



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 מהו"ל ע"ש רוטברג
המחלקה לקורסי קיץ
ותוכניות מיוחדות

Mishpatim: Israeli and International Law

(SPLW401- 48790)

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January 3 – January 28, 2022

60 Academic Hours, 4 Academic Credits

TENTATIVE 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. The seminar begins with 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, such 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 comprise one or two lectures delivered online from Israel (via ZOOM) on a near daily basis over a period of four weeks. As a rule, lectures will be scheduled in the following predefined time slots: 8:30-10:00 AM and 10:30-12:00 AM **Israel time**. All lectures will be subsequently available for viewing online throughout the program.

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. 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 or international law and related to the material taught in the seminar. The research paper must demonstrate a suitably high level of complexity and depth. Evaluation of the paper 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 readings before class and be prepared to discuss them.

Course Outline

Monday, January 3, 2022

Introduction to Israel as a Society and State (4 academic hours) (8:30-12:00)

Guest speaker:

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

- **Suggested reading:**

- Gideon Kouts, Jacob Katz, Shmuel Ettinger, Arthur Hertzberg, Moshe Medzini and Chaim Yahil, "Zionism" in Michael Bernbaum and Fred Skolnik (eds) Encyclopaedia Judaica (Vol. 21, 2nd ed., 2007).

Tuesday, January 4, 2022

Historical Background and Sources of Israeli Law (2 academic hours) (8:30-10:00)

- **Suggested reading:**

- Yaniv Roznai and Liana Voloch, "*Law Reform in Israel*" 6 The Theory and Practice of Legislation 291 (2018).
- Ron Harris, *History and Sources* in Christian Walter, Barak Medina, Lothar Scholz and Heinz-Bernd Wabnitz (eds), *The Israeli Legal System: An Introduction* 15-25 (2019).
- **ONLINE TOUR – THE SUPREME COURT OF ISRAEL (2 academic hours) (11:00-12:30)**

Wednesday, January 5, 2022

Jewish and Religious Law in the Israeli Legal System (2 academic hours) (8:30-10:00)

Guest speaker:

Dr. Benny Porat, Faculty of Law, Hebrew University

- **Suggested reading:**

- Shimon Shetreet and Walter Homolka, Jewish and Israeli Law: An Introduction (2017).
- Francois-Xavier Licari, An Introduction to Jewish Law (2019).

Family Law in Israel through the Prism of International Private Law

(2 academic hours) (10:30-12:00)

Guest speaker:

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

- **Suggested reading:**

- Sharon Shakargy, "What Do You Do When They Don't Say I DO"?" Cross-Border Regulation for Alternative Spousal Relationships 48 Vanderbilt Journal of Transnational Law 427-469 (2015).

- **ONLINE TOUR – THE KNESSET (ISRAELI PARLIAMENT) (2 academic hours) (12:30-14:00)**

Thursday, January 6, 2022

Judicial Review in the High Court of Justice (2 academic hours) (8:30-10:00)

- **Suggested reading:**

- Suzie Navot, The Constitution of Israel 1-47, 193-219 (2014).
- HCJ 910/86 Ressler v. Minister of Defence (1988) IsrSC 42(2) 441.
- HCJ 3094/93 The Movement for Quality of Government in Israel v. The State of Israel (1993) IsrSC 47(5) 404.
- HCJ 4797/07 Association for Civil Rights in Israel v. Airports Authority.
- HCJ 3458/17 Hiddush – For Religious Freedom and Equality v. Respondent: Israel Defense Forces.

The Constitutional Revolution (2 academic hours) (10:30-12:00)

- **Suggested reading:**

- HCJ 98/69 Bergman v. Minister of Finance, (1969) IsrSC 23(1) 693.
- HCJ 6821/93 United Mizrahi Bank v. Migdal Cooperative (1995) IsrSC 49(4) 221.
- HCJ 6055/95 Tzemach v. Minister of Defense (1999) IsrSC 53(5) 241.
- CrimA 5121/98 Issacharov v. Chief Military Prosecutor (2006) IsrSC 320 421.
- Daphne Barak-Erez, "From an Unwritten to a Written Constitution: The Israeli Challenge from an American Perspective" 26 Columbia Human Rights Law Review 309 (1995)

- Talya Steiner, "Proportionality Analysis by the Israeli Supreme Court" in Mordechai Kremnitzer, Talya Steiner, Adreja Lang, *Proportionality in Action: Comparative and Empirical Perspectives* 285-384 (2020).

Friday, January 7, 2022

Between Judicial Activism and Measured Restraint: Current Trends in the High Court of Justice's Decisions (2 academic hours) (8:30-10:00)

- **Suggested reading:**

- HCJ 3429/11 Alumni Association of the Arab Orthodox School in Haifa v. Minister of Finance.
- HCJ 7146/12 Adam v. The Knesset.
- HCJ 5239/11 Avneri v. The Knesset.
- HCJ 8665/14 Desete v. Minister of the Interior.
- HCJ 4374/15 Movement for Quality of Government v. Prime Minister.
- HCJ 1892/14 The Association for Civil Rights in Israel v. Minister of Public Security.
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution* 189-196, 303-337 (2016).
- Gideon Sapir, *The Israeli Constitution: From Evolution to Revolution* (2018).
- Suzie Navot & Yaniv Roznai, "From Supra-Constitutional Principles to the Misuse of Constituent Power in Israel", *21 European Journal of Law Reform* 402 (2019).
- 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.
- Ruth Levush, *Israel: Supreme Court Voids Law Legalizing Settlements Built on Unauthorized and Privately Owned Land in West Bank* Library of Congress, *Global Legal Monitor*, July 14, 2020).
- Jacob Magid, *"In Victory for Asylum-Seekers, High Court Repeals Law Taking 20% of their Pay"* *Times of Israel*, April 23, 2020.

The Increasing Politicization of the Process of Appointment of Judges and the Attorney General (2 academic hours) (10:30-12:00)

- **Suggested reading:**

- Suzie Navot, *The Constitutional Law of Israel* 137-167 (2007).
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution* 29-31, 52-63, 197-211, 237-251 (2016).
- Shimon Shetreet, "Courts and Judiciary" in Christian Walter, Barak Medina, Lothar Scholz and Heinz-Bernd Wabnitz (eds), *The Israeli Legal System: An Introduction* 27-38 (2019).
- Ruth Levush, *Israel: Facing Criminal Trial, Prime Minister Finds Authority Limited by Supreme Court Decision Upholding Attorney General's Conflict of Interest Opinion* Library of Congress *Global Legal Monitor* (April 2, 2021).

Monday, January 10, 2022

International Law pertaining to the Arab-Israeli Conflict (4 academic hours) (8:30-12:00)

Guest speaker:

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

- **Suggested reading:**

- 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).

Tuesday, January 11, 2022

The Israeli-Palestinian Conflict from the Perspective of International Criminal Law (4 academic hours) (8:30-12:00)

- **Suggested reading:**

- Marco, Pertile, "The Borders of the Occupied Palestinian Territory are Determined by Customary Law: A Comment on the Prosecutor's Position on the Territorial Jurisdiction of the ICC in the Situation Concerning Palestine", Journal of International Criminal Justice (2020).
- Yael Ronen, "Palestine in the ICC: Statehood and the Right to Self-determination in the Absence of Effective Control", Journal of International Criminal Justice (2020).
- 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).

Wednesday, January 12, 2022

The International Law of Armed Conflict and the Arab-Israel Dispute (2 academic hours) (10:30-12:00)

Guest speaker:

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

- **Suggested reading:**

- Robbie Sabel, "International Legal Issues of the Arab-Israel Conflict-A Israeli Lawyer's Position" 4 *Journal of East Asia and International Law* 407 (2010).

Thursday, January 13, 2022

ONLINE TOUR – YAD VASHEM HOLOCAUST MUSEUM + SPECIAL WORKSHOP ON SHOAH AND GENOCIDE (8:30-12:00) (4 academic hours)

Monday, January 17, 2022

The Legal Aspects of the Government's Response to the COVID-19 Pandemic in Israel (4 academic hours) (8:30-12:00)

- **Suggested reading:**

- Avinoam Sharon, "COVID-19 Roundup", *VERSA*, May 27, 2020.
- HCJ 2109/20 Ben Meir v. Prime Minister.
- Aeyal Gross, "Rights, Restrictions and Securitization of Health in Israel During COVID-19" *BILL OF HEALTH*, Harvard University (May 29, 2020).
- Tehilla Shwartz Altshuler and Rachel Aridor Hershkovitz, *Digital Contact Tracing and the Coronavirus: Israeli and Comparative Perspectives* (August 2020).
- Ruth Levush, "Regulating Electronic Means to Fight the Spread of COVID-19: Israel" *Global Legal Monitor*, June 2020.
- Ruth Levush, *Israel: Government's Extended Authorization for Coronavirus-Related Surveillance Approved*, *Global Legal Monitor*, Nov. 4, 2020.
- Ruth Levush, *Law Granting Government Special Authorities to Combat Novel Coronavirus Adopted* Library of Congress, *Global Legal Monitor*, July 29, 2020.
- Ruth Levush, *Israel: Privacy Protection Requirements for Conducting COVID-19 Epidemiological Investigations Issued*, *Global Legal Monitor*, Dec. 10, 2020.
- Pnina Sharvit Baruch and Nadiv Mordechay, *The Covid-19 Pandemic and Democratic Resilience in Israel* INSS Special Publication (September 2, 2020).
- Yuval Shany, "The Return to Balfour: Israel's Supreme Court Strikes Down Coronavirus Regulations Curbing the Right to Protest" *Lawfare* (April 13, 2021).
- Tamar Hostovsky Brandes, *A Year in Review: COVID-19 in Israel: A Tale of Two Crises*, *VerfBlog*, (April 13, 2021).
- Yonah Jeremy Bob, "Coronavirus: High Court Limits Shin Bet Surveillance" *Jerusalem Post* (March 1, 2021).
- Elena Chachko, "The Israeli Supreme Court Checks COVID-19 Electronic Surveillance" *Lawfare* (May 5, 2020),
- Ruth Levush, *Israel: Supreme Court Voids Coronavirus Lockdown Restrictions Limiting Demonstrators to 1,000 Meters from Residence*, *Library of Congress: Global Legal Monitor* (April 15, 2021).

Tuesday, January 18, 2022

Law Enforcement & Intercommunal Tensions and Cooperation in the Wake of the Coronavirus Outbreak (2 academic hours) (8:30-10:00)

Guest speaker:

Dr. Gali Perry, Institute of Criminology, Hebrew University of Jerusalem

- **Suggested reading:**

- Gali Perry and Tal Jonathan-Zamir, " Expectations, Effectiveness, Trust, and Cooperation: Public Attitudes towards the Israel Police during the COVID-19 Pandemic" Policing (2020).

Wednesday, January 19, 2022

Integrating the Ultra-Orthodox into Israeli Society and Economy (2 academic hours) (8:30-10:00)

Guest speaker:

Dr. Gilad Malach, Israel Democracy Institute

- **Suggested reading:**

- Lee Cahaner and Gilad Malach, Statistical Report on Ultra-Orthodox Society in Israel (Israel Democracy Institute, 2020)
- Gilad Malach and Leehe Friedman, "Curbing the Coronavirus among the Ultra-Orthodox: an Explainer" *Times of Israel*, April 2, 2020.
- Gilad Malach and Ruben Gorbat, "Integrating the Ultra-Orthodox in the Wake of Coronavirus" Israel Democracy Institute, June 11, 2020.
- Yohanan Plesner , Shuki Friedman, Gilad Malach, "The Ultra-Orthodox and the Corona Crisis: Briefing" Israel Democracy Institute, October 14, 2020.

Wednesday, January 19, 2022

**The Right to Equality and the Military Draft Deferment for Ultra-Orthodox Jews -
PART I (2 academic hours) (10:30-12:00)**

Suggested reading:

- HCJ 910/86 Ressler v. Minister of Defence (1988) IsrSC 42(2) 441.
- HCJ 3267/97 Rubinstein v. Minister of Defence (1998) IsrSC 52(5) 481.
- HCJ 6298/07 Ressler v. Minister of Defense (2012).
- David Ellenson. "The Supreme Court, Yeshiva Students, and Military Conscription: Judicial Review, the Grunis Dissent, and Its Implications for Israeli Democracy and Law" 23 Israel Studies, 197 (2018).
- Ruth Levush, "Israel: High Court Strikes Down Draft Exemption for Ultra-Orthodox" Library of Congress: Global Legal Monitor (Sept. 25, 2017).
- Gideon Sapir: The Israeli Constitution: From Evolution to Revolution 173-198 (2018).

Thursday, January 20, 2022

**The Right to Equality and the Military Draft Deferment for Ultra-Orthodox Jews-
PART II (2 academic hours) (8:30-10:00)**

- **Suggested reading:**

- HCJ 746/07 Ragen v. Ministry of Transport (2011) IsrLR 1.
- Margit Cohn, "Taking a Bus from Immanuel to Mea Shearim: The Role of Israel's High Court of Justice in Regulating Ethnic and Gender Discrimination in the Haredi Ultra Orthodox Sector" (2012).
- Tova Hartman and Chaim Zicherman, "Higher Education for Haredim in Israel" 34 Journal of Law and Religion (2020).

Thursday, January 20, 2022

**The Precarious Position of Asylum-Seekers and Refugees in Israel: Legal and
Economic Perspectives (2 academic hours) (10:30-12:00)**

Guest speaker:

Sigal Rozen, The Hotline for Refugees and Migrants

- **Suggested reading:**

- 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).
- Hotline for Refugees and Migrants, Special Report: *Trapped in Limbo – Israel's Policy of Avoiding Making Decisions in Well-Founded Asylum Claims* (2020)

- Joy Bernard, "For African Migrants in Israel, COVID-19 Means Health, Jobs, Homes All at Risk" *Times of Israel*, April 11, 2020.
- Jacob Magid, "In Victory for Asylum-Seekers, High Court Repeals Law Taking 20% of their Pay" *Times of Israel*, April 23, 2020.
- Lee Yaron, "High Court Orders Israel to Process Darfuri Asylum Requests by End of Year" *Ha'aretz*, April 25, 2021.

Monday, January 24, 2022

VIRTUAL TOUR OF JERUSALEM – INTRODUCTORY SESSION (8:30-10:00) (2 academic hours)

Guest speakers:

Prof. Wayne Horowitz and Abraham Silver, Hebrew University of Jerusalem

Monday, January 24, 2022

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) (10:30-12:00)

Suggested reading:

- Simon Rabinovitch (ed.), *Defining Israel: The Jewish State, Democracy and the Law* (2018).
- Avi Bell, "The Counter-revolutionary Nation-State Law" *26 Israel Studies* (2020).

Tuesday, January 25, 2022

The Challenges of Defining Israel as a Jewish and Democratic State from a Constitutional Law Perspective: The Disqualification of Political Actors Hostile to the Jewish and Democratic Character of the State of Israel (2 academic hours) (8:30-10:00)

Suggested reading:

- Suzie Navot, *The Constitution of Israel* 93-109 (Hart, 2014)
- EA 1/65 *Yardur v. Chairman of the Central Elections Committee for the Sixth Knesset*, (1965) *IsrSC* 19(3) 365.
- 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.
- 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.

Tuesday, January 25, 2022

The Evolution of LGBT Rights in Israel (2 academic hours) (10:30-12:00)

Guest speaker:

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

- Suggested reading:

- Aeyal Gross, "The Politics of LGBT Rights in Israel and Beyond: Nationality, Normativity, and Queer Politics" 46 *Columbia Human Rights Law Review* 81(2015).

Wednesday, January 26, 2022

The Challenges of Defining Israel as a Jewish and Democratic State from a Constitutional Law Perspective: The Status of the Arabic Language under Israeli Law (2 academic hours) (10:30-12:00)

- Suggested reading:

- Meital Pinto, "The Impact of the Basic Law: Israel as the Nation State of the Jewish People on the Status of the Arabic Language in Israel, 30 *Minnesota Journal of International Law* (2020).
- 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).
- Michael M. Karayanni, "Two Concepts of Group Rights for the Palestinian-Arab Minority under Israel's Constitutional Definition as a "Jewish and Democratic" State" 10 *International Journal of Constitutional Law* 304 (2012).
- HCJ 4112/99 Adalah – The Legal Center for Arab Minority Rights in Israel v. City of Tel-Aviv Jaffe IsrSC 56(5) 393 (2000).
- CA 4926/08 Wael & Co. v. National Water and Sewage Authority (2013).

Thursday, January 27, 2022

Legal Issues Relating to the Bedouin in Israel (2 academic hours) (10:30-12:00)

- HavatzeletYahel, "Land Disputes between the Negev Bedouin and Israel" 11 Israel Studies 1 (2006).
- CA 9535/06 Abu-Massad v. The Water Commissioner (2011).
- HCJ 2887/04 Abu-Madigam v. Israel Land Administration (2007) IsrSC 62(2) 57.
- PCA 3094/11 Al-Qi'an v. State of Israel.
- CA 218/74 Al-Huashela v. State of Israel, IsrSC 38(3) 141 (1984).
- CA 4220/12 Al-Uqbi 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).
- Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, Emptied Lands: A Legal Geography of Bedouin Rights in the Negev (2017).

Friday, January 28, 2022

VIRTUAL TOUR OF JERUSALEM – CONCLUDING SESSION(2 academic hours) (8:30-10:00)

Guest speakers:

Prof. Wayne Horowitz and Prof. Abraham Silver, Hebrew University of Jerusalem