

**YOU  
BE THE  
JUDGE 3**

**A Collection of Ethical Cases and Jewish Answers**

**Joel Lurie Grishaver**

**With a Few Cases by Rabbi Aaron Frank**

ISBN 1-891662-59-7

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Published by Torah Aura Productions

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MANUFACTURED IN THE UNITED STATES OF AMERICA

# Introduction

For a decade we have been publishing **You Be the Judge** cases weekly. They first appeared in **Shabbas.Doc**, a newsletter for Jewish families. Later they appeared in **C.Ha** (pronounced “seecha” and meaning “conversation”), a newsletter for 11- to 14-year-olds. In classrooms and homes, as well as in programs all over the world, groups have been struggling to find “the right answer” to a complex series of ethical dilemmas and legal conundrums.

This is the third volume in the **You Be the Judge** collection, **Case Load 3**. In many ways this is a “greatest hits” volume, drawn from six years worth of published cases. A few of the cases come from the half year that **Rabbi Aaron Frank** served as our legal decisor (and are so indicated). The rest were authored by Joel Lurie Grishaver. Many contain the input of the “**C.Ha** Crew,” the students who have regularly participated in the e-mail dialogue that shaped and help produce **C.Ha**.

## The You Be the Judge Process

There is a simple secret to **You Be the Judge** cases. These are situations in which we have to choose between two things we believe in. These are not “should you return the wallet or not” cases. Rather, they are cases that involve “Is it okay to risk your life?” or “Should your dead comrade remain unburied?” They are always about finding the best compromise—or making the hard choices that force you to give up on one value while actualizing another.

**You be the Judge** cases are created two ways. Some start with the answers while others start with the question.

There is a large literature of Jewish questions and answers called Responsa. Since the end of the Talmud, Jews have been asking their rabbis questions. When their rabbis have been unable to answer those questions, they’ve passed them on to some of the leading rabbis of their generation who researched and wrote their best answers. These “answering” rabbis often collected their best answers into books, collections of Responsa. Today most of the major Jewish movements in many

countries maintain “law committees” that answer questions for their movement. In this volume we have drawn on Reform and Conservative Responsa created in North America, Great Britain and Israel. We have used lots of Orthodox Responsa both from this generation and from earlier ones. Many of our cases are drawn from Responsa where the “question” has been restated and the sources and opinions in the answer have been simplified for our answer.

Other times our cases start with a question. Some come from the headlines, some from small sidebar articles in newspapers or from radio shows. Often participants in **You Be the Judge** programs or groups have sent us “real life” cases for which they are seeking answers. When a case starts with the problem, there is a complicated research process that gathers material from the Torah, the Talmud and the Midrash, the Codes, and most of all from Responsa literature. Here we do our best to project good Jewish answers to difficult questions.

*Halakhah*, Jewish law, is an art form, not a science. When looking for the “Jewish” answer to an ethical dilemma, we can always clarify the values that are involved, we can often find the compromises that the tradition has recommended in the past, but we can’t always find solutions. Sometimes the tradition just helps to clarify our choices. Other times, however, we find places where the tradition makes clear recommendations. This isn’t always satisfying.

The **You Be the Judge** process will, however, always do two things. First, it will give you a chance to rehearse your response to difficult situations, to think them through when nothing real is at stake. Second, it will always give you a language and a process to use to confront ethical dilemmas. This is the real richness of the Jewish tradition. It gives you a way to solve problems, even if it doesn’t always give you a clear answer every problem.

## Using **You Be the Judge**

**You Be the Judge** is used by families at their Shabbat table. It is used in lots of classrooms. And **You Be the Judge** is the source for large group programs and even a museum exhibit. In using this material in any of these contexts, there are four steps.

- [1] **Hearing and Reacting to the Case:** The first step is reading and discussing the case. Here is a chance to explore the issues and to propose solutions. This is a time for various solutions to be put on the table, compared, and evaluated.
- [2] **Testing Out Reasoning:** The best way to grow these conversations is to help clarify thinking by testing the parameters of the values expressed. For instance, if a participant says, “A murder should never be forgiven,” among the questions they might be asked are:
- Even if they repent?
- What if the murderer was significantly abused by the person he killed?
- What if the murder was committed under the influence of drugs and alcohol and the person has gone through recovery?
- In confronting such questions—alternative visions of the situation—the participants get a chance to hone their thinking and craft their understanding.
- [3] **Exploring the Jewish Sources:** Following the case, **You Be the Judge** always presents “a Jewish solution.” The “answer” provides Jewish sources that suggest how Jewish values apply to this situation. Reading and discussing the values gives a window on Jewish thinking.
- [4] **Evaluating the Proposed Answer:** As we have said, Halakhah is an artform. The “suggested” answer is not the only possible Jewish response. Answers will differ between Jewish movements, and they will often differ between legal scholars within the same movement. When reading “the Jewish answer,” students need to ask two questions:
- What have I learned from these Jewish sources?
- How do I feel about the suggested answer? Is it an answer for me?

## Core Jewish Values Found in This Volume

*Ba'al Tahshit*: We are commanded not to waste anything that can be useful to people. Recycling is a mitzvah. It is based on a Torah verse that says, “WHEN YOU MAKE WAR YOU CANNOT CUT DOWN FRUIT TREES.” (Deut. 20.19)(*Mishneh Torah, Laws of Mourning* 14.24)

*Darkhei Shalom*: Fostering goodwill and harmony. (*Titan Emet l'Yaakov* 5.24)

*Derekh Eretz*: “The right thing to do.” The students of Rabbi Shimon ben Shetaḥ buy him a donkey as a gift. He is old, and the donkey will help him earn a living. They buy the donkey, the saddle, the blanket, and everything on it in a precise formula from an Arab merchant. Shimon finds a jewel on the animal as he is grooming it. He demands that his students return it. They insist that it is legally his. He persists that it be returned. When they bring it back, the Arab responds, “God bless the God of Rabbi Shimon bar Shetaḥ.” This is *Derekh Eretz*. (*Jer. B.M.* 2.5)

*Dina d'Malkhuta Dina*: The law of the land is the law. This means that one has to follow local laws unless they directly lead to the violation of Jewish laws. (*Nedarim* 28a; *Gittin* 10b; *BK* 113a; *BB* 54b and 55a)

*Ha-Hovel b'Atzmo*: This is the rule against injuring one's self. In Deuteronomy 4:9 we are told “TAKE CARE AND BE CAREFUL TO GUARD YOURSELF.” Maimonides expands this and lists things that risk your health that are forbidden because they are dangerous. (*Hilkhhot Rotzeah* 11:4).

*Ha-Rodef*: This principle means “the pursuer.” If person A is chasing person B in order to kill him or her, an outsider can kill A in order to save B's life, if that is the only way to protect B.

*Hasagat Ge'vul*. This is “violating a boundary.” This is the rabbinic label for unfair competition in business. (*Bava Kama* 20a)

*Hefeker*: This means “abandonment.” The idea is that when a person loses something, how long is a finder obligated to return it? The answer: until it is “*Hefeker*.” When is that? When the original owner gives up hope of ever recovering it. In other words, when it is abandoned. There are rules about how long that takes, but in general, if the object can be identified, “a year and a day,” and

if the object cannot be identified (if it has no distinguishing, describable attributes, like a twenty-dollar bill), immediately.

Hezek Re'yah: The term for prohibition of visually invading someone's space. This is the Jewish category for invasion of privacy. (*Bava Batra*, 2a-3a, 59b)

Hillul ha-Shem: It is forbidden for a Jewish person to do anything that could discredit the religion or God.

Kibud Av v'Em: The mitzvah of honoring parents. (*Kiddushin* 29a)

Kiddush ha-Shem: Standing up for God's name. It is being a good example for God.

Lashon ha-Rah: The sin of gossiping. (*Pesahim* 113b)

Lifnai Ever: The Torah says "DO NOT PUT A STUMBLING BLOCK BEFORE THE BLIND." (Lev. 19.14) Rashi explains, "This law refers to a person who is blind to the consequence of his/her actions, not just to one who is suffering from physical blindness."

Lo Ta'amod al Dam R'ei-ekha. A verse in Leviticus tells us "DO NOT STAND ON YOUR NEIGHBOR'S BLOOD, I AM GOD" (19:16). This prohibition gives us the commandment that we cannot stand idly by while someone is dying; we must do what we can to save him or her. (*Talmud, Sanhebrin* 73a)

Ona'ah is a basic Jewish legal principal called that is usually translated as fraud. (*Bava Metziah* 51a ff).

Ona'at Dibbur: This is verbal fraud. One example in the Talmud is the question, "Can you walk into a store and ask the price of something you have no intention of buying?" (*Bava Metziah* 58b)

Ona'at Dibbur is any set of words that leach self-esteem from another.

Pikuah Nefesh: A principle learned in chapter 8 of *Yoma*. It is based on Leviticus 18.5, where the Torah says "THESE ARE MITZVOT—LIVE BY THEM." The rabbis underline this passage in the Talmud and add, "LIVE BY THEM—do not die by them."

Rakhok me'Shekheker: In the Torah it says "KEEP FAR FROM LYING." (Exodus 23.7) The rabbis make a point of teaching that the text says "KEEP FAR FROM LYING" and not "DO NOT LIE." They explain

that there are times when lying is acceptable. This usually involve (a) making peace, (b) protecting someone's life or property, (c) not hurting someone's feelings, etc. (*Yevamot* 65b, *Ketubot* 17a)

*Shomer Hinum*: An unpaid guardian is not responsible to pay for loss or damage unless s/he made personal use of an object or unless s/he was negligent in protecting it. (*Bava Metzia* 3.1).

*Tokhehah*: The mitzvah of correcting, which teaches that we have an obligation to help other people realize that they are doing something wrong. (Leviticus 19.17)

*T'shuvah*: Judaism believes that repentance is possible for all mistakes and crimes except when one sins and plans on being released from that sin by *t'shuvah*. Judaism makes a distinction between forgiveness and punishment. We are required to forgive anyone who sincerely makes repentance. But, that forgiveness does not necessarily remove the punishment. (*Yoma* 85b)

*V'Shinantem l'Vanekha*: This commitment for parents to teach their children comes from the verse, "AND YOU SHOULD TEACH THEM TO YOUR CHILDREN." (Deuteronomy 6.7)

*Zuto Shel Yam*: This teaches that anything recovered after a flood (even if it has distinguishing marks) does not need to be returned. It is assumed that after a flood the owner has given up hope of retrieving it. (*Bava Metzia* 21a ff.)

# [1] Up Against The Wall

This true case arrived in an e-mail:

”**A**t my school someone put a piece of graffiti on a bathroom wall. I might know who it is if it happens again. So what do you think I should do if it does happen again?”



## The Answer to “Up Against the Wall”



Here are some of the answers sent in by our **C.Ha Crew**:

“If it does happen again, I would tell the person who did it to realize that putting graffiti on the wall makes your school look like a bad place. The same kind of problem happened to my school when someone drew a swastika on the bathroom door.” **Josh, 11, Short Hills, NJ.**

“If you know who it is, you should report them to the principal.” **Ben, 9, Lawrenceberg, IN.**

“Leave it alone. You’ll just get in more trouble if you get into it.” **David, 11, Chicago, IL.**

“Wait until you are sure you know who the person is, then tell them to stop.” **Rory, 13, Wallingford, PA.**

“I feel that Nathan should talk to the one who wrote the graffiti on the wall and express his feelings of why he or she shouldn’t do it again.” **Nate, 13, Denver, CO.**

“If it does happen again, confront the person and tell them you know it is him/her. Tell the person to stop, and if they don’t, go to the principal/administrator.” **Trevor, 14, Omaha, NE.**

“I agree with Trevor—talk to the person if it happens again, but make sure it really IS them (it would be horrible if it wasn’t them!), and tell them that if they don’t stop you will go to an authority person. If they don’t listen to you, then follow through with your word... even though this could earn the person’s eternal hate [-:-]), unless it is your very good friend, it is important to take care of the property. Would you want people to do that to your house? Your school kind of is your second home because you spend most of the day there. You shouldn’t be uncomfortable in the bathroom.” **Rachel, 13 in 1 month, 10 days, Wallingford, PA.**

Whether to “tell” about the person you suspect of being guilty of defacing the bathroom is a hard question.

- [a] First, the Torah makes it clear that you have an obligation to protect other people's property. That would include making sure that the school bathroom is not defaced. The Talmud teaches (*BM 30b*), "If a person sees flood waters approaching someone else's field, that person must make a barrier or a dam and try to save the field." This is based on Deuteronomy 22.1: "IF YOU SEE YOUR NEIGHBOR'S OX OR SHEEP LOST, YOU MUST NOT IGNORE IT. YOU MUST TAKE IT BACK TO YOUR NEIGHBOR."
- [b] There is a mitzvah called "*Tokhehah*," correcting, that says you have an obligation to help other people realize that they are doing something wrong (*Leviticus 19.17*). The rules are complex, but the basic idea is this: if there is a way of talking the kid out of doing it again, you must confront him. Even if it will make you uncomfortable to do so, you still have an obligation. (*Yevamot 65b*) But if your confronting him will make it worse, you are not allowed to.
- [c] You are not allowed to ruin the reputation of someone on a hunch. There is even a passage in the Talmud that says if you are the sole witness to a crime, you are not allowed to testify against the guilty party. This is because in a Jewish court no one can be convicted on the testimony of one witness, and by testifying, all you are doing is harming the reputation of the guilty party. You are actually guilty of *Lashon ha-Rah*, gossiping. (*Pesachim 113b*)

Therefore:

If you think you know who it is, but you don't know for sure, you are not allowed to tell, because you might be ruining someone's reputation.

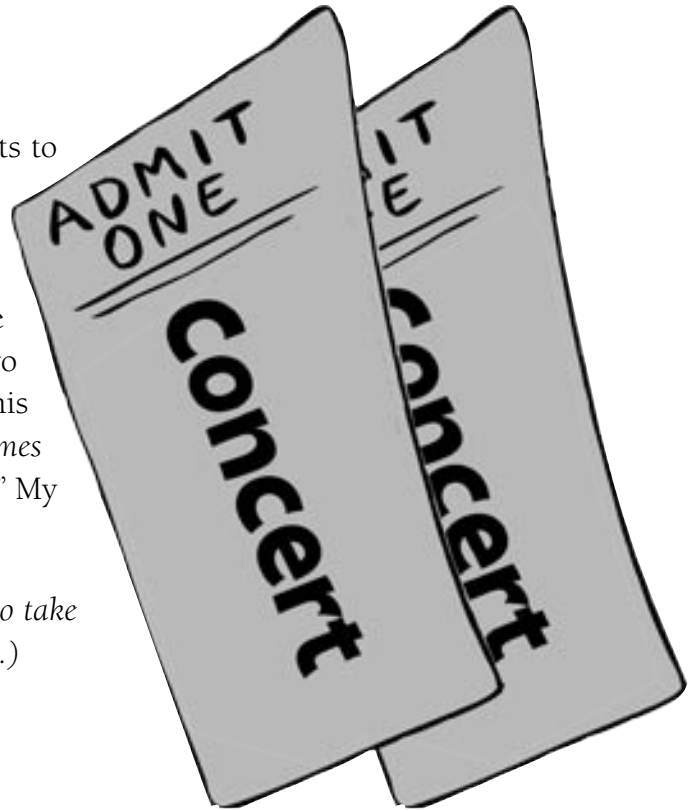
If you can warn the school to watch the place and not the person—say if you know when they do it—that would be best. This will protect the property but not get the other person in trouble without you knowing for sure.

Best would be if there is a way you can talk to the guilty party and change his or her behavior. But you are not allowed to put yourself at risk (say if they would harm you if you confronted them). The very best thing would be if the person could be convinced to repair the damage already done.

## [2] Kosher Tickets

**S**ean is standing in line to buy tickets to a concert he really wants to see. He is set to buy four tickets. There is a rule that no one can buy more than six tickets. A man comes up and down the line and offers to pay Sean \$100 if he buys two extra tickets for him. Should Sean do it? This case comes from a column in the *New York Times* written by Randy Cohen called “The Ethicist.” My own friends have been arguing over this one.

**YOU BE THE JUDGE:** *Is it Kosher to take the money? (Kosher means appropriate for Jews.)*



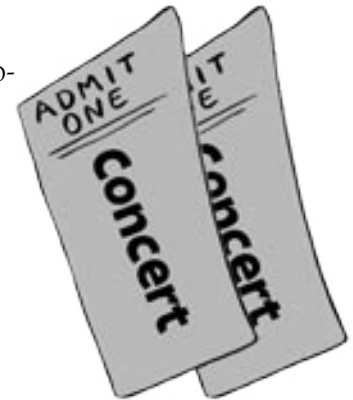
## The Answer to “Kosher Tickets”

I was having dinner with friends of mine, both rabbis, and they had opposite answers to this question.

- [a] The first said, “He is allowed six tickets. He buys six tickets. He has broken no law. If he makes some money, good.”
- [b] Rabbi Number Two said, “It is wrong. First, he is breaking the rule of *Dina d’Malkhuta Dina*, the law of the land is the law. The limits on the number of tickets you could buy were set up to prevent scalpers. Scalpers resell tickets to people at high prices. If this person is a scalper (and the \$100 says he well may be), you are helping him break the law. Helping another person break the law (even if you make money) is a violation of the principle of *lifnai ever*, ‘you shall not put a stumbling block before the blind.’”

If he was just a person who wanted tickets without standing in line, he was stealing the time of people who stood in line. Stealing time is also a violation of the “YOU SHALL NOT STEAL” commandment.

Using no texts but just logic, Randy Cohen said that it was wrong to buy the tickets. Whether you go with Rabbi No. 1, who says you are within the law, or Rabbi No. 2, who says you are breaking the values of the law, is a matter for your own conscience.



## [3] Light One Candle and Go to Jail



**I**t is a mitzvah to light Shabbat and holiday candles. In other words, it is something a Jew is “supposed” to do. Sarah is a freshman at a state university. Her mother gave her candlesticks as part of her “Jewish at college” kit. Now, Rosh ha-Shanah is coming. On many university campuses it is against the dorm codes to have an open flame (like a candle) in a dorm room.

**YOU BE THE JUDGE:** *Sarah wrote and asked this question: “Should she light her candles for Rosh ha-Shanah and break the dorm code, or follow the code and not light candles?”*

## The Answer to “Light One Candle and Go to Jail”

If your college dorm forbids the lighting of candles in your room, what should you do?

- [a] Maimonides makes it clear that it is a mitzvah to light candles on Shabbat and on the *Haggaim* (festivals). (*Laws of Shabbat* 5.3)
- [b] The Talmud makes it clear that Shabbat and other mitzvot can be violated when life is at stake. Performing the mitzvot is not supposed to be dangerous. *Pikuah Nefesh* is the name of this principle, and it can be learned in chapter 8 of *Yoma*. It is based on Leviticus 18.5, where the Torah says, “THESE ARE MITZVOT—LIVE BY THEM.” The rabbis underline this passage in the Talmud and add, “LIVE BY THEM—do not die by them.”
- [c] There is another rabbinic principle called *Dina d’Malkhuta Dina*, that more or less means the law of the land is the law. This means that you have to follow local laws unless they directly lead to the violation of Jewish laws. (*Nedarim* 28a; *Gittin* 10b; *BK* 113a; *BB* 54b and 55a)
- [d] Most of our **C.Ha** kids suggested “work-arounds” such as getting the university to provide a candle room or using electric candles, etc. They were going in the right direction.
- [e] If the university were forbidding Jewish practice or religious practice, then there would be an obligation to protest for freedom. This would be called *Kiddush ha-Shem*, standing up for God’s name. But if the regulation is for health and safety, and if there are alternatives that allow you to still observe the mitzvot, then there is no issue. *Dina d’Malkuta Dina* becomes the overriding principle. The candles are not lit in the room, but an alternative is found.

