The Lawyer as Advice Giver in Jewish Law: An Explication of *Ethics of the Sages* 1:8

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I. INTRODUCTION

This brief article will explore the consequences of advice-giving within the Jewish tradition. In particular, it will discuss the concept of "arrangers of the law," (in Hebrew *orchai hadayanim*), and the various restrictions imposed by Jewish law on one who advocates for or gives advice to another. However, before one even considers this topic, one must understand the basic elements of how a Jewish court (*beit din*) should function. Unlike the common law model of a court of law with its emphasis on the referee or umpire model of justice,[1] Jewish law di-

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1. See e.g. Flanders, *Blind Umpires*, 35 Hastings L.J. 505 (1984). It is interesting to note that *Ethics of the Sages* 1:8 is cited by Resnik, *Managerial Judges*, 96 Harv.L.R. 374 (1982) as a model for the concept of "neutral" or "referee" type judges. After citing Rabbi Samson R. Hirsch's commentary *Ethics of the Sages* 1:8 which states:

> Should you be called upon to function as a judge, do not be like the legal advisers who offer to place their juridical knowledge at the service of the litigating parties. . . . [Y]ou must remain silent and abstain from interference in the arguments . . . . Do not by even so much as a gesture seek to influence either prosecution or defense

Resnik asserts that this one of the historical models for umpire theory of judging, which contrast with the managerial theory she advocates. *Ethics of the Sages* 1:8 at its core addresses the impartiality of the judge and not the balance between the inquisitorial and referee models of judging. As noted above, Jewish law mandated that a judge function in an inquisitorial mode and yet remain impartial.

It is interesting to note that the iconography of "Justice", which is discussed in Appendix A of Resnik, 96 Harv. L.R. at 446, most likely has within it some origins in the medieval Jewish-Christian polemics. Historically, "Justice" was depicted as a "large female figure, draped in Greco-Roman robes. She carries scales and sword, *and her eyes are covered with a blindfold.*" The classical depiction of "Justice" in medieval Christian Europe was without the blindfolds. Blindfolds were a

rected that its judges adopt a more activist model of justice. In a Jewish law court, judges ask questions of witnesses, cross examine the parties, collect evidence and make findings of both fact and law.[2] Lawyers are not needed, and frequently were discouraged. In short, Jewish law adopted an inquisitorial model of justice.

In such a system, lawyers are not required in order for the court to fairly decide a matter and parties need not solicit a lawyer's advice in order to insure a fair hearing. Indeed, *Ethics of the Sages* (*Perkai Avot*) 1:8 states:

> Judah ben Tabai states: Do not act like lawyers [lit: arrangers of the law, in Hebrew, *orchai hadayanim*] and when litigants are in front of you they should be considered as guilty; once they have been dismissed from the court, they should be in your eyes as innocent, provided that they accepted the judgement.[3]

This article is an explanation of the various rules and interpretations given to *Ethics of the Sages* (Avot) 1:8, with a particular emphasis on how the mandates of Avot 1:8 should affect the conduct of lawyers. This article notes that Avot 1:8 has two different components to it. The first is directed to judges and compels them to treat litigants in an even-handed manner, even when a judge thinks one of the parties is at fault. The second component is directed to advocates and lawyers and instructs them to be careful in providing and formulating legal advice.

II. The Judge as Lawyer

As noted above, Jewish law envisions courts running along the inquisitorial model, whereby judges direct the trial and the court. Litigants would not normally need to be represented by lawyers, advocates or other representatives, and certainly not by individuals who will help the litigant formulate claims of law or fact in *beit din*. Indeed, part of the job of the judge is to evaluate the credibility of the *unrehearsed*

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symbol used to denigrate Judaism and Jewish justice which was blind to the "new revelation." The addition of the blindfolds to the iconography of "Justice" after the emancipation of Europe most likely has its origins in the abandonment of Christian iconography as the sole image of justice; see Simmonds *The Blindfolds of Justice* 63 A.B.A. J. 1164 (1977).

Interestingly, a number of nineteenth century Jewish law works from eastern European countries note the problems confronted by Jewish courts whose services were apparently being solicited by the general (Gentile) population, because the Jewish courts heard cases "blind" and impartially (and apparently the local secular courts did not); see R. Chaim Cohen, Divrei Gaonim 52:15 and 77:19.

2. Rabbi Joseph Karo, Shulchan Aruch Choshen Mishpat 17:5-9.
3. *Ethics of the Sages* 1:8.

testimony of the various witnesses.[4] Rabbi Jacob ben Asher, writing in Tur, explains that the prohibition of being an lawyer (*orach din*) applies to judges generally, and is most applicable when they help a litigant formulate his testimony or claim in front of the judge. Such help is normally prohibited and is only permitted when:

> the litigant wishes to save himself with a proper claim, but because of his anger his claim is not formulated or it is confused because of misunderstanding. In that case it is permitted to help him understand the beginnings of his claim since it states, "one must open the mouths of those who are mute".[5] One has to be very careful in this matter lest one be like one of the lawyers [*orchai din*].[6]

The almost identical language is quoted by Rabbi Karo in the Shulchan Aruch[7] as well as by numerous other authorities.[8] It is clear that Jewish law did not allow judges to function as advocates for one party and treated any such transference of roles as unethical, unless the circumstances were such that the party is actually incapable of pleading its case.[9]

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4. This is not to be confused with the Jewish procedural rules that allow for a *mego* type plea. Unlike Jewish law, American law lacks the institution called *mego*, which allows a defendant to assert a false, but provable, claim in court as just that — a false but provable claim, whose viability should allow a defendant to triumph. The mechanism of *mego* in financial cases is commonly misunderstood by beginning students of Jewish law. Essentially, *mego* is a sophisticated pleading in the alternative, in which a defendant states that since he has a legally provable defense that would allow him to triumph in court if he wished to disregard the ethical obligation of justice, that false defense, coupled with defendant's sincere claim that he has a truthful defense (that he cannot prove) is sufficient in Jewish law to allow the defendant to triumph. It is important to realize (and this is commonly overlooked) that in order for a *mego* claim to be valid, the false claim must be one that the defendant would triumph with if the case and the false defense were actually litigated in court. If the *mego* claim can be defeated by the plaintiff through the presentation of evidence, then it is of no value. Jewish law essentially rewards the defendant for his honesty in labeling his provable defense as false, by allowing him to press it anyway. The common law tradition in that case simply encouraged perjury. For more on this, see R. Oded Lipa Levfar, MISHPATAI HAMEGO.

5. PROVERBS 31:8.

6. Rabbi Jacob ben Asher, TUR, Choshen Mishpat 17:9. He adds that Rabbenu Asher (*Rosh*) felt that even this limited help was not allowed. For more on this, see Rabbi Jonah Landsofer, ME'EL TZEDEK 53. For an explication of this based on the biblical verses, see commentary of Rabbi Baruch Epstein, TORAH TEMIMAH, Exodus 22:7-8.

7. SHULCHAN ARUCH, Choshen Mishpat 17:9.

8. See e.g. Rabbi Yecheil Mechal Epstein, ARUCH HASHULCHAN, Choshen Mishpat 17:13; Rabbi Jacob Linderbaum, NITIVOT HAMISHPAT 17:16; HALACHA PESUKA (Machon Harry Fishel, 5751) and KOVETZ HAPOSKIM (Machon Kovetz Haposkim, 1975) commenting on 17:9.

For a discussion of when precisely a *dayan* (judge) may assist a litigant, see Rabbi Jacob Reisher, RESPONSA SHEVOT YAKOV 1:64 and Rabbi Benyamin ben Mattiyahu, RESPONSA BENYAMIN ZEV 50.

9. See Rabbi Jacob Linderbaum, NITIVOT HAMISHPAT, 9:16. It is, of course, true that the liti-

This aspect of the rules found in *Ethics of the Sages* 1:8 is, at a certain level, obvious and is codified into the corpus of Jewish law, not only as ethical rules, but as rules of law also. A judge must conduct himself with impartiality and neutrality and cannot take the role of advocate of either side. Indeed, modern American law codifies this into its legal code also. As it states in the cannon of legal ethics that governs American judges:

> A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.[10]

III. Lawyers Giving Legal Advice

The second situation addressed by *Ethics of the Sages* 1:8 is the more common one of a lawyer giving advice to clients (or a person giving legal advice to friends or relatives). Maimonides, in his commentary on *Ethics of the Sages* states:

> *Like lawyers*: These are people who teach others what to claim until these others are experts . . . When the judge states such, they teach you to reply such; when the opponent claims such, they teach you to reply such, as if they are arranging the law. . . [11]

Similar sentiments are expressed by Meiri in his commentary. He states:

> *Do not make oneself like a lawyer*: These are the people who organize the claims of either the plaintiff or the defendant . . . Similar to this is the incident involving Rabbi Yochanan (Ketubot 52b) where he taught a legal claim to one of his relatives and regretted it, and he [Rabbi Yochanan] stated that he made himself like one of the lawyers, since anyone who does this teaches another to lie and to contradict the

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gant appointed judges — when a system of each party choosing a judge is picked — contains within it some form of advocacy by the judges. As the Jerusalem Talmud notes (*Sanhendren* 3:1) each judge in such a case pursues his party's interest. However, as noted by Rabbi Asher (*Rosh*, commenting on *Sanhendren* 3:2), these judges are completely bound to function as judges according to Jewish law and may not deviate in any way from the norms of judicial conduct found in Jewish law. They certainly are not lawyers. See also Rabbi Yecheil Mechal Epstein, Aruch HaShulchan, Choshen Mishpat 13:1-4 who discusses this issue.

10. Cannon Of Judicial Ethics, Cannon 3(b)(5).

11. Maimonides, commenting on *Ethics of the Sages* 1:8; see also Rabbi Menachem Mendel Kirshenbaum, Responsa Menachem Meshiv 54.

truth.[12]

The source for these interpretations can be found in an incident recounted in the talmud. The talmud states:

> The relatives of Rabbi Yochanan had to support the wife [widow] of their father who required continuous medical treatment. They came in front of Rabbi Yochanan who advised them to arrange for a contract with a doctor for medical care for the woman's whole life for a fixed price. Rabbi Yochanan later stated that we have made ourselves like *orchai hadayinim* (lawyers). Initially [the talmud asks] why did Rabbi Yochanan think [that it was permitted for him to help these people with advice]: since it states "from one's relatives one should not turn away"[13] [*i.e.*, one should help one's relatives]; in the end he thought that this conduct was unbecoming of an eminent scholarly person.[14]

In order for the episode's legal significance to be understood, a certain background in Jewish family law is needed. According to Jewish law, a widow must be supported by the estate of her husband unless she sues for her payment due according to her ketubah (pre-nuptial agreement).[15] The heirs may not compel her to receive this payment in lieu of support from the estate.[16] Along with the various expenses the estate must bear to support the widow, Jewish law mandates that a woman's continuing medical expenses are chargeable against the estate of her husband generally, and not against the wife's entitlement from the estate. On the other hand, fixed cost contracts for medical care are considered expenses that may be deducted from the wife's ketubah payment.

Rabbi Yochanan's advice to the heirs was very simple and was designed to reduce the heir's total payout from the estate. Instead of paying for medical care as needed, they should seek to purchase a contract for medical care, which they then can deduct from the widow's entitlement in the estate. In a situation where the heirs to the estate are not the same as the heirs to the widow's estate, there can be significant repercussions to this choice.[17] A simple example illustrates this. In an

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12. Rabbi Menachem Ben Meir, HAMEIRI, commenting on *Ethics of the Sages* 1:8. Rabbi Shlomo Yitzchaki (*Rashi*) commenting on *Ethics of the Sages* 1:8 advances a similar explanation.

13. Isaiah 58:7.

14. Ketubot 52b. Who precisely is an eminent scholarly person is beyond the purview of this paper; it is clear, however, that by no means is a typical lawyer such a person; see generally ENCYCLOPEDIA TALMUDIC 1:175-180 for a discussion of the parameters of this status.

15. SHULCHAN ARUCH, Even Haezer 93:1-2.

16. *Id.*

17. SHULCHAN ARUCH, Even Haezer 79:1-2.

estate of $100,000, with the woman's ketubah payment equalling $20,000, medical care costing $1,000 a year and a lifetime contract for medical care for the widow costing $20,000, if the widow lives twenty years and right before her death institutes an action for payment of her ketubah,[18] the estate will be worth only $80,000, and it will still have to make a $20,000 payment to the estate of the widow. If on the other hand, it purchases a contract for fixed medical care for $20,000, the estate will still only be worth $80,000 at the time of the widow's death, but all of that money will belong to the heirs.

This is exactly the kind of advice lawyers routinely dispense. The talmud indicates that giving a person completely legal advice on how to avoid an expense or cause the expenses to fall on others — a central activity for a lawyer — is considered conduct unbecoming for an eminent scholarly person and perfectly proper for a relative.[19]

The talmud does not address the propriety of such advice-giving by a non-relative who is also not an "eminent scholarly person" and it is that status that the typical lawyer is in. Indeed, the balance between these two poles is the subject of some disagreement. Rabbi Yoel Sirkes (*Bach*) states that to give a person truthful legal advice prior to litigation that minimizes risk or exposure is perfectly permissible for one's relatives, providing that one is not an eminent scholarly person.[20] No one else may give such advice in anticipation of litigation. On the other hand, Rabbi Yom Tov Lipman Heller states that it is permissible to give truthful legal advice to anyone, relative or not, providing that the advisor is not an eminent scholarly person, and, for such a person, giving advice is prohibited even for relatives.[21] Rabbi Shabtai ben Meir

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18. For more on this, see SHULCHAN ARUCH, Even Haezer 96:1-2.

19. Unlike the legal mandates found in Part II of this article dealing with judicial ethics, a claim could be made that the issues involved in advice giving that do not suborn perjury are within the field of those ethical mandates typically limited to *Ethics of the Sages*, and not part of the classical legal rules of Jewish law. Thus, these issues are left out of Rambam's code, as well as the Tur, Shulchan Aruch and Aruch Hashulchan. While it is true that Rabbi Sirkes (*Bach*) on Choshen Mishpat 17 and Rabbi Avraham Hirsch Eisenstadt, PITCHAI TESHUVA (Choshen Mishpat 17:15) do both discuss these issues, it is unclear from their discussion if the mandate is technically halachic or not; Rabbi Yecheil Mechel Epstein, ARUCH HASHULCHAN, for example, limits his discussion to the case of judges, and not lawyers or advisors.

20. Rabbi Joel Sirkes (*Bach*), commenting on Shulchan Aruch, Choshen Mishpat 17:9. This is agreed to by Rabbi Israel Wolf, SHAR HAMISHPAT Choshen Mishpat 17:9 and HALACHA PASUKA, supra note 8, commenting on 17:9.

21. Rabbi Yom Tov Lipman Heller, TOSAPHOT YOM TOV, commenting on *Ethics of the Sages* 1:8. He notes that Rabbi Shlomo Yitzchaki, *Rashi*, appears not to agree with this approach.

Hacohen (*Shach*) quoting Rabbi Joshua Boaz, *Sheltai Giborrim*, agrees that giving legal advice to people that is deleterious to the interests of another person is completely permissible — whatever the relationship between the advisor and the advisee — providing that the one giving the advice is not also a *dayan* (judge) in the case or an eminent scholar.[22]

Rabbi Avraham David Botatshast, writing in *Kesef Hakadoshim*, adds a twist on this. He states that it is only problematic to give advice that involves a certain amount of underhandedness or trickery. However to simply tell people the complete mandates of Jewish law is permissible and even laudatory, in all situations, relatives or otherwise.[23] The essence of his argument is that providing pure data about the Jewish law position on any give topic should be always permissible.[24]

One additional factor must be noted. Why may a relative give legal advice to family members and others may not — certainly it is not because relatives (or lawyers) are excused from the Jewish law's mandate of honesty and integrity. Rather, as can be implied from some early authorities,[25] the reason is because relatives are already involved in the dispute as they are family and thus they by definition stand to gain from the enrichment of the family member they are advising. To give advice to a person that helps one person but harms another, and is of no consequence to the advisor one way or another, is perceived as ethically improper — simply put, why meddle in another's dispute to the benefit of one and the detriment of another?[26] However, in any situation where the advisor also gains from the advice, it is completely permissible to give it. As proof to this, one sees that Jewish law allowed the

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22. Choshen Mishpat 66:82 quoting SHELTAI GEBORIM on Ketubot 52b and *Rabbi Shabtai ben Meir Shach*, Choshen Mishpat 123:32; this is also agreed to by Rabbi Chaim Pallagi, HACHAFETZ CHAIM 102:5.

23. Rabbi Avraham David Botatshast, KESEF HAKADOSHIM, commenting on Choshen Mishpat 17:9.

24. In this author's opinion, this line of reasoning has much merit to it. The mandate not to be an advocate has to be limited to "advocacy" which is quite a bit different than providing information, which is almost always a fulfillment of the biblical mandate of studying Jewish law, and thus difficult to imagine as prohibited merely because someone might misuse the legal concepts that one is presenting.

25. See Rabbi Solomon ben Meir (*Rashbam*), Bava Batra 174b ("eizehu").

26. Of course, if one were to involve oneself in such a dispute to either do justice or to make peace, that would be permissible and laudatory. Here we are referring to involving oneself solely to aid one side with no just or pious motives; see comments of Rabbi Yom Tov Ashbeilli (*Ritva*) on Ketubot 52b where this distinction is found.

assignment of claims to a representative who would press the claim in court in a case where the "agent" had actually purchased a real stake in the litigation (and thus was like a relative in that he had an interest). Indeed, while the rules relating to appointing another as one's agent to press a claim are detailed and complex, the fact is that Jewish law permitted such representation both as a matter of Jewish law and on an ethical level.[27] As noted by many authorities, the lessons of Ketubot 52b and Rabbi Yochanan are limited to situations where free advice is given solely for the sake of gratuitously aiding one and harming another.[28]

Based on this analysis, there are a number of modern authorities who suggest that a lawyer who is paid to provide legal advice has the same status as a relative — the advisor and the recipient *both* gain from this activity and it is in the best interest of both of them that the advice be legal and work properly.[29] It is precisely this rationale that has been developed to defend the institution of *to'en*, the term commonly given to an advocate in a beit din.[30] Indeed, over the course of many years, it has become the established norm within Jewish law that one may send a representative to a beit din hearing in one's stead or to help press one's claim.[31] One is hard-pressed to distinguish between the

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27. See Nahum Rakover, THE JEWISH LAW OF AGENCY IN LEGAL PROCEEDINGS, 85-179 (1972) and Rabbi Ezra Basri, DINAI MAMONUT 1:256-265. Interestingly, classical American legal ethics absolutely prohibited this type of representation, called champerty; see C. Wolfram, MODERN LEGAL ETHICS 490-91 (1985).

28. This is first found in Rabbi Azarya Fego, GEDULAI TERUMA, commenting on R. Shmuel ben R. Issac Hasefardi, SEFER HATERUMOT, page 300 and is cited as correct by Rabbi Chaim Bennevishte, KENNEST HAGEDOLAH Choshen Mishpat 123 (Tur, 123); Rabbi Mordechai Shimon, MATEH SHIMON Choshen Mishpat 123:4 and Rabbi Ezra Basri, DINNAI MAMMONUT 1:440.

29. This position is tentatively advanced by Rabbi Ezra Basri, DINNAI MAMONUT 1:440 and by Rabbi Shar Yishov Cohen, *Mamad Orchai Din Behalacha* 22 Torah Shebal Pe 64 (1981). See also D. Frimer, *The Role of a Lawyer in Jewish Law*, 1 J. Law & Religion 297, 304 (1983). For similar assertions, see Rabbi Avraham Nissim Askenazi, Nechmad Lemareh 3:p.100; Rabbi Yonah Landsofer, ME'EL TZEDAKA 53; Rabbi Shmuel Abuhav, DEVAR SHMUEL 41 and 43.

30. Rabbi Ezra Basri, DINNAI MAMONUT 1:439-441. See also Rabbi Kalpon Moshe HaCohen, SHOEL VENESHAL, Choshen Mishpat 5:2 and sources cited in note 22. Indeed, the use of these *to'anim*/lawyers has become absolutely common in the beit din system.

31. For a general discussion of these issues, see Nahum Rakover, THE JEWISH LAW OF AGENCY IN LEGAL PROCEEDINGS, 85-179 (1972) and Rabbi Ezra Bazri, DINAI MAMONUT 1:256-265. It is beyond the scope of this paper to discuss how one goes about appointing such a representative in Jewish law. It is important to note that there is little discussion of the halachic or ethical problems of such representation or advisement, indicating that having such help is perceived as permitted, in accordance with the ruling of *Shach*, or with the analysis of Dinnai Mamonut and others, that paid representatives are like family for the purposes of these rules.

duties of a *to'en* or representative and that of a litigator.[32]

IV. The Limits on Advocacy

Advocacy, however, does have limits in the Jewish tradition. One must make certain that the advice given is legal and proper and is not taken as an invitation to suborn perjury or to engage in otherwise illegal activity. As noted by no less an authority than Rabbi Chaim Benniveshte, writing in the *Knesset Hagedolah* nearly four hundred years ago, scholars must be discreet in their legal advice, lest it be misused and understood as a form of suborning perjury.[33]

However, the countervailing factors sometimes favoring advocacy and representation need to be mentioned. Rabbi Solomon ben Aderet (*Rashba*) was asked in a responsum what he thought of the practice of appointing an advocate to plead on behalf of a party in a case. He replied:

> After you have reviewed the opinions of the various early authorities, I need not state for you that this is the opinion of this authority and this is the opinion of that authority. Rather, my opinion is that a plaintiff cannot appoint an advocate who will plead specific facts on his own knowledge, since one who does not know the truth cannot possibly recount what happened . . .
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> Nonetheless, there are cases where even beit din pleads the case of a person, such as the case of opening the mouths of the mute.[34] In any situation where the beit din sees that the person is not pleading properly because of ignorance [it is proper to allow an advocate]. . . It all depends on the circumstances and upon one's innermost intentions; for Torah which is true favors that which is true . . . Nonetheless, to appoint an advocate to plead whatever he thinks proper [without regard to the truth] is wrong.[35]

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32. In addition, it is possible to distinguish between advice as to how to order one's affairs when there is no litigation pending and advice given in anticipation of litigation. It would appear to this author that the former is always permissible, as the various authorities limit Avot 1:8 to cases in which litigation is pending — *i.e.*, one is advising people how to triumph in their disputes; see *Halacha Pasuka*, supra note 8, at 17:9 and comments of Rashi, Rambam, and Meiri discussed above, all of which focus on the role of an advocate in assisting a litigant to deceive the court or beit din.

If this analysis is correct, lawyers who work on transactional matters to facilitate a business deal between two clients or to restructure the business of a single client, are not governed by the mandate of Avot 1:8.

33. Rabbi Chaim Benniveshte, Knesset Hagedolah, Choshen Mishpat 17:19 (Hagaot Hatur); see also Rabbi Mordechai ben Judah HaLevi, Darchai Noam Choshen Mishpat 42.

34. Proverbs 31:8.

35. Rabbi Shlomo ben Aderet, Teshuvot Rashba 2:393.

Rabbi Aderet's analysis is even more true in a situation like the modern American legal system which functions on the assumption that all people do, in fact, employ lawyers on significant legal matters,[36] that court — and the government bureaucracy generally — is bewildering to a non-lawyer and that special legal skills are needed simply to insure justice. Particularly this is so when combined with the fact that a lawyer does not plead facts on behalf of a person but only arranges the case and pleads the law.[37] This is even more valid when a lawyer advises a client about the legal repercussions of his actions *prior* to the possibility of any litigation.[38] In short, in twentieth century America, a person when confronted with a significant issue of modern law — because of its complexity, both procedural and substantive — is like the mute in Rabbi Aderet's responsa. American law and economic life are sufficiently complex that absent such legal advice a person engaging in business can hardly function.[39]

V. Conclusion

Ethics of the Sages 1:8 contains within it two distinctly different admonishments. The first is directed toward judges. It directs them to treat litigants with fairness and equality. This mandate is codified by Jewish law and a violation of it by a judge casts doubts on the validity of the process. The second mandate is directed towards lawyers and is ethical in nature. It is understood in different ways by different authorities. Some maintain that it prohibits strangers from giving legally proper advice on how to best order one's affairs if that advice negatively affects others. Most rule that Avot 1:8 only prohibits that type of advice from being given when it is done for no benefit of the one who gives it or by an eminent scholar; however, in the case of a lawyer, paid advisor

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36. Such as the purchase of a house.

37. Lawyers are precluded from presenting facts or testimony in a case. Lawyers advance legal arguments or organize facts presented by others. A recent article cites a letter from Rabbi Shimon Schwab to the effect that the strictures against being an *orach din* are completely inapplicable in the American legal system; see Mordechai Biser, "Can an Observant Jew Practice Law? A Look at Some Halakhic Problems?" The Jewish Law Annual X: 101-135 (1994). The basis of such a ruling can perhaps be found in the fact that in an inquisitorial legal system, like that envisioned by Jewish law, lawyers — even when permitted — detract from the system. In an adversarial system of justice that is the essence of the common law, it is precisely through zealous advocacy that truth is supposed to emerge.

38. See note 32.

39. Indeed, that perhaps is precisely the type of advice permitted by Rabbi Avraham David Botatshast, Kesef Hakadoshim; see text accompanying note 23.

or relative, such advice is permissible.

In sum, it appears to this writer that Jewish law permits a lawyer, who in not an eminent scholar, to give truthful legal advice which is to the detriment of another, for pay, to clients. Three rationales can be advanced to support this ruling:

1) Many authorities rule that advice giving by non-relatives who are not eminent scholars is always permitted.

2) A number of scholars rule that paid lawyers (by virtue of their personal stake in the outcome) have the status of relatives who always may advise.

3) In modern American law a person without a lawyer is analogous to the mute in the time of the talmud, incapable of advancing his truthful legal claim. In such cases, Jewish law allows the person to seek assistance of one who will help him arrange the case.

Of course, it is prohibited for an advisor to give advice that is illegal, that would inhibit a court or beit din from reaching the proper result, or that encourages perjury.[40]

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40. The intentional providing of advice to violate the law violates the biblical prohibition of "placing a stumbling block in front of a blind person" (Leviticus 19:14). This is the classical case of a violation. As noted by Rabbi Aaron Halevi, in CHINUCH, Negative Commandment 232, it is prohibited to:

> bring Jews to grief by giving them bad counsel, but we should rather guide them correctly when they ask advice, by what we believe to be an honest way and a good plan — as it is stated, "before a blind person thou shalt not put a stumbling block" (Leviticus 19:14).
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> In the language of the Midrash Sifra: This means that before one who is blind about some matter, and he would take advice from you, do not give him counsel that is not suitable for him. And our Sages said: Let a man not tell his fellow, "Sell your field and buy a donkey", so that he can then scheme around him and take the field from him.

Rabbi Chezkeya Demedina, SDEI CHEMED 9:§36 discusses whether one violates a biblical or rabbinic prohibition when one advises a person to violate secular law. The analytical basis for the opinion that one violates only a rabbinic prohibition when the underlying prohibition is only rabbinic — such as secular law enforced through *dina demalchuta* (the law of the law) — is that the aider cannot violate a biblical prohibition if the principal is not also. The alternative, which labels all counselling in violation of Jewish law as biblical violations of placing a stumbling block in front of a blind person, maintains that giving bad advice is prohibited, and advising or aiding a person who is doing a rabbinically prohibited action is a form of bad advice and thus biblically prohibited.

American law prohibits a lawyer from suborning perjury in any way shape or form; see Model Rules of Professional Responsibility Rule 3.4. ("A lawyer shall not . . falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law).