DOWNLOAD PDF EXIGENCY AUTHORITY OF COURTS (SELECTED TOPICS IN JEWISH LAW)

Chapter 1 : CCJS - Criminology and Criminal Justice < University of Maryland

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One vital function of the U. Confessions can play a key role in making this determination. Courts in the U. Confessions were always allowed as evidence in early English common-law trials, even when torture was used to elicit them. Not until the midâ€"eighteenth century did judges in England start to admit only confessions that they deemed trustworthy. To determine the trustworthiness of a confession, judges considered the circumstances surrounding it, whether a threat or promise coerced the suspect to confess, and whether the suspect confessed voluntarily. Supreme Court first addressed the issue of confessions in the case of Hopt v. Following the English common-law standard, the Court looked at whether the suspect had confessed voluntarily or as a result of a threat or promise. The Court first invoked the U. Constitution to support this voluntariness standard in the case of Bram v. United States , U. The Bram holding initially created a harsh standard of confession admissibility. In , the U. Supreme Court considered the issue of coerced confessions for actions in state court, rather than federal court, in Brown v. Brown involved three African-American defendants who had confessed to the murder of a white man only after being beaten and tortured by state police. The Court in Brown announced a due process analysis to be employed by state courts on a case-by-case basis to determine whether, given the totality of the circumstances, a suspect had confessed voluntarily. Case-by-case determination of the kind required by Brown proved to be unwieldy for state courts because the method was so fact-specific. Appellate courts had difficulty setting effective precedents because case outcomes depended solely on unique factual circumstances. As a result, the police were left with little guidance as to thew way to interrogate suspects properly and lawfully. By the mids, the U. Supreme Court once again began to alter its approach to determining the admissibility of confessions. Starting with Malloy v. Thus, the Court held, suspects in state court were entitled to the same standards governing confessionsâ€"initially set forth in the Bram opinionâ€"as were suspects in federal court. In Massiah, the Court held that the sixth amendment grants criminal defendants the right to counsel during post-indictment interrogations, and when this right is violated, confessions obtained are inadmissible. Two years later, the Court handed down the landmark decision miranda v. Any statements made by the suspect may be used against him or her in a court of law. The Court held in Miranda that a suspect may waive any of these rights, but only if the waiver is made voluntarily, knowingly, and intelligently. But Miranda left these criteria essentially undefined, thus prompting a glut of litigation concerning the validity of Miranda waivers. The Court attempted to clarify its position in North Carolina v. Willie Thomas Butler had spoken with the police after they had advised him of his Miranda rights, then later sought to have the court exclude his incriminating statements because he had declined to sign a waiver agreement. In ruling against Butler, the high court adopted the "totality of the circumstances" approach for determining whether a waiver of Miranda rights is voluntary, knowing, and intelligent. Butler, the Court found, had implied a voluntary waiver through his words and actions, thus making an express written waiver unnecessary. Butler further instructed courts to invalidate seemingly voluntary waivers in instances of apparent coercion, deceit, or trickery on the part of police. Another attempt at clarification came in Moran v. Burbine invoked a two-pronged test for courts to apply in determining waiver validity: Francis Barry Connelly, who was diagnosed as schizophrenic, made unsolicited murder confessions to the police while he was in a psychotic state. He continued to talk even after the police read him the Miranda rights. Finding no police misconduct, the high court ruled against Connelly, stating that "Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment; it goes no further than that. Legal commentators have criticized Miranda and its subsequent line of decisions, stating that criminal suspects seldom truly understand the meaning or importance of the

rights recited to them. Studies have indicated that the Miranda decision has had little effect on the numbers of confessions and requests for lawyers made by suspects in custody. Proponents argue that Miranda protects criminal suspects and reduces needless litigation by providing the police with concrete guidelines for permissible interrogation. Even though the idea behind Miranda rights is to protect suspects in custody from police coercion, the U. Supreme Court in held that coerced confessions nevertheless may be used in court if their use is harmlessâ€”in other words, if a jury would probably convict even without them Arizona v. The police suspected that Oreste Fulminante had killed his year-old stepdaughter, whose body was found in an Arizona desert two days after he had reported her missing. Before he was charged with the murder, Fulminante had received a prison sentence for an unrelated weapons-possession charge. While in prison on that charge, he confessed the murder to a fellow inmate, who actually was a paid federal informant. The informant had offered to protect Fulminante from other inmates in exchange for hearing the truth about the murder. Fulminante was subsequently indicted for the killing, and his confession was used at trial despite his objection. A jury found him guilty of murder and sentenced him to death. Supreme Court applied the harmful error test and found that the jurors most likely would not have convicted Fulminante had they not heard his coerced confession, thus its use at trial was harmful. The Court ordered the case back for a new trial, this time without use of the confession. Legal scholars have criticized the Fulminante decision for failing to follow decades of legal precedent holding that coerced confessions violate the due process rights of criminal suspects and that their use at trial necessitates automatic reversal, whether they are harmful or not. Fulminante, they argue, encourages the police to ignore the civil rights of suspects and to coerce confessions. Others argue that the decision is correct because it focuses on achieving an accurate determination of guilt or innocence regardless of whether constitutional rights are violated. Whatever its long-term effects, Fulminante will not be the final word in the progression of U. Supreme Court cases defining the law of confessions. Recent Developments In , the U. Court of Appeals for the Fourth Circuit fueled long-standing speculation that Miranda would be overruled, when it held that the admissibility of confessions in federal court is governed not by Miranda, but by a federal statute enacted two years after that decision. The statute, 18 U. Section , provides that a confession is admissible if voluntarily given. Congress enacted the statute in order to overturn Miranda, the Fourth Circuit said, and Congress had the authority to do so pursuant to its authority to overrule judicially created rules of evidence that are not mandated by the U. In an opinion authored by Chief Justice william rehnquist, the Court said that, whether or not it agreed with Miranda, the principles of stare decisis weigh heavily against overruling it now. While the Court has overruled its precedents when subsequent cases have undermined their doctrinal underpinnings, that has not happened to the Miranda decision, which the Court said "has become embedded in routine police practice to the point where the warnings have become part of our national culture. United States, U. The Court believed that juries will often react similarly to unredacted confessions and to poorly redacted confessions, as jurors often realize that a poorly redacted confession refers specifically to the defendant, even when the statement does not expressly link the defendant to the deleted name. City of Oxnard, F. Martinez stemmed from a minute emergency-room interrogation of a narcotics suspect who had been shot five times by a police officer while being subdued during the arrest. The suspect, who was rendered blind in one eye and paralyzed below the legs by the gunshot wounds, sued the officer who had conducted the interrogation. The officer interposed a defense of qualified immunity, claiming that he could not be sued for injuries suffered by the defendant while the officer was simply doing his job. Mental Retardation and the Law of Confessions.

Chapter 2 : Judaism Syllabus - Rebecca Lesses - Ithaca College

Hanina Ben-Menahem, Exigency Authority of Courts, v.2 permanent edition Selected Topics in Jewish Law, Neil Hecht & Hanina Ben-Menahem, eds., Open University of Israel Publishing House (). [published under the auspices of the Institute of Jewish Law, Boston University School of Law].

It refers to a worldview or worldviews , a daily way of life, a system of ethics, and a communal memory of the Jewish past that links Jews living in under very different conditions across the world. Contemporary Judaism is based in a long textual tradition that begins with the Bible and the Talmud and continues to the present day. Judaism is not a monolithic tradition â€" there are significant differences between Jews stemming from central and northern Europe Ashkenazi Jews , Jews whose roots are found in the Iberian peninsula Sephardic Jews and those coming from the Middle East and North Africa Mizrahi Jews. Historically, law as interpreted by the rabbis has been a very important mode of Jewish creativity and an important factor in the creation of a Jewish way of life. In the modern world, Jewish law has become less important for many Jews, but attachment to Jewish practice and the cycle of Jewish life has remained important even for those who do not identify themselves as religious Jews. The goal of the course is to gain an understanding of the lived tradition of Judaism â€" both the textual and the folk traditions â€" as they have developed over time. It does so by focusing on several aspects of Judaism: A close study of selected texts that range from the Bible to contemporary texts that introduce Jewish theology and legal thinking. This part of the course is designed both to begin to learn how to read and interpret Jewish texts and to learn about specific topics, which include the ethos of rabbinic culture rabbinic self-conceptions and sources of authority , Jewish monotheistic theology, and the process of legal decision-making. This segment of the course introduces the changes in Judaism and Jewish life wrought by the advent of modernity, starting in the early 19th century. We discuss the growth of different Jewish religious movements Reform, Conservative, Orthodox, Reconstructionist, Havurah and Renewal Judaism and the different ways in which they have altered the classical Jewish tradition. This history is discussed in order for students to understand the variety of Jewish practice among Jews in the United States. As part of this unit of the course, we also learn about the internal diversity of the Jewish people, especially in the United States, which is a product of modernity, mass migrations of Jews around the world, and globalization. Through an examination of selected topics in Jewish ethics, students learn further about Jewish legal reasoning and how it has been applied to particular issues. Topics include love of neighbor â€" community and social responsibility; care for the poor and disadvantaged in society; business ethics; and the ethics of war. The focus here is both on examination of the classical texts and their contemporary application. How the ideals of Judaism are lived on a daily basis. The focus is on how the practice of Judaism structures human life, on a daily, weekly, and yearly basis, and throughout the life cycle. In this course, students will learn how to analyze the phenomena of Jewish life in various ways. This means using theories of ritual derived from anthropology or the study of religion to understand the meaning of daily or life-cycle rituals. It means learning methods of moral reasoning to understand Jewish modes of deciding ethical issues. It means employing sociological theories of identity-formation to understand how Jews in the modern world come to construct their own Jewish identities. Such an approach will ensure that students understand and know how to apply theories derived from several disciplines to the study of Judaism. Books Required for Purchase: Additional required readings are available on the course wiki site: Class attendance is required, unless you have a good excuse, which must be documented. Two unexcused absences are allowed, but above that, your absence will be noted and will lower your grade. Participation includes asking questions and speaking up during class discussions, participating in small group work chevruta , active listening to lectures and to classmates, and taking notes. This method is taken from the rabbinic way of studying a text, a method that they called chevruta fellowship. It stems from the idea that learning is acquired best through the active interaction between self, fellow, and text. Your chevruta partner may have different questions than you do, or

different answers. Listening to another person speak is not a passive enterprise. This is true when you listen to your classmates in small or large group discussions or to my lectures. I expect you to pay attention in class and learn both from your classmates and from my lectures. Do not expect simply to remember everything said in class. If you are unfamiliar with taking notes for a class, please speak to me. During the semester you will be asked to join a chevruta group to discuss the primary source texts of the course. This will entail meeting together outside of class and having a discussion, guided by the questions that I will hand out in class or post on the course wiki site. You will take notes on the discussion and hand them in to me in class. Twice during the semester your chevruta group will be asked to kick off class discussion, for the Modern Jewish Identities section of the course and for the Daily Life Cycle section. In order to prepare for your topic, you will need to read the selections for the day carefully and devise interesting ways to bring the whole class into the discussion. This paper will focus on one of the issues discussed in the two Jewish Choices, Jewish Voices books. Wednesday, May 11, 7: Monday, May 9, 7: No plagiarism on papers or cheating on examinations. Please consult the Student Handbook for a complete statement of the Ithaca College policy on plagiarism, including definitions of plagiarism and proper citation of sources. I refer proven cases of plagiarism or cheating to the Judicial Affairs office. Students are expected to attend all classes, and they are responsible for work missed during any absence from class. In accordance with New York State law, students who miss class due to their religious beliefs shall be excused from class or examinations on that day. Any student who misses class due to a verifiable family or individual health emergency, or to a required appearance in a court of law, shall be excused. Two unexcused absences are permitted. Respect for others in the class is required. Arrive to class on time. Turn off your cell-phone before class starts. Do not send text messages or play games on your phone during class. Do not use your laptop in class unless you are given specific permission to do so. If you must eat in class, please throw away your trash after class. Please do not leave the room during class except in case of dire physical need. Respect the instructor and your classmates â€" listen when they speak and avoid whispering or passing notes in class. All written work must be done to pass the class. This includes exams and papers. Students with learning disabilities: Also, please have the Office for Support Services send me a letter with your specific needs. In compliance with Section of the Rehabilitation Act of and the Americans with Disabilities Act, reasonable accommodation will be provided to students with documented disabilities on a case-by-case basis. Students must register with the Office of Academic Support Services and provide appropriate documentation to the College before any academic adjustment will be provided. If you are having personal or family problems, and find it difficult to complete your assignments â€" please speak to me to set up special arrangements. Please, do not simply stop coming to class! The source of symptoms might be strictly related to your course work; if so, please speak with me. However, problems with relationships, family worries, loss, or a personal struggle or crisis can also contribute to decreased academic performance. Ithaca College provides a Counseling Center to support the academic success of students. In the event I suspect you need additional support, expect that I will express my concerns and the reasons for them to you and remind you of resources e. It is not my intention to know the details of what might be bothering you, but simply to let you know I am concerned and that help, if needed, is available. Schedule of Classes and Readings: Notice â€" subject to change! Monday, January 24 Introduction.

Chapter 3 : Give Me Back My Bicycle | dilemma

Selected topics in Jewish law.. [Universiá¹-ah ha-petuá¸¥ah.; Exigency authority of courts --v Law and equity in Jewish law --v Please select Ok if you.

Halakha is based on biblical laws or "commandments" mitzvot traditionally numbered as , subsequent Talmudic and rabbinic law , and the customs and traditions compiled in the many books, one of the most famous of which is the 16th-century Shulchan Aruch literally "Prepared Table". Halakha is often translated as "Jewish Law", although a more literal translation might be "the way to behave" or "the way of walking". The word derives from the root that means "to behave" also "to go" or "to walk". Halakha guides not only religious practices and beliefs, but also numerous aspects of day-to-day life. Historically, in the Jewish diaspora , halakha served many Jewish communities as an enforceable avenue of law â€" both civil and religious , since no differentiation exists in classical Judaism. Since the Jewish Enlightenment Haskalah and Jewish emancipation many have come to view the halakha as less binding in day-to-day life, as it relies on rabbinic interpretation, as opposed to the pure, written words recorded in the Hebrew Bible. Under contemporary Israeli law , certain areas of Israeli family and personal status law are under the authority of the rabbinic courts, so are treated according to halakha. Some differences in halakha itself are found among Ashkenazi , Mizrahi , Sephardi , Yemenite , and other Jews who historically lived in isolated communities, such as in Ethiopia , reflecting the historic and geographic diversity of various Jewish communities within the Diaspora. Etymology and terminology The word halakha is derived from the Hebrew root halakh â€" "to walk" or "to go". The word halakha refers to the corpus of rabbinic legal texts, or to the overall system of religious law. The term may also be related to Akkadian ilku, a property tax, rendered in Aramaic as halakh, designating one or several obligations. Halakha also does not include the parts of the Torah not related to commandments. Halakha constitutes the practical application of the mitzvot "commandments" in the Torah, as developed through discussion and debate in the classical rabbinic literature , especially the Mishnah and the Talmud the " Oral Torah " and as codified in the Mishneh Torah "Repetition of the Torah" or Shulchan Aruch "Code of Law". Because halakha is developed and applied by various halakhic authorities rather than one sole "official voice", different individuals and communities may well have different answers to halakhic questions. With few exceptions, controversies are not settled through authoritative structures because during the Jewish diaspora , Jews lacked a single judicial hierarchy or appellate review process for halakha. First and foremost, it forms a body of intricate judicial rabbinical opinions, legislation, customs, and recommendations, many of them passed down over the centuries, and an assortment of ingrained behaviors, relayed to successive generations from the moment a child begins to speak. It is also the subject of intense study in yeshivas. The mitzvot Broadly, the halakha comprises the practical application of the mitzvot in the Torah, as developed in subsequent rabbinic literature. According to the Talmud Tractate Makot , mitzvot are in the Torah, positive "thou shall" mitzvot and negative "thou shall not" mitzvot, supplemented by seven mitzvot legislated by the rabbis of antiquity. Categories Classical Rabbinic Judaism has two basic categories of laws: Laws which are believed to have been revealed by God to the Israelites at Mount Sinai e. This division between revealed and rabbinic commandments may influence the importance of a rule, its enforcement and the nature of its ongoing interpretation. Halakhic authorities may disagree on which laws fall into which categories or the circumstances if any under which prior rabbinic rulings can be re-examined by contemporary rabbis, but all Halakhic Jews hold that both categories exist and that the first category is immutable, with exceptions only for life-saving and similar emergency circumstances. A second classical distinction is between the Written Law, laws written in the Hebrew Bible , and the Oral Law, laws which are believed to have been transmitted orally prior to their later compilation in texts such as the Mishnah, Talmud, and rabbinic codes. Commandments are divided into positive and negative commands, which are treated differently in terms of divine and human punishment. Positive commandments require an action to be performed and are considered to bring the performer closer to

God. Negative commandments traditionally in number forbid a specific action, and violations create a distance from God. A further division is made between chukim "decrees" â€" laws without obvious explanation, such as shatnez , the law prohibiting wearing clothing made of mixtures of linen and wool , mishpatim "judgments" â€" laws with obvious social implications and eduyot "testimonies" or "commemorations", such as the Shabbat and holidays. Through the ages, various rabbinical authorities have classified some of the commandments in many ways. A different approach divides the laws into a different set of categories: Laws in relation to God bein adam laMakom, literally "between a person and the Place" , and Laws about relations with other people bein adam le-chavero, literally "between a person and his friend". Within Talmudic literature, Jewish law is divided into the six orders of the Mishnah, which are categories by proximate subject matter: Zeraim "Seeds" for agricultural laws and prayer, Moed "Festival" , for the Sabbath and the Festivals, Nashim "Women" , dealing primarily with marriage and divorce, Nezikin "Damages" , for civil and criminal law, Kodashim "Holy things" , for sacrifices and the dietary laws , and Tohorot "Purities" for ritual purity. However, Talmudic texts often deal with laws outside these apparent subject categories. As a result, Jewish law came to be categorized in other ways in the post-Talmudic period. In the major codes of Jewish law, two other main categorization schemes are found. The codification efforts that culminated in the Shulchan Aruch divide the law into four sections, including only laws that do not depend on being physically present in the Land of Israel. Sin Judaism regards the violation of the commandments, the mitzvot , to be a sin. The generic Hebrew word for any kind of sin is aveira "transgression". Based on the Tanakh Hebrew Bible Judaism describes three levels of sin: It is a sin done knowingly, but not done to defy God Chet â€" an "unintentional sin" Relatedly, the three terms â€" chayyav, patur, mutar â€" in the Gemara literally: Judaism understands that the vast majority of people, aside from those who are termed Tzadikim and those termed Tzadikim gemurim Hebrew: A sin or a state of sin does not condemn a person to damnation; a road of teshuva Hebrew: For some classes of people, this is exceedingly difficult, such as those who commit adultery, as well as those who slander others. In earlier days, when ancient Jews had a functioning court system the beth din and the Sanhedrin high court , courts were empowered to administer physical punishments for various violations, upon conviction by extremely high standards of evidence , far stricter than those required in western courts today. These punishments included execution , corporal punishment , incarceration , and excommunication. However, since the fall of the Second Temple , executions have been forbidden. Since the fall of the autonomous Jewish communities of Europe , most other punishments also have been discontinued. The Talmud says that although courts capable of executing sinners no longer exist, the prescribed penalties continue to be applied by Providence. For instance, someone who has committed a sin punishable by stoning might fall off a roof, or someone who ought to be executed by strangulation might drown. Sources and process Eras of Jewish law The Tannaim literally the "repeaters" were rabbis living primarily in Eretz Yisrael who codified the Oral Torah in the form of the Mishnah. The Amoraim literally the "sayers" lived in both Eretz Yisrael and Babylonia. Their teachings and discussions were compiled into the two versions of the Gemara. Some historians credit them with editing the Gemara and giving it its current structure. The Acharonim literally the "lasts" are the rabbis from roughly to the present. The development of halakha in the period before the Maccabees, which has been described as the formative period in the history of its development, is shrouded in obscurity. Baer in Zion, 17 â€"52 , 1â€"55 has argued that there was little pure academic legal activity at this period and that many of the laws originating at this time were produced by a means of neighbourly good conduct rules in a similar way as carried out by Greeks in the age of Solon. For example, the first chapter of Bava Kamma, contains a formulation of the law of torts worded in the first person. Rabbis generally base their opinions on the primary sources of halakha as well as on precedent set by previous rabbinic opinions. The major sources and genre of halakha consulted include: The foundational Talmudic literature especially the Mishna and the Babylonian Talmud with commentaries; Talmudic hermeneutics: These may be seen as the rules by which early Jewish law was derived. This principle applies primarily in areas of commercial, civil and criminal law. In antiquity, the Sanhedrin functioned essentially as the Supreme

Court and legislature in the US judicial system for Judaism, and had the power to administer binding law, including both received law and its own rabbinic decrees, on all Jewsâ€”rulings of the Sanhedrin became halakha; see Oral law. That court ceased to function in its full mode in 40 CE. Today, the authoritative application of Jewish law is left to the local rabbi, and the local rabbinical courts, with only local applicability. In branches of Judaism that follow halakha, lay individuals make numerous ad-hoc decisions, but are regarded as not having authority to decide certain issues definitively. Since the days of the Sanhedrin, however, no body or authority has been generally regarded as having the authority to create universally recognized precedents. As a result, halakha has developed in a somewhat different fashion from Anglo-American legal systems with a Supreme Court able to provide universally accepted precedents. Generally, Halakhic arguments are effectively, yet unofficially, peer-reviewed. Depending on the stature of the posek and the quality of the decision, an interpretation may also be gradually accepted by other rabbis and members of other Jewish communities. Under this system there is a tension between the relevance of earlier and later authorities in constraining Halakhic interpretation and innovation. On the one hand, there is a principle in halakha not to overrule a specific law from an earlier era, after it is accepted by the community as a law or vow ,[5] unless supported by another, relevant earlier precedent; see list below. On the other hand, another principle recognizes the responsibility and authority of later authorities, and especially the posek handling a then-current question. In addition, the halakha embodies a wide range of principles that permit judicial discretion and deviation Ben-Menahem. Notwithstanding the potential for innovation, rabbis and Jewish communities differ greatly on how they make changes in halakha. Notably, poskim frequently extend the application of a law to new situations, but do not consider such applications as constituting a "change" in halakha. For example, many Orthodox rulings concerning electricity are derived from rulings concerning fire, as closing an electrical circuit may cause a spark. In contrast, Conservative poskim consider that switching on electrical equipment is physically and chemically more like turning on a water tap which is permissible by halakha than lighting a fire which is not permissible , and therefore permitted on Shabbat. The reformative Judaism in some cases explicitly interprets halakha to take into account its view of contemporary society. For instance, most Conservative rabbis extend the application of certain Jewish obligations and permissible activities to women see How halakha is viewed today below. Within certain Jewish communities, formal organized bodies do exist. Within Modern Orthodox Judaism , there is no one committee or leader, but Modern US-based Orthodox rabbis generally agree with the views set by consensus by the leaders of the Rabbinical Council of America. Note that Takkanot, the plural form of Takkanah above, in general do not affect or restrict observance of Torah mitzvot. In common parlance sometimes people use the general term takkanah to refer either gezeirot or takkanot. However, the Talmud states that in exceptional cases, the Sages had the authority to "uproot matters from the Torah". Rabbis may rule that a specific mitzvah from the Torah should not be performed, e. These examples of takkanot which may be executed out of caution lest some might otherwise carry the mentioned items between home and the synagogue, thus inadvertently violating a Sabbath melakha. Another rare and limited form of takkanah involved overriding Torah prohibitions. In some cases, the Sages allowed the temporary violation of a prohibition in order to maintain the Jewish system as a whole. For general usage of takkanaot in Jewish history see the article Takkanah. For examples of this being used in Conservative Judaism see Conservative halakha. Historical analysis The antiquity of the rules can be determined only by the dates of the authorities who quote them; in general, they cannot safely be declared older than the tanna from Aramaic, literally "repeater" to whom they are first ascribed. It is certain, however, that the seven middot literally "measurements", and referring to [good] behavior of Hillel and the thirteen of Ishmael are earlier than the time of Hillel himself, who was the first to transmit them. The Talmud gives no information concerning the origin of the middot, although the Geonim "Sages" regarded them as Sinaitic given by God to the people of Israel at the time of the Sinai presence. Modern historians believe that it is decidedly erroneous to consider the middot as traditional from the time of Moses on Sinai. The middot seem to have been first laid down as abstract rules by the teachers of Hillel, though they were not immediately recognized

by all as valid and binding. Different schools interpreted and modified them, restricted or expanded them, in various ways. Akiba and Ishmael and their scholars especially contributed to the development or establishment of these rules.

Chapter 4 : BULL v. STICHMAN | N.Y. App. Div. | Judgment | Law | CaseMine

"Exigency Authority of Courts," Selected Topics in Jewish Law, Tel-Aviv: Open University of Israel, vol. 2, "Individuation of Laws and Maimonides' Book of Precepts " (Hebrew), Shenaton Ha-Mishpat Ha-Ivri ().

Simon eyes the bicycle enviously and makes plans to steal it. When Reuben locks the bicycle to a tree outside the ice cream store, Simon jumps at the opportunity. Using his bolt cutters, Simon cuts the lock and mounts the bicycle, leaving the bolt cutters on the ground. At that moment, Reuben comes out of the store and sees Simon sitting on his bicycle. Hoping to prevent Simon, whom he recognizes from the neighborhood, from riding off with his new bicycle, Reuben picks up the bolt cutters and hurls it at Simon. The bolt cutters hit Simon directly on the head, leaving him unconscious on the ground. Reuben retrieves his bicycle and rides off, noting the need to get a better lock for his bicycle. Simon is taken to the hospital and suffers numerous injuries from the hit. Reuben retaking his stolen item on public property by use of force, absent any physical danger to Reuben. Is Reuben criminally liable for throwing the bolt cutters at Simon? What if he had killed Simon? Can Reuben wait until the next day to attack Simon and retrieve his bicycle? Assuming that Simon escaped with the bicycle, could Reuben legally keep the bolt cutters in lieu of the bicycle? These are only some of the many self-help questions with which every developed legal system must grapple. Both of these systems have extensive laws regarding the self-help privilege, albeit with important differences. Studying these discrepancies, especially ones related to the limitations and justifications of the privilege, helps better our understanding of the complex legal theory behind this doctrine. Part II of this Article details the history of American law in relation to the self-help privilege and gives the current state of the law in many jurisdictions. Part IV of this Article analyzes the discrepancies and identifies two observations. Rabbi Chisda dispatched [the following query] to Rabbi Nachman: There was a well belonging to two persons. It was used by them on alternate days. One of them, however, came and used it on a day not his. The other party said to him: Rabbi Nachman thereupon replied: No harm if he would have struck him a hundred times with the blade of the hoe. For even according to the view that a man may not take the law in his own hands for the protection of his interests, in a case where an irreparable loss is pending he is certainly entitled to do so. It has indeed been stated: No man may take the law into his own hands for the protection of his interests, whereas Rabbi Nachman said: A man may take the law into his own hands for the protection of his interests. In a case where an irreparable loss is pending. Rabbi Yehudah maintains that no man may take the law into his own hands for the [alleged] protection of his interests, for since no irreparable loss is pending let him resort to the [court system]; whereas R. Nachman says that a man may take the law into his own hands for the protection of his interests, for since he acts in accordance with [the prescriptions of the] law, why [need he] take the trouble [to go to court]? Rabbi Chisda believes that one can never use force to retake an item, even if using the court system instead will lead to irreparable loss. Closer introspection of the above Talmudic passage reveals that Rabbi Nachman only explicitly allowed force in the story about the water in the well. In that case, going to the courts would have caused the rightful owner irreparable loss of production in his field; there would be no more water in the well to irrigate the produce by the time the courts issued an injunction against the thief. This omission helps form the novel interpretation of Maimonides on self-help in this context. A man may take the law into his own hands, if he had the power to do so, since he acts in conformity with the law and he is not obliged to take the trouble and go to court, even though he would lose nothing by the delay involved in court proceedings. After bringing the above opinions, the Talmud continues to debate these opinions through extensive analysis of eight scenarios where self-help is used. Likewise, a warning must be issued before force is used. Force as retribution or as future deterrent is equally forbidden. Thus, force by a seller recapturing his own goods after a buyer defaults,89 or force by a lender recapturing his item that was never returned would be privileged. If one is required to use the least violent approach, violence should never be privileged, as the option of using the courts is always the less violent approach! Hence, justification for the majority view of

Jewish law, that force can be used even when going to court would not lead to irreparable loss, must be identified. Reparable Loss as Irreparable Loss The first approach explains the use of force with no irreparable loss in consonance with force by irreparable loss. Separate Right or Power Significantly, a major difficulty of the first approach exists in its interpretation of the Talmudic passage quoted earlier. While the precise nature of this right or power remains vague, many compare this right to the power of the court to use force. Rather, the right to use force stems from the social responsibility of every individual to prevent others from doing bad deeds. If viewed as an extension of the court system, courts can use their force whenever and on whatever they deem necessary. Two legal systems that grapple with this balancing task are the American and Jewish legal systems, albeit with different results. Specifically with regard to recapturing chattels through the use of force, American law restricts the right of the self-helper more severely than Jewish law. The distinct justifications in each of these legal systems highlight the complex legal theories underlying this delicate balance. It is not a simple decision. A Virtual Repo Man? One area where self-help is still being debated is electronic self-help. Importantly, where judicial remedy is unavailable, the necessity of these conditions is undeveloped in American law. With the widespread usage today of automobiles and airplanes, older case law is not that helpful. Baba Kamma, 27ba, at E. Broyde offers some context to Jewish law generally: The Pentateuch the five books of Moses, the Torah is the elemental document of Jewish law and, according to Jewish legal theory, was revealed to Moses at Mount Sinai. The Babylonian Talmud is of greater legal significance than the Jerusalem Talmud and is a more complete work. The post-Talmudic era is conventionally divided into three periods: From the period of the mid-fourteenth century until the early seventeenth century, Jewish law underwent a period of codification, which led to the acceptance of the law code format of Rabbi Joseph Karo, called the Shulhan Arukh, as the basis for modern Jewish law. Orah Hayyim is devoted to daily, Sabbath, and holiday laws; Even HaEzer addresses family law, including financial aspects; Hoshen Mishpat codifies financial law; and Yoreh Deah contains dietary laws as well as other miscellaneous legal matter. Many significant scholarsâ€”themselves as important as Rabbi Karo in status and authorityâ€”wrote annotations to his code which made the work and its surrounding comments the modern touchstone of Jewish law. The most recent complete edition of the Shulhan Arukh Vilna, contains no less than separate commentaries on the text of Rabbi Karo. In addition, hundreds of other volumes of commentary have been published as self-standing works, a process that continues to this very day. Besides the law codes and commentaries, for the last years, Jewish law authorities have addressed specific questions of Jewish law in written responsa in question and answer form. Collections of such responsa have been published, providing guidance not only to later authorities but also to the community at large. Finally, since the establishment of the State of Israel in , the rabbinical courts of Israel have published their written opinions deciding cases on a variety of matters. Broyde, The Foundations of Law: Tractate Baba Kamma, Come-and-Hear. Kethuboth I, 13a, at 68 E. The notable exception is Ephraim ben Shimshon, who follows the opinion of Rabbi Yehudah. His reasoning, that self-help through force is not a judiciary matter, is discussed later in this Article. Extrajudicial Remedies, Jewish Virtual Library, http: Importantly, Abraham diBotem, disagrees with this reading of Maimonides. Laws of Sanhedrin, Lechem Mishneh 2: This is also the understanding of Maimonides according to Joseph Karo. Choshen Mishpat, Shulchan Aruch 4: Eliyahu Touger , http: Vidal of Tolosa, supra note 73, 3: According to many, he must be able to validate this certainty in a court. See Yisroel Zev Gustman, supra note 62, at15 proving from here that the power to use force stems from the fact that the self-helper is an extension of the courts. The permissibility of using deadly force fits nicely with the second approach discussed later, that the power of the self-helper stems from an extension of the court system. Just like a court officer can mete out punishment of death, so too can a self-helper. See generally Yisroel Zev Gustman, supra note 62, at Accordingly, in the case of recapturing real property, where there is no potential for irreparable loss through fleeing or destruction, force would not be privileged. Hecht, 2 Jewish Jurisprudence 94 The author of this Article thinks that the language of Asher ben Yechiel, Rosh Bava Kama 27b , comports nicely with this interpretation. The author of this Article thinks that this understanding can be gleaned from the language of Asher ben Yechiel, Rosh Bava

Kama 27b , as well. See supratext accompanying notes

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Chapter 5 : Neil S. Hecht | School of Law

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Crime 3 Credits Assumptions, biases, and relative strengths and weaknesses of theories of crime as applied to women. Criminal justice sanctioning of crimes by and against women. The course will also explore occupational segregationby gender in criminal justice professions, particularly in the fields ofpolicing, courts attorneys and judges , and corrections correctionalofficers and treatment staff. Life course is examined as a theoretical orientation, a research methodology, and an empirical field of study with special reference to crime and deviance. Course includes development of criminal behavior and criminal careers; stability and change in criminal behavior across developmental stages; trajectories, transitions, and turning points through life; quantitative and qualitative approaches to studying crime and the life course; and social change and its link to individual lives. Readings and class materials will coalesce around specific issues about which there is much debate but scant empirical research. Discussions will center around what is known, what is not, what needs to be done and how. CCJS Regulating Vice and Regulating Organized Crime 3 Credits For this course, vice is defined as a habit with bad consequences that can generate large black markets if the market for supplying that habit is prohibited or heavily regulated. Vice if found in all modern societies, though in widely differing forms, depending on population characteristics, culture and law. This assessment has multiple components, including: Discussions and activities will include topics such as: Programs, Policies and Research 3 Credits Examine the factors that have led to recent police innovations and recent innovations in the study of policing. Critically explores the effects of such policies on crime and disorder, on research practices, as well as unintended consequences on community, police abuse and police organization. Which policies have been found to be effective? What types of practices work most effectively for what type of crime and disorder problems? Has there been sufficient research for us to come to solid conclusions regarding these questions? Does present research fit the practices of the police? CCJS Race, Crime, and Criminal Justice 3 Credits Provides an historical overview of the operation and evolution of the criminal justice system and the impact of race. How race affects definitions of crime and criminality, the workings of the criminal justice system, the development of criminological theory, and the role of criminal justice ethics in the study of race and crime will be considered. CCJS Advanced Topics in Criminology and Criminal Justice 3 Credits An analysis of contemporary issues in criminology and criminal justice with special emphasis on research and theory developments. Policy concerning drug control enforcement, prosecution and sentencing. It considers the philosophy of science and research ethics; discusses sampling, measurement and methods of data collection, including survey, experimental, evaluation, and qualitative research. CCJS Advanced Statistics Methods - Limited Dependent Variables 3 Credits Application of advanced data analysis strategies to criminological and criminal justice problems, with specific focus on limited dependent variables. Must have completed an approved doctoral level statistics course. CCJS Randomized Experiments in Criminology and Criminal Justice 3 Credits Constrast randomized designs with other approaches, examining both statistical, methodological, ethical and practical concerns. What are the statistical advantages of randomized experimental designs? Why do some researchers believe that randomized studies violate ethical standards in criminal justice? Why are experiments considered to have higher internal validity than non-randomized designs and how do different types of designs compare in terms of external validity? Focus on how experiments can be developed and how they are analyzed. What are the practical barriers to experimentation and how can they be overcome? What statistical methods are most appropriate for experimental analysis? How can block randomization or hierarchical modeling be used to develop more powerful or more practical research approaches? CCJS Longitudinal Data Analysis with Latent Variables 3 Credits This course is designed for graduate students with an interest in the use of latent variables in longitudinal data analysis as it is conceptualized in the Mplus framework. This course explores more general features of latent variable analyses as they are related to longitudinal modeling. Topics to be covered include latent growth analysis with a combination of continuous and categorical latent variables as well as the inclusion of continuous and categorical variables as predictors and outcomes. Policy Analysis for Crime Control 3 Credits System theory and method; examination of planning methods and models based primarily on a systems approach to the operations of the criminal justice

system. Must have completed 1 course in research methodology; and 1 course in CCJS.

Chapter 6 : Halakha | Revolvy

Would add Rule to the Rules of Procedure for the Juvenile Court, implementing an amendment to A.R.S. Â§ (A), which permits a juvenile court in a dependency petition to issue a pre-petition order that authorizes the Department of Child Safety to take temporary custody of a child.

Throughout the ages Jewish law developed a complex and sophisticated civil law of commerce and finance in which the law of agency played an important part, being the subject of many talmudic discussions and halakhic rulings. For example, the contrary principle was enacted that there can be no agency to do a wrongful act; the sender is not held accountable for the deeds of his agents. The law also laid down rules governing the manner of constituting an agency, its limitations, its mode of execution, and its revocation or termination. The appointment, competence, and powers of an agent are also dealt with. Generally the Jewish law of agency was developed to meet the social and commercial needs of the community as it constantly changed from age to age; therefore it was inclined to be more flexible and adaptable than some other legal subjects, which, consequently, did not always enjoy the same degree of contemporary relevance. In the State of Israel agency is a matter of civil law and is governed by a principal statute of Details As a result of agency, the possible field of legal activity is extended beyond the normal physical and other limitations. The concept of agency was not recognized in ancient legal systems. Only in the later stages of Roman law did agency achieve a limited form of recognition â€” a phenomenon ascribed to the powerful status of the Roman pater-familias "family head" on whose behalf all acquisitions by his kinsmen or servants were made in any event, thus obviating any urgent need for developing a doctrine of agency. In Jewish law the principle of agency was, however, already recognized in ancient times. While there is no express scriptural provision for it, the tannaim applied the doctrine of agency in various halakhic fields, i. According to the Tosefta Kid. The agent is not regarded as the principal, in the full sense of the term "as himself," since the agent is competent to testify with regard to the subject matter of his mandate in circumstances where the principal is disqualified from being a witness. The reasoning behind the rule is derived in answer to the hypothetical question: Those of the master" i. There is, on the other hand, a tradition that a person who says to his agent, "Go forth and kill that soul! However, the scholars laid down that in three fields the doctrine of agency applied also to transgression: In addition to these three specifically excepted cases, there are also a number of general exceptions to the rule that there can be no agent to do a wrongful act. According to the amora Ravina, the rule does not apply if the prohibition does not extend to the agent himself, e. Similarly, the amora Samma is of the opinion that an agency is constituted when the agent, in committing transgression, fails to act of his own free will ; e. Furthermore, an agency to do a wrong is constituted whenever an agent delegated to commit a wrong must be presumed likely to execute his assignment because he is known to commit such wrongs Sh. Whenever the law recognizes agency in the commission of a wrong, the agent himself will be liable Siftei Kohen sub. Some scholars hold that an agent can not deliver an oath on behalf of his principal Responsa, Noda bi-Yhudah, first series, yd 67 and last series yd It is not a requirement of agency that the manner of carrying out the mandate should be specifically detailed; the principal may grant his agent a degree of discretion, e. Or, the principal can instruct his agent, "Go and purchase for me a field which you consider suitable," in which case the choice of the field is left to the full discretion of the agent. In various places it nevertheless became the practice to assign by way of a formal kinyan. It was also due in part to the desire of the parties to express in a formal act that the decision to conclude an agency was a serious one, and not one undertaken irresponsibly Maim. The agent is required to act strictly within the scope of his mandate, and if he exceeds his authority, all his actions are rendered null and void. The same result follows if the agent errs in any detail of his mandate, since the latter is appointed "to uphold and not to depart from the mandate" Maim. The possible consequences of a complete nullification can, however, be averted by especially stipulating for such a contingency Maim. Thus it became the practice for a condition of this kind to be inserted in written instruments see Hai Gaon , Sefer ha-Shetarot, 65â€” Some

authorities went so far as to hold that even in the absence of such a condition, there was a presumption â€" if the mandate were carried out â€" that the principal had authorized the agent to "uphold and to depart from the mandate," unless the contrary could be proved by the principal Sh. An agent who departs from the terms of his mandate and deals with a third party without disclosing that he is acting as an agent, will be liable for his actions Maim. The Talmud records a dispute between the Palestinian amoraim, Johanan and Resh Lakish, as to whether or not revocation can be done orally tj, Ter. This procedure normally served as an effective deterrent, but if, despite the oath, the principal revoked it, the revocation is effective. Agency is also terminated upon the death of the principal. It was recognized that a revocable mandate could prejudice a third party who was unaware of it, e. It was determined, on various grounds, that in such circumstances the debtor would be released from his obligation. Maimonides adds that in a case where the broker sells property at less than the authorized price, the purchaser must restore the goods to the owner if he knows that it was being sold by a broker on behalf of the true owner ibid. Similarly, in case of theft or loss the liability of the broker is equal to that of a bailee for reward Maim. An agent may not purchase for himself the property which he has been authorized to sell, even at the authorized selling price Sh. However, one opinion says that the principal has a claim for "loss of profits" against an agent who acts for payment, e. When the agent is given money by his principal in order to purchase property, and such property is purchased by the agent for himself with his own money the transaction is valid, "although the agent is a rascal," but the transaction will be for the benefit of the principal if the agent purchased for himself with the money of the principal Sh. The appointment of an agent for the recovery at law of a debt owing to a claimant, is the subject of particular problems. The aforesaid wording of the authorizing instrument rendered the agent a party to the legal proceedings, which in turn gave rise to the fear that the agent would keep whatever he recovered for himself. Gedolot, bk 88, col. Thus the rabbis of Nehardea decided that no power of attorney could be written relating to movables, in respect of which the defendant denied the claim. In the post-talmudic period these restrictions were removed â€" by way of interpretation, custom and rabbinical enactment â€" and Jacob b. In the geonic period, when most Jews had ceased to be landowners, it became necessary to find ways of employing the method of kinyan aggav karka, making it applicable to those who possessed no landed property. In post-geonic times, diminishing reliance was placed on this method, and Maimonides was of the opinion that an assignment i. However, when the actual performance of the act is also the goal, such as donning tefillin or dwelling in the sukkah, such an act cannot be an object of agency Responsa, Iggerot Moshe, eh. There are certain acts regarding which opinions are divided as to whether the law permits their performance by way of an agent, such as the abandonment of an asset Bet Yosef, oh. Maharshdam, hm, ; oath summary of positions in Resp. According to some, this rule is exclusively relevant in the criminal realm. One does not punish a person for an offence committed by another person operating as his agent, despite the fact that in the civil sense the legal consequences of the act are the same as they would have been had the principal performed it himself Netivot ha-Mishpat On the other hand, there is a view that extends this rule to the civil dimension too, arguing that a prohibited action performed by an agent also lacks any legal effect on the civil level too, because by definition the act was not a subject of agency Resp. Nodah bi-Yehudah, 1st ed. The halakhic authorities disputed the applicatory scope of the rule "there is no agency for [the commission of] an offence". According to Rabbina, there can be agency for an offence wherever the agent "does not incur liability" "eino bar hiuva" bm 10b. Sama, the possibility of agency for an offense is restricted to cases in which the agent does not exercise free will or discretion regarding whether or not to commit the act. In reliance on this view, other authorities ruled that can be agency for the commission of an offence in cases in which the agent acted under duress. On the other hand, the agent too is exempted from liability for the same act by force of the rule in Jewish Law, that a person acting under duress is exempt from liability Resp. As such, one who is not Jewish ben brit is disqualified from serving as the agent of another Jewish person, or as his principal Bavli, Kiddushin 41a. However, these restrictions were only established in relation to agency for the performance of a legal act, but where it concerns the performance of a material act nuntius , even if that act has legal ramifications, such as the paying of debt, nothing prevents its

performance by one who is not Jewish Resp. If he discharged his agency in a manner that harms the economic interests of the principal, his agency can be annulled by the principal, who may claim "I sent you to repair and not to damage" Maim, Yad. As a rule, regardless of whether the agency was invalidated ab initio or annulled by the principal, the third party must restore to the situation to what it was initially. In these cases the agent must indemnify the principal for the damage he caused. Where the agent did not present himself as an agent in his dealings with a third party, in other words, where the agency was hidden Maim, Yad. In this context, the liability of an unpaid agent does not differ from that of a paid agent a middelman Sema. Secondary Agency An agent can appoint a secondary agent, whose action will directly credit and obligate the principal Kid. For example, an agent for the writing of a get divorce bill cannot appoint a secondary agent, because the actual writing of a get has no legal consequences Mordechai, Gittin, The death of the principle agent does not annul the secondary agency Git. From this it may be inferred that the secondary agent operates as the extended arm of the principal. Segal, pd 32 3 In that case the Court was required to make a determination regarding the validity of an agreement that the executor of an estate made with a woman who was designated as a beneficiary of the estate. The Court found that the agreement contained a number of legal flaws, such as a suspicion that the executor of the estate exerted undue influence on the woman prior to her signing the agreement. The Court ruled on the question from the perspective of the laws of agency: According to the view of some of the sages â€¦ the reason is one of suspicion, in other words, a conflict of interest between his acting on behalf of the principal and his acting on his own behalf see, e. According to the view of other sages, the flaw inherent in an agent buying for himself is rooted in the fact that in such a case there has been no transfer from one domain to another: In accordance with the above, in addition to a similar conclusion that is arrived at from the perspective of the laws of inheritance and guardianship in Jewish Law see under Apotropos , Justice Elon rules that the validity of the transaction that the executor has carried out for himself with regard the estate that he is administering is contingent upon the prior approval of the court. Because no such approval was given, the transaction is subject to judicial review and the court must "examine the nature and the essence of the transaction from the perspective of what is in the best interests of the beneficiary" ibid, p. Simmons, in; jqr, 8 , â€”31; M. Zeitschrift fuer eergleiehemde f2echtswissenschaft, 36 , â€”13, â€”; Gulak, Yesodei, 1 , 42â€”50; 2 , â€”9; 4 , 54â€”60; Gulak, Ozar, â€”2, â€”9; t. Baker, Legal System of Israel , â€”21; 65 , â€” Elon, Ha-Mishpat ha-Ivri , 1: Cases and Materials , 14â€”15; M. Shenaton ha-Mishpat ha-Ivri, 6â€”7 â€” , ; S. Dinei Israel, 9 â€” ,; D. Shenaton ha-Mishpat ha-Ivri, 10â€”11 â€” ; D. Jewish Law Annual, Cite this article Pick a style below, and copy the text for your bibliography.

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Chapter 7 : ×¤×¨×•×¤' ×—× ×™×× ×”' ×Ÿ ×ž× ×—× | ×”×¤×§×•×œ×” ×œ×žש×©×™×ª

Authority, process and method in Jewish law the prohinbition? The distinction between two courts and one court 'Do not form factions' as.

The legal interpretation of sacred texts is rigidly fixed in Judaism - but by the Talmud, rather than by the Bible itself Shahak The supremacy of the Talmud over the Bible may be seen in the case of the black Ethiopian Jews. Ethiopians are very knowledgeable of the Old Testament. However, their religion is so ancient that it pre-dates the Talmud, of which the Ethiopians have no knowledge. It is the natural consequence of Jewish belief of considering the Talmud superior to the Torah. The Talmud states, Erubin 21b Soncino edition: He is currently translating the Talmud into English, French, and Russian. In many ways the Talmud is the most important book in Jewish culture, the backbone of creativity and of national life. No other work has had a comparable influence on the theory and practice of Jewish life, shaping spiritual content and serving as a guide to conduct. This culture is many faceted, but each of its numerous aspects is connected in some way with the Talmud. This is true not only of the literature that deals directly with the interpretation or continuation of the Talmud, but also of all other types of Jewish creativity. It is an encyclopedia covering the whole scene of human life. Conservative and Reform Jews, however, do not recognize the absolute binding power of the Talmud, although they acknowledge the great part it has played in determining Jewish religious ideas and observances. Whatever laws, customs or ceremonies we observe â€" whether we are Orthodox, Conservative, Reform or merely spasmodic sentimentalists â€" we follow the Talmud. It is our common law. On the contrary, Encyclopedia Britannica tells us that with the rebirth of a Jewish national state since and the revival of Jewish culture, the Talmud has achieved renewed importance. Orthodox Judaism has always focused upon its study and has believed it to be the absolute religious authority. It has become one of the aims of religious Orthodox Jews there to establish the law of Talmud as the general law of the state. Aside from Israel, the legal system described above has continued to function down to the present day in Jewish communities all over the world. The jurisdiction of rabbinic courts is voluntarily accepted by Orthodox Jews. These courts continue to exert authority, especially in the areas of family and dietary law, the synagogue, and the organization of charity and social activity. Furthermore, Conservative Judaism, too, has always been committed to the Talmud. Thus, a network of day schools and higher institutions of learning in which the Talmud occupies a major role in the curriculum has been established. Scores of young Conservative Jews now search in the Talmud for answers to their crucial problems. Chaya Galai New York: Its Influence Today, page 2.

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Description "Jewish Law" is a corpus of traditional Jewish sources which constitute a legal system which is, on the one hand, one of the world most ancient legal systems, and on the other hand a legal system which is, at least in part, still a living legal system.

Chapter 9 : R Rule , Rules of Procedure for Juvenile Court -

These courts continue to exert authority, especially in the areas of family and dietary law, the synagogue, and the organization of charity and social activity. Furthermore, Conservative Judaism, too, has always been committed to the Talmud.