

Contents

<i>Acknowledgments</i>	page xii
<i>Abbreviations</i>	xiii
An Introduction to Jewish Law	1
1 Jewish Law As a Subject for Study	6
SECTION 1 JEWISH LAW	
I Which Adjective?	6
II Which Noun?	7
III 'A Living Law	9
IV Jewish Law and Israeli Law	9
SECTION 2 THE SCIENTIFIC STUDY OF JEWISH LAW	
I Jewish Law As a Science	11
II Jewish Law and Comparative Law	12
A In France	12
B In the United States and Israel	12
2 Jewish Law As a Religious Legal Order	17
SECTION 1 HALACHAH AS A SYSTEM	
I The Juridicity of <i>Halachah</i>	17
II The Teleology of the Commandments	18
III The Taxonomy of the Commandments	22
A The Distinction between Matters of Permission and Prohibition (<i>Issur Veheter</i>) and Monetary Laws (<i>Dinei Mamonot</i>)	22
1 The Distinction	22
2 The Implications of This Distinction	23

B	Commandments of Biblical Origin and Commandments of Rabbinic Origin	26
1	The Distinction	26
2	Consequences of the Distinction	27
IV	Legislative Drafting (Legistics)	29
V	Concepts and Terminology	30
SECTION 2 A RELIGIOUS LEGAL SYSTEM		
I	A Fourth Family?	31
A	A Fluid Family	31
B	An Ideological Family	32
II	Some Parameters of a Religious Legal System	33
A	The Sources of the System	33
B	The Domain Covered by Jewish Law	35
C	The <i>Modus Operandi</i> of the System	37
1	General Orientations	37
2	In the Jewish Tradition, Are the Judgments Divine or Human?	39
SECTION 3 A TRANSNATIONAL LEGAL ORDER		44
3	The Sources of Jewish Law	47
SECTION 1 REVELATION		
SECTION 2 RABBINIC LEGISLATION (TAKANOT AND GEZEROT)		
AND COMMUNAL LEGISLATION (TAKANOT HAKAHAL)		
SECTION 3 CUSTOMS		
SECTION 4 SEVARAH		
SECTION 5 THE VIRTUE OF CASUISTICS: EXEMPLUM, RESPONSUM, JUDGMENT		
4	Halachic Authority	64
	Introduction	64
SECTION 1 HALACHIC AUTHORITY: THE RABBINIC PARADIGM		
I	The Holders of Authority: Books and Individuals	67
A	The Books: The Mishnah, the Talmud and the Codes	67
1	Typology	67
2	Authority	70
B	The Individuals: The <i>Rav</i> and the <i>Posek</i>	72
1	Role and Necessary Qualities	72
2	The Activities of a Rabbi	74

3	Forum Shopping	75
II	The Sources of Authority	76
A	Scriptural Sources	76
B	The Consensual Source	77
III	The Domain of Halachic Authority	77
IV	The Extent of Halachic Authority	79
A	The Extent of Hermeneutic Authority	79
B	The Extent of Creative Authority	82
1	The Exact Scope of the Prohibition on Adding Anything To, or Removing Anything From, the Torah	83
2	Illustrations	87
V	Halakhic Pluralism	91
1	An Affirmation of Halachic Pluralism	91
2	The Limits to Halachic Pluralism	94
 SECTION 2 THE NEW PARADIGMS OF HALACHIC AUTHORITY		
I	Reform Judaism: <i>Zeitgeist</i> as the <i>Grundnorm</i>	97
II	The "Counter-Reform" or the Birth of Orthodox Judaism	98
III	"Ultra-Orthodox" Judaism	99
IV	Religious Zionism: The State of Israel as <i>Telos</i>	102
5	Hermeneutics	107
	Introduction	107
SECTION 1 EXEGETICAL APPROACHES: THE ORCHARD (HA-PARDES)		
I	Four Approaches	107
II	A Famous Controversy: Can the <i>Peshat</i> Contradict <i>Halachah</i> ?	108
SECTION 2 THE PRINCIPAL RULES FOR THE INTERPRETATION OF A BIBLICAL TEXT		
I	Analogical Interpretation	112
A	Rule No. 1: A <i>Fortiori</i> Reasoning	112
B	Rule No. 2: Analogy Based on Identity of Terms	113
C	Rule No. 3: Inference through Induction	114
II	Explicative Interpretation	115
A	Rule No. 4: A General Rule and a Particular Case	115
B	Rule No. 5: A Particular Case and a General Rule	116
C	Rule No. 6: General Rule + Particular Case + General Rule (a General Law Limited by Specific Instances and Then Again Referred to in General Terms)	117

D	Rule No. 7: The General Rule Requires a Particular Rule and the Particular Rule Requires a General Rule	117
E	Rules Nos. 8–11: “A Law That Was Included in the Collective Term”	118
III	A Few Complementary Rules	121
A	Chronological Order Is Not Always Respected in the Torah	121
B	The Torah Is Speaking the Language of Human Beings	121
C	The Consonantal Text of the Torah Is Authoritative/the Vocal Text of the Torah Is Authoritative	122
6	Jewish Law and the Law of Nations: The Administration of Legal Pluralism	124
	Introduction	124
	SECTION 1 RABBINIC ARBITRATION	
I	A History Résumé	124
II	Rabbinic Arbitration As a Legal Duty, Technical Necessity and Source of Savings	127
A	Rabbinic Arbitration As a Legal Duty	127
B	Rabbinic Arbitration As a Technical Necessity	131
C	The Economic Advantages of Rabbinic Arbitration	132
III	The Arbitration Agreement (<i>Shtar Beirurin</i>) and the Composition of the Arbitration Court	133
A	The Arbitration Agreement	133
B	The Composition of the Arbitration Court	134
IV	Some Procedural Elements	135
A	The Summons to Appear before a Rabbinic Court and the Refusal (<i>Siruv</i>)	135
1	The Principles	135
2	The Refusal (<i>Siruv</i>) in Non-Jewish Courts	136
B	Representation by a Lawyer	137
C	The Rabbinic Judgment (<i>P’sak</i>)	138
D	Strict Adherence to the Law (<i>Din Torah</i>) or <i>Ex Aequo et Bono</i> Decision (<i>Peshara</i>)?	141
	SECTION 2 “THE LAW OF THE STATE IS THE LAW” (“DINA D’MALCHUTA DINA”)	
I	The General Meaning and the Historical Background	143
II	Talmudic Sources	143
III	A Principle without Any Legal Base?	144

IV	Conditions for the Application of the Rule	145
A	The Nature of the Political Regime	145
B	The Principle of “ <i>Dina D’malchuta Dina</i> ” and the Kingdom of Israel	146
C	The Principle of Equality	146
V	The Domain of the Principle’s Application	146
A	Monetary Law but Not the Ritual Domain	147
B	The Interests of the King	147
C	“Non-Jewish Ways” and the New Laws of the King	147
D	State Law and <i>Halachah</i>	148
E	Principal Applications	148
1	Taxes	148
2	The Judgments of Non-Jewish Courts	148
3	Changes in the Value of the Local Currency	149
4	Government Appointments to Rabbinic or Judiciary Functions	149
	Concluding Remarks	150
	<i>Index</i>	154