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Understanding Jewish Law

SECOND EDITION

Steven H. Resnicoff

PROFESSOR OF LAW AND DIRECTOR, DEPAUL UNIVERSITY
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Preface

Why this Book?

This book can serve either or both of two principal purposes. First, it can serve as the primary text for a survey course in Jewish law, equipping students with the tools necessary for advanced research and analysis. Alternatively, it could constitute a vital supplement in a Jewish law lecture course or in a seminar that is dedicated to specific substantive or philosophical subjects, such as personal autonomy, paternalism, professional responsibility, conflict of laws, and the like.

Consider the challenges confronting those studying, or teaching, Jewish law in American law schools. Jewish law is an extremely broad subject, encompassing all facets of civil law (*e.g.*, contracts, family law, procedure and torts), as well as ritual and spiritual matters, and is hardly amenable to mastery in a single course. Making things worse (or, ironically, more devilish) is the fact that many Jewish law courses compare aspects of Jewish law to their secular law counterparts, thereby requiring students to spend some of their precious time learning, or at least reviewing, relevant secular law.

Another complication is that most students who sign up for Jewish law classes have virtually no background in Jewish law, and there exists no other law school resource designed to provide students an adequate overview of the various institutional, literary and human elements of Jewish law or of how they interact as a legal system.

In addition, most classical Jewish law literature is written in Hebrew and Babylonian Aramaic, languages with which few American law students are familiar. Students are forced to rely on secondary, English language resources. But most of the materials available in English are written for people who are already somewhat knowledgeable about Jewish law. It is difficult for newcomers to the topic to digest these materials. Not only are they confused by the Jewish legal terms they encounter, they are also baffled by the fact that the same term may be transliterated in so many inconsistent ways.

How do law professors respond to these concerns? Frequently, professors try carefully to restrict the substantive scope of their courses. A class may be limited to one or more topics, such as abortion, bioethics, business ethics, capital punishment, dispute resolution, family law, legal ethics and the like. Carefully circumscribing the area covered can certainly help make the course more manageable for all concerned. However, it also makes it more difficult for students to acquire a comprehensive perspective on how Jewish law functions as a legal system. Without such a perspective, a student's appreciation of any particular Jewish law subject is importantly impoverished.

In addition, there is no law school casebook devoted to such narrow Jewish law topics. Consequently, professors often compile their own sets of materials, relying heavily

on book chapters and law review articles. While these materials can predicate provocative discussions of diverse topics, they are of little help in understanding Jewish law as a legal system.

This book provides the contextual information necessary to facilitate the study of any Jewish law subject. The main text is divided into Parts (conceptually) and Chapters. Although the various Chapters in each Part interrelate, they are written so that each Chapter stands on its own. A student can profit enormously from this work without reading it from start to finish. In addition, there are nine extremely important Appendices.

Part I of this book, comprising Chapters 1 through 5, provides an overall introduction to Jewish law. Chapter 1 begins by identifying some of the reasons why the study of Jewish law remains vibrantly important. It proceeds to explain what Jewish law is (and is not), identifying its sources and hierarchies of authority. Chapter 2 describes and examines the consequences of a number of fundamental Jewish law assumptions, including the axiom that Jewish law was divinely revealed. Chapter 3 focuses on the interrelationship, under Jewish law, of each member of the community. Chapter 4 discusses disparate categories of Jewish law and underscores important distinctions between biblical and non-biblical Jewish law. Chapter 5 explores the essential institutions of Jewish law. It also describes how the fact that many of these institutions have fallen into desuetude has affected the practical development of Jewish law.

Part II, consisting of Chapters 6, 7, and 8, addresses Jewish law's sources. Chapter 6 identifies the primary literary sources of the law, describes the different types of publications and their functions, and illustrates how they are organized. Chapter 7 examines how personal choice, communal choice, and the law of one's host country serve as additional sources of Jewish law. Finally, Chapter 8 focuses on how Jewish law arises from a rabbinic court's invocation of its extraordinary powers and from the decisions of a Jewish monarch. In doing so, Chapter 8 also addresses the often misunderstood issue of procedural protections in Jewish law. It explains that the nature and scope of these protections depend on whether a rabbinic court acts pursuant to its ordinary authority or whether it exercises its extraordinary authority—and on whether the matter is decided by a Jewish king.

Part III, which includes Chapters 9 through 12, examines the Jewish law process. Chapter 9 discusses competing views as to whether Jewish law “unfolds” or “changes,” concluding that, at least as to non-Biblical law, Jewish law changes. Chapter 10 discusses the actual process through which Jewish law develops, and addresses the roles played by individuals, communities and rabbinic authorities within the Jewish law system. Chapter 11 focuses more specifically on the role of personal autonomy within Jewish law. Finally, Chapter 12 describes some of the many significant ways in which Jewish law has developed.

Part IV, which includes Chapters 13 through 16, introduces a number of specific substantive subjects. These chapters do not comprehensively examine their respective topics. Instead, they provide a framework for additional or more sophisticated research. Chapter 13 explores the extremely high value Jewish law places on human life and Jewish law's general opposition to suicide. Chapter 14 compares Jewish and secular debtor-creditor law and discusses how secular bankruptcy law affects Jewish law. Chapter 15 describes Jewish law's approach to professional ethics and, in the case of legal ethics,

compares its approach to that of secular law. Chapter 16 explains Jewish law's preference for forms of dispute resolution other than litigation. It also examines how rabbinic arbitration may be conducted so as to lead to a secularly enforceable arbitral award. Chapter 16 discusses the role of alternative dispute resolution within Jewish law.

Part V, consisting of Chapters 17 and 18, is new to the second edition of this book. Chapter 17 focuses on methodology. It begins by examining the predominant analytical approach through which one studies the Talmud, the principal literary source of Jewish law. It then explains the various processes through which a Jewish law authority (a posek or decisor) reaches a definitive decision in individual cases. Chapter 18 compares and contrasts the Jewish and American legal systems. After discussing underlying differences as to these systems' goals, the chapter examines a variety of the fundamental ways in which they differ as to their substantive and procedural rules.

There are nine appendices. The first provides a glossary of frequently transliterated Jewish law terms. The second is a selected list of post-Talmudic scholars and scholarship. The third prepares students for the multiple systems of transliteration that they will encounter. A fourth provides a general guide to Jewish law legal information available on the Internet. The fifth identifies available non-internet English resources for studying classical texts such as the Pentateuch, the Mishnah, the Talmuds, and certain Codes of law. A sixth provides a selected bibliography of Jewish law books and journals in English. The seventh offers a brief outline of the development of Jewish legal literature. Appendix eight discusses the Jewish and Catholic systems for counting the years and provides a brief chart of Jewish legal and national history. Finally, Appendix nine identifies the books that are part of the Jewish "canon."

Before sending you off to Chapter 1, I want to express my appreciation—and love—to my wife, Gita, for all of her help and support, which were indispensable to the successful completion of this book. I express the same to my marvelous kids (and grandkids), because this work diverted time and energy that might otherwise have been spent with them.

I also especially thank everyone who contributed to the publication of the first edition of this book. This includes my research assistants, Scott Schreiber and Dimitrios Karabetsos, who provided excellent editorial assistance. I also thank Benzy Fox, Rachelle Ketchum, and my daughter Bela Unell for their kind and effective assistance, and my friends Dean Bell and Larry Rabinovich for their valuable suggestions. This second edition has not only been expanded by the introduction of additional chapters, but numerous discussions throughout the book have been further clarified, deepened and advanced. Nevertheless, the value of this second edition is importantly predicated upon that of the first, and I am pleased for the opportunity to again express my gratitude.

I also readily acknowledge my indebtedness to the DePaul University College of Law, to Warren Wolfson and Gregory Mark, the deans served while I worked on the first edition of this book, and, especially, to Jennifer Rosato Perea, the current dean, whose encouragement and support has made publication of this second edition possible.

I acknowledge my deepest respect, love and gratitude to my parents, Jack and Blanche Resnicoff, and to my dear friends, Avraham Chaim Nussbaum, Shlomo Bergman, and Shepherd Gerszberg, may they all rest in peace. This book is dedicated to the memory of

these five exceptional people. Of course, they are not responsible for any of the mistakes or misjudgments that I have made in connection with the book.

Steven H. Resnicoff, Chicago, Illinois
November 28, 2018

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