 Course Name and Number:

**Business law in the Jewish legal system**02-561-80

**Type of course: Lecture**

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

**The courses objectives:**

To understand how Jewish business law works.

**Course Description:**

The course will give a comprehensive understanding of the legal reasoning involved in deciding Jewish law in general and Jewish business law in particular. The first third of the course will be an introduction to rabbinic adjudication. The students will learn about the various factors that the rabbi must consider when deciding law. The course will analyze various business law questions that appear in responsa literature.

**Grade Components (Number grade)**

Material for final will be based on the lectures.

Final grade will be made up of the grade on the Final exam and attendance.

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| ***Comment*** | ***Required Reading*** | ***Topic of the Lesson*** | ***Lesson*** |
| Formalism vs pragmatic justice | Oliver Wendell Holmes, "The Path of the Law," 10 *Harvard Law Review*, 457, 1897 | **the Common law legal system** | 1 |
| Halakhic integrity vs flexibility. | Bernard S Jackson., "Judaism as a Religious Legal System," *Religion, Law and Tradition – Comparative Studies in Religious Law*. pp. 34-48. | **Jewish legal system** | 2 |
|  | Mark Washofsky, "Responsa and the Art of Writing – Three Examples from the Teshuvot of Rabbi Moshe Feinstein," *An American Rabbinate: A Festschrift for Walter Jacob*, Pittsburgh: Rodef Shalom Press, 2001, pp. 149-204. | **Similarities and differences between the systems** | 3 |
| Explaining “Legal Gaps” | Ronald Dworkin, "Hard Cases," Harvard Law Review, 88, 1057, 1975.); Alexander, Larry and Emily Sherwin, *Demystifying Legal Reasoning*, Cambridge: Cambridge University Press, 2008. 1- 30. | **Questions that require legal/rabbinic ingenuity?** | 4 |
| Why business law is considered the hardest topic of Jewish law. | M. Elon, *Jewish Law*, p. 1428 and 1462; David Novak, "Modern Responsa: 1800 to the Present," *An Introduction to the History and Sources of Jewish Law*, Oxford & New York, The Institute of Jewish Law: Boston University School of Law & Oxford University Press, 1996, p. 379; Yedidia Z. Stern, *Religion and State: The Role of Halakhah*, Jerusalem: The Israel Democracy Institute, Dec. 2004. | **The uniqueness of business law and the Evolution of rabbinic literature on business law** | 5 |
|  | Ronald Dworkin, "Is There Truth in Interpretation? Law, Literature and History," *Library of Congress*, <http://www.youtube.com/watch?v=742JyiqLhuk>; Christine Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Dine Israel, vol 25*, 2008, pp. 73-122; Igrot Moshe, vol I, Introduction. | **Absolute truth vs relative truth in rabbinic decisions** | 6 |
| modern customs of business vs formal law |  | **Who is entitled to bank interest from an inheritance?** | 7 |
| Understanding legal analogy | John H. Farrar, "Reasoning by Analogy in the Law," 9 *Bond Law Review*, 2, 1997, pp. 149-17; Richard Posner, *The Problems of Jurisprudence*; New England, Harvard University, 1990; BT, Bava Batra, 101b; *Igrot Moshe,* Hoshen Mishpat, vol II, 56; | **Case: Your friend left her shoes in your closet for over two years, may they be discarded?** | 8 |
| legal fiction | Michael Broyde and Stephan H. Resnicoff, "Jewish Law & Modern Business Structures: A Corporate Paradigm," *The Wayne Law Review; Fall, 1997; 43 Wayne L. Rev. 1685*. <http://www.jlaw.com/Articles/corporations> | **Jewish legal status of corporations.** | 9 |
| legal fiction | [Exodus, 22:25-27](http://bibref.hebtools.com/?book=%20Exodus&verse=22:25%E2%80%9327&src=), [Leviticus, 25:36–37](http://bibref.hebtools.com/?book=%20Leviticus&verse=25:36%E2%80%9337&src=) and [Deuteronomy, 23:20-21](http://bibref.hebtools.com/?book=%20Deuteronomy&verse=23:20%E2%80%9321&src=); Maimonides, Sheluhin Veshutfin, 6:2. J. David Bleich, "Survey of Recent Halakhic Periodical Literature: The Heter Iska and American Courts," *Tradition*, vol 42, 4, 2009, pp. 49- 79. | ***Prohibition of charging interest on loans and heter iska,*** | 10 |
|  | *Igrot Moshe,* Orah Haim, vol I, 91 | **Running a business on Shabbat.** | 11 |
|  | Baruch Finkelstein, “Renting a property to non-Jews in Israel”, *Techumin* vol 31. | **Renting an apartment to non-Jews in Israel.** | 12 |
| Utility vs halakhic integrity | Benjamin N. Cardozo, "The Nature of the Judicial Process,"pp. Yale University Press, pp. 132-133; Ovadya Yosef: Yehave Daat, vol IV, 48; Aharon Kotler: *Mishnat Aharon,* vol II, Hoshen Mishpat, 71; Shlomo Zalman Orbach: *Minhat Shlomo,* vol I, 87 ;Haim David Halevi: *Aaseh Lekhah Rav,* vol V, 23. | **Teachers strike** | 13 |
| Decision based on analogy from aggadah. | *Igrot Moshe,* Hoshen Mishpat, vol I, 49 | **Payment to real estate agent who did not end the deal** | 14 |

**Bibliography:**

Alexander, Larry and Emily Sherwin, *Demystifying Legal Reasoning*, Cambridge: Cambridge University Press, 2008. 1- 30.

Broyde, Michael and Stephan H. Resnicoff, "Jewish Law & Modern Business Structures: A Corporate Paradigm," *The Wayne Law Review; Fall, 1997; 43 Wayne L. Rev. 1685*.

Cardozo, Benjamin N., "The Nature of the Judicial Process,"Yale University Press, pp. 132-133.

Dworkin, Ronald, "Hard Cases," Harvard Law Review, 88, 1057, 1975.

Farrar, John H. "Reasoning by Analogy in the Law," 9 *Bond Law Review*, 2, zzz1997, pp. 149-17;

Feinstein, Moshe, Igrot Moshe, vol I, Introduction.(Hebrew)

Posner, Richard, *The Problems of Jurisprudence*; New England, Harvard University, 1990;

Hayes, Christine, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Dine Israel, vol 25*, 2008, pp. 73-122.

Holmes, Oliver Wendell, "The Path of the Law," 10 *Harvard Law Review*, 457, 1897.

Jackson, Bernard S., "Judaism as a Religious Legal System," *Religion, Law and Tradition – Comparative Studies in Religious Law*. pp. 34-48.

Posner, Richard, *The Problems of Jurisprudence*; New England, Harvard University, 1990.

Washofsky, Mark, "Responsa and the Art of Writing – Three Examples from the Teshuvot of Rabbi Moshe Feinstein," *An American Rabbinate: A Festschrift for Walter Jacob*, Pittsburgh: Rodef Shalom Press, 2001, pp. 149-204.