LABOR AND BUSINESS ETHICS AS REFLECTED IN EARLY TALMUDIC LITERATURE

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Digest

This paper seeks to examine those portions of the Tannaitic and early Amoraic law codes which deal with business and labor. While recognizing, and making mention of, the laws dealing with this aspect of early Talmudic literature, the primary goal of this study has been to discover and present the ethics of business and labor as formulated by the Rabbis. Seeking to differentiate between law and ethics, I have become aware of that characteristic of Jewish legal literature which, perhaps most clearly, demonstrates its uniqueness and significance. I refer to the nearly complete identity of ethics and the law: the one being integral to, and inseparable from, the other.

This study seeks to demonstrate that, whether in employment or in tenancy, in the marketplace or in guardianship, in the transaction of a loan or in dealing with the gentiles, it was, to a great degree, the human concern and solicitude of the Rabbis which motivated the formulation of the laws which are found in the early Talmudic sources. The rights of both parties to a contract (of whatever sort) had to be respected, and were legally guaranteed.

However, the thrust of this literature, was not merely to compel men to discharge their legal obligations. The Rabbis sought to inculcate a feeling for people in addition to a respect for law. Jewish law, ethics, and religion were united in the effort to encourage men to grow beyond the law: to do the ethical thing, to perform the moral act, even when these were not legally commanded. Thus employment, while defined as a legal relationship, was also deemed to be a human one, demanding mutual honesty and concern. Identifying law and ethics, the

Rabbis sought to legislate, and thus to universalize, this mutual concern between each man and his fellows. In this paper, ethics as they relate to the major phases of business in early Talmudic times, are examined and presented.

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I. An Overview
A. Ethics and Law

It is likely that in no other legal system have law and ethics been so closely aligned, as they were in the Rabbinic legal codes. Indeed, from Biblical times, religion, law, and ethics (or morals) may be shown to have been undifferentiated (witness, for example, the "Holiness Code," Leviticus 19).[1] The law, as understood in Biblical and even in early Rabbinic times, was composed of a system of divine commands (מצוות) dealing with ceremony, jurisprudence, and the relationship of one human being to another (i.e., ethics). As the law promoted and maintained order, peace, liberty, and the general welfare, it was deemed just; as it was utilized and administered in consideration of equity and fairness, the law was considered ethical, or moral. Jewish law held justice and ethical consideration in equally high esteem. Echoing the Biblical prophets, the Rabbis of the Mishnah and Tosephta

> ...repudiated any antimony between law and ethics, since they regarded the end of law as a realization of moral goals such as righteousness, lovingkindness and truth.[2]

Though law and ethics have, in the past diverged,[3] we may emphasize the close relationship they have maintained in the broad scope of Jewish legal history. For, regardless of specific cases to the contrary,

> ...there is (my underline) a moral obligation attached to the obedience of every law and ritual practice as such, insofar as it involves the ful-

> fillment of a divine command, or contributes to the welfare of society.[4]

Moshe Silberg, in his tractate "Law and Ethics in Hebrew Jurisprudence" (חוק ומוסר במשפט העברי), affords us insight into the reason why the moral and legal contents of Jewish law possessed such great similarity, as to become, ostensibly, identical, one with the other. He uses as his example, the situation precipitated by an incurred debt: repayment was considered primarily a religious-moral duty of the debtor; the legal right of the creditor to have his money returned, was only secondary in importance.[5] For the Jewish law was 1) a religious law: all breaches of it were transgressions against God, even those which occurred in dealings between man and man; 2) a national law: its goal was to preserve the national identity of a nation in exile; 3) a moral law: its efficacy depended totally upon the voluntary adherence of a people freely choosing to obey it. Only each individual's moral consciousness, then, would allow this law to be applied to, and observed by, all Jews, for it possessed no intrinsic coersive power of its own. The philosophy of the formulators of Rabbinic law may be succinctly stated: the legal system must be ethically based; without this foundation, the welfare of both the individual and the society, would be threatened.

Acknowledging the integral relationship of law and ethics in the traditional literature, how would a government have been expected to operate under such a system?[6] It would have had to

> ...allow for the freest exercise of the human capacities with the least injury to (conflicting) interests. The more perfectly (it) accomplishes this, the more clearly it realizes the purpose of law and what ethics demands of law.[7]

As nearly as possible, the Rabbis sought to shape their legal order according to the demands of ethics. Therefore, this legal order embodied a great concern for the welfare of the individual: concern for his rights, his responsibilities to his fellows, his human failings and his strengths. The Rabbis endeavored to help man; for man might otherwise stumble and fall while seeking to achieve the good life (described as total adherence to God's law, both written and oral).

Thus, Jewish law was, over the centuries of its creation and compilation, designed to have significant application in all areas of Jewish life; and in each area, the ethics woven into - and made inseparable from - the law, were clearly in evidence. This was particularly true with respect to the financial segments of Jewish communal life: I refer, of course, to business and labor. This thesis deals with "Labor and Business Ethics as Reflected in Early Talmudic (i.e., Tannaitic and early Amoraic) Literature." The primary sources are תוספתא, משנה (סדר נזיקין) and, to a smaller degree, ספרא, קב' נג, מכילתא (גמרא), as well as the following Tractates of the Mishnah: פסחים, ביצה, מועד קטן, קדושין, ברכות

שביעית, שבת. For background material, secondary sources were utilized as well, and were quoted whenever they provided the clearest of possible explanations.

B. Labor and Business in Rabbinic Times

1. General Reflections Concerning Labor and Business

Several general reflections dealing with labor and business in Rabbinic literature should be considered before we enter more specifically into a discussion of labor and business ethics. First, it is important to note that manual labor was a profession possessing considerable dignity in Rabbinic times. The extensive body of legal literature in our Talmud reflects the amount of concern and the degree of respect it commanded. "Great is work for it honors the workman;"[8] "Shemayah says, 'Love labor (i.e., manual labor) ... ."[9] Labor was held in high esteem, second only to study of Torah which, if unaccompanied by physical labor, led man to sin. Many scholars earned their livelihood through the work of their hands.

In most instances, no moral differentiation was made between the various professions into which a man might enter. Wage-earners suffered no social stigma in comparison to independent artisans, nor was the employee thought to be inferior to his employer; legal provisions (and thus ethical considerations) applied equally to all.[10] But there were some exceptions; it was generally agreed that no father should teach his son a trade or craft which would force him into frequent contact with women.[11] Most rabbis also concurred that no young man should enter the somewhat immoral professions of the ass-driver or (though there was some disagreement) the camel-driver.[12]

A further note: much of the primary material with which we shall be dealing, may be traced directly back to Biblical precedents. For Biblical law too, was infused with the ethical-moral concern which is so much a part of the Rabbinic law codes. This can be demonstrated by presenting a random sampling of the Biblical texts which shall be utilized in the later, fuller exposition of this paper's several topics. Exodus 22:9-12 constituted a source for the formulation of the Rabbinic law dealing with guardianship and restitution in case of loss or damage; Leviticus 25:35-37 prohibited lending upon interest; in the Holiness Code (Leviticus 19) there are ordinances concerning the withholding of wages, honesty in measurement, and so on. The Rabbinic laws dealing with these and other matters, are couched in terms of their Biblical antecedents. As noted previously, this shall be studied in greater detail as we examine our several areas of concern.

2. The Economy

It would be desirable to survey briefly the socio-economic milieu of the period with which we shall be concerned. It will then be possible to place the ethical edicts with which we shall later be concerned, into the context of the conditions which necessitated and fostered their emergence. What were the economic conditions just prior to, and during our period, as these affected the Jews?

We may begin (as Judah Goldin has done[13]) with the Hasmonean dynasty which dates from ca. 143 to 37 B.C.E. Under their aegis, Palestine prospered, and its once totally agrarian economy was developed and diversified. Though agriculture was not displaced as the mainstay of the economy (the main crops were wheat, dates, and figs; the main production items were oil, wine, and spices),

> ...urban centers (were) developed. Many engaged in handicrafts. There was trade, domestic and foreign; there were luxuries; there was an almost steady building program...[14]

in Judea. The base of the economy was broadened and became more complex. The increasing complexity was even more apparent during the time of Hillel, which followed almost immediately the cessation of Hasmonean rule. One clear indication of this was the enactment of the prozbul (פרוזבול),[15] the purpose of which was to revoke the ancient practice of annuling all debts during the Sabbatical year. With increasing urbanization, a credit system had developed; until the prozbul was put into practice, credit was nearly impossible to acquire as the seventh year approached, for creditors feared they would be made to forsake the accounts still payable to them. The prozbul, then, reflected and resulted from, the economy's progressive growth and development.[16]

Prior to the destruction of the Temple, we may speak of an economy which, though still agricultural, was becoming increasingly diversified. Many people became laborers, and hired themselves out to perform work on a day-to-day (or on a weekly or monthly) basis. The masses, though poverty stricken, knew little actual starvation during this period. Following the Jews' humiliating defeat at the hands of Rome (in 70 C.E.), the economy, as well as all facets of communal life in Palestine, was brought to a temporary halt. A once-diverse establishment reverted to a much more primitive form, depending even more completely upon agriculture. Settlements were small, cities were few (if they could be found at all); the agricultural land-base was itself reduced, as much Jewishly-owned land was absconded by the Romans as war booty.

Palestinian hegemony suffered a second crucial blow, with the defeat of Bar Kochba, and came to an utter end with the abolition of the Nasi patriarchate in 425 C.E. Meanwhile, however, the Jewish community of Babylonia was in the ascendancy, and was ready to assume the leadership relinquished by the Palestinian community. In fact, by the third century C.E., the Jews, some of whose families had lived in Babylonia since the days of Nebuchadnezzar, were a sizeable community, and were well distributed among the population. Much of the legal-ethical material with which we shall deal, reflects this Babylonian settlement, its needs and its development.

As time passed, the Jews of Babylonia found their way into nearly every available occupation. They

> were laborers and capitalists, professional men and non-skilled workers, farmers and craftsmen, shopkeepers and serfs, cattle dealers and food distributors, producers and exporters, middlemen and peddlers, sailors and clerks.[17]

The economy, as this illustrates, was a broadly based one, similar perhaps to (but more highly developed than) the economy of Palestine prior to 70 C.E. It was this sort of economy, in which "Honesty and welfare could have been either ... cultivated or ruined..."[18] that motivated the Babylonian Amoraim to establish legislation (based on the Mishnah) which would determine the ethics of competition, the fair measure, the fair price, the fair wage, etc. All of these shall be discussed in detail, in the body of this paper.

Most of the Jews continued in the period of our concern, to retain a connection with <u>some</u> phase of agriculture. We may ascertain however, in a study of some of the legislation in the traditional sources, that some Jews did (as illustrated above) go into the diversified fields of endeavor which the urbanized economy of Babylonia spawned.

3. As the Society Viewed Itself

How did the Jewish community view itself? What was the function of Jewish law, and how did the Jewish people feel it related to them? What was the impact of this Jewish self-image upon the economy of Jewish communal life in Palestine, and later in Babylonia?

The Jews in Rabbinic times, as we have seen, constructed a law code to fit the differing situations in which they progressively, over the decades and centuries, found themselves. The earliest oral teachings were later codified in the Mishnah, which then was expanded with the development of the Gemara. These were viewed as an on-going revelation of the Sinai covenant, and the law codes, as well as the multitude of oral and written material into which they were cast, were considered holy: a viable and elemental portion of Jewish tradition. From the time of Jochanan ben Zakkai, then, these codes as a part of the "Oral Law," were conceived to afford security and protection for all Jews, wherever they were exiled: together, they were thought to compose a "portable homeland."

Within this context, Judaism taught that love of one's fellow-man, and respect for his rights, were prime requisites for individual security. However, people would know security only if the law codes of the society guaranteed and enforced it. The essence of the Rabbinic concept of society may be capsulized in the

> ...saying that it is the function of government to keep the stronger from swallowing up the weaker... a society is just when it is informed by respect for the human rights of all its members.[19]

Mordecai Kaplan holds to this same view; he has noted that,

> ...in the estimate of Judaism,

> (the exploitation of the weak by the strong is) the source of man's undoing.

Thus it was, concludes Kaplan, that Judaism was the first religion to place the field of human relations "within the dimension of the moral law."[20]

This, of course, may be seen also with respect to those relationships which flow out of a business context. One need only study the Mishnah and Tosephta of Baba Bathra. As one commentator has noted,

> Many laws in the Bible enjoin right conduct in business...(furthermore) Rabbinical standards for commerce and industry are...expressed both in laws and ethical injunctions. They require strictest honesty.[21]

In these passages, one is enjoined against using his property in a manner that would interfere with a neighbor's enjoyment of his own property.[22] For example, a baker's or dyer's shop could not be opened under a store-house belonging to another person; the fumes and odors might damage the goods which are therein stored.[23] Similarly, one could not plant a tree so close to the border which separates his land and another's, lest the tree's roots would interfere with the ploughing of his neighbor.[24] As we shall see, both partners in a contractual agreement were protected by law against one taking unfair advantage of the other, or taking more than that to which he was entitled.

The intent of the law was to protect those who might otherwise have suffered loss or damage; but the intent of ethics, in this case general business ethics, was to motivate individuals to do more than the law required of them. According to Rabbinic law and ethics, taking more than a fair profit, seeking unfair advantage in any area of business, was a transgression of the Sinaitic covenant. On the other hand,

> it is attributed to (one who is honest in his business dealings) as if he had fulfilled the whole of Torah.[25]

Society or government was supposed to guarantee that men would lead ethical lives whether in business or in their private lives; to this end, the Rabbis conceived a system of government "...founded on the principles of humanism and social justice."[26]

4. Oaths and Contracts

Since oaths had two quite distinct applications in the general realm of economics, it is essential to differentiate between them, and to characterize each as it pertained to the subject of labor and business ethics. One may be called the "oath of innocence," and the other, the "contractual oath."

By coining what I hope is a descriptive terms, it is possible to refer to one type of oath as the "oath of innocence," or the "oath to equalize damages." In Exodus 22:10, this oath is referred to as "the oath of the Lord"(שבועת יהוה). As described in the Mishnah, one would take this oath "...(in order that) (he) need not make restitution."[27] Put another way: by taking it, a person would seek to avoid being wronged in a contractual agreement. For example, a day-laborer (שכיר יום) could have taken this oath, to the effect that he had not received his wages; and although the employer said he had given it to him, הוא נשבע ונוטל (he could take the oath, and receive his pay).[28]

Another example: in certain instances, a shopkeeper (חנוני) could have taken an oath to the effect that he had transacted the business asked of him by a client; and although the client said he did not, the shopkeeper would receive his due.[29]

In certain types of dealings, wherein one person could sue another for damages, an oath of this sort could be taken "to disclaim any liability for having misused...aught put in (one's) charge."[30] For example, one partner (שותף) may put the other under oath, causing him to vow that he had not been cheating by taking more than an equal share of the profits; a landlord could compel his tenant to swear that he had taken only his rightful percentage of the crop; and a guardian or deposit holder (שומר) could be placed under oath concerning the article or money in his care, guarding against possible misappropriation, misuse, etc.[31] In general, if a complainant wished that the accused take an oath, the latter had to do so, affirming that he had done his duty honestly.

Thus did this oath serve to obligate the two parties in a contractual agreement, to the effect that all terms of the contract had been fulfilled, and that each partner had dealt honestly with the other. The great emphasis placed upon an oath of this type, helps us to understand the significance of, and credibility which was given to, a man's word. If one swore that he had done what he was contracted to do, then it was believed that he had done so. If he took an oath to the effect that he was wronged, then again, his testimony was considered honest. The goal of law and ethics as bearing upon business, was to insure that no man would be exploited by another, that each man would receive his due.

In addition to the above signification, an oath could be of an entirely different nature; here, we refer to the "contractual oath" or "oral contract." The contractual oath was one way of establishing and sealing a contractual relationship. As one author explains,

> oaths and vows when made between two or more...parties imposing obligations estimable in money are, in a sense, a source of (contractual) obligation.[32]

Indeed, contracts made orally (i.e. , only by word of mouth) were not mere moral obligations, but binding contracts.[33]

The "contractual oath" or "oral contract" was, of course, only one type of contract which could exist between two or more persons. It is possible, from our perspective in the twentieth century, to ask whether any real contract, as we conceive of them today, was really known in the literature we have labeled "Early Talmudic." Yet, we must conclude, as one expert in the subtleties of the Rabbinic contractual relationship does, that

> ...the contractual element is sufficiently present to justify the classification of obligations resulting from sale or employment of labor and the like under the category of obligations <u>ex contractu</u> (contractual).[34]

Bailment, too, fell into this category. This, then, defines the nature of a contractual agreement; the distinction between this sort of agreement and others of a non-contractual nature (for example, the agreement that a farmer may not glean, and must leave a portion of his harvest for the poor - פאה) is of paramount importance, particularly with respect to the scope of this paper.

For we shall be dealing with labor and business ethics as these relate to the various situations in which <u>contractual</u> agreements are utilized (whether oral or written). The following topics shall be discussed, with specific emphasis upon the ethical considerations which relate to each: the employer-employee relationship; the landlord-tenant relationship; the business dealings of the marketplace; the guardian (שומר) and the depositor (מפקיד); business dealings with idolators (gentiles); interest and increase; and labor and the transaction of business on religious holidays.

II. The Employer-Employee Relationship
A. By Way of Introduction

As we have noted earlier, Jewish law and Jewish ethics are very closely identified, one to another. Within nearly every law dealing with human relationships, the ethic is clearly discernible, and behind many ethical pronouncements is the force of law.

Within Rabbinic literature, law and ethics are of paramount importance, both qualitatively and quantitatively. In the fields of labor and business, this is particularly true: ethical precepts are so numerous and so pervasive, that they may be said to have almost universal application. They seek to guarantee equal rights to all parties in a contract, and illustrate the Rabbis' genuinely humane impetus as they formulated their codes designed to control human behavior. These precepts reflect the needs and conditions of those times (and, remarkably, of our own times); thus they may be regarded as <u>keys to an understanding of the wrongs against which they speak</u>. In observing the oft-repeated warning that an employer must not withhold the wages of his hired man, for example, we may conclude that the presence of such a ruling indicates that this must have been done, even since Biblical times; the charge against withholding wages reflects the evident frequency of its perpetration, which the Rabbis assayed to eliminate. This observation appears valid in all of our areas of concern, not only in the relationship of employer and employee, to which we initially turn our attention.

The nature of the relationship between an employer (שוכר) and an employee (or laborer) (פועל) was partially defined within Biblical literature; it was upon this Scriptural basis that the Rabbis built their system as reflected in Talmud, Midrash and Tosephta. There are numerous injunctions against withholding the wages of a hired laborer once he has completed his labors.[35] One may find regulations concerning the eating of agricultural produce (though applied specifically to agricultural workers only in Tannaitic literature).[36] The purchase and care of Hebrew "slaves," concerning which the Rabbis expressed concern, was treated in Scriptures as well.[37] This sampling serves to illustrate the presence of Biblical precedents to which later amplification was amended by the Rabbis, who answered the need to remold the law to fit their own times.

B. עבדים, פועלים, ואומנין

While speaking of "employees" in that term's broadest sense, the Rabbis distinguished essentially four different categories. First, there were the Hebrew slaves, of whom there were probably only a few during the early Talmudic period (for various reasons, to be discussed shortly). Second, the tenant farmers, a class of employees mentioned frequently in early Rabbinic sources; these individuals worked on land belonging to another person for a percentage of the crop, and/or a money wage. This social-economic class grew as the economy regressed to a more primitive state; the war with Rome (as earlier shown) proved to be a chief cause for this reversion or relapse: in its wake, many Jews were made to forfeit their land holdings. Third, the gentile laborers who, though possibly quite numerous, were seldom mentioned since the conditions under which they worked were nearly identical to those set down for Jewish laborers (who compose our fourth class of employees).

The general term for a laborer or an employee (categories three and four, above) is פועל ; the term פועלים, in general usage however, referred more specifically to agricultural workers. There were two classifications of פועלים: those hired for a specific period of time (שכירים) and those contracted to accomplish a certain amount of work, for which a specific wage would be paid (קבלנים).[38] שכירים were often hired for a time of short duration, the extent of which was seldom in excess of one agricultural season. Skilled artisans, or אומנין , composed another class of employees (at least in a subtle, legal sense; for their livelihood derived from the work they did for, or sold to, others. Customersin this sense, were considered analogous to employers). It is possible, as we have done, to distinguish between פועלים and אומנין , though the distinction was, in practice, quite vague. The former, however, were usually paid wage-earners, while the latter were the more independent craftsmen.

C. Ethics and the Contract
1. The Special Status of the Slave

The relationship between a Hebrew slave and his master in early Talmudic times may be referred to as a special case of the contractual association between any employee and his employer. For, insofar as both slave and master were obligated to honor certain stipulated and well-defined conditions as part of their "business" relationship, they could be spoken of as being bound by a "contract." Jewish law demanded that a Hebrew slave serve his master well for the period of his servitude. The master, then, would be requited for the price he paid, and for the expense incurred in keeping and feeding the slave.

The master, on the other hand, was restricted with regard to the number of years of servitude in which he might retain his slave, and the sort of duties he was permitted to impose upon him. Those who were slaves "were most likely treated in accordance with Biblical law, which demanded their manmission after six years' service...(securing) for them favourable (sic) treatment."[39] Commenting upon Exodus 21:2 - "If thou buy a Hebrew slave, six years he shall serve; and in the seventh he shall go out free for nothing" - the Mekhilta noted that the law was written with a specific time limit included; thus, one need not think that he would have to serve forever after once being reduced to servitude (as punishment for a theft or other crime).

This comment, demonstrating the ethical, humane concern of the authors of the Mekhilta, is further illustrated in subsequent comments on the same verse. With respect to the kinds of work one may compel a Hebrew slave to do, specific limits were defined. He could not be made to perform the degrading and menial tasks of the bondservant; thus, he was exempt from duties such as washing the master's feet, putting on his shoes, or carrying him from place to place. A Hebrew slave had to be given work similar to that of a regular hired man; indeed, a master was prohibited from forcing either hired man or Hebrew slave to do anything other than the trade for which he was trained: אין אתה רשאי לשנותו מאומנותו ; neither could they be forced to work at night.[40] And when the slave's term of service was ended, "he shall go out free for nothing:" i.e., he need not pay his master anything to regain his freedom; he was free to leave without further obligation.

The above amply illustrates the Rabbis' deep concern that the Hebrew slave should retain, throughout the term of his debenture, his self-respect and (as reflected in other Mekhilta comments)his physical and emotional health. He could not be demeaned nor degraded as a human being; he was required only to be conscientious in the fulfillment of his term of service. Thus, each party to this "contract" was assured of fair and ethical treatment.

2. The Relationship between Employer and Employee

We turn now to a consideration of the employer-employee relationship, as this category was more specifically defined: wherein one man agrees to pay wages to a second, for which the latter consents to perform a prescribed task, or to work for a definite length of time. As noted earlier, in terms of our present understanding of the dehumanized contractual "relationship" between corporate employer and a union of employees, any reference to a contract as it existed in Rabbinic times, may seem to be exaggerated or even contrived. As characterized in the early Talmudic literature, the bond between employee and employer, though definitely structured, was an informal one. Each did have obligations and responsibilities to the other, and the Rabbis enjoined both parties against endangering or infringing upon any condition relevant to, or implicit in, the contract that united them. But their relationship was, in essence, a simple one, "...which (as one commentator noted) could be regulated by simple laws and injunctions."[41]

Even in Biblical law, the employer was prohibited from infringing upon the human rights of those whom he hired. A laborer's right to his wages for example, elicited the following edict: "...the wages of a hired servant shall not abide with thee all night until the morning."[42] This consideration is one of many which was discussed quite fully in the Rabbinic sources; for it defined one of the primary legal (and thus ethical) responsibilities which an employer had toward those whom he employed.

The Biblical injunction is quite explicit and definite: under no circumstance may a man's wages be withheld, nor may their payment be delayed, by even so much as one day. The Tannaim adopted this conviction in principle. The Mishnah initially[43] explains the verse from an employee's point of view. He was permitted to lay claim to his wages during certain stipulated periods immediately after the termination of his employment. Thus, one hired by the day (שכיר יום), could collect at any time during the night following the day of his engagement. One hired for the night (שכיר לילה) could collect at any time during the ensuing day, and so on.[44] When an employee came to collect his wages, he had to be paid. Thus were Lev. 19:13: "...the wages of a hired servant shall not abide with thee..." and Dt. 24:15: "...at his day shalt thou give him his hire" explained. This thought was echoed and developed further in the Gemara.[45] The injunction was even more strongly worded:

> ...all who suppress (כובש : withhold) the wages of a hired laborer transgress five prohibitions and one positive commandment.

This statement refers to the six injunctions to be found in Lev. 19:13 and in Dt. 24:14-15.[46] The Sifra commenting on Lev. 19:13, provides another example of the feeling that withholding wages was indeed a serious offense. The Sifra refers to this practice as a form of stealing. When wages were due, in exchange for a man's services, or a beast's, or for the rental of land or tools, the principle was: one may not withold hire of any kind. We may, it seems, conclude as one author has done, that

> in tannaitic times, there (was) a clear determination to make the withholding of wages a specific offense, and a major one at that.[47]

But as we shall see, the Tannaim allowed for certain exceptions to this rule, and thus deprived the Biblical injunction of much of its emphasis. If an employer arbitrarily withheld, he was considered guilty; but if a laborer did not demand payment within the time alloted for collecting the wages, the employer was not thought to have transgressed any commandment.[48] The responsibility, then, came, in early Talmudic literature, to rest on the employee: if he did not claim his due within a strictly defined period of time, the employer would not suffer the onus of guilt. Furthermore, no transgression was committed if the שוכר simply had no money with which to pay wages,[49] or if he had arranged to pay later.[50]

An employee was granted recourse if he had found that his employer was unwilling to pay his wages and was arbitrarily retaining them. A שכיר could take an oath that he had not yet been paid, and then collect his wages בזמנו - during the time allotted for collection (the night following a day of work, etc.). Once this specified time had passed, he could not take an oath and collect, unless witnesses testified that he had claimed his wages within the allotted time.[51] The ethic involved should perhaps be more clearly enunciated. A ruling such as the above - indeed all of the Rabbinic modifications to the original Biblical injunction - illustrate the Rabbis' concern for the welfare of both parties to an employment contract. The employee was entitled to his wages if he had worked a full and honest period of time in return for them; for purposes of courtesy and convenience however, he was expected to collect his wages promptly, not to procrastinate and cause undue complications. The employer, on the other hand, had an obligation to pay, yet, as we have mentioned, certain circumstances may have mitigated against his doing so, including lack of funds. Hence, though his obligation remained, he did not have to feel remorse due to sin. His freer conscience, perhaps, would have enabled him to work out his problems and, when possible, to discharge his responsibilities.

In theory then, early Talmudic legislation may have served, to pre-empt the uncompromising attitude of the Biblical injunction against the withholding of wages. Indeed, with the expansion of the economy in Babylonia, the older attitude may have proved to be unsuitable and cumbersome. But in actuality, we may conclude that the significant concern expressed by the Rabbis over the single issue of payment of wages, lent "added emphasis to the general injunctions against oppression of the hired worker,"[52] and that in general, the original Biblicallydefined time limits continued to be observed.

The employer's responsibilities extended to a certain group of laborers beyond those who actually performed work for him. There were times when a workman, hired to accomplish certain tasks, was unable, due to weather conditions or the like, to fulfill the conditions of his hire. Though forced to sit idle, this laborer was still entitled to a wage, not for work done, but for time lost. Under such circumstances, he was referred to as a פועל בטל (or idle laborer), and the employer was obligated to pay him a wage, though at a lower rate than if he had been able to work. The law required this payment: an employee, once hired, could seldom procure another job; yet his family needed his wage for their subsistence (this, of course, was the ethical consideration which prompted formulation of the law).[53] A further stipulation: if a hired man died or became ill during his hire, he was to be paid according to the time he had worked (in the case of the שכיר), or according to the amount of work he had accomplished (in the case of the קבלן).[54] In all instances, wages were to be paid in cash, unless otherwise agreed upon,[55] "...for his wages are his living."[56]

The employer had responsibilities in matters other than wages. He was prohibited, for example, from breaching or changing the terms in the employment contract, once work had begun.[57] Also, many employers had the obligation of feeding their hired laborers. Though based upon Biblical precedent,[58] the application of this latter was narrowed by the tannaim to include only agricultural workers, not (as in Scripture) any passer-by. In general, whether food would be provided was, in all likelihood, determined when one was hired. Whether meals were to be furnished or not was, to most wage-earners, an important consideration. We may assume that some workers were well provided for, whereas others were not. The local custom was an important factor in the determination of this matter, (הכל כמנהג המדינה).[59] However, if it were the practice to provide food for those who worked with the produce directly, "the privilege was extended 'by custom of the land' also to watchmen and keepers employed to guard the crop."[60] There were certain definite stipulations with regard to who was permitted to eat, and how much he was entitled to; also included in the law code was an explanation of the crops which were forbidden. In accordance with good common sense, laborers were advised to partake only moderately of their employer's produce, if they desired to retain their employment.[61]

Essentially, we may conclude that the employer was bound by law to deal fairly and equitably with those whom he hired. But the suggestion was that he should even exceed the bounds of law, in order to show consideration to his employees: the Gemara prescribes and recommends an ethical-moral concern beyond that reflected in the laws themselves. Legally, an employer <u>must</u> pay wages to one who satisfactorily completes a task for him; morally, in the cause of decency, and "that thou mayest walk in the way of good men" (Proverbs 2:20), an employer should even pay someone who, through carelessness, had caused him material loss. The story is related of Raba bar bar Chana,[62] who lost a barrel of wine when his porters accidentally broke it; he was told not to take their garments in pledge (against reimbursement for the loss), and to pay their wages out of consideration, not because the law had prescribed such payment. The humanitarian and ethical concern of the Rabbis, with respect to ones employees, is nowhere more succinctly illustrated.

Legal responsibilities (reflecting ethical obligations) were imposed upon the amorphous group known as employees, as well as upon those who hired them and paid their wages. They were prohibited, both literally and figuratively, from "robbing" their employer. This prohibition was broadly defined, and included any action which would result in loss to the employer. Thus, if one overworked or starved (or otherwise afflicted) himself, "he would be (guilty) of stealing the work of (i.e. not putting forth his best effort for) the employer."[63] A hired man was not permitted to waste time while under hire; thus, a שכיר could be asked to make up time so lost (a קבלן, hired for a particular job, not for a specified length of time would, of course, not be penalized). Wasting time was tantamount to robbing the employer, according to Jewish law. Relative to, and derivative from, this interpretation, certain rulings have been set down in Mishnah Berachot, describing which prayers required full concentration (כונה) and, thus, necessitated stopping work; and which could be done without halting one's labors. Thus, for example, a craftsman (אומן) did not need to descend a tree or wall to recite the שמע וברכותיה, though he had to descend for the תפילה.[64] Nor might one interrupt a scholar during those hours when he was working. One Midrash relates that when a philosopher approached Abba Yosef the builder, for his opinion on a matter of importance, he found him standing on a scaffold. After the philosopher asked his question, Abba Yosef told him that he was unable to come down and speak to him: " איני יכול לירד מפני שאני שכיר יום, I am unable to descend, because I am employed by the day;" his obligation to his employer precluded any activity which would have taken him from the task for which he was being paid.[65]

The worker was expected to take great care with his employer's property. Unless damage resulted from some unavoidable, overwhelming accident, he was held responsible and was required under law to make restitution.[66] This included shepherds, the guardians of produce, porters and even artisans who were accounted "paid guardians" with respect to those goods which were not their own.

There was one further sense in which the employer could have been "robbed" by his employees, and which, thus, was prohibited in Jewish law. In certain types of work, the neglect or postponement of one or more specific tasks, could have resulted in irretrievable loss to the employer. The most frequently mentioned example of this was in the steeping of flax: if left in the steeping liquid too long, the flax would be ruined, and the employer would be forced to absorb the loss. Thus, retraction or breach of contract by workmen hired to perform work which resulted in irretrievable loss if postponed or neglected (דבר האבד), was prohibited.

The honesty and integrity of the employee, then, was expected and demanded within the scope of Jewish labor law and ethics. The relationship between him and his employer bespeaks a mutual trust, a mutual respect, and a mutual concern, each for the other's welfare. Ideally, every employer and every employee should benefit from a contractual alliance; Jewish law would assure this by appealing to each individual's ethical nature through the vehicle of, and with the weight and support of, the law itself. Nowhere is ethical concern and the mutuality of responsibility more evident than in the regulations governing formulation of the contract itself.

A contract in Rabbinic times, as we have noted in passing, could either be written or oral; the latter, as we have seen, was a form of oath.[67] Our discussion on breach or retraction of a contract (beginning immediately below) has reference to both types: the verbal agreement, like the written one, was morally and in most cases legally, binding.

3. Breach of Contract

The theme of retraction or breach of a labor contract was quite fully explored in early Talmudic literature, as was a variation of this idea, the alteration of a contract's terms after work had been started. As remarked in a more general context earlier,[68] we may reasonably expect that the enactment of specific laws was a key to the frequency of the specific offenses which they condemned. No one would have made breach of contract a legal crime, if this practice were not, to some degree, prevalent. One author, expressing this opinion, wrote that "most of the laws on retraction and change of terms arose out of situations occurring in actual practice..."[69]

The legal opinion with respect to retraction of a contract, or as applied to a change in a contract's terms (which was, legally, equivalent to retraction) may be summarized as follows: the party that retracted (whether employer or employee) was at the disadvantage and was bound to accept certain liabilities.[70] This applied only <u>after</u> work has been started; prior to this time, both parties had (in most cases) only a moral obligation to fulfill their contract; furthermore, deception by either party prior to the beginning of work granted no legal redress.[71] In tannaitic law, this latter situation was considered a breach of promise only, the contract not having become operative. There were, however, two exceptional instances, where this ruling did not apply: If workers were paid in advance, they were legally bound to complete the work, even before it was begun;[72] and laborers hired to do any work which would suffer irretrievable harm if postponed or neglected were legally bound to complete that work, from the moment a contract was made, and even before work was begun. If these workmen did default, others could be hired at their expense, or the employer could promise them a higher wage and, within the law, deceive them by paying only the lower wage.[73] The concern here was for the employer who could be blackmailed by his hired men who knew how essential their labor was to him. The employer could suffer no loss on account of base or dishonorable employees.

An understanding of two technical terms used by the Rabbis in reference to this subject, will serve to deepen our insight into the ethical and legal aspects of retraction, in a contractual relationship between employer and employee. The term הטען in the early Talmudic literature, referred to an employee not showing up for his job at all. Except under the exceptional circumstances described above, he was not legally (though he was ethically) liable. The term חזרן referred to retraction after the work was begun.

The employer had legal redress, if he was the victim of the retraction. If the situation were reversed, and the employer were the retracting party, he would be legally obligated

> to pay the dismissed workers the difference between the wages promised to them, and what they will actually receive when taking other employment

at a lower rate.[74] In Rabbinic law, no one was free to retract without penalty.

The Rabbis proscribed the practice of changing the terms of a contract in similarly unequivocal terms. Once a פועל was hired for one job, an employer could not compel him to do something else,[75] not even if the other work were of an easier nature than that for which he was originally engaged. An employee, on the other hand, was bound to complete his assigned task as specified by the employer.

III. The Landlord-Tenant Relationship
A. Introduction

The Rabbis defined the landlord-tenant relationship along lines similar, in some major respects, to the employer-employee relationship. It too, was to be based upon a mutuality of concern, whereby both parties to a rental contract would, through the contract, stand to benefit; furthermore, neither could be made to suffer disproportionate loss at the hands of his "associate." In general, a landlord was obligated to lease a property commensurate with what the tenant, through the lease contract, expected to receive. He could not, for example, lease a defective house to an unsuspecting tenant: if a house were defective, it would then be incumbent upon the landlord to effect repairs at his own expense. The tenant's obligations were, of course, to pay the agreed-upon rental (unless an "unavoidable mishap" - אונס - made this impossible),[76] and to take due care of the land and/or building he had leased, since they were not his personal property.

B. The Lease With Respect to Agricultural Acreage

Similar to the relationship which existed between employer and employee, local custom had a bearing on the nature of the association which existed between landlord and tenant. As the Mishnah explains:[77] Where it is the custom to cut the crops, the leaseholder must do so; where it is the custom to uproot them, he must uproot them; and where it is the custom to plough after cutting or uprooting (in order to eliminate the weeds), he must plough: הכל כמנהג המדינה (the practice must conform to local custom).

Tenancy on agricultural acreage was finalized on the basis of either of two major types of contractual arrangement. חכירות was the term for tenancy wherein the tenant agreed to pay a fixed (money or produce) rental, regardless of the yield of the land in any given year. Unless the חכיר insisted that his lease contract be contingent upon the fulfillment of certain specified stipulations (for example, that the field he was about to lease be an irrigated field), any natural occurrence that reduced his yield (such as the drying up of an irrigating stream) would not have served to reduce his rental.[78] If the lease had specified that trees were to be on the field, and the trees were cut down, the leasee could deduct from the agreed-upon rental. If this were not stipulated, the trees could be removed, and no deduction would be possible.[79]

Another type of contractual lease arrangement was referred to as אריסות, whereby a leaseholder agreed to pay only a share, that is a percentage, of his land's actual yield. A landlord could have compelled his tenant to take an oath after the produce had been gathered, to the effect that he had taken only his just percentage of the crop, and had given over as rental the full amount which was agreed upon.[80] Of course, if an אריס were negligent, and simply chose to allow the land to lie fallow, he could have been taken to court by his landlord; there, he would have been ordered to pay the equivalent of the agreed-upon percentage of what the land would have yielded, had it been cultivated.[81] To protect the landlord, this practice was generally followed; a landlord could bring his tenant to court whether that proviso were specifically written into the contract or not.

If the field were destroyed in (or, as part of) a widespread, general calamity, the leaseholder was allowed to deduct from the agreed-upon rental, since he had sown his seed, yet had lost his crop. If the calamity were not widespread (a differentiation which, we must conclude, was a matter for the courts to determine), he was not allowed to reduce the amount of the lease: he was obligated to pay the rental in full.[82]

In addition to the payment of rental, the tenant was expected to demonstrate proper concern for the condition of the land he leased. He was permitted to vary the crop he grew only if the soil would not, as a result of the change, become impoverished. For example, barley could be planted in place of wheat, but wheat could not be substituted for barley. If a tenant did sow seed which threatened to impoverish the soil, he was required to maintain his lease for the length of time needed for the soil to recover; he was prohibited from returning the field in a more impoverished condition than it was when he acquired it.[83]

In general, then, many considerations motivated the Rabbis to structure the lease contract between the owner of agricultural land and his tenants, along ethical lines. Both parties had responsibilities as well as rights. If a contract were wisely drawn up, and religiously adherred to, both sides would stand to benefit from the relationship. A similar observation could be made in an examination of the laws relating to the leasing of buildings.

C. The Lease With Respect to Buildings for Residential, Entertainment, or Industrial Use

When, in Rabbinic times, a landlord leased a building to a tenant, he was responsible for making sure that it (i.e., the home or other structure which he rented) was safe and structurally sound. If, for example, a previously weakened wall fell as a consequence of an earthquake or excessive rain, the landlord was liable. Likewise, if he had been given a time limit by which he was expected to repair the wall, and it fell <u>after</u> that period (of at least thirty days length), he was also liable. If it collapsed during that thirty-day period, the owner was exempt from guilt.[84]

The Mishnah extended the landlord's obligation; it it happened that an entire house collapsed, he was required to replace it with a house identical to it (no larger, no smaller).[85] If an owner had rented his upper story, and it caved in, the tenant was free to move downstairs with the landlord until the latter fulfilled his responsibility, by rebuilding the upper floor.[86] A tenant, in other words, payed rental for a home he assumed to be safe. If it were not safe, the landlord was culpable, since it was his section of the lease which was not being upheld.

The landlord had a further (moral) obligation: he was required to give a certain amount of notice prior to enforcing the eviction of a tenant. The length of the notice was determined by the season of the year, the location of the building, and the type of tenant involved (whether residential or professional, baker or dyer, etc.)[87] One could not evict a tenant nor raise his rent during the rainy season without first serving thirty days notice of his intention;[88] in the summer, both parties were required to give thirty days notice (of intent to evict or vacate); in the cities at all times, a tenant was entitled to notice of a full twelve months, because of the difficulty of locating vacancies in urban areas. A commercial tenant was likewise allowed twelve months, to permit him to collect his debts and close his accounts.[89]

When letting a house, the landlord had to provide a number of basic necessities which would help assure the leaseholder of his and his family's security. Thus, a door, a bolt (on the inside of the door) and a lock (on the outside) were to be furnished by the owner.[90]

The tenant, was required to show care for those objects that did not belong to him. This included the building itself, and all appurtenances attached thereto. He was also conjoined, when renting a tavern or tavern room, to pay the stipulated fee for a prescribed minimum rental period. For example, when renting a room for the purpose of sleep, he had to pay the rate for an entire day, and not for a period of hours. If he were renting facilities for a wedding, he had to pay the rental for a period of not less than thirty days.[91] This, of course, was to insure the tavern owner against loss: for he would have rented out facilities for a marriage celebration, fully expecting to be paid for a thirty-day period, and he would thus have refused similar offers from other prospective occupants; were a tenant to leave prior to giving the tavern owner the full rental, the owner would be made to suffer an unjust loss. Similarly, "one who leases a shop from his companion (i.e., the landlord) may not lease it for a period of less than twelve months..."[92] Thus, minimum lease contracts were, under certain circumstances, conjoined and enforced.

Ethics, as we have seen, played a similar role in both employment contracts and lease contracts. In neither could one party act so as to cause the other to suffer unjust loss; in neither could one party abnegate his responsibilities as these were spelled out in the law codes. The concern was for each individual: if human and moral solicitude were not inherently a part of the contractual relationship, the Rabbis made certain that it was inculcated, if necessary, by the force of law.

IV. The Ethics of the Marketplace
A. Introduction

Both the legal and the "wisdom" strata within Holy Scriptures contain examples of the Biblical attitude toward honesty in the marketplace. These are the precedents upon which the Rabbis developed their own position concerning this area of business conduct. In Proverbs we read: "A just balance and scales are the Lord's; all the weights of the bag are His work."[93] God, in other words, was praised and glorified when a man's measuring instruments were maintained honestly; He condemned anyone who would tamper with them, for the purpose of receiving an unjust profit. The law was spelled out more specifically in Leviticus; there, God commanded man:

> You shall do no unrightness in judgment, in meteyard, in weight, or in measure. Just balances, just weights, a just ephah, and a just hin, shall you have: I am the Lord your God, who brought you out of the land of Egypt.[94]

In Baba Metzia, the Rabbis illustrated their interpretation of the phrase (just quoted as part of the passage from Leviticus): " לא תעשו עול - you shall do no unrightness."[95] Man was specifically warned against acting falsely or dishonestly 1) in judgment; 2) in meteyard (במדה), which, in referring to land measurement, suggests that one measure everything in the same season, because the measuring cord would shrink in summer (due to the heat) and expand in the winter (due to the cold); 3) in weight: prohibiting one from steeping his weights in salt, or otherwise making them heavier; and 4) in measure: one should not cause a liquid to foam while weighing it out, since when the foam disappears, the measure will end up short. Regarding one who has performed any of these prohibited acts, Raba is quoted as saying that from him, God would exact vengeance.[96]

The common market transaction, that of exchanging a commodity for a sum of money, involved a tacit contract between the buying and selling parties (the one expecting to make a profit, the second trusting that his money has been wisely spent), and is thus an apt subject for examination in this paper. We turn now to a discussion of the ethical standards which related directly to the conduct of business in the marketplace. Upon the Biblical precedents, a whole legal and moral structure was built.

B. The Transaction of a Sale

There are strictly legal considerations concerning the finalization of a purchase or sale, which must be understood prior to any appreciation of the moral or ethical issues which are involved. There were at least two major ways by which a sale was finalized in Rabbinic times. One was the act, on the part of the purchaser, of drawing the produce he wanted to buy, toward him. This was called משיכה in Hebrew, that is a "drawing toward" oneself. Even though money had not yet been exchanged, the act of drawing or moving the article toward oneself served to finalize the sale: it constituted an act of possession.[97] The completion of the sale in this manner, gave the seller a right to the money due him for the article;[98] once משיכה had been performed, neither party could retract(אינו יכול לחזור בו). If, however, money were exchanged but the produce not yet drawn, either could retract. But (and with this solemn warning, the Mishnah concludes) God will exact punishment from "whomever does not stand by (i.e., abide by) his word (שאינו עומד בדבורו).[99]

Another way to make a sale binding, according to Rabbinic law, was to "hire its place"(שוכר את מקומו); in "buying" the ground upon which the produce was placed, a purchaser automatically acquired the produce, too. This, of course, was a formality, instituted in response to the possibility that one might buy an article which was too heavy for משיכה; a purchaser could pay a small amount, through which he insured that his newly-acquired possession would not be sold to someone else while he left to arrange for the hire of a wagon, etc. By the act of "drawing the produce" or "hiring its place," a sale was recognized by both parties to it, as final: the seller could not retract and sell to someone offering a larger sum of money; the buyer could not rescind either. The ethical consideration in this instance (the desire to insure each party of fair treatment at the other's hand) is clear.

Of course, there were times when the purchaser was defrauded by the seller, in that he had paid a premium for a commodity which, so he was told, was of the highest quality; however, the seller had misrepresented his product, the value of which was considerably less than he had stated. In the event of fraud, the seller was liable, and the transaction was referred to as an erroneous purchase(מקח טעות). Specifically, if one sold wine which he knew would turn sour, and neglected to mention this fact to the purchaser, the seller was liable, and the purchase considered erroneous.[100] But, decreed one authority in the Gemara,

> ...in those cases where there is an illegality in the sale...the sale is valid nevertheless, and cannot be set aside because it was made through a transgression.[101]

C. False Measures and Fraud: אונאה

Provision for other types of transgression was made by the Rabbis. The use of false weights and measures was unequivocally condemned. It was tantamount, writes one modern scholar, to stealing:

> Stealing, in a legal sense is not only taking someone's property without his intelligent consent, but also using false measures and weights, and adulterating food products.[102]

The Mishnah demanded that the wholesaler and shopkeeper clean out their measures, in order to maintain and to insure their accuracy; the removal of dregs and sediment (which would overbalance a scale) was to be done at regular intervals.[103] Honesty in all measures was insisted upon, lest a customer, assuming he was receiving a full ephah of flour, pay its money equivalent, yet receive less than an ephah. Injustices of this sort were legislated against, for undoubtedly, man's ethical impulse required, at times, a forceful proding.

אונאה, defined as overcharging or overreaching, was also condemned by the Rabbis. אונאה was defined as an overcharge of one-sixth of an article's total purchase value. The Rabbis stated that one could retract if he suspected that he was being overcharged, but <u>only</u> within the time needed to procure another opinion; after that he (the purchaser) had no further redress.[104]

The law as the Rabbis of the Mishnah established it (though, as we have seen, some later sages took issue with their stand) was quite clear. If one were overcharged less than one-sixth, the sale was final; if he were overcharged exactly one sixth, the sale was valid, but the amount of overcharge could be recovered by the wronged party; if more than one-sixth were added to the purchase price, the sale could be voided.[105] It is important to point out, that relief from overreaching was available to both purchaser and merchant; it applied to the latter when he had inadvertently undercharged by more than one-sixth, in which case he was permitted to rescind the sale.[106] The law of אונאה applied only to certain kinds of produce and commodities;

slaves, deeds of indebtedness, real estate, and objects belonging to the Temple, were not included.[107]

אונאה was, as a concept, broadly defined, and included not only overcharging or overreaching, but the genre we might label fraud, or misrepresentation. A merchant was prohibited from deceiving a prospective customer by mixing new produce (for example, wine) with old produce, and calling it all "new" or all "old." He could not dilute wine with water, unless such were the local practice, and the customer was aware of what he was buying.[108] Furthermore, a used utensil could not be repainted and then resold as new; a slave's white hair could not be dyed black in the hope of making him seem younger, therefore more valuable; inferior produce could not be hidden under that of higher quality, if the desire was to deceive the eye of a prospective purchaser.[109]

The customer, too, was prohibited from engaging in that sort of fraud which only he could perpetrate. To quote the Mishnah:

> Just as there is (fraud by) overreaching in buying and selling (מקח וממכר , commerce, trade), so there is wrong done by words. (Thus) one could not ask, 'How much does this article cost?' if he has no intention of buying it (i.e., if he asked only out of idle curiosity, or to annoy the merchant).[110]

This, too came under the proscription attached to אונאה .

It seems evident that in the marketplace, the Rabbis noted at lease a modicum of dishonesty on the part of both customers and merchants. Here as in other areas (either previously dealt with or about to be discussed), they were motivated to legislate, and thereby to enforce, ethical consideration upon those who found it expedient to ignore their own ethical and moral impulses. A merchant's livelihood was important, and there were laws established to help him earn it; but to the Rabbis, a man's moral self was even more vital, and they endeavored to help him realize its full development when it was not permitted to develop on its own. The contract binding merchant and purchaser was, in this way, identical to the types of contract discussed earlier.

V. The Guardian in Jewish Business Ethics
A. Introduction

In the Jewish society of the early Talmudic era, people were frequently, though under diverse circumstances and for different reasons, appointed to guard and/or keep, articles belonging to another person. Those who had in their possession objects which did not belong to them, were referred to as שומרים, which term may be translated as guardians, watchmen, or bailees. Within this very broad designation were included paid guardians, such as shepherds; in addition, those who agreed to watch over another's possessions without remuneration were called שומרים, as were those who borrowed an object gratis, or paid a sum to hire it. This category also included artisans, and creditors who had in their possession a pledge (in lieu of the payment of a debt). With respect to all of these, we may refer with certainty to the existence of a "contract" which bound them to those whose belongings they were guarding or keeping; this contract entailed certain stipulations.

> Bailment (and, we might add, other forms of guardianship) is, of course a source of (contractual) obligation ....the bailee...contracts...to act as bailee.[111]

This contract implied that the שומרים (of whatever sort) had certain obligations as well as certain rights, with respect to the articles in question, and thus were charged with a definite responsibility for them (the degree of which depended upon the type of agreement made).

The ethical considerations and restrictions of the contractual agreement reached between the שומר and the מפקיד (the lender or depositor, i.e., the one to whom an object in deposit belonged) were succinctly spelled out in the Biblical literature. One who dealt falsely with his neighbor in a matter of deposit (e.g., assuming possession of something belonging to one's debtor, in lieu of payment) had thereby committed a trespass against God; he was compelled to restore that object and to add to it one-fifth of its monetary value.[112] If one borrowed or hired a beast, and it died, was lost, or was otherwise injured, the שומר was obligated, under certain circumstances, to either prove his innocence in the matter, or to make restitution.[113] Laws demonstrating the emphasis on the moral and human concern which a creditor was expected to show his debtor, were also articulated in Scriptures.[114] All of these form the basis of the Rabbinic attitude toward 1) the שומר, 2) his relation to the מפקיד, 3) and the article which was placed in his care.

B. Who Were the שומרים? How Were They Classified?

According to Mishnah Baba Metzia, the שומרים (hereafter referred to by either one of their nearest English equivalents: guardians or bailees) were of four basic types. These were:

The Unpaid Guardian (שומר חנם),
The Borrower (שואל),

The Paid Guardian (נושא שכר),
and The Hirer (שוכר).[115]

Legally, these four classes of guardian were differentiated by the degree of liability to which they were subject. Depending on whether a guardian was paid or not, or whether a beast of burden (or other article) was borrowed or hired, the guardian may or may not have been held liable for the fate of the object in question while it was under his care. The relative liability of the four classes of guardian may be presented as follows: the unpaid guardian was the least liable, and could be made to pay only for damage resulting from his personal negligence; the borrower and the paid guardian were both liable for the theft or loss of the article in their care; the borrower was held responsible for damage resulting from אונס (unavoidable mishap);[116] indeed, the hirer was likewise liable for אונס, but not for "reasonable wear and tear."[117] In other respects, his culpability was similar to that of the paid bailee, in that both made use of another's property, and benefitted from it.[118] We proceed now to a more detailed analysis of each of the four classes of guardian, or bailee.

1. The Unpaid Guardian (שומר חנם)

As the name intimates, the unpaid guardian was one who, though consenting to watch over property belonging to someone else, expected nothing in return: he may have consented to do this as an act of kindness, or in return for a prior favor. As is noted above, the unpaid guardian was, for quite apparent reasons, the least liable in the event of damage accruing to the article(s) temporarily placed in his care. Indeed, by taking an oath as a means of swearing to his innocence, the unpaid bailee was quit of all liability, and absolved of all blame.[119] In commenting on a Biblical passage dealing with the delivery of an animal into the care of another person,[120] The Mekhilta noted that the words "...and he shall not make restitution" referred specifically to a gratuitous (unpaid) bailee, who may swear to his innocence and be freed from the payment of any indemnity. Indeed, in the case of אונס, the unpaid bailee "may stipulate that he is to be exempt from taking an oath...:" his blamelessness in this regard was unquestioned.[121]

The gratuitous bailee could, of course, have been held responsible if damage had occurred as a result of his admitted negligence, or by his refusal to swear that he did not misuse an article under his care. But, having guarded his charge properly, he was absolved of guilt.[122]

An interesting provision was made in the law, for an unpaid guardian who was unable to admit what had actually befallen an animal while it was under his care. Legally, he was not liable for theft or loss, etc., unless these resulted from his dereliction. Yet if, out of fear, he had sworn falsely concerning the fate of the animal, and if what had occurred had not resulted from his negligence, he was still exempt of liability, since he would not have been considered culpable even if he had told the truth.[123] Of course, if he <u>had</u> misused the animal (for example, slaughtered him for food) and, after he had taken an oath to his innocence, witnesses brought evidence that he had sworn falsely, he would be compelled to make full restitution commensurate with the loss he had caused.[124] Illegal acts by the unpaid guardian were, of course, not allowed.

It was the practice, at times, to deposit one's money with a money changer (as opposed to a paid guardian) for safekeeping. If it were tied up prior to deposit, and handed to him in the form of a sealed package, the money changer was considered to be a gratuitous bailee with respect to it. Thus (assuming he had taken all proper precautions) he was not responsible for its loss. Likewise, a private individual (בעל הבית) was considered a gratuitous bailee: whether the money was loose or tied up, he could not use it, and was not responsible for loss.[125]

The unpaid guardian was treated with great leniency within the law; for his consent to watch over another's property resulted in no material benefit to him. It was assumed that he would have candidly acknowledged his negligence, if this had caused the loss or damage. The ethic behind the law is clear: the efficaciousness of the oath bears witness to the Rabbis' belief in the basic honesty of men.

2. The Borrower (שואל)

One who borrowed an animal (or other object) from his neighbor possessed the greatest culpability in case of damage. This was so, because the borrower stood to benefit from use of the borrowed object, whereas its owner, having lent it gratis, received no benefit. The ruling in the Mishnah reads " השואל משלם את הכל - (and) a borrower must repay in every case."[126] Thus, whether an animal in his care was stolen, or lost, or killed by a wild beast, a borrower had to make full restitution.

The Mishnah and Tosephta provide precise information regarding the nature, and temporal limitations, of the liability of a borrower. Interpreting two consecutive verses from Exodus,[127] the Rabbis noted that if one borrowed (or hired) a cow with (or after) its owner, the borrower (or hirer) was not liable; but if the cow were borrowed first, and it died, he was liable.[128] Furthermore, a borrower's liability began only when the animal came into his possession, or into that of his authorized agent; thus, if the owner's agent delivered it, and it died or was damaged along the way, the borrower was exempt from responsibility.[129] This ruling applied in general, to the loan of inanimate objects as well. The borrower was, of course, considered free of liability in the case of "unavoidable mishap."

As with the unpaid guardian, and illustrative of their great insight, the Rabbis made provision for the borrower who would not tell the truth regarding the animal he had been lent: the borrower was at all times required to make restitution for loss or damage. And, if he denied ever having borrowed, whereas the cow or ox was dead or lame (as a result of his having borrowed it) he was liable for reimbursement, plus the guilt offering for a false oath.[130]

3. The Paid Guardian (שומר שכר)

Those who were hired and paid a wage in exchange for guarding property belonging to another person, were also considered liable in the event of certain occurrences which resulted in financial loss to their employer. In general, the paid guardian was required to make full restitution if the loss resulted from his negligence (also called "insufficient care" - חסרון שמירה). As the Mekhilta has noted, both the loss of (for example) the animals in his care (if he were unable to find them after they had strayed) and the theft of them, were considered due to his negligence; thus, he was required to compensate for them.[131] It follows, of course (and the law specifically states), that even a paid guardian was quit of liability if he swore that he was innocent of gross laxity.[132] In general, a guardian was not liable for damages incurred if he could not have prevented them; he was liable only if he could have prevented them, and did not do so.[133] In this respect, a paid guardian's responsibility appears similar to that of the unpaid guardian; but it seems that a charge of negligence was much more meticulously studied and strictly applied by the judges, if that charge were made against one who was paid for his services.

It is important to note the fact that the laws dealing with a paid guardian were applied not only to the guardian of flocks, but also to the guardian of goods. Thus, when one gave to an artisan the raw materials out of which to fashion a pair of shoes, a robe, etc., the artisan was considered a paid guardian with respect to those raw materials. If they were lost or stolen, he was liable.[134] Furthermore, if he misused or spoiled an article which he was supposed to repair, the artisan was required to pay its owner full compensation: "נתן לאומנין לתקן וקילקלו, חייבין לשלם - If one gave something to the craftsmen to repair, and they ruined it, they (were) required to pay (for it)."[135]

Upon completion of a task (construction of a new article or repair of an old one) the artisan could notify his customer; upon requesting that the object be picked up, and that he be paid for his services, the artisan became (legally) an unpaid guardian, without responsibility for any damage to, or loss of, the object (except, of course, through willful neglect).[136] This applied also to the following circumstance: If one gave wool cloth to a dyer, and the vat burned it or the new coloration ruined it, the dyer was required to refund to the owner the value of the material. But if the error of the dyer resulted in the increased value of the cloth, it was the practice that the owner and the dyer split the value of its increased worth.[137]

In the early Talmudic era, which pre-dated by centuries the institution of banking facilities for the safe deposit of money, it was the usual custom to deposit monetary funds and valuable goods with a guardian who was paid to care for them. The guardian was liable to compensate for loss <u>if</u> he undertook less than the fullest measure of security, that is protecting it "in the manner of bailees - כדרך השומרין." Thus, if the money or other object were lost because it was not safely locked away in the house (or held in the hand while traveling), the bailee had to pay the full indemnity.[138]

Similarly, if a wine cask which was deposited with a guardian, were damaged or broken, the guardian would be liable <u>only</u> if the damage resulted from moving it for his own need; thus, if, while moving the cask because <u>it</u> was in danger where it stood, the guardian had accidentally broken it, the owner would have had to absorb the loss.[139]

In general, then, a paid guardian had, as his primary responsibility, the obligation to guard whatever was placed in his care with utmost probity and sincerity. If loss, damage, or theft resulted from his less-than-scrupulous concern, he was culpable; if any of these misfortunes occurred despite his best efforts, he was not held responsible.

4. The Hirer (שוכר)

Herzog points out (as we have done earlier) that, like the paid guardian, the hirer used the owner's property and benefitted from it. Thus, the liability of the former was analogous to the liability of the latter: both were required to repay in cases of loss and theft.[140]

One who hired an animal from another person was responsible only in the case of negligence. If injury or death came about naturally, while the animal was doing that work for which it was hired, the hirer was required merely to take an oath of innocence, and he was absolved of guilt.

C. "Unavoidable Mishap" (אונס), the Guardian, and the Oath.

There remains a topic which, though introduced in our discussion above, requires further examination, in order that the fullest understanding of the concept of guardianship or bailment, as defined by the Rabbis, be achieved. I refer to the idea of אונס , demarcating a category which we may label "unavoidable mishap."

We need have no doubt that the Rabbis not only observed, but lived through, experiences such as earthquakes, huge wind and rain storms, tidal waves, and hailstorms, the like of which no man could have prevented, and the effects of which no human could possibly have overcome. Under such circumstances a guardian, hired to protect another's property, could not be held responsible for the resultant loss or damage.

Thus, certain provisions had to be made within the morally-based law code, to reduce or eliminate human responsibility in the event of a consummate or overpowering crisis. This was accomplished by placing all such exegencies into the category of "unavoidable mishaps." While making <u>no</u> allowance for human carelessness, it was for the Rabbis, an ethical imperative to make exception for what the best and most diligent of guardians could not have prevented.

The Mishnah and Tosephta define the concept of "unavoidable mishap" in concrete terms. In the event that such a mishap occurred, the guardian was free of liability: he was not held accountable. A borrower had to take an oath to the effect that אונס had in truth occurred, but, once taken, he was accounted innocent; indeed, a paid guardian and a hirer were exempt from taking the oath, as was the unpaid guardian.[141]

What, precisely, constituted אונס ? What, in the opinion of the Rabbis, was a <u>force majeure</u>, or an "act of God," beyond any man's ability to counteract or subvert it? The attack of two wolves, or of a robber, or of a lion, a bear, a tiger, a leopard, or a snake, <u>if</u> they had come of their own accord (מאליהן), constituted an "unavoidable mishap."[142] If, however, a guardian had led his flocks to an area where robbers or wild animals were known to hide out, then an attack was not considered under this category; it was judged to be a direct result of the guardian's negligence, and he was liable for any death or injury that occurred.[143]

Within this category was included the eventuality of natural death: if an animal died while under hire to (and/or under the care of) a bailee, and the death was not a result of maltreatment, the guardian was not considered liable. This was also the case if an animal, after ascending a crag of its own accord, fell to its death.[144] In all cases, if the guardian could have saved his flock and did not (if, for example, he had gone to town and something had happened to the flock that he could have prevented were he present),[145] he was considered liable, and the category of אונס did not apply. The guardian's oath, or in some cases merely his word that he could not have reversed matters, was sufficient within the law.

D. The Taking of a Pledge in Lieu of Payment of a Debt

One who seized a pledge from his debtor in lieu of payment of a debt was, in Rabbinic law, considered a guardian with respect to the article taken in pledge. Thus, the issue of taking a pledge was part of the larger concept of guardianship as defined by the Tannaim.

It was not uncommon during the Rabbinic period, that one who contracted a debt found himself unable to pay off his note of indebtedness when it was due. The straitened economy prevalent during much of this period was, of course, one reason why borrowing was a common practice, and the inability to repay a not uncommon malady.[146] When this happened, the law made allowances for both parties to the debt, since both had certain rights - and, of course, certain obligations - to the other party. The creditor was entitled to have his money returned to him; the debtor (provided that he had made an honest effort to repay the sum he owed) was entitled to the consideration which his honesty and sincerity warranted, as well as the opportunity to repay that sum at a later date, without penalty. In this situation as in many others, the Rabbis were motivated by their real and human concern for those caught in this predicament, for neither side was really at fault; thus, neither could be made to suffer unduly. Furthermore, a stringent penalty, if meted out to the impoverished debtor would have served only to demoralize him; it would have reduced the chance that he would ever repay the money he owed. Conversely, the creditor, entitled to receive the money he lent, had to be given assurance that it would, within a certain period of time, be returned to him.

Many (but not all) of the laws adopted by the Rabbis, which deal with the seizing of a pledge in lieu of payment of a debt, are based upon Biblical precedents. One Mishnah[147] summarizes the Rabbinic attitude with respect to this matter.

At the time when he made a loan, the lender could exact a pledge from the debtor; however, when the time for repayment had expired, and the debt had not been repaid, the creditor was required to obtain a court order in order to receive a pledge in lieu of payment. When taking a pledge, the creditor (or court officer) was not allowed to invade the premises of the debtor: the latter's pride, and his privacy, were not to be violated. This particular qualification was in force from Biblical times:

> When you make a loan of any sort to your neighbor, you must not enter his house to seize his pledge. You must remain outside, while the man to whom you made the loan brings the pledge out to you.[148]

If, as must often have been the case, the debtor were very poor, the creditor was not permitted to take into pledge anything that would cause him to suffer hunger or discomfort, or that would jeopardize his livelihood. This was stated in both Biblical and Rabbinic literature in a variety of ways. In Deuteronomy we read:[149]

> If he is a needy man, you shall not go to sleep in his pledge; you must return the pledge to him at sundown, that he may sleep in his cloth and bless you...

The Mishnah stated what the Bible, in this passage, only implied: if a debtor owned two objects, the creditor could take only one of them to pledge at a time; he must (for example) return the pillow for the night and the plough during the day.[150] In this way, the debtor was granted the opportunity to continue his vocation. One may see in this decree an awareness on the part of the Rabbis, that a poor man would be more likely to fulfill his obligations, if he were allowed to continue his work; imprisonment or the like, would only increase his impoverishment. If the debtor were wealthy, there was, of course, no need to return a pledge by day or by night.[151]

A creditor could not (whether the debtor was poor or rich) take as a pledge anything that was required by the debtor for the preparation of those foods essential to life (אוכל נפש).[152] The Biblical injunction was cited as the basis upon which the Rabbis predicated this important consideration:

> No man shall take the mill or the upper millstone to pledge, for he (thereby) takes a man's life to pledge.[153]

The mill, or upper millstone, so important in the preparation of the bread which was life's mainstay, served to exemplify all such essential implements, without which a man's life and security were jeopardized.

Finally, the widow was protected by Rabbinic law, in the matter of the pledge. Even though she had contracted a debt, and regardless of whether she were poor or rich, the Rabbis decreed (after the Biblical precedent)[154] that one could not take a pledge from her.[155]

Just as the debtor was protected by the laws which bespoke the codifiers ethical concern, so the creditor was defended as he sought to acquire the money to which he was entitled. After holding a pledge in lieu of payment for thirty days, the creditor could seek the permission of the court to sell the pledge in order to retrieve his money.[156]

He was, of course, obligated to avoid misuse of the article he had taken in pledge, in consideration both of the debtors rights, and of his own interests, should he be forced to sell the pledge in order to recover his money.

VI. The Legal and Ethical Aspects of the Practice of Lending
A. Introduction

As we noted in the last chapter,[157] the practice of lending was quite common in the early Talmudic era. We have discussed the legal and ethical consequences which accrued in the case of the nonpayment of a loan within the agreed-upon time limit: the creditor could exact a pledge from the debtor, etc. We shall now examine the laws dealing with the practice of lending itself, looking specifically into the question: What was the Rabbinic attitude concerning the issue of charging interest on a loan?

The stand of the Rabbis with respect to lending in general revolved around this particular issue. The charging of interest for a monetary loan (the term for this in both Biblical and Rabbinic literature is נשך)[158] was prohibited from Biblical times. Receiving increase (known as תרבית , and referring to the augmentation of one's profits while dealing in produce) was likewise forbidden, but this latter prohibition was originally instituted by the Rabbis, who broadened the Biblical concept of נשך to cover this specific form of interest taking.[159]

The Biblical position with respect to the charging of interest was quite unequivocal: the condemnation of the practice was vivid and unmistakable; but there was an internal variance with respect to whom the condemnation was addressed. In Torah, Prophets, and Writings, the injunction against charging interest was stated and restated. In Ezekiel and Psalms,[160] it was asserted in a general way, referring to all men and covering any business arrangement where a loan was involved: "He that putteth not out his money on interest...shall never be moved."[161] However, in three places in the Pentateuch,[162] there was an implied restriction of the negative commandment against lending on interest: one could not exact interest from a fellow Israelite. Hence, one passage reads:

> If you lend money to any of My People
> (עמי), even to the poor with you,
> you shall not be a creditor to him;
> nor will you lay interest upon him.[163]

The other two passages forbid lending on interest to "your brother" (אחיך). Thus, it appears that the practice, while circumscribed to exclude Jews, was permitted when dealing with non-Jews.[164]

B. To Whom, According to the Rabbis, Did the Injunction Apply?

The Rabbis, as attested to in early Talmudic literature, seem to have embraced the opinion reflected in the Torah passages. One Mishnah[165] states that the prohibition against charging interest was obligatory only upon Jews; but, if money were lent by a Jew to a "heathen" (עובד כוכבים), the former could (and, no doubt, did) charge interest on the loan. Likewise, a Jew who borrowed from a non-Jew was expected to pay interest on the loan.

The Gemara, in at least one place, reiterates this stand: Raba, in commenting on Leviticus 25:36, interpreted God's words to mean that he would "...exact vengeance from him who...lends (his money) to an Israelite on interest..." Furthermore, one must not attempt to countermand the law by ascribing his money to a non-Jew, thereby endeavoring to charge a Jew interest on a loan.[166]

The limitation of this prohibition against charging interest was not, however, always explicitly stated in early Rabbinic literature. The Mekhilta,[167] for example, contains no reference to this restriction: lending on interest was *in principle wrong*, and was therefore prohibited in any and all business dealings. The Biblical injunction was a warning (אזהרה) to the lender that he could not lend on interest to anyone; it was also an implicit warning to the borrower, that he not accept money lent to him on interest. A similar impression is gathered from a modern compendium to the Talmud,[168] which quotes a number of passages condemning those who charge interest, with no delineation of who was affected by the law, and who was not. We may conclude, in this regard, that the Rabbis wished to terminate the custom of taking interest on as broad a base as possible. They saw it as inherently dishonest and immoral, an unfair and illegitimate method of earning a livelihood. In practice, however, the condemnation could not have extended beyond the limits of their own authority; thus, the practice of charging interest continued in the transaction of loans which involved anyone other than two Jews. The attempt to achieve universal prohibition, was tempered by a realization of the verities of the world as it was then constituted.

C. The Practice of Lending, and the Injunction Against Charging Interest: Defined and Examined

Interest was defined as extorting or "biting" (the Hebrew root of which is נשך) from the borrower more than was lent to him. Thus, charging five denars (= one and one-fourth selas) for the loan of four denars (= one sela) was an example of charging interest; similarly, if it required a promise to pay back three seahs of wheat, in order to borrow only two, this too, was an example of charging interest.[169]

The assessing of interest took many forms in Rabbinic times, and thus had to be specifically defined and limited by the Rabbis. For example, the practice of living free or at a reduced rental at the expense of one's debtor, was considered charging interest; likewise, increasing the selling price (of a field, etc.) if it were to be payed for later rather than immediately, was a method of charging interest (since the money not paid immediately would thus become a debt) and, hence, was prohibited.[170] Though it was not a charging of interest when two individuals agreed to help one another at the same task for the same length of time, there was a possible charging of interest if the two agreed to help each other in different tasks (because of the possible difference of market value of each task) or for different lengths of time; this was forbidden.[171]

In addition, the Mishnah prohibited a Jew from accepting an "iron-sheep" investment (in Hebrew, צאן ברזל) from another Jew. For, this investment included a guarantee against loss for the one who lent his funds: he would share in any profits, but was not responsible for any loss: the tantamount effect was a charge of interest.[172]

Lending money on condition that the debtor repay a like amount, was not prohibited; but lending produce in exchange for an equal amount of produce was condemned, since the price of the produce could increase, and the lender would thus have had returned to him more than he had loaned.[173] These will serve to illustrate the various forms of נשך, all of which the Rabbis prohibited.[174]

At least one modern commentator has observed that the Rabbi's ethical concern was a primary motivation for the galaxy of laws which condemned the charging of interest. Intimating that it was an ethically illegitimate practice, he observed that charging "interest...meant taking advantage of another's poverty..."[175] The Sages, noting that it was the poor man who had frequent recourse to the lender, realized that a supplemental interest charge would have served only to aggravate his poverty by increasing his burden. The emotional as well as the economic burden would have been exceedingly heavy upon him. The Rabbis, many of whom were poor themselves, realized how unrealistic, unfair, and immoral this extra charge was.

"Those who charge interest are comparable to shedders of blood."[176] One who borrows or lends, or witnesses the transaction of a loan on interest, transgresses five Biblical prohibitions.[177]

> Scripture regards one who takes interest as if he had committed all the evil deeds and transgressions in the world...but God attributes to one who lends without interest as if he had performed all the precepts...[178]

Thus was the practice condemned in unequivocal and unswerving terms: it was equivalent to all the other evils in the world. It corrupted the creditor, discouraging him from engaging in a profitable and constructive pursuit, such as commerce or farming; it added hardship to hardship in the marginal life of the poor debtor. Hence, the Rabbis, moved by ethical concern, a sense of justice, and a need for the official regulation of lending, formulated the legal structure which we have just examined.

Lending was to be done without the consideration of profit. If an Israelite and a gentile came before a Jew, both desiring to borrow a sum of money, it was incumbent upon the lender to serve the Jew first, even though the non-Jew would have paid interest on the loan. Similarly, the creditor was instructed to lend to a poor man before a rich one (despite the probability that the latter would be more likely to repay within the established time limit), and to his poor relative before other poor borrowers.[179] The transaction of a loan in the spirit which these dicta exemplify would truly have been a Mitsvah, commensurate with all the other precepts in God's law.

VII. The Regulation of Business Dealings With the Gentiles

There were non-Jews in the world: This fact the Jewish community of the early Talmudic era could not ignore. Their presence and importance in certain facets of communal life had become obvious and elementary facts of existence. So the Jews set about the structuring of an all-encompassing code of law and conduct, which would prescribe and limit, among other things, a proper relationship with the gentiles. One area requiring definition was that of transacting business with those outside the Jewish community.

The regulations set down in this matter bespoke the Rabbis' distrust of the outside world, and their concern that the Jewish community retain its exclusivity with respect to that world and its appeal. If a Jew had a choice of doing business (or working for) another Jew or a non-Jew, he was expected to do business with the Jew. But, acknowledging that the conduct of business with the outside world was an economic necessity, the Jew was expected to adhere to a series of laws defining such transactions.

The Mishnah states that a Jew could not carry on any business dealings with the gentiles (referred to as עובדי אלילים - idolators) for the three days immediately before any of their (idolatrous) festivals.[180] However, apparently for social and political reasons, this restriction was limited to the day of the festival only;[181] and, even this circumscription was not observed. For, the Rabbis allowed a Jew to have business dealings with gentiles on one of their festival days, if it were conducted <u>outside</u> the town, or in those shops within the town that were not decorated for the festival.[182] Hence, a Jew was prohibited from having a direct connection with a gentile while the latter was engaged in the performance of his religious rites. However, some of the laws regulating the relationship of Jew and non-Jew, did reflect the exegencies of life as it was then carried on; these latter were more lenient than the others.

A Jew was also prohibited from selling certain items to gentiles: these included objects such as stone-pine cones and frankincence, which were specifically intended to be used for idolatrous purposes.[183] Certain animals, likewise, could not be sold to non-Jews. Small animals (sheep, goats, etc.) could be sold to them, if local custom permitted; large beasts of burden (cattle, etc.) could never be sold to non-Jews, because they could cause them to work, or hire them out to toil, on the Sabbath. Animals which could injure people (bears, lions, etc.) were also prohibited in the commerce between Jews and non-Jews.[184]

The Tannaim specified which structures a Jew could (or could not) help a non-Jew to construct.[185] In the name of Rabbi Jose, the criteria which determined whether a Jew could lease or sell a house or field to a non-Jew, were enacted:

> In the land of Israel, they may lease houses to them (the gentiles) but not fields; (and) in Syria they may sell houses and lease fields (to them);

> and outside the land (of Israel, plus Syria) they may sell either one (to them).[186]

Since it must have been the practice, at times and in certain places, for Jews to employ gentiles or to seek employment from them, the law code set down certain stipulations regulating and limiting this practice. For example, a Jew could not accept the offer of a non-Jew who would pay for his assistance in the moving of libation wine. But if he were hired for another task, and was then asked to move a cask of the wine, this was permitted, and his hire was not objected to.[187]

If a gentile, on the other hand, were hired by a Jewish wine merchant to help him move closed jars of wine from one place to another, the wine was still permitted for use by Jews if the gentile were assumed to have been watched during the moving process. Thus, if the gentile were in reality left alone, but was unaware that he was not being watched, the wine was considered kosher.[188] If a Jew left a gentile in care of a quantity of wine in stoppered casks, informing him of his absence, the wine would remain fit for Jewish use only if the owner were not gone long enough for the gentile to open a cask, close it, and permit the new clay stopper to dry (thus hiding his possible misdeed).[189]

The practice of charging interest (including the iron-sheep investment), forbidden between Jews, was permitted between Jew and gentile.[190] One Jew lending to another without exacting interest, thereby performed an act of charity: the creditor could realize no profit. But gentiles, in lending money, sought thereby to augment their income; since they charged interest, the Jews' refusal to follow suit (in transactions involving non-Jews) would have resulted in economic distress and possible ruin. However, R. Hiyya bar R. Huna prohibited the accumulation of wealth through the charging of interest: one could engage in this practice only to the extent of achieving a livelihood.[191]

The ethic of the preservation of Jewish identity through Jewish exclusiveness is clearly discernible in the attitude of the Rabbis toward the transaction of business with the gentiles. They expressed solicitude for those Jews who dealt with the gentiles, that they not be threatened economically, nor led into transgression through association. The Rabbis would assure that, despite the presence of the gentiles, the Jewish community remain untouched by pagan intrusions into their closed, protected society.

VIII. The Labor and Business Ethics of Religious Festivals and Observances
A. The Sabbath

The Biblical prescription against working on the Sabbath is well known:

> Six days you shall labor and do all your work; but the seventh day is a sabbath unto the Lord your God; in it you shall not do any manner of work, you, nor your son, nor your daughter, nor your man-servant, nor your maid-servant, nor your cattle, nor your stranger that is within your gates.[192]

This, the fourth commandment of the Decalogue, is slightly rephrased and repeated in the book of Deuteronomy;[193] it constituted the primary precedent upon which the Rabbinic attitude toward working, or conducting business on the Sabbath, was based. Passages from Mekhilta and Mishnah which have a bearing on the Sabbath, contain an exegesis on the Biblical attitude as represented above. The Rabbis specified <u>who</u> would rest, to what situations this prohibition of labor was directed, and so on.

The ethical motivation on the part of the Rabbis is, I believe, quite easily comprehended. The family unit, they seemed to imply, was not supported or preserved solely by the wage of the husband and father who worked to provide the necessities of life for those who depended upon him. Maintaining a home was not only a physical act, but a spiritual one. The deeper values of life - like those of love, mutual concern, and the practice of Judaism - could only be internalized and perpetuated if time were set aside for them, to the exclusion of more worldly, and baser, pursuits. Thus, the Rabbis maintained the prohibition against work on the Sabbath, in order that all Jews might be given the opportunity to live the life of the pious man and the sage, if only for one day a week: the day of rest would provide a taste of the world to come.

The Mekhilta offered an explanation of the passage from Exodus (quoted above) to accommodate it to the needs of the generation it addressed.[194] On the Sabbath, one shall: 1) rest as if all his work were done, and 2) rest from the very thought of work. Included under this prohibition were minors, Jewish slaves, and righteous proselytes (גר צדק : "your stranger that is within your gates)." God created "in six days...and rested on the seventh" (vs. 11) to provide an example to man; according to the exegetic principle of kal v'homer (קל וחומר), if God, who knows no weariness, rested on the seventh day, how much the more so does man need rest.

The Mishnah catalogued those tasks which were forbidden on the Sabbath and which, if performed, constituted a transgression of the commandment prohibiting work. Anyone who did even the slightest amount of hewing or chizeling or striking with a hammer, was culpable,[195] as was one who ploughed or weeded, or gathered wood, or did any manner of farm-work, however little.[196] Likewise, one who wrote even two letters, whether they were the same or different, scratched on parchment, in clay, or on ones skin, was guilty of a transgression;[197] he was exempt from guilt only if he had written with fruit juice, or in the dust of the road, or in the sand (i.e., letters that were not indelible).[198] The general impression is that if a person purposely did any sort of work of a permanent (i.e., enduring) nature, he was culpable. On certain (but not all) "occasions of forgetfulness," the transgression was overlooked. As on the Sabbath itself, the Jew was prohibited from engaging in a task late on Friday afternoon, especially if he could not hope to complete it prior to nightfall.

Finally, one could not hire laborers on the Sabbath, nor could he request his (non-Jewish) companion to hire laborers for him.[199] Everything related to labor or to business was prohibited on the Sabbath, to the end that all Jews be totally separated, both from the deed and the thought of work for one day of every week. The spiritual and physical quickening of a day of rest was, as the Rabbis knew, essential to one's health, emotional stability, and long life.

B. The Festivals and the New Year

The primary ordinance relating to the Festivals and the New Year (for purposes of this paper) was, as above, that which prohibited all forms of work. The book of Leviticus provides us with the Biblical precedent for this prohibition: on the first and seventh days of Pesach,[200] on the first day of Shavuous,[201] on both days of Rosh Ha-Shanah,[202] and on the first and eighth days of Sukkos,[203] "you shall do no manner of servile work." The injunction against working on any of the above sacred days is identical to that applied to the Sabbath, save that one may prepare what "...every man must eat, that only may be done by you."[204]

Thus, if a festival day (upon which work was forbidden) fell on the eve of the Sabbath (ערב שבת), one could not cook for the Sabbath on the holiday (since cooking is a form of work); one would have to prepare food for both days on the eve of the holiday (ערב יום טוב).[205] But the Rabbis, defining the prohibition very narrowly, saw fit to permit the performance of certain tasks which were not "officially" acts of work. Hence, one could not take wood off the walls of a hut, but he was permitted to gather that which lay loose on the ground around the hut, or to use what was previously gathered.[206]

As on the Sabbath, so it was on a sacred or holy day; those acts which could lead one to transgress the command to abstain from work (such as climbing a tree, swimming, or dancing) were all forbidden.[207]

Working on the eve of Pesach (until noon) was discussed by the Rabbis, who left a determination in this regard up to local custom: if others did it, it was permitted.[208] But, they noted, three types of craftsmen were permitted to work until noon on the eve of Pesach (regardless, apparently, of local custom): these were tailors, hairdressers (or, barbers), and launderers.[209]

One tractate of the Mishnah deals exclusively with the non-sacred (half-festive, or intermediate) days between the first and last days of Pesach and Sukkos.[210] These days are referred to in Hebrew by the term חול המועד; during them, only light labor which was necessary to meet the needs of the festival,[211] or to avoid loss or damage which might result from postponement of a task, was allowed. Included in this provision were irrigation to save a crop, and repair to salvage a home or other essential facility. Thus, for example, a field requiring frequent irrigation could be irrigated during the intermediate days of the festival, if this were accomplished by means of a flowing stream (that eliminated the need to carry the water from one place to another).[212] Furthermore, rodents harmful to crops could be caught and destroyed during these intermediate days.[213]

Fulfilling public needs (צרכי הרבים) likewise came under the heading of necessary labors that could be performed; waterways containing and guiding drinking water to its destinations could be repaired if necessary, as could public roads and reservoirs.[214]

If, as occasionally must have happened, hired laborers did not show up to complete a task (such as placing wine in casks and sealing them) prior to the Festival, or if one were the victim of an "unavoidable mishap" (אונס), he was permitted to do the required labor himself during the intermediate days, lest he suffer irreparable loss.[215] Similarly, if one were forced to bring in his produce, due to a fear of possible theft, or if he had to remove his flax from the steeping pond, he was permitted to carry on these tasks, provided he had not intended originally to do them during the intermediate days.[216]

By the prohibition of work (on the Festival days) and its severe limitation (during the intermediate days), the Rabbis sought to augment the number of days when a man would have to leave his secular pursuits, and to devote himself totally to the deepening and enriching experiences of prayer, meditation, and family communion. Only with opportunities such as these could he reach the ethical and moral goals toward which the Rabbis led and prompted him by means of their code of ethically-based laws.

C. The Sabbatical Year and Jubilee

The Rabbinic attitude toward the Sabbatical and Jubilee cycle was rooted in, though at some variance with, the Biblical position. The authors of the legal portions of the Pentateuch ascribed their understanding of this cycle directly to the revelation of the Law on Mt. Sinai, as the introductory verse to chapter 25 of the Book of Leviticus makes apparent. That chapter contains the fullest expression of the Biblical observance of this cycle. The resting of the land[217] and the theme of release[218] are mentioned elsewhere as well.

Whereas the Biblical writers conceived of the seventh year as primarily 1) a period to allow the ground to lie fallow, in order to avoid impoverishment of the soil, and 2) a time of release from, and annulment of, monetary obligations (שמיטת כספים), the Rabbis saw the Sabbatical observance as chiefly theocratic in nature.

According to the Rabbis, a man should devote himself fully to the service of God by abstaining from the thoughts and deeds characteristic of most years. As he observed his Sabbath day of rest, so should he comply with the Biblical injunction forbidding work during the entirety of every seventh year.[219]

It was the ruling of Rabban Gamaliel and his court (בית דין) that one could plow and cultivate a field up to the new year celebration of the seventh year, but no later.[220] As a result of this ruling, some crops would grow of themselves during the Sabbatical year; those which would be lost if kept under the soil too long could, according to the "Sabbatical Year" law, be taken from the ground and used, but <u>not</u> sold or wasted. This applied to certain types of food (for man and beast) and to plants used in dyeing.[221] Since all trade in Sabbatical year produce was forbidden, the dyes derived in this manner could be used by the dyer for his own purposes, but not in exchange for payment.[222] The above rulings serve to illustrate the Rabbinic attitude toward work during the Sabbatical year: in order that a man have abundant time for prayer and meditation, his labors should be limited to the fulfillment of his basic needs, and those of his family and his animals.

The occurrence of the Sabbatical Year also served to cancel certain kinds of monetary obligations. The Rabbinic stand on this issue is a significantly modified version of the Biblical decree, which stated that

> ...every creditor shall release that which he has lent to his neighbor; he shall not exact it of his neighbor and his brother, because the Lords release has been proclaimed.[223]

The prozbul (פרוזבול), intended to counteract the all-encompassing nature of the Biblical injunction, was formulated by Hillel the Elder. It was, perhaps, the most significant piece of economic legislation adopted in Rabbinic times. Noting the hesitancy of creditors to transact loans when the Sabbatical year approached (due to the fear that the Sabbatical year would annual the loan prior to its repayment), Hillel devised the prozbul, a legal declaration, agreed to by both creditor and debtor, that the Sabbatical year would not annul the debt they were about to contract.[224] The Rabbis instituted other exceptions to neutralize the original ruling: the debt owed to a shopkeeper for merchandise purchased on credit could not be annulled; neither could the wages owed to a hired person.[225]

In observance of the Jubilee,[226] the same regulations with respect to the resting of the land and the cancelation of monetary obligations, were enforced. Though apparently never fully observed after the period of the exile,[227] the Rabbis felt the institution of the Jubilee would be restored upon the peoples return to Palestine. In order "...to discontinue the idea of servitude to man,"[228] the Jubilee would signal the return of each man to his property, in order that he might re-establish possession of it.[229] This was the principle of land-release (שמיטת קרקעות), which the Rabbis thought to be extremely vital if men were to be allowed to serve only God, not become subservient to men. As an extension of this ideal of human freedom and individual self-determination, the Hebrew bondman (עבד עברי) would be allowed to regain his freedom in the Jubilee.[230]

Thus, the Sabbatical and Jubilee cycle was instituted originally on an ethical basis, which the Rabbis, at least in theory, (since the actual practice of these institutions in the Rabbinic era may be questioned) accepted, but with modification. Alterations such as the prozbul, served to make the Biblical concept more appropriate for those living in a more urban and commercialized period of history. The idea of setting aside time for worship and meditation, and the endeavor to keep men from becoming dependent on other men, were the morally indispensible goals which the Rabbis, through the entire period of their codification, inculcated and taught to the people they loved and served.

IX. Conclusion

The early Talmudic literature which we have studied serves to typify that aspect of the entirety of Jewish legal literature which is perhaps most unique and significant. I refer to the nearly complete identity of ethics and the law: the one being integral to, and inseparable from, the other. We have examined those portions of the Tannaitic and early Amoraic codes concerned with business and labor and have, I trust, arrived at an understanding of this remarkable identity.

Whether related to the employer-employee relationship, the landlord-tenant relationship, the concept of the ethics of the marketplace or of the guardian in Jewish business ethics, it was, to a great degree, the human concern and solicitude of the Sages which motivated the formulation of the laws which are found in the early Talmudic sources. The rights of both parties to a contract (of whatever sort) had to be respected, and were legally guaranteed. The illegal conduct of one party at the expense of the other was dealt with according to those punitive measures which were written into the law codes (but which are beyond the scope of this paper). However, the thrust of this literature, was not merely to compel men to discharge their <u>legal</u> obligations. Jewish law, ethics, and religion were united in the effort to encourage men to grow beyond the law: to do the ethical thing, to perform the moral act, even if these were <u>not</u> legally commanded. The illegal, thus, became the unethical and the immoral: the full force of the Jewish consciousness would instill in all Jews an aversion to that which was legally forbidden.

Thus, in employment and tenancy, in the marketplace and in guardianship, in the transaction of a loan and in dealing with the gentiles, the Rabbis sought to inculcate a feeling for people in addition to a respect for law. They wanted to teach care, concern, and solicitude: hence, employment (for example) was not solely a legal relationship; it was a human one, and demanded that employer and employee be honest and fair with one another. These Rabbis, though assuming the basic honesty and honorable intentions of both parties to any contract, endeavored nonetheless, to legislate,and thus to universalize, the mutual concern of each man for his fellow.

The contract assumed an importance beyond the specific relationship or association it defined and described; it exemplified the entire structure of labor and business law. The law (like each specific contract) would have been fragile and tenuous indeed were it not for its single strongest support: its foundation upon ethical and moral concern.

X. Footnotes

Footnotes to Chapter I

1. This, despite the fact that in the Pentateuch, there was no specific term for "ethics" or "morals".

2. Boaz Cohen, Law and Tradition in Judaism, p. 192.

3. Law deals only with overt acts, while the chief concern of ethics is often with feelings, emotions, motivations: in general, the development of ones inner character. Law cannot be applied in this latter realm, for it would then attempt to legislate "obedience to the unenforceable" (B. Cohen, p. 220), which includes moral principles possessing no legal sanction, humanitarian impulses, and other unwritten "laws" which are deemed fair, honorable, and right.

4. B. Cohen, p. 196.

5. Moshe Silberg, חוק ומוסר במשפט העברי.

6. To be examined more fully later. Please refer to p. 8, ff.

7. B. Cohen, p. 213.

8. Nedarim 49b.

9. Mishnah Avot 1:10.

10. Joseph H. Heinemann, "The Status of the Labourer in Jewish Law and Society in the Tannaitic Period" in Hebrew Union College Annual (Vol XXV), pp. 265-266.

11. Mishnah Kiddushin 4:14.

12. Ibid.

13. Judah Goldin, "The Period of the Talmud" in The Jews: Their History, Culture, and Religion (ed. L. Finkelstein).

14. Ibid., p. 126.

15. Mishnah Sheviith 10:3. See pp. 5 and 60 re: the prozbul.

16. Dr. Ellis Rivkin, in his paper "A Religion of City Dwellers, The Internal City", notes that whatever change did occur in Palestine during the period of our concern, was greatly influenced by the introduction of the Hellenistic-Greek idea of the polis into Palestine. The Pharisees (i.e., the sages of Rabbinic times), seeing this happening,

then reshaped Judaism to fit into the polis: "Pharisaism forged its Judaism out of the crucible of polisification" (p. 14). Basically, he explains, the Rabbis adopted the polis idea of the primacy of law (a necessity in urban life) and gave it Jewish significance by causing it to be internalized by the individual, helping him to face any and every situation. Thus is the Talmud and other genre of Rabbinic law and expression, explained. This feeling is reflected by J. Goldin (p. 164): "By developing norms of universal conduct, by underscoring a few doctrines which were held to be fundamental, and by sustaining a sensitivity to ethical demands, the Sages could contemplate the destiny of Jews and Judaism in terms quite independent of any immediate political disappointments.

17. Goldin, p. 176.

18. Ibid.

19. Israel Mattuck, Jewish Ethics, p. 86.

20. Mordecai M. Kaplan, "The Contribution of Judaism to World Ethics" in The Jews: Their History, Culture, and Religion (ed. L. Finkelstein), p. 688.

21. Mattuck, p. 96.

22. Mishnah Baba Bathra (hereafter referred to as M.B.B.), 2:1

23. Ibid., 2:3.

24. Ibid., 2:12.

25. Mekhilta (דר' ישמעאל) to Ex. 15:26.

26. B. Cohen, p. 230.

27. Mishnah Shevuoth (hereafter referred to as M. Sh.), 7:1, and Tosephta Shevuoth (hereafter referred to as T. Sh.), 6:1.

28. M. Sh., ibid.

29. M. Sh., 7:5, and T. Sh., 6:4.

30. M. Sh., 7:8.

31. Ibid.

32. Isaac Herzog, The Main Institutions of Jewish Law (Vol. II), p. 17.

33. Ibid., p. 23, ff.

34. Ibid., p. 16.

Footnotes to Chapter II

35. See Leviticus 19:13, Deuteronomy 24: 14 ff., Proverbs 3: 28. Refer to p. 20 ff. for discussion of this topic.

36. See Deuteronomy 23: 25-26. Refer to p. 24 ff. for discussion of this topic.

37. See Exodus 21: 2-6. Refer to p. 18 ff. for discussion of this topic.

38. Tosephta Baba Metzia (hereafter referred to as T.B.M.), 7:3.

39. Heinemann, p. 269.

40. Mekhilta to Ex. 21:2-3.

41. Mattuck, p. 103.

42. Leviticus 19:13.

43. Mishnah Baba Metzia (hereafter referred to as M.B.M.), 9:11.

44. A single exception occurs in the legislation for the Sabbatical year, during which time a laborer must be paid first for his labor, not at the end of the day (Mishnah Sheviith 8:4).

45. Baba Metzia (hereafter referred to as B.M.), 110b, 111a.

46. B. M. 111a; transgression of five negative commandments also mentioned in T.B.M. 10:3.

47. Heinemann, p. 291.

48. M.B.M., 9:12.

49. Baraitha in B.M. 112a (quoted in Heinemann, p. 287).

50. Sifre on Dt. 24:15, on the phrase: "for he setteth his heart upon it".

51. T.B.M. 10:6; see also M. Sh. 7:1 and T. Sh. 6:1 re: oath.

52. Heinemann, p. 291.

53. See T.B.M. 7:3,4 (if an employer were unwilling to pay at פועל בטל rate, the employee may bring suit against him in order to receive payment).

54. T.B.M. 7:3.

55. M.B.M. 10:5.

56. Herzog, p. 171.

57. This prohibition extended to the employees too: neither party was permitted to breach a contract which bound them equally. This theme is more fully developed on p 29, ff.

58. See p. 16, and footnote #36.

59. M.B.M. 7:1.

60. Heinemann, p. 315.

61. M.B.M. 7:2.

62. B.M. 83a.

63. T.B.M. 8:2.

64. Mishnah Berachot 2:4.

65. Exodus Rabbah 13:1.

66. See Chapter V, "The Guardian in Jewish Business Ethics", p 46, ff.

67. See p 11, ff., re: oaths and contracts.

68. P. 15.

69. Heinemann, p. 67.

70. M.B.M. 6:2.

71. T.B.M. 7:1.

72. Baba Bathra (hereafter referred to as B.B.) 86b.

73. M.B.M. 6:1.

74. Heinemann, p. 300.

75. T.B.M. 7:5.

Footnotes to Chapter III

76. See Chapter V, re: "unavoidable mishap".

77. M.B.M. 9:1.

78. M.B.M. 9:2.

79. Ibid.

80. M. Sh. 7:8.

81. M.B.M. 9:3.

82. Ibid., 9:6.

83. Ibid., 9:8,9.

84. T.B.M. 11:7.

85. M.B.M. 8:9.

86. Ibid., 10:2.

87. T.B.M. 8:27.

88. In fact, one may not evict a tenant between סכות and פסח unless he had given notice to that effect thirty days prior to the beginning of the rainy season.

89. M.B.M. 8:6, and T.B.M. 8:26.

90. M.B.M. 8:7.

91. T.B.M. 8:28.

92. Ibid., 8:26.

Footnotes to Chapter IV

93. Proverbs 16:11.

94. Leviticus 19:35-36.

95. B.M. 61b.

96. Ibid.

97. M.B.M. 4:2 and 5:7; B.M. 48a

98. M.B.M. 4:1.

99. Ibid., 4:2.

100. M.B.B. 6:3.

101. B.M. 65b. Re: the voiding of a sale which was contracted in error: refer to section dealing with אונאה (p. 42, ff.). The Rabbis disagreed over whether an erroneous sale could be voided or not.

102. B. Cohen, pp. 217-218.

103. M.B.B. 5:10.

104. M.B.M. 4:3, and T.B.M. 3:15.

105. M.B.M. 4:4. A sale could be voided if the purchaser consulted an expert who concurred in the allegation that an overcharge of more than one-sixth was actually levied. If this were not done within a specified time limit, the sale would stand. The merchant had no fixed time limit within which to seek expert advice.

106. Ibid.

107. Ibid., 4:9.

108. Ibid., 4:11.

109. Ibid., 4:12.

110. Ibid., 4:10.

Footnotes to Chapter V

111. Herzog, Vol. II, p. 16.

112. Leviticus 5:21 ff.

113. Exodus 22:9-12.

114. Deuteronomy 24:6, 11, 13, 17.

115. M.B.M. 7:8, and M. Sh. 8:1.

116. See p. 55, ff. , re: "Unavoidable Mishap".

117. Herzog, Vol. II, p. 177.

118. Ibid., p. 176.

119. M.B.M. 7:8, and M. Sh. 8:1

120. Exodus 22:9-12

121. M.B.M. 7:10.

122. M.B.M. 3:1, and T.B.M. 8:13.

123. M. Sh. 8:2.

124. Ibid., 8:3.

125. M.B.M. 3:11.

126. Ibid., 7:8.

127. Exodus 22:13-14.

128. M.B.M. 8:1, and T.B.M. 8: 20,21.

129. M.B.M. 8:3.

130. M. Sh. 8:1, 6.

131. Mekhilta to Exodus 22:9-12; see note #120.

132. M.B.M. 6:8.

133. Mekhilta; see note #120.

134. M.B.M. 6:6, and T.B.M. 7:18.

135. Mishnah Baba Kamma (hereafter referred to as M.B.K.) 9:3.

136. M.B.M. 6:6, and T.B.M. 7:18.

137. M.B.K. 9:4.

138. M.B.M. 3:10.

139. Ibid., 3:9.

140. Ibid., 7:8.

141. Ibid., 7:10.

142. Ibid., 7:9, and T.B.M. 8:15, 16.

143. Ibid.

144. M.B.M. 7:10.

145. T.B.M. 8:18.

146. See p. 5, ff., re: the economy.

147. *M.B.M.* 9:13

148. Deuteronomy 24:10-11.

149. Deuteronomy 24:12, ff.

150. *M.B.M.*, 9:13.

151. *B.M.* 114b.

152. *M.B.M.* 9:13, and *B.M.* 113a.

153. Deuteronomy 24:6.

154. Deuteronomy 24:17.

155. *M.B.M.* 9:13.

156. *Ibid.*

Footnotes for Chapter VI

157. In the discussion of the taking of a pledge in lieu of payment of a debt: p. 57, ff.

158. נשך is translated not only as "interest", but also as "usury", or the charging of an excessive rate of interest. The distinction denoting "an excessive amount" is meaningless in our discussion of the Jewish law applied to lending; thus the term usury shall not be used. "Interest" shall suffice as a definition of נשך.

159. *M.B.M.* 5:1

160. Ezekiel 18:8, 13, 17; Psalms 15:5.

161. Psalms 15:5.

162. Exodus 22:24; Leviticus 25:36; Deuteronomy 23:20.

163. Exodus 22:24.

164. See below, Chapter VII, "The Regulation of Business Dealings With the Gentiles", p 69, ff.

165. *M.B.M.* 5:6.

166. *B.M.*, 61b.

167. To Exodus 22:24.

168. A. Cohen, Everyman's Talmud, pp. 195-196.

169. M.B.M. 5:1.

170. Ibid., 5:2.

171. Ibid., 5:10.

172. Ibid., 5:6.

173. Mekhilta to Ex. 22:24; J. Lauterbach ed., p. 147, ff.

174. The reader is referred to M.B.M., Chapter 5, which presents in fullest detail, the concept of נשך , and those transactions which, falling into this catagory, are prohibited.

175. Mattuck, p. 98.

176. B.M. 61b.

177. M.B.M. 5:11.

178. Exodus Rabbah 31:13.

179. Mekhilta to Exodus 22:24; see note #173.

Footnotes to Chapter VII

180. Mishnah Avodah Zarah (hereafter referred to as M.A.Z.) 1:1-2.

181. Phillip Blackman ed., Mishnayoth, p. 450, Vol. IV, note to M.A.Z. 1:2.

182. M.A.Z. 1:4.

183. Ibid., 1:5.

184. Ibid., 1:6,7.

185. Ibid., 1:7.

186. Ibid., 1:8.

187. Ibid., 5:1.

188. Ibid., 5:3.

189. Ibid., 5:3,4.

190. M.B.M. 5:6; see Chapter VI, re: the charging of interest.

191. B.M. 70b-71a.

Footnotes to Chapter VIII

192. Exodus 20:9-10.

193. Deuteronomy 5:14.

194. Lauterbach, Mekhilta, Vol. II, p. 253, ff.

195. Mishnah Sabbath 12:1.

196. Ibid., 12:2.

197. Ibid., 12:3,4.

198. Ibid., 12:5.

199. Ibid., 23:3.

200. Leviticus 23:7-8.

201. Ibid., 23:21.

202. Ibid., 23:24-25.

203. Ibid., 23:35-36.

204. Exodus 12:16, and Blackman, Vol. II, p. 351.

205. Mishnah Betsah 2:1

206. Ibid., 4:2.

207. Ibid., 5:2.

208. Mishnah Pesachim 4:1

209. Ibid., 4:6.

210. Mishnah Moed Katan.

211. Ibid., 2:4.

212. Ibid., 1:1.

213. Ibid., 1:4.

214. Ibid., 1:2.

215. Ibid., 2:2.

216. Ibid., 2:3.

217. Exodus 23:10-11.

218. Deuteronomy 15:1-3.

219. Isidore Singer, ed., The Jewish Encyclopedia, Vol. X, p. 605.

220. Mishnah Sheviith, Chapters I and II.

221. Ibid., 7:1.

222. Ibid., 7:3.

223. Deuteronomy 15:2.

224. Mishnah Sheviith 10:3, ff.

225. Ibid., 10:1.

226. The prevailing opinion among the Rabbis was that the Jubilee was an intercalated fiftieth year following the seventh Sabbatical year. Judah ha-Nasi and others, however, thought it was identical to the seventh Sabbatical year (see Rosh Ha-Shanah 9a, Gittin 36a).

227. Jewish Encyclopedia, Vol. X, p. 606.

228. Ibid., p. 605.

229. Leviticus 25:10; the only exceptions were houses in walled cities, which could never be redeemed, unless within one year following the sale (Leviticus 25:29, ff.).

230. Mishnah Kiddushin 1:2.

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