

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE OATH-TRANSGRESSION CONSIDERED AS REFERRING TO BOTH PAST AND FUTURE.--THE DETERMINATION OF THE SIZE OR QUANTITY OF THE OBJECT REGARDING WHICH THE OATH IS MADE.--THE WORDING OF THE OATH.--IS OR IS NOT DRINKING INCLUDED IN EATING (TO WHICH THE OATH REFERS) AND *vice versa*.--DOES OR DOES NOT THE REPEATED STATING OF THE OATH ENTAIL A SEPARATE LIABILITY.--TO WHAT ACTS OR WORDS THE OATH RELATES.--OATHS MADE BY COMPULSION.--OATHS CONCERNING THE FULFILLING OR IGNORING OF A COMMANDMENT.

MISHNA I.: There are two kinds of oaths subdivided into four--viz.: I swear that I will eat or will not eat; that I did or did not eat. If upon making the oath, I will not eat, he does eat, and be it but a minimum, he is guilty; so R. Aqiba. Whereupon he was questioned: Where do we find a similar case that one be guilty for a minimum, so that this one be declared guilty? He replied: Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering?

GEMARA: The rabbis taught: "The expression *Mib'ta* of [Numb. xxxvii.] is considered an oath, and also the word *Issor* is considered such; and what prohibition attaches to this last form of an oath? If you decide that *Issor* is an oath, liability is attached to its transgression." Now, how is this to be understood? Does not the Boraitha state expressly that *Issor* is an oath? Said Abayi: It means to say thus: The expression *Mib'ta* is an oath, and if one says: This object is *Issor* to me as the first, and this third object be to me as the second, it is in such a case that, if it be decided that the making of an oath on a thing by comparing it to the first one *is* an oath, the second one is prohibited (*e.g.*, if one says: I swear not to eat this meat, then pointing to a bread he says: This bread be for me equal to the said meat; and then again: This fish be equal to this bread. In

such a case if swearing by *comparing* one object to another is an oath, each thing is prohibited). [1](#)

But whence do we know that the expression *Mib'ta* is an oath? From [Lev. v. 4]: "Or if any person swear, by pronouncing with his lips (*Leb'ata*); now, it reads [Numb. xxx. 3]: "Or he swear an oath to bind his soul with an *Issor* (obligation)," hence, *Issor* is *obviously* also an oath? Therefore said Abayi: That *Mib'ta* is an oath, is inferred from [ibid., ibid. 7]: "Or what she may have uttered (*Mib'ta*), wherewith she hath bound (*Assro*)"; from here we see that "she has bound," not sworn, and it is with *Mib'ta* that she has bound herself. Rabha, however, said: There is no necessity of Abayi's explanation, as swearing by comparing is not considered; and as to the above Boraitha, it may be simply explained, as follows: *Mib'ta* is an oath, *Issor* is also an oath; however, *Issor* is found used between vow and oath, and this is what the Boraitha says: If one expresses *Issor* as a vow, it is a vow, and if as an oath, it is an oath. And where is it found in such connection? [Ibid., ibid. 11]: "And if she had vowed in her husband's house, or had bound

her soul by an obligation (*Issor*) with an oath." And the explanations of Abayi and Rabha are respectively in accordance with their theories elsewhere; as it was taught: If one swears by comparing, it is, according to Abayi, the same as swearing directly with the word oath, while according to Rabha it is not so.

An objection was raised from the following: What is *Issor* mentioned in the Torah? If one says, I take upon myself not to eat meat, not to drink wine just as on the day of the death of my father or of a certain man, e.g., Gedaliuhu b. Achikom, or as on the day when I have seen Jerusalem destroyed, it is an *Issor*; and Samuel adds: Provided he has previously *vowed* already not to consume these objects on those days. Now, according to this, Abayi's theory is correct, as we see here that one may make a vow by comparing, hence, he may also make an oath by comparing; but Rabha's theory remains open to objection? Nay; Rabha may say that the cited Boraitha should read thus: "What is an *Issor of a vow* mentioned in the Torah?" "If one says," etc.; and to this Samuel makes his addition, by reason of [ibid., ibid. 3]: "If a man vows a vow," which means:

p. 29

[paragraph continues] He vows on a thing on which he has already vowed. Moreover, Gedaliuh's day is specifically mentioned in the Boraitha in order to teach that, notwithstanding that it is a general fast-day, one's vow is only then a vow if he has previously vowed especially for this day; and again, lest one say, this being a general fast-day a vow referring thereto is not considered at all, consequently such a vow is not even one by comparing, and hence should be wholly disregarded, it comes to teach us that it is not so.

R. Johanan, too, upholds Rabha's theory, as Rabin, on coming from Palestine, said in his name: If one says, *Mib'ta*, I will not eat, or *Issor*, I will not eat, it is considered an oath. However, when R. Dimi came from Palestine, he said in the name of the same authority: The oath for a future, e.g., I will or will not eat, is considered *false*, and the warning against it is in [Lev. xix. 12]: "And ye shall not swear by my name falsely." Furthermore, the oath for the past, e.g., I have or have not eaten, is considered *vain*, and the warning against it is in [Exod. xx. 73] "Thou shalt not take the name of the Lord thy God in vain," and against a vow the warning is found in [Numb. xxx. 3]: "He shall not profane his word."

An objection was raised from the following: Vain (*Shahve*) and false (*Shekker*) are identical. Does not this mean that just as *vain* refers to a past, so does false, too, refer to the past? Why, vain and false are identical in respect of another point, but each of them has its signification as above; as there is a Boraitha: *Zachor*, ye shall remember (in the first ten commandments) and *Shamar*, ye shall observe the Sabbath (in the last ten commandments) were uttered by the Lord in one word, which transcends the power of the human mouth and ear. ¹ But what does this Boraitha teach us thereby? The following: just as stripes are applied to a false, so they are also to a vain oath. But is not this self-evident, as both are negatives? Lest one say that it is as R. Papa said to Abayi (further on), it comes to teach us that the Halakha prevails with Abayi.

When Rabin came, he said in the name of R. Jeremiah that R. Abuhu said in the name of R. Johanan that an oath for the past is a false one, and the warning against it is as cited above; and an oath for the future is merely a transgression of "He shall not profane his word," as above; and a vain oath is when one swears, e.g., that a man is a woman. Said R. Papa: R. Abuhu's

statement was not explicitly stated, but inferred from the following: It was taught, Aidi b. Abin said in the name of Amram that R. Itz'hak said in the name of R. Johanan that R. Jehudah, quoting R. Jose the Galilean said: Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor; excepting, however, an oath, an exchange and a curse upon one's neighbor by the holy name, to which three, though not implying manual labor, stripes apply. And whence do we know that it is so concerning an oath? Said R. Johanan in the name of R. Simeon b. Jo'hai, it reads [Exod. xx. 7]: "For the Lord will not hold guiltless," etc., which means only the heavenly court, but the worldly court will make him guiltless by punishing him with stripes.

Said R. Papa to Abayi: But maybe it means that no one can make him guiltless? And he answered: It would be so if it were not predicated of the Lord; but as it is, it can but mean that not the Lord but the earthly court will. All this concerns a vain oath, but whence do we know that the same is the case with a false one? Said R. Johanan, his own opinion: In the cited verse "vain" is mentioned twice, and as the second is not needed for itself, apply it to a false oath. R. Abuhu, however, deliberated as to how should be the case? If one swears, I will not eat and did eat, then there is an act done, hence it is in the category of negatives with manual act; again, if he swears, I will eat but did not eat, it is a case to which stripes do not apply according to both R. Johanan and Resh Lakish? (above [p. 25](#)). Upon due deliberation, however, R. Abuhu decided that it means an oath referring to the past, *e.g.*, I swear that I have eaten, and he did not eat, or *vice versa*; and though there is no manual labor here stripes apply, as Rabha said: The Torah has expressly extended the provision of the vain oath to the false one, to teach that just as a vain refers to the past, so also a false oath.

"*And be it a minimum*," etc. The schoolmen questioned: Does R. Aqiba hold with R. Simeon who declares one liable for a minimum with regard to all biblical transgressions? As we have learned in the following: Stripes apply even to a minimum, and the size of an olive is prescribed only concerning an offering. And why does R. Aqiba differ here, when he does not differ in any other places? Is it in order to let you know the power of his opponents, the rabbis, who say that if one swears not to eat even a minimum and did eat such, he is nevertheless

not liable! Or, in all other cases he agrees with the rabbis, while here he differs; because if one swore not to eat a minimum he would certainly be liable if he did eat, hence he is also liable if he swore generally, without mentioning the word minimum? Come and hear. R. Aqiba said: A Nazarite who has soaked his bread in wine and consumed it, is liable provided wine of the size of an olive entered the bread; now, should he hold with R. Simeon, why does he require the size of an olive? And also from the next Mishna, concerning reptiles which the Gemara explains in accordance with R. Aqiba, that a man may impose upon one's self the prohibition of even a minimum, it is inferred that he agrees with the rabbis in all cases.

"*Where do we find*," etc. But is there not a moth, which is but a minimum in size, and yet one is liable for consuming it? It is different with living creatures. Again, is not one liable in the case of the sanctuary? Here also there must be no less than the value of a *Peruta*. But does not he himself say that if one expresses a "minimum" he is liable? The expression raises it to the value

of a creature. But is there not a case regarding earth, where no definite quantity is requisite? And should you say that it is, then solve the following question propounded by Rabha: If one swore that he will not eat, and thereafter ate earth, what quantity thereof makes him liable, by saying that the quantity of an olive is required! Nay; because earth is not eatable, you cannot very well assign to it a definite quantity. But is not such the case with vows? A vow is equivalent to the expressions "minimum" used in an oath.

"As this one does talk and brings an offering," etc. But is not such the case with the blasphemer who is liable for mere talk? Here a case is looked for where one imposes upon one's self a prohibition by talk, while the blasphemer sins with his talk. But is not the case of a Nazarite, who brings an offering for mere talk, analogous? Nay; the Nazarite brings the offering, that wine become allowed to him. But does one not impose a prohibition by saying: "This should be sanctified?" We look for a case where one imposes the prohibition only upon one's self, while in this case the prohibition is general. But does not one prohibit a thing to one's self by saying: "This is a vow for me?" (And if he uses the thing unintentionally he must bring an offering.) The Tana of the Mishna holds that to this case an offering does not apply. Said Rabha: They differ only regarding the case where he did not express the word "minimum,"

p. 32

but if he did, the expression raises it to the value of a creature. He said again: They differ only when he said, "I will not eat," but if he said, I will not taste, all agree that he is liable. And Rabha says this lest one say that with the expression "taste" one intended to mean "eat." Said R. Papa: They differ only concerning vows, while as regards oaths all agree that liability attaches even to a minimum, because by saying "this is a vow for me" he does not mention eating.

MISHNA II.: (If one says): I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. But if he says: I swear that I will neither eat nor drink and did both, he is guilty twice. If he says: I swear not to eat and then eats wheat bread, barley bread and rye bread, he is guilty but once; if he swears: I will not eat either wheat bread, barley bread or rye bread and then eats, he is guilty for each one severally. I swear that I will not drink, and thereafter drinks varied beverages, he is guilty but once; I swear I will drink neither wine, oil, nor honey, and then drinks, he is guilty for each severally. I swear not to eat, and then ate things not suitable to eat, and drank something not suitable as a drink, he is free. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. If one said: I swear to abstain from deriving any benefit from my wife if I have eaten to-day, and he did eat carcasses, etc., his wife is prohibited to him for all benefit.

GEMARA: R. Hyya b. Abin said in the name of Samuel: If one swears not to eat and thereafter drank, he is guilty. If you wish, this is mere common sense, since ordinarily a man inviting the other one to have a bite, the two go in and eat *and* drink: or if you wish, it is found in the Scripture that the expression eat includes also drinking--viz.: in [Deut. xiv. 16]: "In cattle, sheep, wine . . . and thou shalt eat these." But perhaps it means there an *aino garum* (a dish in which wine is mixed)? The verse says further *Shechor* 1 (old wine), which means an intoxicating beverage. Neither can it here be spoken of a date of the City of Kehilla, which when eaten intoxicates and regarding which a Boraitha says that one who had eaten it and then entered the sanctuary is culpable, as the word *shechor* here is analogous with the same word used concerning a Nazarite where it surely means only wine for which he is culpable. Said

[paragraph continues] Rabha. This is implied also in our Mishna: If one swears not to eat, and then eats and drinks, he is culpable but once, which signifies that the drinking is included in the eating; for if this were not the case, to what purpose would the express teaching be? Would it be necessary, *e.g.*, for the Tana to teach expressly that the oath regarding eating makes one culpable only for the eating and not for performed labor? Said Abayi to him: According to your doctrine that eating includes drinking, how is the second part of the Mishna "I will neither eat nor drink" to be understood? As eating includes drinking, why is he culpable twice? And he answered: Because of the expression; the addition "nor drink" shows clearly that his "I will neither eat" was not yet in *his mind* including drinking. Said R. Ashi: It seems to me, too, that the teaching of the Mishna implies drinking in eating, hence, "I swear not to *eat* and then ate things not eatable and *drank* things not suitable to drink," which implies that if the things he drank were suitable, he would be liable, hence we see that drinking is included in eating. However, this is hardly evidence, as the Mishna here may mean that he said in his oath both eat and drink.

"*I will not eat either wheat bread . . . he is guilty for each.*" But perhaps he intends by mentioning expressly bread merely to exclude other things which to eat he shall be free? If such were the case, he would not repeat the word bread with each kind separately. But again, maybe he uses repeatedly the word bread in order to prevent the belief that he swears with regard to wheat bread not to *eat*, while with regard to the others not to *chew*? If this were his intention, he would say: I will not eat wheat bread, nor barley, nor rye, without repeating bread each time. But if he said so, his oath could be understood to concern a mixture of all these, but not each singly and severally? Then let him say: I will not eat bread of wheat, of barley, or of rye, without repeating *bread*. Hence, the repetition must have been intended to emphasize that he makes an oath for each severally.

"*I will drink neither wine, oil . . . he is guilty,*" etc. Here again the question arises, maybe he intends to exclude other beverages, as here the above argumentation cannot be advanced, since the beverages are here specified. Said R. Papa: It speaks of a case where all these liquids were standing before him, so that he could by pointing to them swear not to drink them; why, then, are they specified? To indicate that he makes an

oath for each one. But if so, it could be said that he must not partake only of these before him, but of other wine, etc., he may? Let him then say: I will not drink of these before me nor of their kind in general. Hence, it must be said that the specification is intended to make the oath for each severally. R. Aha b. R. Aika said: The Mishna speaks of one invited by his neighbor to drink with him wine, oil and honey, to which he could answer: I will not drink with you (without repeating wine, oil and honey); hence, his repeating the liquids makes him liable for each one separately.

"*I will not eat and then ate things not eatable,*" etc. Does not the Mishna contradict itself? It states that on eating an unsuitable thing he is free, and hereafter it declares him culpable for eating carcass? What are the reasons to account for these two parts respectively? This presents no difficulty. The first part speaks of the case when he says in general: I will not eat; while the second part speaks of the case when he expressly says: I will not eat anything. But even if this be so, why should the oath hold regarding reptiles, where an oath (not to eat such) lies on him

already from the Mount Sinai? Rabh, Samuel and R. Johanan all three said: It speaks of the case when one includes in his oath the permissible with the forbidden--viz.: I will not eat legal and illegal things. Resh Lakish, however, says: A case like that of the Mishna cannot take place, unless he stated plainly not to eat even a half of the prescribed quantity; in which case according to the rabbis, who hold one liable only for the whole quantity, the oath concerns a half-quantity, and according to R. Aqiba, who says that liability attaches even to a minimum, the oath here concerns a half-quantity provided he has not plainly specified anything.

But why does not Resh Lakish agree with R. Johanan? He may say that R. Johanan's theory of inclusion can be applied only to prohibitions in themselves, such as, eating carcasses on the day of atonement, where the carcass is prohibited even if not on the day of atonement, nevertheless the rabbis make him liable also for the day of atonement, because as one is prohibited from eating legal food on that day, he is likewise prohibited from eating carcass, for the prohibition to eat includes legal as well as illegal food; however, where a prohibition is imposed by man upon one's self, no one can make him liable for inclusion. Said Rabha: The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition;

p. 35

while the reason of him who holds that such is not the case is that an additional prohibition holds good when concerning one and the same piece, but not when concerning separate pieces; *i. e.*, an inclusive prohibition is, *e.g.*, a carcass on the day of atonement, where the day itself adds nothing to the prohibition of the carcass as such, but does add a prohibition upon the man (*viz.*: that he must not eat it on that day); while if, *e.g.*, illegal fat, which is prohibited to eat, but allowed for the altar, remains over night, it is prohibited also for the altar, hence, there is on *it* an *additional* prohibition (for its having remained over night), but this additional prohibition can be only on one and the same piece, but not on separate pieces.

Rabha said further that to him who holds the theory of inclusive prohibition, he who swears not to eat figs and hereafter swears not to eat figs and grapes, is liable for the figs twice; for the second oath resting upon the grapes, rests again upon the figs, too. But is not this self-evident? Lest one say that this theory applies only to prohibitions in themselves, and not to such made by man upon himself, he comes to teach us that there is no difference between the two cases. [1](#)

MISHNA III.: It is immaterial whether the things sworn off concern himself or others; whether they are or are not of some essential nature. *E.g.*, he says: I swear that I will or will not give something to this or that person; that I did or did not give him something; that I will or will not sleep; that I did or did not sleep; that I will or will not throw a stone into the sea; that I did or did not throw it. R. Ismael says: One is guilty only for an oath made with reference to the future, for it is written: To do evil or to do good. Said to him R. Aqiba: According to this view I know but about oaths concerning things that are intrinsically either evil or good, but whence do I learn about those regarding things that entail neither evil nor good doing? Retorted the former: From the addition in the Scripture; to this rejoined the latter: If the Scripture widens the notion in this respect, it does it likewise in the other (case).

GEMARA: The rabbis taught: In some respects vows are more rigorous than oaths, in others oaths are more rigorous than vows. Vows are more rigorous in that their liability attaches even to commandments, *e.g.*: If one says, I vow not to make a

sukkah, and hereafter he makes one, he is liable for transgressing the vow; which is not the case with an oath (as an oath rests upon him from the Mount Sinai). On the other hand, oaths are more rigorous than vows in that their liability attaches also to things not essential, which is not the case with vows.

"*I will or will not give*," etc. What does it mean, "I will give"? If charity to the poor, it is obligatory for him by oath on the Mount Sinai? Nay; it means a present to a rich man.

"*I will or will not sleep*," etc. But has not R. Johanan said that if one swears not to sleep for three days in succession, he gets stripes and is put to sleep immediately (because one cannot keep from sleeping for three days)? This is no difficulty, as in the case of the Mishna no number of days is specified.

"*I will throw a stone*," etc. It was taught: If one said, I swear that so and so has or has not thrown a stone into the sea, according to Rabh he is culpable, as he transgressed a negative; according to Samuel he is not, for such an oath can not be made with reference to the future. Shall we assume that the above differ in the same in which R. Aqiba and R. Ismael differ in our Mishna: R. Ismael said, one is liable only for the future, as it reads: To do evil or to do good; whereupon said R. Aqiba: If it were as you say, the liability would apply but to things that are intrinsically either evil or good; and he answered: From the addition in the Scripture: To every thing uttered with his lips; whereto R. Aqiba rejoined, etc. Whence it would appear that Rabh is in accordance with Aqiba, and Samuel in accordance with R. Ismael? Nay; according to R. Ismael, who frees one for the past even in a case where a future is possible, there can be no doubt that in the case illustrated above, one should be culpable; but where they do differ is concerning the interpretation of R. Aqiba's view. According to Rabh, R. Aqiba holds one liable for transgressing a negative immaterial whether such an oath can or can not apply to a future; while Samuel maintains that R. Aqiba's view applies only to a case where an oath for the future *is* possible, but not to other cases.

Said Abayi: Rabh admits that if one says, I swear that I know something to testify for you, and it is found hereafter that he knows nothing, there is no liability in this case because the negative, I swear that I do not know, etc., is not possible here (as this is not considered an utterance, but belongs to the category of testimony). But regarding the oath, I was or was not aware of testimony in your case, or, I have or have not testified,

[paragraph continues] Rabh and Samuel still differ. (Says the Gemara): According to Samuel's theory it is correct that the law has excluded the witness-oath from the category of uttered oaths, as there is a rule that where there is no future possible, no liability attaches to the past; but according to Rabh who disregards this rule, why were the witness-oaths excluded? Said the rabbis before Abayi: in order to make one liable twice (*i.e.*, if one is fit to testify, knows the case, and nevertheless denied it before the court, he is liable twice, for the witness-oath and for an uttered oath). Said Abayi to them: It is impossible to make one liable twice, as it reads plainly [Lev. v. 4]: "That he hath incurred guilt by *one* 1 of these," which means, he can be punished once but not twice. But, then, to what other purpose have the witness-oaths been excluded,

according to Abayi? To what we have learned in the following: Concerning all oaths it reads "escaped his memory," except the oath of a witness, to make him liable (to a sin-offering) for an intentional oath just as for an unintentional one. Said the rabbis to Abayi: Say, then, that for an intentional he is liable to one, and for an unintentional he should be liable to two, viz.: for a witness and an uttered oath? And he answered: Have I not said that the above-cited verse prevents it from making one liable to two? And as to an intentional, the liability of an uttered oath does not exist there.

Rabha, however, said: The reason why there can be no two liabilities is this: There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self (*i.e.*, the witness-oath as an oath is included in the general uttered oaths, and when the Scripture makes for it a new special law of liability, you cannot any more apply to it also the liability attached to the uttered oath). But how is it according to Abayi? Does he hold that there is such an oath at all? Has he not declared above that Rabh admits that if one swears: I know testimony for you, etc., there is no liability here, as such oath cannot be made in the negative, whence it would seem that such in the negative does not exist at all? He has retracted his above statement, or, if you wish, one of the above statements was not said by Abayi but by R. Papa.

p. 38

"*One is guilty only . . . with reference to the future.*" The rabbis taught, it reads [Lev. v. 4]: "To do evil, or to do good," whence we infer only those that are in themselves either good or evil; but whence do we know about oaths concerning other things? From [ibid., ibid.]: "Pronouncing with his lips," etc. But all this is concerning the future; whence do we know the same concerning the past? From [ibid., ibid.]: "In *whatsoever* it be"; so R. Aqiba. R. Ismael, however, says: "To do evil, or to do good" means only oaths for the future. Said to him R. Aqiba: If such be the case, we know only about oaths concerning things intrinsically good or evil, but whence do we know about those regarding other things? Retorted the former: From the addition in the Scripture ("*whatsoever*"), whereupon rejoined R. Aqiba: If the Scripture widens the notion in this respect, it does it likewise in all other respects. Now, is not R. Aqiba's statement perfectly correct? Said R. Johanan: R. Ismael, who was a disciple of R. Ne'hunia b. Hakana, who was in the habit of interpreting the Scripture by generals and particulars, proceeds in the same manner as his master; while R. Aqiba, who was the disciple of Na'hum of Gimzu, whose method of interpretation was extensions and limitations, follows his master's method. And this is as stated in the following Boraitha: "If any person swear" is an extension; "To do evil or good" is a limitation; "In *whatsoever* it be" is again an extension, and there is a rule that such an extension includes everything, while a limitation is excluding a commandment. This is in accordance with R. Aqiba; while R. Ismael, whose method is the generals and particulars, interprets the verse thus: "If any person," etc., is a general; "To do evil or good" is a particular; "In *whatsoever*" is again a general, and there is a rule that wherever there is a particular between two generals, the latter must be interpreted in the sense of the particular; now, as the particular here refers expressly to the future, so also everything relates to the future; the generals, however, affect in the same way all other things relating to the future, but not implying either good or evil, while the particular affects things relating to the past, that they be excluded. (Says the Gemara): And why not the reverse? Said R. Itz'hak: They must be similar to the particular (of to do evil, etc.), which is prohibited because of the above-cited [Numb. xxx.]: "He shall not profane his word," excluded the past to which the prohibition is "He shall not lie." R. Itz'hak b. Abin, however, said: This is inferred from the cited verse,

[paragraph continues] "If any person swear by pronouncing," which signifies that the oath was before the act, but not the past where the act was before the oath.

The rabbis taught: "If any person swear," etc., intends to exclude compulsion; "Escaped" to exclude intention; "From his memory" to signify that the oath escaped his memory but not the thing in question; hence, one is culpable only for forgetting the oath, but not for forgetting the object.

The master says: "To exclude compulsion," what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college had ceased; one would say, I swear that Rabh said so and so, and the other would say, I swear that Rabh said the contrary, and when they came to ask Rabh on the point, he certainly said as one of them; and to the question of the other, Have I sworn false, Rabh answered: You were compelled by your conscience and the verse "Escaped (from) his memory" means the oath but not the object.

This statement was ridiculed in the west. An oath and not the object is to be found, *e.g.*, in: I swear not to eat wheat bread, and thereafter he thinks that he swore to eat, and accordingly eats it, hence, he forgot the oath but not the object; but where do you find a case where the object is forgotten and not the oath? As, *e.g.*, in: I will not eat wheat bread, and thereafter ate it thinking it to be of barley, hence, he has the oath in mind and not the object; but as he forgot the object, is it not as if he forgot the oath? Therefore, decided R. Elazar that it makes no difference what one forgets. R. Joseph opposed: Is it indeed so, that the object cannot be forgotten without the oath? May it not happen that one swear not to eat wheat bread, and then stretch his hand to the basket where there was both barley and wheat bread with the intention to take that of barley, but takes that of wheat, and eats it up in the belief that it is of barley? In this case he had the oath clearly in mind, but he did not recognize the object. Said Abayi to him: But when he brings the offering, why does he bring it, for the bread he has eaten? Surely because of the oath (hence, they were right in the west). R. Joseph, however, insists on his statement for the reason that if he actually recognized that this is wheat bread, he would certainly abstain from it, hence, here is the ignorance of the object.

Rabha questioned R. Na'hman: How is it if he forgot both? And he answered: As soon as he became ignorant of the oath

he is culpable. Rejoined Rabha: Why not the contrary? Here is the ignorance of the object, and hence he should be free? Said R. Ashi: In such a case we have to examine the nature of the case; if he abstained from the object by recollecting the oath, then the ignorance of the oath is the main thing, and he is culpable; but if he abstained by recollecting the object, then the ignorance of the object is the main point, and he is free. Said Rabina to him: I do not see any difference here; if his abstention is caused by the recollection of the oath, is not here also the recollection of the object brought about? And the same may be asked *vice versa*,. hence, there can be no difference here.

Rabha questioned again R. Na'hman: How can an unintentional uttered oath take place for the

past? If he (who swears) is while swearing aware that it is false, then it is intentional; and if he is not aware, then it is a case of compulsion. And he answered: Take the case where he is aware that such an oath is prohibited, but is not aware that the liability of a sin-offering is attached thereto. Is this in accordance with Munbaz, who holds that such an ignorance be considered, and not in accordance with the rabbis, his opponents? Nay; this may even accord with the latter, as they differ with him only in all other cases of the Torah, but not in this case, for it is a novelty, as we do not find anywhere in the Scripture that one should be liable to a sin-offering for a negative except in this case, in which, therefore, the rabbis, too, agree with Munbaz.

Rabina (the elder) questioned Rabha: Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it? In danger! then he is certainly allowed to eat it! Said Rabina: I mean to say that suppose he ate this bread while impelled by hunger and having forgotten his oath not to eat it. And Rabha answered: Concerning this we have learned elsewhere, a sin-offering applies only to such a case where he would abstain from eating if he recollected his oath, but not otherwise; while here, being, as he is, impelled by hunger, he would not abstain, it cannot be considered unintentional. [1](#)

Samuel said: It is not sufficient that one make up his mind, he must pronounce it with his lips, as it reads "By pronouncing with his lips." [2](#)

p. 41

MISHNA IV.: If one swears to ignore some commandment and does not carry out his oath, he is free; if he swears to fulfill a commandment and fails to realize his oath, he is free. It appears on the first glance that he should rather be guilty, as R. Jehudah b. Battina argues thus: Since one is guilty for oaths regarding voluntary acts not provided for from the Mount Sinai, so much the more is it so in the case of oaths regarding commandments, to which he is sworn in from the Mount Sinai. Whereupon he was retorted: If you declare him guilty in voluntary acts where affirmation and negation are both alike indifferent, you can by means do the same in oaths concerning commandments where affirmation and negation are not equivalent; since one is free, if he swears to, but does not, violate a commandment.

GEMARA: The rabbis taught: Lest one say that one who swore to ignore a commandment and did not, should be culpable, it reads, "To do evil or good"; just as to do good unto one's self is a voluntary act, so also an evil act must be voluntary, and this excludes him who swore to ignore a commandment. Furthermore, lest one say that he who swore to fulfill a commandment and did not, should be culpable for the oath, we again compare the good to the evil act: just as latter is voluntary in this case, so must former be voluntary, and this excludes the case of an oath to fulfill a commandment. Again, lest one say that if one swore to do evil unto himself and did not, he should be free, we again compare evil to good; just as the latter means voluntary, so also the former, hence, it includes the case where one swore to do evil to himself, which he was at liberty to do, and he is culpable. Finally, lest one say that the same is the case if he swore to do evil to others and did not, we compare evil to good, which latter is voluntary, while in the case of strangers he is not at liberty to do evil, hence he is free. But whence do we know that he who swore to do good to others and did not, is culpable? From "*or* to do good." What is an evil doing to others? *E.g.*, one says: I will strike so and so, and split his head.

(Says the Gemara): But whence is it known that the above-cited verse treats of a voluntary act,

perhaps it has in view a meritorious act? This cannot be borne in mind, as the two, the evil and the good, must be compared with each other; and as doing good cannot be spoken of concerning the ignoring of a commandment, so also doing evil cannot treat of ignoring a commandment,

p. 42

hence, this expression of doing evil would be in this respect good, as it does not apply to the ignoring of commandments; on the other hand, the good-doing is compared to the evil-doing: just as the former cannot treat of the fulfilling of a commandment, so also the latter cannot; hence, in this respect the good-doing would be evil (therefore, the expression in question cannot treat of meritorious acts). But in the light of these considerations, this expression cannot treat of voluntary acts, either, where good and evil means to do good and evil unto one's self respectively, hence, here, too, good would in some respects be evil (as, *e.g.*, the oath not to eat a harmful thing) and *vice versa*? [1](#) Therefore we must say that, because it was needful to the Scripture to use the disjunction "or" in order to indicate doing good to others, it must treat of voluntary acts; since if it treated of commandments, the "or" would not be necessary, as it would be self-evident, for as the doing evil to others is included here, so much the more the doing good! [2](#)

"*R. Jehudah b. Bathira*," etc. Is not the argument of the rabbis against R. Jehudah b. Bathira correct? He may say thus: Let us see; was it then necessary for the Scripture to add that if one swore to do good to others and did not, he is culpable; is this not self-evident, since one is not culpable for an oath to do evil to others, being as he is not free to do so, he is culpable when he *is free* to do so; and nevertheless the Scripture did add, hence, the same is the case with the oath to fulfill a commandment, where, although it is self-evident that he is culpable in this case because he is not culpable when he swore to ignore a commandment, yet the Scripture adds it. To all which the rabbis might say: These two cases are by no means analogous, as when one swears not to do good to so and so, he is culpable, while if one swears not to fulfill a commandment, and thereafter he does fulfill, he cannot be culpable.

MISHNA V.: If one swears, I will not eat this loaf of bread, I swear I will not eat it, I swear I will not eat it, and eats it nevertheless, he is guilty but once. This is an uttered oath for the intentional violation of which one is subject to stripes, and for whose unintentional violation to a poor or rich offering. Vain swearing, if wilfully done, is punished with stripes, but if committed unintentionally, is free from punishment.

p. 43

GEMARA: To what purpose does the Mishna vary the language? It comes to teach us that only when making the oath in such expressions he is culpable but once; but if he said first: I will not eat it, and then, I will not eat this loaf, he would be culpable twice; as Rabha explains elsewhere that the expression "I will not eat this bread" makes one culpable when he ate of it the size of an olive; but if one says, "I will not eat it," he is not culpable unless he has consumed the whole of it; hence, if the Mishna stated first "I will not eat it," and then "I will not eat this loaf of bread" he would be culpable twice (as here were two *distinct* oaths: the former on the *whole* bread, the latter on the size of an olive; and the latter does not do away with the former, while the former if stated last would do away with the latter).

"I will not eat it, and eats it none the less," etc. For what purpose is this repetition, since one oath does not rest upon the other, as we have seen it to be the case with the second one, and it is surely so with the third one, too? It comes to teach us that, though there is no liability, yet the oath is not ignored, and that in case there will be place for it, it may rest; this illustration is as Rabba said: In case he asked a sage to nullify the first oath, the next comes to take its place.

Rabba said: If one says, I swear not to eat *this* bread in case I eat the other, and it happened that he ate the first 1 (1) erroneously and the second intentionally, he is free (2); if *vice versa*, he is culpable (3); furthermore, if he ate both unintentionally, he is free (4); if both intentionally, it depends on the following: if he had eaten the conditional one first and thereafter the one he prohibited to himself, he is liable (5), and if *vice versa* it is under the category of cases concerning which R. Johanan and Resh Lakish differ; according to him who holds that a doubtful

p. 44

warning is considered, he is culpable (6), while according to the other, who holds that such is not considered, he is free (7). If, however, continues Rabba, he made the two breads dependent on each other--viz.: I will not eat the one if I eat the other. I will not eat the other if I eat this, and thereafter he consumed one intentionally (*i.e.*, he has in mind the oath that he must not eat this in case he eats the other one, but he forgot that he swore the same with regard to the other bread) then he consumed the other one also intentionally (the same as before, but he forgot that he has already consumed the first one), he is free; if, however, he has consumed the first unintentionally (*i.e.*, he forgot that the conditional oath is on *this* bread, though aware of the oath itself and therefore he consumes the second one in the same manner, he is culpable (8); but if he consumed both unintentionally (having forgotten all about the oath), he is free; both intentionally, he is, all agree, culpable for the second one; the first, however, falls into the foregoing category concerning which R. Johanan and Resh Lakish differ. Said R. Mari: there are vows by error and vows by compulsion; how so? If one says: I vow this object if I have eaten or drunk such and such, and then recollects that he did; in like manner if he vows for the future and on forgetting the vow eats or drinks, to such a vow no liability attaches; and there is a Boraitha that just as there are vows by error, there are also oaths by error.

Eipha taught the Tract Sheb'noth at Rabba's college, and Abimi, his brother, asked him: How is it if one swears twice, I have not eaten, I have not eaten, while he did eat? He answered: He is culpable but once; whereupon he said: You are mistaken, since the first oath was already a lie, and the second one is again a lie. He asked further: How is it if one swears not to eat nine and ten (articles), and thereafter he eats ten, without recollecting his oath in between? And he answered: He is culpable for each one severally. Said the other: You are again mistaken, for the oath for the ten does not rest at all, as ten presupposes nine and for the nine he has made a separate oath; but how is it if he swear not to eat ten, and then not to eat nine? Here he is culpable only once. The other rejoined: You are again mistaken, for as soon as he ate nine he broke one oath, and by eating the tenth he breaks the other oath. Said Abayi: In this last case, then, may be a case that Eipha is right --viz.: if one swear not to eat ten, and thereafter not to eat nine; then he ate nine and recollecting his transgression, brought

p. 45

a sin-offering and then consumed the tenth; the tenth is then considered but a half-quantity, and for such one is not liable.

MISHNA VI.: Which is false swearing? If one swears that something is different from what it is known by everybody to be, *e.g.*, that a stone column is of gold, that a man is a woman, that a woman is a man; or if he swears to an impossibility--viz.: If I have not seen a camel flying in the air; If I did not see a serpent of the shape of an oil-press; so! . . . If one asks some witnesses: Come to testify for me, and they answer, We swear that we shall not bear you witness; or if someone swears to ignore a commandment, as, *e.g.*, not to make a Sukka, not to take Lulab'be, or not to put on phylacteries; so it is a false swearing punishable with stripes if committed intentionally, and unpunishable if made by error. If he swears, to one and the same loaf of bread, I will not eat it, then, I will not eat it, the former is a vain oath, and the latter an uttered oath; so that by eating it he is liable for uttered swearing; by not eating it he is liable for a vain oath.

GEMARA: Said Ula: Provided it was acknowledged by three persons that this pillar was of stone.

"*If he swore to an impossibility*," etc. Why does the Mishna use a negative and not a positive expression? Said Abayi: Read it in the positive, if you prefer. Rabha, however, said: It speaks thus: If he says, all the fruit in the world be forbidden to me, if I have not, 1 etc.

"*I will eat, I will not eat*," etc. Let us see: since he is liable for the uttered oath, shall he not be liable for the vain one? He *has* pronounced such and why shall he not be liable? Said R. Jeremiah: Read in the Mishna, he is liable for the uttered oath *also*.

MISHNA VII.: The provisions regarding uttered swearing apply to males, females; to kindred, non-kindred; to those legally fit to testify as well as to those unfit; to cases before as well as outside the court. The oath, however, must come forth from his own mouth, and its intentional violation is punished with stripes, and its unintentional with a poor and rich-offering. Vain swearing takes place by men as well as by women; by kindred and non-kindred; by those fit to testify and by those unfit; before and outside the court, and the oath must issue from one's own mouth; its intentional violation is attended with stripes,

p. 46

while its unintentional is unpunishable. In both cases one is guilty if made to swear by others, thus: If he says, I ate nothing to-day, I put on no phylacteries, and another interposes: I adjure you, to which he answers: Amen, he is guilty.

GEMARA: Said Samuel: He who answers amen after an oath is considered as if he pronounced the oath with his lips, as it reads [Numb. V. 22]: "And the women say amen, amen." Said R. Papa in the name of Rabha: There are a Mishna and a Boraitha which seem to teach the same. The Mishna is the next following (viii.): The witness-oath . . . unless they deny before the court; such is R. Mair's view. Then the illustration in the Boraitha: If one said to the witnesses, Come and testify for me, and they answer: We swear that we know of no testimony for you, or, We do not know any testimony, whereto he says, I adjure you, and they answered: Amen, they are liable when they deny it, immaterial in the presence or absence of the court; so R. Mair. Hence, the Boraitha apparently contradicts the Mishna; however, as we said, the Mishna means that they did not answer amen, while in the Boraitha he did so, hence, the answer, amen, is equivalent to pronouncing with one's lips.

Said Rabina in the name of Rabha: From our own Mishna we may infer the same; as in the first part it requires that he must utter it himself, whence it is to be inferred that not through others, and in its last part it states that in both cases if sworn through another, he is liable; does the last part contradict the first? Nay; the last part means when they answered Amen, while the first part does not mean so. But if so, what comes Samuel to tell us? He comes to teach that the Mishna is particular in its statements concerning an uttered oath--viz.: if made by himself, he must pronounce it with his lips, and if by others, he must also utter with his lips Amen.

Footnotes

[28:1](#) This illustration is taken from 'Hanannel, as Rashi's illustration here is too complicated.

[29:1](#) The continuation of this will be translated in Tract Benedictions.

[32:1](#) *Shechor* is old wine and *Shiccor* from the same stem means intoxicated.

[35:1](#) The discussion following here, being but repeated from its proper place, is here omitted.

[37:1](#) Here the word *l'achath* (to one) is taken by the text literally: one; while further on it is explained to mean 'to anyone'.

[40:1](#) The explanation here is that of Hanannell's second version, Rashi not being clear on the point.

[40:2](#) This statement is objected to by many, but the objections are overthrown; and as all this discussion is both complicated and unimportant, we omit it.

[42:1](#) The commentaries on the point are in great perplexity.

[42:2](#) The discussion here on the disjunction "or" is omitted, for it is already given in Sanhedrin.

[43:1](#) (1) The first, *i.e.* the conditioned *A*, the second, *i.e.* the conditioning one *B*. (2) Because when he eats *A* he forgot all about *B* and the oath has not yet rested upon him, since *R* was not yet consumed by him; hence, he is free from both stripes and sin offering. (3) Because while eating *A* he was aware of his oath, and when consuming *B* he forgot the oath; hence he is liable to an offering for breaking an oath by forgetting. (4) Because he had forgotten the oath already when he ate *A* hence there was no oath at all resting upon him. (5) To stripes, since after having consumed *A* he was aware that *B* was forbidden to him, and the warning was a certain one. (6) Because if he was warned with regard to either *A* or *B*, he has broken his oath intentionally. (7) Even when warned while eating *A*, because the liability to stripes is originally attached only to *B*, hence the warning does not effect. (8) Because one of the breads was necessarily consumed intentionally.

[45:1](#) The further development of this discussion will appear in its place in N'dairm.

[Next: Chapter IV](#)