

LAWS 6220-001 Introduction to Jewish/Israeli Law FALL 2009

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Visiting Professor

The history of the Jewish law begins with its foundation in the early biblical period with the giving of the commandments at Mount Sinai. It covers more than fifteen periods in the life of the Jewish people. It encompasses not only the Written Biblical Law, but also the Oral Tradition, customs and mores that were developed and were unique to each Diaspora, from East to West. These laws were incorporated into a large and vast body of living and dynamic law that led the Jewish people throughout the generations - until and including the body of law that has developed in the state of Israel, most of which is modern, secular, and has its sources in the common law system as well as the European civil code. The students are introduced to the development, the sources, the codifications and the applications of the Jewish law, with some emphasis on the intricacies of the problematic relationship between the Jewish law and the modern unique body of law that that has been developing in the state of Israel.

The course is divided into Three Parts:

Part I: outlines the history and the basic principles of the Jewish Law, the Halakhic system that encompasses the Biblical law (Torah law) and the Rabbinic law.

Part II: covers the Legal Sources of the Jewish laws, its interpretation, legislation, custom, precedence and legal reasoning. It encompasses also some of the vast literary sources of Jewish law Biblical, post-Biblical, the Babylonian Talmud and the Jerusalem Talmud, commentaries and codification.

Part III: Explores the study of the Modern legal system of the state of Israel and examines the problematic nature of the incorporation of the Law of personal status in the Rabbinical and in the general courts, the absence of civil marriage and divorce, and the status of women under these laws. Finally it underlines the religious and cultural complexities of the question of the status of Jewish law in the unique legal system of the State of Israel which houses traces of laws from the Ottoman, British and civil code of Europe, and has some relation to the American body of law.

Every part will be accompanied by examples of case law and court rulings, while comparing and contrasting between the two bodies of law, the Jewish law and the Israeli unique common law under the umbrella of the Israeli general legal system.

GRADING:

Attendance and active class participation 30%
Final research paper or take home exam 70%

REQUIRED TEXTS

Hecht, N. S., B. S. Jackson., S. M. Passamaneck., D. Piattelli., and A. M. Rabello., (Eds.) *An Introduction to the History and Sources of Jewish Law*, Boston University. Institute of Jewish Law. (No. 22. (Paperback), "The biblical period of Jewish Law dates from the mid-second millennium to the fourth century B.C.E.", 1996

BIBLIOGRAPHY (A tentative list)

PART I: The history of the Jewish Law

Week 1

Elon Menachem, *Jewish Law* 1994 "The History and development of Jewish law", in Elon, Chapter 1& 2, Vol. I. pp. 1-45

Religious, legal and moral issues

Week 2:

Elon Menachem, *Jewish Law* 1994, "Religious and legal Halakhah", Chapter 4, Vol. I. (V) pp. 122-140; (VI) "Law and Morals in the Jewish legal system", pp. 141-189

Elon Menachem, *Jewish Law* 1994, "The Oral Law: Definition and general principles" in Elon, Chapter 5, Vol. I. pp.190-227

Kirshenbaum Aaron, "The Bystander's Duty to Rescue in Jewish Law", *Jewish Medical Ethics III*, Vol. 2, pp: 52-64, 1998

Week 3:

Kirshenbaum Aaron, "Criminal Attempt and Moral Luck in Judaism", *Bar-Ilan Law Studies*, Vol. 20, pp. 97-175, 2003.

Week 4:

PART II: The Legal Sources Authority and Interpretation

"The Prerogative of the Halakhic Authorities", in Elon, Chapter 7, Vol. I. (I) pp. 240-242; II: D pp. 261-263; III p. 266

England Itzhak, "Majority Decision vs. Individual Truth: The interpretation of the Oven of Achnai" *Aggadah*, 15 *Tradition* 137 1975, pp. 137- 151

"Interpretation of the Torah", in Elon, Chapter 9, Vol. II. (XII) pp. 391-399

"Interpretation of the Halakhah", in Elon, Chapter 10, Vol. II. pp. 400-421

"Interpretation of Documents", in Elon, Chapter 11, Vol. II. (II (A&B) pp. 432-443

"Legislation: the Halakhic Authorities", in Elon, Vol. II. Chapter 14, IV, pp. 505-515, 521-533

Week 5:

"Legislation: the Halakhic Authorities", in Elon, Vol. II. Chapter 14, pp. 536-544

Peretz Segal "Jewish Law during the Tannaitic Period" in Hecht, et al. 1996, pp. 101-140

Lifshitz Berachyahu, "The Age of the Talmud", in Hecht, et al. 1996, pp.169-196

Week 6:

Libson Gideon, "Halakhah and Law in the time of the Geonim", in Hecht, et al. 1996, pp.197-250

"The Post Geonic Period", preceding the Shulchan Aruch, (1250–1550), in Elon, Vol. II. Chapter 18, pp. 666-677

Week 7:

Fram Edward, "Jewish Law from The Shulhan Arukh to the enlightenment", in Hecht, et al. 1996, pp. 359-378

Shochetman Eliav, "Jewish Law in Spain", in Hecht, et al. 1996, pp 271- 298

Grossman Avraham, "Ashkenazim to 1300", in Hecht, et al. 1996, pp. 299-322

Week 8:

Passamaneck Stephan M, "Toward Sunrise in the East", in Hecht, et al. 1996, pp. 323-358

Novak David, "Modern Responsa: 1800 to the Present", in Hecht, et al. 1996, pp. 379-396

Week 9:

"Precedence", in Elon, Vol. II. Chapter 23, pp. 945-986

"Legal reasoning", (500-600C.E.), in Elon, Vol. II. Chapter 24, pp. 987-1014

Week 10:**PART III: The law of the State of Israel and the Jewish Law**

"Jewish law from the abrogation of the Jewish law autonomy to the establishment of the state of Israel", in Elon, Vol. IV: Chapter 41, pp. 1575-1618

Sinclair Daniel, "Jewish Law in the State of Israel", in Hecht, et al. pp. 397- 420

Week 11

Bin-Nun, Ariel, *The Law of the State of Israel: An Introduction*, Jerusalem: Rubin Mass LTD, 1990, pp. 1-73.

Week 12**Problems in the Personal Status Law**

"Additional aspects of the problem of the personal status of Jewish law in the law of the state of Israel", in Elon, Vol. IV. Chapter 43, pp. 1752-1784, 1802-1807, 1818-1826

"The Halachic Trap: Marriage and Family Life" in Halperin-Kaddari Ruth, 2003, pp. 227-262

Week 13

"The Foundation of Law Act, 1980", in Elon, Vol. IV. Chapter 44, pp.1827-1870

Kirshenbaum Aaron., "Modern Times, Ancient Laws – Can the Torah be Amended? Equity as a Source of Legal Development", *Saint Louis University Law journal*, Vol. 39, pp: 1219-1234

Ben Menahem Hanina, "The Judicial Process and the nature of Jewish Law", in Hecht, et el., pp. 421- 438

Week 14

Conclusion and a summary of the course

Internet sites

The Knesset (Parliament) www.knesset.gov.il

The Judicial Authority www.court.gov.il

The Israel Bar Association

Israel Democracy Institute www.idi.co.il

Guide to Law Online - Israel

Lexis