

Universidad de Chile

Facultad de Derecho
Departamento de Ciencias del Derecho

INTRODUCCION DERECHO JUDAICO

Primer Semestre 2010

PROGRAMA

Preparado por el rabino Avi Horowitz

Objetivos Generales

Conocer diversas dimensiones de la jurisprudencia judaica desde la legislativa hasta la ejecutiva. Presentar el origen, significado y consecuencias de esta tradición jurídica, tanto escrita como oral, en la historia de su sistema judicial. Evaluar críticamente la relevancia y compatibilidad del derecho judaico con el mundo de hoy.

Conocer el origen y la centralidad del concepto veterotestamentario de justicia y reconocer su impacto en el entendimiento de lo jurídico en Occidente. Se presentan los mecanismos del ordenamiento judaico en términos de un análisis de casos extraídos desde el período del *Talmud* (c. 500 –1500 EC) hasta otros que han sido fallados por las autoridades rabínicas contemporáneas. Se examinará en particular la postura del derecho judaico frente a asuntos actualmente polémicos, tales como aborto, pena de muerte, encarcelación y divorcio.

Objetivos Específicos

- Conocer un resumen histórico del derecho judaico (la *Halaja*).
- Conocer la distinción entre la ley escrita y la ley oral.
- Conocer cómo de la ley divina se extraen normas prácticas de conducta en el judaísmo.
- Conocer la relación entre la ley religiosa y ley civil en el derecho judaico.
- Conocer la relación entre las leyes judías y la ley local.

Primera Unidad

La *Halajá*: presentación y análisis de la historia de la transmisión de la ley. La tradición escrita y la tradición oral desde el periodo bíblico (1300 A.E.C.) hasta el siglo XX. La producción jurídica judaica en la Edad Media. Comentarios a la ley. Compendios de casos resueltos según la *halajá*. Los códigos y el pensamiento de Maimónides.

Segunda Unidad

Necesidad y función de la tradición oral en el derecho judaico. Comparación del derecho judaico con otros sistemas legales. Presentación y análisis del pluralismo *halájico*. Teorías de la controversia y la tesis “Los pronunciamientos de ambos son las palabras del D’s Vivo” (*Talmud Bavli* Er. 13b)

Tercera Unidad

Presentación y análisis de la doctrina según la cual “Un sabio es mejor que un profeta” [*Talmud Bavli* B.B. 15b]. La transición de la época profética a la época rabínica (450 A.E.C.): orígenes y principales consecuencias. La exposición de la *Torah*: métodos, problemas y elaboraciones conceptuales. La distinción entre ley sináutica y ley rabínica. Jurisprudencia basada en la ley escrita y su aplicación contemporánea a casos específicos.

Cuarta Unidad

Presentación, análisis y comparación de la resolución de casos según el derecho judaico y según el derecho civil. La ley como un reflejo de la moralidad. Elaboración del entendimiento de la *Halajá*. Límites de la jurisprudencia justificada por referencia a la voluntad de D’s. El poder de la corte y la realidad del pueblo.

Quinta Unidad

“La ley del gobierno es la ley” [*Talmud Bavli* Ned. – 28a]. Inclusión de la ley civil local en el ordenamiento judaico. Sistema institucional del derecho. Las implicaciones al principio de igualdad al frente de la ley y la separación entre el estado y la iglesia.

EVALUACIÓN

Habr  dos evaluaciones parciales durante el semestre, durante el horario de clases, los d as lunes, 10 de Abril y 15 de Mayo, cada una de las cuales representar  el 50% de la nota de presentaci n. El examen ser  el lunes, 26 de Junio.

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b. Primaria

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Birth Control in Jewish Law - Introduction
David Feldman

The Essence of Talmudic Law and Thought
Hoenig – Aronson 1993

From Text to Tradition – A History of Second temple and Rabbinic Judaism
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Rabbinical Authority and Personal Autonomy
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Mendelsohn – Sepher Hermon Press 1991

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RESUMEN HISTORICO DE LA HALAJA (DERECHO JUDAICO)

1 – El Periodo bíblico --- 1312 a.e.c - ca. 450 a.e.c.

- Representa la fecha de la entrega de la Torah por Moisés hasta Ezra el escriba
- El periodo entre medio --- Yehoshua, los Jueces, los Reyes, y los Profetas

2 – El Periodo Talmudico --- Ca. 450 a.e.c – Ca. 550 e.c.

A) Pre – “Tanaitico” (“Tana” = Mentor) – Ca. 450 a.e.c. – Ca. 30 a.e.c.

- Hombres del Gran Asamblea (la época de transición – constituido de 120 sabios de la época anterior y de la nueva generación quien instituyeron varias cosas famosas; entre ellas las bendiciones y rezos formales, la fiesta de Purim, y la canonización de algunas partes de la Biblia Judía como lo tenemos hoy), Soferim (los “Escribas”- colegas y sucesores de Ezra “el escriba”), Zugot (los “Pares” – había 5 desde 167 a.e.c. hasta el principio de la era común) representan la cadena entre el ultimo de los libros de la Biblia y el comienzo de la literatura talmúdica

B) “Tanaim” – Ca. 30 a.e.c. – Ca. 200 e.c. (cuando la Mishna fue redactado)

C) “Amoraim” – Ca. 200 e.c. – 450 e.c. (la creación del Talmud babilónico - el Talmud de Palestina Ca. 350 e.c.)

D) “Savoraim” – Ca. 450 – 550 (Sabios pos – Talmud quienes asumieron la responsabilidad de la redacción literaria del Talmud babilónico)

3 – El Periodo “Medieval” – Ca. 550 – 1800 e.c. – Comentarios, Códigos y “Respona”

A) “Geonim” de Babilonia – Ca. 550 – 1000

B) “Rishonim” – Pre 1000 – Ca.1450 - Autoridades tempranas medievales de “Ashkenaz (N. Francia y Alemania principalmente), Sefarad (España, y N. Africa), y de comunidades orientales

Comentarios:

- Rashi
- Tosafot

Códigos:

- Rif
- Rambam
- Rosh
- Tur

- C) Ajaronim: Autoridades subsecuentes de las tierras antes mencionadas hasta Ca. 1800. Obra legal importante – “Shuljan Aruj”

4 – El Periodo Moderno – 1800 hasta el presente

- A) Pérdida gradual de la autonomía jurídica de las comunidades judías especialmente en Ashkenaz, culminando en el holocausto europeo.
B) Emergencia de las dos comunidades principales
- EEUU – desarrollo moderno intenso de la ley y apelación voluntaria a las cortes improvisadas
 - Israel – legislación religiosa aplicada a la ley civil y la restauración limitada de la jurisdicción de las cortes rabínicas

5 – Antigüedad y Continuidad

A) El sistema legal lo mas antiguo (comparado con el Romano *Ab Urbi Condita* –*Siglo 8 a.e.c.*)

- La tradición oral conecta la divulgación de la Torah por Moisés a la formulación Mishnaica
- A pesar de la destrucción del estado (70 e.c.) seguían las enseñanzas religiosas y la tradición legal si bien mas limitada
- A pesar de los trastornos geográficos hasta el año 1000 e.c. siguió el contacto entre los centros de estudios del cercano oriente (Babilonia y Palestina) y las comunidades incipientes de N. África y Europa hasta la desaparición del primero.
- Continuidad histórico y su relación al concepto de “Iglesia y estado” – Caso de *Skornik vs. Skornik*

Fuentes de La Ley Judaica

- A) Fuentes Escritas
B) Fuentes Legales
C) Fuentes Históricas

A) Fuentes Literarias –

- La Torah
- Los Profetas y Las Escrituras (lit. general de esas épocas)
- La Mishna/Talmud (gemara)
- Literatura posTalmudica
 - Comentarios, comentarios creativos
 - “Preguntas y Respuestas” (responsa)
 - Códigos
 - Enciclopedias de Halaja

- Biografías
- Bibliografías y obras halajicas
- Léxicos y diccionarios

B) Fuentes Legales – Su autoridad – la “ley escrita”

- “Kabala” – Tradición estático y inmutable
- Midrash – Normas derivadas de la interpretación de la Torah escrita – “de la implícita a la explícita”
- “Gezeira y takana – Decreto y institución – actividad legislativa de autoridades halajicas competentes
- “Minhag” – Normas legales derivadas de costumbre
- “Ma’ase” Conducta de autoridades/sabios en casos concretos
- La Lógica – Normas derivadas DIRECTAMENTE de la lógica legal de los expertos

Categorías Legales

A) Ritual Vs. Legal (Civil)

- En común – Modos de interpretación, terminología, argumentación etc. y comparten principios legales
- En contraste – casos de “costumbre vence la ley”, estipulaciones, evidencia, ley del estado

B) Leyes y Moralidad

- Leyes impuestos vs. No impuestos
- Casos
- Conversión de imperativos morales en normas legales – caso de objeto perdido...”mas allá que el requerimiento de la ley”

C) Ley de Torah y ley Rabinica

- Determinación necesita analisis caso por caso
- Tienen los dos la misma fuerza legal
- Diferencias son; casos de duda, casos de indulgencia etc...

...The purpose of the law, as civilized society understands it, is to bring order into the lives and affairs of men, to guarantee -- to use a Mishnaic phrase -- that "men shall not swallow themselves alive" (Avot 3:2, cf. Psalms 124:3). Where order

exists in society, humankind can develop to the fullest extent its capacities for progress under freedom and liberty. A society governed by the law is therefore given a guarantee against anarchy, against chaos and disintegration.

Though this is the purpose of the law, the law itself can become cold and sometimes even cruel if it is designed only to meet the requisites of an ordered society. Indeed, there is law even among barbarians. The cruelty and tyranny of the dictator is also framed in the order of law. One is reminded of the words of the Psalmist who, in speaking of the tyrant, describes him as being one "who frames violence by statute" (Psalms 94:20).

The development of civilized law knows, therefore, also of the development of equity in the law. Equity has served, we might say, as a guardian over the law, seeking to keep it in line with ethical norms.

It has not been the purpose of the law, however, even when joined with equity, to develop the moral and ethical standards of society and of the individual. This has been the domain of philosophy and of religion. These values nurtured by philosophy, religion, and other kindred branches of ethical and moral teaching became the norms within which the law developed and fructified.

Talmudic jurisprudence is unique in that the very purpose of the law itself is the development of man's moral and ethical personality. The ambit of Talmudic law is a very wide one, indeed, the widest one can imagine, for its scope embraces every facet of human living. It is by no means limited to that body of legal matter encompassed by the term "law" as we know it in modern society, namely, that which concerns itself only with those affairs of man vis- a-vis his fellow man. Since its purpose is order in society, it deals with man as part of society, its ambit being the world of human relations. Man, the individual, per se is not the object of the law. Certainly the conscience of the individual is outside the scope of the typical legal system.

Not so with Talmudic jurisprudence. The very same law which deals with torts, bailments, contracts, and criminal offenses deals also with man's duties of prayer, with ritual and ceremonial areas, even with problems of faith in the Divine Creator. Just as the Rabbinic Court was bidden to enforce a contract, so was it bidden to enforce the observance of the building of the succah on the Feast of Tabernacles. Idolatry in Talmudic law is of the same degree as the criminal offense of murder, subject to the death penalty.

The gamut of the Beis Din HaGadol, the High Court, the supreme authority of the law, included such diverse matters as the case of the false prophet, the High Priest who had committed a capital offense, the decision to declare war, extending the boundaries of Jerusalem and of the Temple courts, appointing district courts, and decisions involving interpretation of the law. The law embraced all of life, public as well as private, individual as well as social in character.

The ultimate authority for Talmudic law is the Torah, the Five Books of Moses, containing the Commandments of the Lord revealed at Sinai, and thereafter through Moses. Since the ultimate authority of the law is the Commandment of God, there is no room left for man outside the framework of the law. All is open before Him "Who tests the hearts of men."

The law, therefore, in the Talmudic sense, is the revelation of the Divine Commandment, of the demands made upon man to raise himself above the level of the beast. It is the law which says to man: "See, I set before you life and good and

death and evil, and you shall choose life" (Deuteronomy 30:15-19). It is the law which posits the freedom of man to choose the path to nobility and human dignity, the freedom of the individual to determine and direct his destiny, that freedom which is the primary source and the ultimate goal of the sovereignty of people revolting against the yokes of all forms of tyranny. Maimonides terms this freedom "the pillar of the Law and the Commandment" (Laws of Teshuva 5:3). But yet the law, in stating this great human principle, bids and commands man as to the direction of his choice. Within this commandment, "You shall choose life," is contained the entire body of the law, embracing all which is life.

The law is so many times identified, in the language of the Torah, with righteousness -- "righteous statutes and judgments" (Deuteronomy 4:8) -- for its purpose is to make of man a righteous being, who has chosen freely to be governed by moral and ethical values. The basic premise of the law is the never-ceasing consciousness that one stands always in the presence of his Creator. In order to insure this goal, the law sees the necessity for a complete system regulating the conduct of man, not merely in dealing with his fellow man, but also in dealing with himself. For he who attempts to achieve moral and ethical perfection and integrity in himself will, of necessity, deal in kind with his fellow man. Society is molded of the individuals who build it. An ordered and disciplined personality in the individual guarantees a well-balanced and harmonious society.

How striking are the words of the Torah when commanding the judge to be completely impartial and objective, not to be influenced by the fear of men. Why? "For justice is of God" (Deuteronomy 4:8). The court is but the instrument of the will and commandment of He who created the judge, the plaintiff, and the defendant. How ennobling for all concerned to feel that they stand in the presence of God when seeking justice in the court of law!

The student of the Talmud is acquainted with the phrases "Rachmana amar, Rachmana kasav -- The Merciful One has said, the Merciful One has written" (Bava Kamma 5b). The law is an expression of Divine mercy evidenced in the desire, apparent in the commandment, to raise and elevate man to the level of that law designed for man. And often our opinion would dictate a more stringent liability, but "Rachmana chas alei, the Merciful One has eased the penalty" (Bava Kamma 15a). Laws in civil liabilities become lessons in Divine mercy. Is this not a unique approach to law?

That great pillar of Talmudic jurisprudence, Maimonides, created the greatest comprehensive codification of Talmudic law. It seems apparent that he considered his Code as an elaborate commentary upon the 613 commandments of the Torah. He first created his Book of Commandments (Sefer HaMitzvot), containing the cardinal principles in determining the essence of a commandment of the Torah, and enumerating the 613 commandments based upon these principles. He then proceeded to elaborate upon this work by codifying the entire body of Talmudic law. Every division in his Code, therefore, is introduced with an enumeration of the mitzvot, the commandments, dealt with in that division of the Code. This is indicative of the Talmudic approach to the law. The law is the commandment of God revealed in the Torah, developed and expostulated down through the ages. A discussion of the law in the Talmudic academies of learning is an attempt to understand the will of God in directing the conduct and affairs of man...

We find a most interesting and unique feature in Talmudic law. We read in the Talmud: Rabbah Bar Bar-Chana had a barrel of wine broken through the negligence

of laborers hired to transport the wine. Rabbah seized the laborers' cloaks as a lien for damages, something permissible by law. The laborers complained to the great master, Rav, who directed Rabbah to return the cloaks. Rabbah asked Rav: "Is this then the law?" And Rav answered: "Yes, for it is written, 'That you shall walk in the path of the virtuous'" (Psalms 2:20). Rabbah returned the cloaks.

The laborers then said to Rav: "We are poor, we have labored all day and we are hungry, but we have not the means to purchase food." Rav thereupon said to Rabbah: "Pay them their hire." Rabbah asked: "Is this the law?" And Rav answered: "Yes, for it is written, 'And the paths of the righteous shalt thou keep'" (Bava Metzia 83a).

The ruling of the court in this case was not prompted by the recognition of the equity and justice in the claim of the plaintiffs, for indeed, they had no claim at all. Rather, it was prompted by the realization that the ultimate purpose of the law is to develop a disciplined personality, fully imbued with personal morals and ethics. No doubt the ruling was delivered by Rav because the defendant was Rabbah Bar Bar-Chana, an individual who had proved himself worthy of higher moral demands and standards. The ruling of the court took into consideration the ethical norms of the individuals involved. This is in accordance with the general principle known as "going beyond the line of the law," which in this particular case was equated by Rav with "din" -- the line of the law itself.

It is quite apparent that this is not a question of an equity which seeks to have the law meet ethical norms, but rather reveals a desire on the part of the law to inject its inner spirit and purpose into the ruling of the court. It is a part of that body of law which describes a lawsuit in terms of "unto the Lord shall their dispute come" (Exodus 22:8; cf. Deuteronomy 19:17, Rashi et al.).

All which we have attempted to say is so beautifully presented in the poetic language of the Midrash. Solomon, in his Song of Songs, speaks of the people of Israel as being like a "heap of wheat set about with a hedge of roses" (Song of Songs 7:3; see Midrash Rabbah ad loc.). The Rabbis of the Midrash comment: "The hedge of roses," these are the words of the Torah, which are as delicate as the rose. Said Rabbi Levi: "A tempting dish is brought before a person. He prepares to partake of it with great relish. He is told that tallow [i.e., forbidden animal fat] has fallen into the food, and he refrains even from tasting it. Who has caused this restraint? What serpent has bitten him? What scorpion has stung him to keep him from drawing near to the food to taste of it? Only the words of the Torah, delicate as the rose, for it is written: 'You shall not eat the fat' (Leviticus 3:17)."

And yet another illustration (see Rashi, Song of Songs ad loc.). A person was walking along a country road. He passed a fruit orchard, and the fragrance of the fully ripened, first fruits of the season attracted him. He stretched forth his hand to pick a fruit from the tree. He was reminded: These fruits have an owner. He drew back his hand in restraint. What had caused this restraint? What stood between him and the fruit? Only the words of the Torah, delicate as the rose, for it is written: "Thou shalt not steal" (Leviticus 19:13).

For the aesthete who has developed an appreciation for the beauty and delicacy of the rose, a hedge of roses is stronger than a wall of iron. He needs but the rose itself to serve as a barrier against trespassing. For one reared and nurtured in the law, transgression is trespassing.

Man, created in the image of God, is inherently good and noble, striving to fulfill the Divine will which inheres within him (Maimonides, Hil. Gerushin 2:20). That world of

passion, lust, and temptation which makes goodness and nobility so difficult to realize must find its remedy in the law. Man is called upon to develop within himself, through the law, an aesthetic appreciation of moral and ethical values -- an ever-present God-consciousness. The word of the law is the gentle reminder to refrain from trespassing in the human soul, the handiwork of Almighty God.

But certainly a code of law designed to be studied only by lawyers cannot achieve the purpose of which we speak. The law cannot lead men to the lofty heights of morals and ethics, nor can it serve as a guide for the disciplined conduct of the individual if it remains beyond the reach of the individual. The loftiest principle, therefore, of Talmudic law is the exhortation to study the law, an exhortation directed towards every individual, not only to those who seek their profession in the law...

Maimonides, in his Code, has a division devoted to the laws of Torah study. Therein he postulates (Talmud Torah 1:8): "Every male person in Israel is obligated to study Torah, be he poor or rich, healthy or subject to suffering, young or so old that his strength is ebbing; even if he be burdened with wife and children, he is obligated to set aside a specific time by day and by night to study Torah, for it is written: 'Thou shalt study it by day and by night'."

This commandment, this law to study the law, is the quintessential one of Talmudic jurisprudence. We quote from Talmudic literature (Avos d' R' Nassan 6:2): What were the beginnings of Rabbi Akiva? It is said: When he was forty years of age, he had not yet studied Talmud. Once he stood by the mouth of a well. There he noticed a well-stone. "Who has hollowed out the stone?" he asked. He was told it was the water which fell upon it every day continually. He wondered at this. It was said to him: "Akiva, has thou not read, 'The waters wear away the stones'?" (Job 14:19)." Thereupon Rabbi Akiva drew the implication for himself. "If what is soft wears down the hard, all the more shall the words of the Torah, which are as hard as iron (i.e., in their unbending and unchanging demands upon man), hollow out my heart which is but flesh and blood!" With this he dedicated himself to the study of Torah.

The law, through continuous, endless study, can make of man's heart a receptacle for the living waters of moral and ethical perfection. For, as we quote from Maimonides: Every human being has the characteristic that when he is attracted to the ways of wisdom and righteousness, he yearns for them and pursues them (Hil. Teshuvah 6:5).

Talmudic law is common law in the sense that its knowledge is common for all men and not the domain of the professional student of the law. The law is therefore truly a Torah -- a system of instruction to the people embracing all the problems of life, seeking to make the people worthy of the great heritage of humanity -- man created in the image of God (cf. Avot 3:8).

I think we have made some points, though of necessity quite superficial, which, if digested and taken to heart, will be found to have great bearing upon the problems besetting us in these troubled times. Freedom and liberty under law rather than violence under tyranny; this is the great problem of our day. The further the advance of science in developing nuclear energy and in conquering outer space, the greater is the poignancy of this problem. The law, Divine in essence, brought to all the people to lead and guide them to the heights of human nobility and dignity -- therein lies our strength and security as free men.

Oral law

An **oral law** is a code of conduct in use in a given culture, religion or other regroupment, by which a body of rules of human behavior is transmitted by [oral tradition](#) and effectively respected, or the single rule that is verbally transmitted.

Many cultures do have an oral law, while most contemporary legal systems have a formal written organization. The oral tradition (from the [latin](#) *tradere* = to transmit) is the typical instrument of transmission of the oral codes or, in a more general sense, is the complex of what a culture transmits of itself among the generations, "from father to son". This kind of transmission can be due to lack of other means (like for illiterate or criminal societies) or can be expressly required by the same law

Question 3.5: What is the Oral Law?

Answer:

The Torah makes it clear that it was being transmitted side by side with an oral tradition. Many terms and definitions used in the written law are totally undefined. Many fundamental concepts such as shekhita (slaughtering of animals in a kosher fashion), divorce and the rights of the firstborn are all assumed as common knowledge by text, and are not elaborated. Some specific examples:

- * In describing the proper way to slaughter animals for food, the Torah writes "If the place which G-d your L-rd has chosen to place His name there will be too far from you, then you shall kill of your herd and of your flock which G-d Lord has given you, as I have commanded you." (Deut 12). However, the Torah doesn't record that earlier commandment anywhere.
- * When it comes to divorce -- the bible never discusses the laws outright, they are assumed in passing in a discussion about when remarriage would be allowed. (Deut 24:1-4)
- * There is a reliance on sages for interpreting the law in Exod 18:36 and in Deut 17:8-3.

Another story related to this: R' Akiva was 40 years old before he took an interest in Torah study. He joined a class of little children studying the Hebrew alphabet. On the first day, the teacher taught that such was an alef, and such was a beis, etc... On the second day, the teacher went through the alphabet backwards -- starting with tav and working down to aleph. R' Akiva asked the teacher, "But didn't you teach it the other way yesterday?" "And how do you know that that was the right way and not this one?"

There's an alternate version, perhaps of the same story. This one is told about a non-Jew who came to Shammai and said that he wanted to convert on condition that he would accept only the Written Law. Shammai, realizing that the non-Jew was mocking him, chased him away. The non-Jew then went to Hillel with the same condition. The first day, Hillel taught him alef, bais, gimel, dalet. The second day, he began by calling the same characters tav, shin, raish, kuf. The non-Jew objected, "But didn't you tell me yesterday that these were alef, bais, gimel, dalet?" Hillel responded, "You see that even the names and sounds of the letters can only be understood by an oral teaching. How much more must the Torah itself be understood only through the Oral Law." The non-Jew then began studying completely and honestly.

And an experimental proof: There were numerous movements that tried to follow the written Torah alone: Baithusians, Saducees, Karaites,

etc... Each, without fail, eventually evolved its own tradition about how to understand the text. Pure fundamentalism about the verses, letting each man interpret for his/herself, has yet to provide a consistent structure. The Torah requires more information than it gives in the text alone. [Note that even Reform uses traditional interpretations of the verse; it is not the interpretation of the verse that is subject to individual choice in Reform, it is whether to incorporate the practice].

There are a number of examples in the rest of Jewish scriptures that show consistency with conclusions contained in the Oral Torah based on the Pentateuch. In other words, things the prophets assumed about Jewish law that aren't in the text:

- * Zacharia 7:2 and 8:13 refer to the Rabbinically enacted fasts to commemorate the fall of the first Temple.
- * Nechemia 13 notes the Rabbinic prohibition against buying or selling things on the Sabbath.
- * The book of Ruth only works with the Oral Torah that limits the prohibition of Deut 23:3 to remarrying Moabite men. Otherwise, how could Boaz marry Ruth -- a Moabite convert. Ruth also relies on Oral Torah laws on kinsman redeemers and the conversion ritual.

The term "oral law" thus reflects the knowledge about how to fulfill the laws and regulations of Torah that was transmitted orally, from generation to generation. The Oral Law can be thought of as a body of jurisprudence and procedure that accompanies the statutes of the Written Law. It is believed to have been passed down from the time of Moses, restored after the first exile by Ezra and Nehemiah, and finally written down by the academies at Yavne and in the Galilee in the two generations following the destruction of the Second Temple in 70 CE. It consists of specific interpretations and elaborations of the Written Law, and some commentary on the principles by which the Written Law can be expounded.

There are Jews called Karaites, recognized by the state of Israel as 100% Jewish but heretical, who reject the Oral Law, as did the Sadducees of the time of the Second Temple. One objection to their 'purism' is that they have been forced by practical necessity to develop interpretations and methods of textual analysis of their own---you simply cannot have law without jurisprudence. This being the case, most traditional Jews accept the authority of the Oral Law that has come down to us as (at the very least) the closest we can come to Torah from Mount Sinai.

The thirteen rules by which Jewish law was derived

During the time of the Mishnah, the oral law was said to be derived from the written [Torah](#) by virtue of one or more of the following methods ("Introduction to *Sifra*" by Rabbi Yishma'el):

1. *A fortiori*: We find a similar law in a more lenient case; how more so should that law apply to our stricter case!
2. *Gezera Shava*, similarity in phrase: We find a similar law in a verse containing a similar phrase to one in our verse. This method can only be used by oral tradition.

3. *Binyan Av*, either by one or two Scriptures: We find a similar law in another case, why shouldn't we assume that the same law applies here? Now the argument may go against this inference, finding some law which applies to that case but not to ours. This type of refutation is valid only if the inference was from one Scripture, not if it was from two Scriptures.
4. *Klal Ufrat*, a generality and a particularity: If we find a phrase signifying a particularity following that of a generality, the particularity particularises the generality and we only take that particular case into account.
5. *Prat Ukhlal*, a particularity and a generality: If the order is first the particularity and then the generality, we add from the generality upon the particularity, even to a broad extent.
6. *Klal Ufrat Ukhlal*, a generality, a particularity and a generality: If there is a particularity inserted between two generalities, we only add cases similar to the particularity.
7. A generality that requires a particularity, and a particularity that requires a generality:
8. Every thing that was within the general rule and was excluded from the rule to teach us a rule, we don't consider this rule as pertaining only to this excluded case, but to the entire general case.
9. Anything that was included in a general rule, and was excluded to be susceptible to one rule that is according to its subject, it is only excluded to be treated more leniently but not more strictly.
10. Anything that was included in a general rule and was excluded to be susceptible to one rule that is not according to its subject, it is excluded to be treated both more leniently and more strictly.
11. Anything that was included in a general rule and was excluded to be treated by a new rule, we cannot restore it to its general rule unless Scripture restores it explicitly.
12. A matter that is inferred from its context, and a matter that is inferred from its ending.
13. The resolution of two Scriptures that contradict each other [must wait] until a third Scripture arrives and resolves their apparent contradiction.