Spring 2006

Jewish Law for the Law Librarian

David Hollander

Jewish Law for the Law Librarian*

David Hollander**

Mr. Hollander provides an introductory guide to the Jewish legal system with the intent of providing law librarians with the basic knowledge necessary to begin to help a patron conduct research in Jewish law.

Contents

** Reference/Instructional Services Librarian, University of Miami School of Law Library, Coral Gables, Florida.

Introduction

¶1 As an undergraduate I was involved with my university's Jewish student center. It hosted a program in which students from a local yeshiva would come to the center to spend time studying the Talmud with the university students. I was not a participant in this program. I had never studied Jewish law and since I hadn't any intention to seriously abide by its intricacies, I did not feel the need to spend any more time in a classroom than I already did. One evening I was at the center for another program when about fifteen of these yeshiva students arrived. They rushed into the building as if they were in costume for a production of *Fiddler on the Roof*. From their classroom came a cacophony of voices, what I assumed was the pre-class socializing. Half an hour later, the chitchat was going strong. Wondering why the Jewish law lesson had not yet begun, I poked my head in the room and witnessed something I had never seen before. Every yeshiva student was paired with a university student. Each couple sat hunched over a large tome of the Talmud, engaged in spirited and loud discussion of the contents of the open page. Much to my shock, the cacophony of voices was not pre-class socializing but the class itself!

¶2 I later came to learn that what I was witnessing (and hearing) was an ancient method of study called *chaveruta*, in which pairs of students will study a page of Talmud together and out loud, debating and arguing intricate points of Jewish law. This unique form of oral study is appropriate for the Talmud, which is an extended commentary on one of the "founding documents" of Jewish law called the Oral Law. According to Jewish tradition, for centuries the Oral Law was not written down, but passed orally from generation to generation. Since its final redaction in the year 220 C.E., the Oral Law continues to be studied orally. The study of Jewish law that I witnessed as an undergraduate could not contrast more with the study of law in the modern American law school. In addition to the massive difference in the methodology of study, much about the structure and substance of the Jewish legal system is unique and vastly different from law as it is taught in the contemporary American law school. As a result, most law librarians are not equipped with the knowledge to provide even basic reference service on questions of Jewish law.

¶3 For any nonexpert[1] who has never studied Jewish law (Heb.—*halakha*), the process of learning Jewish law can be daunting. None of the primary sources are

1. The term "nonexpert" is used to refer to a law librarian, law student, lawyer, or law professor who is not well versed in Jewish law and Hebrew.

in English, and some have not been translated. Furthermore, some translations fail to convey the subtlety and complexity of the Hebrew and Aramaic and thus are peppered with many Hebrew and Aramaic words for which there is no adequate translation. Another obstacle for the nonexpert is the lack of comprehensive finding tools for Jewish law (such as a digest system or searchable database). Finally, few of the Jewish legal resources are strictly legal resources. While containing Jewish law, the major Jewish legal texts also serve as the texts for Jewish history, Jewish ethics, and Jewish philosophy. Because the law is intertwined, sometimes seamlessly, with these other areas, it can be difficult for a nonexpert to find and understand the law on a particular issue.

¶4 As more American law schools offer courses in Jewish law,[2] these are only a few of the obstacles that a law librarian will face when trying to assist a patron researching Jewish law. How can the study of this ancient law be transferred from the arguing couplets of students in the yeshiva into the modern law school classroom and the modern law school law library? How can a librarian, who has not had any exposure to the unique structure, terms of art, major works, or even the methodology of study of Jewish law, ever hope to help a law student or professor, who may be similarly ignorant, research Jewish law? Is this a hopeless case of the blind leading the blind? Despite many obstacles to the nonexpert, the answer is no.

¶5 There is a significant body of English literature on Jewish law aimed at the academic law school community as well as a body of literature aimed at the Jewish religious community. There are many excellent scholarly works on Jewish law, including invaluable multivolume treatises. There are excellent bibliographies, both concise and expansive. There are many law review articles, some addressing a specific issue of Jewish law in great detail and some outlining the broad themes of Jewish law with little detail. However, there is a gap in this literature. What is missing is a concise guide to the study of Jewish law that will offer *substantive* detail about the structure of the Jewish legal system and its major sources and provide advice about basic research strategy. The larger works, while offering great detail, are of little use to the librarian seeking to gain just enough of a base of knowledge to know his or her way around the library's Jewish law collection and offer basic reference assistance. The more concise works on Jewish law only offer a bare-bones explanation of the structure of Jewish law, not nearly enough to get someone started in research.

¶6 This article is intended to fill that gap by offering both a concise and substantive guide to the structure and sources of Jewish law. Jewish law is not aptly described as simply a foreign legal system, as the German system is to the American system. For the most part, the structure and sources of the

2. *See generally* Chad Baruch & Karsten Lokken, *Research of Jewish Law Issues: A Basic Guide and Bibliography for Students and Practitioners,* 77 U. DET. MERCY L. REV. 303 (2000); *see also* Samuel J. Levine, *Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion,* 26 FORDHAM URB. L.J. 1041, 1042–45 (1999).

Jewish legal system do not easily translate into the terms and definitions of the modern legal system. Most law librarians, not to mention law students, will be starting from scratch. This article will help to provide a basic foundation in the terms, sources, and structure of Jewish law and offer basic advice on how to get research started.

¶7 The second section of this article briefly describes the overall structure of the Jewish legal system, while the following section explains the historic development, structure, and authority of the major primary sources of Jewish law and provides research strategies for using translations of each major source. Next the article discusses contemporary secondary sources of Jewish law and how they are especially useful to the nonexpert. The final section addresses how Jewish law is applied today, in the American and Israeli legal systems as well as in the major branches of Judaism.

Structure of Jewish Law

¶8 Jewish law begins with the immutable and unchangeable laws found in what is called the Written Law (the Torah) and its companion law, the Oral Law (also called the Oral Torah). Flowing from these sources is an entire system of law that was developed over centuries by rabbis from around the world. The substance of Jewish law is found, not in any official government pronouncement, but rather in the intellectual product of rabbis of the past two thousand years. The authority of a legal work has been determined, not by force of arms or sovereign government, but rather by the work's acceptance by the Jewish people over time. In other words, Jewish law is found in the rabbinical works that history has accorded the force of law. These works, and the laws contained within them, flow from rabbinical interpretation of the Written Law and the Oral Law. These rabbinical works take many forms, but can be grouped in the following general categories: direct commentary on the Oral Law (called the *Gemara*); commentary on the *Gemara;* legal codes compiled from the laws in the Torah, Oral Law, and *Gemara;* and case law applying these laws (called responsa). In sum, the corpus of primary sources of Jewish law is made up of the Written Law, the Oral Law, and associated authoritative intellectual product of rabbis.

¶9 Much of this material addresses the particulars of Jewish religious observance and the ancient Temple rites. However, a component of Jewish law deals with matters that are today thought of as civil law and criminal matters: business relationships, evidence, torts, property, theft, etc. It is this component, called *mishpat ivri* by many modern scholars of Jewish law, that will probably be the primary focus of most Jewish legal research and scholarship conducted in the context of a secular law school. While this article does not exclude information about the religious and ritual laws, it will offer more detailed information about researching the *mishpat ivri* component of Jewish law.

Primary Sources of Jewish Law: Historic Development, Authority, Structure, and Research Strategy

¶10 Understanding the historic development of Jewish law is central to understanding the structure of the Jewish legal system and interpreting the law itself. Laws stemming from different periods and from different sources are accorded a different status as to their authoritativeness and changeability. Furthermore, in contrast to the American legal system, in which the most recent legal opinions are accorded primary authoritativeness, the opposite is sometimes true of the Jewish legal system. In the Jewish legal system, often the greater the antiquity of the legal source, the more authoritative it is considered.

¶11 Complicating matters further is the lack of a clear distinction between primary sources and what normally would be considered secondary sources. For example, some rabbinical commentaries on the Talmud have such authority that the commentaries themselves serve as a source of law. An example of such a work is the commentary on the Talmud written by Rabbi Shlomo ben Yitzkak (Rashi) (1040–1105). For purposes of this article, works that *function* as an actual source of law will be treated as primary sources of Jewish law, even though by strict definition they would be considered secondary sources of law.

¶12 The following sections will outline the historic development of the primary sources of Jewish law, explaining the contents of each source and its authority within the Jewish legal system. They also will describe how to actually conduct research using these primary sources.

Written Law and Oral Law

¶13 The founding document of Jewish law is split into two parts: Written Law and Oral Law. Jewish tradition holds that the source of these two sets of laws is divine revelation. The Written Law is found in the Torah, also called the Pentateuch (consisting of the first five books of the Hebrew Bible). According to Jewish tradition, the Torah was handed by God to the Jewish people at Sinai after the exodus from slavery in Egypt. However, the Torah "requires human interpretation to be understood and applied as a legal text."[3] Therefore, "[t]o facilitate such interpretation, God revealed to Moses at Sinai, together with the Written Torah, an Oral Torah, consisting of revealed interpretations of certain laws as well as hermeneutic rules to be used by legal authorities to derive further interpretations."[4] While these traditional beliefs may not be important to the scholar or law student conducting Jewish legal research in the secular law school context, the practical purpose of this traditional belief for such secular study of Jewish law is that both the Written Law and the Oral Law are immutable and unchangeable.

3. Samuel J. Levine, *An Introduction to Legislation in Jewish Law, with References to the American Legal System*, 29 SETON HALL L. REV. 916, 919 (1999).
4. *Id.*

The two serve as a sort of "constitution" for the legal system, except that this constitution may never be amended or changed. The Written and Oral Law together are categorized as *d'oraita* (literally "Torah law" in Aramaic). *D'oraita* law is immutable and unchangeable.

¶14 The Torah's 613 laws form the basis from which all Jewish law is derived. "Every section, verse and letter—indeed, even every ornamentation on the letters—of the Torah has been recognized as an authoritative source of Jewish law."[5] The Torah and its laws are the fundamental source for the entire system of Jewish law.

¶15 However, the Torah does not stand alone in Jewish law. In fact, despite the Torah's position at the apex of sources of Jewish law, citation to a Biblical law alone is rarely a sufficient source citation to Jewish law. "Citing the Hebrew Bible for any proposition without understanding the applicable Oral Law is an inherently dangerous business."[6] This may seem counterintuitive. The "constitutional level" laws found in the Torah should seem to be able to stand alone. However, the purpose of the Oral Law is to clarify, complement, and supplement the laws written in the Torah. Essentially, the Oral Law provides guidance on the nature and applications of the Written Law, and a reference to the Written Law without a reference to the Oral Law will almost never accurately describe the current Jewish legal position on a given subject.

¶16 The main source for the Oral Law is a work called the *Mishna*. The Oral Law was initially handed down orally from generation to generation, until it was compiled and edited in 220 C.E. by Rabbi Judah Ha-Nasi (ca. 135 C.E.–ca. 220 C.E.). The historical period of the compilation and codification of the Oral Law is called the *Tannaitic* Period (1st century C.E.–220 C.E.). The *Mishna*, largely organized by subject, "records the rules of the Oral Law as abstract, self-contained legal propositions"[7] called *mishnayot* (lit. "mishnas").[8]

¶17 In addition to the *Mishna*, there are other sources of the Oral Law. These sources are the *halakhic midrashim* and the *Tosefta*. The *halakhic midrashim* are compilations of laws that correspond directly to Written Laws from the Torah. This is in contrast to the self-contained Oral Laws contained in the *Mishna*. Essentially the *Mishna* and the *halakhic midrashim* both contain the Oral Law expressed in differing methodology of exegesis: *mishnaic* (self-contained rules and laws) and *midrashic* (connected to a Written Law from the Torah).[9] There are four major compilations of *halakhic midrashim*.[10] The *Tosefta* is a compilation of *mishnayot* that were not included in the final version of the edited *Mishna*.

---

5. 3 MENACHEM ELON, JEWISH LAW: HISTORY, SOURCES, PRINCIPLES 1020 (1994).
6. Baruch & Lokken, *supra* note 2, at 308.
7. 3 ELON, *supra* note 5, at 1049.
8. *See infra* Appendix A for an outline of the contents of the *Mishna*.
9. 3 ELON, *supra* note 5, at 1049.
10. *See infra* Appendix A for a list of the four major compilations.

¶18 In sum, the Written Law and Oral Law are the immutable (*d'oraita*) founding legal documents of the Jewish legal system. The Written Law is found in the Torah. The *Mishna* is the major source of the Oral Law, but the *halakhic midrashim* and the *Tosefta* are Oral Law sources as well. Laws developed after the close of the *Mishna* in 220 C.E. are not considered *d'oraita*, but rather *d'rabbanan* (Aramaic for "rabbinical"). In contrast to the *d'oraita* laws, *d'rabbanan* laws, made by rabbis, may be amended or modified, although no prescribed and universally accepted system exists for doing this.

The Babylonian Talmud

¶19 The next primary source to consider, the Babylonian Talmud, is probably the most important source for the purpose of understanding the law. It is the source of thousands of *d'rabbanan* laws that were the result of rabbinical interpretation of the *Mishna*. The term "Talmud" is actually a bit misleading. The Talmud is actually a collective term for several individual works that are printed together in the same set of volumes. The Talmud consists of the *Mishna*, another work called the *Gemara*, and several commentaries on both these sources. In other words, the Talmud contains the text of the Oral Law, serves as the primary source of the *d'rabbanan* laws, and also contains commentaries whose authority has risen to the level of a primary source of Jewish law. Therefore, as a package, the Talmud and the Torah are the most important sources of Jewish law.

The Gemara

¶20 The *Gemara* was developed in the *Amoraic* period (220 C.E.–500 C.E.), which was the first historical period after the close of the *Mishna*. The text of the *Gemara* records and reports seven generations worth of debates and statements of the rabbis of the great academies of the Land of Israel and Babylonia. Put simply, the rabbis of the *Mishna* argued about the Torah, and the rabbis of the *Gemara* argued about the *Mishna*.[11] The focus of the *Gemara* is the interpretation and application of the *Mishna*. These recorded debates and statements result in thousands of *d'rabbanan* laws that form the bulk of Jewish law today.

¶21 There are actually two different *Gemarot* (plural for *Gemara*) that appear in two different Talmuds: (1) the Babylonian Talmud or *Talmud Bavli* (containing the *Gemara* emanating from the academies of Babylonia); and (2) the Jerusalem Talmud or *Talmud Yerushalmi* (containing the *Gemara* emanating from the academies of the Land of Israel). The Babylonian Talmud is the more complete and more widely used and cited of the two. A reference to "the Talmud" is almost universally a reference to the Babylonian Talmud.

Commentaries Included on the Pages of the Talmud

¶22 Several commentaries on the Talmud function as primary sources of Jewish law and play a much greater role in the Jewish legal system than legal commentaries

11. MELVIN KONNER, UNSETTLED: AN ANTHROPOLOGY OF THE JEWS 95 (2003).

play in the American legal system. The most authoritative of these appear within the pages of the Talmud itself and are often considered a part of the Talmud. One such example is Rashi's Commentary on the Talmud. Rabbi Shlomo ben Yitzkak (most often called Rashi) (1040–1105) was a great eleventh-century scholar who lived in France and Germany. His classic commentary appears today on the margin of each page of the Talmud and has "become an inseparable part of the Talmud" itself.[12] One scholar has gone so far as to state that "[i]t is practically impossible to understand the Talmud without [Rashi's Commentary]."[13] In his commentary, Rashi clarifies what he believes to be the accurate text of the *Mishna* and *Gemara*. His opinions have the weight of law.

¶23 Another example of a commentary from within the pages of the Talmud is the *Tosefot*.[14] This commentary is comprised of notes that yeshiva students took during their studies, beginning with Rashi's students and compiled over the following two hundred years, from the eleventh century through the thirteenth century. Several other commentaries are included in the extreme outside and inside margins of the Talmud page. One of these commentators is considered one of the greatest Talmud scholars of all time, Rabbi Eliahu ben Shlomo Zalman (1720–97), known as the "Vilna Gaon" or the "GRA."

¶24 In sum, on each page of the Talmud are actually several different works written in different centuries, as early as the third century C.E., as late as the nineteenth century, and anywhere in between. These works were written all over the world, from Babylonia, the Land of Israel, Spain, Italy, North Africa, and Eastern Europe. The heart of the Talmud—the *Mishna* and *Gemara*—is printed in the center column of each page, but the entire Talmud page comprises the great discussion that spans both time and geography and together forms the seminal primary source of Jewish law.

Conducting Research with the Babylonian Talmud

¶25 Although the Talmud is the core primary source of Jewish law, it is extremely difficult for nonexperts to navigate. The legal material of the Talmud is interwoven with nonlegal philosophical, ethical, and moral material, called *aggada*. Secondly, even the legal discussions often flow from topic to topic, exploring disagreements among rabbis, often without clearly stating a concise and final rule. Finally, although divided into tractates that roughly follow a specific subject area, laws from other subject areas may be included in each tractate. The Talmud's thematic organization is more general in nature than the law codes discussed later in this article[15] which organize the Talmudic laws in concise statements, arranged by topic.

---

12. 3 ELON, *supra* note 5, at 1116.
13. MARC-ALAIN OUAKNIN, THE BURNT BOOK: READING THE TALMUD 32 (Llewellyn Brown trans., 1995).
14. *Tosefot* should not be confused with *Tosefta*, discussed *supra* ¶ 17.
15. *See infra* ¶¶ 39–50.

In sum, nonexperts should be wary of relying on the Talmud alone to research Jewish law. The Talmud should always be used in conjunction with contemporary treatises and the major law codes, as well as the numerous guides on Talmud interpretation.[16] The study of Talmud, which is the core of Jewish law, is an incredible intellectual pursuit, but its use alone is not the ideal way for the law library patron to ascertain what Jewish law holds on any given issue. Nonexperts should always consult resources that would be more familiar in form and language. Nonetheless, a Talmudic reference will almost always be necessary when citing to Jewish law. Nonexperts should not hesitate from using the Talmud, but they should be aware of how difficult it can be to understand. Nonexperts should use all available tools (including a knowledgeable law librarian) to help guide them through what is often called the "sea of Talmud." The following three subsections will provide practical information about conducting research with the Babylonian Talmud.

Basic Structure of the Talmud

¶26 The structure of the Talmud tracks the structure of the *Mishna*; therefore it is necessary to first understand how the *Mishna* is structured. The *Mishna* is divided into six "orders" (*seder*-sing., *sedarim*-pl.), each dealing with a subject area: (1) *Zeraim* (lit.-seeds), laws dealing with agricultural and food laws; (2) *Moed* (lit.-holidays), laws relating to holiday and Sabbath rituals; (3) *Nashim* (lit.-women), laws relating to marriage and divorce; (4) *Nezikin* (lit.-damages), laws of tort, evidence, and other civil and criminal matters; (5) *Kodoshim* (lit.-holy things), laws relating to the Temple sacrifice and ritual; and (6) *Taharot* (lit.-purity), laws relating to ritual purity. Each order is divided into tractates (*masekhet*-sing., *masekhtot*-pl.). Each tractate is divided into chapters, and each chapter is made of up individual laws called *mishnayot* (*mishna*-sing.).[17] Although the Talmud's tractates and chapters track the tractates and chapters of the *Mishna*, it is important to note that the Talmud does not contain a tractate for every *Mishna* tractate. In the listing of *Mishna* tractates in appendix A, tractates marked with an "*" are ones in which there is a corresponding Talmud tractate.

¶27 The Talmud, tracking the tractate and chapter divisions of the *Misnha*, is also divided by page number. The pages, also called folios, use the following system: 2a, 2b, 3a, 3b, 4a, 4b, etc. The numbering starts anew with each tractate, but there is no page 1a or 1b. Each tractate begins with page 2a. All of the page information appears at the top of each page: chapter name, chapter number, tractate name, and page number. In the untranslated Talmud, all of the page and chapter numbers are written in Hebrew characters, not in Arabic numerals. The Schottenstein translation[18] contains all of this information in English on the

16. *See infra* Appendix E for a list of published bibliographies and contemporary treatises.
17. *See infra* Appendix A for a complete listing of the tractates of the *Mishna.*
18. The SCHOTTENSTEIN EDITION TALMUD BAVLI (Yisroel Simcha Schorr & Chaim Malinowitz eds., Artscroll Series, rev. ed. 2001) was used for this article.

translation page. Citations to the Talmud are to the tractate name and the page number. For example, in the citation "TB Baba Batra 29a," the "TB" refers to the *Talmud Bavli* (some citations will instead have a "BT" for Babylonian Talmud), the tractate is Baba Batra, and the folio is number 29a.

Structure of a Hebrew/Aramaic Page of Talmud

¶28 Even when researching the Talmud in English, it is beneficial to understand how the page is constructed in the Hebrew and Aramaic. The pages of the Talmud are set up in a unique fashion. The different works that make up the Talmud (*Mishna*, *Gemara*, commentaries) are all placed together on the same page. In a sense, each page of Talmud contains a conversation whose participants are diverse historically (spanning across a thousand years) and geographically (they lived in places as varied as Babylonia (in present-day Iraq) and France). Awareness of this unique setup helps in understanding a translation, even if one has no knowledge of Hebrew.[19] While all the pages do not look identical, the basic structure is similar.

¶29 The central column of the Talmud page contains the text of both the *Mishna* and the *Gemara*. Text from the *Mishna* will appear first, usually a single law. Immediately following the *Mishna* text, the text of the *Gemara* will begin (often on the same line) and proceed to discuss, interpret, and expand upon the immediately preceding *Mishna* text. After the *Gemara* completes its extended discussion of the preceding *Mishna* (this may be several pages), the next law from *Mishna* will appear, followed by *Gemara* text addressing this next *Mishna.* Signals (an Aramaic abbreviation for *Mishna* or *Gemara*) are used to indicate when the text switches from *Mishna* to *Gemara* and back again. The signal is in a slightly larger typeface than the text of the *Mishna* and *Gemara*. The *Mishna* text is in Hebrew and the *Gemara* text is in Aramaic, although they will appear identical to the untrained eye.

¶30 On both sides of the central column are marginalia that contain the commentaries.[20] The central inside margin section contains Rashi's commentary on the Talmud. The central outside margin contains the *Tosefot* commentary on the Talmud. Finally, the extreme inside and outside contain margin notes that have been added over the centuries. These may vary from page to page, but two common ones are: (1) *Ein Mishpat Ner Mitzvah*—complied by Yehoshua Boaz in Italy in the 1500s, providing citations to legal codes that relate to the Talmudic discussion on that page; and (2) *Masoret ha-Shas*—providing citations to other Talmudic tractates and to other works that are relevant to the page's discussion.

---

19. The Hebrew/Aramaic pages of the Shottenstein translation use the Romm Talmud, printed originally in Vilna in 1886. This edition of the Talmud is considered the standard. Dovid Landesman, A Practical Guide to Torah Learning 9 (1995).
20. Rashi's commentary as well as Tosefot and others are printed in a slightly different Hebrew typeface called "Rashi Script."

Using Translations of the Talmud

¶31 The major translations[21] usually do not follow this physical structure of a central column and margin columns. Also, most do not contain full translations of Rashi, *Tosefot*, or the extreme margin commentaries.

¶32 The Schottenstein edition uses a unique system for its translation. First, it contains the full untranslated Talmud, using the classic "Vilna edition" folios that have been the standard since its publication in 1886.[22] The Hebrew/Aramaic page is on one side of the open volume, and its translation is on the opposite page. However, the translation of one of the Hebrew/Aramaic folios takes several English pages. For example, it takes two pages of English translation to translate page 28a of tractate Baba Batra. Sticking to the practice of keeping the Hebrew/Aramaic page opposite the English translation page, the editors include the complete page 28a opposite each of the two pages translating it. In other words, the Hebrew/Aramaic page 28a appears twice. A gray bar along the central column of the Hebrew/Aramaic (*Mishna/Gemara*) denotes the portion that is translated on the opposite page. On the English page, the first page translating 28a is indicated with a superscript number: 28a^1. Additional pages needed for the translation are labeled 28a^2, 28a^3, 28a^4, etc. These page numbers appear on the top margin of the page along with the chapter name, chapter number, and tractate name. Therefore, the top margin of the first translation page of page 28a of tractate Baba Batra[23] reads:

CHEZAKAS HABATIM CHAPTER THREE BAVA BASRA 28a^1.

¶33 There is only a full English translation of the center column (*Mishna/Gemara*). The beginning of a *Mishna* is indicated by the term "*Mishna*" in large letters, and the beginning of a *Gemara* is indicated in the same way. In general, the *Mishna* portion is short, usually only a portion of one page, while the *Gemara* can be as long as several pages.

¶34 The translation of the *Mishna*/*Gemara*, which appears on the top portion of the English page, is made up of **bold type** and normal type. The bold type is the word-for-word translation of the *Mishna* or *Gemara* which is supplemented with language in normal type. This has the effect of making the language flow in English and therefore be more understandable. This is one of the major advantages of the Schottenstein edition. The normal-type supplements allow for more a readable translation than a straight translation, but the bold type still indicates that which constitutes the actual language of the *Mishna* and *Gemara*. Furthermore, embedded in the English is the Hebrew/Aramaic text. Each bold-type word-for-word translation

21. Although this article focuses on the Schottenstein edition, it will also reference another translation published in a series designated as the Hebrew English Edition of the Babylonian Talmud by Soncino Press in 1989.
22. LANDESMAN, *supra* note 19, at 9.
23. Note that "B**a**b**a** B**a**t**r**a" is the same thing as "B**a**v**a** Bas**r**a." In Hebrew, many words may be properly pronounced in two different ways with interchangeable letters. In many words a "b" is interchangeable with a "v" sound. The same rule can apply to the "t" and "s" sounds.

phrase is accompanied with the Hebrew/Aramaic text. This may make reading the translation a little more difficult, since the text is interrupted with Hebrew characters. This system was probably intended to help people who have a basic knowledge of Hebrew learn how to study the text in the original language. However, it is still relatively easy to skip over the Hebrew phrases and read only the bold translations and the normal-type supplements that together form a readable translation of the *Mishna* and the *Gemara*.[24]

¶35 As stated earlier, the Schottenstein edition only translates the center column of the Talmud page, consisting of the *Mishna* and the *Gemara.* The Rashi, *Tosefot*, and margin notes are not translated. However, each page contains extensive explanatory footnotes that are drawn from these sources and from commentaries not appearing on the Talmud page. A significant portion of the substance of the Rashi, *Tosefot*, and other commentaries is integrated into these footnotes, but there is no direct and complete translation of the marginalia.

¶36 Another helpful feature in these translations is the English language introductions. In the Schottenstein edition, each tractate and each chapter within a tractate contain an introductory essay. These essays are very helpful in introducing the topics that will be discussed in the tractate and chapter. The Soncino edition only contains tractate introductions.

Additional Commentaries on the Talmud

¶37 There are also numerous authoritative commentaries that do not appear within the pages of the Talmud. Some of these include commentaries by Rabbi Moshe ben Nachman (Nachmanides or Ramban) (1194–1270) and Rabbi Shlomo ben Aderes (Rashba) (1235–1310). Authoritative commentaries on the *Mishna* include Rabbi Moshe ben Maimon's (Maimonides or Rambam) (1135–1204) commentary on the *Mishna*, Rabbi Ovadiah of Bertinoro's (Bartinura) (ca. 1450–ca. 1515) commentary on the *Mishna*, and *Tosfot Yom Tov* by Yom Tov Lipmann Heller (1579–1654). These are also not inserted onto the Talmud page. Landesman's *A Practical Guide to Torah Learning* contains extensive citations to the classic commentaries on the Talmud and *Mishna*, as well as citations to other works of Jewish law.[25]

¶38 Post-Talmudic legal scholars are separated into three historical subperiods: *geonim* (700–1050), *reshonim* (1050–1599), and *aharonim* (1600–present). The legal literature of these periods can be separated into three rough genres: (1) commentaries on the Talmud, (2) law codes, and (3) responsa (case law).[26]

---

24. The Soncino edition is more of a traditional translation, one page of Hebrew/Aramaic for one page of English. Also, the Soncino does not use the **bold-type** system to denote exact word-for-word translation versus supplementary language to make the text flow. Finally, the translation page is entirely English, uninterrupted by any Hebrew or Aramaic. Other editions and translations may use different methods to effectively translate the Hebrew and Aramaic text. The third major translation of the Babylonian Talmud is the Steinsaltz Talmud. ADIN STEINSALTZ, THE TALMUD: STEINSALTZ EDITION (1992).
25. LANDESMAN, *supra* note 19, at 9–34.
26. 3 ELON, *supra* note 5, at 1101–02.

Commentaries on the Talmud were discussed earlier; law codes and responsa are discussed in the following sections.

Law Codes

¶39 As discussed earlier, the Talmud is not strictly a legal source. It examines religious, ethical, moral, and philosophical subjects, as well as legal issues. Furthermore, the legal issues are intertwined with the nonlegal subjects (called *aggada*). Finally, although the Talmud follows the thematic pattern of the *Mishna*, laws on almost any subject can be addressed in any part. In other words, laws of the same subject will not always appear together. As a result, it can be extremely difficult—even for the expert—to find a specific law in the Talmud (and therefore its commentaries).

¶40 The authoritative law codes provide a solution to this problem. Great rabbis have undertaken the enormous task of creating comprehensive law codes by separating out the actual laws from the great Talmudic discussions and putting them together by subject.[27] These authoritative law codes are an extremely helpful resource, especially since they have the force of law themselves.

Mishneh Torah

¶41 The first of the major codes is Maimonides's *Mishneh Torah.* This work, also called *Yad ha-Chazakah* ("Code of Maimonides") or simply the "Rambam" (an abbreviation for the author's name), codifies almost 15,000 laws from the Talmud. The *Mishneh Torah* took Maimonides ten years to complete and dates from the 1170s and 1180s, although exact dates are unknown.[28] Although *Mishneh Torah* was controversial when published because no Talmudic source for each law was listed, today the *Mishneh Torah* is considered an absolutely authoritative statement of Jewish law. The *Mishneh Torah* can properly be considered a primary source of law, and there are many commentaries written on the *Mishneh Torah* itself, including several tracing the Talmudic sources of Maimonides's statement of the laws.

¶42 The *Mishneh Torah* is divided into fourteen books, each stating the laws of a single subject. Each book is divided into subject-area sections (titled "Laws of . . ." or "*Hilchot* . . ."). Each section is further divided into chapters, and each chapter is divided into paragraphs. Each paragraph constitutes a single law. Laws in the *Mishneh Torah* are cited by section name, chapter number, and paragraph number. For example, in the citation **MT, Nizkei Mamon 1:1**, MT stands for *Mishneh Torah*; *Nizkei Mamon* is the subject-area section (damages caused by property); and 1:1 refers to chapter 1, paragraph 1.

¶43 The vast majority of the civil law material is found in books 4, 11, 12, 13, and 14. These books contain laws relating to divorce, damages, sales, contracts,

27. *See infra* Appendix B for a table that traces the anatomy of a single law, from the *Mishna* to the *Gemara* and then to two of the major law codes.
28. 3 ELON, *supra* note 5, at 1188.

employment, inheritance, evidence, and many other areas.[29] Unfortunately, English translations of the entire *Mishneh Torah* are not commonly found in most academic law libraries; however, most will usually have one of the many abridged translations. The subject-area divisions and subdivisions make finding a specific law relatively simple by narrowing down where a law will be located. The tables of contents and indexes, if included within a particular edition, also are helpful in locating a law.

Shulchan Aruch

¶44 The second major law code is Yosef Karo's (ca. 1488–1575) *Shulchan Aruch*. The *Shulchan Aruch*, completed in 1565, is probably the most important of the legal codes. For hundreds of years it has been accepted as the final and authoritative codification of the laws found in the Talmud.[30] Even the work's title indicates its authority. *Shulchan Aruch* translates as "set table," thereby symbolically stating that the Jewish law has finally been set and settled in a clear code.[31] It should be noted that the authoritative *Shulchan Aruch* contains glosses, or explanatory notes added by Moshe Isserles (ca. 1525–72), also known as Rama or Remu, that present legal opinions omitted by Karo, especially opinions specific to *Ashkenazic* (German and Eastern European) Jewish customs. The glosses are called the "table cloth" (*mappah*) to the "set table" of the *Shulchan Aruch*. The two together still form the definitive statement of Jewish law. In contrast to the *Mishneh Torah*, which codifies the entire body of Jewish law, the *Shulchan Aruch* codifies only the laws that were applicable in Karo's time and, for the most part, today (i.e., laws applicable for the rites of the Temple in Jerusalem are omitted).

¶45 The *Shulchan Aruch* was originally a companion work to *Bet Yosef* (also by Karo). *Bet Yosef* is a compendium of material and sources for the laws that were applicable after the destruction of the Temple in Jerusalem (in the year 70 C.E.). For each of these laws, Karo cites the Talmudic source and presents all the different opinions on the law from more than thirty of the authoritative works. He then concludes by stating which of the opinions should be followed.[32] The *Shulchan Aruch* is the clear and definitive statement of the law based upon his conclusions in *Bet Yosef*. Sources and differing opinions are omitted in the *Shulchan Aruch* but may be referenced from the *Bet Yosef*.

¶46 The *Shulchan Aruch* is divided into four parts. Each part is divided into sections (*halachot*), each section is subdivided into chapters (*simanim*), and each chapter is subdivided into paragraphs that contain a law (*se'if*-sing., *se'ifim*-pl.). The four parts are *Orach Chaim* (laws addressing daily religious ritual observance), *Yoreh De'ah* (laws addressing ritual observances such as kashrut, circumcision, burial, and mourning), *Even ha-Ezer* (family law), and *Hoshen Mishpat* (civil laws and criminal laws).

---

29. *See infra* Appendix C for a subject-area breakdown of these books.
30. 3 ELON, *supra* note 5, at 1368–1422.
31. 3 *id*. at 1359–65.
32. 3 *id*. at 1316.

¶47 The *Shulchan Aruch* is cited by part, chapter, and paragraph. For example, in the citation **Sh. Ar. HM 201:1**, HM is the part *Hoshen Mishpat*; 201, the chapter number; and 1, the paragraph or law number. The sections are given names, but they are not included in the citation as they are in the *Mishneh Torah* citations.[33]

¶48 An unabridged translation of the entire *Shulchan Aruch* has not yet been published. The common abridged translations contain a table of contents, index, or both that are relatively simple to use for locating laws on a specific subject. Although not a direct translation of the *Shulchan Aruch*, Quint's *A Restatement of Rabbinic Civil Law*[34] restates the civil laws enumerated in the *Hoshen Mishpat* part, following its exact chapter divisions. This book is essential to any nonexpert seeking to use this part of the *Shulchan Aruch.*

¶49 There are also numerous commentaries on the *Shulchan Aruch* that are themselves considered authoritative primary sources of law. Some of these are traditional commentaries, explaining the *Shulchan Aruch* in detail, and others follow the codificatory form, even updating the *Shulchan Aruch* with rulings that postdate its publication. Some of these commentaries are more common in law libraries than the *Shulchan Aruch* itself.[35]

Arba'ah Turim

¶50 A third authoritative code is the *Arba'ah Turim* (also called the *Tur*) by Jacob ben Asher (ca. 1270–ca. 1343). Along with the *Mishneh Torah*, the *Tur* served as the foundation of the *Shulchan Aruch*. Integrated into the *Tur* are comparisons of Maimonides's legal opinions to those of Rabbi Yitzchak Alfasi (the Rif) (1013–1103) and to those of the *Tosefot*. The *Shulchan Aruch* follows the "four-book" organizational structure of the *Tur*, both only addressing Jewish laws in force when each code was written. Even partial English translations of the *Tur* are rare in academic law libraries. However, the *Mishneh Torah* and *Shulchan Aruch*, which are more likely to be held by major academic law libraries, will adequately address the research needs of most patrons.

Responsa

¶51 Responsa (written rabbinical opinions on legal disputes or issues) are a third type of post-Talmudic literature and primary source of law. The responsa is the "case law" of Jewish law, consisting of the decisions of rabbis who responded to

---

33. *See infra* Appendix D for a subject outline of the chapter divisions of *Shulchan Aruch,* part *Hoshen Mishpat*.
34. Emanuel Quint, A Restatement of Rabbinic Civil Law (1990).
35. Some of these "code updates" and commentaries have titles that are very similar to *Shulchan Aruch* and should not be confused with the original by Karo. An example is Yechiel Michel Epstein, Aruch Ha-Shulchan; another is Shlomo Ganzfried, Kitzur Shulchan Aruch, which is a concise statement of the laws of *Shulchan Aruch*, part *Orach Chaim*. Confusing things even further is Yisrael Kagan, Mishna Berurah, which is also a major commentary on *Shulchan Aruch*, part *Orach Chaim*, and not the similarly named *Mishna*.

questions of Jewish law submitted in writing. Questions would be submitted to a local rabbi, who would either answer the question or pass it up to a more renowned scholar of Jewish law, who would then answer the question. The following paragraphs discuss responsa in the three post-Talmudic historical periods. Menacham Elon's *Jewish Law: History*, *Sources*, *Principles* contains an extensive bibliography of compiled volumes of responsa called compilations.[36]

¶52 During the *Geonic* period (7th century to mid-11th century), questions were mainly submitted by members of Jewish communities in Spain and North Africa. Questions would be screened by scholars in Egypt before being sent on to the academies of Babylonia. Upon reaching the academies, the questions would be debated, answered, and sent back along the same route by which they arrived. The compilation and organization of these early responsa can best be described as sketchy, and much has been lost to history.[37] Further, many of the compilations have not been translated into English. An important compilation is *Otzar Ha-Geonim*,[38] prepared by Benjamin M. Lewin, in which the responsa are organized by subject in the sequence of the Babylonian Talmud.

¶53 The period of the *Rishonim* (mid-11th century to 16th century) has been called the "classic" period of responsa.[39] During this period, a more detailed form of responsum developed. Also, the responses came from many different centers of Jewish learning, rather than a single city (as in the *Geonic* period). As a result, often these decisions were addressed to, and thus only binding upon, the community from which the question came. Major respondents of this period include Rabbi Yitzchak Alfasi (the "Rif") (1013–1103), Rabbi Yaakov ben Meir ("Rabbenu Tam") (ca. 1100–71), Maimonides, Nachmanides, and Rabbi Shlomo ben Aderes ("Rashba") (1235–1310).

¶54 Finally, during the period of the *Ahronim* (16th century to present), the source of the responsa shifted from Spain to Eastern Europe, Turkey, the Balkans, the Land of Israel, North Africa, and, eventually, even the United States. Rabbi Eliahu ben Shlomo Zalman (1720–97), known as the Vilna Gaon, is one of the main respondents of this period. Other major respondents included Rabbi Meir of Lublin (Maharam) (1558–1616), Yosef Karo, Moshe Isserles, and Rabbi Shlomo Luria (Maharshal) (1510–74). The major American work of responsa is *Sefer Igrot Mosheh* by Rabbi Moshe Feinstein (1895–1986).[40]

¶55 Researching the responsa will be difficult, especially for the nonexpert. There exist today 300,000 known responsa in three thousand books.[41] There is no comprehensive digest of all of these decisions. Compilations of responsa are

36. 4 Elon, *supra* note 5, at 1989–2008.
37. 3 *id*. at 1472.
38. Benjamin M. Lewin, Otzar Ha-Geonim (1928–42).
39. 3 Elon, *supra* note 5, at 1472.
40. Moshe Feinstein, Sefer Igrot Mosheh (1959–).
41. 3 Elon, *supra* note 5, at 1462.

the main tool to locate responsa on a specific topic. After the publication of the *Shulchan Aruch*, most compilations of responsa are organized according to the subject structure of that source. While each individual compilation may be organized by topic, these decisions are not organized, indexed, or digested across different compilations. Most are not translated into English.

¶56 Even those with the ability to research the responsa in their original languages face obstacles in conducting such research. There is not even a comprehensive list of the untranslated compilations, let alone the individual decisions. However, the *Digest of the Responsa Literature* is currently being compiled (in Hebrew) at the Hebrew University of Jerusalem. When completed, it will digest responsa in each major historical period alphabetically by topic. It will also digest historical information contained within the responsa and index the sources cited. This work is only partially completed.[42]

¶57 In sum, extensive research of responsa will be practically impossible for nonexperts working in secular law schools. The best available strategy is to locate several major translated compilations and check each for the desired topic. Elon's *Jewish Law: History*, *Sources*, *Principles*[43] and Weisbard and Schonberg's *Jewish Law: Bibliography of Sources and Scholarship in English*[44] each contain a bibliography of compilations of responsa. The former lists both translated and untranslated compilations, while the latter is limited to English compilations.

Secondary Sources: Contemporary Treatises

¶58 Because the uninitiated researcher will face many obstacles in the use of primary sources, contemporary treatises of Jewish law are probably the most important research tool for the nonexpert. Such sources comprise a body of literature written by contemporary scholars and rabbis about topics of Jewish law. They are written, for the most part, by authors who are able to access the original sources in their original languages, and who almost invariably cite to those sources. These helpful resources may be multivolume sets, single monographs, or even law journal articles. Most academic law libraries are far more likely to have these secondary sources than the original primary sources (or their translations). The secondary sources may be used to learn about the substance of Jewish law on a subject, to find citations to primary sources, or to learn how to use the primary sources. Ideally, the contemporary treatises should be used as a gateway to the primary sources. However, there may be instances where the relevant primary source will be completely inaccessible either because it has not been translated into English or because it is not owned by any local law library.

---

42. 3 *id.* at 1523–28.
43. ELON, *supra* note 5.
44. PHYLLIS HOLMAN WEISBARD & DAVID SCHONBERG, JEWISH LAW: BIBLIOGRAPHY OF SOURCES AND SCHOLARSHIP IN ENGLISH (1989).

¶59 There are several types of treatises. First, there are general treatises, addressing the whole body of Jewish law. An example of this kind, and by far the most valuable resource for conducting research in Jewish law, is Elon's *Jewish Law: History*, *Sources*, *Principles*.[45] This four-volume work is essential for anyone conducting Jewish legal research. The second type is the subject-specific treatise or article that addresses a single Jewish legal issue or a general subject area of Jewish law. Examples of this type are "Some Observations on the Talmudic Law of Torts"[46] and *Medicine and Jewish Law*.[47]

¶60 Another type that may be helpful is the "how-to" book. Such sources offer advice about how to conduct research in Jewish law. Some of these books offer a general overview of the mechanics of studying Jewish law. Others offer detailed information about reading and interpreting a specific resource, most often the Talmud. Because Talmudic discussion can be very complicated, these books will be invaluable for the nonexpert who is delving into a page of Talmud. An example of this type is Yitzchak Feigenbaum's *Understanding the Talmud*.[48]

¶61 The Jewish legal researcher should be aware that although many of these treatises are written for the legal community, many are also written for the Jewish religious community. Works in the latter category, similar to all the primary sources of Jewish law, are aimed at people who share beliefs about the divine origins of Jewish law and its binding nature on the Jewish community; they are not intended for the academic study of law. However, these books will still be extremely helpful to the secular study of Jewish law because they will be filled with citations to primary sources and valuable analysis of these sources, even though intended for religious use.

¶62 In sum, the research strategies outlined above for the legal codes, Talmud, and responsa should be used in conjunction with contemporary treatises. These will help the nonexpert wade through the vast body of Jewish law.[49]

How Jewish Law Is Applied Today

¶63 While the study of Jewish law is a fascinating intellectual exercise, it is important to note the real-world applications of Jewish law. While Jewish law is not the governing law of any nation-state, its application goes beyond the obvious function of governing the religious practice of the Jewish community. Jewish law plays an increasingly important part in the secular law of the State of Israel and even has been a factor in American case law. Furthermore, the application of Jewish law to

45. ELON, *supra* note 5.
46. Steven Friedell, *Some Observations on the Talmudic Law of Torts,* 15 RUTGERS L.J. 897 (1984).
47. MEDICINE AND JEWISH LAW (Fred Rosner ed., 1993).
48. YITZCHAK FEIGENBAUM, UNDERSTANDING THE TALMUD (1988).
49. *See infra* Appendix E for a list of contemporary treatises, as well as several excellent bibliographies of such treatises.

the Jewish religious community is surprisingly diverse. The following section will address how Jewish law is actively applied on a practical level in the present day.

State of Israel

¶64 Contrary to what may be a popular assumption, Jewish law has not been a major component of the law of the State of Israel. Upon independence in 1948, the new state adopted much of the existing pre-1948 law as its own.[50] This pre-1948 law was an amalgam of English law (instituted during the British mandate, 1922–48) and Ottoman Law (left over from the period of Turkish rule, 1517–1917).[51] Until 1980, the development of a native Israeli law was governed by a 1922 British Mandate-era statute, Article 46. Article 46 provides that when a statute does not adequately address an area of law, English common law will govern.[52] So until 1980, one primary source for the development of Israeli law was English law. Obviously, the Israeli Parliament (the *Knesset*) passed statutes that, under Article 46, would preempt English common law. However, in the absence of a statute, either passed by the *Knesset* or preexisting the founding of the state, English common law was followed by the Israeli courts.

¶65 In 1980, the *Knesset* repealed Article 46 and replaced it with the Foundations of Law Act. This law formally stated that in certain circumstances, the courts of Israel should draw upon sources of Jewish law in its decisions. The statute provides,

> Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case law or by analogy, it shall decide it in light of the principles of freedom, justice, equity and the peace of Israel's heritage.[53]

Although not specifically mentioning Jewish legal sources, the Foundations of Law Act "aim[s] at replacing English judicial wisdom with traditional Jewish thinking as a reservoir to be drawn upon" when a court faces a question of first impression.[54] The extent of that replacement is a matter of great debate among Israeli legal scholars. Some scholars argue that Jewish legal resources should only be used by courts "in the rare situation where the legal system had never dealt at all with the subject in issue, either directly or indirectly."[55] Many others hold that courts should draw upon Jewish law not only for issues that have never been addressed in Israel but also for the interpretation of statutes containing terms that are value-laden (such as "justice"), abstract, or unique to Jewish law.[56] Finally, a

---

50. Esther M. Snyder, Israel: A Legal Research Guide 1 (2000).
51. *Id.*
52. Yoram Shachar, *History and Sources of Israeli Law*, *in* Introduction to the Law of Israel 6 (Amos Shapira & Keren C. DeWitt-Arar eds., 1995).
53. Foundations of Law Act, 5740–1980, 34 LSI 181, 181 (1979–80) (Isr.).
54. Shachar, *supra* note 52, at 7.
55. 4 Elon, *supra* note 5, at 1895.
56. 4 *id*. at 1895–96.

third group of scholars, which includes Elon, holds that the Foundations of Law Act "establishes Jewish law as the primary persuasive source, the 'first among equals,' in every case where an Israeli statute is ambiguous or uncertain, except only where the Israeli statute explicitly differs from Jewish law."[57] According to this view, Jewish law is to be the "primary complementary source of enlightenment—duly taking into account . . . 'the needs of the time and the purpose of the law.'"[58] Israeli judges and legal scholars will debate what role Jewish law should play in the law of the Israel for many years to come. However, it is settled that Jewish law will, on some level, play a role in the governance of the State of Israel.[59]

United States

¶66 While, of course, Jewish law plays no authoritative role in the American legal system, Jewish law does appear in case law in interesting ways. There are generally two different contexts where Jewish law surfaces. First, in cases that have nothing to do substantively with the Jewish community or Jewish issues, a creative judge cites Jewish law in dicta, sometimes in an entertaining way and sometimes in a serious way. For example, in a case involving banking law and consumer protection, the Tenth Circuit cites the Babylonian Talmud for the proposition that a general deposit of funds into a financial institution is really a form of loan, passing title to the institution, which is required to repay the loan from its own funds upon demand.[60] Both the Tenth Circuit opinion and the cited section of the Talmud contrast such a deposit to a bailment, which does not pass title.

¶67 More commonly, Jewish law surfaces in American litigation dealing with a matter that is related in substance to Jewish law or the Jewish community. These cases usually involve a dispute over a Jewish religious divorce[61] or a dispute between a Jewish institution and a municipality, usually over the building of an *eruv* (an artificial "boundary" marked by a wire or a rope that is necessary to perform certain actions on the Jewish Sabbath).[62] A common, although not universal, outcome of this type of case is that the court refuses to intervene on the grounds that it is a religious matter.[63] In sum, while never governing an outcome in American case law, Jewish legal issues or citations in dicta, while not common, do exist. A very basic understanding of Jewish law can help a practitioner understand these issues and references.

---

57. 4 *id*. at 1896.
58. *Id.* (quoting Hendeles v. Bank Kupat Am, 35 (ii) P.D. 785, 795 (1981)).
59. *See, e.g.*, C.A. 2034/98 Amin v. Amin (citing the Babylonian Talmud and the *Shulchan Aruch* among other Jewish law sources).
60. Dean Witter Reynolds Inc. v. Variable Annuity Life Ins. Co., 373 F.3d 1100, 1107 (10th Cir. 2004) (citing and quoting TB Baba Metzia 43a).
61. *See, e.g.,* Klagsburn v. Va'ad Harabonim of Greater Monsey, 53 F. Supp. 2d 732 (D.N.J. 1999); Goldberger v. Goldberger, 624 A.2d 1328 (Md. 1993).
62. *See, e.g.,* Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly, 309 F.3d 144 (3d Cir. 2002).
63. *Klagsburn*, 53 F. Supp. 2d at 742.

Orthodox Judaism

¶68 It is within the Orthodox movement that Jewish law finds its widest application. Most of those who live their lives adhering to Jewish law and who have the greatest level of knowledge about Jewish law are members of the Orthodox Jewish community. The divine origin of the Torah and the Oral Law is the foundational belief that underlies the application of Jewish law within Orthodox Judaism. Put differently, the Torah and the Oral Law were dictated by God to Moses. Therefore, while Jewish law may develop and evolve over millennia, the laws outlined in the divinely revealed foundational documents are not changeable. And while post-*Mishna* rabbinical laws may be interpreted, developed, adapted, or changed, they may not be adapted or interpreted in light of, or on the basis of, changing social and political understandings. Rather, any adaptations must be justified from within the existing texts of Jewish law. Consequently, there is little room for creative rule-making in Orthodox Judaism. "Changes and developments in [Jewish law]" are not understood "as new norms but rather as elaboration and realization of existing ones."[64] Because of these restrictions, developments in the law occur rarely and slowly. After the publication (in the sixteenth century) and universal acceptance of the *Shulchan Aruch* (along with Isserles's glosses) as the authoritative codification of Jewish law, there have been practically no major changes in the laws and their application within Orthodox Judaism.

¶69 There is no single authoritative body to rule on an issue of Jewish law. Rather, each Orthodox rabbi has ruling authority over his own community. The authority of rabbis, both in the present day and since the close of the *Mishna* in 220 C.E., is embedded in the divine origins of the Torah and Oral law.

> The laws of the Torah, as interpreted by recognized legal authorities, are "absolute and unconditional." In what lies the authority of these legal interpreters? For [Orthodox Jews] the divine authority behind Jewish law was bestowed on Moses, transmitted by him to Joshua, by Joshua to the elders, and so on down the line up to and including the latest duly ordained Orthodox rabbi who is authorized to decide question of ritual and civil law. And no part of life is left out of the range of these laws.[65]

In practice, an Orthodox Jew brings a question of Jewish law to his or her rabbi, whose decision is binding upon the questioner. Furthermore, an Orthodox rabbi will set the communal standards for his congregation. Often, on broad standards and rulings, individual communal rabbis will follow the standards of a more renowned rabbi. Disputes between people may be brought to a community's rabbinical court (*beit din*).

¶70 Jewish law, as applied within Orthodox Judaism, is a binding legal doctrine that governs every aspect of the believer's life. The Orthodox interpretation

64. Benjamin Brown, *Orthodox Judaism*, *in* THE BLACKWELL COMPANION TO JUDAISM 311 (Jacob Neusner & Alan J. Avery-Peck eds., 2000).
65. MARC LEE RAPHAEL, JUDAISM IN AMERICA 19 (2003).

and application of Jewish law represents the strictest and least malleable permutation of Jewish law. Articles discussing Jewish law from the Orthodox perspective appear in *Tradition*, a journal published by the Rabbinical Council of America, the rabbinical arm of the largest American Orthodox Jewish organization, the Orthodox Union.

Conservative Judaism

¶71 Conservative Judaism, in philosophy at least, holds that Jewish law remains binding upon Jews. However, in contrast to Orthodoxy, laws may be interpreted and developed in light of their historical context and new social realities. Elliot Dorff, a leading theologian of the Conservative movement, states that "Jewish law is understood to be divine in origin, but human in application." The laws are to be interpreted and applied in "historical context, using the same intellectual tools that researchers employ in investigating other aspects of life."[66] With this view of the law, Conservative Judaism attempts to preserve the tradition while remaining open to new ideas and practices.[67] However, despite having a greater openness to change and development than contemporary Orthodox Judaism, the Conservative movement and its leaders (if not its laity) maintain a devotion to a binding Jewish legal framework.

¶72 Ismar Schorsch, a leader of the movement and chancellor of its rabbinical seminary, the Jewish Theological Seminary, counts "governance of Jewish life by *Halakha*" as one of Conservative Judaism's seven core values.[68] In his statement on these values, he avows the sanctity of both the Written and Oral Torah. However, he goes on to state that Jewish law is not immutable and when "historically considered, evinces a constant pattern of responsiveness, change and variety." And while "valid adjustment where absolutely necessary" is acceptable, radical revision or rejection of the entire legal system is not. According to Schorsch, Conservative Judaism must strive to be sensitive to human need while maintaining its *halakhic* integrity.[69] In sum, Schorsch clarifies that Jewish law remains binding upon Jews, but may change, adapt, and develop when necessary and in a way that maintains the integrity of the legal system.

¶73 Similar to Orthodoxy, the Conservative movement allows its rabbis to make individual legal decisions. However, in contrast to Orthodoxy, Conservative Judaism maintains a centralized institution to set legal standards, namely the Committee on Jewish Law and Standards of the Rabbinical Assembly. Jewish legal issues are also debated and discussed in the movement's journal (*Conservative Judaism*). The movement's rabbinical organization (the Rabbinical Assembly)

66. Elliot N. Dorff, A Living Tree: The Roots and Growth of Jewish Law 340 (1988).
67. *Id.* at 341.
68. Ismar Schorsch, The Sacred Cluster: The Core Values of Conservative Judaism, http://www.jtsa.edu/about/cj/sacredcluster/shtml (last visited Dec. 16, 2005).
69. *Id.*

continues to produce and publish responsa. Finally, works on Jewish law from the movement's perspective are published by the Rabbinical Assembly and the United Synagogue Book Service.

Reform Judaism

¶74 The Reform movement does not maintain a Jewish legal system, per se. Rather, the movement views the laws as a source of practices that may or may not be observed, depending upon the individual conscience of each Jew. In short, Jewish law is no longer treated as law. In its earlier stages, the Reform movement focused almost solely on the moral norms of the Bible, practically dropping the more ritualistic laws such as the laws of kosher food and observance of the Sabbath.[70] Recently, however, the movement has begun to explore more traditional observance, although not in the context of a set of binding laws to be followed. In 1999, the movement issued a statement of principles called the Pittsburgh Principles.[71] A published commentary to the principles discusses the laws in the context of a dialogue between God and an individual Jew. According to the commentary, Jews should "hear" each of God's commands as a call that "it is important to God" for him or her to observe each law. However, Jews each have the autonomy to respond to this call in one of many ways. Some Jews may respond

> by taking on the[ ] sacred obligations . . . [while] others . . . may respond [to God], "We need to dialogue more." [O]thers . . . may respond, "I cannot do this act—in terms of my present moral or communal understanding it seems meaningless, or even wrong." And perhaps God responds as our beloved might: "Let's keep the conversation going."[72]

Therefore, despite describing the laws as "sacred *obligations*," each individual Jew maintains the autonomy to observe or not observe the law as his or her conscience dictates, through an individual dialogue with God. While in recent years the Reform movement has moved toward more traditional observances of the practices described in the Jewish laws, such practice cannot be accurately described as legal in nature since observance is voluntary. The movement's rabbinical arm, the Central Conference of American Rabbis, publishes responsa as "guidelines" for such observance, not as binding decisions. However, these responsa frequently draw upon traditional sources of Jewish law. For example, one such decision cites the Babylonian Talmud, *Shulchan Aruch*, *halakhic midrashim*, Rashi's Commentary on the Talmud, *Mishna*, and many others.[73] In sum, Jewish law functions as a source of knowledge and practice for Reform Judaism. However, Jewish

---

70. DORFF, *supra* note 66, at 343.
71. Cent. Conference of Am. Rabbis, A Statement of Principles for Reform Judaism Adopted at the 1999 Pittsburgh Convention (May 1999), http://data.ccarnet.org/platforms/principles.html.
72. Cent. Conference of Am. Rabbis, Commentary on the Principles for Reform Judaism, http://data.ccarnet.org/platforms/commentary.html (last visited Dec. 29, 2005).
73. *See, e.g.,* CCAR Responsa 5756.8, On Homosexual Marriage, http://data.ccarnet.org/cgi-bin/respdisp.pl?file=8&year=5756 (last visited Jan. 9, 2006).

law as a legal system has been dismantled and replaced with a system that places the individual's free will at the center of observance.

Reconstructionist Judaism

¶75 The Reconstructionist movement, by far the smallest of the four contemporary expressions of Judaism, also no longer treats Jewish law as law.[74] Jewish law is understood as part of the customs and folkways that underlie an evolving Jewish civilization.[75] While within the Reconstructionist movement these customs are an important part of the maintenance and development of Jewish identity and practice, they are not treated as binding "laws" by the movement.

Conclusion

¶76 Jewish law begins with the laws contained in the Written Law (the Torah) and the Oral Law (primarily the *Mishna*, but also the *halakhic midrashim* and *Tosefta*). The laws in these sources form the immutable "constitution" of Jewish law (*d'oraita* laws). After the close of the *Mishna*, rabbis interpreted, studied, and applied the laws contained in the Written and Oral Law, and the result was numerous new laws created by rabbis (*d'rabbanan* laws). The Talmud (*Gemara* and its commentaries, along with the text of the *Mishna*) records, explains, and interprets the rabbinical discussions of seven generations that result in the body of *d'rabbanan* law. This large body of law is codified in clear, definitive statements in the great law codes. Finally, the even larger body of responsa, or case law, records how these laws were applied by rabbis in real-life situations. Commentaries on all of these works help to explain and clarify their meanings and application. Some commentaries may even have the force of law, essentially functioning as primary sources of law.

¶77 While the previous paragraph sums up the main body of primary sources of Jewish law, there are other primary sources. These include the full Hebrew Bible or *Tanakh* (the Torah plus the Prophets and Writings), commentaries on the Hebrew Bible, *aggadic midrashim* (interpretation of the ethical and philosophical component of the Written and Oral Law), explanations of the major commentaries of the Talmud, commentaries on the major codes, major ethical works, rabbinical and communal enactments (called *takkanot*), and legal documents such as marriage contracts (*ketubot*). Contemporary treatises are invaluable works that can serve as guides to both the substance of the law and to the use of the primary Jewish legal sources.

¶78 A basic understanding of the structure, contents, authority, and application of the primary sources is necessary before researching Jewish law. I sincerely hope

74. Dorff, *supra* note 66, at 342.
75. *Id.*

that this article's explanation of the Jewish legal system, although introductory, will provide the law librarian the basic knowledge necessary to begin to help a patron conduct research in Jewish law and to understand the fruits of that research.

Appendix A
Outline of Primary Jewish Law Sources

(The major sources are in **bold.**)

1. **Written Law—Torah**
   - a. **Genesis (Bereshit)**
   - b. **Exodus (Shemot)**
   - c. **Leviticus (Vayikra)**
   - d. **Numbers (Bamidbar)**
   - e. **Deuteronomy (D'varim)**

2. **Oral Law**—Tannaitic Period (1 C.E.–220 C.E.)
   - a. **Mishna**—The Mishna is divided into six orders (seder, sing.; sedarim, pl.), each subdivided into several tractates (masekhet, sing.; masekhtot, pl.). Each masekhet is divided into chapters. Tractates marked with an "*" are also tractates in the Babylonian Talmud. The orders and the tractates are:
     - i. Zeraim (lit.-seeds)—agricultural and food laws
       - (1) Berakhot*
       - (2) Peah
       - (3) Demai
       - (4) Kilayim
       - (5) Shebiit
       - (6) Terumot
       - (7) Maaserot
       - (8) Maaser Sheni
       - (9) Challah
       - (10) Orlah
       - (11) Bikkurim
     - ii. Moed (lit.-holidays)—laws relating to holiday and Sabbath rituals
       - (1) Shabbat*
       - (2) Erubin*
       - (3) Pesachim*
       - (4) Shekalim
       - (5) Yoma*
       - (6) Sukkah*
       - (7) Besah*
       - (8) Rosh Hashanah*

(9) Taanit*
(10) Megillah*
(11) Moed Katan*
(12) Hagigah*

iii. Nashim (lit.-women)—laws relating to marriage and divorce
(1) Yebamot*
(2) Ketubot*
(3 Nedarim*
(4) Nazir*
(5) Sotah*
(6) Gittin*
(7) Kiddushin*

iv. Nezikin (lit.-damages)—laws of tort, other civil law, criminal law
(1) Baba Kamma*
(2) Baba Metzia*
(3) Baba Batra*
(4) Sanhedrin*
(5) Makkot*
(6) Shavuot*
(7) Eduyot
(8) Avodah Zarah*
(9) Avot (also known as Pirkei Avot, Ethics of the Fathers)
(10) Horayot*

v. Kodoshim (lit.-holy things)—laws relating to Temple sacrifice and ritual slaughter
(1) Zevachim*
(2) Menachot*
(3) Chullin*
(4) Bekhorot*
(5) Arakhin*
(6) Temurah*
(7) Keritot*
(8) Meilah*
(9) Tamid*
(10) Middot
(11) Kinnim

vi. Tahorot (lit.-purity) —laws of ritual purity
(1) Kelim
(2) Ohalot

(3) Negaim
(4) Parah
(5) Tohorot
(6) Mikvaot
(7) Niddah*
(8) Makhshirin
(9) Zabim
(10) Tebul-Yom
(11) Yadayim
(12) Uksin

b. Halakhic Midrashim
   i. Mekhilta—on Exodus (Shemot)
   ii. Sifra—on Leviticus (Vayikra)
   iii. Sifrei—On Numbers (Bamidbar)
   iv. Sifrei—On Deuteronomy (D'varim)

c. Tosefta

3. Amoraic Period (220 C.E.–500 C.E.)
   a. **Gemara (Babylonian Talmud or Talmud Bavli)**—The Gemara tracks the order of the *Mishna*. Not all tractates of the *Mishna* are addressed. Those that are addressed are indicated with a " * " in the listing of the Mishna tractates above.
   b. Jerusalem Talmud or Talmud Yerushalmi
4. Post-Talumdic Period (Geonim, 7th Century–mid-11th Century; Rishonim, mid-11th Century–16th Century; Ahronim, 16th Century–present)
   a. Major commentaries on *Mishna/Gemara*
      i. **Rashi**
      ii. **Tosefot**
      iii. Numerous others
   b. Codes of Law
      i. **Mishneh Torah**
      ii. **Arba'ah Turim**
      iii. **Shulchan Aruch**
   c. Responsa
   d. Other resources including takkanot (enactments), legal forms, and legal documents

Appendix B
Anatomy of One Law

The following example traces the development of one law from the *Mishna* (Oral Law) to a rabbinic law from the Babylonian Talmud to the codification of that law in the law codes (*Mishneh Torah* and the *Shulchan Aruch*).

Mishna *(Oral Law)*

Order Nezikin, Tractate Baba Batra, Chapter 3, *Mishna* 1 states that possession of certain types of real property (houses, pits, ditches, vaults, and others) for an uninterrupted period of three years entitles the possessor to undisputed ownership of the property.

*Talmud (*Mishna + Gemara + *Commentaries of Rashi,* Tosafot*, and others)*

Chapter 3 of Tractate Baba Batra from the Babylonian Talmud opens by restating the *Mishna* discussed above.[76] Rashi explains why this rule requires uninterrupted possession. According to Rashi, for a possessor to establish ownership, the possessor must make use of all the benefits of the property. Because the types of property listed in the *Mishna* for this rule are the types that give benefits continuously, possession of the property for the three-year period must also be continuous to establish ownership.

Following the *Mishna* is the rabbis' discussion of this law in the *Gemara*. They examine and argue about the basis for the three-year requirement and explore how it is or is not applied in different circumstances. Eventually the discussion leads to the following example. Two people "bought" a servant jointly. The first used the servant in years 1, 3, and 5. The second used the servant in years 2, 4, and 6.[77] (The Tosafot commentary explains in more detail than in the *Gemara* that the two partners arranged the use of the servant according to this schedule so neither partner would use the servant for 3 consecutive years and thus establish ownership against the other partner).

The *Gemara* continues: at the end of the 6 years, the servant's original owner claimed that he never sold the servant to the partners. The *Gemara* holds that just as no ownership was established between the two partners because use of the servant was not for 3 consecutive years, no ownership is established against the original owner.[78]

The *Gemara* then discusses a qualification of this ruling. If the partners had entered a written contract apportioning the use of the jointly owned servant for use

76. TB Baba Batra 28a. This summary of the Talmudic discussion was drawn from the SCHOTTENSTEIN EDITION TALMUD BAVLI, *supra* note 18.
77. TB Baba Batra 29b.
78. *Id.*

by one partner in years 1, 3, and 5 and the other in 2, 4, and 6, the two partners would have fulfilled the requirement of establishing ownership against the original owner, because the arrangement would be known through the existence of the written contract.[79]

It is important to note that the above summary is an abridged version of this Talmudic discussion. The actual discussion, although on the more concise end for the Talmud, is more free-flowing. Individuals, rabbis, and judges involved in the case are mentioned by name and the rabbis' differing opinions regarding the cases are referenced. Furthermore, one would have to read through other discussions to reach this ruling. All of this discussion makes it difficult to find the simple statement of the law.

For these reasons, the law codes are helpful by stating the law clearly, concisely, and then placing it in a code that brings together laws on the same subject. Below are statements from two of the major codes on the law discussed above.

Mishneh Torah[80]

If two partners were in possession of a field for six years—the first one having taken the profits during the first, third, and fifth [years], and the other having taken the profits during the second, fourth, and sixth [years]—neither of them has sufficient possession . . . , because the [original] owner of the property may say, "Since I neither saw nor heard that one person occupied it year after year, I did not protest." Therefore, if these partners had drawn up a written agreement between themselves to the effect that each would occupy the property in alternate years . . . because there is a public knowledge of a written agreement; and since the [original owner] did not protest, he has lost his right. The same applies to a slave who worked for each of the two persons, in alternate years; if they had a written agreement between themselves, they have had sufficient possession.[81]

This statement of this law is placed in the *Mishneh Torah* book (*sefer*) of civil laws and in the subsection (*halakhah)* on plaintiffs and defendants (*to'even v'nitan*). All the related laws are in this section.

Shulchan Aruch

If two partners were in possession of a field for six years—the first one having taken profits for [years] 1, 3, 5 and the other haven taken the profits for [years] 2, 4, 6—the possession is not sufficient for either one of them. If they had made this arrangement in a written agreement, their possession is sufficient once three years have passed . . . . The same applies to a slave who worked for them under the same conditions.[82]

---

79. *Id*.
80. Elon includes many of these helpful comparisons of the language of the Mishneh Torah and the *Shulchan Aruch.* He also includes language from the *Tur.* 3 ELON, *supra* note 5, at 1327–36; 4 *Id*. at 1979–87.
81. MT, To'even v'Nitan 12:5, as translated by Elon. 3 ELON, *supra* note 5, at 1335–36.
82. Sh. Ar. HM 144:1, as translated by Elon. 3 ELON, *supra* note 5, at 1335–36.

This very concise statement of the law is placed in the book *Hoshen Mishpat*, chapter 144, paragraph 1. This book contains the civil laws, and this particular law is placed in the section titled *Hilchot Hezkat Karka'ot* containing laws addressing possession of land.

Appendix C
Mishneh Torah Civil Law Subject List[83]

Book 4: **Sefer Nashim** ***(Book of Women)***
Hilchot Ishut (Laws of Personal Status)
Hilchot Gerushin (Laws of Divorce)
Hilchot Yibbum va-Chalitzah (Laws of Levirate Marriage and Release Therefrom)
Hilchot Na'arah Betulah (Laws of Unmarried Women)
Hilchot Sotah (Laws of the Suspected Wife)
Book 11: **Sefer Nezikin** ***(Book of Damages)***
Hilchot Nizkei Mamon (Laws of Damages Caused by Property)
Hilchot Genevah (Laws of Theft)
Hilchot Gezelah va-Avedah (Laws of Robbery and Lost Property)
Hilchot Chovel u-Mazzik (Laws of Wounding and Damaging)
Hilchot Rotzeah u-Shemirat ha-Nefesh (Laws of Homicide and Preservation of Life)
Book 12: **Sefer Kinyan** ***(Book of Acquisition)***
Hilchot Mechirah (Laws of Sales)
Hilchot Zechiyah u-Matanah (Laws of Entitlements and Gifts)
Hilchot Sechenim (Laws of Neighbors)
Hilchot Sheluchin v'Sutafin (Laws of Agency and Partnership)
Hilchot Avadim (Laws of Slaves)
Book 13: **Sefer Mishpatim** ***(Book of Civil Laws)***
Hilchot Sechirut (Laws of Leasing and Hiring)
Hilchot She'elah u-Fikadon (Laws of Borrowing and Bailment)
Hilchot Malveh ve-Loveh (Laws of Creditor and Debtor)
Hilchot To-en ve-Nitan (Laws of Plaintiff and Defendant)
Hilchot Nachalot (Laws of Inheritance)
Book 14: **Sefer Shoftim** ***(Book of Judges)***
Hilchot ha-Sanhedrin v'ha-Onshin ha-Mesurin Lahen (Laws of Sanhedrin and Its Penal Jurisdiction)
Hilchot Edut (Laws of Evidence)

83. Books 4 and 11–14 of *Mishneh Torah* and the *Shulchan Aruch* part *Hoshen Mishpat* cover much of the same material, but in very different order.

Hilchot Mamrim (Laws of Rebels)
Hilchot Evel (Laws of Mourning)
Hilchot Melachim u-Milchamoteihem (Laws of Kings and Their Wars)

Appendix D
Chapter Divisions of *Shulchan Aruch*, Part *Hoshen Mishpat*[84]

Chapters	Section	Subject (laws of)
1–27	*Hilchot Dayanim*	Judges
28–38	*Hilchot Edut*	Evidence
39–74	*Hilchot Halva'ot*	Loans
75–96	*Hilchot To'en v'Nitan*	Plaintiff and Defendant
97–106	*Hilchot Giviyat Mivah*	Loan Collection
107–110	*Hilchot Giviyat Hov m'Yetomim*	Collection of Debt from Orphans
111–116	*Hilchot Giviyat Hov m'Nechasim*	Collection of Debt from Encumbered Property
117–120	*Hilchot Apotiki*	Mortgages
121	*Hilchot ha-Oseh Shaleach Ligbot Hov*	Appointment of Agent to Collect Debt
122–128	*Hilchot Harsha'ah*	Powers of Attorney
129–132	*Hilchot Arev*	Suretyship
133–139	*Hilchot Hezkat Metaltelin*	Possession of Personal Property
140–152	*Hilchot Hezkat Karka'ot*	Possession of Land
153–156	*Hilchot Nizkei Shechenim*	Damages by Neighbors
157–170	*Hilchot Shutafim b'Karka*	Concurrent Owners of Land
171–175, ¶4	*Hilchot Halukat Shutafut*	Dissolution of Joint Ownership
175 ¶5–end	*Hilchot Mitzranut*	Adjoining Landowners
176–181	*Hilchot Shutafin*	Partnership
182–188	*Hilchot Sheluchin*	Agency
189–226	*Hilchot Mikach u-Mimkhar*	Purchase and Sale
227–240	*Hilchot Ona'ah u-Mikach Ta'ut*	Overreaching and Transactions Resulting from Mistake
241–249	*Hilchot Matanah*	Gifts
250–258	*Hilchot Matanat Shechiv Me'ra*	Gifts of a Person Dangerously Ill or Reasonably Apprehending Imminent Death
259–271	*Hilchot Avedah u-Metzi'ah*	Lost and Found Objects
272	*Hilchot Perikah u-Te'ina v'Din Holkhei*	Unloading and Reloading Overloaded Animals; Travelers
273–275	*Hilchot Hefker v'Nichsei ha Ger*	Ownerless Property and Property of Proselytes
276–289	*Hilchot Nachalot*	Inheritance

84. Elon presents these divisions with cross-references for the corresponding sections of the *Mishneh Torah* and the *Shulchan Aruch*. 4 ELON, *supra* note 5, at 1949–78.

Chapters	Section	Subject (laws of)
290	*Hilchot Apitrapos*	The Guardian, Administrator, or Trustee
291–302	*Hilchot Pikadon*	Pledges
303–305	*Hilchot Shomer Sachar*	The Paid Bailee
306	*Hilchot Umanim*	Craftsmen
307–319	*Hilchot Socher*	The Lessee
320–330	*Hilchot Hakirut v'Kabbelanut*	Sharecropping
331–339	*Hilchot Sechirut Po'alim*	Hiring Laborers
340–347	*Hilchot She'ela*	Borrowing
348–358	*Hilchot Genivah*	Theft
359–377	*Hilchot Gezilah*	Robbery
378–387	*Hilchot Nezikin*	Damages
388	*Hilchot M'abed Mamon Chavero u-Masira*	Destroying Another's Property and of Informers
389–419	*Hilchot Nizkei Mamon*	Damages Caused by Property
420–426	*Hilchot Chovel ba-Chavero*	Injuring Another Person (Assault and Battery)
427	*Hilchot Shmirat ha-Nefesh*	Removing Life-Threatening Risks and of Erecting a Parapet on One's Roof

Appendix E
Selected List of Bibliographies, Contemporary Treatises, and Web Sites

Bibliographies

Weisbard, Phyllis Holman, and David Schonberg. *Jewish Law: Bibliography of Sources and Scholarship in English*. Littleton, Colo.: Fred B. Rothman & Co., 1989.

This bibliography is extremely helpful, containing more than five-hundred pages of citations of primary sources (including compilations of responsa) and contemporary treatises.

Baruch, Chad, and Karsten Lokken. "Research of Jewish Law Issues: A Basic Guide and Bibliography for Students and Practitioners." *University of Detroit Mercy Law Review* 77 (2000): 303–20.

Levine, Samuel J. "Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion." *Fordham Urban Law Journal* 26 (1999): 1041–50.

Weisbard, Phyllis Holman. "Basic Books and Periodicals on Jewish Law: A Guide for Law Librarians." *Law Library Journal* 82 (1990): 519–29.

Contemporary Treatises

Abrams, Judith Z. *The Babylonian Talmud, A Topical Guide*. New York: University Press of America, 2002.

This work provides a topical outline of the Talmud. It is organized according to the order of the Talmud.

Cohen, Abraham. *Everyman's Talmud: The Major Teachings of the Rabbinic Sages*. New York: Schocken, 1949.

This book contains a summary of the substance of the major laws in the Talmud. It is organized in the order of the Talmud and is peppered with historical information to put the laws in context.

Dorff, Elliot N., and Arthur Rosett. *A Living Tree*, *The Roots and Growth of Jewish Law*. Albany, N.Y.: State University of New York Press, 1988.

This work is an accessible guide to Jewish legal resources and their historical development. To enhance their explanation of the Jewish legal system, Dorff and Rosett use analogies to other legal systems, including the American system. This device will be helpful for the law student, lawyer, and American legal scholar not well versed in Jewish law.

Elon, Menachem. *Jewish Law: History*, *Sources*, *Principles*. Philadelphia: Jewish Publication Society, 1994.

It would be impossible to overstate the importance of this work. Menacham Elon, a former justice of the Israel Supreme Court and now a professor at the Hebrew University School of Law, is the world's foremost scholar of Jewish law in the context of law school study (as opposed to yeshiva study). This four-volume set is the seminal treatise on both the substance and sources of Jewish law. Elon's focus is *Mishpat-ha-Ivri*, the civil law component of the Jewish legal system. These volumes are essential to guide the student and practitioner through the process and sources of Jewish law. Elon details the historic development of Jewish law, addresses many substantive issues in Jewish law, and provides invaluable guides to Jewish law research, including a list of responsa compilations and subject cross-reference table for the *Shulchan Aruch* and the *Mishneh Torah.*

Feigenbaum, Yitzchak. *Understanding the Talmud*. New York: Feldheim Publishers, 1988.

This book provides a guide to the syntax and language structure of the Talmud to aid the beginner in the interpretation and understanding of the text. This book is intended to aid those seeking to study Talmud in the original Hebrew and Aramaic.

Issacs, Ronald H. *Every Person's Guide to Jewish Law*. Northvale, N.J.: Jason Aronson, Inc., 2000.

This work gives a history of Jewish law and its major sources. It also contains a chapter with legends associated with Jewish law and a glossary of Jewish law topics.

Landesman, Dovid. *A Practical Guide to Torah Learning*. Northvale, N.J.: Jason Aronson Inc., 1995.

Although its target audience is religiously motivated students and scholars, this book contains much information that will be valuable to the law school student or scholar of Jewish law. Especially helpful is its extensive listing of classic primary Jewish law sources and its sample analysis of a Talmudic discussion.

Lewittes, Mendell. *Jewish Law: An Introduction*. Northvale, N.J.: Jason Aronson Inc., 1994.

This book provides an overview of both the history and sources of Jewish law from ancient to contemporary times, including information on contemporary responses of Jewish law to modern technology. Lewittes also makes references to lesser-known works of Jewish law.

Lopes Cardozo, Nathan T. *The Written and the Oral Torah: A Comprehensive Introduction*. Northvale, N.J.: Jason Aronson Inc., 1997.

Lopes Cardozo provides a detailed exposition of the nature, history, structure, and philosophy of the Written Law and the Oral Law (including *Tosefta* and *halakhic midrashim* in addition to the *Mishna*). There is also a chapter on the classic rules of interpretation of these works.

Neusner, Jacob. *How Talmud Works.* Boston: Brill, 2002.

This book is a relatively advanced guide to the structure and organization of the Babylonian Talmud. It includes detailed and somewhat complicated analysis of Talmudic discussions and contains a bibliography of Neusner's extensive writings on Jewish law.

Quint, Emanuel. *A Restatement of Rabbinic Civil Law*. Northvale, N.J.: Jason Aronson, Inc. 1990.

This multivolume work, although not a direct translation of the *Shulchan Aruch*, restates the civil laws enumerated in *Shulchan Aruch*, part *Hoshen Mishpat*, following its exact chapter divisions. This book is essential to any nonexpert seeking to use the *Shulchan Aruch.*

Helpful Internet Sites

Eliezer Segal's Official Web Site, http://www.acs.ucalgary.ca/~elsegal/TalmudPage.html (accessed Jan. 9, 2006).

Maintained by Eliezer Siegel, professor of Jewish History at the University of Calgary, this site provides excellent information about the sources of Jewish law and their organization. Siegel includes images of "typical" pages from many of the sources.

Jewish Law: Examining Halacha, *Jewish Issues and Secular Law*, http://www.jlaw.com (accessed Jan. 9, 2006).

This electronic journal of Jewish law contains articles, forms, commentary, case summaries, and other information regarding Jewish law. There are also links to articles published by other law journals on topics related to Jewish law.