

LESSON



BEYOND GOOD NEIGHBORS

Most laws are designed to protect the rights of people and their property. But Judaism's civil code is driven by a different goal: shaping an upright society. In this lesson we explore how this value guides Jewish law, establishing its attitude toward neighborly disputes and interpersonal ethical dilemmas.

TZEDAKAH GIRL

Leah Raab, acrylic on canvas. A young girl gives charity to a needy man, illuminating the dark street.

I. THE PURPOSE OF LAW

Welcome to an exploration of the underlying values of Jewish law and the laws they shape.

In this course, we will explore what makes Jewish civil law “Jewish” and unique, and what this means to us living in a society governed by a secular, non-Jewish legal system.

This lesson focuses on the basic question of the purpose of law: Is the function of law merely regulating society to protect people’s rights, or should it seek to shape society and promulgate righteous conduct? If law should promote righteous conduct, how far should it go in this regard? The way a legal system defines its purpose dictates what values it incorporates and how they are applied.



EXERCISE 1.1

If you were a referee given a few minutes to address the players before a game of football, what would be the top three things you would say?

1

2

3

If you were a coach given a few minutes to address the players before a game of football, what would be the top three things you would say?

1

2

3

Divide the words on the following list into two categories and give each category a descriptive title. If you wish, you can then add further examples for each category.

CATEGORY 1:	CATEGORY 2:

- Teacher
- Coach
- Playbook
- Parent
- Referee
- Government
- Police officer
- Rule book
- G-d



TEXT 1

Secular Law

Marquis de Lafayette, et al., Declaration of the Rights of Man, adopted by National Assembly of France, August 26, 1789, Articles 4–5

Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

DECLARATION OF THE RIGHTS OF MAN

The Declaration of the Rights of Man and of the Citizen was adopted by France's National Constituent Assembly in 1789. Written by the Marquis de Lafayette in consultation with Thomas Jefferson, the Declaration defines the principles of individual and collective rights that inspired the French Revolution. The Declaration has influenced and inspired rights-based liberal democracy throughout the world.



First printed edition of the Declaration of the Rights of Man and of the Citizen, 1789 (National Library of France)



TEXT 2

The Why of Jewish Law

Rabbi Don Yitzchak Abarbanel, Exodus 21:1

אֵין קבוצ בְּבִנֵי אָדָם שֶׁלֹּא יִהְיֶה בִּיְנֵיהֶם מִשְׁפָּטִים . . .
 וְכֵן הַמַּעֲלָה הַזֹּאת לְמִשְׁפָּטֵי ה' אָמַת עַל . . .
 מִשְׁפָּטֵי שָׂרֵי הָאוֹמוֹת שֶׁעָלִיהֶם נֶאֱמַר וְאַלֶּה
 הַמִּשְׁפָּטִים אֲשֶׁר תִּשִּׂים לְפָנֵיהֶם כִּאלֹ הִתֵּה יְדִיעָה
 הַעֲלִינָה נִתְּנָה הָאֱלֹקִים לָהֶם לְבָדָם . . .
 מִצַּד טָבַע הַמִּשְׁפָּטִים עֲצָמָם, שֶׁהָאֱלֹקִים כּוֹלְלִים
 דְּבָרִים אַחָדִים מָה שֶׁלֹּא יִמָּצְאוּ בְּמִשְׁפָּטֵי הָאוֹמוֹת . . .
 מִשְׁפָּטֵי ה' הֵם מִיּוֹסָדִים עַל הֶרְחָמִים וְהַטּוֹב.

Every human society requires laws. . . . What is the advantage of G-d's* Torah laws over . . . the legal systems set up by other nations? Why does the verse state that “these are the laws you shall set before them,” thereby telling us that these laws are a unique divine system exclusively given to us by G-d? . . .

The reason for this is that the divine laws contain elements absent from other legal systems. . . . G-d's laws are based on the principles of compassion and goodness.

**RABBI DON
YITZCHAK ABARBANEL
1437–1508**

Biblical exegete and statesman. Abarbanel was born in Lisbon, Portugal, and served as a minister in the court of King Alfonso V of Portugal. After intrigues at court led to accusations against him, he fled to Spain, where he once again served as a counselor to royalty. It is claimed that Abarbanel offered King Ferdinand and Queen Isabella large sums of money for the revocation of their Edict of Expulsion of 1492, but to no avail. After the expulsion, he eventually settled in Italy, where he wrote a commentary on Scripture, as well as other venerated works.

* Throughout this book, “G-d” and “L-rd” are written with a hyphen instead of an “o” (both in our own translations and when quoting others). This is one way we accord reverence to the sacred divine name. This also reminds us that, even as we seek G-d, He transcends any human effort to describe His reality.



TEXT 3

“Right and Good”

Deuteronomy 6:17–18

שְׁמוֹר תִּשְׁמְרוּן אֶת מִצְוֹת ה' אֱלֹהֵיכֶם . . .
אֲשֶׁר צִוָּה. וְעָשִׂיתָ הַיָּשָׁר וְהַטּוֹב בְּעֵינֵי ה'.

Diligently observe G-d's commandments . . .
that He has commanded you. Do what
is right and good in G-d's eyes.



**A JEWISH SHOPKEEPER
WITH TWO CLIENTS**
Jan van Grevenbroeck
(1731–1807),
watercolor on paper
(Correr Museum, Venice, Italy)



TEXT 4

Law That Creates Life

Rabbi Yosef Yitzchak Schneersohn, cited in *Hayom Yom*, 22 Shevat

עס זײַנען דא צוויי ערליי חוקים:

(א) א געזעץ וועלכער שאפט לעבן.

(ב) א געזעץ וועלכער ווערט באשאפן פון לעבן.

מענטשליכע געזעצען זײַנען געשאפן פון לעבן . . . תורת
ה', איז דער ג-טליכער געזעץ וועלכער שאפט א לעבן.

There are two types of laws:

- a) Laws that create life
- b) Laws created by life

Human laws are created by life. . . . G-d's

Torah is a divine law that creates life.

RABBI YOSEF YITZCHAK SCHNEERSOHN (RAYATZ, FRIEDRIKER REBBE, PREVIOUS REBBE) 1880-1950

Chasidic rebbe, prolific writer, and Jewish activist. Rabbi Yosef Yitzchak, the sixth leader of the Chabad movement, actively promoted Jewish religious practice in Soviet Russia and was arrested for these activities. After his release from prison and exile, he settled in Warsaw, Poland, from where he fled Nazi occupation and arrived in New York in 1940. Settling in Brooklyn, Rabbi Schneersohn worked to revitalize American Jewish life. His son-in-law Rabbi Menachem Mendel Schneerson succeeded him as the leader of the Chabad movement.

FAITH

Detail from an elaborately decorated 18th-century parchment manuscript of the Scroll of Esther. Richly painted miniatures depict the scenes of the Purim story, as well as related allegorical figures such as this one depicting a seated man holding an open book and a Torah scroll. The style of the art points to a northern Italian origin.



II. WHEN IS DOING THE RIGHT THING AN OBLIGATION?

We've established that Torah law seeks to shape society rather than just regulate it and maintain order. We begin this section with four case studies that raise the tension between personal rights and doing the right thing, and then proceed to explore the multiple ways in which practical Jewish law aims to shape the society it governs.



CASE STUDY A

Jake Rossen, "The Man Who Built a 40-Foot Spite Fence Around His Neighbor's Home," mentalfloss.com, April 24, 2017

Nicholas Yung considered himself a lucky man. A German who immigrated to the United States in 1848, Yung had worked hard to carve out a living for himself and eventually prosper as the owner of a mortuary in San Francisco. The business allowed him and wife Rosina to purchase a modest lot on the top of California Street Hill, where they built a quaint, cottage-style home and planted a beautiful garden. Every day, California sunlight and fresh air would stream in through their windows.

Yung had no reason to believe that anything could interrupt his idyllic life, or that any one person could somehow deprive him of the beautiful days he had worked so hard to enjoy. But Yung also hadn't accounted for Charles Crocker, a very rich and very petty man who would eventually become both his neighbor and the bane of his existence. . . .

At 6 feet tall and 300 pounds, Charles Crocker cut an imposing figure. He had filled his bank account by being one of the “Big Four” barons behind the building of the Central Pacific Railroad. By the 1870s, he could afford whatever he desired. And what he wanted was to loom over S. Francisco like a gargoyle.

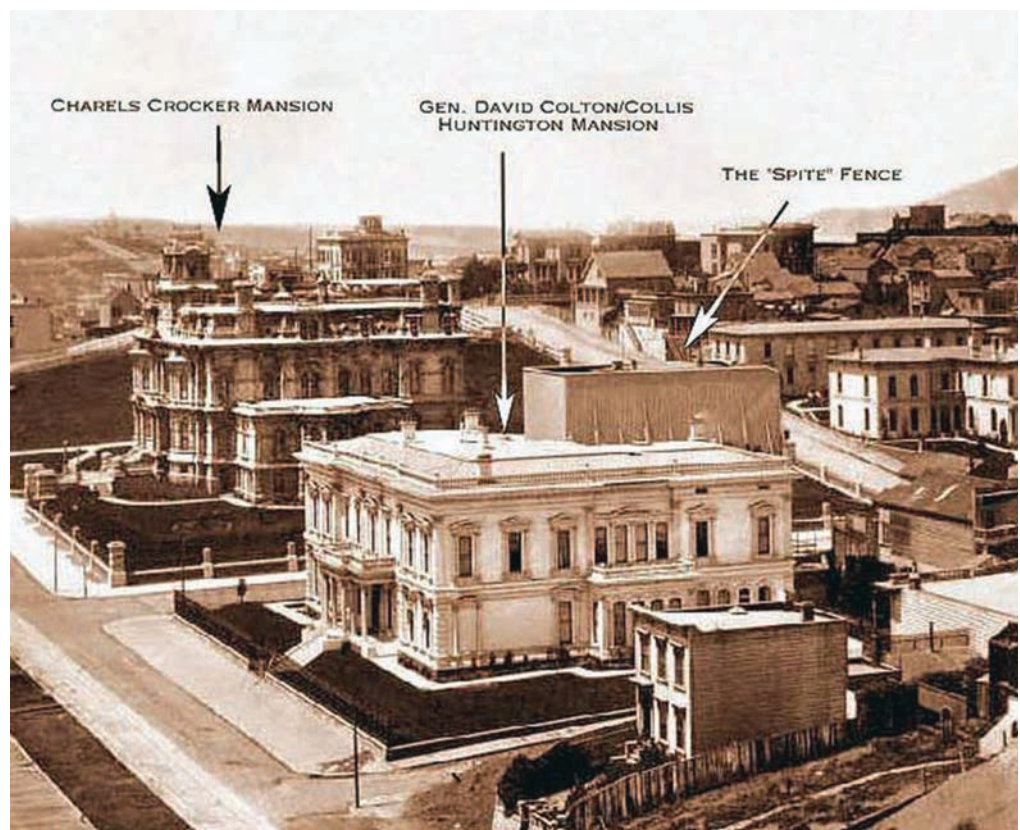
Crocker and his wealthy partners began scouting California Street Hill for its scenic views and proximity to the city’s financial district. . . . Soon a group of wealthy men, including Crocker, were buying up all the homes on their chosen blocks. By the time Crocker was finished, he had erected a 12,000-square-foot mansion. With its new, wealthy inhabitants, California Street Hill was renamed Nob Hill.

As the project neared completion in 1876, there was one nagging detail: On the northeast corner of the block, Nicholas Yung was reluctant to sell. His cottage was dwarfed by the mansions going up, but he had come to enjoy the neighborhood. . . .

With one or both men causing acrimony, the end result was that Yung was not moving. . . . At a reported cost of \$3,000, Crocker had his workers construct a wooden fence on his land that towered over three sides of Yung’s home. With its 40-foot-tall panels, the enclosure acted like a window shade, blotting out the sun and cool air and immersing Yung in darkness.

Should Charles Crocker's fence be legally allowed to stand?

☐ Yes ☐ No



An 1878 photograph of S. Francisco by Edward Muybridge shows the spite fence built by Charles Crocker, annotated by Bruce C. Cooper.

**CASE STUDY B**

Rachel maintains a large and beautiful flower bed in her yard. But one day her neighbor Joe built a high wooden fence between their properties that cast shade over the garden, causing the flowers to die. When Rachel asked Joe why his fence needed to be so high, she was told that it was necessary to protect his birds from cats entering the property. Rachel offered to replace the wooden fence with a glass screen at her personal expense, in order to allow her flowers to receive sunlight without exposing Joe's birds to danger. But Joe refused to allow Rachel to replace the fence, without offering any reason.

Should Joe be legally required to allow Rachel to replace his wooden fence with a glass screen?

☐ Yes ☐ No

**CASE STUDY C**

Michael moved into a new house. Before setting up his own Wi-Fi connection, he realized that his neighbors have an open Wi-Fi network.

Can Michael use his neighbors' Wi-Fi network without their knowledge?

☐ Yes ☐ No



CASE STUDY D

Sarah’s next-door neighbor David left on a lengthy vacation. It is difficult to find parking on their street, and David’s driveway—situated smack in between their two homes—is now empty. Sarah wishes to park her car there while her neighbor is away.

Should Sarah be allowed to park her car in David’s vacant driveway without his advance permission?

☐ Yes ☐ No



FIGURE 1.1

“Right and Good” Commandments

	MITZVAH	SOURCE
	Do not stand by when someone’s life is at risk.	Leviticus 19:16
	Pick up any lost object you encounter and return it to its owner.	Deuteronomy 22:1–3
	Provide roadside assistance.	Exodus 23:5
	Don’t spread gossip.	Leviticus 19:16



TEXT 5

The Spirit of the Law

Nachmanides, Deuteronomy 6:18

וּלְרַבּוֹתֵינוּ בָּזָה מְדַרְשׁ יָפָה, אָמְרוּ ז' . . . לְפָנִים מְשׁוֹרֵת
הַדִּין. וְהַפְּנָה בָּזָה, כִּי מִתְחַלָּה אָמַר שְׁתַּשְׁמֹר חֻקֹּתַי
וְעִדּוֹתַי אֲשֶׁר צִוָּה, וְעַתָּה יֹאמַר גַּם בְּאֲשֶׁר לֹא צִוָּה תִּן דְּעַתָּה
לַעֲשׂוֹת הַטּוֹב וְהַיָּשָׁר בְּעֵינָיו, כִּי הוּא אוֹהֵב הַטּוֹב וְהַיָּשָׁר.

וְזֶה עֲנִין גָּדוֹל, לְפִי שְׂאֵי אֶפְשָׁר לְהַזְכִּיר בַּתּוֹרָה
כָּל הַנְּהִיגוֹת הָאֲדָמָה עִם שְׂכֵנָיו וְרַעֲיוֹ וְכָל מִשְׁאֹ
וּמִתְנֶנּוּ וְתַקּוּנֵי הַיָּשׁוּב וְהַמְּדִינוֹת כָּלֵם.

אֲבָל אַחֲרֵי שֶׁהַזְכִּיר מֵהֶם הִרְבֵּה, כָּגוֹן לֹא תִלָּךְ רָכִיל (וִיקָרָא
יט, טז), לֹא תִקָּם וְלֹא תִטָּר (שם, יח), וְלֹא תַעֲמֹד עַל דָּם
רָעָה (שם, טז), לֹא תִקַּלֵּל חֵרֶשׁ (שם, יד), מִפְּנֵי שִׁיבָה תִקּוּם
(שם, לב), וְכִיּוֹצֵא בָהֶן, חָזַר לֵאמֹר בְּדֶרֶךְ כָּלֵל שִׁיעֲשֵׂה הַטּוֹב
וְהַיָּשָׁר בְּכָל דְּבָר עַד שִׁכְנִס בָּזָה . . . לְפָנִים מְשׁוֹרֵת הַדִּין.

Our sages expounded on this verse and explained that it instructs us to . . . go beyond the letter of the law. In other words, the Torah first exhorts us to observe all of G-d's commandments, and it now instructs us to be careful to do that which is "right and good," even when not explicitly commanded to do so, because G-d cherishes good and proper conduct.

This instruction is very important because it would be impossible for the Torah to exhaustively address all of our conduct with

**RABBI MOSHE
BEN NACHMAN
(NACHMANIDES, RAMBAN)
1194-1270**

Scholar, philosopher, author, and physician. Nachmanides was born in Spain and served as leader of Iberian Jewry. In 1263, he was summoned by King James of Aragon to a public disputation with Pablo Cristianí, a Jewish apostate. Though Nachmanides was the clear victor of the debate, he had to flee Spain because of the resulting persecution. He moved to Israel and helped reestablish communal life in Jerusalem. He authored a classic commentary on the Pentateuch and a commentary on the Talmud.



Watch a conversation with **Rabbi Adin Even-Israel Steinsaltz** about Talmudic ethics and the laws they inspire: myjli.com/beyondright

our friends and neighbors, all of our business affairs, and the welfare of society and the world.

Instead, after offering multiple specific commandments such as, “You shall not go about as a gossipmonger” (LEVITICUS 19:16), “Do not take revenge or bear a grudge” (IBID., 19:18), “Do not stand by the shedding of your fellow’s blood” (IBID., 19:16), “Do not curse even a deaf person” (IBID., 19:14), and “Stand in the presence of the aged” (IBID., 19:32), the Torah then concludes with a generalized command to do that which is “right and good” . . . meaning, to go beyond the letter of the law.



TRIPTYCH OF GOODNESS
CHESED—ACTS OF
LOVING KINDNESS
Chaia Heller, Leverett, MA



TEXT 6

Sodom-Like Conduct

Talmud, Bava Batra 12b

כּוּפִין עַל מִדַּת סְדוֹם.

A person is compelled by law not to act in a manner characteristic of the inhabitants of Sodom.

BABYLONIAN TALMUD

A literary work of monumental proportions that draws upon the legal, spiritual, intellectual, ethical, and historical traditions of Judaism. The 37 tractates of the Babylonian Talmud contain the teachings of the Jewish sages from the period after the destruction of the 2nd Temple through the 5th century CE. It has served as the primary vehicle for the transmission of the Oral Law and the education of Jews over the centuries; it is the entry point for all subsequent legal, ethical, and theological Jewish scholarship.

Detail from one of the most elaborate copies of Maimonides's classic work, the *Mishneh Torah*. Illuminated in Northern Italy, c. 1457, the manuscript is attributed to the Master of the Barbo Missal. The parchment manuscript contains several large depictions of various aspects of the law in tempera and gold leaf. This scene, an introduction to the laws pertaining to death and the ritual impurity it causes, depicts part of the care and purification given to a corpse prior to burial. This process is a Jewish value known as *chesed shel emet*—true kindness—since the recipient is unable to give anything in return. (Jointly owned by the Israel Museum, Jerusalem, and The Metropolitan Museum of Art, New York)





TEXT 7A

Mine Is Mine, Yours Is Yours

Mishnah, Avot 5:10

הָאוֹמֵר שְׁלִי שְׁלִי וְשִׁלְךָ שִׁלְךָ, זֶה מִדָּה בִּינוּנִית.
וַיֵּשׁ אוֹמְרִים, זֶה מִדַּת סְדוֹם.

One who insists, “What is mine is mine, and what is yours is yours,” is of average character. However, another opinion maintains that such an attitude is characteristic of the wicked people of Sodom.



TEXT 7B

Character Assessment

Rabbi Menachem Me'iri, ad loc.

שְׁתִּייהֶן אֶמֶת, וְהוּא שָׁאֵם בְּמָה שְׁאִינוּ רוֹצֶה שְׂיִהְיוּ אַחֲרֵים
מִמּוֹנוּ הוּא דָּבָר שְׁאֵלֹו הָיָה מְהִנָּה אוֹתָם בְּכָף לֹא הָיָה אֶצְלוֹ
אוֹ אֶצֶל מִמוֹנוּ שׁוֹם חֶסֶד, זֶה הִיא מִדַּת סְדוֹם . . .

אֲבָל הָרֵאשׁוֹנָה הִיא שְׁאֵלֹו מְהִנָּהוּ יֵשׁ אֶצְלוֹ אוֹ אֶצֶל
מִמוֹנוּ קִצָּת חֶסֶד . . . וְעַכְבָּה זֶה הוֹאִיל וַיֵּשׁ בָּהּ חֶסֶד
אֵינָה מִדַּת סְדוֹם, שְׁאִינוּ רוֹצֶה לְחַסֵּר בְּשָׁל אַחֲרֵים וְלֹא
לְהַחֲסֹר עַל יְדֵי אַחֲרֵים, אֲלֹא הִיא מִדָּה בִּינוּנִית.

Both statements in the Mishnah are valid, because the second view [which classifies such conduct as wicked] refers to those who refuse to permit others to benefit from them,

AVOT (ETHICS OF THE FATHERS; PIRKEI AVOT)

A 6-chapter work on Jewish ethics that is studied widely by Jewish communities, especially during the summer. The first 5 chapters are from the Mishnah, tractate Avot. Avot differs from the rest of the Mishnah in that it does not focus on legal subjects; it is a collection of the sages' wisdom on topics related to character development, ethics, healthy living, piety, and the study of Torah.

RABBI MENACHEM ME'IRI 1249–1310

Talmudist and author. Me'iri was born in Provence, France. His monumental work, *Beit Habechirah*, summarizes in a lucid style the discussions of the Talmud along with the commentaries of the major subsequent rabbis. Despite its stature, the work was largely unknown for many generations, and thus has had less influence on subsequent Halachic development.

even when they will incur no personal or monetary expense as a result. Such conduct is characteristic of the inhabitants of Sodom. . . .

By contrast, the first view in the Mishnah [which classifies such conduct as “average”] refers to those who refuse to allow others to benefit from them when doing so *would* come at a personal or monetary expense. . . . Individuals who adopt this approach cannot be compared to the inhabitants of Sodom because they seek simply to avoid incurring losses through the actions of others, just as they would not inflict a loss upon their fellow. This indeed reflects the average character.

Detail from the introductory artwork to the Book of Damages in the Master of the Barbo Missal's 15th-century illumination of Maimonides's *Mishneh Torah* depicting damage that can be caused by an animal. (Jointly owned by the Israel Museum, Jerusalem, and The Metropolitan Museum of Art, New York)





TEXT 8

Walls and Windows

Maimonides, *Mishneh Torah*, Laws of Neighbors 7:8

מי שֶׁהָיוּ לוֹ חִלּוֹנוֹת לְמִטָּה בְּכַתְּלוֹ וּבֵּא חֲבֵירוֹ
 לְבָנוֹת בְּפִנְיָהּ וְאָמַר לוֹ, אֲנִי אֶפְתַּח לָךְ חִלּוֹנוֹת
 אַחֲרוֹת בְּכַתְּלִי זֶה עֲצָמוֹ לְמַעַלָּה מֵאֵלּוּ . . .
 אִם לֹא הָיָה שָׁם טֶרַח כָּלֵל וְאֵין צָרִיךְ לְפָנּוֹת, אֵינוֹ יָכוֹל
 לְעֵצֵב עָלָיו. וְכוּפִין אוֹתוֹ שִׁיְהִיָּה חֲבֵירוֹ סוֹתֵם חִלּוֹן זֶה
 שֶׁלְּמִטָּה מִמֶּנּוּ וְעוֹשֶׂה לוֹ חִלּוֹן מִלְּמַעַלָּה, שֶׁזוֹ מִדַּת סְדוּם.
 וְכֵן כָּל דָּבָר שֶׁזֶה נִהְיָה בּוֹ וְאֵין חֲבֵירוֹ מִפְסִיד
 וְאֵין חֶסֶר כְּלוּם, כּוּפִין עָלָיו.

A person has windows set in the lower portion of the wall of his house, and his neighbor desires to erect a building that would block them. The neighbor proposes to solve the problem by installing new windows in the upper portion of the homeowner's wall. . . .

If this arrangement won't cause the homeowner any difficulty at all and would not require him to leave his home during the construction, he cannot prevent the new neighbor from performing this construction. The homeowner is compelled by law to allow the neighbor to close the windows on the bottom part of his wall and create new windows higher up. This is

**RABBI MOSHE
 BEN MAIMON
 (MAIMONIDES, RAMBAM)
 1135–1204**

Halachist, philosopher, author, and physician. Maimonides was born in Córdoba, Spain. After the conquest of Córdoba by the Almohads, he fled Spain and eventually settled in Cairo, Egypt. There, he became the leader of the Jewish community and served as court physician to the vizier of Egypt. He is most noted for authoring the *Mishneh Torah*, an encyclopedic arrangement of Jewish law; and for his philosophical work, *Guide for the Perplexed*. His rulings on Jewish law are integral to the formation of Halachic consensus.



For an introduction to the processes of a modern Jewish rabbinical court, watch: myjli.com/beyondright

because it would be Sodom-like conduct for the homeowner to refuse this accommodation.

This principle applies to every situation in which one individual will benefit while his fellow will not lose anything as a result. In all such cases, the relevant party is compelled by law to cooperate.

THERE'S MORE...

For an additional example of the implementation of the anti-Sodom-like conduct principle, see Appendix A (p. 29).



QUESTION

How might Jewish law adjudicate Case Studies A and B?



Professor Michael Helfand explains the process of religious arbitration and its place in the contemporary legal system:
myjli.com/beyondright



TEXT 9

No Pain, Only Gain

Talmud, Bava Kama 20a–21b

הָדָר בַּחֲצֵר תִּבְרֹו שְׁלֹא מִדַּעְתּוֹ צָרִיף
 לְהַעֲלוֹת לוֹ שָׁכָר אוֹ אֵין צָרִיף. . .
 בַּחֲצֵר דְּלֹא קִיָּמָא לְאַגְרָא וְגִבְרָא דְּעֵבִיד לְמִיגַר מָאִי?
 מָצִי אָמַר לִיה מָאִי חֲסִרְתִּיף?
 אוֹ דְּלָמָא מָצִי אָמַר הָא אֶתְהֵינִית. . .
 הָאִי זֶה נִהְיָה וְזֶה לֹא חֲסִר הוּא. . .
 אָמַר לִיה רַבָּה בַּר רַב הוּנָא, הֵכִי אָמַר אָבָא מָרִי
 מִשְׁמִיָּה דְּרַב: אֵינּוּ צָרִיף לְהַעֲלוֹת לוֹ שָׁכָר.

If one lives in his fellow's yard without the latter's knowledge, does he have to pay him rent or not? . . .

The question is in regard to a yard that is not on the market for rent, but the squatter is a person who usually rents. What is the law?

Can the squatter say to the owner,
 “What loss have I caused you?”

Or, perhaps the owner can insist, “Look, you have benefited [from my property instead of paying rent elsewhere]!” . . .

This is a case in which one individual benefits while the other does not lose anything. . . .

[The Talmud concludes:] Rabah the son of Rav Huna stated, “My father ruled in the name of Rav that the squatter does not have to pay rent.”



TEXT 10

Right to Refuse

Tosafot, Bava Batra 12b

הָא דְּכּוֹפִין עַל מִדַּת סְדוֹם בְּזָה נִהְיָה וְזָה לֹא חָסֵר,
הֵינּוּ בְּשִׁכְבָּר דָּר בְּחֶצֶר חֲבֵרוֹ, שְׂאִינוּ מַעֲלָה לוֹ שָׂכָר.
אֲבָל הָא פְּשִׁיטָא שְׂיָכוֹל לְמַחוּת בּוֹ שְׂלֹא יִכְנָס לְדוֹר בְּבֵיתוֹ.

We only compel the property owner not to conduct himself like the inhabitants of Sodom regarding the past: the squatter, who resided on his property without paying rent, is not compelled to pay him rent for the past.

At the same time, it is clear that the property owner has the right to protest the squatter's presence and need not permit the squatter to remain on his property.

TOSAFOT

A collection of French and German Talmudic commentaries written during the 12th and 13th centuries. Among the most famous authors of *Tosafot* are Rabbi Yaakov Tam, Rabbi Shimshon ben Avraham of Sens, and Rabbi Yitzchak (“the Ri”). Printed in almost all editions of the Talmud, these commentaries are fundamental to basic Talmudic study.



TEXT 11

Compromising Control

Rabbi Shimon Shkop, *Chidushei Rabbi Shimon Shkop*,
Bava Kama 19:3

וְנִרְאָה דְּכֻנְתָּם דְּלִכְתֵּחִילָה לִּיכָא כְּפִיָּה מְשֻׁם דָּאם
יְכַפּוּהוּ נוֹטְלִים מִמֶּנּוּ שְׁלִיטַת בֵּיתוֹ, וְעַל זֶה קִפְּדִי רוּב
אִינְשֵׁי, וְלֹא חָשִׁיב סְדוֹם בְּדִבְרֵי שְׁקִפְּדִי רוּב אִינְשֵׁי.
וְאִם כָּבֵר דֵּר בּוֹ, הֲרִי כַּפּוּהוּ בְּאוֹפֶן שְׁלֹא יִהְיֶה
נֶעֱדָר שְׁלִיטָתוֹ, דְּכָל זְמַן שִׁירְצָה יֵצֵא מִבֵּיתוֹ.

In my opinion, the reason *Tosafot* rules that the property owner cannot be actively compelled to allow a squatter on his property is because compulsion in such an instance would be a forcible negation of the property owner's control over his own property. Most people would object to this. The failure of an individual to consent to something that most people would object to cannot be considered Sodom-like conduct.

However, the squatter's presence on the property without the owner's knowledge doesn't negate the owner's control of the property because the owner retains the right to evict the squatter at any time.

RABBI SHIMON SHKOP
1860–1939

Talmudic scholar. Born in Turets (modern-day Belarus), Rabbi Shkop studied in the yeshiva of Volozhin where he was a close student of the renowned Rabbi Chayim Soloveitchik. He taught at the yeshiva in Telz before being appointed to head the yeshiva in Grodno. The author of *Shaarei Yosher* and other works of Talmudic scholarship, Rabbi Shkop is known for his distinctive method of analysis, focusing on the intellectual and philosophical principles by which the law is established.



QUESTION

How might Jewish law adjudicate Case Studies C and D?

THERE'S MORE...

For an additional example of a law based on the principle of “doing what is right and good,” see Appendix B (p. 31).



EINE STREITFRAGE AUS DEM TALMUD—A CONTROVERSY IN THE TALMUD

Carl Schleicher, oil on panel, 19th century, Germany

III. RECOMMENDED CONDUCT

While Jewish law will not compel an individual to suffer a loss in order to allow benefit to a second party, it does delineate guidelines for circumstances under which such conduct is expected on an ethical basis. The following case from the Talmud illustrates this moral expectation.



TEXT 12

Ways of the Righteous

Talmud, Bava Metzi'a 83a

רַבָּה בַּר בַּר חָנָן תִּבְרוּ לִיה הִנְהוּ שְׁקוּלָאִי
חֲבִיתָא דְחִמְרָא, שְׁקַל לְגְלִמְיִיהוּ.
אָתוּ אָמְרוּ לָרַב, אָמַר לִיה, הֵב לָהּ גְלִמְיִיהוּ.
אָמַר לִיה, דִּינָא הָכִי?
אָמַר לִיה אִין, לְמַעַן תִּלְוּ בְּדֶרֶךְ טוֹבִים (מִשְׁלִי ב, כ).
יְהִיב לָהּ גְלִמְיִיהוּ.
אָמְרוּ לִיה, עָנִי אֲנִי וְטָרְחִינָן כּוֹלָה יוֹמָא וְכַפִּינָן וְלִית לָן מִיָּד.
אָמַר לִיה, זִיל הֵב אֲגָרִיִּיהוּ.
אָמַר לִיה, דִּינָא הָכִי?
אָמַר לִיה אִין, וְאַרְחוֹת צְדִיקִים תִּשְׁמֹר (מִשְׁלִי ב, כ).

Rabah bar bar Chanan's barrel of wine was negligently broken by the porters he hired to transport it. Rabah seized the porters' cloaks as payment for the damage.

The porters complained to Rav, who instructed Rabah, “Give them back their cloaks.”

Rabah asked, “Is that the law?”

Rav replied, “Yes—as stated in the verse, ‘In order that you follow the path of the good people.’” (PROVERBS 2:20)

Rabah returned the porters their cloaks.

The porters complained further to Rav, “We are poor and we labored all day. Now we are hungry and have nothing to eat.”

Rav told Rabah, “Pay them their wages.”

Rabah asked, “Is that the law?”

Rav responded, “Yes—as stated in the verse, ‘And observe the ways of the righteous’” (PROVERBS 2:20).




THERE’S MORE...

For a more detailed analysis of this Talmudic episode and its implications, see the Case Analysis on page 34.



FIGURE 1.2

The Three Degrees of “Doing What Is Right and Good” in Jewish Law

-
- A.  Obligations specified by the Torah’s explicit commandments, such as those detailed in Figure 1.1. These laws are obligatory for everyone.
-
- B.  Doing the right thing in favor of a fellow when no personal expense is incurred. Such conduct was made legally binding by rabbinic law.
-
- C.  Doing the right thing in favor of a fellow despite personal expense or loss. Such conduct is not legally obligatory, but is nevertheless encouraged.
-



Cover artwork to the six chapters of *Ethics of the Fathers* included in a late 15th-century manuscript of a Sefardic prayer book. (Library of the JTS, New York [MS 8235])

**EXERCISE 1.2**

We identified three degrees of expression of the basic Jewish principle of doing what is “right and good.”

Identify the areas in your life in which you might better apply each of these degrees.

a

b

c

d



**ELIEZER AND REBECCA
AT THE WELL**

Illustration from *Dore's English Bible*, 1866. In this story from Genesis, Eliezer experiences Rebecca's great kindness to himself and his animals after a long journey.

KEY POINTS

- 1 All legal systems are shaped by their underlying values, but this is especially true of Jewish law.
- 2 While secular law views its purpose as maintaining social order by protecting individual rights, Jewish law sees its purpose as shaping society by guiding individuals to do what is right and upstanding in G-d's eyes.
- 3 Jewish law forbids spiteful conduct. "Spite fences" are forbidden, and people can be compelled to allow changes to their property that benefit others and come at no personal cost.
- 4 Certain unauthorized uses of other people's property that cause no harm to the owners are permitted by Jewish law. However, the owner generally retains the right to object.
- 5 When doing the right thing in favor of a fellow entails a degree of personal expense or loss, Jewish law declines to mandate it, but nevertheless encourages people to adopt this praiseworthy approach.

APPENDIX A



TEXT 13

Mill Rental

Talmud, Ketubot 103a

ההוא גברא דאוגר ליה ריחיא לחבריה
לטהינה. לסוף איעתר זבין ריחיא וחמר.

אמר ליה, עד האידנא הוה טחיננא
גבה, השתא הב לי אגרא.

אמר ליה, מיטחן טחיננא לך . . .

ולא אמרן אלא דלית ליה טחינא לריחיא.

אבל אית ליה טחינא לריחיא כגון זו,
כופין אותו על מדת סדום.

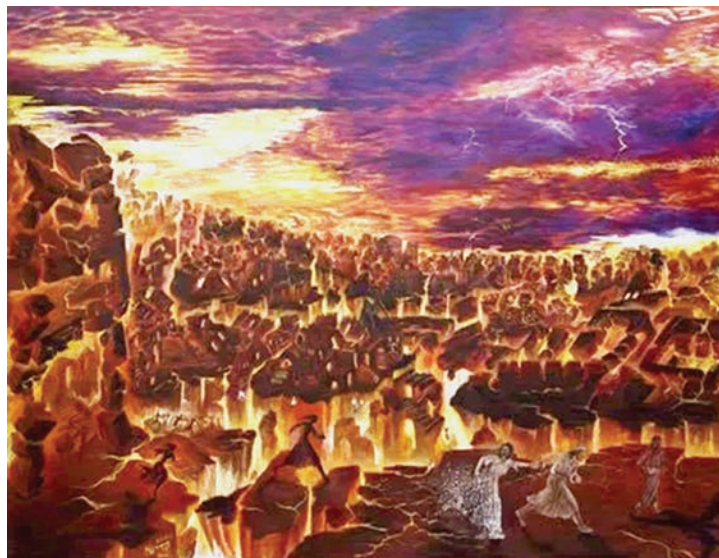
A man once rented his mill to his fellow in exchange for milling services [whereby the renter would pay for the rental by grinding the owner's grain upon demand]. Later, the mill owner became rich. He purchased another mill and a donkey, and no longer required the renter's grinding services.

The mill owner said to the renter, "Until now you milled my grain as rent payment for the mill. Now, since I no longer require this service, give me cash payments for the millstone."

The renter replied, “I will grind for you because that is what I agreed to. I never agreed to pay cash.” . . .

The renter’s response is justified if there isn’t enough local demand for grinding services to operate the mill full-time, and he would use the slack time to grind the owner’s grain and thereby pay his rent. Under such circumstances, switching to cash payment would cause the renter an actual loss.

However, if there is sufficient local demand for grinding services to operate the mill full-time, and instead of grinding the owner’s grain the renter can grind for other people for a fee, thereby earning the money needed to pay for the rental, he is compelled by law not to act like the inhabitants of Sodom and pay his rental fee in cash.



SODOM AND GOMORAH
Natalia Kadish, colored pencil
on dark mat board, 2011

APPENDIX B



TEXT 14

Neighbor's Rights

Maimonides, *Mishneh Torah*, Laws of Neighbors 12:5

המוכר קרקע שלו לאחר, יש לחברו שהוא בצד
המצר שלו לתן דמים ללוקח ולסלק אותו.
ודבר זה משום שנאמר ועשית הישר והטוב (דברים ו, יח).
אמרו חכמים, הואיל והמכר אחד הוא טוב וישר
הוא שיקנה מקום זה בן המצר יותר מן הרחוק.

If someone sells property to someone other than
the neighbor who owns the adjacent property,
the neighbor has the right to reimburse the
buyer for the purchase and evict him. . . .

This law is based on the verse, “Do what is
right and good” (DEUTERONOMY 6:18).
The sages explained that since the sale price
is the same, it is “right and good” that the
property should be acquired by a neighbor
rather than by a distant person.

Perspectives on the Functions of Law

U.S. DECLARATION OF INDEPENDENCE

July 4, 1776

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed . . .

JOHN LOCKE

England, 1690

 *Second Treatise of Civil Government*, Chapter XI, "Of the Extent of the Legislative Power"

The end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, a liberty for every man to do what he lists: (for who could be free, when every other man's humour might domineer over him?) but a liberty to dispose and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

THOMAS HOBBES

England, 1651

 *The Leviathan*, Chapter XIII

Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is a war of every man against every man. . . .

Where every man is enemy to every man, the same results occur in the time when men live without other security than what their own strength and their own invention shall furnish them with. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious [large or spacious] building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short. . . .

It may be perceived what manner of life there would be, where there is no common power to fear, by the manner of life which men that have formerly lived under a peaceful government use to degenerate into a civil war.

RABBI YITZCHAK ARAMEH

 *Akeidat Yitzchak, Shaar 46*

Spain, second half of fifteenth century

The divine interpersonal laws are unique. Only G-d, the all-knowing Creator of the world, can perceive the real nature of people and their possessions and establish a true system of justice, as the verse says, “He Who forms the hearts of all, Who understands everything they do” (Psalms 33:15).

The prophet says, “You are great in counsel and mighty in carrying it out, for Your eyes are open to the ways of all people, to give each person in accordance with their ways and in accordance with the fruit of their deeds” (Jeremiah 32:19). Only G-d, who is “great in counsel and mighty in carrying it out,” and who created the world and all that it contains with this power, can establish a system that properly “gives each person in accordance with their ways” and judges them according to their true nature. . . .

The Torah’s interpersonal laws naturally generate the benefit of guiding people’s impulses and correcting their character. This is in addition to establishing and maintaining a more sound societal order than can be produced by any human system of law.

RABBI NATAN LEVIN

 *Beit Yitzchak, Choshen Mishpat, Bepetach Habayit*

Poland, 1906

The interpersonal laws commanded by the Torah are filled with the spirit of holiness because they were established and commanded by G-d. Secular legal systems attend to regulating society. The Jewish system does likewise in an exceptionally advanced manner, but it also possesses a refined spirit of holiness that uplifts and purifies those who observe it. . . .

For this reason, the Torah’s interpersonal laws begin with the commandment to honor one’s parents, establishing the proper relationship between parents and their children. This commandment serves as a foundation for all the subsequent laws concerning societal order; it is a cornerstone of this great edifice. . . .

Secular legal systems aim to resolve conflict. They regulate conduct in work and business transactions based on principles of justice, with the purpose of removing wrongdoing and offense.

The Torah laws similarly resolve disputes and straighten crooked paths, but they simultaneously plant seeds of peace to draw people together and uproot the causes of conflicts and quarrels. Therefore, Jewish courts are commanded to pursue settlements of compromise between disputants. These efforts are commanded by the verse, “Render true and peaceful judgment in your courts (Zechariah 8:16)” —for, as our sages explain, “peaceful judgment” refers to compromise settlements (Sanhedrin 6b).

Case Analysis

The case from the Talmud cited in Text 12 appears here with explanation and analysis culled from the classic Talmudic commentaries and Halachic works.

❶ The Talmud presents a case in which a wine barrel was broken as a result of the porters' negligence. An example of such negligence would be if they exercised insufficient caution that led to them stumbling despite walking on level ground. Or, alternatively, if they employed an unsuitable method of carrying the barrel.

Rashi, ad loc.

Since the accident occurred as result of the porters' negligence, they were legally obligated to pay compensation for the damages and were not entitled to payment for the job they botched. But had the porters not been negligent, they would not have been liable to pay for the damages.

Maharsha, ad loc.

❷ Jewish law permits individuals to exercise self-help for the sake of recovering their money or property. However, although this passage seemingly justifies a creditor seizing any property belonging to the debtor in order to recover his overdue debt, the accepted law restricts creditors to the seizure of actual items that are owed to them, but nothing else.

Shulchan Aruch Harav, Choshen Mishpat, Laws of Stolen Property 27-28

❸ On the weight of Rav's decisions that obligated Rabah to release the porters' cloaks and even pay

them for their work, certain Halachic authorities conclude that a Jewish court has a similar capacity to compel individuals to step beyond the strict letter of the law when the court deems such action appropriate. An example of this would be in the case of a wealthy individual for whom the expense could be accurately considered relatively minimal.

Mordechai, Bava Metzi'a 2:257

However, other Halachic authorities reject the premise that a Jewish court can legally compel an individual to act beyond the letter of the law. Their reading of the Talmud's case is that an individual may be instructed and strongly encouraged to act beyond the letter of the law—but not legally compelled to do so. This opinion is accepted as definitive.

Shulchan Aruch, Choshen Mishpat 12:2

❹ Rav employed a quote from Proverbs to justify his directives to Rabah. However, elsewhere the Talmud derives the virtue of acting beyond the strict letter of the law from an

Talmud, Bava Metzi'a 83a

Rabah the grandson of Chanan once hired porters to transport his barrel of wine, but they broke it in transit. ❶ He seized the porters' cloaks as payment for the damage. ❷

The porters complained to Rav, who instructed Rabah, "Give them back their cloaks."

Rabah asked, "But is that the law?"

Rav replied, "Yes ❸—as stated in the verse, 'in order that you follow the path of the good people' (Proverbs 2:20)."

Rabah returned the cloaks to the porters.

The porters complained further to Rav, "We are poor and we labored all day. Now we are hungry and have nothing to eat."

Rav told Rabah, "Pay them their wages."

Rabah asked, "But is that the law?"

Rav responded, "Yes—as stated in the verse, 'and observe the ways of the righteous' (Proverbs 2:20)."

❹ Rav employed a quote from Proverbs to justify his directives to Rabah. However, elsewhere the Talmud derives the virtue of acting beyond the strict letter of the law from an

alternative verse: “Inform them about the way they should follow and the deeds they should do” (Exodus 18:20). The Talmud explains that the words “they should do” refer to going beyond the letter of the law (Bava Metzi’a 30b).

Tosafot observes that an examination of various Talmudic discussions on the topic reveals the deliberate use of a varied pool of scriptural sources to establish the value of stepping beyond the letter of the law. Tosafot views these nuances as indicative of a hierarchy within the virtue of acting beyond the letter of the law. The hierarchy starts with a category close to the baseline law and progresses with categories that move gradually further beyond the letter of the law. As a rule, the closer a given act is to the actual law, the greater the moral imperative to adopt its practice.

The most elementary degree of acting beyond the letter of the law occurs when an individual has a specific personal exemption from a general principle of law. In such a case, the virtue of acting beyond the letter of the law calls on the exempted individual not to make use of the dispensation. An example: Respected elderly individuals are not obligated by Jewish law to proactively trouble themselves to retrieve a lost item for the sake of returning it to its owner. In such a

case, the virtue of acting beyond the letter of the law encourages the respected elder to nevertheless act in accordance with the legal standard required of the average person.

Progressing further, a second category includes actions from which all people are equally exempt, but that would not result in the individual incurring any actual financial loss. For example: a situation in which an individual encounters a lost object and the particular circumstances are such that Jewish law frees all individuals equally from having to return the item to its owner. Considering that returning the item does not entail any financial loss, acting beyond the letter of the law would involve returning the item despite the absence of a legal obligation.

A third degree of acting beyond the letter of the law includes cases in which the action results in financial loss. Our Talmudic case study is a prime example of this category. From a strictly legal perspective, Rabah was entitled to seize compensation from the porters for the financial loss they inflicted on him. He was certainly not obligated to extend money to pay the porters for their botched job. Nevertheless, Rabah was urged to go far beyond the letter of the law and incur the financial

expenses of relinquishing his compensation and providing the withheld payments.

Tosafot, Bava Metzi’a 24b

5 Rabbi Eliyahu of Vilna notes that Rav used two different phrases from the same verse in response to the two questions raised by the case. In response to the question of forgiving compensation for the damage caused by the negligent porters, Rav cited the words “follow the path of the good people.” By contrast, in response to the question of paying the workers for the botched job, he cited the phrase, “observe the ways of the righteous” (from the continuation of the same verse).

Adding to the categories of “beyond the letter of the law” conduct developed by *Tosafot*, Rabbi Eliyahu explains that Rav presented another two distinct levels of exemplary conduct. Forgiving compensation one is legally entitled to receive, Rabbi Eliyahu explains, is the “good” course of action, whereas going even further and extending money not owed in the first place (i.e., paying the porters for their failed job) is the “righteous” course of action.

Rabbi Eliyahu of Vilna, Proverbs 2:20