REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

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THE MANHATTAN *ERUV*

One of the most distinctive institutions marking off Rabbinic Judaism from the fundamentalism of those who reject the Oral Law is the *Eruv*. The kind of *Eruv* referred to here is a legal device enacted by the rabbis whereby a large urban area, within boundaries properly designated and constituted, may be regarded as one corporate domain for the purpose of removing the prohibition against carrying outside private property on the Sabbath. Since the time of the Talmud, which devotes an entire tractate to the subject (*Eruvin*), the attitude to the legality of the *Eruv* has characterized the schism between the Pharisees or Rabbanites and their opponents — first the Sadducees (*Eruvin* 68b) and later the Karaites (Judah Hadassi, *Eshkol Ha-Kopher,* 182-183) — who denounced the institution as an unwarranted interference with the law by the rabbis (cf. Yehudah Halevi, *Kuzari,* 3:51).

In the past such an *Eruv* was in effect in many great European communities, including Warsaw, Vienna and several German cities or parts of them. To this day most cities in Israel have such an *Eruv*. But New York, with the largest Jewish population in the world and with the most ideal physical conditions for such a measure, has so far had to do without an *Eruv,* due largely to the dissension and rivalries resulting from the absence of a recognized *Kehillah*-organization guided by a central rabbinate.

Isolated efforts to overcome this deficiency have not been lacking. Several bulky volumes could be filled with the records of the practical proposals, learned dissertations, and often heated controversies on this subject, accumulated for well over half a century. As early as 1907 a distinguished rabbinical scholar originally from Poland published a lengthy treatise advocating an *Eruv* for parts of Manhattan (R. Joshua Siegal, *Eruv ve-Hotza'ah*), and J. D. Eisenstein in his encyclopedia *Otzar Yisrael* published in 1924 (8:138 ff.) assembled enough material on the Manhattan *Eruv,* including a map of Manhattan showing the boundaries of the proposed *Eruv,* to fill three columns. Yet in the end all these efforts proved ineffective, and many thousands of Jews in Manhattan still desecrate the Sabbath by carrying, while countless Orthodox mothers, doctors, and others continue to face severe hardships vitiating the "delight of the Sabbath" by their inability to take their babies out of their homes, to carry necessary items, etc.

Lately the project has again been given great momentum, notably through the tireless work and

painstaking researches of Rabbi Menachem Kasher, a prolific writer on this complicated, controversial subject. In his latest contribution, published in the January 1962 issue of *Hapardes*, he was able to marshal the views of four leading sages of our age in support of the proposed *Eruv* for Manhattan: the late Geonim R. Chaim Ozer Grodzinsky and the *Chazon Ish* as well as, among the living, the two leading *Poskim* of Manhattan itself, R. J. E. Henkin and R. Moses Feinstein.

Rabbi Chaim Ozer's opinion is contained in a hitherto unpublished letter, sent in the summer of 1938 to Rabbi Elie Munk of Paris, regarding the proposal to set up an *Eruv* in that city. While Paris, as a city regularly traversed by over 600,000 people, must be regarded as biblically constituting "public domain,"* this status is qualified by the fact that it (i.e., the parts for which the enactment is suggested) is surrounded on three sides by the river Seine and on the fourth in part by the artificial boundary of telephone wires. Provided, therefore, all breaches in the perimeter, especially the bridges crossing the Seine, are closed by nominal gateways (*"tzurat ha-petach"*) consisting of wires or poles at a distance not exceeding ten cubits, an *Eruv* can be properly established. The *Chazon Ish* also concurred in this opinion.

While Paris nevertheless remained without an *Eruv* because the essential improvements could not be carried out, Rabbi Kasher concludes that all the conditions stipulated are met far more ideally in the case of Manhattan, which is a complete island surrounded by man-made ramparts along the water-front and connected with the mainland by bridges which all now have a *"tzurat ha-petach"* as required by law. Moreover, Manhattan has the advantage over Paris of the designated territory extending to the entire city (or borough) and not just to a part of it, while the number of Jews who would be saved from Sabbath desecration is far larger than in Paris.

The article then reproduces the contents of a recent letter addressed to the "Committee for an *Eruv* in Manhattan" by Rabbi Henkin in which he affirms the legal grounds for an *Eruv* in Manhattan as superior to those in the many other cities throughout the world where an *Eruv* was instituted. He also advises against waiting until all the rabbis affected are convened to endorse the *Eruv;* "for we know from experience that this takes much time, and it is a pity for the time lost in the meantime. Rather let whatever can and must be done be effected immediately, and after the enactment let it be announced that the *Eruv* has been established and that rabbinical supervisors have been appointed over it." However, pending its endorsement by the majority of Manhattan's com-

* Rabbi Kasher believes there is an error in the copying of this sentence; instead of "must" it should read "may not," following an explicit statement to that effect by the *Bet Ephraim, Orach Chayyim,* 1:26.

petent rabbis, the *Eruv* should be utilized only for urgent purposes (*sha-at ha-dechak*), viz., to enable those who already carry to do so legitimately, to make it possible for mothers to take their babies out of their homes, to relieve the conscience of observant doctors who carry their bag when visiting patients who are not in danger, and to transfer items to the *Sukkah* which may otherwise involve a violation of the Sabbath. But all others should refrain from carrying on the Sabbath as heretofore, until the sanction is ratified by the majority of practicing rabbis in Manhattan. This restriction is necessitated by the fact that Manhattan, unlike the European communities, has no communal rabbi acknowledged as the local spiritual head (*Mara d'Atra*). Finally, Rabbi Henkin suggests the form in which the *Eruv* and its conditions should be publicly announced.

Rabbi Feinstein, also in a letter, defends the right of those who wish to set up the *Eruv* as founded on many sound arguments. But while he endorses the legality of such an *Eruv*, without the restrictions of Rabbi Henkin, he advises those who desire to impose special stringencies on themselves not to carry in Manhattan as an act of piety.

Quoting further the enthusiastic support given the proposal by the late Rabbi Pesach Zvi Frank of Jerusalem, Rabbi Kasher urges that prompt action be taken to implement it.

The Sabbath and the Dateline

The problem of fixing the line where "East and West meet" to determine the local incidence of the Sabbath at all points on earth has occupied Jewish scholars from the middle of the 12th century to the present day. It raised a particularly lively controversy with the flight in the summer of 1941 of a remnant of Yeshivah scholars from Lithuania (overrun by the Nazis) through Siberia to Japan and their inquiry from the rabbinate in Jerusalem as to the day on which they should observe the Sabbath and the fast of *Yom Kippur*. With the growing Jewish addiction to globe-trotting and the increasingly frequent travels of observant Jews on the trans-Pacific route, the problem has now assumed popular and highly practical proportions.

The voluminous and complex literature on this question has now been summarized in an excellent survey by Rabbi Samuel Hibner in the latest issue of *Ha-Darom* (Nisan 5722). The first to discuss this matter was the poet-philosopher Yehudah Halevi in his *Kuzari* (2:20). Dealing with the supremacy of the Holy Land as "the center of the inhabited earth"* and adverting to a tal-

* That Palestine is at the center of the world was already assented in the Talmud. Thus one passage states that the Holy Land was the first part of the world to be created (*Ta'anit* 10a), the remainder following progressively around the center,

mudic parallel in connection with the fixing of the New Moon (*Rosh Hashanah* 20b), Halevi regards the Sabbath as being determined by the position of the sun at midday over Palestine which is practically on the same meridian as Sinai, or rather Alush (see Numbers 33:14), where the Sabbath law was originally proclaimed. That time corresponds with sunset in China, at the extreme Eastern end of the inhabited world 90 degrees to the East of Palestine, and with sunrise at the Western extremity of the inhabited world 90 degrees to the West. Consequently, since the Jewish reckoning of the day begins and ends at sundown, the commencement of every Sabbath extends from a line along the 90th meridian East of Palestine until the same line is reached 270 degrees West of Palestine 24 hours later. This would fix the dateline close to the 125th meridian East of Greenwich (Palestine being about 35 degrees East of Greenwich). This opinion was also held by Halevi's younger contemporary, R. Zerachyahu Halevy Gerondi (*Ha-Maor ha-Katan,* on *Rosh Hashanah* 20b).

Over a century later this verdict was somewhat amended by R. Isaac Ha-Israeli, a disciple of Asheri, in his *Yesod Olam* (2:17). He argued that it was unreasonable to assume a single line dividing the East from the West whereby relatively near-by people on opposite sides of that line would observe different days in the calendar. He therefore eliminated the line altogether, holding instead that the East begins at the extreme Eastern end of the inhabited world and the West reaches up to the Western shores of the land surface, these points being separated by the ocean covering the lower half of the globe. Since that part was uninhabited, there was no need to have any precise line between East and West within it; we were not required to legislate for the fish in the sea.

But later authorities found this view quite untenable since human settlements (not to speak of ships) were in fact to be found on the antipodal side of the earth. Precedents for closely-situated communities varying in their reckoning of days were already mentioned in the Talmud (*Rosh Hashanah* 21a, see Tosaphot, *a.l.*), just as national boundaries were clearly demarcated, sometimes even within a city, such as in Acco of which only a part belonged to the Land of Israel (*Jer. Shevi'it,* 6:1; Tosa-

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whilst another holds that "the Land of Israel is higher than all other lands" (*Kiddushin* 69a). On this an interesting explanation is offered by R. Samuel Edeles: Since the world is spherical "like an apple," and Palestine is in the center of the world, it must be the "highest" point on the globe (*Maharsha, a.l.*). Even geographically it is significant that in the hemisphere showing the maximum land (i.e., inhabited) surfaces, Palestine does in fact appear at about the center, so that it is closer to the "top" of the populated half of the world than any other part.—*I.J.*

phot, *Gittin* 2a). Accordingly, there was nothing absurd in a dateline dividing between East and West; the laws of nature themselves, after all, necessitated such a line (*Benei Zion,* 2:10).

While the 16th century Italian scholar R. Obadiah Seforno justified the local variations of the Sabbath, despite the obviously fixed time of the original Sabbath, with the verse "It is a sabbath unto the Lord *in all your dwellings*" (*Lev.* 23:3), i.e., varying according to your habitations (*Seforno, a.l.*), his contemporary R. David ibn Zimra reached a similar conclusion on the basis of a talmudic law which stipulates that a wanderer in the desert who has lost the count of days should allow six days to pass and then sanctify the seventh as the Sabbath (*Shabbat* 69b). Since one is not required to abstain from work on each day as being possibly the true Sabbath, it is evident that the incidence of the Sabbath may be determined in relation to purely local circumstances. Ibn Zimra held, however, that the maximum variation in the commencement of the Sabbath between East and West could not amount to more than twelve hours, so that he too (like the *Yesod Olam*) apparently disputed the existence of a single dateline (*Radvaz,* 1:76).

The actual problem of those who travel around the world, losing one day if they go West and gaining one if they go East, is first mentioned by R. Jacob Emden in the 18th century. He ruled that such a traveler should observe the Sabbath according to his own regular count of days and switch the Sabbath only on reaching a settled community keeping the Sabbath on the preceding or following day (*Mor Uktzi'ah,* 344). In conformity with this opinion, the rabbi-mathematician Joseph Schwartz of Jerusalem contemplated the possibility of three persons in the same place observing the Sabbath on three different dates: one having circumnavigated the world eastwards, the other westwards and the third not having moved at all (*Divrei Yosef*). These and other authorities (*e.g., Shoel Umeshiv,* 4:2:154; *Even Yekarah,* 1:11) thus discount the dateline for travelers.

The first to fix a dateline the crossing of which would determine the Sabbath was R. Chaim Selig Slonimsky, the genial 19th century Russian scholar who excelled in rabbinics, mathematics and astronomy alike. He considered the zero meridian as passing through Jerusalem, so that the dateline would be exactly opposite, 180 degrees from Jerusalem. He interpreted "It is a sabbath unto the Lord *in all your dwellings*" (cf. above) to mean that the 24 hours of the Sabbath as observed in the Holy Land must at least in part coincide with the Sabbath anywhere else; this can be achieved only if the beginning of the Sabbath is not removed by more than 12 hours (or 180 degrees) in any part of the world from its commencement in Jerusalem. Jews throughout the world would thus always celebrate the Sabbath si-

multaneously with those in the Holy Land at least 12 hours. This would put the dateline along the 145th degree West of Greenwich (180 minus 35), i.e., to the East of Alaska and Hawaii. On the other hand, R. Samuel Moholiver, the pioneer of religious Zionism and friend of Herzl, thought the dateline was wherever the first East and West travelers originally met; for they established a presumption of the law ("*Chazakah*") which remained binding. Accordingly, Jews in Alaska (sold by Russia to America in 1867 and thus transferred from the Eastern to the Western hemisphere) must retain the Eastern Sabbath. But this opinion was generally rejected as quite impracticable, particularly since historical research could never determine with certainty the original meeting places of migrants from East and West.

Lately the controversy has been narrowed down somewhat to the following principal views regarding the location of the dateline:

1. *Along the 125th meridian east of Greenwich* (i.e., 90 degrees east of Jerusalem, following the *Kuzari*). This view was upheld by R. Isaiah Meir Schapira of Czortkow (*Ha-Maggid*, 1872) and notably by the *Chazon Ish* in our time. The latter qualified this ruling, however, by including in the East any land-surface which lies astride the 125th meridian. Hence the entire Asian and Australian mainlands belong to the East, with the West commencing only off their Eastern coasts. This places the island of Japan in the West, and the *Chazon Ish* accordingly advised travelers from China to Japan to switch their Sabbath from Saturday to Sunday on leaving the Asian mainland. This opinion is also endorsed by R. Chaim Zimmerman of Chicago against the attacks on it by many others.
2. *Along the 145th meridian west of Greenwich* (i.e., 180 degrees east of Jerusalem, following Slonimsky). R. Yechiel Michael Tukczinsky, advocating this view, argued that the dateline is bound to be determined by a center or zero line on the opposite side, and just as the international community had accepted the meridian passing through Greenwich as the starting point, it was only natural that Jews should take Jerusalem as the center and point of departure for the division between East and West.
3. *Along the international dateline on the 180th meridian* (i.e., 145 degrees east of Jerusalem) and across the Bering Strait separating Asia from America in the North. This view is supported by R. David Schapira (*Benei Zion*) and especially by R. Menachem Kasher, who has written extensively on the subject, as corresponding to the most natural division between East and West. They refute the opinion of the *Chazon Ish* as illogical, because it would place Australia (as part of it is west of the 125th meridian) in the

East and the island of New Guinea, though within the same longitudes as Australia, in the West (as no part of it is west of the 125th meridian), and because the criterion used is quite arbitrary; for one might equally well say that any land-surface protruding beyond the 125th meridian to the West belongs to the West.

The international dateline has also been endorsed by the rabbinate in Jerusalem in its reply of 1942 to the inquiry received from the refugees in Japan. Following the consensus of rabbinical opinion, Rabbi Hibner reaches these conclusions:

1. The division between East and West in Jewish law corresponds to the international dateline.
2. Those traveling across the dateline need not adjust the days of the week and vary the date for observing the Sabbath until they disembark on land, and then only if Sabbath-observing Jews are to be found there.
3. In order not to lose a Sabbath, travelers from the West to the East (i.e., from America to Asia or Australia) should be careful to arrange their journey so as not to cross the dateline on Friday (in view of #2 above, this applies presumably only to air travelers who might leave the West on Friday and arrive in the East on Sunday, or to any travelers from the West who would reach their destination in the East on Sunday, irrespective of the day on which they crossed the dateline.—*I. J.*).

Grape-Juice for *Kiddush*

It may be symptomatic of the weakening of the "spirit" of practical Halakhah in the "orchard" (*"pardes"*) of rabbinical literature that the only practical questions discussed in the Iyar 5722 issue of *Hapardes* concern the use of grape-juice instead of wine for *Kiddush* and the utilization of the profits accrued from the sale of an old synagogue in part exchange for the acquisition of a new one.

The first question arises from the unqualified statement often printed on grape-juice bottle labels: "kosher for *Kiddush* and the *Arba Kosot* on Passover." According to a concise responsum by Rabbi J. E. Henkin, such a statement is misleading; it ought to stipulate that this applies "only to weak people for whom proper wine would be unhealthy." For healthy persons, however, wine must have a certain strength and pungency, as indicated by its association with "strong drink" in the Book of Proverbs (20:1; 31:6). While the Talmud (*Baba Batra* 97a) expressly permits the use for *Kiddush* of "wine from the vat" i.e., not yet fermented, grape-juice may be less acceptable since it is not even potentially fit to assume the strength of wine. Such juice should not therefore be used for religious purposes except when indicated by health considerations.

Proceeds from a Synagogue's Sale

A problem which the constant shifting of the Jewish population in urban areas has unfortunately rendered increasingly acute is the subject of the second brief responsum by Rabbi Henkin. Its synagogue building having passed under municipal control, a congregation utilized the proceeds of the sale in part for the purchase of another synagogue and divided the balance among its members. Rabbi Henkin condemns this action as improper and as possibly constituting a violation of sacred property. He rules that the members should return the money distributed to them and have it spent on Jewish religious education or on helping poor brides, applying the same law as restricts the money realized from the sale of a *Sefer Torah* to these two purposes only (*Yoreh De'ah,* 270: 1). The right to dispose of such proceeds is strictly limited, particularly in the case of synagogues in large cities, since many contributors who are not members may be presumed to have donated towards the building costs (*Orach Chayyim,* 153:7). Quite apart from the prohibition on putting funds from the sale of a synagogue to profane use, therefore, it would certainly be wrong to disburse these funds among members who were not founders and whose membership entitled them merely to a share in the ground and to voting rights.

Automatic Watches on Sabbath

In response to some readers' requests the current issue of *Ha-Darom* also features a few short rabbinical responsa by Rabbi Nachum L. Rabinowitch, the Associate Editor of this fine journal. In a prefatory note he cautions, however, against accepting his opinions without the endorsement of our leading sages.

May automatic wrist-watches be carried on the Sabbath? According to Rabbi Moses Feinstein (*Igrot Mosheh, Orach Chayyim,* 111), the only consideration which might militate against the wearing of ordinary wrist-watches is the fear that one might then also be led to carry pocket-watches, which is prohibited; but since the latter are now hardly used at all, this fear may be discounted. The problem with automatic watches is, however, that every movement of the hand helps to wind them. While some authorities regard the winding of a watch on the Sabbath as a biblical offense (*Chayyei Adam,* 44:19), the majority dispute this, provided it is still going at the time and it has no bell attachment (see commentaries on *Orach Chayyim,* 388:3). In the light of these views, combined with the fact that the self-winding mechanism works quite unintentionally and that, moreover, the operation of the mechanism with the hand's movement is doubtful, particularly if the watch was wound up before the Sabbath, Rabbi Rabinowitch inclines to a permissive reply. As a matter of interest, he also refers to the opinion that the wearing of a watch serves the needs of a *Mitzvah* in that it enables the wearer to

know the correct time for the recital of the *Shema* and the prayers (*Peri Megadim, Mishbatzot,* 252:7).

Space Travel

Does traveling to the moon and planets accord with the spirit of the Torah? While those who undertake such journeys will scarcely inquire about the attitude of the Torah, Rabbi Rabinowitch observes the question deserves an answer. As a rabbinical guide to space travel, the author cites some interesting biblical and talmudic passages. Referring to the generation of the Tower of Babel, the Talmud teaches in the name of R. Jeremiah ben Eleazar: "They split up into three parties. One said, 'Let us ascend and dwell there;' the second, 'Let us ascend and serve idols;' and the third, 'Let us ascend and wage war [with God].' Whereupon R. Nathan said: 'They were all bent on idolatry,'" (*Sanhedrin* 109a). This indicates that the conquest of heaven was punished only because it was undertaken as a challenge to God. A similar reasoning is implied in the Prophet's rebuke to Nebuchadnezzar: "And thou saidst in thy heart: 'I will ascend into heaven, above the stars of God will I exalt my throne; . . . I will ascend above the heights of the clouds; *I will be like the Most High*'" (Is. 14:13-14). (Cf. the answer to Nebuchadnezzar's challenge given in *Pesachim* 94a.)

On the other hand, the rabbis derived from the use of the singular in the verse "For *ask thou* now of the days past, which were before thee, since the day that God created man upon the earth, and from the one end of heaven unto the other . . ." (Deut. 4:32) that only individuals on their own but not groups of people may engage in the study of cosmogony, because of its esoteric aspects, concerning "what is above and what is below, what before and what after [the heavens]" (*Chagigah* 11b). But the Talmud (*ibid.,* 13a) also cites with approval the advice of Ben Sira: "Seek not things that are too hard for thee, and search not out things that are hidden from thee. The things that have been permitted thee, think thereupon; thou hast no business with the things that are secret" (Ecclus. 3:21-22). On "the things that have been permitted thee, think thereupon," R. Samuel Edeles comments that this is stated in the imperative in accordance with the views of the scientists and philosophers "that man should inquire into his existence through [studying] whatever has been created in the universe" (*Maharsha, a.l.*).

From these passages it would appear that there is nothing in the principles of Judaism to conflict with the exploration of space, provided such flights are not undertaken or exploited to challenge religious faith, as the Russians in fact did.

Pre-recording TV Program for Sabbath Broadcast

A rabbi was invited to participate in a TV panel discussion on the Sunday Blue Laws (then pro-

posed in a state legislature). May the rabbi do so if the program is to be pre-recorded for transmission on a Sabbath?

Any TV broadcast naturally involves many acts forbidden on the Sabbath, and in principle a Jew must not tell a non-Jew to do anything on the Sabbath he is prohibited from doing himself (*Orach Chayyim*, 307:2), even for the sake of a *Mitzvah* (Magen Avraham, 306:17). Nevertheless, several responsa permit a Jew to commission a non-Jewish agent, acting through the civil courts, to collect a debt if he would otherwise suffer great loss (*Zera Emet*, cited in *Sha'arei Teshuvah, Orach Chayyim*, 307:3) or if the debtor intends to abscond (*Binyan Zion Hachadashot*, 3; see also *Chelkat Ya'akov*, 2:80).

In this case, however, the problem of commissioning non-Jews does not really arise at all, since the broadcast is, after all, given for the general public and not specifically for Jews; it is only incidentally of benefit to the Jewish community, as it may help to avert unfavorable legislation. More relevant would be the law against sitting with a non-Jew doing work on the Sabbath for fear that people may suspect the work is done for the Jew (*Orach Chayyim*, 244:6, gloss). But since observant Jews would in any event not watch the program, and in view of the vital stakes involved in the presentation of the Jewish case, this fear may here be ignored. Yet Rabbi Rabiowitch suggests the display throughout the program of a notice indicating that it was taped on a weekday.

The Recourse to Halakhah in the Israeli Supreme Court

The restoration of Jewish sovereignty to the Holy Land has opened the gates of Zion not only to the return of her children but also to the rehabilitation of Jewish law and jurisdiction. The loss of Jewish national independence was *preceded* by the loss of Jewish jurisdiction, at least in capital cases — "the Sanhedrin was exiled forty years before the destruction of the Temple" (*Avodah Zarah* 8b) — and it is to be expected that the rebirth of Jewish statehood must *precede* the gradual revitalization of Jewish law. The beginnings of this process are analyzed in an instructive article on "The Halakhah on Damages in Supreme Court Judgments," by Israel Shelomoh Ben-Meir in the February 1962 issue of *Sinai* (vol. 50, no. 5).

While the rabbinical courts in Israel exercise exclusive jurisdiction only in the areas of marriage, divorce, and personal status, limiting the absolute rule of the law of the Torah to these confined fields, the laws governing the much broader areas of civil and criminal cases are still administered principally on the basis of the Mandatory (English) and Ottoman (Turkish) systems of law prevailing prior to the establishment of the Jewish State. But some of the Supreme Court judges — notably the justices Asaf, Hashin, and Silberg — did, from time to time, refer to rabbinic sources in their

opinions and verdicts. In order to examine the Jewish contents of these judgments, the author investigated 2,820 cases recorded in the first twelve volumes of the Supreme Court archives, and he found that references to Jewish law occurred in 82 of them, or close to 3% of all cases. 36 of these dealt with cases in the category of "damages," the subject of the article's investigation.

In many cases rabbinic sources were adduced to define the exact meaning of terms used in Israeli laws. For instance, in a dispute on the validity of a will made shortly before death, a precise definition of *shekhiv mera* (whose oral instructions are binding) had to be given, and the Court ruled in accordance with the *Shulchan Arukh*: "A patient whose entire body is so weakened . . . by the illness that he cannot walk on his feet outside and is confined to bed is called *shekhiv mera*" (*Choshen Mishpat,* 250:5).

On the other hand, a decision soon after the establishment of Israel rejected a reference to Jewish law as a precedent in a constitutional problem. In a case of an appellant who had sought an injunction to compel the President of Israel to dissolve the Knesset, the Court considered whether a President is to be regarded like the kings of Judah, who may judge and be judged, or like the kings of Israel, who may not judge nor be judged (*Sanhedrin* 19a); but the Court concluded that Jewish law could not be applied and, leaning on American law instead, it dismissed the appeal.

In another case Jewish law was invoked to award the payment of interest. A lower court had ruled in favor of a plaintiff claiming a sum of money. After the defendant had appealed and lost the appeal, the plaintiff sought the interest accrued on the amount from the day of the original judgment to the day of payment. The Court sustained the claim on the strength of the established Halakhah based on "the unchallenged custom to award a market loss in accordance with the law that the disposal of private property by the court is valid" (*Beth Hillel, Yoreh De'ah,* 170, and other authorities) despite an opinion in the Talmud that such a loss does not constitute a legal claim (*Jer. Baba Metzi'a* 9:3). This ruling is founded not on the law of the Torah (*Din Torah*) but on what is rabbinically known as "a market ordinance" (*takanat ha-shuk* — i.e., a conventionally accepted business practice whieh the rabbis are empowered to enforce as law).

Sometimes Jewish law was adduced to corroborate the verdict of English law. In accordance with the latter, Judge Hashin had exonerated from all liability for negligence the owner of a pool in which a child had drowned after trespassing on the property despite previous warnings to keep out from it. Judge Asaf substantiated this judgment with the following talmudic law: If a worker, while entering his employer's property without permission to claim his wages, was gored by an ox and

died, the employer is not liable (*Baba Kamma* 33a; cf. Maimonides, *Hil Nizkei Mamon,* 10:11-12).

A similar division of opinion leading to a common verdict concerned the case of a nun who had inflicted a serious injury on a pupil while chastising her. Following English law, Judge Hashin affirmed the right of a teacher to use corporal punishment, but only within reasonable limits; these had been exceeded in this case. Judge Asaf reached the same conclusion by referring to the rule of Jewish law: "A teacher may strike his pupils to impose respect upon them, but he may not smite them in a hostile or brutal way; hence he may not hit them with rods or sticks but only with a small strap" (Maimonides, *Hil. Talmud Torah,* 2:2; based on *Baba Batra* 21a). More particularly an 18th century responsum, in reply to a question whether a teacher who had injured a pupil was liable to pay full compensation, legally exonerated the teacher even if the punishment was more severe than permitted by law, but it nevertheless awarded the payment of medical expenses in order to prevent a recurrence of such excess (*Shevut Ya'akov,* 3:140).

Occasionally Jewish law was used even to overrule the provisions of the corresponding non-Jewish statutes. Thus, according to Ottoman law, a defendant cannot claim an object if he admitted that it had once belonged to the plaintiff but that having purchased it he had lost the papers documenting the transaction. Judge Silberg, however, invoked Jewish law which utilizes the principle of *Chazakah* (claim based on possession) to protect the buyer in the event of the documents being lost (*Baba Batra* 170a; cf. 29a), and the Court accepted this opinion in its verdict.

Other instances of Jewish law being cited in Supreme Court decisions include the assessment of stolen property in accordance with its value at the time of the theft, following the rule in the Mishnah, "All thieves make restitution according to the value at the moment of the theft" (*Baba Kamma* 9:1); the validation of the testimony of witnesses whose evidence showed some discrepancy regarding the identification of the accused, provided such discrepancy did not bring the guilt of the accused into doubt (based on *Jer. Sanhedrin* 3:8, and 4:1); and the identification of an offender by his voice (based on *Gittin* 23a).