Dr.Yael Landman

Dr. Yael Landman is Affiliated Fellow at the Herbert D. Katz Center for Advanced Judaic Studies at the University of Pennsylvania and Acquisitions Editor for Gorgias Press. She holds a Ph.D. from Yeshiva University.

Asham of False Oaths: Why Does the Offender Confess?

Drawing on biblical and ancient Near Eastern evidence about the consequences of swearing falsely, I suggest a new understanding of the *asham*case (Lev 5:20-26) involving property violation and a subsequent false oath.

[Dr. Yael Landman](https://www.thetorah.com/author/yael-landman)



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A Guilt Offering for Taking Property and Swearing Falsely about It

Leviticus 1–5 lays out the rules for Israelites bringing various types of sacrifices. The final sacrifice is an *asham* (guilt offering)[1] for a two-step infraction.

Step 1—Committing a Property Offense

ויקרא ה:כא נֶפֶשׁ כִּי תֶחֱטָא וּמָעֲלָה מַעַל בַּי־הוָה וְכִחֵשׁ בַּעֲמִיתוֹ בְּפִקָּדוֹן אוֹ־בִתְשׂוּמֶת יָד אוֹ בְגָזֵל אוֹ עָשַׁק אֶת־עֲמִיתוֹ ה:כב אוֹ־מָצָא אֲבֵדָה וְכִחֶשׁ בָּהּ...

Lev 5:21 When a person sins and commits a trespass against YHWH by dealing deceitfully with his fellow in the matter of a deposit or a pledge, or through robbery, or by defrauding his fellow, 5:22 or by finding something lost and lying about it…

Any one of these offenses seems to be serious enough to explain the need to bring a guilt offering. However, the case continues with a second offense, and implies that only then is the offering mandatory.

Step 2—Swearing Falsely about the Offense

ה:כב ...וְנִשְׁבַּע עַל־שָׁקֶר עַל־אַחַת מִכֹּל אֲשֶׁר־יַעֲשֶׂה הָאָדָם לַחֲטֹא בָהֵנָּה.

5:22 … if he swears falsely regarding any one of the various things that one may do and sin thereby.

It seems strange that the Torah here adds this second offense. To avoid this problem, Abraham ibn Ezra (1089–1167) suggests that the false oath is just another example of a sin for which the *asham* will be necessary:

ונשבע על שקר—פירושו: או נשבע על ממון שיבקש אדם ממנו. והעד: או מכל אשר ישבע עליו לשקר.

“And he swore falsely”—meaning, or he swore [falsely] about money that is fellow demanded from him. And the proof [that this is the meaning comes from the later restatement of the same sin in v. 24]: “or from anything about which he swore falsely.”

This is an unlikely translation considering that the phrase about the false oath is not presented the same way as the long list in vv. 21-22a but instead seems to reflect back on the previous offenses. Thus, the false oath here is a second wrongdoing on top of whatever previously listed property sin the perpetrator committed.

Exculpatory Oaths

Verse 22b describes what scholars call exculpatory oaths, where the accused swears innocence, that she or he has not committed a particular offense. Such oaths are widely attested in ancient Near Eastern law collections (such as the Laws of Hammurabi) and in trial records from Mesopotamia. They take place when one party accuses another party of wrongdoing, but without evidence or eyewitness testimony to back it up.

Let us consider two examples of exculpatory oaths that appear in the Pentateuchal law collections.[2]

Adultery (Num 5)—A woman suspected of adultery by her husband, וְעֵד אֵין בָּהּ, “and there is no eyewitness against her” (v. 13), is forced to swear an oath of innocence.

Herding Mishap (Exod 22)—A shepherd watching someone else’s animal:

שמות כב:ט כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ חֲמוֹר אוֹ שׁוֹר אוֹ שֶׂה וְכָל בְּהֵמָה לִשְׁמֹר וּמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבָּה אֵין רֹאֶה כב:י שְׁבֻעַת יְ־הוָה תִּהְיֶה בֵּין שְׁנֵיהֶם אִם לֹא שָׁלַח יָדוֹ בִּמְלֶאכֶת רֵעֵהוּ וְלָקַח בְּעָלָיו וְלֹא יְשַׁלֵּם

Exod 22:9When a man gives to another an ass, an ox, a sheep or any other animal to guard, and it dies or is injured or is carried off, with no witness about, 22:10an oath before YHWH shall decide between the two of them that the one has not laid hands on the property of the other; the owner must acquiesce, and no restitution shall be made.

We see from both cases, the administration of an oath occurs in a case when the accusing party has no eyewitness.[3] The oath in Leviticus 5, therefore, is likely a case where forensic evidence is unavailable.[4] Although the accuser cannot prove a claim against the defendant, the Torah here would require them to swear an exculpatory oath, which is enough for the judges to rule in their favor.

The logic behind this practice is that the gravity of swearing by the deity—whether by YHWH in the Bible or by Bel, Nabû, etc. in Mesopotamian legal texts—ensured that in most cases, an accused party would not dare swear falsely in their name. Leviticus 5:20–26 envisions a situation where this assumption has failed, and the thief or other lawbreaker has gotten away with their wrongdoing.

The Offender is *Ashem*

The case here takes a strange turn. Although the thief apparently swore an exculpatory oath and would thus have been considered innocent in the eyes of the law, for some reason, the thief confesses anyway and returns the stolen items.

ויקרא ה:כג וְהָיָה כִּי־יֶחֱטָא וְאָשֵׁם וְהֵשִׁיב אֶת־הַגְּזֵלָה אֲשֶׁר גָּזָל אוֹ אֶת־הָעֹשֶׁק אֲשֶׁר עָשָׁק אוֹ אֶת־הַפִּקָּדוֹן אֲשֶׁר הָפְקַד אִתּוֹ אוֹ אֶת־הָאֲבֵדָה אֲשֶׁר מָצָא ה:כד אוֹ מִכֹּל אֲשֶׁר־יִשָּׁבַע עָלָיו לַשֶּׁקֶר...

Lev 5:23 When he has thus sinned, and is guilty (*ve*-*ashem*), he restores that which he got through robbery or fraud, or the deposit that was entrusted to him, or the lost thing that he found, 5:24 or anything else about which he swore falsely…

Why would someone who had the gall to swear falsely by YHWH in the first place then change course and admit what they had done? The answer depends on how we translate וְאָשֵׁם (*ve*-*ashem*)—rendered above as “is guilty”—in this context.

Realizing Guilt—NJPS translates the phrase as “realizing his guilt,” but this makes little sense in context. As noted by the expert in biblical Priestly literature, Jacob Milgrom (1923–2010), although such a translation works for inadvertent sins, in this case, the offense was deliberate: the offender lied and then swore an oath saying that the lie was true.[5]

Feeling Guilty—Milgrom understands *ve-ashem*as referring to a *feeling*of guilt.[6] In this case, the offender experiences “qualms, pangs, remorse, and contrition” and feels “conscience-smitten or guilt-stricken.”[7]This feeling is what Baruch Schwartz has called the “psychological component” that the term *ashem*may bear.[8] Yet, while it is certainly possible that our offender may have indeed felt pangs of guilt, a psychological reading of the law seems unlikely.[9]

Becoming Guilty—A third approach, suggested by Bruce Wells of the University of Texas at Austin, is that the term should be translated as “becoming guilty,” reflecting an experience of physical or material suffering.[10] For example, the guilty person may experience illness or financial loss, which the offender would interpret as punishment for wrongdoing.[11]

If I Swear Falsely, Then… What?

The physical suffering that *ve-ashem*denotes is directly related to the false oath. Biblical and comparative evidence suggest that the exculpatory oath would have been formulated conditionally: “If I committed such and such (then may such and such befall me)” – with the punishment in the apodosis (the “then” clause).

Sometimes, the apodosis is explicit, like what we see with the adultery case referenced above, in which the presiding priest says to the woman:

במדבר ה:כא...יִתֵּן יְ־הוָה אוֹתָךְ לְאָלָה וְלִשְׁבֻעָה בְּתוֹךְ עַמֵּךְ בְּתֵת יְ־הוָה אֶת יְרֵכֵךְ נֹפֶלֶת וְאֶת בִּטְנֵךְ צָבָה. ה:כב וּבָאוּ הַמַּיִם הַמְאָרְרִים הָאֵלֶּה בְּמֵעַיִךְ לַצְבּוֹת בֶּטֶן וְלַנְפִּל יָרֵךְ וְאָמְרָה הָאִשָּׁה אָמֵן אָמֵן.

Num 5:21 … “May YHWH make you a curse and an imprecation among your people, as YHWH causes your thigh to sag and your belly to distend; 5:22 may this water that induces the spell enter your body, causing the belly to distend and the thigh to sag.” And the woman shall say, “Amen, amen!”

In addition, the well-known oath about forgetting Jerusalem, sung at Jewish weddings, contains an explicit apodosis:

תהלים קלז:ה אִם אֶשְׁכָּחֵךְ יְרוּשָׁלָ‍ִם תִּשְׁכַּח יְמִינִי. קלז:ו תִּדְבַּק לְשׁוֹנִי לְחִכִּי אִם לֹא אֶזְכְּרֵכִי אִם לֹא אַעֲלֶה אֶת יְרוּשָׁלַ‍ִם עַל רֹאשׁ שִׂמְחָתִי.

Ps 137:5 If I forget you, O Jerusalem, let my right hand wither; 137:6 let my tongue stick to my palate if I cease to think of you, if I do not keep Jerusalem in memory even at my happiest hour.[12]

Similarly, in Job 31, Job includes a number of oaths with various negative consequences such as:

איוב לא:כא אִם הֲנִיפוֹתִי עַל יָתוֹם יָדִי כִּי אֶרְאֶה בַשַּׁעַר עֶזְרָתִי. לא:כב כְּתֵפִי מִשִּׁכְמָה תִפּוֹל וְאֶזְרֹעִי מִקָּנָה תִשָּׁבֵר.

Job 31:21 If I raised my hand against the fatherless, looking to my supporters in the gate, 31:22 May my arm drop off my shoulder; My forearm break off at the elbow.

Other consequences mentioned by Job in this chapter are agricultural loss, financial ruin, property damage, alienation of one’s spouse, and murder (vv. 5–10, 38–40). We see similar types of negative consequences for false oaths in Mesopotamian texts, such as (UET 6, 402):

The one who swears a (false) oath by Nanna and Šamaš will be covered with leprosy. He will become poor and have no heir.[13]

Other consequences include rejection by deities, death at the hand of a deity or family member, and childlessness.[14]

Nevertheless, most biblical and ancient Near Eastern oath formulas—exculpatory or otherwise—omit an apodosis, leaving it implied. A classic example is the oath formula, “may God do this to me and more,” which appears numerous times in the Bible. For example, when Ruth swears not to leave her mother-in-law Naomi, she says:

רות א:יז ...כֹּה יַעֲשֶׂה יְ־הוָה לִי וְכֹה יֹסִיף כִּי הַמָּוֶת יַפְרִיד בֵּינִי וּבֵינֵךְ.

Ruth 1:17 …Thus and more may YHWH do to me if anything but death parts me from you.[15]

The oath doesn’t say what it is YHWH should do to her if she violates the oath, but the implication, of course, is that it would be very unpleasant. It seems likely that the reason so many oaths lack a specific apodosis is based on a fear that even expressing the consequences of an oath could inadvertently cause them to take effect.[16]

The point is that the violation of oaths was not simply a cause for feeling guilty, but it was believed that such violations bring about the explicit or implicit threat in the oath’s apodosis. I suggest, therefore, building on Wells, that *ve-ashem* here means that the person has begun to experience suffering that they interpret as the effects of divine wrath in fulfillment of the apodosis of the false oath.

The perpetrator would be particularly susceptible to such a belief if the oath envisioned in Leviticus 5:23 was one of the many such oaths that came with only an implied—rather than explicitly stated—consequence. When the false swearer begins to suffer in any way, they interpret their suffering not just as the consequence of their wrongdoing, but as the fruition of the implied or spoken apodosis of the oath they know they swore falsely.[17]

The Small Penalty Clause

The law In Leviticus 5 continues, mandating a penalty payment:

ויקרא ה:כד...וְשִׁלַּם אֹתוֹ בְּרֹאשׁוֹ וַחֲמִשִׁתָיו יֹסֵף עָלָיו לַאֲשֶׁר הוּא לוֹ יִתְּנֶנּוּ בְּיוֹם אַשְׁמָתוֹ.

Lev 5:24 …He shall repay the principal amount and add a fifth part to it. He shall pay it to its owner on the day of his *ashmah*.

The penalty payment here is significantly less than the comparable penalty clause of paying double that we find the cases of theft described in the Covenant Collection (Exod 22:6–8).[18]

One reason[19] for the lower penalty here is because, unlike in Exodus, the offender was convicted by the court, whereas here, the offender confessed to the crime without having been convicted.[20] Another may be because the offender has already suffered some divine punishment, because of the violation of the oath.[21]

The Function of the Guilt Offering

Whatever the reason for the relatively small penalty clause, the Priestly text is, unsurprisingly, more focused on the oath violation than the original property offense.[22] This, then, is the reason for the *asham* offering:

ויקרא ה:כה וְאֶת־אֲשָׁמוֹ יָבִיא לַי־הוָה אַיִל תָּמִים מִן־הַצֹּאן בְּעֶרְכְּךָ לְאָשָׁם אֶל־הַכֹּהֵן ה:כו וְכִפֶּר עָלָיו הַכֹּהֵן לִפְנֵי יְ־הוָה וְנִסְלַח לוֹ עַל־אַחַת מִכֹּל אֲשֶׁר־יַעֲשֶׂה לְאַשְׁמָה בָהּ.

Lev 5:25 Then he shall bring to the priest, as his penalty to YHWH, a ram without blemish from the flock, or the equivalent, as a guilt offering. 5:26 The priest shall make expiation on his behalf before YHWH, and he shall be forgiven for whatever he may have done to draw blame thereby.

In sum, although the case here concerns an individual who has committed a property violation against another person, the false exculpatory oath overshadows the original wrongdoing. Such offenders come to the Temple in the belief that they have been afflicted by divine punishment as a result of the oath and must make restitution. Once the property is returned, plus a fifth more, the priest can then offer the *asham* on their behalf, atoning for the sin and, ostensibly, putting an end to the person’s affliction.

[View Footnotes](https://www.thetorah.com/article/asham-of-false-oaths-why-does-the-offender-confess)

1. For an alternative translation of *asham*as “reparation offering” see Jacob Milgrom, *Leviticus 1-16: A New Translation with Introduction and Commentary,*AB 3 (New York: Doubleday, 1991), 342. For a discussion of this section, see James W. Watts, [“Leviticus' Rhetorical Presentation of the Sin and Guilt Offerings,”](https://www.thetorah.com/article/leviticus-rhetorical-presentation-of-the-sin-and-guilt-offerings) *TheTorah* (2019).
2. How prevalent such oaths may have been and how exactly they would have been phrased is difficult to know since the perishable writing materials that Israelite and Judahite scribes favored unfortunately prevented the survival of trial records from the biblical world. Thus, we are left only with the testimony of law collections, which could reflect idealized law as opposed to practiced law.
3. The law continues with what happens in cases of the animal being stolen or eaten by a predator:

כב:יא וְאִם גָּנֹב יִגָּנֵב מֵעִמּוֹ יְשַׁלֵּם לִבְעָלָיו כב:יב אִם טָרֹף יִטָּרֵף יְבִאֵהוּ עֵד הַטְּרֵפָה לֹא יְשַׁלֵּם

22:11 But if [the animal] was stolen from him, he shall make restitution to its owner. 22:12 If it was torn by beasts, he shall bring it as evidence; he need not replace what has been torn by beasts.

In the latter case, the ability to produce the dead animal’s remains as proof of predation (i.e., mauling to death by a beast of prey), functions the same as having witnesses, and allows the shepherd to escape liability.

1. Other possible examples of exculpatory oaths include Exod 22:7-8; Deut 21:1-9; 1 Kgs 8:31-32. Biblical poetry and wisdom also use “oath language” toward various literary ends; see, e.g., Ps 7:5-6; 137:6; Job 31.
2. Milgrom, *Leviticus 1-16*, 338.
3. Like a number of “sin” words, *ashem*has a consequential valence; that is, it may refer not only to the sin but also to its consequence. Milgrom, *Leviticus 1-16,*340-43. For the observation of a consequential meaning to the “sin” word *avon* see Ibn Ezra’s commentary to Gen 4:13.
4. Milgrom, *Leviticus 1-16*, 343.
5. Baruch J. Schwartz, “The Bearing of Sin in the Priestly Literature,” in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, ed. D. P. Wright, D. N. Freedman, and A. Hurvitz (Winona Lake: Eisenbrauns, 1995), 5-21 [p. 14].
6. See Bruce Wells, *The Law of Testimony in the Pentateuchal Codes* (BZAR 4; Wiesbaden: Harrassowitz, 2004), 67-68; David Lambert, *How Repentance Became Biblical: Judaism, Christianity, and the Interpretation of Scripture* (Oxford: Oxford University Press, 2016), 59-61.
7. Bruce Wells, *The Law of Testimony in the Pentateuchal Codes*, 67–68.
8. Although Milgrom (*Leviticus 1-16,*342-343) has argued that biblical and ancient Near Eastern texts blur the distinction between emotional and physical suffering, the precise characterization of the wrongdoer’s experience of guilt as physical is critical to understanding the misfortune they undergo, as well as the consequences they face upon confessing.
9. Another example from the book of Psalms is:

תהלים ז:ד יְ־הוָה אֱלֹהַי אִם עָשִׂיתִי זֹאת אִם יֶשׁ עָוֶל בְּכַפָּי. ז:ה אִם גָּמַלְתִּי שׁוֹלְמִי רָע וָאֲחַלְּצָה צוֹרְרִי רֵיקָם. ז:ו יִרַדֹּף אוֹיֵב נַפְשִׁי וְיַשֵּׂג וְיִרְמֹס לָאָרֶץ חַיָּי וּכְבוֹדִי לֶעָפָר יַשְׁכֵּן סֶלָה.

Ps 7:4 O YHWH , my God, if I have done such things, if my hands bear the guilt of wrongdoing, 7:5 if I have dealt evil to my ally—I who rescued my foe without reward—7:6 then let the enemy pursue and overtake me; let him trample my life to the ground, and lay my body in the dust. Selah.

1. Małgorzata Sandowicz, “’Fear the Oath!’ Stepping Back from Oath Taking in First Millennium B.C. Babylonia.” *Palamedes*6 (2011): 17-36 [p. 18].
2. Examples of such oaths may be found in BIN (=Babylonian Inscriptions in the Collection of James B. Nies) 6 39:18-19; BIN 6 97:20-22; M. 5719 IV:11-15; EA (=Die El-Amarna Tafeln) 209, ll. 13-16; UET (=Ur Excavations, Texts) 4 171; UET 6 402. Also see, Małgorzata Sandowicz, “‘Fear the Oath!’,” 18; *eadem*, *Oaths and Curses: A Study in Neo- and Late Babylonian Legal Formulary* (Münster: Ugarit-Verlag, 2012), 400–401; Blane Conklin, *Oath Formulas in Biblical Hebrew*(Winona Lake: Eisenbrauns, 2011), 87.
3. Other verses which use this formula are: 1 Sam 3:17; 14:44; 20:13; 25:22; 2 Sam 3:9, 35; 19:14; 2 Kgs 6:31.
4. We see something similar in the rabbinic principle קללת חכם אפילו בחנם היא באה “the curse of a sage happens even for no reason,” i.e., that even if the condition under which the curse is supposed to come about isn’t fulfilled, the curse will happen anyway, since a sage uttered it. See b. Berakhot 56a, Sanhedrin 90b, Makkot 11a.
5. A similar interpretation was offered by David Lambert, a Bible scholar from the University of North Carolina, who writes:

To be *ashem* is to be condemned; sacrifices are brought in anticipation of the affliction that is thought to follow from a state of guilt.

In Lambert’s view, the offender believes that they are condemned, and admit their wrongdoing, in order to curb the effects of the false oath and prevent any further affliction. In my view, *ve-ashem*means that the perpetrator has already begun to experience affliction.

שמות כב:ו כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ כֶּסֶף אוֹ כֵלִים לִשְׁמֹר וְגֻנַּב מִבֵּית הָאִישׁ אִם יִמָּצֵא הַגַּנָּב יְשַׁלֵּם שְׁנָיִם. כב:ז אִם לֹא יִמָּצֵא הַגַּנָּב וְנִקְרַב בַּעַל הַבַּיִת אֶל הָאֱלֹהִים אִם לֹא שָׁלַח יָדוֹ בִּמְלֶאכֶת רֵעֵהוּ. כב:ח עַל כָּל דְּבַר פֶּשַׁע עַל שׁוֹר עַל חֲמוֹר עַל שֶׂה עַל שַׂלְמָה עַל כָּל אֲבֵדָה אֲשֶׁר יֹאמַר כִּי הוּא זֶה עַד הָאֱלֹהִים יָבֹא דְּבַר שְׁנֵיהֶם אֲשֶׁר יַרְשִׁיעֻן אֱלֹהִים יְשַׁלֵּם שְׁנַיִם לְרֵעֵהוּ.

Exod 22:6 When a man gives money or goods to another for safekeeping, and they are stolen from the man's house -- if the thief is caught, he shall pay double; 22:7 if the thief is not caught, the owner of the house shall depose before God that he has not laid hands on the other's property. 22:8 In all charges of misappropriation—pertaining to an ox, an ass, a sheep, a garment, or any other loss, whereof one party alleges, “This is it”—the case of both parties shall come before God: he whom God declares guilty shall pay double to the other.

1. While it is possible to simply explain the difference by noting that these laws are from different law collections, many source critical scholars have offered meaningful reasons beyond just differing legal traditions, and I find these approaches more compelling in this case.
2. A similar principle exists in rabbinic halakha, namely מודה בקנס פטור “one who confesses about a [crime which brings with it a] penalty payment is exempt [from paying it].” See e.g., b. Ketubot 43a.
3. This would not be beneficial to the victim of the original property offense, of course, who would certainly prefer to receive double compensation. But the victim’s experience is not the perspective that interests the Priestly text here. Instead, Lev 5:20-26 considers what constitutes a fair consequence that primarily takes into account the experience of the partly punished offender.
4. This is parallel what one finds in Mesopotamian legal texts. See discussion in, Milgrom, *Leviticus 1-16*, 365-378; Eckart Otto, “Die rechtshistorische Entwicklung des Depositenrechts in altorientalischen und altisraelitischen Rechtskorpora,” in *Kontinuum und Proprium. Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments*(Wiesbaden: Harrassowitz, 1996), 139-63 [161-163]; Wells, *Law of Testimony*, 140.