Mishpatim: Israeli and International Law  
(SPLW401-48790)

Dr. Daniel Ohana  
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January 5 – January 23, 2020  
60 Academic Hours, 4 Academic Credits

SYLLABUS

Seminar Description and Objectives

This three-week 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. 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 field trips to the Supreme Court of Israel, the Knesset (the Israeli Parliament) and the Yad Vashem Holocaust Museum. Class attendance and participation in field trips is mandatory. Students who do not regularly attend class will not receive credit for the course.

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. Some graduate (JD or LLM) students may be required to write an essay instead of, or in addition to, the exam in order to receive accreditation from their university for participation in the seminar. Students within this category are requested to notify the instructor at the beginning of the seminar of the requirements that apply to them. JD and LLM students from
the University of Western Australia are required to submit a 2,000 word paper (worth 20% of the final grade) in addition to writing the exam (worth 80%). The essay may be written following completion of the seminar, and students will be expected to submit it to the instructor by e-mail following their return to Australia. 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. 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**

**Sunday, January 5, 2020**

- Financial Registration
- Campus Tour
- Orientation

**Monday, January 6, 2020 (9:00-12:30)**

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

Dr. David Mendelsson, Senior Lecturer, Rothberg International School, Hebrew University

**Monday, January 6, 2020 (13:30-15:00)**

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

Menachem Mautner, Law and the Culture of Israel 40-44 (2011).
(*) 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.
CA 29/47 London Society for Promoting Christianity among the Jews v. Orr, 14 P.L.R. 218
Cr. A 112/50 Yosifof v. The Attorney General, 5 P.D. 481.

**Monday, January 6, 2020 (15:30-17:00)**  
**The Israeli Court System and Process of Appointment of Judges and Attorney General**

**Tuesday, January 7, 2020 (10:30-12:00)**  
**Judicial Review in the High Court of Justice (2 academic hours)**
- (*) 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).

**Tuesday, January 7, 2020 (13:30-15:00)**  
**The Constitutional Revolution**
- (*) HCJ 98/69 Bergman v. Minister of Finance 23(1) P.D. 693
- (*)HCJ 6821/93 United Mizrachi Bank v. Migdal Cooperative 49(4) P.D. 221.
\begin{itemize}
  \item (*) HCJ 6055/95 Tzemach v. Minister of Defense (1999).
  \item Hanna Lerner, Making Constitutions in Deeply Divided Societies 51-80 (Cambridge University Press, 2011).
\end{itemize}

Tuesday, January 7, 2020 (15:30-17:00)

Current Trends in the Jurisprudence of the Israeli High Court of Justice
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  \item (*) HCJ 7146/12 Adam v. The Knesset (2013).
  \item (*) HCJ 5239/11 Avneri v. The Knesset (2015).
  \item HCJ 8665/14 Desete v. Minister of the Interior (2015).
  \item HCJ 4374/15 Movement for Quality of Government v. Prime Minister (2016).
  \item (*) HCJ 3429/11 Alumni Association of the Arab Orthodox School in Haifa v. Minister of Finance (2012).
\end{itemize}

Wednesday, January 8, 2020 (14:00-18:00) (4 academic hours)

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
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  \item Ruth Gavison, "Constitutional Anchoring of Israel's Vision: Recommendations Submitted to the Minister of Justice" (2013).
  \item 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).
  \item Aviad Bakshi, "Basic Law Proposal: Israel as the Nation State of the Jewish People – The Liberal Justifications" Institute for Zionist Strategies (October 2013).
\end{itemize}

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

• 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 Actors Hostile to the Jewish and Democratic Character of the State of Israel

• (*) 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.
Jewish and Religious Law in the Israeli Legal System (2 academic hours)
Dr. Benny Porat, Faculty of Law, Hebrew University of Jerusalem

Thursday, January 9, 2020 (11:00-12:30)
Family Law in Israel through the Prism of International Private Law (2 academic hours)
Dr. Sharon Shakargy, Faculty of Law, Hebrew University of Jerusalem

Thursday, January 9, 2020 (13:00-18:00)
Field Trip: Yad Vashem Holocaust Museum

Friday, January 10, 2020
Extra-Curricular Trip: Masada and Dead Sea

Sunday, January 12, 2020 (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

Sunday, January 12, 2020 (13:30-17:00)
Legal Aspects of Countering Terrorism (4 academic hours)
- (*) HCJ 5100/94 Public Committee against Torture v. The State of Israel, P.D. 53(4) 817.
- The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report – The Turkel Commission, Israel's Mechanisms for Examining and

- 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).
- Mordechai Kremnitzer and Yuval Shany, ‘Special Interrogations,’ Confessions and the Duma Arson Attack” Lawfare (July 9, 2018).

Monday, January 13, 2020 (9:00-10:30) (2 academic hours)
The Israeli-Palestinian Conflict from the Perspective of International Criminal Law (2 academic hours)

**Monday, January 13, 2020 (13:00-17:00)**

**Field Trip:** Visit to Knesset (Israeli Parliament)

Please abide by the Knesset’s dress code as stated on their website and make sure not to carry laptops or big bags to the Knesset.

**Tuesday, January 14, 2020 (12:30-14:00) (2 academic hours)**

“The International Law of Armed Conflict and the Arab-Israel Dispute”

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

**Tuesday, January 14, 2020 (14:15-17:30) (4 academic hours)**

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

- (*) HCJ 4112/99 Adalah – The Legal Center for Arab Minority Rights in Israel v. City of Tel-Aviv Jaffa.

**PART II – LEGAL ISSUES RELATING TO THE BEDOUIN IN ISRAEL**

- 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).

**Tuesday, January 14, 2020 (17:30-19:00)**

Special Event – Meeting and group discussion: Souria Bishara, Adv. and students involved in the International Human Rights Clinic at the Clinical Legal Education Center, Faculty of Law of the Hebrew University of Jerusalem.

**Wednesday, January 15, 2020 (10:30-18:00) (4 academic hours)**

**Field Trip: Tel Aviv**

- **Guest Lecture (12:00-13:30):** Tal Steiner, Adv. The Hotline Center for Refugees and Migrants
- **Guest Lecture (14:00-15:30):** Hagai Alkaly, Adv. The Aguda – An Organization for the Empowerment of the Lesbian, Gay, Bisexual and Transgender Community in Israel
Monday, January 20, 2020 (16:00-19:00)
Field Trip: Visit to Supreme Court – Meeting with the Honourable Justice Uzi Vogelman

Tuesday, January 21, 2020 (12:00-13:30)
Integrating the Ultra-Orthodox Community into Israeli Society and Economy (2 academic hours)
Guest speaker: Dr. Gilad Malach, Israel Democracy Institute

Tuesday, January 21, 2020 (14:00-17:30) (4 academic hours)
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).
- Ruth Levush, "Israel: High Court Strikes Down Draft Exemption for Ultra-Orthodox"
  Library of Congress: Global Legal Monitor (Sept. 25, 2017) available online:

Wednesday, January 22, 2020
Study Day – No Class

Thursday, January 23, 2020
FINAL EXAM (10:30-14:30)