RABBI JOSE BEN HALAFTA:

A STUDY OF HIS HALACHA

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The thesis consists primarily of an analysis of the mishnayot containing R. Yose's halaka. It begins with an explanation of the differing attitudes toward the development of law which becomes the pattern into which all the decisions of R. Yose are fitted. They are classified on the basis of this pattern yielding an original and illuminating classification which helps the candidate to explain in interesting fashion many of the decisions and points of view of R. Yose.

Had the candidate thoroughly combed all the existing dicta of his subject, applying his method for further classification and elucidation, he might have turned out a first class study. He left his thesis, however, somewhat incomplete and skimpy. Further faults are insufficient references either to literature or sources and too sketchy and general an introduction.

The thesis, however, may be considered a start in the proper direction and a sort of preliminary study for a doctoral dissertation in which the present reviewer hopes he will make full use of his promising method. It is recommended for acceptance.

Dr. John J. Tepfer

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FOREWORD

At the beginning of his brief study of tannaitic jurisprudence, "Les Principes des Controverses Halachiques entre les écoles de Schammai et de Hillel," S. Zeitlin says, "L'étude des principes qui sont à la base des controverses entre les écoles de Hillel et de Schammai est indispensable, non seulement à l'intelligence de ces controverses, mais encore à celle de la jurisprudence tannaïtique. Les controverses entre Schammaïtes et Hillelites dépassent la centaine et les controverses halachiques entre les Tannaïm tels que Rabbi Eliezer et Rabbi Josue, ou Rabbi Juda et Rabbi Yosé, peuvent etre classés parmi les controverses des écoles de Schammai et de Hillel."

It is the purpose of the present study to develop and document this idea with respect to R. Jose and to show that R. Jose was in the line of the Hillelite legal tradition.

CHAPTER I: HISTORICAL AND BIOGRAPHICAL INTRODUCTION.

When the Second Jewish Commonwealth came to an end with its conquest by Rome in the year 70 C.E. both the land and the people of Palestine lay utterly exhausted under the yoke of the conquerors. The Jewish people had survived, but with horrible losses, utter disorganization, and mortifying shame. But perhaps the most fateful loss was the foundation of Jewish life of that period: a Jewish national state. During the declining years of the commonwealth its political independence was hardly more than a shell. Now that it was no more than a vassal state of Rome not even the occasional native king or the sanhedrin were permitted it.

For the most part rebelliousness in Palestine had been wiped out. The Roman conqueror had promised the restoration of the Temple and the rebuilding of Jerusalem and so there was no reason for rebellion; the most important immediate objective could be achieved in peace. Over the years, however, nothing came of these promises but continual procrastination.

Finally, in 130, a new emperor came to Judea intent upon an ironic fulfillment of Roman promise. Jerusalem would be rebuilt, but as a pagan city dedicated to the worship of Jupiter.

Rebellion in Palestine had been deterred by the leaders of the people who had preached faith in the pledged word of Rome. Now they were faced not only by a complete negation of its promise, but also by a deliberate insult. Not long afterwards another decree was issued which was understood as a ban on circumcision.

The situation as it appeared to the Jews in 130 offered two alternatives; on the one hand they could remain subservient to Rome, and with their independence gone, the restoration of their Temple denied, and their religious observances banned risk national extinction; or, on the other hand, they could attempt by force of arms to achieve their independence. There were still several million Jews in Palestine, and so victory and survival were possible.

Rabbi Akiba ben Joseph, the most outstanding teacher of his time, was the most influential of the leaders of the ensuing rebellion. However, at eighty-eight he was much too old to lead the struggle. Simon ben Koziba, stronger and younger, was chosen and acclaimed by Akiba as the leader of the Jewish cause, and under his banner the third war against Rome was launched.

When Hadrian, the Roman emperor, realized the extent of the Jewish preparation and the difficulty of the struggle he appointed Julius Severus to head the Roman forces. And once more began that slaughter and destruction which had laid waste the land just sixty years before. 580,000 men are said to have been killed in battle alone. With the fall of the fortress of Beth-ther the revolt was at an end. Judea again lay desolate.

At the first signs of insurrection an edict was issued forbidding not only circumcision, but also the observance of the Sabbath, the teaching of the Torah, and the maintenance of the religious organization through ordination. The leading scholars of the nation suffered martyrdom and the scholastic center at Jabneh was broken up. The Beth Din was outlawed. To those giving the authority of ordination the Romans decreed the death penalty, as well as the destruction of the town near which the ceremony took place. The Chain of Tradition, the continuation of the Oral Law, was threatened.

It was at this time that one of the surviving scholars suffered martyrdom in order to perpetuate the chain of tradition. Rabbi Judah ben Baba picked six

young but highly promising disciples of Rabbi Akiba, R. Meir, R. Judah b. Ilai, R. Elazar b. Shamua, R. Nehemiah, R. Simon and R. Jose b. Halafta, took them to a place between two towns so that neither town could be blamed and hurriedly ordained them. Hardly was the ceremony over when the Romans, notified by spies, were upon them. The older teacher urged his pupils to run for their lives while he remained to receive the punishment of the enemy. He was killed while the newly ordained rabbis lived on to continue the Jewish tradition.

In 138, three years after his victory over the Jews, Hadrian died and was succeeded by Antoninus Pius who, rather than pursue his course at the risk of exterminating the Jewish people, chose to yield to their susceptibilities and rescinded the decrees of Hadrian. For the Jews the task of reconstructing national life could now begin. With the hope for an independent state utterly crushed, the Rabbis saw that the survival of the Jews as a separate group would be assured "not by might nor by power, but by My spirit". Seeing that the losses in their ranks were so numerous that there was danger that the results of the labors of the two previous generations might be lost they set themselves to restore the Law, to recover and complete the work of their predecessors.

At the first opportunity a synod was convened in Usha, in Galilee, made up of the most distinguished disciples of R. Akiba: R. Judah b. Ilai, R. Nehemiah, R. Meir, R. Simeon, R. Eliezer, the son of R. Jose the Galilean, R. Eliezer b. Jacob, and R. Jose b. Halafta. Among the most important measures enacted there were those pertaining to the reorganization of the lower schools and the enforcement of discipline, the maintenance of minor children as a matter of legal obligation, the restriction of charitable gifts to a fifth of one's income as a maximum, and the exemption of scholars from the process of excommunication.

During the persecutions - the Written Law had not come as close to extinction as did the Oral Law whose transmission was almost ended by the closing of the academies and the killing of many scholars. To insure the safety of the oral tradition the Rabbis now undertook to restore and organize the traditions they received. Their individual compilations, containing their recollections and interpretations of the older halacha and also their own newer rulings which served as the basis for the Mishnah when it was given final form by R. Judah the Prince, helped create in the Oral Law a new medium for Jewish survival. In this enterprise R. Jose played a leading role with 340 halachoth and the compilation of the tractate Kelim and the eight chapter of Hullin, all in the Mishnah, to his credit.

R. Jose was born in Sepphoris where his father R. Halafta had his school and served as judge. It was to there he returned after the end of the Hadrianic persecutions. Sepphoris was the greatest city in Galilee and the center of the Roman end of the autonomous administrations of the country and therefore the seat of the representatives of the Jewish community. The leaders of the Jewish community as members of the city council of Sepphoris, as judges, as representatives of the Jewish community before the Roman government and as Roman tax collectors employed their power for the benefit of their own class. The heads of the Jewish community as well as the wealthy middle class in Sepphoris looked down upon the scholars there. The scholars had only one weapon with which to combat this haughtiness, to preach humility and denounce pride. Even more persistenly did they preach against scholars who exhibited haughtiness. It is in the light of this situation that R. Jose's well known dictum can be better understood, "He who is overbearing on account of his learning will ultimately be humiliated. And he who humiliates himself on account of his learning will ultimately be raised."

Since there were few schools and scholars in Galilee before the persecution the Jews there knew little about rabbinical law. The leaders were at the same time the judges and administered justice according to their own dictates and procedures. Even after rabbis had settled everywhere in Galilee the political leaders continued to take no notice of them.

R. Jose joined with the other rabbis in battling against the ignoring of later developments of Jewish law. Once two men came before him with a case and asked that he judge them according to the law of the Torah, the latter meaning strict law as opposed to equity. To this request R. Jose answered, "I do not know the law of the Torah; may God who knows your intentions punish you." In asking to be judged by the biblical laws as though they were Sadducees they thus showed their refusal to submit to the law of the Rabbis.

The rabbis not only attacked the population of Sepphoris by speaking of them as robbers and violent men but they also charged them with immorality. When, after many people in Sepphoris had been killed by a plague, the Jewish inhabitants had complained about it to R. Hanina he attributed it to their sins and the many Zimris in their midst.

Such was the level of morality which R. Jose found and tried to raise upon his return to Sepphoris. Rami b. Abba, in San. 19a, relates: "Owing to an occurrence R. Jose instituted in Sepphoris that no woman should allow her son to walk behind her in the street, but in front of her; and that women should talk to each other when in a privy in order that no man should enter." In Jer. Berakhoth, III, 4,6c,54, R. Jose tells of cases of adultery in Sepphoris. In Ketuboth I,10, R. Jose tells of a girl who was violated when descending to draw water from a well.

R. Jose's statement in Derekh Eretz, XI, that "those who hate the scholars and their disciples, the false prophets and the calumniators will have no share in the world to come" is an indication of the very strong feeling that prevailed against the teachers of his town. The rabbis were criticized just as vehemently by the leaders and wealthy people as they were criticized by the rabbis. Even R. Meir, when temporarily staying in Sepphoris, was exposed to the contempt and hatred which the people felt for the scholars. Although the charges brought against him are nowhere mentioned, the fact that R. Jose defended him as a great, holy and chaste man implies that the charges were serious.

Poverty was the rule among the rabbis in Galilee. The wealthy men cared little for them or for the Torah to which they devoted themselves. This condition is illustrated by a baraitha in Hagiga, 5b; " God weeps daily over three classes of men: over him who could study the Torah and fails to do so, over him who cannot study and yet does so, and over a Parnas who behaves haughtily to the congregation."

The sons of the wealthy landowners or the prosperous segment of the priestly class generally avoided the study of the Torah and only the poor young men joined the academies. Only by practicing a regular handicraft could scholars achieve independence. In this connection R. Jose quoted R. Gamaliel's statement: Of a man who has no occupation people speak unfavorably and ask whence has this man his food. Only by achieving independence through handicrafts could a scholar keep himself free from suspicion. Of R. Jose himself it is said that he earned his livelihood by working as a tanner of hides. Perhaps working at this humble craft inspired him to describe earning a living as twice as difficult as giving birth.

In a beraitha in Pesahim, 49b, it is expressly stated that the women of Sepphoris hated the scholars even more than their husbands did. The trend of Jewish thought and life which the Rabbis represented was so foreign to the leaders and wealthy men of Sepphoris that the rabbis had to suffer for their cause. Such was the "vineyard" in which R. Jose and his colleagues worked.

R. Jose was born circa 97 C. E. A list of genealogies found in Jerusalem, according to the Jerusalem Talmud, traced his descent from Jonadab ben Rahab who helped Jehu, the king of Israel, to destroy the house of Ahab and to eradicate idolatry from among the ten tribes. Presumably R. Jose's grandfather came to Palestine from Babylonia and his racial purity was therefore unquestioned, since the purity of Palestinian Jewry was thought to have been affected by the immorality of the Romans. R. Jose's pride in his descent can be seen in his statement, "All lands are as sour dough when compared to the Land of Israel, but the Land of Israel is as scur dough when compared to Babylonia."

R. Halafta was R. Jose's first teacher and he frequently quoted laws in his name. Although he was primarily a disciple of R. Akiba he was also, at various times, a pupil of Rabban Gamaliel II, R. Joshua b. Hananiah, R. Ishmael b. Elisha, R. Tarphon and R. Jochanan b. Nuri and Abtolemos, whose name is mentioned only three times in the Mishnah.

R. Jose's legal opinions were accepted in law over those of his colleagues R. Meir, R. Judah and R. Simeon. Both the Nasi Rabban Simeon b. Gamaliel II, as well as his son Judah established all laws according to the decisions of R. Jose. When the Nasi R. Judah was once asked about this he replied, "Just as the distance between the most holy and the profane is great, even so is the difference between our generation and the generation of R. Jose".

R. Jose seems to have realized that the task of reconstruction would require compromise and conciliation not only when dealing with Palestine's Roman rulers but also in the restoration of the law.

The former is illustrated by the following story: Once R. Judah, R. Jose and R. Simon were sitting together and with them was Judah b. Gerim. R. Judah began and said, "How good are the works of this nation. They

have built market places, they have built bridges, they have built baths." R. Jose remained silent. R. Simon answered and said, "All they have built they have built for their own needs. They have built marketplaces - for immorality. They have built baths -- to enjoy themselves; bridges -- to impose taxes." Judah b. Gerim went and related these words, and they were heard by the Government. And they said, "Judah who praised, shall be praised; Jose who remained silent shall be exiled to Sepphoris; Simon who condemned shall be killed."

Aware that to resist Rome would mean that much effort diverted from the vital task of reconstruction and that to criticise Rome might bring retaliation, R. Jose at that time had not wanted to be dishonest and therefore had remained silent.

It may have been in the interest of reconstruction that R. Jose showed a great interest in Jewish history, composing a chronology from the time of the Creation to his own day under the name of "Seder Olam". He frequently related the customs of previous generations and based his own opinions on those customs. He thus elucidated customs concerning the scapegoat, the sanctification of the new months, the regulations pertaining to women who bring offerings to the temple.

R. Jose's efforts to maintain harmony among his colleagues is well illustrated by the following: R. Simeon b. Gamaliel, in order to strengthen the respect for the office of Nasi which he held at the academy in Usha issued a decree restricting the tokens of esteem shown by the community to other members of the school. R. Meir, the Hakham, and R. Nathan, the Ab-beth-din, who were next in rank to R. Simeon, were offended by this move and conspired to depose him and assume his authority. When their plot came to the knowledge of R. Simeon he expelled them from the school. "Thereupon they wrote down scholastic difficulties on slips of paper which they threw into the college... Said R. Jose to them (the members of the college): The Torah is without and we are within! Said R. Simeon b. Gamaliel to them: We shall re-admit them..."

R. Jose deplored the conflicts that had arisen amongst his colleagues and predecessors and said, "At first there were no disputes in Israel... but when the disciples of Hillel and Shammai became many... disputes in Israel became many and the Torah became as two." There are many instances where R. Jose mediates between the opposing views of his colleagues, e.g. Ter. 10:3, Erub. 86a, Moed Katan 10a, Yoma 4:10, Tem. 26a.

R. Jose had five sons: R. Ishmael, R. Elazar,

R. Halafta, R. Abtilas and R. Menahem. All of them figured among the scholars of their time and R. Jose proudly said that he had planted five cedars among the Jews.

R. Jose died *circa* 180 C.E. It is said that when R. Jose died understanding ceased from among the Jews.

CHAPTER II: THE HALACHA OF R. JOSE.

The Mishnah, which embodies the legal thought of the Pharisees, also gives evidence of the contending attitudes and tendencies within their ranks. The Pharisees, through the Oral Law, had evolved a technique by which Jewish life could be adjusted to the demands of new conditions by reconciling the opposites of innovation and tradition. They approached tradition with an attitude which was one of both loyalty and flexibility, and which emphasized individualization.

This progressive tendency, however, did not go unopposed, for there were elements of a more conservative trend of legal thinking among the Pharisees. The strongest opposition was given by the Shammaites, against their contemporaries, the progressive Hillelites. The conflicting traditions which were engendered by this dispute finally made it necessary to establish officially the authority of the Hillelites and to repudiate the minority Shammaites.

Although the Shammaites had been repudiated their position was approximated by the conservative factions of succeeding generations of Pharisaic teachers. R. Eliezer b. Hyrcanus, for example, one of the leaders of his generation, was repudiated by his colleagues because of his extreme conservatism.

In R. Jose's generation too, Pharisaic thought had its progressive and conservative factions. The Shammaites and their successor R. Eliezer had been repudiated but their outlook, temperament and predilections were still shared by some of R. Jose's colleagues, most notably R. Judah, the son of R. Eliezer's ardent disciple, Ilai. In the restoration of the oral tradition after the Hadrianic persecution R. Jose championed the cause of the Hillelites. This we hope to show by analyzing some of his halachoth, after first discussing the methods of uniformity and individualization that distinguish the conservative and progressive tendencies.

Every system of jurisprudence involves a going from the general legal principles to the particular case. In the event of a new situation unification is achieved by extrapolation from the general principle. Legal uniformity, which is the result of this method, results in an impartial and certain jurisprudence. However, injustice too is often a result when a general law is mechanically imposed on particular situations involving variations of circumstance. Individualization is a counter-balance, as it were, to uniformity, with its emphasis on flexibility and minimization of formal, analytical and logical interpretation. All legal systems contain within

themselves conflicting tendencies toward both uniformity and individualization, the dominance of either one, it is generally agreed, depending on the outlook and predilections of the jurist. So, in the case of R. Jose, for instance, we find a predilection for change and adaptation together with an emphasis on individualization.

Individualization may be achieved by the following means:

I. The subjective method. Not only objective facts but also personal and subjective elements are taken into consideration, including the mental processes and intentions preceding each act.

II. 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.

III. The historical method. The conditions which necessitated the law must be considered in applying the law. Also, this method insists that not only the descriptive data but also the history and development of each case be taken into consideration. Before extending a law from one case to another there should be sufficient similarity between their respective conditions.

IV. The sociological method. This method postulates the welfare of society as the aim of the law. When the welfare of society is threatened by the implementation of a law, then the law is to be amended or annulled.

These basic techniques of individualization characterize progressive Pharisaic legal thought. We now proceed to show how these methods of individualization are employed in R. Jose's halacha.

I. The Subjective Method.

Terumoth, 1:3. "If a minor has not produced two hairs, R. Judah says: His heave-offering is valid. R. Jose says: If (he gave 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 Tos. Ter. 1:1, we find a similar dispute over the necessity for intention in tithing in which the disputants are the Rabbis, R. Eliezer, (the ideological forbears of R. Jose and R. Judah) and R. Judah. The issue there is the validity of tithes offered by a deaf-mute. Since tithing to the Rabbis was an act requiring intention, of which a deaf-mute was not considered fully capable, 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. Judah, in the case of intention even more conservative that R. Eliezer,

maintains that the heave-offering of a minor incapable of sufficient intention is valid. 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.

Sukkah, 3:14. "R.Jose says: If the Festival-day of the Feast fell on a Sabbath and a man forgot and brought out the Lulab into the public domain, he is not culpable since he brought it out (with intent) to fulfil a licit act."

This mishnah is a classic example of the subjective approach. If the first festival-day of Sukkoth falls on the Sabbath the Lulab is brought to the synagogue on the day before so as not to profane the Sabbath by carrying the Lulab from the private domain of the home into the public domain of the street and synagogue. If, however, a man was unaware of it being the Sabbath and carried the Lulab from one domain into the other he is not culpable, because his intention was not to transgress the prohibition of carrying but to fulfil a commandment. The act of violating the Sabbath did not represent the doer's specific intention, and since it was not a consequence of his volition it is not an act but a mere event or incident.

Shabbath, 12:3. "He is culpable that writes two letters, whether with his right hand or with his left, whether the same or different letters, whether in different inks or in any language. R. Jose said: They have declared culpable the writing of two letters only by reason of their use as a mark; for so used they to write on the boards of the Tabernacle that they might know which adjoined which."

Any act of writing, albeit haphazard, it might be assumed from the opening statement of the mishnah, is a violation of the Sabbath, providing the objective and quantitative requirement of a minimum of two letters is met. R. Jose's statement aims to forestall that assumption. The writing of two letters is culpable only when it is a purposeful act from which advantage is derived, i.e., work, and not when the merely physical act of writing has been done. Objective action, according to R. Jose, must be accompanied by subjective volition to constitute an act.

Maaser Sheni, 4:7. "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 as such, R. Jose says: It suffices. But R. Judah says: He must designate it expressly.

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

The certainty of legal uniformity is strengthened by the minimization of the subjective element. In the case of designation this minimization of the subjective element is achieved by the objectification of intention. This is done by requiring that the inner volition be given objective existence in the form of explicit utterance, usually formulaic. R. Judah, sharing the Shammaite tendency toward uniformity, denies the validity of the implicit designation.

R. Jose, sharing the Hillelite tendency toward individualization with its recognition of the subjective element, 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.

Mikwaoth, 2:2. "If an immersion-pool was measured and found lacking, any acts requiring cleanness that had theretofore been done following immerison therein, are deemed to have been done in uncleanness, whether (the condition of doubt arising thereby concerned) a private domain or the public domain. This applies only to graver uncleanness; but if it was a lighter uncleanness, to wit, if a man ate unclean foods or drank unclean liquids, or if his head and the greater part of him entered drawn water, or if three logs of drawn water fell on his head and the greater part of him - - if then he went down to immerse himself, and it is doubt whether he immersed himself or not; or if, even though he immersed himself, it is in doubt whether there was forty seahs (of water) or not; or if there were two pools, the one holding forty seahs but not the other, and he immersed himself in one of them but does not know in which of them he immersed himself, his condition of doubt is deemed clean. R. Jose declares him unclean; for R. Jose used to say: (If he was rendered unclean by) aught that must be assumed to be unclean, his unfitness continues till he knows that he is become clean; but if it is in doubt whether he became unclean or whether he (afterward) conveyed uncleanness, he is deemed clean."

The words "until he knows that he is become clean" show the emphasis R. Jose places on the subjective. The fact of a person's purity or impurity, according to R. Jose, depends not exclusively upon his actual objective condition, but depends also upon the measure of certainty with which he considers himself clean or unclean. Although he may actually have become clean unknowingly, still, the lack of absolute subjective certainty leaves him in a state of uncleanliness, although objectively he may be clean.

If, however, a person was not certain of his original uncleanness and then was not certain that he had become clean, since he is not completely convinced of his original impurity he does not require complete certainty of his purification to make him feel pure. R. Jose therefore rules a doubtful purification effective.

Kerithoth, 5:4. "If there was a piece of unconsecrated flesh and a man ate one of them and it is not known which of them he ate, he is exempt. R. Akiba declares him liable to a Suspensive Guilt-offering. If he ate the second also, he must bring an Unconditional Guilt-offering; if he ate the one and another came and ate the other, they must each bring a Suspensive Guilt-offering. So R. Akiba. R. Simeon says: They together bring one Guilt-offering. R. Jose says: Two cannot bring one Guilt-offering."

The eating of unconsecrated flesh is punishable by extirpation. If the transgression is committed in error, the transgressor must bring a sin-offering after becoming aware of his transgression.

The controversy in this mishnah is over the third case, where an actual transgression was committed, the transgressor being unknown. According to R. Akiba, since the guilt of each man is in doubt, they each bring a Suspensive Guilt-offering. R. Simeon emphasizes the objective aspect of the situation: there may be doubt as to who the transgressor is but there is no doubt that a transgression has been committed. To meet this problem R. Simeon rules that since they are collectively guilty they should both share in a sin-offering, which a known transgression calls for.

R. Jose shifts the emphasis from the impersonal aspect of the certain nature of the transgression, to the personal aspect, the uncertainty of guilt. Two persons cannot bring one Guilt-offering for the simple reason that they do not share the guilt, they merely share the possibility of guilt. That is the meaning of "collective guilt" in this case. Consequently, if a sin-offering were brought by both of them together, since one of them is certainly innocent it would result in a sin-offering being brought by an innocent man. Hence, R. Jose considering the men as two individuals and not as a collective perpetrator of a single transgression rules that they should each bring a Suspensive Guilt-offering.

Peah, 3:7. "If one that lay sick assigned his goods to others (as a gift) and kept back any land soever, (if he recovered) his gift remains valid; but if he had kept back no land soever his gift does not remain valid. If he assigned his goods to his children and assigned to his wife any land soever, she forfeits her Ketubah. R. Jose says: If she accepted (such an assignment) even though he did not indeed assign it to her, she forfeits her Ketubah."

The principle underlying the entire mishnah is that of intention. The sense of the first part is that the assignment of a gift does not depend entirely on the gesture or act of assigning; the intent of the granter must be given consideration. Indeed, the nature of an act of assignment, as illustrated in the mishnah, may cast light on the intent of the grantor and show that because of lack of intent the assignment was not effective.

The second case of the mishnah deals with the presumption of intention. If any land was assigned to the man's wife, in the absence of any declaration to the contrary on her part, it may be presumed that she accepted the assignment in lieu of her Ketubah. She therefore forfeits her Ketubah even without an overt act of acceptance.

R. Jose tacitly agreeing with the preceding, applies the idea of intention still further, to a case where there was explicit expression of the intention to accept but no actual assignment, only an expected one. If she accepted such an assignment, since it is still presumed that she was willing to share with the sons in the inheritance and to forego her claims to her Ketubah, she forfeits her Ketubah.

Baba Bathra, 1:3. "If a man's land surrounded his fellow's land on three sides, and he fenced it on the first and the second and third sides, the other is not bound (to share in building these walls). R. Jose says: If the other rose up and fenced it on the fourth side he is compelled to bear his share in the cost of all the other walls."

Into his translation of this mishnah, which is given above, Danby reads a meaning which the original Hebrew text does not clearly call for. The original text of R. Jose's dictum reads: אומר רואה [illegible] מקיפין עליו את הפרץ, which leaves it an open question whether it refers to the man who is surrounded, the nikkaf, or to the man surrounding him, the makkif. According to the translation the reference is to the nikkaf.

The ambiguity of R. Jose's dictum gives rise to a difference of opinion in the Gemara: one opinion construing the statement to mean the nikkaf, holding him liable, since his completion of the enclosure of his field shows his acceptance by conduct; the other opinion taking R. Jose to mean the makkif, holding the nikkaf liable, even if the makkif put up the fourth side, because of the benefit derived through the labour and expense of his neighbor.

Bertinoro, ad locum, takes the second position, on the grounds that if the first were true R. Jose's

statement would be obvious and therefore unnecessary, since we need no new ruling to tell us that where the nikkaf indicates approval of his neighbor's building the other three sides by his own building of the fourth side he must share in the cost of the other three sides.

It is our opinion, however, that this, far from being a truism, is precisely the point that R. Jose makes. There is ample reason to rule the nikkaf not liable for his share in the expense of the first three walls if he subsequently built the fourth wall. The two acts of building can be taken as being entirely independent of each other. When the makkif built the first three walls he did so entirely in his own interest without regard for that of the nikkaf. At that time he thought the expense of building them commensurate with the use and service to be derived from them by him alone. The act of building on the part of the nikkaf is therefore irrelevant. Second, there is no contract or other sure evidence showing the desire of the nikkaf for the building of the first three walls, or for sharing in their cost.

It is here, we think, that R. Jose's emphasis on the subjective is evidenced. Although no concrete proof exists whereby we can hold the nikkaf liable, his act of building the fourth wall gives us evidence of his tacit acceptance. The point that R. Jose makes,

and which was so familiar to Bertinoro as to be taken for granted, is that this subjective "retroactive quasi-acceptance", as Herzog calls it, is sufficient to obligate him.

Baba Bathra, 10:5. "If a man had 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 locus classicus 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 that the dispute between R. Jose and R. Judah

is motivated by their conflicting tendencies toward individualization and uniformity.

R. Judah's position can be said to rest on the following grounds: Even if the debtor was sincere in his promise the transaction is not binding because of the lack of a sufficient consideration in case of forfeiture. The creditor has no claim on and cannot acquire the bond beyond the amount secured if he has not given the debtor a sufficient consideration. According to R. Judah the debtor cannot, by sheer volition and without the form of receiving a consideration, convey his property to the creditor.

All this assumes the sincerity of the debtor in making his promise to forfeit. The nature of the promise, however, is such as to establish the presumption that he could not possibly have been sincere. Since, therefore, if the debtor was sincere the promise is not binding, and since the presumption is that the promise was not sincere, R. Judah holds that asmakta does not give title.

Where R. Judah stresses the formal and objective aspects of the transaction, R. Jose stresses the volitional and subjective. The lack of a consideration, he believes, is not sufficient to make ineffective the debtor's conveying the bond to the creditor if it is his desire to do so. Furthermore, while R. Judah

maintains that the intention to forfeit is impossible, R. Jose, attributing a more comprehensive nature to intention, maintains that the intention to forfeit is possible. Since a consideration is not essential in the conveyance of property where sufficient intention exists, and since the intention to forfeit is possible, R. Jose holds that asmakta does give title.

Gittin, 7:9. "(If he said,) 'If I have not returned before twelve months, write out and deliver a bill of divorce to my wife', and they wrote out the bill of divorce before the twelve months and delivered it after the twelve months, it is not valid. (If he said,) 'Write out and deliver a bill of divorce to my wife if I have not returned before twelve months', and they wrote it out before the twelve months and delivered it after the twelve months, it is not valid. R. Jose says: Such a bill of divorce is valid..."

We have shown above, in commenting on Baba Bathra, 10:5, that while R. Judah maintains that an intention to forfeit is impossible, R. Jose maintains that it is possible. In this mishnah too R. Jose allows for greater play of intention.

The first instructions of the husband are unambiguous and not open to dispute. But in the case of the second it is unclear whether the conditional clause

"if I have not returned before twelve months" applies to both the writing and delivery of the bill of divorce or to the delivery alone.

The first tanna rules the bill of divorce invalid because the instructions cannot be taken as specifying explicitly that it be written before the twelve months. R. Jose maintains that although there was no clear and explicit instruction to write the bill of divorce before the twelve months, neither is it clear and indisputable that that was not meant in the instruction. To be sure, if the question were raised before the writing of the bill of divorce R. Jose would not instruct that it be written. But after it has already been written, on the grounds that the man's intentions may have been for it to be written even before the twelve months, R. Jose declares it valid.

Temurah, 5:3. "If a man said, 'The young of this (beast) shall be a whole-offering and itself a peace-offering', his words hold good. If he said, 'This shall be a peace-offering and her young a whole-offering', it is accounted but the young of a peace-offering. So R. Meir. R. Jose said: If from the first his intention was such, his words hold good, since it is not possible to assign them to two kinds of offering at the same time; but if after he said, 'This shall be a peace-

offering', he bethought himself and said, 'Its young shall be a whole-offering', it is accounted but the young of a peace-offering."

R. Meir's view is based on the word order of the dedication. The first clause accomplished the dedication of the mother; the second clause was without effect, since by the time it had been uttered the foetus had been already dedicated as part of the whole beast.

R. Jose takes into account not only the words and their order but also the intentions behind them. In making the dedication in the given order the dedication of the mother precedes and makes ineffective the dedication of the dam, thus negating the owners intention and making it impossible for him to assign them as he wishes. In such a case, R. Jose rules, to accomodate his intentions, they and not the order of his words, should be primary and decisive.

Nedarim, 4:8. "If (two men) were on a journey together (one man being forbidden by vow to have any benefit from his fellow) and the first man had naught to eat, the other may give the food to a third person as a gift, and the first is permitted to use it. If there was none other with them, he may lay the food on a stone or on a wall and say, 'This is ownerless

property for all that wish', and the other may take it and eat it. But this R. Jose forbids."

In Jer. Peah, 19b, there is a controversy between R. Meir and R. Jose which S. Zeitlin illuminates in his study of the controversies between the Shammaites and the Hillelites. The controversy is about a man who renounced his property rights to a certain object with the reservation that certain other persons may not acquire possession of that object. R. Meir considers the object as abandoned; R. Jose holds that in abandoning his rights the owner has lost neither his responsibility for nor title to the object. Zeitlin connects this dispute with that between the Shammaites and Hillelites on the general subject of property.

Two important categories of property are res privatae, private property, and res nullius, property of which anyone can become the owner by an act of acquisition. Res nullius includes not only such things as wild animals but also objects to which the owner has renounced all rights without transferring them to anyone else. A lost object without distinguishing characteristics would come under the heading of res nullius since anyone who finds it can acquire title to it. The Hillelites apply the requirements of res nullius strictly, and so if the abandonment is qualified in any degree whatever it is

not effective. The Shammaites do allow some degree of restriction.

Accordingly, in the Jerusalem Talmud, R. Meir following the Shammaite construction of res nullius considers a conditional abandonment as effective. R. Jose, a Hillelite, because of the conditional nature of the abandonment considers it ineffective.

R. Jose's position in the mishnah under consideration is similar to his position in the Jerusalem Talmud. For R. Jose the cirumstances of the act of abandonment in our mishnah make it unmistakably clear that it was an act of expediency. It was impossible to transfer property rights to the food directly because of the interposition of the vow. The only other way remaining was to declare the food abandoned, while actually intending it to become available to the other man. Since the declaration of abandonment was not a result of a genuine intention to abandon the food, and since even if we were to consider it an intended act of abandonment, the circumstances involved establish the presumption that it was a conditional one, excluding in effect everyone but the other person from acquiring property rights to the food, R. Jose forbids the use of the food if this method is used.

II. The Pragmatic Method.

Makkoth, 1:8. "As the evidence of two witnesses is void if one of them is found to be a kinsman or ineligible, so the evidence of three is void if one of them is found to be a kinsman or ineligible. Whence (do we learn that this applies even to one out of) a hundred? Scripture says: 'Witnesses'. R. Jose said: This only applies in capital cases; but in non-capital cases the evidence can be sustained by the remaining witnesses (that are not ineligible)."

The anonymous tannah does not specify whether he is referring to capital and non-capital cases or only to capital cases, leaving the implication that both are meant. R. Jose does make a distinction between the two types of cases. In capital cases where such assistance is necessary the law achieves its end by granting every assistance to the accused. To apply the law to non-capital cases, where such precautions are uncalled for, would be supererogatory.

Baba Metzia, 3:2. "If a man hired a cow from his fellow and lent it to another, and it died a natural death, the hirer must swear that it died a natural death, and the borrower must repay (its value) to the hirer. R. Jose said: Why should that other traffick with his fellow's cow! - - but, rather, the (value of the) cow is returned to the owner."

According to rabbinic law, if a beast was lost, stolen or died of natural causes and if it had been borrowed, the borrower must make restitution in every case; a hirer must make restitution only if the beast had been lost or stolen (B.M. 7:8); if the beast had died of natural causes the hirer takes an oath to that effect and he is free of liability. What happens in a case which involves both a borrower and a hirer is the subject of this mishnah.

In the first opinion of the mishnah the law of the hirer and the law of the borrower are considered as logical propositions from the rigorous combination of which the inevitable conclusion follows that restitution is awarded not to the owner but to the hirer.

R. Jose points out, however, that logical consistency alone in the implementation of these laws begets a result which they were not originally intended to achieve. By applying these laws mechanically indemnification goes to the hirer and not to the owner who is the only one of the two who has suffered any loss, since the hirer can sue the owner for the return of the hire over and above that for the actual use of the beast while it was alive. In this case where uniformity would negate the purpose of the laws and result in inequity, R. Jose holds that logical consistency must be foregone and individualization or equity must be resorted to.

Baba Metzia, 3:4, 5. "If two men deposited money with a third, the one 100 zuz and the other 200 zuz, and one afterward said, "The 200 zuz is mine", and the other said, 'The 200 zuz is mine' he should give a 100 zuz to each of them, and the rest must be suffered to remain till Elijah comes. R. Jose said: But if so, what does the deceiver lose? -- But, rather, the whole is suffered to remain until Elijah comes."

"So, too, (if two men deposited) two things, one worth 100 zuz and the other 1000 zuz, and one afterward said, 'The better one is mine', and the other said, 'The better one is mine', he should give the thing of lesser worth taken from (the value of) the thing of greater worth; and the rest must be suffered to remain until Elijah comes. R. Jose said: But if so, what does the deceiver lose? -- but, rather, the whole is suffered to remain till Elijah comes."

The underlying principle of these mishnayoth seems to be that any property whose ownership is irresolvably disputed must be impounded by the court until such time as the ownership can be established. Consequently, since the two depositors in the first mishnah disagree over 100 zuz, only that sum should be withheld.

R. Jose protests, however, that the rigorous implementation of that principle in this case will defeat its original end and actually encourage dishonesty, the deceiver having all to gain and

nothing to lose. The procedure R. Jose suggests is calculated to avoid such inequity. All the money or goods should be impounded, he suggests, if need be until the coming of Elijah; the deceiver faced with the loss of his property will make haste to admit his deception.

Demai, 3:5. "If a man gave (food to be cooked) to the mistress of the inn he must tithe what he gives her and also what he receives back from her, since she must be suspected of changing it. R. Jose said: We are not answerable for deceivers: he needs tithe only what he receives back from her."

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-haaretz, 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-haaretz must assume that it has not been tithed and 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 am-haaretz class.

He must tithe in advance what he gives her since he may not give any food not duly tithed so that others shall be saved from doing wrong. In addition, he must tithe what he receives back from her because she must be suspected of changing it, perhaps because of its being spoiled while being cooked as the following mishnah suggests.

It is to the former injunction that R. Jose objects. To tithe in advance so that the innkeeper shall be saved from doing wrong, and then to tithe again because she is suspected of changing the produce is to apply the law to tithe in advance mechanically and to overlook the end it was originally intended to achieve, the protection of the presumably honest, and not presumably dishonest people. If the former, nobly motivated injunction is indiscriminately carried out, R. Jose says, we become "answerable for deceivers."

III. The Historical Method.

Tohoroth 7:1. "If a seller of pots set down his pots (in the public domain) and went down to drink, the innermost pots remain clean but the outer ones become unclean. R. Jose says: 'This applies only if they were not tied together; but if they were tied together, all remain clean."

The pots become unclean because they may have been handled by an am-haaretz or unclean person passing by. However, says R. Jose, not always are pots open to such defilement, and it would be unfair to apply the general law even to cases where it is improbable, because of the peculiar arrangement of the pots, that they were defiled by passers by. A distinction must be made between the different cases. Where, therefore, the pots are tied together and unlikely, for that reason, to be handled by passers-by, the general law does not apply.

Sanhedrin 9:4. "If a man was found liable to two of the death penalties that can be inflicted by the court, he must be punished by the more severe of them. If he committed a transgression by which he was found liable to two kinds of death penalty, he must be punished by the more severe of them. R. Jose says: He must be punished by that penalty which first attaches to his transgression."

The first statement in the mishnah refers to a case like the one where a man has profaned the Sabbath intentionally and then committed murder, being punishable by stoning in the first instance and by beheading in the latter. Since only one of these sentences can be carried out, stoning receives precedence since it is the more severe of the two.

The second statement of the mishnah refers to a case similar to that in the first, where a man is also liable to two death penalties. Here, however, the two death penalties are incurred by a single act, as in the following example. If a man had intercourse with his mother-in-law, if she is married to a husband he is rendered liable to strangulation for transgressing the law respecting a man's wife, and for transgressing the law respecting a mother and her daughter he is rendered liable to burning. Since here, too, two death penalties have been incurred by a single man, the first tannah rules, by analogy, that the more severe of them should be inflicted.

R. Jose, however, maintains that the superficial similarity between the two cases in the mishnah, namely the fact that in both cases the man is liable to two death penalties, is not sufficient to allow the conclusion that in both the more severe penalty is to be inflicted. The two cases present different histories and must not be considered analogous.

In the first case each penalty is separately incurred by the commission of two separate acts. The full penalty, if it could possibly be administered, would be to execute the criminal twice. Since that is not feasible, as much as possible of that aggregate penalty must be inflicted. That is why the severer penalty has precedence. However, in the second case, a single criminal act has been committed, "a transgression" as the text reads, to which two kinds of death penalty are attached. These penalties are not both mandatory; only one is mandatory and that may be either one. Unlike the first case there is no compelling reason for choosing one rather than the other. It is this drawing of an analogy between two cases with superficial similarities but profounder differences that R. Jose contests.

In his dictum R. Jose answers the question of how to choose the one penalty to be inflicted. Since the transgression derives from a breach of a relationship taboo, a study of history of that relationship will reveal when the first taboo became operative. If other taboos developed they are all complementary to the first. Consequently, if this set of taboos are breached it is actually the first one that is breached, and it is its penalty which is incurred.

Maaser Sheni 4:11, "If a man found a vessel and on it was inscribed a Kof, this is Korban; if a Mem it is Maaser (Tithe); if a Daleth it is demai-produce (produce not certainly tithed); if a Tet it is Terumah (Heave-offering); for in the times of danger they used to write Tau for Terumah. R. Jose said: They may all be (the initials of)men's names. R. Jose said: Even if a man found a jar full of produce with 'Terumah' written on it it should be deemed unconsecrated, since I may assume that it was filled with Heave-offering a year ago and afterward emptied."

If a vessel was inscribed with any of the above letters it might very well be that these letters were abbreviations of the words Korban, Maaser, etc. During the Hadrianic persecutions when it was forbidden to observe religious practices it was the practice to use such abbreviations. Why, however, should it be presumed that in all cases where these inscriptions are found that they are abbreviations of Korban, Maaser, etc.? They may also be abbreviations of other words, such as men's names. R. Jose refusing to generalize from the practices of a particular period, therefore rules the letters as without significance.

The second dictum of R. Jose is another warning against literalness and against making assumptions on the basis of a limited possiblity. We know that jars used for Terumah last year are used to hold unconsecrated produce of this year. Therefore, says R. Jose, even if a man found a jar with Terumah (and not merely Tau) it would be wrong to assume that it contained consecrated produce.

IV. The Sociological Method.

Kilaim 7:4. "If a man suffered his vine to overshadow his fello's growing corn he renders it forfeit and he is answerable therefor. R. Jose and R. Simeon say: None can render fofeit what does not belong to him."

This mishnah seems to consist of an old halacha and a later modification of it by R. Jose and R. Simeon.

The overshadowing of growing corn by a vine is an infraction of the law forbidding the growing of diverse kinds of crops. In the first opinion of the mishnah the law is given full sway and is applied despite the fact that generally speaking it amounts to a limitation of the neighbor's property rights in peripheral areas of his field. R. Jose and R. Simeon on the other hand, more responsive to practical exigencies affirm the importance of property rights and consider them sufficiently strong to cancel the taboo of diverse kinds.

Yebamoth 16:4. "If a man had fallen into the water, whether or not within sight of shore, his wife is forbidden (to marry another). R. Meir said: Once a man fell into a large well and came up again after three days. But R. Jose said: Once a blind man went down into a cave to immerse himself and his guide went down with him; and they waited time enough for life to become extinct and then permitted their wives to marry again ... "

The opening sentence of this mishnah seems to be an older halacha upon which R. Jose and R. Meir are commenting, R. Meir supporting it and R. Jose disputing it.

If a man has fallen into the water and his fate is uncertain, in the absence of proof of his death it is possible that he may still be alive, even after the lapse of some time. The probability , however, is that he died.

The instance R. Meir citesshows his emphasis on the element of possiblity and his lack of emphasis on the element of probability. Although the man had been in the well three days he did come up again. He was presumably dead, yet as long as there was no conclusive proof of his death there was the possibility of his being alive. In this isolated case the possibility

was fulfilled and the presumption proven wrong. The advantage of precluding even the slightest possibility of transgression, such as would result from the wife's remarriage while her husband was still alive, makes worthwhile for R. Meir the exercising of such extreme precautions, even at the price of the wife remaining an agunah.

R. Jose would not forbid remarriage in such a dituation solely because of the absence of conclusive proof. Presumptive proof, he holds, is sufficient to allow the wife's remarriage. Every time a man falls into the water he does not always die, but neither does he always live. It does sometimes happen, as in the case cited by R. Meir, that a man survives, but very rarely. Although a nominal possibility exists that the presumption of death is wrong, R. Jose would not create a hardship on the basis of that possibility.

Kiddushin 3:9. "If a man had two groups of daughters by two wives, and he said, 'I have given one of my elder daughts in betrothal but I do not know whether it was the eldest of the older group or the eldest of the younger, or the youngest of the older group that is older than the eldest of the younger group', they are all forbidden excepting the

youngest in the younger group. So R. Meir. R. Jose says: They are all permitted excepting the eldest of the older group. (If a man said,) 'I gave one of my daughters in betrothal but I do not know whether it was the youngest of the younger group or the youngest of the older group, or the eldest of the younger group that is younger than the youngest of the older group', they are all forbidden excepting the eldest of the older group. So R. Meir. R. Jose says: They are all permitted excepting the youngest of the younger group."

In the first case, which is analytically identical with the second, R. Meir forbids all the daughters except the very youngest because she is not older than any other sister. "Older daughter" according to him, means any daughter that has a younger sister. R. Meir, emphasizing the element of possibility, holds that since all daughters but the youngest are within the scope of the possible meaning of the father's words and therefore possibly given in betrothal, they are forbidden in the absence of absolute certainty. T. Meir would take exhaustive precautions and forbid any number of daughters so that a daughter already betrothed might not be given in betrothal again, thereby committing a transgression. Fiat jus pereat mundi.

R. Jose seems to feel that to forbid almost all of the daughters in this case would be working too severe a hardship for too little cause. He does not go to such great lengths to preclude the slightest possibility of transgression. The probable meaning, rather than the range of possible meaning, of the father's words govern his decision. Although, strictly speaking, any but the youngest daughter may have been given in betrothal, it is more probable that the oldest daughter was the one betrothed. It is she, therefore, that should be forbidden.

Terumoth 4:13. "R. Jose said: A case once came before R. Akiba about fifty bundles of vegetables among which a like bundle was fall of which the half was Heave-offering; and I decided before him, 'It is neutralized' -- not that Heave-offering can be neutralized in fifty and one, but because there were there a hundred and two halves."

The general law covering such cases is: If one seah of Heave-offering fell into 101 seahs of ordinary produce, making 102 in all, any one seah may be taken out and given to the priest, and the rest is free for common use. The strict approach to our mishnah would be to require 101 bundles to neutralize the composite bundle. Since here there are only

51 in all, the composite bundle would not be considered neutralized.

R. Jose rules the composite bundle neutralized by using the device of dividing each bundle into halves. The use of that device, however, entails difficulties which call for another radical step.

This mishnah extends between two points in time. At the first point in time the confusion of Heave-offering and common produce within the odd bundle took place. At that time the common half by virtue of its being confused with the half bundle of Heave-offering, was itself converted into Heave-offering, resulting in the whole bundle being Heave-offering. Now that this bundle is lost in the other fifty bundles, even if we consider halves as units we still have only a hundred halves of common produce, not enough for neutralization.

In order to get the required 101 common halves R. Jose uses another device, claiming that though, at the first point in time, the common half of the odd bundle was converted into Heave-offering, now that the formerly composite bundle lost in fifty bundles of common produce (or a hundered half-bundles) the formerly common half of the odd bundle regains its common nature to be added to the other 100 common halves. It is by taking these two radical steps that R. Jose is able to rule the Heave-offering neutralized.

Taanith 2:9. "They may not decree a public fast beginning with a Thursday lest they disturb (market) prices, but they appoint the first three days of fasting for a Monday and the following Thursday and Monday; but they may appoint the second three days of fasting for a Thursday and the following Monday and Thursday. R. Jose says: Like as the first (three days of fasting) may not begin on a Thursday so the second (three) and the last(seven) may not begin on a Thursday."

The public fast mentioned in the mishnah are those ordained in case of drought during the period from the 1st of Kislev to the 14th of Kislev. There are three fasts in all, the first two fasts are three days long and the third fast is seven days long. The series of three days of fasting fall on Mondays and Thursdays.

Since the heavy buying of food in preparation for the end of the fast on Thursday together with the heavy buying in preparation for the Sabbath would cause prices to go up, the first opinion of the mishnah holds that the first fast should not begin on a Thursday. The next two fasts however, may begin on a Thursday. R. Jose maintains that prices may also be forced upwards on the other two fasts if they begin on Thursdays and therefore that a fast may only begin on a Monday.

Shabbath 16:2 (p11b) "("If fire broke out on the Sabbath) they may sabe food enough for three meals - - for men food that is suited to men and for cattle food that is suited to cattle. Thus if a broke out in the night of the Sabbath they may save enough food for three meals; if in the morning, they may save enough for two meals; if in the afternoon, enough for one meal. R. Jose says: They may always save food enough for three meals."

Both the first tanna and R. Jose agree in allowing infraction of the prohibition against removing objects from the private domain on the Sabbath so that life can be preserved, for food cannot be procured on the Sabbath. According to the first tanna, however, if a fire broke out in the afternoon only enough for one meal may be saved. That will see the victim through to the end of the Sabbath after that he will be without any food, but it will be permissible for him to procure it. R. Jose is not interested solely in seeing the victim through to the end of the Sabbath when he will be permitted to obtain a fresh supply of food. He may not always be able to procure food on Saturday night, especially if he was hit very hard by the fire. Furthermore, the victim's welfare on the Sabbath should not be our only concern; he needs time to adjust to his loss. R. Jose, therefore, rules that he may always save enough food for three meals allowing him a whole day to rehabilitate himself, regardless of when the fire broke out.

LIST OF THE HALACHOTH OF R. JOSE IN THE MISHNAH.

I. Religious Laws.

a. Sabbath. Shabbath 2:5; 3:3; 5:2; 6:8; 8:7; 12:3; 14:2; 16:2;4,5; 17:8; 18:3. Erubin 1:6,7; 2:5; 3:4; 7:9; 8:5; 9:3; 10:9,10. Sukkah 3:14; Rosh Ha-Shanah 1:5; Taanith 3:7.

b. Festivals. Pesahim 1:7; 8:7; 9:2; 10:8. Yoma 4:4,6; 6:3; Sukkah 1:9; 3:7,14; Betzah 4:2; Rosh Ha-Shanah 1:5,7; 3:2; 4:6. Megillah 2:3. Moed Katan 1:5,8; 2:1,2,5.

c. Fasts. Taanith 2:9; 3:6.

d. Prayer. Berakoth 2:3; Rosh Ha-Shanah 4:6.

e. Temple Cult. Shekalim 7:7. Yoma 4:4,6; 6:3. Rosh Ha-Shanah 3:2; Zebahim 4:5,6,7,8; 6:1; Meilah 3:6. Middoth 2:2; 3:1. Kinnim 1:4. Kelim 1:9. Parah 3:1,2,3,7; 5:1,6; 7:7,11; 9:4; 11:3,8,9.

f. Mourning. Taanith 4:8.

g. Sacred Writings. Parah 10:3. Yadaim 3:5.

h. Women. Yebamoth 4:10; 7:3; 8:6; 10:1,4; 16:4. Ketuboth 1:10; 5:7,8; 7:3; Sotah 2:3; 4:5. Gittin 6:7; 7:4,9. Kiddushin 3:9; 4:5,7. Kerihoth 1:4. Mikwaoth 8:4; 9:2; Niddah 1:5; 2:6; 4:2,5; 5:8; 7:1; 9:1,2,9;10:5. Makshirin 5:11. Zabim 2:3.

i. Idolatory. Abodah Zarah 3:3,8; Kerithoth 3:5; 4:2.

j. Dietary Laws. Hullin 2:7; 3:7; 8:1. Tohoroth 1:1.

k. Forbidden Relationships. Kerithoth 3:5.

l. Vows. Ketuboth 7:3. Nedarim 3:11; 4:8; 6:5,10; 8:2; 11:1,2. Arakhin 1:3; 5:1; 8:1. Nazir 4:7; 6:2; 9:1.

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BIBLIOGRAPHY

Bacher, W., Die Agada der Tannaiten, Strassburg 1903.

Cardozo, B.N., The Nature of the Judicial Process, New Haven 1921.

Cohen, M.R., Reason and Nature, New York 1929.

Graetz, H., History of the Jews, Philadelphia 1895.

Mishnah, ed. Horeb 1924.

Mishnah, tr. Danby, H., London 1933.

Moore, G.F., Judaism in the First Centuries of the Christian Era, Cambridge 1927-1930.

Talmud, Babylonian, Montreal 1919.

Talmud, Palestinian, Krotoshin 1865.

Tosefta, ed. Zuckermandel, Pasewalk 1881.

Zeitlin, S., "Studies in Tannaitic Jurisprudence," Journal of Jewish Lore and Philosophy, I 1919, pp. 297-311.

Zeitlin, S., Les Principes des Controverses Halachiques entre les ecoles de Schammai et Hillel, Paris, 1932.