

HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION
New York School

The Halaka of Rabbi Yehuda ben Ilai by Bernard Silverblatt

The candidate undertook to examine the Halakic decisions of Rabbi Yehuda ben Ilai as they are found in the total Mishna, with a view to relating them to the period. He was to discuss thought trends together with social and cultural implications. His study was also to show the stage in the development of the Halaka reached in that generation with the particular contribution towards juridical development made by the subject of the thesis.

The thesis begins with a general description of the period and the role played by his subject. He examined such of the Agadah as appeared in Bacher for a clue to Rabbi Yehuda's significance and his general religious or pietistic attitudes. He points out his own private code of ethics and the ethical demands he made of his generation.

This study of Yehuda's Halaka, he classified in accordance with the different methods used by his generation in general, in approaching the question of law in society. He discovered that four methods were used, which he names the subjective, the pragmatic, the historical, and the sociological.

It appeared to this reader that no distinct line of demarcation can be drawn between one method and the other, and such strict delimitation is a bit forced. The candidate has not always been too happy in the discussions of the different Halakot, because of the necessity of forcing them into the framework he had set up. Nevertheless, he has gone through the Mishna and a goodly portion of the literature, both primary and secondary anent his text and grasped most of it adequately. He has also gained some knowledge of the problems that have to be faced in a study such as this. He has learned certain methods of research and how to handle his material. I am therefore, ready to give him a passing mark with a grade of "C".

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Rabbi Judah Bar Ilai

An Analysis of his Halakot

by

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Dedications

I am indebted to a number of individuals for their help in the preparation of this thesis.

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It was my association with the above named individuals that made working on this thesis a highly instructive and gratifying experience.

"It is not thy part to finish the task, yet thou art not free to desist from it...(Aboth 2:16)"
If through this work I have stimulated others to investigate the problem -- I feel that my task has been accomplished.

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CHAPTER I

The last gasp of Jewish freedom -- the fortress of Bethar -- fell to the Romans in 135 C. E.,¹ according to tradition, on the ninth of Ab;² thus marking the end of the Bar Kochba War of Rebellion. The Jewish survivors that had not succumbed to the famine during this siege were sold as slaves in the slave markets of Hebron.³ Many fugitives, however, fled to Arabia, whence that country obtained its Jewish population which afterward played so important a part in its history.⁴

Judah resembled a desert -- hundreds of fortresses and villages were in ruins. One permanent result of the Bar Kochba rebellion was the loss of Jewish population in Palestine. Those spared from the Roman sword fled from Roman oppression to other parts of the world, above all to that portion of the Parthian Empire already famous in Jewish history under the name of Babylonia. Neither the Babylonian nor the Palestinian Jew realized as yet that this transfer of population was but the beginning of a transfer of religious strength and authority.

That was to become apparent several generations later. In the meantime it was clear that Judea was completely destroyed.

Hadrian attempted to turn Jerusalem into a pagan city, which the Jews regarded as an abomination.⁵ On the mount in Jerusalem where formerly stood the Sanctuary was reared the Roman temple to Jupiter Capitolinus.⁶ Once a year, on the Ninth of Ab, Jews streamed there, begging and bribing the Roman guards to permit them to linger, pray, and weep over the destruction of the Sanctuary.⁷ In memory of this last revolt, the Jews, as a sign of mourning, decreed that brides should no longer be carried in beautiful sedan-chairs into the houses of their bridegrooms.⁸

Hadrian's cruel measures were directed not against the survivors alone, but also against the dead. The heaps of dead bodies were not permitted to be interred, but the horrible sight was intended as a warning to the survivors, that they should no longer dream of deliverance from the Roman yoke....It appears that a pious man desired to impress on the Romans, and who lived in seclusion, the necessity of interring the corpses in the darkness of the night, even at the cost of their

own happiness and peace. To this end he composed a book -- The Book of Tobit -- in which great weight is laid on the duty of secretly interring the bodies of those whom the tyrants doomed to disgrace; and at the same time it was hinted that the danger attending this duty would bring a rich reward. The contents of the Book of Tobit undeniably indicate that it was composed in the reign of Hadrian.⁹

Although Rome had achieved her victory, she did so at a price as great as any in her history. But Hadrian was able to carry out his intention. The following years witnessed the attempt of the Hadrianic regime to raze the religion of the Jews to its foundations. Hadrian understood the religious motives of the war, and took revenge on the religion.¹⁰ The existence of the Jewish people remained an enigma to the Roman authorities. They were a misfit in the Roman conception of what a nation should be. Years before they had lost their Sanctuary and the last vestiges of autonomy. The language spoken by the Jews was as diversified as the areas into which they had been dispersed, and the surrender of authority to the Romans and the acceptance of

Roman yoke and Greek language had caused not the slightest abatement in the strong national feeling that bound these people together wherever they were to be found. This strong nationalism posed an annoyance to Rome, since the flareup that had occurred just previously foreboded no good to the Roman sense of security. Hadrian ventured the premise that the strength of the Jews lay within their faith and he proposed to bring down the inner citadel of strength as Antiochus Epiphanes had tried to do just two and a half centuries before; in the long run, Rome was no more successful than the last of the Seleucids.

This period referred to in Talmudic and Midrashic literature as the time of danger or the age of the edict or persecution, was one of the most critical in the history of Palestinian Jewry.¹¹ As soon as the insurrection began to manifest itself, an edict was issued by the Roman authorities forbidding not only circumcision, the observance of the Sabbath and the Festivals,¹² but also the maintenance of religious organization through the institution of

ordination.¹³ The very essence of Judaism -- the teaching of the Law -- was prohibited;¹⁴ and it was for disregard of this imperial decree that Akiba and other teachers, glorified in legend, suffered death by torture.¹⁵ The stubborn adherence of the Jewish people to their religious laws and customs overcame, in the course of years, Rome's efforts to destroy them. Ten scholars especially, are said to have suffered martyrdom for defiance of the Roman edicts.¹⁶ The last among the martyred scholars was the saintly R. Judah b. Baba who defied the imperial edict by ordaining the disciples of Akiba.¹⁷

Hadrian's severe persecution also fell upon the Jewish Christians -- perhaps on all Christians -- although they had separated from the Jewish community; for the reason that the Roman authorities did not consider the differences of dogma between Jews and Christians. Both sects of Christians were anxious to be recognized as a body separate from the Jews, both politically and religiously, so as to avoid the doom impending over the latter ---- From this time dates the unity and identity of most of the Jewish-Christian and heathen-Christian sects ---- From the times of Hadrian all connection between Jews and Christians closed and they no

longer occupied the position of two hostile bodies belonging to the same house, but they became two entirely distinct bodies.¹⁸

Those scholars who were able fled to Babylonia, while those who remained were searched out by Roman spies. The destruction of the nation in Palestine seemed imminent -- with the Roman government forbidding the teaching of the Torah and the dissolution of the great scholastic center of Yavneh.

Through the remainder of Hadrian's reign a ruthless war of extermination was carried on against the religion of the Jews, which, the emperor shrewdly realized, was the head and front of the resistance.¹⁹ Usha, near Haifa, and the larger towns in Galilee, whose ignorance and illiteracy had long been a subject for jest among the scholars of the south, now became the rallying point for those who loved the law.

The death of Hadrian three years after the fall of Bethar, and the succession of his son, Titus Aurelius Antoninus (Pius Antoninus) to his throne, brought about a favorable turn. Titus Aurelius Antoninus was faced with the choice of

yielding to Jewish susceptibilities or else, of exterminating the whole of the Jewish people. He proved receptive to the petitions and lamentations of the Jews, and on the twenty-eighth of Adar (139 or 140) came the joyful tidings that the Hadrianic decrees were revoked and the persecution was ended.

The seven fugitive disciples of R. Akiba were allowed to return,²⁰ and they immediately set about the task of reorganizing and reconstructing the religious life. Study was their sole comfort; knowledge their only wealth. Yet it was now clearer than ever, that the survival of the Jewish people as a separate group, and the survival of Judaism along with its ideals, would be assured "not by might nor by power, but by My spirit".²¹

These scholars were Meir, Judah ben Ilai, Jose ben Halaftha, Eliezer ben Jose, Simon ben Jochai, Eleazer ben Jacob and Nehemiah. They invited all the remaining teachers of the Law to meet at Usha, which even previous to the revolution of Bar Kochba had been, for a short time, the seat of the college; to begin the work of

reinstating and renewing the observance of the traditions which had fallen into disuse during the persecution.²²

The members of the Tanaite circle pursued the work of their predecessors with great self-sacrifice, in order to restore the broken chain of tradition, but their numbers were less, and their mental activity inferior to that of the former generations.²³ It was at this city that the remaining disciples chose to reconstitute themselves as a Sanhedrin. There is no question of the fact that a great court was constituted at Usha by this assemblage embodying every writ and regulation that had preceded it at Yabneh, and one of their most durable accomplishments was the establishment of a *לית הנה צרכי* for the *חכמים* and their disciples.²⁴

CHAPTER II

In the Mishnah and Gemorah whenever the name R. Judah is mentioned it refers to Rabbi Judah bar Ilai.¹ He was a Tanna of the third generation who lived in Palestine during the second century.² R. Judah came from Babylonia and his birthplace was Usha.³

R. Judah received his early education from his father's teacher, Rabbi Eliezer ben Hyrcanus.⁴ R. Judah was also taught by R. Yehoshua, R. Jose Haglili, R. Shmuel, and R. Eleazar ben Azariah.⁵ Some of the classmates of R. Judah were Jose ben Halaftha⁶ and Simeon ben Gamaliel, who later was destined to become the Nasi.⁷ His primary teachers were Rabbi Tarfon and Rabbi Akiba.⁸ R. Judah thus accumulated a large volume of information which he later quoted in the name of his masters.⁹

R. Tarfon greatly influenced R. Judah as a youth¹⁰ and on more than one occasion addressed R. Judah as his son for he loved him greatly,¹¹ and once asked R. Judah to read the Megillah

before him.¹² After R. Tarfon he went to the academy of Rabbi Akiba to continue his studies. Rabbi Akiba influenced R. Judah in the formulative years of his life,¹³ and prepared him for ordainment. R. Akiba, however, could not ordain R. Judah as it was forbidden by Hadrian¹⁴ after the destruction of Bethar.¹⁵ (There is no historical record of R. Judah bar Ilai in the period of the Bar Kochba revolution with Hadrian.¹⁶)

Rabbi Judah b. Baba risked his life when he finally ordained R. Judah and four others (R. Meir, R. Simeon, R. Jose b. Halaftha and R. Eleazar b. Shammua);¹⁷ and as a direct result of this ceremony of ordainment R. Judah b. Baba was killed. The five dedicated themselves to the Law; as the Law (Torah) now truly depended upon them as the Nasi Gamaliel was dead and no other Nasi reigned. These five newly ordained 'Rabbis' now dispersed to different areas.¹⁸ R. Judah b. Ilai later recorded the expedients used to maintain as much as possible of the religious laws during this period when it was proscribed.¹⁹ Many others such as

R. Akiba, R. Chaniniah ben Tradjon, R. Judah b. Baba, etc., either perished untimely deaths or directly through the catastrophic days that followed.

Following the death of Hadrian the Valley of Remon witnessed large gatherings of Jews;²⁰ and the illustrious teachers of that generation included the five that were ordained by R. Judah b. Baba. In all these meetings R. Judah bar Ilai was the foremost speaker,²¹ and for this reason received the surname Rosh Hammedaberim. This name was associated with him all the days of his life. The statements of R. Judah b. Ilai concerning accepted laws quoted the opinions of his teachers,²² or traditional interpretations which were received from their predecessors as it was customary at that time to quote opinions of authorities dating back before the destruction of the Temple.

This assemblage in the Valley of Remon added an extra month to the Jewish calendar even though this was the sacred duty of the Nasi; however,

since no Nasi reigned, they took it upon themselves to proclaim this great event. Consequently the supreme authority of the Nasi temporarily changed to those gathered in the Valley of Remon.

After the Hadrianic decrees were lightened they moved to a new center of learning in Usha and from there issued a call that those that wished to study (the Law) in this new academy were to come there. This assembly did not remain in Usha very long but journeyed to Jabneh where they attempted to centralize the educational system.²³ In this period R. Judah b. Ilai credits the Sages of Jabneh from whom he received great knowledge.²⁴

I have mentioned before that R. Judah was 'the first to speak' in Usha because he was a native of that city and the townspeople honored him as the outstanding man of the city by delegating him as their leader. This position he also maintained after the 'Sanhedrin' returned to Jabneh as a result of his friendly attitude towards Rome.²⁵

The manner in which his attitude became known to the Romans is related in the following story:²⁶

"R. Judah, R. Jose ben Halafta and R. Simeon b. Yochai once sat in the academy together with R. Judah ben Gerim. A discussion developed regarding the achievements of the Romans in Palestine and R. Judah b. Ilai praised the Romans for paving the highways and building baths and bridges. Rabbi Jose heard these praises and remained silent. (Perhaps he did not agree with R. Judah and did not wish to contradict him.) R. Simeon ben Yochai said: 'What is there to praise? Whatever the Romans did -- they did for their own benefit. They paved streets in order to settle their harlots there; they built bath houses in order to anoint themselves; they built bridges in order to collect tolls.'"

Unintentionally perhaps, Rabbi Judah ben Gerim repeated these words in the presence of others; and the Roman authorities finally heard of this discussion and were greatly displeased. They commanded that Rabbi Judah b. Ilai, who praised the Roman achievements should be honored. Rabbi Jose ben Halafta, who remained silent and did not express his agreement (nor disagreement) with R. Judah, they interned him in his native city of Sephoris, and he was forbidden to leave it. Rabbi Simeon ben Yochai, who denounced the Romans, was condemned to death but escaped the death penalty by hiding in a cave.²⁷

Concerning this incident, R. Judah b. Ilai who was highly respected and admired by the Roman admin-

istration effected a compromise by taking upon himself to guarantee the cooperation of R. Jose b. Halaftha; whereupon R. Jose was taken off 'town arrest'.²⁸

From his place of exile under a new Roman administration R. Simeon b. Gamaliel was elected Nasi, R. Natan was to become the chief of the Beth Din, and R. Meir was chosen Hacham.²⁹ R. Judah b. Ilai was designated advisor and tutor in the Nasi's court and delegated liason between the Nasi and the Roman administration.³⁰ The Roman administration, however, looked with disfavor on this new Sanhedrin as it was being regarded by all as a sign of the messiahship. R. Judah personally undertook the responsibility and guaranteed closer relationship between the two.³¹ The Roman attitude was one of toleration and they allowed the Jews to continue with the office of the Nasi (as long as they did not interfere in politics and paid their taxes regularly).

At the same time R. Judah was busy establishing new academies of learning throughout the length and

breadth of the country. The most famous of these was the Academy of Sichna.³²

R. Judah's personal piety was most rigid.³³

R. Judah observed many of the practices of the Hasidim and the Essenes.³⁴ On the eve of Tisha B'av R. Judah would eat dry bread and salt so as to make the fast all the more difficult.³⁵

He was ready to overlook his own dignity when peace between husband and wife was at stake.³⁶ Thus it happened that a man once vowed not to taste of his wife's cooking until R. Judah would first partake of it, and he bowed to the wish of the husband for the sake of peace.

In Ketuboth 17A and Megillah 29A we see where when the question was discussed whether it was more important to study the commandments or to practice them, R. Judah said that the fulfillment of the commandments was of greater significance than the study of the Law. Accordingly, he commanded his disciples to interrupt their studies especially when it interfered with the duty of burying the dead or attending a wedding. He always accepted an

opportunity of rejoicing with a bride or bringing about a reconciliation between man and wife.³⁷

Despite R. Judah's prominence among the Jews and his favorable position among the Romans he suffered great poverty. R. Judah and his wife possessed one coat between them.³⁸ She would wear it to the market places and upon her return, he would wear it to the yeshiva (where he shared this coat with yet five others). Once when the Nasi R. Simeon b. Gamaliel ordained a fast, usually the 'Hachamim' came before him; however, R. Judah was unable to appear, as his wife, at the time, was wearing the only coat available. Nonetheless, he declined all assistance, since he had accustomed himself to the simplest mode of life, and on principle desired to have no delight in this world.³⁹ From that which has been related so far we may conclude that R. Judah b. Ilai was a man of modesty and of extreme piety. He was a great botanic scholar (Shebilith 2:5).

According to the later teachers, wherever the Talmud speaks of a 'saint' (hasid) without men-

tioning the name, it refers either to R. Judah b. Ilai or to R. Judah b. Baba.⁴⁰ The study of the Torah was his chief and dearest occupation, and he lamented the fact that such a devotion was no longer wide-spread as in former times.⁴¹

R. Judah's favorite sayings were:

- (1) Great is labor for it brings honor to the laborer.⁴²
- (2) He who does not teach his son a trade is as if he would teach him to steal.⁴³
- (3) A Sadducee who met R. Judah said to him, "You look like a usurer or like an owner of a swineherd." But R. Judah answered, "I am a Jew and therefore I can be neither".⁴⁴
- (4) "Charity is a great virtue and it brings redemption nearer. God created ten kinds of strength each of which is

stronger than the preceding one and acts as a cure for it. A mountain is strong, but iron cuts it; iron is strong but fire melts it; fire is strong but water puts it out; water is strong but the clouds carry it away; the clouds are strong but the wind disperses them; wind is strong but the human body withstands it; the human body is strong but fear breaks it; fear is strong but wine dispels it; wine is strong but sleep does away with its effects. The strongest of all is death but charity saves one from death".⁴⁵

- (5) "He who makes the Torah the outstanding purpose of his life relegates secular knowledge to a secondary position will come to be considered by the world as of importance; but

a man who makes his secular knowledge the central motive of his life and relegates the Torah to a secondary place will himself come to be considered as of no importance."⁴⁶

- (6) "Be careful in teaching, for an unintentional mistake in this is accounted as if it were a wilful wrong."⁴⁷
- On the other hand, he held that ignorance of the Law was an excuse; a transgression by an ignorant person (an Am Haaretz), even if done deliberately, was to be regarded as unintentional, since he knew no better.⁴⁸

R. Judah b. Ilai attained a very great age, surviving his teachers and all of his colleagues.⁴⁹

There is, however, no source of his death recorded.

R. Judah had two sons; one died during his lifetime, the other, Jose ben Judah,⁵⁰ became a great scholar who served in the court of Rabbi Judah Hanasi.⁵¹ It

was R. Judah Hanasi who was destined as a pupil to
 pay last honors to his great teacher -- Rabbi Judah
 bar Ilai.

CHAPTER III

Within the framework of the Mishnah are embodied the attitudes and opinions of the Pharisees in addition to the 'Halachah'. The object of this activity was the preservation, cultivation, and application to life of 'the Law' (Torah), in the form in which many generations of like-minded Jewish religious leaders had learnt to understand the law.¹ The Pharisees succeeded in regulating Jewish life by reconciling the opposites of innovation and tradition through the new conditions as set forth by the 'Oral Law'.² They approached tradition with an attitude which was one of both loyalty and flexibility, and which emphasized progressive thinking.³ Indeed on very many subjects of their teaching they went beyond what was to be found in the Scriptures, but always by way of mutual development, not by way of sudden break, still less by decisive rejection.⁴

There were, however, elements of a conservative trend of legal thinking that opposed the progressive trend of legal thinking in the rank and file of the

Pharisees. The division among the Pharisees accounts also for the curious division of opinion in its midst between the rival schools of Shammai and Hillel, and, after the disappearance of these schools, between those of Ishmael and Akiba.⁵ The schools of Shammai and Ishmael tended to be conservative and to take provincial and aristocratic sides of various controversies; those of Hillel and Akiba tended toward the side of the urban-minded artisans.⁶

These conflicting tendencies finally made it necessary to officially designate the authority of the Hillelites over that of the Shammaites.⁷ Consequently Jewish life was now regulated by the more progressive teachings of the Pharisees; the whole history of Judaism was reconstructed from the Pharisaic point of view; a new chain of tradition supplanted the older, priestly tradition; Pharisaism shaped the character of Judaism and the life and thought of the Jew for the future; it gave the Jewish religion a legalistic tendency and made 'separatism' its chief characteristic; yet

only thus were the pure monotheistic faith, the ethical ideal and the intellectual and spiritual character of the Jew preserved in the midst of the downfall of the old world.⁸

Pharisaic thought in R. Judah bar Ilai's generation, too, also had its progressive and conservative factions. The Shammaites and their successor R. Eliezer ben Hyrcanus⁹ had been repudiated, but their outlook, temperament and predilections were still shared by some of R. Judah's colleagues.¹⁰

After the Hadrianic decrees were revoked¹¹ and the persecutions were ended;¹² the scholars began to return to Palestine¹³ from Babylon to begin the work of reinstating and renewing traditions which had fallen into disuse. In the restoration of the Oral Law R. Judah championed the cause of the Hillelites; although at times he was extremely conservative in his point of view that one could say that he too, was a champion of the Shammaite tradition. Both are equally true.

As a great scholar and preserver of traditions,

his voice carried great weight. His views are to be studied for their academic value, but as far as practice was concerned, the position of the majority alone was to be authoritative.

The primary purpose of this thesis is an analysis of the 'halakot' of Rabbi Judah ben Ilai and to discern any significant trends between the conservative and progressive Pharisaic traditions with an eye on uniformity and individualization. Individualization in legal thought implies a difference or break from the prevailing opinion.

Individualization may be achieved by the following methods:

A. Subjective Method: (1) belonging to the thinking subject, thus applicable to all mental phenomena;¹⁴ (2) intention or purpose is considered as a means of reasoning.

B. The Pragmatic Method: Logical consistency is not the only standard of legal reasoning. Decisions

ought to be made in the light of the end that the Law was originally intended to achieve.¹⁵

C. The Historical Method: It was assumed that the old doctrine of natural law rested on a belief in the actual existence of human beings in a state of nature prior to organized society; and as history has not shown that such a state ever existed, natural law falls to the ground.¹⁶ The existing conditions demanding the enactment of any laws must be evaluated in the application of such laws.

D. The Sociological Method: Laws are made for society's advantage and gain. The law may be amended, annulled, and even changed for the betterment and welfare of society.¹⁷

The distinctive intellectual traits of ancient civilization have been largely moulded by the appeal to nature against conventional taboos and by the appeal to nature against arbitrary authority. To understand fully the grounds, causes and effects of this conflict would involve a thorough survey of contemporary civilization and carry us far into the complexity of the human mind. One of the elements, however, in such a survey is a right understanding of the general bearing or meaning of various methods, i. e., of the principle and procedure according to which results are obtained (and according to which these results are being revised). Modern thought emphasizes mobility.

The best and typical Mishnayot concerning these four methods will be used to demonstrate R. Judah's concept on individualization and uniformity. The methodological classification of the Mishnayot will be found in Appendix A, and the subject matter classification will be found in Appendix B. The scope of this study is

limited only to the Halachot which appear in the Mishnah. For the purpose of this investigation the Romm edition of the Mishnah was used. The English rendering of the Mishnah is that of Danby's 'The Mishnah'. We now proceed to investigate the legal thought within the 'halakot' of Rabbi Judah ben Ilai along the Pharisaic lines of uniformity and individualization.

A. The Subjective Method

Ketuboth, 9:1.

"If a man declared to his (betrothed) wife in writing, 'I will have neither right nor claim to thy property', he may yet have the use of it during her lifetime and inherit her property when she dies. If so, to what purpose did he declare to her in writing, 'I will have neither right nor claim to thy property'? -- so that if she sold it or gave it away her act should be valid. If he declared to her in writing, 'I will have neither right nor claim to thy property or to the fruits thereof', he may not enjoy the fruits during her lifetime, but he may inherit her property when she dies. R. Judah says: He can in any wise enjoy the fruit of the fruits unless he declared to her in writing, 'I will have neither right nor claim to thy property or to the fruits thereof during thy lifetime or at thy death', he may not enjoy the fruits during her lifetime and when she dies

he may not inherit her property. Rabban Simeon b. Gamaliel says: If she dies he may still inherit her property because he made a condition contrary to what is enjoined in the Law, and if a man makes a condition contrary to what is enjoined in the Law, his condition is void."

R. Judah and Rabban Simeon b. Gamaliel differ over the matter of specific intent. According to Rabban Simeon in a case where a husband declares in writing that he will forego all rights to her (his wife's) property as well as the fruits thereof, or to the fruits of the fruits thereof; after her death he inherits her property. Although it was his intention to forego his right in inheritance, this action is invalid since it is contrary to the principles of inheritance (Num. 27:11); as no man may make a condition contrary to what is enjoined in the Torah.

R. Judah, however, is of the opinion that specific intent is valid; and he (the husband) foregoes his right in inheritance by his specific intent (in writing).

Maaser Shení, 4:7.¹⁸

"If a man redeemed Second Tithe yet had not designated it Second Tithe, R. Jose says: It suffices. But R. Judah says: He must designate it expressly. If a man was speaking to a woman about her divorce or her betrothal and gave her her bill of divorce or her betrothal gift but did not expressly designate it such, R. Jose says: It suffices. But R. Judah says: He must designate it expressly."

The disputes between R. Judah and R. Jose in the above Mishnah revolve about the question of the validity of implicit designation.

R. Jose not only considers objective facts but also the mental processes which they may imply. Where, therefore, there is an act of redeeming Second Tithe, or giving a bill of divorce or a betrothal gift, R. Jose allows the subjective implications of these acts and rules them sufficient.

R. Judah denies the validity of the implicit designation and stresses that the Second Tithe or

a bill of divorce or betrothal gift must be designated expressly. For according to R. Judah only specific intent is valid.

Berakoth, 7:2.

"Women or slaves or minors may not be included (to make up the number needed) for the Common Grace. How much (should one eat) to be included (to make up the number needed) for the Common Grace? An olive's bulk. R. Judah says: An egg's bulk."

The difference of opinion in the Mishnah is of the subjective. The fact that a person ate an olive's bulk would make him eligible to be included in the number needed for the Common Grace according to the Rabbis. The eligibility, according to R. Judah, depends on his actual participation of a meal, which is at least the size of an egg.

Since there is a Biblical basis for the say-

ing of Grace (Deut. 8:10, Deut. 32:3, Ps. 34:4),
 "And thou shalt eat and be satisfied" -- i. e.,
 eating wherein is some satisfaction; and what is
 that? That, according to R. Judah, is the mini-
 mum quantity of the size of an egg (Berakoth 49B).

Shebiith, 7:4.

"If a man bought a Firstling for his son's wedding
 feast or for a Feast (at Jerusalem), and he does
 not need it, he may sell it. If hunters of wild
 animals, birds and fishes chanced upon species
 that are unclean, they may sell them. R. Judah
 says: Also if a man came upon such by accident
 he may buy or sell them provided that this is not
 his trade. But the Sages forbid it."

The principle underlying the entire Mishnah
 is that of intention. The reasoning of the first
 part is that the purchase of a firstling for his
 son's wedding feast or for a feast at Jerusalem

is permitted to him if it is blemished and if he is not a priest. Indeed, the nature of an act of assignment cases light on the intent of the buyer as well as the seller.

The second clause of the Mishnah deals with the presumption of intention. R. Judah is more lenient than the Rabbis in the case where a man (not a hunter -- one that earns his livelihood from this profession by paying a special tax and who is permitted to hunt only for clean species, and if by accident finds unclean species, is permitted to sell and not buy them) came upon accidentally a nest or den of unclean animals, birds, fishes, etc. the Rabbis forbid the selling of unclean species by those that are not hunters by profession as this may become a new profession to them. They also forbid the buying of unclean species to all -- whether a hunter or not -- as this, too, might lead to a forbidden occupation.

However, according to R. Judah, we need not fear that the unclean species found accidentally by a non-hunter (as R. Judah agrees with the Rabbis

in the case of a hunter) will lead to a new trade, consequently R. Judah permits the buying as well as the selling of these unclean species.

Terumoth, 1:3.¹⁹

"If a minor has not produced two hairs, R. Judah says: His Heave-offering is valid. R. Jose says: If (he gave the Heave-offering) before he reached an age when his vows are valid his Heave-offering is not valid; but if after he reached an age when his vows are valid his Heave-offering is valid."

In the commentary of 'Rabenu Simson' to Terumoth 1:1 we find a similar dispute over the necessity of intention in tithing in which the disputants are the Rabbis, R. Eliezer and R. Judah. The issue there concerns the validity of tithes offered by a deaf mute. Since tithing to the Rabbis was an act requiring full intention, of which a deaf mute was not considered fully

capable, as he could not hear the blessing, they held a deaf mute's tithes invalid. R. Eliezer, while agreeing to the necessity of intention, maintained that the limited intention of which a deaf mute is capable ought to be adequate. Nevertheless, he recommended that the tithing of a deaf mute should be confirmed by a legal guardian. R. Judah validates the tithes of a deaf mute without any reservation whatever.

In the Mishnah under consideration the necessity of intention in the giving of Heave-offering is disputed by R. Judah and R. Jose. R. Jose maintaining the position of the Rabbis, holds that Heave-offering is valid only if the offerer is capable of full intention. Without the component of mature volition the act of Heave-offering remains incomplete and ineffective.

R. Judah, in the case of intention is even more conservative than R. Eliezer, maintaining that the Heave-offering of a minor incapable of sufficient intention is to be regarded as complete and effective as his specific intent for tithing is valid.

Erubin, 4:4.

"If a man sat down while on a journey (on the eve of the Sabbath) and rose up (after nightfall) and saw that he was near to a town, since it had not been his intention he may not enter the town. So R. Meir. But R. Judah says: He may enter the town. R. Judah said: It once happened that R. Tarphon entered (a town in like case) although it had not been his intention (to pass the Sabbath there)."

Here is a dispute between R. Meir and R. Judah concerning whether a journeyman may enter a town on the Sabbath. R. Meir maintains that since the journeyman had not the intention of spending the Sabbath in the town he may not go there by using the following principle: One is permitted to walk 2000 feet on the Sabbath from his present dwelling-place and if the 2000 feet end in the city he can go no farther since he is not to be classified as a city-dweller -- one that may walk freely in the city and also may go in any direction from the city a distance of 2000 feet.

R. Judah maintains that he may enter the city, as he would not have made 'Shabus' in his present dwelling-place had he known that he was presently within the city limits; therefore he may walk freely throughout the city and its environs. R. Judah cites another case of R. Tarfon, when he (R. Tarfon) entered a town on the Sabbath although it had not been his intention to pass the Sabbath there.

Peah, 7:5.

"If a man thinned out his vines, he may thin out what belongs to the poor like as he thins out what belongs to himself. So R. Judah. R. Meir says: He has rights over what is his but not over what belongs to the poor."

R. Meir maintains the opinion that when the farmer thins out his vineyard he is automatically depriving the poor by lessening their due share,

as the mitzvah of Peah gives the poor ownership rights to that part (Peah); the same rights as a buyer, consequently the farmer cannot enter the field even to improve it.

R. Judah maintains that the farmer betters not only his own crop but also the crop of the poor; since he will remove all single grapes and defective clusters from the vineyard; as the mitzvah of Peah gives the poor partnership rights to the size of the Peah, consequently the owner, who is the other partner, may enter and develop the entire vineyard. Objective action, according to R. Judah, must be accompanied by subjective volition to constitute an act.

Baba Bathra, 10:5.²⁰

"If a man paid part of his debt and the bond was placed with a third party, and the debtor said to him, 'If I have not paid thee by such a day, then give him his bond', and the time came and he had not paid, R. Jose says: He should give it to

him. R. Judah says: He should not give it to him."

This Mishnah is a classic example of the controversy over asmakta. Jastrow, citing the situation in this Mishnah as an example, defines asmakta as "a promise to submit to a forfeiture of the pledged property (or equivalent) without having received sufficient consideration; collateral security with the condition of forfeiture beyond the amount to be secured." Asmakta gives no title, he explains because "the law presumes that he who made such a promise could not have meant it seriously but had in view only to give his transaction the character of good faith and solemnity."

In the light of these statements it is possible to show the dispute between R. Jose and R. Judah.

R. Jose maintains that since the undertaking to pay the full debt was given in the hope and expectation that it would never have to be carried

out, it is nevertheless legally binding, since the condition on which it was dependent was not in fact fulfilled, therefore R. Jose is of the opinion that asmakta does give title.

R. Judah's position can be said to rest on the following grounds: It is obvious that the borrower never intended to pay the full debt after he had already paid an installment. His undertaking to pay the full debt if the balance were not paid by a certain date must have been in the nature of an expression of good faith, in his desire to show that it was his earnest hope and intention to pay the balance before that date arrived -- therefore R. Judah is of the opinion that asmakta does not give title.

Yebamoth, 15:5.

"If one woman said, 'My husband is dead', and the other (wife) said, 'He is not dead', she that said, 'He is dead', may marry again and take her

Ketubah; and she that said, 'He is not dead', may not marry again or take her Ketubah. If one said, 'He is dead', and the other said, 'He has been killed', R. Meir says: Since they contradict one another neither may marry again. R. Judah and R. Simeon say: Since both admit that he is not alive they may both marry again. If one man testified and said, 'He is dead', and another man testified and said, 'He is not dead', and one woman said, 'He is dead', and another woman said, 'He is not dead', she may not marry again."

We are concerned with the middle part of our Mishnah which deals with when one wife says 'He is dead', and the other wife says 'He has been killed'. R. Meir (disputes with the first part as well as the second part of the Mishnah and he) maintains that since both contradict one another, the woman is not permitted to remarry. The right of a widow to remarry, according to R. Meir, is by her own testimony, however, in this case, the widows weaken this right by contradicting one

another.

R. Judah and R. Simeon maintain that the right of the widows to remarry is that they no longer have a husband, as both agree that he is not alive, whether due to a normal or accidental death, consequently they are permitted to remarry.

Berakoth, 2:1.

"If a man was reciting (the verses of the Shema') in the Law and the time came to recite the Shema', if he directed his heart he has fulfilled his obligation; otherwise he has not fulfilled his obligation. Between the sections he may salute a man out of respect and return a greeting; but in the middle (of a section) he may salute a man (only) out of fear of him, and return a greeting. So R. Meir. R. Judah says: In the middle he may salute a man out of fear of him and return a greeting out of respect; between the sections he may salute a man out of respect and return the greeting of any man."

R. Judah and R. Meir agree that between the

sections of the Shema (between one paragraph and another, between one blessing and another), one may salute a man out of respect and return the greeting of any man. The controversy in this Mishnah is over the second case, concerning the greeting of a man in the middle of the Shema.

R. Meir maintains that if one is in the midst of reciting a blessing of the Shema, or in the midst of reciting one of the paragraphs he may salute a man and return his greeting only out of the fear of him; however, in a case where the element of fear does not enter, a man can not 'out of honor' salute a man and certainly not return his greeting.

R. Judah is more lenient and maintains that since honor is due to every individual, consequently one may return the greeting of any man.

The principle underlying the entire Mishnah is that of intention. According to R. Meir the greeting of an individual in the middle of the Shema would be permitted only from fear of the individual. R. Judah agrees in principle to R. Meir's

dictum but adds to it that the respect of any individual would necessitate an honest greeting of return.

Erubin, 3:8.

"Moreover R. Judah said: A man may make conditions about a basket (of fruit) on the first Festival-day and eat it on the second. So, too, an egg laid on the first day may be eaten on the second. But the Sages did not agree with him."

The Mishnah relates the case of a man carrying a basket of produce not yet given its proper Tithe and Heave-offering and the New Year Feast is at hand. According to the Torah no tithing may be made on (the Sabbath or) Holy Day, and the problem is how can the tithing now be made. R. Judah advises the following method: On the first day he says, 'If today is not holy let this produce be Heave-offering for the rest; and if today is holy

let my words be void', since Tithe and Heave-offering may not be set apart on a holy day. The next day he says, 'If yesterday was holy and today not holy, let what I yesterday designated Heave-offering be Heave-offering for the rest, and if today is holy and yesterday was not holy, it is in anywise Heave-offering'. And he may eat of the tithed produce and leave aside the Heave-offering.

R. Judah cites a similar case of an egg laid on the first day of the Festival which, he says, may be eaten on the second day of the Festival. If the first day is a 'holy' day and the second day is a 'common' day the egg may be eaten on the second day. Moreover, if the first day is a 'common' day, all eggs laid on that day, may one on the second day eat, even if it be a holy day.

Betzah (Yom Tob), 3:4.

"If a Firstling fell into a pit, R. Judah says:
Let a skilled person go down and look at it; if

it has incurred a blemish let him bring it up and slaughter it; otherwise it may not be slaughtered.

R. Simeon says: In that its blemish was not perceived on the day before, it cannot count as what is set in readiness."

The laws concerning sacrificial offerings at the time when the Temple was in existence is our topic of discussion. A Firstling belongs to (the Priest and) Temple and must be slaughtered and eaten by the Priests in the Temple. If, however, a Firstling has incurred a blemish, it may be slaughtered anywhere, but must be eaten in Jerusalem. All may eat of this save the Priests. The Gemara specifies two types of blemishes: one that is temporary and one that is permanent. An expert must be called in for verifications.

Our Mishnah relates the case where a Firstling with a questionable blemish fell into a pit on the day of the Festival. The question facing us is: Was the blemish of a temporary or of a permanent nature?

R. Judah maintains that if the expert testifies that the animal had a permanent blemish, then it may be slaughtered and eaten by all save a priest, as the animal was considered to be in readiness for slaughtering. If, however, he testifies that the blemish is of a temporary nature, then it cannot be slaughtered, as the animal may not be considered as in readiness to be slaughtered, and secondly, it no longer belongs to him, but to the Priest and Temple.

R. Simeon maintains that whenever the extent of the blemish is not definitely decided before the Festival, it is not to be regarded as being ready for the festival as one is not permitted to make this decision on the Festivals.

B. The Pragmatic Method

Peah, 8:1.

"From what time are all men permitted to glean and from the field? After the last of the poor have gone. And to take grape-gleanings and defective clusters? After the poor have gone into the vineyard and returned. And to glean from the olive trees? After the second rainfall. R. Judah said: But are there not some that do not pick their olives until after the second rainfall? -- but, rather, (others may not glean from the olive trees) until such time that when a poor man goes forth he cannot bring back more than four issars' worth."

In the above Mishnah we are given to understand that only the 'gleanings' of the field, however, the 'forgotten sheaves', 'peah', 'poorman's tithe', etc.; all these, too, belong to the poor. There is a time of the year when the poor no long-

er come into the field to collect their due shares, and all that now remains belongs to all; poor and rich alike. Our problem is: At what time does this take place? Our Mishnah answers -- after the last of the poor have gone -- all may now come and take that which remains.

Concerning grape-gleanings and defective clusters the Mishnah states that all may enter to glean after the poor have returned from the vineyard. Rashi, however, in Taanith 6A states: "All may come only after the poor have entered the vineyard, left and returned again; or two groups of poor have come into the vineyard at different intervals, then the field becomes 'hafkir' and is open for gleaning to all".

We are concerned, however, with the third part of the Mishnah that is troubled with the element of just when do olive trees become 'hafkir' and open for gleanings. The Rabbis' state that all may come after the second rainfall.

In Palestine, during the summer, there is hardly any rainfall and the first heavy rainfall

occurs at the end of the Harvest (Succoth) Festival which falls about September, and the second rainfall occurs about the middle of November.

R. Judah argues that logical consistency is not the only standard of legal reasoning. Here is a classic example of the pragmatic method. There are many farmers who wait until the end of the second rainfall to collect their due-share of the gleanings from the olive trees and they would face a heavy loss if they were deprived of this additional (and expected) revenue; consequently R. Judah states, after the farmers glean the olive trees are open to all only after the poor have entered the fields and returned with four issars' worth (of produce).

Pesahim, 2:1.

"So long as it is permitted to eat of the hametz a man may give it as fodder to cattle, wild animals, and birds, or sell it to a gentile; and (after any fashion) it is permitted to derive benefit from

it. But when the time is past it is forbidden to derive benefit from it, nor may one light an oven or stove with it. R. Judah says: Removal of the hametz may only be by burning. But the Sages say: It may be crumbled up and scattered to the wind or thrown into the sea."

The Rabbis' and R. Judah, both maintain that the hametz must be destroyed. The Rabbis' state that it can be destroyed by any means, while R. Judah maintains that the commandment "Be'ur Chometz" can only be applied by burning.

Here is a classic example of how we today accept R. Judah's dictum to that of the Rabbis. We hold in principle and practice that the hametz must be burned as advocated by R. Judah.

Erubin, 6:2.

"Rabban Gamaliel said: A Sadducee once lived with us in the same alley in Jerusalem and my father said

to us, 'Hasten and put out all the (needful) vessels in the alley before he brings out (his vessels) and so restricts you'. R. Judah recounts (the tradition) in other fashion: 'Hasten and do what is needful in the alley, before (the eve of Sabbath) is ended and he so restricts you'."

Here is an excellent pragmatic example. The Mishnah is in disagreement with whether a Sadducee is to be classified as gentile or whether he is classified as a dissentient Jew. If the Sadducee is regarded as gentile, a Jew may certainly rent the Sadducee's dwelling's and not have any fear where the Sadducee to take his utensils, etc., out into the street; if, however, the Sadducee is regarded as a dissentient Jew, were the Sadducee to take his utensils out into the street, thereby asserting his own right in possession, our Erub would be void and we were transgressing the Sabbath limits.

Therefore Rabban Gamaliel instructed his sons to make the Erub first so that the Sadducee cannot assert his right in possession by later bring-

ing out his own utensils, etc.

R. Judah maintains that a Sadducee is to be regarded as a dissentient Jew (one that believes in the 'Written' but not the 'Oral' Law); consequently, the laws pertaining to the making of an Erub does not apply to him; however, his Jewishness must be taken into consideration when renting or making an Erub.

Gittin, 6:2.

'If the woman said, 'Do thou accept my bill of divorce on my behalf', she must have two pairs of witnesses: two that say: 'She said so in our presence', and two that say, 'He received it and tore it up in our presence', even though the first witnesses are the same as the latter witnesses, or if there is one from the first pair or one from the latter and a third one associated with them. If a girl was (only) betrothed, she and her father receive her bill of divorce.

R. Judah said: Two hands cannot together take possession: but, rather, her father alone receives her bill of divorce. And any that is unable to take care of her bill of divorce cannot be divorced."

We previously learned (Ketuboth 4:4) that a girl (under twelve years and a day) that was (only) betrothed, and he (her future husband) wished to divorce her, then she and her father together take the bill of divorce. This betrothal can be instituted even against her will. If, however, she now attains (the) age (of twelve years and a day) she may herself take the bill of divorce.

Rashi (Gittin 64B) comments on: "both she and her father may receive her Get". Being a דלל, she is no longer a minor, and therefore is competent to receive her Get. Her father, however, still retains the right since she is still under his authority. As to a minor, i. e., who has not reached twelve years and a day, opinions

differ: Rashi does not declare her competent to receive her Get, where she has a father; whereas Tosafoth (וְיָדָה) holds that there is no difference in this respect between a וְיָדָה and a minor -- וְיָדָה being specified in this Mishnah to emphasize the extreme view of R. Judah.

The Gemorah explains R. Judah's opinion: The Rabbis held that the all-merciful conferred upon her an extra hand, whereas R. Judah held that where her father can act, her own hand counts as nothing. Consequently, according to R. Judah, only the father may take the bill of divorce for his daughter.

Moreover, R. Judah adds: "Anyone that is unable to take care of her bill of divorce cannot be divorced". A young girl (betrothed) cannot receive her bill of divorce if she doesn't understand the reasons concerning divorce; for one may divorce his betrothed and give her a bill of divorce; she will take it and still come back to her husband as she fails to understand divorce procedures. R. Judah maintains that neither she

nor her father can take the bill of divorce in such a case.

Hallah, 2:2.

"(Whatsoever grows in) soil from outside the Land that comes to the Land in a ship is liable to Tithes and subject to the Seventh Year Law. R. Judah said: This applies only when the ship touches the land. Dough that has been kneaded with fruit juice is liable to Dough-offering, and it may be eaten with the hands."

The Gemora explains that the ship was patched with dirt to prevent further leakage. The Mishnah stresses the fact that when the ship docks the moisture of ERETZ ISRAEL is absorbed by the dirt aboard ship, thereby making all produce aboard liable to Tithes and subject to the Seventh Year Law; while R. Judah insists this can take place only when the ship touches bottom

and both 'earths' are attached as one.

Taanith, 4:7.

"In the week wherein falls the 9th of AB it is forbidden to cut the hair or wash the clothes; but it is permitted on the Thursday because of the honour due to the Sabbath. On the eve of the 9th of AB let none eat of two cooked dishes, let none eat flesh and let none drink wine.

Rabban Simeon b. Gamaliel says: A man need but make some difference. R. Judah says: A man must turn up his couch. But the Sages did not agree with him."

We are concerned with the second part of the Mishnah where Rabban Simeon b. Gamaliel says: "A man need make some difference", with reference to the eve of the 9th of AB as to other days of the week (including Festivals), e. g. eat somewhat less than is his custom. All these religious injunctions were self imposed as a sign of mourning

for the destruction of the Temple.

R. Judah carries the act of mourning farther by implying that one must truly relinquish all comforts; therefore, as a sign of deep mourn, one does not sleep (on the 9th of AB) on a bed but on the ground.

Shabbath, 19:3.

"They may wash the child either before or after the circumcision and sprinkle it by means of the hand, but not by means of a vessel. R. Eleazar b. Azariah says: They may wash the child on the third day if this falls on a Sabbath, for it is written, And it came to pass on the third day when they were sore. They may not profane the Sabbath for the sake of a child about which there is doubt or that is androgynous; but R. Judah permits it for one that is androgynous."

Concerning the child about which there is doubt

(one who is born prematurely, and he may be an eight month's child. The Rabbis held that such could not possibly live, and therefore the Sabbath might not be violated for his circumcision.) R. Judah agrees with the Rabbis.

In the case of an androgynous: R. Judah differs from the Rabbis by permitting the act of circumcision on Shabus. He interprets the verse "Every male of you shall be circumcised (Gen.17:10)".

Yebamoth, 4:7.

"If a man submitted to halitzah from his deceased brother's wife he still counts as one of the brothers in what concerns inheritance; but if the father was living the property falls to him. If he consummated marriage with his deceased brother's wife he thereby acquires title to the property of his brother. R. Judah says: In either case if the father was living the property falls to him. If a man submitted to halitzah from his deceased

brother's wife neither may marry the kindred of the other: (namely) he may not marry her mother, her mother's mother, or her father's mother, her daughter, her daughter's daughter or her son's daughter or her sister (such time as the deceased brother's wife is living: but his brothers may marry her); and she may not marry his father, his father's father or his mother's father, his son or his son's son or his brother or his brother's son. A man may marry one that is near of kin to the co-wife of his deceased brother's wife at whose hands he submitted to halitzah, but not the co-wife of one that is near of kin to his deceased brother's wife at whose hands he has submitted to halitzah."

Concerning the inheritance of a brother one would think that since he did not submit to פ'ג' of his brother's widow, he would forego any claim in inheritance; our Mishnah teaches that he, as well as the other brothers, even if they all refuse her פ'ג', are still entitled to a share

of their brother's inheritance. This applies only if the deceased had no father living; if however, a father lives, then he (the father), and he alone, inherits it (as a father takes precedence over a brother in respect of inheritance -- Baba Bathra 115A). R. Judah states that in either case: if a brother gave halitzah, or he gave her פדיון ; if a father lives he (the father), inherits all.

Demai, 2:2.

"He that undertakes to be trustworthy must give tithe from what he eats and from what he sells and from what he buys (to sell again); and he may not be the guest of an Am-haaretz. R. Judah says: Even he that is the guest of an Am-haaretz may still be reckoned trustworthy. They replied: He would not be trustworthy in what concerns himself; how then could he be trustworthy in what concerns others."

The associates were a group who undertook to observe the Law to the full; in particular the rules of tithing and of cleanness and uncleanness. The scrupulousness of the associates was in sharp contrast with the laxity of the 'amme ha-aaretz', the uninstructed 'people of the land' who were under suspicion of not giving tithes from their produce. Therefore, a scrupulous observer of the Law receiving produce from an 'am ha-aaretz' must assume that it has not been tithed and must separate the tithe from it himself.

Our Mishnah, which shows the implementation of this scrupulousness, deals with an associate lodging at an inn managed by a member of the 'amme ha-aaretz' class. The associate must tithe in advance. In addition, he must tithe what he receives back from him; since there is a possibility that it has been changed and therefore untithed.

R. Judah maintains that an associate can be the guest of an 'am ha-aaretz' and may still be reckoned trustworthy for he will be able to see whether what he eats has been tithed or not.

Better yet, the associate may himself give tithe
of what he eats.

C. The Historical Method

Yebamoth, 2:9.

"If a man brought a bill of divorce from (a man) beyond the sea, and said: 'It was written in my presence and it was signed in my presence', he may not marry the man's wife. (If he said,) 'He is dead', (or) 'I killed him', (or) 'We killed him', he may not marry the man's wife.

R. Judah says: (If he said) 'I killed him', she may not marry (again), (but if he said,) 'We killed him', she may marry (again)."

According to our Mishnah that when the man brings the news that 'He is dead', he excludes himself from marrying this woman, for only through her freedom became effective and we may suspect that his actual intentions were to marry her, thusly being a false witness.

Where the man said 'I killed him', R. Judah is of the opinion that he invalidates himself from

being a witness, since he is a נִשְׁיָא and is unacceptable as a witness, therefore she may not remarry (anyone). If, however, he said 'We killed him', and he specifically said he was at the murder of her husband but did not participate in the murder, his statements are accepted as a reliable witness, and she may remarry (save this man).

Baba Metzia, 2:6.

"For how long must a man proclaim (what he has found)? Until all his neighbours know of it. So R. Meir. R. Judah says: At the three Feasts and for seven days after the last Feast, to allow (to him that lost it) three days to go back to his house, three days to return, and one day wherein to proclaim (his loss)."

Our Mishnah asks the question: How long is the time that one must announce what he has found? R. Meir maintains that the object may remain in the finder's possession only after he had notified the

neighbors in the vicinity of where he found the object. R. Meir and R. Judah both admit that when one notifies his neighbors concerning the finding of an object -- he has fulfilled his obligations.

R. Judah, however, gives us the historical background for his dictum. At the time of the Holy Sanctuary's existence our forefathers went there for the three Festivals; Succoth, Passover and Shabuoth; and if one lost an object there, R. Judah allowed three days for him to go to his house where he eventually missed the object, three days for him to return to the Sanctuary, and one day for him to proclaim his loss.

After the destruction of the Holy Sanctuary some argued that 'found objects' now belong to the king; consequently R. Meir and R. Judah enacted that if one announced his 'find' to the neighbors, he has fulfilled his obligation.

Erubin, 4:9.

"This it is of which they have said, 'The poor

man makes Erub with his feet'. R. Meir said: We are concerned with the poor man only. R. Judah said: It is all one whether it is a poor man or a rich man, for they have only enjoined that Erub is made with bread so that it shall be easier for the rich man and that he need not himself go out and make Erub with his feet."

Here, R. Judah and R. Meir differ on how an Erub (Sabbath limits) is made and for whom and by whom. R. Meir maintains that the poor do not have the 'extra' bread necessary for the making of an Erub, so they can make an Erub with their feet. R. Meir stresses ע"י רגליהם. The rich, on the other hand should only make an Erub with bread.

In contradistinction, R. Judah maintains the opinion that the rich and poor alike may only by foot make the Erub. He stresses ע"י רגליהם. However, the rich may appoint a messenger to place the necessary bread in the making of an Erub for him.

Shebiith, 9:8.

"If a man still had Seventh year produce and the time came for Removal, he must allot food for three meals to every person (in his household). The poor may eat (of such produce) after the time of Removal, but not the rich. So R. Judah. R. Jose says: Poor and rich alike may eat after the time of Removal."

Who may eat after the time of removal is our topic under consideration. R. Jose stresses the fact that the food is now 'hafkir', and all -- rich and poor -- even the former owner -- had an equal right in this growing produce of that year and were allowed to use it for food as it was deemed ownerless property.

R. Judah stresses the fact that only the poor may eat thereof and not the rich. He wishes to exclude the former owner as the terminology 'rich' is applied to him, and poor to all others. Consequently all may eat thereof, save the former owner.

Shekalim, 1:2.

"R. Judah said: At first they used to root them out and cast them down before the owner, but when transgressors grew many they used to root them out and cast them down by the waysides; (later) they ordained that (where Diverse Kinds grew) the whole field should be accounted ownerless property."

R. Judah applies the theory of *הפקר בית דין* to this Mishnah. Since the farmers did not weed out the growth of Diverse kinds, Beth Din came and rooted them from the field. The Beth Din continued to root the Diverse kinds from the fields; however, they carted them away so that the farmers could not benefit from them as fodder for their cattle. Still more, when they gleaned the farmer's field of Diverse kinds they actually bettered his field, therefore on the principle of the above,

הפקר בית דין Beth Din ordered that the whole field be counted as ownerless property.

D. The Sociological Method

Erubin, 7:11.

"A man may give a maah to a wine-seller or a baker to secure for him a share in an Erub. So R. Eliezer. But the Sages say: His money (alone) cannot secure for him a share. But they agree that with any others his money can secure for him a share. Moreover none may make Erub for another save only with his consent. R. Judah said: This applies only to Erub of Shabbath limits; but for the Erub of the courtyards they may make Erub with or without his consent, since they may act to another's advantage in his absence, but not to his disadvantage in his absence."

R. Judah's concern for society is best illustrated by this Mishnah. He uses the following logic: If one were to place an 'Erub' for another in the east side of town, then the 'owner' of the 'Erub' would be permitted to walk two thousand feet farther in the eastern direction of

town, however, he is not permitted to walk (on the Sabbath) in any other direction outside of the town. R. Judah continues, if one were to place a 'Courtyard Erub' for another he is able to carry on the Sabbath.

Therefore, R. Judah postulates: "An Erub may be made for another in his absence or without his knowledge, if it will tend to the advantage of his fellowman; if, however, to his disadvantage, he may not make an 'Erub' without his consent.

Berakoth, 3:6.

"If a man with flux suffered a pollution, or if a menstruant discharged semen, or if a woman suffered a flow during intercourse, they must immerse themselves. R. Judah pronounces them exempt."

The Mishnah asks: What of a case where a man with flux suffered a pollution or if a menstruant

discharged semen, or if a woman suffered a flow during intercourse and the time comes for the Morning prayer or the study of the Holy Law. The Question now facing us is: Do the above mentioned conditions necessitate an immersion in addition to the immersion prescribed for their particular major uncleanness?

R. Judah says they need not have an additional immersion. His reasoning is that two immersions would cause the populace to forget their importance and that it might tend to lose its significance; consequently, he stresses one immersion -- for major uncleanness.

Demai, 4:7.

"If ass-drivers entered a city and the one said, 'My produce is new and that of my fellow is old', or 'My produce is not duly tithed but that of my fellow is duly tithed', they may not be believed.

R. Judah says: They may be believed."

R. Judah maintains that since the issue concerning Demai of produce received from an 'Am ha-aaretz' is only a rabbinical injunction and since the majority of them (the 'amme ha-aaretz) do observe the laws pertaining to the tithing of 'Maaser', we believe them when they say, 'Ours is tithed'.

Furthermore, R. Judah states: 'If we do not accept their word as being true, it would be difficult to bring (or receive) produce (from city to city).

Shabbath, 24:2.

"They may loosen bundles of hay in front of cattle and shake loose stalks of fresh rice, but (they may) not (loosen) triply-bound bundles of straw. They may not chop up unripe stalks of corn or carobs in front of small or large cattle. R. Judah permits it with carobs for small cattle."

R. Judah emends the Law by permitting the

chopping of carobs for small cattle. R. Judah's humanism and kindness is exemplified in this dictum by permitting this because of their (small cattle) thin teeth and their difficulty in chewing.

Sotah, 1:3.

"These may not eat of Heave-offering; she that says: 'I am unclean to thee', and she against whom witnesses have testified that she was unclean, and she that says, 'I will not drink', and she whose husband is not minded to make her drink, and she whose husband has connexion with her while on the way. How should he behave toward her? He should bring her to the court that is in that place and they appoint for him two disciples of the Sages lest he have connexion with her while on the way. R. Judah says: Her husband is accounted trustworthy concerning her."

We are concerned with the latter part of the

Mishnah where the Sages appoint two disciples to bring the woman to the court. The Sages are of the opinion that the two disciples will prevent the husband from having connexion with her while on the way.

R. Judah, on the other hand, is more lenient, concerning these taboos, and permits the husband to bring her to court, for he is accounted trustworthy concerning her.

CHAPTER IV

Conclusion

The basic theory underlying the methods (Subjective, Pragmatic, Historical and Sociological) of R. Judah bar Ilai recognizes the dignity and worth of the individual. He stresses the fact that since man was created in the image of God, man's character and personality is to be regarded as of great value. This includes man's relationship to his fellow man and to God, in all fields, (see Appendix B).

R. Judah takes into account the personal participation and the mental processes involved by an individual in every given case. When an individual says: "It has been tithed", "It has been properly set aside", "It has been designated expressly", etc. -- suspicion, according to R. Judah, does not obviate truth.

The Halakot of R. Judah bar Ilai in the Mishnah bears a trace of a tendency to effect reforms in the Jewish religious and ceremonial

usage and to evolve a new scheme in closer accord with later conceptions of what the Law required.

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Appendix A

The Subjective Method

Berakoth 2:1,2,3; 7:2.

Peah 1:3; 7:5.

Ketuboth 9:1.

Maaser Shenii 4:7,10.

Sanhedrin 2:1,2,3,4; 3:3,4; 5:3; 9:3.

Terumoth 1:3.

Shebiith 7:4.

Erubin 3:8, 4:4.

Yebamoth 15:1,5; 16:5.

Betzah 3:4,8.

Demai 3:6; 4:7.

Nedarim 1:3,4; 6:3,6,10; 7:3; 8:5; 11:10.

Nazir 1:7; 2:1,2; 3:6; 4:3.

Gittin 2:1.

Kiddushin 4:8.

Baba Bathra 8:7; 10:5.

Shebuoth 7:1,2,3,6.

Zebahim 2:5; 3:6; 6:7.

Menahoth 1:4; 2:2; 3:2; 5:9.

Hullin 6:4,6; 7:3,6; 10:4.

Bekhoroth 4:9; 8:3,4,6.

Terumah 7:6.

Meilah 3:6; 6:5.

Tohoroth 8:1; 10:1.

Niddah 3:1.

Gittin 6:2.

The Historical Method

Berakoth 4:7; 9:2.

Peah 3:5; 7:5.

Yebamoth 2:9.

Baba Metzia 2:6.

Shekalim 1:2.

Erubin 4:9.

Shebiith 9:8.

Orlah 1:9.

Shabbath 7:4; 9:5; 13:5.

Sukkah 2:1.

Ketuboth 2:8.

Gittin 4:8; 6:2.

Menahoth 10:5.

Niddah 6:11.

The Pragmatic Method

Berakoth 3:4; 4:1; 6:3.

Peah 2:2; 8:1.

Pesahim 2:1.

Erubin 6:2.

Hallah 2:2; 4:9.

Gittin 6:2.

Taanith 4:7.

Shabbath 10:4; 15:2; 19:3; 24:4.

Yebamoth 4:7; 6:5.

Demai 2:2.

Terumoth 11:10.

Maaseroth 4:2.

Megillah 1:3; 2:3; 4:6,7.

Ketuboth 6:6.

Hullin 2:1.

The Sociological Method

Erubin 7:11.

Berakoth 3:6.

Demai 4:7.

Shabbath 15:2; 24:2.

Sotah 1:3.

Peah 8:1.

Baba Kamma 3:1; 6:6.

Baba Metzia 2:1; 4:4,5,9,12; 5:7.

Baba Bathra 2:14; 5:8,9.

Appendix B

I. Religious

1. Am Haaretz

Demai 2:2;3.

Tohoroth 8:1.

2. Animals

Kilaim 6:4.

Baba Kamma 2:4; 3:9; 4:2; 6:6.

Baba Bathra 5:2.

Makkoth 3:4.

Hullin 12:4.

Bekhoroth 1:6.

Parah 3:9.

3. Circumcision, etc.

Zebahim 3:6.

Megillah 2:4.

Shabbath 19:3.

4. Cleanness (Uncleanness, Purity, Impurity,

Dietary Laws, Trefah, etc.)

Tebul Yom 1:5; 2:7; 3:1.

Megillah 2:4.

Zabim 2:2.

Shebuoth 1:4.

Niddah 3:1; 9:5; 10:2.

Eduyoth 5:1,6; 8:7.

Mikwaoth 7:6.

Zebahim 7:6; 8:12; 9:2; 14:10.

Hullin 3:1,4,7; 5:3; 7:1,2,3,6; 9:2,6.

Menahoth 2:2.

Kelim 1:5; 4:14; 5:1,2,6,11; 6:1; 7:1,2;

8:10; 10:3; 13:1; 14:6; 15:1;

16:1,4,8.

Oholoth 6:4; 7:4.

Negaim 2:5; 6:7; 11:3; 12:5; 13:11.

Tohoroth 1:1.

Uktzin 3:8.

5. Debts

Shebiith 10:1.

6. Erub

Betzah 4:2.

Erubin 1:1,4; 2:1,4; 3:1,5; 4:9; 5:6; 7:11.

7. Fasts

Taanith 4:7.

8. Festivals

Shebiith 2:5,6; 7:4.

10. Maaseroth 3:7.

Bikkurim 1:6.

11. Shabbath 1:11.

Erubin 3:7,8.

Pesahim 1:3,4.

12. Shebuoth 1:4.

Sukkah 3:15.

Betzah 2:8; 3:6; 5:4.

13. Rosh Hashanah 3:5.

Hagigah 3:7.

Baba Kamma 8:3.

9. Gentiles

Arakhin 1:2.

Makshirim 2:5,7,8.

Demai 6:12.

Terumoth 3:9.

14. Orlah 1:2.

Erubin 8:5.

Pesahim 4:3.

Baba Kamma 4:7.

9. Abodah Zarah 1:1,5,6,8; 2:5.

Hullin 7:2.

10. Grace (after meals)

Berakoth 7:2.

11. Hunting

Shabbath 13:5.

Shebiith 7:4.

12. Idolatry

Shabbath 9:6.

13. Abodah Zarah 1:5,8; 2:5.

13. Immersion

Parah 8:8,9,10,11.

Mikwaoth 2:10; 5:4,5; 6:1,9.

14. Levites

Demai 6:5.

Terumoth 2:2.

15. Arakhin 8:5.

Makkoth 2:8.

15. Mourning

Terumoth 11:10.

Sanhedrin 2:1.

16. Vows - Oaths

Ketuboth 4:4; 7:12.

Nedarim 2:4; 6:3,6,10; 7:3; 11:10.

Nazir 1:7; 3:6; 4:3.

Gittin 4:7.

Sanhedrin 1:3.

Shebuoth 7:1.

Menahoth 5:9; 13:1.

Arakhin 1:2; 4:2; 5:1.

17. Omer

Menahoth 10:5,8.

18. Prayer

Berakoth 2:1,2,3; 3:4; 4:1,7; 6:1,3,4; 9:2;

Bikurim 3:6.

Sukkah 4:5.

Taanith 1:2; 2:3; 4:6.

19. Priests

Bekhoroth 8:6.

Demai 6:5.

Hallah 4:9.

Bikkurim 3:12.

Shekalim 1:4; 7:6.

Tohoroth 7:8.

Yoma 1:1; 4:5.

Tamid 7:2.

Sukkah 4:9; 5:8.

Megillah 4:7.

22. Yebamoth 6:5.

Ketuboth 2:8.

Sotah 2:2; 7:6.

Sanhedrin 2:1.

Menahoth 3:2; 4:5; 6:5.

Arakhin 8:5.

20. Proselytes

Kiddishin 4:6.

23. Baba Kamma 4:7.

Hullin 10:4.

24. Niddah 7:3.

21. Sabbath

Killaim 1:9; 9:10.

Maaseroth 2:3; 4:2.

Shabbath 5:2; 9:5; 13:5; 17:5; 20:5; 24:4.

25. Erubin 3:4; 7:11; 8:2,5,7; 10:3.

Pesahim 5:8.

Sukkah 3:15.

Betzah 2:10.

Hagigah 3:7.

Baba Kamma 4:2.

23. Menahoth 11:2.

22. Sacred Writings

Berakoth 2:2.

27. Erubin 10:3.

Megillah 3:1; 4:10.

28. Moed Katan 3:4.

Sotah 2:3.

Aboth 4:13.

Yadaim 3:4,5.

23. Sadducee

Erubin 6:2.

24. Samaritan

Demai 6:1.

Terumoth 3:9.

Kiddishin 4:3.

Niddah 7:4.

25. Slaves

Berakoth 7:2.

Pesahim 8:7.

Sukkah 2:1.

Baba Kamma 8:3.

Arakhin 8:5.

26. Sukkah

Sukkah 1:1,2,6,7; 2:1,2.

Betzah 4:2.

27. Temple Cult

Shebiith 7:4.

28. Women

Berakoth 3:6; 7:2.

Shabbath 18:2.

Parah 2:4.

Pesahim 8:7.

Yoma 1:1.

Moed Katan 1:7.

Yebamoth 4:7,10; 6:5; 11:1.

Nedarim 11:10.

Nazir 4:3.

Sanhedrin 2:2,4; 9:1.

II. Agricultural

1. Diverse Kinds

Kilaim 1:2,9; 9:10.

Terumoth 2:6.

Shekalim 1:2.

Betzah 1:10.

2. Dough Offering

Hallah 2:2.

Tebul Yom 1:1,2.

3. First Fruit

Bikkurim 1:1,6,7,11; 3:12.

4. Firstlings

Shebiith 1:4.

Hallah 4:9.

Betzah 3:4.

Bekhoroth 3:4; 4:3; 5:2.

5. Forgotten Sheaf

Peah 4:6; 5:5; 6:10.

6. Gleanings

Peah 1:3; 2:2; 3:5; 4:6; 5:5; 8:1.

7. Grafting

Kilaim 1:7.

Shebiith 2:6.

8. Heave Offerings

Demai 6:1,5.

Kelim 1:5.

Tehoroth 1:1; 7:8.

Tebul Yom 2:3,7.

Terumoth 1:3; 2:2.4.5.6; 3:9; 4:3;

9:7; 10:1; 11:1,10.

Maaseroth 2:5.

Hallah 4:9.

Shabbath 21:1.

Erubin 3:1.

Pesahim 1:5.

Gittin 3:8.

Bekhoroth 4:9.

9. Poorman's Tithe

Peah 5:5.

10. Second Tithes

Maaser Sheni 3:10; 4:7.

Gittin 3:8.

Sanhedrin 1:3.

Kelim 1:5.

11. Seventh Year

Sanhedrin 3:3.

Demai 3:6.

Kilaim 1:9.

Shebiith 2:5; 3:1; 4:2,5; 5:1,5; 9:1,4,8;
10:1.

Hallah 2:2.

Pesahim 4:2.

12. Tithes

Peah 5:5.

Demai 1:1; 4:7; 5:3,4,5; 6:1,2,5;

Kilaim 1:9.

Terumoth 3:9; 4:3.

Maaseroth 1:2,7,8; 2:2,5,8; 3:5,7; 5:5,6.

Hallah 2:2.

Bekhoroth 4:9.

13. Whole Offerings

Shekalim 6:5; 7:6;

Nazir 2:7.

Abodah Zarah 2:5.

III. Civil

1. Articles (lost - found)

Baba Metzia 2:1,6.

2. Bailments

Baba Metzia 6:7.

Baba Bathra 10:5,6.

Shebuoth 7:2.

3. Cities of Refuge

Makkoth 2:3,6,8.

4. Criminal Law

Sotah 4:3.

Baba Kamma 3:1; 6:5; 8:6.

Baba Metzia 3:11; 4:4,5,9.

Shebuoth 7:2.

5. Death

Sanhedrin 6:3; 7:2,3,4; 9:1,3; 11:1,4.

6. Hiring, Lending, Borrowing

Baba Kamma 4:9; 9:5,6.

Shebuoth 7:1.

Abodah Zarah 1:1.

7. Legal Documents (contracts)

Yebamoth 2:9.

Ketuboth 4:2; 6:6; 9:1.

Nedarim 1:3,4.

Gittin 1:2; 2:1,4; 3:2; 6:2; 7:6; 9:3.

Sanhedrin 4:3.

8. Public Property

Baba Bathra 2:14.

Tohoroth 6:8.

9. Wills

Baba Bathra 8:7.

10. Witnesses

Ketuboth 2:8.

Baba Kamma 8:6.

Gittin 6:2.

Sanhedrin 3:4; 8:4.

Makkoth 1:5.

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