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## Temple oaths in Ptolemaic Egypt : a study at the crossroads of law, ethics and religion

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# CHAPTER 1

## INTRODUCTION

### MEANING AND TERMINOLOGY OF THE OATH IN ANCIENT EGYPT

#### *1. Meaning and Functioning of the Oath in Ancient Egypt: the Religious and Social Framework – 2. Egyptian Oath Terminology – 3. Use of Modern Terminology*

This chapter addresses two main topics, the essential meaning and functioning of the oath in Ancient Egypt and the oath terminology, ancient and modern. The essence of the oath as an invocation to a higher authority to guarantee the veracity of the oath-taker's statement and integrity, and its functioning as an instrument of law in the ancient Egyptian society will be illustrated first, along with the general religious and moral view of the world the oath refers to and lies upon. This view is outlined through certain Egyptian terms used in the invocation formulae and by means of significant statements about oath and perjury in the Egyptian literature. The section on terminology will deal first with the basic Egyptian vocabulary of oath-taking including terms such as 'oath' and 'to swear', and the various invocation formulae. Second, modern terminology will provide a frame of reference for classifying oaths in Ancient Egypt.

#### **1.1 MEANING AND FUNCTIONING OF THE OATH IN ANCIENT EGYPT: THE RELIGIOUS AND SOCIAL FRAMEWORK**

*Introduction:* In the ancient Egyptian's perspective, religion and morality can barely be separated and connections between social, religious, moral and normative aspects are particularly close. Hence, ancient Egyptian terms and expressions often embodied several levels of meaning.<sup>1</sup> This is of particular importance and significance in the case of oaths, for the terminology used in Egyptian for oath and swearing carries various connotations and implications at an abstract level. These help us to reconstruct the framework within which the place of the oath must be understood. This framework is both religious and socio-judicial. On the one hand, it relates to certain central Egyptian beliefs about the gods, the king, the creation of the cosmos and the concept of *Ma'at* as an inherent element of it; on the other hand, it relates to the organization of society according to those beliefs, and its system of normative values and justice.

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<sup>1</sup> J. Toivari-Viitala, *Women at Deir el-Medina: A Study of the Status and Roles of the Female Inhabitants in the Workmen's Community during the Ramesside Period* (2001), p. 15.

Oaths are traditionally sworn in the name of a god or a person of superior social standing – briefly, a ‘higher authority’ – whether based on generally accepted notions or on personal points of view.<sup>2</sup> The function of the invocation of this higher, mostly divine, authority by the oath-taker is to guarantee the veracity of the contents of the oath and the oath-taker’s own integrity in the matter in question. The system works on the basis of complete trust in the intrinsic supernatural force of the oath: by invoking powers greater than himself to uphold the truth of his statement, the oath-taker does not only invoke divine guarantee, but also divine displeasure upon himself if he fails in his sworn duties. The very fear of the consequences of this divine displeasure should prevent the oath-taker from committing perjury.

In Ancient Egypt, the proper authorities invoked to be the guarantor of oaths are mostly either the ruling king or the god(s),<sup>3</sup> both representing divine authority, by role (the king) or by nature (the gods).<sup>4</sup> The ancient Egyptian gods and kings were indeed expected to avenge any lie pronounced in their name, and the fear for their avenging and far-reaching power worked as a deterrent against perjury. This is very much in line with the above description of the functioning of oaths in general. More specifically, the trust in the functioning of the oath in ancient Egypt rested on the fundamental belief that the gods and the king were responsible for the cosmic order and for certain social norms. Accordingly, when these were violated by the interference of a false oath, somehow retaliation could be expected.

This belief is clearly embedded in the ancient Egyptian oath-terminology. As we will see in more detail in the next section, two verbs are normally used in Egyptian in the invocation formula, *ꜥnh* ‘to live’, from which the word for ‘oath’ is derived, and *wꜥh*, ‘to endure, to last, to continue to exist’. The choice of these two verbs is not coincidental, as both imply and refer to fundamental ideas of the basic Egyptian view of the constitution of the world, i.e. the background upon which the oath must be understood in the first place.<sup>5</sup>

The term *ꜥnh* signifies ‘life’ in all of its configurations, and began to apply when the omniscient creator god(s) brought order out of chaos by establishing the well-ordered world. Order is the inherent structure of creation, symbolized by the deified concept of *Ma‘at*, usually translated as ‘truth’ or ‘justice’, but which actually means ‘the right order’, the ideal

<sup>2</sup> In many ancient and modern societies oaths are taken under the auspices of a deity, or the king, but also noblemen and even heroes could be invoked. For an overview of oaths in various societies and historical periods, see Verdier (ed.), *Serment* I-II.

<sup>3</sup> A few ancient Egyptian oaths addressed to local noblemen are considered ‘an extension’ of the oaths addressed to the king “at a time when powerful nobles were usurping royal prerogatives”. See Wilson, *JNES* 7 (1948), p. 129, note 3. As such, they will not be dealt with separately in this book. For specific examples, see Kaplony, *LÄ* I, col. 1189, nr. 5 and 20.

<sup>4</sup> The supreme deity of the Egyptian pantheon, the creator of the ordered world sun-god Re, has delegated the power and the task of ruling over his creation and maintain order to the Pharaoh, his ‘earthly lieutenant’, as clearly illustrated in the following inscription on the Luxor temple dating to the New Kingdom: ‘*Re has placed the king NN on the land of living, for ever and ever, to judge men and satisfy the gods, to generate Ma‘at (truth) and destroy Isefet (falsehood), while making offerings to the gods*’. For more on this text, see P. Grandet, in: C. Ziegler (ed.), *The Pharaohs* (2002), p. 118.

<sup>5</sup> See also Menu, in: Verdier (ed.), *Serment* I, p. 329-331.

equilibrium of the cosmos and society, of which justice is considered to be an integral part. After the creation by the gods, the king had the duty to maintain *Ma'at* and to deal both with the gods and the ever-looming threats of disorder that surrounded the cosmos.<sup>6</sup> In temple scenes and in ritual literature, the king was described and portrayed as worshipping *Ma'at* and presenting her to the creator gods. The inscriptions and reliefs underline the role of the king as judge and lord of *Ma'at*, that is, lord of truth and justice.<sup>7</sup> The king, like the gods, was entrusted with putting the world to rights; when he ruled, a proper order had to be maintained despite hostile cosmic forces, enabling the cosmos and thus society to be preserved and to continue. The verb *wšḥ* 'to endure, to continue to exist' embodies exactly this essential idea of the Egyptian basic concept of the world: the need of continuance, despite negative forces, of the natural and thus social order, guaranteed as long as the king rules. The verbs *snb* 'to be in good health' and *ḏd* 'to be stable', also used in the invocation formula of oaths, embody the same concept, since their opposites, illness and instability, are seen as a manifestation of chaos and disorder and, as such, as a threat to the cosmos and society.

Gods, king and humankind are thus bound together by moral obligations, chief among which is the duty to create and maintain order. The Egyptian's general conception of order has dimensions that are socially relevant, since, as stated above, their "local and cosmic visions are connected".<sup>8</sup> Thus, events that threaten ordinary life and endanger its continuity (the untoward, diseases, epidemics) or infractions of normative values that jeopardize social relations, of which perjury is definitively one, may acquire more general significance as an analogy of the threatened cosmos. Any fraud, any falsehood, that is: any perversion or infraction of *Ma'at*, the deified concept of order and balance, truth and justice, could jeopardize the established order of society, and ultimately the cosmic order, and was subsequently liable to punishment. Therefore, when a person swears an oath calling upon the life and endurance of a god or the king, he engages in a solemn and binding commitment (*ḥrk* 'to swear, to bind') *vis-à-vis* the supernatural powers and acknowledges the divine implications should he commit perjury.

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<sup>6</sup> J.R. Baines, in: B.E. Shafer, J.R. Baines, L.H. Lesko, D. Silverman (eds), *Religion in Ancient Egypt: Gods, Myths and Personal Practice* (1991), p. 124 ff. See also Assmann, *Ma'at*, especially chapters 1, p. 1-39 and 7, p. 200-236; idem, *JEA* 78 (1992), p. 149-162, in particular p. 150-151.

<sup>7</sup> Many examples from Ptolemaic temples are collected by Quaegebeur, in: Cannuyer, Kruchten (eds), *Mélanges Théodoridès*, p. 201-220. See especially p. 204 and notes 17-23; p. 219-220.

<sup>8</sup> Baines, in: Shafer, Baines, Lesko, Silverman (eds), *Religion in Ancient Egypt*, p. 125 ff; see also Assmann, *JEA* 78 (1992), p. 151 and 162.

*Perjury and punishment:* In what follows, statements about the oath, and the role of the divine authority as the guarantor of its veracity, will make explicit what is implied in the oath terminology. These extracts, mostly taken from literary texts, are likewise helpful to understand how the ancient Egyptians thought about oath and perjury, and the respect they had for the oath through the ages. Furthermore, some daily life texts from Deir el-Medina will show, as illustrated by Borghouts,<sup>9</sup> how the Egyptians experienced certain physical vexations, e.g. blindness, as the result of the visitation by a god who was offended, for example by perjury, and how they “style the workings of a socially conditioned guilty conscience as a religious phenomenon”.<sup>10</sup>

In an Old Kingdom<sup>11</sup> document dealing with a dispute about inheritance, three witnesses are summoned to swear an oath on the authenticity of a certain document.<sup>12</sup> In their oath the following threat concerning a manifestation of the power of the divinity invoked is added: ‘*May your manifestation (bꜣw) be against him (who may testify falsely).*’<sup>13</sup> Similarly, in the invocation formula of New Kingdom oaths, ‘enforcing epithets’ sometimes follow the invoked king: (the Pharaoh/Ruler) ‘*whose manifestation (bꜣw) is worse than death*’,<sup>14</sup> which are at the same time a reminder and a warning of the terrible punitive power of the king as the guarantor of the oath.

Warnings about the far-reaching power of the king and the gods as well as recommendations to be scrupulous when swearing an oath in their name occur regularly in the Egyptian literature through time, as well as statements concerning the role of the oath or references to false oaths.<sup>15</sup> For instance, in the Middle Kingdom’s loyalist instruction of Sehetpibre, the chief treasurer of Amenemhet III, to his children, he advises them to behave toward the king as follows: “*Fight for his name, respect the oath in his name (twꜣ hr ꜥnh=f), and you will be clear from a taint of disloyalty*”.<sup>16</sup> Among the qualities of Amenhotep, son of Hapu, in the early New Kingdom, were listed the following ones: ‘*Making the Oath of his Lord to endure (srwd ꜥnh n nb=f), respecting his name, worshipping his power*’.<sup>17</sup>

Moreover, instructions or wisdom literature at all times contain, almost without exception, statements and warnings about oath and perjury.<sup>18</sup> Many passages of the

<sup>9</sup> Borghouts, in: Demarée and Janssen (eds), *Gleanings*, p. 1-70; see especially p. 1-20.

<sup>10</sup> Vleeming, *Ostraka Varia*, p. 133.

<sup>11</sup> For the sake of simplicity, in this chapter the periods of Egyptian history are mentioned without reporting the dates pertaining to them (for which see Chapter 2, *passim*).

<sup>12</sup> P. Berlin P 9010: for translation (partly) and bibliography see Chapter 2, ex. 24, p. 52.

<sup>13</sup> For the translation(s) of the notion *bꜣw* see Borghouts, in: Demarée and Janssen (eds), *Gleanings*, especially p. 32.

<sup>14</sup> See Borghouts, *ibidem*, p. 9 and note 34 for various examples, and p. 31-32.

<sup>15</sup> Several examples are collected by Wilson, *JNES* 7 (1948), p. 149-151.

<sup>16</sup> Stela of Sehetpibre, ll. 17-18.

<sup>17</sup> Statue Cairo CG 583, l. 9.

<sup>18</sup> See for instance the Instruction of Insinger, 12, l. 11 etc. Note, in particular, passage 33, l. 17: “*the one who hastens to take an oath is the one whose death will hasten*”; and in a previous passage 33, l. 10: “*the god does not forget, retribution does not rest*”.

Instruction of Amenemope (New Kingdom), for instance, deal with the fate of someone who commits a fraudulent act (in the passage quoted below concerning a plot of land) and then takes a false oath on this matter. The oath-breaker receives a visitation by the tutelary moon-god Thot whose name he offended: ‘*A ploughing furrow worn down by time, the one who suppresses it in the field:*<sup>19</sup> *when he is caught in (swearing) false oaths, he will be taken captive by a manifestation (bꜣw) of the Moon*’.<sup>20</sup>

Apart from the literary examples quoted and referred to above in which divine forces were expected to punish the transgressor, and divine vengeance could be understood as an abstract literary theme, there are records of private persons being ‘visited’ by an offended punitive god. Some daily life texts from Deir el-Medina show how an inappropriate or offensive act towards the god is connected with a divine reaction, often described as ‘*a manifestation (bꜣw) has come about*’, or in a similar way. The nature of the infringements could take on different forms, as could the concretization of the consequent divine punishment.<sup>21</sup>

An additional handful of texts specifically combine the false oath theme with the mention of the punitive *bꜣw* of the god, demonstrating the ancient Egyptian belief in the causal relationship between perjury and a manifestation of divine justice. The following text provides a good example of how the guilty conscience of an oath-breaker made him establish the connection in retrospect between the perpetrated offensive perjury and the appearance of sudden blindness, the latter being seen as the tangible sign of the visitation by the offended god.<sup>22</sup> “...*I am a man who swore falsely to Ptah, the Lord of truth. He caused that I see darkness by day. I will speak of his manifestation (bꜣw) to him who does not know it (and) to him who knows it, to the small (and) the great ones. Beware of Ptah, the Lord of truth. See, he does not overlook a fault of anyone. Avoid pronouncing the name of Ptah falsely ...*”<sup>23</sup>. A warning then follows to anyone who may similarly swear a false oath in the name of Ptah.

Although the notion of *bꜣw* mostly evokes dread and terror, in another close parallel to the British Museum text, Stela Turin N 50044, the oath-breaker seems to have been forgiven by the god whose name he had offended by committing perjury.<sup>24</sup> A clear example of a confession of guilt along with a request to the deity to be forgiven occurs in another

<sup>19</sup> Translation after Borghouts, in: Demarée and Janssen (eds), *Gleanings*, p. 12. Differently Wilson, *JNES* 7 (1948), example 123, p. 150: ‘*he who acts fraudulently in the fields*’ and Morschauser, *Threat-Formulae*, p. 203: ‘... *the one who confiscates it from the field ...*’.

<sup>20</sup> Instruction of Amenemope, 7, ll. 16-19. Cf. Instruction of Amenemope 8, ll. 9-12 and 19, ll. 6-9, both translated by Borghouts, in: Demarée and Janssen (eds), *Gleanings*, respectively p. 11 and p. 12.

<sup>21</sup> The notion of *bꜣw* in general and more specifically the expression *bꜣw (nꜣr) hꜣpr(w)* ‘*a manifestation (of a god) has come about*’ have been fully discussed by Borghouts, in: Demarée and Janssen (eds), *Gleanings*, p. 1-70; for the infringements and punishments, see especially p. 9 and 19. For the non-religious and non-literary texts from Deir el-Medina, see p. 3-10.

<sup>22</sup> This is a rare example of a concrete punishment. As remarked by Borghouts, in: Demarée and Janssen (eds), *Gleanings*, p. 33, usually “we have little insight into the details of the diagnosis of *bꜣw*”. For the interpretation of ‘*darkness by day*’ as a probably temporary darkness: *ibidem*, p. 7 and note 31.

<sup>23</sup> Stela BM EA 589, ll. 2-5.

<sup>24</sup> This text has likewise been translated and discussed by Borghouts, in: Demarée and Janssen (eds), *Gleanings* (1982), p. 6.

document from Deir el-Medina, P. DeM 15. This is a letter from carpenter Khonsu to his mother, in which he requests her to intervene on his behalf and ask the tutelary god of the oath for forgiveness for breaking his promise. There is no mention here of a visitation by the god at this point; maybe Khonsu's request was intended to prevent that from happening: *The carpenter Khonsu to his mother, the (female) citizen Nofretkha: in life, prosperity, and health! Moreover: "I swore saying: 'I will not eat a haunch or tripe either', but see, I have eaten them. I won't do it again. Tell the god by whom I swore to be merciful".*<sup>25</sup>

Similar private secular texts, such as those from Ramesside Deir el-Medina in which perjury and retaliation by the tutelary god(s) are so clearly associated, are to my knowledge lacking in later times.<sup>26</sup> Rather, the intrinsic belief in the retaliation by gods has moved to the public domain. Indeed, many Ptolemaic temple inscriptions and reliefs illustrate the same belief that gods could be offended when certain norms were violated, and that retaliation could then follow in some form. In the temple of Khonsu at Karnak, for example, on the Gate of Ptolemy III Evergetes, which is also known as a *Rwt-djt-M3.t* 'Gate-of-giving-justice' and as a place for the utterance of temple-oaths,<sup>27</sup> the god Khonsu receives the epithets of *s3b* 'judge' and *p3 ir s3r* 'the one who determines the destiny'.<sup>28</sup> Moreover, it is said that 'his *b3w* (Khonsu's) takes possession of the one who says falsehood on the dromos of the *Bnnt*-temple'.<sup>29</sup>

In summary, the force of the oath and its functioning lie in and depend on the socially accepted and commonly shared belief in possible retaliation by divine forces against anyone who somehow offended or betrayed them. Therefore, by committing perjury, the oath-breaker not only offended their name (a kind of *lèse-majesté*),<sup>30</sup> but also broke the norms, viz. to speak the truth, agreed upon by society. This belief in the omnipotence and omniscience of the tutelary god or king, and the fear of his avenging and punitive power (*b3w*) against any falsehood was intended to prevent any perjury or breaking of vows. This is the meaning of the oath, which made it a valid instrument of truth and law for such a long time. This may

<sup>25</sup> P. DeM 15, ll. 1-3.

<sup>26</sup> Although not of the genre 'private secular texts', the so-called 'Myth of the Sun's Eye' – a literary text from the 2<sup>nd</sup> century A.D. preserved in many Demotic versions and a Greek translation – is worth mentioning in connection with the theme of false oaths/divine wrath. Particularly relevant is the animal-fable in which mother vulture and mother cat promise by oath, with Re as witness, to leave each other's young ones alone while out hunting. Nevertheless, both of them break the oath, each one differently, with the divine wrath (*b3w*) as a consequence (P. Leiden 384, 2, 14 – 3, 8). The text was first published by W. Spiegelberg, *Der ägyptische Mythos vom Sonnenauge* (1917) and re-edited by F. de Cenival, *Le Mythe de l'oeil du soleil* (1988), about which see the criticism by Smits, *BiOr* 49 (1992), p. 80-95. See also the translation and commentary by A. Loprieno, in: O. Kaiser (ed.), *Texte aus der Umwelt zum Alten Testament*, III: *Mythen und Epen* (1995), p. 1038-1077.

<sup>27</sup> For more about these matters, see below p. 117-118 and p. 204.

<sup>28</sup> Quaegebeur, *OLP* 6/7 (1975/76), p. 470, notes 63 and 69; idem, in: Cannuyer, Kruchten (eds), *Mélanges Théodoridès*, p. 219, note 120. The same epithet of (*3yty*) *s3b* "judge" connotes the king as well: see *ibidem*, p. 219, note 122.

<sup>29</sup> Sethe, *Urkunden* VIII, Bab el Amara 109.

<sup>30</sup> Borghouts, in: Demarée and Janssen (eds), *Gleanings*, p. 9.



seem odd to our secularized society, but since the Egyptians took their gods seriously it is highly unlikely that they treated an oath lightly.<sup>31</sup> Evidently, they certainly did not.

Nevertheless, throughout its long historical development, the oath went through several adjustments and even times of weakness. Those adjustments have to be seen in the light of both the belief in divine justice and intervention in human life, and the developments of the earthly juridical system over the course of time. The appearance, for instance, of penalty clauses that were increasingly attached to the oath text in the New Kingdom and examples of oaths that had to be repeated or emphasized, have made scholars wonder about a weakening of the binding force and social impact of the oath by the end of that period.<sup>32</sup> Wilson suggests that the multiplication of oaths from the 18<sup>th</sup> dynasty onwards had resulted in a real inflation in the Ramesside Period (19<sup>th</sup>-20<sup>th</sup> dyn.), which ultimately may have led to a temporary erosion of the force and impact of the oath due to its overuse. This erosion would have been compensated by an increase in additional statements and explicit sanctions to strengthen the impact of the oath. Also, according to Wilson, these earthly, explicitly stated penalties in addition to the sanction implicit within the oath (that is: retaliation by the gods) may indicate that fear of ‘human vengeance’ had become more powerful, or at least was of more immediate effect, than fear of ‘ultimate divine vengeance’.<sup>33</sup>

In my opinion, however, the apparent ‘multiplication’ of oaths in the Ramesside Period, like the quasi ‘disappearance’ of oaths in the following Third Intermediate Period (21<sup>st</sup>-23<sup>rd</sup> dyn.), could just be a question of extant sources, and the appearance of penalty clauses a legal development. According to Diodorus of Sicily, in the time of pharaoh Bocchoris (24<sup>th</sup> dyn.) oaths, despite the scarcity of surviving examples from that period, were considered “the mightiest guarantee of good trust known among men”, since the Egyptians respected and feared the gods and the oaths.<sup>34</sup> And indeed, in the Late Period (25<sup>th</sup>-30<sup>th</sup> dynasties), and in the Ptolemaic Period the use of oaths was widely attested again, which means that the ancient Egyptians still believed in the power and effectiveness of the oath as an instrument of truth and law.<sup>35</sup>

With regard to oaths as an instrument of law, it should be remarked that while the impact, binding force and functioning of the oath on the whole depend on the belief in supernatural forces and repercussions, the actual functions and uses of the oath itself as an

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<sup>31</sup> Wilson, *JNES* 7 (1948), p. 155. Despite the secularization of our society, even today there are persons giving testimony in court who swear an oath to tell the truth on the Bible (although not required by law), which is based on the same assumption of divine punishment for perjury.

<sup>32</sup> Wilson, *JNES* 7 (1948), p. 155-156; see also Menu, in: Verdier (ed.), *Serment* I, p. 338-339 and 343.

<sup>33</sup> Wilson, *ibidem*, p. 156.

<sup>34</sup> Diodorus Siculus, *Bibliotheca Historica*, I, 77 and I, 79. Cf. Helms, in: Verdier (ed.), *Serment* I, p. 137 and Malinine, *BIFAO* 46 (1947), p. 97.

<sup>35</sup> The appearance of the so-called oath-helpers (see definition below, p. 20) in certain late Ptolemaic temple oaths to strengthen the credibility of the oath-taker and the veracity of his oath has also raised the question whether late Ptolemaic temple oaths may have lost their absolute binding power, perhaps also due to frequent usage, similarly to what may have happened with the oaths in the Ramesside Period. For more on this matter, see Chapter 3, p. 140.

instrument of law have a strong affinity with jurisdiction.<sup>36</sup> In other words, the oath extends to both the supernatural justice and the earthly law system, or at least the juridical oaths (that is: oaths dealing with legal matters) do.<sup>37</sup> In fact, one can say that the juridical oaths contain a double commitment by the oath-taker: a commitment of 'superior' and divine order to the supernatural forces, with terrible long-term consequences of divine vengeance for perjury, and a legal commitment to his opponent and to the legal authorities supervising the event, facing more material, earthly and short-term consequences. The uses of these juridical oaths and their development from a legal point of view, along with the changes in the scribal and legal practices in the time spanning from the Old Kingdom through to the Ptolemaic Period (ca. 2600–30 B.C.), will be addressed in Chapter 2.

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<sup>36</sup> See Assmann, *JEA* 78 (1992), p. 162.

<sup>37</sup> As stressed by Assmann, *ibidem*, p. 150-151 and 162.

## 1.2 EGYPTIAN OATH TERMINOLOGY

The Egyptian language and the script in which it was written went through profound changes through time. In the long history of oath-taking in Ancient Egypt which is treated in this book (ca. 2600 B.C.–30 B.C.), the oaths also became couched in various phraseologies. However, the basic Egyptian vocabulary of oath-taking, that is to say the words for ‘oath’ and ‘to swear’, as well as the terms used to impose the oath remained the same throughout the different stages of the Egyptian language, despite using different grammar and being written in different scripts. In contrast to the basic vocabulary, the terms used to invoke the god(s) and the king, that is: the invocation formulae, did actually change through time and also varied according to whether the oath was dealing with legal matters or not (see Table 1 below).

### 1.2.1 Words and Expressions for Oath and Swearing an Oath in Ancient Egyptian

Two terms are commonly used in ancient Egyptian for oath and swearing an oath: *ḥnh* which can be used as an independent noun ‘oath’ or in the expression *ir ḥnh* ‘to take an oath’ (literally: ‘to make, to perform an oath’); and *ḥk* ‘to swear’ (literally: ‘to bind’). Both terms appear to have a primary meaning from which the extended meanings ‘oath’ and ‘to swear’ are probably derived.<sup>38</sup>

- *ḥnh* ‘oath’ and *ir ḥnh* ‘to take an oath’

The primary meanings of *ḥnh* are ‘to live’ as a verb and ‘life’ as a noun, and remain in use in the Egyptian sources from the Old Kingdom up to the Ptolemaic Period. The secondary meaning ‘oath’ of the noun *ḥnh* appears increasingly from the end of the Middle Kingdom onwards.<sup>39</sup> Wilson suggests that the translation of *ḥnh* ‘oath’ may have derived from the use of the primary meaning of this word, ‘to live’, as the first component of a customary invocation formula of the oath: *ḥnh NN ... “As true as<sup>40</sup> NN (a god or the king) lives ...”* (text of the oath follows), which was used in oaths from the Old Kingdom onwards.<sup>41</sup> This formula connects a certain sacred or revered person, a ‘divine authority’, with the contents

<sup>38</sup> The history of the Egyptian words *ḥnh* and *ḥk* and the development of their meaning have previously been addressed by scholars such as Wilson, *JNES* 7 (1948), p. 129-130; McDowell, *Jurisdiction*, p. 33-37; Menu, in: Verdier (ed.), *Serment* I, p. 329-335.

<sup>39</sup> See Wilson, *JNES* 7 (1948), p. 130; Menu, in: Verdier (ed.), *Serment* I, p. 331; Kaplony, *LÄ* I, col. 1189; Lurje, *Studien*, p. 138.

<sup>40</sup> Note that the translation ‘As true as’ – or its abbreviated version ‘As’ which will be used henceforth – is just a corresponsive construction, a translator’s method since these words are found nowhere in the Egyptian text. For the grammar, see J.F. Borghouts, *Egyptian. An Introduction to the Writing and Language of the Middle Kingdom* (2010), 56 b (ii), p. 204-205.

<sup>41</sup> Wilson, *JNES* 7 (1948), p. 130.

of the oath-statement. The use of the petrified verb form  $\zeta nh$  as a noun ‘oath’ probably derives from this equation.<sup>42</sup>

The expression *ir*  $\zeta nh$  ‘to take an oath’ exists alongside the verb  $\zeta rk$  ‘to swear’ in the Egyptian sources, at least since  $\zeta nh$  is attested as a noun. They usually have a similar meaning, with the exception of some Late Egyptian oaths (see below).

- $\zeta rk$  ‘to swear’ or ‘to forswear’

The meaning of  $\zeta rk$  ‘to swear’ is attested from the Middle Kingdom onwards<sup>43</sup> and is expressed by the use of two determinatives. One consists of a band of strings or linen, which significantly is also used in Egyptian to determine deeds and documents, conveying thereby the idea of the oath as a *binding* commitment. The other is the man with hand to mouth, symbol of any abstract event, included an oral statement. Since  $\zeta rk$  ‘to swear’ embodies the idea of binding someone to say or do something, it seems likely that this meaning has originally been related to or derived from the verb with the same root  $\zeta rk$  ‘to bind, to wrap’, as suggested by Wilson.<sup>44</sup> The prepositions usually associated with this verb are *m* or *n* (to swear ‘by’ or ‘to’ someone) and *hr* (to swear ‘on’ or ‘away from’ something).

The verb  $\zeta rk$  ‘to commit (oneself)’ and the expression *ir*  $\zeta nh$  ‘to take an oath’ usually have a similar meaning. Some scholars, however, have pointed out that in Late Egyptian sources, especially from Deir el-Medina, the verb  $\zeta rk$  does not always correspond exactly to the expression *ir*  $\zeta nh$ .<sup>45</sup> This expression appears to be used widely and indifferently with affirmative and negative oaths, but still retains the meaning ‘to take an oath’ each time.

<sup>42</sup> Cf. Kaplony, *LÄ I*, col. 1190, nr. 40 and nr. 44, who suggests that a similar semantic development, though not that long-lasting, is to be seen with the verbs *wšh* ‘to endure’, ‘to last’ and *mr* ‘to love’. According to him, these verbs, which are commonly used in the invocation formula of the oath in the New Kingdom, in a corresponsive/paratactic sentence like that with  $\zeta nh$ , are also occasionally attested as a noun for ‘oath’. Unfortunately, the examples given by Kaplony do not support this theory and must be translated as verb forms. So nr. 40 must be translated as follows: “I said: ‘As endures (...)’...”; and nr. 44: “As lives for me and as loves me [Re ...]”.

<sup>43</sup> See Wilson, *JNES* 7 (1948), ex. 87, p. 144; Kaplony, *LÄ I*, col. 1195, nr. 23.

<sup>44</sup> Wilson, *JNES* 7 (1948), p. 130; see also Menu, in: Verdier (ed.), *Serment I*, p. 330-331 and 338-339. Cf. also Morschauer, *Threat-Formulae*, p. 260. According to El-Aguizy, *BIFAO* 96 (1996), p. 1, note 4, the term  $\zeta rk$  as ‘to bind oneself with’ equals a modern Arabic expression. Worth mentioning is the Egyptian verb *snh* ‘to bind’ which is used in connection with an oath in a Turin magical papyrus from Deir el-Medina (P. Turin CG 54051). In this text, dealing with the goddess Isis tricking her father Re into disclosing his true name so that her son Horus can be the new king, the concerned passage reads as follows: (Re is speaking to Isis): “If (now) the first time occurs that something leaves my heart, then communicate it to your son Horus after you have bound him with a divine oath (*snh-n=t sw m*  $\zeta nh$  *ntr*) which you should impose (upon) the god by his eyes”. And the great god gave his name away to Isis, great of magic. Translation after J.F. Borghouts, in: S.É. Thompson and P. der Manuelian (eds), *Egypt and Beyond. Essays presented to Leonard H. Lesko* (2008), p. 41-48 (specifically p. 43). See also A. Roccati, *Magica Tauriniensa* (2011), p. 143 (transcription) and p. 167 (translation); see meaning of *snh* ‘vincolare’.

<sup>45</sup> See McDowell, *Jurisdiction*, p. 33-36 with further bibliography on the subject.

On the contrary, the verb  $\text{ḥrḳ}$  seems to be used less commonly and, particularly when constructed with a reflexive suffix pronoun and the preposition  $\text{ḥr}$  ( $\text{ḥrḳ=f sw ḥr ...}$  ‘he binds himself on/off’ something), was practically confined to negative oaths, i.e. when the contents of the oath was a denial, either a promise not to do something or a denial of being in possession of the disputed object, or knowing its whereabouts. In these cases the meaning that better fits the context seems to be the one of rejecting or denying something by means of the oath, and therefore the best translation for  $\text{ḥrḳ}$  may be ‘to forswear’ or ‘to abjure’.<sup>46</sup> However, this distinction does not apply to sources from earlier or later periods.<sup>47</sup>

- $(r)dj.t \text{ ḥnh}$  ‘to give an oath’ and  $(r)dj.t \text{ ḥrḳ/ir ḥnh}$  ‘to cause to swear/take an oath’

Apart from the more neutral formulations that a given person ‘takes an oath’ or ‘swears’, some sources, especially those reporting the legal context of the oath, attest that the oath was ‘given’ by someone to the oath-taker, or that the latter was made to take or swear an oath. In both cases the Egyptian verb used is  $(r)dj.t$  ‘to give’ (lexical use, examples *a* below) or, when constructed with an infinitive, ‘to make NN do’ something or ‘to cause that NN does’ something (auxiliary use with a causative meaning, examples *b* below):

- a*       $(r)dj.t \text{ ḥnh } n \dots$  ‘to give an oath to NN’, often used in a passive form:  
            $p^3 \text{ ḥnh } (r)dj=f w n \dots$  ‘the oath was given to NN’
- b*       $dj.t \text{ ḥrḳ} \dots$  ‘to cause that NN swears’ or ‘to make NN swear’  
            $dj.t \text{ ir } \dots \text{ ḥnh}$  ‘to cause that NN takes an oath’ or ‘to make NN take an oath’

The expressions  $dj.t \text{ ḥrḳ} \dots$  and  $dj.t \text{ ir } \dots \text{ ḥnh}$  literally: ‘to make NN swear’ and ‘to make NN take an oath’, as seen in the given examples in *b* above, are used alongside each other in the sources and are usually synonymous with ‘to impose an oath upon NN’ or ‘to require an oath from NN’; both expressions are regularly attested in the sources from the Old Kingdom through the Ptolemaic Period. The identity and the position of the one who imposes the oath differ from case to case and from period to period, and can be explicitly mentioned or left unspecified.

The less commonly used expression  $(r)dj.t \text{ ḥnh } n \dots$  literally: ‘to give an oath to NN’ of example *a* above, on the contrary, can be more specifically translated with ‘to impose an oath upon NN’, when it clearly refers to the (legal) authority who exacts the oath from the oath-taker, or with ‘to administer an oath to NN’, when it refers to the person, for example a priest, assisting the oath-taker at the oath-taking ceremony and dealing with its administration, i.e. the correct performing of the oath-taking. The context usually indicates

<sup>46</sup> For all the examples known, see *ibidem*; cf. R.A. Caminos, *Late Egyptian Miscellanies* (1954), p. 185.

<sup>47</sup> For instance, in the Ptolemaic Period the use of  $\text{ḥrḳ}$  alongside  $\text{ir ḥnh}$  with a similar meaning is attested in P. Mattha, about which see § 4.5.2.

which of the two translations is appropriate. However, at times the meaning of  $(r)dj.t \text{ } \textit{c}n\textit{h} n$  ... is fairly literal, indicating that the ostracon or the papyrus bearing the oath-text was actually entrusted to someone, usually a different person from the oath-taker.<sup>48</sup>

### 1.2.2 The Invocation Formulae: Terms Used to Invoke the King and the God(s)<sup>49</sup>

As previously mentioned, ancient Egyptian oaths are usually taken in the name of the ruling king, a god, or gods; occasionally the king and a certain god are invoked together in the same sworn statement. That is the case for instance with many New Kingdom oaths being taken under the auspices of both Pharaoh and the god Amun. In general, though, the king seems to be invoked more commonly than gods as the guarantor of oaths dealing with legal matters (the so-called juridical oaths, for which see below). This is not surprising as the king was traditionally considered to be the source of law, due to his power to issue decrees, and the executor of justice.<sup>50</sup> However, in the Ptolemaic Period, when new forms of power became current and indigenous kingship lost its value and authority as an assertive factor, only gods appeared as guarantors of the Egyptian juridical oaths, the so-called temple oaths.<sup>51</sup> Moreover, when the king himself is the one who swears, he usually invokes a god; less frequently he swears in his own name. Gods normally swear in the name of another god.<sup>52</sup> The subject matter and context of such oaths, in which the king and gods are also the oath-takers, are usually non-juridical, but rather historical or religious. The following table summarizes the main invocation formulae used in the ancient Egyptian oaths:<sup>53</sup>

<sup>48</sup> As in the so-called trustee-formula in the Ptolemaic temple oaths, for which see § 3.3.3.

<sup>49</sup> On the invocation formula in general see Wilson, *JNES* 7 (1948), p. 151-152; Menu, in: Verdier (ed.) *Serment* I, p. 332-335; Lurje, *Studien*, p. 132-141; Kaplony, *LÄ* I, cols. 1189-1191; J. Vergote, *Joseph en Égypte* (1959), p. 162-167. On the grammatical aspects of this formula, see F. Junge, *Neuägyptisch. Einführung in die Grammatik* (1996), p. 307-309. See also P.J. Frandsen, *An Outline of the Late Egyptian Verbal System* (1974), p. 127-140. Note that there still are conflicting opinions among scholars about the interpretation and translation of  $\textit{c}n\textit{h}$  in oaths, see for instance Borghouts, *Egyptian* (2010), p. 204-205, who is inclined to see it as what is traditionally called a perfective  $\textit{s}dm=f$  (argument: the immanent feature of always being, pertinent to a god) against for instance A. Gardiner, *Egyptian Grammar* (1957), § 218, p. 164-165:  $\textit{s}dm=f$  in a virtual clause of asseveration or as a prospective  $\textit{s}dm=f$  (argument: it is a future condition).

<sup>50</sup> On the king and legal matters, including oaths, see for instance Morris, in: Lloyd (ed.), *Companion to Ancient Egypt* (2010), p. 215.

<sup>51</sup> The royal oaths taken in the name of the Ptolemaic rulers – the βασιλικοὶ ὄρκιοι – are in fact a Greek form of oath. See below, § 2.4.1.

<sup>52</sup> The invocation formulae of oaths taken by the king himself or by a god are collected by Menu, in: Verdier (ed.), *Serment* I, p. 332-333 and 335 respectively; cf. Kaplony, *LÄ* I, col. 1189, nr. 13-16 and 17-19; and Lurje, *Studien*, p. 133-134 and 140.

<sup>53</sup> The invocation formula of oaths addressed to noblemen, due to their being an extension of those taken in the name of the king, is not charted separately (see note 3 above). Moreover, the table does not contain the invocation formulae of the few Ptolemaic temple oaths drawn up in Greek (for which see § 2.4.2).

**Table 1.** The Main Invocation Formulae of Ancient Egyptian Oaths

Verb and use	King*	God(s)	King + God(s)
<p>ϵnh “As lives ...”</p> <p><u>Context of use:</u> in juridical and non-juridical oaths</p> <p><u>Period of use:</u> Old Kingdom – Ptolemaic Period</p>	<p>ϵnh (n=j) njswt / ...</p> <p>“As the king / NN lives (for me)”<sup>54</sup></p> <p>[OK – NK]</p> <p>ϵnh pr-ϑ</p> <p>“As Pharaoh lives”</p> <p>[NK – Ptol. Per.]</p>	<p>ϵnh (n=j) ...</p> <p>“As NN lives (for me)”</p> <p>[1<sup>st</sup> IP – Late Per.]</p> <p>ϵnh ... iw=f htp dj irm ntr nb ntj htp (dj) irm=f</p> <p>“As NN lives, who rests here and each god who rests (here) with him”</p> <p>[Ptol. Per.]</p>	<p>ϵnh n=j njswt ϵnh n=j ntr</p> <p>“As the king lives, as the god lives for me”</p> <p>[MK]</p> <p>ϵnh Imn ϵnh pr-ϑ</p> <p>“As Amun lives, as Pharaoh lives” ***</p> <p>[3<sup>rd</sup> IP – Late Per.]</p>
<p>ϵnh + other verbs (paratactic formula)</p> <p><u>Context of use:</u> in juridical and non-juridical oaths</p> <p><u>Period of use:</u> Old Kingdom – Ptolemaic Period</p>	---	<p>ϵnh n=j mr wj R<sup>c</sup> hsj wj it=j Imn / Tm</p> <p>“As lives for me, as Re loves me, as my father Amun/Atum favors me” **</p> <p>[NK – Late Per.]</p> <p>ϵnh dd snb (n=j) ...</p> <p>“As NN lives, is stable, is healthy for me”</p> <p>[NK – Ptol. Per.]</p>	See below w3h
<p>w3h “As endures ...”</p> <p><u>Context of use:</u> in juridical oaths</p> <p><u>Period of use:</u> New Kingdom – Late Period</p>	<p>w3h p3 njswt / ...</p> <p>“As the king / NN endures”</p> <p>[NK]</p> <p>w3h p3 h3</p> <p>“As the Ruler endures”</p> <p>[NK]</p> <p>w3h k3 ...</p> <p>“As the Ka (of) NN endures”</p> <p>[NK; Late Per.]</p>	<p>w3h ...</p> <p>“As NN endures”</p> <p>[NK; 3<sup>rd</sup> IP]</p> <p>w3h k3 ...</p> <p>“As the Ka (of) NN endures”</p> <p>[NK; Late Per.]</p>	<p>w3h Imn w3h p3 h3</p> <p>“As Amun endures, as the Ruler endures”</p> <p>[NK]</p> <p>w3h p3 h3 w3h Imn</p> <p>“As the Ruler endures, as Amun endures”</p> <p>[NK]</p> <p>w3hh Imn ϵnh Pr-ϑ</p> <p>“As Amun endures, as Pharaoh lives”</p> <p>[3<sup>rd</sup> IP – Late Per.]</p>

\* Facultative exclamatory clause: “May he live, be prosperous and healthy!”

\*\* Facultative exclamatory clause: “As my nostrils are rejuvenated with life and satisfaction!”

\*\*\* Facultative exclamatory clause: “May he be healthy and may Amun give him victory!”

<sup>54</sup> Contrary to Wilson, *JNES* 7 (1948), p. 132, who suggests to translate the formula ϵnh=j “As I swear”.

The oldest, and longest-lasting, invocation formula of the oath runs as follows: “*As the king NN or god NN lives ... (follows the text of the oath)*”. The king is usually invoked by his name or only with the term *njswt* ‘king’ (Old, Middle and New Kingdom); *ḥkꜣ* ‘ruler’ (New Kingdom) or *pr-ḥ* ‘pharaoh’ (from the New Kingdom onwards).<sup>55</sup>

The god, on the contrary, was usually invoked by name, and this varied according to the provenance of the oaths, although in the New Kingdom and at later times some of the gods occupied a standard place in the invocation formula (such as Amun in New Kingdom oaths). Occasionally the term *ntrw* ‘gods’ is used. In the Demotic temple oaths from the Ptolemaic Period the collective term *ntr nb* ‘each god’ is mentioned as a standard element following the name of the chief god of the oath: “*As (god) NN lives, who rests here and each god who rests here with him*”. Finally, both the king and the god can be invoked by their ‘ka’ (*kꜣ*), which is a kind of spiritual double, a sustaining spirit.<sup>56</sup>

Two verbs, as mentioned, are normally used in the surviving Egyptian oaths for invoking the god(s) or the king, *ꜥnh* ‘to live’ and *wꜣḥ* ‘to endure, to last, to continue to exist’. The latter, however, did not have as long a period of usage or as wide a field of application as the verb *ꜥnh*. In fact, the formula *ꜥnh NN* “*As NN lives ...*” was already used in the Old Kingdom and continued with only slight modifications through the Ptolemaic Period, in both juridical and non-juridical oaths. The *wꜣḥ*-formula, by contrast, appears to be practically confined to the juridical oaths of the New Kingdom: after becoming widely applied in the late Ramesside Period (19<sup>th</sup> and 20<sup>th</sup> dynasties) in the form *wꜣḥ Imn wꜣḥ pꜣ ḥkꜣ* “*As Amun endures, as the Ruler endures*”, it almost disappeared from the sources in later periods.<sup>57</sup> Other verbs which may occur as supporters of the veracity of the oath in the oath invocation formulae are *snb* ‘to be in good health’, *ḏd* ‘to be stable’, *mr* ‘to love’, *ḥs* ‘to favour, to praise’, *ḥtp* ‘to be in peace, to rest’, all often combined with the verb *ꜥnh*.<sup>58</sup>

The use of all the verbs above, either employed in juridical or non-juridical oaths, rests upon their connecting some superior, divine being with the oath-taker and the contents of the oath-statement. Whatever combination of terms occurs in the invocation formulae, the meaning of it remains the same: the invoked supernatural force will guarantee the truth of the oath and punish any lie, as explicitly stressed by enforcing epithets that may be added to the standard invocation formula (see above).<sup>59</sup>

<sup>55</sup> Kaplony, *LÄ I*, cols. 1189-1190; Vergote, *Joseph en Égypte*, p. 165-167.

<sup>56</sup> See Wilson, *JNES 7* (1948), exs. 19, 25, 27 etc. p. 133-134; Kaplony, *LÄ I*, col. 1190, nr. 45; Menu, in: Verdier (ed.), *Serment I*, p. 334.

<sup>57</sup> Wilson, *JNES 7* (1948), p. 151-153; Donker van Heel, *Abnormal Hieratic and Early Demotic Texts*, p. 80-81. For the Abnormal Hieratic oaths comprising the *wꜣḥ*-formula, see Chapter 2, p. 60.

<sup>58</sup> Examples in Wilson, *JNES 7* (1948), p. 132 ff; Kaplony, *LÄ I*, col. 1190; Menu, in: Verdier (ed.), *Serment I*, p. 332-333 and 335.

<sup>59</sup> This ‘expanded’ invocation formula, that is: a threat or malediction as a component or addition to the oath, occurs especially in New Kingdom oaths for which see Chapter 2, p. 45.



### 1.3 USE OF MODERN TERMINOLOGY IN THIS BOOK

#### 1.3.1 Classifications and Definitions of Oaths

It is still unknown how, or even if, the Egyptians classified the oaths themselves, since almost any surviving type of oath from ancient Egypt is simply called *ḥnh* ‘oath’ (see above). The Egyptians, apparently, did not feel the need to create a specialized legal vocabulary or technical terminology on this matter. Consequently, the term *ḥnh* ‘oath’ is an ‘amorphous’ cover term for various kinds of oaths, which reveals little about their contents or use.

In only a few cases the Egyptians used more specific terms than single *ḥnh* to define an oath, such as the phraseologies *ḥnh n nb* ‘oath (in the name) of the king’ and *ḥnh n ntr* ‘oath (in the name) of the god’. Unfortunately, this culture-bound terminology does not actually reveal – beyond the obvious difference in the invoked authority – what differences, if any, in contents, circumstances and use there were between these types of oaths.<sup>60</sup>

Therefore, although the starting point still remains the Egyptian material, scholars dealing with the oath in Ancient Egypt often have recourse to definitions of oaths adopted from modern legal terminology, with only slight modifications for the ancient Egyptian setting, to order the material and understand the uses and functions of the oath.<sup>61</sup> However, it is not the intention of this study nor is it within the specialist field of the current author to give the precise nuances of modern legal terminology.<sup>62</sup> Nevertheless, it is useful to present a brief outline of the major oath-related legal terms and definitions that will be used in this book, as charted in the following table:

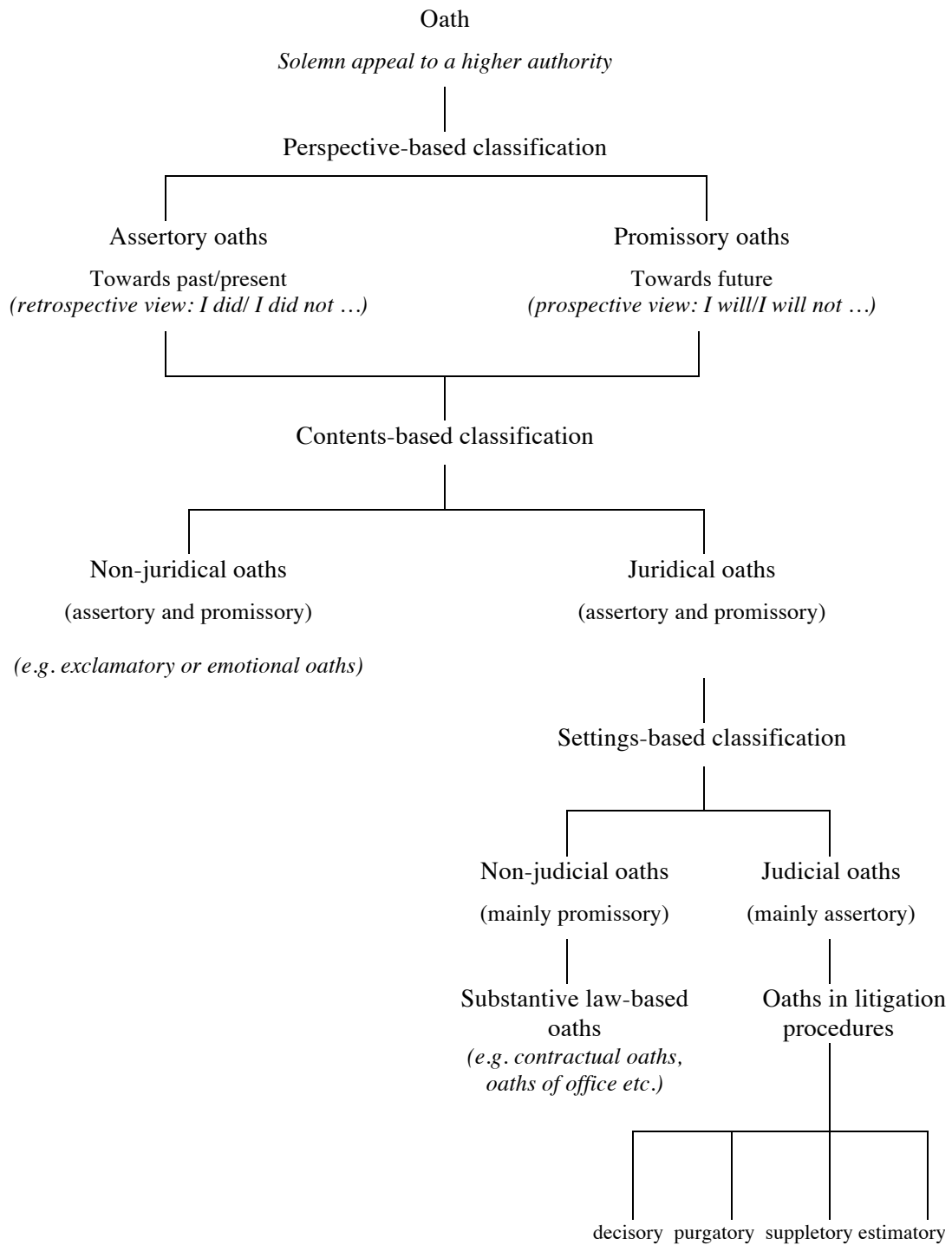
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<sup>60</sup> An attempt to distinguish between these oaths has been made by Wilson, *JNES* 7 (1948), p.152-154. Cf. McDowell, *Jurisdiction*, p. 36-37. See also Chapter 2, p. 27, note 92.

<sup>61</sup> See for instance W. Spiegelberg, *Studien und Materialien* (1892), p. 71 ff.; Wilson, *JNES* 7 (1948), p. 129-131; Seidl, *Einführung*, p. 26-27; 29; 37; 49; 51-52; Lurje, *Studien*, p. 137-138, who speaks of ‘declaratory oaths’, i.e. assertory oaths. Differently Menu, in: Verdier (ed.), *Serment* I, p. 336 ff, who distinguishes between ‘serments de vérité’, ‘serments déclaratifs’ and ‘serment d’engagement’. The first and latter may be compared to the assertory and the promissory oath respectively, while the use and function of the so-called ‘serment déclaratif’ remain somewhat obscure from a legal perspective.

<sup>62</sup> For those nuances consult for instance *The Black's Law Dictionary* (paper edition 1979), also available online (2014); good alternatives are P. Cane and J. Conaghan (eds), *The New Oxford Companion to Law* (2008) and B.A. Garner, *Dictionary of Legal Usage* (2011).

**Table 2.** A Functional Classification of Oaths



*The oath: general*

The oath is a solemn appeal to a higher, mostly divine, authority (in ancient Egypt a god the king or a highly placed private person) to bear witness to the truth of one's statement. This general definition covers the concept of the oath as a divine confirmation or guarantee of an earthly statement.

However, when the sworn statement is taken into consideration, that is: its formulation and contents, along with the setting in which it was made, other definitions of oaths, and distinctions of its fields of use come to mind. It must be noted that different classifications or definitions of oaths can be applied to one and the same oath.<sup>63</sup>

*Assertory and promissory oaths*

One way of organizing oaths is a perspective-based classification. Accordingly, the oath can be formulated either as an attestation of truth made with regard to past or present events (*assertory oath*) or as a promise to do or not to do something in the future (*promissory oath*). An assertory oath usually has a retrospective or historical view: "As lives God NN or King NN, *I did* or *I did not do* such and such a thing", while a promissory oath has a prospective or forward view: "As lives God NN or King NN, *I will* or *I will not do* such and such a thing".

The Egyptian sources from the Old Kingdom through the Ptolemaic Period examined in this book provide examples of both promissory and assertory oaths according to the above definition.<sup>64</sup>

*Juridical and non-juridical oaths*

Another way of organizing oaths is a contents-based classification. The contents of the oath can be either juridical, i.e. concerning legal or judicial matters, or non juridical, therefore not dealing with legal topics and taken without any requirement of law.<sup>65</sup> Examples of 'juridical oaths' are those used to guarantee a contractual obligation or to deny certain accusations in a legal dispute, whereas 'non-juridical oaths', are for instance the so-called 'exclamatory' or 'emotional' oaths such as those taken by the Pharaoh when, fighting against his enemies, he invokes the god(s) to assist him at a crucial moment in battle.<sup>66</sup>

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<sup>63</sup> For example, one and the same oath can be defined as being assertory (perspective-based classification), juridical (contents-based classification), judicial (i.e. taken in a litigation setting), decisory (as settling the dispute once and for all).

<sup>64</sup> The modern categories of 'promissory' and 'assertory' applied to ancient Egyptian oaths are used for instance by Wilson, *JNES* 7 (1948).

<sup>65</sup> Wilson, *ibidem*, p. 130, provides a similar definition of juridical oaths, i.e. "oaths having to do with law or the administration of law and justice". Note that it is usually a private person who takes a juridical oath. With regard to the non-juridical oaths, these are mainly found in a historical, biographical or religious context to emphasize certain deeds, words or emotions of the person who takes them. The latter can be a king, a god, or a private person.

<sup>66</sup> On this and other examples of non-juridical oaths (left out of scope in this study), see Wilson, *JNES* 7 (1948), p. 130-131; see also Lurje, *Studien*, p. 133 ff. and Menu, in: Verdier (ed.), *Serment* I, p. 332-337.

It must be noted that this law-based classification coexists with the former, typological one, so juridical oaths can be either assertory or promissory statements. As this book will concentrate on the juridical oaths, a further subdivision of these based on the setting in which they are taken (judicial or non-judicial), is required along with related terminological remarks, and must be dealt with here prior to the study.

#### *Juridical oaths in a judicial or non-judicial setting*

Juridical oaths can be subdivided into two main groups, based on the setting in which they are taken. This setting is either judicial, that is: “pertaining to the administration of justice, or to courts of justice, or to a judge thereof”<sup>67</sup>, or non-judicial, that is: pertaining to the so-called substantive law, which is the branch of the legal system that determines the obligations and rights of persons involved and refers to private and public law (e.g. contracts law, family law, property law, inheritance, torts).<sup>68</sup>

Subsequently, oaths taken in a judicial setting, or ‘judicial oaths’, consist of court-ordered oaths used in judicial proceedings or litigation (see types below). In contrast, oaths taken in a non-judicial setting, or ‘non-judicial oaths’, consist of substantive law-based oaths used in legal transactions or arrangements. They are normally meant as a precautionary measure, for extra insurance, e.g. to guarantee the fulfilment of a contractual obligation when entering into an agreement. In this sense, their use is mostly ‘proactive’, attempting to prevent a legal dispute from arising. By contrast, the use of judicial oaths is ‘reactive’ as they attempt to settle a legal dispute afterwards. Therefore, non-judicial oaths are usually promissory statements, whereas most judicial oaths are assertory statements. In the ancient Egyptian sources both groups of oaths, either in a judicial and non-judicial setting, are abundantly represented.

#### *Types of oaths in a judicial setting*

Ancient Egyptians used certain types of judicial oaths that in modern terminology are called *decisory oath*, *purgatory oath*, *suppletory oath* and *estimatory oath* respectively. It must be noted, however, that these definitions are not exclusively applied to one oath, but they coexist and can be used simultaneously for one and the same oath (for instance many purgatory oaths are also decisory oaths).

- a. *Decisory (or decisive) oath*: by taking or refusing to take such an oath, a dispute between two parties can be settled once and for all.

In other words, the party upon whom the oath is imposed, wins by simply swearing; on the contrary, by refusing to swear, he avoids the divine judgment and thus he admits

<sup>67</sup> *Black's Law Dictionary*, p. 759.

<sup>68</sup> For more on substantive law, *ibidem*, p. 1281.

being in the wrong himself and his adversary gets the credit. Decisory oaths are commonly used to settle a dispute when by necessity the word counts for everything, i.e. in cases where there is an absence of adequate written documentation to corroborate the statements, and the claims, of the parties.

- b. *Purgatory oath* or *oath of innocence*: an oath by which a person *purges* or clears himself from charges, presumptions or suspicions held against him.

Purgatory oaths are mostly formulated as negative oaths (“*I didn’t do such and such a thing*”).

- c. *Suppletory oath*: an oath which supplies the missing information or evidence on some aspects of a case, which is necessary to formulate the sentence.
- d. *Estimatory oath*: an oath required to assess the value of the claimed good.

A concluding remark and a caveat are in order as to the use of modern classifications of oaths in general. Despite their undoubted utility in sorting out the material, the types of oaths mentioned above are not always clearly separated in the ancient Egyptian material. This is especially true for promissory and assertory oaths, since many examples of ancient Egyptian oaths combine a promise about future conduct and a declaration about past or current matters in the same statement.<sup>69</sup> Moreover, the demarcation between law and religion, juridical procedures and religious belief is not easy to determine in ancient Egypt, just as it is difficult to strictly apply the distinction between penal and civil law or procedural and substantive law to the Egyptian setting.<sup>70</sup> So, for example, contract-related promissory oaths, usually sworn to guarantee the execution of the contract agreed upon and thus prevent a dispute from arising, may be imposed by an Egyptian court in litigation to pressure the breaching party into fulfilling his overdue obligations.<sup>71</sup>

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<sup>69</sup> For examples of such ‘combined oaths’, see Chapter 2, ex. 30, p. 54-55 and ex. 41, p. 71.

<sup>70</sup> As also remarked by Wilson, *JNES* 7 (1948), p. 130-131; and Menu, in: Verdier (ed.), *Serment* I, p. 335 and note 30.

<sup>71</sup> On such contract-related promissory oaths taken during litigation, see Chapter 2, p. 35.

### 1.3.2 Other Oath-Related Terms

Finally, a few other terms concerning the oath need to be brought up in addition to the above mentioned definitions of oaths. Any person who takes the oath is synonymously called an *oath-taker* or an *attestant* in this book, while the person for whose benefit the oath is taken is called an *opponent* or *adversary*. In cases where the oaths are taken in a judicial setting the oath-taker can be the *plaintiff*, i.e. the litigant who brings a legal action before a legal authority, or the *defendant*, i.e. the litigant against whom legal action is brought, or a *witness* in a given case.

The so-called *oath-helpers* (or *con-jurators*) are fellow oath-takers, usually relatives of the main oath-taker, who swear to the trustworthiness of the party they are helping and to the credibility of his or her oath; and hence are associated with the main oath-taker with regard to the possible divine and earthly consequences of perjury. The oath sworn by the oath-helpers is called a *subsidiary oath*. Finally, any person who commits a breach of oath is referred to as an *oath-breaker* or *perjurer*.

### 1.3.3 Other Legal Terms

The terms ‘disputing parties’, ‘disputants’ and ‘litigants’ are used synonymously for indicating two (or more) parties involved in a disagreement, without any legal distinction as to the kind of disagreement they have or in which stage of the disputing process they are.

The terms ‘contract’ and ‘oral agreement’ respectively cover the concept of written (that is: formalized in a deed) and unwritten legal agreements between two parties. Indeed, at all times the Egyptian practice included oral agreements (that is: not formalized in a deed), which appear to have been the norm, alongside the written ones, which were rather the exception; so the preserved written documentation from ancient Egypt reflects only part of the legal agreements between parties. Accordingly, we may surmise that many transactions in Ancient Egypt occurred without any deed being drawn up at all (especially when concerning low value goods). In fact, it is often those oral agreements and transactions that the oaths, which also represent an oral procedure, refer to and are meant to guarantee or confirm.<sup>72</sup>

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<sup>72</sup> On written contracts and oral agreements see David, *Legal Register*, p. 264; Haring, *JESHO* 46 (2003), p. 249-272; for more on the use of documents, see Eyre, *Use of documents*, especially p. 101-153.