

1. LSUC Rules of Professional Conduct (2014), Rule 3.2-1

A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Cases

- Susan, an observant Jew, is a lawyer specializing in healthcare. She is approached by David, who wants her help in navigating the system to procure medical assistance in dying. Susan does not wish to provide this help, due to concern for Jewish law; should she send David to another lawyer for help?
- Mark, an observant Jew, is a lawyer specializing in trusts and estates. Rhonda, who just lost both parents and is dealing with hostile siblings regarding the estate, seeks Mark's advice to claim a share of the estate which the Torah's laws of succession would not give to her. Should Mark advise Rhonda regarding her legal options despite Jewish law?
- Samantha, an observant Jew, is a lawyer specializing in commercial transactions. Jonathan is a Jew who is seeking a loan from a Jewish lender at 3% interest, and he approaches Samantha to write up the documents. Samantha knows that Jewish law prohibits such a loan; should she draft the documents regardless of Jewish law?
- William, an observant Jew, is a lawyer specializing in litigation. Karen, a Jew, is suing her Jewish neighbour in a property dispute, and she approaches William to represent her. Should William represent her?

Framing the problem

2. Chief Justice Nemetz, Supreme Court of BC (reported at (1985), 64 B.C.L.R. 113 (B.C.C.A.))

We have no doubt that the right to access to the courts is under the rule of law one of the fundamental pillars protecting the rights and freedoms of our citizens.

3. Eric B. Appleby, Legal Research Guide to Ethics (2006), <http://www.mlb.nb.ca/site/ffiles/ethics06.pdf>

The lawyer's duty to the state includes the entity, its systems and its people. The New Brunswick Code of Professional Conduct (2003), chapter 20, commentary 1, states: "The paramount duty of the lawyer is to serve the cause of justice." The British Columbia Canons of Legal Ethics (1992), chapter 1, states: "A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel, or assist any person to act in any way contrary to the law."

4. Leviticus 24:22

מִשְׁפֵּט אֶחָד יִהְיֶה לָכֶם כַּגֵּר כְּאִזְרָח יִהְיֶה כִּי אֲנִי ד' אֱלֹהֵיכֶם:

You shall have one justice for yourself, like stranger like citizen, for I am HaShem your Gd.

5. Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130, paragraph 118

"The advocate has a duty to his client, a duty to the Court, and a duty to the State: but he has above all a duty to himself and he shall be, as far as lies in his power, a man of integrity. No profession calls for higher standards of honour and uprightness, and no profession, perhaps, offers greater temptations to forsake them..." Lord Birkett's Presidential Address to the Holdsworth Club in Birmingham

6. LSUC, Rules of Professional Conduct (2014), Rule 3.2-7

A lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct or instruct a client or any other person on how to violate the law and avoid punishment.

7. Talmud, Bava Kama 118b-119a

אין לוקחין מן הרועים לא עזים ולא גדיים ולא גיזין ולא תלושין של צמר אבל לוקחין מהן תפורין מפני שהן שלהן ולוקחין מהן חלב וגבינה במדבר ולא ביישוב

We do not purchase goats, kids, wool or tufts of wool from shepherds, but we purchase stitched clothing from them, because these are theirs. We may purchase milk and cheese in the wild, but not in urban areas.

8. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Laws of Robbery 5:1

אסור לקנות דבר הגזול מן הגזול... שכל העושה דברים אלו וכיוצא בהן מחזק ידי עוברי עבירה ועובר על ולפני עור לא תתן מכשול
One may not purchase stolen goods from a thief... Doing such things strengthens the hands of sinners and violates "Do not put a stumbling block before the blind. (Leviticus 19:14)"

9. Talmud, Sotah 41a-b

משנה: אגריפס המלך... כשהגיע ללא תוכל לתת עליך איש נכרי זלגו עיניו דמעות אמרו לו אל תתירא אגריפס אחינו אתה אחינו אתה
גמרא: באותה שעה נתחייבו שונאי ישראל כלייה שהחניפו לו לאגריפס

Mishnah: When King Agrippas read, "You shall not place a stranger upon yourself," his eyes ran with tears. They said to him, "Do not fear, Agrippas! You are our brother, you are our brother!"

Gemara: At that moment, the "enemies of Israel" became liable for destruction, for flattering Agrippas.

10. Leviticus 19:17

לא תשנא את אחיך בלבבך הוכה תוכיח את עמיתך ולא תשא עליו חטא.

Do not hate your brother in your heart. Instruct, and do not bear sin for him.

11. LSUC, Rules of Professional Conduct (2014), Rule 3.7-1

A lawyer shall not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary [1] Although the client has the right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship.

12. Re. A.L., 2003 ABQB 905 (CanLII), <<http://canlii.ca/t/4phc>>, retrieved on 2017-12-07, para. 37

The authors of the *Law of Lawyering* make the following comments about the differences between the ABA's *Model Rules of Professional Conduct* and the *Restatement of the Law Governing Lawyers*:

Other listed reasons for permissive withdrawal are more controversial and should be employed with correspondingly more caution precisely because the breakup of the client-lawyer relationship can less clearly be laid at the client's door. Indeed, for withdrawals based on these grounds, Restatement §32(4) specifically requires recalibration of the competing harms: if the harm to the client "significantly exceeds" the harm to the lawyer or others that prompted the impulse to withdraw, withdrawal is no longer permissible.

A chief example is withdrawal in the face of client choices that the lawyer finds "repugnant or imprudent"; see Model Rule 1.16(b)(3) and Restatement of the Law Governing Lawyers §32(3)(f). Read too broadly, these provisions would permit lawyers to abandon clients at the first sign of disagreement or unpleasantness, which is antithetical to what a proper client-lawyer relationship should be. Clearly, lawyers ought to give clients the benefit of the doubt, and not withdraw unless the disagreement is fundamental, and the client's position so extreme as to be nearly impossible for most reasonable lawyers to countenance. See Restatement §32, Comment *j*.

Case 1: Referral

13. LSUC, Rules of Professional Conduct (2014), Rule 4.1-1

A lawyer shall make legal services available to the public in an efficient and convenient way.

Commentary [4] Right to Decline Representation - A lawyer may decline a particular representation (except when assigned as counsel by a tribunal), but that discretion should be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation... A lawyer declining representation should assist in obtaining the services of another licensee qualified in the particular field and able to act. When a lawyer offers assistance to a client or prospective client in finding another licensee, the assistance should be given willingly and, except where a referral fee is permitted by rule 3.6-6, without charge.

14. LSUC, Rules of Professional Conduct (2014), Rule 3.7-9

Upon discharge or withdrawal, a lawyer shall...

(f) co-operate with the successor legal practitioner so as to minimize expense and avoid prejudice to the client; and...
Commentary [4] Co-operation with the successor legal practitioner will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter...

15. Mishnah Avodah Zarah 4:9

ישראל שהוא עושה בטומאה לא דורכין ולא בוצרין עמו אבל מוליכין עמו חביות לגת ומביאין עמו מן הגת

One may neither trample nor harvest [grapes] with a Jew who processes them in impurity, but one may bring barrels to the press with him, and bring the barrels from the press with him.

16. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 19:33:9

כן אין לדלג על כמה שיטות ראשונים שסוברים שאם זה לא בתרי עברי דנהרא אין בכלל איסור...

One should also not omit the views of early authorities that there is no prohibition against aiding unless the help cannot be duplicated elsewhere...

17. Rabbi Shabbtai haKohen (17th century Poland), Shach to Yoreh Deah 151:6

כ"ע מודים להמרדכי ותוס' בפ"ק דעבודת כוכבי' דבעובד כוכבי' או מומר שרי והגמ"ר ותוס' והרא"ש בפ"ק דשבת והר"ן פ"ק דעבודת כוכבים מיירי בישראל שהוא חייב להפרישו מאיסור

All agree with Mordechai and Tosafot in Avodah Zarah that one may [sell idolatry accessories] to a non-Jew or a *mumar*. Hagahot Mordechai, Tosafot in Shabbat, Rosh, and Ran refer to a Jew, whom one must separate from sin.

18. Talmud, Yevamot 65b

ואמר רבי אילעא משום ר' אלעזר בר' שמעון: כשם שמצוה על אדם לומר דבר הנשמע, כך מצוה על אדם שלא לומר דבר שאינו נשמע.
רבי אבא אומר: חובה, שנאמר: +משלי ט'+ אל תוכח לץ פן ישנאך הוכח לחכם ויאהבך.

And R' Ila'a said, citing R' Elazar b'R' Shimon: Just as there is a mitzvah to say that which will be heard, so there is a mitzvah not to say that which will not be heard. Rabbi Abba said: It is obligatory, as it is written, 'Do not rebuke a scorner, lest he hate you. Rebuke a wise man and he will love you.'

19. Tosafot (13th century France/Germany) Shabbat 55a **ואע"ג**

היינו היכא דספק אי מקבלי כדאמר בסמוך לפנייהם מי גלוי אבל היכא דודאי לא מקבלי הנח להם מוטב שיהו שוגגין ואל יהיו מזידין

This is where one does not know whether they will accept; as the Talmud says, "Is it obvious to them [that others won't listen]?" But where they definitely will not accept, leave them; better for them to sin accidentally than intentionally.

20. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 19:33:9

להרבה פוסקים אין זה אלא איסור מדרבנן בלבד, ועל כן סוברים הרבה מהבאים אחריהם שאין חיוב להפסיד כל ממונו כדי שלא יעבור על זה... ואפילו אם נאמר שאיסור מסייע הוא מדין הוכח תוכיח, כדס"ל למקצת פוסקים, ג"כ הרי נפסק ביו"ד סי' קנ"ז דא"צ להוציא ממונו על זה... ויש מקום לומר כן גם להסוברים שהוא מדין ערבות... כן אין לדלג על כמה שיטות ראשונים שסוברים שאם זה לא בתרי עברי דנהרא אין בכלל איסור...

According to many authorities this is only a rabbinic prohibition, and so many of those who follow their view rule that one need not lose all of his wealth to avoid violating it... And even if we will say that the prohibition against aiding is a function of [the biblical] mitzvah of rebuke, as some do, it was ruled in Yoreh Deah 157 that one need not spend money for this...

Case 2: Legal Advice

21. Talmud, Avodah Zarah 6a-b

וכי אית ליה [חפצא דאיסורא] לא עבר משום עור לא תתן מכשול? והתניא, אמר רבי נתן: מנין שלא יושיט אדם כוס של יין לנזיר, ואבר מן החי לבני נח? ת"ל: ולפני עור לא תתן מכשול; והא הכא דכי לא יהבינן ליה שקלי איהו, וקעבר משום לפני עור לא תתן מכשול! הב"ע - דקאי בתרי עברי נהרא. דיקא נמי, דקתני לא יושיט ולא קתני לא יתן, ש"מ.

Does one not violate *lifnei iver* if the recipient already possesses [another prohibited item]? But we have learned, "Rabbi Natan said: How do we know that one may not extend a cup of wine to a nazir, or a part from a live animal to a Noachide? 'Do not put a stumbling block before the blind.'" Even if we don't give it to him, he will take it, and yet you are in violation of this *lifnei iver*! [This is not a problem, because:] In that case, he and the prohibited item are on two different sides of a river. We may see this in the language of "extend", as opposed to "give".

22. Rabbi Moshe Isserles (16th century Poland), Shulchan Aruch Yoreh Deah 151:1

י"א הא דאסור למכור להם דברים השייכים לעבודתם, היינו דוקא אם אין להם אחרים כיוצא בו או שלא יוכלו לקנות במקום אחר, אבל אם יכולים לקנות במקום אחר, מותר למכור להם כל דבר. (מרדכי דפ"ק דע"ז). ויש מחמירין. ונהגו להקל כסברא הראשונה, וכל בעל נפש יחמיר לעצמו. (ר"ן שם ובתוספות ואשיר"י והגמ"ר פ"ק דשבת לדעת הרב).

Some say that the prohibition against selling idolatry-related items to non-Jews applies only where they lack similar items, and they could not purchase them elsewhere. If they could purchase elsewhere, one may sell them anything. And some are strict. The practice is to be lenient, following the first view, and a person of spirit will be strict for himself.

23. Rabbi Yehudah Rosanes (17th century Constantinople), Mishneh l'Melech, Hilchot Malveh v'Loveh 4:2

יש לחלק ולומר דלא הותר ללוה ללוה בשביל שלוח אחר רוצה ללוות משום דאפשר שהלוה יחזור בו ולא ילוה...

Perhaps borrowing is not permitted just because another wishes to borrow, since perhaps this other borrower would recant and not borrow...

24. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 19:33:1

רבו הפוסקים החולקים על המשנה למלך וסוברים שאיננו עובר זה על לפ"ע אפילו בכה"ג מכיון שעכ"פ אם לא הוא, ימצאו אחרים שיעשו זאת, כמובא בשדי חמד מע' ו' כלל כ"ו ע"ש... וא"כ זה שהוטל עליו מכה תפקידו לבצע ההכנות בשלשת המקרים האמורים יש לו כר נרחב להסתמך עליו שלפיו איננו עובר בכה"ג על לאו דלפני עור.

Many authorities disagree with the Mishneh l'Melech and rule that one does not violate *lifnei iver* even in this case, for even if he doesn't do it, this person will find another to do it... Therefore, one whose job makes him responsible to execute preparations in these three cases has broad support to say that he is not violating *lifnei iver*.

Case 3: Preparing Documents

25. Talmud, Bava Metzia 75b

ואלו עוברין בלא תעשה: המלוה והלוה והערב והעדים. וחכמים אומרים אף הסופר. עוברים משום... ומשום ולפני עור לא תתן מכשול ויראת מאלקיך אני ד'.

These people violate prohibitions: Lender, borrower, guarantor, witnesses. And the Sages add: The scribe, too. They violate... and "And do not put a stumbling block before the blind, and you shall revere your Gd, I am Gd."

26. Rabbi Avraham Yitzchak haKohen Kook (20th century Israel), Daat Kohen 154

ולא עוד אלא שהמקבלים אותם הרי הם עוברים על לפני עור ממנ"פ... ואם באמת הם גרים, ובדיעבד מתחייבים בכה"ת כולה, הרי הם מכשילין אותם בזה שמחייבין אותם בעונשין של איסורי תורה שעוברים עליהם...

Further, those who accept them violate *lifnei iver* no matter what... If they are converts, they are liable for the entire Torah, and the judges are making them stumble in this and making them liable for violation of biblical prohibitions...

27. Rabbi Asher Weiss (21st century Israel) <http://bit.ly/2cwTij2>

Case 4: Representation in Civil Court

28. Rabbi Michael Broyde, *The Pursuit of Justice in Jewish Law*

29. Rabbi Ovadia Yosef (20th century Israel), Yechaveh Daat 4:65

עורך דין ירא שמים שנדרש לייצג בבית המשפט אדם שתובע ממון מחבירו, לפי ההלכה חייב להימנע מכך, שהרי הוא מסייע בידי עוברי עבירה

A Gd-fearing lawyer who is asked to represent a plaintiff who claims money in court is halachically required to refrain from this, for he aids sinners.

30. Rabbi Menasheh Klein (20th century USA), Mishneh Halachot 7:255

הבעיה הגדולה הוא אצל עו"ד כשיש סכסוך בין שני ישראלים הבאים לערכאות שיש בזה איסור גזל כשאין דיניהם שווה לדינינו ואיסור של לפנייהם ולא לפני עו"כ

This is a big problem for lawyers, when there is a quarrel between two Jews and they come to civil courts. There is a prohibition against theft when their laws do not match ours, and the prohibition of "before them" – and not before idolaters."

31. Rabbi Moshe Isserles (16th century Poland), Shulchan Aruch Choshen Mishpat 348:8

המראה לחבירו לגנוב או שלחו לגנוב, אין המשלח חייב (ת"ה סימן שט"ו), דאין שליח לדבר עבירה (ד"ע). מיהו אם השליח אינו בר חיובא, י"א דהמשלח חייב (מרדכי פ"ק דמציעא).

One who shows another person a target for theft, or sends him to steal – the sender is not liable, for there is no agency for sin. But if the agent is not personally liable, some say the sender is liable.

32. Rabbi Aryeh Leib haKohen (18th century Poland), Ketzot haChoshen 348:4

בפרק מרובה (ב"ק) דף ע"ט (ע"א) תנן היה מושכו ויוצא כו', נתנו לשומר לשואל ולנושא שכר והיה מושכו ויוצא ומת ברשות הבעלים פטור, הגביה או הוציאו מרשות הבעלים חייב. ופירש רש"י שאמר גנב לשומר שור אחד יש לי בבית פלוני קחנו ותהא עליו שומר, הוציאו השומר מרשות בעלים ומת חייב הגנב במשיכת השומר ע"ש

Bava Kama 79a: "If [the thief] was pulling the item and leaving [the owner's property], and then he gave it to [his own unpaid] guardian, borrower or paid guardian, who pulled it to exit [the owner's property] and then it died in the owner's property, he is exempt. If he picked it up, or he took it out of the owner's property, he is liable." Rashi explained: The thief told the guardian, "I have an ox in this house; take it, and guard it." If the guardian took it out of the owner's property and it died, the thief is liable for the guardian's act.

33. Rabbi Gedaliah Felder (20th century Canada), Sefer Yovel for Rabbi Y. D. Soloveitchik, pg. 410

הוא לא עושה דבר, שאם הוא לא יקבל על עצמו לייצגם יבואו אחרים, יהודי או נכרי, ויסדרו הדבר. ובכן אין כאן מסייע ידי עוברי עברה, ואף בלא רשות ב"ד אין לאסור לעורך דין...

He is doing nothing, for if he would not accept to represent them, others would come – Jewish or non-Jewish – and arrange it. Therefore, there is no issue of aiding transgression, and even without license from a beit din one should not prohibit a lawyer...

34. Rabbi Michael Broyde, *The Pursuit of Justice in Jewish Law* pg. 65

Once one side in litigation actually seeks to have the dispute adjudicated in *beit din*, and *beit din* accepts jurisdiction and orders both parties to appear, it is a violation of the Jewish court's order to assist the recalcitrant litigant in pursuing a prohibited secular remedy.