

THE RIGHT TO PRACTICE RELIGION AS THEY PLEASE

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This paper examines Friedman v. State of New York, a 1963 case in which a sixteen-year-old Orthodox Jewish girl jumped off a moving ski lift to avoid violating the Jichud, a prohibition of Jewish law.² It analyzes the court's application of the Free Exercise Clause of the First Amendment, which requires the court to respect Friedman's individual interpretation of her religion, regardless of whether others in her community agree. It further examines the State's negligence in failing to adequately warn passengers of the ski lift's shutdown time and how that negligence compelled Friedman to risk her life to uphold her religious convictions. The case ultimately stands for a broader principle: courts must defer to an individual's own understanding of their religion, not the majority view within that religion.

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² *Friedman v. State*, 54 Misc. 2d 448, 282 N.Y.S.2d 858 (Ct. Cl. 1967), *modified*, 31 A.D.2d 992, 297 N.Y.S.2d 850 (3d Dep't 1969).

INTRODUCTION

August 22, 1963. On a summer day in Belleayre Mountain Ski Center in Highmount, Ulster County, New York, a sixteen-year-old Orthodox Jewish girl jumped off a moving ski lift to avoid what she believed was a violation of Jewish law. This is the ski lift *Jichud* case that has made its way around social circles in the Orthodox Jewish community. How could she not have known that she would be alone on a ski lift with a man? Was she really correct in jumping off the ski lift, or was she just overzealous? And if it was in fact reasonable for her to jump, did the court have to respect this decision when other reasonable interpretations of Jewish law would not require her to do so?

I. THE STORY

The *Jichud* (known colloquially as “yichud”) is an Orthodox Jewish law that prohibits an unmarried man and woman from being alone in a place that is inaccessible or unobserved by a third or fourth person, an issue that arises more often at night. In Orthodox Jewish law, there are few instances where risking one’s life would be required to avoid the violation of a religious prohibition. On August 22, 1963, Ruth Friedman legitimately believed that as a member of an Orthodox Jewish community and as an individual who strictly followed the laws and traditions of her Orthodox community, she had to avoid violation of the *Jichud* at all costs. Friedman was 16 years old on the date of the incident and had attended Yeshiva day schools her whole life. At the time, she was employed as a lifeguard in Camp Shiroh, an ultra-Orthodox camp in New York. She had one day off per week, which she usually spent with her friend, Jack Katz. On the date of the incident, Friedman and Katz visited Belleayre Mountain Ski Center, a recreational area owned by the State of New York, to spend their day off sightseeing.

The ski center's summer operations consisted of running the ski lift up and down Belleayre Mountain. The ski lift spanned 2,950 feet in length and was 783 feet in height. Each car on the lift had two chairs, allowing for two people in a car at a time, and each individual chair was equipped with a safety bar and a footrest. At the time, the ski lift was staffed by three State employees: one at the bottom and two at the top. Friedman and Katz arrived at the ski center in the early afternoon and took the ski lift up the mountain. When they made it to the top of the mountain, they walked out of sight of the ski lift terminal for a while. Eventually, Friedman looked at her watch and realized it was getting late. Katz believed that they started heading back to the mountain at around 5:30 PM, a walk that took about 10 to 15 minutes.

When they got to the terminal, it was deserted, but the ski lift was still operating. Not seeing any barriers or signs preventing them from boarding the car, they mounted the ski lift and began their descent down the mountain. A few minutes after their car started to go down, it stopped operating, leaving them about 20 to 25 feet in the air. For 15 minutes, they yelled for help, but no one came. Friedman began to panic and reached a near-hysterical state at the thought of being stuck 25 feet in the air overnight. As was later explained in court, part of this near-hysteria could have been due to the religious obligation that Friedman felt she was under not to spend the night alone with a man.

To avoid violating the *Jichud*, Friedman crawled out of her chair and held onto the bottom of the car. The next thing she recalled was finding herself on the ground, in pain and covered in blood. She managed to go back up the mountain and break into the terminal lodge to use the telephone, but the phone was dead. She continued down the mountain, while in immense pain, to the intermediate cabin where she again forcibly gained access and tried to use the phone. That one was dead as well. She

struggled down the rest of the mountain before breaking into the base lodge, where, finally, the telephone was working. She called the State Police, who sent personnel to rescue Katz and transport Friedman for medical assistance.

II. RELIGIOUS FREEDOM AS A LEGAL DEFENSE

A. *Case Background*

Friedman subsequently sued the State of New York for the injuries she sustained, related medical expenses, and loss of services sustained by her father. The State attempted to dismiss Friedman's claims on the grounds of negligence, arguing that jumping off the ski lift unnecessarily endangered her, thereby making her responsible for all injuries sustained.

The plaintiff had to prove that the State was responsible for failing to warn her in advance that the ski lift would be shut off at 5:50 PM, and that it was legitimate for her to jump off the lift, thereby risking her life, to avoid violating the religious prohibition of *Jichud*. But to connect these dots, the plaintiff first had to demonstrate that the State was responsible for putting her in a situation where she had to risk her life in order to keep her religious practices.

B. *Religion As A Legal Basis*

In court, Rabbi Herschel Stahl was called upon to testify as an expert witness on the Orthodox interpretation and observance of Jewish law. Rabbi Stahl knew the plaintiff and her family and was therefore aware that she was raised with strictly Orthodox observance of Judaism. In this instance, as Rabbi Stahl testified, not only would violating the *Jichud* be a violation of a serious religious prohibition, it would also likely ruin Friedman's and her parents' reputations in their community. Rabbi Stahl noted that a girl who was educated and raised as Friedman would possibly

go as far as to even jump to her death to avoid this violation of the *Jichud*. After an extensive cross-examination in court, it was shown that although individual members of Orthodox Judaism might disagree, it was possible that a strictly Orthodox member of Judaism would practice Friedman's interpretation of Jewish law in this case.

This point was pivotal. The court is obligated to respect religious freedoms, with no authority to judge a religious law or to determine which interpretation of the law a member of that religion must follow. The court found that there was a valid interpretation of the religious law that would lead the plaintiff to jump off the ski lift, thus negating any negligence on her part. It was not whether Rabbi Stahl gave an absolutely correct interpretation of the Jewish law, but rather whether there is a branch of Judaism that subscribes to the interpretation that he gave, and if Friedman fit under this branch of Judaism at the time of the incident. Rabbi Stahl's testimony ultimately established that there was a legitimate basis for the moral compulsion that Friedman felt she was bound by.

C. *The Free Exercise Clause*

Freedom of religion is protected under the First Amendment to the Constitution, where, in the Free Exercise Clause, it "protects citizens' right to *practice their religion as they please*."³ This means that when there are different understandings of a religious text and practices, even within the same religious community, people have the right to practice their faith according to their own understanding. Freedom of religion, thus, is not just about having the right to practice (or not to practice) any specific religion, but also one's legal right to practice their religion according to how they understand it.

³ U.S. CONST. amend. I.

This clause is essential to the case of *Friedman v. State*. After Rabbi Stahl established that Friedman acted reasonably within her understanding of her religion when she jumped off the ski lift in order to avoid violating the *Jichud*, the court was thus *legally* obligated under the First Amendment to respect her actions, removing the State's claims of "negligence" on her part. Although even individual members inside the Orthodox Jewish community might disagree with people who believe they have to risk their life to avoid the *Jichud*, it is irrelevant to that person's legal rights. The court is obligated to respect people's *valid understanding* of their religious texts, even if others disagree.

III. STATE LIABILITY

A. *Common Carriers*

After Friedman's actions were deemed reasonable under the First Amendment, her counsel proceeded with the second part of the trial, which was to prove the ski center's negligence, which led Friedman to risk her life and subsequently suffer damages. Plaintiff's counsel first tried establishing Belleayre Mountain Ski Center as a "common carrier" under the common carrier doctrine. This doctrine holds common carriers to a higher standard of safety and care for the goods and people they transport, since common carriers serve the public.⁴ In previous cases, such as *Grauer v. State* and *Battalla v. State*,⁵ ski lifts were established as common carriers. However, as of April 23, 1963—121 days before the incident—an amendment to subdivision 9 of section 2 of the Public Service Law was put into effect, limiting common carriers to "any such agency for public use in the conveyance of persons or property within this state *other than by use of ski*

⁴ Common Carrier Duties, SCMEDU, <https://scmedu.org/commoncarrierduties/>

⁵ *Grauer v. State*, 9 A.D.2d 829, 192 N.Y.S.2d 647 (3d Dep't 1959); *Battalla v. State*, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961).

tows and other passenger tramways operated at ski centers.”⁶ Because of this, the State could not be deemed a common carrier in operating the ski lift. However, as referenced earlier, in *Grauer v. State of New York*, it was stated that “[i]n view of the fact however that the lift was a constantly moving device it is obvious on the face of it that the State owed a duty to use every reasonable care to see to it that each passenger was seated safely; and this duty existed *whether the State is technically classified as a common carrier or not.*”⁷ Because of this, the State did have an obligation to exercise reasonable care in the operation of the ski lift, regardless of “common carrier” designation or not.

B. *Negligence*

Once the State’s responsibility was thus established, the plaintiff’s counsel proceeded to prove that the State was negligent in its operation of the ski lift. Simply put, they did not adequately warn Friedman and Katz that the ski lift would stop operating at 5:50, which left Friedman in a situation where she was ultimately injured. In court, it was shown that there was no substantial sign indicating the time that the ski lift would cease to transport tourists down the mountain (although there was a sign that signified the time that the ski lift would cease to transport tourists up the mountain), nor did any attendants tell Friedman or Katz about the ski lift’s shutdown time. There was a small sign at the start of the ski lift that stated “Last Passenger Down 5:50 P.M.” However, this sign was deemed insignificant in court because it was placed on a tree that was easily missed. There was another sign at the top of the mountain that stated the same message, but it was only visible if a tourist chose to sign the guest book in the attendants’ shed, an action neither required nor carried out by Friedman or Katz. The ski lift was also arguably the most negligent that

⁶ N.Y. PUB. SERV. LAW § 2(9) (McKinney 1963).

⁷ *Grauer*, 9 A.D.2d at 830.

day, failing to carry out its closing procedure, which included not allowing passengers onto the lift and checking the top of the mountain for remaining tourists. Attendants regularly boarded the lift to descend the mountain at the end of the day, turning off the lift once they reached the bottom, which left a blind spot where people could potentially board the ski lift while it was still running without an attendant's detection—exactly what happened to Friedman and Katz.

C. *Case Conclusion*

Since the State was found to be so overwhelmingly negligent, especially due to the lack of an attendant's presence at the boarding site of a moving lift, the plaintiff was found free from any contributory negligence. The plaintiff suffered from many injuries—including fractures, lacerations, whiplash, trauma, and deformities—due to the incident, and she had to undergo many expensive and lengthy procedures. Her doctor stated that the procedures helped bring her to 75% improvement from the condition she was in after the incident, but some of her injuries were permanent. The State was found liable, and the plaintiff and her father were awarded the joint sum of \$37,231.53.

CONCLUSION

Aside from the other findings of this case, such as whether the ski lift was considered a common carrier or if the park substantially warned the plaintiff about the ski lift's closing time, the most striking and novel part of this case concerns the Free Exercise Clause. It may seem surprising to many Orthodox Jews that the Court respected Friedman's understanding of the *Jichud* prohibition, when Jewish law never explicitly requires one to risk their life to avoid it. What these people do not understand, however, is the true nature of the Free Exercise Clause and the manner in which Jewish law can overlap with U.S law.

Jewish oral law is originally recorded in the *Mishnah*, which is then elaborated and debated in the *Talmud*. The Talmud—one of the earliest texts of Jewish law—includes disagreements and arguments on its exact parameters, yet the extent of Jewish law does not end there. Numerous legal books have been written on the Talmud, and additional books have been written on those books. It is because of this that there are a vast number of understandings of the exact conditions of a particular Jewish law, with different communities within the Orthodox Jewish community practicing different interpretations of that law. Regardless of whether there is even one theologically correct way to practice a given law, the community accepts that there are multiple legitimate ways to practice it.

It would be unreasonable to suppose that the U.S. Court should find *the one* correct way to practice a particular Jewish law, and doing so would require going back to the original Talmudic debates. Furthermore, it would need to assume that the Court has the capacity to decide a Jewish theological debate. This level of involvement with a religion's practices would be inappropriate and would impede one's religious freedom. If the Court decided on one correct way to practice a contested Jewish law, but an American Rabbi and community wholeheartedly believed that their religious understanding led them to a different conclusion than that of the Court, they would now have to forgo their religious understanding for that of the law.

Because religious law admits many interpretations, the Free Exercise Clause protects all legitimate understandings of any particular religious law. This is the essence and backbone of religious freedom, and if the Free Exercise Clause did not exist, or, namely, if the Court had the right to tell a citizen how to practice their religion, religious freedom would cease to exist. Thus, the Court had to respect Friedman's legitimate

understanding of her religion's prohibition, setting a precedent that each citizen has the right to practice their religion as they please.