

CHAPTER V.

RULES AND REGULATIONS CONCERNING THE DEPOSITORY-OATH: WHO IS OR IS NOT FIT TO TAKE IT; WHERE THE DENIAL OF THE DEPOSIT BY OATH MUST TAKE PLACE; THE CONDITIONS DETERMINING THE LIABILITY TO BE EITHER ONE OR FOR EACH ARTICLE SEPARATELY; IN WHICH RESPECT SUCH OATH IS MORE RIGOROUS THAN THE WITNESS OATH.

MISHNA 1.: The depository oath concerns men and women, non-kindred and kindred, those fit to testify and those unfit, cases within the court and outside thereof, provided it comes forth from one's own mouth, but if through that of others, he is not liable unless he denies it before the court; such is R. Mair's view, while the sages teach: Regardless of whether it comes from one's own mouth or from that of others, he is guilty so long as he denies it. But one is guilty for willful perjury and willful denial of the deposit when ignorant of the liability; not so, however, if he was mistaken concerning the oath only. And what is the fine attached to a willful oath? A [transgression](#) offering in the value of two shekkels. How does the oath concerning deposits take place? When one says: Give me my deposit that I have in your possession, and latter replies thereto: I swear you have nothing with me, or merely You have nothing with me, whereupon the former says: I adjure you, and this answers: Amen, and so he is guilty. If the plaintiff adjured him five times either before court or outside and be denied it by oath every time, so he is guilty for each time severally. R. Simeon said: The reason is that he had ample possibility to confess the truth. If five people require of him in the same time, saying: Give us the deposit we have in your possession, and he says: I swear ye have nothing with me, so he is guilty but once. But if he says: I swear that thou hast nothing with me, nor thou you, nor thou, so he is guilty for each one severally. R. Eliezar says: Provided he make the oath last. R. Simeon says. Provided he accompany each statement with the words I swear.

If one says: Give me the deposit, the loan, the stolen and

lost, that I have in your possession, he replies: I swear that you have nothing with me, he is guilty but once. If, however, his reply be: I swear that you have nothing with me, either deposit, or loan, or the robbed and lost, so he is guilty for each one severally. The same is the case with wheat, barley, and if he denies all with one oath he is guilty but once, and if he repeated "I swear" with each one, he is liable for each. R. Mair says: Even if he required the things in the singular, the other one is guilty for each one severally. If one says: You have violated or seduced my daughter and he replies: I have done neither the one nor the other, I adjure you whereto he says: Amen, so he is guilty. R. Simeon holds him free, for one does not pay fine on his own confession. To which it was objected: Although upon self-confession one pays no fine, yet he must pay indemnity for shame and loss of value. You have stolen my ox; I have not stolen him; I adjure you, the other one: Amen, so he is guilty. But if the latter says: True, I have stolen your ox, but not slaughtered nor sold him; I adjure you; Amen, so he is free. Your ox has killed mine;

He did not; I adjure you; Amen, so he is guilty. Your ox has killed my slave; He did not; I adjure you; Amen, so he is free. You have bruised me and wounded me; I have neither bruised nor wounded you; I adjure you; Amen, so he is guilty. But if the slave says to his master: You have blown out my eye or tooth, and latter replies: I have done to you neither the one nor the other; I adjure you; Amen, so he is free. This is the general rule: Whenever one has to pay damages on self-confession, he is (in case of perjury) guilty, but whenever he has not to pay on self-confession, he is free.

GEMARA: R. A'hra b. Huna, R. Samuel b. Rabba b. b. 'Hana and R. Itz'hak b. R. Jehudah have been learning the Tract Shebath at Rabba's college; and when R. Kahana met them he asked: What is the law when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? Shall we assume that, as this law to bring a sin-offering for an intentional oath is novel, there is no difference whether there was warning or not, or this law holds good only when there was no warning, and if there was, he is subject to stripes and not to a sin-offering, or to both? And they answered: This we have learned in our Mishna; the depository oath is more rigorous, as stripes apply to it when intentional, and a trespass-offering for two shekkels when unintentional. Now, as

p. 69

it states stripes, it must be that he was warned, and no offering is mentioned; and concerning the rigorousness it may be said that one is pleased to bring a sin-offering instead of getting stripes. Said Rabba b. Eithi to them: This is in accordance with R. Simeon, who holds that an intentional depository-oath cannot be atoned for, but according to the rabbis who maintain that it can, he must bring an offering also. Said R. Kahana to them: Leave out the Boraitha cited by you, as I taught it Thus; it makes no difference whether it was intentional or unintentional, he is liable to a trespass-offering for two shekkels; and the rigorousness is that for any other oath he may bring a sin-offering in the value of a δαντικός, while here it must be in the value of two shekkels. But then, why did R. Kahana resolve his question from here? Because this may be a case where there was no warning.

According to another version R. Kahana adduced the following Boraitha: No liability attaches to an unintentional oath; and what is the liability of an intentional? A trespass-offering for two shekkels. Does it not mean a case where there was warning? Nay; it may mean one without warning. Come and hear another Boraitha: The comparison with the offering of a Nazarite cannot be drawn here, as a Nazarite who defiles himself gets stripes in addition, while to a depository-oath stripes do not apply; now, since it states that he does get stripes he must have been warned, and nevertheless it states that to a depository-oath stripes do not apply, whence it is to be understood that an offering is required in this case? Nay; it may be said that it means that stripes do not suffice without an offering. But if such be the case, the Nazarite who gets stripes must not bring an offering any more; is it not expressly written that he *is* liable to an offering? His offering is not for his transgression, but for enabling him to continue in his state of a Nazarite in purity.

R. Kahana's question from above was recited before Rabba and he said: From this it may be inferred that, if he was not warned by the witnesses, and they testify, he is nevertheless liable to a sin-offering; but if such a case happens in civil law, his denial would count for nothing, and there are witnesses and he must pay; why then shall he in this case be liable to a sin-offering? (Says the Gemara): From Rabba's question we may conclude that his opinion is that he who

denies a debt in spite of witnesses is not subject to a biblical oath. Said R. 'Hanina to Rabba. The following Boraitha supports your opinion. It

p. 70

reads [Lev. v. 22]: "And lie concerning it" to exclude the case when he confesses this to one of the brothers or partners, "swear falsely" to exclude the case where there were documents or witnesses. And he answered: If you have in the Boraitha no other support but this, it is no support to me at all, as this Boraitha is to be interpreted thus: If the defendant says, I have borrowed from you but not in the presence of witnesses, or not on any document (hence, the Boraitha has in view not denial but confession); and this interpretation is necessitated by the expression of this Boraitha "To one of the brothers"; because how was the case? If he confessed the half of the amount, then there is a complete denial of the other half; thus we must say that the confession to one of the brothers means that the denial was not concerning the amount, but springing from his assertion that he made the loan of *one* of the brothers only, so that it is but a denial of words, and as the first part of the Boraitha means a denial of words and not of the amount, so also the second part.

Come and hear. It was said above: He is not liable for its unintentional; and what is the liability for an intentional? A trespass-offering, etc. Shall we not assume that it means a case where there were witnesses warning him? Nay, it means that there were no witnesses. Come and hear another objection. If the depository claims that the deposit has been stolen from him, swears, but thereafter confesses, and there are also witnesses to this effect, it depends on the following: if the witnesses come after he has sworn, he must pay double amount and bring a trespass-offering; but if he has confessed before the appearance of the witnesses he has to pay the amount plus one-fifth of it and bring a trespass-offering. (We see then that he is liable to a trespass-offering in any case)? This may be explained also as Rabina stated above--viz.: At the time he takes the oath the wives of the witnesses find themselves in agony, etc. (see above [p. 67](#)), but in case of simple witnesses no offering is necessary. Said Rabina to R. Ashi: Come and hear: a depository oath is more rigorous, since for an intentional he is liable to stripes and for an unintentional to a trespass-offering in shekkels; now, stripes presuppose a warning by witnesses, and nevertheless it says that for an unintentional a trespass-offering (which signifies by implication that no offering applies to an intentional)? Said R. Mordachai: Leave alone this Boraitha, as R. Kahana said. This Boraitha *I* taught and it states that a trespass-offering must

p. 71

be brought, immaterial whether for an intentional or unintentional one. Finally, come and hear the following objection: In the discussion (above, [p. 69](#)) concerning an inference *a fortiori* it is stated that there is a difference regarding a Nazarite defiling himself, as he gets stripes, which is not the case with a depository oath; now, a Nazarite does not get stripes unless there were witnesses, and as it says that it is not the case with a depository-oath, it signifies that even if here were witnesses stripes do not apply, but an offering does apply, hence Rabba's statement is objected.

R. Johanan, however, said: If one denies money where there are witnesses, he is subject to an oath but is free from such if there is a document. Said R. Papa: The reason of R. Johanan is that witnesses are subject to death (then the denial would be considered, which is not the case with a document. Said R. Huna b. R. Jehoshua to R. Papa: May it not happen also to a document to be

lost? Therefore, R. Johanan's reason is that to a document real estate is encumbered, and there is no oath concerning the denying of real estate.

It was taught: If one adjures witnesses in a case of real estate, R. Johanan and R. Elazar differ: according to one they are liable, according to the other they are not; now, from what R. Johanan has said above it is to conclude that he is the one who declares them free, and his reason is that advanced by R. Huna b. Jehoshua.

Said R. Jeremiah to R. Abuhu: Shall we assume that R. Johanan and R. Elazar differ in what R. Eliezar and the rabbis differ (First Gate, Mishna VII. p. 270; see Mishna and Gemara), and he who makes him liable agrees with R. Eliezar of that Mishna, while he who frees him agrees with the rabbis? And he answered: Nay; as he who makes him free may say that in such a case even R. Eliezar admits since here concerning a false oath it reads [Lev. v. 22]: "In *any one* of all," but not all, which excludes real estate. Said R. Papa in the name of Rabha: It seems to be so also from our Mishna, which illustrates it by the theft of an ox and not by that of a slave, and this is because a slave is considered real estate to which an offering does not apply.

"*How does the oath concerning deposits take place,*" etc. The rabbis taught: "When the oath was made in general, he is liable but for one; but when in particular, he is liable for each severally"; so R. Mair. R. Jehudah, however, said: If he says, I

p. 72

swear I have it not from thee, and not from thee, and not from thee, he is liable for each one; R. Eliezar, however, maintains that he is liable for each one only then when the words "I swear" were said last; but R. Simeon said that to be liable for each one he must mention "I swear" with each one separately. Said R. Jehudah in the name of Samuel: The general of R. Mair is the particular of R. Jehudah (*i.e.*, "and not from thee, and not from thee," which is considered by R. Mair as a general, R. Jehudah considers a particular), and the general of R. Jehudah (*i.e.*, the same statement but without "and") is the particular of R. Mair. R. Johanan, however, said: Concerning "*and not from*" all agree that it is a particular; where they differ is regarding "not from thee" (without "and"), which is to R. Mair a particular, and to R. Jehudah a general. What then is a general to R. Mair? "I swear that you all have nothing with me." But what is the point they differ in? Samuel bases his view upon the just-cited Boraitha in which R. Jehudah says "and not from thee" is a particular, and this must be taken as an answer to R. Mair, who maintains that such statement is a general. On the other hand, R. Johanan bases his view upon our Mishna in which R. Mair says that for swearing "you all have nothing with" he is guilty but for one, whence it follows that if he states in his swearing "not from thee, not from thee" he is culpable for each. As to the Boraitha, R. Johanan explains it thus: R. Jehudah, answering R. Mair, says: concerning the phrase "*and not from thee*" I agree with you that it is a particular, but I do not agree with you concerning the phrase "not from thee, not from thee" (without and); to which Samuel cannot agree, as, he thinks, if this were the case R. Jehudah would state only in what he differs. As to the Mishna, Samuel does not agree with R. Johanan, as according to Samuel the phrase "*and not from thee*" is identical with "not from you all." (Here follow objections to the above, from our Mishna, where in all the cases it is stated with a *vahve* (-and) and the answer is: read it without "and." And to the question: Is it possible that all the "ands" are mistakes, it answers that the whole Mishna is in accordance with Rabbi's view in Tract Zebachim, where he plainly says that there is no difference whether the conjunction "and" was said or not.

"*R. Mair says: Even,*" etc. Said R. A'ha b. R. Aika: It means that even if he says wheat in the singular, it none the less means a measure of the same (as we find in [Exod. ix. 32]

p. 73

the word for wheat in the singular, and it denotes the whole kind of wheat).

"*Give me the wheat,*" etc. Said R. Johanan: The value of a *Peruta* from all of them counts to make him liable for each severally, and R. A'ha and Rabina differ in their explaining this point. According to one he is liable only for three particulars, but not for the oath as such, which is a general; while the other maintains that he is liable for four: for the three particulars, and for the oath as a general. But has not R. Hyya taught that he is liable to fifteen sin-offerings (if he swore to five persons), so that the Tana of the Boraitha counts only the particulars and not the five generals (for, with the generals it would make up 20: $3 \times 5 = 15$ for the particulars, and five for the oaths in general)? The Tana counts only the particulars, and he does not count the generals, though he holds one liable for a general. But again, there is another Boraitha by the same R. Hyya in which the liability counts twenty? This second Boraitha refers to the previous statement in the Mishna, "Give me the deposit, the loan," etc., which amount to *four* particulars.

Rabha questioned R. Na'hman: How is it if five persons claim the four articles just mentioned, and he says to one of them: I swear that thou hast not with me a deposit, a loan, a robbed, a lost article, and not thou, and not thou, and not thou, and not thou, he is liable with regard to the last four only to one sin-offering (so that all in all he should be liable to eight), or because he said to each one, "*and not thou,*" the particulars must be counted in each case, and hence he is liable to twenty? Come and hear what R. Hyya taught above: Twenty sin-offerings; now, if R. Hyya had in view that all particulars were mentioned in the oath, would it be necessary for him to specify the number of the sin-offerings? Hence, he surely has in view a case illustrated by you, and makes one liable for all the particulars.

"*You violated,*" etc. Said R. Hyya b. Aba in the name of R. Johanan: The reason of R. Simeon is that the main claim in this case is fine. Said Rabha: We may illustrate R. Simeon's view as follows: If one says, "Give me the wheat, barley and rye which I have with you," and the answer is, "I swear that you have no wheat with me," and it was found that he really had no wheat, but had barley and rye, he is free, because the oath for the wheat was true; said Abayi to him: This illustration does not answer the purpose, since when swearing about

p. 74

wheat he did not deny barley and rye. But R. Simeon's view may be illustrated thus: one answers "I swear you have nothing with me," whereupon it was found that he had no wheat, but barley and rye, in which case he is culpable? Therefore, when Rabin came he said in the name of R. Johanan: Their point of difference is that according to R. Simeon the plaintiff demands only the fine, but not the indemnity for the shame and loss of value which is not fine, while according to the sages he demands also the latter. And their respective reasons are explained by R. Papa thus: According to R. Simeon one would not demand an amount that has to be appraised as yet, while the fine is an amount established in the Scripture; on the other hand, the rabbis maintain that, on the contrary, one would not demand a fine, the admission of which by the offender makes him free, while the indemnity for shame, etc. he must pay at all events.

[Next: Chapter VI.](#)