



האוניברסיטה העברית בירושלים
THE HEBREW UNIVERSITY OF JERUSALEM



Faculty of Law

Rothberg International School
Department of Summer Courses
and Special Programs

הפקולטה למשפטים

ביה"ס לתלמידים מחו"ל ע"ש רוטברג
המחלקה לקורסי קיץ
ותוכניות מיוחדות

Mishpatim: Israeli and International Law

(SPLW401- 48790)

Dr. Daniel Ohana

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January 4 – January 29, 2021

60 Academic Hours, 4 Academic Credits

SYLLABUS

Seminar Description and Objectives

This seminar aims to provide Australian students with an overview of the contemporary Israeli legal system, while enabling them to explore the major challenges it has grappled with in recent years, including the outbreak of the coronavirus pandemic this year. The first week of the seminar includes introductory classes designed to impart knowledge of the basic concepts and institutional framework of Israeli law and government. Classes during the remainder of the seminar focus on more specific areas of Israeli law. They feature guest lectures by leading academics and experienced practitioners, who provide students with information on the latest developments in their fields of expertise. In the course of the program, students will also participate in online tours of the Supreme Court of Israel, the Knesset (the Israeli Parliament) and the Yad Vashem Holocaust Museum.

It should be noted that the program is subject to changes based on developments caused by the coronavirus pandemic in Israel and that it may undergo last-minute modifications due to health-related restrictions imposed by the authorities on universities and other public institutions.

Format

The format of the seminar will include one or two lectures delivered daily online from Israel (via ZOOM) over a period of four weeks. All lectures will be available online throughout the program for the students to view when convenient to their schedule.

Students must attend each week at least 75% of the live sessions in real-time.

Participation in the online tours is mandatory. Students who do not regularly attend class will not receive credit for the course.

Assessment

Students are required to submit a 7,500-10,000 word research paper, which demonstrates a suitably high level of complexity and depth. The paper shall be written following completion of the seminar, and students will be expected to submit it to the instructor by e-mail. The topic of the essay will be selected in agreement with the instructor from a list of proposed subjects pertaining to Israeli law and related to the material taught in the seminar. Evaluation of the essay will be based on the following criteria: thoroughness of research; presentation and organization (including references and a bibliography); quality and style of writing; and the strength of the presented argument, including demonstrated comprehension of pertinent materials, clarity of reasoning, and originality of the ideas developed in the paper.

Readings

The seminar is conducted exclusively in English; proficiency in spoken or written Hebrew is not a prerequisite for participation in the program. Israeli statutes and Supreme Court decisions relevant to the material discussed in class are often fully or partially available online in English translation. The list of scholarly articles compiled for the seminar summarizes, in English, leading court cases and legal doctrines. An online site administered by the Rothberg International School is available to enable easy interaction between students and the instructor throughout the course of the program. By accessing

the site, students will be able to obtain general information and announcements about the program. Background material and course readings will be posted online in the period leading up to the seminar, so as to give students the opportunity to familiarize themselves in advance with the various topics addressed in the course of the program. Students are expected to complete the required readings before class and be prepared to discuss them.

Course Outline and Readings List

Monday, January 4, 2021 (8:30-12:00)

Introduction to Israel as a Society and State (4 academic hours)

Dr. David Mendelsson, Rothberg International School, Hebrew University of Jerusalem

Tuesday, January 5, 2021 (8:30-10:00)

Historical Background and Sources of Israeli Law (2 academic hours)

- Daniel Friedmann, "The Effect of Foreign Law on the Law of Israel: Remnants of the Ottoman Period" 10 *Israel Law Review* 92 (1975).
- Daniel Friedmann, "Infusion of the Common Law into the Legal System of Israel" 10 *Israel Law Review* 324 (1975).
- Daniel Friedmann, "Independent Development of Israeli Law" 10 *Israel Law Review* 515 (1975).
- Assaf Likhovski, Law and Identity in Mandate Palestine 21-45, 61-83 (2006).
- Menachem Mautner, Law and the Culture of Israel 40-44 (2011).
- Yoram Shachar, "The Dialectics of Zionism and Democracy in the Law of Mandatory Palestine" in Assaf Likhovski, Ron Harris, Alexandre Kedar and Pnina Lahav (eds) *The History of Law in a Multi-Cultural Society: Israel 1917-1967*, 95-104 (2002).
- Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law: An Introduction* 37-40 (2017).
- HCJ 5/48 Lion v. Gubernick, 1 P.D. 58.
- HCJ 73/53 Kol Ha'am v. Minister of the Interior, 7 P.D. 871.
- CA 113/40 Sherman v. Danovitz, 7 P.L.R. 363.
- PCA 30/39 Ayoub v. Farouqi, 8 P.L.R. 116.
- CA 29/47 London Society for Promoting Christianity among the Jews v. Orr, 14 P.L.R. 218
- M.A. Shanti v. Attorney General, [1937] S.C.J. 31.
- Cr. A 112/50 Yosifof v. The Attorney General, 5 P.D. 481.

Tuesday, January 5, 2021 (10:30-12:00)

The Israeli Court System and the Process of Appointment of Judges and the Attorney General (2 academic hours)

- Suzie Navot, *The Constitutional Law of Israel* 137-167 (Hague: Kluwer, 2007).
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution* 29-31, 52-63, 197-211, 237-251 (New York: Oxford University Press, 2016).
- Yael Levy Ariel, *Judicial Diversity in Israel: An Empirical Study of Judges, Lawyers and Law Students* Faculty of Laws, University College London, Thesis Submitted for the degree of PhD (April 2018).

Wednesday, January 6, 2021 (8:30-10:00)

Jewish and Religious Law in the Israeli Legal System (2 academic hours)

Dr. Benny Porat, Faculty of Law, Hebrew University

- Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law: An Introduction* 3-34 (2017).

Wednesday, January 6, 2021 (10:30-12:00)

The Challenges of Protecting the Rights of Women under Jewish Law in Israel (2 academic hours)

Dr. Susan Weiss, Center for Women's Justice

Thursday, January 7, 2021 (8:30-10:00)

Judicial Review in the High Court of Justice (2 academic hours)

- Suzie Navot, *The Constitution of Israel* 1-47, 193-219 (Hart, 2014).
- HCJ 910/86 Ressler v. Minister of Defence 42(2) P.D. 441.
- HCJ 4797/07 Association for Civil Rights in Israel v. Airports Authority (2015).
- Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law: An Introduction* 103-121, 131-134, 187-199, 213-227 (2017).

Thursday, January 7, 2021 (10:30-12:00)

The Constitutional Revolution and Current Trends in the High Court of Justice's Decisions (2 academic hours)

- HCJ 98/69 Bergman v. Minister of Finance 23(1) P.D. 693
- HCJ 6821/93 United Mizrahi Bank v. Migdal Cooperative 49(4) P.D. 221.
- HCJ 6055/95 Tzemach v. Minister of Defense (1999).

- HCJ 7146/12 Adam v. The Knesset (2013).
- HCJ 5239/11 Avneri v. The Knesset (2015).
- HCJ 8665/14 Desete v. Minister of the Interior (2015).
- HCJ 4374/15 Movement for Quality of Government v. Prime Minister (2016).
- HCJ 3429/11 Alumni Association of the Arab Orthodox School in Haifa v. Minister of Finance (2012).
- Yoav Dotan, "Constitutional Adjudication and Political Accountability: Comparative Analysis and the Peculiarity of Israel" in Gideon Sapir, Daphne Barak-Erez and Aharon Barak (eds) *Israeli Constitutional Law in the Making* 91 (Hart, 2013).
- Joshua Segev, "Justifying Judicial Review: The Changing Methodology of the Israeli Supreme Court" in Gideon Sapir, Daphne Barak-Erez and Aharon Barak (eds) *Israeli Constitutional Law in the Making* 105 (Hart, 2013).
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution 189-196*, 303-337 (New York: Oxford University Press, 2016). Hanna Lerner, *Making Constitutions in Deeply Divided Societies* 51-80 (Cambridge University Press, 2011).
- Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law: An Introduction* 40-53 (2017).

Friday, January 8, 2021 (8:30-12:00)

ONLINE TOUR OF YAD VASHEM

Monday, January 11, 2021 (8:30-10:00)

The Challenges of Defining Israel as a Jewish and Democratic State from a Constitutional Law Perspective: Basic Law: Israel as the Nation-State of the Jewish People ((2 academic hours)

- Ruth Gavison, "Constitutional Anchoring of Israel's Vision: Recommendations Submitted to the Minister of Justice" (2013).
- Sammy Smooha, "Israeli Democracy: Civic and Ethnonational Components" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) *Handbook of Israel: Major Debates*, Vol. 2, 672-690 (2016).
- Alain Dieckhoff, "What Kind of Democracy is Israel?" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) *Handbook of Israel: Major Debates*, Vol. 2, 691-704 (2016).
- Mordechai Kremnitzer and Amir Fuchs, *Basic Law: Israel as the Nation State of the Jewish People – A Danger to the Zionist Enterprise*, Israel Democracy Institute (May 2014).
- Aviad Bakshi, "Basic Law Proposal: Israel as the Nation State of the Jewish People – The Liberal Justifications" Institute for Zionist Strategies (October 2013).
- Benjamin Neuberger, "From Liberal Democracy to Ethnocracy: Different Conceptions of Israel's Democracy" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) *Handbook of Israel: Major Debates*, Vol. 2, 705-740 (2016).

Monday, January 11, 2021 (10:30-12:00)

The Disqualification of Political Actors Hostile to the Jewish and Democratic Character of the State of Israel (2 academic hours)

- Suzie Navot, *The Constitution of Israel* 93-109 (Hart, 2014)
- EA 23/84 Neiman v. Chairman of the Central Elections Committee, 39(2) P.D. 225.
- EA 1/88 Kach v. Central Elections Committee for the Twelfth Knesset (1988).
- Suzie Navot, "Fighting Terrorism in the Political Arena: The Banning of Political Parties" 14 *Party Politics* 745-762 (2008).
- Ruth Levush, "Israel: Constitutionality of Removal from Parliament for Incitement to Racism or Support for Armed Struggle Against the State" (June 7, 2018), Library of Congress, Global Legal Monitor, available at: <http://www.loc.gov/law/foreign-news/article/israel-constitutionality-of-removal-from-parliament-for-incitement-to-racism-or-support-for-armed-struggle-against-the-state/>
- Ruth Levush, "Israel: Knesset Authorizes Eligibility Restriction on Knesset Candidates Convicted of Terrorism or Security Offenses (May 25, 2018), Library of Congress, Global Legal Monitor, available at: <http://www.loc.gov/law/foreign-news/article/israel-knesset-authorizes-eligibility-restriction-on-knesset-candidates-convicted-of-terrorism-or-security-offenses/>

Tuesday, January 12, 2021 (8:30-10:00)

Family Law in Israel through the Prism of International Private Law (2 academic hours)

Dr. Sharon Shakargy, Faculty of Law, Hebrew University of Jerusalem

Wednesday, January 13, 2021 (8:30-12:00)

International Law Issues pertaining to the Arab-Israeli Conflict (4 academic hours)

Prof. Guy Harpaz, Faculty of Law, Hebrew University of Jerusalem

Guy Harpaz and Yuval Shany, "The Israel Supreme Court and the Incremental Expansion of the Scope of Discretion under Belligerent Occupation Law", 43 *Israel Law Review* 514 (2010).

Thursday, January 14, 2021 (8:30-12:00)

The Israeli-Palestinian Conflict from the Perspective of International Criminal Law (4 academic hours)

- Eugene Kontorovich, 'Israel/Palestine – The ICC's Uncharted Territory' (2013) 11 *Journal of International Criminal Justice* 979.
- Yael Ronen, 'ICC Jurisdiction over Acts Committed in the Gaza Strip: Art. 12(3) of the ICC Statute and Non-State Entities' (2010) 8 *Journal of International Criminal Justice* 8.
- Yael Ronen, 'Israel, Palestine and the ICC – Territory Uncharted but Not Unknown' (2014) 12 *Journal of International Criminal Justice* 7.
- Daniel Benoliel and Ronen Perry, 'Israel, Palestine and the ICC' 32 *Michigan Journal of International Law* 73 (2010).
- Marco Longobardo, 'Everything is Relative, Even Gravity: Remarks on the Assessment of Gravity in ICC Preliminary Examinations and the Mavi Marmara Affair' 14 *Journal of International Criminal Justice* 1011 (2016).
- Yael Ronen, 'Taking the Settlements to the ICC? Substantive Issues' 11 *American Journal of International Law* 57-61 (2017).
- Eugene Kontorovich, 'When Gravity Fails: Israeli Settlements and Admissibility at the ICC' *Israel Law Review* 47 *Israel Law Review* 379 (2014).
- Hannes Jobstl, 'An Unlikely Day in Court? Legal Challenges for the Prosecution of Israeli Settlements under the Rome Statute' 51 *Israel Law Review* 339 (2018).
- Amichai Cohen and Yuval Shani, "Israel's Military Advocate General Terminates 'Black Friday' and Other Investigations: Initial Observations" *Lawfare* (August 27, 2018).
- Yuval Shani, "A Question of Time: Israel's State Comptroller Finds Flaws in the IDF's 'Protective Edge' Investigations" *Lawfare* (April 4, 2018).

Friday, January 15, 2021 (8:30-10:00)

The International Law of Armed Conflict and the Arab-Israel Dispute (2 academic hours)

Prof. Robbie Sabel, Faculty of Law, Hebrew University of Jerusalem

Monday, January 18, 2021 (8:30-10:00)

The Status of the Arabic Language under Israeli Law (2 academic hours)

- Ilan Saban, "Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel" 36 *New York Journal of International Law & Politics* 885 (2004).
- HCJ 4112/99 Adalah – The Legal Center for Arab Minority Rights in Israel v. City of Tel-Aviv Jaffe.
- CA 4926/08 Wael & Co. v. National Water and Sewage Authority (2013).

Tuesday, January 19, 2021 (8:30-10:00)

The Legal Aspects of the Government's Response to the COVID-19 Pandemic in Israel (2 academic hours)

- Avinoam Sharon, "COVID-19 Roundup", VERSA, May 27, 2020.
- Tehilla Shwartz Altshuler and Rachel Aridor Hershkowitz, "How Israel's Covid-19 Mass Surveillance Operation Works" Brookings (July 6, 2020).

Wednesday, January 20, 2021 (10:30-12:00)

Law Enforcement & Intercommunal Tensions and Cooperation in the Wake of the Coronavirus Outbreak (2 academic hours)

Guest speaker: Dr. Gali Perry, Institute of Criminology, Hebrew University of Jerusalem

Thursday, January 21, 2021 (10:30-12:00)

The Precarious Position of Asylum-Seekers and Refugees in Israel: Legal and Economic Perspectives (2 academic hours)

Guest speaker: Sigal Rozen, The Hotline for Refugees and Migrants

- Hotline for Refugees and Migrants, Special Report: *Immigration Detention in Israel, 1998-2018* (2019).
- Hotline for Refugees and Migrants, Special Report: *Falling on Deaf Ears – Asylum Proceedings in Israel* (2018).
- Joy Bernard, "For African Migrants in Israel, COVID-19 Means Health, Jobs, Homes All at Risk" *Times of Israel*, April 11, 2020.

Friday, January 22, 2021 (10:00-12:00)

ONLINE TOUR – KNESSET (ISRAELI PARLIAMENT)

Monday, January 25, 2021 (10:00-12:00)

ONLINE TOUR – ISRAELI SUPREME COURT

Tuesday, January 26, 2021 (10:30-12:00)

Legal Issues Relating to the Bedouin in Israel (2 academic hours)

- Havatzelet Yahel, "Land Disputes between the Negev Bedouin and Israel" *Israel Studies* 11(1) 1-22 (2006).
- CA 9535/06 Abu-Massad v. The Water Commissioner.
- HCJ 2887/04 Abu-Madigam v. Israel Land Administration.
- PCA 3094/11 Al-Qi'an v. State of Israel.
- CA 218/74 Al-Huashela v. State of Israel.
- State of Israel, Regularization of Bedouin Communities in Israel, Summary of the Public Hearing on the Draft Law and recommendations for policy and for amendments to the Draft Presented to the Cabinet by Ze'ev B. Begin (January 23, 2013).

Wednesday, January 27, 2021 (10:30-12:00)

The Evolution of LGBT Rights in Israel (2 academic hours)

Hagai Alkaly, Adv. The Aguda – An Organization for the Empowerment of the Lesbian, Gay, Bisexual and Transgender Community in Israel

- Ruth Levush, Israel: Exclusion of Single Men and Same-Sex Male Spouses with Genetic Affinity for the Newborn from Surrogacy Agreements Held Unconstitutional" Library of Congress, *Global Legal Monitor*, March 24, 2020.

Thursday, January 28, 2021(8:30-10:00) (2 academic hours)

Integrating the Ultra-Orthodox Community into Israeli Society and Economy

Guest speaker: Dr. Gilad Malach, Israel Democracy Institute

Friday, January 29, 2021 (8:30-12:00)

The Right to Equality and the Military Draft Deferment for Ultra-Orthodox Jews (4 academic hours)

- HCJ 910/86 Ressler v. Minister of Defence 42(2) P.D. 441.
- HCJ 3267/97 Rubinstein v. Minister of Defence 52(5) P.D. 481.
- HCJ 4124/00 Ornan Yekutieli v. The Minister of Religious Affairs (2014).
- HCJ 6298/07 Ressler v. Minister of Defense (2012).
- Yedidia Stern, Religion, State and the Jewish Identity Crisis in Israel (Washington, D.C.: Brookings Institute, 2017).
- Ruth Levush, "Israel: High Court Strikes Down Draft Exemption for Ultra-Orthodox" Library of Congress: *Global Legal Monitor* (Sept. 25, 2017) available online: <http://www.loc.gov/law/foreign-news/article/israel-high-court-strikes-down-draft-exemption-for-ultra-orthodox/>