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## Teaching Jewish Law in American Law Schools – Part II: An Annotated Syllabus

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**Teaching Jewish Law in American Law Schools—Part II:**  
**An Annotated Syllabus**

Samuel J. Levine\*

**INTRODUCTION**

In recent years, American legal scholarship has increasingly turned to the Jewish legal system as a source of comparison and contrast for questions that arise in American legal discourse.<sup>1</sup> Concomitantly, a growing number of American law schools have introduced into their curriculum a course in Jewish Law. By some estimates, approximately thirty American law schools include courses in Jewish Law as part of their curriculum.<sup>2</sup> A number of different models

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The syllabus presented here is a variation of the syllabi I have used in the Jewish Law courses I have taught at St. John's University School of Law and Fordham University School of Law. I gratefully acknowledge that in compiling these syllabi, I gained from the advice and assistance of friends, colleague, and mentors, many of whom shared with me the syllabi they had used in teaching Jewish Law. In addition, I thank Abraham Abramovsky, with whom I taught the course at Fordham.

I also note the recent appearance of a Jewish Law textbook for use in American law schools. See MENACHEM ELON ET AL., *JEWISH LAW (MISHPATIVRI): CASES AND MATERIALS* (1999). Although Professor Elon's book represents a groundbreaking achievement and is a valuable source for any course in Jewish Law taught in an American law school, the book differs from my own syllabus in its emphasis on Jewish law in the context of modern Israeli law, an approach more consistent with the international law model that I incorporate into my syllabus to a considerably more limited degree.

<sup>1</sup> See sources cited in Chad Baruch and Karsten Lokken, *Research of Jewish Law Issues: A Basic Guide and Bibliography for Students and Practitioners*, 77 U. DET. MERCY L. REV. 303 (2000); Samuel J. Levine, *Jewish Legal Theory and American Constitutional Theory: Some Comparisons and Contrasts*, 24 HASTINGS CONST. L.Q. 441, 442-43 nn. 3-11 (1997) [hereinafter, Levine, *Jewish Legal Theory*]; Samuel J. Levine, *Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion*, 26 FORDHAM URB. L.J. 1041 (1999) [hereinafter, Levine, *Teaching Jewish Law: An Emerging Trend*]; Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813, 817-19 nn. 14-28 (1993).

<sup>2</sup> See Edward H. Rabin, *Symposium: The Evolution and Impact of Jewish Law, Foreword*, 1 U.C. DAVIS J. INT'L L. & POL'Y 56 (1995); Jeffrey I. Roth, *Fraud on the Surviving Spouse in Jewish and American Law: A Model Chapter for a Jewish Law Casebook*, 28 CASE W. RES. J. INT'L L. 101, 101 n.1 (1996).

According to the findings of a recent survey compiled by the Institute of Jewish Law, Touro College / Jacob D. Fuchsberg Law Center, American law schools that offered courses in Jewish Law in 1999 and 2000 included: University of California at Davis, Benjamin N. Cardozo School of Law, Catholic University, Chicago-Kent College of

exist for such a course, including a comparative law model, an international law model, and a law and religion model, each of which may be modified or combined with one or both of the others.<sup>3</sup>

In reality, the precise nature of the Jewish Law course offered in a particular law school is more complex than these models might suggest, as it may be the product of a number of variables, including, but not limited to: (1) the interests and expertise of the instructor or instructors, whose knowledge of both American law and Jewish law varies widely in different schools, and who may have a particular area of scholarly interest in either or both of the legal systems; (2) the interests and backgrounds of the students, who may prefer to study Jewish law in the context of a specific area or methodology of the American legal system, and whose knowledge of or familiarity with the substance of Jewish law often varies not only among different schools but within the same classroom; and (3) the place of the course in the law school curriculum, which may depend on the vision of various groups or individuals in addition to the instructor, including the dean or deans, the faculty as a whole, and the curriculum committee.<sup>4</sup>

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Law, Columbia University, Cleveland State University / Cleveland-Marshall College of Law, DePaul University, Duke University, Emory University, Fordham University, Georgetown University, Harvard University, University of Houston, Northwestern University, Pepperdine University, Saint Louis University, Southwestern University, Texas Tech University, Touro College / Jacob D. Fuchsberg Law Center, University of Utah, Wayne State University, and Yale University.

In addition, the results of prior surveys list Jewish Law courses offered at a number of other law schools in 1994 and in 1996-97, including American University / Washington College of Law, Boston University, Brigham Young University, University of California at Berkeley, University of California at Los Angeles, Duquesne University, Hamline University, New York University, University of Miami, University of Michigan, University of Missouri-Kansas City, Notre Dame University, Pace University, University of Pennsylvania, Rutgers University-Camden, Stetson University, and University of Wisconsin. (Survey findings on file with author.) Finally, a number of other schools, such as St. John's University, include a Jewish Law course as part of their curriculum but did not offer the course in the years surveyed, while other schools, such as Nova Southeastern University, have added courses in Jewish Law since the survey was conducted.

<sup>3</sup> For a discussion of the different models and their respective advantages and disadvantages, see Levine, *Teaching Jewish Law: An Emerging Trend*, *supra* note 1, at 1042-45.

<sup>4</sup> Indeed, the titles of the courses offered in different law schools attest to the varied nature of the courses. Such titles include not only more generic references to "Jewish Law," but also more specific subjects such as: "Bible & Talmud"; "Bioethics & Jewish Law"; "Comparison of American, Israeli and Talmudic Law"; "Comparative Law: Hebrew Law"; "Comparative Social Issues Under Jewish Law"; "Composition of the Talmud"; "Environmental Issues in Classical

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The following annotated syllabus is intended for a Jewish Law course that attempts to combine different models and, thus, consists of segments reflecting, to some degree, the goals of each of the three general models listed above.<sup>5</sup> The syllabus is presented in outline form, organized according to different stages of the course, together with annotations describing the purpose of the materials included in each section. In addition to the materials described in the text, alternative materials are suggested in footnotes.

## SYLLABUS

### I. INTRODUCTION: JEWISH LAW IN THE AMERICAN SCHOOL

- Edward H. Rabin, *Foreword: Symposium: The Evolution & Impact of Jewish Law*, 1 U.C. Davis Journal of International Law & Policy 49 (1995).
- Samuel J. Levine, *Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion*, 26 Fordham Urban Law Journal 1041 (1999).
- Jeffrey I. Roth, *Fraud on the Surviving Spouse in Jewish and American Law: A Model Chapter for a Jewish Law Casebook*, 28 Case Western Reserve Journal of International Law 101-104 (1996).

These articles serve as an introduction for students who may be interested in understanding the place of Jewish law in American law schools and American legal scholarship. The articles reflect the different perspectives, experiences, and suggestions of three American law

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Jewish Law”; “Equity in Jewish Law”; “Hermeneutics and Jewish Law”; “Jerusalem, Rome and Westminster: Three Sources of Western Law”; “Jewish Criminal Law”; “Jewish Family Law”; “Jewish Law and Contemporary Issues”; “Jewish Law and Ethics in Comparative Perspective”; “Jewish Law and Maimonides’ Code: The *Mishneh Torah*”; “Jewish Legal History”; “Jewish Tort Law”; “Judaic Sources of American Law”; “Law and Religion”; “Law, Theology and State”; “The Legal Thought of Maimonides and its Talmudic Sources”; “Religious Legal Systems”; and “Seminar on Legal Controversy In Jewish Law.” See surveys, *supra* note 2.

professors who have taught Jewish Law courses in American law schools. Like most of the materials included in the syllabus, these articles appear in journals published at American law schools, which are likely to be accessible to American law students and which also help illustrate to students the acknowledged relevance of Jewish law in American legal scholarship.<sup>6</sup>

## II. SOURCES AND STRUCTURE OF JEWISH LAW

- Irving A. Breitowitz, *Sources of Jewish Law*, in *Between Civil and Religious Law: The Plight of the Agunah in American Society* 307-13 (1993).
- Menachem Elon, *The Basic Norm and the Sources of Jewish Law*, in *Jewish Law: History, Sources, Principles* 228-39 (Bernard Auerbach & Melvin J. Sykes trans., 1994).
- Menachem Elon, *The Legal System of Jewish Law*, 17 *New York University Journal of International Law and Politics* 221 (1985).
- Steven F. Friedell, *Book Review: Aaron Kirschenbaum on Equity in Jewish Law*, 1993 *Brigham Young University Law Review* 909 (1993).
- Aaron Kirschenbaum, *A Historical Sketch of the Sources of Jewish Law*, in *Equity in Jewish Law: Halakhic Perspectives in Law: Formalism and Flexibility in Jewish Civil Law* 289-304 (1991).

These works offer a broad introduction to the Jewish legal system, including discussions of the history, sources, structure, and methodology of Jewish law. It is significant that, like nearly all of the materials in the syllabus, these pieces are written by law professors with

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<sup>5</sup> See also Levine, *Teaching Jewish Law: An Emerging Trend*, *supra* note 1, at 1044-45.

<sup>6</sup> Other articles that document and analyze the reliance on Jewish Law in American law and legal scholarship include: Daniel G. Ashburn, *Appealing to a Higher Authority?: Jewish Law in American Judicial Opinions*, 71 *U. DET. MERCY L. REV.* 295 (1994); Charles Auerbach, *The Talmud: A Gateway to the Common Law*, 3 *CASE W. RES. L. REV.* 5 (1951); Chad Baruch & Karsten Lokken, *Research of Jewish Law Issues: A Basic Guide and Bibliography for Students*

extensive knowledge of both the American legal system and the Jewish legal system. Though the authors differ to some degree in their approach and emphasis, there is inevitably a fair amount of repetition among these works and, therefore, students should probably not be assigned all of them as required reading. Nevertheless, all of these pieces may be helpful to students as reference tools to be used throughout the semester.<sup>7</sup>

### III. LEGISLATION IN JEWISH LAW

- Samuel J. Levine, *An Introduction to Legislation in Jewish Law, With References to the American Legal System*, 29 Seton Hall Law Review 916 (1999).

Having completed the general overview, the course introduces students to components of the Jewish legal system and Jewish legal theory that parallel those studied and applied in the American legal system, demonstrating broad methodological similarities. For example, both systems distinguish analytically between legislation and interpretation, and the two systems share a number of specific modes of legal interpretation. At the same time, a close look reveals some of the differences between Jewish law and American law, including those arising out of the fundamental distinction between a legal system explicitly based in religion and one based in secular values. Many of the readings present issues in a comparative framework, while others

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*and Practitioners*, 77 U. DET. MERCY L. REV. 303 (2000); Levine, *Jewish Legal Theory*, *supra* note 1; Levine, *Teaching Jewish Law: An Emerging Trend*, *supra* note 1; Stone, *supra* note 1.

<sup>7</sup> Other helpful introductions to the Jewish legal system include: AN INTRODUCTION TO THE HISTORY AND SOURCES OF JEWISH LAW (N.S. Hecht et al., eds., 1996); DAVID M. FELDMAN, BIRTH CONTROL IN JEWISH LAW: MARITAL RELATIONS, CONTRACEPTION, AND ABORTION 3-18 (1968); JEWISH LAW AND LEGAL THEORY (Martin P. Golding ed., 1993); NAHUM RAKOVER, A GUIDE TO THE SOURCES OF JEWISH LAW (1994); AARON M. SCHREIBER, JEWISH LAW AND DECISION-MAKING: A STUDY THROUGH TIME (1979). Each of the books on this list could serve as a Jewish Law textbook in its own right, and some of them were intended for that purpose. Professor Rakover's book, for example, illustrates Jewish legal method by tracking the laws of bailments in primary and secondary sources, from the Torah through the writings of contemporary legal authorities.

discuss only the Jewish legal system. In either case, the implicit comparisons and contrasts to American law will be apparent to American law students.<sup>8</sup>

#### IV. INTERPRETATION IN JEWISH LAW

##### A. CIVIL LAW INTERPRETATION

- Adin Steinsaltz, *Civil Law, in The Essential Talmud* 145-62 (Chaya Galai trans., 1976).
- Samuel J. Levine, *Jewish Legal Theory and American Constitutional Theory: Some Comparisons and Contrasts*, 24 *Hastings Constitutional Law Quarterly* 441, 462-468 (1997).
- Irene Merker Rosenberg & Yale L. Rosenberg, *Lone Star Musings on "Eye for Eye" and the Death Penalty*, 1998 *Utah Law Review* 505, 525-538 (1998).

##### B. RITUAL LAW INTERPRETATION

- Adin Steinsaltz, *Strange and Bizarre Problems, in The Essential Talmud* 234-38 (Chaya Galai trans., 1976).
- Samuel J. Levine, *Jewish Legal Theory and American Constitutional Theory: Some Comparisons and Contrasts*, 24 *Hastings Constitutional Law Quarterly* 441, 447-461 (1997).
- Michael Broyde & Howard Jachter, *The Use of Electricity on Shabbat and Yom Tov*, 21 *Journal of Halacha & Contemporary Society* 4 (1991).

##### C. AUTHORITY IN INTERPRETATION

- Itzhak England, *Majority Decision vs. Individual Truth: The Interpretations of the "Oven of Achnai" Aggadah*, 15 *Tradition* 137 (1975).

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<sup>8</sup> See also Menachem Elon, *The Basic Norm and the Sources of Jewish Law*, in *JEWISH LAW: HISTORY: HISTORY*,

- Samuel J. Levine, *Jewish Legal Theory and American Constitutional Theory: Some Comparisons and Contrasts*, 24 *Hastings Constitutional Law Quarterly* 441, 468-475 (1997).
- Menachem Elon, *The Prerogatives of the Halakhic Authorities*, in *Jewish Law: History, Sources, Principles* 240-72 (Bernard Auerbach & Melvin J. Sykes trans., 1994).

The inclusion of sections on both "civil law" and "ritual law" interpretation helps illustrate the methodological unity that exists within Jewish law, which does not distinguish on an analytical level between laws that relate to explicitly "religious" issues and those that are more commercial in nature. On a substantive level the topics discussed in the section on civil law are generally familiar to American law students, while the discussions of ritual law, though they may be more exotic, also find some fascinating parallels in American law. Finally, although Rabbi Steinzaltz is not a professor in a law school, his writings are particularly valuable, due in part to his ability to present complex matters in a way that is both scholarly and accessible.<sup>9</sup>

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SOURCES, PRINCIPLES 479-81 (Bernard Auerbach & Melvin J. Sykes trans., 1994).

<sup>9</sup> There has developed a wide literature, much of it appearing in American law school journals, addressing issues of interpretation in Jewish law. General works on interpretation include: Menachem Elon, *Exegetical Interpretation of the Torah*, in *JEWISH LAW: HISTORY, SOURCES, PRINCIPLES* 479-81 (Bernard Auerbach & Melvin J. Sykes trans., 1994); Samuel J. Levine, *Unenumerated Constitutional Rights and Unenumerated Biblical Obligations: A Preliminary Study in Comparative Hermeneutics*, 15 *CONST. COMMENT.* 511 (1998); Levine, *Jewish Legal Theory*, *supra* note 1, at 478-508; Bernard Rosensweig, *The Hermeneutic Principles and Their Application*, 13 *TRADITION* 49 (1972).

Works on civil law interpretation include: Yitzchak Adler, *Restoration or Compensation*, in *LOMDUS: A SUBSTRUCTURAL ANALYSIS* 39-41 (1989); Menachem Elon, *Interpretation of the Halakha*, in *JEWISH LAW: HISTORY, SOURCES, PRINCIPLES* 411-14 (Bernard Auerbach & Melvin J. Sykes trans., 1994); 1-8 *EMANUEL QUINT, A RESTATEMENT OF RABBINIC CIVIL LAW* (1990-1997).

Works on ritual law interpretation include: Michael Broyde & Howard Jachter, *Electrically Produced Fire or Light in Positive Commandments*, 25 *J. HALACHA & CONTEMP. SOC'Y* 89 (1993); Arthur Schaffer, *The History of Horseradish as the Bitter Herb on Passover*, 8 *GESHER* 217 (1981).

Discussions of authority in interpretation include: Daniel J.H. Greenwood, *Akhnai*, 1997 *Utah Law Review* 309 (1997); Aaron Kirschenbaum, *Modern Times, Ancient Laws -- Can the Torah be Amended? Equity as a Source of Legal Development*, 39 *Saint Louis University Law Journal* 1219 (1995); Norman Lamm and Aaron Kirschenbaum, *Freedom and Constraint in the Jewish Judicial Process*, 1 *Cardozo Law Review* 99 (1979); Samuel J. Levine, *Halakha*



**V. ISSUES IN JEWISH LAW THAT PARALLEL ISSUES  
IN THE AMERICAN LEGAL SYSTEMS**

**A. CRIMINAL LAW AND CAPITAL PUNISHMENT**

- Adin Steinsaltz, *Criminal Law, in The Essential Talmud* 163-74 (Chaya Galai trans., 1976).
- Samuel J. Levine, *Capital Punishment in Jewish Law and its Application to the American Legal System: A Conceptual Overview*, 29 Saint Mary's Law Journal 1037 (1998).
- Samuel J. Levine, *Playing God: An Essay on Law, Philosophy, and American Capital Punishment*, 31 New Mexico Law Review 277 (2001).
- Basil F. Herring, *Capital Punishment, in Jewish Ethics And Halakhah For Our Time: Sources and Commentary* 149-73 (1984).

**B. SELF-INCRIMINATION**

- Norman Lamm, *The Fifth Amendment and Its Equivalent in the Halakha*, 5 Judaism 53 (1956).
- Irene Merker Rosenberg & Yale L. Rosenberg, *In the Beginning: The Talmudic Rule Against Self-Incrimination*, 63 New York University Law Review 955 (1988).

**C. DUTY OF CONFIDENTIALITY**

- Russell G. Pearce, *To Save A Jewish Life: Why a Rabbi and a Jewish Lawyer Must Disclose a Client Confidence*, 29 Loyola of Los Angeles Law Review 1771 (1996).
- Gordon Tucker, *The Confidentiality Rule: A Philosophical Perspective with Reference to Jewish Law and Ethics*, 13 Fordham Urban Law Journal 99 (1985).

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*and Aggada: Translating Robert Cover's Nomos and Narrative*, 1998 Utah Law Review 465 (1998); Michael Rosensweig, *Eilu ve-Eilu Divrei Elokim Hayyim: Halakhic Pluralism and Theories of Controversy*, in *Rabbinic Authority and Personal Autonomy* 93-122 (Moshe Sokol ed., 1992); Jeffrey I. Roth, *The Justification for Controversy Under Jewish Law*, 76 California Law Review 337 (1988); Moshe Silberg, *Law and Morals in Jewish Jurisprudence*, 75 Harvard Law Review 306 (1961).

- Alfred S. Cohen, *On Maintaining A Professional Confidence*, 7 *Journal of Halacha and Contemporary Society* 73 (1984).

#### D. ABORTION

- Basil F. Herring, *Abortion, in Jewish Ethics and Halakhah For Our Time: Sources and Commentary* 25-45(1984).
- Aaron Lichtenstein, *Abortion: A Halakhic Perspective*, 25 *Tradition* 3 (1991)

Building on the more general and introductory sections on the methodology of Jewish law, the course examines in detail a number of substantive areas of Jewish law that have direct parallels in the American legal system.<sup>10</sup> American law students are likely to have an interest in and at least some knowledge of these issues in relation to American law, thereby facilitating their ability to analyze the issues in the context of Jewish law. Conversely, studying these issues through the perspective of Jewish law may place American law in a new light, potentially leading students to rethink some of the assumptions and approaches of the American legal system. In addition, the excerpts from Rabbi Herring's book offer students an opportunity to apply to primary and secondary sources of Jewish law the textual and analytical skills that the students have developed in law school.<sup>11</sup>

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<sup>10</sup> It should be noted that several courts in the United States have relied on Jewish law in considering some of the issues discussed in this section. Indeed, the United States Supreme Court cited Rabbi Lamm's article in two seminal cases involving the Fifth Amendment privilege against self-incrimination. *See Garrity v. New Jersey*, 385 U.S. 493, 497-98 n.5 (1967); *Miranda v. Arizona*, 384 U.S. 436, 458 n.27 (1966). *See generally* Ashburn, *supra* note 6.

<sup>11</sup> There are numerous pieces that discuss criminal law and capital punishment in Jewish law. *See generally* J. David Bleich, *Jewish Law and the State's Authority to Punish Crime*, 12 *CARDOZO L. REV.* 829 (1991); Moshe A. Bleich & Daniel Pollack, *Search and Seizure in Schools: A Comparison of Historical Jewish Legal Sources and Contemporary United States Law*, 7 *IND. INT'L & COMP. L. REV.* 379 (1997); Gerald J. Blidstein, *Capital Punishment: The Classic Jewish Discussion*, 14 *JUDAISM* 159 (1965); Steven Davidoff, *A Comparative Study of the Jewish and the United States Constitutional Law of Capital Punishment*, 3 *I.L.S.A. J. INT'L & COMP. L.* 93 (1996); Arnold N. Enker, *Aspects of Interaction Between the Torah Law, The King's Law, and the Noahide Law in Jewish Criminal Law*, 12 *CARDOZO L.*

REV. 1137 (1991); Arnold N. Enker, *Error Juris in Jewish Criminal Law*, 11 J.L. & RELIGION 23 (1994-95); Aaron Kirschenbaum, *The Role of Punishment in Jewish Criminal Law: A Chapter in Rabbinic Penological Thought*, 9 JEWISH L. ANN. 123 (1991); Bruce S. Ledewitz & Scott Staples, *Reflections on the Talmudic and American Death Penalty*, 6 U. FLA. J.L. & PUB. POL'Y 33 (1993); Samuel J. Levine, *Capital Punishment and Religious Arguments: An Intermediate Approach*, 9 WM. & MARY BILL RTS. J. 179 (2000); 1 EMANUEL B. QUINT & NEIL S. HECHT, JEWISH JURISPRUDENCE: ITS SOURCE AND MODERN APPLICATIONS (1980); Irene Merker Rosenberg & Yale L. Rosenberg, *Advice From Hillel and Shammai on How to Read Cases: Of Specificity, Retroactivity and New Rules*, 42 AM. J. COMP. L. 581 (1994); Irene Merker Rosenberg & Yale L. Rosenberg, *Guilt: Henry Friendly Meets the MaHaRaL of Prague*, 90 MICH. L. REV. 604 (1991); Irene Merker Rosenberg & Yale L. Rosenberg, *Lone Star Liberal Musings on "Eye for Eye" and the Death Penalty*, 1998 UTAH L. REV. 505 (1998); Irene Merker Rosenberg et al., *Murder by Gruma: Causation in Homicide Cases Under Jewish Law*, 80 B.U.L. REV. 1017 (2000); Irene Merker Rosenberg & Yale L. Rosenberg, *"Perhaps What Ye Say is Based Only on Conjecture": Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995); Irene Merker Rosenberg et al., *Return of the Stubborn and Rebellious Son: An Independent Sequel on the Prediction of Future Criminality*, 37 BRANDEIS L.J. 511 (1998-1999); Aaron M. Schreiber, *The Jurisprudence of Dealing with Unsatisfactory Fundamental Law: A Comparative Glance at the Different Approaches in Medieval Criminal Law, Jewish Law and the United States Supreme Court*, 11 PACE L. REV. 535 (1991); Kenneth Shuster, *Halacha as a Model for American Penal Practice: A Comparison of Halachic and American Punishment Methods*, 19 NOVA L. REV. 965 (1995); Moshe Sokol, *Some Tensions in the Jewish Attitude Toward the Taking of Human Life: A Philosophical Analysis of Justified Homicide in Jewish Legal and Aggadic Literature*, 7 JEWISH L. ANN. 97 (1988).

For an extensive discussion of self-incrimination, see AARON KIRSCHENBAUM, SELF-INCRIMINATION IN JEWISH LAW (1970).

Other readings on confidentiality in Jewish law include: 2 J. DAVID BLEICH, *Medical Questions: Professional Secrecy*, in CONTEMPORARY HALAKHIC PROBLEMS, 74-80 (1979); Jeffrey H. Miller, *Silence is Golden: Clergy Confidence and Interaction Between Statutes and Case Law*, 22 AM. J. TRIAL ADVOC. 31 (1998); Arthur Gross Schaefer & Peter S. Levi, *Resolving the Conflict between the Ethical Values of Confidentiality and Saving a Life: A Jewish View*, 29 LOY. L.A.L. REV. 1761 (1996).

For other discussions of the relationship between Jewish law and legal ethics and professional responsibility, see Mordecai Biser, *Can an Observant Jew Practice Law?: A Look at Some Halakhic Problems*, 11 JEWISH L. ANN. 101 (1994); MICHAEL J. BROYDE, THE PURSUIT OF JUSTICE AND JEWISH LAW: HALAKHIC PERSPECTIVES ON THE LEGAL PROFESSION (1996); Michael J. Broyde, *Practicing Criminal Law: A Jewish Analysis of Being A Prosecutor or Defense Attorney*, 66 FORDHAM L. REV. 1141 (1998); Monroe H. Freedman, *Legal Ethics from a Jewish Perspective*, 27 TEX. TECH. L. REV. 1131 (1996); Dov I. Frimer, *The Role of a Lawyer in Jewish Law*, 1 J.L. & RELIGION 297 (1983); BASIL F. HERRING, JEWISH ETHICS AND HALAKHA FOR OUR TIMES: SOURCES AND COMMENTARY 91-120 (1984); Jerome Hornblase, *The Jewish Lawyer*, 14 CARDOZO L. REV. 1639 (1993); Samuel J. Levine, *Further Reflections on the Role of Religion in Lawyering and in Life*, 11 REGENT U.L. REV. 31 (1998-99); Samuel J. Levine, *Introductory Note: Symposium on Lawyering and Personal Values--Responding to the Problems of Ethical Schizophrenia*, 38 CATH. LAW. 145 (1998); Samuel J. Levine, *Law, Ethics, and Religion in the Public Square: Principles of Restraint and Withdrawal*, 83 MARQ. L. REV. 773 (2000); Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH. L. REV. 1199 (1996); Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577 (1993); Russell G. Pearce, *Jewish*

## VI. INTERSECTION OF JEWISH LAW WITH OTHER LEGAL SYSTEMS

### A. "THE LAW OF THE LAND"

- Aaron Rakefet-Rothkoff, *Dina D'Malkhuta Dina--The Law of the Land in Halakhic Perspective*, 13 Tradition 5 (Fall 1972).
- Aaron Kirschenbaum & Jon Trafimow, *The Sovereign Power of the State: A Proposed Theory of Accommodation in Jewish Law*, 12 Cardozo Law Review 925 (1991).

### B. GET LAWS AND KOSHER LAWS

- Michael J. Broyde, *The 1992 New York Get Law, in The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession* 139-49 (1996).
- Kent Greenawalt, *Religious Law and Civil Law: Using Secular Law to Assure Observance of Practices With Religious Significance*, 71 Southern California Law Review 781 (1998).

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*Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613 (1993); Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH. L. REV. 1259 (1996); Steven H. Resnicoff, *A Jewish Look at Lawyering Ethics: A Preliminary Essay*, 15 TOURO L. REV. 73 (1998); Steven H. Resnicoff, *The Attorney-Client Relationship: A Jewish Law Perspective*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 349 (2000); Marc D. Stern, *The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness*, 27 TEX. TECH. L. REV. 1363 (1996).

Classic works on abortion in Jewish law include: J. David Bleich, *Abortion in Halakhic Literature*, in JEWISH BIOETHICS 155-96 (Fred Rosner and J. David Bleich eds., 2000); FELDMAN, *supra* note 7, at 251-94; Immanuel Jakobovits, *Jewish Views on Abortion*, in JEWISH BIOETHICS 139-153 (Fred Rosner and J. David Bleich eds., 2000).

In addition, as in American law, the advent of new biotechnologies has produced a large body of literature in Jewish law, some of which has appeared in American law journals, addressing issues of both law and ethics. See, e.g., Michael Broyde, *Cloning People: A Jewish Analysis of the Issues*, 30 Connecticut Law Review 503 (1998); Elliot N. Dorff, *Human Cloning: A Jewish Perspective*, 8 Southern California Interdisciplinary Law Journal 117 (1998); Daniel Pollack et al., *Anderson v. St. Francis-St. George Hospital: Wrongful Living From an American and Jewish Legal Perspective*, 45 Cleveland State Law Review 621 (1997); Chaim Povarsky, *Regulating Advanced Reproductive Technologies: A Comparative Analysis of Jewish and American Law*, 29 University of Toledo Law Review 409 (1998); Steven H. Resnicoff, *Physician Assisted Suicide Under Jewish Law*, 1 DePaul Journal Health Care Law 589 (1997); Daniel Sinclair, *The Obligation To Heal and Patient Autonomy In Jewish Law*, 13 Journal of Law and Religion 351 (1998-99); Marc D. Stern, "And You Shall Choose Life": *Futility and the Religious Duty to Preserve Life*, 25 Seton Hall Law Review 997 (1995).

Having analyzed Jewish law largely on its own terms or, on a theoretical level, in a comparative context, the course turns to some of the complex and more practical questions relating to the interaction of Jewish law with other legal systems. Students who have studied conflicts law may recognize parallels to some of these questions, while most American law students will have a working knowledge of the constitutional issues implicated by the legislation of "get laws" and "kosher laws" in the United States. Professor Greenawalt's article may prove particularly helpful for American law students, as it represents the efforts of an American legal scholar who is admittedly not an expert in Jewish law, but who has undertaken the task of studying the way issues in Jewish law affect American constitutional law.<sup>12</sup>

## VII. MODERN APPLICATION OF JEWISH LAW IN THE ISRAELI LEGAL SYSTEM

- Shmuel Shilo, *The Contrast Between Mishpat Ivri and Halakha*, 20 Tradition 91 (Summer 1982)
- Daniel Sinclair, *Jewish Law in the State of Israel*, in *An Introduction to the History and Sources of Jewish Law* 397-419 (N.S. Hecht et al., eds., 1996).
- Menachem Elon, *The Ethiopian Jews: A Case Study in the Functioning of the Jewish Legal*

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<sup>12</sup> Other important works on "the law of the land" include: Hershel Schachter, *"Dina De'malchusa Dina": Secular Law As a Religious Obligation*, 1 J. HALACHA & CONTEMP. SOC'Y (1981); Shmuel Shilo, *Maimonides on "Dina De-Malkhuta Dina (The Law of the State is Law)"*, 1 JEWISH L. ANN. 146 (1978).

There are numerous works by American legal scholars discussing get laws and kosher laws. For a comprehensive discussion of get laws by a scholar of both Jewish law and American law, see IRVING A. BREITOWITZ, *BETWEEN CIVIL AND RELIGIOUS LAW: THE PLIGHT OF THE AGUNAH IN AMERICAN SOCIETY* (1993). See also Irving Breitowitz, *The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment*, 51 MD. L.REV. 312 (1992). For a discussion of kosher laws, see, e.g., Stephen F. Rosenthal, *Food for Thought: Kosher Fraud Laws and the Religion Clauses of the First Amendment*, 65 GEO. WASH. L. REV. 951 (1997).

Another interesting area of intersection between Jewish law and American law involves the religious rights of Jewish prisoners. See Abraham Abramovsky, *First Amendment Rights of Jewish Prisoners: Kosher Food, Skullcaps, and Beards*, 21 American Journal of Criminal Law 241 (1994); Isaac M. Jaroslawicz, *How the Grinch Stole Chanukah*, 21 Cardozo Law Review 707 (1999). See also Daniel Pollack et al., *Goodwin v. Turner: A Comparison of American and Jewish Legal Perspectives on Procreating Rights of Prisoners*, 86 Kentucky Law Journal 367 (1997).

*System*, 19 New York University Journal of International Law and Politics 535 (1987).

The course concludes with another practical application of Jewish law, examining the role of Jewish law in the Israeli legal system through the works of three Israeli law professors with extensive knowledge of Jewish law. This section, representing the international component of the course, illustrates to students some of the basic differences between Jewish law, which they have thus far been studying, and the law that governs the modern State of Israel. Although Israel is a Jewish state, Israeli law is generally secular in nature. Nevertheless, as the readings describe, certain areas of Israeli law incorporate Jewish law in a way that would violate American notions of the separation of church and state. The final reading, a fascinating analysis of the rescue and absorption of Ethiopian Jews into Israel, provides a fitting closing, combining many of the themes presented throughout the course.<sup>13</sup>

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<sup>13</sup> Other works addressing the relationship between Jewish law and modern Israeli law include: Louis Rene Beres, *Opposing the "Peace Process": Israel, Civil Disobedience and the Principle of a Higher Law*, 13 ARIZ. J. INT'L & COMP. L. 117 (1996); Menachem Elon, *Law Truth, and Peace: "The Three Pillars of the World"*, 29 N.Y.U.J. INT'L L. & POL. 439 (1997); Izhak Englard, *Human Dignity: From Antiquity to Modern Israel's Constitutional Framework*, 21 CARDOZO L. REV. 1903 (2000).