

NCSY'S TORAH IN OUR TIMES PRESENTS:

LAW



**Jewish Legal values
in the modern world.**

TOPICS IN THIS MODULE...

CAN YOU TAKE THE LAW INTO YOUR OWN HANDS? ♦ DEFENDING A GUILTY PARTY ♦ INHERITANCE ♦ WHEN IS BUSINESS COMPETITION ETHICAL? ♦ DIVORCE ♦ AGUNOT IN TODAY'S TIMES ♦ BEIT DIN VS SUPREME COURT: WHO SHOULD YOU GO TO? WHO SHOULD YOU LISTEN TO? ♦ IS SMOKING WEED AGAINST HALACHA?

Unbeknownst to many Jews today, Jewish Law is one of the best developed, oldest, and most extensively documented legal systems in the world. Indeed, a quarter of the Shulchan Aruch (The authoritative Code of Jewish Law) is dedicated to questions and cases of damages, lending, borrowing, theft, court proceedings and liability. At its core is the understanding that all of our worldly possessions are decided by God, and it is through His Laws that we should govern our attitude and behaviors in the legal sphere.

Likewise, the Talmud has extensive discussions about how to judge capital cases, issue punishments and fines and establish justice. These laws and the philosophies behind them are rooted in the understanding that a moral and just society cannot operate independent of a God given code of Law.

Historically, the study of Talmudic Litigation has taken precedence of the study of Jewish Rituals for generations. That is to say, in Yeshivot all over the world, scholars spend far more time debating the laws of damages, borrowing, lending, divorce, marriage, inheritance and litigation than they do for kashrut and Shabbat.

This is not only because of their wide spread application, but indeed, the process of involving oneself in understanding the way that God wants us to live practically, in day to day life, is the highest honor for any Jew.

It goes without saying, then, that the legal profession has always been in at the forefront of Jewish life.

It is important, however, to point out that Jewish Law is not always the same as secular law, and that even when a non-Jewish court will rule in accordance with Halacha, a Jew still needs to bring his or her case to Jewish court (בית דין), with the understanding that even the most mundane legal case is another opportunity to conduct our lives with G-d in mind.

In this module, we will examine ways that the Torah's legal ethics influence the life of the modern day lawyer as well investigating the times when Jewish values and law collide.



TALMUD BAVLI (BABA KAMA 113A)

Jews need to pay taxes to the king as long as they are fair. (That is to say that there is no obligation to pay taxed that just designed to enrich the king.) This is based on the principle that “That law of the king is law – דינא דמלכותא דינא”

TWO PARADIGMS FOR UNDERSTANDING THE ABOVE LAW

RAN (NEDARIM 28A)

The above only applies outside of Israel. In the Land of Israel, nobody has the right to charge a Jew taxes, since Israel belongs to each Jew.

RAMBAM

The government in any country can charge taxes to the citizens of that country, this is equally true in Israel as well as anywhere else.

THE SOURCES FOR THE ABOVE OPINIONS:

RAN (NEDARIM 28A)

The Torah tells us that we are obligated to pay for usage of someone else's property. Outside of the Land of Israel, Jews are residents on another nation's land, and thus we are obligated to pay taxes. This is not the case in Israel.

RAMBAM

Tanach clearly describes the rights of a king. These include the right to levy taxes, enlist people in the army and wage wars. This is true regardless of where one lives, or whether it is their national home land.

WHICH OPINION DO WE FOLLOW?

The Shulchan Aruch (Definitive Code of Jewish Law) states clearly that Jews need to pay taxes in Israel as well. That is to say, that we hold of Rambam's opinion and not the Ran's. One may argue, that being that we don't have a king in the USA, we are not obligated to pay taxes under Jewish Law!

THE CONCEPT OF PARTNERSHIP

Modern Poskim (Halachik Deciders) point out that living in a democracy is a different legal entity entirely: It is a partnership. Before democracies, countries did not take responsibly for roads, water purification, mail, garbage collection, and other municipal duties. In a democracy, the country is run by it's own appointed representatives, and benefitting from everyone else without contributing is outright theft!



PAYING TAXES: DOES GOD CARE?



The Facts

Paying taxes is a requirement in the USA which every person is obligated in some way or another, and the laws governing the payment of these taxes of often complicated.

The question arises, for Jews, is paying taxes a legal requirement alone? Or perhaps is accurate reporting and paying a religious obligation as well?

To generalize the question, does the Torah care about American law? Can you still be a good Jew and cheat on taxes?

ARE YOU EVER ALLOWED TO TELL A LIE?



The Facts

The legal profession is often notorious for its practitioners' propensity towards lying. While lying might not be a good thing, is it ever permitted? Are there times that a person can lie? Are there times that a person should lie? With regard to the legal profession, can one blur the line between fact and fiction in order to win a case?

TANACH

Shmot: (Perek 23, Pasuk 7)

(Context: When relating the laws of judges in the Jewish legal system, the Torah explains:)

מִדְּבַר-שָׁקֶר, תִּרְחֹק

Stay far away from falsehood.

TALMUD

What do we say when dancing before a bride? Shamai says we say it how it is (if she is beautiful, we say so, if not, we don't.) Hillel says we say "she is fair and charming."

RITVAH

Hillel believes that the prohibition against lying is relaxed in order to keep the peace. (In this case, not insulting a bride.)

This is learned from a story in the Torah:

When Sarah was told that she would have a child a age 90, she laughed, and said it was impossible being that her husband was too old. Nevertheless, when God related this to Avraham, He quoted Sarah as saying she was too old. From this we learn that it is permissible to lie for the sake of peace.

MASECHTOS KETANOS

Hillel believes that there is no prohibition against lying outside of court (perhaps only for judges!)

Thus there is no problem with lying as long as it is not within the context of legal proceeding.

SEFER YERAIMI

Anytime a person lies in order to unlawfully extract money from another person, it is forbidden.

But simply telling an insignificant falsehood is certainly permitted.

Telling
the truth VS
Keeping the
peace

SEFER CHAREIDIM

Even when it is not forbidden, one should not teach themselves to lie.

HALACHA TODAY

Rabbi David Tzvi Hoffman would instruct people to avoid lying outright, even when they were permitted to do so. That it to say, we should never allow ourselves to fully distort the truth.



It is plainly forbidden for a lawyer to lie in court in order to win money or property that does not belong to his/her client. However, it may be permissible to lie in order to save one's client embarrassment, since that could be constituted as keeping the peace.

One should, however, always be mindful not to create a Chillul Hashem – a desecration of God's name by allowing people to think that Jews are dishonest.



The Facts

It is forbidden for a Jew to steal any property belonging to another person. The notion of theft, however, is not limited to the conventional notion of stealing (simply taking something that doesn't belong to you), but also includes using another person's property without their permission (borrowing without consent.)

The question arises: What is the definition of property? Can copy another person's mp3? According to Halacha, is one permitted to download music, movies or software that one did not purchase?

TANACH

Bereishit: (Perek 14, Pasuk 19)

(Context: Malkitzedek, King of Shalem is blessing Avraham...)

וַיְבָרֶכְהוּ, וַיֹּאמֶר: בָּרוּךְ אַבְרָם לֵאלֹהֵינוּ, קִנְיָ שָׁמַיִם וָאָרֶץ.

And he blessed him and said: "Blessed is Avram to God, the owner of heaven and earth.

RASHI

From where do we know that God is the owner of heaven and earth? From the fact the He created the world. When one creates something, it is his.

SHOEL U'MEISHIV

(R' Yosef Shaul Natansohn, (1800's). The Rabbi of Lvov. Wrote many respected halachik responsa)

As the above verse indicates, when a person creates something, that entity belongs to him. This fact is simple and obvious, and even non-Jewish law has included the notion of paying royalties to an inventor.

CHASAM SOFER

From the fact that in approbations for all Jewish books, there is a copyright notice (usually stating that one is forbidden from copying this work for a period of 25 years) we understand that there is no objective ownership on intellectual property. Indeed, once those 25 years have passed, one is free to copy the books.

RAMBAM (SUPPORT FOR THE CHASAM SOFER)

If one steals a shofar, and uses it to fulfill the mitzva of blowing shofar on Rosh HaShana, one has fulfilled their obligation. (This is despite the general principle that one cannot fulfill a mitzva by doing an aveira.) The reason for this is because the mitzva of shofar requires listening to a sound, and a sound cannot be stolen.

From here one may assume that there is nothing wrong with infringing on another's intellectual property, but there are still three issues:

COMPETITION השגת גבול	THE LAW OF THE LAND דינא דמלכותא דינא	MONETARY VALUE שווה כסף
It is against halacha for a person to go into direct competition with another person. For example, if there is a pizza place in town, one is not allowed to open up another pizza place that will directly negatively affect the business of the first one. So too, one cannot compete with the artists/producers and affect their livelihood.	As Jews, the laws of the place in which we live are binding upon us in monetary matter. To that end, if the country in which one lives rules that intellectual property be treated as property with regards to stealing (which is certainly the case the USA), then as Jews, we are obligated to follow these laws.	Rabbi Moshe Feinstein notes that intellectual property has monetary value, in that it is sold, regardless of the medium on which it is distributed (CD, DVD, iPod etc...) Since this is the case, taking this intangible property constitutes theft and renders the act forbidden.

TANACH

Shmot: (Perek 20, Pasuk 6)

(Context: The Ten Commandments)

לֹא תִשָּׂא אֶת־שֵׁם־יְהוָה אֱלֹהֶיךָ.
לְשׁוֹן

Do not take the name of Hashem, your God, in vain.

Devarim: (Perek 10, Pasuk 20)

(Context: Laws)

אֶת יְהוָה אֱלֹהֶיךָ תִירָא אֹתוֹ תַעֲבֹד
וְבוֹ תִדְבָּק וּבְשֵׁמוֹ תִשָּׁבַע.

You should fear Hashem, your God. You should serve Him, cleave to Him and swear in His Name.

RAMBAM

From the above verses, there is an איסור (prohibition) to swear falsely in the Name of God. But there is also a חיוב (obligation) to swear in God's Name when one has need to swear.

RAMBAN

There is no חיוב to swear in God's name, but there is a רשות (permission) to do so. Thus one may choose to do so, but does not need to.

SHULCHAN ARUCH

One should avoid swearing at all costs, even when one is telling the truth. The words we say in the context of an oath are binding and significant and if one did (for some reason) take an oath, they should be exceedingly careful to ensure that they fulfill it and make sure it is true.

What is considered an oath?

1. Any word (in any language) that means the same as swearing. OR
2. Any time one mentions the Name of God (or any nick-names).

TZITZ ELIEZER

Rabbi Eliezer Yehuda Waldenberg, (1915–2006). One of the foremost Halachik authorities of our generation. Rav of the Shaarei Tzedek hospital in Yerushalaim.

In American courts, one is allowed by law to use the words "I affirm." Since one is specifically choosing to use the word "affirm" and not the regular word "swear" it is permissible. However, adding "so help me God" would constitute an oath, and should be avoided.

RAV OVADYA YOSEF

(Born 1920) Previously the Sefardi Cheif Rabbi of Israel and primary authority for Sefaradi Jews. Regarded widely as one of the most knowledgeable Jews alive.

Although one is not allowed to assist a Jew in sinning, it is permissible to assist a Jew when it is מנהג (custom) and not an איסור (prohibition.)

Thus, a lawyer is permitted to bring a witness to court and make them swear. But if he knows that the witness will lie, he is forbidden to do so.



SWEARING IN A COURT OF LAW



The Facts

In American court, one is often asked to swear in order to validate one's statements. Is this form of swearing considered swearing according to halacha? Furthermore, when is one permitted to swear?

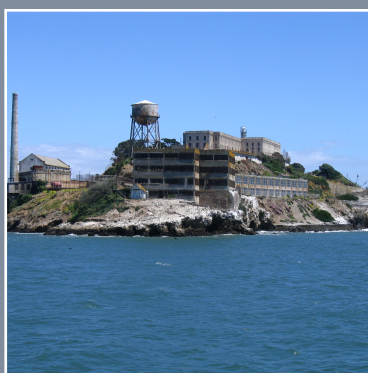
In the cases that one is not allowed to swear, is a Jewish lawyer allowed to bring another Jew to court and make them swear?

DEFENDING A GUILTY PARTY



The Facts

From time to time a Jewish lawyer may be asked to defend a client that appears to be guilty. In which cases is one allowed to defend such a party, and in which cases is this against halacha?



TALMUD

It was rumored that certain Galileans had killed a person. They came to Rabbi Tarfon and said “hide us.” Rabbi Tarfon replied, “What should I do? If I do not hide you, you will be seen. (and captured) But then again, how can I hide you? The Sages have said that rumors, even though they may not be accepted, nevertheless, should not be dismissed. Go and hide yourselves.”

RASHI

Defending a guilty party is prohibited, and thus, Rabbi Tarfon did not want to help them for fear that he was assisting criminals in escaping justice.

From this, one would conclude that it is forbidden to serve as a defense attorney.

TOSFOS AND ROSH

Helping them is technically permitted (although not obligatory). Rabbi Tarfon, however, did not wish to be caught harboring criminals for fear that he too would be accused.

It seems, that if the government allows one to help a guilty party, it would indeed be permitted.

MAHARSHAL

Rabbi Shlomo Luria (1510 – 1573). Author of the Yam Shel Shlomo. Major source of Ashkenazi Tradition, Rav of Brisk and Head of the Lublin Yeshiva.

One can only follow the opinion of Tosfos and Rosh when one is in doubt (as Rabbi Tarfon was). However, if one knows with certainty that the client is guilty, it is forbidden to assist them even if the government allows it.

HALACHA TODAY

Usually, a client does not admit to having committed a crime. In such a situation, there is no reason for a lawyer to assume guilt, indeed, it is in his or her best interests to believe that the client is innocent.

But even in a case that guilt is known with certainty, one can still plead to ensure that the client is not punished more severely than necessary.

LIFNEI IVER



Additionally, there is a prohibition in the Torah against assisting a person in committing a crime.

This prohibition is phrased in the Torah as “do not place a stumbling block before a blind person.” Meaning, that one should be careful not to be the cause of another person’s downfall with regards to keeping Halacha. This applies to everyone, and certainly to lawyers as well.