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J. David Bleich and Arthur J. Jacobson  
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## JEWISH LAW AND CONTEMPORARY ISSUES

Organized as a series of authoritative discussions, this book presents the application of Jewish law – or *Halakhah* – to contemporary social and political issues. Beginning with the principle of divine revelation, it describes the contents and canons of interpretation of Jewish law. Though divinely received, the law must still be interpreted and “completed” by human minds, often leading to the conundrum of divergent but equally authentic interpretations. Examining topics from divorce to war and from rabbinic confidentiality to cloning, this book carefully delineates the issues presented in each case, showing the various positions taken by rabbinic scholars, clarifying areas of divergence, and analyzing reasons for disagreement.

Written by widely recognized scholars of both Jewish and secular law, this book will be an invaluable source for all who seek authoritative guidance in understanding traditional Jewish law and practice.

J. David Bleich is a professor of Talmud (Rosh Yeshiva) at Rabbi Isaac Elchanan Theological Seminary, as well as Professor of Law at the Benjamin N. Cardozo School of Law, and Tenzer Professor of Jewish Law and Ethics at Yeshiva University. A prolific writer and an authority on Jewish law and ethics, he is widely known as author of the six-volume *Contemporary Halakhic Problems*.

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# Jewish Law and Contemporary Issues

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Contents

<i>Preface</i>	<i>page</i> vii
1 The Nature and Structure of Jewish Law	1
2 Divorce	18
3 Jewish Law and the State’s Authority to Punish Crime	100
4 The Sotheby Sale	130
5 Torture and the Ticking Bomb	174
6 War	206
7 Dead or Alive?	252
8 Rabbinic Confidentiality	325
9 Cloning	357
<i>A Note on Halakhic Sources</i>	397
<i>Transliteration Style</i>	401
<i>Index of Passages Cited</i>	403
<i>Index of Names and Subjects</i>	407

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## Preface

Judaism is a religion of law and its legal system, known as Halakhah, is unique in that it has survived as a living system for millennia without being the law of any sovereign jurisdiction. Courses in Jewish law have of late become a staple of comparative law offerings in law schools and universities. Unhappily, as has been stated in a different context, “The students are many, but the knowledgeable are few.”

Mastery of Jewish law requires years and years of long and arduous study. The Midrash (*Va-Yikra Rabbah* 2:1) declares: “A thousand [students] enter . . . but only one emerges” as a proficient scholar. For the uninitiated, the language barrier is itself a formidable obstacle. Rabbinic texts are written in a linguistic style dubbed by one classical commentator as a language of its own, “the language of the Talmudists” – a curious amalgam of rabbinic Hebrew and Aramaic with frequent incorporations of allusions to biblical and rabbinic texts of antiquity and replete with idioms and literary metaphors beyond the ken of all but the cognoscenti. Until relatively recently, recognized rabbinic scholars eschewed presentation of serious scholarship in the vernacular.

In order to appreciate the nature of Jewish law, it is necessary to recognize that it constitutes a self-contained system. It is founded upon a complex set of axiological premises, or *grundnorms*, that serve as the matrix of its internal coherence. A philosopher of science understands full well that the entire complement of the laws of nature as posited by science cannot be tested simultaneously. Any given hypothesis can be confirmed or disconfirmed only by assuming, at least for the purposes of that investigation, the constancy of all other axioms comprising the corpus of scientific knowledge. Thus, it can readily be shown that parallel lines do not converge, but that is true only of Euclidean space. Euclidean geometry is cogent and demonstrably certain only if basic premises regarding the nature of the universe are assumed. Much the same is true of the nature of halakhic discussion and dialectic. Little wonder,

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then, that persons trained primarily in other, quite different, legal systems and ideological traditions are ill-equipped to serve as exponents of Jewish law.

This volume constitutes an attempt to present Jewish law as it has been understood by its devotees and transmitted from generation to generation over a span of centuries, *viz.*, as an internally consistent system essentially impervious to external, historical and sociological influences.

The work is designed to introduce the contemporary reader to Jewish law as it was – and continues to be – understood in rabbinic academies. It is, after all, that system of Jewish law that divine providence has guided and caused to flourish and thrive.

American students are fully familiar with the casebook method. Law, in the United States, is not taught as a disembodied system of principles and statutes. Instead, the law is extracted from analysis of concrete applications. For a variety of reasons, a pure version of that method is not a feasible approach to an introductory study of Jewish law. But the method that is employed in the discussions undertaken herein is a reasonable approximation thereof. Those discussions are in the form of a quest for resolution of a series of concrete modern-day questions from the vantage point of Jewish law. The student will readily perceive the methodological similarity to the casebook method with which he or she is familiar. Common to both systems is the pedagogic device of extrapolation and elucidation of basic principles from their application in the analysis of identified problems.

Much of the material in this work has appeared in a somewhat different form in various volumes of J. David Bleich's *Contemporary Halakhic Problems* and *Bioethical Dilemmas*, vol. II. We extend our appreciation to the publishers of those volumes, Ktav Publishing House and Targum Press. Significant portions of Chapter 2 appeared in Volume 5 (2015) of the *International Journal of the Jurisprudence of the Family*, edited by Professor Scott FitzGibbon, to whom thanks are due for his valuable and incisive comments.

We are indebted to Professor Bernhard Schlink, of the faculty of law, Humboldt University in Berlin, who urged us to collaborate on this book. Without his encouragement this enterprise would not have become a reality.

We also wish to express our thanks to John Ludwig for preparing the index, to Hadassah Gurwitz for her meticulous proofreading, and to Kaaron Saphir and Sharon Thomas for their secretarial assistance.

It has been a singular pleasure to work with the editorial and production team of the Cambridge University Press. Our particular gratitude to John Berger for his patience, graciousness, and friendship.