 Course Name and Number:

**Between man and man - Business Ethics**

**02-035-80**

**Type of course:**

**Year of Studies:**2020**-**2021 **Semester:** Spring **Hours/credits**: 2

**The courses objectives:**

Understanding the relationship between ethics and Jewish business law

**Course Description:** The course will illustrate the relationship between ethics and business law. The course will begin with some basic jurisprudence to understand the source of law. The first topic will be the debate concerning natural law vs positive law and the role of ethics in law. The course will then show how this debate relates to Jewish law. Business topics will include: finding lost articles, charity, interest on loans, responsivity to pay debts, עני מהפך בחררה, cheating on tests, when Jewish business law is the determining factor and when the law of the state is the determining factor, and more.

**The Process of the Course:**

Power Point Presentations and texts.

**Detailed Lesson plan:**

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| Required Reading | Topic of the Lesson | Number of Lesson |
| Hart, H.L.A. "Positivism and the Separation of Law and Morals, pp. 607-615. | Natural Law | 1 |
| Green, Leslie "Legal Positivism," *Stanford Encyclopedia of Philosophy*, 2003. <http://plato.stanford.edu/entries/legal-positivism/> | Positive Law | 2 |
| Faur, Jose, "The Fundamental Principles of Jewish Jurisprudence," / Novak, David, *Natural Law in Judaism* | The Torah: Natural Law or Positive Law? | 3 |
| Lichtenstein, Aaron, “The Human and Social Factor in Halakha," *Tradition*, pp. 1- 25. | The humane aspect in Jewish law | 4. |
| Brown, Benjamin, "From Principles to Rules and from Musar to Halakhah: pp. 171-256. | Morals and law/ morals and Torah | 5. |
|  | עני מהפך בחררה | 6.-7. |
| Broyde, Michael and Michael Hecht, "The Return of Lost Property According to Jewish & Common Law: A Comparison," <http://www.jlaw.com/Articles/avedah> | Finding lost objects | 8. |
| Bleich, J. David, "Survey of Recent Halakhic Periodical Literature: The Heter Iska and American Courts," *Tradition*, vol 42, 4, 2009, pp. 49- 79. | Interest in loans and heter iska/ charity laws | 9. |
| Englard, Itzhak, "The Relationship between Religion and State in Israel," pp. 168-189. | Philosophical aspects of the rule: dina demalkhuta dina | 10. |
| Kleinman, Ron S. “Civil Law as Custom: Jewish Law and Secular Law – Do they Diverge or Converge?,” : Stern, Yedidia Z., *Religion and State: The Role of Halakhah*, | Custom as law:  Dina demalkhuta dina and Jewish law | 11. |
|  | Cheating on tests | 12. |

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| Shapira, Haim, "The Debate Over Compromise," | Compromise as a solution to business disputes | 13. |
| Katz, Jacob, *Divine Law in Human Hands: Case Studies in Halakhic Flexibility*: Manning, John F., "What Divides Textualists from Purposivists?," pp. 70-111.: Barak, Aharon, *Purposive Interpretation in Law*. | Purpose based law or formal law?Finding the ethical answer for problems when black-letter law fails | 14. |

**Course requirements**

**Pre-requisites**

**Requirements/ Assignment/Tasks**

Reading and quizzes

**Grade Components (Number grade or pass/fail)**

**80% final, 10% attendance, 10% quizzes.**

#### Bibliography: (Required/ Elective)

Bleich, J. David, "Survey of Recent Halakhic Periodical Literature: The Heter Iska and American Courts," *Tradition*, vol 42, 4, 2009, pp. 49- 79.

Brown, Benjamin, "From Principles to Rules and from Musar to Halakhah: The Hafetz Hayim's Rulings on Libel and Gossip," *Dine Israel,* vol *25*, 2008, pp. 171-256.

Broyde, Michael and Michael Hecht, "The Return of Lost Property According to Jewish & Common Law: A Comparison," <http://www.jlaw.com/Articles/avedah>

Englard, Itzhak, "The Relationship between Religion and State in Israel," *Jewish Law in Ancient and Modern Israel*, ed., Haim Cohen, Jersey City: Ktav Publishing House, 1971, pp. 168-189.

Faur, Jose, "The Fundamental Principles of Jewish Jurisprudence," *New York University: International Law and Politics*, vol 12, 1979, pp. 225-238.

Fishman, D.E. "Musar & Modernity: the Case of Novardok," *Modern Judaism*, vol 8. 1988. pp. 41-64.

Fuller, Lon L., ‘Reason and Fiat in Case Law,” *Benjamin Cardozo Memorial Lectures*, New York: the Association of the BAR of the city of New York, Matthew Bender Publishers, 1942, pp. 31-58.

Green, Leslie "Legal Positivism," *Stanford Encyclopedia of Philosophy*, 2003. <http://plato.stanford.edu/entries/legal-positivism/>

Homes, Oliver Wendell, "The Theory of Legal Interpretation," 12 *Harvard Law Review*, 6, 1989, pp. 417-420. <http://www.jstor.org/stable/1321531?seq=2>

Katz, Jacob, *Divine Law in Human Hands: Case Studies in Halakhic Flexibility*, Jerusalem: The Magnes Press, 1998.

Kennedy, Duncan. "Legal Formalism," *Encyclopedia of the Social & Behavioral Sciences*, vol XIII, eds., Neil J. Smelser, & Paul B. Blates, Amsterdam, New York, Paris, Oxford, Singapore, Tokyo: Elsvier, 2001, pp. 8634-8638.

Kopel, Moshe, *Meta-Halakhah: Logic, Intuition and the Unfolding of Jewish Law*, Northvale & London: Jason Aronson Inc., 1997.

Lichtenstein, Aaron, “The Human and Social Factor in Halakha," *Tradition*, pp. 1- 25.

Manning, John F., "What Divides Textualists from Purposivists?," *Columbia Law Review*, vol. 106, January, 2006, pp. 70-111.

Nelson, Caleb, "What is Textualism?," *Virginia Law Review*, vol 91, 18, 3, 2005. pp. 347-418.

Novak, David, *Natural Law in Judaism*, Cambridge: Cambridge University Press, 1998.

Rousseau, Jean Jacques, "Social Contract," II, 12, ed., Charles M. Andrews, *Famous Utopias*, New York: Tudor Publishing, 1901.

Sacks, Jonathan, "Creativity and Innovation in Halakhah," *Rabbinic Authority and Personal Autonomy*, ed., Moshe Z. Sokol, Northvale, New Jersey & London: Aronson, 1992.

Shapira, Haim, "The Debate Over Compromise," *Dinei Yisroel*, 2010, pp. 183-228.

Stern, Yedidia Z., *Religion and State: The Role of Halakhah*, Jerusalem: The Israel Democracy Institute, Dec. 2004.

**Required material for the final**

Final is based on lectures and required reading.