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FEDERATION

## OVERVIEW OF TYPES OF SHEVUOS [PART 1]

### Parshah/Halacha

פרשת יתרו כ' (ז) לא תשא את שם ה' אלקיך לשוא

Having recently concluded *masseches Shevuos* in the Daf Yomi, one can appreciate what a serious matter it is to take an oath even if one swears truthfully. The Gemoro relates the whole world quaked when the mitzvah of *לא תשא את שם ה' אלקיך לשוא* was given.<sup>1</sup>

There are five types of *shevuoh*<sup>2</sup>: - *shevuos* of the Torah, *Shevuas Hamishna*, *Shevuas Heses* of the Amoraim, *Shevuos HaGeonim* and "*gilgul*" *shevuoh*<sup>3</sup>. Some *shevuos* are levied by a Beis Din, some may be self-imposed or demanded by another person. Swearing falsely may incur the transgression of *shevuas shov* (Parshas Yisro), or *shevuas sheker* (parshas Kedoshim), or *lo yachel* (parshas Mattos).<sup>4</sup>

*Shevuos* of biblical origin are *shevuas hapikodon*<sup>5</sup>, *shevuas bituy*, *shevuas hoeidus*<sup>6</sup>, and *shevuas shov*. In this article we discuss *Shevuos Hadayonim* (imposed by Beis Din).<sup>7</sup> There are three cases of *Shevuos Hadayonim* which are of Torah origin. In all cases of a *shevuos* of the Torah it is the respondent who swears to exempt himself from payment<sup>8</sup>.

➔ **Shevuas Modeh Bemikzas** – the respondent admits part in response to a definite claim (*taanas "bori"*). He is obliged to pay what is admitted and take a *shevuoh* to exempt payment on the part he denies.

➔ **Shevuas Hashomrim** – the guardian can swear to exempt himself for payment for the loss of the deposit, subject to the level of guardianship. The claimant can enforce a biblical *shevuoh* even when he is uncertain (*taanas "shemo"*).

➔ **Shevuas Eid Echod** – the respondent is obligated to swear to contradict the single witness brought by the claimant, thereby exempting himself from payment. This oath is quite likely to be in response to a *taanas "shemo"*.

In addition there are *shevuos* of Rabbinic authority as follows:-

➔ **Shevuas Hamishna** – the mishna<sup>9</sup> counts 15 cases where the oath is made by the claimant, either because the respondent is unfit to take an oath, or there is a defect in the *shtar*, or to protect an absentee respondent, orphans or purchasers. In addition, a trustee, partner, or manager may be requested to swear periodically even where there is no definite claim against him. There are two further cases of *Shevuas Hamishna* not mentioned in *maseches shevuos*.<sup>10</sup>

➔ **Shevuas Heses**<sup>11</sup> – when the defendant totally denies his liability Rav Nachman requires an oath to be taken by the respondent.<sup>12</sup> In cases where Torah

specifically excludes a *shevuoh* a *shevuas heses* is required.<sup>13</sup>

➔ **Shevuos HaGeonim** – when it was apparent that swindlers were on the increase the Geonim instituted that borrower who protests that he has no assets to repay a documented loan may be forced to take an oath which has the full severity of a Torah oath.<sup>14</sup> Another example of the *Shevuas HaGeonim* is the case of a lender, who admits that he holds security for the loan but disputes the value of the security, although in Talmudic law (on the basis of "*migo*") only a lenient oath would have been required.<sup>15</sup>

A Torah *shevuoh* has five stringencies. If the respondent refuses to swear Beis Din may expropriate his assets as opposed to the lesser penalty of excommunication for 30 days. Secondly, the respondent cannot demand that the claimant take the oath to collect payment. Thirdly, if the respondent is disqualified from taking an oath, the Rabbis switched the oath onto the claimant whereas in rabbinical *shevuos* the respondent is exempt from paying.<sup>16</sup> Fourthly, one taking a Torah oath must swear whilst holding a sacred object, usually a *Sefer Torah*, and finally the Divine Name must be invoked. None of these apply to a *shevuas heses*, some may apply to *shevuas hamishna*.

In Part 2 it is proposed to deal with *shevuoh* in a contemporary Beis Din.

1 Shevuos 39a.

2 Oruch Hashulchon 87, 1.

3 Kidushin 27b. a *shevuoh* rolled over from an existing *shevuoh*. The *shevuoh* will be either *min haTorah* or *midrabbonon* depending on the source *shevuoh*. The source for this *shevuoh* is the oath of a *sotah*.

4 Shevuos 20b.

5 Vayikro 5,21. A denial of a monetary liability, either a deposit, loan, theft, or lost property.

6 Vayikro 5,1.

7 Two of the three cases of *Shevuos Hadayonim* are incorporated in *Shevuos hapikodon*. *Shevuas Eid Echod* is not a case of *shevuas hapikodon*.

8 Shevuos 44b Mishna and gemoro 45a.

9 Shevuos 44b Mishna. 5 of these *shevuos* are also mentioned in the Mishna Kesubos 87a.

10 Bovo Metzia first mishna – two people acquiring a tallis simultaneously and Bovo Kamma 117b retrieving stolen property from an innocent buyer.

11 Shevuos 40b, Bovo Metzia 5a

12 There would appear to be extensions of the *Shevuas Amoraim* e.g. Rav Popo, *Shevuos* 41a – on being presented with a document of loan, the respondent, who claims he repaid the loan, can demand a *shevuoh* from the claimant. This *shevuoh* is not mentioned in the Mishna, so it would appear to be an extension of the *Shevuas Heses*. See also Magid Mishna Toein Venitan 1, 3.

13 Choshen Mishpot 95, 1 Claims relating to land, slaves, or documents.

14 Choshen Mishpot 99, 1. See Biur HaGra for a precedent for such a severity of *Shevuoh*, on a doubtful claim.

15 Choshen Mishpot 72, 17 see Sma and Biur Hagro ad locum.

16 Shevuos 41a, Takanta le takanta we do not make.

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