

Oaths in Disputes

Ref: *Sefer Mishpatim, Hilchot Toen Venitan, Chapter 1*

📖 | The law of a person claiming against a colleague and he either admits or denies the claim.¹

🔔 Reminder

Oaths with Regard to Loans. Ref: *Sefer Mishpatim, Hilchot Malveh Veloveh, Chapter 26*



When a person issues a claim for moveable property against a colleague and the defendant admits part of the claim, he must pay the part he admits, and take a Scriptural oath that he does not owe the rest.

If he denies the claim completely and one witness testifies that he does owe the money, he would have to take a Scriptural oath.

🏔️ | *Mipi Hashmuah* – when 2 witnesses obligate a person to pay money, 1 witness obligates him to take an oath.

🔔 Reminder

Pack on Oaths
Pack on Finances
Pack on Witnesses



Oaths *Deoraita* (scriptural) and oaths *Derabanan* (Rabbinical).

📖 | *Deoraita*:

- *Modeh bemiktzat* (Denies a portion of the claim of movable property.)
- *Ed echad* (Person obligated by one witness and denies claim completely.)
- *Shomer* (Watchman)

🔔 Reminder

Definition of Watchmen Borrowers etc. Ref: *Sefer Mishpatim, Hilchot Sechirut, Chapter 1 and 2*



Defendant must hold a sacred object when taking the oath.

Taking a false oath is a serious matter, and therefore a G-d fearing defendant may not want to. He could therefore opt rather just to pay the claim against him instead of taking the oath.

To prevent plaintiffs taking this advantage, the *Geonim* allowed the defendant to issue a *cherem* against plaintiff before defendant takes vow i.e. plaintiff must accept a *cherem* if he is making a false claim, and then defendant goes ahead and takes vow.

Defendant not allowed to revert oath to the plaintiff.

If oath already being taken plaintiff can include other items in the *shvuah* (*gilgul shvuah*).

📖 | *Derabanan*:

- Employee (Takes oath and collects his due.)
- A person injured (Takes oath and collects his due.)

- A person impairing a legal power of his promissory note (Takes oath and collects remaining portion of promissory note.)
- Partners (Due to the possibility of a claim
- Sharecropper being lodged against them.)

Person must hold a sacred article like oath *Deoraita*.

If plaintiff does not want to take oath, he can just leave without being paid.

Not allowed to revert oath to the other party, but can insist that defendant take a *shvuat hesset*.

If defendant did not want to take the oath, (this applies where there is doubt between partners or sharecroppers) he is put in *nidui* for 30 days.

If he does not seek release from this ban he is given *makat mardut* (stripes).

After the 30 days, his property is not put on lien because it is not a Scriptural oath.

Plaintiff can force other items to be included in *shvuah* (*gilgul shvuah*).

 *Shvuat hesset* ('Entice' a defendant to admit an obligation relating to movable property.)

- Person denies totally.
- Admits a portion and gives it to claimant immediately (*helach*).
- Admits owing originally but that all has been settled.
- Admits owing barley where claimant says wheat.
- Land

Defendant does not have to hold a sacred article, and is thereafter freed of his obligation.

Similarly to *Derabanan* oath, if defendant does not want to take the oath, he is put in *nidui* for 30 days etc. But defendant can ask the plaintiff to take the oath instead of himself. (Other oaths are more severe and this reverse procedure is not allowed.)

Plaintiff can then take *shvuat hesset* and collect his claim.

This is the only case where a person takes a *shvuat hesset* and collects (i.e. when defendant reverts).

Gilgul shvuah applies.

For *shvuat hesset*, claim must be definite and precise. If not, the defendant is not liable for the oath.

GENERAL POINTS

- For all oaths, if the person being obligated (i.e. defendant), feels that the other party (i.e. plaintiff) is trying to extract money from him which he does not owe, he can put a conditional *cherem* against him. (Because he does not want to take an oath unnecessarily.) The plaintiff must answer *amen* (to being put in *cherem*), and the defendant then must take the oath.
- For all oaths, when the defendant starts taking the oath for one item and the plaintiff wants to add more items, the defendant cannot withdraw from these extras. He would be liable for everything. ie If he takes the oath he is liable for nothing, and if not, he is liable for everything.
- When plaintiff lodges a claim that would not result in any financial obligation, the defendant does not need to take an oath, nor can he be put in *cherem*.

- *Gilgul* shvuah means that whenever someone is liable to take an oath, he can be requested to include other items in the oath.

An oath can only be taken if the claim is precise and defined. If claim is vague, defendant can reject it, as far as taking an oath.