Halakha

Halakha (Hebrew: חֲלָכָה; also transliterated as Halakhah, Halacha, Halakhot and Halachah with pronunciation emphasis on the third syllable, "kha"), is the collective corpus of Jewish religious law, including biblical law (the 613 mitzvot) and later talmudic and rabbinic law as well as customs and traditions. Judaism classically draws no distinction in its laws between religious and ostensibly non-religious life. Hence, Halakha guides not only religious practices and beliefs, but numerous aspects of day-to-day life. Halakha is often translated as "Jewish Law," though a more literal translation might be "the path" or "the way of walking." The word is derived from the Hebrew root that means to go, to walk or to travel.

Historically, Halakha served many Jewish communities as an enforceable avenue of civil and religious law. In the modern era, Jewish citizens may be bound to Halakah only by their voluntary consent. In Israel, though, certain areas of Israeli family and personal status law are governed by rabbinic interpretations of Halakha. Reflecting the diversity of Jewish communities, somewhat different approaches to Halakha are found among Ashkenazi, Mizrahi, Sephardi, and Yemenite Jews. Among Ashkenazi Jews, disagreements over Halakha, and over whether Jews should continue to follow Halakha, have played a pivotal role in the emergence of the Orthodox, Reform, Conservative, and Reconstructionist streams of Judaism.

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Terminology
The name *Halakha* derives from the Hebrew *halakh* חֲלָקָה, which means "to walk" or "to go"; thus a literal translation does not yield "law", but rather "the way to go". The term Halakha may refer to a single law, to the literary corpus of rabbinic legal texts, or to the overall system of religious law. The root may be Semitic *aqqa*, meaning "to be true, be suitable". The *Halakha* is often contrasted with the *Aggadah*, the diverse corpus of rabbinic exegetical, narrative, philosophical and other "non-legal" literatures. At the same time, since writers of *Halakha* may draw upon the aggadic literature, there is a dynamic interchange between the two genres. Halakha constitutes the practical application of the 613 *mitzvot* ("commandments", singular: *mitzvah*) in the Torah, (the five books of Moses, the "Written Law") as developed through discussion and debate in the classical rabbinic literature, especially the Mishnah and the Talmud (the "Oral law"), and as codified in the Mishneh Torah or Shulkhan Arukh (the Jewish "Code of Law").

The Halakha is a comprehensive guide to all aspects of human life, both corporeal and spiritual. Its laws, guidelines, and opinions cover a vast range of situations and principles, in the attempt to realize what is implied by the central Biblical commandment to "be holy as I your God am holy". They cover what are better ways for a Jew to live, when commandments conflict how one may choose correctly, what is implicit and understood but not stated explicitly in the Bible, and what has been deduced by implication though not visible on the surface.

Because Halakha is developed and applied by various halakhic authorities, rather than one sole "official voice", different individuals and communities may well have different answers to halakhic questions. Controversies lend rabbinic literature much of its creative and intellectual appeal. With few exceptions, controversies are not settled through authoritative structures because Judaism lacks a single judicial hierarchy or appellate review process for Halakha. Instead, Jews interested in observing Halakha may choose to follow specific rabbis or affiliate with a more tightly-structured community.

Halakha has been developed and pored over throughout the generations since before 500 BCE, in a constantly expanding collection of religious literature consolidated in the Talmud. First and foremost it forms a body of intricate judicial opinions, legislation, customs, and recommendations, many of them passed down over the centuries, and an assortment of ingrained behaviors, relayed to successive generations from the moment a child begins to speak. It is also the subject of intense study in yeshivas; see
Torah study.

Laws of the Torah

See also Oral law; Halacha l'Moshe m'Sinai; Relationship between the Bible and the Mishnah and Talmud.

Broadly, the Halakha comprises the practical application of the commandments (each one known as a mitzvah) in the Torah, as developed in subsequent rabbinic literature; see The Mitzvot and Jewish Law. According to the Talmud (Tractate Makot), there are 613 mitzvot ("commandments") in the Torah; in Hebrew these are known as the Taryag mitzvot. There are 248 positive mitzvot and 365 negative mitzvot given in the Torah, supplemented by seven mitzvot legislated by the rabbis of antiquity; see Rabbinical commandments.

Categories

Classical Judaism has two basic categories of laws:

- Laws believed revealed by God to Moses at Mount Sinai (e.g. the written Pentateuch and elucidations therefrom, oral Halacha l'Moshe m'Sinai);
- Laws believed to be of human origin but divinely inspired, including Rabbinic decrees, interpretations, customs, etc.

This division between revealed and rabbinic commandments (Mitzvot) may influence the importance of a rule, its enforcement and the nature of its ongoing interpretation. Halakhic authorities may disagree on which laws fall into which categories or the circumstances (if any) under which prior Rabbinic rulings can be re-examined by contemporary rabbis, but all halakhic Jews hold that both categories exist and that the first category is immutable, with exceptions only for life-saving and similar emergency circumstances.

A second classical distinction is between the Written Torah (laws written in the Hebrew Bible, specifically its first five books), and Oral Law, laws believed transmitted orally prior to compilation in texts such as the Mishnah, Talmud, and Rabbinic codes.

Commandments are divided into positive and negative commands, which are treated differently in terms of Divine and human punishment. Positive commandments (of which tradition holds there are 248) require an action to be performed, and thus bring one closer to God. Negative commandments (traditionally 365 in number) forbid a specific action; thus violations create a distance from God. In striving to "be holy" as God is holy, one attempts so far as possible to live in accordance with God's wishes for humanity, striving to more completely live with each of these with every moment of one's life.

A further division is made between chukim ("decrees" — laws without obvious explanation, such as kashrut, the dietary laws), mishpatim
("judgments") — laws with obvious social implications and eduyot — "testimonies" or "commemorations", such as the Shabbat and holidays. Through the ages, various rabbinical authorities have classified the commandments in various other ways.

A different approach divides the laws into a different set of categories:

- Laws in relation to God (bein adam le-Makom), and
- Laws about relations with other people (bein adam le-chavero).

There is no notion in halakha that violations of the latter are more severe, in certain ways, because of the requirement one must obtain forgiveness both from the offended person and from God in the latter case.

**Sin**

Judaism regards the violation of the commandments, the mitzvot, to be a sin. The term "sin" is theologically loaded, as it means different things to Jews and Christians. In Christianity a "sin" is an offense against God, by which one is separated from God's love and grace, and for which one would suffer punishment, unless one repents (see Sin for a more complete comparison of sin from several viewpoints). Judaism has a wider definition of the term "sin", and also uses it to include violations of Jewish law that are not necessarily a lapse in morality. Further, Judaism holds it as given that all people sin at various points in their lives, and hold that God always tempers justice with mercy.

The generic Hebrew word for any kind of sin is aveira ("transgression"). Based on the Tanakh (Hebrew Bible) Judaism describes three levels of sin:

- **Pesha** — an "intentional sin"; an action committed in deliberate defiance of God
- **Avon** — a "sin of lust or uncontrollable emotion". It is a sin done knowingly, but not done to defy God
- **Chet** — an "unintentional sin"

Judaism holds that no human being is perfect, and all people have sinned many times. However a state of sin does not condemn a person to damnation; there is always a road of teshuva (repentance, literally: "return").

There are some classes of person for whom this is exceedingly difficult, such as the one who slanders another.

In earlier days, when Jews had a functioning court system (the beth din and the Sanhedrin high court), courts were empowered to administer physical punishments for various violations, upon conviction by far stricter standards of evidence than are acceptable in American courts: corporal punishment, incarceration, excommunication. Since the fall of the Temple, executions have been forbidden. Since the fall of the autonomous Jewish communities of Europe, the other punishments have also fallen by the wayside. Today, then, one's accounts are reckoned solely by God.
Gentiles and Jewish law

Judaism has always held that gentiles are obliged only to follow the seven Noahide Laws; these are laws that the Oral Law derives from the covenant God made with Noah after the flood, which apply to all descendants of Noah (all living people). The Noahide laws are derived in the Talmud (Tractate Sanhedrin 57a), and are listed here:

1. Murder is forbidden.
2. Theft is forbidden.
3. Sexual immorality is forbidden.
4. Eating flesh cut from a still-living animal is forbidden.
5. Belief in and worship or prayer to "idols" is forbidden.
6. Blaspheming against God is forbidden.
7. Society must establish a fair system of legal justice to administer these laws honestly.

The details to these laws are codified from the Talmudic texts in the Mishneh Torah. They can be found mainly in chapter 9 and 10 of Hilkhoth Melakhim u'Milhamothem in Sefer Shoftim of the Mishneh Torah. Although not mentioning the Noahide Laws directly by name, the Christian convention of Apostles and elders in Jerusalem mentioned in Acts 15 appears to validate the idea that all gentiles follow the constraints established by the covenant of Noah. Supporting this idea, the list of constraints to be applied to the gentiles that are converted to Christianity, verse 15:20, is similar to the Noahide laws.

The sources and process of Halakha

The boundaries of Jewish law are determined through the halakhic process, a religious-ethical system of legal reasoning. Rabbis generally base their opinions on the primary sources of Halakha as well as on precedent set by previous rabbinic opinions. The major sources and genre of Halakha consulted include:

- The foundational Talmudic literature (especially the Mishna and the Babylonian Talmud) with commentaries;
- The post-Talmudic codificatory literature, such as Maimonides' Mishneh Torah and the Shulchan Aruch with commentaries;
- Regulations and other "legislative" enactments promulgated by rabbis and communal bodies:
  - Gezeirah: "preventative legislation" of the Rabbis, intended to prevent violations of the commandments
  - Takkanah: "positive legislation", practices instituted by the Rabbis not based (directly) on the commandments
- Minhag: Customs, community practices, and customary law, as well as the exemplary deeds of prominent (or local) rabbis;
- The **she'eloth u-teshuvoth** (responsa, literally "questions and answers") literature.
- **Dina d'malchuta dina** ("the law of the land is law"): an additional source of Halakha, being the principle recognizing non-Jewish laws and non-Jewish legal jurisdiction as binding on Jewish citizens, provided that they are not contrary to any laws of Judaism. This principle applies especially in areas of commercial, civil and criminal law.

In antiquity, the **Sanhedrin** functioned essentially as the Supreme Court and legislature for Judaism, and had the power to administer binding law, including both received law and its own Rabbinic decrees, on all Jews — rulings of the Sanhedrin became Halakha; see Oral law. That court ceased to function in its full mode in **CE 40**. Today, the authoritative application of Jewish law is left to the local rabbi, and the local rabbinical courts, with only local applicability. In branches of Judaism that follow halakha, lay individuals make numerous ad-hoc decisions, but are regarded as not having authority to decide definitively.

Since the days of the Sanhedrin, however, no body or authority has been generally regarded as having the authority to create universally recognized precedents. As a result, Halakha has developed in a somewhat different fashion from Anglo-American legal systems with a Supreme Court able to provide universally accepted precedents. Generally, contemporary halakhic arguments are effectively, yet unofficially, peer-reviewed. When a rabbinic **posek** ("decisor") proposes a new interpretation of a law, that interpretation may be considered binding for the posek's questioner or immediate community. Depending on the stature of the posek and the quality of the decision, an interpretation may also be gradually accepted by rabbis and members of similar Jewish communities.

Under this system, there is a tension between the relevance of earlier and later authorities in constraining halakhic interpretation and innovation. On the one hand, there is a principle in Halakha not to overrule a specific law from an earlier era, unless based on an earlier authority. On the other hand, another principle recognizes the responsibility and authority of later authorities, and especially the **posek** handling a concurrent question. In addition, the Halakha embodies a wide range of principles that permit judicial discretion and deviation (Ben-Menahem). Generally speaking, a rabbi in any one period will not overrule specific laws from an earlier era, unless supported by a relevant earlier precedent; see list below. There are important exceptions to this principle, which empower the **posek** (decisor) or **beth din** (court) responsible for a given opinion.

Notwithstanding the potential for innovation, rabbis and Jewish communities differ greatly on how they make changes in Halakha. Notably, **poskim** frequently extend the application of a law to new situations, but do not consider such applications as constituting a "change" in Halakha. For
example, many Orthodox rulings concerning electricity are derived from rulings concerning fire, due to its physical similarity with that other form of human-managed energy. In contrast, Conservative Poskim emphasize that electricity is physically and chemically more like turning on a water tap (which is permissible) than lighting a fire (which is not permissible) and therefore permitted its use on Shabbat. Conservative Judaism, in some cases, will also explicitly interpret Halakha to take into account its view of contemporary sociological factors. For instance, most Conservative rabbis extend the application of certain Jewish obligations and permissible activities to women. See below: How Halakha is viewed today.

Within certain Jewish communities, formal organized bodies do exist. Within Modern Orthodox Judaism, there is no one committee or leader, but Modern Orthodox rabbis generally agree with the views set by consensus by the leaders of the Rabbinical Council of America. Within Conservative Judaism, the Rabbinical Assembly has an official Committee on Jewish Law and Standards.

Takkanot

Main article: Takkanah

Traditional Jewish law granted the Sages wide legislative powers. Technically, one may discern two powerful legal tools within the halakhic system:

- **Gezeirah**: "preventative legislation" of the Rabbis, intended to prevent violations of the commandments
- **Takkanah**: "positive legislation", practices instituted by the Rabbis not based (directly) on the commandments

However, in common parlance sometimes people use the general term takkanah to refer either gezeirot or takkanot.

Takkanot, in general, do not affect or restrict observance of Torah mitzvot. However, the Talmud states that in exceptional cases, the Sages had the authority to "uproot matters from the Torah" in certain cases. In Talmudic and classical halakhic literature, this authority refers to the authority to prohibit some things that would otherwise be biblically sanctioned (shev v'al ta'aseh). Rabbis may rule that a Torah mitzvah should not be performed, e.g. blowing the shofar on Shabbat, or blessing the lulav and etrog on Shabbat. These are takkanot are executed out of fear that some might otherwise carry the mentioned items between home and the synagogue, thus inadvertently violating a Sabbath melakha.

Another rare and limited form of takkanah involved overriding Torah prohibitions. In some cases, the Sages allowed the temporary violation a prohibition in order to maintain the Jewish system as a whole. This was part of the basis for Esther’s relationship with Ahasuerus. (Sanhedrin)
For general usage of tikkunot in Jewish history see the article Takkanah. For examples of this being used in Conservative Judaism see Conservative Halakha.

**Eras of history important in Jewish law**

**Rabbinical Eras**
- Zugot
- Tannaim
- Amoraim
- Savoraim
- Geonim
- Rishonim
- Acharonim

See also: *Rabbinic literature*  
- The *Tannaim* (literally the "repeaters") are the sages of the *Mishnah* (70–200)  
- The *Amoraim* (literally the "sayers") are the sages of the *Gemara* (200–500)  
- The *Savoraim* (literally the "reasoners") are the classical Persian rabbis (500–600)  
- The *Geonim* (literally the "prides" or "geniuses") are the rabbis of Sura and Pumbeditha, in Babylonia (650–1250)  
- The *Rishonim* (literally the "firsts") are the rabbis of the early medieval period (1250–1550) preceding the *Shulchan Aruch*  
- The *Acharonim* (literally the "lasts") are the rabbis of 1550 to the present.

**Rules by which early Jewish law was derived**

Hermeneutics is the study of rules for the exact determination of the meaning of a text; it played a notable role in early rabbinic Jewish discussion. The sages investigated the rules by which the requirements of the *oral law* were derived from and established by the written law, i.e. the Torah. These rules relate to:

1. grammar and exegesis  
2. the interpretation of certain words and letters and superfluous words, prefixes, and suffixes in general  
3. the interpretation of those letters, which, in certain words, are provided with points  
4. the interpretation of the letters in a word according to their numerical value  
5. the interpretation of a word by dividing it into two or more words  
6. the interpretation of a word according to its consonantal form or according to its vocalization  
7. the interpretation of a word by transposing its letters or by changing its
vowels
8 the logical deduction of a halakah from a Scriptural text or from another law

Compilations of such hermeneutic rules were made in the earliest times. The tannaitic tradition recognizes three such collections, namely:
1 the seven Rules of Hillel (baraita at the beginning of Sifra; Ab. R. N. xxxvii.)
2 the thirteen Rules of R. Ishmael (baraita at the beginning of Sifra; this collection is merely an amplification of that of Hillel)
3 the thirty-two Rules of R. Eliezer b. Jose ha-Gelili.

The last-mentioned rules are contained in an independent baraita, which has been incorporated and preserved only in later works. They are intended foragogic interpretation; but many of them are valid for the Halakah as well, coinciding with the rules of Hillel and Ishmael. Neither Hillel, Ishmael, nor Eliezer ben Jose ha-Gelili sought to give a complete enumeration of the rules of interpretation current in his day, but they omitted from their collections many rules that were then followed.

They restricted themselves to a compilation of the principal methods of logical deduction, which they called "middot" (measures), although the other rules also were known by that term (comp. Midrash Sifre, Numbers 2 [ed. Friedmann, p. 2a]).

One of these set of rules is found in the siddur, from the "Introduction to Sifra" by Ishmael ben Elisha, c. 200 CE. These are known as the thirteen rules of exegesis.
1 Kal va-Chomer (a fortiori): We find a similar stringency in a more lenient case; how more so should that stringency 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 in a case where there is a tradition to use it.
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 that 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 Klal shehu tzarich lifrat, a generality that requires a particularity, and a particularity that requires a generality: If it is impossible to have the more general law without more specific examples or more specific cases without the statement of the general law, the above three rules don't apply.

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.

**Historical analysis of rules**

The antiquity of the rules can be determined only by the dates of the authorities who quote them; in general, they can not safely be declared older than the tanna to whom they are first ascribed. It is certain, however, that the seven middot of Hillel and the thirteen of Ishmael are earlier than the time of Hillel himself, who was the first to transmit them. The Talmud itself gives no information concerning the origin of the middot, although the Geonim regarded them as Sinaitic. Modern historians believe that it is decidedly erroneous to consider the middot as traditional from the time of Moses on Sinai.

The middot seem to have been first laid down as abstract rules by the teachers of Hillel, though they were not immediately recognized by all as valid and binding. Different schools interpreted and modified them, restricted or expanded them, in various ways. Akiba and Ishmael and their scholars especially contributed to the development or establishment of these rules. Akiba devoted his attention particularly to the grammatical and exegetical rules, while Ishmael developed the logical. The rules laid down by one school were frequently rejected by another because the principles that guided them in their respective formulations were essentially different. According to Akiba, the divine language of the Torah is distinguished from the speech of men by the fact that in the former no word or sound is
superfluous. Some scholars have observed a similarity between these rabbinic rules of interpretation and the hermeneutics of ancient Hellenistic culture. [citation needed]

How Halakha is viewed today

See also Talmud: The Talmud in modern-day Judaism.

Orthodox Judaism holds that Jewish Law was dictated by God to Moses essentially as it exists today. It holds that there is an underlying core of Sinaitic law, but there is significant disagreement within Orthodox Judaism, particularly between Haredi Judaism and Modern Orthodox Judaism, about the extent of the Sinaitic core and the circumstances under which post-Sinaitic additions can be changed. See Orthodox Judaism, Beliefs about Jewish law and tradition.

Conservative Judaism holds that Halakha is normative and binding, and is developed as a partnership between people and God based on Sinaitic Torah. While there are a wide variety of Conservative views, a common belief is that Halakha is, and has always been, an evolving process subject to interpretation by rabbis in every time period. See Conservative Judaism, Beliefs.

Reform Judaism and Reconstructionist Judaism both hold that modern views of how the Torah and rabbinic law developed imply that the body of rabbinic Jewish law is no longer normative (seen as binding) on Jews today. Those in the traditionalist wing of these movements believe that the Halakha represents a personal starting-point, holding that each Jew is obligated to interpret the Torah, Talmud and other Jewish works for themselves, and this interpretation will create separate commandments for each person. Those in the neo-traditional wing of Reform include Rabbis Eugene Borowitz and Gunther Plaut.

Those in the liberal and classical wings of Reform believe that in this day and era most Jewish religious rituals are no longer necessary, and many hold that following most Jewish laws is actually counter-productive. They propose that Judaism has entered a phase of ethical monotheism, and that the laws of Judaism are only remnants of an earlier stage of religious evolution, and need not be followed. This is considered wrong (and arguably heretical) by Orthodox and Conservative Judaism.

[edit] Flexibility within the Halakha
Throughout history, halakha has, within limits, been a flexible system, despite its internal rigidity, addressing issues on the basis of circumstance and precedent. The classical approach has permitted new rulings incorporating regarding modern technology. These rulings guide the observant about the proper use of electricity on the Sabbath and holidays
within the parameters of halakhah. (Many scholarly tomes have been published and are constantly being reviewed ensuring the maximum coordination between electrical appliances and technology with the needs of the religiously observant Jew, with a great range of opinions.) Often, as to the applicability of the law in any given situation, the proviso is: "consult your local rabbi or posek." Modern critics, however, have charged that with the rise of movements that challenge the "Divine" authority of halakha, traditional Jews have greater reluctance to change, not only the laws themselves but also other customs and habits, than traditional Rabbinical Judaism did prior to the advent of Reform in the 19th century.

**Differences between Orthodox and Conservative Judaism**

Because Orthodox Jews regard Halakha as having a Divine, immutable core, while Conservative Jews regard all of it as being a human-divine partnership, their view of the Halakha has given rise to substantial differences in approach as well as result.

**Orthodox Judaism**

Orthodox Jews hold that, unlike secular precedent-based systems, *halakha* is a religious system, whose core represents the *revealed* will of God, either directly, or as close to directly as possible. Although Orthodox Judaism acknowledges that rabbis made many additions to and interpretations of Jewish Law, at its core is a body of law representing the literal word of God revealed to Moses on Mount Sinai through both a written Torah and an Oral Law. Orthodox Judaism believes that subsequent interpretations have been derived with the utmost accuracy and care. As such, one must be extremely conservative changing or adapting Jewish law. There have, nevertheless, been many changes including both rabbinic ordinances over centuries, and the recent application of halakha to modern technology. Orthodox Judaism has a range of opinion on the circumstances and extent to which change is permissible. Haredi Jews generally hold that even *minhagim* (customs) must be retained and existing precedents cannot be reconsidered. Modern Orthodox authorities are generally more inclined to permit limited changes in customs (such as the institution of *Bat Mitzvah* and women saying *Kaddish*), and some reconsideration of precedent (such as women singing *zemirot*), in the presence of solid scholarly authority. All Orthodox authorities, however, agree that only later Rabbinical interpretations are subject to reconsideration, and hold that core sources of Divine written and oral law, such as the Torah and the Mishnah, cannot be overridden.

**Conservative Judaism**

It has been suggested that this article or section be merged into
For more details on this topic, see Conservative Halakha.

The view held by Conservative Judaism (and to some extent the Bible critics at Hebrew University[citation needed]) is that while God is real, the Torah is not the word of God in a literal sense. However, in this view the Torah is still held as mankind's record of its understanding of God's revelation, and thus still has divine authority. In this view, traditional Jewish law is still seen as binding. Jews who hold by this view generally try to use modern methods of historical study to learn how Jewish law has changed over time, and are in some cases more willing to change Jewish law in the present.

A key practical difference between Conservative and Orthodox approaches is that Conservative Judaism holds that its Rabbinical body's powers are not limited to reconsidering later precedents based on earlier sources, but the Committee on Jewish Law and Standards (CJLS) is empowered to override Biblical and Taanitic prohibitions by takkanah (decree) when perceived to be inconsistent with modern requirements and/or views of ethics. The CJLS has used this power on a number of occasions, most famously in the context of the driving ishuva, which permits driving to synagogue, and most recently in its December 2006 of an opinion lifting most traditional prohibitions on homosexual conduct. Conservative Judaism also made a number of changes to the role of women in Judaism, including counting women in the minyan and ordaining women as rabbis. The latter was accomplished by simple vote on the faculty of the JTS. Orthodox Judaism holds that takkanot (Rabbinical decrees) can only supplement and can never nullify Biblical law, and significant decisions must be accompanied by scholarly responsa analyzing sources.

An example of how different views of the origin of Jewish law inform Conservative approaches to interpreting that law involves the CJLS's acceptance of Rabbi Elie Kaplan Spitz's responsum decreeing the Biblical category of mamzer as "inoperative", in which The CJLS adopted the Responsum's view that of how, in the Conservative view of Halakha, the "morality which we learn through the unfolding narrative of our tradition" informs the application of Mosaic law:

We cannot conceive of God sanctioning undeserved suffering… When a law of Torah conflicts with morality, when the law is ‘unpleasant,’ we are committed to find a way to address the problem… We are willing to do explicitly what was largely implicit in the past, namely, to make changes when needed on moral grounds. It is our desire to strengthen Torah that forces us to recognize, explicitly the overriding importance of morality, a morality which we learn from the larger, unfolding narrative of our tradition

[1] (pdf)

The responsum cited several examples of how, in Spitz's view, the
Rabbinic Sages declined to enforce punishments explicitly mandated by Torah law. The examples include the "trial of the accused adulteress (Sotah)", the "Law of the Breaking of the Neck of the Heifer" and the application of the death penalty for the "rebellious child". Spitz argues that the punishment of the Mamzer has been effectively inoperative for nearly two thousand years due to deliberate rabbinic inaction (with a few rule-proving counterexamples, including the 18th century Orthodox rabbi Ismael ha-Kohen of Modena, who decreed that a child should have the word "mamzer" tattooed to his forehead). Further he suggested that the Rabbis have long regarded the punishment declared by the Torah as immoral, and came to the conclusion that no court should agree to hear testimony on "mamzerut". His motion was passed by the CJLS.

The decision represented a watershed for Conservative Judaism because it represented an explicit abrogation of a Biblical injunction on the grounds of contemporary morality, as distinct from exigency. The dissenters, notably included Rabbi Joel Rothm as well as a partial concurrence by Rabbi Daniel Nevin argued for reaffirming the classical halakhic framework in which human decrees inform and often limit but never wholly abrogate law believed to be of Divine origin, stating that "we should acknowledge that God's law is beyond our authority to eliminate", but should continue the traditional approach of applying strict evidentiary rules and presumptions that tend to render enforcement unlikely. He also argued that the current framework is moral, both because proving mamzer status sufficiently beyond all doubt is already so difficult that it is rare, and because the mere existence and possibility of mamzerut status, even if rarely enforced, creates an important incentive for divorcing parties to obtain a get (Jewish religious divorce) to avoid the sin of adultery. He cited a responsum by prominent Haredi Orthodox Rabbi Ovadiah Yosef as an example of how the traditional approach works. Rabbi Yosef was faced with the child of a woman who had left a religious marriage without religious divorce and had a child in the second marriage, seemingly an open-and-shut case of Mamzer status. Rabbi Yosef proceeded to systematically discredit the evidence that the former marriage had ever taken place. The Ketubah was mysteriously not found and hence disqualified, and the officiating Rabbi's testimony was never sufficiently corroborated and hence not credible. Rabbi Yosef then found reason to doubt that the new husband was ever the father, finding that because the ex-husband occasionally delivered alimony personally, an ancient presumption (one of many) that any time a husband and wife are alone together the law presumes intercourse has taken place governed the case. He held that Jewish law had to conclude that the original husband really was the child's father and there was no case of Mamzer status. [2]
Codes of Jewish law

The Torah and the Talmud are not formal codes of law; they are sources of law. There are many formal codes of Jewish law that have developed over the past few thousand years. These codes have influenced, and in turn, have been influenced by, the responsa; History of Responsa thus provides an informative complement to the survey below. The major codes are:

- The Mishnah, composed by Rabbi Judah the Prince, in 200 CE, as a basic outline of the state of the Oral Law in his time. This was the framework upon which the Talmud was based; the Talmud's dialectic analysis of the content of the Mishna (gemara; completed c. 500) became the basis for all later halakhic decisions and subsequent codes.

- Codifications by the Geonim of the halakhic material in the Talmud. An early work, She’ilot ("Questions") by Achai of Shabcha (c. 752), discusses over 190 Mitzvot — exploring and addressing various questions on these. The first legal codex proper, Halakhot Pesukot ("Decided Laws"), by Yehudai Gaon (c. 760), rearranges the Talmud passages in a structure manageable to the layman. (It was written in vernacular Aramaic, and subsequently translated into Hebrew as Hilkhot Riit). Halakhot Gedolot ("Great Law Book"), by R. Simeon Kayyara, published two generations later, contains extensive additional material, mainly from Responsa and Monographs of the Geonim, and is presented in a form that is closer to the original Talmud language and structure. (Probably since it was distributed, also, amongst the newly established Ashkenazi communities.) The She’ilot was influential on both subsequent works.

- The Hilchot of the Rif, Rabbi Isaac Alfasi (1013–1103), summations of the legal material in the Talmud. Alfasi transcribed the Talmud's halakhic conclusions verbatim, without the surrounding deliberation; he also excludes all Aggadic (non-legal, homiletic) matter. The Hilchot soon superseded the geonic codes, as it contained all the decisions and laws then relevant, and additionally, served as an accessible Talmudic commentary; it has been printed with almost every subsequent edition of the Talmud.

- The Mishneh Torah (also known as the Yad Ha-Hazagah for its 14 volumes), by Maimonides (Rambam; 1135–1204). This work encompasses the full range of Talmudic law; it is organized and reformulated in a logical system — in 14 books, 83 sections and 1000 chapters — with each Halakha stated clearly. The Mishneh Torah is very influential to this day, and several later works reproduce passages verbatim. It also includes a section on Metaphysics and fundamental beliefs. (Some claim this section draws heavily on Aristotelian science
and metaphysics; others suggest that it is within the tradition of Saadia Gaon.) It is the main source of practical Halakha for many Yemenite Jews — mainly Baladi and Dor Daim — as well as for a growing community referred to as talmidei haRambam.

- The work of the Rosh, Rabbi Asher ben Jehiel (1250?/1259?–1328), an abstract of the Talmud, concisely stating the final halakhic decision and quoting later authorities, notably Alfasi, Maimonides, and the Tosafists. This work superseded Rabbi Alfasi's and has been printed with almost every subsequent edition of the Talmud.

- The Sefer Mitzvot Gadol (The "SeMaG") of Rabbi Moses ben Jacob of Coucy (13th century, Coucy, France). "SeMaG" is organised around the 365 negative and the 248 positive commandments, separately discussing each of them according to the Talmud (in light of the commentaries of Rashi and the Tosafot) and the other codes existent at the time.

- "The Mordechai" — by Mordecai ben Hillel, d. Nuremberg 1298 — serves both as a source of analysis, as well of decided law. Mordechai considered about 350 halakhic authorities, and was widely influential, particularly amongst the Ashkenazi and Italki communities. Although organised around the Hilchot of the Rif, it is, in fact, an independent work. It has been printed with every edition of the Talmud since 1482.

- The Arba'ah Turim (The Tur, The Four Columns) by Rabbi Jacob ben Asher (1270–1343, Toledo, Spain). This work traces the Halakha from the Torah text and the Talmud through the Rishonim, with the Hilchot of Alfasi as its starting point. Ben Asher followed Maimonides's precedent in arranging his work in a topical order, however, the Tur covers only those areas of Jewish religious law that were in force in the author's time. The code is divided into four main sections; almost all codes since this time have followed the Tur's arrangement of material.

- Orach Chayim — "The Way of Life" worship and ritual observance in the home and synagogue, through the course of the day, the weekly sabbath and the festival cycle.

- Yoreh De'ah — "Teach Knowledge" assorted ritual prohibitions, dietary laws and regulations concerning menstrual impurity.

- Even Ha'ezzer — "The Rock of the Helpmate" marriage, divorce and other issues in family law.

- Choshen Mishpat — "The Breastplate of Judgment" The administration and adjudication of civil law.

- The Beit Yosef, and the Shulchan Aruch of Rabbi Yosef Karo (1488–1575). The Beit Yosef is a huge commentary on the Tur in which Rabbi Karo traces the development of each law from the Talmud through later rabbinical literature (examining thirty-two authorities, beginning with the Talmud and ending with the works of Rabbi Israel Isserlein). The
**Shulchan Aruch** is, in turn, a condensation of the *Beit Yosef* — stating each ruling simply (literally translated, *Shulchan Aruch* means "set table"); this work follows the chapter divisions of the Tur. The *Shulchan Aruch*, together with its related commentaries, is considered by many to be the most authoritative compilation of halakha since the Talmud. In writing the Shulchan Aruch, Rabbi Karo based his rulings on three authorities — Maimonides (Rambam), Asher ben Jehiel (Rosh), and Isaac Alfasi (Rif); he considered the Mordechai in inconclusive cases. Sephardic Jews, generally, refer to the Shulchan Aruch as the basis for their daily practice.

- The works of Rabbi Moshe Isserles ("Rema"; Kraków, Poland, 1525 to 1572). Rema noted that the *Shulkhan Arukh* was based on the Sephardic tradition, and he created a series of glosses to be appended to the text of the Shulkhan Arukh for cases where Sephardi and Ashkenazi customs differed (based on the works of Yaakov Moelin, Israel Isserlein and Israel Bruna). The glosses are called *Hamapah*, the "Tablecloth" for the "Set Table". His comments are now incorporated into the body of all printed editions of the Shulkhan Arukh, typeset in a different script; today, "Shulchan Aruch" refers to the combined work of Karo and Isserles. Isserles' *Darkhei Moshe* is similarly a commentary on the Tur and the Beit Yosef.

- The *Shulchan Aruch HaRav* of Rabbi Shneur Zalman of Liadi (c. 1800) was an attempt to recodify the law as it stood at that time — incorporating commentaries on the *Shulchan Aruch*, and subsequent responsa — and thus stating the decided halakha, as well as the underlying reasoning. The work was written, partly, so that laymen would be able to study Jewish law. Unfortunately, most of the work was lost in a fire prior to publication. It is held in esteem by many Hasidim and non-Hasidim, and is quoted as authoritative by many subsequent works.

- "Layman oriented" digests of Halakha. The *Kitzur Shulkhan Arukh* of Rabbi Shlomo Ganzfried (Hungary 1804–1886), based on the very strict Hungarian customs of the 19th century, became immensely popular after its publication due to its simplicity. This work is not binding in the same way as the Mishneh Torah or the Shulchan Aruch. It is still popular in Orthodox Judaism as a framework for study, if not always for practice. *Chaye Adam* and *Chochmat Adam* by Avraham Danzig (Poland, 1748–1820) are similar Ashkenazi works, but are regarded as a more appropriate basis for practice. The *Ben Ish Chai* by Yosef Chaim (Baghdad, 1832–1909) is a corresponding Sephardi work.

- Works structured directly on the Shulchan Aruch, providing analysis in light of Acharonic material and codes. The *Mishnah Berurah* of Rabbi Yisroel Meir ha-Kohen, (the "Chofetz Chaim", Poland, 1838–1933) is a
commentary on the "Orach Chayim" section of the Shulchan Aruch, discussing the application of each Halakha in light of all subsequent Acharonic decisions. It has become the authoritative halakhic guide for much of Orthodox Ashkenazic Jewry in the postwar period. Arukh HaShulkhan by Rabbi Yechiel Michel Epstein (1829–1888) is a scholarly analysis of Halakha through the perspective of the major Rishonim. The work follows the structure of the Tur and the Shulkhan Arukh; rules dealing with vows, agriculture, and ritual purity, are discussed in a second work known as Arukh HaShulkhan he’Atid. Kaf HaChaim on Orach Chayim and parts of Yoreh De'ah, by the Sephardi sage Yaakov Chaim Sofer (Baghdad and Jerusalem, 1870–1939) is similar in scope, authority and approach to the Mishnah Berurah. Yalkut Yosef, by Rabbi Yitzchak Yosef, is a voluminous, widely cited and contemporary work of Halakha, based on the rulings of Rabbi Ovadia Yosef.

- "A Guide To Jewish Religious Practice", by Rabbi Isaac Klein, with contributions from the Conservative Committee on Jewish Law and Standards of the Rabbinical Assembly. This work is based on the previous traditional law codes, but written from a Conservative Jewish point of view. It is not accepted among Orthodox Jews.

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