

Jewish Law Association Newsletter

January 2007

Editor: Prof. Steven H. Resnicoff

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Although most of the participants in the conference were Israeli academics, the United Kingdom and the United States were represented as well. The turnout, particularly as to the presenters, was sufficiently large to warrant a number of concurrent sessions. A schedule of the conference, listing the various presentations that were made, can be accessed at the JLA web site, <http://www.mucjs.org/JLAS/ENG.pdf> (English) or <http://www.mucjs.org/JLAS/HEB.pdf> (Hebrew).

Notes Regarding the 2006 Jerusalem Conference

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The JLA's 2006 Jerusalem Conference, held at Bar-Ilan University from June 12-15, 2006, was the first JLA conference convened at and in connection with an Israeli University. The JLA expresses its sincere gratitude to Bar-Ilan University and its administration for its generous (I would add the word "warm," but all of Tel Aviv was warm in June) hospitality. The JLA especially thanks Professor Yaffa Zilbershats, Dean of the Faculty of Law, for it was that faculty's facilities which were most intensively utilized during the conference. On behalf of all JLA members, this Newsletter also congratulates the JLA Chair Professor Yosef Rivlin, a member of the Bar-Ilan faculty, for the manifold ways in which he ensured that the Conference would be the great success that indeed it was.

The JLA's next conference is scheduled to take place at the University of Manchester, in the summer of 2008. More about that in a future newsletter.

Meet Your Colleagues

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Note: My hope is to use this column to help us get to each other a little better. We will start with *Rabbi Professor Hillel Gamoran*.

Some of you may only know Hillel as the person who signed our recent solicitation of new members. Let me tell you a little more about him. Hillel, currently the JLA's Secretary for the Diaspora and a member of its Executive Committee, has admirably served the JLA in numerous ways over the years. Ordained at Hebrew Union College - Jewish Institute of Religion in New York, Hillel earned his doctorate at Spertus College (now Spertus Institute) of Jewish Studies in Chicago. After serving a

synagogue in Morristown, New Jersey, he became the first Rabbi of Congregation Beth Tikvah in Hoffman Estates, Illinois. He continued in that position for 34 years, retiring at age 65 in 1994. Hillel was so popular at Congregation Beth Tikvah, where he holds the title of Rabbi Emeritus, that its web site, <http://beth-tikvah.org/howeare/leadership.php>, continues to sing his praises. For example, in part, it states that:

"Rabbi Gamoran was instrumental in Beth Tikvah's achieving the reputation for having one of the finest Jewish religious schools in the Chicago area with many graduates receiving college credit for Hebrew. He also was a staunch supporter of sending our children to OSRUI, the Reform summer camp in Wisconsin. As part of his retirement gift, congregants established an OSRUI camp scholarship fund in his honor."

Although Hillel and his wife, Judith, now live in Seattle, Washington, they nonetheless keep a residence in Evanston, Illinois, and periodically attend Beth Tikvah on special occasions.

Since his retirement from Beth Tikvah, Hillel has taught Jewish studies courses at the University of Washington, maintained an active involvement in communal affairs, continued to lecture and publish works on Jewish law, and, of course, contribute to the JLA. Hillel was the editor of Jewish Law Association Studies XII, the Zutphen Conference Volume, and Jewish Law Association Studies XIV, the Jerusalem 2002 Conference Volume, and contributed articles to each of those volumes. His recent works also include *Insights into Buying and Selling* and *Employer-Employee Relations* which are part of the *Talmud for Everyday Living* series.

JLA Officers

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For 2006-2008, the JLA's Honorary President remains Professor Nahum Rakover, jewishl@zahav.net, former Deputy Attorney

General for the State of Israel and the head of the Jewish Legal Heritage Society, <http://www.mishpativri.org.il/english/default.htm>

The other officers are:

Chairman of the Executive Committee: Professor Yosef Rivlin, Bar-Ilan University, rivlij@mail.biu.ac.il

Vice-Chairman of the Executive Committee: Professor Bernard Jackson, University of Manchester, bsj@legaltheory.demon.co.uk

Treasurer: Larry Rabinovich, Esq., larryr@sfl-legal.com

Secretary for the Diaspora: Professor Hillel Gamoran, University of Washington, hillgam@u.washington.edu

Secretary for Israel: Professor Nahum Rakover, jewishl@zahav.net and

Chairman of the Publications Committee: Professor Joseph Fleishman, Bar-Ilan University, jofleish@mail.biu.ac.il

The Members of the Executive Committee are:

- * J. Bazak, former Vice-President of the Jerusalem Court, j_bazak@netvision.net.il
- * M. Broyde, Professor at Emory School of Law, mbroyde@emory.edu
- * S. Cohn, Professor, Georgetown Law Center, Cohn@law.georgetown.edu
- * E. Dorff, Rector and Professor, University of Judaism, edorff@uj.edu
- * J. Fleishman, Professor, Bar-Ilan University, jofleish@mail.biu.ac.il
- * H. Gamoran, Professor, University of Washington, hillgam@u.washington.edu
- * E. Goldman, Professor, Hebrew Union College, Edwgold@aol.com
- * B. Jackson, Professor, University of Manchester, bsj@legaltheory.demon.co.uk
- * R. Katzoff, Professor, Bar-Ilan University, katzoff@mail.biu.ac.il

- * S. Passamaneck, passamaneck@sbcglobal.net
- * C. Povarsky, Professor, Cardozo School of Law, povarsky@aol.com
- * L. Rabinovich, Esq., larryr@sfl-legal.com
- * N. Rakover, Professor and former Deputy Attorney General of Israel, jewishl@zahav.net
- * S. Resnicoff, Professor, DePaul University College of Law, sresnico@depaul.edu
- * Y. Rivlin, Professor, Bar-Ilan University, rivlij@mail.biu.ac.il
- * M. Wygoda, Esq., MichaelW@justice.gov.il

Contents of JLA Studies XVI (upcoming volume)

..... *The Boston 2004 Conference Volume* Edited by Elliot Dorff

- Michael Broyde, "Just Wars, Just Battles and Just Conduct in Jewish Law: Jewish Law Is Not a Suicide Pact!"
- Jonathan Burnside, "Rethinking 'sexual' offences in biblical law: The literary structure of Leviticus 20"
- Elliot N. Dorff, "Theories of Jewish Law and Movement Borders"
- David Elgavish, "Ya'el, Wife of Heber the Kenite, in Biblical Perspective"
- Bernard S. Jackson, "Human Law and Divine Justice in the Methodological Maze of the *Mishpatim* (Or: Why is God Interested in Goring Oxen?)"
- Ron S. Kleinman, "Delivery of Keys (*Traditio Clavium*) as a Mode of Acquisition: Between Jewish and Roman Law"
- Leonard R. Levy, "Alfasi, *Sugyan* and the Authority of the Stam: The Development of a Principle of Adjudication in the Eleventh Century"
- Ya'akov Meron, "Human Life in Moslem and in Jewish Law and Society"
- Laurence J. Rabinovich, "The Judge as Educator?: Codes, Commentaries and Court Decisions"
- Steven H. Resnicoff, "Keeping One's Word in Commercial & Non-Commercial Contexts"

Call for Submissions

The JLA Newsletter wants you! More to the point, we encourage you to submit articles or essays on issues involving Jewish law (including, of course, the interrelationship between Jewish law and secular law) for possible inclusion in the Newsletter. Book reviews are also invited. Some members have suggested that the Newsletter contain additional materials, such as discussions regarding secular litigation pertaining to issues of Jewish law, such as *eruvim* or *gittin*. Please let us know what you think about this suggestion and share any other ideas you have. Submissions (as well as comments and suggestions) should be sent to sresnico@depaul.edu.

- Yosef Rivlin, "*Moda'ah* and *Bittul Moda'ah* (Notification and its Cancellation) in Jewish Law"
- Avinoam Rosenak, "Ritual, *Halakhah*, and Culture: On the Indispensability of Norms"
- Haim Shapira, "The Law of the Pursuer (*rodef*) and the Source of Self-Defense: An Analysis of the Talmudic sources"
- Itamar Warhaftig, "Contract Laws – A Religious Law or a Social Law?"
- Michael Wygoda, "Organ Selling, Jewish Law and Israeli Law"
- Peter S. Zaas, "*Spiritus Ex Machina*. Jewish Legal Aspects of the Matthean Birth Narrative"

Membership Entitlements Beginning 2007

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- (a) Members automatically receive **conference volumes** in printed form (as and when published), together with the additional option to purchase the volume, or articles from it, in electronic form (pdf files, distributed on CD-ROM or via e-mail);
 - (b) Members receive without further payment ONE **non-conference volume** published by

- (c) UPA in every two-year subscription period; Members are eligible for a 15% **discount** on all further Association volumes published by UPA;
- (d) Members receive a quarterly **e-Newsletter (The content of future editions of the e-Newsletter will importantly depend on submissions by JLA members);**
- (e) Members receive a **discount** (\$20) on registration for any JLA-sponsored programs;
- (f) Members (only) are eligible to **offer papers** at any JLA-sponsored programs;
- (g) Members (only) are eligible to **offer articles** for publication in the Association's newsletter and on its web site;
- (h) Members will receive up to five **articles** from the back issues of Jewish Law Association Studies, where available **in pdf form**, without charge;
- (i) Members are eligible to purchase further **articles** from the back issues, where available **in pdf form**, at \$5.00 per item;
- (j) Members are eligible to purchase **back issues** of *Jewish Law Association Studies* (vols. I-XV) at special discount prices (**see the blue box, below**);
- (k) Members are eligible for discounts on (direct) purchase of volumes of *The Jewish Law Annual*, and such other discounts as may be offered to members of the Association.

**Back Issues of *Jewish Law Association Studies*
Special Offer to Paid-Up Members of the Association**

The Contents of vols. I-XV may be viewed at
<http://www.arts.manchester.ac.uk/cjs/JLAS/publications.htm>

The current publisher is making the following special offer to paid-up members of the Association:

Volumes 1-11 (all hardback):	\$5.00 (per volume)
The whole set of 1-11:	\$49.95
Volumes 12-14:	hardback, \$25.00; paperback, \$9.00 (per volume)
Volume 15:	hardback: \$38.00, paperback \$19.00

All orders are subject to the following postal charges:

Domestic (US): \$7.00 for 1st book and \$2.00 for each additional book;
International: \$12.00 for 1st book and \$3.00 for each additional book.

This offer is open until May 1, 2007, subject to availability.

Members in the United States should first contact Larry Rabinovich larryr@sfl-legal.com to have their membership confirmed and to receive order forms. They should then submit their order forms, together with payment in the form of checks drawn on a US bank, as instructed on the order forms.

Members outside the United States may pay by credit card charge (VISA or MASTERCARD). They should fax their orders, together with credit card details (16 digit number and expiry date), to Bernard Jackson (+44-(0)151-729 0371; e-mail: bsj@legaltheory.demon.co.uk).

Jewish Legal Scholarship and the Internet by Prof. Steven H. Resnicoff

Many of you know far more than I about the panoply of web sites that can importantly promote your scholarly agendas. This brief article is nonetheless proffered to provide information, albeit incomplete, to any readers who may still be relatively unaware of the treasures the internet offers. *Nevertheless, this article does not make any warranties as to the files, products or services offered at the various sites it mentions.*

I would respectfully ask readers to contact me - at sresnico@depaul.edu - to provide me with the addresses and descriptions of additional links that ought to be added to this list.

A. *Promoting one's own publications*

1. Many internet sites will help publicize one's scholarship and, thereby, make it accessible to a wide audience. These sites may be especially important as to books and chapters that might not otherwise be included in a major database. For example:
 - a. The JLA's web site, at <http://www.mucjs.org/JLAS/index.htm>, contains a growing directory of abstracts of articles, chapters and books on various Jewish law topics. All scholars - especially JLA members - are encouraged to send abstracts of their publications to Bernard.Jackson@man.ac.uk so that they may be included in the directory. For more about the JLA web site, see page 20 of this Newsletter.
 - b. RAMBI - the Index of Articles on Jewish Studies, is a multi-lingual bibliography of selected articles on Jewish studies. If your publications are not already listed there, RAMBI may well include it if you submit the appropriate bibliographic information, as explained at http://jnul.huji.ac.il/rambi/about_%7E1.htm.
 - c. The Library of the Faculty of Law at Bar-Ilan University maintains its own Index to Articles, written in Hebrew or English, that address matters of Jewish law. This index can be found by going to <http://www.law.biu.ac.il/library>, choosing the hyperlink at the top left for "English," and then choosing the hyperlink for "Index to Articles." If your work is not already included in this index, you might want to submit the appropriate bibliographic information to the Esther Snyder, Director of the Library. The main e-mail address for that library is law.library@mail.biu.ac.il.
2. Additional web sites may enable you to provide access (sometimes even searchable access) to the full-text of your working papers or published work. Of course, before posting your work to these sites, you will want to consider copyright implications. For example, if you have already published an article or chapter in a book, but that book is not likely to be widely available, you may want to post the text on one of the web sites discussed below. Nevertheless, if you have already transferred the copyright to the work to someone else, you may well need to get permission from the current copyright holder before posting the text.
 - a. The JLA is interested in the possibility of featuring its members' essays or articles on Jewish law (defined fairly broadly) - whether original pieces or excerpts from already published works - on the JLA's web site. If you are interested in this possibility, please contact Bernard Jackson at Bernard.Jackson@man.ac.uk. (By the way, the JLA would also encourage members to submit such works for possible inclusion in the JLA newsletter. If you would like to pursue the possibility of having your work included in the JLA Newsletter, please contact me, Steve Resnicoff, at sresnico@depaul.edu).

b. The Social Science Research Network (“SSRN”), <http://www.ssrn.com/index.html>, is dedicated to the rapid dissemination of social science scholarship. An author may submit abstracts and full-text papers to the SSRN by following its instructions. One subdivision of the SSRN, the Legal Scholarship Network (“LSN”), may be of especial interest to those writing on matters of Jewish law.

In addition to enabling an author to make his or her work available online, the SSRN provides a free service that enables an author to submit an unpublished paper to over 300 law reviews that accept electronic submission. This service, “eSubmission,” allows authors to provide customized messages to the various journals and to time submissions to such journals on differing dates.

B. Advancing one’s research

1. Access to texts

Of course, the sites mentioned above are boons to one’s research by providing abstracts, articles or chapters for free. In addition, however, there are many other sites that provide access to extensive collections of Jewish law works. Many of these sites provide access without charge, while others come only at a price.

a. The following are a few examples of sites that provide access to texts for free:

- i. Hebrew Books, at <http://www.hebrewbooks.org/home.aspx>, enables one to download in PDF acrobat format 11,000 Hebrew books (seforim) dealing with Jewish law (Halakha). One may also purchase one of three products from this web site:
 - (1) the 11,000 Hebrew seforim on one hard drive, 10,000 of which are supposedly searchable, although I do not know the effectiveness of the search engine;
 - (2) 1,846 Hebrew responsa seforim (part of the 11,000 mentioned above), 1,000 of which are supposedly searchable, on two DVDs;
 - (3) 500 Hebrew seforim dealing with the tractate Berakhot of the Babylonian Talmud.
- ii. Seforim Online, at <http://www.seforimonline.org/>, enables one to download approximately 239 Hebrew seforim, many of which are rare or out-of-print.
- iii. The Jewish Legal Heritage Society provides the full texts of some of its publications at www.mishpativri.org.il and, at <http://www.mishpativri.org.il/english/multibibtochen.htm>, provides the full text of Prof. Nahum Rakover’s *Multi Language Bibliography of Jewish Law*.
- iv. Jlaw, at <http://www.Jlaw.com>, enables one to download or print various contemporary Jewish law articles or commentaries in English.
- v. Tshuvos, at <http://www.tshuvos.com/>, enables one to download more than 100 Hebrew seforim.
- vi. Here is a small sampling of University provided pages with hyperlinks to texts (as well as to other resources):

- (1) Judaica Electronic Texts, <http://www.library.upenn.edu/cajs/etexts.html>: This site, hosted by the University of Pennsylvania, provides hyperlinks to a wide variety of texts in English, Hebrew, Aramaic and other languages. It also contains hyperlinks to various other electronic libraries, collections and reference works. *See also* “Internet Resources for the Study of Judaism and Christianity,” at <http://ccat.sas.upenn.edu/~jtreat/rs/resources.html>.
 - (2) Jewish Studies Resources, <http://www.princeton.edu/~pressman/jewish.html>, hosted by Princeton University.
 - (3) Jewish Studies Internet Resources, <http://www.columbia.edu/cu/lweb/indiv/mideast/cuvlj/>, hosted by Columbia University.
 - (4) Internet Resources for Jewish Studies, hosted by the University of Delaware, contains 22 pages of hyperlinks. You may find this site by looking for “Internet Resources for Jewish Studies” on Google and using the appropriate hyperlink. The address for the site is <http://www2.lib.udel.edu/subj/jew/internet.htm>
- vii. Various individual journals are accessible online. *See, e.g.*, The Journal of Torah and Scholarship at http://www.biu.ac.il/JH/BDD/ind_eng.shtml
- viii. Working papers of the Agunah Research Unit, University of Manchester, are available at <http://www.arts.manchester.ac.uk/cjs/publications.htm>
- b. Here are descriptions of a few sites that charge for access to texts:
- i. Otzar Ha-Hochma, http://www.otzar.biz/index_e.php, provides access to up to 23,000 volumes of Hebrew texts in PDF acrobat format. In addition to offering for sale five different editions of a portable database containing some or all of these texts, Otzar Ha-Hochma offers a variety of “packages” of online access to these texts. Its web site states, “The Online Otzar HaHochma users have the option of purchasing a license for single books, or a time-limited license for the entire repository – one day, one week, a month or a year without having to pay for the entire repository.” Depending on the option they choose, online users may also be charged separately for the right to print limited numbers of pages from the texts.

It seems (at least to the editor of this newsletter) that this resource may be of considerable interest to those scholars who cannot otherwise conveniently obtain access to one or more books on this database. Instead of waiting for an inter-library loan or for a distant library to fax copies of pertinent pages, a person could pay for a one-day use of the database (and, if necessary, for the privilege of printing out the necessary pages). The charges for such limited access appear (again, at least to me) to be relatively nominal.

The web site provides a free demonstration search for those who are interested in the database. [When my institution inquired into the possibility of acquiring a slightly earlier version of this database, which we did ultimately acquire, Otzar Ha-Hochma provided me with a free one-week trial.]

- ii. The Saul Lieberman Institute of Talmudic Research of The Jewish Theological Seminary, <http://ipaper.co.il/cgi-bin/v.cgi?id=liebermaninstitute/eng>, states:

“The Sol and Evelyn Henkind Talmud Text Databank is comprised of primary textual witnesses to tractates of the Babylonian Talmud, including manuscripts, first printed editions and Cairo Geniza fragments. The new version of the databank contains c. 250 manuscript and first editions units and more than 750 Geniza fragments from the Seminary Library, Oxford, and Cambridge. Added in this version are more than 1,700 digital photographs of Mishnah and Talmud fragments from the Adler Geniza collection in New York (JTS) and early European fragments from libraries and archives in Italy, discovered and restored thanks to the indefatigable work of Prof. Mauro Perani.”

2. *Access to Jewish studies research guides and reference materials*

Various sites provide a wealth of valuable information and hyperlinks to assist in Jewish studies research. Here are a few such sites:

- a. University of Miami’s Jewish law research guide - <http://library.law.miami.edu/jewishlaw/jewishguide.html>. This is a relatively comprehensive 21-page guide.
- b. Cleveland State University’s Judaic Law Research Guide - <http://www.law.csuohio.edu/lawlibrary/lawpubs/JudaicLaw.htm>
- c. Bar-Ilan Faculty of Law library - <http://www.law.biu.ac.il/library/index.php?id=28&pt=2&pid=13&level=1&lang=2>
- d. Columbia University’s Bibliographies on Jewish studies - <http://www.columbia.edu/cu/lweb/indiv/mideast/cuvlj/BibInfo.html>.

3. *Access to audio materials*

- a. Those interested in assistance in understanding Talmudic passages may want to use:
 - i. D.A.F.’s Dafyomi Central Headquarters, at <http://dafyomi.shemayisrael.co.il/central.htm>, which provides hyperlinks to free online resources as well as links to purchasable study aids regarding the Babylonian Talmud. This is an extensive 18-page site.
 - ii. For audio lectures on the Jerusalem Talmud, go to <http://www.yerushalmionline.org/audio.html>.

- b. For other audio - and, sometimes, written materials - on miscellaneous topics, some of which may be relevant to your research, *see, e.g.*:
 - i. Yeshiva University's site: <http://www.yutorah.org>
 - ii. <http://www.simpletoremember.com/audio/index.htm>

- 4. *Access to Miscellaneous information*
- a. For information Regarding Jewish law and Jewish Studies Conferences, *see* <http://orion.huji.ac.il/resources/boardConferences.html>

- b. For information regarding possible sources of funding, *see, e.g.*:
 - i. Funding Sources for Judaic Studies, at <http://www.library.upenn.edu/cajs/funding.html>
 - ii. Grants and Fellowships available for the study of Jewish History and related disciplines, at <http://www.hum.huji.ac.il/dinur/grants/grants.htm>
 - iii. <http://www.jewishstudiesgrants.org/>
 - iv. National Foundation for Jewish Culture - http://www2.jewishculture.org/disciplines/jewish_scholarship/

- c. For information regarding the academic study of Judaism, *see* H-Judaic, the Jewish Studies Network ("JSN"), at <http://www.h-net.org/~judaic/>

- d. For information on Jewish ethics or bioethics, *see, e.g.*:
 - i. Jewish Ethicist - <http://www.ou.org/torah/je/archive.htm>
 - ii. The Jewish Association for Business Ethics (JABE) - <http://www.jabe.org/>
 - iii. Torah forums - <http://forums.torah.org/>
 - iv. News and articles on Jewish Ethics - http://news.surfmax.com/ethics/files/Jewish_Ethics.html
 - v. Jewish Ethics - Darchei Noam - http://www.darchenoam.org/ethics/business/bus_home.htm
 - vi. Jewish Media Resources - Jewish Ethics - <http://www.jewishmediaresources.com/issues/4/>
 - vii. The Society of Jewish Ethics - <http://society.bioethics.net/sje/bylaws.php>
 - viii. Reconstructionist Center for Jewish Ethics - http://www.rrc.edu/site/c.iqLPIW0EKrF/b.1466799/k.D526/The_Center_for_Jewish_Ethics.htm

- ix. Kampelman Collection on Jewish Ethics - <http://www.georgetown.edu/research/nrcbl/nrc/collections/kampelman.htm>
 - x. Shaare Zedek - Jewish ethics - <http://www.szmc.org.il/index.asp?id=95>
 - xi. Schlesinger Institute for Jewish ethics - http://www.medethics.org.il/siteEng/PagesEn.asp?cat_id=1&page_id=14
 - xii. The Orthodox Caucus Torah Ethics Project - <http://www.orthodoxcaucus.org/projects/ethics/>
5. *Links to miscellaneous Jewish studies organizations, programs or libraries*
- a. University of Manchester Centre for Jewish Studies - <http://www.mucjs.org>
 - b. University of Manchester Agunah Research Unit - <http://www.mucjs.org/agunahunit.htm>
 - c. London School of Jewish Studies - <http://www.lsjjs.ac.uk/programmes.asp?submID=26>
 - d. University of Cambridge, College of Divinity, Jewish Studies - <http://www.divinity.cam.ac.uk/Judaism/default.html>
 - e. Oxford Centre for Hebrew and Jewish Studies - <http://www.ochjs.ac.uk/>
 - f. Princeton University Program in Judaic Studies - <http://www.princeton.edu/~judaic/>
 - g. Harvard University Center for Jewish Studies - <http://www.fas.harvard.edu/~cjs/>
 - h. University of Pennsylvania Center for Advanced Jewish Studies - <http://www.cjs.upenn.edu/>
 - i. Spertus Institute of Jewish Studies - <http://www.spertus.edu>
 - j. Bar-Ilan Faculty of Law - <http://www.law.biu.ac.il/English/indexE.php>
 - k. Hebrew University Faculty of Law - <http://law.mscc.huji.ac.il/law1/newsite/english.html>
 - l. Tel-Aviv University Faculty of Law - <http://www.tau.ac.il/law/>
An English directory of its faculty can be found at <http://www.tau.ac.il/law/members.htm>
 - m. Academic Jewish Studies Internet Director - <http://www.jewish-studies.com>
 - n. Association for Jewish Studies - <http://www.ajsnet.org>

- o. Western Jewish Studies Program - <http://www-rohan.sdsu.edu/dept/lipinsky/wjsacall.htm>
- p. Jewish Legal Heritage Society - <http://www.mishpativri.org.il/english/default.htm>
- q. Association of Jewish Libraries - <http://www.jewishlibraries.org/ajlweb/home/htm>
- r. The Jewish National and University Library - <http://jnul.huji.ac.il/eng/>

"Abbreviated Outline of Issues" to be addressed in a prospective article on Jewish Law & Estate Planning by Prof. Steven H. Resnicoff¹

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PLEASE NOTE:

True to its title, this summary is merely a brief outline of relevant issues. It is neither a comprehensive nor a definitive treatment of those issues. Moreover, it is important to emphasize that *halakhic* decisions - as well as secular legal decisions - depend on innumerable factual variables and should not be based on general statements made in an outline or even a full article. The modest ambition of my prospective article is to familiarize the reader with some of the fundamental concepts that might enable him or her to consult more effectively with a competent rabbinic advisor. This abbreviated outline has an even more limited aspiration.

To make reading this outline easier, I refrain from employing copious footnotes and references. However, for those who are interested in detailed information, I provide, at the end of this outline, bibliographic information regarding a number of pertinent English publications.

If readers have constructive comments or suggestions, I would be grateful if they would send them to me at sresnico@depaul.edu. In fact, I believe that the newsletter may well be an excellent forum for the submission of working papers or drafts that could generate helpful input from other JLA members.

THE FOUR QUESTIONS OF *HALAKHIC* ESTATE PLANNING:

- I. Why should one bother to engage in *halakhic* estate planning?
 - II. Pursuant to *halakha*, what type(s) of estate planning *can* one do?
 - III. Pursuant to *halakha*, what type(s) of estate planning *should* one do?
 - IV. How does one accomplish *halakhically* effective estate planning? (*I.e.*, what specific steps does one take?)
- I. Why should one bother to engage in *halakhic* estate planning?
 - A. There are many financial and personal purposes for engaging in estate planning, including the ones enumerated below.
 - 1. Financial considerations
 - a. Ensuring that the "right" persons benefit from one's estate

¹ Professor, DePaul College of Law; J.D., Yale Law School; B.A., Princeton University; Rabbinic Degree, Beth Medrash Govoha; sresnico@depaul.edu

- b. Maximizing these benefits through prudent secular tax and investment strategies
2. Personal considerations
 - a. Controlling “health care decisions” pertaining to oneself in the event of possible future legal incompetence
 - b. Controlling decisions regarding the disposition of a deceased’s organs or other body parts of a loved one or relative
 - c. Appointing guardians for minors or for others who lack legal competence
 - d. Providing advice to one’s heirs (it is a well-established Jewish tradition for persons to provide written guidance in the form of an "ethical will" for those whom they leave behind)
- B. *Secular* planning tools *alone* will not accomplish all of these goals:
1. Financial considerations - ensuring the “right” persons benefit from one’s estate:
The problems arise from the fact that Jewish and secular inheritance laws conflict.
 - a. Jewish inheritance law specifies how a person’s estate is to be distributed.
 - b. Jewish law’s distribution rules generally differ from secular laws (intestacy laws) which prescribe how a person’s estate is distributed when the person dies without a valid will.
 - c. Jewish law’s distribution rules generally differ from the provisions in many secular wills.
 - d. Most Jewish law authorities rule that Jewish law’s provisions trump both state intestacy laws and the provisions in secularly valid wills.
 - i. There are two Jewish law doctrines that sometimes interact with Jewish commercial law: (1) “*Dina de-Malchuta Dina*” (i.e., the laws of the government are halachically valid), and (2) “*Minhag ha-Socharim*” (i.e., commercial customs are halachically valid).
 - ii. Nevertheless, most Jewish law authorities rule that these doctrines are inapplicable to Jewish inheritance laws.
 - e. Consequently, suppose someone dies. Even if the person had a secularly valid will, a clear majority of Jewish law authorities would rule that the halakhic heirs automatically became the owners of the deceased’s property in accordance with Jewish law. This could give rise to various problems from a Jewish law perspective. Here are the three most salient problems:
 - i. First, anyone who took property under secular intestate law or under the deceased’s secular will would, as a matter of Jewish law, be in wrongful possession of the halakhic heir’s property (and would be halachically obligated to return such property). Surely the deceased does not want his or her heirs to be deemed wrongdoers under Jewish law.
 - ii. Second, to the extent that a prospective heir named in the secular will is religiously observant, he or she may refuse to take property in violation of Jewish inheritance law. If so, then the deceased’s intentions that this heir benefit in accordance with the secular will would be frustrated.
 - iii. Third, to the extent that secular law and Jewish law differ in a particular case as to the ways in which the deceased’s estate is to be distributed, there is a likelihood that there may be, G-d forbid, bitter acrimony among the

- various heirs.
- f. Could these problems be solved if the secular and halakhic heirs could agree as to how to divide the estate? There are many problems that might prevent such resolution, *e.g.*:
 - i. If one or more of the halakhic heirs is a minor, he or she would lack capacity, under Jewish law, to relinquish legal rights to the property inherited.
 - ii. If a Jewish law heir is improperly “forced” to relinquish his or her rights by a secular law heir’s threat to take the matter to secular court, the relinquishment of the right may, as a matter of Jewish law, be either void or voidable.
 - iii. Even if a halachically binding settlement could be struck, it might be difficult to do so without creating disharmony among the secular and halakhic heirs.
 - g. Here are just some of the ways in which Jewish inheritance law may differ from secular intestacy law and from provisions commonly present in secular wills:
 - i. Adopted children receive no inheritance under Jewish law.
 - ii. If a married woman dies, her widower inherits her property under Jewish law. If a married man dies, however, his widow does not inherit his property.
 - iii. If a man dies, leaving one or more sons, then his estate is distributed to the sons. Even if the deceased also left a surviving spouse and/or one or more daughters, they do not receive proportionate shares in the estate. Jewish law does contain rules requiring that, under certain circumstances, portions of the estate must be used for the surviving spouse and daughters, these rules are too detailed to elaborate in this outline. If a man dies without sons or daughters, then various other paternally related relatives may inherit him. Relatives who are only maternally related to the deceased (*e.g.*, a person born of the same mother but not of the same father) do not inherit him.
 - iv. If a man dies, leaving two sons and one of the sons is the man’s first-born and was born through natural delivery (rather than through a Caesarian procedure), then this son is called a “*Bechor*” with respect to inheritance and, as to many types of estate property, this son takes twice as much as any other son.
 - v. If an unmarried woman dies, then the same rules apply to her estate as applies to a man’s estate. *See* “iii,” above.
 - vi. If the decedent has any relative who inherits under Jewish law, then no part of the decedent’s estate goes to an organization (including a Jewish charity or Torah institution) or to any person who is not such a relative.
2. Personal Considerations (*e.g.*, controlling decisions regarding health care and disposition of body parts): Secular law provides - or may soon provide - its own answers as to a variety of critical issues, such as when medical treatment may be terminated and when one’s organs or body parts may be used for other purposes

(including profit-making purposes). Many such secular law answers may be inconsistent with Jewish law. Many secular jurisdictions, however, authorize a person to execute a special power of attorney to empower someone else to make these decisions for the person, should the person become legally incompetent.

II. Pursuant to *halakha*, what type(s) of estate planning *can* one do?

- A. The first thing to know is that it is *generally* possible, through halakhic planning, to distribute one's property so that the intended beneficiaries become the halakhic owners of the property. Section "B," below, discusses the ways in which this can be accomplished, while Section "C," below, discusses a few particular provisions that must be satisfied.
- B. The principal ways in which, to one extent or another, the result in "A," can be accomplished, include:
 1. **The Last Will and Testament of one who is critically sick (a "*Shechiv me-Rah*"):** This is not a useful *planning* tool because it cannot be used by one who is healthy.
 2. **Inter vivos gifts which explicitly state that they will be effective "from now and after my death":** Such gifts accomplish immediate transfers of the corpus of the property in question, while reserving a life interest in the grantor. Once a grantor gives property in this way, however, (s)he cannot undo the transfer. This fact and other drawbacks militate against using this mechanism.
 3. **Inter vivos gifts effective "from today and one hour before my death" with express language making the conveyances subject to conditions** allowing the grantor: (a) the right to change his(her) mind; (b) the right not only to use the property throughout the grantor's lifetime but also to sell and consume the property throughout the grantor's life. Nevertheless, under Jewish law this device only works as to property that the grantor actually owns at the time (s)he makes the inter vivos gifts; it does not work as to subsequently acquired property. In addition, there are arguably additional halakhic problems too complex to discuss in this outline.
 4. **Written undertakings of indebtedness:** Unlike modern secular contract law, Jewish law allows a person to undertake a legally binding financial obligation without receiving "consideration" ("consideration" is a term used in secular law) in exchange therefor. Consequently, a person can halachically plan his/her estate by using a combination of two documents: (a) a secular will; and (b) a Jewish writ of indebtedness. There are alternative ways in which this can be done; I will mention just one version. In the secular will, the person sets forth the specific distributions that (s)he wants to be made. In the writ of indebtedness, the person *conditionally* undertakes a large debt (picked as an amount likely to be larger than his or her entire estate). Under Jewish law, this indebtedness - which precedes the deceased's death - is enforceable against the assets in the estate, even if those assets have been distributed to the various beneficiaries identified in the secular will.

The written undertaking of indebtedness provides that if none of the halakhic heirs challenges - or refuses to agree to - the distribution set forth in the secular will (or that version of the will that is in effect immediately prior to his death), then the entire indebtedness is canceled. On the other hand, if any of the halakhic heirs challenges - or refuses to agree - to the distribution set forth in the secular will, then the indebtedness falls immediately due, but it can only be collected from that part of the estate that is to be distributed to, or has been distributed to, the halakhic heir or heirs who do so challenge - or do so refuse to agree - to the distribution set forth in the secular will. In this way, no halakhic heir has any financial incentive for challenging - or refusing to agree - to the distribution set forth in the secular will.

A married woman cannot use her own written undertaking of indebtedness to effectuate the distributions set forth in her secular will as a man might. Why? As mentioned above (*see I-B-1-g- ii*), under Jewish law, a surviving husband inherits his wife. His rights to his wife's estate date from the date of the marriage and, therefore, trump the subsequently created rights of the obligee of a written undertaking of indebtedness executed after the date of the marriage. Consequently, the surviving husband could halachically contest the secular will, yet retain all of the estate despite the wife's indebtedness to the obligee in the written undertaking. The "solution" for this is to have the husband himself to execute a written conditional undertaking of indebtedness whereby the indebtedness will be due upon his wife's death, should she predecease him but it will be canceled if he makes the distributions set forth in her secular will.

C. A few required provisions

Upon one's marriage, Jewish law imposes certain financial obligations on the husband, and the persons to whom these obligations are owed have a greater claim to the husband's estate than the claim held by the obligee in post-marriage written undertakings (*see B-4, above*). Consequently, the secular will should provide for distributions to satisfy these few specific financial obligations. These obligations include the following:

1. If a person's wife survives him, then she has a claim against the husband's estate for the amount set forth in her wedding contract (*Ketubah*). Until she receives this amount, she has a claim against the estate for maintenance (shelter, food, clothing, utensils, and medical care). (*Shulchan Aruch, Even ha-Ezer 79, 93, 94*)
2. If a man is survived by minor daughters, then they have a claim against the man's estate for maintenance (shelter, food, clothing and utensils) until they reach maturity. (*Shulchan Aruch, Even ha-Ezer 112*)
3. Unmarried daughters have a claim on their father's estates for a dowry to improve their marriage prospects. (*Shulchan Aruch, Even ha-Ezer 113*)
4. If a man has had sons from more than one wife, and the mother of one or more sons predeceases him, then the man inherits that wife's estate. When this man dies, the son(s) from the wife whose estate he inherited have a claim on the man's estate for

the amount of their mother's *Ketubah*. After they receive that amount, they participate with the other sons in the distribution of the man's estate. This is known as "*Ketuba B'nin Dichrin*."

D. Other Jewish law doctrines of limited relevance

1. Jewish law says it is "a Mitzvah to fulfill a decedent's wishes." Nevertheless, applicability of this rule is substantially limited. It does not apply, for instance, to a minor and, according to many authorities, it may not apply at all if the decedent did not deposit the properties in question with a third party. (*Shulchan Aruch, Choshen Mishpat* 252:2) Even if the rule does apply, it does not prevent the Jewish law heirs from becoming owners of the property; it merely obligates them to reconvey the property according to the decedent's wishes. Nevertheless, if they refuse to do so, the property remains theirs.
2. The decedent's own child may have "a Mitzvah to fulfill one's parent's wishes," which may apply even if the decedent did not deposit the properties in question with a third party.

III. Pursuant to *halakha*, what type(s) of estate planning *should* one do?

- A. In addition to providing rules as to who automatically inherits a person's estate and as to particular financial obligations incumbent on a person's estate, Jewish law provides additional guidance as to estate planning.
- B. First, Jewish law provides generally that one should not disinherit halakhic heirs. This is a very important and complex concept.
 1. The Mishnah (*Bava Batra* 133b) says: "If a man gives his estate to others and passes over his sons, what he has done is legally effective, but the Sages have no pleasure in him." This principle is referred (in Hebrew) as "*Ha'avarat Nachalah*"
 2. There is considerable controversy as to the nature and parameters of this principle.
 - a. As to its nature:
 - i. Some say that it represents an actual legal prohibition (an "*Issur*") - either biblical or rabbinic.
 - ii. Some say it is not an *issur* at all, but merely represents an expression of rabbinic disfavor
 - b. As to its parameters: the following factors may limit this principle's application:
 - i. On the one hand, it applies even if someone gives more to one son and less to another son. And this is true even if the son to whom more is given is a Torah scholar and the son to whom less is given is a person who acts improperly.
 - ii. It has been suggested that this principle *might* only apply as a restriction on a last will and testament of one who is critically sick (and who is therefore attempting to immediately circumvent the Jewish law of inheritance).
 - iii. According to some, it only applies if those who are being denied their full halakhic share are sons.
 - iv. According to some, it only applies if a halakhic heir is denied any portion (or at least any significant portion) in a person's estate. According to some

rabbinic authorities, it would be enough to provide such halakhic heirs with a relatively small “inheritance,” while others, such as the late Rabbi Moshe Feinstein, contend that they should get a significant portion. Rav Moshe argues that they should receive 20% of the estate, while 80% of the estate may be distributed through halakhic planning to others.

- v. According to some, it does not apply if one is giving his assets for a Mitzvah (such as charity).
- vi. According to some, it does not apply if one is giving his assets for his own purposes (such as when one gives money to charity in order to go to the Heavenly Court with merits or when someone conveys the property in exchange for services that he needs in his lifetime, such as nursing home services).
- vii. According to some, it does not apply if one is simply making lifetime gifts, not in contemplation of death.
- viii. According to at least some, even if a person should not disinherit a son who acts improperly, he may disinherit a son who publicly violates the laws of the Sabbath or who publicly rejects Judaism.
- ix. NOTE: Jewish law is a legal system with rules as to how to reach an appropriate decision where there are divergent views. One of these rules involves the use of a combination of minority views in order to reach a “lenient” decision. Consequently, even if a rabbinic authority might not rule leniently when only one of the above limiting factors is present (because that particular limiting factor may only be embraced by a minority of rabbinic authorities), he may rule leniently if 2 or more of such factors are present, even if both of the factors are only minority positions.

C. Second, Jewish law provides “guidance” not to wrongfully favor one heir over another.

1. Some of the guidance is not entirely clear. Thus, Rabbi Ezra Basri writes, “One should divide his estate equally among his children without showing favor to any individual. Citing the example of Joseph and his brothers, the sages explained how the slightest favoritism towards one son could cause deep strife and quarrels among the family and ultimately affect the future of the entire Jewish people.”

Nevertheless, this does not mean that the sages encouraged one to vary the portions that halakhic heirs are to receive, such as by depriving the first-born son (the *Bechor*) of his double share or by providing equal shares to daughters. Whether to make distributions to daughters and, if so, how much to so distribute, remains subject to considerable debate.

2. Nevertheless, the sages do recommend providing for charities, because, among other things, a distribution to a charity is for the actual benefit of the decedent.
3. Furthermore, many rabbis recommend that at least partial shares be given to daughters and to spouses, and, indeed, a custom developed to give at least a partial share (typically a half-share) to daughters. It is at least arguably unclear whether there is a persuasive halachic basis for ruling that half-shares would be permissible

but full-shares would not be permissible. This is obviously a question with far-reaching implications.

IV. How does one accomplish *halakhically* effective estate planning? (I.e., what specific steps does one take?)

Sorry, but this outline is not the appropriate forum for discussing precise instructions. The important thing to understand and remember is that the planning and implementation of such estate planning should be done in consultation with and under the supervision of a reliable reliable rabbinic authority - and, of course - an attorney and a sound financial advisor. Forgive me, but I do not describe the process here lest you be tempted to implement them without such personalized, professional representation.

Selected Readings in English:

1. Rabbi Ezra Basri, *I, Hereby, Bequeath: A Comprehensive Guide to Jewish Wills* (Haktav Institute, 1975)(apparently out of print, but available at some libraries);
2. Rabbi Feivel Cohen, *M'Dor L'Dor* (published by author, 1987)(out of print but available at some libraries).
3. Dayan I. Grunfeld, *The Jewish Law of Inheritance* (Targum Press, 1987)
4. Judah Dick, "Halacha and the Conventional Last Will and Testament," in *Journal of Halacha & Contemporary Society*, and available on the world wide web at http://www.jlaw.com/Articles/last_will_and_testament1.html
5. Mechon L'Hoyroa, *Mashiv B'Halocha*, vol. 21 (Adar-Nisan 5758), at 37-43.
6. Rabbi Chaim Dovid Zwiebel, "The Halachic Health Care Proxy," at <http://www.jlaw.com/Articles/healthcare.html>
2. Anat Scolnicov, Religious Law, "Religious Courts and Human Rights within Israeli Constitutional Structure," 4 *International Journal of Constitutional Law* 732 (October, 2006)
3. Hanina Ben-Menachem, "The Second Canonization of the Talmud," 28 *Cardozo Law Review Rev.* 37 (October, 2006)
4. Christine Hayes, "Rabbinic Contestations of Authority," 28 *Cardozo Law Review* 123 (October 2006)
5. Arye Edrei, "Law, Interpretation, and Ideology: The Renewal of the Jewish Laws of War in the State of Israel," 28 *Cardozo Law Review* 187 (October 2006)
6. Caryn Litt Wolfe, "Faith-based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction With Secular Courts," 5 *Fordham Law Review* 427 (October 2006)
7. David Hollander, "Jewish Law for the Law Librarian," 98 *Law Library Journal* 219 (Spring 2006)
8. Steven F. Friedell, "Medical Malpractice in Jewish Law: Some Parallels to External Norms and Practices," 6 *Chicago-Kent Journal of International & Comparative Law* 1 (Spring 2006)

Selected Recent Articles on Jewish Law from American Law Journals

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1. Martin H. Pritikin, "Punishment, Prisons, and the Bible: Does 'Old Testament Justice' Justify Our Retributive Culture?," 28 *Cardozo Law Review* 715 (November 2006)

9. Steven H. Resnicoff, "Supplying Human Body Parts: A Jewish Law Perspective," 55 *DePaul Law Review* 851 (Spring 2006)
10. Jeremy Glicksman, Student Note, "Almost, but Not Quite: the Failure of New York's *Get* Statute," 44 *Family Court Review* 300 (April 2006)
11. Bernard M. Levinson, "The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy," 27 *Cardozo Law Review* 1853 (February 2006)
12. Philip J. Bentley, "Conference on the Law of Death and Dying the Shattered Vessel: the Dying Person in Jewish Law and Ethics," 37 *Loyola University of Chicago Law Journal* (Winter 2006)
13. Louis Reinstein, "Goodwin Seminar: Constitutional Decisionmaking: the Growth of Chabad in the United States and the Rise of Chabad Related Litigation," 30 *Nova Law Review* 303 (Winter 2006)
14. Arye Edrei, "The Excessive Use of Force: Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces," 7 *Theoretical Inquiries in Law* 255 (January 2006)
15. Edward A. Zelinsky, Symposium on Deregulating Marriage, "The Pro-marriage Case for Abolishing Civil Marriage," 27 *Cardozo Law Review* 1161 (January 2006)
16. Daniel A. Crane, Symposium on Deregulating Marriage, "A 'Judeo-Christian' Argument for Privatizing Marriage," 27 *Cardozo Law Review* 1221 (January 2006)
17. Carol Sanger, Symposium on Deregulating Marriage, "A Case for Civil Marriage," 27 *Cardozo Law Review* 1311 (January 2006)
18. David Nir, Note, "A Critical Examination of the Jewish Environmental Law of *Bal Tashchit* ('Do Not Destroy')," 18 *Georgetown International Environmental Law Review* 335 (Winter 2006)
19. Chaim Saiman, "Legal Theology: the Turn to Conceptualism in Nineteenth-century Jewish Law," 21 *Journal of Law and Religion* 39 (2005-2006)
20. Stacey A. Tovino, Book Review, "'Jewish Biomedical Law: Legal and Extra-legal Dimensions,' by Daniel B. Sinclair," 21 *Journal of Law and Religion* 247 (2005-2006)
21. Samuel J. Levine, Symposium on Law & Politics as Vocation, "A Look at American Legal Practice Through a Perspective of Jewish Law, Ethics, and Tradition: a Conceptual Overview," 20 *Notre Dame Journal of Law, Ethics and Public Policy* 11 (2006)
22. Russell G. Pearce and Amelia J. Uelmen, "AALS Presentation: Religious Lawyering's Second Wave," 21 *Journal of Law and Religion* 269 (2005-2006)
23. Bruce A. Green, "AALS Presentation: The Religious Lawyering Critique," 21 *Journal of Law and Religion* 283 (2005-2006)
24. Elazar Nachalon, "Structural Models of Religion and State in Jewish and Democratic Political Thought: Inevitable Contradiction? The Challenge for Israel," 22 *Touro Law Review* 613 (2006)
25. Rachel Sara Rosenthal, "Of Pearls and Fish: an Analysis of Jewish Legal Texts on Sexuality and Their Significance for Contemporary American Jewish Movements," 15 *Columbia Journal of Gender and Law* 485 (2006)
26. Elie Mischel, Note, "'Thou Shalt Not Go about as a Talebearer among Thy People': Jewish

Law and the Private Facts Tort”, 24 *Cardozo Arts and Entertainment Law Journal* 811 (2006)

27. Symposium Panel One (including Steven H. Resnicoff): "Does Corporate Decision Making Allow Room for Religious Values?," 11 *Fordham Journal of Corporate and Financial Law* 547 (2006)

28. Steven H. Resnicoff, Essay, "Jewish Law and Socially Responsible Corporate Conduct," 11 *Fordham Journal of Corporate and Financial Law* 681 (2006)

Announcement(s):

We have been asked to publish the following announcement:

"The London School of Jewish Studies, together with King's College London, offers a unique new MA programme in Jewish Ethics. The course can be taken on a full or part-time basis, and involves both the study of Jewish approaches to specific moral issues and a chance to explore philosophical aspects of Jewish ethics. Lecturers include Dr. Daniel Rynhold, Rabbi Dr. Michael Harris, Professor David-Hillel Ruben and Dr. Tamra Wright. See <http://www.lsjjs.ac.uk/programmes.asp?submID=26> for details of this programme, or contact Dr. Tamra Wright for more information (020 8203 6427; twright@lsjjs.ac.uk)."

The JLA Web Site

The JLA web site, at <http://www.mucjs.org/JLAS> (or <http://www.arts.manchester.ac.uk/cjs/JLAS>), currently describes the JLA, sets forth its by-laws, provides tables of contents of its publications, and contains abstracts of various works on Jewish law. Plans, however, are under way for possible additional uses, such as the publication of articles, essays, books reviews or other materials. More about such possibilities in the next Newsletter.