

Mitchell H. Gropper, QC Faculty Exchange Program

DECIDING BETWEEN CONTRADICTING NORMS: RIGHTS-BASED LAW VS. DUTY-BASED LAW

The concept of right stands at the very center of our legal universe. An imaginary alternative legal universe might have exactly the same norms as ours, except that they are centered on the concept of duty. Is there any significant difference between these two legal universes? The Hohfeldian assumption of complete correlativity between rights and duties might imply that the difference between these two universes is merely a matter of rhetoric. This article, however, argues that a rights-based legal world would presumably be significantly different from a legal world based upon duties. For this purpose, the article examines the way in which contradictory norms are resolved. A rights-based system decides cases of contradictory norms according to a process that is different from that used by a duty-based system. The article is devoted to examining the roots of this difference, its significance and its implications. Alongside the discussion of the classical and modern legal sources from the Western legal tradition, the article contains a comparative discussion of Jewish law sources, which is considered a typical example of a duty-based legal system.

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Benjamin Porat is a Senior Lecturer and the Director of the Matz Institute for Research in Jewish Law, at the Faculty of Law, The Hebrew University of Jerusalem. He completed his PhD at the Faculty of Law, The Hebrew University (LL.D. summa cum laude). After completing his doctorate in 2010, he was a Halbert Postdoctoral Fellow at the University of Toronto. Dr.

Porat focuses on the areas of theory of Jewish law, contract law, and distributive justice. Dr. Porat is the editor of Shenaton ha'Mishpat ha'lvri (the Jewish Law Annual). His works have appeared in numerous publications including University of Toronto Law Journal, American Journal of Comparative Law, and Columbia Journal of Gender and Law. His new book, entitled "The Principles of Welfare Regulations: From Biblical Law to Rabbinic Literature", is about to be published in the coming weeks.

This event qualifies for 1 CPD credit.



ALLARD
SCHOOL OF LAW



FEBRUARY

07

THURSDAY

12:30 –
1:45PM

FASKEN
CLASSROOM
(ROOM 122)