THE RULE OF LAW IN THE JEWISH SOURCES

NAHUM RAKOVER

THE RULE OF LAW IN THE JEWISH SOURCES

The Library of Jewish Law

The Library of Jewish Law

Ministry of Justice

The Jewish Legal Heritage Society

Foundation for the Advancement

of Jewish Law

0

The Library of Jewish Law
The Jewish Legal Heritage Society
P.O.Box 7483 Jerusalem 91074
1989

9

CONTENTS

Preface

PART ONE				
LAW AS A UNIVERSAL VALUE				
	Law and the Noahides			
Chapter 1	Introduction	17		
Chapter 2	Sources of the Noahide Laws	19		
Chapter 3	Noahide Law as Natural Law and Equity	25		
Chapter 4	The Law of the State is the Law	30		
Chapter 5	The Content of 'law'			
	a. Identity with Jewish Law	34		
	b. Explicit differences	41		
Chapter 6	Jurisdiction over Jews	47		
Chapter 7	Jurisdiction over non-Jews	49		
Chapter 8	Non-Jewish litigants in Jewish courts	53		
Chapter 9	Conclusion	56		
	PART TWO			
	THE RULE OF LAW			
	The Law of the State is the Law			
Chapter 1	Introduction	63		
Chapter 2	The Law of the State is the Law	65		
Chapter 3	The Law of the State and the Law			
	of the King	66		
Chapter 4	Form of authority	68		
Chapter 5	Recognised Authority	69		
•	Deviation from government authority	70		
Chapter 7	Discrimination	7 1		
Chapter 8	Group penalties .	72		
Chapter 9	Religion and independence of Jewish Law	73		
Chapter 10	Conclusion	75		

Contents

PART THREE

ETHICAL STANDARDS FOR PUBLIC SERVANTS

Chapter 1	Introduction	81
Chapter 2	Status of communal leader	81
Chapter 3	Service but not Domination	83
_	Equality under the law	84
	Setting an example	85
	The Rule of law	86
	Duty to attend meetings	86
	Propriety	87
Chapter 4	Confidentiality	87
Chapter 5	Answerability	89
Chapter 6	Blamelessness	91
Chapter 7	Conflict of interest	94
Chapter 8	Disrepute ('A Basket of Reptiles')	95
Chapter 9	Public servants as judges	96
Chapter 10	Conclusion	99
Appendix	Law Concerning Employment by	
	Members of the Knesset	100
	PART FOUR	
VIOL	ENCE IN THE JUDICIAL PROCESS	
Chapter 1	Introduction	107
Chapter 2	Non-compliance with summons to court	
-	a. Use of non-Jewish courts	109
	b. Denial of right to sue	111
Chapter 3	Violence towards judge	
	a. Fearlessness	112
	b. Change of venue	113
Chapter 4	Violence towards witnesses	
	a. Shifting burden of proof	115
	b. Swearing witnesses	124
	c. Taking evidence in the absence of the	
	violent party	125
	d. Evidence of quarrel	134
Chapter 5	Conclusion	136

Contents

PART FIVE

STATE WITNESS

Chapter 1	Introduction	141
Chapter 2	The prescribed Law	
	a. Testimony by a criminal	143
	b. Testimony against accomplice	144
	c. Testimony of state witness	145
Chapter 3	Emergency exceptions in penal evidence	
_	a. The rule: judgment not on	
	conjectures	146
	b. Over-zealousness may lead to increased	i
	crime	148
	c. Authority of Court	148
	d. Authority of Public Leaders	
	1. The King	150
	2. Government of Israel	152
	3. Precedents from communal history	153
	e. Formal and substantive disqualification	
	of witnesses	154
Chapter 4	Immunity of witnesses	156
Chapter 5	Conclusion	158
	PART SIX	
	TESTIMONY UNDER OATH	
Chapter 1	Introduction	165
-	'The Oath of Testimony'	166
-	Warning of witnesses	
•	a. Contents of warning	169
	b. Occasion for warning	170
	c. Purpose of warning	171
	d. Testimony given without warning	174
Chapter 4	Oath for truthful testimony	
	a. Need for oath renders testimony	
	worthless	176
	b. Swearing of witness may lead	
	to false oath	180

Contents

Ban as alternative to swearing	180
a. Advantages	
 Avoiding divine punishment for 	
false oath	180
2. Impact of ban greater than oath	181
3. Restrictions relating to swearing	
avoided	182
b. Bases for ban during Geonic period	
and its subsequent crystallization	187
The custom of swearing witnesses	
in criminal cases	194
The custom of swearing witnesses	
to tell the truth	198
Disqualification of testimony not given	
under oath	202
Oath to fulfill Commandment	204
Avoiding oath	206
Conclusion	208
Abolition of swearing witnesses in Israel	209
INDEXES	
tter Index	215
Sources Index	
	 Avoiding divine punishment for false oath Impact of ban greater than oath Restrictions relating to swearing avoided Bases for ban during Geonic period and its subsequent crystallization The custom of swearing witnesses in criminal cases The custom of swearing witnesses to tell the truth Disqualification of testimony not given under oath Oath to fulfill Commandment Avoiding oath Conclusion Abolition of swearing witnesses in Israel INDEXES