



Rothberg International School  
בית הספר לתלמידים מחו"ל ע"ש רוטברג  
THE HEBREW UNIVERSITY OF JERUSALEM  
האוניברסיטה העברית בירושלים



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

Introduction to Israeli Law and Society:  
Ancient Peoples and Newcomers in the Start-Up Nation (48872)

May 2 – May 24, 2018  
60 Academic Hours, 4 Academic Credits  
Spring Semester  
2017-2018

*Dr. Daniel Ohana and Prof. Bryan Schwartz*

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### Seminar Syllabus

#### **Seminar Description and Objectives**

The three-week seminar aims to provide Canadian business and law students with an overview of the contemporary Israeli legal system, while enabling them to discover the major social and economic challenges that Israel has grappled with in recent years. The seminar includes introductory classes designed to provide general knowledge of Israel's high-tech economy and the basic concepts and institutional framework of Israeli law and government. It also includes classes which focus on more specific issues, featuring guest lectures by leading academics and experienced practitioners, who will supply students with information on the latest developments in their fields of expertise. Areas of academic interest covered will include constitutional law, international law, Jewish law, minority rights law, and counter-terrorism law.

In the course of the program, students will also participate in field trips to sites such as the Knesset, the Supreme Court, and the Yad Vashem Holocaust Museum. In addition, students will have the opportunity to visit the offices of international high-tech business enterprises and meet young start-up innovators working in Tel Aviv.

#### **Assessment**

Students are required to take a four-hour exam at the end of the seminar. The grade for the seminar will be determined on the basis of the final exam only.

Class attendance and participation in all field trips is mandatory. Students who do not regularly attend class will not receive credit for the course.

## 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 topics taught in class are often 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 International Rothberg School is available to enable easy interaction between students and the academic coordinator 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.

Items marked with an asterisk are required readings. Students are expected to complete the required readings before class and be prepared to discuss them.

### Course Outline and Seminar Readings List

(Note: Field trip details and classroom numbers are on program schedule in welcome packet distributed on arrival day)

#### **Wednesday, May 2, 2018**

##### ❖ **08:30-14:00**

Arrival Day:

- Financial Registration
- Campus Tour
- Orientation

#### **Thursday, May 3, 2018**

##### ❖ **9:00-12:30** (4 academic hours)

Guest Lecture: Introduction to Israel as a Society and State

Dr. David Mendelsson, Head of Israel Studies at the Hebrew Union College - Jewish Institute of Religion in Jerusalem

##### ❖ **13:30-15:00** (2 academic hours)

**Special Address:** The Independence of the Justice System, the Role of Lawyers, and Career Paths

The Honorable Justice Marie Deschamps

James R. Bullock Visiting Chair in Canadian Studies, Halbert Centre for Canadian Studies, Hebrew University of Jerusalem

##### ❖ **15:30-17:00** (2 academic hours)

## Lecture: Historical Background and Sources of Israeli Law

### Readings:

- 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 Yosifov v. The Attorney General, 5 P.D. 481.

## Friday, May 4, 2018

### ❖ 8:30-12:00 (4 academic hours)

Lecture: The Israeli Court System, the Procedure for the Appointment of Judges and Norms of Judicial Review in the High Court of Justice

### Readings:

- (\*) Suzie Navot, *The Constitutional Law of Israel* 137-167 (Hague: Kluwer, 2007).
- (\*) 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 98/69 Bergman v. Minister of Finance 23(1) P.D. 693
- 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).
- 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).

## Sunday, May 6, 2018

### ❖ 11:00-14:30 (2 academic hours)

## Lecture: The Constitutional Revolution and Recent Trends in the High Court's Jurisprudence

### Readings:

- (\*)HCJ 6821/93 United Mizrahi Bank v. Migdal Cooperative 49(4) P.D. 221.
- (\*) 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 Government v. Prime Minister (2016).
- HCJ 3429/11 Alumni Association of the Arab Orthodox School in Haifa v. Minister of Finance (2012).
- HCJ 6055/95 Tzemach v. Minister of Defense (1999).
- Ruth Levush, " Israel: New Basic Law on Requirements for Approval of Territorial Concessions" Library of Congress: Global Legal Monitor (May 22, 2014)available online at: [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403990\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403990_text)
- [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).
- Hanna Lerner, Making Constitutions in Deeply Divided Societies 51-80 (Cambridge University Press, 2011).
- Daniel Friedmann, The Purse and the Sword: The Trials of Israel's Legal Revolution 189-196, 303-337 (New York: Oxford University Press, 2016).
- Shimon Shetreet and Walter Homolka, Jewish and Israeli Law: An Introduction 40-53 (2017).

### ❖ 15:00-18:30

**Special Field Trip:** Supreme Court tour and special meeting with the Honorable Justice David Mintz

## Monday, May 7, 2018

### ❖ 10:00-17:30 or 12:00-19:00

**Field Trip:** Knesset (Israeli Parliament) + Yad Vashem Holocaust Museum (in two groups in two different times. See program schedule for more information)

## Tuesday, May 8, 2018

### ❖ 12:30-18:00 (6 academic hours)

Lecture: The Challenges of Defining Israel as a Jewish and Democratic State from a Constitutional Law Perspective

### **PART I – Basic Law: Israel as the Nation-State of the Jewish People**

#### Readings:

- 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).
- Benyamin 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).

## **PART II – Religion, State and Jewish Identity: Key Issues and Recent Challenges**

Readings:

- Yedidia Stern, Religion, State and the Jewish Identity Crisis in Israel (Washington, D.C.: Brookings Institution, 2017).
- Dov Halbertal, "Religion and State, One and the Same" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) Handbook of Israel: Major Debates, Vol. 1, 122-130 (2016).
- Avi Sagi, "Religion and State" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) Handbook of Israel: Major Debates, Vol. 1, 166-180 (2016).
- Mordechai Kremnitzer and Amir Fuchs, "The Non-Separation of Religion and State in Israel: Does it Support the Racism and Nationalism Wave" in Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Gloeckner (eds) Handbook of Israel: Major Debates, Vol. 1, 181-195 (2016).
- Ariel Bendor, "The Constitutional Significance of the Jewishness of Israel" in Fania Oz-Salzberger and Yedidia Z. Stern (eds) The Israeli Nation-State: Political, Constitutional, and Cultural Challenges 118-134 (2014)
- Aviad Bakshi and Gideon Sapir, "Israel as a Nation-State in Supreme Court Rulings" Fania Oz-Salzberger and Yedidia Z. Stern (eds) The Israeli Nation-State: Political, Constitutional, and Cultural Challenges 164-190 (2014)

## **PART III – The Disqualification of Political Parties Hostile to the Jewish and Democratic Character of the State of Israel**

Readings:

- (\*) 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).

#### **PART IV - The Status of the Arabic Language under Israeli Law**

Readings:

- 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).

#### **Wednesday, May 9, 2018**

##### ❖ **9:00-10:30** (2 academic hours)

Guest Lecture: Jewish and Religious Law in the Israeli Legal System

Dr. Benny Porat, Faculty of Law, Hebrew University of Jerusalem

##### ❖ **11:00-14:30** (4 academic hours)

Guest Lecture: The Rise of the Israeli Knowledge Economy and the Challenges Ahead

Mr. David Rosenberg, business journalist and author of *Israel: The Knowledge Economy and its Costs* (Palgrave Macmillan, 2017).

##### ❖ **15:00-16:00**

Field Trip: JestHub Hi-Tech Entrepreneurship Center in East Jerusalem

##### ❖ **17:00-18:30**

Screening: "Silicon Wadi," a documentary about Israeli high-tech entrepreneurs & a meeting with Mr. Ido Wolf

#### **Thursday, May 10, 2018** (day-long field trip)

##### ❖ **8:00-9:00**

**Special Meeting:** Magistrates' Court Justice Ednaki Sebhat Haimowitz (Rehovot)

##### ❖ **10:00-11:30**

Meeting: Sigal Rozen, Public Policy Coordinator at the Hotline Center for Refugees and Migrants (Tel Aviv)

##### ❖ **12:00-13:30**

Meeting: Si Buchbut, Managing Director at Techlift 8200

##### ❖ **14:30-16:30**

Tour: "Start-Up City" Tour, Municipality of Tel Aviv

## Monday, May 14, 2018

### ❖ 08:00-

Day-long extracurricular trip: Masada and Dead Sea

## Tuesday, May 15, 2018

### ❖ 9:00-12:30 (4 academic hours)

Guest Lecture: International Law Issues Pertaining to the Arab-Israeli Conflict

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

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).

### ❖ 13:30-15:00 (2 academic hours)

Lecture: International Criminal Law and the Israeli-Palestinian Conflict

Readings:

- 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).
- Marc Schach, 'Going to the Hague as Coercive Leverage: The Palestinian ICC Policy during the 2014 Operation Protective Edge' 15 *Journal of International Criminal Justice* 319 (2017).
- Eugene Kontorovich, 'When Gravity Fails: Israeli Settlements and Admissibility at the ICC' *Israel Law Review* 47 *Israel Law Review* 379 (2014).

### ❖ 15:30-17:00 (2 academic hours)

**Guest Talk:** Ariel Shrem, CEO *Guide in Medical* and graduate of Bio-Design program at the Hebrew University Asper Center for Entrepreneurship and Innovation, Jerusalem School of Business Administration

## Wednesday, May 16, 2018

### ❖ 10:30-12:00 (2 academic hours)

Lecture: The Nature of Jewish Law

Prof. Bryan Schwartz, Faculty of Law, University of Manitoba

❖ **13:00-17:00** (4 academic hours)

Lecture: Legal Aspects of Countering Terrorism

Readings:

- (\*) HCJ 5100/94 Public Committee against Torture v. The State of Israel, P.D. 53(4) 817.
- (\*) HCJ 769/02 Public Committee against Torture v. The Government of Israel.
- (\*) HCJ 8090/14 Hamoked: Center for the Defense of the Individual v. Minister of Defense (2014).
- Mordechai Kremnitzer and Re'em Segev, "The Legality of Interrogational Torture: A Question of Proper Authorization or a Substantive Moral Issue?" 34 Israel Law Review 509 (2000).
- Miriam Gur-Arye and Florian Jessberger, "The Protection of Human Dignity in Interrogations – Reflections in Light of Recent German and Israeli Experiences" 44 Israel Law Review 229 (2011).
- The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report – The Turkel Commission, Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law (2013).
- Guy Harpaz, "Being Unfaithful to One's Own Principles: The Israeli Supreme Court and House Demolitions in the Occupied Palestinian Territories" 47 Israel Law Review 401 (2014).
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution* 79-97 (New York: Oxford University Press, 2016).

**Thursday, May 17, 2018**

❖ **10:00-11:30** (2 academic hours)

Guest Lecture: Integrating the Ultra-Orthodox Community into Israeli Society and Economy

Dr. Gilad Malach, Israel Democracy Institute

❖ **13:00-16:30** (4 academic hours)

Lecture: The Right to Equality and the Military Draft Deferment for Ultra-Orthodox Jews

Readings:

- (\*) Ruth Levush, "Israel: Supreme Court Decision Invalidating the Law on Haredi Military Draft Postponement" Library of Congress: Current Legal Topics (March 2012) available online: <http://www.loc.gov/law/help/haredi-military-draft.php>
- (\*) 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).

**Monday, May 21, 2018**

- ❖ **16:30-18:00** (2 academic hours)

**Special Meeting and Group Discussion:** Uri Sabach, Adv., together with students involved in the Multiculturalism and Diversity Clinic at the Clinical Legal Education Center, Faculty of Law of the Hebrew University of Jerusalem

**Tuesday, May 22, 2018**

- ❖ **14:00-15:30** (2 academic hours)

**Special Guest Lecture:** Legal Issues Relating to the Bedouin Community in Israel  
Emi Palmer, Adv., Director-General of the Ministry of Justice

**Wednesday, May 23, 2018**

Study day – no class

**Thursday, May 24, 2018**

- ❖ **10:30-14:30**

Final Exam