Traditional Jewish family law has persevered for hundreds of years, and rules covering marriage, the raising of children, and divorce are well established; yet pressures from modern society are causing long-held views to be re-examined. The Jewish Family: Between Family Law and Contract Law examines the tenets of Jewish family law in light of new attitudes concerning the role of women, assisted reproduction technologies, and prenuptial agreements. It explores, through interdisciplinary research combining the legal aspects of family law and contract law, how the Jewish family can cope with both old and modern obstacles and challenges. It focuses on the nexus of Jewish family law and contract law to propose how “freedom of contract” can be part of how family law can be interpreted. The Jewish Family will appeal to practitioners, activists, academic researchers, and laymen, readers who are interested in the fields of law, theology, and social science.

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The Jewish Family

BETWEEN FAMILY LAW AND CONTRACT LAW

YEHEZKEL MARGALIT
Netanya Academic College
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Preface

This book deals with the nexus of Jewish contract law and Jewish family law and their potential mutual influence. The essence of the research explores whether and to what extent there is considerable halakhic room for the usage of ancient and modern contractual devices and doctrines to privately regulate the Jewish family. Whereas Jewish law regulates comprehensively and thoroughly both the spousal and parental relations, it is necessary to discuss whether and to what extent there is freedom of contract to privately regulate the various angles of those relations. The subject of the research is mainly the horizontal relationship between spouses, but it also discusses the vertical relationship between parent and child. The research draws upon material from the biblical period and concludes with current analysis and materials. It focuses mainly on the Mishnah and the Talmud periods onward. This book discusses mainly Jewish law, which I prefer for several reasons to call halakhah and which stands at the crossroads of theology and law, but it also engages with modern civil law.

This is especially true in the last chapter of the book, Chapter 5, where one can find discussions of the most cutting-edge legal-ethical dilemmas in the field of advanced biomedical innovations regarding who should be determined as the legal parent of a child conceived through artificial means. The methodology of the research is taken mainly from the halakhic dogmatic method but often also applies the historical method; it is thus an example of Professor Menahem Elon’s combined historical-dogmatic standpoint. This book concludes the results of my writings over the last decade in both Jewish and civil law. The research commenced with my MA thesis, “Public Regulation and Private Agreement of Spousal Conjugal Privileges in Jewish Law,” which was published in 2006. This was followed in 2011 with the publication of my PhD dissertation, “Determining Legal Parentage by Agreement.” Following these two major research projects, I developed my thinking in over twenty publications in various law reviews in the United States as well as in Israel, drawing it together in this book.
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