Rabban Simon Ben Gamaliel Nasi at Usha: A Study in Tannaitic Literature

Shalom Novoseller

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Rabban Simon Ben Gamaliel Nasi at Usha: A Study in Tannaitic Literature

Abstract
In this work, it is my intention to focus on the life and activities of Rabban Simon ben Gamaliel (from here on: RSBG), exclusively in the Usha period (140-180 CE). An examination of RSBG's life and his decisions, recorded both in the Mishnah and Tosefta as well as the tannaitic midrashim, will reveal that various conditions and responsive leadership produced a legal tradition that became the foundation of rabbinic law.

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Comments
RABBAN SIMON BEN GAMALIEL NASI AT USHA: 
A STUDY IN TANNAITIC LITERATURE

by
Shalom Novoseller

A Dissertation
submitted in partial fulfillment of the requirements
for the degree of
Doctor of Philosophy

Annenberg Research Institute
(Dropsie College)

250 N. Highland Avenue
Merion, Pennsylvania 19066

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APP R O V A L

This dissertation, entitled
RABBAN SHIM'ON BEN GAMALIEL NASI AT USHA:
A STUDY IN TANNAITIC LITERATURE
by
Shalom Novoseller
Candidate for the degree of
Doctor of Philosophy

has been read and approved by

[Signatures]

Date: 5/24/80
I wish to express my many thanks to those who guided me throughout my studies in the preparation of this dissertation. First to Dr. Baruch M. Bokser, who suggested the study of Rabban Simon ben Gamaliel for this dissertation.

My thanks to Dr. David M. Goldenberg and Dr. Sol Cohen who visualized the scope and framework of the present work. And most of all I express my sincere thanks to Dr. Neil Danzig, who guided me throughout the long and difficult days to completion. My special thanks to Dr. Daniel Rettberg for reading the manuscript and adding not only style and grammar but seeing it through to the last comma, ready for print.

Finally I pay tribute to the memory of Prof. Solomon Zeitlin with whose spirit (the spirit of lekh bekhohakha zeh) I reached this moment.
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<td>A. Z.</td>
<td>Arakhin</td>
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<td>&lt;A. Z.</td>
<td>Avodah Zarah</td>
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<td>BB</td>
<td>Bava Batra</td>
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<tr>
<td>BCE</td>
<td>Before the Common (or Christian) Era</td>
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<td>Bek.</td>
<td>Bekhorot</td>
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<td>Ber.</td>
<td>Berakhot</td>
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<td>Bik.</td>
<td>Bikkurim</td>
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<td>BM</td>
<td>Bava Mesiah</td>
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<td>BQ</td>
<td>Bava Gamma</td>
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<td>BT</td>
<td>Babylonian Talmud</td>
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<td>CE</td>
<td>Common (or Christian) Era</td>
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<td>Dem.</td>
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<td>Deut.</td>
<td>Deuteronomy</td>
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<td>&lt;Edu.</td>
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<td>&lt;Eruvin</td>
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<td>Ex.</td>
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<td>Hagigah</td>
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<td>Hul.</td>
<td>Hullin</td>
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<td>JPS</td>
<td>Jewish Publication Society</td>
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<td>JQR</td>
<td>Jewish Quarterly Review</td>
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<tr>
<td>JT</td>
<td>Jerusalem (or Palestinian) Talmud</td>
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<td>K.</td>
<td>Kaufman MS. of the Mishnah</td>
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<td>Ket.</td>
<td>Ketubot</td>
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<td>Kil.</td>
<td>Kilayim</td>
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<td>Description</td>
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<td>M.</td>
<td>Mishnah</td>
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<td>Ma&lt;as. She.</td>
<td>Ma&lt;aser Sheni</td>
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<td>Makhshirin</td>
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<td>MdRY.</td>
<td>Mekhilta deR. Shim&lt;on ben Yohai</td>
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<td>Mekhilta</td>
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<td>Miq.</td>
<td>Miqwa&gt;ot</td>
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<td>Ned.</td>
<td>Nedarim</td>
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<td>Neg.</td>
<td>Nega&lt;im</td>
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<td>Nid.</td>
<td>Niddah</td>
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<tr>
<td>&gt;Oh.</td>
<td>&gt;Ohalot or &gt;Ahilot</td>
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<td>Parma MS. of the Mishnah</td>
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<td>Pes.</td>
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<td>Qidd.</td>
<td>Qiddushin</td>
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<td>R.</td>
<td>Rabbi</td>
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<td>San.</td>
<td>Sanhedrin</td>
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<td>Shabbat</td>
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<td>Sheqallim</td>
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<td>Shev.</td>
<td>Shevi&lt;it</td>
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<td>Sot.</td>
<td>Sotah</td>
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<td>ShSM</td>
<td>H. Albeck, Shishah Sidre Mishnah</td>
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<td>Suk.</td>
<td>Sukkah</td>
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<td>T.</td>
<td>Tosefta</td>
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<td>Ta&lt;an.</td>
<td>Ta&lt;anit</td>
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<td>Tah.</td>
<td>Taharot</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>Ter.</td>
<td>= Terumot</td>
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<tr>
<td>TK</td>
<td>= S. Lieberman, Tosefta Ki-fshutah</td>
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<td>Yad.</td>
<td>= Yadayim</td>
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<tr>
<td>YT</td>
<td>= Yom Tov</td>
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KEY TO TRANSLITERATION

Alef.............\,
Bet................b.
Vet................v.
Gimmel...........g, with or without a dagesh.
Dalet.............d, with or without a dagesh.
Heh..............h.
Waw................w.
Zayin...............z.
Het................h.
Tet................t.
Yud................y.
Kaf.................k.
Khaf...............kh.
Lamed.............l.
Mem................m.
Nun...............n.
Samekh.............s.
Ayin.................<.
Pe..................p.
Fe..................f.
Sadi...............s.
Quf...............q.
Resh...............r.
Shin...............sh.
\S
Sin...............s.
Tav................t, with or without a dagesh.
Vowels: a for patah and qamas; e for sere, segol, and mobile shewa; i for hiriq; o for holem and qamas qatan; u for shuruq and qubus; Reduced (hataf) vowels are transliterated as nonreduced vowels. Quiescent shewa is not transliterated. Titles of books and articles follow the transliteration of the author, when available, otherwise I follow the system of transliteration used for this study. All translations are mine unless otherwise credited.
Introduction

In this work, it is my intention to focus on the life and activities of Rabban Simon ben Gamaliel (from here on: RSBG), exclusively in the Usha period (140-180 CE). An examination of RSBG's life and his decisions, recorded both in the Mishnah and Tosefta as well as the tannaitic midrashim, will reveal that various conditions and responsive leadership produced a legal tradition that became the foundation of rabbinic law.

The Mishnah (hereinafter: M.), as we have it, is a text first edited c. 200 CE. It is the product of Jewish leaders, of sages, culminating in the Tannaim, at the beginning of the third century CE. The text served as the basis for the discussions in the schools of Babylonia (Sura, Nehardea and Pumbeditha), as well as in the schools in the land of Israel. These discussions later became the Babylonian and Jerusalem Talmuds, for later generations of Jewish students the formal and undisputed interpreters of the Mishmah (the oral law).

The Tosefta (hereinafter: T.) is the compilation of tannaitic quotations that according to tradition were not included in the M. redacted by R. Judah haNasi.1 In the T. we have more extensive discussions of some of the laws.

1. An anonymous M. is considered as of R. Meir's collection and an anonymous T. is attributed to R. Nehemiah. BT San. 86a.
recorded in the M. Often the T. will identify an anonymous law in the M. as that of a particular tanna. The T. is a primary resource in tannaitic literature. Often we find in the T. interpretations of discussions in the M., sometimes as a commentary, and sometimes contradicting the attribution of the M. The collection is traditionally attributed to R. Hiyya and R. Oshaya. 2

The Mishnah is a document of antiquity sacred beyond measure in rabbinic Judaism. My work, however, does not concern itself with the status of the M. as the Torah shebe'alpe (the oral law), only as a document of ancient times that contains recorded statements (legal and historic) of the many rabbis in whose names these statements are quoted. For this work M. stands for a document redacted (according to tradition) by Rabbi Judah haNasi, and encompassing six sections (or "orders"). My conclusions are the results of analysis of the RSBG statements set against the background of the four decades of his life at Usha. The M. and T. documents themselves together with the other tannaitic works constitute the main evidence of the period for this study. To me it is self evident that the authority of RSBG's traditions offered as they are within the context

of a document edited only a generation after his time, is beyond question a more accurate record than those where many generations have separated the written record of the M. with the rabbinic authority that is quoted. I am concerned only with the authenticity of the RSBG traditions. J. Neusner and H. Albeck, on the other hand, have concerned themselves with the larger issue of the historicity of the process of Mishnaic transmissions. Both Neusner and Albeck appear to consider the M. as Torah shebe'alpe but Neusner contends that it had its origins as a whole at the beginning of the second century CE, while Albeck believes it is a part of an older interpretive process. To Neusner the M. is a separate development; to Albeck it is part of a larger and older oral tradition.

Arguments pro and con the status of the M. as Torah shebe'alpe are, however, not the concern of this paper. References to the M. as Torah shebe'alpe are peripheral to its record as a document of the tannaitic period. Whether the M. "... is a construction, a system, formed out of an


5. Ibid.
thousand years: Jews living in a mixed society under a foreign government.

My methodology begins with collation and examination of the tannaitic sources (consulting traditional commentaries), as well as the examination, comparison, and evaluation of primary manuscripts available to me. The present day accessibility to manuscripts of Mishnah, Tosefta, and tannaitic midrashim as well as the careful treatment of these works by S. Lieberman, J. N. Epstein, and others have now turned these tannaitic sources into open resources awaiting further scholarship that will go beyond textual issues and begin to focus on the life and history of the period. In this light, I have therefore critically analyzed the sources by consulting selected manuscripts (where available), and by evaluating all statements against the historical background of the period, in an attempt to comprehend the significance of the legal views espoused by RSBG and his colleagues.

Many scholars of the tannaitic period have written studies concerning other tannaim such as R. Meir, R. Yossi, R. Judah, and others. However, thus far no one has examined the pericopae attributed to RSBG in order to evaluate his impact upon that period. The contribution of RSBG in the

same period of these tannaim was given only peripheral
attention, even though he stood at the helm, and was the
father and immediate predecessor of R. Judah haNasi.

J. N. Epstein has created a monumental analysis of the
literary oeuvres of the tannaim, especially those with whom
we associate a compilation of mishnayot, particularly "The
Mishnayot of the Students of R. Akiba"; i.e. that of R.
Meir, R. Yehudah, R. Yossi, R. Shim'on and R. El'azar.9

The "Mishnah" of RSBG is placed by J. N. Epstein as one
among the "Mishnayot of Other Tannaim", i.e. not one of the
students of R. Akiba.9 Epstein's concern with the corpus of
legal traditions of RSBG moved him to collect thirty-five
pericopae attributed to RSBG. This meager sample does not
attempt to encompass the over four hundred RSBG pericopae in
tannaitic literature (see appendix). However, Epstein's
interests were not historical but textual, and he did not
discuss the historical significance of RSBG's legal
traditions.

From among the Jewish historians of the early rabbinic
period, H. Graetz devoted five pages to RSBG and discussed
three episodes of his patriarchate. He credits RSBG with
the reestablishment of the Sanhedrin in Usha, and of
affirming Israel's authority to intercalate the months and
establish the holidays. He also discusses the alleged

8. J. N. Epstein, Introduction To Tannaitic Literature op.
cit., pp. 96-159.

rabbinic authorities make decisions and a leader shows his strength and greatness by supporting rather than opposing them.

It is therefore quite evident that the contribution of RSBG to the halakhah, as recorded in the Mishnah, Tosefta and tannaitic midrashim, has not been accorded the full examination it deserves. A fresh analysis and critical evaluation of the sources will help to establish the identity of the "RSBG" at Usha, and will do away with the confusion of sources and attributions to other rabbis with the same name (RSBG). It was RSBG of Usha who left his imprint on Jewish tradition in the period of transition from lost dreams of a Jewish homeland to a Jewish life under a hostile Roman conqueror.

My study of RSBG is based on the examination of tannaitic sources¹³ and parallels of those sources when they appear in the JT or BT. I have also examined all the baraitot attributed to RSBG, and have taken note of those baraitot that modern scholars questioned, and after re-examination I gave my view.¹⁴ A baraita is basically, to mean any attribution to a tanna found in a source outside of the M. For the purposes of historical inquiry, I attribute more authority to baraitot in late tannaitic compilations

¹³. See Appendix, pp. 123-127.

¹⁴. See infra pp. 32-34 where I discuss BT Hor. 13b-14a and show that the baraita is of amoraic origin.
(i.e. Tosefta or halakhic midrashim), than I do to baraitot cited solely in the Talmuds.

Division Of This Work

My work is divided into three chapters. The first traces the election of RSBG as patriarch and develops the personality of the patriarch from his teachings and biblical interpretations.15 RSBG was patriarch, a position of recognized, albeit limited leadership due to the restrictions of the Roman government.16 The duties of the patriarch at Usha included: legislator, judge, administrator, and head of a Bet Din. The patriarch also made appointments to the leading offices of the various Jewish communities. Cities that had a large enough Jewish population had courts staffed by rabbis as judges.17 The patriarch, by his appointment of judges, endowed the courts with power.18 The most difficult function was that of representing the Jewish community to the Roman authorities.19 The Romans, on the one hand were satisfied

15. See infra pp. 17-34.
18. Court action was authoritative even above the usual six percent margin of error (when evaluating property), and on certain terms even to double the value or half its value. See M. Ket. 11:5.
to leave what they considered private matters, unworthy of their attention, such as Jewish dietary laws (kasrut) and matters of ritual purity to rabbinic leadership so long as their authority was recognized. The Jewish people and their leaders, on the other hand accepted that authority with equanimity for the sake of peace and the return of normal conditions to their communities.²⁰

The second chapter presents RSBG's views and rulings in the socio-economic areas, agriculture, the marketplace, the courts and relations with Gentiles. His attitude toward the non-Jewish peoples was one of respect and of a promise of blessing in return, when they treat the Jewish people benevolently. The Jewish courts could receive the testimony of a Gentile (as information) in certain matters, but he could not be a witness. A Jewish witness was liable to punishment for erroneous testimony, a rule that they could not apply to a Gentile. RSBG shows a familiarity with farm activity, and the Judaean landscape. His views show a concern for the farmer's needs and his decisions lessened the sabbatical year burden on the farmer as well as the laws of ritual purity for his tools. Transactions that involved non-Jews had to meet the market conditions of the (Roman) state. His decisions in money lending, his attitude toward wholesalers and builders always show an awareness of economic realism. Business men who were (haverim) were held to a strict performance of the trust.

²⁰. M. Avi-Yonah ibid, p. 50.
The third chapter deals with family relations, marriage and divorce, agency, and the Ketubah. RSBG's basic outlook is one of leniency,\textsuperscript{21} and of championing the woman in the halakhic discussions. Contrary to the view one might obtain from some of RSBG's positions on the Ketubah, overall it is clear that he was concerned about their halakhic status, and did what he could to alleviate their position.

\textsuperscript{21} See BT Git. 75b where R. Hisda observes that the "baraita is of RSBG who is lenient in matters of conditions".
I. The Patriarchate of Rabban Simon ben Gamaliel

The Patriarchate

At Usha\(^1\) in the Galilee, situated between the Mediterranean Sea and the Sea of Galilee, RSBG took part in the revival of the Jewish community in the land of Israel following the defeat of Bar Kokhba's armies at the hands of

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1. On the geographic location of Usha, see: Encyclopaedia Judaica Vol. 16 (Jerusalem: 1971), p. 18, s. v. Usha, where it is described as: "a town in Lower Galilee ... and as of importance in mishnaic and talmudic times ... and for some time it was the seat of RSBG". See also: S. Klein, Eretz HaGalil (Jerusalem: 1945), p. 76: "Usha is situated east of Haifa, where the hills of Galilee begin to rise", and Z. Vilnai, Ariel Antziquopedia l'Yediot Eretz Yisrael (Tel Aviv-Jerusalem: 1969), pp. 92-94. An important statement regarding Usha as the seat of Jewish leadership is BT Rosh Ha-Shanah 31b: umiYavneh leUsha umeUsha leYavneh umeyYavneh leUsha, and see M. Avi-Yonah, op. cit., p. 3, who corroborates the reading since an attempt to return to Yavneh was made but there was not enough of a Jewish community that remained and the Sages (Sanhedrin) returned to Usha. See also: B. M. Levin ed., Iggeret Rav Sherira Gaon (Haifa: 1921), p. 14, where R. Sherira Gaon refers to the semikhah of the five Sages as taking place between two big mountains and two big towns between Usha and Shofrebam. See also: A. Oppenheimer, S. Safrai, M. D. Herr, D. Rokeah, G. Foerster, Z. Yeivin, "Discussion: The Jewish Community In Galilee During The Period Of Yavneh And The Bar-Kokhba Revolt," Cathedra 4 (July, 1977), p. 65. For many reasons the Galilee area suffered little during the Bar-Kokhba Revolt, and as for the choice of Usha as the seat of the Sanhedrin it is possible that because Usha was a small town it was not under the constant vigilance of the Romans, and was therefore better suited for the seat of the patriarch as well. See also: S. Safrai, "A Description of Eretz Israel In The Geography of Claudius Ptolemaeus," Bar-Ilan, Annual Of Bar-Ilan University Studies In Judaica And The Humanities vol. 18-19 (1981), pp. 270-286. We may conclude from the fact that the author of this geography, Claudius Ptolemaeus (whose activities were during the years 135-160 CE), does not include the name of Usha, that it was not a city large and significant enough that the Roman Government should be interested in it during this period.
the Romans (135 CE).\textsuperscript{2} Usha became the chief gathering point for Jews from Judaea and Jerusalem, whether directly transferred there from the South by the Romans or whether they found their way there on their own.\textsuperscript{3} Judaea again lay in total ruins after the Bar Kokhba rebellion, and RSBG's observation that the fruits had lost their taste after the destruction\textsuperscript{4} reflects the extant of that devastation. It took decades before the land was brought once more to full productivity.\textsuperscript{5}

In order to attain greater acceptance in the eyes of the Roman authorities, as well as wider popular Jewish support, the rabbis at Usha invited RSBG, a descendent of Hillel\textsuperscript{6} and heir to the presidency of the Sanhedrin, to transfer that body from Yavneh to Usha. This northern shift from Yavneh in Judaea to the Galilee, had already begun unofficially as a result of the activities of the pupils of R. Akiba in Usha,\textsuperscript{7} but the other rabbis turned to RSBG when

\begin{itemize}
  \item[2.] See: M. Avi-Yonah, \textit{op. cit.}, p. 11: "At the time of the renewal of the central institutions at Usha, RSBG was the candidate for the office of Patriarch".
  \item[4.] M. Sota 9:12.
  \item[6.] Hillel min deDavid (JT Ta'a. 4:2, 68a).
\end{itemize}
it became feasible for a patriarch to be chosen. The position of patriarch was apparently vacant since the death of Rabban Gamaliel II during the war.6

Background Of RSBG's Election

The first to assume the duties usually associated with the patriarch, with the rights and powers as they were exercised by RSBG, was his father Gamaliel II. Around the year 95 CE Rabban Johanan ben Zakkai abdicated the leadership in favor of Gamaliel II who as a grandson of Gamaliel I, restored the line of Hillel.7 With the Bar Kokhba uprising Rabban Gamaliel II and the line of Hillel of the House of David disappear temporarily from the scene.8

The Patriarchal Chain Is Broken

The patriarchal chain was first broken by the destruction of the Second Temple in Jerusalem and the resultant assumption of leadership by Rabban Yohanan ben Zakkai at Yavneh. The term Nasi was not used with Rabban Yohanan ben Zakkai.9 The first restoration followed with


9. See infra n. 11 where Rabban Gamaliel II is placed at Yavneh in the late 70's CE.


11. G. Alon, ibid., p. 317., and p. 342, n. 86. See also G. Alon, Meukarim beToldot Yisrael (Tel Aviv: 1957), p. 270 and
selection as patriarch. The meeting in the Valley of Rimon that RSBG arranged had to achieve two results: the return of the power of intercalation to Israel, and the naming of RSBG (who was still a persona non grata with the Romans) to the position of patriarch. To achieve these ends RSBG arranged for seven illustrious elders to meet at the Valley of Rimon. Indeed these seven men by their very acceptance of this mission at the Valley of Rimon already gave an indication that they recognized that RSBG has the leadership qualities to fill the position of patriarch.

The Patriarchate Restored

With the election of RSBG as head of the Sanhedrin at Usha came the second restoration of the patriarchal house. As patriarch he had jurisdiction not only over strictly

15. R. Meir, R. Yehudah, R. Yosi, R. Sham‘on, R. Nehemiah, R. Eli‘ezer ben Ya‘akov, and R. Yohanan haSandlar. See A. J. Efrati, pp. 52-53 and M. Avi-Yonah, BiYeme Roma U'Bizantium op. cit., p. 10, who refers to an assembly at Usha where it was decided to create, not renew, the patriarchate.

16. See H. Mantel, op. cit., p. 37. See also: E. M. Levin ed., Iggeret Rav Sherira Gaon, op. cit., pp. 74-75, where R. Sherira Gaon records the line of Nesîyim including Hillel and followed by Sham‘on etc. then R. Yohanan ben Zakkai and Rabban Gamaliel and RSBG, but does not speak of Davidic origin. See also: L. I. Levine, "The Jewish Patriarch (Na‘i) in the Third Century Palestine", Aufstieg und Niedergang der Romischen Welt Vol. 2 19.2 eds. H. Temporini and W. Haase (Berlin-New York: 1979), p.665. who states that the claim of the patriarchs (i.e. the house of Hillel) to Davidic origin appears in the third century. As for RSBG, he claims: "absolutely nothing is known about his political dimensions...contacts with various Jewish communities and leaders are never mentioned, and even accounts of his relationships with other sages are rare." Contrast the view of J. Neusner, "The Formation of Rabbinic Judaism", jbid.,
the election of Rabban Gamaliel II to the patriarchate. The chain was again broken with the disorganization arising from the Bar Kokhba War and its aftermath.

As a result of the disruption of life in the land of Israel due to internal struggles during and prior to the Bar Kokhba War, the important function of the intercalation of the year (i.e., adding a month of thirty days)\(^\text{12}\) was assumed by Babylonian rabbis. Apparently, there was in Babylonia a group of rabbis who delegated these functions to themselves,\(^\text{13}\) and when the war ended these Babylonian rabbis wanted to maintain this power. The rabbis in the land of Israel fought to disqualify these rabbis from performing the intercalation process.\(^\text{14}\) The restoration of the intercalation procedure to the Sages of the land of Israel was orchestrated by RSBG and later contributed to his

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\(^{12}\) BT San. 11a.

\(^{13}\) "R. Hanina, a nephew of R. Yehoshu\(\text{a}\), went to Babylonia during the revolt and ... decided ... to intercalate the year and set the months ..." (BT Ber. 63a). See: Pisqa 80, L. Finkelstein, ed., Sifre on Deuteronomy (New York: 1969). See also: A. J. Efrati, "From Yavneh to Ushä", Sinai 77 (1975), p. 56, n. 74.

\(^{14}\) "R. Safra said:...because you are intercalating the years ... in the Diaspora (behus la\(\text{a}r\)es) say to him in our name [to desist] if he listens, 'then good, and if not he will be ostracized (beniduy)'" (BT Ber. 63a). See also: JT Ned. 6:13, 40a: "Hananyah the nephew of R. Yehoshu\(\text{a}\) intercalated in the Diaspora, Rabbi sent three letters [of protest] ... a small group in Israel is preferred to the Great Sanhedrin in the Diaspora".
selection as patriarch. The meeting in the Valley of Rimon that RSBG arranged had to achieve two results: the return of the power of intercalation to Israel, and the naming of RSBG (who was still a persona non grata with the Romans) to the position of patriarch. To achieve these ends RSBG arranged for seven illustrious elders to meet at the Valley of Rimon. Indeed these seven men by their very acceptance of this mission at the Valley of Rimon already gave an indication that they recognized that RSBG has the leadership qualities to fill the position of patriarch.

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rabbincic matters as exercised by the early patriarchs (Nesi'im), but also over matters which were originally the province of the High Priests, such as the determination of leap-years and the dates of the Jewish festivals.

RSBG's tasks were numerous. In general terms, they were two: to lead the community as head of the Sanhedrin, and to elevate the patriarchate to the position of honor and glory it had previously held. For this second purpose, RSBG's decrees and rulings are intentionally couched in honorific terms, or deal with in some way with the person of the patriarch and his position. 17

The Role of Patriarch as Seen in His Teachings

Higher Demands Made Upon The Leader

The Mishnah states: "A bridegroom who wishes to recite the Shema on the first night [after his wedding] may recite it. RSBG says, not everyone who wishes to pronounce the NAME may pronounce it." 18 A previous Mishnah 19 states that a bridegroom is not obligated to read the Shema on the first night [of his wedding] until the end of the Sabbath. This law is followed by a narrative about Rabban Gamaliel who did

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17. See infra p. 21.
18. M. Ber. 2:8.
19. Ibid., 2:5.
read the [Shema] on the first night after his wedding. When asked by his students why he did not follow the established rule, RSBG answered that he did not want to take the Kingdom of Heaven from his mind, even for a moment. RSBG's expression "of not everyone who wishes to pronounce the NAME", is confirmation that the patriarch and the members of his family (even extending to the patriarch's household slaves) are unique. RSBG is saying that everyone must obey the law, but that with higher rank comes greater responsibility. Reciting the Shema at times of universally acknowledged emotional stress is forbidden to the general public, since one must recite the Shema with the proper concentration (kawannah) if one is to fulfill one's obligation. The patriarch has not only special privileges, but special obligations toward God as well. Therefore he must recite the Shema even when under stress.

Another of RSBG's teachings that "a person should always consider himself a scholar" and thus avoid working on the Ninth of Av", even in a place where people are working, may seem to contradict the principle of special

20. Ibid., 2:7.

patriarchal responsibility. However, it is explained with the dictum, "Go out and observe how many are idle in the market place." The law regarding the Ninth of Av must also be understood in the light of the awful memories associated with the destruction of the Temple. As great as the impact of the destruction upon the scholarly community was, RSBG was able to set aside his personal grief and think of the masses when he said: "From the day on which the Temple was destroyed, it would have been reasonable not to eat meat and not to drink wine, but a court does not make decrees for the community concerning things which the community cannot bear." However, for a one day observance of the Temple's destruction RSGB felt that the entire Jewish community should participate and practice as though each member were a scholar.

General Outlook on Education

As head of the Jewish community at large, and as head of the patriarchal household, he had the responsibility of not only providing the leadership for the academies but for giving his sons the greatest exposure to Jewish learning. Sending his sons to study in different academies was not only proper exposure to different educational approaches but

22. Puq hazi kama batlane yikka beshuqa (BT Ber. 17b, and Pes. 55a). People who will see someone not working on the Ninth of Av will say: "He has no work [today]" (melakhah hu delet le), and not consider him one of the scholars.

was of great political wisdom as well. It is especially noteworthy to read his comment on the Greek language. According to RSBG the Greek language has a special status; it is superior to all others, one may write [translate] the Books [Torah, Prophets and Holy Writings] only into Greek. The JT states with great definitiveness that, "They examined and found that Greek is the only language that lends itself to a proper translation of the Torah." It was RSBG's attitude toward education that set the standard for the educational standards for all men.

Tests of Leadership

The following quotations from M. M. may be seen as an overview of RSBG's hopes and aspirations, if not of his achievements. Among the sayings in the first chapter of M. M., two are attributed to RSBG, one in the name of Shim'on and one with his full title RSBG. According to R. Menahem Ha Meiri the earlier saying quotes RSBG when he was a young man (thus: Shim'on and not RSBG) and the latter


25. Af bisfarim lo> hitiry sheyikotyu >el>a yewanit (M. Meg. 1:8). See also: T. Sot. 15:8 where it is recorded that they permitted the house of Rabban Gamaliel to study Greek, because they were close to the government.


when he was an adult. As a young man, when he was in the company of the great, he found that the wisest approach to attaining wisdom and knowledge was through maintaining silence while the wise men spoke. In the later quote, he emphasizes the importance of one's actions being consistent with one's words. This is an attribute that fits the patriarch easily, since he is in a better position of following up his words with deeds, and thus it should be seen as the more mature man speaking. RSBG then returns to his first premise by indicating the opposite, that those who speak too much will miss the point, and he has not forgotten the lesson of his youth. The chapter concludes with RSBG's minimum requirement for stability of government and society: administration of justice, the pursuit of truth, and peace.

Honor Status is Supreme

In the Sifra on Leviticus 10:12 an anonymous interpretation of the verse places the remaining two sons of Aaron in a positive light, the elder two having died as a result of their presuming to offer incense before God commanded it. Unlike the elder sons, they are to have honor equal to their father, since they accepted God's will in

28. Cf. Iggeret Rav Sherira Gaon op. cit., pp. 23-24, where Rav Sherira Gaon explains a reference in the Mishnah attributed to Ben Zakkai and not Rabban Yohanan ben Zakkai, as having been made in an earlier period and recorded in the Mishnah without indicating the change in status.

silence, and did not protest the death of their brothers. In contrast RSBG offers an interpretation of R. Elazar ben Azaria which gives a different reason for the exclusive honor of Aaron's younger sons as his heirs. The point of departure is reading into the text the phrase 'and they had no sons'\(^{30}\). By implication, we are to understand that had Nadab and Abihu had sons they would retain the right of the first born, a position tantamount to honor. Since they had no children, the inheritance passed to the younger sons, and honor with it. In the interpretation of RSBG there is clear emphasis on inheritance as a vehicle for family honor. In an interpretation of the phrase "so that the days of rule of his kingdom may be lengthened, he and his sons (Deuteronomy 17:20)" the Sifre\(^{31}\) states: "If he dies his son will take his place, and not only of [kings] is this to be understood, but it applies to all leaders. If one dies the son fills his place; that is the meaning of 'he and his sons in Israel'". Following this interpretation RSBG's brother Hananyah concludes with the verse "and even what you have not asked of me I shall give unto you, wealth and honor".\(^{32}\)

As honor was of primary importance to the patriarch and his family, it became an important theme of their teaching. In a discussion concerning the qualities of the

\(^{30}\) Wayamat Nadav waAbihu lifne hashem behaqrivam yesh zarah lifne hashem uvanim lo hayu lahem (ibid).

\(^{31}\) Pisqa 162, L. Finkelstein, ed., Sifre on Deuteronomy op. cit.

\(^{32}\) Kings I 3:13.
Canaanites. RSBB offers an interpretation in the name of R. Yehudah ben Laqish. The theme of the quotation is "those who honor the righteous person merit peace." Similarly, RSBB ruled that stones once hewn for one's father's tomb but not used for that purpose could not be used for anything else because they were once associated with his father. He also drew the principle of patriarchal honor from the importance of honoring parents, the righteous, and elders.

The Leader Has No Faults

The Mekhilta on Exodus 18:3 presents a discussion on the importance of circumcision. All discussants, except RSBB, blame Moses for the delay in circumcising his son.

33. Parshat >Ahare Mot, chap. 9, I. H. Weiss, Sifra d'bai Rav, op. cit.

34. So in ed. princeps and Ms. Vatican 66. In other editions: "R. Shim<on ben Laqish", which is an obvious error.

35. RSBB >omer mishum R. Yehudah ben Laqish hare hu >omer ha>adam ha>Adod ba<anaqim hu weha>ares shaqtah mimilhamah. Bne >adam shekhbdu et hasadig zakhu shetishgot <alehem et ha>ares (Sifra d'bai Rav, op. cit.).

36. BT San. 48a.

37. The principle of honor for a patriarch is illustrated in the Sifre with the following story. At a gathering on the occasion of a party for Rabban Gamaliel's son, the host himself was serving wine to the Rabbis, and the Sages were debating: "Is this the proper action for Rabban Gamaliel?" When it was shown that Abraham served his guests and even God serves all of creation then of course it is in order for the patriarch to serve his guests as well. See: Pisqa 38, L. Finkelstein, ed., Sifre on Deuteronomy (New York: 1969), pp. 74-75, n. to line 10.
According to RSBG, Moses was always guiltless and at no time was Moses in danger. The one at fault was the child, and it was the child whom the angel sought to kill. RSBG could not tolerate a notion that Moses committed a sin for which the angel of God would want to kill him. As patriarch he saw in Moses the infallible leader that he hoped his colleagues and Jewry would see in him.

The Sifre on Deuteronomy 33:6 presents a number of interpretations for the biblical accounts of the story of Bilhah, Reuben and Jacob. Various atonements are suggested for Reuben, including intercession by others, personal repentance, and forgiveness in the world to come. One tradition even denies forgiveness altogether. RSBG, in contrast to all the others, denies any possibility of wrongdoing by Reuben. He interprets Genesis 49:4 as taking up the cause of Reuben’s mother Leah. RSBG finds it impossible to ascribe adultery to the one whose descendants would stand at the head of all the tribes pronouncing a curse on the adulterers (Deuteronomy 27:20). The leader cannot, by his very nature, be a hypocrite!


40. BT Shab. 55b has R. Shim’on b. El’azar.

41. See commentary of R. Solomon Eidels ad. loc., who explains that Reuben considered Bilhah as a maidservant and not as the formal wife of Jacob.
Knowledgeable In Many Fields

During the course of his career RSBG handed down many opinions relevant to a wide variety of legal and moral problems. In medicine he identified an embryo-fetus as having human form if it had facial outlines such as the claw of a rooster\(^\text{42}\) or the tongue of an ox.\(^\text{43}\) After birth he recognized a full pregnancy as one where the child survived for at least thirty days.\(^\text{44}\) He identified bleeding as normally or abnormally menstrual.\(^\text{45}\) He distinguished a wound that would heal from one that would not.\(^\text{46}\) He ruled in problems related to circumcision.\(^\text{47}\) He made practical decisions that lay down the basic principles for future rulings on who is considered deaf, mute, or borderline insane, making it easier to determine the level of legal responsibility in individual cases.\(^\text{48}\) In areas of ritual purity, he gave the measurement limits for a migwah.\(^\text{49}\) To establish proper apparel, RSBG's measurements are again quoted.\(^\text{50}\)

\(^{42}\) T. Nid. 4:9.
\(^{43}\) Ibid., 4:7.
\(^{44}\) T. Shab. 15:7.
\(^{45}\) T. Nid. 4:2.
\(^{46}\) T. Hull. 3:7, 3:5.
\(^{47}\) T. Shab. 15:9.
\(^{48}\) T. Ter. 1:1.
\(^{49}\) M. Miq. 9:5, M. Kel. 7:6, K. 7:9.
\(^{50}\) BT Shab. 114a.
The Leader Takes The Blame

In addition to being a widely educated and knowledgeable judge, RSBG was also a wise leader. One can see this from his comments on Deuteronomy 1:13, a passage in which Moses is shown appointing officers. RSBG comments on the pitfalls of choosing from many qualified candidates:

"There is no assembly chosen concerning which people will not complain: Why was this person selected and not that one?"\(^5\) We see in RSBG the man of experience and authority, aware of the problems that face a leader, who must decide between many qualified candidates.

The Family is Wholesome

The Mishnah, in discussing some of the laws of inheritance, states that a father who wants to deny inheritance to his heirs can give his property to others as gifts. "If a man assigned his property to others, and left sons; what he has done is done, but the Sages are not pleased with him. RSBG says, If his sons did not conduct themselves properly, he is to be remembered for good."\(^5\) RSBG is a firm believer in the rights of heirs, viz. T. BB 8:1 where RSBG returns to the rightful heirs the property that the father had originally given to another as a gift and the

\(^5\) Pesaq 13, L. Finkelstein, ed., Sifre on Deuteronomy, op. cit.

\(^5\) M. BB 8:5.
recipient said that he does not want it. However, where there is improper behavior on the part of heirs, not only is the action of the father denying inheritance to such sons valid, but it is also blessed. We see therefore that for RSBG the ethical wholesomeness of the family was of primary importance.

The Traditions Of The Patriarchal Household

The rabbinic sources view the patriarch's family life as epitomizing high standards in religious observance and scholarship, and as being based on proper moral conduct. This can be seen from the fact that practices of the patriarchal home are often cited together with the legal decisions recorded in rabbinic literature. Some of these traditions are cited in RSBG's name. RSBG is quoted as saying: "We would make a clean animal take an interest in its offspring on a festival", 53 and: "In my father's household they used to give white clothes to a Gentile laundryman three days before the Sabbath". 54 A third example involves a discussion of what sorts of materials may be used for wicks in lights used on the Sabbath. RSBG relates that the members of his father's household would wrap the wick over a nut and light it. 55

Holiday Jubilance

The Tosefta\textsuperscript{36} records a tradition that RSBG danced while juggling eight lit torches, while the same source quoted in the JT\textsuperscript{57} has eight torches of gold. The same tradition speaks of his agility as he celebrated. He would place his index finger\textsuperscript{58} in the earth or on the floor, bow, kiss the ground and immediately straighten up. Even though this story refers to RSBG,\textsuperscript{59} it is difficult to ascribe it to him, since he lived in the period after the destruction of the Temple. However, since there is no indication in the narrative that this took place during Temple days, it is just as likely that the celebration on the eve of the second day of Sukkot (Simhat Bet HaSho\textsubscript{evah}) was celebrated in Usha, and that the actor was RSBG.

First Fruits

Concerning first fruit offerings, RSBG ruled: "One may not bring dates as the first fruit offering [Bikkurim] except from those that grow in Jericho, and we do not read

\begin{itemize}
\item \textsuperscript{56} T. Suk. 4:4.
\item \textsuperscript{57} JT Suk. 5:4, 55c. According to J. Neusner the reading "torches of gold" must be a mistake. See: J. Neusner, \textit{The Peripatetic Saying} (Chico, Cal.: 1985), p. 133.
\item \textsuperscript{58} BT Suk. 53a: "His two thumbs".
\item \textsuperscript{59} See: \textit{The Peripatetic Saying}, \textit{op. cit.}, where J. Neusner devotes a chapter to this RSBG story and presents in columnar form the various readings indicating how the BT "borrows and develops" details for its presentation of a story. See also: Neusner n. 50, on pp. 131-133.
\end{itemize}
[the biblical passage] except for the premium dates or the large dates [kotavot]. The special favoritism for Jericho in Temple days when Bikkurim were offered, may be traced to the renown of Jericho as the city of dates. However, the quoted comment of RSBG in the Tosefta speaks not only of the glory that past, but of his view requiring high quality of offering to be used in the performance of miswot. The later tradition of using the best quality for performance of a miswah (hiddur miswah), is already reflected in RSBG's comment.


61. RSBG >omer >en mevi>in temarim >el> a miYeriho we>en gorin >el> a <al haKotavot (T. Bik. 1:5). See: JT Bik. 1:3, 63d. See also: S. Lieberman, The Tosefta Bik. 1:5, p. 287, n. 16, that is to say: "[We do not read the Biblical passage except] on the dates of Jericho for they are the best". See also: TK p. 829, line 16.

62. See: Deut. 34:3: We>et biq<at Yeriho <ir hatmarim.

63. Ex. 15:2 states: "This is my God and I shall adorn Him" See: Masekhta deShirah, Parsha 3, "H. S. Horovitz, I. A. Rabin, eds. Mechilta D'Rabbi Ismael op. cit., R. Ishmael says: "... I will adorn Him with misvot I will make a beautiful lulav, a beautiful sukkah ...". See also: BT Meg. 28a: "One sheep [for the daily sacrifice in the Temple every morning etc., the Torah could have written] keves why keves yehad? One [is to be understood as] the best one in his flock (hammeyuhad shebe<edro)".
Approach of Warmth And Love

Love Of The Land, The People, And God

After so many decades of strife, loss and destruction, the Jewish people that remained in the Land were very much depressed. It was the patriarch's great faith that held the remnant of Israel together. He preached God's love for Israel, the mysterious nature of God's ways and the inherent worth of the Jewish people. RSBG's interpretation of Exodus 16:4 as recorded in Mekhilta, demonstrates God's great love for Israel. RSBG goes a step beyond the biblical verse, and on the phrase "I shall cause bread to rain from heaven", he comments: "Such a change God performs only for those whom He loves"64. God's ways are mysterious; i.e. His help may come in a most unexpected way. In the incident at Marah65 the bitter waters became sweet after throwing a tree with a bitter taste into the water. RSBG observes how God's ways are different from man's therapies.66 We may think that a sweetener should be applied to the bitter to change its taste, but God changes the bitter through a bitter therapy. God's prophets did the same; Isaiah healed with a date [plaster] that ordinarily putrefies upon contact with flesh,

64. Ulef shehen havivim lefanov shanah <alehen ma<aseh bereshit (Masekhta deWayiss<a, Parsha 2, H. S. Horovitz, I. A. Rabin, eds. Mechilta D'Rabbi Ismael op. cit.).


66. Masekhta d'Vayiss<a, Parsha 1, MdR. op.cit.
and the prophet Elisha added salt to purify the water. 67
This illustrates that the ways of God and the prophets who
speak in His name are different from ordinary human ways,
and that help may come unexpectedly.

To concretely express the importance of the land of
Israel he required that the biblical payments associated
with certain fines and redemptions be paid in Israel
coinage, even by those living in Babylonia. 68

Collegial Relationships

In his professional relationships we find RSBG always
assuming a position of great respect for the opinions of his
colleagues. On one occasion during Sukkot, RSBG was having
difficulty with his eyes and he relates that rather than
decide for himself, he deferred to R. Yossi for permission
to sleep outside the Sukkah. 69 He is also pictured as
deferring to his colleagues in cases brought to them by
others. On one occasion he did not interfere when the others
ruled that Shim'on b. Kahana could not import wine with the
status of heave-offering into the land of Israel. Although

68. RSBG says: "[Coinage for the payment of] the marriage
contract of a woman and for a creditor [follow the coinage]
of the place of the marriage. The five sel'ak for the
redemption of the first born and the thirty for a slave, the
fifty paid by the one who rapes or seduces a girl, the one
hundred paid by the one who spreads malicious rumors about a
girl, all of them, even though they are in Babylonia, collect in the coinage of the land of Israel" (T. Ket.
13:3).
69. T. Suk. 2:2.
he had the authority to overrule his colleagues, he chose to respect their decision and not to interfere.  

The Sounds of Rebellion

It is impossible to conceive the life of a public figure without opposition. However, the kind of plot described in the Talmud where R. Meir and R. Nathan plan to overthrow the patriarch RSBG, has many internal contradictions that deserve reexamination. In the tannaitic sources we have the following regulations, that in later years were woven into the story of a plot against the patriarch. The Tosefta presents the general decorum to be followed when the patriarch (Nasi), chief justice (Av Bet Din), and the sage (Hakham) enter the academy. The JT quotes a few rules of the Tosefta with minor additions, but the entire plot "story" is omitted. A separate incident concerning R. Meir is included. In the Sifre RSBG states

70. One may not import produce designated as heave-offering from another country into the land of Israel. Said RSBG: "In Acre, I once saw Shimon b. Kahana drinking wine of the status of heave-offering. When he said, 'This wine comes from Cilicia', they required him to drink [the wine] on the boat [i.e. he was not permitted to bring the produce into the land of Israel]" (T. Shev. 5:2).

71. BT Hor. 13b-14a. See: B. M. Levin, ed., Iggeret Rav Sherira Gaon, op. cit., p. 25 where R. Sherira Gaon uses the story to show that some mesikhtot were not fully known to some rabbis, and in this case [masekhet] Ugsin to RSBG.

72. T. San. 7:8-11.

73. RSBG Omer hamaaleh et haQatan lemagom gadol wehaGadol lemagom qatan zeh bisyu<la (Pisqa 17, L. Finkelstein, and H. S. Horovitz eds. Sifrei on Deuteronomy op. cit.)
that he who elevates the low person to a high position, or
moves a great to a low position, is engaging in blasphemous
compromise. Again, no plot story is included. Modern
scholars have been divided in their understanding and
interpretation of the sources, but all agree that there
exists only an amoraic version of the rebellion story. The
language of the story is Aramaic and its structure is
amoraic. For example: Some of the terms used such as "gali
<Ugsin [lecture to us on tractate <Ugsin] and "pashat garas
wetana" [he unfolded taught and interpreted] are Babylonian
in origin. Details such as expulsion from the academy (Bet
haMidrash) as a punishment and the division of leadership
between the patriarch, chief justice and the sage (Naši, >Av
Bet Din and Hakham) as a solution, point to amoraic
authorship, on the grounds that the later rabbis wanted to
discredit the prestige of the patriarchal house of their own
day. They, therefore, invented the story of the plot for
purely political ends. This corroborates the other evidence
I have found that the position of patriarch was secure in
the period of RSBG. There was no possibility of deposing a

74. D. Goodblatt, "The Story of the Plot Against R. Simeon
B. Gamaliel II". OP. CIT., p. 349, n. 1, lists the scholars
who take the plot story as authoritative and those who do not.

75. "What the Talmuds now contain are later efforts to use
incidents from the past—in this case by recounting them in
such a way that the prestige of the Patriarchal house would
either be discredited ... or enhanced ...". R. Goldenberg,
"History and Ideology in Talmudic Narrative." Approaches to
Ancient Judaism, vol. 4, ed. W. S. Green (Chico, Ca.: 1983),
p. 168.
descendant of the House of David, nor of finding a substitute to the son of Gamaliel II and a descendant of Hillel.

Foreign Relations

It is important for us to note how RSBG viewed the Roman governors of the land of Israel. The Mekhilta quotes two interpretations of RSBG on Exodus 14:7. The first compares the ancient Egyptian use of wealth with its use by the contemporary governors of the land of Israel. The second is an interpretation of the term "shalishim" in the Biblical text as adding a third driver to each chariot.76 RSBG's comment is on the surface a critique of the Egyptian government, but by implication it praises the Roman government. Egypt has idle wealth as is shown by its three hundred chariots available at a moment's notice, while the Roman chariots, on the other hand, are in use day and night. The Pharaoh shows extreme animosity of the Jewish people, as is evident by his adding a third driver to speed the recapture. The Romans, by implication, are benevolent and magnanimous in their rule of other peoples. Only a wicked King like the Pharaoh would relentlessly pursue the Jewish People.

76. Masekhta deWayehi, Parsha 1, H. S. Horovitz, I. A. Rabin, eds. Mechina D'Rabbi Ismael op. cit.
II. RSBG'S POSITIONS IN SOCIO-ECONOMIC ISSUES

In examining the many areas where RSBG's comments and rulings touch matters of agriculture and business, I will examine not only the arguments of the litigants, but more importantly the underlying issues as interpreted by RSBG. The pericopae that involve the business world touch on such legal concerns as property, damages, personal rights, zoning, and the courts. Agricultural problems cover such areas as the size of fields, the sabbatical year, laws affecting the poor, and tithes.

Agriculture

The following is an examination of RSBG's opinions, legal rulings, definitions, and other statements involving farming.

Familiarity With Farm Activity

RSBG was familiar with both the theory and practice of farming. In describing the coarse wide furrow the farmer might use after a heavy rain, RSBG stated: "[This furrow] was known as a horse's tail, ultimately the earth of this furrow would spread to that furrow."¹ We can see that RSBG was familiar with the descriptive language of the farmer. In defining virgin soil, RSBG considers the human touch the crucial factor. If one "has removed sherds" from a land

¹ T. Kil. 1:17.
area, that soil is no longer untouched. An anonymous view quoted within the same context considers the evidence of produce as the crucial criterion for determining whether or not soil is virgin. For RSBG, however, the human touch makes the difference. It makes no difference whether the farmer digs in the soil specifically for the purpose of planting seeds or only for digging out sherds.  

The Tosefta preserves a similar example when it gives a full description of the growth cycle of the fig tree in the name of RSBG. "From the time the tree produces leaves to the appearance of the hard kernel is fifty days, from the kernel stage to the unripe fruit stage is fifty days and to the full developed date is fifty days." In addition, he was familiar with the detail of the Judaeoan landscape. RSBG says: "A mark of mountains is [the growth of] pine trees, a mark of valleys is the growth of palm trees; a mark of river-beds is [the growth of] reeds; and a mark of lowlands is [the growth of] sycamores." RSBG, at one point, gives a farm measurement by analogy to the weaving trade.

Upon entering the promised land the Israelites were not to eat the fruit of trees they might plant for the first three years of their growth, the technical term for such fruit is Ḫolah. The Mishnah carefully describes what is and

2. T. Shev. 3:15.
4. T. Shev. 7:11, BT Pes. 53a.
5. Leviticus 19:23.
what is not <i>Orlah</i>. Should a single root of an uprooted tree remain in the ground, the root is exempt (i.e., what will grow out of this root does not come under the law of <i>Orlah</i>). How thick must that root be? RSBG, quoting R. Elazar Ben Yehudah of Bartota states: "As the weaver's stretching pin". It is also possible that the familiarity of the patriarch's family with the silk trade and the weaving process accounts for the use of the weaver's tool as a guide for determining the thickness of the root.

In a discussion concerning liability for tithes, the Tosefta in the name of RSBG describes the <i>rīkha</i> onion as one that has only a single husk. At another point he disputes that Sicilian beans are quadrangular, saying that "There has been nothing [created] square since the six days of creation." In describing Egyptian lentils, RSBG mentions that they have no stones. In planting garden vegetables the farmer often planted a strange plant in order to separate one vegetable from another. RSBG expressed his concern for the farmer’s need to separate plantings by stating: "[That we may] surround small areas [of vegetables

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6. M. <i>Orlah</i> 1:4, and see: H. Albeck, <i>ShSM ad. loc.</i> (p. 294), who translates: "A root whose thickness is as thick as the pin with which the weavers pull the edge of the cloth".


10. Ibid.
with a plant called] mustard hare'a", and it would not be
considered mixed planting.¹¹

Size Of Fields

Both the Mishnah and Tosefta illustrate RSBG's
knowledge of farm measurements in the course of discussing
what constitutes an orchard. RSBG's definition is: three
trees planted sufficiently far from one another, that an ox
with its yoke may pass between them. The Tosefta offers a
similar definition in the case of saplings, gourds and
melons.¹² In terms of area a seah-space covers two thousand
five hundred amah square.¹³

The Sabbatical Year

During the Usha period Jewish farmers in the land of
Israel observed the sabbatical year although they did not
observe the Jubilee.¹⁴ The courts forbade any activity
undertaken to improve the land so as to promote growth in
the sabbatical year. In discussing the tasks that the farmer
may carry out in a field during the sabbatical year, the
Mishnah¹⁵ includes the placing of heaps of manure for
spreading the next year. One may also fence in an area for

¹¹ T. Kil. 2:5.
¹² M. Shev. 1:5; T. Shev. 1:3.
¹³ >Alpayim wehamesh meot amah meruba<ot (TK Shev. p. 481).
¹⁵ M. Shev. 3:1-4.
keeping sheep so as to create a self-fertilization system. Fertilizing and readying the land for plowing in the eighth year was of special concern to the Sages because by so doing the farmer appeared to be improving the field during the sabbatical year. RSBG permitted such activity provided it involved no forbidden acts and the farmer made an attempt to show his awareness of the seventh year.

RSBG made several decisions designed to lessen the burden on the farmer that such a stricture would naturally cause. He permitted cutting reeds during the sabbatical year by simply altering the method. Such altering was, for RSBG, a sufficient sign that the farmer was aware of the restrictions of the sabbatical year. "In a place where they are accustomed to cut, he plucks, and in a place where they are accustomed to pluck, he cuts." Similarly RSBG permitted the throwing of reeds into a reed thicket. Throwing the plucked reeds into the thicket was a change from the usual burning of the reeds. RSBG permitted the planting of non-fruitbearing trees during the sabbatical year if the intent was that they should act as a fence. He permitted the training of animals in plowing as long as it was not done on the farmer's own field. On a neighbor's farm


17. "Permits" is missing, in Ms. E., see: ibid., ed. Zuckerman, ad. loc.

18. S. Lieberman, The Tosefta, Shev. 3:19, p. 178, n. 43.

one could train the animal as long as he did not attach a plow.\textsuperscript{20} The concern for not engaging in work (or its appearance) that is prohibited in the seventh year is satisfied when one trains the animal on his neighbor's farm. One need not go to the extreme of the anonymous position that the farmer must search for sandy soil for the training.

Cutting down a fruit bearing tree during the sabbatical year is forbidden because we must preserve all the fruit for food. The Mishnah preserves a dispute between the Houses of Shammai and Hillel giving different times when the ripening of the fruits is complete.\textsuperscript{21} Regarding the prohibition of cutting down fruit trees in the seventh year the Mishnah states that an olive tree that produces a quarter of a \textit{qav} of fruit a year may not be cut down during any year in accordance with the biblical rule.\textsuperscript{22} RSBG in this case introduced the principle of quality as well as quantity in determining the right to cut down the olive tree.\textsuperscript{23}

The sabbatical year restrictions were a burden not only to farmers, but to borrowers and lenders as well. The Sages struggled with the laws of the sabbatical year, especially

\textsuperscript{20} T. Shev. 3:20.

\textsuperscript{21} M. Shev. 4:10.

\textsuperscript{22} Deuteronomy 20: 19-20: "... thou shalt not destroy the trees ... for thou mayest eat of them.... Only the trees of which thou knowest that they are not trees for food, them thou mayest destroy and cut down ...". JPS, (Philadelphia: 1962) p. 238.

with those pertaining to loans and their cancellation. 

Already in the Second Temple period, Hillel, seeing the hardship placed upon people who could not get loans because of the sabbatical year cancellation, created a legal instrument to prevent loans from being cancelled. This document was referred to as the prosbul. In essence, it transferred the right of collecting the loan to the court. In the course of time further decisions burdened it with many rules, interpretations and exceptions. RSBG enacted two of these changes. Before RSBG's time, the prosbul, to be effective, required the borrower to own land. RSBG ruled that a lender could collect debts from many borrowers as long as there was at least one land owner among them. In the matter of loans made after the prosbul has been written, RSBG maintains that the sabbatical year does not cancel them. He intended this corrective measure to help both

24. Deut. 15:1-2: "At the end of every seven years thou shalt make a release ... every creditor shall release that which he hath lent unto his neighbour ..." (JPS, op. cit., p. 257).

25. "[A loan secured by] a prosbul is not cancelled [by the seventh year]. This is one of the things that Hillel the Elder ordained, when he saw that the people refrained from making loans, and transgressed on what is written in the Torah ..." (M. Shev. 10:3). See: E. Schurer, The History of the Jewish People in the Age of Jesus Christ vol. 2 (Edinburgh, 1973), pp. 366-367, who states: "The 'judicial proviso' [Prosbul] was introduced under Hillel's influence".

26. Five [people] who borrow from one [lender] on one note, then, for each borrower who owns land the court may write a prosbul and the one who does not own land you may not write a prosbul. RSBG says: "Even if only one borrower has land a prosbul is drawn for him, [i.e. for the lender]" (T. Shev. 8:8-9).

27. T. Shev. 8:10.
borrowers and lenders, both rich and poor. The borrowers had found various loopholes to circumvent the proshul for their own purposes. When it suited the borrower he claimed he had no real estate, and therefore the court could not enact the proshul against him. Another rule previously required the lender to write the proshul before making the loan. However, since the intent of the proshul was to protect the lender, RSBG maintained that a postdated proshul is also valid.

The basic need during the sabbatical year was food both for the people and for the animals in the field. People were not to horde food in their homes. If it no longer was available in the field, food had to be taken from the home and brought into the field. Food that was in the field but not easily accessible was not considered available. Thus RSBG²⁸ says:²⁹ "They may [continue to eat [dates which they have in their homes] by virtue of [the dates] which [have fallen from their stems and are lodged] in upper branches [of the date palms], but they may not [continue to] eat [dates which they have stored in their homes] by virtue of [the dates] which [are lodged] in the [lower] prickly branches. And all other fruit of trees, such as, pears, crustumenian [pears], quince³¹ and crab apples,³² they may

²⁸. "Ben Gamaliel" is missing in Ms. E., see: ed. Zuckermandel, _ad. loc._
²⁹. _T. Shev_. 7:16.
eat the fruits which grow in the hill country by virtue of the fact that fruit of the same kind is still growing in the fields of the valley, and they may eat fruit which grow in] the valley by virtue of the fact that fruit of the same kind is still growing in the fields of the hill country." RSBG shows himself here a careful observer of the nature of animals. They may search for food on the branches of trees but will make no effort to find it among thorns. As for other fruits, the animals will roam on hill and valley, and as long as there is food on the hill you need not provide food in the valley.33

The Poor

The discussion in the Mishnah and Tosefta of the forgotten sheaf is based on biblical law.34 The principles underlying RSBG'S line argument are: A forgotten sheaf that is surrounded by standing grain is not in fact considered forgotten; rather it is like other standing grain (qama) that belongs to the farmer. Because standing grain surrounds the forgotten sheaf, it imparts its character to it.

However, a section of a field with forgotten standing grain

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32. M. Jastrow, ibid., s. v. <azror p. 1049.


34. Deuteronomy 24:19: "When thou reapest thy harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go back to fetch it; it shall be for the stranger, for the fatherless and for the widow ..." (JPS, op. cit., p. 242).
(qama) still growing on it belongs to the poor. If, however, the upper part of the stalk hangs down sufficiently so that the owner would naturally cut it together with the next uncut row, it is ordinary grain and may be cut by the farmer as his own, and it is not considered forgotten. RSBG's rule states: "Just as standing grain (qama) surrounding a forgotten sheaf (omer) saves the sheaf for the owner, so does a sheaf of the owner save forgotten standing grain (qama)." In each case, that portion which the farmer has not forgotten imparts its peculiar character to what one would normally consider as forgotten grain. This is followed by an argument a minori ad maius. In principle RSBG is following Rabban Gamaliel's logic and an approach like that of Bet Hillel whose views favor the farmer in that they limit the gleanings and forgotten sheaves allowed the poor. If by accident, the gleanings were covered by the farmer's threshing area, or a storm spread the farmer's

35. T. Peah 4:5.

36. "Just as grain still standing [on the field] saves a sheaf [from being considered as forgotten], so does a sheaf save grain [of a small area but] still standing [on the field]" (T. Peah 3:6).

37. "If in standing grain (qama) where the owner has a weak position [because the owner has to give many gifts to the poor from standing grain (qama) such as the grain growing on the corners of the field (peah) and the gleanings (leqet)] it saves the forgotten sheaf (omer) for the owner; a forgotten sheaf (omer), where the share of the owner is greater since there is only one gift to the poor possible in the forgotten sheaf, namely, the forgotten sheaf only, it surely should save the standing grain (qama) for the owner." (T. Peah 3:6).

38. M. Peah 6:5-6.
sheaves over an area not yet gleaned, an anonymous position mandates a fine in the first instance and an estimated solution in the second. RSBG provides a standard formula for restitution, i.e. 1/45 of a field's harvest. In contrast, a definite formula of restitution is a standard that deals fairly with the legitimate claims of both the poor and the owners. His position sought to establish guidelines that limited the extent to which the poor could penetrate the farmer's field in search of forgotten sheaves. The law in effect protected the owner's resources from over taxation. It also made it possible for those poor unable to glean at the usual time to collect at a later date according to the standard yield.

Priests and Levites

Priests and Levites had to go to the farms in order to collect their tithes. If one group arrived at the farm ahead of another, the Tosefta lays down a strict 'first come -- first served' rule; the farmer was to give his tithe to the first group. How can this inequity be explained? According to RSBG the individual distribution was left to the priests themselves and it was an established tradition among them to

39. "A heap of grain [placed] in an area where gleanings have not been taken, everything that touches the ground belongs to the poor. A wind that scattered the sheaves [over a field where gleanings have not been picked] they estimate what gleanings this field is likely to yield and give it to the poor. RSBG says, They give to the poor the standard at falling" (M. Peah 5:1).

40. BT BM 105b.
share with late commers. It certainly reveals to us how RSBG viewed the priestly families. It was also good collection practice: Today you are late at this distribution area, tomorrow I may be late at another but on both days neither will return empty handed. 41

41. "Priests and Levites who were standing [and waiting to receive their tithes] at the threshing area, and other priests came and stood [waiting]; they [the new arrivals] may not take [the heave offering portion] from the first arrivals [even though the first arrivals have not actually been given the heave offering yet], it is assumed that the owner who has seen the first arrivals intended to give it to them" (T. Peah 4:3).
Sales

Intention to sell.

Conditions and penalties are common in business transactions. The Tosefta quotes R. Yossi as follows: "If one [the buyer] gives a deposit on a house or field, with a condition stating that if he does not bring the balance by a certain date his deposit is lost, and the seller includes a condition that if he should change his mind about selling, he would double his deposit; on the specified date the conditions should be carried out." RSBG adds to this principle the needed clarification of the intent to buy, namely, the buyer must write "my deposit shall conclude the sale". In addition, he supplements it with a decision of his own: "If one buys a house or a field for a hundred maneh, even if he gave on account only three maneh, the field is considered sold and the [buyer] may pay the balance even after three years [i.e. long past the stated due date]."

To RSBG, not complying with the letter of an agreement, but the actual intent of both parties to the transaction is decisive in making a ruling on whether or not a contract is binding.

Sales and Liability

According to RSBG if a person sells garden seeds which he contends are for planting rather than for eating he can

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be held liable if they do not sprout. Also in this case intent determines the nature of responsibility in a contract. 43

Rentals
When a landlord gives notice to his tenant the Mishnah varies the length of time he must allow the tenant according to the season and the location. 44 RSBG applies the principle of notice to the business world. According to RSBG, wholesale bakers and painters [paint manufacturing plants] need three years notice. The sources give diverse reasons for the necessity of such a long grace period. The Tosefta explains the necessity of taking into account the large amount of business done by such firms, 45 while the Talmud states that such businesses are involved in long term credit arrangements. 46

Women in Sales
The Tosefta permits various small purchases on the principle that: "we do not suspect that stolen goods were involved". 47 To this list RSBG adds: "women selling olives

43. The purpose of buying inedible garden seeds is for planting and therefore if they did not sprout, the seller is held responsible (M. BB 6:1).
44. M. BM 8:6.
45. T. BM 8:27.
46. Tann> a mipne sheheqefan meruba< (BT BM 101b).
47. Wekhulan she> omru lehatmin > asur (T. BQ 11:5-8).
outside of the store”. Thereby he both expresses faith in
the integrity of women, and he lets us know who is the head
of the family in a decision in Upper Galilee where he
permitted the purchase of small quantities of olives from
women because “sometimes a man is ashamed to be selling in
front of his store and he gives it to his wife and she
sells”. 48

Slaves

According to the Sages slaves are property, and as such
are subject to all laws that apply to real property. One may
not sell real property to non-Jews; therefore it is illegal
to sell slaves to non-Jews. Should a person sell his bondman
to a Gentile or to anyone outside the land of Israel, that
bondman thereby automatically receives his freedom. In some
cases the seller was penalized and required to buy the slave
back no matter what the cost (“even a hundredfold”) and then
to set him free. 49 In examining RSBG’s ruling, we find
that it actually differs with the Sages prohibition in some
respects. While it appears at first glance to be stricter,
it is in fact in some cases more lenient. He, for example,
provides a formula to validate the sale without penalties to
the seller. The seller simply writes “if you run away from

48. RSBG omer loghin mehen zetim bemukot beGalil haelyon
sheep amim adam bosh lihyot mokher kal petah beto (T. BQ
11:7 and BT BQ 119a).

49. Aflyu me ah bedamaw (T. A. Z. 3:19).

him (the purchaser) I have nothing to do with you".\footnote{51} In doing this RSBG simply accepts the realities of the Jewish situation at his time. He acknowledges both, that non-Jews also owned slaves within the boundaries of the land of Israel, and that Jewish rulings could not be enforced against Gentiles. Such realism can be seen even more clearly in RSBG's ruling in the case of a slave that is sold outside of Israel: "He who sells his slave abroad, he has gone forth free ... RSBG says: 'Under some circumstances he has not gone forth free. If the sale is to an Antiochen [living in Antioch], the slave goes free but if the sale is made to an Antiochen living in Lydda the slave does not go free'.\footnote{52}

Sales involving non-Jews had to meet the market conditions of the (Roman) state. The same Roman law that applied to the Gentile buyer applied also to the Jewish buyer.\footnote{53} In such a case it was Jewish law that had to find a legal adjustment, rather than Roman law. This is illustrated in RSBG's above two rulings. In M. Git.,\footnote{54} it may appear

\footnote{51. >Amar RSBG ... katav (alav) ono zeh hu shihruro ... dekatav le hakhi likeshetivrah mimeno en li keseg bakh. RSBG said: "If he (the seller) of the slave) wrote (ono) the liberty of his disposal of himself, i. e. that the slave if he should run away from the buyer, would not be claimed by him who sold him, that is granting the slave his freedom" (BT Git. 43b). Mai ono what is the meaning of 'his own possession'? Ans. He wrote to him this, "If thou (my emphasis) run away from him (the purchaser) I have nothing to do with thee". See: M. Jastrow, op. cit., p. 28, s. v. >on. See also A. Gulak, "Shtar Mekhirat Eved B'Dine HaTalmud" Tarbiz 4:1 (1932): p. 7, n. 29a. The document has to be written in the second person, lekeshetivrah.}

\footnote{52. T. <A. Z. 3:18.}

\footnote{53. A. Gulak, op. cit., p.2.}
that RSBG is unconcerned about promoting the freeing of bondmen, but his is a decision that correlates Jewish treatment of the law with an awareness of a mixed marketplace controlled by State practices and traditions. The Talmud sees in RSBG's ruling a warning to slaves not to escape to gangs who will then seek a ransom for their freedom. According to RSBG, under such conditions they would still remain slaves. RSBG's realism was, nonetheless, tempered with concern both for the bondman and for placing responsibility where it belongs. Thus, in a case where the master pledged his bondman as security and then set him free, it is not the bondman, but the master who is liable for his value and must write a bond of indebtedness. The freed slave, according to RSBG, is not to be burdened with having to pay the creditor for an obligation incurred by his master. The reason for RSBG's ruling would therefore be, we write the document of indebtedness against [the master] who freed him, because he is the one who brought about the loss.

RSBG's rulings show the same realistic approach in the case of a slave who is taken captive and then redeemed. In

54. RSBG >omer ben kakh uven kakh yisht<bed (M. Git. 4:4).

55. De>amar Hizqiyah mipne mah >omru ben kakh uven kakh yishta<bed shelo yeh kol >ehad we>ehad holekh umapil <asmo legayasot (BT Git. 37b).

56. RSBG >omer >eno kotev >elo meshahrer (M. Git. 4:4).

M. Git. he states: "One way or the other, he is to be enslaved, [and the master is to repay the cost of his redemption]." At first glance it may appear that there is a contradiction between the case as the Mishnah preserves it and as the Tosefta reads. In the Mishnah, where a slave is held captive RSBG holds that in either situation he is to remain a slave, and in the Tosefta RSBG holds that in neither situation he is to be enslaved. S. Lieberman considers this reading an error. Most of the commentaries in fact adjust the RSBG reading in the Tosefta to agree with the Mishnah reading. It is my view that we have two different cases, and that RSBG's position in the Mishnah thus does not contradict the one in the Tosefta. A

58. T. Git. 4:2.


60. S. Lieberman, in TK (T. Git. 4:2) pp. 829-31, basing himself on the BT Git. 37b and JT ed. Venice, Git. 4:4 (p. 45d) discusses these cases on the basis of principles that developed at a later period. M. S. Feldblum in his Studies In Talmudic Law Of Divorce (New York: 1958), pp.126-131, discusses the entire sugya and concludes that there are errors in the texts. However, in my opinion the two cases are different. The case in the Tosefta depicts the master-owner as present at the sale of the captive and in such a situation, RSBG views it as the personal obligation of the Jewish master to redeem his slave. Toward this end he states that just as it is incumbent upon Israelites to redeem freemen (who are held hostage) so are they (the owners), commanded to redeem their slaves (keshem sheyisrael mesuwin lifdot et bene horin kakh mesuwin lifdot et <avdehem [lakhben] ben kakh uven kakh lo yisha<bed). The Mishnah's case does not present the sale as taking place in the presence of the master-owner, and thus the obligation of redemption does not apply to him. RSBG's view on the redemption of the slave from captivity where the master is not present is to be understood as a humanitarian act by others. When the owner is not present, as is the case in the
rationale may be suggested for RSBG's two views as follows:

In the Mishnah, where the redemption sale takes place without the presence of the owner and others redeem the slave, those who redeem the slave offer him back to his owner, and the owner refunds the redemption money and keeps his slave. In the Tosefta, however, the owner is personally seeking the return of the slave, and for that reason he is present at the redemption sale. In this case, if the law permits him to keep the slave, he will not have fulfilled his obligation as a Jew to redeem the captive; he will only have purchased the slave a second time. Thus RSBG rules in the Tosefta that the slave goes free.

It was RSBG's view that helping captives (who might otherwise be subject to being sold as slaves) escape from their captors was not a good policy. However, if all the captives in the group could be released then he approved of helping them escape.

The two cases, involving a slave and his master and a slave with a physician, state clearly that RSBG held the

Mishnah, the only concern before us is freeing the slave from his captors, and not changing his status as a slave. RSBG, therefore, holds that in either situation of the Mishnah he is in the status of a slave and should be returned to his master-owner (ben kakh uven kakh yishta\bed).

61. RSBG says: "They do not help captives to escape, because of the good order of the captives" (M. Git. 4:6. and T. Git. 3:6).

62. Ibid.

63. "He who strikes his slave, whether he intended to [strike] him or he did not intend to [strike] him he goes free. RSBG says: '[If he hit him] intentionally he goes
principle of intention as a basis in law. The anonymous position makes no distinction between hitting the slave intentionally or unintentionally, while RSBG does. In the case of the physician who damaged a slave's limb during treatment, the Sages declare the slave emancipated, but RSBG does not. It is evident to RSBG that there was no intention to mistreat the slave. RSBG supports this by interpreting the word weshihatah as meaning that, "[One is not guilty] until one intends to destroy it and for an unintentional act we do not levy fines." For the Sages a definite identification of the action is all that is needed for the act of the master to be considered an action against the slave, even without intention to hurt the slave. In the case of damage to a fetus even the Sages admit that upon birth the infant will not be free, because at the time of the incident it is uncertain whether the fetus has in fact been damaged. This interpretation is inherent in the word free, unintentionally he does not go free.' If his master was a physician, and the slave said to him, "Heal my eye for me, but he [the physician] blinded it ... he goes free." RSBG says: 'He does not go free'" (T. BQ 9:24-25).

64. RSBG omer lo yega ben horin (J. N. Epsein and E. Z. Melamed, Mekhilta D'Rashby (Jerusalem: 1979), Pirqa II, 268 p. 177).


66. Weshihatah kad sheyitkawen leshahatah (BT Qidd. 24b).

67. Lerabanan af al pi sho'lo kiwen... yose leherut (Tosafot RI HaZaken to BT Qidd. 24b).
weshihatah, since the pronominal suffix indicates definitiveness not doubt. 68

In the case of the wife who inherited old slaves, RSBG held that the husband may not sell them, for they represent the prestige of her father's house. 69 RSBG does not, however, consider old olive trees and old grapevines as a reflection of her father's prestige. RSBG thus sees slaves as human beings to be distinguished from other (non-human) living things. Slaves, as human beings, can be the bearers of prestige, whereas old trees and grapevines do not have human qualities and do not bear prestige. According to R. Judah even trees may possess prestige.

On the economic realities of slaves, we may note the comparison to the status of women. Both could act as salespeople for the husband or master, but with a note of warning that reflects on their economic status. Both might try to hide a sale from the husband or master. 70 We can follow RSBG's attitude of humanization toward slaves in the case of sacred property that is desecrated. When property is declared sacred, anyone who converts it to personal use has desecrated it. However, real property or slaves remain as is; they cannot be made sacred, and thus even if someone were to make use of the land or slave it would not be an act

69. M. Ket. 8:5.
70. T. BG 11:7.
of desecration. RSBG, however, points out that if one were
to dedicate a slave's hair, the hair would indeed be the
Temple's property and therefore to use it for other than
sacred purposes would be an act of desecration.\textsuperscript{71}

Even though he made no attempt to ban the slave trade,
RSBG limited it. In administering the property of orphans,
the administrator could not sell the slaves in order to buy
real estate.\textsuperscript{72}

Protecting the Disadvantaged

Immediately after the destruction of the Temple and the
fall of Judaea the Romans expropriated the land of the Jews.
Nonetheless, in time much of the land returned to its
original owners or to their families.\textsuperscript{73} It is probably in
reference to the immediate post-war period that RSBG's
statement refers when he says: "I have heard that an
expropriated estate is equivalent to an abandoned estate".\textsuperscript{74}
The Tosefta speaks of three kinds of abandoned property:
property of captives assumed to be dead, property of
captives whose fate is unknown and property of owners whose

\textsuperscript{71} BT San. 15a and BT Git. 39a.

\textsuperscript{72} T. BB 8:16.

\textsuperscript{73} E. M. Smallwood, op. cit., p. 341.

\textsuperscript{74} "He who enters into an expropriated estate,...What is
meant by an expropriated estate? Any whose father or
brothers ... went overseas and he heard that he died, and he
entered into his inheritance. What is an abandoned estate?
It is any estate, the death of whose owner has not been
reported,... RSBG says: 'I have heard that an expropriated
estate is equivalent to an abandoned estate'" (T. Ket. 8:3).
See also: TK, pp. 315-17.
whereabouts are unknown. RSBG equates captives whose fate is unknown with those who are assumed dead. Whatever products that are grown on property the squatters have consumed is of the squatters and the rest is returned to the owners who have come back.\textsuperscript{75}

Minors

There are a number of age divisions in reference to minors. We find age nine recorded as a measure in sexual relations\textsuperscript{76} and the term pe\textsuperscript{utot} as an age when the sale of a minor is valid.\textsuperscript{77} Some authorities considered seven as the minimum age for pe\textsuperscript{utot}.\textsuperscript{78} RSBG does not hold strictly to this rule and considers the intellectual level as the determining criterion for the sale transaction of a minor.\textsuperscript{79} According to RSBG it is, therefore, possible to have a child of six whose purchase or sale will be valid and one of ten whose transaction will be considered invalid.

\textsuperscript{75} Ibid.

\textsuperscript{76} T. Yev. 8:1.

\textsuperscript{77} "As to children [pe\textsuperscript{utot}] their purchase is valid and their sale is valid in the case of movables but not in the case of real estate. RSBG says: 'They referred to children [pe\textsuperscript{utot}] only with reference to prevailing circumstances'" (M. Git. 5:7 and T. Git. 5:3). See also: TK p. 848.


\textsuperscript{79} S. Lieberman, \textit{ibid.} p. 139.
Usury

The Mishnah, in listing possible usurious arrangements, permits the owner of cattle or other animals to have someone undertake the raising of the animals and for owner and employee to divide the profits. Where custom permits, young born to the animals included in such an arrangement may also be considered part of the profits according to both owner and employee. RSBG permits the inclusion of the young, independent of what local custom may dictate. He does not consider such young a usurious benefit to the owner. Both Talmuds understand RSBG's position to apply even in areas where the owner would normally pay extra for the tending of the young. In such a case the tenant-worker does not receive compensation, and it is, nevertheless, not considered usury.\textsuperscript{80}

RSBG also permits a tenant-farmer, in exchange for a loan, to undertake additional work that will result in the improvement of the owner's field. RSBG's decision is that, in such a case, he does not have to be concerned that there is an appearance of usury involved.\textsuperscript{81} This indicates a realistic conception of the needs of borrower and lender within the economic conditions that prevailed in RSBG's time, especially where it concerns agriculture. The Tosefta more fully illustrates RSBG's economic realism when it

\textsuperscript{80} \textit{Afulu bemagom shem\textbackslash alim sekhar katef} (JT BM 5:6, 10b).

\textsuperscript{81} \textit{Mafriz \textbackslash al sadehu we\textbackslash eno hoshesh mishum ribit} (M. BM 5:6).
quotes him as saying: "They pay increased rent [in exchange for a loan for the improvement of] one's field. How so? [If] one has accepted the tending of a field in exchange for ten kors of wheat, and then said to him: 'Give me two hundred denars, and I shall fertilize it, and then I'll pay you twelve kors [of wheat] in a year's time, it is permitted'".82

Care of Scales, Weights and Measures

RSBG shows special concern for the business person in terms of a realistic understanding of the tools of his trade. In a Mishnah83 dealing with weights and measures while the anonymous position requires the wholesaler to wipe his measures every thirty days, RSBG requires it only once a year. For the small storekeeper he requires regular checks only on liquid measures.84 Yet, he thinks of the buyer and recommends a procedure to allow for scale error. The Tosefta illustrates this concern in the course of its describing the various measures and its giving of the small coin exchange value to the silver dinar. RSBG adjusts the value of the perutah to the ›issar as one to six instead of one to eight.85

82. T. BM 5:13., BT BM 69b.
83. M. BB 5:10.
84. M. BB 5:11.
85. "The perutah of which they have spoken is one of six perutot to the ›isar" (T. BB 5:9-12).
The Marketplace

Safety

Two statements of RSBG, one in the Mishnah\(^6\) and the other in the Tosefta\(^7\) present his concern for the safety and proper use of the marketplace. Both texts list many cases involving damages that arise in the public domain, but RSBG summarizes his concern for the safety and use of the marketplace with the following all inclusive rules: "All who are spoilers [upturn refuse] in the public domain so that it has caused damage, must make restitution".\(^8\) However, according to the anonymous view: "Anyone who first acquires it [the stubble or straw while it is in the public domain] becomes its owner and is entitled to the protection of the law".\(^9\) RSBG maintains that: "All who spoil [upturn refuse] in the public domain are not protected by the laws against robbery".\(^9\) According to RSBG, the law will hold anyone who puts waste out into the street [for improvement so that it may be used as fertilizer] responsible for damages that may arise from such actions.\(^9\) In addition, by declaring the stubble or straw as ownerless property, the law will not

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86. M. BQ 3:3.
87. T. BQ 2:8.
89. Wa\(>\)asura mishum gezel (T. BQ 2:8).
90. Mutarin mishum gezel (ibid).
91. However, cf. BT BQ 30b where other concerns are expressed, such as who is entitled to the improvement as a result of turning the compost pile.
offer any protection against theft of the compost. The point in the Tosefta (BQ 2:8) is not to present RSBG as favoring the one who will become the new owner by turning the manure, but rather to show him as supporting the principle that anyone causing a nuisance in the public domain has no protection under the law. The process of gathering manure after it was thrown into the street or marketplace was tolerated in all cities except Jerusalem. RSBG, however, ruled against this practice in all cities.

Construction in the Marketplace

RSBG exhibited great consideration for those engaged in construction in the public domain. While the majority of the Sages required immediate use of any stones brought into the public domain for building purposes, RSBG allowed thirty days for gathering all necessary materials. In contrast to his normal consideration for public convenience and safety, the needs of the individual here take precedence for him.

Haverim and Amme ha'Ares in Business

The many laws of purity which the Book of Leviticus originally prescribed exclusively for the priests, in later times were taken upon themselves by some non-priests. Together, these people, who called themselves haverim (colleagues) formed societies or fellowships dedicated to

93. M. BM 10:5.
If, however, the member in question had not taken his
could no longer do business in the community of the Haverim.
violating the agreed upon restrictions he was expelled, and
undergone the admission ceremony (gabbalot) before the group
it was for those who had not done so. When a person who had
strictly for those who had made such public profession then
punishment for deviation from the newly accepted norm was
while their household (children, servants) did not.
to make public and formal profession of their new status,
between a public and a private gabbalah. Adult (males) had
following the usual practice; the law made a distinction
introduces the admission requirements (gabbalot) and
be consistent in dealing with offenders. Tosefta (Demai 2:2)
saying, if you wish to have a license to do business, let it
endangering the status of their colleagues, may seem to be

known to be not as strict in their observance, without
Haverim and (selectively) with the (same) Haverim (people

a Haverim was trusted as able to do business with both
current contracts were quite serious. A person who had the status of
strictly enforced. The commercial implications for such
construction. Once such a contract is made, it should be
 contracting matters. ASBY shows himself to be a strict
the acceptance of people into such groups. On such

such observance. The Tosefta records the requirements for

This letter came to me from Casarara, "(124)"

"It happened that R. Yossi ber Abbahu sent me a
99. RSBG said: "It happened that R. Yossi ber Abbahu.

98. TDK Dem., p. 66, R'eisi. R. Yossi ber Abbahu.

h'm' (T. Dem. 31:4)."

'am Ha'are's he has to tithe, to a haver he has to inform
must set aside the tithe. RSBG says, "If he sends to an
97. One who sends either to an (am Ha'are's) or to a haver

96. " If. 9:11.


Recipient is an (am Ha'are's), the sender (presumably a
RSBG that when sending untithe produce to another, if the
etrog. 43 This action of R. Yossi agrees with the ruling of
occasion informed him (RSBG) that he was sending him an
from the following story: R. Yossi on a particular
this (that RSBG considered himself a haver) specifically
titiated Rabban RSBG considered himself a haver. We see
were the Rabban. RSBG considered himself a haver. "We see
in purity." 43 Since among those in the category of haver
dry), even though he knows that he does not read his dough
but one is permitted to sell wheat, since the grain 15 sold
always except to a haver who observes the laws of purity,
sell a stack of grain, or a bunch of grapes, or a vat of
houses (Bet Shammai and Bet Hillel) that "one should not
In (1. Maaseerot 31:3) RSBG quotes an agreement between the
on the separation of those who do not
RSBG's views on the separation of those who do not
admission oath (Gabba'lah) before a group he simply reverted

63
haver), must first tithe it. If, however, the recipient is a haver, it is sufficient to inform him that the produce has not yet been tithed.

Purity In and Out Of The Marketplace

The regulations that were in force for both priests and Israelites during the Second Temple period changed drastically after the Temple was destroyed. From the rules and regulations advocated by, and attributed to, RSBG, however, we can reconstruct the life of purity as it existed in the days at Usha. RSBG's ruling with reference to ritual purity indicates a desire to alleviate undue hardship wherever possible. The Mishnah\(^9\) records a disagreement between the Houses concerning the extent of contamination caused by a tevul yom touching dough offerings. Should they stick together, even though it was the intent of the baker to separate them, the School of Shammai would rule that even the untouched are unclean by virtue of their connection with the touched. The School of Hillel would under such condition rule that only direct contact causes uncleanliness. The Tosefta states its first halakhah anonymously as the Bet Shammai, however, there is a difference in products other than dough-offerings.\(^1\) RSBG restricts such contamination

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9. If one collected dough-offerings with the intention of separating them, and they stuck together: The School of Shammai say: "They are considered connected (and the uncleanliness goes from one to the other), if touched by a tevul yom. The School of Hillel say: "They are not considered connected" (M. Tevul Yom 1:1).
to private bakers and to commercial bakers if the dough contains certain spices. This decision alleviated great hardship for those who collected the heave-offering on the fields. They in particular, even as late as the Usha period, held strictly to the tradition of looking upon sundown as the point of separation between clean and unclean.

According to an anonymous mishnaic tradition the minimum amount of water to be used in hand washing is a container of at least one-eighth liter for pouring over the hands of one person or of two, but not of three. In the Tosefta, RSBG states: "Two hands of two individuals are regarded as if they were of two men". If one-eighth liter was used initially on these two hands, neither person can use the balance for a second washing, that would constitute a third person and for three people one must begin with a quarter of a liter.

Farmers would bring their vegetables to the marketplace tied in bundles. If a bundle fell apart, the farmer had to bind it again. According to R. Meir, since the farmer is

101. "They are clean when touched by an ḥay haTumah [a father of uncleanness] and it is not necessary to say by a tevul yom", the words of R. Meir. And the Sages say: "They are clean [when touched by] a tevul yom, but become unclean when touched by all other degrees of uncleanness" (T. Tevul Yom 1:1).

102. "RSBG says: "... in the case of baker's loaves, unclean are only the black cummin and the garlic ..." (T. Tevul Yom, 1:2).

103. M. Yad. 1:1.

likely to use his teeth in the retying process, his saliva must of necessity touch the vegetables, and this practice exposes the vegetables to ritual uncleanliness.\textsuperscript{105} RSBG saw an area where uncleanliness would be limited, as where a farmer brings large sheaves to market, since such tying is not possible.\textsuperscript{106}

RSBG also tried to lessen the burden of the laws of ritual purity for the farmer, orchard and olive grower. In discussing how to cleanse various parts of the olive and wine presses, the Tosefta\textsuperscript{107} records differing approaches to ritual impurity. While some rule that the parts are considered clean if they are left unused for twelve months, for RSBG the idle period is only from one period of use to the next.\textsuperscript{108} In addition, according to RSBG, immediate cleanliness can be achieved by rinsing in a river of flowing water or under a spout with flowing water.\textsuperscript{109} The seasons for olive and wine pressing may go on for some time. When the season ends and the grower cleans and idles his utensils

105. JT Demai 5:8, p. 24d.
106. RSBG says: "If we follow the words of R. Meir, then the sheaves are insusceptible to uncleanliness" (T. Mak. 3:8).
107. "He whose wine-vats and olive-presses were unclean and he wants to clean them,... he has to leave them unused. And how long does he leave them unused? Twelve months" (T. Toh. 11:16, and T. (A. Z. 8:3).
108. RSBG says: "From one wine-vintage to the next, and from one pressing season of olives to the next" (ibid).
109. RSBG says, in the name of R. Yossi: "He places them in a river whose waters flow throughout the entire season or under a spout whose waters flow" (ibid).
and press parts, he automatically restores ritual cleanliness for the next use. It is a way of recognizing the worker and his need of the tools in the operation of his presses and of their cleanliness, rather than an arbitrary period expressed in a calendar formula. It is as if RSBG were saying, the next time you have to use the press it will be clean and ready. RSBG\textsuperscript{110} also ruled that a popular fragrance containing oil and often applied to the skin after bathing did not make its wearer susceptible to ritual uncleanliness.\textsuperscript{111}

RSBG's concern in easing the laws of contamination even made him an inventor. He developed an oven not susceptible to ritual contamination.\textsuperscript{112} RSBG's views on metals contracting impurity are always lenient.\textsuperscript{113} As for clay vessels, the Sages ruled that the only way to cleanse them is to break them. RSBG held that it would be sufficient to

110. RSBG says: "It does not contaminate the contamination of liquids" (T. Demai 1:29).

111. BT Pes. 18b. See: Rashi ad. loc. beshittat R. Akiba, where we find an analysis of a Yavnean dispute between R. Yossi and R. Akiba, where R. Akiba holds that liquid contamination has biblical derivation and R. Yossi does not give it biblical status."

112. RSBG says: "He who wishes to make for himself an oven in [a state of] cleanliness brings a cracked oven and brings a new oven [which has not been heated] and dresses it from the outside and puts dirt or pebbles between them, and even though he has made a lining for the outer one, it is clean" (T. Kel. BQ 4:15).

immobilize them by nailing to the earth or filling with salt. 114

RSBG tried to make life easier for the farmer. His decision to permit the free movement of Ma’aser Sheni to and from Jerusalem115 gave the farmer an opportunity to move his grain to the mills outside of the city and thus save money.116

Suspicion, Trust and Fraud

RSBG was aware of the possibility of two people using the law to perpetrate actions of collusion in order to defraud a third. His opinions reflect that concern,117 and he provides a method that will frustrate such designs. Thus, RSBG protects the innocent guarantor and rules that if the borrower has the means to pay, the creditor may not exact payment from the guarantor.118

115. M. Ma’as. She. 3:5.
116. Commentary of R. Ovadiah Bartenura to M. Ma’as. She. 3:5.
117. "If a man lent money on a guarantor’s security, he may not collect payment from the guarantor, but if he said: 'On the condition that I may collect from whom I want,' he may collect payment from the guarantor. RSBG says, If the borrower has property he cannot collect from the guarantor. And thus RSBG used to say: "If a person was guarantor for a woman's Ketubah and her husband was in the process of giving her a divorce, the husband must vow that he will have no benefit from her, for we are concerned that they may be in collusion against the property of the guarantor and the husband intends to remarry her." See also M. <aruk. 6:1, BT <Aruk. 23a, and see BT BB 174b, where Abbayya is making such a recommendation to R. Hunna (M. BB 10:7).
The Mishnah, 119 in discussing possible usurious arrangements, permits the owner of cattle or other domestic animals to divide his profits with a tenant-worker who undertakes the actual raising of the animals. Where custom permits, they may also consider the young profits. RSBG does not leave it up to custom, but, in the case of grazing animals, permits the inclusion of the young at birth with the mother.120 In addition RSBG permits additional work by a tenant-farmer in exchange for a loan that will result in the improvement of the field for the owner.121 RSBG clearly states that the tenant need not be concerned that there may be usury involved.122 RSBG understood the needs of the marketplace, the needs of the borrower and the lender, and especially the owner and the tenant-worker relationship,123 and ruled in favor of the owner, the lender, even against established custom.124

118. Ibid.
119. M. BM 5:5.
122. RSBG says: "A tenant may increase [rent in exchange for a loan] to improve his field, without fearing that this is in the nature of usury" (M. BM 5:6).
123. "[If] one has accepted the tending of a field in exchange for ten kors of wheat, and then said to him, 'Give me two hundred denars, and I shall fertilize it, and then I'll pay you twelve kors [of wheat] in a year's time,' it is permitted. They may not pay increased rent [in exchange for a loan for the improvement of] one's ship, shop, or anything that does not earn its keep" (T. BM 5:13).
124. Wa>afilu bemakom shenahagu le<alot sekhgar katef lema<ot (BT BM 68b). See also: Tosafot ad. loc., s. v. Makom.
In the Mishnah that sets the rule: "Any blemishes likely to be caused by human hands, Israelite shepherds are believed but not priest shepherds," RSBG rules that under specific circumstances the court should accept a priest-shepherd's testimony. The court should consider him trustworthy when he testifies concerning another's animal, but not when he testifies concerning his own. Thus, according to RSBG, the law does not disqualify priest-shepherds as a class, nor does it place under suspicion of dishonesty as a group. The Tosefta in quoting the same rule as the Mishnah, accepts the position of RSBG.

Zoning Laws

In two rulings RSBG establishes his views concerning an individual's zoning rights. A resident's rights do not grant him privileges that are denied to outsiders, when undesirable trades are involved. Even if it is an established business that has only recently become a nuisance to its neighbors RSBG says: "In the case of one's neighbor, they may force him [to desist from annoying practices]." When it comes to taking measures for protection, however, RSBG takes up the cry of the individual

125. M. Bek. 5:4.
126. Ibid.
127. T. Bek. 3:19.
against the group: "Not all courtyards need a gate-house, and not every town needs a wall".¹³⁰ The individual, therefore, cannot be forced to contribute to a project where he believes the need for protection does not exist.

¹³⁰ M. BB 1:5.
Ways of the Amorites

The Tosefta devotes two chapters to a discussion of various healing practices attributed to the Amorites, that border on the superstitious.\textsuperscript{131} In the concluding Tosefta RSBG states: "You have no people which is more restrained than the Amorites, and so we find that they believed in the Omnipresent and were exiled to Africa. The Omnipresent gave them a land as beautiful as their original land, and the land of Israel was called by their name".\textsuperscript{132} This summation of praise gives us the official attitude of the patriarch for those who originally occupied the land of Israel as being a people blessed and rewarded by God. RSBG consciously translates this attitude of respect into a similar attitude toward the non-Jewish peoples, among whom the Jews in the Galilee lived.

Gentiles and Kutim

While RSBG\textsuperscript{133} at first held that Kutim (Samaritan Jews) should be considered Israelites in every respect,\textsuperscript{134} upon further examination he placed them on a par with the Israelite \textit{am ha-Ares}.\textsuperscript{135} R. >El<ez<er, too, placed the

\textsuperscript{131} T. Shab. chaps. 6, 7.
\textsuperscript{132} T. Shab. 7:25.
\textsuperscript{133} JT Sheq. 1:4, 46b, T. Ter. 4:12, 4:14, JT Ber. 7:1, 11b, Matnita keRSBG.
\textsuperscript{134} "In any observance the Kutim accept they are more punctilious than the Israelites" (T. Pes. 2:15).
Products are then referred to as ordinary (קר RegExp) because not terracing. After the buyer has given the tithe these products are called under suspicion (גנאי), and the buyer needs to give mæser, not the tithe. (Mæser) has been set aside, but the buyer-offering (תור ותוריה), has been set aside, and the mæser, Products from which the buyer-offering (תור ותוריה) has been set aside. When we assume mæser are called certain (מיסל), or (תאודי). I shall define the following terms: (תור ותוריה), מַאֶזֶר, מַיְאֶשֶׁר.

I.36. Before presenting the few paracopae, which mention the tenant-worker (דיילא) who shares in the produce. The same attitude of variations in the degree of trust in ASGA treats him as an Israelite of the same trust status.

Some have suspicions concerning the truthfulness of a kid. The same degree of trust as a Jew. In I. Ter. 4:14, while the produce is mæser. However, to ASGA, the kid still retained that the kid is like a gentile, reflects ASGA's later opinion that the kid is like an Israelite. The view of Rabbi, that the end of the paracopae, records ASGA's early legal opinion of view of ASGA with reference to the kid. The Mishnah, at least.

I.37. Ter. 4:12 Reflects both the early and the late Tosefta Ter. 4:12 Reflects both the early and the late Tosefta (אומרים as demai. Even though the majorty of the same category: "just as they ruled the fruits of the Israelite (אומרים as demai. Even though the majorty of the Israelite (אומרים as demai. Even though the majorty of the Israelite (אומרים as demai. Even though the majorty of the
identifies the products of the owner. 137 One sees the same approach in RSBG's accepting the testimony of a priest, when he identifies the blemish of a firstling of another, but not when it is his own animal. 138 This view of RSBG clearly illustrates the principle of "one does not commit a sin where there is no personal advantage". 139

Business With Gentiles

There were various ways in which Gentiles could be involved with products belonging to Jews, resulting in a concern for the separation of terumah and maakter. The Gentile could be called upon as an agent 140 to deliver a product, or the Gentile had a mill, 141 where Jews had left their grain for processing into flour, or he had a storehouse, where Jews would deposit their grain. There are different concerns in each case. T. Dem. speaks of a Jew who left his grain for safekeeping with a Gentile. Upon the Jew's claiming his grain, RSBG required of him only that he separate the tithes but not the terumah. RSBG expressed his view symbolically when he said to the Jew: "You have raised the level of the Gentile's products to the status of

137. T. Dem. 4:30.
138. M. Bek. 5:4.
139. TK Dem. p. 84, n. 78.
140. T. Dem. 4:26.
141. T. Dem. 4:27.
influence in the climate of a different religion: "He is not believed, for the words of the Gentile do not elevate [a product] nor bring [the product] down".¹⁴⁸

Not all Gentiles had the same status before Jewish law. According to RSBG, Ammonites and Moabites were special. His position is formulated in the Tosefta: "Any whose daughter you are permitted to marry, you are permitted to marry his widow, and any whose daughter you are not permitted to marry, you are not permitted to marry his widow". Therefore, according to RSBG, the daughter of a priest or levite who became a widow after having lived with an Ammonite or Moabite could be married to a priest.¹⁴⁹

Animals

The sources describe transactions between Jews and Gentiles involving animals in terms of one transferring,¹⁵⁰ buying¹⁵¹ or receiving¹⁵² the animals. The case of "one who transfers" presents RSBG's view concerning suspicion. His attitude of not suspecting any substitution of the young and

¹⁴⁸. "A Gentile's opinion in a Jewish religious matter does not add or detract" (T. Dem. 5:2).

¹⁴⁹. De<amoni we<amoni> <amoni> avit ... >armalto [shel ha<amoni] nami kesherah (T. Yev. 8:1). See: TK p. 64. See also: BT Yev. 68a and BT Qidd. 75a.

¹⁵⁰. "One who transfers his cattle to a Gentile for grazing ... does not have to suspect any substitution" (T. Bek. 2:16).

¹⁵¹. "One who buys a nursing animal from a Gentile ... it remains in the same status" (T. Bek. 2:14).

¹⁵². "One who receives [cattle] ... the Gentile has assumed full responsibility" (M. Bek. 2:4, T. Bek. 2:5).
the nursing mother is the same for both Jew and Gentile.\textsuperscript{153}

In his view, a Gentile is no more likely to substitute his own inferior animals for those with which he is entrusted than is a Jew. The Tosefta quotes RSBG as taking for granted the transferring of Jewish owned cattle to non-Jews for grazing,\textsuperscript{154} even though it states that because of sexual deviation "we do not transfer cattle to their shepherds".\textsuperscript{155}

Whether RSBG in fact limited this practice in any way is questionable. The statement "even though it is not permitted" could be an editorial insertion, since it occurs in many similar contexts.\textsuperscript{156} The word rashai appears often in Tosefta expressions similar to our pericope and also in tradition incorporating the phrase, \textit{ven adam rashai}.\textsuperscript{157}

In my opinion, RSBG not only knew and allowed the practice of Jews transferring their cattle to Gentiles for grazing, but that in addition he did not limit it in any way. It was RSBG's principle that it is better that a person should perform a prohibited act unwittingly, than that someone more knowledgable should call attention to it and cause the person to transgress it. The expression "even though it is

\textsuperscript{153} T. Bek. 2:15-16.

\textsuperscript{154} \textit{Wekhen hayah RSBG omer haMoser et behemto legyov lir\textit{ot ... eno hoshesh (ibid).}

\textsuperscript{155} \textit{Wekhen hayah RSBG omer haMoser et behemto legyov lir\textit{ot ... eno hoshesh (ibid).}

\textsuperscript{156} \textit{En mosrin behemah lero\textit{eh shelohen (T. <A. Z. 3:2).}

\textsuperscript{157} \textit{T. <Ar. 4:23; 5:6-8.}
not permitted" is therefore the editor's insertion, and not authentic to RSBG.158

The second case "one who buys a nursing animal from the Gentile", (M. Bek. 3:2) establishes RSBG's view, that a Jewish buyer need have scruples over the first born status of the calf on the conviction that a Gentile owner would not strictly separate the firstborn and its mother from the other calves. The Jewish buyer may confidently accept the calf as first-born, and carry out his duty to the priests (Ex. 13:2).

The third case "one who receives" involves a Jew accepting cattle from a Gentile owner in order to raise them for the owner. In such a partnership, it was customary for the two to share in the offspring. Under such terms, RSBG exempted the Jewish partner from any obligation to make sacrificial offerings from the herd. It is important to note not only RSBG's view, "releasing the animals from all priestly gifts",159 but also the totality of the exemption as stated "to infinity".160 The restrictive priestly gifts no longer applied since there was a Gentile involved no matter how remote the involvement. Thus the inclusion of a

158. Y. Cohen, The Attitude To The Gentile In The Halacha And In Reality In The Tannaitic Period (Ph.D. dissertation, Hebrew University, 1975), pp. 222-235, differs and states that even though RSBG knew that handing over cattle to Gentiles was prohibited he ruled in accordance with the reality.

159. RSBG >omer hen uwladotehen uwlade weladotehen peturin min haBekhorah umin haMatanot (T. Bek. 2:5).

160. >Afalu <ad sof ha<olam (ibid).
Gentile as a partner in the contract created a legal loophole that eliminated any need for concern for the law of the firstling.

Testimony and Trust

A Jewish court may receive the testimony of a Gentile concerning the death of a Jew in order to declare his wife a widow. The Tosefta\(^1\) relates a number of incidents relevant to this matter, among them the story by RSBG of a contingent of suspects brought to trial in Antioch. Upon their return they said "only the Jew was executed". When the facts were related to the Sages, they permitted the executed Jew's wife to remarry. RSBG's story differs from the incident where the Gentile's testimony included "and I buried him". From RSBG's case it appears that he did not require such a definitive declaration as "I buried him" to act on the testimony and declare the woman free to remarry. However, since those that were executed by the Government were not permitted to be buried, and were only thrown into a pit, it is possible that the statement executed already includes buried.\(^2\) This view of RSBG follows an earlier incident that took place at the time of the fall of Betar when sixty Jews who left the city

\(^{1}\) T. Yev. 14:7.

\(^{2}\) TK Yev. p. 178. See: T. >Oh. 16:12, where reference is made to "A pit into which they toss people slain in battle, one gathers bone by bone and all is clean".
were executed, and upon the testimony of a Gentile, the rabbis permitted their wives to remarry.\textsuperscript{163}

Idolatrous Items

The attitude toward the buying and selling of idolatrous objects was in flux both during and after RSBG's time.\textsuperscript{164} RSBG held a very strict view, prohibiting the use of all items which depicted idolatrous images.\textsuperscript{165} However, RSBG made a distinction in the case of objects with images depicting signs of the sun, moon and dragon, limiting the prohibition only to special objects (those kept only for particularly honorable purposes) and excluding ordinary items: "Concerning the respected [valued objects], the vessel is prohibited: Concerning despised [worthless objects], the vessels are permitted".\textsuperscript{166} The Tosefta gives examples of "respected vessels" and "despised or worthless vessels" (T. \textit{A. Z.} 5:1). "Respected vessels" are objects of value such as silk, nose-rings, bracelets, or earrings, while ordinary objects (objects of no worth) are, for example: pitchers, water-pots, frying pans, kettles, bowls, mats, or rings. RSBG is therefore distinguishing between

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\textsuperscript{163} TK Yev., p. 179, citing T. Yev. 14:8.

\textsuperscript{164} This continued during the time of R. Judah haNasi. \textit{Kesad mevatlo? ... Rabbi omer, bitel} (M. \textit{A. Z.} 3:1, 3:3, 4:5).

\textsuperscript{165} \textit{Ibid.} 3:1, 3:3.

\textsuperscript{166} \textit{She'al hamekhubadim >asurim, she'al hamevuzim mutarin} (\textit{ibid.} 3:3).
utilitarian and ornamental objects that have images of the sun, moon, or dragon on them. The view that RSBG is here permitting the images of some heavenly bodies does not disagree with Tosefta (A. Z. 5:1). This distinction between ornamental and utilitarian objects helped to broaden the permitted spheres of business to include formerly idolatrous objects.

Among those items which RSBG prohibited totally, including deriving any benefit from them, were hides that were pierced with a straight cut. The Tosefta (A. Z. 4:7) as well refers to hides which were perforated opposite the heart, and thus made into a kind of window, as prohibited. The Tosefta, however, permits the hide if the cut is straight, and cites this view in the name of RSBG. Explaining RSBG's view, R. Huna states that when the heart is removed from the animal while it is alive the cut in the hide will be round. If it is removed after the animal is slaughtered, however, the cut is drawn and will not be round. Idolatrous worship of the time required the heart to

167. Maga\textsuperscript{a} taba\textsuperscript{at we\textsuperscript{a}aleh surat hamah ... yolikh leyam haMelah. The Tosefta speaks of a ring, which is ornamental. See: G. J. Blitstein, \textit{Rabbinic Legislation on Idolatry--Tractate Abodah Zarah} (Ph.D. dissertation, Yeshiva University, 1968), p. 280, who claims RSBG's view does not agree with the Tosefta. T. (A. Z. 5:1. See also: M. Hadas-Lebel, "Le paganisme 'a travers les sources rabiniques des IIe et IIIe siècles," \textit{Aufstieg und Niedergang der Romischen Welt} 2nd ed. 19.2, Edited by H. Temporini and W. Haase (Berlin: 1979), pp. 397-485, where the difference between ornamental and ordinary is the accepted view.


be removed while the animal was still alive.\textsuperscript{170} This accounts for the distinction made by RSBG. Skins (leather bottles) belonging to Gentiles could be used as mats for cattle, according to RSBG in the name of R. Joshua ben Qufsat.\textsuperscript{171}

\textbf{Idolatrous Wine}

RSBG limits the prohibition on wine made by Gentiles to wine intended for idolatrous libation. Therefore in the case of wine intended for idolatrous libation that falls into a vat containing other wine, RSBG says: "It [the entire contents] may be sold to a Gentile, deducting the value of the idolatrous wine in the mixture".\textsuperscript{172} Two cases of possible involvement of a Gentile with wine production are given in the Tosefta,\textsuperscript{173} and in both cases the rule is to sell it to a Gentile. Concerning barrels of wine in transit\textsuperscript{174} or in storage, if they were left alone with a Gentile for a period of time sufficient to permit the opening of the top, [not making a hole]\textsuperscript{175} closing it with

\begin{itemize}
\item \textsuperscript{170} JT <A. Z. 2:3, 41a.
\item \textsuperscript{171} T. <A. Z. 4:10.
\item \textsuperscript{172} M. <A. Z. 5:13.
\item \textsuperscript{173} T. <A. Z. 7:4-6.
\item \textsuperscript{174} M. <A. Z. 5:2-3.
\item \textsuperscript{175} According to RSBG making a hole is unlikely, because it could easily be detected (BT <A. Z. 69b).}
\end{itemize}
clay, and allowing it to dry, then RSBG declared the contents to be idolatrous.

RSBG exempted cooked wine from the general prohibition. RSBG is commonly quoted as saying: 176 "Cooked wine [has its merit] it does not [attract snakes] when exposed, and is not disqualified because of [the law of] idolatrous wine." 177

The Land Of The Gentiles

The Tosefta offers the general rule concerning entering a land of the Gentiles, "If one can enter it in cleanliness, he is clean". RSBG's view is stated in the following phrase, "even a single furrow intervenes". 178 The law declaring the lands outside Israel as unclean had a national concern in earlier periods as well; 179 it was to keep Jews from emigrating to the surrounding countries. RSBG, as head of the Jewish community, could not afford to view favorably attempts to legitimize the exit of Jews from the Land, while

176. TK Ter. p. 341, and n. 22.
177. T. Tr. 4:4.
178. For RSBG there is no way one could leave the land of Israel, enter foreign soil and remain in a state of cleanliness. >Afilu telem >ehad hare zeh mafsig (T. >Oh. 18:2).
179. It was for the same reason that Yossi ben Yo<ezer in an earlier generation declared foreign countries in a state of contamination. >Az qazar Yossi ben Yo<ezer ... tumah <al eres ha<amin kede le<akev et haYesiah meEres Yisrael. At this time, too, in order to offset the exodus of many Pharisees and Essenes the Zealots used this method to deter them from leaving the land of Israel. S. Zeitlin, "Yud-Het Davar", HaMered HaGaddol ed. A. Kashe (Jerusalem, Daf-Hen, 1983), p. 147.
still allowing them to feel that they were in a state of purity. His statement "even one furrow of land, where there is doubt as to its cleanliness, is a separation" voices an objection to leaving Israel. RSBG maintained this strict view of Gentile lands even when it concerned the roads leading to Israel from Babylonia. Even here, where immigrants were involved, RSBG limited the clean area for personal needs as only "up to the place at which a person turns right and left (and is not ashamed)." 180

The Courts And Their Functions

Power To Intercalate

One of the most important responsibilities under the authority of the patriarch and his court was the intercalating of a thirteenth month into the calendar year. This awesome power and responsibility was entrusted to a court of three judges only. Even according to RSBG the decision could have been made by a court of three, although in disagreement they could increase up to seven judges.181 The Tosefta offers the following reasons for intercalating the year: 182 "Because the Spring grain was not ready to ripen, or the fruit trees did not blossom, or the Spring equinox had not arrived. It required two of the late

180. <Ad magom she>adam poneh miyemino umismolo (T. >oh. 18:3).

181. M. San. 1:2. Cf. T. San. 2:1, where RSBG's opinion is given in the name of the Sages.

arrivals for a decision to intercalate. There was joy when the court ruled to delay because of the lateness of the Spring grain, and RSBG said, there was joy when they intercalated because of the equinox as well". An announcement of an intercalation by RSBG, in Aramaic, is recorded in the Tosefta:183 "Because the pigeons are still tender, and because the lambs are still thin, I find it proper to add thirty days to this year". The decision to intercalate was conditional on the concurrence of the majority in the community: "RSBG and R. Eli<ezer b. R. Sadoq say: 'They intercalate the year and they carry out all public business, only with the stipulation that the majority of the community concurs'".184 This approach is similar to the principle that a judge does not impose a ruling on the community that the majority would not be able to bear.185

183. T. San. 2:5.
185. >Ain gozrin gzerah <al haSibur >ela >im ken rov haSibur yekholin la<amod bah. BT BQ 796. See also: BT <A. 2. 36a where RSBG is named as one of the authors of this principle, wesamkhu rabotenu <al divre RSBG we<al divre R. El<azar bar Sadoq... See also: M. Masinah, ">Ain gozrin gzerah <al haSibur >ela >im ken rov haSibur yekholin la<amod bah" Tarbiz 54:4 (1985), pp. 447-453, who speculates on the similarities of the message by the early Church Fathers against abstinence, to the RSBG principle.
What Is The Power Of The Court Worth?

Both the patriarch and the rabbis\(^{186}\) were interested in strengthening the influence of the court. The exclamation "If so how will the power of the court be served!" is heard both in the Mishnah\(^{187}\) and the Tosefta.\(^{188}\) Still the court used protective measures to maintain a proper public image, by assuring that in the case of the sale of (orphans') property the seller would attract enough bidders.\(^{189}\) One such measure was advertising\(^{190}\) a public sale for thirty days, morning and evening, and the sale of a sacred [one that had been contributed to the Temple] item for sixty days.

Courts Maintain Scribes To Write Documents

The courts played a very important role in the business world. In those days the court not only adjudicated conflicts but it also prepared the relevant documents. The

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186. "If it is thus, the Sages, too, hold that the court has power. However not to confirm the sale but to break it." D. Weiss-Halivni, Sources and Traditions vol. 3 (Jerusalem: 1968), p. 244 n. 4, on the discussion of mah koah bet din yafeh in BT Ket. 100b.

187. "The Judges assessment who undervalued [the property] by one-sixth or overvalued it by a sixth, the sale is void. RSBG says: 'the sale is valid, if so [that you will not recognize the sale], of what strength [value] is the power of the court'" (M. Ket. 11:5).


189. JT Ket. 11:6, 34c.

190. Ibid. "What is Iggeret Bigoret? R. Yehudah ben Pazi says: Announcement [\(\text{Dakhrazah}\)]." See BT Ket. 100b, where customs changed and practices differed, as in Nehardea.
Mishnah\textsuperscript{191} states: "We do not write documents unless both parties agree". RSBG added that both parties must receive documents, although each party gets a record only of its own argument.\textsuperscript{192}

\begin{flushleft}
\textsuperscript{191} M. BB 10:6.
\textsuperscript{192} BT BB 168a.
\end{flushleft}
Arbitration

According to RSBG the process of arbitration was as valuable as a court decision if not more: 193 "Just as a judgment is with three [judges], so is arbitration [with three arbiters]. The force of arbitration is greater than the force of a court decision. How so? Two appointed judges who gave a legal decision, [the litigants] have the right to retract, but two arbiters elected by the litigants who affected an arbitration, they [the litigants] do not have the power to retract". Even though both Talmuds 194 quote RSBG: "A judgment is with three [judges] and arbitration is with two [judges]", we do not find such a tradition in the name of RSBG either in the Mishnah or the Tosefta. The Tosefta 195 makes reference to a settlement by compromise and describes it as a "judgment with justice". RSBG's view, advocating arbitration, was thus not an isolated position, but was accepted by others of his colleagues as well.

Witnesses

Witnesses, in the course of carrying out their responsibilities, sometimes find it necessary to sign written documents. Where the witnesses do not have the skill of writing, RSBG permits the stenciling of their names and the witnesses fill in with ink. However, this he permits

194. BT San. 5b, JT San. 18a.
195. T. San. 1:3.
only in writs of divorce. For all other documents, if they know how to write they sign, otherwise they do not.\footnote{196}

Testimony of One

*Testes singulares* is an area of Jewish law which the rabbis discussed and developed extensively, especially in cases of divorce and ritual prohibition. RSBG, however, concerns himself with the validity of a single witness's testimony only in terms of the official recognition of priestly status. RSBG quotes R. Shim'on son of the deputy of the High Priest that, "We elevate one to the priestly family according to the testimony of one."\footnote{197}

Custom of the Province

Local custom plays an important part in RSBG's rulings.\footnote{196} In M. Ket. 6:4 RSBG opposes the anonymous position of one to one and a half in marital gift arrangements. According to RSBG, such matters should follow

\footnote{196. BT Git. 9b, and 19b.}

\footnote{197. M. Ket. 2:8. See: T. Ket. 2:3, where RSBG says in the name of R. Shim'on, son of the deputy of the High Priest: "They raise one to the priesthood on the evidence of a single witness, and not only on the evidence of a single witness, but on the evidence of a woman; and not that the woman comes to court; but if she merely says: 'Let them give him [heave-offering, that is sufficient evidence]'.

\footnote{198. RSBG *omer hakol keminhag haMedinah* (M. BB 10:1). See: BT BB 165a, where the rule of RSBG appears to be so widely accepted that the Talmud begins the discussion with "what is the rule of the province? In many discussions in the BT where 'custom' is in question the rule of "Everything is in accordance with the rule of the province" is quoted in the name of RSBG.}
In the case of one who finds a note of indebtedness stating a particular amount of interest, the anonymous position holds that it should be destroyed. Here, too, RSBG leaves it to custom. The principle of custom is not unique to RSBG, but the sources apply it anonymously to other rulings as well. In some cases, for example, the Mishnah (BM 7:1) uses the phrase "Everything in accordance with the custom of the province" as a standard for employers. The Mishnah states that when one is hiring laborers one may not change the terms of contract usual to the area: "If a man hired laborers and asked them to work early or to work late, he has no right to compel them where the custom is neither to work early nor to work late. Where the custom is to give them their food he should give it to them; and where the custom is to provide them with foodstuff, he should provide it. Everything should follow local custom". In cases where the Mishnah offers the

199. If she undertook to bring him in ready money, one silver sela shall become six denars. The bridegroom undertakes to give her ten denars for the treasure chest for every mina [that she brings in]. RSBG says: "In all things they should follow local custom." In T. Ket. 6:6, the same halakhah is followed not by RSBG's statement, but by R. Yossi who states: ken halakhah magom shenahagu ... en meshannin miminhag haMedinah. However, see S. Lieberman in TK p. 276, n. 23, who attributes the entire discussion to RSBG. See also M. BM 9:1 where the rule hakol kminihag haMedinah is stated as the anonymous position and not attributed to RSBG.

200. He who finds a writ of indebtedness should tear it up. [If] it should come to a court, they tear it up. RSBG says: "Everything is in accordance with the rule of the province" (T. BM 5:23).
rule of custom in the name of RSBG, tradition sometimes expresses it as "everything is [built] according to the sanctuary construction" (M. BB 6:4). The same Mishnah gives the basic dimensions of living quarters for humans as understood by the terms "small house", "large house" etc. It offers the height dimension as half the combined length and width, and as proof the dimension of the sanctuary is given.\textsuperscript{202} The text quotes RSBG in this context, and understands it to mean that all construction should take place in accordance with the custom of the land.\textsuperscript{203}

Documents

Changing From One Form To Another

There are two ways that one can change a document: one can either alter the form or one can alter the content. RSBG rules that changes of form are to follow local custom.\textsuperscript{204} Changes of content, contrariwise, follow individual ruling.\textsuperscript{205}

\textsuperscript{201} M. BM 7:1. See JT BM 7:1, 11b where R. Hoshayyah states: "That proves that custom annuls the law" (\textit{zot omaret haminhag mevatej et haHalakhah}). BT BM 87a adapts the rule where the custom is not clear, "Either we take the average or pay the lesser wage."

\textsuperscript{202} I Kings 6:2: "And the house which king Solomon built for the Lord, the length thereof was sixty cubits, and the breadth thereof twenty cubits, and the height thereof thirty cubits." JPS \textit{op. cit.}, p. 409.

\textsuperscript{203} \textit{Atu kule kalma kebinyan hekhal kayde} (BT BB 98b).

\textsuperscript{204} M. BB 10:1.

\textsuperscript{205} M. BM 9:8 and T. BM 9:18.
In drafting documents there were two forms, a simple and a complex (tied). A simple document required two witnesses, while a "tied" document required three.\textsuperscript{206} In a simple document, the witnesses sign within the document; in a "tied" document, the witnesses sign on the back. RSBG ruled that exceptions should follow the custom of the province.\textsuperscript{207}

Contract And Substitution

In two instances the Mishnah rules a tenant may alter the original agreement with his landlord; RSBG maintains in both that no changes may be made.\textsuperscript{208} Yet, in the case of one who deposits produce with a friend and the fruit is rotting, the rabbis say, "The fruit must not be touched even if they perish",\textsuperscript{209} while RSBG permits the friend to sell them in the presence of the court. By selling the fruit before it spoils completely, it is as if he is restoring a lost object to its owner. By allowing the sale of the fruit before the court, RSBG shows both simple logic and a desire to augment the authority and respect the average person held for the court. As a result, 'selling under court supervision' became accepted practice.\textsuperscript{210}

\begin{thebibliography}
\item 206. M. BB 10:2.
\item 207. Ibid., 10:1.
\item 208. M. BM 9:8.
\end{thebibliography}
Return Of Lost Documents

In the context of general rules for the return of lost documents and receipts, RSBG in M. BM 1:8 propounds a rule concerning three documents, all of which apply either to one borrower or to one lender: "If the document that was found concerned one man that borrowed from three others, it should be returned to the borrower; but if three men borrowed from one, it should be returned to the creditor". The reasoning here is evident.

Two Holding A Document, Let Them Divide

RSBG was a proponent of settling arguments on the basis of the letter of the law. In the case of two holding a document where: "This one says: 'It is mine, and I lost it' and that one says: It was in my possession and I already paid you for it'", R. Judah haNasi rules that the court should undertake a complete examination of the document and of its witnessing signatures. RSBG, however, rules simply "Let them divide it between them". The Mishnah uses this

210. Wahakhamim >omrim <oseh tahem takanah umokheron beBet Din (BT BM 38b).


212. "If they belong to the three different lenders, then why are they in one roll?" Therefore the finder should return the documents to the borrower, who evidently borrowed from three different lenders. However, if one found three documents of three different borrowers, who borrowed from one lender, then these documents should be returned to the lender" (BT BM 20b).

213. T. BM 1:15, JT Git. 1:1, 43b.
same principle ("let them divide it") in settling the case of a rental agreement intercepted by an intercalated year. If the agreement reads "for a year" the renter benefits, and if the agreement reads for "twelve months" the landlord benefits. It once happened in Sepphoris that a person rented a bathhouse from his friend at twelve golden denars a year, or one denar a month. The case came before RSBG and R. Yossi, and they ruled: "Let them divide the added month".

215. Ibid.
III. RSBG'S POSITIONS IN OTHER AREAS OF LAW

Marriage and Divorce

From RSBG's approximately twenty-five¹ extant traditions concerning marriage and divorce which the tannaitic collections preserve, one can isolate a number of general principles.² RSBG, also shows himself, in the tannaitic sources, to be concerned with the preservation of earlier practices.³

General Approach - Lenient

In a case where major physical defects are discovered after a marriage, he does not require the wife to fulfill certain pre-divorce conditions.⁴ His rulings also show a high respect for marriage, and reflect a desire to preserve rather than to dissolve marriages. However, once a divorce


2. See, especially, M. Git. 7:6: "A lack of performance that is not the fault of the wife does not damage the validity of the divorce," and T. Git. 5:6: "No condition stated in a document is valid which is not stated twice".


4. According to RSBG, the woman not only does not have to remain married to the man in whom were discovered major defects, but the husband has to divorce her and pay the ketubah as well. Kinsah setam venimsehu bo mumin ... yeqayem, RSBG >omer ... yosi veyiten ketubah (T. Ket. 7:10).
document had been offered and accepted, it carried the full impact of a divorce even where the real situation was one of annulment, as in the case of a minor girl who exercised the right of refusal. Under difficult economic conditions, the contract of marriage could be dissolved for the mutual benefit of both husband and wife.

Proper Names In The Document

The importance of using correct names in a document is self-evident. Nevertheless, RSBG tended towards leniency in the use of the proper known names for the parties in a divorce. According to RSBG if the name of one of the parties was different in Galilee than in Judaea and the unknown name was used, the divorce is valid. In difficult times, as in times of national emergency, the court did not require proof

5. RSBG et al. say: "One way or the other, since she has gone forth from him with a writ of divorce, she is prohibited from returning to him" (T. Yev. 13:5).

6. RSBG says: "... If there were years of famine, if he then said to her, 'Take your writ of divorce and your marriage-contract, and go feed yourself', he has that right" (T. Ket. 4:5).

7. In T. Git. 6:5 in the name of R. Shim'on. However, see TK p. 270 n. to line 24 where the Erfurt reading, 'RSBG', is preferred.

8. "If a man has two wives, one in Judaea and one in Galilee, and he has two names, one that is used in Judaea and one that is used in Galilee; then, if he divorced his wife in Judaea by the name he uses in Galilee, and he divorced his wife in Galilee by the name he uses in Judaea, it is invalid... RSBG says: 'Even if he wrote his name as used in Judaea when in Galilee, and his name as used in Galilee when in Judaea it is valid'" (T. Git. 8:5).
of a divorce or of possession of the relevant document in order to collect the Ketubah.  

Non-Jewish Witnesses

RSBG, himself, went so far as to recognize the validity of divorce documents signed only by non-Jews as witnesses as well as of divorce documents drawn up in a Gentile registry.  

R. Akiba and the Sages had already, at their time, debated the validity of a bill of divorce granted in a non-Jewish court. RSBG follows Rabbi Akiba in recognizing the validity of a divorce for the wife and of a freedom-document for a slave, where only non-Jewish witnesses are involved. In the concluding statement of the Tosefta,  


10. "All documents which come forth from Gentile registries even though their signatories are Gentiles, R. Akiba declares valid in the case of all of them. But the Sages declare invalid in the case of writs of divorce for women and writs of emancipation for slaves.... RSBG says: 'Also writs of divorce for women and writs of emancipation for slaves are valid in a situation in which there is no Israelite available to sign'" (T. Git. 1:4). The M. Git. 1:5., states the above ruling as anonymous except for the RSBG view which is identified. "All writs which are drawn up in registries of the Gentiles are valid, even though those who signed them are Gentiles, except divorce documents for women and for the emancipation of slaves. R. Shim'on says: 'Even these are valid, only those that are drawn up by an untrained registry were mentioned as invalid'". According to J. N. Epstein, Mavo LeNusah HaMishnah, op. cit., p. 1199, the correct reading is RSBG, R. Shim'on dematnitan RSBG hu. See also BT Git. 11a. and S. Kanter, Rabban Gamaliel II: The Legal Traditions (Chico, 1980), pp. 158-160.


12. "RSBG says: It was a great ordinance which they ordained, that witnesses should place their names on writs
RSBG views the requirement of the full disclosure of the names of witnesses as a great improvement.

Conditions

Intention Of The Condition

If all those party to a document fulfil all conditions to which they agree, the court recognizes the validity of the document; if not, it declares the document invalid. Partial fulfillment voids a contract. Such a principle raises an important question: What does the court recognize as complete fulfillment? Is intent to fulfill equivalent to fulfillment? To RSBG, at least in divorce law, intent did equal fulfillment. RSBG considers the conditions that a husband makes at the time he gives a writ of divorce to his wife fulfilled, if through no fault of her own she cannot perform them, so long as she is willing to do so. 13

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of divorce" (T. Git. 7:13). See: TK p. 913, where some quote this ordinance in the name of Rabban Gamaliel.

13. M. Git. 7:6 illustrates how a condition that cannot be carried out, is considered null and void because the parties to the contract did not comply with it, even if their non-compliance was involuntary. RSBG, however, looks to the spirit of the condition, the intent of the contract. In the case above, it is understood that one must nurse a child in the early months of life, and one must care for an elderly father. The condition is, therefore, a necessary point in the contract. However, if the child or father has died, the action behind the spirit or intent of the condition for giving the divorce is no longer necessary, and it is as if the parties to the contract have complied with the condition. Since the wife agreed to the particular condition and was ready to perform, the divorce according to RSBG is valid. RSBG termed this rule as a general principle: "A lack of performance that is not the fault of the wife does not damage the validity of the divorce".
Limits To The Cancellation Of The Condition

In an earlier period, if a husband appointed an agent to deliver a divorce to his wife, and he had a change of heart, he could, without informing the wife or the agent, go before a court and invalidate the divorce or the agency. RSBG limits the husband's ability to add a condition, cancel or invalidate a divorce, once it has left the husband's hand. ¹⁴

We see here a conflict of principle. To other authorities the validity of the document [in this case a bill of divorce] is contingent on the total fulfillment of any condition named in it. To RSBG, however, a condition that has lost its meaning or relevance need not be performed, and its lack of fulfillment does not cancel the contract nor invalidate the divorce. ¹⁵

¹⁴ "In an earlier period [the husband] would set up a court any place and before this [just appointed] court he would annul it. If he annulled it, it is considered invalid: these are the words of Rabbi. RSBG says: He may not annul it nor add upon his conditions" (T. Git. 4:1). In BT Git. 33a this baraita is followed with: "For if so, what is the power of the court worth" (cf. p. 84). See also M. Git. 4:1, where it is stated that Rabban Gamaliel ordained that this form of cancellation of agency was not to be done.

¹⁵ "If he said: Here is your bill of divorce on condition that you serve my father for two years, or that thou suckle my son for two years, and the son died, or the father died or said: 'I do not wish thee to serve me', without provocation from her, the bill of divorce is not valid. RSBG says: Such a bill of divorce remains valid". RSBG laid down a general rule: 'If no hindrance arose through her, the bill of divorce remains valid'" (M. Git. 7:6). See also: TK ad. loc. p. 878, and JT Git. 7:6, 49b (The opinion of Resh Laqish: "In circumstances that are beyond our control it is as if the condition was accomplished"). See also: T. Git. 7:5: "[If the husband said]: 'This is your
important in the case of a possible levirate marriage or halisa that would result if the divorce would be declared invalid.16

Provocation In Conditions

In a case that may be termed "under provocation" (haqpadah), RSBG does not consider the condition fulfilled.17 The divorce would therefore be invalid according to RSBG. However, we must parallel the Mishnah version with the Tosefta. What the M. Git. 7:6 calls "without provocation" the T. calls "if with willingness" (berason); so that RSBG's position in the M. and T. is the same. In both the M. and T. he states the divorce is

divorce, on condition that you pay me two hundred zuz', and he died, if she paid the money, she is not subject to the 'levir', and if not she is subject to the 'levir'. RSBG says: "Let her pay the money to his father or his brother or to one of the heirs". J. N. Epstein, Introduction to Tannaitic Literature, op. cit. p. 607, n. 5, sees RSBG as an exponent of the principle of 'intention'. By giving the money to the one who is legally entitled to inherit from the husband, we act in accordance with his intention. See also M. Git. 7:5, and D. Weiss-Halivni, Sources and Traditions Vol. 3 op. cit. p. 595, n. 1, who states that for RSBG fulfilling his intention and thought is sufficient.

16. T. Git. 7:5. See above n. 15. See also T. Yev. 1:10 where the outburst of RSBG goes unanswered, and R. Joshua exclaims: "Why do you force me to get involved in this controversy between the Houses?" We see from RSBG's outburst how concerned he was that a woman should not be exposed to the possibility of a levirate marriage.

17. "[If he said this is your divorce] on condition that you serve [my] father and the father said, 'I do not want that you serve me', since the condition was not fulfilled, the divorce is not valid. RSBG says: If the words were spoken in an unprovoked atmosphere, then the divorce is valid, if they were spoken under provocation it is not valid" (M. Git. 7:6, T. Git. 7:6).
valid. If there is provocation on her part then the divorce is invalid, this is how it is stated in the Tosefta. In the Mishnah this is understood when we consider the reverse of the generalization of RSBG, "any hindrance that does not stem from her, the divorce is valid," but if there is hindrance or provocation on her part then the divorce is invalid.

Circumstances Beyond Our Control

In another case adjudicated by RSBG, a divorce could not be performed according to the literal statement of the husband, since he had died before the condition could be carried out. RSBG declared the divorce valid so that the widow might not be exposed to a levirate marriage. In the same spirit RSBG quotes favorably a decision of the Sages in a famous case that arose in Sidon. A condition in the divorce required that a lost garment be restored. The Sages ruled the divorce to be valid even if the wife substituted money for the personal item. In every other problem in

18. B. Cohen, "Conditions In Jewish And Roman Law," Harry Austryn Wolfson Jubilee Volume (Jerusalem: 1965), p. 209, notes: "RSBG maintains that such a get is valid as long as there was no hindrance (akava) on her part".

19. See commentary of Rashi to BT Git. 75b s. v. (shelo behaqpadah): "She did not provoke him ..., and the hindrance does not stem from her".

20. T. Git. 5:5.

21. M. Git. 7:5. See BT Git. 74b where it is understood that: "On condition that you return my coat" means a particular coat according to the anonymous position, and according to RSBG it means the value of the coat as well.
divorce law, the M. accepts the views of RSBG, except in this case involving a condition that requires the return of a particular item. This case is one of three in the M. where the law is not established like RSBG. 22

Double Form Of Condition

An additional approach by RSBG, that lessened the impact of conditions on divorce laws, was his requirement that in matters involving biblical laws, the parties must follow the principle of "thai koful". One must state the condition and its negative. 23 This follows the type of agreement made by Moses and the tribes of Gad and Reuben. 24 According to the Tosefta it is RSBG's view that every conditional statement mentioned in Scripture is expressed both positively and negatively. 25 On this principle, that a

See also D. Weiss-Halivni Sources and Traditions [Hebrew], vol. 3 op. cit., Git. 75b, p. 595, who understands that: kal menat, [and in the case above kal menat shetitni li istaliti] to RSBG, means the woman's readiness to perform. Therefore the condition is considered fulfilled when the value of the coat is returned.

22. "Said Rabbah bar bar Hanna in the name of R. Yohanan: "Everywhere in our Mishnah that RSBG taught [states his view] the law is in accordance with his view, except in the case of a guarantor [BT BB 173b], Sidon, [BT Git. 74a] and additional testimony after a case is closed [BT San. 31a]" (BT Git. 75a). See infra p. 116 n. 6.

23. One must state the condition and its negative: "If you will perform the condition it will be a divorce, and if you will not perform the condition it will not be a divorce" (T. Qidd. 3:2).


25. T. Git. 7:6, BT Git. 76a.
condition must be expressed in a double form, RSBG agrees with R. Meir and differs with his brother Hananya. 26

Agency

Instructions To Write A Divorce

The correct expression to be used when asking the court to prepare a bill of divorce is "kituy utenu" (write a divorce document and give it). 27 If one used an incomplete formula, RSBG quotes the Sages to the effect that circumstantial evidence may be used to determine his intention in the incomplete formula. 28 The words themselves are not as important as their intent, and thus we may resort to clarification from sources other than verbal expression. A sudden unnatural demise, following an incomplete order to write bills of divorce is not of itself evidence of one's intention to divorce his wife. The court must look into the circumstances; if the death was suicide, the divorce stands, if it was an accident it does not. Intention is important here as well. 29 According to the JT, 30 however, if his

27. M. Git. 6:7.
28. "The Sages said: If he fell on his own, this is a valid divorce, if the wind pushed him, it is not a valid divorce" (M. Git. 6:6).
29. The principle as it is formulated by the Rabbis is: "that the later action proves [his intention at] the beginning" (M. Git. 6:6 and T. Git. 6:9). See: J. N. Epstein, Introduction to Tannaitic Literature, op. cit., pp. 599-601.
incomplete statement is followed by his immediate death, even though there is doubt as to his intention, his incomplete statement is taken as if he had stated the full formula, and we proceed to write the divorce.

Appointment Of Agents

Mishnah and Tosefta Gittin present a format for the appointment of agents in carrying out a divorce: if the husband appoints an agent to deliver and the wife appoints an agent to receive the divorce, until the divorce is in the possession of either the wife or her agent, the husband may cancel the agency. The expression for the appointment by the wife of an agent to receive the divorce is "receive the divorce for me" (hitqabbel li gitti), and RSBG adds: "take the divorce for me" (tol li gitti) as a permissible formula. In the Tosefta RSBG gives two possible legal expressions for the husband's appointment of an agent and two expressions for the husband's confirmation of the wife's agent. As he transfers the divorce to the agent the husband uses either the wife's form "hitqabbel", or an expression of privilege, such as "zekhi lah". In the first two cases the

30. "If he died on the spot it is a valid divorce (Im alatar nafal hare zeh get)" (JT Git. 6:8, 48b).
31. M. Git. 4:1.
32. M. Git. 6:1.
33. T. Git. 4:1.
34. The giving of the divorce to the wife's agent takes place in a setting where the agent states: "Your wife said,
husband retains the right to cancel the agency and in the last two cases the bill of divorce is considered as delivered as soon as it reaches the hand of the agent. The concern in the Tosefta is whether the husband renames the wife's agent as his own by using the wife's expressions "hitqabbel" or "zekhi". According to RSBG he does not, according to Rabbi he does. The opinion of RSBG is that he may not make a new appointment, while according to Rabbi he may not only make a new appointment, but he may now, as the person initiating the agency, cancel the agency, unless the bill of divorce reaches the wife's hands first.

Agency Involving Different Countries

The formula that an agent bringing a divorce to the land of Israel from another country must use is: "This divorce was written and signed before me". An agent who transports a divorce between any two countries must also use this formula. RSBG is of the opinion that in a foreign country an agent must use the appropriate formula even when bringing the bill of divorce from one jurisdiction to another. RSBG again places less emphasis on the exact expression 'receive the divorce in my behalf (hitqabbel li gitti), 'and the husband says: 'Receive for her (hitqabbel lah) '.

35. M. Git. 1:1.

36. In T. Git. 1:1 the same case is presented with a change in the position of the Sages: "Originally it was required [to be said when bringing a divorce] from one country to another country, and [the Sages] changed their position to require [the agency formula to be said] even from one neighborhood to another. RSBG's position "from one jurisdiction to another "did not change. However in the
wording of the formula than do his colleagues. RSBG lays emphasis rather on the jurisdiction. Within one jurisdiction the agent need not use the set formula, but when carrying the divorce document from one jurisdiction to another he must.

Minor's Refusal And Divorce

RSBG, (together with R. Yishmael and R. Yehoshua), confirms the validity of a divorce even after the process of "mi'un" (the refusal by a minor to a marriage contract). All the restrictions and limitations that apply to a divorcee apply to the minor as, for example, not being able to marry a priest.

Physical Defects And Divorce

Once a marriage was valid, normally the woman had to live with her husband even if he developed major bodily defects. T. Ket. also confirms RSBG as trying to keep

\[37. \text{He does so since it is difficult to find witnesses to confirm the signatures or since the judges may not be knowledgeable in the laws of divorce. Lefi she>en beqi>in lishmah ... lefi she>en mesuyin leqaymo (BT Git 2b).}

38. T. Yev. 13:5.

39. "Under what circumstances did they rule that he must divorce her and pay off her marriage contract? When he wants, but she does not want, (or) she wants, but he does not want [to continue the marriage]. But if both want [to
the husband and wife together, even though they may have
discovered minor physical defects after the marriage. However, if major defects are discovered, the marriage may
be terminated and the husband forced to give his wife a
divorce and pay the Ketubah.

The Ketubah

The Ketubah is a financial obligation of the husband to be paid to his wife in the event of divorce, or to his widow in case of his death. According to RSBG as cited in the Mekhilta, the Ketubah obligation has no limit in Scripture. RSBG will not tolerate interfering with the provisions of the Ketubah when the violation of a Torah principle is involved. This rule is enunciated in M. Ket.

continue the marriage] they do continue the marriage" (T. Ket. 7:11).

40. "If he married her without specification, and blemishes and encumbering vows were found on her, this one continues the marriage. RSBG says: "If he was lame in one foot and [Mss. E. and P."or"] blind in one eye, they are major blemishes and he must divorce her and pay off her marriage-contract" (T. Ket. 7:10).

41. M. Ket. 7:9.

42. *Yosi meyiten ketubah* (T. Ket. 7:10).

43. Mishpatim 22:16. J. N. Epstein and E. Z. Melamed eds. *Mekhilta D'Rabbi 'Simon b. Jochai* op. cit. In the discussion on the amount of dowry to which the bridegroom must obligate himself, various Scriptural verses are suggested as patterns. RSBG dismisses all suggestions with a terse rule: "The woman's Ketubah has no limit in Scripture." In an earlier generation R. Meir stated: "It must never be less than 200 [dinar] if she is a batulah or a manna if she is an almannah" (M. Ket. 5:1). In an earlier generation, yet, all the property of the husband, real and movable, was subject to the payment of this obligation (T. Ket. 9:1).
and T. Ketubot 9:2, namely: that a condition made contrary to the Torah, is by definition void. Ordinarily the Ketubah was followed to the letter but, under all circumstances, RSBG holds that the concerned must follow local custom.  

Collection Of The Ketubah

According to RSBG the full rights to the Ketubah remain intact if the widow lives at her father's home, but if she lives in the husband's home, the court assumes that her benefits will exceed the value of the Ketubah. RSBG considers the collection of the Ketubah as if it were a biblically recorded obligation, and he requires the payment of the Ketubah in Jewish coins, as other biblical recorded obligations do. RSBG also supports the widow's right to collect her Ketubah from any property, real or movable.

44. RSBG says: "If he dies he may still inherit her property because he made a condition contrary to what is enjoined in the Law, and if a man makes a condition contrary to what is enjoined in the Law, his condition is void."

45. RSBG and R. Yohanan b. Beroqah say: "If she died, he inherits [from] her, for he has made a condition against what is written in the Torah. And whoever makes a condition against what is written in the Torah, his condition is null."

46. T. Ket. 6:5.
49. T. Ket. 12:3.
Difficult times forced changes in many areas; including the collection of the Ketubah. According to RSBG, for example, a woman may collect her Ketubah payment, without producing the writ of divorce. However, we find RSBG hesitant in allowing the woman to collect the Ketubah from a guarantor, for fear of collusion between the divorcing couple in order to extort money from the guarantor. The husband had to vow not to benefit in anyway from the Ketubah.

50. "From the days of those slain in battle the law of the usurper occupant was applied ..." meharuga haMilhamah wehelakh yesh bah sigrigon (M. Git. 5:6).

51. "If she brought out a writ of divorce without her Ketubah, she may collect her Ketubah. If she produced her Ketubah without the divorce... she cannot collect. RSBG says: Since the days of peril a woman may collect her Ketubah without producing a writ of divorce ..." (M. Ket. 9:9). See also M. Git. 6:2: "If two [witnesses] say: 'Before us he received the [divorce for her] and he tore it'." This is reflected in BT 64a: "Why tear it? Said R. Yahudah in the name of Rav: This has reference to the period of the gezerah," i.e. that at the time of the persecutions, when they prohibited the observance of the mishwot including the delivery of a bill of divorce, immediately after the delivery of the divorce document to the wife or her agent it was torn. See: H. Albeck, ShSM. ibid. Git. 6:2, addenda p. 403.

52. "If a man had dedicated his goods to the Temple and he was liable for the Ketubah at the time, [and now he wants to divorce his wife] R. >Eli< ezer says: When he divorces her he must vow to derive no further benefit [from the divorce]. Joshua says: He need not. Similarly RSBG said: If one was a guarantor for a woman's Ketubah and her husband divorced her, the husband must vow to derive no further benefit from her lest he should conspire against the property of the guarantor and then take his wife back again" (M. BB 10:7. and M. <Ar. 6:1).
The Ketubah And The Oath

Tannaitic Courts upheld widow's actions in collecting the Ketubah, even when they were not in accord with the laws of sale. Where, ordinarily, an oath was required, RSBG required only a vow from the widow. For example if the widow found herself in the position of collecting from orphans a condition which required an oath, we hold it sufficient for the widow to make a vow.53

Sales By The Widow

RSBG supported the validity of a widow's sale of property to settle her Ketubah claim, even if the property was sold below its real value. RSBG held the sale to be valid even though a below market value sale diminished the orphan's income. The widow, however, was required to make restitution of the amount undersold.54

The Ketubah and Illness

One could, according to RSBG, use Ketubah funds for the payment of debts accruing through routine sickness but not

53. "A widow may not collect from the property of orphans except with an oath,...Rabban Gamaliel the elder ordained that the widow should promise by a 'vow',...and collect her Ketubah" (M. Git. 4:3). See: M. Shevuot 3:7, where it is stated that for the transgression of an oath there is physical punishment, while for not fulfilling a vow there is no physical punishment. See also: M. Ned. 2:2 for special variations in this law.

54. RSBG says: "Under all circumstances is her sale valid and she returns the dinar to the heirs ..." (M. Ket. 11:4 and T. Ket. 11:3).
for the support of a person suffering from a chronic illness.\textsuperscript{55} In addition, during hard times, the Ketubah was no protection for the wife. According to RSBG in difficult times the husband could simply divorce his wife, pay her the required amount, and send her on her way.\textsuperscript{56}

The Widow And Her Father’s Real Estate

Two further examples involve the wife’s rights of inheritance and residence. It was RSBG’s view that the wife’s real inheritance had more than market value. According to RSBG it was a living memorial to her father, and therefore the husband could not sell it.\textsuperscript{57} In addition, the Tosefta\textsuperscript{58} offers a tradition ascribed to RSBG in the name of R. Meir to the effect that the blessings of the home are due to the presence of the woman, and that even the widow has a right to continued residence, in the home of her deceased husband. Such residence, he maintains, brings ongoing honor to the deceased. Both of these rulings foster the protection as well as the respect of the woman.

\begin{footnotes}
\item[55] T. Ket. 4:5.
\item[56] Ibid.
\item[57] “If she inherited old slaves and maidservants, they should be sold and land should be bought with the money, and the husband may benefit from what grows on the land. RSBG says: She should not sell them, because they are the pride of her father’s household” (M. Ket. 8:5).
\item[58] T. Ket. 12:3.
\end{footnotes}
The Blessing Of The Home

The position of the woman as a human being with personal honor and respect found its expression in many decisions of RSBG. The blessings in the home are ascribed to the woman and her right to work is not just a privilege but a matter of mental health. Among the rights of the wife as a human being, RSBG considered the right to work as important to her.

59. RSBG says: "Moreover if a man put his wife under a vow to do no work he should divorce her and give her the Ketubah, for idleness leads to lowness of spirit" (M. Ket. 5:5). See also: Rashi to BT Ket. 59b s. v. shikamum where he translates the term shigakon (insanity).
Conclusion

The turbulent days following the Bar Kokhba War found the Jewish community relocated in the Galilee. RSBG emerged as the man who not only possessed the qualities of leadership, required by those days of transition, but who also was able to re-establish the patriarchate as a viable institution for generations to come.

During his patriarchate RSBG established his authority in the Jewish community. As patriarch he was the head of the patriarchal court that now sought to function with the same authority as the Sanhedrin at Jerusalem had functioned. His court made decisions that affected not only Jewry in the land of Israel, but in the Diaspora as well. RSBG affirmed the authority of the local rabbis and their courts but still firmly maintained the seat of Jewish leadership at Usha. It was to RSBG's credit that the court system throughout Israel worked. It was his humble character, that cemented the rabbis of his generation into the foundation of rabbinic leadership, upon which rabbinic Judaism would later be built.

1. See supra pp. 82-83.
2. M. Ket. 11:5.
3. See supra p. 28.
4. M. R. H. 1:6 records a confrontation between Rabban Gamaliel and R. Akiba where Rabban Gamaliel warns R. Akiba that his actions will cause harm in the future. Compare this to the democratic manner in which RSBG handled the Rosh Hashannah service question (see the following note).
RSBG at Usha was the uniting force at a crucial moment in the life of the Jewish community. His decisions touched all areas of life, the family, the market place, the farms, and even the prayer service.  

Because he was the patriarch, to whom all major difficulties were directed, his own decisions and the decisions of others which he applauded, reflect the kind of leadership that the period demanded. He, more than anyone, set the tone demanded by the complete change of conditions from the Yavneh and even more from the pre-70 period.  

An early amoraic tradition in the name of R. Yohanan, offers a high tribute to RSBG when it states that with only three exceptions RSBG's rulings in the M. are normative. 6 There were other rabbis at the major Jewish centers in the Galilee, but there was only one patriarch who was responsible for all the rabbis as well as for the entire Jewish community.  

The RSBG pericopae in the M. and T. are testimony to the extent of his personal participation in the life of the

5. T. R. H. 4:55 shows RSBG as listening one say to one version of the Rosh Hashannah service and to another version on the second day and approving one.  

6. "Said Rabbah bar bar Hanna in the name of R. Yohanan, 'Any place where RSBG is stated in the Mishnah, his opinion sets the law (halakhah) (BT Ket. 77a), except [in the case] of a guarantor [BT BB 173b], [the case of] Sidon [BT Git. 74a.], and [the case of] one who wants to bring additional testimony after the verdict was pronounced [BT San. 31a]." See also BT Git. 15a, where Rav Yosef states: "The law is like R. Shim'on Hanasi [Halakhah keR. Sh. haNasi]" and there was only one Shim'on who was a Nasi. See infra, p. 121, n. 28.
Jewish community. The extent of his influence can be seen from the fact that over one hundred mishnaic traditions are offered explicitly in his name, while many anonymous decisions can be traced to him as well. By recording RSBG decisions in the M. in RSBG'S name and not merely as anonymous (stam), R. Judah haNasi gave pre-eminence to many RSBG decisions, even though stam also gives a halakhah special status in a dispute.7

The RSBG pericopae in the socio-economic area show his awareness of the farmer's special concerns. He speaks of the olive growers' tools, the farmer's picturesque language, the special needs of the farmer for mixed planting, the growth cycle of the fig tree, the landscape, as well as the animals in the field; his legal decisions that involved the people who worked the land were made from a learned knowledge of those people and their work.8 Even in the area

7. BT Hull. 31b. R. Yohanan is quoted saying, "The halakhah is like the anonymous position recorded in the Mishnah [halakha kistam Mishnah]." However, if an anonymous law is opposed by another tannaitic authority and the Amora can prove that the anonymous position is of only one, the anonymous position will not prevail. See also BT Yev. 42b, where it is stated that a stam Mishnah that is followed by a dispute in a baraita, the halakhah is like the stam Mishnah. See also: D. Halivni, Sources and Traditions op. cit., ad. loc. p. 49, who accepts the view that because scholars have identified R. Shim'on as the author of this Mishnah it is, therefore, not a stam Mishnah. See also JT Yev. 4:11, 6b, where it is stated: "Is it not a rule that we can arrive at a minori ad maius (min ma hen) that where Rabbi states a stam in the Mishnah then a dispute that is followed by a stam, the halakhah is like the stam of the Mishnah? See also B. M. Levin ed., Iggeret Rav Sherira Gaon op. cit., p. 38 for a brief formulation.

8. See supra pp. 32-34.
of uncleanness, where RSBG, though he was normally strict in matters of ritual purity, even found a way to make it easier for the farmer to bring his garden products to the market without exposing the vegetables to ritual uncleanness. In addition he minimized the requirements for the cleansing of the olive and wine presses, and protected the farmer's seed purchases by holding the seller liable when seeds did not sprout.

It is especially important to note that RSBG permitted the farmer to perform many agricultural activities during the Sabbatical year. His most important concern was that the farmer should be aware of the Sabbatical year restrictions. This approach of trust shows that RSBG considered the farmer as reliable in the observance of the law. The farmer's awareness of the seventh year, and a minor change in the method of maintaining the soil for the year ahead was all that RSBG required.

His decision validating a postdated prosbul shows his concern not only to protect the lender's investment but the preservation of the original purpose of the prosbul, which was to establish stability in the money market. Likewise RSBG ruled that wholesalers and manufacturers had to be given long periods of notice when a lease expired. A

9. T. Makh. 3:8, and supra p. 63.
11. M. BB 6:1, and supra p. 44.
12. T. Shev. 3:19, and supra p. 36.
business man's tools of trade, his weights and measures, were inspected at longer intervals of time than the retail storekeeper. \(^{13}\)

The marketplace was to be a safe area for the people to engage in business. However, those engaged in the construction trade in the public domain were given special consideration. His primary concern, however, was for public safety and convenience in the marketplace. RSBG ruled that anyone whose actions caused damage in the public domain had to make restitution. \(^{14}\)

RSBG also viewed contractual arrangements realistically. Where following the contract to the letter would lead to total loss for one of the parties RSBG ruled in favor of altering the original agreement and allowing saving action under court supervision. \(^{15}\)

RSBG's rulings on slaves and usury were dictated by a realistic appraisal of the authority of the occupying government as well as local custom. In many cases he ruled to overlook the appearance of usury. \(^{16}\) Of particular interest is the apparent contradiction between slavery and the rule that when a slave is captured, the owner has a responsibility of redeeming his slave and freeing him. \(^{17}\)

\(^{13}\) M. BB 5:10, and supra p. 56.

\(^{14}\) See supra pp. 57-58.

\(^{15}\) M. BM 9:8, T. BM 9:18, and BM 38b. See supra p. 90.

\(^{16}\) See supra p. 55.

\(^{17}\) See supra pp. 49-50.
His decisions involving Gentiles are especially important. They clearly present an attitude of respect toward the non-Jewish peoples in whose midst they now lived. He approved bills of divorce and of emancipation drawn by Gentile courts. In Jewish religious matters, however, the Gentile had no say. From his biblical interpretations in praise of the Roman Government we may judge how careful RSBG had to be in his utterances concerning the authorities.

The references to the cordial relationship with Antoninus Pius apparently do not reflect the early days of his patriarchate.

18. See supra p. 95.
19. See supra p. 73.
21. See supra p. 30. In commenting on the pursuit of the Israelites during the Exodus from Egypt, RSABG states that Pharaoh added a third rider in order to intensify the pursuit. Masekhta deWayehi, Parsha 1, J. N. Epstein, E. Z. Melamed, eds. Mechilta D'Rabbi Simon b. Jochai adds a variant to the statement of RSABG "some say that Antoninus added [the third rider]." The name Antoninus is taken as a reference to the Romans as pursuers of Israel, and therefore an unfriendly Antoninus reference in the alternate version of RSABG. See Hugo Mantel: op. cit., p. 241 who writes that when "RSBG spent the festival of Succot in Caesarea in order to visit the Roman governor .... On the occasion of his visit to Caesarea Antoninus sent for R. Judah ha-Nasi ...". The identity of Antoninus and Rabbi is one of the most complicated among the scholars, including H. Graets, I. H. Weiss and I. Halevy. In a long note H. Graets, vol. 2 [Hebrew] op. cit., p. 300, n. 2, S. P. Rabinowitz, Graets's translator into Hebrew states that Antoninus Pius the First died in 161CE, that wouldplace Antoninus Pius references and Rabbi in a later period, and would identify Antoninus Pius in the RSABG reference as Antoninus Pius the First. We may therefore understand the Mekhilta and the variant above in that frame of reference. The variant in the RSABG reference in the Mekhilta tells us that whatever friendly overtures
Strict interpretation of Jewish law is the rule in the area of divorce. However, RSBG maintained a lenient approach in many cases, as for example, when he permitted the use of an unknown name of the husband in a divorce document. Where conditions were stipulated in a divorce, RSBG considered the condition fulfilled if through no fault of the wife she could not perform the conditions, as long as she was willing to do so. RSBG limited the husband's ability to add new conditions, or to cancel or invalidate a divorce once it has left his hand. Where conditions lost their meaning or relevance and were therefore not performed by the wife, he also ruled the divorce to be valid. RSBG applauded a decision of the Sages to accept money in place of a condition requiring the return of a personal item. RSBG's rulings were considered lenient when the widow or divorcee had to collect the Ketubah. His attitude toward the right of the wife to work is especially noteworthy. He considered the right to work a matter of mental health.

Practically all the rules, decisions or opinions of RSBG were accepted as the rabbinic law not only in his court but in the Mishnah. Ultimately RSBG's decisions influenced all of Jewish tradition.

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22. T. Git. 8:5 and supra p. 94.
23. See supra pp. 97-98.
Because of RSBG's position as patriarch and his relationship as the father of the redactor of the Mishnah, his influence and input into that corpus was quite substantial. His decisions left their imprint on the Mishnah and consequently on Jewish life throughout the centuries. That great corpus of Jewish tradition is therefore a monument not only to its redactor but to his father RSBG, the first Nasi or patriarch at Usha.


27. See E. M. Smallwood, *op. cit.*, p. 349, note 70, who says that RSBG "succeeded in raising the dignity and prestige of his office as supreme head [Nasi] of the world wide Jewish Community above its pre-war level, and thus laid the foundations for the almost autocratic rule of his son Rabbi Judah I, the greatest of the patriarchs".

28. The term Nasi used with the person of Shim'on can refer only to RSBG. "Furthermore, R. Simeon haNasi is quoted in a baraita, and we know that the only Nasi of that name was R. Simeon b. Gamaliel II." See: H. Mantel, *Studies In The History Of The Sanhedrin* *op. cit.*, p. 4, n. 12 and supra, p. 16, n. 16.

29. The position of D. Halivni ("The Reception Accorded to Rabbi Judah's Mishnah" *op. cit.*, p. 212), that "R. Judah's ambitions were not realized ... He was revered no end yet his ambition was not granted. To me, at least, this sounds tragic." is a view to which I take exception, speculations about R. Judah's intentions notwithstanding. I concur with A. I. Baumgarten, "The Politics of Reconciliation: The Education of R. Judah the Prince", *Jewish and Christian Self Definition* *op. cit.*, p. 225, who sees great strategy in the actions of RSBG toward the "Akibani opponents" in order to bring them "into the circle of Patriarchal influence". That same kind of guidance and strategy gave the Mishnah an "Akibani coloration". Baumgarten (ibid., p. 390 n. 75), also notes the disagreement between J. N. Epstein and H. Albeck about Judah's intentions in compiling the Mishnah.
Something really happened at Usha. Rabbinic (not nationalistic) Judaism with patriarchal authority under foreign (Roman) domination and protection was conceived here, with RSBG and formalized under Rabbi in the Mishnah.  

30. I concur with J. Neusner as to the importance of the period at Usha for the rabbinic tradition (J. Neusner, "The Study Of Religion As The Study Of Tradition: Judaism", History of Religions vol. 14.3, (1975), p. 206). In a parenthetical clause concerning the historical hermeneutic he contends that what is of primary importance is "whether the historian can persuade himself something has really happened".
APPENDIX


The Mishnah

Zera'im: Ber. 2:8, Peah 5:1, Demai 7:3, Shev. 1:5, Shev. 1:7, Shev. 3:4, Shev. 4:10, Makas. 5:5, Makas. She. 3:5, Makas. She. 5:1, Orlah 1:4.

Mo'ed: Shab. 1:9, Shab. 12:1, Shab. 13:5, Shab. 18:1, ḤEruv. 8:6, Pes. 2:3, Pes. 4:5, Sheq. 8:5, Be'ah 3:1, Ta'ka 4:7, Ta'ka. 4:8, Meg. 1:8.

Nashim: Ket. 2:8, Ket. 5:5, Ket. 8:5, Ket. 9:1, Ket. 9:9, Ket. 11:4, Ket. 11:5, Ket. 12:4, Ket. 13:10, Ned. 8:5,
Nazir 6:8, Sot. 9:12, Sot. 9:15, Git. 1:1, Git. 4:3, Git. 4:4, Git. 4:6, Git. 6:1, Git. 6:6, Git. 7:5, Git. 7:6.

Tosefta

Zera'kim: Ber. 2:16, Ber. 4:9, Ber. 4:14, Ber. 5:2, Ber. 5:20, Peah 3:6, Peah 4:5, Dem. 1:29, Dem. 3:12, Dem. 3:14, Dem. 4:21, Dem. 4:25, Dem. 4:30, Dem. 5:2, Dem. 5:23, Dem. 5:24, Dem. 8:1, Ter. 1:1, Ter. 3:15, Ter. 4:4, Ter. 4:9, Ter. 4:12, Ter. 4:13, Ter. 4:14, Ter. 5:1, Ter. 5:12, Ter. 9:15, Ter. 10:7, Ter. 10:10, Shev. 1:1, Shev. 1:3, Shev. 2:6, Shev. 2:9, Shev. 3:2, Shev. 3:15, Shev. 3:19, Shev. 3:20, Shev. 4:20, Shev. 5:2, Shev. 6:9, Shev. 6:27, Shev. 7:11, Shev. 7:16, Shev. 7:18, Shev. 8:8, Shev. 8:10, Ma'as. 3:13, Ma'as. 3:15, Ma'as. She. 3:9, Ma'as. She. 3:10, Ma'as.
She. 3:18, Ma'as. She. 4:14, Ma'as. She. 5:14, Ma'as. She. 5:17, Kil. 1:12, Kil. 1:17, Kil. 2:5, Kil. 4:11, Ma'as.

Rishon 1:5, Ma'as. Rishon 2:5, Ma'as. Rishon 2:22, Hallah 2:1, <Orlah 1:1, Bik. 1:5.


Nashim: Yevamot 1:10, Yevamot 6:7, Yevamot 7:2, Yevamot 8:1, Yevamot 10:6, Yevamot 13:5, Yevamot 13:6, Yevamot 14:7, Ket. 2:3, Ket. 3:1, Ket. 4:5, Ket. 5:1, Ket. 6:5, Ket. 6:10, Ket. 7:10, Ket. 7:11, Ket. 8:3, Ket. 9:2, Ket. 11:3, Ket. 12:3, Ket. 12:6, Ned. 1:1, Ned. 1:2, Ned. 3:5, Ned. 4:2, Nezirot 1:2, Sot. 15:2, Sot. 15:5, Sot. 15:6, Sot. 15:10, Git. 1:1, Git. 1:4, Git. 4:1, Git. 4:2, Git. 4:4, Git. 5:3, Git. 5:5, Git. 5:6, Git. 8:5, Git. 9:13, Qidd. 3:2.

Midrashe Halakhah

Mekhilta D'Rabbi Yishmael: Mesikhta deWayehi Parshah 1, Mesikhta deWayiss'a Parshah 1, and Parshah 2, Mesikhta deAmaleq Parshah 1.


Sifre on Numbers: Naso: Pisqa 8.

Sifre on Deuteronomy: Devarim: 1 Pisqa 25; Eev: 11 Pisqa 38, Pisqa 43; Reeh: 12 Pisqa 76; Shoftim: 16 Pisqa 144; Wez'ot: 33 Pisqa 347.
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