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A Restatement of Rabbinic Civil Law, Volumes VII and VIII, by Emanuel Quint (Book Review)

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A RESTATEMENT OF RABBINIC CIVIL LAW, VOLUMES VII AND VIII. By Emanuel Quint. Northvale, N.J.: Jason Aronson 1997; 1998. Pp. 304, 344. \$50.00. ISBN: 1-568-21907-5.

One of the qualities that sometimes characterizes common law systems is the potential lack of consistency in judicial decisions, resulting in part from the absence of uniform legislative codes.¹ In some legal systems, the need for more definitively delineated rules has prompted efforts by legal scholars and authorities to restate the law in a more organized fashion. In 1923, the American Law Institute initiated a project to produce Restatements in various areas of the law, premised on “the belief that out of the mass of case authority and legal literature could be made clear statements of the rules of the common law . . . expressed as simply as the character of our complex civilization admits.”² While this project represents a relatively new development in the American legal system, restatements have long played an important role in the course of Jewish legal history. Significantly, among the many restatements that have appeared, the two that have probably achieved the widest acceptance and influence, those of the medieval scholars Maimonides and Rabbi Joseph Caro, have perhaps most closely anticipated the goals articulated by the ALI, presenting a complex and varied body of law in a clear and concise manner.³

In Volumes VII and VIII of *A Restatement of Rabbinic Civil Law*, Rabbi Emanuel Quint follows admirably in the path of Maimonides and Rabbi Caro.⁴ Building on and updating the work of these and countless other legal scholars, Rabbi Quint offers a comprehensive and scholarly

1. For a discussion of the unique nature of this quality in Jewish law and its theological implications, see Yitzchok Hutner, *Pachad Yitzchok: Chanuka 27-29, 35-37, 66-71, 76-83* (5th ed., Gur Aryeh 1998).

2. See Marshall S. Shapo, *In Search of Products Liability: The ALI Restatement Project*, 48 Vand. L. Rev. 631, 633 (1995) (quoting William Draper Lewis, *History of the American Law Institute and the First Restatement of the Law*, in *ALI Restatement in the Courts* 9 (permanent ed., ALI 1945)).

3. Indeed, both of these scholars introduce their works stating their intention to offer a terse, systematic, and accessible depiction of Jewish law. See Joseph Caro, *Introduction to Shulchan Aruch*; Maimonides, *Introduction to Mishneh Torah*.

4. Reviews of earlier volumes of Rabbi Quint's Restatement have appeared in the past in American law journals, including this one. See Leon Wildes, *A Modern Restatement of Jewish Civil Law*, 18 Cardozo L. Rev. 2037 (1997) (reviewing vol. IV); Yale L. Rosenberg, *A Codification, A Restatement and More*, 12 J. L. & Relig. 323 (1995-1996) (reviewing vols. I-VI); Emanuel Rackman, *A Restatement of Rabbinic Civil Law, Vol. I*, 14 Cardozo L. Rev. 417 (1992).

yet comprehensible and practical description of the law in a wide variety of subjects, including sales, gifts and gifts *causa mortis*, wills and estates, lost property, and bailments.

In both structure and substance, Rabbi Quint's Restatement closely and intentionally mirrors Rabbi Caro's *Shulchan Aruch*, utilizing Rabbi Caro's system of organization and categorization and conveying the essential components of Rabbi Caro's rulings. The deceptive simplicity of Rabbi Quint's finished product, however, should not obscure the inherent difficulty of the ambitious task he has undertaken: an attempt to present a guide to contemporary Jewish law by using modern English and employing American legal terminology to translate and update a sixteenth-century restatement of Jewish law written in rabbinic Hebrew. Many of the challenges Rabbi Quint must have faced in this effort should be obvious to anyone who has engaged in the fields of legal history, comparative law or translation; Rabbi Quint's project requires methods employed in each of these fields, together with a working knowledge of the substantive areas of law involved. On these grounds alone, Rabbi Quint's successful and skillful completion of these volumes is a valuable contribution.

Moreover, Rabbi Quint clarifies Rabbi Caro's rulings through helpful techniques such as diagrams, introductions, and summaries. For example, in discussing the intricate details of the order of inheritance in cases of intestacy, Rabbi Quint illustrates the twenty-eight categories of relatives by means of a "distribution chart" spanning five generations, in which each of the categories is numbered in order of priority. Each entry on the chart is then further explained in a corresponding list. (VIII, 122-125) Similarly, in presenting the laws of discrepancy in price, a topic that involves a combination of mathematical and economic determinations, Rabbi Quint depicts his conclusions in a chart illustrating the analysis he undertook after consultation with a university mathematician. (VII, 8)

At the end of Volume VIII, Rabbi Quint overcomes a possible obstacle to clarity and cohesiveness through the use of an informative introduction. Because the laws of inheritance are completed on page 207 of Volume VIII, Rabbi Quint had to decide whether to add a partial discussion of the next subject in the *Shulchan Aruch*, the laws of bailments, or to include the laws of bailments in their entirety in Volume IX. Presumably to prevent Volume VIII from becoming a relatively slim volume, Rabbi Quint opted for the former, dividing the laws of bailments between two volumes by placing the laws of the unpaid bailee at the end of Volume VIII. However, in the interest of presenting these

laws in context rather than isolating them completely from the rest of the laws of bailments, Rabbi Quint precedes the laws of the unpaid bailee with a detailed overview of the laws of the four classes of bailees. (VIII, 211-224) As a result, the laws of the unpaid bailee can be understood in perspective, while the laws in the beginning of Volume IX have been succinctly introduced.

Perhaps the most innovative aspect of Rabbi Quint's Restatement is reflected in his willingness and ability to update Rabbi Caro's rulings and apply them in the setting of contemporary society. A somewhat mechanical but nevertheless insightful example of this technique is the discussion of the laws of helping others to load, unload, and reload animals, in which Rabbi Quint includes a section of "[c]ontemporary applications." Rabbi Quint applies ancient laws involving owners of mules and other beasts of burden in need of assistance to the modern context of a driver of a car or truck who needs help. Rabbi Quint concludes on a note of gentle urging: "[M]any drivers have had the experiences where a car was stuck on a lonely, dark road and there was no way to communicate with the police. A helping hand at that moment would be a Godsend." (VIII 90-91)

A more intriguing example of Rabbi Quint's application of laws to modern society is his approach to wills in contemporary Jewish law. Noting that, at first glance, the very implementation of a will may appear to violate the laws of inheritance, Rabbi Quint lists a number of methods through which an individual may retain the ability to choose how to dispose of assets, yet still conform with Jewish law. (VII, 240-245) After analyzing the efficacy of each of these methods, Rabbi Quint recommends that, in addition to a last will and testament, an individual should execute a "note of indebtedness" that Rabbi Quint has designed. (VII, 245-248)

On one level, Rabbi Quint's prescription serves as a particularly poignant demonstration of the unique contributions he has made through his Restatement. With his apparently extensive knowledge and understanding of Jewish law, American law, and contemporary society, Rabbi Quint is well-equipped to explore unsettled areas of Jewish legal practice and offer recommendations based on an analysis of the decisions of legal authorities. At the same time, however, Rabbi Quint's willingness to include such recommendations in his Restatement may leave him vulnerable to the same criticism that has been leveled over the years against some of his predecessors, including Maimonides. Consistent with many of the goals of a restatement, including those of brevity, uniformity, and practicality, Rabbi Quint, like others before

him, generally omits references to the legal sources upon which he relies. Despite his explanation of the utility of this method, a similar decision by Maimonides created great controversy among his contemporaries who argued that, as a result, the *Mishne Torah* could not be subjected to appropriate critique and review.⁵ Likewise, a proper evaluation of Rabbi Quint's Restatement would presumably require an ability to consider his conclusions in light of the sources and authorities whose views he accepts or disputes.

For example, before recommending that a testator draft two separate documents, Rabbi Quint summarizes the views of legal authorities as follows:

If the decedent leaves a will and does not take any other steps, his will is, according to a few outstanding authorities, not in violation of [Jewish law], since it complies with the laws of the land. But after one reads much of the relevant literature on the subject, this method, while technically in de facto compliance, at best circumvents the intent of the [law]. (VII, 245)

Because Rabbi Quint does not identify these "outstanding authorities" or the "relevant literature" on which he relies for his analysis, the reader is left with one of two options: blindly accepting Rabbi Quint's conclusions or conducting substantial research to uncover and independently examine the sources. For the reader seeking practical legal guidance, whose goal in consulting the Restatement conforms closely with Rabbi Quint's apparent purpose in writing it, the first of these choices is probably satisfactory. However to the scholar who wishes to evaluate the accuracy and persuasiveness of the Restatement, it may be disappointing that the book does not provide further documentation.

Yet, perhaps any such objection should be seen in historical perspective, again by reference to Maimonides. Despite the initial protestations to Maimonides' decision not to cite sources, in addition to providing a clear and concise restatement of the law, the *Mishne Torah* has served as a springboard for extensive and creative scholarly pursuits.⁶ With history as our guide, we can hope and anticipate that a similar future awaits Rabbi Quint's Restatement.

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5. See Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* 97-108 (Yale 1980).

6. See *id.* at 158-162 & nn.1901-1991.

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