲקִיבָה. אֱמְרוּ לוֹ לְרְבִּי עֲקִיבָה אֲכַלְתִי. שְׁבוּעָה שֶׁלֹא אוֹכַל כָּל־שֶׁהוּא שֶׁהוּא חַייֶב שֶׁזֶּה חַייֶב. אָמֵר לָהָן אֵיכָן מְצִינוּ בְּּמְדַבֵּר וּמֵבִיא קַרְבָּן. שְׁבוּעָה שֶׁלֹא אוֹכַל וְשֶׁתָה אֵינוֹ חַייֵב אֶּלָּא אָחָת. שָׁלֹא אוֹכַל וְשֶׁתָה אֵינוֹ חַייֵב אֶּלָּא אָחָת. שָׁלֹא אוֹכַל וְשֶׁתָה וְאֵכָל וְשָׁתָה חַיִיֵב שְׁתָּהִם:

Mishnah 1: There are two kinds of oaths¹ which are four kinds: An oath that I shall eat, or that I shall not eat; that I ate, or that I did not eat. An oath that I shall not eat, when he ate the most minute amount, he is liable, the words of Rebbi Aqiba. They said to Rebbi Aqiba, where do we find that one who eats the most minute amount should be liable, that this one be liable²? He told them, where do we find that a person talks and has to bring a sacrifice; but this one talks and has to bring a sacrifice³!

An oath that I shall not eat, when he ate and drank⁴ he is liable only for one. An oath that I shall not eat or drink, when he ate and drank he is liable for two.

- 1 Mishnah 1:1. This Chapter treats "blurted oaths" (*Lev.* 5:4) where a person makes an oath that he shall do or not do certain things, which do not involve others. A breach of such an oath triggers a liability for a variable sacrifice (or if made before witnesses, punishment by flogging.) The liability for a variable sacrifice is subject to the usual conditions for such a sacrifice, prior knowledge, oblivion, and remembrance.
- 2 In all other matters, only food in the volume of an average olive triggers obligations.
- 3 In general, only actions, not words, trigger obligations; but an oath is simply words (Note 166). In commercial transactions an obligation is enforceable only when it was confirmed by an action, such as a signature or a handshake. But there are other possible exceptions, such as blasphemy and apostasy (Note 21).
- 4 Since the general acceptation of "eating" is "ingesting nourishment", this is the meaning of the word if used in an oath unless the wording of the oath clearly indicates that a more narrow meaning is intended, such as "ingesting solid food".

HALAKHAH 1 67

(34b line 21) **הלכה א** שְׁבּוּעוֹת שְׁתַּיִם שְׁהֵן אַרְבַּע כול'. נִיחָא שְׁאוֹכַל וְשָׁלֹא אוֹכַל. שְׁאָכַלְתְּי וְשְׁלֹא אָכַלְתִּי. מָה נֶן קַייָמִין. אָם בְּיָדוּעַ שְׁאָכַל וְנִשְׁבַע שֶׁלֹּא אָכַל. שְׁבוּעַת שְׁקֶר הוּא. וְאָם סְבוּר שְׁאָכַל וְנִשְׁבַע שְׁלֹא אָכַל. רְבִּי בָּא רַב יְהוּדָה בְשׁׁר בְב. בְּשׁוֹגֵג בְּקַרְבָּנָהּ וּבְמִיּדְ בְּקַרְבָּנָהּ. עְּבִיּ בָּא רַב יְהוּדָה בְשׁׁר בְב בְּשׁוֹגֵג בְּקַרְבָּנָהּ. וְלֹא כֵן אָמֵר רְבִּי אֲבָל. סְבוּר הָיִיתִי שְׁאֵין בָּהּ שְׁבוּעָה. מוּתָּר. אֶלֶא בְמֵזִיד בָּה וּבְשׁוֹגֵג בְּקַרְבָּנָהּ. וְלֹא כֵן אָמֵר רְבִּי אֲבָּהוּ בְשׁם רְבִּי יוֹחָנָן. מֵזִיד בְּחַלְב וְשׁוֹגֵג בְּקַרְבֶּן מַתְרִין בּוֹ וְלוֹקָה וּמֵבִיא קַרְבָּן. לֵית יְכִיל. דָּמֵר רְבִּי אַבְעְרָב לְאַבְים רְבִּי יוֹחָנָן. מֵזִיד בְּחַלְב וְשׁוֹגֵג בְּקַרְבָּן מַתְרִין בּוֹ וְלוֹקָה וּמֵבִיא קַרְבָּן. לֵית יְכִיל. דְּמַר רְבִּי עְקִיבָה. מָצִינוּ דְּבָר שְׁחַייָבִין בִּזְּדוֹנוֹ מִשׁוּם רְבִּי לָאְנָר. כָּדְּ מֵשׁים רְבִי יִשְׁמָעאל לְרְבִי עֲקִיבָה. מָצִינוּ דְּבָר שְׁחַייָבִין בִּזְּדוֹנוֹ מִשׁוּם שְׁבוּעת שָׁקָר וּבְּהָעֻלְימוֹ מִשׁוֹם בִּיטוּי. וְיתִיבִינִיהּ רְבִּי עֲקִיבָה. מָצִינוּ דְּרָר שְׁחַייִבִין בִּזְדוֹנוֹ מִשׁוּם שְׁבְּוֹעת שְׁקָר וּבְבִיא קֹרְבָּן. אֶלָא כִי נָן קַיּיִמִין בְּבָּרִיא לוֹ שְׁאָכֵל וְנִשְׁבַע וְנִמְצָא שְׁלֹא אָכַל. לֹא שְׁבִּע בְּקוּבְב, אַלְרבָן. מִין זוֹ שְׁבוּעָה. תַּמִן בְּבָּר אָחָר. תִּמְן בָּר אָחֵר. תִּמְן בָּר אָחָר. תַבְיא בָּחוֹ בְּעָה בְּטוֹעה בַחוֹנֵת הְבָּר אֲחָר.

Halakhah 1: "There are two kinds of oaths which are four kinds." etc. One understands "that I shall eat, or that I shall not eat." "That I ate, or that I did not eat"5? Where do we stand? If it is known that he ate and he swore that he did not eat, it is a false oath⁶. But if he was of the opinion that he ate and swore that he did not eat? Rebbi Abba, Rav Jehudah in the name of Rav: If he is inadvertent for its sacrifice or intentional for its sacrifice⁷. But "I was of the opinion that this is not an oath" is permitted⁸. But it must be that he was intentional in the deed but in error about the sacrifice⁷. Did not Rebbi Abbahu say in the name of Rebbi Johanan⁹: Intentional about fat and in error about the sacrifice, one warns him, he is flogged and has to bring a sacrifice¹⁰. This is impossible, as Rebbi La said in the name of Rebbi Eleazar: So did Rebbi Ismael¹¹ answer Rebbi Agiba: Do we find a situation where one is liable if intentional because of a false oath and in oblivion because of blurting¹²? Should not Rebbi Agiba retort, we find a situation where one is liable if intentional because of a false oath and he brings a sacrifice¹³? But we deal here with the case that he was sure that he ate, and he swore, and it turned out that he had not eaten. Not about him who said that this is not an oath? There¹⁴, if he says this is not an oath; but here if he knows that this is an oath but he errs because of something else¹⁵.

5 We do not talk here about judicial oaths which by necessity are about past events, but "blurted oaths". How can a statement about past events ever lead to a

variable sacrifice? For a future directed oath it is possible that he had the honest intention of keeping what he swore to but later he forgot. But for the past we must

assume that he knows what he did.

- 6 Under the right conditions he can be punished for it, but there can be no atoning sacrifice.
- 7 A sacrifice is possible only for an inadvertent sin. In this context, "inadvertent" may mean that the perpetrator was not aware that his act was criminal or sinful, or that he was not aware that the act if inadvertent requires a sacrifice.
- 8 A statement qualifies as an oath only if it is pronounced as such, not as a simple statement.
- 9 *Terumot* 7:1 Notes 5,6; *Šabbat* 11:5 (13b), *Ketubot* 3:1 Note 30, *Bava Qamma* 7:2 Note 29; Babli *Šabbat* 69a.
- 10 Sacrifices are possible only for inadvertent deadly sins. If a person knew that eating fat was forbidden but did not know that it was a deadly sin, he simultaneously committed an intentional sin and an unintentional deadly sin. If he had been duly warned by two witnesses not to break the law, he can be flogged for the intentional sin and has to bring a sacrifice for the unintentional deadly sin even though

there cannot be two penalties for one crime (*Terumot* 7:1 Notes 19-70).

- 11 Who is R. Aqiba's opponent. All of Mishnah 1 is R. Aqiba's teaching. R. Ismael opposes adding backward looking oaths as blurted oaths.
- 12 A future directed oath, where it cannot be verified instantly whether it will be kept or violated, is an actionless crime and cannot be prosecuted (cf. Note 3). The preconditions of a sacrifice for a blurted oath negate the possibility of judicial penalties.
- 13 If R. Aqiba did accept R. Johanan's argument, it would be possible for a person to be flogged for violating the prohibition of perjury (*Lev.* 19:12) and still be liable for a sacrifice. This would make R. Ismael's objection irrelevant.
- 14 If he denies that he intended or pronounced an oath, there is no oath and the entire discussion is irrelevant.
- 15 He made the oath in good faith but his mind was distracted by other things. It is an inadvertent sin which qualifies for a sacrifice

(34b line 34) מָה גָן קַייָמִין. אָם בְּאוֹמֵר. שְׁבוּעָה שְׁאוֹכַל אֲכִילַת תּוֹרָה. אַף רְבִּי עֲקִיבָּה מוֹדָה. אָלָא כִי גָן קַייָמִין כָּל־שָׁהוּא. כָּל־שָׁהוּא בְּלִילָה. פָּבוּעָה שְׁלֹא אָטְעוֹם. אַף רַבָּגָן מוֹדוּ. אָלָא כִי גָן קַייָמִין כָּל־שָׁהוּא. כָּל־שָׁהוּא אֲכִילָה. פָּתַר לָהְ כְּבִי עֲקִיבָה דְּאָמֵר. כָּל־שָׁהוּא אֲכִילָה. מַה מַפְקָא מִבֵּינֵיהוֹן. שְׁבוּעָה שָׁאוֹכַל כִּיכָּר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִּיה דְּרְבִּי עֲקִיבָה טָייִב. עַל דַעְתִּין דְּרַבָּנִין פָּטוּר. שֶׁלֹא אוֹכַל כִּיכָּר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִיה דְּרְבִּי עֲקִיבָה טָּטוּר. שְׁלֹא אוֹכַל כִּיכָּר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִין דְּרַבָּנִין אִשְׁתוֹ מוּתֶּרֶת. שָׁלֹא אוֹכַל כִּיכָּר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִין דְּרַבָּנִין אִשְׁתוֹ מוּתֶּרֶת. עַל דַעְתִין דְּרָבָּנִין אִשְׁתוֹ מוּתֶּרֶת. עַל דַעְתִין דְּרָבָּנִין אִשְׁתוֹ מוּתָּרֶת. עַל דַעְתִין דְּרָבָּנִין אִשְׁתוֹ מוּתֶּרֶת. עַל דַעְתִין דְּרָבָּנִין אִשְׁתוֹ מוּתָרָת. עַל דַעְתִין דְּרָבָּין אִשְׁתוֹ מוּתָּרֶת. עַל דַּעְתִין דְּרָבָּנִין אִשְׁתוֹ מוּתָרִרן. שָׁלֹא אוֹכַל כִּיכָּר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִיה דְּרָבִי עֲקִיבָּה אִשְׁתוֹ בְּיטִרן בָּנִין דְּרָבִין דְּרָבִין וְנְכָסִין בֵּן בִּינִין דְּרָבִי עָקִיבָּה אִשְׁתוֹ בְּינִית וְבָּנִין אִשְׁתוֹ בִּינִין הְעָּבְיר זוֹ. וַאֲכָלָה חָסֵר כָּל־שָׁהוּא. עַל דַעְתִיה דְּרָבִי עֲקִיבָּה אֲסוּרִין. עַל דַעְתִין דְּרָבָנִין אָסוֹרִין. עַל דַעְתִין דְּרָבָנִין אַסוּרִין.

Where do we hold? If about one who said, an oath that I shall eat according to Torah standards¹⁶, even Rebbi Agiba will agree. And if about one who says, an oath that I shall not taste, even the rabbis will agree¹⁷. But we hold, about minute amounts. Are minute amounts eating? Explain it following Rebbi Aqiba who said that a minute amount is eating. What is the difference between them¹⁸? "An oath that I shall eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Agiba he is liable, in the opinion of the rabbis he is not liable¹⁹. "That I shall not eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Aqiba he is not liable, in the opinion of the rabbis he is liable. Also for blurted oaths²⁰ it is so: "An oath that my wife may not have any usufruct from me if I shall eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Agiba his wife is forbidden [to have usufruct], in the opinion of the rabbis his wife is permitted. "That I shall not eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Agiba his wife is permitted [to have usufruct], in the opinion of the rabbis his wife is forbidden. Also with property it is the same. "An oath that my properties be forbidden to me if I shall eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Agiba they are forbidden, in the opinion of the rabbis his properties are permitted. "That I shall not eat this loaf," and he ate it except a minute amount. In the opinion of Rebbi Aqiba his properties are permitted, in the opinion of the rabbis they are forbidden.

16 The standard minimal amounts of food which in biblical rules either are needed for the validity of an act or may lead to prosecution of a criminal act. This is the volume of an average olive. R. Aqiba must agree that if somebody insists that his food intake be measured by biblical standards, the minimum is an olive-sized piece. The Babli disagrees (21b) and holds that R. Aqiba agrees with R. Simeon that there is no lower limit for prosecutable offenses (*Pesahim* 3:1 29d 1, 61).

- 17 Tasting by definition involves minute amounts (Babli 22a).
- 18 Between R. Aqiba and his opponents in the second part of the Mishnah.
- 19 Let ε denote the volume of an olive. If somebody swore that he would (or would not) eat a certain amount m, for R. Aqiba he fulfilled (or violated) his oath if he ate exactly amount m. But for the rabbis he fulfilled (or violated) his oath if he ate more than m- ε but less than m+ ε . This is the basis of the subsequent examples. If he had

sworn to eat exactly one loaf, for R. Aqiba he violated his oath by eating a minute quantity less than a whole loaf but for the rabbis he swore truly.

20 This expression is difficult to

understand and may be a copyist's error since the preceding two examples are prime examples of blurted oaths. Maybe one should read "vows", since the example uses the language of yows denying usufruct.

(49) וֹהֲרֵי הַמְּגַדֵּף מֵבְיא קֶרְבָּן. חֲבַרייָא אֶמְרֵי בְּשׁׁם רֵישׁ לָקִישׁ. כְּשִׁיטָתוֹ הַשִּׁיבוּהוּ. פְשׁישָׁתוֹ הַשְׁבוּהוּ. אַין הַמְגַדֵּף מֵבְשֶׁה. אֵיכָן מָצִינוּ בִמְדַבֵּר וּמֵבִיא קָרְבָּן שְׁיֶּה מְדַבֵּר וּמֵבִיא קַרְבָּן שְׁיֶּה מְדַבֵּר וּמֵבִיא קַרְבָּן שְׁיֶּה מְדַבֵּר וּמֵבִיא קַרְבָּן שְׁיֶּה בְעֵי. מִחְלְּבָּה שִׁישַׁת רֵישׁ לָקִישׁ. תַּמָּן מָר. לְרְבִּי עֲקִיבָה אֵין הַמְגַדֵּף מֵעֲשֶׂה. וְהָכָא מָר. מְנִבְּף מַעֲשֶׂה כְּרְבִּי עֲקִיבָה. רְבִּי לָא בְשׁם רֵישׁ לָקִישׁ. תְּנִיין אִינּוּן עַל דְּעִּתִיה דְּרָבִי עֲקִיבָה. חַד אָמֵר. אֵין הַמְּגַדְף מַעֲשֶׂה. וְ חַד אָמַר. הַמְּגַדְף מֵעֲשֶׂה.

Does not the blasphemer have to bring a sacrifice²¹? The colleagues in the name of Rebbi Simeon ben Laqish: They answered him according to his²² argument. Following your argument, since you say that the blasphemer does not act, where do we find that somebody talks and brings a sacrifice that this one talks and brings a sacrifice? Rebbi Abba from Carthage asked, is not Rebbi Simeon ben Laqish's argument inverted? There²³ he said, for Rebbi Aqiba the blasphemer does not act. But here he says, the blasphemer is acting in the opinion of Rebbi Aqiba. Rebbi La in the name of Rebbi Simeon ben Laqish: Two Tannaïm²⁴ following the opinion of Rebbi Aqiba. One said, the blasphemer does not act, and the other said, the blasphemer does act.

- 21 This is a matter of contention. In Mishnah *Keritut* 1:1, the anonymous Tanna, supposed to represent the school of R. Aqiba, lists the blasphemer as one who has to bring a purification sacrifice for inadvertent sin but the Sages insist that the blasphemer cannot bring a sacrifice since a sacrifice is restricted to atone for actions.
- 22 The anonymous Tanna in our Mishnah here, who also is supposed to represent the school of R. Agiba.
- 23 In Sanhedrin 7:13 (Note 282) R.

Simeon ben Laqish explains that for R. Aqiba the conjurer of magical spells does not act since he simply speaks, but here he attributes the same opinion to the opponents of R. Aqiba.

24 The inconsistency is not R. Simeon ben Laqish's but is the Mishnah's choice of representatives of the reputed teachings of R. Aqiba. Since R. Aqiba's students were scattered by the Hadrianic persecutions and only a few survived, the divergence of traditions is easily explained.

HALAKHAH 2 71

(fol. 34a) **משנה ב:** שְׁבוּעָה שֶׁלֹּא אוֹכַל וְאָכַל פַּת חִמִּים וּפַּת שְׁעוֹרִים וּפַּת כּוּסְמִין אֵינוֹ חַייֶב אלא אחת.

Mishnah 2: An oath that I shall not eat; when he ate wheat bread, and barley bread, and spelt bread, he is liable only once²⁵.

While he broke his oath many times, is only one oath to break. he is liable only for one sacrifice since there

(34b line 55) הלכה ב: שְׁבוּעָה שֶׁלֹא אוֹכַל. וְאָכַל כול". שְׁתִייָה בְּכְלֶל אֲכִילָה וְלֹא אֲכִילָה בְּכְלֶל אֲכִילָה וְלֹא אֲכִילָה בְּכְלֶל אֲכִילָה וְלֹא אֲכִילָה בְּכְלֶל אֲכִילָה וְלֹא אֲכִילָה בְּכְלֶל אֲכִילָה וְלָא אֲכִילָה בְּכְלְ דְּם שְׁקְרֵשׁ אֵינוֹ לֹא אוֹכֶל וְלֹא מֵשְׁקָה. (אֶלֶּא כֵן נֶן מְיִמִיון. אָם בְּדָם שֶׁקָרִשׁ. הָתַנֵּי. בְּם שֶׁקָרִשׁ אֵינוֹ לֹא אוֹכֶל וְלֹא מֵשְׁקָה. (אֶלֶּא כֵן נֶן קִייָמִיון. כָּל־שָׁהוּא. כָּל־שֶׁהוּא אֲכִילָה. בְּתַר לָהּ בְּרַבִּי אֲקִיבָה. דְּרַבִּי אֲקִיבָה אָמַר. כָּל־שָׁהוּא אֲכִילָה. בְּלִה וְלָא מַשְׁקָיבְה אוֹ שְׁהַקְפָּה חֵלֶב וַאֲכָלוֹ. אִם גֵשׁ בּוֹ כְזֵיִת חַיִּב. מָה אֲבָד לָהּ רְבִי יוֹנָה. אֵינוֹ לֹא אוֹכֶל לִישָּמֵא טוּמְאֵת אוֹכְליו וְלֹא מֵשְׁקָה לִישָּמֵא טוּמְאֵת מַשְׁקִיון. חָזֵר רְבִּי יוֹנָה וּפָתַר מֵתְנִיתָה. וְעָתַתַּה הַבֶּטֶף בְּכֹל אֲשֶׁיר־תְּאֵלֶּה וַבְּשִׁיּדְ. מָה נַן קִייָמִיון. אִם בְּטוֹעֵם טַעֵם יֵיוְ בְּתַבְשִׁיל. וַהָלֹא הַשַּעם לִבְּנָם. אֶלָּא בֵן נֶן קִייָמִיון כָּל־שָׁהוּא וְרַחֲמָנָא קְרָיהֵה אֲכִילָה. רַבְּנִילְ וְלֹא מִשְׁ בְּלִייְתָה שְׁהָּכֹל יְמֵילָה לָאֲבִילָה בָּאַכִּיוֹ גְמְרִייָה שְׁהָכִילָה. רַבְּנִילָה בָּאִלִין גְּמָרִיים שְׁמָב לְנִן גָּמְרִייָה שְׁמָבִילָה לַאֲבִילָה בָּאַכִילָה. רַבְּילָה. בַּבְּילִה. וְהָלִים לִים מֵּא בִּילָה. בַּיִבְּילוּ בְּלִשְׁיך וְלְּא מִילְן גָּמְרִייִה שְׁמָב לְנְבָּיתָה לְצְבִילָה בְּאִלִין גְּמְרִין. תִּיְמִרְן הַנְּעִרְין הָאִילִין גָּמְרִייָה וְאוֹלְריָר הִישְׁבּל עְפֵילָה לָאבִילָה לָאבִילָה.

רְבִּי יוֹסֵי שָׁמֵע פּוּלְהוֹן מִיכָּא. שְׁבוּעָה שֶׁלֹא אוֹכַל. וְאָכַל וְשְׁתָה. אֵינוֹ חַייָּב אֶלָּא אֶחָת. אֱמְרֵי וּחֲבֵרִייָה קוֹמֵי רְבִּי יוֹסֵי. וָמַר דְּבַתְרָה. שְׁבוּעָה שֶׁלֹא אוֹכַל וְשֶׁלֹא אֶשְׁתָּה וְאָכַל וְשָׁתָה. אֵין חַייָב אֶלָא אַחַת. אָמַר לוֹן רְבִּי יוֹסֵי. אִילוּ מִי שֶׁאָמַר. שְׁבוּעָה שֶׁלֹא אוֹכַל כִּכָּר זוֹ. חָזַר וְאָמַר. שְׁבוּעָה שְׁלֹא אוֹכַל כִּכָּר זוֹ. חָזַר וְאָמַר. שְׁבוּעָה שְׁלֹא אוֹכַל כִּכָּר זוֹ. וְאַכַל שְׁתִּיהָן. שְׁמֵא אֵינוֹ חַיִּיב שְׁתַּיִם.

רְבִּי חֲנִינָא בְשֵׁם רְבִּי פִינְחָס שָׁמַע כּּוּלְהוֹן מִיכָּא. שְׁבוּעָה שֶׁלֹא אוֹכַל. וְאָכַל אוֹכְלִין שֶׁאֵינָן רְאוּיִין חֲשֶׁתָה מַשְׁקִין שֶׁאֵינָן רְאוּיִין. פָּטוּר. הָא אָכַל אוֹכְלִין רְאוּיִין וְשֶׁתָה מַשְׁקִין רְאוּיִין חַייָב.

רְבִּי בָּא שָׁמֵע כּוּלְהוֹן מִיכָּא. אָכַל וְשָׁתָה בְּהֶעְלֵם אֶחָד אֵינוֹ חַייָב אֶלָּא אַחַת. עֵד כְּדוֹן בְּשֶׁאָמֵר. שְׁבוּעָה שָׁלֹּא אוֹכַל וְשָׁתָה. וּלְרְבִּי שֶׁאָמֵר. שְׁבוּעָה שָׁלֹּא אֶשְׁתָּה.

רִבִּי חִינְנָא שָׁמַע כּוּלְהוֹן מִיכָּא. לְא־אֶבַּלְתִּי בְאנִי אֶלָא שָׁתִיתִי.

עַד כְּדוֹן בְּשֶׁאָמַר. שֶׁלֹּא אוֹכַל. וְשָׁתָה. אָמַר. לֹא אָשְׁתֶּה. וְאָכַל. שְׁתִייָה בִּכְלָל אֲכִילָה וְלֹא אַכִילָה בָּכָלַל שָׁתִייַה.

Halakhah 2: "An oath that I shall not eat; when he ate," etc. ²⁶Drinking is subsumed under eating but eating is not subsumed under drinking. Rebbi Jonah understood all this from: *Therefore, I told the Children of Israel, none of you shall eat blood*²⁷. Where do we hold? If about congealed blood, was it not stated that congealed blood is neither food nor drink? ²⁸(But we hold, about minute amounts. Are minute amounts eating? Explain it following

Rebbi Aqiba who said that a minute amount is eating.) And was it not stated: If one liquefied the blood and swallowed it, or froze fat and ate it, if there is the volume of an olive he is liable. What does Rebbi Jonah do with this? It is not food to become impure in the impurity of food, or fluid to become impure in the impurity of fluids. Rebbi Jonah changed and explained the Mishnah: *You shall spend the money for anything you desire*²⁹. Where do we hold? If about one who gives the taste of wine into a cooked dish, is that not spoiling the taste? But we hold with everything and the Merciful called it "eating." The rabbis of Caesarea said, explain if about *gomraya* and *orzaraya*³⁰, since anything that is auxiliary to food is like food.

Rebbi Yose understood all this from the following: "An oath that I shall not eat; when he ate and drank he is liable only for one. "The colleagues said before Rebbi Yose, but it is said following this, "an oath that I shall not eat nor drink, when he ate and drank" should he be liable only for one? Rebbi Yose told them, if somebody said, an oath that I shall not eat this loaf, and he continued, an oath that I shall not eat this other loaf, when he ate both of them would he not be guilty on two counts?

Rebbi Hanina³² in the name of Rebbi Phineas understood all this from the following: "An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable.³³" Therefore if he ate edible food and drank drinkable fluid he is liable.

Rebbi Abba³⁴ understood all this from the following³⁵: "If he ate and drank in one forgetting he is liable only once."

Rebbi Ḥinena understood all this from the following: *I did not eat from it in my mourning*, ³⁶ but I drank?

So far if he said, that I shall not eat, but he drank. If he said, that I shall not drink, but he ate? Drinking is subsumed under eating but eating is not subsumed under drinking.

26 The entire Halakhah does not refer to Mishnah 2 but to the last part of Mishnah 1 where it is stated that an oath to refrain from eating includes a prohibition of drinking but separate oaths for solid and fluid food mean

just that. The text is a slightly inaccurate copy of a text in *Ma'aser Šeni* 2:1, Notes 8-23 and *Yoma* 8:3 (45a); a parallel discussion is in the Babli, 22b-23a. The essence of the argument is that if one

mentions eating, the accompanying drink is included, but speaking of drinking no solid food is intended.

- 27 Lev. 17:12.
- 28 This text does not belong here; it was copied again from Halakhah 1, text between Notes 17,18.
- 29 *Deut.* 14:26. The argument is about the part of the verse which is not quoted, that the money of Second Tithe may be spent for all kinds of edibles, cattle and sheep, wine and liquor.
- 30 Ma'aser Šeni 2:1, Note 16. For the second word the preferred reading seems to be that of the other two sources, אוראנייה, which may denote cedar resin (J. Levy) or a

derivative of אורי "rice". The readings for the first word, גמרייה, גמאוזיניה, גומענייא show that the scribe did not know what to do with it; it may be a derivative of "gum" (gummi, $x \acute{o} \mu \mu)$ (E. G.) used in the preparation of liquors.

- 31 Mishnah 1.
- 32 In the parallel sources correctly: Hananiah
- 33 Mishnah 5.
- 34 In the parallel sources correctly: Abba Mari.
- 35 Mishnah Yoma 8:1.
- 36 Deut. 26:14

(fol. 34a) **משנה ג**יּ שְׁבּוּּעָה שֶׁלֹּא אוֹכַל פַּת חָמִים וּפַּת שְׁעוֹרִים וּפַּת כּוּסְמִיזְ וְאָכַל חַייָב עַל כָּל אָחַת וָאָחַת:

Mishnah 3: An oath that I shall eat neither wheat bread, nor barley bread, nor spelt bread; when he ate wheat bred, and barley bread, and spelt bread, he is liable for each single one³⁷.

He made three oaths, each one requiring a separate sacrifice.

(4 line) **הלכה ג**: שְׁבּוּעָה שֶׁלֹּא אוֹכֵל כול'. שְׁבּוּעָה שֶׁלֹּא אוֹכֵל פַּת. וּכְרֶכָהּ בְּעֵלֵי קָנִים וְעֲלֵי גְפָנִים וְאָכֵל. אֵינוֹ חַייָב אֶלָּא אַחַת. שְׁבוּעָה שֶׁלֹא אוֹכֵל פַּת וְחַרְצָנִין וְזָגִין. וּכְרְכָהּ בְּחַרְצָנִין וְזָגִין. חַייָב עַל כָּל־אַחת וָאַחַת. וְאִם הָיָה נָזִיר חַייָב שָׁלֹש. רְבִּי יוֹחָנֶן אָמֵר. בְּכוֹלֵל. אֲבָל בָּפוֹרֵט אֵין שְׁבוּעוֹת חָלוֹת עַל הָאִיפּוּרִין. רֵישׁ לָקִישׁ אָמֵר. אֲבִּילוּ בְכוֹלֵל אֵין שְׁבוּעוֹת חָלוֹת עַל הָאִיפּוּרִין.

Halakhah 3: "An oath that I shall eat neither," etc. ³⁸"An oath that I shall not eat bread" and he wrapped it in reed leaves or grape leaves and ate, he is liable only once³⁹. "An oath that I shall not eat bread nor grape skin nor grape seeds, and he wrapped it in grape skins and grape seeds, he is liable for each one⁴⁰, and if he was a *nazir* he is liable for three⁴¹.

Rebbi Joḥanan said, in comprehensive form. But in detail, no oaths fall on prohibitions. Rebbi Simeon ben Laqish said, even in comprehensive form no oaths fall on prohibitions⁴².

- 38 There is a long dissertation about this Halakhah in the commentary *Mishneh Lammelekh* to Maimonides, *Hilkhot Ma'akhalot Asurot* 14:12.
- 39 The expression "only once" is only because of the following sentence. For the bread wrapped in inedible leaves one has to state that he broke his oath even if the bread itself did not touch his mouth. (Grape leaves are edible when cooked; they may be marginally edible when raw.)
- 40 As explained in the Mishnah.
- 41 The formulation is not quite correct. For the oath he is liable for three sacrifices (or, if duly warned, for three floggings) but for breaking the *nazir*'s prohibition of anything coming from grapes (*Num*. 6:4) he is liable for flogging if duly warned, not for

- a sacrifice. His liability would be three sacrifices and one additional sin.
- 42 Babli 22b, 23b. In Nazir 1:2 (Note 55) R. Ze'ira proclaims as undisputed what here and in the Babli is R. Johanan's opinion. Since all future Jewish souls were present at Mount Sinai, he already has sworn to keep the precepts of the Torah. Therefore an oath to break Torah prohibitions is void. Johanan holds that if an oath is valid since it contains matters not involving Torah prohibitions it is valid in general since an oath is either valid or invalid. R. Simeon ben Lagish (and in the Mishnah, R. Simeon ben Iohai) hold that oaths can be partially invalid; the parts infringing on Torah precepts are always void (Babli 33b).

(fol. 34a) **משנה ד**י שְבוּעָה שֶׁלֹא אֶשְׁתֶּה וְשָׁתָה מַשְׁקִין הַרְבֵּה אֵינוֹ חַייָב אֶלָּא אַחַת. שְבוּעָה שלא אִשְׁתָה יֵין וְשֵׁמוֹ וּדְבַשׁ וְשָׁתַה חַיִּב עַל כַּל אֲחַת וְאָחַת:

Mishnah 4: An oath that I shall not drink; if he drank many kinds he is liable only for one. An oath that I shall drink neither wine, nor oil, not date syrup, if he drank he is liable for each single one.

משנה ה: שְבוּצָה שֶלֹּא אוֹכֵל וְאָכֵל אוֹכְלִים שֶאֵינָן רְאוּיִין לַאֲכִילָה וְשָׁתָה כַּזשְׁקִין שֶׁאָינָן רְאוּיִין לִשְׁתִּה פָּטוּר. שְבוּצָה שֶלֹּא אוֹכֵל וְאָכֵל נְבָלוֹת וּטְבפוֹת שְׁקַצִים וּרְטָשִׁים חַיִּב. רְבִּי שְׁמְעוֹן פּוֹטֵר. אָמֵר קוֹנָם אִשְׁתִּי נֶחֲנִית לִי אִם אָכַלְתִּי חַיּם וְחוּא אָכַל נְבַלוֹת וּטְבפוֹת שָׁקצִים וּרְטַשִּים חַבֵּי אָשָׁתוֹ אַסוּרָה.

Mishnah 5: An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable⁴³. An oath that I shall not eat; when

he ate carcass or torn meat, abominations or crawling animals, he is liable; Rebbi Simeon declares him not liable⁴⁴. If he said, a *qonam*⁴⁵ that my wife may not benefit from me if I had eaten today, if he had eaten carcass or torn meat, abominations or crawling animals, his wife is forbidden benefits⁴⁶.

- 43 In popular usage, swallowing inedibles is not called "eating". Judicial interpretation of oaths must follow popular usage.
- 44 Eating forbidden food still is called eating. R. Simeon will agree with this statement; he holds not only that an oath to break biblical commandments is void in itself but breaking the law to fulfill an oath invalidates the oath.
- 45 *Qonam* is a substitute for $qorb\overline{a}n$

"sacrifice" which in the context of an oath or a vow means "it shall be forbidden to me as if it were sacrificial meat", cf. *Introduction to Tractate Nedarim.*

46 He can neither have marital relations with her nor let her eat anything that is wholly or partially his, nor let her live in his house: he must divorce her and pay the marriage settlement in full. R. Simeon will agree.

(9 Act line 9) הלכה די שְׁבּוּעָה שֶׁלֹא אֶשְׁתָּה כול'. בְּדָא רְבִּי שִׁמְעוֹן פּוֹטֵר. רְבִּי שִׁמְעוֹן כְּדַעְתַּיה. זְּתַבְּיה. בְּבִי שִׁמְעוֹן פּוֹטֵר. רָבִי שִׁמְעוֹן כְּדַעְתַּיה. דְּתַנִּינֶן תַּמֶּן. כַּמָה יֹאכַל מִן הַשֶּבֶל וְיהֵא חַיֶּב. רְבִּי שִׁמְעוֹן אוֹמֵר. כָּל שֶׁהוּא. וַחֲכָמִים אוֹמְרִים. כַּזִּית. אָמֵר לְהָן רְבִּי שִׁמְעוֹן. אֵין אַתֶּם מוֹדִין בָּאוֹבֵל וְמֶלָה כָּל־שָׁהוּא שֶׁחַייָב. אֲמְרוּ לוֹ. מִפְּנֵי שֶׁהִיא כְּבְרְייָתָהּ. אָמֵר לָהֶן. אַף חִישָּה אַחַת כְּבִייְייָתָהּ: עַל דַּעְתֵּיה דְּרְבִּי יוֹחָנֶן לָמָה רְבִּי שִׁמְעוֹן פּּדַעְתֵּיה. תַּנֵי בְשֶׁם רְבִּי שִׁמְעוֹן. תְּעַנַּוּ אֶת־נַפְשְׁתֵיכֶּם. פוֹטִר, אָמֵר רְבִּי זְעִיְרָה. רְבִּי שִׁמְעוֹן כְּדַעְתֵּיה. תַּנֵי בְשֶׁם רְבִּי שִׁמְעוֹן. תְּעַנַּוּ אֶת־נַפְשְׁתִיכֶּם. מִמֹּוּת לָכָם וְלֹא מֵאֲסוּר לָכֶם.

Halakhah 4: "An oath that I shall not drink," etc. In this case⁴⁷, Rebbi Simeon declares not liable. Rebbi Simeon follows his own opinion, as we have stated there⁴⁸: "How much does he have to eat from *tevel* to be liable? Rebbi Simeon says, anything⁴⁹; but the Sages say, the volume of an olive. Rebbi Simeon told them, do you not agree that one who eats an ant is liable? They told him, because it is a creature. He answered them, also a grain of wheat is a creature⁵⁰." In Rebbi Johanan's opinion, why does Rebbi Simeon declare not liable? Rebbi Ze'ira said, Rebbi Simeon follows his own opinion. It was stated in the name of Rebbi Simeon: *You shall deprive yourselves*⁵¹, of what is permitted to you, not of what is forbidden to you⁵².

ְרְבִּי בָּא בַּר מָמֶל בָּעֵי. עַל דַּעַת רְבִּי יוֹחָנֶן דְּאָמֵר. בְּכוֹלֵל שְׁבוּעוֹת חָלוֹת עַל הָאִיסוּרִין נִיתְנֵי. שְׁבוּעָה שֶׁלֹא אוֹכַל. וְאָכַל. אָמַר רְבִּי זֵירָא. כָּל יוֹמוֹי דְרְבִּי בָּא בַּר מָמָל לֹא אַשְׁכַּחְנֶן תּוֹתְבָה. וּמֵן דְּדְמַךְּ אַשְׁכַּחְנֵן תּוֹתְבָה. מָה נָן קִינָמִין. אָם בָּאוֹמֵר. שָׁבוּעָה שֵׁלֹא אוֹכַל בָּשֶׂר כָּל־יִמוֹת הַשָּׁנָה וְהַפֶּּסַח בְּתוֹכָן. שֶׁלֹא אוֹכַל עֲשֶׂרֶת יָמִים הַלְּלוּ וְיוֹם הַכִּיפּוּרִים בְּתוֹכָן. בְּמֵיחֵל שְׁבוּעָה עַל הָאִיפוּרִין. אָמַר רְבִּי יוֹסֵי. וְתִשְׁמֵע מִינָהּ. הָיוּ לְפָנָיו זֵתִים שֶׁלִשְׁחוּטָה וְאֶחָד שֶׁלֹנְבֵילָה וְאָמֵר. שַׁאוֹכַל עֵשֶׂרַת זֵיתִים אֵילוּ. כֵּיוַן שַׁפְּטוּר עַל הַנְּבִילָה פָּטוּר אַף עַל הַשָּׁאָר.

Rebbi Abba bar Mamal asked: According to Rebbi Johanan, who said that comprehensive oaths fall on prohibitions, should we not state "an oath that I shall not eat; when he ate" Rebbi Ze'ira said, in the whole lifetime of Rebbi Abba bar Mamal we did not find an answer; after he had died, we found an answer. Where do we stand? If one said, an oath that I shall not eat meat, including Passover⁵⁴; that I shall not eat during these ten days⁵⁵, including the Day of Atonement, then the oath falls on prohibitions. Rebbi Yose said, one may infer from here if in front of him were olive-sized pieces of slaughtered [meat] and one of carcass meat and he said, [an oath] that I shall eat these ten olive-sized pieces, since he is not liable for the carcass meat, he neither is liable for the remainder.

ָרְבִּי בּוּן בַּר חִייָה בָעֵי. וְלָמָה לֹא מֵר. שְׁבוּעָה שֶׁאוֹכַל מִשְּׁחִיטֵת פְּלוֹנִי. אֵין בָּהּ חֵלֶב בִּשׁוֹחֵט צְבַיִים. אֵין בָּהּ גִּיד הַנְּשָׁה. בְּעוֹפוֹת. אֵין בָּהֶן דָּם.

Rebbi Abun bar Ḥiyya asked: Why did he not say, "an oath that I shall eat of the slaughter of X"? Is there not fat? If he slaughters deer. Is there not the hip sinew? About fowl. Is there not blood⁵⁷?

רְבִּי חִינְנָה בָעֵי. וְלָמָה לֹא מֵר. שְׁבוּעָה שֶׁאוֹכֵל מִפְּלוֹנִי סְתָם. בְּגִין רְבִּי שִׁמְעוֹן. וְאִין כְּרְבִּי שִׁמְעוֹן נִיתְנֵי. יוֹם הַכִּיפּוּרִים. דְתַנֵּי רְבִּי שִׁמְעוֹן. תְּעַנַּי אֶת־נַפְשְׁתֵיכֶּם. מֵאָסוּר לוֹ וְלֹא מִמּוּתָּר לוֹ. אֵלֶּא שֵׁזֶּה בִקָבוּעַ וְזָה בִעוֹלָה וִיוֹרֵד.

Rebbi Ḥinena asked: Why did he not say, "an oath if I would eat of X" without detail⁵⁸? Because of Rebbi Simeon. But if following Rebbi Simeon, how could we state the Day of Atonement, since Rebbi Simeon stated, *you shall deprive yourselves*, of what is (forbidden)⁵⁹ to you, not of what is (permitted)⁵⁹ to you. Only one has a fixed rate sacrifice, the other a variable one⁶⁰. הַּתִיבוֹן. הַרֵי טוּמְאַת מִקְּדָשׁ וְקֵדָשִׁיו שָׁהוּא בְּעוֹלֶה וְיוֹרֵד וְתַנֵּי תַנָּא. לֹא אֲתִינָן מִיתְנֵי אֶלָא

דָבָרִים שֶׁהֵן חִיּוּב כָּרֵת. שְׁבוּעוֹת אֵין בָּהֶן חִיּוּב כָּרֵת.

They objected, is there not impurity of the Sanctuary and its *sancta* which need a variable rate [sacrifice] and did the Tanna not state it⁶¹? We come to state only things carrying a liability to extirpation; there is no extirpation for oaths.

HALAKHAH 4 77

הָתִיבוֹן. הֲרֵי מְעִילָה אֵין בָּהּ כָּרֵת וְתַנֵּי. לֹא אֲתִינָן מִיתְנֵי אֶלֶּא דְבָרִים שָׁאֵין לָהֶן הֵיתֵר אַחַר אִיסוּרָן. שְׁבוּעוֹת יֵשׁ לָהֶן הֵיתֵר אַחַר אִיסוּרָן. הָדָא אֵמְרָה שָׁאֵין אָבוֹת מְלָאכוֹת בְּיוֹם הַכִּיפוּרִים. אִילּוּ מִי שָׁעָשָׂה כולָם בְּהֶעֲלֵם אֶחָד כְּלוּם חַייָב אָלָא אַחַת עַל כּוּלָן. אִילּוּ מִי שֶׁעָשָׂה כָל־אַחַת בִּפְנֵי עַצְמָהּ שַׁמָּא אֵינוֹ חַייָב עַל כָּל־אַחַת וְאַחַת.

They objected, there is no extirpation for larceny and it was stated⁶²! We come to state only things which cannot become permitted after being forbidden. Oaths may become permitted after being forbidden⁶³. This⁶⁴ implies that there are no categories of work for the day of Atonement⁶⁵, for if anybody violated all of them in one forgetting he is liable only for one [sacrifice] for all of them. But if anybody violated each of them separately, would he not be liable for each single one?

עַל דַּעְתֵּיה דְרְבִּי יוֹחָנֶן דְּאָמַר. שְׁבוּעָה שָׁלֹא אוֹכֵל מֵצָה. אָסוּר לוֹכַל מֵצָה בְלֵילֵי הַפֶּּסַח. שָׁלֹא אוֹכַל מַצָּה בְלֵילֵי פֶּסַח. לוֹקָה וְאוֹכֵל מַצָּה. שֶׁלֹא אֵשֵׁב בַּצֵל. אָסוּר לֵישֵׁב בְּצֵל סוּכָּה שָׁלֹא אֵשֵׁב בְּצֵל סוּכָּה. לוֹקָה וְיוֹשֵׁב בְּצֵל סוּכָּה.

In the opinion of Rebbi Johanan, if one said, "an oath that I shall not eat unleavened bread", he is forbidden to eat unleavened bread in the night of Passover. "That I shall not eat unleavened bread in the night of Passover," he is flogged and eats unleavened bread⁶⁷. "That I shall not sit in the shadow", he is forbidden to sit in the shadow of a booth." "That I shall not sit in the shadow of a booth," he is flogged and sits in the shadow of a booth.

- 47 In Mishnah 5.
- 48 Mishnah *Makkot* 3:2 Notes 27-32. *Tevel* is produce from which heave and the heave of tithe have not been removed, whose consumption except at harvest time is a deadly sin.
- 49 In R. Simeon's opinion, biblical prohibitions are absolute, but infringing on a prohibition in a minute amount, for edibles less than the size of an olive, does not trigger the obligation of a sacrifice. Babli 24a.
- 50 He does not defend his point of view but shows his opponents that even in their opinion a complete fruit or animal is

biblically forbidden even if it is smaller than an olive but still visible with the naked eye. This is accepted as practice, cf. *Berakhot* 6:1. Notes 14-18.

- 51 Lev. 16:29.
- 52 Eating non-kosher food violates a simple prohibition; breaking the fast on the Day of Atonement is a severe sin subjecting the unrepentant sinner to extirpation. R. Simeon declares eating non-kosher food on the Day of Atonement as violation of a simple prohibition (which if committed inadvertently does not make the perpetrator liable for a sacrifice). If the stringent prohibition of the Day of Atonement does

not include forbidden food then an oath which never can lead to extirpation cannot include forbidden food either.

This refers to Mishnah Keritut 3:4. that a person may become liable for 5 sacrifices for eating one olive-size bite: an impure person who on the Day of Atonement ate sacrificial fat which was a leftover from a prior day. Eating fat is always forbidden; eating sacrificial fat is illegitimate use of sacra, classified as larceny (requiring restitution reparation sacrifice); eating any sacra while impure is punishable by extirpation. The mention of the Day of Atonement shows that the Mishnah is formulated for the Rabbis, not R. Simeon. The question then is, if the statement of R. Johanan be true that an oath containing a general prohibition also refers to things biblically prohibited, the Tanna, who obviously is looking for an example showing the maximum of criminal acts that can be committed by one action, should have added that the person who ate the fat had previously made an oath that he would not eat at all, for a total of 6 sacrifices. That no oath is mentioned in the Mishnah seems to prove that R. Johanan's position is rejected by the Mishnah; it cannot be accepted in practice.

54 Since oaths have to be interpreted according to common usage, not lawyers' jargon, an oath "that I shall not eat" will be interpreted as oath not to eat permitted food; the question of R. Abba bar Mamal does not apply. But an oath to become vegetarian is a valid oath and in Temple times would prevent the person from fulfilling the commandment of eating of the Passover sacrifice. Since in contrast to vows oaths

cannot be dissolved by a rabbi, this is a case where a general oath supersedes a biblical commandment

55 The Ten days of Penitence, from New Year's day to and including the Day of Atonement. In this case breaking the fast is a double sin since it also means breaking the oath. The entire argument is for the Rabbis, so it includes eating non-kosher food.

56 This follows R. Simeon. If there can be no punishment for breaking the oath relative to the carcass meat then there cannot be one for eating the other 9 since the oath was for 10, not for 9 pieces.

Following R. Johanan it is difficult to find any oath involving meat that should be valid at all, since he requires an oath which forbids permitted foods; as a consequence it will also apply to prohibitions. somebody forbids himself anything which a person X will slaughter, the oath includes the fat of the slaughtered domestic animal forbidden by biblical standards. Since an original oath forbidding biblically forbidden things is void, the entire oath is voided. Similarly for wild animals, whose fat is permitted (Lev. 7:23), the hip sinew still is forbidden (Gen. 32:33), and the blood of a fowl is forbidden like the blood of four-legged animals (Lev. 7:27).

58 The difficulty encountered in the preceding paragraph can easily be circumvented if the oath is made on a piece of meat which does not contain any forbidden fat and is drained of its blood. Then the only problem is the problem that for R. Simeon the number of required sacrifices is not a measure of the number of prohibitions which were violated; the Tanna might want to formulate his statement to take care of R.

Simeon's opinions also. But since the Mishnah requires a separate sacrifice for eating forbidden fat on the Day of Atonement, it certainly cannot be formulated for R. Simeon, who denies that the prohibitions of that day refer to forbidden food.

- 59 It is clear that the words in parentheses have to be switched, Note 52.
- 60 The Tanna of *Keritut* counts only the maximum of fixed-rate sacrifices; he could agree that with an oath a liability for a variable rate sacrifice could be added. Nothing can be inferred about the disagreement between R. Johanan and R. Simeon ben Lagish.
- 61 The previous explanation is incorrect. The Tanna of *Keritut* mentioned a sacrifice for eating *sancta* in impurity; this requires a variable value sacrifice.
- 62 The previous explanation is incorrect. The Tanna of *Keritut* mentioned a sacrifice for illegally appropriating Temple property for private use. There is no extirpation mentioned for this, only restitution with a fine and a reparation sacrifice (*Lev.* 5:14-16). Only fixed-rate purification offerings are restricted to atoning for unintentional sins carrying a penalty of at least extirpation, not reparation sacrifices. This finally yields the correct answer.
- 63 Since oaths may be made for a certain time only.
- 64 Nothing mentioned here but the end of Mishnah *Keritut* 3:4 where R. Meïr says that if it was on a Sabbath and the person brought the piece of meat between his teeth from a private to a public domain he is liable for an additional sacrifice.

- 65 The rules for the Sabbath specify 39 categories of forbidden work (Mishnah Šabbat 7:2), each of which triggers liability for a separate sacrifice. Since the anonymous Tanna placed the case on the Day of Atonement, and any work forbidden on the Sabbath is forbidden on the Day of Atonement, R. Meïr could simply have added carrying also on the day of Atonement. Since he has to place that Day on a Sabbath, it follows that any and all infringements of the sanctity of the Day of Atonement trigger the same liability of a sacrifice. There never can be more than one for a given Day. The conclusion of the Babli, Keritut 14a, is formulated more Transporting from domain to domain is not a separate desecration of the Day of Atonement.
- 66 This remark is quite obvious. In general, any purification sacrifice only covers deeds made during one period when the person was oblivious either of the holiday or of the particular prohibition which he violated.
- 67 While leavened bread is forbidden for seven days on Passover, there is a positive commandment to eat unleavened bread only on the first night (*Ex.* 12:18; cf. H. Guggenheimer, *The Scholar's Haggadah*, pp. 328-329.) An oath not to fulfill this commandment is void; the oath is void and incurs the penalty of void oaths. But an oath never to eat unleavened bread is valid and prevents its maker from fulfilling his duty without breaking the oath.
- 68 On the festival of Tabernacles, *Lev*.23:42. The argument is totally parallel to that of the preceding example.

(34c line 39) לא סוֹף דָּבָר סְתָם אֶלֶא אֲפִילוּ פְּלוֹנִי. לֹא סוֹף דָּבָר כּוֹלֵל אֶלֶא אֲפִילוּ פוֹרֵט. לֹא סוֹף דָּבָר לָבֹא אֶלֶא אֲפִילוּ לְשֶׁעֶבַר. לֹא סוֹף דָּבָר רַבָּנֵן אֶלֶא אֲפִילוּ רְבִּי עֲקִיבָה. לֹא סוֹף דָּבָר נָבֵילוֹת וּטֵרֵיפוֹת אֵלֶא אַפִּילוּ עַפַר. עִולָה הַיָּה רוֹצֵה לָהוֹרוֹת לוֹ.

Not only unspecified, but even "X". Not only comprehensive but even in detail. Not only in the future but also in the past. Not only the rabbis but even Rebbi Aqiba. Not only carcass and torn meat but even dust⁶⁹. He wants to teach himself a pretext⁷⁰.

- 69 The Babli (24a) explicitly declares ingesting dust as not eating.
- 70 This refers to the last sentence in Mishnah 5. Since this refers to a vow, which may be annulled by a rabbi or a court, all the restrictions described for oaths are

eliminated. Even if he made his vow dependent on minute details, or refers to something in the past, or to minute quantities, or even to worthless things, the vow is valid since he only wants to find a pretext to divorce his wife.

(fol. 34a) משנה וּ שֶּׁתֶד דְּבָרִים שֶׁל עֵצְמוֹ וְשָּׁתָד דְּבָרִים שֶׁל אֲחֵרִים וְשֶׁתָד דְּבָרִים שֶׁתֵּשׁ בָּהֶן מַמָּשׁ. בֵּיצֵד אָמֵר שְׁבוּעָה שֶׁאֶחוֹן לְאִישׁ פְּלוֹנִי וְשֶׁלֹא אָתֵּן שֶׁנְשִׁנְתִי וְשֶׁלֹא יָשְנְתִּי. שֶׁאֶזְרוֹק צְּרוֹר לַיָּם וְשֶׁלֹא אִשֵּׁן שֶׁיָשְׁנְתִי וְשֶׁלֹא יִשְׁנְתִי. שֶׁאֶזְרוֹק צְרוֹר לַיָּם וְשֶׁלֹא אִשֵּׁן שֶׁיָשְׁנְתִי וְשֶׁלֹא יָשְנְתִי. שֶׁאֶזְרוֹק צְרוֹר לַיִם וְשֶׁלֹא צָרְקְתִי. רְבִּי וְשְׁלֹא אוֹמֵר אֵוֹם הַעָּלָא חַיִּב אֶלָּא עַל הָעָתִיד לְבוֹא שֶּנֶּאֱמֵר לְּהָרָע אוֹ לְחֵימִיב. אָמֵר לוֹ רְבִּי עֵקִיכָה אִם בֵּן אֵין לִי אֶלָּא דְבָרִים שֶׁצֵּשׁ בָּהֶן הַרָעָה וַהֲטָבָה לְנִין. אָמֵר לוֹ מֵרִיבּוּי הַבָּתוּב. אָמֵר לוֹ אִם רִיבּוּי הַבְּתוֹּב לְּכָךְּ דְּבִּיִים שֶׁאֵין בְּהֶן הַרָעָה וַהֲטָבָה מְנֵיין. אָמֵר לוֹ מֵרִיבּוּי הַבְּתוֹּב. אָמֵר לוֹ אִם רִיבּוּי הַבְּתוֹּב לְּכַךְּ רִבּיּי הַבְּתוֹב לְּכַךְּ:

Mishnah 6: Whether matters of himself⁷¹, or matters of others, or material matters, or immaterial matters. How is this? An oath that I shall give to X, or that I shall not give, that I gave, or that I did not give, that I shall sleep, or that I shall not sleep, that I sleep, or that I did not sleep, that I shall throw a pebble into the sea, or that I shall not throw, that I threw, or that I did not throw. Rebbi Ismael said, he is liable only for the future, for it is said *to cause evil or cause good*⁷². Rebbi Aqiba said to him, if it is so then this refers only to matters of causing evil or good; from where matters which do not refer to causing evil or good? He answered him, from the additional text of the

verse⁷³. He answered, just as the additional text of the verse is for this, the additional text of the verse is for the other⁷⁴.

- 71 All the rules of liability for a variable value sacrifice spelled out in the preceding Mishnaiot are valid for all kinds of oaths irrespective of their content or meaning.
- 72 Lev. 5:4. The causative refers to the future.
- 73 The continuation of the quote,

anything which a person will blurt out in an oath, which seems to be superfluous since the sentence starts: Or a person who would swear blurting out with his lips. The addition indicates that the verse should not be interpreted narrowly. Cf. Note 83.

74 Oaths stating facts about the past.

(43) הלכה וי אֶחָד דְּבָּרִים שֶׁלְּצִצְמוֹ כול'. רְבִּי בָּא בְשֵׁם שְׁמוּאֵל. שְׁבוּעָה שֶׁנָּתַן פְּלוֹנִי וֹמְנָה, וְנִמְצָא שֶׁלֹא נָתַן. מֵאַחַר שָׁאֵין בְּיָדוֹ לְבֹא אֵין בְּיָדוֹ לְשֶׁעָבַר. הָתִיב רְבִּי יוֹמֵי. הֲרִי תְּבִּילוֹ מְשֶׁלָבוֹ אַחֵן לַבֹּא וְיֵשׁ בָּהָן לְשֶׁעָבַר. אָמֵר לוֹ. תְּפִילִּין מִמְּקוֹם אַחֵר בָּאוּ. לְהָרֵע אוֹ לְהַיִּטִיב. מְהַ הָשָׁרָה רְשׁוּת אַף הַרְעָה רְשׁוּת. יָצָא דְּבָר שָׁהוּא שֶׁלְּאִיסוֹר וְדָבָר שָׁהוּא שֶׁלְּהִיתֵר. לְכֹל אֲשֶׁר יְבָּעֵא פְּרָט לְקָטְן. הָאָדָם בִּשְּׁבָּאָה פְּרָט לְאָנוֹס. וְנֶעְלָם מְמֶנוּ פְּרָט לְמֵילוּ. וְנָעְלָם מְמֶנוּ שְׁבוּעָה. אוֹ יָכוֹל וְנָצֶלָם מְמֶנוּ הַחֵפֶץ. בְּשְׁבָּאָה וְנֶעְלַם מְמֶנוּ יִּנָע הָשֶׁלם שְׁבוּעָה וֹהָא חִייָב. עַל הָעֻלֵם שְׁבוּעָה וְיהָא חִייָב. וְאֵין בִּינִהֶן חַיִּיב עַל הָעֲלֵם חַפֶּץ. וְתֵן הָעֶלֵם חָפֶּץ עַל הָעֲלֵם שְׁבוּעָה וְיהֵא חִייָב. וְאֵין בִּינִהֶן הַיְבָּעם טוּמְאָה עַל הָעֻלֵם מִקְּדָשׁ. וְתָּן הָעֶלְם מִמְּנוּ וֹנְעֻלְם מִמְּנֵוּ שְׁבִינִיהוּ הַיִּבְב עְל הָעֲלֵם מִקְּדָשׁ. תַּמָן כָּתוֹב וְנָעְלָם מִמְּנֵוּ וּנְעְלְם מִמְּנוּ שְׁבִי מִקְנוּ אַחָר. יְכוֹל הַנִּשְׁבַּע לְהָרַע לְאֲחֵרִים יְהָא חְיִיב. תַּלְמִבּי לְהָרָע אוֹ לְהָתָע לְאֲחֵרִים יְהָא מְחִב. לְהָרָע אוֹ לְהָרָע אוֹ לְהָרֵע לְאֲחֵרִים יְהָא מְיִבּוֹ לְמְבֵּרְה מְיכוֹל. הָנִשְּבַּע לְהָרַע לְאֲחֵרִים יְהֵא חְיִיב. תַּלְהָב רְשׁוּת לְּחָבָרִיה מֵיכוֹל. הַנִּשְּבַע לְהָרַע לְאֲחֵרִים יְהֵא חְיִבּב שְׁיִה לְחַבְרִיה מְשִּרְ לְחָבֵרִיה מְיִכּוּל. חֲמִתְּיה מְפַרְבּר וְיהבּב לְיה.

Halakhah 6: "Whether matters of himself," etc. Rebbi Abba in the name of Samuel: "An oath that X gave a mina to Y," and it turns out that he did not give, since it was not in his power for the future, it is not in his power for the past⁷⁵. Rebbi Yose objected, about phylacteries there is nothing about the future but there is about the past⁷⁶! He told him, phylacteries came from another source. To cause evil or cause good⁷²; just as doing good is optional so doing bad is optional; this excludes anything involving a prohibition or anything involving a permission⁷⁷. Anything which one will blurt out, excluding a minor⁷⁸. A person in an oath, excluding a person not acting at his own will⁷⁹. And it will be forgotten by him, he will be oblivious of the oath. Or could I think that the object was forgotten by him? The verse says, in an oath and it was forgotten by him; he is liable for forgetting the oath; he is not

liable for forgetting the object. Could one not add forgetting the object to forgetting the oath so that he should be liable? What is the difference between this and forgetting impurity and forgetting the Sanctuary so that he should be liable twice following Rebbi Ismael, who said forgetting impurity and forgetting the Sanctuary⁸⁰? There it is written *it was forgotten by him*, *it was forgotten by him* twice⁸¹. Here it is written *it was forgotten by him* once. I could think that one who swears to the detriment of others should be liable: the verse says, *to cause evil or cause good*; just as doing good is optional so doing bad is optional⁸². I shall exclude one who swears to the detriment of another that he should not be liable. For example, if one swears that he will not provide food for another. He saw him in convulsions and gave to him.

75 He never could swear that X will give Y since it is not in his power to force X to give. This is all about liability for a variable sacrifice, not monetary liabilities. Since witnesses do not swear, this is not a case of perjury.

76 If somebody swore falsely that he put on *tefillin* he is liable for a sacrifice (Mishnah 9).

77 The expression המניר "permission" probably is induced by the usual opposites prohibition - permission. What really is intended here is מצוה "commandment" which is the opposite of something optional; Sifra Hova (Wayyiqra 2) Parashah 9(6), Babli 27a.

78 Whose words have no legal consequences.

79 Sifra Hova (Wayyiqra 2) Parashah 9(9), Babli 26a. This includes even a person acting by his own will on false information or false remembering.

80 Chapter 1, Note 23.

81 *Sifra Ḥova (Wayyiqra 2) Pereq* 12(7), Babli 14b; Mishnah 2:6.

82 Since harming anybody is forbidden, an oath to harm another person does not trigger liability for a sacrifice if it is broken. The example shows that in this case breaking the oath may be a meritorious act. Babli 27a.

(34c line 59) הַיּדְּ רְבִּי יִשְׁמָעֵאל דְּרִישׁ. אַוֹ נֻּפֶשׁ כִּי תִשְּׁבַעֵּ לְבַפֵּׂא בִשְׂפָתַׁיִם כְּלָל. לְהָרֵע | אַוֹ לְפָשׁ כִּי תִשְּׁבַע לְבַפַּׂא בִשְׂפָתִׁים כְּלָל. לְהָרָע | אַוֹ בְּכְלָל אֶלָא מֵה שְׁבִּפְרָט. וַהֲלֹא אֵין בִּפְרָט אֶלָא דְבָרִים שְׁיֵשׁ בָּהֶן הֲכָלָל וְהַכֵּל הְרָיכִי וְהֲטָבָה. אֶלֶא בֵינִי. לְהָרֵע | אַוֹ לְהִיטִיב בְּרָט. לְכֵּל אֲשָׁר יְבַשֵּא כְּלָל. כְּרָע וּכְלָל וְהַכִּל בְּכְל וְרִיבָה דְבָרִים שְׁהֵן לְשֶׁעֲבַר. אֶלֶא בֵינִי. אַוֹ נְּפֶשׁ כִּי תִשְׁבַע לְבַפַּא כְּלָל. לְהָרָע | אַוֹ לְהֵיטִיב בְּרָט. לְכֹל אֲשִׁי בְּלָן וְרִיבָה דְבָרִים שְׁהֵּל וְהַכְּע. מְהָ הַבְּל וּבְּלָע וּבְלְע אֵי אַתָּה דָן אֶלָא כְעֵין הַבְּּרָט. מָה הַבְּרְט בְּכָּר שְׁבִּין בָּהָן הַרְעָה וַהַטְבָּה מְנִיין. אָמֵר לוֹ. אָמַר לוֹ. אָמַר לוֹ. אָמַר לוֹ. אַמַר לַּבְּ רִיבָּה הַכַּתוּב לָכָךְּ רִיבָּה הַכָּתוּב לַכָּךְּ: לֵיהָ יִּלָּא בְּיִיּה הַכָּתוּב לָכָךְּ רִיבָּה הַכָּתוּב לְכָךְּ: לִיהָּר בָּיִבְּה הַכָּתוּב לְכַךְּ: לִיתְּ יִכִּיל דָּמֵר רְבִּי הִילָא

בְשֵׁם רְבִּי לֶעֶזָר. כָּדְ מֵשִׁיב רְבִּי יִשְׁמָעֵאל אֶת רְבִּי עֲקִיבָה. מָצִינוּ דְבָרִים שֶׁחַייָבִין עַל זְדוֹנָן מִשֶׁם שְׁבוּעַת בִּיטוּי. וְיתֵיבִינֵיהּ. מָצִינוּ דְבָר שֶׁחַייָבִין בִּזְדוֹנוֹ מִשְׁם שְׁבוּעַת בִּיטוּי. וְיתֵיבִינֵיהּ. מָצִינוּ דָּבָר שֶׁחַייָבִין בִּזְדוֹנוֹ מִשְׁם שְׁבוּעַת שֶׁקֶר וּמֵבִיא קַרְבָּן. אָמֵר לִיהּ. וְאִית לָדְ דְּבָרִים שְׁאֵין בָּהֶן הֲרָעָה וַהַטָּבָה וְלִי נָן כְּתִיבִין אִין בָּהֶן אָמַר לֵיהּ. אַף עַל גַּב דְּאִית לִי דְּבָרִים שְׁאֵין בָּהֶן הֲרָעָה וַהַטָּבָה. לִית אִינּוּן כְּתִיבִין אִין בָּהֶן מִשְּׁוּם הַרְעָה וַהַטָּבָה. הָא לְשַּׁעָבַר לֵית.

How does Rebbi Ismael explain the verse? 72Or a person, if he would swear blurting out with his lips, a general statement. To cause evil or cause good, a detail. A general statement followed by a detail; the general statement contains only what is in the detail. But the detail only contains matters of causing evil or good! But it is so: To cause evil or cause good, a detail. Anything which a person will blurt out, a general statement. A detail followed by a general statement, everything is included; this adds matters directed towards the past. But it is so: Or a person, if he would swear blurting out with his lips, a general statement. To cause evil or cause good, a detail. Anything which a person will blurt out, a general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail⁸³. Since the detail is explicit, matters of causing evil or good, from where matters not causing evil or good? 8444He answered him, from the additional text of the verse^{73,85}. He answered, just as the verse added for this, the verse added for the other⁸⁶." You cannot⁸⁷. as Rebbi Hila said in the name of Rebbi Eleazar: So did Rebbi Ismael¹¹ answer Rebbi Aqiba. Do we find cases where one is liable for intentional action because of a false oath but if in oblivion because of a blurted oath¹²? Could he not have objected, do we find cases where one is liable for intentional action because of a false oath and he has to bring a sacrifice¹³? He said to him⁸⁸, do you agree that there are cases which are not matters of causing evil or good, even if they are not written⁸⁹? He told him⁹⁰, even though I accept cases which are not matters of causing evil or good, are they only written if they be matters of causing evil or good⁹¹? Therefore never for the past⁹².

83 In the version of *Sifra* (*Introduction* 1), in the list of the thirteen hermeneutical principles of R. Ismael one finds (5) a general statement followed by a detail, (6) a

detail followed by a general statement, (7) a general statement followed by a detail followed by a general statement you only argue following the pattern of the detail, (8)

a general statement dependent on the detail, (9) a detail dependent on the general statement. Rules 8 and 9 mean that if the general statement can only be understood by the detail or vice versa, rules 5 and 6 do not apply. It then is explained in §7 that if a general statement is followed by a detail, only the detail is intended. §8: If a detail is followed by a general statement, the general statement adds to the detail. Examples are Lev. 1:2: From animals, from cattle, or from small cattle. This implies that sacrifices are restricted to cattle, sheep, or goats. 22:9: A donkey, an ox, a sheep, or any animal. The rules of caretakers apply to any animal. Then it becomes a problem how to treat a verse which contains general statement, detail, general statement, whether to apply rule 5 (eliminating the final general statement by rule 9), or rule 6 (eliminating the first general statement by rule 8), or rule In the preceding derivation, the arguments have been suppressed that rules 8 and 9 do not apply and, therefore, only rule 7 is relevant. The standard example for an application of rule 7 is Deut. 14:26, about permitted uses of Second Tithe money at the place of the Sanctuary: You may spend the money for anything you desire (general), for cattle, or small cattle, or wine, or liquor (detail), or anything you wish (general). The common denominator of the items in the detail describes animal or vegetable food; Second Tithe money can be used for any food derived from animals (generated from semen) or plants (growing from seeds).

Since the first part of *Lev.* 5:4 fits Rule 7, it is clear that the rule applies not only to oaths intended to cause good or evil but to a

larger set of oaths which, however, have to conform to the idea underlying "causing good or bad things". Obviously one of the ideas is that events caused are later in time than the cause. This is R. Ismael's interpretation of the verse. Babli 26a.

84 Quote from the Mishnah.

85 This is not an additional argument. The additional text shows that the rule to be applied is rule 7, not rule 5. R. Aqiba follows a different system. For him the sentence structure is not general, detail, general but expansive, restrictive, expansive, which he reads as including everything except what is completely different from the detail quoted as restriction.

86 The text of R. Aqiba's answer is the text of the Mishnah in the Babli. It is known that the separate Mishnah in the Yerushalmi is not from the Yerushalmi text. The Mishnah text in Maimonides's autograph is that of the separate Yerushalmi Mishnah.

87 The Mishnah cannot be quoted as proof that R. Ismael conceded to R. Aqiba.

88 R. Agiba to R. Ismael.

89 Since they are not mentioned in the verse. For לינת אין read לָלוֶת אין.

90 R. Ismael to R. Agiba.

91 It is obvious from rule 7 that the obligation of a variable sacrifice for a blurted oath must hold for a larger set than "causing bad or good things". The only problem is to define this larger set and the causative employed definitively excludes oaths regarding the past. The Tanna of the Mishnah cannot accept R. Ismael's hermeneutical rules

(fol. 34a) משנה זי נְשְּבַּע לְּבַשֵּל אֶת הַמִּצְוָה וְלֹא בִישֵּל פָּמוּר. לְקַיֵים אֶת הַמִּצְוָה וְלֹא קִייֵם (fol. 34a) משנה זי נִשְּבָע לְבַשֵּל אֶת הַמִּצְוָה וְלֹא בִישֵּל פָּמוּר. שֶׁהָיָה בַּדִּין שֶּיְהֵא חַיִּב דְּבְרֵי רְבִּי יְהוּדָה בֶּן בְּתֵירָא. אָמֵר רְבִּי יְהוּדָה בֶּן בְּתֵירָא וּמְה אֵם הַרְשוּת שֶׁצִינוֹ מוּשְּבָּע עֻלֶּיהָ מֵהַר סִינֵי הֵרִי הוּא חַיִּב עֻלֶּיהָ. מֻמְרוּ הַיִּשוּת שֶּבֵּן עֻשָּׁה מַהְר סִינַי אֵינוֹ דִין שֶּיְהֵא חַיִּב עֻלֶּיהָ. אֱמְרוּ לוֹ לֹא. אִם אָמַרְתָּ בִּשְׁבוּעִת הַרְשוּת שֶּבֵּן עֲשָׁה בָהּ לָאוֹ כְּהֵין שֶׁאָם נִשְּבַּע לְבַפֵּל וְלֹא בְמֵל בָּה לָאוֹ כְּהוֹ לָאוֹ בְּהֵל וְלֹא בְמֵל פְמוּר:

Mishnah 7: If he swore not to observe a commandment but failed not to observe it, he is not liable ^{42,92}; to observe a commandment and did not observe it, he is not liable ⁹³, though it would have been logical that he should be liable, the words of Rebbi Jehudah ben Bathyra. Rebbi Jehudah ben Bathyra said, since he is liable for a permitted purpose, for which he is not sworn to from Mount Sinai, is it not logical that he should be liable about a commandment to which he is sworn from Mount Sinai⁴²? They said to him, no. What you say about an oath for permitted purpose where He made "no" equal to "yes", can you say that about an oath concerning a commandment, where He did not make "no" equal to "yes"? Since one who swears not to observe a commandment but failed not to observe it, is not liable ⁹⁴.

- 92 Since the oath is void, he is prevented from sacrificing if it was unintentional. If it was intentional he can be prosecuted for a vain oath, forbidden in the Ten Commandments.
- 93 The oath to keep the commandments is valid (*Ps.* 119:107); why does breaking this valid oath not imply liability for a sacrifice

or criminal prosecution?

94 In matters not involving biblical precepts, an oath is valid whether formulated in the positive or negative. But for biblical precepts King David already did decide that one may swear to keep them (*Ps.* 119:106); only oaths to break commandments are intrinsically void.

(34c line 74) **הלכה זי** נְשְׁבַּע לְבַטֵּל אֶת הַמִּצְוָה כול'. אָמַר רְבִּי מָנִי. כֵּינִי מַתְנִיתָא. חַייָב. דְּבְרִי רְבִּי יְהוּדָה בֶּן בְּתַירָא. מָה מֵר רְבִּי יְהוּדָה בֶּן בְּתֵירָא בִּשְׁאָר הָאִיסוּרִין. שְׁבוּעָה שָׁאוֹכַל נְבֵילָה. וְלֹא אֲכָלָהּ. פָּטוּר. אָמַר. שְׁבוּעָה שֶׁלֹא אוֹכַל. וְאָכַל. אִין תֵּימֵר חַיִּיָב. וִיתִיבִינֵיהּ. לֹא. אִם אָמֵרְתָּ בִּשְׁבוּעַת הָּרְשׁוּת שֶׁעָשֶׂה בָהּ לָאו כְּהֵין וְהֵין כְּלָאו. תֵּימֵר בִּשְׁבוּעַת מִצְוָה שֶׁלֹא עָשָׂה בָהּ לָאו כָּהֵין.

אַזְהָרָה לִשְׁבוּעַת הֶרְשׁוּת מְנַיִּין. אָמֵר רְבִּי יוֹסֵי בֵּירְבִּי בּוּן. לְא יַחֵל דְּבָרְוֹ. לֹא יַעֲשֶׂה דְבָרְיו חוּלִיוִ. Halakhah 7: "If he swore not to observe a commandment," etc. Rebbi Mani said, so is the Mishnah: "He is liable, the words of Rebbi Jehudah ben Bathyra. "S" What Rebbi Jehudah ben Bathyra said refers to prohibitions in general. "An oath that I shall eat carcass meat," but he did not eat it. He is not liable. "An oath that I shall eat," and he ate "6. If you would say that he is liable, they should have objected to him: No. You declare about an oath for permitted purpose where He made "no" equal to "yes" and "yes" equal to "no", can you declare this about an oath concerning a commandment, where He did not make "no" equal to "yes"?

From where a warning about an oath for a permitted purpose? Rebbi Yose ben Rebbi Abun said, *he shall not profane his word*⁹⁸, he shall not make his words profane⁹⁹.

95 Since R. Jehudah ben Bathyra gives an argument to hold a person liable if he breaks any oath, R. Mani wants to read simply "he is liable, the words of R. Jehudah ben Bathyra".

Everybody, including R. Jehudah ben Bathyra, agrees that somebody who breaks an oath to break a Torah commandment is never liable for a sacrifice. The only problematic cases are somebody who keeps an oath to break a Torah commandment or who breaks an oath to keep commandment. In both cases he might be liable to prosecution for breaking the commandment; the only question here is whether he is liable for a sacrifice, which is answered in the negative by the majority and

in the positive by R. Jehudah ben Bathyra.

97 Oaths about profane subjects may be formulated either as declarations of intent to do something or to refrain from it; about biblical precepts the only admissible ones are to keep the commandments. For R. Mani's interpretation of R. Jehudah ben Bathyra's argument to hold, the Mishnah should have been formulated differently. As it stands, the formulation of the Mishnah has to be accepted and R. Mani's correction rejected.

98 *Num.* 30:3, the paragraph about profane vows. Babli 21a.

99 He translates biblical into rabbinic Hebrew.

(fol. 34a) משנה חּי שְבוּעָה שֶלֹא אוֹכַל כָּכָּר זוֹ שְבוּעָה שֶלֹא אוֹכְלֶנָה שְבוּעָה שֶלֹא אוֹכְלֶנָה וַאֲכָלָה אֵינוֹ חַיִּב אֶלָּא אַחַת. זוֹ הִיא שְבוּעַת בִּיטוּי שֶחַיִּבִין עֵל זְדוֹנָה מַכּוֹת וְעַל שִּגְנָתְהּ קַרַבָּן עוֹלֵה וִיוֹרַד. **Mishnah 8**: "An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it;" he is liable only once¹⁰⁰. This is the blurted oath¹⁰¹ where in case it be intentional one is liable for flogging¹⁰², and if unintentional for a variable sacrifice.

100 He made three oaths but the second and third are void since they forbid what already is forbidden.

101 It is the paradigm for all rules about "blurted oaths".

102 If he was duly warned not to break his oath but broke it before witnesses he can be prosecuted in criminal court for breaking the commandment of he shall not profane his word

(34d line 5) הלכה ח: שְׁבוּעָה שֶׁלֹּא אוֹכֵל כָּכָּר זוֹ כול". שְׁבוּעָה שֶׁאוֹכֵל כָּכָּר זֶה הַיּוֹם. וְעָבַר הַיּוֹם וַאֲכָלָה. רְבִּי יוֹחָנֶן וְרִישׁ לָקִישׁ תְּרֵיהוֹן אֱמְרִין. פָּטוּר. לֹא טַעֲמָא דְאָהֵן. טַעֲמֵיה דְּרִבִּי יוֹחָנֶן מְשֵׁם שְׁאֵינוֹ רָאוּי לְקַבֵּל הַתְּרָייָה. טַעֲמֵיה דְּרִישׁ לָקִישׁ מִשׁוּם שְׁהוּא בְּלֹא תַעֲשֶׂה שְׁאֵינוֹ בָאוּי לְקַבֵּל מַעֲשֶׂה שְׁאֵינוֹ רָאוּי לְקַבֵּל מַעֲשֶׂה. מַה מַפְּקָה מִבֵּינֵיהוֹן. שְׂרָכָּהּ וְהִשְׁלִיחָהּ לַיָּם. אִין תִּימֵר מִשִּׁם שְׁאֵינוֹ רָאוּי לְקַבֵּל הַתְרָייָה פָּטוּר. וְאִין תִּימַר מִשׁׁוּם שְׁהוּא בְלֹא תַעֲשֶׂה הַרִי יֵשׁ בּוֹ מַעֲשֶׂה.

Halakhah 8: "An oath that I shall not eat this loaf," etc. "An oath that I shall eat this loaf today," the day passed and then he ate it. Rebbi Johanan and Rebbi Simeon ben Laqish both say, he is not liable ¹⁰³; not for the same reason. The reason of Rebbi Johanan, because he cannot be duly warned ¹⁰⁴. The reason of Rebbi Simeon ben Laqish, because it is a prohibition without action ¹⁰⁵. What is the difference between them? He burned it or threw it into the sea. If you say, because he cannot be duly warned ¹⁰⁶, he is not liable. If you say, because it is a prohibition without action, there is an action.

103 Criminal liability.

104 No criminal prosecution is possible without evidence that the criminal was duly warned not to commit the crime (cf. *Introduction to Tractate Sanhedrin*, on Chapter Five). The warning must be delivered shortly before the criminal act, so the accused cannot claim to have forgotten. In this case criminality would be inaction; this is not subject to warning.

The Babli, 3b, brings the same

example and connects this with the dispute between R. Johanan and R. Simeon ben Laqish whether a warning can be delivered even if it is conditional because there is no certainty that the contemplated action will be criminal (*Yebamot* 11:7 Note 171, *Nazir* 8:1 Note 48, *Pesahim* 5:4 fol. 32c; Babli 3b). Since R. Johanan holds that a conditional warning is acceptable, the Babli is forced to switch the attributions in this case. As a consequence it follows that for

the Yerushalmi here, in R. Joḥanan's opinion this would not be a conditional warning but one which it is impossible to deliver. (In his Notes to Tosaphot s. v. אבל א, Babli 4a, R. Akiba Eiger essentially notes that the Babli's argument cannot be read into the Yerushalmi.)

105 Cf. Note 3.

106 Even if the witnesses are present at the moment when the loaf is thrown into the sea he cannot be warned since what he does is not breaking the oath but making its fulfillment impossible; there is no biblical paragraph prohibiting this action.

(34d line 12) רְבִּי פִּינְחָס בָּעֵי. הָיָה אַסְתָנֵיס. מֵאַחַר שָׁאֵין בְּיָדוֹ לָבֹא אֵין בְּיָדוֹ לְשְׁעָבָר. רְבִּי יוֹסֵי בַּיִרבִּי בּוֹן. רְבִּי יוֹסֵי בָּירְבִּי וּוֹסֵי בַּירְבִּי בּוֹן. רְבִּי יוֹסֵי בָּירְבִּי בּוֹן. רְבִּי יוֹסֵי בָּירְבִּי בּוֹן. רְבִּי יוֹסֵי בַּירְבִּי בּוֹן. נִישְׁמְעִינָהּ מֵן הָדָא. שְׁבּוּעָה שֶׁלֹּא אוֹכַל כִּכָּר זוֹ. שְׁבוּעָה שֶׁלֹּא אוֹכְלִינָה. שְׁבוּעָה שֶׁלֹּא אוֹכְלִינָה. עֲבוּעָה שֶׁלֹּא אוֹכְלִינָה. עֲבוּעָה שֲׁלֹא אוֹכְלִינָה. וְאָחַת. וַאָבְּיָרָה. מָחְבִּי בָּה זוֹ. הָא אִם לֹא הָזְכִּיר בָּהּ זוֹ חַייָב עֲלַ כָּל־אַחַת וְאַחַת. מִפְּנֵי שֶׁהִזְכִּיר בָּהּ זוֹ. הָא אִם לֹא הָזְכִיר בָּהּ זוֹ חַייָב עֵל כָּל־אַחַת וְאַחַת. Rebbi Phineas asked, if he was asthenic 107? Since it is not in his hand for the future, it is not in his hand for the future, it is not in his hand for the past 75.

Rebbi Yose asked, "an oath, an oath, an oath, that I shall not eat," and he ate. What is the rule? Rebbi Yose ben Rebbi Bun said, let us hear from the following: "An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it;' he is liable once." Because he mentioned *this*. Therefore, if he did not mention *this*, he would be liable for each single one 108.

107 Greek ἀσθενής. He is unable to eat an entire loaf during the day and he knows it. Therefore it is a false oath, not a blurted one.

108 Since he specified the loaf in the first

oath, the others were vain. But if it was not specified, the oaths are concurrent but separate and each one carries its own liability. This is amplified in the next paragraph.

(16 line 16) אַבּימֵי אַחוֹי דְחֵיפָה אָמַר. שַׁמְשִׁית בְּנְדָרִים שַׁמְשִׁית בִּשְׁבּועוֹת. בָּעֵי חֵיפָה מִיבְּדְּקִינֵיה. הָיוּ לְפָנָיו חָמֵשׁ כִּבְּרִין וְאָמֵר. שְׁבּוּעָה שֶׁאוֹכַל כִּבָּר זוֹ. וְחָזַר וְאָמֵר. שְׁתַּיִם אֵילוּ מִיבְדְּקִינֵיה. הָיוּ לְפָנָיו חָמֵשׁ כִּבְּרִין וְאָמֵר. שְׁבּשָׁה אֵילוּ. וְחָזַר וְאָמֵר. חֲמִשְׁה אֵילוּ. וְחָזַר וְאָמֵר. חֲמִשְׁה אֵילוּ. וְאָמֵר. אַבְּבָעה אֵילוּ. וְחָזַר וְאָמֵר. חֲמִשְׁה אֵילוּ. וְחָזַר וְאָמֵר. אָמֵר לֵיהּ. אֵינוֹ חַיִּיב אֶלָּא אַחַת. מִבְּיוֹן הָרְאשׁוֹנָה. אָמֵר לֵיהּ. חַיִּב עַל כָּל־אַחַת וְאַחַת. אָמֵר לֵיהּ. אֵינוֹ חַיִּיב אֶלָּא אַחַת. מִיבֶּון נְאֵילַדְּ כְּמֵיחַל שְׁבּוּעוֹת עַל הָאִיפּוּרְיון. וְאֵין שְׁבוּעוֹת חָלוֹת עַל הָאִיפּוּרְיון.

חָזַר חֵיפָה וּבְדָקֵיהּ. הָיוּ לְפָנָיו חָמֵשׁ כִּכָּרין וְאָמֵר. שְׁבוּעָה שֶׁאוֹכַל חָמֵשׁ כִּכָּרים אֵילוּ. וְחָזַר וְאָמֵר. שְׁבוּעָה שֶׁאוֹכַל חָמֵשׁ כִּכָּרים אֵילוּ. וְחָזַר וְאָמֵר. אַנְר לִיהּ. וְאָמֵר אָמָר לִיהּ. חָיָב עָל כָּל־אַחַת וְאַחַת. אִילוּ מִי שֶׁאָמֵר. שְׁבוּעָה שֶׁאוֹכַל אֵינוֹ חַייָב עֻל כָּל־אַחַת וְאַחַת. אִילוּ מִי שֶׁאָמֵר. שְׁבוּעָה שֶׁאוֹכַל חֻמֵשׁ כִּכָּרִים. וְאָכַל ד'. שֶׁמָא אֵינוֹ פָטוּר.

אַמַר רְבִּי יוֹסֵי. מִסְתַּבָּרָה כְאַחוֹי דְחֵיפָה בַּאַחֵרִייַתָא וּכְחֵיפָה בְקַדְמִיתַא.

Abime the brother of Ḥefa¹⁰⁹ said, I had studied *Nedarim* and *Ševuot*; Ḥefa wanted to examine him. He had before him five loaves and said, an oath that I would not eat this loaf. He returned and said, these two. He returned and said, these five. He returned and said, these five. Then he ate the first. He¹¹⁰ said to him, he is liable for each single one¹¹¹. He¹¹² answered, he is liable only once, for when he mentioned the first he made it like carcass meat; the following make an oath fall on something prohibited and oaths cannot fall on prohibitions¹¹³.

Hefa continued to examine him. He had before him five loaves and said, an oath that I would not eat these five loaves. He returned and said, these four. He returned and said, these three. He returned and said, these two. He returned and said, this one, and ate the first one. He¹¹⁰ said to him, he is liable only once¹¹⁴. He¹¹¹ answered, he is liable for each single one; if somebody said "an oath if I would eat five loaves" and he ate four, is he not free from liability¹¹⁵?

Rebbi Yose said, the brother of Hefa seems to be reasonable in the later case and Hefa in the prior.

109 He is called עיפא in the Babli 28b, where their dispute is about other cases and Hefa always has the correct answer. They are Babylonian Amoraim of the fourth generation.

110 Abime.

111 Since each oath adds to the preceding prohibition, even R. Johanan should agree that the addition in each oath is valid (Note 42).

112 Hefa.

113 R. Johanan will agree that successive additions of prohibitions are valid only if the prohibitions vary in kind, not if the domain of applicability of one prohibition is enlarged.

114 Since 4,3,2,1 all are contained in 5, all oaths following the first are void.

115 Since he did not eat five, he did not break the oath. In this case, instead of "not liable" one should say "permitted."

(fol. 34a) משנה ט: שְבוּעַת שָּוְא חַיָּבִין עֵל זְדוֹנָהּ מַכּוֹת וְעֵל שִׁנְגָתָהּ פָּמוּר: וְאֵי זוֹ הִיא שְבוּעַת שָּוְא נִשְבָּע לְשַׁנּוֹת אֶת הַיָּדוּעַ לָאָדָם אָמֵר עֵל הָעָמוּד שֶׁל אֶבֶן שֶהוּא שֶל זָהָב וְעֵל הָאִיש שֶהוּא אִשָּה. עֵל הָאִשָּה שֶהִיא אִיש. נִשְבַּע עַל דָּכָר שֶאִי אֶיפְשָּר לוֹ לְהְיוֹת. אִם לֹא רָאִיתִי נָחָש כְּקוֹרַת בֵּית הַבָּד. אָמַר לְעַדִים בּוֹאוּ וְהַעִידוּנִי שְׁבוּעַה שֶׁפּוֹרַה נִשְׁבַּע לְבַמֵּל אֶת הַמִּצְוָה שֶׁלֹא לַעֲשׁוֹת סוּכָּה וְשֶׁלֹא לִימוֹל לוּלְב וְשֶׁלֹא לְיִמוֹל לוּלְב וְשֶׁלֹא לְתַבּוֹת הַפְּלֹץין, זוֹ הִיא שָׁבוּעַת שַּוֹא שֶּחִיבִין עֵל זְדוֹנַהּ מַכּוֹת וְעֵל שֻׁנְגַהְהּ פָּמוֹר:

Mishnah 9: For an intentional vain oath one is liable to be flogged; if in error one is not liable. What is a vain oath¹¹⁶? One swears to change what is known to man, about a stone pillar that it is of gold, a man that he is a woman, or a woman that she is a man. One swears about an impossibility, if I did not see a flying camel, if I did not see a snake like the beam of the olive press. If one said to witnesses come and testify for me, an oath that we shall not testify for you¹¹⁷. One swears not to keep commandments: not to make a booth⁶⁸, not to take the *lulav*¹¹⁸, not to put on phylacteries¹¹⁹; these are vain oaths for which one is liable to be flogged if intentional, and free from prosecution of unintentional.

116 An oath which either is obviously false or one which he is forbidden to keep.117 This is sinful if they know testimony.

Lev. 5:1.

116 *Lev.* 23:40, the palm branch with accompanying greenery.

117 Ex. 13:16, Deut. 6:8,11:18.

(34d line 28) **הלכה ט**י שְׁבוּעַת שַׁוְא חַייָבִין עַל זְדוֹנָהּ מַכּוֹת כול'. תַּפֶּן תַּנִּינֶן. אָם לֹא רָאִיתָּר בַּדֶּרֶךְ זֶּה כְּעוֹלֵי מִצְרַיִם. אֶיפּשַׁר שֶׁלֹא עָבַר בָּהּ כְּעוֹלֵי מִצְרַיִם. אֶלָּא כִי נָן קַייָמִין בַּרְאִייָה אַחַת. בַּדֶּרֶךְ זֶּה כְּעוֹלֵי מִצְרַיִם. אֶלָּא כִי נָן קַייָמִין בַּרְאִייָה אַחַת. וְהָא דְּוֹקְלֵיטִיאָנוּס כַּד נְחַת תַּמָן נְחַת עִימֵיה ק"כ רְבְוֹוֶן. אֶלָּא כִי נָן קַייָמִין בַּרְאִייָה אַחַת. 2 כִי נִן וֹנִ מִּען בּרָאִינָ בְּרְאִייָה אַחַת. 2 כי נוּ וֹנִּל וּמוֹ נוּ דּוֹקליטִיאנוּס וְנֹלוֹינוֹס קִיסִר תַמוֹן נֹלתמוְ קִיכֹּוֹנְ מאה ואשרים בּי נוּ וְנֹאכּן אַנן "For an intentional vain oath one is liable to be flogged," etc. There 118, we have stated: "If I did not see on this road [crowds] like those who left Egypt." But we are dealing with one look. Was it not the case that when Diocletian went there, 1'200'000 [men] went with him? But we must be dealing with one look.

118 Mishnah Nedarim 3:2.

there in Notes 37-78.

119 From here to the end of Halakhah 10, the text also is in *Nedarim* 3:2 (3), explained

120 In Nedarim: Julianus Caesar. This is the correct text since Diocletian never made war "there", i. e., in Babylonia.

(34d line 32) אָם לא רָאִיתִי נָחָשׁ כְּקוֹרַת בֵּית הַבָּד. וְהָא חִיוְיָא דְּשָׁבוּר מַלְכֶּא בְּלַע גְּמָלִין בְּלַעוֹן קַרוֹנִין. כַּד בְּעוּן מִיקְטְלוֹנֵיהּ אֵייתוֹן בְּחָלִין דְּגָמֶלִין וּמָלוֹן יַתְהוֹן תֶּבֶן וִיהָבוּן בְּהוֹן גּוֹמְרִין וּבַלְעוֹן קַרוֹנִין. כַּד בְּעוּן מִיקְטְלוֹנֵיהּ אֵייתוֹן בְּחָלִין דְּגָמֶלִין וּמָלוֹן יַתְהוֹן תֶּבֶּן וִיהָבוּן בְּהוֹן גּוֹמְרִין וּבַלְעוֹן נַמִּת. אָמֵר רְבִּי יּיְּה בַּר בְּיִי. חֲמִית מְשַׁח דְּחִיוִי סְלִיק קָרוּכִּין דְמַלְכוּתָא. שְׁמוּאֵל אָמֵר. בִּמְרוּבַּע. וְאָם בִּר יִנְיְן אָבוֹי יִּדְן אָבוֹי דְרְבִּי מִתְּנִייָה. שֻׁלָּא דְלֵית אוֹרְחָא דְתַנֵּייָא בְּמָר מִּרְבָי אַבְּיל בּיְבִין. נְמְלֵי מִנְּיְנִייָ, עַּבְּבָּר פוֹרֵח בָּאֲוִיר. נִיתְנֵי. נִיתְנֵי. עַּבְּבָּר פוֹרֵח בָּאֲוִיר.

"If I did not see a snake like the beam of the olive press." ¹²¹Did not the snake of king Sapor swallow camels and carts? When they wanted to kill it, they filled camel bags with straw and put glowing coals inside; it swallowed them and died. Rebbi Jehudah bar Pazi said, I saw the hide of a snake made over eight spaces between pillars¹²². Rebbi Samuel ben Jacob said, I saw the hide of a snake covering a state coach¹²³. Samuel said, square. If square one could state even a small one¹²⁴. Rebbi Yudan the father of Rebbi Mattaniah said, so it is. It is the way of this Tanna to use only big words, as we have stated: "A flying camel." Could he not have stated, "a flying rat"?

121 The text in *Nedarim* either is from another textual tradition or is rather corrupt.
122 Greek μεσοστύλιον "space between columns."

123 Latin carruca "travel coach".

124 In Samuel's opinion a square snake is more wonderful than an oversized one since nothing in nature is square, as stated later in the text

34d line 40) תַּנֵי. רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר. אֵין מְרוּבַע מִשְּׁשֶׁת יְמֵי בְּרֵאשִׁית. הָתִּיב רְבִּי בְּרָאשִׁית. וְהַתַּנִּינֵן. גוּף הַבַּהֶרֶת כָּגְרִיס הַקִּילִקִּי מְרוּבַע. מְקוֹם הַגְּרִיס תַּשִּׁע עֲדְשׁוֹת. מְקוֹם עֲדְשָׁה אֲלְרִיה שְּמֵר רְבִּי יוסנה. כָּל־גַּרְמָא אֲמְרָה שָׁאֵינוֹ מְרוּבַע. אַרְבַּע שְׂעָרוֹת. נִמְצְאוֹ שְׁלִשִׁים וְשֵׁשׁ שְׂעָרוֹת: אָמֵר רְבִּי יוסנה. כָּל־גַּרְמָא אֲמְרָה שָׁאֵינוֹ מְרוּבַע וְלָמָה תַנִּיתָה מְרוּבַע. דִּי יְרַבְעֶינָה הוּא. והכגעה. מָלֵא הוּא קִיטְרִין. וְהָא עֲנִיבָה דְבִּילָא. עָגוּל הוּא מִלְמַשְׁה. וְאִית דְּבָעֵי מֵימַר. לֹא מַר רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אֶלֶּא בְבַרְיוּת. וְתַנֵּי כַּן. מְרוּבַע בָּבְרִיוּת. בְּתִינֹת. מִמִימַר. לֹא מַר רַבָּן שִׁמְעוֹן בָּן גַּמְלִיאֵל אֶלֶּא בְבִרְיוּת. וְתַנֵּי כַן. מְרוּבַע בָּבְרִיוּת.

¹²⁵It was stated: Rabban Simeon ben Gamliel says, there is nothing square from the six Days of Creation. Rebbi Berekhiah objected: Did we not state: "The body of *baheret* is like a square Cilician grit. The place for a grit is nine lentils. The space for a lentil is four hairwidths; in all 36 hairwidths. ¹²⁶" Rebbi (Yosna)¹²⁷ said, that in itself says that there is no square. Why was it stated

"squared"? That he should square it 128. And כגעה It is full of knots. But there is the bunch of *pila* 130! It is round below. Some wanted to say, Rabban Simeon ben Gamliel said this only about creatures, There is square in foods, there is no square in creatures.

125 This paragraph in addition is from *Ma'serot* 5:7, Notes 122-129.

126 Mishnah *Nega`im* 6:1. Cf. Chapter 1, Note 4.

127 For the otherwise unknown name ייטנה the other two sources read the well- attested name Bisna.

128 Determine its surface area, standard

Euclidean terminology.

129 The text in *Ma`serot* reads נגעה, in *Nedarim* כנעה. The latter probably is the correct text, "lice".

130 A kind of spice, cf. *Ma'serot* Note 129. Possible Latin *pila*, among other meanings also "ball, globe" (E. G.).

(34d line 46) שְׁבוּעָה שֶׁאֵין אָנוּ יוֹדְעִין לֶךְּ עֵדוּת. לוֹקִין מִשֵּׁם שְׁבוּעַת עֵדוּת. שְׁבוּעָה שֶׁלֹא נעידְדָ. לוֹקין משׁם שׁבוּעת בִּיטוּי.

¹³¹"An oath that we do not know testimony for you;" they are flogged because of witnesses' oath¹³². "An oath that we shall not testify for you;" they are flogged because of blurted oath¹³³.

130 This paragraph is not in one of the parallels.

131 If it can be shown that they committed perjury and were duly warned.

132 Rashba (Novellae on Tractate Ševuot,

on 26b, in the edition by J. D. Ilan, Jerusalem 1993, col. 97, Note 145) declares this unintelligible since it contradicts Mishnah 4:2.

(fol. 34b) משנה י: שְבוּעָה שָאוֹכַל כָּכָּר זוֹ שְבוּעָה שֶלֹא אוּכְלֶינָה הָרְאשוֹנָה שְבוּעַת בִּיפוּוּי וְהַשְּׁנִייָה שְׁבוּעַת שָוְא. אֲכָלָה עָבַר עַל שְבוּעַת שָוְא. לֹא אֲכָלָה עָבַר עַל שְבוּעַת בִּיפוּי:

Mishnah 10: "An oath that I shall eat this loaf; an oath that I shall not eat it." The first one is a blurted oath, the second a vain oath 133. If he ate it he violated a vain oath, if he did not eat it he violated a blurted oath.

133 Since by the first oath he became obligated to eat the loaf by biblical rules, the

second oath has a similar status as an oath to violate a biblical commandment.

(48) **הלכה** יי שְׁבּוּעָה שְׁאֹכֵּל כָּכָּר זוֹ כול'. שְׁוְא וְשְׁקֶר שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֶמְרוּ. מַה שְׁצֵין אוֹזֶן יְכוֹלָה לִשְׁמוֹעַ ולֹא כֶּה לְדַבֵּר. מְחַלְלֶיהֶ מְוֹת יוּלָת וּבְיוֹם הַשְּׁבָּּת שְׁנֵי־כְבָעִים בְּדִיבּוּר שְׁמִי וֹלִא הָתּלְבַּשׁ שְׁעַטְנֹז גְּדְלִים תַּעֲשֶׂה־לֶּדְ שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֶמְרוּ. עֻרְוַת אֵשְׁת־אָחָידְ אֶחָד נֶאֶמְרוּ. לָא תִלְבַּשׁ שַׁעַטְנֹז גְּדְלִים תַּעֲשֶׂה־לֶּדְ שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֶמְרוּ. וְלְא־תִּשְּׁב נַחֲלָה וְכָל־בַּת יֹּרֶשֶׁת נַחֲלָה שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֶמְרוּ. וְלְא־תִשְּׁב נַחֲלָה וְכָל־בַּת יֹרֶשֶׁת נַחֲלָה שְׁנֵיהֶן דְּבָּר לְבָּא לָאוֹזן לִשְׁמוֹעַ. וְכֵן הוּא אוֹמֵר אַחַת | דְּבֶּר אֱלִא לָאוֹן לִשְׁמוֹע. וְכֵן הוּא אוֹמֵר אַחַת | דְּבֶּר אֱלִא לָאוֹן לִשְׁמוֹע. וְכֵן הוּא אוֹמֵר אַחַת | דְּבֶּר אֱלִהִים שְׁנִינְם וְּשְׁמִענוּ. וְאוֹמֵר הַלֹּוֹא כָּה דְּדַבְיִ כְּאֵשׁ נִאֶם־יִיּ.

Halakhah 10: "An oath that I shall eat this loaf;" etc. ¹³³Vain and untruth both were said together, which is impossible for the ear to hear and the mouth to say. Its desecrator shall be put to death and on the Sabbath day two sheep ¹³⁴ were said together. Do not wear ša'atnez, fringes you shall make for yourselves ¹³⁵, both were said together. The nakedness of your brother's wife and her brother-in-law shall come to her ¹³⁶ were said together. You shall not move property; any daughter inheriting real estate ¹³⁷ both were said together, which is impossible for the mouth to say and the ear to hear. And so it says, God spoke once, two I heard from this ¹³⁸. And it says, is not My word like fire, says the Eternal ¹³⁹.

133 A shortened version of a paragraph in *Nedarim* 3:2 (Notes 50-59) and the texts quoted there. The general topic are pairs of pentateuchal verses which seemingly contradict one another.

134 Ex. 31:14, Num. 28:9.

135 Deut. 22:11-12.

136 Lev. 18:16, Deut. 25:5.

137 Num. 36:8-9.

138 Ps. 62:12.

139 *Jer.* 23:29. The reference is to the end of the verse, *and like a hammer splintering rock.*

(34d line 55) שְׁבוּעַת שְׁוְא. נִשְׁבַּע לְשַׁנּוֹת אֶת הַיָּדוּעַ לְאָדָם. שְׁבוּעַת שֶׁקֶר. נִשְׁבַּע לְהַחֲלִיף. רְבִּי נַעֲלֵב בַּר אָחָא בְשֵׁם רְבִּי יוֹחָנֶן. כָּל־הַיָּדוּעַ לִשְׁנֵיִם זוֹ הִיא שְׁבוּעַת שְׁוְא. לִשְׁלֹשָׁה זוֹ הִיא שְׁבוּעַת שְׁוְא. לִשְׁלַשָּׁה זוֹ הִיא שְׁבוּעַת שְׁנְא הִיא. שְׁקָּא בְשֵׁם רְבִּי לֶעֶזֶר. אֲפִילוּ יָדוּעַ לֹשְׁנַיִם וְאֶחֶד בְּסוֹף הָעוֹלֶם מַכִּירוֹ שְׁבוּעַת שָׁוְא. עַל דַּעְתֵּיה מָפְקָא מְבֵּינֵיהוֹן. שִׁינָה בִּפְנֵי שְׁנֵיִם וְהִשְׁלִיכוֹ לַיָּם וְהִתְרוּ בוֹ מִשׁוּם שְׁבוּעַת שְׁקָר. עַל דַּעְתֵּיה דְּרְבִּי לֶעֶזֶר לוֹקֶה. הְתְרוּ בוֹ מִשׁוּם שְׁבוּעַת שֶׁקֶר. עַל דַּעְתֵּיה דְּרְבִּי לְעָזֶר לוֹקֶה. הְבִּי לֵעְזֶר לוֹקָה. עָל דַּעְתֵּיה דְּרְבִּי לֹעֲזֶר לוֹקָה. רְבִּי בָּא בְשֵׁם רְבִּי יְהוּדָה. אֲפִילוּ ביטה וּמַרְנֵּלִתְא. וְאַכָּילוּ, אֵלֶּא כְּגוֹן בִיטא וּמַרְנֵּלִיתָא.

¹⁴⁰A vain oath, if one swears to change what is known to men; a false oath if he swears to substitute. Rebbi Jacob bar Aha in the name of Rebbi Johanan: anything known to two persons is a (vain)¹⁴¹ oath, to three it is (false)¹⁴¹.

Rebbi La in the name of Rebbi Eleazar: If it is known to two persons and another one at the end of the world, it is a vain oath. What is the difference between them? If he was untrue before two [persons], threw it into the sea, and they had warned him because of a vain oath; in the opinion of R. Johanan he is not flogged, in the opinion of Rebbi Eleazar he is flogged. If they had warned him because of a false oath, in the opinion of Rebbi Eleazar he is flogged, in the opinion of Rebbi Johanan he is not flogged¹⁴². Rebbi Abba in the name of Rebbi¹⁴³ Jehudah, even an egg¹⁴⁴ and a pearl. What means "even"? But, for example, an egg and a pearl.

140 A corrupt copy of the text in *Nedarim* 3:2, Notes 60-65. R. La (Ulla) is quoted in the Babli, 29a.

141 One has to exchange "vain" and "false" as in *Nedarim*. A vain oath is obviously vain, a false oath is materially false but may not generally be seen as such.

142 With the *Nedarim* text, one has to switch "flogged" and "not flogged".

143 With Nedarim read: Rav.

144 Reading בּיצָה; it may not be a scribal error but a dialectal identification of שנ for

.ض

(34d line 63) תַּנֵּי. כְּשֶׁם שֶׁנְּדְרֵי הֲבָאי מוּתָּרִין כְּדְּ שְׁבוּעוֹת הֲבָאי מוּתָּרִין הְהַנֵּי. שְׁבוּעוֹת הֲבָאי מוּתָּרִין הְבָּאי מוּתָּרִין. וְהָתַנֵּי. שְׁבוּעוֹת הֲבָאי אֲסוּרִין. רְבִּי יִרְמְיָה בְשַׁם רְבִּי כְּדָת. כָּאן בְּמֵעֲמִידִין כָּאן בְּשָׁאֵין מַעֲמִידִין. וַאֲפִילוּ תֵימָא. כָּאן וְבָשְׁמִידִין. בְּאן בְּמֵעְמִידִין. כָּאן בְּמֵיחַל שְׁבוּעוֹת עַל נְכָסְיי. עָלִיי. יְכָסְיי אֲסוּרִין. הָא בְּמֵיחַל לְּקָחֹת אֵינוֹ לוֹקָה. כְּשָׁם שָׁנִּדְרֵי זֵירוּזִּין מוּתָּרִין כָּדְּ שְׁבוּעוֹת זֵירוּזִין מוּתָּרִין. עוּד הוּא בְּמֵיחַל שְׁבוּעוֹת עַל נְכָסְיו. שְׁבוּעה נְכָסִיי עָלִיי. נְכָסִיו אֲסוּרִין. הָא לִלְקוֹת אֵינוֹ לוֹקָה.

1 אסורין | נאסורות 2 אסורין | נאסורות בשאין | נבשאינן ואפי' | נאמ' ר' בא. ואפי' 3 כאן וכאן אסוריות מעמידיו

exaggeration are permitted." But was it not stated: Vows of exaggeration are forbidden? Rebbi Jeremiah in the name of Rebbi Pedat: Here about those who insist, there about those who do not insist. You may even say in both cases if they insist; here it is about one who intends that his oath should fall on his property, "an oath that my property [should be forbidden] to me." Then his property is forbidden [to him]. But in matters of flogging, he cannot be flogged. Just as speeding-up vows are permitted, so speeding-up oaths are permitted. It is the same case; if he intends that his oath should fall on his property, "an oath that my property [should be forbidden] to me." Then his

property is forbidden [to him]. But in matters of flogging, he cannot be flogged.

145 Nedarim 3:2 Notes 66-69, Tosephta Nedarim 2:1, Babli Nedarim 24b.

(34d line 70) חִזְּקיָה אָמֵר. אָהֵן דְּמִשְׁתְּבֵּע עַל תְּרֵין דְּאִינּוּן תְּרִין לוֹקֶה מִשׁוּם שְׁבוּעַת שָׁוְא. רְבִּי מְנְּחֵם בְּשֵׁם רֵישׁ לָקִישׁ. אָהֵן דְּחֲמֵי מִיטְרָא נְחִית וַאֲמֵר. קוּרִי פָּלִי בּרֵיכּסוֹן. לוֹקֶה מִשׁוּם שְׁבִּוּעֵת שָׁוְא. רְבִּי חוֹנְיָא רְבִּי יַעֲקֹב בְּרְבִּי בּוּן בְּשֵׁם רְבִּי שְׁמוּאֵל בַּר נַחְמֶן. כ"ד בּוּלַייוֹת הָיוּ בְּנִיכְם לַשְׁוֹא הָכִּיתִי אַת־בְּנֵיכָּם. בַּרָּוֹים וְכוּלַם חַרְבוּ עַל שׁבּוּעַת שַׁוְא שַׁהִיא אֵמֵת. דְּכָתִיב לַשַּׁוְא הָכֵּיתִי אַת־בְּנֵיכָּם.

1 תרין דאינון תרין | נ תריי דינון תריי 2 מנחם | נ חגיי ריש לקיש | נ ר' שמעון בן לקיש דחמי | נ דחמא קורי פלי בריכסון | נ בלי קורי בריקשון 3 בון | נ אבון כ"ד | נ עשרים וארבע 4 אמת | נ שלאמת

Hizqiah said: he who swears that two are two is flogged for a vain oath. Rebbi Menahem¹⁴⁶ in the name of Rebbi Simeon ben Laqish: He who saw rain falling and said Κύριε πόλυ βρέξον¹⁴⁷ is flogged for a vain oath. Rebbi Onias, Rebbi Jacob ben Rebbi Abun in the name of Rebbi Samuel ben Nahman: 24 city councils¹⁴⁸ were in Judea and they all were destroyed because of true vain oaths, as it is written: *For the vain did I hit your sons*¹⁴⁹.

146 In Nedarim: Haggai.

147 O Lord, make it rain a lot (Musaphia). The invocation of the Lord is considered a violation of the Third Commandment. It is possible to read the first word as a

contraction Κῦρι. The statement shows that Κύοιος was accepted as a Divine Name.

148 Greek βουλή.

149 Jer. 2:30.

(fol. 34b) **משנה יא:** שְׁבוּעַת בִּיפוּי נוֹהֶגֶת בָּאַנָשִים וּבַנָּשִים בְּרָחוֹקִים וּבַקְּרוֹבִים בַּקְּשֵׁרִם וּבַקְּרוֹבִים בַּקְּשֵׁרִם וּבַקְּרוֹבִים בַּקְּשֵׁרִם וּבַקְּבוֹים נִבְּקְבוֹים נַבְּשְׁרִם וּבַקְּבוֹים בַּקְּשֵׁרִם וּבַקְּבוֹים בַּקְּשֵׁים וּבַנְּשְׁרִם וְבַלְּא בִּבְנֵי בֵית דִּין מְשָּׁלְא בִפְנֵי בֵית דִּין מְפָּי עִצְמוֹ. וְחַייָבִין עַל זְדוֹנָה מַכּוֹת וְעֵל שִׁנְנָתְהּ כַּרְבּּן עוֹלֵה וְיוֹרֵד:

Mishnah 11: A blurted oath applies to men and women, relatives and unrelated persons, qualified and disqualified persons, before a court or out of court, from his own mouth¹⁵⁰. For intentional violation one is liable to flogging, for unintentional [to bring] a variable sacrifice.

150 This list is quite unnecessary here, it rules of blurted oaths apply to every would have been sufficient to say that the competent adult. The details are listed in

contrast to the rules for witnesses' oaths which are restricted to unrelated qualified males made to swear by others. Excluded relatives are enumerated in *Sanhedrin* 3:7, disqualified persons in *Sanhedrin* 3:6.

(34d line 75) **הלכה יא**: שְׁבוּעַת בִּיטוּי כול'. שְׁבוּעָה שֶׁלֹא אֹכַל כָּכָּר זוֹ. שְׁבוּעָה שֻׁלֹא אוֹכְלֶינָה. שְׁכוֹ חַייָב אֶלֶא אַחַת. דְּבָר שְׁאִילוּ בִנְדָרִים אָסוּר וּבִשְׁבוּעוֹת מוּתָּר לֹא שְׁבוּעָה שֶׁלֹא אוֹרְלֶינָה. אֵינוֹ חַייָב אֶלֶא אַחַת. דְּבָר שְׁאִילוּ בִנְדָרִים אָסוּר וּבִשְׁבוּעוֹת מוּתָּר לֹא אַתְייָא אֶלֶא בְּמַתְנִיתָה אֶחָד דְּבָרִים שְׁלְּצִצְמוֹ וְאֶחֶד דְּבָרִים שְׁלֹא אֲחַרִים. אֶחָד דְּבָרִים שְׁצִּישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי לְאִישׁ בְּלוֹנִי מְשָׁרָא שָׁבָּר. שִׁשְּׁכַר הַשְּׁלֵא שָׁבַר. אֲשְׁכַּח תַּנֵי עַל תְּרַוּיהוֹן. זֶה מְנֶב לְשְׁבָבר מִשְּׁלְבֹא. שְׁהָאוֹמֵר. לֹא אוֹכַל לֹא אוֹכַל. אֵינוֹ חַייָב אֶלֶא אַחַת. לֹא אָכַלְתִּי לֹא אָכַלְתִּי לֹא אָכַלְתִּי לֹא אָכַלְתִּי לֹא אָכַלְתִּי חַיִּב עַל כָּל־אַחַת וָאַחָת.

שְׁבוּעָה שָׁאוֹכֵל כָּכָּר זוֹ שְׁבוּעָה שֶׁלֹּא אוֹכְלֶנָה. הָרְאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְּׁנִייָה שְׁבוּעַת שְׁרָא וְלֹא עֵל שְׁבוּעַת בְּיטוּי. טְּרָאשׁוֹנָה שְׁבוּעַת שִׁרְא וְלֹא עֵל שְׁבוּעַת בִּיטוּי. שְׁרָא וֹלְא עֵל שְׁבוּעַת בִּיטוּי. שְׁבוּעַת בְּיטוּי וְהַשְּׁנִייָה שְׁבוּעַת שְׁרָא וֹלָא אוֹכַל כָּכָּר זוֹ שְׁבוּעָה שֶׁאוֹכְלֶנָה. הָרְאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְּׁנִייָה שְׁבוּעַת שְׁרָא אוֹכָל בִּכָּר זֹנ שְׁלֹא יֹאכֵל. מוּטָב לַעֲבוֹר עַל שְׁבוּעַת שְׁוְא לְחוּד וְלֹא עַל שְׁכֹּר שַׁלְא וֹבִיטוּי. שִׁרְא וּבִיטוּי.

שְׁבוּעָה שָׁאוֹכַל פִּפֶּר זוֹ הַיּוֹם שְׁבוּעָה שֶׁלֹּא אוֹכְלֶנָּה הַיּוֹם. רְבִּי יוֹחָנֶן אָמַר. קִייֵם אֶת הָראשׁוֹנָה וּבִיטֵל לַשְּׁנִייָה. רִישׁ לָקִישׁ אָמַר. בִּיטֵל לָרִאשׁוֹנָה וְלֹא קִייֵם לַשְׁנִייָה.

שְׁבוּעָה שֶׁלֹּא אוֹכַל כִּכָּר זוֹ הַיּוֹם שְׁבוּעָה שָׁאוֹכְלֶינָה הַיּוֹם. וַאֲכָלָהּ. רְבִּי יוֹחָנֶן אָמַר. בִּיטֵל אֶת הָראשׁוֹנָה וְהַשְּׁנִייָה אוֹמְרִים לוֹ שֶׁיקִיימינּה בכיכּר אחרת.

שְבוּעָה שֶׁאוֹכַל כָּכֶּר זוֹ הַיּוֹם שְבוּעָה שֶׁאוֹכְלֶנֶּה הַיּוֹם. וַאֲכֶלֶה. רְבִּי יוֹחָנֶן אָמֵר. קייֵם אֶת שְׁתֵּיהֶן. וְבִישׁ לָקִישׁ אָמַר. קִייֵם לָרִאשׁוֹנָה. וְהַשְּׁנִייָה אוֹמְרִים לוֹ שֶׁיְּקַייְמֶינָּה בְּכִיכֶּר אֲחֶרָת.

שְׁבוּעָה שֶׁלֹּא אוֹכַל כָּכֶּר זוֹ הַיּוֹם שְׁבוּעָה שֶׁלֹּא אוֹכְלֶינָה הַיּוֹם. וַאֲכָלָהּ. עַל דַּעְתֵּיהּ דְּרְבִּי יוֹחֶנֶן חַייָב שְׁתַּיִם. עַל דַּעְתֵּיה דְּרִישׁ לָקִישׁ אֵינוֹ חַייָב אֶלָּא אַחַת. אוּף רְבִּי שִׁמְעוֹן בֶּן לָקִישׁ מוֹדָה. שַׁאֵינוֹ אֵלֶא כִמְזֵרִז עַצָמוֹ מִן הַאִיּפוּרִין.

Halakhah 11: "A blurted oath," etc. ¹⁵¹" An oath that I shall not eat this loaf, an oath that I shall not eat it', he is liable only once ¹⁰⁰. Something which would be forbidden for vows and is permitted for oaths ¹⁵². Not on this was it said but on the following: "Whether matters of himself, or matters of others," as Rebbi Abba said in the name of Samuel: 'An oath that X gave a mina to Y.' If it turns out that he had not given, since it is not in his hand for the future it is not in his hand for the past. It was found stated on both cases: This is more stringent for the past than for the future: If he says "I shall not

eat, I shall not eat," he is liable only once. "I did not eat, I did not eat," he is liable for each single time¹⁵³.

"An oath that I shall eat this loaf; an oath that I shall not eat it." The first one is a blurted oath, the second a vain oath 133. How does one deal with him? One tells him to eat; it is better to break a vain oath than a blurted one 154.

"An oath that I shall not eat this loaf; an oath that I shall eat it." The first one is a blurted oath, the second a vain oath. How does one deal with him? One tells him not to eat; it is better to break a vain oath than to break a vain and a blurted one.

"An oath that I shall eat this loaf today; an oath that I shall not eat it today." Then he ate it. Rebbi Johanan said, he kept the first oath and invalidated the second 155. Rebbi Simeon ben Laqish said, he invalidated the first one and did not keep the second.

"An oath that I shall not eat this loaf today; an oath that I shall eat it today." Then he ate it. Rebbi Joḥanan said, he invalidated the first oath and kept the second 156. Rebbi Simeon ben Laqish said, he invalidated the first one. One tells him to keep the second with another loaf 157.

"An oath that I shall eat this loaf today; an oath that I shall eat it today." Then he ate it. Rebbi Johanan said, he kept both of them. Rebbi Simeon ben Laqish said, he kept the first one and one tells him to keep the second with another loaf¹⁵⁸.

"An oath that I shall not eat this loaf today; an oath that I shall not eat it today." Then he ate it. In Rebbi Joḥanan's opinion he is twice liable¹⁵⁹. Is he only once liable in Rebbi Simeon ben Laqish's opinion¹⁶⁰? Even Rebbi Simeon ben Laqish agrees that he only emphasizes the prohibitions¹⁶¹.

151 There is a parallel in *Nedarim* 3:2, Notes 74-78, which is not an exact copy. While repeated vows are separate obligations, of repeated identical oaths only the first is valid; the others are vain oaths. There is no notion of a vain vow.

152 It is not really permitted for oaths since the second oath is vain, but the second never has the status of a valid oath.

153 In the first case, the first oath creates a prohibition; no oath can be made concerning an existing prohibition. In the second case, a false statement is reinforced by an oath; there is no upper limit on the number of lying oaths a person might make.

154 The reading of Rosh (#24) is: It is better to break a vain oath than blurted and vain ones. The two oaths have completely

different status: Since the second one is vain at the moment it is made, the making of the vow is sinful and its maker is liable to be flogged. The only active oath is the first and this one has to be kept.

155 For R. Johanan, the valid first oath prohibits the making of the second which automatically becomes a vain oath subject to the statutory punishment for vain oaths but irrelevant as oath. R. Simeon ben Laqish notes that the first oath contains a promise, not a prohibition. Therefore, there is no rule which prohibits making the second oath. Making the second oath is sinful because it invalidates the first but from the point of view of the law of oaths it is possible. Since he becomes liable for punishment for breaking the first oath, the second is active and should be kept. By eating the loaf, the person commits a second sin.

The Babli, 28b, has a completely different taking on this problem and refers it to the problem whether a criminal warning is possible if it is not clear that a criminal act was intended (Note 104).

156 Swearing the second oath was a criminal act. Since the second is not a prohibition, it can be fulfilled.

157 Since he said אַכְלְנָה "I shall eat it" and not אַכְל פָּבֶּר "I shall eat this loaf" it is better to interpret it as not referring to the same loaf as does the first oath. Then while nothing can be done to mitigate the sin of breaking the first oath, the second oath can be changed from a vain oath to a new, valid oath referring to something different, not connected with the first.

158 This is a situation similar to the preceding one. For R. Johanan, the second oath is vain, subject to punishment as such, but kept by keeping the first. For R. Simeon ben Laqish the second oath is not vain if *it* is interpreted as referring to another loaf; both oaths can be kept without sin.

159 Once for breaking the oath, and once for uttering a vain oath.

160 By referring the second oath to an indefinite other loaf.

161 In this case, R. Simeon ben Laqish might agree that the repetition indicates reinforcement and that any reasonable interpretation must refer both oaths to the same loaf, agreeing in this case with R. Johanan.

(66. 34b) **משנה יב:** שְׁבוּעֵת שָׁוְא נוֹהֶגֶת בָּאֲנָשִים וּבַנָּשִׁים בְּרָחוֹּקִים וּבַקְּרוֹבִים בַּבְּשֵׁרִים וּבַנְּשִׁים בְּרָחוֹקִים וּבַקְּרוֹבִים בַּבְּשֵׁרִים וּבַבְּשְׁרִים בְּבְּשֵׁרִים וּבַנְּשִׁים בְּרָחוֹקִים וְעֵל שְּגְנָתָהּ וּבַבְּסְוּלִים בִּפְנֵי בֵית דִּין וְשֶׁלֹא בִפְנֵי בִית דִין וְשֶׁלֹא בִפְנִי בִית דִין וְשָׁלֹא בִפְנִי בִייִם וְלֹא שָׁבַלְתִי חַיֹּים וְלֹא שָׁבַלְתִי חַיֹּם וְלֹא הָבַלְתִי חַיִּם וְלֹא חָבִיבִּי תַּפִילְּוְה אֲנִי וְאָבֵר אָבִי תְבִּילְעָה חָיִב:

Mishnah 12: A vain oath applies to men and women, to relatives and unrelated persons, to qualified and disqualified ones, in court and out of court, and by his own words¹⁵⁰. For intentional violation one is liable to flogging,

for unintentional he is not prosecutable¹⁶². In both cases¹⁶³, one who is sworn to by another person can be liable. How is this? One said, "I did not eat today, I did not put on phylacteries today." "I want you to swear to it," if he said "Amen" he¹⁶⁴ is liable.

162 The Third Commandment contains no determination of the punishment. Therefore it can be prosecuted as a standard infraction, punishable by flogging only after due warning and swearing in the presence of two eye witnesses.

163 Blurted and vain oaths.

164 The person who is challenged to swear. By answering Amen he has sworn even though he himself did not utter any oath nor invoke the Divine Name.

(35b line 26) **הלכה יב**: שְׁבוּעַת שָׁוְא כּול'. נֶפֶשׁ נֶפֶשׁ. מַה נֶפֶשׁ שֻׁנֶּאֲמֵר בִּשְׁבוּעַת הָעֵדוּת עָשָׂה אֶת הַמּוּשִׁבָּע כְּנִשְׁבָּע. אַף שֶׁנֵּאֲמֵר בִּשְׁבעת הַפִּיקָדוֹן עַשָּׂה אֶת הַמּוּשָׁבָּע כְּנִשְׁבָּע.

Halakhah 12: "A vain oath," etc. *A person, a person*. Since by *a person* which was said for an oath of testimony He made the one at whom the oath was directed like one swearing, so also by *a person* which was said for an oath of deposit He made the one at whom the oath was directed like one swearing¹⁶⁵.

165 The text here can be understood by a comparison with Halakhah 4:8. Lev. 5:1 starts: But a person who would sin. V. 21 stars: A person who would sin. The topic of v. 1 is a person whom another person makes swear indirectly (Note 164) that he will testify in court on his behalf but who then reneges on his promise, thereby breaking his oath. V. 21 describes a person who commits sacrilege towards the Eternal by lying to his fellow man about a deposit, or a

partnership, or robbery. One commits sacrilege by swearing falsely. The parallel language implies that swearing falsely about money matters does not necessarily mean to utter a formal oath. The sin of swearing falsely also has been committed if the injured party says to the accused in the presence of witnesses, "swear to me that you do not owe me" and the person then answers "Amen".

(35a line 28) זֶה הַפְּלָל. בָּל־לֹא תַצְשֶׂה שָׁיֵּשׁ בּוֹ מֵצְשֶׂה לוֹקֶה וְשָׁאֵין בּוֹ מַצְשֶׂה אֵינוֹ לוֹקֶה. חוּץ מִן הַמֵּימַר וְהַנִּשְׁבַּע וּמְקַלֵּל אֶת חֲבִירוֹ בַשִּׁם. רְבִּי אַבְּהוּ בְשֵׁם רְבִּי יוֹחָנָן. לֵית בָּאן מֵימַר. מֵימַר דְּבוּר וּמַצְשֶׂה. נִשְׁבַּע לַשֶּׁקֶר מְנַיִּין. רְבִּי יוֹחָנָן בְּשֵׁם רְבִּי יַנַּאי. כְּי לָא יְנַקֶּה ֹיִי. מְנַקִּין הֵן הַדִּייָנִין. קִישׁ לְקִישׁ בְּשֵׁם רְבִּי הוֹשַׁעְיָה. לְיִרְאָה אֶת־הַשֵּׁם וגו'. נִשְׁבַּע לשֶּׁקֶר מְיִלֵּל אֶת חֲבֵירוֹ בַשִּׁם מְנַיִּין. בִישׁ לְקִישׁ בְּשֵּם רְבִּי הוֹשַׁעְיָה. לְיָיְרְאָה אֶת־הַשַּׁם וגו'. נִשְׁבַּע לשֶּׁקֶר אֵין זָה יָרֵא. קִילָּל אֶת חֲבֵירוֹ בַשְּׁם עַלַּיִין. מִינָּה. מִכְּיָן שַׁנְּשַׁבַּע לשָׁקָר אֵין זָה יֵרֵא. קִילָּל אֶת חֲבֵירוֹ בַשְּׁם

דַּעְתֵּיה דְּרָבִּי יוֹחָנֶן מְנַיִּין. מִכֵּיוָן שָׁקִּילֵל אֵין זֶהּ יָרֵא. מַה מַפְקָה מְבֵּינֵיהוֹן. נִשְׁבַּע לַשֶּׁקֶר וְקִילֵל לַחֲבֵירוֹ בַשָּׁם. עַל דַּעְתֵּיה דְּרָבִי יוֹחָנֵן חַיִיב שְׁתַּיִם. עַל דַּעְתֵּיה דְּרָבִי יוֹחָנֵן חַיִיב שְׁתַּיִם. עַל דַּעְתֵּיה דְּרָבִי שׁ לַקִּישׁ אֲתֹר.

This is the principle ¹⁶⁶: One flogs for any prohibition involving an action, but one does not flog if there is no action except for one who substitutes ¹⁶⁷, or swears, or curses a fellow man by the Name. Rebbi Abbahu in the name of Rebbi Johanan: This does not include one who substitutes; substituting implies speech and action ¹⁶⁷. From where one who swears falsely? Rebbi Johanan in the name of Rebbi Yannai: *For the Eternal will not cleanse*; but the judges will cleanse him ¹⁶⁸. From where one who cursed his fellow man by the Name? Rebbi Simeon ben Laqish in the name of Rebbi Hoshaia: *To fear the Name* ¹⁶⁹, etc. The one who swears falsely in the opinion of Rebbi Simeon ben Laqish from where? Since he swore falsely, he does not fear. The one who cursed his fellow man by the Name in the opinion of Rebbi Simeon ben Laqish from where? Since he cursed, he does not fear. What is the difference between them? If one swore falsely and cursed a fellow man by the Name. In Rebbi Johanan's opinion he is liable for two [punishments] ¹⁷⁰. In Rebbi Simeon ben Laqish's opinion he is only liable for one.

166 Babli 21a, *Makkot* 16a, *Temurah* 3a. In the Babli the formulation of this (undisputed) principle is attributed to R. Yose the Galilean.

167 Before an animal can be sacrificed, it has to be sanctified by dedication (*Lev*. 27:9). Once sanctified, it is forbidden to substitute another animal (v. 10). If somebody would substitute, both the original and the substitute are dedicated. Therefore the oral declaration of substitution is at the same time the real act of sanctification which makes the animal prohibited for all profane use. This argument is not found in the Babli. already

168 Ex. 20:7, Deut. 5:11. As the Babli explains, if the verse simply had said "he will not be cleansed", then a vain or false oath would be an unpardonable sin. But since it said, the Eternal will not cleanse, it implies that punishment by the earthly court will remove the sin from the Heavenly ledger.

169 *Deut.* 28:58. While the language is that of a positive commandment, the context shows that its violation is punishable.

170 Since the two offenses violate two different prohibitions. But for R. Simeon ben Laqish they are repeated violation of the same law, punishable only once.