

The Nasi, the Judge and the Hostages: Loans and Oaths in Thirteenth-Century Narbonne

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The Nesi'im, or Jewish "princes," in Narbonne have aroused the curiosity and imaginations of people – Jewish and Christian alike – for centuries.² As described by their earliest chronicler, the so-called Provençal addition to *Sefer ha-Kabbalah* (The Book of Tradition), the Nesi'im were characterized by a combination of worldly wealth, political clout and rabbinic expertise.³ Their wealth and political status faded during the thirteenth century, but their status as respected aristocrats endured until the expulsion of the Jewish community in 1306.⁴

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- 2 E.M. Rose, *The Murder of William of Norwich: The Origins of the Blood Libel in Medieval Europe* (Oxford: Oxford University Press, 2015), 86; Arthur J. Zuckerman, *A Jewish Princedom in Feudal France, 768–900* (New York: Columbia University Press, 1972); Jonathan Levi, *Septimania: A Novel* (New York: Overlook Press, 2016). For a resounding rebuttal of Zuckerman's theory, see Jeremy Cohen, "The Nasi of Narbonne: A Problem in Medieval Historiography," *AJSR* 2 (1977): 45–76.
- 3 "We have a tradition that in Narbonne they have a chain of grandeur in *Torah* and *Nesi'ut* and *Ge'onut*." Ms New York, Jewish Theological Seminary, Rab. 34, fol. 225v–228r; first published with French translation in Adolph Neubauer, "Documents inédits," *REJ* 10 (1885): 100–5. See also Fredric L. Cheyette, *Ermengard of Narbonne and the World of the Troubadours* (Ithaca: Cornell University Press, 2001), 16–17.
- 4 Aryeh Grabois, "The Nassiim of Narbonne: On the Image and Nature of Jewish Leadership in Southern France in the Middle Ages," *Michael* 12 (1991): 43–66

The last Nasi, Kalonymos ben Todros (known in Latin as Moumet Judeus de Nerbo), maintained a personal relationship with Mordechai Kimḥi.⁵ Kimḥi was a grandson of the famous exegete from Narbonne, David Kimḥi. The grandson served as a rabbinic judge (*dayyan*) in Narbonne and the region before moving east to Carpentras, towards the end of the thirteenth century. There he continued his work as a judge for a time. Throughout his career of more than half a century, Kimḥi was immersed in the real-world practice of Jewish law. He was acutely, even painfully, aware of how different applied law could be from its image in theory.⁶

The correspondence between Kalonymos the Nasi and Mordechai Kimḥi the *dayyan* is important not simply because there are so few literary remains of the Nesi'im. Their exchange sheds precious light on legal tensions within the Jewish communities of Languedoc and Catalonia during the late thirteenth century, and on social distinctions between rabbinic scholars and Jewish laypeople—specifically, scribes and businesspeople—that had significant ramifications for the development of Jewish law.⁷ It relates to a legal transplant, the practice of pledging hostageship as a penalty for failure to repay debts, which laypeople were incorporating into their legal practice and adapting to a Jewish context.

Kalonymos wrote to Mordechai Kimḥi after the latter had left Narbonne and moved east, to “the edge of the land.”⁸ Although Kimḥi expressed surprise that the Nasi had turned to him when there were rabbinic scholars ready and available in Narbonne, it seems clear that Kalonymos trusted his old friend’s acumen and honesty. Kalonymos described two cases involving

(Hebrew); idem, “Le ‘roi juif’ de Narbonne,” *Annales du Midi* 109 (1997): 165–88. See also Shlomo H. Pick, “Jewish Aristocracy in Southern France,” *REJ* 161 (2002): 97–121.

- 5 On Kalonymos see Daniel Friedenberg, *Jewish Seals from Medieval Europe* (Detroit: Wayne State University Press, 1987), 71–76.
- 6 Pinchas Roth, “Legal Strategy and Legal Culture in Medieval Jewish Courts of Southern France,” *AJSR* 38 (2014): 375–93.
- 7 On the active role played by laypeople in the development of Jewish law during the Middle Ages, see Rachel Furst, “Marriage Before the Bench: Divorce Law and Litigation Strategies in Thirteenth-Century Ashkenaz,” *Jewish History* 31 (2017): 7–30.
- 8 Ms. Jerusalem, National Library of Israel, 8°90, fol. 49r–52r. Published by Shmuel Eliezer Stern, *Me'orot ha-Rishonim* (Jerusalem: Machon Yerushalayim, 2002), 243–53.

loans and oaths. One case was apparently hypothetical, while the second took place in Catalonia and a prominent rabbi from Barcelona had reacted to it. The question sent by Kalonymos, then, was not spurred by the pressing need to resolve any pending legal case, but by a more general concern. The first, hypothetical, case was posed in order to set the stage for the second, more problematic one that had actually taken place.

I. The first question

Both cases involved loans made between Jews. The way in which Kalonymos recounted the first case compelled the reader to empathize with the lender against the borrower:

Reuben was owed money by Simeon, given either as a deposit or a loan, and Reuben has no witnesses or any proof that could force him in court to return the money – neither in a Jewish court (*dine Yisrael*) nor in a gentile court (*dine ummot ha-olam*). Alternatively (*o kallekh le-derekh zo*) – he had witnesses and many proofs to force him in court to return the money.⁹

The recalcitrant debtor eventually offered his creditor a deal: he would repay the money if Reuben the lender agreed to make an oath, committing himself to something inconvenient or embarrassing. Reuben felt he had no choice, since he was pressed for funds, and made the oath. However, having now received his money, Reuben rankled against the terms of the oath and wanted to have it undone.

The idea that an oath could be undone is a profoundly rabbinic innovation.¹⁰ The Mishnah described it as “flying in the air with nothing to stand on” because of its total absence from the Bible.¹¹ It is rabbinic not only by origin but also in its performance. As summarized by Maimonides:¹²

9 Stern, *Me’orot ha-Rishonim*, 244 (my translation).

10 Moshe Benovitz, *Kol Nidre: Studies in the Development of Rabbinic Votive Institutions* (Atlanta: Scholars Press, 1998), 149–64.

11 *M. Hag.* 1:8.

12 Maimonides, *Laws of Oaths* 6:1; trans. B. D. Klein, *The Code of Maimonides – The Book of Asseverations* (New Haven: Yale University Press, 1962), 24–25.

If anyone, having uttered a rash oath, regrets it, and on realizing that he will be in distress if he fulfills it, changes his mind about it... he may consult with a sage, or where no sage is available with three ordinary men, who may then absolve him from his oath.

Oaths have a dual character, combining deeply religious ritual elements with an often-interpersonal legal purpose.¹³ On the social plane, people who did not trust each other would extract an oath in order to compel honesty or compliance from their peers. This oath then became the basis for contracts and other legal agreements between the sides. The religious element of the oath served to cement those agreements, since it was assumed that even a person who was dishonest in business dealings would quail at the prospect of transgressing a sacred oath.¹⁴ Yet rabbinic law—and the manifestation of rabbinic law in the person of a specific rabbi—pulled the carpet out from under such an agreement by allowing the oath to be undone. It was this incongruous and destabilizing trespass of the rabbi into the marketplace—or the court—that spurred the Nasi's question.

Jewish law was not particularly helpful in dealing with recalcitrant borrowers, and Jews often turned to non-Jewish courts for a ruling that had some teeth. But in cases when that too would not help, what was a lender to do? Must he really submit himself to humiliation and inconvenience in order to recover his funds? It was bad enough that the legal system was unable to help him; should that system be allowed to harm him?¹⁵ Morally, it seemed

13 Gideon Libson, "The Use of a Sacred Object in the Administration of a Judicial Oath," *Jewish Law Association Studies* 1 (1985): 53–60.

14 For a similar blurring of the lines between economy, law, and religion in medieval Christian Europe, see Tyler Lange, *Excommunication for Debt in Late Medieval France: The Business of Salvation* (Cambridge: Cambridge University Press, 2016). Medieval Jews in northern France employed a religious tool in their contracts by adding the threat of excommunication to betrothal agreements; see Simcha Emanuel, "Invalidating a Marriage Agreement," in *Studies on the History of the Jews of Ashkenaz Presented to Eric Zimmer*, ed. Gershon Bacon, Daniel Sperber, and Aharon Gaimani (Ramat-Gan: Bar-Ilan University Press, 2008), 157–202 (Hebrew).

15 For a similar quandary in medieval Jewish tort law, see Pinchas Roth, "Incrimination as Vengeance: New Light on Isaac of Dampierre's Responsum to Asher of Lunel," *Shenaton ha-Mishpat ha-Ivri* 29 (2016–2018): 153–80 (Hebrew).

clear that the law and the rabbis ought to help the lender escape the terms of his oath. But would this not undermine the legal system?

II. The second question

Kalonymos's second question was not preserved in the opening of the text but it was reproduced by Kimḥi at the outset of his response. Possibly, it was sent separately as a follow-up to the first question.

You asked me a second question. It once happened in Catalonia that Reuben lent money to Simeon and swore that, if [Simeon] did not repay the money by a certain date, [Simeon] would enter the house of hostages as a warning.¹⁶ When the time of repayment arrived, [Simeon] did not have the money available to repay the loan, and he entered the house of hostages as a warning. He remained there many days, and the lender was unwilling to undo [his oath] in any way. Many distinguished people begged him, but he paid them no attention. The famous Rabbi Aaron ha-Levi of Barcelona¹⁷ was there, and he said that if [Reuben] would not extend [the time of repayment], [Simeon] could ask for his oath to be undone until he was able to repay [the debt]. Many people were baffled by this. You asked, my lord, how it could be just for someone who willingly made an oath to his fellow to then have that oath undone, and under what

- 16 The Hebrew term, "*bet ha-ta'aruvot*," is taken from 2 Kgs 14:14, "He carried off all the gold and silver and all the vessels that there were in the House of the Lord and in the treasuries of the royal palace, as well as *bene ha-ta'aruvot*." David Kimḥi, in his commentary ad loc., explained that the sons of the princes were taken by Jehoash "as guarantors (*arevim*) that they would not rebel against him." In his lexical work *Sefer ha-Shorashim*, Kimḥi added a gloss: *ostayyes* (my thanks to Judith Kogel for pointing this out). David Kimḥi, *Sefer ha-Shorashim*, ed. J. H. R. Biesenthal and F. Lebrecht (Berlin: Bethge, 1847), 278.
- 17 On Aaron de na Clara of Barcelona see Ernest Renan, "Les rabbins français du commencement du quatorzième siècle," in *Histoire littéraire de la France*, vol. 27 (Paris: Imprimerie nationale, 1877), 523–28; Israel Ta-Shma, *Talmudic Commentary in Europe and North Africa* (Jerusalem: Magnes Press, 2000), 2:66–69 (Hebrew); Yosef Hillel, "Introduction," *Ḥiddushe ha-Ra'ah – masekhet Berakhot* (Jerusalem: Ahavat Shalom, 2000), 11–18; Chaim Eliezer Ashkenazi, "Le-toledot ha-Ra'ah bi-shenot ḥayyav ha-me'uharot ve-al shenat petirato," *Yeshurun* (forthcoming).

circumstances. You begged me to explain it all to you – both the matter of extending the loan and of extending the incarceration.¹⁸

III. Hostageship and incarceration

Hostageship as a penalty for unpaid debts, as described by Kalonymos, was known in various towns in southern France. Local laws from Arles and Aix during the late twelfth and mid-thirteenth centuries mention the confinement of debtors to *hostagia*.¹⁹ John Pryor explained the process in relation to Marseilles:²⁰

A debtor who was so impoverished that he could not satisfy his creditors from his property might be required by the court to *tenere hostagium* until he had made payment. Holding oneself hostage was a form of house arrest in which the person concerned had to live in a small, circumscribed area around the Platea Palacii in the centre of the city and was not allowed to leave it except for certain specific activities such as going to Church, appearing in court, and going to defecate. Prison for debt was envisaged in the Marseillaise judicial system only if a debtor broke hostage, fled the city, and was recaptured.

In Perpignan, loan contracts stipulated the penalty of hostageship, sometimes within a specific house, with separate locales for Jews and for Christians.²¹ By the late fourteenth century, the practice had spread to the north of France.²²

18 Stern, *Me'orot ha-Rishonim*, 245–46.

19 Adam Kosto, *Hostages in the Middle Ages* (Oxford: Oxford University Press, 2012), 161 n. 129.

20 John H. Pryor, *Business Contracts of Medieval Provence* (Toronto: Pontifical Institute of Mediaeval Studies, 1981), 133.

21 In 1381, many Jews of Perpignan were warned that they would be held as hostages in the house of Pierre Grimaldi's heirs in the fruteria of Perpignan. Later, however, the place of confinement was replaced with the house of Struch Maymon, within the call (ADPO 3E1/5086, f20r). Struch Maymon's home was mentioned again in 1387, when Cresques de Besalum agreed to confinement in the Maymon residence until he repaid his debt to his brother Samiel Abram de Besalum (ADPO 3E1/2146, f14r). I am grateful to Sarah Maugin for this information.

22 Julie Claustre, *Dans les geôles du roi: L'emprisonnement pour dette à Paris à la fin du Moyen Âge* (Paris: Sorbonne, 2007), 318–21.

Hostageship as a penalty for debt is distinct, both experientially and legally, from debtor's goal.²³ Although imprisonment for debt certainly existed, it was often limited by law to debtors who attempted to flee the town instead of paying, or whose debts were owed to kings or high lords.²⁴ Prison surely served as a deterrent to non-payment, but incarceration was not conducive to the financial activity that might allow a creditor to recover his debts.²⁵ Hostageship, on the other hand, imposed limitations on the debtor's freedom and was probably considered an embarrassment, but it gave the debtor the freedom to take steps to repay the money he owed.

Menahem Elon, who argued that Jewish law throughout its history was opposed to corporal punishment for debtors, conceded that "alongside the theoretical halakhah, which was opposed to any type of incarceration for debt, there developed a norm (*nohag*) of accepting incarceration in various contracts."²⁶ It was adopted by generations of Jewish businesspeople, whose Hebrew contracts sometimes contained clauses requiring incarceration in

- 23 A better known use of hostageship was holding the guarantors to a debt hostage in order to place moral pressure upon the debtor. Charles le Fort, "L'otage conventionnel d'après des documents du moyen age," *Revue de législation ancienne & moderne française et étrangère* 4 (1874): 408–33; Mireille Castaing-Sicard, *Les contrats dans le très ancien droit toulousain (X^e-XIII^e siècle)* (Toulouse: Espic, 1959), 381–83; Marie-Louise Carlin, *La pénétration du droit romain dans les actes de la pratique Provençale (XI^e-XIII^e siècle)* (Paris: Librairie Générale de droit et de jurisprudence, 1967), 200–2. See also Haym Soloveitchik, "Surety in Jewish-Gentile Money-Lending Contracts," *Zion* 37 (1972): 1–21 (Hebrew). Yet another application of the hostage system was common in medieval Aragonese Jewish communities as part of the election process of community leadership; see Yom Tov Assis, *The Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragon, 1213–1327* (London: Littman Library, 1997), 93, 100.
- 24 Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe, 1000–1300* (Houndmills: Palgrave Macmillan, 2002), 76–78, 95–96; Philippe de Beaumanoir, *The Coutumes de Beauvaisis*, trans. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1992), 364 (chapter 34, sec. 1030). See also Kathryn L. Reyerson, "'In pace et sine lite': Methods of Resolution of Indebtedness Outside the Court System," *Russian History* 28 (2001): 315–24.
- 25 In fourteenth-century Florence, debtors were by far the majority of prisoners in the city prison; see G. Geltner, *The Medieval Prison: A Social History* (Princeton: Princeton University Press, 2008), 51.
- 26 Menahem Elon, *Human Dignity and Freedom in the Methods of Enforcement of Judgments* (Jerusalem: Magnes Press, 1999), 139 (Hebrew). Elon's work was first published as his doctorate (Hebrew University Law School, 1961) and subsequently as a book (Jerusalem, 1964), which was republished in 1999 with the addition

case of non-payment or noncompliance.²⁷ These clauses were formulated and finessed by generations of Jewish scribes and perhaps what might be called lawyers, who attempted to create a contract so intimidating that it would never be challenged and so watertight that even a rabbinic judge would uphold it.

There was rabbinic opposition to imprisonment clauses. Asher ben Yehiel of Toledo (d. 1327) was particularly adamant in a responsum he sent to Burgos:²⁸

You asked about a contract in which the borrower agreed to be imprisoned until he repays – is this contract valid? If the condition was incarceration in a non-Jewish prison, *ab initio* (*lekha-tehilah*) he should not hand his fellow over to be imprisoned by gentiles. Even though a person is allowed to forego his own physical suffering... that refers to foregoing monetary compensation [for his suffering].²⁹ But *ab initio* the condition is not effective in allowing him to coerce his fellow physically and to cause him any type of physical suffering. Asher ben Yehiel.

Asher's use of "ab initio" is ambiguous. He may have meant that the contract was immediately disqualified because of that clause. More likely, although the clause was unjustified on legal grounds, it would not invalidate the contract even if the lender followed through on his threat and imprisoned the borrower. After the fact the contract would stand.

of Elon's landmark Supreme Court ruling (1992) forbidding imprisonment for debt under Israeli law.

27 Elon, *Human Dignity*, 138, cited Hebrew contracts from 14th-century Saragossa which mention imprisonment. However, they are rental contracts, not loans. Fritz Baer, *Die Juden im Christlichen Spanien* (England: Gregg International Publishers, 1970), I, 739, 770–71, 1062–63. A contract from Tortosa, 1386, made by Vidal Elietzer, his wife Blanqua, their son Saltell and his wife Astruga with Jacobo de Castris (a Christian) stipulates "tenere hostagium" as penalty for non-payment of the annual payment of a loan. The document was published in Moshe A. Shaltiel, *The Shaltiel Manuscripts: Catalunya 1061–1481* (New York: iUniverse, 2004), 360–62.

28 Asher ben Yehiel, *Responsa* 68:10 (my translation).

29 A man who had suffered physical suffering at the hand of his fellow was entitled to monetary compensation. If he had agreed in advance to accept that suffering, he could no longer demand the compensation. However, his foregoing the damages did not mean that the physical attack itself was permitted.

The opposition of rabbis like Asher ben Yeḥiel did not eradicate the use of contracts with imprisonment clauses.³⁰ Not many Hebrew contracts have survived from the Middle Ages, but their tradition of legal creativity is reflected in *tikkune shetarot*, formularies. Many formularies were compiled by recognized rabbinic scholars, but they are both prescriptive and descriptive, reflecting the types of contracts that were in use during their time.³¹ An anonymous formulary, preserved in a 16th-century manuscript from Crete copied in Byzantine script, includes a loan contract with a richly detailed clause about imprisonment:³²

A loan contract with conditions... the borrower agreed to submit his body and gave full permission to the lender and to anyone producing this deed to seize his body without any obstacle and to place him under guard, as he likes, in prison and in iron chains, and to move him from place to place as he likes, and to deprive him of food and drink, whatever he wants. The borrower has foregone any privilege from any king or queen or any ruler in any place in the world who may have decreed not to bodily seize any Jew or Jewess for any debt or fine, so that nothing can help him – no privilege given to him personally or to a group in any place in the world from this moment on.

- 30 The tension between rabbis and lay leaders over incarceration for debts can be found in 19th-century Morocco, where communal ordinances specified that Jews who had not paid communal taxes could be imprisoned and that rabbis and Jewish law could not be invoked to prevent that punishment – which did not stop the rabbis from trying. See Jessica Marglin, *Across Legal Lines: Jews and Muslims in Modern Morocco* (New Haven: Yale University Press, 2016), 85–86.
- 31 Victor Aptowitz, “Formularies of Decrees and Documents from a Gaonic Court,” *JQR* 4 (1913): 23–51; Menahem Ben-Sasson, “Fragments from Saadya’s *Sefer ha-Edut veba-Shetarot*,” *Shenaton ha-Mishpat ha-Ivri* 11–12 (1984–1986): 135–278 (Hebrew); Joseph Rivlin, *Bills and Contracts from Lucena (1020–1025 C.E.)* (Ramat-Gan: Bar-Ilan University Press, 1994) (Hebrew); Ruth Lamdan, *Sefer Tikkun Soferim of Rabbi Itzhak Tzabab* (Tel Aviv: Tel Aviv University, 2009) (Hebrew); Joseph Rivlin, *Sefer ha-Shetarot – Rabbi Yehudah ha-Barzeloni* (Bene Berak: Sefunim, 2014) (Hebrew).
- 32 Ms. London, Montefiore Library 156, fol. 23v–24r (my translation). For brief descriptions of the manuscript, see Hartwig Hirschfeld, *Descriptive Catalogue of the Hebrew Mss. of the Montefiore Library* (London: Macmillan, 1904), 45; *Important Hebrew Manuscripts from the Montefiore Endowment* (New York: Sotheby’s, 2004), 182.

The same type of evidence documents the use of the hostageship oath during the time and place of Kalonymos and Kimḥi. A formulary from late thirteenth-century Narbonne, composed by Aaron ha-Kohen as an appendix to his legal work *Orḥot Ḥayyim*, includes a template for a sophisticated loan contract:³³

A loan contract with guarantors and oath and *ostages* ... and in our presence, the undersigned witnesses, they swore a severe oath in the name of the Lord of Israel... without any trickery and without any room for undoing or regret, that if they do not repay so-and-so the entire loan at the aforementioned times, that the next day they will stand as *ostages* within a certain area, and they will not leave it and will not go anywhere else until they repay him... unless he extends the time of repayment.

This contract uses the Occitan and Catalan form *ostage*, which was translated in Kalonymos's question into the Hebrew *bet ha-ta'arubot*.³⁴ Just as in the case described by Kalonymos, the hostage clause described in the *Orḥot Ḥayyim* formulary was not part of the written contract but was administered as an oath taken at the same time the contract was signed.³⁵

In contrast to Asher ben Yeḥiel's opposition to debt imprisonment, Solomon ibn Adret (Rashba) seemed entirely unperturbed by hostageship:³⁶

You asked about someone who swore to his fellow to repay him by a certain date, and if he did not repay him, he would stay in the *ostages*. If [the lender] is not in the country, and [the borrower] has the money to repay him but he is unable because the lender is not there, must he stay in the *ostages*? It

33 Ms. Moscow, Russian State Library, Guenzburg 107, fol. 246r (my translation). Published by Joseph Rivlin, *Kobez al Yad* 18 (2005): 262–65. See also Joseph Rivlin, "Incarceration for Non-payment of Debts," *Jewish Law Association Studies* 12 (2002): 193–206.

34 Emil Levy, *Provenzalisches Supplement-Wörterbuch*, 8 vol. (Leipzig: Reisland, 1894–1924), 5:543; Eduard Feliu, "Mots Catalans en Tetos Hebreus Medievals: Els Dictamens de Salomo ben Adret," *Calls* 3 (1988): 65–66.

35 Another similarity is the attention given in the *Orḥot Ḥayyim* formulary to the lender's option of extending the time of repayment, which temporarily release the borrower from hostageship. This issue was discussed at length in Kimḥi's responsum.

36 Solomon ibn Adret, *Responsa* 7:157 (my translation).

seems obvious to me that he is not obligated. Imagine – if [the lender] were with him in the country but refused to accept the payment, would he need to stay in the *ostages*?

Rashba's concern was with a very specific problem, and he did not voice opposition to the institutions of *ostages* in general. Perhaps this was due to its less draconian restrictions, but it seems likely that he was more readily inclined to approve an oppressive oath than an oppressive contract, since oaths were onerous, almost by definition.³⁷ Therefore, a borrower's oath imposing limitations upon himself was more admissible than a borrower's agreement to the conditions in a written contract, which could be overturned if proven to be illegal. This point was made explicitly by Isaac ben Sheshet Perfet in a responsum sent to Huesca in the late fourteenth century.³⁸ He was asked to justify imprisonment for debt, on the grounds that it was similar to the practice in Aragon of imprisonment for nonpayment of the *alfarda* tax.³⁹ Perfet refused, concluding that "I do not see any legal way to physically seize him when he cannot pay, unless he made an oath to place himself in prison and not to leave until he repays his debt. This is like *ostages*, who is similarly seized because of an oath, in order to fulfill his oath."⁴⁰

Nevertheless, the fact that the hostageship was imposed as an oath, rather than a clause in the contract, made it particularly vulnerable to rabbinic intervention. The undoing of oaths was recognized as being the province of rabbis. Even though the ceremony itself could be conducted by laymen, it was fundamentally a religious rather than a judicial ceremony. This was the nub of Kalonymos's question: could contractual arrangements, entered freely by both sides to the contract, be overturned by rabbinic intervention?

37 Maimonides, *Guide of the Perplexed* 3:35, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), 537: "The thirteenth class comprises the commandments concerned with the prohibition of certain foods... [the commandments concerning] vows and the state of the Nazirites belong to this class. The purpose of all this is... to put an end to the lusts and licentiousness..."

38 Isaac ben Sheshet Perfet, *She'elot u-Teshuvot*, ed. David Metzger (Jerusalem: Machon Yerushalayim, 1993), 727–29, no. 484.

39 On the term *alfarda*, which originates in Arabic but was used in medieval Aragon, see Elon, *Human Dignity*, 141 n. 128; Ricardo del Arco and Federico Balaguer, "La Aljama Judaica de Huesca," *Sefarad* 9 (1949): 381.

40 Perfet, *She'elot u-Teshuvot*, 729.

What right did rabbis like Aaron ha-Levi of Barcelona have to open doors for people to escape their legal responsibilities?

This critique had a special resonance when it issued from the pen of Kalonymos the Nasi. The Nesi'im of Narbonne had been praised for their scholarship and close relationships with the rabbis of Narbonne. Kimḥi, throughout his letter, emphasized that Kalonymos himself was a *talmid ḥakhamim*, a rabbinic scholar. But, at the end of the day, Kalonymos was an aristocrat and a lay leader, and his perspective was closer to that of the Jewish businesspeople and of the scribes who drew up their contracts. That class of people possessed a knowledge of Jewish law that was more limited in breadth and depth than that of lifelong scholars like Kimḥi, but it was knowledge nonetheless, hard-earned and practical. To them, the idea that a rabbi could undermine a binding legal arrangement by conducting a religious ceremony was not only baffling—it was infuriating.

Mordechai Kimḥi seems to have perceived the situation in much the same way, proving that Kalonymos knew his man. Kimḥi stated openly that the hostage oath was binding and could not reasonably be undone by a rabbi in the way that the extortionist oath in the Nasi's first question could. However, he was reluctant to categorically reject the ruling of Aaron de na Clara of Barcelona, who was one of the most prominent rabbis of his time. Kimḥi went through the motions of justifying it after the fact, but perhaps revealed his feelings most clearly toward the end of his responsum:⁴¹

Here, my lord, is what I have for your honour in my opinion, as revealed to me from heaven, about your question to me and about your bafflement about the *Ḥaver* Rabbi Aaron who said that he could ask for his oath [to be undone]. Perhaps he relied on one of the explanations I have written for you. Nevertheless, one may not be frivolous about this, certainly not when there is desecration of the Holy Name (*ḥillul hashem*) – then we do not hold back out of respect for a rabbi.

Kimḥi stopped short of explicitly stating that Aaron ha-Levi was responsible for publicly desecrating God's name by offering to undo the oath, but he very effectively sketched out the lines of engagement. The rabbi had pronounced his opinion on the public stage. The public had responded with surprise and perhaps even anger, an anger which travelled to Languedoc—perhaps

41 Stern, *Me'orot ha-Rishonim*, 153.

through the ancient channels connecting the Nesi'im of Narbonne to the Jewish aristocracy of Barcelona.⁴² Mordechai Kimḥi realized that Aaron de na Clara had disturbed the delicate balance between influence and humility that the rabbis in his time were forced to maintain. By overplaying his hand, the rabbi from Barcelona had lost his influence.⁴³

IV. Merchants, scribes and scholars

Looking again at the social setting in which Aaron issued his declaration, it seems that he felt he was acting in accordance with popular opinion. "Many distinguished people" had intervened on behalf of the bankrupt borrower, and Aaron was simply following their lead by helping him. Why, then, were people so surprised and disturbed by his intervention?

Perhaps the resistance to Aaron de na Clara's move came from a specific quarter, from people who felt personally affected by his decision. As noted above, at least two interlinked groups would have been affected – Jewish merchants who, among other things, lent money to fellow Jews, and the Jewish scribes who wrote the Hebrew contracts for those loans. As many legal historians have noted, medieval merchants provided a powerful influence on the shaping of commercial law.⁴⁴ Their interest in this case was clear – the hostage clause was designed to help them make good on their loans, and Aaron de na Clara's ruling would directly undermine that ability.

42 On the Nesi'im of Barcelona, who were deposed early in the thirteenth century, see Elka Klein, *Jews, Christian Society and Royal Power in Medieval Barcelona* (Ann Arbor: University of Michigan Press, 2006), 52–57, 116–41.

43 Very little is known of his life, but it is known that Aaron de na Clara served as a rabbi in Saragossa and in Toledo, but each time for a very brief period. Yitzhak Baer, *A History of the Jews in Christian Spain*, trans. Louis Schoffman (Philadelphia: Jewish Publication Society, 1966), 225; Judah Galinsky, "Asher ben Yechiel (The Rosh), the Ashkenazi, in Spain: His Tosafot, Psakim and his Yeshiva," *Tarbiz* 74 (2005): 418–19 (Hebrew). It is tempting to suggest that Aaron ha-Levi's policies were out of step with the demands of influential members of the communities he tried to serve, as they apparently were in the case under discussion here.

44 Emily Kadens, "Order within Law, Variety within Custom: The Character of the Medieval Merchant Law," *Chicago Journal of International Law* 5 (2004): 39–65; Ron S. Kleinman, *Methods of Acquisition and Commercial Customs in Jewish Law: Theory, Practice and History* (Ramat-Gan: Bar-Ilan University Press, 2013) (Hebrew).

It is unlikely that merchants, focused on the practicality of realizing their investments, were the ones who developed the sophisticated hostage clause. More precisely, the hostage clause was not developed by Jews, for it first appeared in Christian legal contexts. But by the late thirteenth century, it had been translated—linguistically and legally—for Jewish use. That translation was arguably the achievement, not of the merchants themselves, but of the scribes who prepared their contracts. The contribution of Jewish scribes to legal history has only recently begun to receive recognition, although their counterparts among Christian notaries have long been acknowledged as crucial actors in the drama of commercial law.⁴⁵ Although Jews made ample use of Christian notaries in medieval Catalonia, Provence and the region, that use involved crossing social, religious, legal, and linguistic boundaries and was not without some attendant tension and friction.⁴⁶

The key advantage of hostageship was that it provided the borrower with a limited degree of freedom, which might be more conducive to the repayment of his debt than incarceration in debtors' prison could be. However, that freedom was also its weakness, since there were no guards to ensure that the borrower remained within the prescribed area. Introducing an oath was the best solution to this problem, since oaths possessed—in medieval European law as in Jewish law—a dual nature. "Its sacred character imposed a spiritual as well as moral and legal obligation to fulfil its terms. Failure

- 45 Haym Soloveitchik, "An Analysis of the Provençal Mortgage Contract," *Tarbiz* 41 (1972): 313–24 (Hebrew); Eve Krakowski and Marina Rustow, "Formula as Content: Medieval Jewish Institutions, the Cairo Geniza, and the New Diplomats," *Jewish Social Studies* 20 (2014): 111–46; Micha J. Perry, "Hatpasah: Jewish Translated Documents from Medieval Catalonia: Formulae, Law and Society," *Journal of Medieval Iberian Studies* 10 (2018): 167–94. On the role of Christian notaries, see Kathryn L. Reyerson, *The Art of the Deal: Intermediaries of Trade in Medieval Montpellier* (Leiden: Brill, 2002), 79–84; Kathryn L. Reyerson and Debra A. Salata, *Medieval Notaries and their Acts: The 1327–1328 Register of Jean Holanie* (Kalamazoo: Medieval Institute Publications, 2004), 9–11; Susan Mosher Stuard, "Where Notaries Provided Legal Services to Medieval Townspeople," *Journal of Family History* 43 (2018): 270–80.
- 46 Rebecca Winer, "Jews in and out of Latin Notarial Culture: Analyzing Hebrew Notations on Latin Contracts in Thirteenth-Century Perpignan and Barcelona," in *Entangled Histories: Knowledge, Authority, and Jewish Culture in the Thirteenth Century*, ed. Elisheva Baumgarten, Ruth Mazo Karras, and Katelyn Mesler (Philadelphia: University of Pennsylvania Press, 2016), 113–33.

to honour it implied both sacrilege and perjury."⁴⁷ By virtue of that sacred character, an oath provided intangible bars to confine the hostage to the "house of hostages."

Not content with simply transplanting this arrangement into their contracts, Jewish scribes translated the Christian oath into its Jewish equivalent, creating a legal instrument that they believed would be effective in intimidating Jewish borrowers.⁴⁸ Although inter-Jewish loans in medieval Iberia and southern France could, in principle, be contracted before Christian notaries, this did not generally happen. Jews preferred to conduct their business with each other, before Jewish scribes. Their records have not been preserved, but responsa record echoes of their practices, and of the effective ways in which they meet the needs of their clientele. Those practices mirrored, in many ways, the civil law system that had come to dominate the courts of the western Mediterranean during the twelfth- and thirteenth centuries—a system that was perceived by Jews and Christians alike as reasonable and generally efficient.⁴⁹ Even when Jews did not avail themselves of that legal

47 Robert Tittler, *The Reformation and the Towns in England: Politics and Political Culture, c. 1540–1640* (Oxford: Clarendon Press, 1998), 202. See also Michael D. Gordon, "The Perjury Statute of 1563: A Case History of Confusion," *Proceedings of the American Philosophical Society* 124 (1980): 438–54; Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden: Brill, 1992), 54–70; John Spurr, "A Profane History of Early Modern Oaths," *Transactions of the Royal Historical Society* 11 (2001): 37–63; Ayala Mazuz, "Mashma'ut ha-shevu'ah vetokpah bi-tefisatam shel Haside Ashkenaz ube-Sefer Hasidim (The Significance and Potency of the Oath According to Haside Ashkenaz and Sefer Hasidim)" (master's thesis, Ben-Gurion University of the Negev, 2014); Ephraim Shoham-Steiner, "Exile, Immigration and Piety: The Jewish Pietists of Medieval Germany, from the Rhineland to the Danube," *JSQ* 24 (2017): 234–60.

48 It is important to emphasize that this was a Jewish oath, formulated in Hebrew according to Jewish legal norms. It is entirely unrelated to the Jewry-Oath, which was imposed upon Jews by Christian courts, on which see Amnon Linder, "The Jewry-Oath in Christian Europe," in *Jews in Early Christian Law: Byzantium and the Latin West, 6th–11th centuries*, ed. John Tolan et al. (Turnhout: Brepols, 2014), 311–58; Ilona Steimann, "'Das es dasselb puch sey': The Book as Protagonist in the Ceremony of the Jewry-oath," *European Journal of Jewish Studies* 13 (2019): 77–102.

49 Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca: Cornell University Press, 2003), 29–88; Pinchas Roth, "Mourning Murderers in Medieval Jewish Law," in *Medieval and Early Modern Murder: Legal, Literary and Historical Contexts*, ed. Larissa Tracy (Woodbridge: Boydell Press, 2018), 80.

system, they looked to it for inspiration, incorporating elements of it into their own legal practice.⁵⁰

Aaron de na Clara's ruling shocked the commercial and scribal elite because it made them realize that harnessing a religious institution to legal purposes had brought a Trojan horse into their carefully devised system. The oath, so useful because it transcended the profane realm, was unreliable precisely because of its transcendence. By using it, they had handed the power over their commercial dealings into the hands of rabbinic scholars. Perhaps it was they who turned to Kalonymos the Nasi, the last remnant of a Jewish aristocracy who could conceivably claim authority over the rabbis.

V. Conclusion

Throughout the Middle Ages, Jewish laypeople made use of Jewish law in order to create and enforce their commercial and social commitments. In doing so, they incorporated elements from non-Jewish legal systems, especially from the civil law system that spread throughout Mediterranean Europe during the thirteenth century. One of the elements that was transplanted into the legal practice of Jews in Provence and Catalonia was hostageship, a type of house arrest or open imprisonment imposed as a penalty for unpaid debts. Since the hostage was not under guard or lock and key, the confinement was enforced through an oath that borrowers were forced to pronounce, committing themselves to the conditions of hostageship in the event that they were to default on their debts. The legal transplant of hostageship into Jewish law was ostensibly effective, and it even received a name inspired by biblical Hebrew. However, because hostageship rested on the oath, and in rabbinic law oaths can be nullified by rabbinic scholars, the arrangement was vulnerable to the intervention of rabbis. When Aaron de na Clara of Barcelona demonstrated this vulnerability by offering to undo an oath and free a hostage from his penalty, a public outcry ensued. Kalonymos ben Todros, the last Nasi of Narbonne, formulated a two-part query challenging Aaron de na Clara's intervention. Kalonymos turned to his long-time friend, the veteran rabbinic judge Mordechai Kimḥi, for support. Kimḥi responded with a measured but damning condemnation of Aaron de na Clara's decision. Although Kimḥi upheld the ability of Jewish laypeople to impose binding

50 For other examples, see Roth, "Legal Strategy and Legal Culture."

oaths, the tension caused by rabbinic intervention in lay legal procedures continued for as long as Jewish legal autonomy existed.

Appendix:

Ms. Jerusalem, National Library of Israel, 8°90, fol. 49r-52r.

שאלה לנשיא ר' קלונימוס דנרבונא אל החכם הרב מרנא ורבנא ר' מרדכי קמחי. מי שיודע בחכמה הכל משכימים לפתחו אליו עם יי ידרשו לשמע תרה מפיו ודרכם נכחו להשקותם הלכות כגן רוח לרוות צמאם ולהשמיעם שמועות להשביעם כמוך הותיק החכם גל של אגוזים קופת הרוכלין בור סיד שאינו מאבד טפה נודעת בחכמה אצל כל שער בני עמך ועל כן אני קטן מתלמידך צמאתי למימך אשר לא יכזבו והגמיאוני מהם ותוריני הא דבעינא ממך הלכה למעשה. ראובן שהיו לו מעו' לגבי שמעון בתורת פקדון או בתורת הלואה ואין לראובן עדים ולא שום ראייה להכריחו בב"ד להשיב המעות לא בדיני ישראל ולא בדיני או' העו' או כלך לדרך זו שהיו לו עדים וראיות הרבה להכריחו בב"ד להשיב המעו' ונתפקר שמעו' והחזוק כפרן וגלגל לראוב' חובות ומרמות וזיופים ותבע ממנו ממון שלא הלוחו למען יגזול ראוב' מהמעות שהיו לו בידו ובא הנגזל ורדף אחריו כל יום ויום שישב אליו הפקדון או ההלואה עד כי נתבייש שמעו' והודה להשיב המעו' אם יעשה לו ראוב' שבועה כך וכך שאינה צריכה לו אבל תהי לו לנזק לראובן ולא יכול ראוב' להתאפק לחסרונו אל המעות ובראותו נמי שאין עליו ראייה להכריחו בב"ד והודה לדבריו וישבע לו בכל אשר שאל. ילמדנו רבי' דין זה הלכ' למעשה לנקות ראוב' מירשאל אם ימצא פתח להתיר שבועתו ביחיד מומחה או בג' הדיוטות שלא ברצון שמעו' שנשבע על דעתו כי אנוס היה ולא עשה שבועה כי אם להציל הטרף מיד הארי ויש לראובן עדים שגלה דעתו מאנסו אני אני הכותב שלא כדת מעלתך וחכמתך כנואש ולא כמועל קורא כשלו' תורת' נכון ומזומן למצות' אחד מקטני תלמידך קלונימוס דנרבונא.

תשובה לרב. מעמוסי יריכי נחשון גדלת גזעו קדמה לנסי ים וירדן ונחל קישון, תהלת כבודו לא יכילנה ספר ולא יספרוה לשון מאז ידעתיו אהבתו נצורה וחביבה עלי כאישון השקתיו ואוה עד תשוקתו לא תניח לי לישון. ומאז נחת שולחני מעדן תורתו דשנה דשון ומה גם עתה שלח לי מטעמים מראשית צידו אקו ודישון, ויהי היום יום ראשון פרשת אלוף אצר אלוף דישון, ואשב ללחום את נעם דבריך מצאתי אליה וקוץ בה חוח וקמשון כולו עשית בי גבירי עשון כי חשבת מחובשי עצמן בבית המדרש איש אשר כמה שנים ספר לא דרש ואלו לא באת בכתב רשום מפורש חששתי בך גבירי משו' לועג לרש כל שכן וכל דכן כי בחרת במוקצה בקצה הארץ יותר מן המוכן, אבירי ארצנו היושבים עלי כן, ועזבת מעייני התורה בשביל מי המשרה ומים זכים נקיים המים עכורים וכלואים והנחת מי צחו נהרי נחלי רחבי ידים אשר לא יעברו ברגלים ובאת לשחות במי אוגלים מי אפסים. אמנ' בשביל ענותנו' וחסידותך דנתך לכף זכות ואמרת שנו דבי

ריש גלותא דלא חשובי שכינייהו שאלו מינייה שאלתא ויהיבי להו רשותא להפטר על טעותם ולכסות על כל פשעי אהבתם. ומעתה אחר שאני פטור על טעותי ואיני נתפס על שגיאתי דלמדן דינא ולאור אוראה נקיטנא רשותא מבני נשיאה, הנני מתחיל להפיך רצונך ולעשו' בקשתך ולקיים מצותך.

בצענין נשבע לחבירו אחת בכתב ואחת על פה הראשונה ראובן שהיו לו מעו' לגבי שמעו' בתורת פקדון או בתורת מלוה ואין לראובן עדים ולא שום ראייה להכריחו בב"ד ולהשיב המעו' לא בדיני ישראל ולא בדיני האומות או כלך לדרך זו שהיו לו עדים וראיות הרבה להכריחו בב"ד ונתפקר והוחזק כפרן וגלגל לראוב' דברים תורות ומרמות וזיופין ותבע ממנו ממון שלא הלוהו למען יגזול ראוב' מהמעו' שהיו לו בידו ובא הנגזל ורדף אחריו כל יום ויום ששייב אליו הפקדון או ההלוואה עד כי נתבייש [ב49] שמעו' והודה להשיב המעו' אם יעשה לו שבועה כך וכך שאינה צריכה אליו אבל תהי לו לנזק לראוב' ולא יכל ראוב' להתאפק לחסרונו על המעות ובראותו נמי שאין עליו ראייה להבריוחו בב"ד והודה לדבריו וישבע לו כל אשר שאל. ילמדנו רבי' דין זה הלכה למעשה לנקות ראוב' מישאל אם ימצא פתח להתיר שבועתו ביחיד מומחה או בג' הדייטות שלא ברצון שמעו' שנשבע על דעתו כי אנוס היה ולא עשה שבועה כי אם להציל הטרף מיד הארי ויש לראובן עדים שהגלה דעתו מאנסו ע"כ לשונך.

השנית שאלת אלי כי מעשה היה פעם אחת בקטלונייא שהלוה ראוב' לשמעו' מנה ונשבע לו שאם לא יפרענו בזמן פלני שיכנס לבית התערובות לאזהרתו, ובהגיע זמן הפרעון לא היה מזומן אצלו לפרוע ונכנס לבית התערובות לאזהרה' ועמד שם ימים רבים ולא רצה המלוה להתירו בשום פנים בעולם. וחלו פניו רבים ונכבדים ולא נשא פני איש והיה לשם הרב ר' אהרן הלוי הידוע בברצלונא ואמר שאם לא יאריכהו יהיה נשאל על שבועתו ויתירנה לו עד שיוכל לפרעו ותמהו עליו רבים. ושאלת גבירי איך יכול להיות דין שמי שנשבע לחברו ברצון נפשו יהיה נשאל ובאי זה ענין וחלית פני לבאר לך הכל בין לענין אריכות החוב בין לענין אר"י(סו)כות התערובות.

ועתה הנני מתחיל לבאר לך כפי מעוניי שכלי מה ששאלת גבירי על ראובן שהיו לו מעו' אצל שמעו' בתורת מלוה או בתורת פקדון וכו' עד שלא רצה להחזיר לו עד שנשבע לו שבועה שאינה צריכה לו כי אם להיות לראוב' לנזק ויש לו עדי' שגלה דעתו להם מאנסו שאלת אלופי אם יוכל להשאל על שבועתו ונר' לפי מה שכתבת שאותה שבועה לא הייתה צריכה כלל לשמעו' המשביע ולא תבעה אלא להיות לו לנזק לראובן להיות מסור בידו על ידי אותה שבועה וראובן לא עשה לו אותה שבועה אלא להחזיר אליו מעותיו כי לא יוכל להתאפק לחסרונו אל המעות. אפשר לדמות דין זה לנודרין להרגין ולחרמין בעבור שראובן היה אנוס ומוכרח תכלית האנס וההכרח נראה שאעפ"י שהשביעו שמעון על דעתו שמעולם לא קבל אותה שבועה על דעת המשביע ולא היו פיו ולבו שוין בדבר זה כמו שגלה דעתו מאנסו וכל עצמו לא עשאה אלא להציל עצמו מיד עושקו העושק ממונו שאין בידו כח להכריחו בדין לא בדיני ישראל ולא בדיני

אומו' או מגלגל עליו תוך ומרמה לגזל לו ממונו וכיון שכך נר' ודאי דדינו כדין הרגין וחרמין ומוכס העומד מאליו שכל אלו התירו רבו' לדור להם לכתחלה בין בנדר בין בשבועה כדאית' פ' ד' נדר' לפטר עצמן מיד האונס אעפ"י שיכולין להיפטר בפריעת המכס התירו להם חכמי' לדור להם ואעפ"י שנדרו ואסרו כל פירות שבעולם אם אינם של בית המלך אינן אסורי' עליהם לפי שאין דעתם לאסור הפירות עליהם אלא להציל נפשם מיד אונס ובתר דעתם אזלינן' ולא בתר פיהם כדחזינן' נמי במס' שבו' גבי נדרי הבאי ושבועות הבאי שהתירו אעפ"י שאמ' שבועה שלא אוכל אם לא ראיתי גמל פורח באויר או בדרך זה כפלים מיוצאי ומקרי שבוע' הבאי מפני שאין דעתו לאסור הפירות אלא לאמת שקרותו ואעפ"י שאסור לעשות שבועה כזו אפי' הכי לא מתסרי עליה וכן כתב הרב אבן מגש הת' במ' שבועו' שכל דבר שאינו עושה אלא לאמת שקרותו לא מיתסרי פירות עולם עליה וכן נמי גבי נדרי דאנסין שאינו עושה אלא להציל עצמו מיד האונס לא מיתסרי פירות עליה דתרווייהו בחדא מחתא מחתינהו בענין זה. וכן נמצאת גרסא בספרים בהא מילת' דגמל פורח לאו מי אמ' רב עמרם באומ' יאסרו וכו' אם אינן של בית המלך הכא נמי באומ' יאסרו וכו' אם לא ראיתי גמל פורח באויר. נמצא שטעם אחד לשניהם שלא נתכון לאסור הפירות נמצא דתרווייהו בחד ענינא שיכי שכיון שאין דעתם אלא לאמת שקרותם או להציל נפשם מיד אונס לא נאסרו הפירות עלייהו הכא נמי בהאי עניינא דאתינן עליה כיון שלא עשה לו השבוע כי אם בהכרח [א50] בהכרח גדול להציל עצמו מיד אונס להחזיר אילו ממונו ולא היה פיו ולבו שוה בדבר זה ולעולם לא היה דעתו שיעמד מן הדבר שנשבע לו עליו כיון שכך מעולם לא בטל דעתו מפני דעת האונס להיות נמנע בשבילו ממה שנשבע עליו כמו בנדר' אונסי' ונדר' הבאי שלא חל האסור על הפירות הכא נמי לא שנא אע"ג דגבי נדרי אונסין לא נשבעו על דעת האונס בפירוש אפי' הכי לא שנא דאיכ' למימ' שמעולם לא בטל דעתו מפני דעת האנס והראיה שהרי מסר מודעא על אונסו. ועו' דהא גבי השאלה השנית משמ' דביעבד פטור אפי' נשבע מדעתו כ"ש היכ' שנאנס. ואע"ג דבמילתיה דרב עמרם מק' בפ' ד' נדר' והא מתסרי פירות עליה דמשמ' שנאסרו פירות עליו התם הוא משו' דקתני במתני' נודרי' לכתחלה דשרי למגדר לכתח' ואיסבי' ליה דלא חייל נדרא אפירות א"כ הוה ליה ההו' נדר משו' שבוע' שוא ולא נפיק מכלל איסור' אלא ודאי מדשרי למגדר לכתחלה ודאי חייל נדרא אפירות ודעתו לקיים השבועה או הנדר ולא מקרי שוא. ומסי' בגמ' כגו' דאמ' בליבו היום ומתסר ההו' יומ' דלחוד וכיון דמקיים נדריה ההוא יומא סגי ואע"ג דקיימי' לן דרב'י' שבלב אינן דברים במסכ' קדו' גבי אונס כי האי גונא הוה דברי' הכא גבי האי עניינא לא הוציא דבריו לבטלה שהרי עמד בשבועתו יום או יומים או שנה או שנתים כי לפי דבריך גבירי משמ' שלא נשבע לתת לו כלום אלא להיות נמנע מדבר פלוני.

ועו' שהרי ראובן לא פתח לשבע לשמעו' האנס אלא שהוא תבע ממנו השבועה אם ירצה שיחזיר לו מעותיו וכיון שהוא הכריחו אין ראוי לעמד על שבועתו. הנה גבירי לפי הדמיון הזה שרמינו להרגין ולחרמין ולמוכס העומד מאליו משמש שאינו צריך

לשאל על שבועתו אא"כ הוא עם הארץ שמחמירין עליו כדי שלא יהיו נותנין קלות ראש בנדריו' ובשבועו' ומסבכין שימצא פתח לנדרו אבל אם הנשבע הוא ת"ח כמורך אלופי אינו צריך לישאל כדמשמ' בפ' ד' נדריו'. זה הדין הוא להיות נקי מיי אשר לו נתכנו עלילות. אבל להיות נקי מישראל צריך על שבועתו להשאל בעבור שאותו שמעו' האנס לא יקשרנו ולא יפרסמנו להיות עובר על שבועתו. וכן צריך ראוב' לקחת ג' בני אדם וללכת אצל שמעו' ולומ' לו פלגי אתה ידעת שכבר עשקת ממני ימים מעותי ולא רצית להחזירם אלו עד שנשבועתי לך על דבר פלגי ועתה איני יכול או איני רוצה לעמד באותה שבועה כי היא לתקלה וקלון והנני מחלה פניך שתתיר אותה לי ואם לאו אני אשאל עליה ואם רוצה להתירו מוטב ואם לאו אותן ג' מתירי' אותו בפניו אפי' בעל כרחו מן הטעמי' שאכתב לך לקמ' על השאלה השנית דודאי כיון שהודיעו יכולין ב"ד להתירו אותן שלפניהם הודיע לשמעו' או אחרים שיעידו בפניהם שכבר הודיע ראוב' לשמעו' שהוא רצה להשאל עליה וכ"ש אם אותן עדים קיימין שהודיע להם אנסו ומסר בפניהם המודעא שיכולין כל ב"ד להתירו. ואמנם כי לפי עניו דעתי על ידי הדחק ימצא שעדים יעודו בבירור אנס כזה כמו שכתב רבי' שמואל בשם ר"ח ז"ל בפ' חזק' הבתים גבי מעשה דפרדסא. אבל בענין הזה לא יזיק לנו בעבור שלא יחדנו זה כי בלא אותן עדי' יכול להשאל ואפי' יש לו עדים על קצת האונס צריך להיות נשאל ושיודיע לשמעו' שהוא יהיה נשאל על אותה שבועה בעבור שלא יחשדוהו להיות עובר על שבועתו. ולגבי הרגין וחרמין לא שייך האי טעמ' כלל משום שהרג וחרם והמוכס אם יראנו אוכל ממה שנאסר עליו אם אותן פירות אינן של בית המלך לא יחשדנו שיהא עובר על שבועתו אלא יחשב שאותן פירות הן של בית המלך כמו שנשבע אבל האי עובדא דאתינן עלה אם לא יודיענו יחשדנו להיות עובר על שבועתו ומ"ה צרי' להודיע ואח"כ ישאל כפי אשר ימצא פתח לנדרו ומתירין אותו לכתחלה. זהו דעתי להלכה למעשה כפי הענין הזה אשר שאלת גבירי שאותה שבוע' לא היתה צריכ' לשמעו' העושה או אפי' היתה צריכ' אליו והיתה לתועלתו ולהנאתו [ב50] שהוא לא היה חייב לעשות לו אותה שבועה בשום תנאי ובשום דין ודברים אלא שהיה אנסו עליה אומ' אני שודאי מתירין אותו לכתחלה כענין שכתבתי לפניך אלופי ומיודעי אבל אם ראובן היה חייב לעשות לו אותה שבועה מצד אחר כגון שהתנה עמו זה כמה ימים או זה שנים ולא רצה לעשותה אליו ועכשיו משכנו עליה הפקדון או המלוה שיש לו בידו עד שעשאה לו כפי הענין הזה לא יקרא אנס דעביד איניש דינא לנפשיה בענין הזה ולכתחלה אין להקל ראש בדבר ויהיה דינו כדין השאלה השנית כאשר אכתוב לפני כבודך גבירי.

השאלה השנית שראית בגליל' קטלונייא באחד שנשבע לחבירו וכו' כמו שכתבתי לעיל שאמ' הר"ר אהרן הלוי שאם לא יאריכוהו שיהא נשאל ומתירין לו ותמהו עליו רבים ושאלת ידידי איך יכול להיות דין זה כי מי שנשבע לחבירו ברצון נפשו יהיה נשאל ובאיזה ענין וחלית פני לבאר לך הכל בין לענין אריכות התערובות. ועתה אלופי מיודעי הט אונך לאמרתיה הנה אמת ויציב כי מי שנשבע לחבירו לפרוע לו חובו לזמן פלגי ואם

לא יפרענו יכנס לבית התערובות ובא לישאל על שבועתו אין נזקקין לו לכתחלה וברין תמהו התמהים על החכם ר' אהרן כדאמ' בנדר' המדיר את חבירו בפניו אין מתירין לו אלא בפניו וכן נמי אמר' הת' בנדר' בפ' ר' אליעזר דאמ' דאמ' קב"ה למשה רבי' במדין נדרת במדין התר נדריך וגבי צדקיה כתב בזה אלה הפר ברית שנענש על שנשאל שלא בפני נבוכ' נצר כדאמ' הת' בנדר'. מיהו אפשר שהר"ר אהרן ראה שנשבע לא היה יכול לפרו' חובו עודנו נסגר בבית התערובות ובענין הזה שהשעה צריכה לכך אפשר דדיעבד אם התירו אותו מותר וכגון שיבא הלוחם למלוה ויחלה פניו בפני ב' או ג' שיאריכוהו עד אשר יהיה לאל ידו לפרעו ואם איננו רוצה להאריכו שיאמר לו שהוא יהא נשאל על שבועתו ושמן היום הוא לא יחשדנו להיות עובר על שבועתו וישאל בפניו על שבועתו או שלא בפניו כיון שהודיעו. אפשר דבענין הזה אם התירו לו מותר אע"ג דקיימ' לן הנוד' או הנשבע לחבירו בפניו אין מתירי' לו אלא בפניו כדאמ' הנדר' וכדחזי' גבי משה רבי' דא"ל קב"ה במדין נדרת ובמדין התר נדריך וגבי צדקיה כת' בזה אלה והפר ברית מ"מ בפניו או בהודעה אפי' שלא בפניו אם התירו לו מותר לפי דעת הירושלמי שפי' הטעם שאין מתירי' לו אלא בפניו מפני החשד ומפני הבושה ר"ל שיחשדנו שיהא עובר על שבועתו שלא ידע שנשאל עליה וכיון שהודיעו קודם שישאל על נדרו או על שבועתו תו ליכ' חשד ובושה ואם התירוהו בפניו או בהודעתו אפי' שלא ברצון חבירו מותר כמו שמצי' במסכ' סוטה ביוסף כשרצה לעלות לקבור את אביו שלא היה רוצה פרעה לתת לו רשות ואמ' לו יוסף מה אעשה על שבועתא דאבא שהשביעני ואמ' לו פרעה צא והשאל על שבועתך ואמ' לו יוס' ואנא נמי אשאל על שבועה שנשבעתי לך שלא אגלה לך שאינך יודע לשון הקדש ואמ' לו עלה וקבור את אביך כאשר השביעך וכו' כדאית' במסכ' סוטה הרי מצינו שאמ' לו יוסף לשאל על שבועתו ואע"ג דלא ניחא ליה לפרעה אמ' לו יוסף שישאל על שבועתו בעל כרחו שלא בטובתו ותו ליכ' איסורא כיון שהודיעו עד שפרעה נתרצה ברבר וא"ל עלה וכו'. ועו' ראייה ברורה דלא בעינ' רצונו בדיעבד מההי' דגבעונים דאוכח מינייהו ר' יהוד' בפ' השולח בגיטין דנדר שהודר ברבים אין לו הפרה כנדר שהודר על דעת רבים לרבנן. וא"כ דמי שנשבע לחבי' אין יכול להשאל אלא לרצונו היכי מצי' למוכח מנה ר' יהוד' דנדר שהודר ברבים אין לו הפרה דילמ' התם גבי גבעונים היינו טעמ' דלא הוי הפרה משו' דקיימ' לן המדיר את חבירו בפניו אי' מתירין לו אלא בפניו ומדעתו. והגבעונים לא היו שם. ואפי' נביאם בעל כרחם לא היו מתרצים באותה הפרה כדי שלא ימותו אבל לעולם אימ' לך דנדר שהודר ברבים בעלמ' אית ליה הפרה. [א51] וא"ת לא מקרי הודר בפניהם שהרי לא נדרו בפני הגבעוני' אלא בפני שלוחם. הא לא מצי' למימ' חד' בשלוחו של אדם כמותו ובפניו מקרי. ועו' דדעת שלוחים מיהא בעינן ושלוחים לא יתרצו לעולם באותה הפרה. ואם כן דאין להתיר אלא מדעתו מנ' ליה לר' יהוד' דנדר שהודר ברבים אין לו הפרה דילמ' התם הוא משום דאין להתירם אלא מדעת גבעונים וגבעונים או שלוחם לא יתרצו לעולם בהתר זה שלא יתרצו למות. אלא ודאי יכולין היו להתיר שבועתם שלא מדעתם בפניה'

או שלא בפניהם ובלבד שיודיעום וכן נר' דעת הירושלמי וכן נר' דעת הר' בעל השלמה בשלהי פרקי' מההיא דגבעונים ומן הירושל' ומצאנו נמי לרבי' יעקב ז"ל שכתב בפ' דאין מתירין לו אלא בפניו אבל אם הותר הותר אפי' בלא ידעתו. והראב"ד ז"ל חלק עליו ואמ' אם כן דיעבד מותר מדוע נענש צדקיה על שבועת נצר. וי"ל דצדקיהו נענש על חלול השם שהיה גדול כשלא הודיע לנבוכד נצר כדאמ' הת' בנדר' על אותו מעשה ישבו בארץ ידמו זקני בת ציון ששמטו כרים וכסתות מתחתיהם ומשו' חלול השם שהיה גדול בדבר נענש. ועו' יש ראייה בדבר לפי עניות דעתי דאם איתא דמי שנשבע לחבר אינו יכול לשאל בלי דעת חבירו מאי איכא בין נדר שהודר על דעת רבים לנדר הודר על דעת יחיד שהרי פרש"י בפ' השולח בגיט' גבי הנושא נשים בעבירה דקת' נודר ועובר יורש ומגרש ומסיק התם דמדרי' על דעת רבים ופרש"י וצריכינ שיאמרו אותן רבים הרי אנו מדירין אותך על דעתינו דסביר' ליה לר"ש וגם לקצת מפרשי' דלא מקרי נדר שהודר על דעת רבים אלא כשהרבים ידועין ומדירין ומשביעין אותו ואומ' לו על דעתנו. וכן מצינו בשם רב האי גאון ז"ל דאפי' יאמר אדם כל היום בפני רבים על דעת רבים אני נודר או נשבע אינו קרוי נדר על דעת רבים אא"כ יאמר לפניהם לדעתכם אני נודר. וגדולה מזו כתבנו בחדושי' בשם ר"ח וכן כתב בעל העטור בשמו בדין כתבה דנדר שהודר על דעת רבים אין לו הפר' כלו' אין לנודר לשאל על נדרו על דעת רבים עד שיודיעם ע"כ לשו' ר"ח דמשמ' דכיון שיודיעם יש לו הפרה. והכי הוי פסקא דמילת' אליב' דר"ח דלדבר הרשות אין לו הפרה לנדר שהודר על דעת רבים עד שיודיע לאותם רבים אבל לדבר מצוה יש הפרה אפי' בלי ידיעתם דכיון דלדבר מצוה הוא מסתמ' אומדן דעתא הוא דהכי ניחא להו שלא חלה דעתיהו על עקירת מצוה. הא לך אחי דכלהו הני רבואתא סביר' להו דנדר שהודר על דעת רבים בעי' דעת אותן רבים. וא"כ דמי שנשבע על דעת יחיד אין לו הפרה בלי דעתו ורצונו מאי איכא בין על דעת רבים לדעת יחיד. וטעם נדר שהודר על דעת רבים דאין לו הפרה מפרשי' בשם הראב"ד ז"ל דכיון שהם רבים שלשה לפחות בפלוגת' דהתם בהשולח וראויים להיות ב"ד כל אדם מבטל דעתו מפני דעתם ויש להם כח דכח ב"ד יפה. אבל בשביל אחד או שנים דאין להם כל כך כח אין אדם מבטל דעתו ולפיכ' יש לו הפרה וכן יש קצת ראייה דעל דעת יחיד אפשר לשאל בלא דעתו ממש רבי' ע"ה כששביע את ישראל דאמר' הת' בשבועו' כשהשביע משה את ישראל אמ' להם הוו יודעים שלא דעתכם אני משביע אתכם אלא על דעתי ועל דעת המקום וכו' עד ולטעמיה לימא להו על דעתי ועל דעת המקום למה לו כי היכי דלא תהוי הפרה לשבועתייהו כלל. דמשמ' שאם לא ישתף הקב"ה עמיה דהוה ליה הפרה אע"ג שהשביע משה רבי' ע"ה על דעתו ומ"ה הוצרך לשתף הקב"ה עימיה דלא להוי הפרה לשבועתייהו. ובענין הכנסת התערבות יש שמקילין בדבר היכא שהמשביע האריכו פעם אחת ורוצין לומר שכיון שהמשביע התירו פעם אחת לצאת מבית תערובתו פעם אחת שוב אינו יכול לאסרו ולהזהירו בכח השבועה שיכנס שם בבית התערובות. שכיון שהותר הותר. ואעפ"י שמנהג העולם שנכנסין ויוצאין על פי המשביע יכול לומר המשביע

שעל פי המנהג התירם וקבל שבועתם שכן כותבין [51ב] בשטרות ישראל על דעתו ובשטרי האומות שהוא נשבע בטוב הבנתו. עם כל זה אומ' שכשנשבעו לדעתו או בטוב הבנתו אינו ר"ל לכל מה שהוא יכול להבין אלא כך רוצה לומר שלא יערים בעקר שבועה כגון בעיקר הפירעון שלא יהא דעתו דליפרעו אסקונדרי ולסוק שמיה מעות וכזו בעקר כניסת התערובות דלא ליסוק שם מקום אחר בשם המקום שהתנה ליכנס בתערובות ואומרי' שלא נשבעו אלא שלא בעקר חלות השבועה אבל לדברים אחרים אעפ"י שהם מנהג כיון שלא בארם בכיבוד שלם אומרי' שאינם חייבי' זהו קצת בני אדם האומ' כל העולה על רוחם. ודבר זה קל בעיני מסובין בעבור שעקר שבועתם היה ליכנס לבית התערובות לאזהרתו ושלא לצאת משם בלי דעתו. שאעפ"י שהמלוה מאריכו לצאת מבית התערובות יום או יומים מעולם לא התיר לו עקר שבועתו אבל חשב שיכול לצאת ולבא על פי רצונו שכן הבין השבועה שלא יצא מבית תערובתו בלי דעתו אבל בדעתו יכול לצאת ולבא ואם הוא אומ' שמעולם לא נשבע לצאת ולבא על פי רצונו אלא יהא אסו' משיכנס לשם עד שיתירהו משבועתו וכיון שהתירו שוב אינו יכול לאוסרו ולהזהירו מכח שבועתו דבר זה אינו מפני שמעולם לא התירו משבועתו כלל שלא היה דעתו בכך לצאת ולבא על פיו ולפי דעתו גם בפעם הראשונה יצא משם באסור שהרי לא התיר להם השבועה כלל. אבל אם יש עקר לסבר' זו לפי עניות דעתי בע"א יכול להיות לה שרש כגו' ראוב' שנשבע לשמעו' לפרו' לו מעות ביום פלני וכאשר הגיע הזמן בא הלוח למלוה שיאריכנו משבועתו שאינו יכול עכשיו לפרעו ומרויח לו הזמן חדש ימים דבר זה צ"ע היאך יפטר משבועתו בזה בעבור שהוא מאריך לו הזמן שהרי נשבע לו לחלוטי' שיפרע לו המעות ביום פלני. וא"ת מפני שהמלוה מאריך לו הזמן הרי המלוה ודאי אינו יכול להאריכו משבועתו אם לא פטרו לגמרי כדאמ' בנדר' בפ' הנודר מן הדיק ומייתי לה בפ' מי שאחזו בגיטין האומ' לחבירו קונם שאין אתה נהנה לי אם אי אתה נותן לבני כור של חטין או שתי חביות ר' מאיר אומ' אסור עד שיתן וחכמי' או' הרי זה יכול להתיר נדרו שלא על פי חכם ואומ' הריני כאילו התקבלתי. ר"ל שיפטרנו לגמרי וכיון שפטרו לגמרי היאך יכול אחר כן להכריחו מכח אותה שבועה הרי משמ' לכאורה שאינו פטור כלל או הוא פטור לגמרי בענין זה ר"ל שיש מקום לדבר זה אבל בענין התערובות אין הנדון דומה לראיה ואין לנהוג קלות ראש בדבר כלל ומי שנהג קלות ראש בדבר או בשום שבועה ובא לישראל אחרי כן עליה אין נזקקין עד שינהוג אסור בעצמו כימים שנהג בהם היתר או שלשים אם היו יותר משלשים יום כדגרסי' בנזיר מי שנזר ועבר על נזירותו אין נזקקין לו אלא אם כן נהג אסור בעצמו כימים אשר נהג בהם היתר דברי ר' יהוד' אמ"ר יוסי בד"א בנזירות מועטת אבל בנזירות מרובה דיו ל' יום. ונראה דהלכה כר' יוסי. הלכך כל מי שנהג קלות ראש בשבועתו אין נזקקין לו עד שינהוג אסור בעצמו כדאית' הת'. ודע גבירי שאסור לשאל על שבועה כל זמן שלא חלה כגו' שנשבע אם לא אפרע לך ביום פלני אהא אסור לאכול בשר או אכנס בבית התערובות שאינו יכול להיות נשאל מאכילת הבשר או מהכנסת התערובות קודם הגעתו זמן הפרעון דכיון דאכתי לא

חלה השבועה אין נשאלין עליה כדאמ' בפ' בתר' דנדררי' דאין נשאלין לנדררי' עד שיחולו דתניא קונם שאיני נהנית לאבא ולאביך אם אני עושה לפיך ר' נתן אומ' לא יפר וחכמי' אומ' יפר ואמ' בגמר' דסביר' ליה לר' נתן דאין חכם מתיר עד שיחול הנדר וקיימ' לו כותיה. הכ' נמי משמ' דכל היכא שלא בא זמן הפירעון לא חלה עליו חיוב התערובות ואסור הבשר הילכך אינו יכול להיות שואל עליה וכן כל כיוצא בזה. הנה לך גבירי שכתבתי לפני כבודך לפי עניות שכלי מה שהראוני מן השמים על מה ששאלת ממני ועל התמה שתמה על החבר ר' אהרן כשאמ' שיהא נשאל על שבועתו איפשר דסביר' ליה חדא מהני טעמי שכתבתי לפני כבודך ועם כל זה אין להקל ראש בדבר וכ"ש היכא דאיכא חלול השם שאין חולקין כבוד לרב ואעפ"י שדמינו הדברים אין לעשות מעשה מהם כמו שאנו רואים רבו' ע"ה דשקלי וטרו בסוגיא דחדא שמעת' ומחוק כל אחד [א52] מהם סברתו כאלו קבלה מסיני ועם כל זה כשבאין לעשות מעשה היו אומ' אם אנו מדמין נעשה מעשה. הילכ' אין לעשות מעשה בכיוצא בדברים האלה. אבל במה שכתבתי גבי שבועה שנעשה כאנס ודאי נר' לי דאע"פ שנשבע על דעת האנס שיכל להשאל עליה. ואתה אדני חכם כמלאך האלהי' ועשה כחכמתך. ועל כל פשעים תכסה אהבתך. ובחסדך אתי עיין בדברים האלה ושלח לי דעתך בהם אם תסכים עמהם או תשיג עליהם. ואמנם אין להאשימיני על שגיאיותי כי יצאתי מארץ מגורתי ומן העיר קברות אבתי ולמקום מושבי אין איש לעורר לבבי וגם כלי מלחמתי אינם אתי כי יצאו מעמדי שרי הרכב והפרשים הם ספרא וספרי ושאר הפירושים תוספתא ויתר החדושים ונשארתי לבדי כילדי קסתי קולמוסי ועטי הם הם לבדם הנותנים עצה וטעם לכן אל תאשימני כאשר לא כונתי יפה בכל מקום פרקי המסכויות אשר הבאתי ראייה מהם כי דע נאמנה באמונת שוכן מעונה כי הספרים לא היו עמדי וגם לא בגבולי. ובזכותך גבירי זכני הרחמן שנזכרתי המעט הזה אשר כתבתי לכבודך וכבוד גדלת תורתך ומשרתך יגדל לעד כנפש הכותב מרדכי ב"ר יצחק קמחי.

A question from the Nasi, R. Kalonymos of Narbonne, to the sage, our teacher and rabbi, R. Mordechai Kimḥi. Whoever possesses wisdom, everyone comes knocking at his door. God's nation call to him to hear Torah from his mouth, and direct their path to him so that he may irrigate them with Torah like a watered garden,⁵¹ to quench their thirst, to let them hear teachings and to satisfy them. Like you, the venerable sage, a pile of nuts,⁵² a peddler's pack,⁵³ a plastered water-hole that does not lose a single drop.⁵⁴ You are famed for your wisdom in all the gates of your brethren. So I, the

51 Isa 58:11.

52 *B. Git.* 67a, Rabbi Tarfon was described as a pile of nuts.

53 *Ibid.*, describing Rabbi Yoḥanan ben Nuri.

54 *M. 'Avot* 2:8.

least of your disciples, thirst for your waters that do not fail.⁵⁵ Let me sip from them and teach me what I ask of you in practical law (*halakhah le-ma'aseh*). Reuben was owed money by Simeon, given either as a deposit or a loan, and Reuben has no witnesses or any proof that could force him in court to return the money—neither in a Jewish court (*dine Yisrael*) nor in a gentile court (*dine ummot ha-olam*). Alternatively (*o kallekh le-derekh zo*)—he had witnesses and many proofs to force him in court to return the money. But Simeon was defiant (*nitpakker*) and entrenched in his denial (*huḥzak kafran*), and he threw back at Reuben debts and frauds and forgeries, demanding money that [Simeon] had not lent him, in order to steal from Reuben the money in his possession. The victim (Reuben) pursued him every day in order to regain his deposit or his loan, until Simeon became embarrassed and agreed to return the money on condition that Reuben would swear a certain oath (*shevu'ah*) that was of no use to him but which would be damaging to Reuben. Reuben was unable to wait any longer because he needed the money, and when he saw that he had no proof to compel him in court, he agreed to his words and performed the oath that he asked of him. Teach us, Rabbenu, the practical ruling in order to absolve Reuben, whether a way can be found to undo his oath, by a single expert or by three laymen, against the will of Simeon who had demanded the oath. For he was under duress, and he made the oath only in order to pull the carcass from the lion's teeth. Reuben has witnesses who testify that he told them he was under duress. I am writing to you in a way that does not befit your station and wisdom, in desperation. I wish you the best and wait upon your orders. One of the least of your students, Kalonymos of Narbonne.

Response: From the loins of Naḥshon,⁵⁶ the great ancestor who was first to cross the sea, the Jordan and the river Kishon. The glory of his honour cannot be encompassed by a book or recounted by a tongue. Since I first knew him, I have cherished his love like the pupil of my eye. My yearning for him does not let me sleep. My table has long been laid with the rich food (*dishun*) of his wisdom,⁵⁷ and now he has sent me delicacies from his hunt—wild goat and antelope (*dishon*).⁵⁸ On this Sunday of [the week in which we read] the

55 Isa 58:11.

56 *B. Sanh.* 12a.

57 Cf. Job 36:16.

58 Gen 27:3–4; Deut 14:4.

pericope of “the chief of Ezer, the chief of Dishan,”⁵⁹ I sat down to do battle with your pleasant words. But I found a tail with a thorn in it,⁶⁰ overgrown with prickles and barbs. My lord, you angered me, because you counted among those who confine themselves to the study hall a man who has not studied a book for several years. If you had not contacted me with an explicit written letter, I would have suspected that you were mocking me. Even more so, because you chose a castaway at the end of the land over the prepared knights of our land. You spurned the wellsprings of Torah for a dirty tub, and pure water for dirty standing water, leaving a wide stream that cannot be crossed on foot in order to swim in dew and ankle-deep puddles.⁶¹ But, by virtue of your humility and piety, I judged you favourably, saying that the members of the House of the Exilarch are different, for they have no neighbours. They asked me a question and granted me permission to expose their errors and to conceal their sins of love. Since I have been pardoned from responsibility for my errors and will not be blamed for my mistakes, for I have received permission from the House of the Nasi to judge and to issue a ruling,⁶² I will now commence fulfilling your request and doing your bidding and performing your commandment, in the matter of someone who swore to his fellow, whether in writing or orally.

First, Reuben was owed money by Simeon, given either as a deposit or a loan, and Reuben has no witnesses or any proof that could force him in court to return the money—neither in a Jewish court nor in a gentile court. Alternatively—he had witnesses and many proofs to force him in court to return the money. He was defiant and entrenched in his denial, and he threw back at Reuben debts and frauds and forgeries, demanding money that he had not lent him, in order to steal from Reuben the money in his possession. The victim pursued him every day in order to regain his deposit or his loan, until Simeon became embarrassed and agreed to return the money on condition that Reuben would swear a certain oath that was of no use to him but which would be damaging to Reuben. Reuben was unable to wait any longer because he needed the money, and when he saw that he had no proof to compel him in court, he agreed to his words and performed the oath that he asked of him. Teach us, Rabbenu, the practical ruling in order to absolve

59 Gen 36:30.

60 *B. Rosh Hash.* 17a.

61 Cf. *Ezek* 47:3–5.

62 Cf. *b. Sanh.* 5a.

Reuben, whether a way can be found to undo his oath by a single expert or by three laymen, against the will of Simeon who had demanded the oath. For he was under duress, and he made the oath only in order to pull the carcass from the lion's teeth. Reuben has witnesses who testify that he told them he was under duress. This is what you wrote.

You asked me a second question. It once happened in Catalonia that Reuben lent money to Simeon and swore that, if [Simeon] did not repay the money by a certain date, [Simeon] would enter the house of hostages as a warning. When the time of repayment arrived, [Simeon] did not have the money available to repay the loan, and he entered the house of hostages as a warning. He remained there many days, and the lender was unwilling to undo [his oath] in any way. Many distinguished people begged him, but he paid them no attention. The famous Rabbi Aaron ha-Levi of Barcelona was there, and he said that if [Reuben] would not extend [the time of repayment], [Simeon] could ask for his oath to be undone until he was able to repay [the debt]. Many people were baffled by this. You asked, my lord, how it could be just for someone who willingly made an oath to his fellow to then have that oath undone, and under what circumstances. You begged me to explain it all to you – both the matter of extending the loan and of extending the incarceration.

I now begin to explain to you to the best of my mental ability what you asked, my lord, about Reuben who was owed money by Simeon as a loan or a deposit, etc. He would not return it to him until he made him an oath that was of no use to him but which would be damaging to Reuben. He has witnesses who testify that he told them he was under duress. You asked, my chieftain, whether he can ask for his oath [to be undone]. It appears to me, according to what you wrote, that Simeon had no need of the oath, and he demanded it only in order to cause damage to Reuben, to be able to hold that oath over him. Reuben made the oath only in order to retrieve his money because he could not manage with it. This is comparable to "It is permissible to swear to murderers and thieves,"⁶³ since Reuben was under the ultimate duress. It would appear that even though the oath was made at Simeon's demand, [Reuben] never accepted it with Simeon's intention, and that his mouth and his heart were at odds in this, since he revealed to others that he was under duress, and it was made only in order to save himself from his oppressor who was stealing his money, since he could not compel him in court, neither

in Jewish court nor in Gentile court, or he was falsely accusing him in order to steal his money. Therefore, it seems obvious that his status is like that of the murderers and thieves and self-appointed tax-collectors, regarding all of whom our Sages permitted swearing, either vows or oaths—as it says in the fourth chapter of *Nedarim*⁶⁴—so that a person could escape the duress. Even though they could simply have paid the tax, they allowed them to swear, and even if they swore and forbade upon themselves all the fruit in the world except for the fruit of the royal household, they are not forbidden to them because they did not intend to forbid the fruit upon themselves but to save themselves from duress. We follow their intention and not their words, as is seen also in Tractate *Shevuot*⁶⁵ regarding vows of exaggerations and oaths of exaggeration which were permitted, even if he made an oath “that I will not eat if I did not see a camel flying in the air”⁶⁶ or similarly twice the number of people who left Egypt,⁶⁷ and this is called an oath of exaggeration because he does not mean to forbid the fruit but to confirm his lie. Even though it is forbidden to make such an oath, nevertheless [the fruit] does not become forbidden to him. Rabbi ibn Migash wrote there in tractate *Shevuot* that anything that he did only in order to confirm his lie does not make the fruit of the world forbidden to him.⁶⁸ So too regarding vows to murderers, where he is doing it only in order to save himself from duress, the fruit are not forbidden to him, for they both fall into the same category in this matter. There is also a variant found in the texts in this passage of the flying camel,⁶⁹ “Did not Rav Amram say, when he says [all the fruits of the world] will be forbidden etc. if they do not belong to the royal house, so too here when he says they will be forbidden etc. if I did not see a flying camel.” Clearly, both of these have the same reason, that he did not intend to forbid the fruit, and thus they both belong to the same topic, namely that since they intended only to confirm their lie or to save themselves from duress, the fruit did not

64 Ibid.

65 *B. Ned.* 24b.

66 *B. Shevu.* 29a.

67 *M. Ned.* 3:2.

68 Joseph ibn Migash, *Hiddushe Masekhet Shevuot*, ed. Moshe Shmuel Shapiro (Jerusalem: Be'er Ya'akov, 1992), 66 (to *b. Shevu.* 27b).

69 *B. Ned.* 28a. Kimḥi seems to have misremembered the source. Several medieval commentators noted the absence of the flying camel case in *Nedarim*. See *b. Shevu.* 29a, and Tosafot and Solomon ibn Adret ad loc.

become forbidden to them. So too regarding this topic under discussion, since he made the oath only out of his great need to save himself from duress to recover his money, and his mouth and his heart were not aligned and he never intended to abstain because of the oath from whatever he swore to avoid. Just as in regard to vows to murderers and vows of exaggeration, the fruit did not become forbidden, so too here it is no different, even though in vows to murderers they did not explicitly make the vow according to the intention of the murderer, it is still no different because it can be claimed that he never intended to privilege the oppressor's intention over his own. The proof of this is that he made a declaration about his duress.

Furthermore, from the second question it emerges that, after the fact, he is absolved even when he swore on his own, so it must be so when he was forced to do it. Even though from the discussion of Rav Amram's statement in the fourth chapter of *Nedarim*,⁷⁰ where it says "all the fruits of the world are forbidden to him," it emerges that the fruit was indeed forbidden, that is because the Mishnah states "One may swear," ab initio, [implying that] it is permitted ab initio to make a vow. Then they challenge it by saying that, if the vow did not render the fruit forbidden, then the vow was a false oath and it is still considered a violation. Rather, if it was permitted to make the vow, the vow must have forbidden the fruit and he intends to fulfill this oath or vow and it is not considered a vain vow. The Gemara concludes that it is as if he said in his heart "today" and it became forbidden only for that day, and since he upheld his vow that day, it is sufficient. Even though in tractate *Kiddushin*⁷¹ it is established that inner thoughts are not declarations, in regard to duress like her they are considered declarations. Here, in regard to this matter, he did not make a vain statement since he upheld his oath for a day or two or a year or two, since according to you, my lord, it seems that he did not vow to give him anything but rather to avoid something. Also, since Reuben did not initiate the oath to Simeon and did not demand the oath as a condition for returning his money, since he forced him, it is unworthy to uphold the oath. Behold, my lord, that according to the comparison we made with murderers and thieves and tax-collectors, he does not need to ask for his oath [to be undone] at all, unless he is an unlearned person, with whom we are stricter so that they do not become frivolous about vows and oaths. In that case, we can find a way to undo his oath. But if the oath-maker

70 *B. Ned.* 28a.

71 *B. Kidd.* 49b.

is a scholar (*talmid hakhamim*) like you, my lord, he does not need to ask, as stated in the fourth chapter of *Nedarim*.⁷²

This is the law in order to be clean before God, before whom all actions are measured.⁷³ But in order to be clean before Israel, he must ask for his oath [to be undone], so that Simeon the bully should not spread the word that he broke his oath. Therefore Reuben should take three people with him to Simeon and to tell him: “So and so, you know that you withheld my money for many days, and you would not return it until I swore to you about this thing. Now I cannot or will not maintain the oath, because it is an obstacle and an embarrassment, and I beg you to release me from it. If not, I will ask for it [to be undone].” If he is willing to release him, good. If not, those three people undo it in his presence, even against his will, for the reasons that I will write below about the second question. For, once he has notified him, the court can free him—either the same people before whom he made his declaration to Simeon or others before whom they can testify that Reuben had notified Simeon that he wanted to ask for the oath [to be undone], and certainly if the same witnesses before whom he testified to his duress are available, then any court can free him. Admittedly, in my humble opinion, it is difficult to find witnesses who can clearly testify to such duress, as Rabbi Samuel wrote in the name of Rabbenu Ḥananel in chapter *Ḥezkat ha-Batim* about the case of the orchard.⁷⁴ But in this case it will not harm us that he did not appoint them since without such witnesses he can also ask [for the oath to be undone]. Even if he has witnesses to only part of the duress, he should ask [for it to be undone] and notify Simeon that he is going to ask for the oath [to be undone] so that he not be suspected of violating his oath. Regarding murderers and thieves this consideration [of suspicion] is not applicable, since if a murderer or a thief or a tax collector sees him eating what was [ostensibly] forbidden to him, if the fruit are not from the house of the king, he will not suspect that he is violating his oath but rather will assume that the fruit are from the house of the king, as he had sworn. But in this case that is under discussion, if he does not notify him, he will suspect him of violating his oath. Therefore he must notify and then ask according to whatever opening he finds in the vow, and it is undone for him, *ab initio*. This is my opinion of the practical law in the case that you asked me about,

72 *B. Ned.* 14a.

73 1 Sam 2:3.

74 Samuel ben Meir (Rashbam), commentary on *b. B. Bat.* 40b, s.v. *hay uvda de-pardesa*.

my lord, that the oath was unnecessary for Simeon the oppressor. Even if it had been necessary for him and served some purpose and benefit for him, seeing as he was under no obligation to make the oath—either due to a condition or some negotiation—but only because he was under duress, I say that it can certainly be permitted for him, *ab initio*, as I wrote to you, my chieftain and friend. But if Reuben were obligated to make that oath for some other reason—for example, if he made a condition with him several days or years earlier and he did not want to fulfill it, and now he pawned the deposit or the loan in his possession, which led to his doing as described—that is not called duress, since a person can seek self-help in a case like that, and *ab initio* we cannot take it lightly, and the ruling would be as in the second question, as I will set out before your honour, my lord.

The second question, that you saw that in the area of Catalonia, about someone who swore to his fellow, etc., as I wrote above. Rabbi Aaron ha-Levi said that if he did not extend [the time] for him, he should ask and his oath would be undone. Many people were baffled by him. You asked, my friend, how it could be just for someone who willingly made an oath to his fellow to then have that oath undone, and under what circumstances. You begged me to explain it all to you – both the matter of extending the loan and of extending the incarceration. Now, my chieftain and friend, turn your ear to what I have to say. It is indeed true that whoever swore to his fellow to repay his debt by a certain date and if not he will enter the house of hostages, and he comes to ask for his oath [to be undone], we do not take his case. The people who were baffled by the sage Rabbi Aaron were justified, because it says in *Nedarim* that someone who vowed to forbid any benefit to his fellow is permitted only in his presence.⁷⁵ It also says there in *Nedarim*, in the chapter of R. Eliezer, that the Holy One said to Moses our Teacher: “You made an oath in Midian—in Midian it shall be undone.”⁷⁶ About Zedekiah it says “whose oath he flouted and whose covenant he broke,” that he was punished for asking [for his oath to be undone] without the presence of Nebuchadnezzar, as it says there in *Nedarim*.⁷⁷ However, it is possible that Rabbi Aaron realized that the oath-taker was unable to repay his debt while confined to the house of hostages, and in such a case when there is a pressing need, if he undid his oath, it is permitted after the fact. The borrower can go to the lender and

75 *B. Ned.* 65a.

76 *Ibid.*

77 *Ezek* 17:16; *b. Ned.* 65a.

beg him, in the presence of two or three people, to extend [his time] until he is able to repay the debt. If he does not want to extend, then he can tell him that he is going to ask for the oath [to be undone] and that from that day onwards he should not suspect him of violating his oath. He should then ask for his oath [to be undone] in his presence, or not in his presence since he notified him. It is possible that in this way, if it was undone, the dissolution is valid, even though we hold that someone who made a vow or an oath to his fellow in his presence, it can be undone only in his presence, as it says in *Nedarim*, and as we see regarding Moses our Teacher, to whom the Holy One said "In Midian you vowed, in Midian undo your vow," and regarding Zedekiah it says "whose oath he flouted and whose covenant he broke."⁷⁸ Nevertheless, in his presence or with notification even without his presence, if it was undone, it is permitted, according to the Palestinian Talmud which explained that the reason it is undone only in his presence is because of suspicion and embarrassment, viz. that he would suspect him of violating his oath if he was not aware that he had asked about it. If he notified him before asking about his vow or oath, there is no further suspicion or embarrassment.⁷⁹ If it was undone in his presence or having notified him, even if it was done without his approval it is undone, as we find in tractate *Sotah* regarding Joseph who wanted to travel [to the Land of Israel] to bury his father, and Pharaoh did not want to grant him permission.⁸⁰ Joseph asked him: "What shall I do about the oath I made to my father?" Pharaoh responded, "Go and ask for your oath [to be undone]." Joseph responded: "I will also ask about my oath to you, when I swore that I would not reveal that you do not know the Holy Tongue." He said: "Go and bury your father as he made you swear," etc. as it appears in tractate *Sotah*. We find that he told Joseph to ask about his oath, and even though Pharaoh was unhappy, Joseph told him that he would ask about the oath against his will and to his detriment, but there is no prohibition because he notified him until Pharaoh acquiesced and told him "Go," etc.

Another clear proof that his approval is not required post facto is from the Gibeonites, from whom R. Judah proved in the fourth chapter of *Gittin* that a vow made in public cannot be undone, just like a vow made to the

78 *B. Ned.* 65a.

79 *P. Ned.* 5:6 (39b).

80 *B. Sof.* 36b.

public according to the Rabbis.⁸¹ If a person who made an oath to his fellow could only ask for it to be undone with the permission of his fellow, how could R. Judah prove from there that a vow made in public cannot be undone? Perhaps the reason that the vow could not be undone was that we hold that [when] someone made a vow or an oath to his fellow in his presence, it can be undone only in his presence and with his approval, and the Gibeonites were not present. Even if they had been brought against their will, they would not have accepted that undoing [of the vow] so that they would not die. Rather, a vow made in public can normally be undone. If you were to object that it was not considered a vow in their presence because the vow was not made before the Gibeonites but only before their emissary, that cannot be claimed. First, a person's emissary is considered the same as the person and this is considered in his presence. Further, the approval of the emissaries would certainly be required, and the emissaries would never agree to that undoing. Therefore, if it could not be undone with his approval, how could R. Judah prove from there that a vow made in public cannot be undone? Perhaps there it is because it could only be undone with the approval of the Gibeonites, and the Gibeonites or their emissaries would never approve of it since they did not agree to die. Rather it must be that the oath could have been undone without their approval, in their presence or not as long as they notified them. That seems to be the opinion of the Palestinian Talmud,⁸² and of the author of *Sefer ha-Hashlamah* at the end of the chapter, on the basis of the Gibeonites and the Palestinian Talmud.⁸³ We also found that Rabbi Jacob, of blessed memory, wrote explicitly that it is only undone in his presence, but if it was undone, the undoing is valid even without his knowledge.⁸⁴ Rabad, of blessed memory, disagreed with him and asked why, if in fact it was permitted post facto, Zedekiah was punished for the oath to

81 *B. Git.* 46a.

82 Above, n. 78.

83 Meshulam ben Moses of Béziers's work, *Sefer ha-Hashlamah*, is not extant on tractate *Gittin*. Daniel Katz, "The Talmudic Exegesis of Rabbi Meshulam son of Rabbi Moshe in His Work *Sefer HaHashlamah*" (Ph.D. diss., Bar-Ilan University, 2012), 95–98 (Hebrew). One section from his discussion ad loc. was copied from the work in ms. Oxford 781, fol. 95v–96r (see Katz, *Talmud Exegesis*, 109 n. 302), but it does not include the section on the Gibeonites.

84 Tosafot *Gittin* 35b, s.v. *lehush*.

Nezzar.⁸⁵ It can be answered that Zedekiah was punished for desecrating God's great name when he failed to notify Nebachednezzar, as it says there in *Nedarim*, for that deed "the elders of Fair Zion sit silent on the ground,"⁸⁶ that they took away their pillows and cushions, and he was punished for the great desecration of the Divine Name.

In my humble opinion, there is another proof: if it were true that whoever made an oath to his fellow could not ask [for it to be undone] without his fellow's approval, what would be the difference between a vow made to the public and a vow made to an individual? It says in *Gittin* regarding [a priest] who marries women whom he is forbidden to marry, "he can take a vow and serve and descend [from the altar] and divorce,"⁸⁷ and the conclusion is that he makes the vow to the public.⁸⁸ Rashi explained: "the public must say to him, 'we make you swear to us.'"⁸⁹ Rashi, and other commentators, believed that a vow made to the public is only one in which the public were known and actively involved in the oath and told him "it is to us." We also found in the name of Rabbi Hayye Gaon that even if a person says in public all day long "I am making a vow or oath to the public," it is not considered a vow to the public unless he says in their presence, "I am making a vow to you."⁹⁰ We wrote more in our novellae in the name of Rabbenu Ḥananel. The author of *Sefer ha-Ittur* also wrote in his name in the section on *ketubbah* that "a vow made to the public can never be undone" means that the person who made the vow cannot ask for it to be undone until he notifies the public.⁹¹ End of quote from Rabbenu Ḥananel. This implies that, if he notified them, it can be undone, and this is the ruling in the matter according to Rabbenu Ḥananel, that, for non-obligatory matters a vow made to the public cannot

85 Abraham ben David (Rabad), glosses on *Hilkhot Alfasi*, *Gittin* 18b. See Solomon ibn Adret, *Ḥiddushe ha-Rashba Nedarim*, ed. Yaakov Hayyim Solomon (Jerusalem: Mosad Harav Kook, 2008), 259 (*b. Ned.* 65a); idem, *Ḥiddushe ha-Rashba Gittin*, ed. Yisrael Sclar (Jerusalem: Mosad Harav Kook, 1986), 325 (*Gittin* 35b).

86 Lam 2:10.

87 *B. Giṭ.* 35b.

88 *B. Giṭ.* 36a.

89 Rashi, *Gittin* 36a, s.v. *al da'at rabbim*.

90 B.M. Lewin, *Otsar ha-Geonim – Tractate Gittin* (Jerusalem: Mosad Harav Kook, 1941), 70.

91 Isaac ben Abba Mari, *Sefer ha-Ittur*, part 2 (Vilna: Fuenn, Rosencrantz and Schriftzetter, 1873), 32a.

be undone unless he notifies those people, but for an obligation (*mitsvah*) it can be undone even without their knowledge since for a *mitsvah* it can be assumed that they would acquiesce, that they did not intend to uproot a *mitsvah*. Behold, my brother, that all of these rabbis believed that a vow made to the public requires the knowledge of that public. Therefore, if someone who made an oath to an individual cannot undo it without his knowledge and will, what is the difference between the public and an individual? The reason that a vow made to the public cannot be undone is given in the name of Rabad, that since “the public” is at least three people, according to the dispute in *Gittin*, and they could form a [three-member] court, any individual must defer to them and they possess power, because the court is powerful. But before one or two people, who do not have such power, an individual does not defer and therefore it can be undone. There is also some proof that it is permissible to ask for an oath made to an individual without his knowledge, from Moses our Teacher who made [the People of] Israel swear, as it says there in *Shevuot*:⁹² “When Moses made Israel swear, he said to them—You must know that I am not making you swear to yourselves, but to me and to God,” etc., until: “And according to you, he could have said ‘to me,’ why did he need to say ‘and to God’? So that their oath would not be undoable.” This implies that, if he had not included God, it could have been undone even though Moses made them swear to him. Therefore he needed to include God with him so that it could not be undone.

Regarding entry in hostageship, there are some who are lenient in the matter when the [lender, who] made him swear, extended [the date of repayment] once—they want to say that, since he allowed him once to leave the house of hostages, he can no longer confine him and threaten him by strength of the oath to enter the house of hostages, because it was undone it is undone. Even though the common custom is to enter and leave according to the will of the lender, and he can say that he allowed it according to the custom, as it says in Jewish contracts: “to him” (*al da'ato*), and in the Gentile contracts, that he swears with the best of his understanding. Nevertheless, they say that when they swore to him or with the best of his understanding, it does not mean anything that he could understand, but rather to say that he cannot cheat him regarding the essence of the oath—for example, the essence of the repayment, that he cannot intend to repay with checkers and

to call them coins.⁹³ Similarly, with the essence of the hostageship, that he cannot call a different place by the name of the place where he agreed to go as a hostage. They say that the oath was only regarding the essence of the oath, but for other matters—even though they are the custom—if they were not stated explicitly, they say they are not obligated. These are people who say whatever they like. In my eyes, this is lighter than bran,⁹⁴ since the essence of their oath was to enter the house of hostages at his warning, and not to leave without his permission. Even though the lender extends the time allowing him to leave the house of hostages for a day or two, he never undid the oath itself. Rather, he understood that he is allowed to come and go with his permission, since he understood the oath to mean that he could not leave the house of hostages without his permission, but with his permission he could come and go. If he says that he never swore to come and go with permission, but rather that he would be bound from the time he entered until he was freed from his oath, and that once he had been freed he could no longer be bound and threatened by his oath, this is false. He never freed him from the oath because he did not intend that [but rather only] to come and go by his word and with his permission, and even the first time he left illegally since he had not undone his oath at all. But if there is any basis for this position, in my humble opinion it can be found in a different way. Reuben swore to Simeon to repay his money on a certain date, and when that date arrived the lender asked the borrower for an extension to his oath since he was presently unable to repay, and he extended it by a month. It is unclear how he could be released from his oath in this way by extending the time, since he swore to him absolutely that he would repay on a certain day. If you were to say that it is because the lender extended the time, the lender certainly cannot extend the oath without absolving him entirely, as it says in *Nedarim*⁹⁵ and cited in *Gittin*,⁹⁶ “Someone who says to his fellow: ‘I swear that you will not derive any benefit from me unless you give my son a measure of wheat or two barrels,’ Rabbi Meir says that he is forbidden until he gives [the produce to the son] and the Sages say that he can undo his vow without a sage by saying ‘It is as if I received [the produce].’” This means that he absolves him entirely, and once he has absolved him, how can

93 *B. Ned.* 25a.

94 *B. B. Bat.* 98b.

95 *M. Ned.* 8, 7; *b. Ned.* 63b.

96 *B. Git.* 74b.

he later coerce him by the strength of that same oath? It would seem that he is either not absolved at all, or entirely absolved in this matter, meaning that there is room in this matter. But in the matter of the hostages, the subject is dissimilar to the analogy. One should not be frivolous in this matter at all, and anyone who is frivolous in this or any oath and afterwards comes to ask for it [to be undone], he is not dealt with until he maintains himself under the prohibition for the period of time that he was frivolous about it, or for thirty [days] if it was for more than thirty days, as it says in *Nazir*:⁹⁷ “[If someone] made a nazirite [vow] and violated it, they do not deal with him unless he maintained himself under the prohibition the number of days that he flaunted it—this is the opinion of Rabbi Judah. Rabbi Yose said—this applies to a short nazirite period, but for a long nazirite period, thirty days are sufficient.” It would appear that the law follows Rabbi Yose. Therefore, whoever was frivolous with his oath is not dealt with until he maintains himself under the prohibition, as it says there.

You should know, my nobleman, that it is forbidden to ask for an oath [to be undone] before it has gone into effect. For example, if he swore “If I do not repay you on this-and-this day, I shall be forbidden from eating meat, or I will enter the house of hostages,” he cannot ask about eating meat or entering the house of hostages before the date of repayment arrives. Since the oath has not yet gone into effect, it cannot be asked about, as it says in the last chapter of *Nedarim* that vows cannot be asked about before they go into effect, as it was taught there:⁹⁸ “I will derive no benefit from my father or from your father if I prepare anything for you”—Rabbi Nathan says that he cannot annul it and the Sages say that he can annul it.” The Talmud says⁹⁹ that in Rabbi Nathan’s opinion, a sage cannot undo a vow before it has gone into effect, and we follow his opinion. Here too it seems that whenever the repayment has not come due, the hostageship does not apply to him and the meat is permitted, and therefore he cannot ask about it, and so with any similar case.

Here, my lord, is what I have for your honour in my opinion, as revealed to me from heaven, about your question to me and about your bafflement about the Ḥaver Rabbi Aaron who said that he could ask for his oath [to be

97 *B. Ned.* 20a; cf. *b. Naz.* 32a.

98 *B. Ned.* 89b.

99 *B. Ned.* 90a.

undone]. Perhaps he relied on one of the explanations I have written for you. Nevertheless, one may not be frivolous about this, certainly not when there is desecration of the Holy Name (*hillul hashem*)—then we do not hold back out of respect for a rabbi. Even though we have made some suggestions, they should not be followed in practice, just as we find our Sages, of blessed memory, who would discuss a topic and each of them would hold fast to his own opinion as if he had received it from Mount Sinai, but nevertheless, when it came to practice, they would say “because we made suggestions, should we now follow them in practice?!”¹⁰⁰ Therefore one should not follow these words in practice. However, in regard to what I wrote about the oath made under duress, it certainly appears to me that even though he swore to the oppressor, he can ask for it [to be undone].

Now, my lord, wise as God’s angel, act in accordance with your wisdom¹⁰¹ and let your love cover up all faults.¹⁰² Through your kindness towards me, read these words and send me your opinion about them, whether you agree with them or dispute them. However, I cannot be blamed for the errors because I have left the land of my sojourn and the city of my ancestors’ tombs, and in my dwelling there is no man to arouse my heart. Nor are my weapons with me, for the chariot officers and the knights (*parashim*) have left me—that is, Sifra and Sifre and the other commentaries (*perushim*), Tosefta and the other novellae. I have been left alone as I was born, with only my quill and calamus and pen to advise me. Therefore, do not blame me when I did not always refer accurately to the chapters of the tractates when I cited prooftexts from them, because you should surely know that I did not have the books with me or even in my region. Through you, my lord, the Merciful One allowed me to remember the little that I wrote in your honour and the honour of your exalted scholarship. Your prestige should grow forever. Signed: Mordechai ben Isaac Kimḥi.

100 *B. Git.* 19a.

101 1 Kgs 2:6.

102 Prov 10:12.