

TANJA HIDDE / TAL ILAN

Massekhet Shevu'ot

*A Feminist Commentary
on the Babylonian Talmud
IV/6*

Mohr Siebeck

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edited by

Tal Ilan

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Text, Translation, and Commentary

Mohr Siebeck

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Dedicated to my father Joachim Hidde
(Tanja Hidde)

Dedicated to my wonderful friends
Joe Ganz and Paula Blumenfeld
(Tal Ilan)

Acknowledgement

This is the first volume of *Seder Neziqin* published in this series. It began as an MA thesis that my wonderful student Tanja Hidde wrote in 2014. She herself did not go on to write a PhD, and I myself did not have the time, until now, to go back to it. In the summer of 2023, after having retired, and having published the work of another student of mine (see the commentary on Tractate *Kil'ayim* of the Mishnah in *FCBT* I/2), and when I found myself free of other obligation, I devoted myself to producing the volume at hand. After confirming with Tanja that she did not wish to pursue the commentary on the Talmud of Tractate *Shevu'ot* (=oaths) I took upon myself to (1) translate her MA thesis (with the generous help of Google Translate), (2) rework it, so as to fit a volume that also has a commentary on the Talmud, and (3) write the missing commentary. Style-wise, Tanja and I do not always work in the same way, but as to content, I found myself almost always agreeing with what she had written, and since I think that we both agree that gender-wise, this is not a very friendly tractate, I was also most impressed with the amount of relevant observations that Tanja made on it, and the many sources she collected to bolster her arguments.

Since I am now retired, I no longer have funds for the publication costs of these volumes. It is for this reason that I am exceptionally grateful to my two very old friends Joe Ganz and Paula Blumenfeld. I know Joe from when I was 9 and he was a volunteer in my kibbutz in 1966. I know Paula since she married Joe almost fifty years ago. They have been great company all these years, and now they have very generously taken upon themselves to finance the publication of this series. Though not mentioned in vol. III/6/d-e in this series, on Chapters 4-5 of Tractate *Gittin*, they have already contributed toward its publication earlier this year, and they will also be financing this volume. I dedicate this volume to them.

Tal Ilan, September 2024, Jerusalem

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Tractate *Shevu'ot*

Introduction

(Tanja Hidde)

General Introduction

1. *Promissory and assertory oaths*

The custom of swearing is deeply rooted not only in Judaism – in the written and oral Torah – but also in the Middle East in general. The practice of swearing comes from a distant Mesopotamian past, the origin of which can no longer be precisely determined.¹ Some of the concepts associated with swearing in the *mShevu'ot* are not only based on the Bible, but can be found in ancient Mesopotamian texts.

According to a simple definition, swearing is a solemn and formal invocation of God as a witness to the truth of the words spoken to another.² An oath is a conditional curse under which the swearer places himself. A terrible event or misfortune is said to be unleashed by God or a divine power to strike the oath-taker if he swears falsely. Thus, once the oath is uttered, it transforms into an entity that is independent of the will of the swearer. The semantic expansion of the word “to swear” into “to curse” (in English and other languages) can be understood as a special form of metonymy: it is a *totum pro parte* – the whole that stands for a part.³

Usually, both the oaths on Mesopotamian clay tablets and the oaths of the Hebrew Bible can be divided into promissory and assertory oaths – a division that the rabbis also make explicit. The promissory oath – an oath that refers to

¹ Swearing was a normal affair in Mesopotamia. Since the Sumerian period, swearing had been a part of every court procedure. In Old Akkadian trial reports, the court oath appears from the third quarter of the third millennium and remains an integral part of trials until the Neo-Assyrian period. Since a detailed history of the oath would go beyond the scope of this commentary, reference is made here to further literature: PRICE, “The Oath in Court Procedure in Early Babylonia,” 22-29; WELLS, MAGDALENE and WUNSCH, “The Assertory Oath in Neo-Babylonian and Persian Administrative Texts,” 13-29; WELLS, “The Cultic Versus the Forensic,” 205-232; SILVING, “The Oath I,” 1329-1390.

² KLINGER, “Vows and Oaths,” 301.

³ BRICHTO, The Problem of “Curse” in the Hebrew Bible, 24.

the future, often appears in connection with alliances.⁴ Also in the Hebrew Bible, loyalty is often demonstrated by means of an oath, whereby oaths can exist not only between people, but also between God and an individual, or between God and his people. The fulfillment of a curse that goes with the oath takes effect as soon as the agreement is violated.⁵

There are three negative commandments in the Torah that prohibit false or thoughtless swearing. The first is in the Decalogue, which belongs to the earliest legal corpus of the Torah. Although the third commandment of the Decalogue (Exod 20:7; and see also Deut 5:11) does not explicitly mention the practice of swearing, it is understood as a warning against it, for an oath usually included an invocation of the divine name.

לֹא תִשָּׁא אֶת-שֵׁם-ה' אֱלֹהֶיךָ לְשׁוּא כִּי לֹא יִנָּקֶה ה' אֶת אִשְׁרֵי-יִשְׂרָאֵל אֶת-שְׁמוֹ לְשׁוּא.

You shall not swear falsely by the name of your God 'ה'; for 'ה' will not clear one who swears falsely by his name.

The obligation regarding a promissory oath is noted in Num 30:3:

אִישׁ כִּי-יָדָר נָדָר לַה' אוֹ-הִשְׁבַּע שְׁבָעָה לְאַסֹּר אֶסֶר עַל-נַפְשׁוֹ לֹא יַחַל דְּבָרוֹ כָּכָל-הִיצָא מִפִּיו יַעֲשֶׂה.

If a man makes a vow to 'ה' or takes an oath imposing an obligation on himself, he shall not break his pledge; he must carry out all that has crossed his lips.

This law shows to what extent the biblical lawgiver recognized the power of language; the power created through words. Through an oath or a vow, people create new legally binding conditions that they must fulfill.⁶ That is, they can add obligations or restrictions to the biblical commandments and prohibitions.

The assertory oath – a type of oath widely used in the ancient Near East – is one that refers to an action in the past. The curse takes effect if the oath taken turns out to be false. In this form, the oath can be an instrument to obligate someone to make a true statement, especially in court.⁷ According to Bruce Wells, there are three ritual procedures that were used to find out the truth and

⁴ This type of oath often appears in the so-called vassal agreements of the Neo-Assyrian period, see: MAGNETTI, "The Function of the Oath in the Ancient Near Eastern International Treaty," 815-829.

⁵ Of the various rituals that accompany a covenant, which usually includes an oath, the one described in Gen 15:7-21 is the most illustrative. Abraham seals his pact with God by cutting sacrificial animals, in half and placing the two opposite each other. They symbolize the fate of the one who breaks the covenant. See also Jer 34:18-20. It should be noted that self-cursing does not generally have to be formulated explicitly. An explicit example of self-cursing is Ps 137:5: "If I forget you, O Jerusalem, let my right-hand wither" (אִם-אֶשְׁכַּחְךָ יִירוּשָׁלַם תִּשְׁכַּח יְמִינִי).

⁶ The difference between oaths and vows will be explained in more detail in *Mishnah* 2. *mShevu'ot* 3:4.

⁷ Or in the words of Helen Silving: "Truth' was not – as it is in the ideal of modern men – determined with objective facts, but was a successful assertion of one's cause"; SILVING, "The Oath I," 1334.

are memorable in English because of their alliteration: “the oath, the oracle, and the ordeal.”⁸ In most periods, in the Middle East, such religious rituals played an important role in reaching resolutions in legal disputes; namely, courts turned to the divine realm for help in resolving cases.⁹ The three tools are also mentioned in the Hebrew Bible. What is described as casting lots was probably one of the means by which an oracle was obtained.¹⁰ An ordeal is described in Num 5:19 – the drinking of the bitter cursing water (מֵי הַמָּוֶה) by a woman suspected of adultery, bringing a curse on her if she is guilty.¹¹ The prohibition on taking a false assertory oath can be derived from Lev 19:12:

וְלֹא-תִשָּׁבַעוּ בְשִׁמִּי לִשְׁקֹר וְחָלַלְתָּ אֶת-שֵׁם אֱלֹהֶיךָ אֲנִי ה'.

You shall not swear falsely by My name, profaning the name of your God: I am ה'.

This Levitical prohibition is classified as part of the Holiness Code, which, according to Jacob Milgrom and Israel Knohl, derives from an editorial layer that supplements the priestly writing.¹² As will be seen below, the editors of the Mishnah based Tractate *Shevu'ot* on those passages from Leviticus that provide the corresponding options for atonement for thoughtless or false swearing.

2. The name of the tractate

The name of Tractate *Shevu'ot* derives from the plural of the biblical word שְ�בוּעָה, the most common Hebrew word for ‘oath.’ It is derived from the root שָׁבַע, which means “to swear” in *nif'al* and “to make swear” in *hif'il*. In the Torah, God himself swears oaths: in Gen 22:16 he swears in his own name (בִּי נִשְׁבַּעְתִּי) that he will bless Abraham.¹³ The first person in the Bible to swear an oath is Eli'ezer, Abraham's servant,

⁸ WELLS, “The Cultic Versus the Forensic,” 205.

⁹ Lev 16:8-10; Num 26:55-56; Josh 7:14-19 and see WELLS, “The Cultic Versus the Forensic,” 208.

¹⁰ Wells showed that the use of these tools slowly declined and forensic tools were increasingly used to find out the truth. Although Num 5 (on which see in the Feminist Introduction to the Talmud, below) prefers the cultic to the forensic, and uses an ordeal to ferret out suspected adulteresses, the text is, according to Wells, ambiguous. According to Num 5:13, a husband can accuse his wife of adultery, even though he has no witnesses, and she was not caught in the act (וְהוּא לֹא נִתְפָּשָׁה). This sentence encompasses the two forms of evidence that were particularly valued in the Ancient Near East: witness statements and the discovery of the perpetrator in the commission of his crime; WELLS, “The Cultic Versus the Forensic,” 229. WEINFELD, “On Demythologization and ‘Secularization’ in Deuteronomy,” 230-233 suggested that a process can be identified in Deuteronomy, in which mystical procedures, like that of the adulteress, (*sotah*), are abandoned.

¹¹ Although an oath in court is not often mentioned in the Bible, it is referenced in Exod 22:9-10, Lev 5:21-26, Num 5:11-31, Deut 21:1-9, and I Kings 8:3-32. More on the *sotah* ritual see in the Feminist Introduction to the Talmud, below.

¹² The Holiness Code is described both by MILGROM, *Leviticus* 23-27, 2440-2446, and KNOHL, *The Sanctuary of Silence*, as pre-exilic and belonging to the “Holiness School.”

¹³ There are many places in the Bible where God himself swears, e.g. Gen 26:3, Exod 32:13, Num 32:10, Deut 1:34.

who, with the word אֲשַׁבֵּעַךְ (I make you swear), uttered by Abraham, is asked to promise not to choose a wife for Isaac from the daughters of the Canaanites, but from Abraham's own family (Gen 24:3). Eli'ezer asks what will happen if he is not given a wife for Isaac, answering this description. In his answer to Eli'ezer, Abraham says: וְנִקִּיתִי, אִם תִּנָּקֶה מֵאֱלֹהֵי (then shall you be free from this oath – Gen 24:8)¹⁴ as well as אִם תִּנָּקֶה מֵאֱלֹהֵי (then shall you be freed from my oath – Gen 24:41). The word אלה is, thus, used in the same sense as שבועה. However, two terms can never be considered absolutely synonymous: Although a curse is immanent in the term שבועה, it is even more strongly linked to the term אלה, for in its semantic field, the latter also means curse.¹⁵

Sometimes the terms אלה and שבועה appear together, as in Neh 10:30: וְכָאִים יִבְאֵלוּ וּבְשִׁבוּעָה לֵלְכֶת בְּתוֹרַת הָאֱלֹהִים (They shall come with an אלה and a שבועה pledge to walk in the law of God). Such a curse and an oath, taken upon oneself, are intended to ensure compliance with the commandments.

Theodor Nöldeke believed that the term שבועה derives from the number seven (שבע), since the seventh number was considered sacred and the oath between Abraham and Abimelech in Beer-Sheva was confirmed by seven sacrifices (Gen 21:24-32).¹⁶ Nöldeke sees two accounts interwoven in the story. In one account, Abraham is asked to swear that he will maintain his friendship with Abimelech. An oath is taken between the two, whereupon the place of the alliance is named Beer-Sheva (Oath Well). In the other account, the covenant between the two is sealed by seven lambs. Abraham confirms that the wells that Abimelech's people appropriated belong to him. Although not explicitly mentioned, the seven lambs are probably also intended to explain the name "Beer-Sheva" as "Well of seven."

The fact that a curse always lurks in the background of an oath is not only evident in the Hebrew term for 'oath,' but is already inherent in Akkadian. The Akkadian word *māmītu* can be understood as an oath sworn to the king, the gods, relatives, etc. Likewise, *māmītu* is a curse, being the consequence of a broken oath.¹⁷ The term has been preserved in the Aramaic מומתא, and shares with *māmītu* the double meaning of 'oath' and 'curse.'¹⁸ In Targum Onkelos it trans-

¹⁴ The *nif'al* of נקה means 'to be pure' in the sense of 'innocent,' but also 'to be free from punishment, to be clear (from an oath),' see GESENIUS, *Hebrew and Chaldee Lexicon*, 565.

¹⁵ BRICHTO, *The Problem of "Curse" in the Hebrew Bible*, 26. As a verb, אלה is never used in the sense of 'to swear,' but always as 'to curse.' For other biblical terms for 'curse,' such as קללה and מארה, see also BRICHTO, *The Problem of "Curse" in the Hebrew Bible*.

¹⁶ NÖLDEKE, "Sieben Brunnen," 340-344.

¹⁷ For *māmītu* see CAD M/1, 189-195; for other meanings of *māmītu* see GELLER, "The *Šurpu* Incantations and Lev. V 1-5," 183-184.

¹⁸ Some assume that מומתא derives from a root ימא, see: SODEN, *Akkadische Handwörterbuch*, 1459, under *wamā'um*; JASTROW, *Dictionary*, 743. Both forms also occur in the Elephantine papyri, see UNGNAD, *Aramaic Papyri from Elephantine*: in papyri 33:1-2; 58:9; SAYCE and COWLEY, *Aramaic Papyri Discovered at Aswan*, in papyri B:4,8,11; D 24.1. In papyrus F 5.8, a Jewish woman accepts an Egyptian's oath to the goddess Sati.

lates the invocation of the *sotah* in Num 5:21: **וְלִשְׁבָּעָה לְאַלֶּה וְלִשְׁבָּעָה** (May 'ה' make you a curse and an oath). **וְלִשְׁבָּעָה לְאַלֶּה וְלִשְׁבָּעָה** in Aramaic are **ללווט ולמומי**.¹⁹ In Targum Pseudo-Jonathan to Josh 2:17 it is used in a speech addressed to Rahav: **מומתך/שבועתך** (your oath).²⁰ A similar term **במותא** appears in the Mishnah once, in *mNed* 1:2: **שבועה, שקוקה, נדר, במותא**²¹ **הרי אלו כנויין לשבועה** (Whoever says: **שבועה, שקוקה, נדר**, these are epithets for oath).

The word **מומתא** appears alongside **שבועה** countless times in the Aramaic magic bowls, almost always with a 2nd person suffix, feminine singular: "Take your divorce document and accept your oath (**מומתיכי**) and go out and flee and go away and flee from the House of ... (**שקולי גיטיכי וקביל מומתיכי ופוקי וקדוחי**) ... (**וערוקי מן ביתיה ד...**)".²² In the *Bavli* **מומתא** appears four times.²³

Another term for 'oath' in Akkadian is *nīšu*, meaning precisely: '(oath to) live.' The Akkadian oath formula is *nīš X*, which literally means 'so-and-so lives,' whereby so-and-so can refer to a god, the king or the city. Likewise, oath sentences in the Bible can be recognized by the following elements: **חי אני** (as I [=God] live, Num 14:21), **חי ה'** (as surely as 'ה' lives, e.g. Judg 8:19), **חי פרעה** (as surely as Pharaoh lives, e.g. Gen 42:15), **חי נפשי** (as surely as you live, I Sam 1:26). As a verb, *nīšu* can also have the meaning of 'raise,' for example, the hand.²⁴ The Hebrew **נשא** (raise up) is also used in the Bible to indicate God's swearing, as e.g. in Exod 6:8, God swears **נִשְׁאַתִּי אֶת-יָדִי** (I raised my hand) that Israel will receive the land.

3. The biblical evidence

The two most important biblical texts, without which Tractate *Shevu'ot* would be incomprehensible, are Lev 5:1-13 and 20-26. The two thematic complexes of the treatise emerge from these passages: the defilement of the sanctuary and its connection to oaths in general.

¹⁹ When **אלה** and **שבועה** appear together in the Torah, **שבועה** is translated by Onkelos as **מומתא** and **אלה** as **לוטא**. In the Bible **לט** means 'hidden things'; in the plural 'secret arts, sorceries' (Exod 7:22, 8:3, 14) and the verb **לוט** means 'to cover,' while in the Aramaic magic bowls it has the meaning of 'curse'; see e.g. SHAKED, *Aramaic Bowl Spells*, 45:6, 48:3, 49:2 and others.

²⁰ See DALMAN, *Aramäisch-Neuhebräisches Wörterbuch zu Targum, Talmud und Midrasch*, 217.

²¹ Quoted from Ms Kaufmann. All MSS, including the Tosefta, transmit different variants of **במותא**. The form may be a corruption of the Aramaic **מומתא**, or it may indicate a name. *Ran* to *bNed* 10b assumes that **במוהי** (Mss Munich and Parma) is a paraphrase for "Moses," meaning "sworn by Moses"; see also KRUPP, *Nedarim*, 4; BENOVIETZ, *Kol Nidre*, 112, n. 5.

²² See for example SHAKED, *Aramaic Bowl Spells*, 166 (JB/A 30:12, as well as 40:4, 27:7, 30:12, 32:9, 33:6, 34:10, 37:8, 41:7, 42:6, 43:8, 47:7); and also MÜLLER-KESSLER, *Zauberschalentexte in der Hilprecht-Sammlung*, 49, MONTGOMERY, *Aramaic-Incantation Texts from Nippur*, 52.

²³ *bNed* 10b, *bPes* 113b, *bBM* 85a, *bBQ* 114a.

²⁴ See CAD N/2, 290-294: When *nīšu* appears together with *māmitu*, it is translated as 'oath' and *māmitu* as 'curse.'

Lev 5:1-13 is the basis for the oath of testimony, the thoughtless oaths, and their connection to the defilement of the temple. Verse 1 is about the public swearing-in of a witness, verses 2-3 describe, in the context of the temple cult, a person who touched unclean things, and verse 4 is about a carelessly uttered oath. Verses 5-13 describe people who have sinned in any of these areas, and therefore are required to bring a sliding-scale sin-offering.

(א) וְנִפְשׁ כִּי-תִחַטָּא וְשָׁמְעָה קוֹל אֱלֹהִים וְהָיָא עֵד אוֹ רֹאֶה אוֹ יָדַע אִם-לֹא יִגִּיד וְנִשְׁאַ עֲוֹנוֹ: (ב) אוֹ נִפְשׁ, אֲשֶׁר תִּגְע בְּכָל-דָּבָר טָמֵא אוֹ בְּנִבְלַת חַיָּה טָמְאָה אוֹ בְּנִבְלַת בְּהֵמָה טָמְאָה אוֹ בְּנִבְלַת שְׂרָץ טָמֵא וְנִעְלַם מִמֶּנּוּ וְהָיָא טָמֵא וְאִשָּׁם: (ג) אוֹ כִּי יִגַּע בְּטָמְאָת אָדָם לְכָל טָמְאָתוֹ אֲשֶׁר יִטְמָא בָּהּ וְנִעְלַם מִמֶּנּוּ וְהָיָא יָדַע וְאִשָּׁם: (ד) אוֹ נִפְשׁ כִּי תִשָּׁבַע לְבָשָׂא בְשָׁפְתִים לְהָרַע אוֹ לְהִיטִיב לְכָל אֲשֶׁר יִבְטֵא הָאָדָם בְּשָׁבָעָה וְנִעְלַם מִמֶּנּוּ וְהָיָא יָדַע וְאִשָּׁם לֵאחַת מֵאֵלֶּה: (ה) וְהָיָה כִּי-יֵאָשֵׁם לֵאחַת מֵאֵלֶּה וְהִתְוַדָּה אֲשֶׁר חָטָא עָלֶיהָ: (ו) וְהִבִּיא אֶת-אֲשָׁמוֹ לַה' עַל חַטָּאתוֹ אֲשֶׁר חָטָא נִקְבָּה מִן-הַצֹּאֵן כִּשְׁפָה אוֹ-שְׁעִירֵת עֹזִים לְחַטָּאת וְכֹפֶר עָלָיו הִכְהֵן מִחַטָּאתוֹ: (ז) וְאִם-לֹא תִגִּיעַ דָּוָּי שָׁה וְהִבִּיא אֶת-אֲשָׁמוֹ אֲשֶׁר חָטָא שְׁטִי תְרִים אוֹ-שְׁנֵי בְנֵי-יוֹנָה לַה' אֶחָד לְחַטָּאת וְאֶחָד לְעֹלָה: (ח) וְהִבִּיא אֹתָם אֶל-הַכֹּהֵן וְהִקְרִיב אֶת-אֲשֶׁר לְחַטָּאת רֹאשׁוֹנָה וּמִלֵּק אֶת-רֹאשׁוֹ מִמּוֹל עֲרָפוֹ וְלֹא יִבְדִּיל: (ט) וְהִזָּה מִדָּם הַחַטָּאת עַל-קִיר הַמִּזְבֵּחַ וְהִנִּשְׁפָּךְ בְּדָם יִמְצָה אֶל-יִסוֹד הַמִּזְבֵּחַ חַטָּאת הִוא: (י) וְאֶת-הַשְּׁנֵי יַעֲשֶׂה עֹלָה כַּמִּשְׁפָּט וְכֹפֶר עָלָיו הִכְהֵן מִחַטָּאתוֹ אֲשֶׁר-חָטָא וְנִסְלַח לוֹ: (יא) וְאִם-לֹא תִשְׁגִּי יָדוֹ לְשְׁטִי תְרִים אוֹ לְשְׁנֵי בְנֵי-יוֹנָה וְהִבִּיא אֶת-קָרְבָּנוֹ אֲשֶׁר חָטָא עֲשִׂירֵת הָאֶפֶס סֵלֶת לְחַטָּאת לֹא-יִשִּׁים עָלֶיהָ שָׁמֶן וְלֹא-יִתֵּן עָלֶיהָ לִבְנָה כִּי חַטָּאת הִוא: (יב) וְהִבִּיאָהּ אֶל-הַכֹּהֵן וְקִמֵּץ וְקִמֵּץ מִמֶּנָּה מְלֹא קִמְצוֹ אֶת-אֲזָכְרָתָהּ וְהִקְטִיר הַמִּזְבֵּחַ עַל אֲשֵׁי ה' חַטָּאת הִוא: (יג) וְכֹפֶר עָלָיו הִכְהֵן עַל-חַטָּאתוֹ אֲשֶׁר-חָטָא מֵאחַת מֵאֵלֶּה וְנִסְלַח לוֹ וְהִיָּתָה לִפְהֵן, כַּמִּנְחָה:

(1) If a person incurs guilt, when one has heard a public imprecation but (although able to testify as having either seen or learned of the matter) has not given information and thus is subject to punishment; (2) or when a person touches any impure thing (be it the carcass of an impure beast or the carcass of impure cattle or the carcass of an impure creeping thing) and the fact has escaped notice, and then, being impure, that person realizes guilt; (3) or when one touches human impurity (any such impurity whereby someone becomes impure) and, though having known about it, the fact has escaped notice, but later that person realizes guilt; (4) or when a person utters an oath to a bad or good purpose (whatever a human being may utter in an oath) and, though having known about it, the fact has escaped notice, and he knew, in any of these matters, (5) upon realizing guilt in any of these matters, one shall confess having sinned in that way. (6) And one shall bring as a penalty to 'ה, for the sin of which one is guilty, a female from the flock, sheep or goat, as a sin-offering; and the priest shall make expiation for the sin, on that person's behalf. (7) But if one's means do not suffice for a sheep, that person shall bring to 'ה, as the penalty for that of which one is guilty, two turtledoves or two pigeons, one for a sin-offering and the other for a burnt-offering. (8) The offerer shall bring them to the priest, who shall offer first the bird for the sin-offering, pinching its head at the nape without severing it. (9) He shall sprinkle some of the blood of the sin-offering on the side of the altar, and what remains of the blood shall be drained out at the base of the altar; it is a sin-offering. (10) And the second bird he shall prepare as a burnt-offering, according to regulation. For the sin of which one is guilty, the priest shall thus make expiation on behalf of that person, who shall be forgiven. (11) And if one's means do not suffice for two turtledoves or two pigeons, that person shall bring as an offering for that of which one is guilty a tenth of an *ephah* of choice flour for a sin-offering; one shall not add oil to it or lay

frankincense on it, for it is a sin-offering. (12) The offerer shall bring it to the priest, and the priest shall scoop out of it a handful as a token portion and turn it into smoke on the altar, with 'ה's offerings by fire; it is a sin-offering. (13) For whichever of these sins one is guilty, the priest shall thus make expiation on behalf of that person, who shall be forgiven. It shall belong to the priest, like the meal-offering.

The sin offering – חטאת – is already discussed in Lev 4. The sort of sin-offering required is dependent on the socio-religious status of the violator.²⁵ On the other hand, the special case of the sliding-scale sin-offering in Lev 5, the sort of sacrifice required is dependent on the income of the violator: Instead of a female animal of the flock, a pair of doves (one of them as a burnt-offering), or even just a meal-offering can be offered.

A sin-offering in Lev 4 is required when a prohibition has been violated unintentionally; otherwise the penalty of כרת (being cut off from the community, usually understood as death in the hands of heaven) will apply. It is therefore a matter of negligence that can be atoned through a sin-offering. Although the offenses in the specific cases of Lev 5:1-4 are treated as negligence, they can also be understood as intentional transgressions, such as refusing to testify as a witness. Two questions arise from this text: (1) what connects these four cases to each other, and (2) why is there a graded offering for the cases mentioned?²⁶ Jacob Milgrom in *The Anchor Bible*, to Lev 1-16, explains how the tannaim might have understood this law. Since verses 2-4 are structurally similar they should be discussed first.

In verses 2-3, a person who is not primarily unclean (such as a woman in labor) becomes unclean through contact with something unclean; such a person is usually required to purify her/himself, but not to bring a sacrifice. Even defilement from a corpse – the most severe impurity – requires only seven days of purification but no sacrifice (Num 19:13). That is, the contraction of impurity in itself is not forbidden, but the willful failure to purify from it leads to cutting-off (כרת) for the person who touched a corpse, and “he must bear (responsibility for) his sin” (Lev 5:2-3), which, according to Milgrom, means the same thing.²⁷ Why can the impurity spoken of in verses 2-3 only be atoned by a sacrifice? The answer is: וְנִצָּלָם מִמָּוֶה (and it escapes him). The wrongdoing is not the contraction of impurity, but rather not having noted the fact. This prolongs impurity and has the potential to defile the sanctuary (if one happens to visit it). In such a case, it is not enough to simply purify oneself through ritual bathing; rather a sin-offering – described by Milgrom as a “detergent *par excellence*” – must be

²⁵ For example, a priest must sacrifice an ox, while an ordinary Israelite only has to sacrifice an unblemished goat (see Lev 4:1-35).

²⁶ Lev 5:1-5 has also been interpreted against an ancient-Near-Eastern background, see GELLER, “The *Šurpu* Incantations and Lev. V 1–5,” 181-192.

²⁷ MILGROM, *Leviticus 1-16*, 311.

offered.²⁸ Milgrom prefers the translation “purification sacrifice” for the term **הטאת**, even though it derives from **חטא** – ‘Sin.’ According to Dalia Marx, both are correct, since **חטא** – sin – is etymologically close to **חִטּוּי** – ‘disinfection or cleaning.’²⁹

Now to verse 1: Here someone exposes himself to a curse because he refuses to testify regarding something about which he has information, even though he hears the voice cursing (**וְשָׁמַעְתָּ קוֹל אֵלֶּה**).³⁰ It seems that hearing alone is enough for anyone, who evades this request, to “face the consequences.”³¹ This passage is viewed by the rabbis as the basis for the testimony oath, i.e. that a potential witness must testify when called upon to do so. In case where there is no memory lapse, one can assume that if he does not testify, he is acting intentionally. There can be many reasons for this, such as complicity, or fear, or indifference.³² The rabbis are convinced that withholding testimony is a deliberate act (*mShevu* 4:2). Milgrom thinks it is possible that this case was originally an independent law and was then assigned to the sliding-scale-offering, because it did not fit into the category of the sin-offering of Lev 4:40. Since verse 1 does not have quite the same structure as verses 2-4, an unintentional transgression is

²⁸ MILGROM, *Leviticus 1-16*, 310-311.

²⁹ MARX, *Tractates Tamid, Middot and Qinnim* (FCBT V/9), 198.

³⁰ According to Brichto, in the ancient Near East, public proclamations were commissioned to either publicize or elicit information in order to solve questions of property status or a crime. A person who knows something about a case should act as a witness. If s/he refuses to do so, s/he becomes guilty and incurs a curse. In this understanding of **קוֹל אֵלֶּה**, the curse and the swearing are closely linked. This interpretation is also supported by Targum Onkelos, which translates the passage as **וּשְׁמַע קַל מוֹמִי**, since **מוֹמִי** can mean both oath and curse in the plural, see BRICHTO, *The Problem of “Curse” in the Hebrew Bible*, 293-294.

³¹ In Num 5:22 (the *sotah* episode) the curse must be accepted with “Amen.” Passages that support the idea that merely hearing the curse is enough are Deut 29:18-19 and Judg 17:2.

³² Complicity is described in Prov 29:24: **חֹלֵק עִם-גֹּנֵב שׁוֹנֵא נִפְשׁוֹ אֵלֶּה יִשְׁמַע וְלֹא יִגִּיד** (He who makes common cause with a thief, hates his life; he hears the curse uttered and does not show it). The motif of fear also appears in a piece translated by Wilfred Lambert from the wisdom texts of the Ancient Near East, advising against giving evidence in court: “Do not frequent a law court;/do not loiter where there is a dispute./For in the dispute they will have you as a testifier./ Then you will be made their witness./ And they will bring you to a law suit not your own to affirm./When confronted with a dispute, go your own way; pay no attention to it,” LAMBERT, *Babylonian Wisdom Literature*, quoted from: MILGROM, *Leviticus 1-16*, 294. The rabbis in *mSan* 4:5 know of abstention from testimony, due to indifference, and describe this negative human attitude with the question **מָה לָנוּ וְלַצִּירָה הַזֹּאת?** (How does this problem concern us?). To criticize this attitude, they quote Lev 5:1, **וְהָיָא כְּבֵר נֶאֱמַר: “עַד אִם לֹא רָאָה אִם יָדַע אִם-לֹא יִגִּיד וְנִשְׁאַ עֲוֹנוֹ”** (Has it not been said: “When one has heard a public imprecation but [although able to testify as having either seen or learned of the matter] has not given information is thus subject to punishment.” For the request to testify as a witness see also *mSan* 6:1; and see the baraita in *bSan* 43a, describing the sending out of a herald to proclaim the accusations against Jesus 40 days before his execution.

very unlikely, but it is not a case of perjury, which, as will be seen, is atoned with a guilt-offering (אשם).

Just as there is no penalty for becoming unclean *per se*, so there is no penalty for taking an oath *per se*. And just as there is a commandment to cleanse oneself from impurity, so there is a commandment to honor an oath (Num 30:3). Failure to honor an oath in verse 4 can also be caused by a memory lapse. Thus, in all three verses we find the formula: ונעלם ממנו (and the fact has escaped his notice), but in verse 4, this formula is followed by והוא ידע (and he knew), suggesting that he was aware of his transgression at first, later he forgot it, and at an even later point in time he became aware of it again. That is, in Lev 5:2-4 negligence in purification is equated with negligence in fulfilling an oath. In both cases, a performative imperative is violated: an undesirable state is prolonged.³³

The rabbis also created a separate category of sacrifices out of the laws of Lev 5:1-13. In the mishnaic text they never speak of the sin-offering of Lev 4, but always call it קרבן עולה וירד, literally “an ascending and descending sacrifice,” emphasizing its graded nature, according to wealth. In addition, the authors of the Mishnah expand the applicability of the sacrifice by including, in addition to the contamination by carrion or unclean persons, the contamination of the sanctuary and its sacred implements.

Now to the second passage on which *mShevu* is based: Lev 5:20-26³⁴ deals with the case of perjury, which is committed in order to appropriate another person's property.

(כ) וידבר ה' אל-משה לאמר: (כא) נפש כי תחטא ומעלה מעל בה' וכחש בעמיתו בפקדון או-בתשומת יד או בגזל או עשק את-עמיתו: (כב) או-מצא אבדה וכחש בה ונשבע על-שקר על-אחת מכל אשר-יעשה האדם לחטא בהנה: (כג) והיה כי-יחטא ואשם והשיב את-הגזלה אשר גזל או את-העשק אשר עשק או את-הפקדון אשר הפקד אותו או את-האבדה אשר מצא: (כד) או מכל אשר-ישבע עליו לשקר ושלם אותו בראשו וחמשותי יסף עליו לאשר הוא לו יתננו ביום אשמתו: (כה) ואת-אשמו יביא לה' איל תמים מן-הצאן בערקה לאשם אל-הכהן: (כו) וכפר עליו הכהן לפני ה' ונסלח לו על-אחת מכל אשר-יעשה לאשמה בה:

(20) 'ה spoke to Moses, saying: (21) When a person sins and commits a trespass against 'ה by dealing deceitfully with another in the matter of a deposit or a pledge, or through robbery, or by defrauding another, (22) or by finding something lost and lying about it; if one swears falsely regarding any one of the various things that someone may do and sin thereby, (23) when one has thus sinned and, realizing guilt, would restore either that which was gotten through robbery or fraud, or the entrusted deposit, or the lost thing that was found, (25) or anything else about which one swore falsely, that person shall repay the principal amount and add a fifth part to it. One shall pay it to its owner upon realizing guilt. (24) Then that person shall bring to the priest, as a penalty to 'ה,

³³ In Akkadian, *baṭū(m)* means primarily 'to trespass, to sin,' which suggests translating the biblical חטאת as 'sin-offering.' The term *baṭū(m)* is also used in the sense of 'to be negligent, to neglect.' In addition, the *baṭū* is referred to as 'sinner,' especially against oaths; see SODEN, *Akkadische Handwörterbuch*, 337; and also: CAD H, 153, 156.

³⁴ And, according to another verse enumeration, Lev 6:1-7.

a ram without blemish from the flock, or the equivalent, as a guilt-offering. (26) The priest shall make expiation before 'ה on behalf of that person, who shall be forgiven for whatever was done to draw blame thereby.

In verse 21, someone commits an offense (מעל)³⁵ against 'ה by denying that his neighbor had entrusted him with something. This property is referred to as פקדון, and the rabbis refer to it when they invent the term שבועת הפקדון (the safekeeping oath).³⁶ A sinner is also someone who abuses a trust relationship יד בתשומת יד (lit.: the placing of one's hand),³⁷ takes something by robbery (בגזל), or takes something wrongly (עשק).³⁸ In verse 22 someone denies having kept something that another had lost (אבדה). The verse continues with the words "and swears a false oath" (ונשבע על-שקר), from which the rabbis understood that the protagonist is swearing a false oath not only about someone else's lost property, but also about the sins listed in verse 21. The clause "one of the various things that someone may do and sin thereby" (על אחת מהן), can be understood to mean that false swearing refers not only to the offenses mentioned above, but to all offenses that are accompanied by a false oath. Not only has the wrongdoer done injustice to his/her neighbor, s/he has even denied it under oath. This makes it clear what is meant by "injustice against 'ה": God is made an accomplice in deceiving this person's neighbor. However, this wrong can be righted if everything is returned, plus a fifth of the value. In addition, a cultic atonement is also necessary: a guilt-offering (אשם). Since it was a false oath and God's name was taken in vain, this punishment is surprisingly mild, especially when compared to the third commandment of the Decalogue.³⁹ What is common to all these verses is that the plaintiff is certainly the one who knows in whose possession his property is located. However, since the plaintiff cannot call on any witnesses or documents, the defendant must confirm his ownership rights under oath, in order to be able to keep the property.⁴⁰

³⁵ GESENIUS, *Hebrew and Chaldee Lexicon*, 494: As verb: "to act treacherously," as noun: "perfidy, treachery against God,"; on מעל in the biblical context see MILGROM, "The Concept of *ma'ul* in the Bible and the Ancient Near East," 236-247; in rabbinic literature and with regard to gender aspects, see: LEV, "Metaphors of *Me'ilah*."

³⁶ The noun פקדון appears only here and in Gen 41:36. Also in Akkadian, *puquddu* has the meaning of "deposit, entrusted goods," see CAD P, 514.

³⁷ This expression appears in the Bible only here.

³⁸ GESENIUS, *Hebrew and Chaldee Lexicon*, 660: עשק "to treat cruelly, intimidate or take advantage." And see, with reference to withholding the wages of a day laborer, Deut 24:14-15.

³⁹ WELLS, "The Cultic Versus the Forensic," 229.

⁴⁰ MILGROM, *Leviticus 1-16*, 337.

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