

School: Lauder School of Government, Diplomacy & Strategy B.A

Introduction to Israeli Constitutional Law

Lectures: Dr. Yaniv Roznai

Course.No:	Type Course :	Weekly Hours :	Credit Points:
4164	Lecture	2	2

Course Requirements :	Group Code :	Language:
Exam	161416401	English

Prerequisites / Exclusive :

Course Details

This course covers the story of Israel's constitutional law in a comparative view. Each topic is first explored from theoretical and comparative perspectives. On this basis, we will study and evaluate the approach of Israeli law. The course is composed of three sections: a) Theory & History; b) Israel's Bill of Rights; c) Constitutional Dilemmas.

The course includes lectures and active discussions. Attendance is mandatory. Students are expected to come to class having completed the readings for the class and be prepared to discuss them (literature marked as 'additional reading' is not obligatory unless discussed in class).

Course Goals

The aim of the course is to provide the students familiarity with the features and normative framework of Israeli constitutional law in a comparative perspective, and to provide the students basic tools for a rational analysis of issues related to constitutional law.

Course Grading Method

100%: Exam

Lecture Reception Hours

Office hours: by appointment (roznai.yaniv@post.idc.ac.il)

Assistance Reception Hours

Noa Hakim (noa.hakim@gmail.com)

Additional Remarks

Reading Assignment

The reading materials are available on the course webpage.

Israeli decisions are rendered in Hebrew but there are a number of authorized translations in English on the Israel Supreme Court website:

http://elyon1.court.gov.il/eng/verdict/search_eng/verdict_by_misc.html

Some Supreme Court decisions are summarized in English in *Bulletins on Constitutional Case-Law* published by the Venice Commission, the Council of Europe, which are available in the library.

The Benjamin N. Cardozo School of Law of Yeshiva University has launched the Israeli Supreme Court Project (ISCP), the core of which is the translation into English and dissemination of key opinions of the Israeli Supreme Court:

<http://versa.cardozo.yu.edu/opinions>

An official English translation of statutes, entitled Laws of the State of Israel (L.S.I.), is published by the Ministry of Justice. Authorized English translations of laws are also available on the Foreign Ministry website:

<http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/default.aspx>

The Basic Laws are published in English on the Knesset website:
https://www.knesset.gov.il/description/eng/eng_mimshal_yesod1.htm

There are several English law reviews in Israel: [Israel Law Review](#), [Israel Yearbook on Human Rights](#), [Tel-Aviv University Studies in Law](#), and [Theoretical Inquiries in Law](#). Another publication is [Justice](#), published by the International Association of Jewish Lawyers and Jurists. These journals are available online or through legal databases such as LexisNexis.

The main books that will accompany us during the semester are: Suzie Navot, *The Constitutional Law of Israel* (2007) and Suzie Navot, *The Constitution of Israel – A Contextual Analysis* (2014).

Reading List

Section I: Theory & History

1. Introduction (20 October)

- Louis Henkin, *Constitutionalism and its Values, in Israel Among the Nations* 227-40 (Alfred E. Kellermann et al eds., 1998) [hereinafter *Israel Among the Nations*].
- Suzie Navot, *The Constitutional Law of Israel* 55-56 (2007) [hereinafter *Navot, The Constitutional Law of Israel*].
- David S. Law and Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 *California Law Review* 1163, 1194-1201(2011).

Additional reading:

- Yaniv Roznai, *A Bird is Known by its Feathers – On The Importance and Complexities of Definitions in Legislation*, 2(2) *The Theory and Practice of Legislation* 145, 160-165 (2014).

2. Historical background (27 October)

- Israel's Declaration of Independence, May 14, 1948, <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>
- Suzie Navot, *The Constitution of Israel – A Contextual Analysis* 1-25 (2014) [hereinafter *Navot, The Constitution of Israel*].
- Suzie Navot, *The Constitutional Law of Israel* 35-40, 192-201 (2007) [hereinafter *Navot, The Constitutional Law of Israel*].
- Adam Shinar, *Accidental Constitutionalism: The Political Foundations and Implications of Israeli Constitution-Making*, in *The Social and Political Foundations of Constitutions* 207-238 (Dennis Galligan & Mila Versteeg, eds. 2013).

Additional reading:

- *Israel First Knesset: The Debate on a Constitution, February 1 and June 13, 1950*, in *Israel in the Middle East* 96-102 (Itamar Rabinovich & Jehuda Reinharz eds., 2008) [hereinafter *Israel in the Middle East*].
- George M. Gross, *The Constitutional Question in Israel*, in *Constitutionalism: The Israeli and American Experiences* 51, 58-71 (Daniel J. Elazar ed., 1999).
- Amnon Rubinstein & Alex Yakobson, *Israel and the Family of Nations: The Jewish Nation-State and Human Rights* 12-21, 41-43 (2008) [hereinafter *Israel and the Family of Nations*].

3. The Constitutional Revolution (3 November)

- Basic Law: Freedom of Occupation, 1992; Basic Law: Human Dignity and Liberty, 1992.
- CA 6821/93 *United Mizrahi Bank Ltd. v. Migdal Cooperative Village* (1995) [hereinafter *Mizrahi Bank case*] (Opinion of Justice Barak - pp 256-258 only).
- Amnon Rubinstein, *Israel's Partial Constitution: The Basic Laws*, in *Israel Studies: An Anthology* (Mitchell G. Bard & David Nachmias eds., 2009), <http://www.jewishvirtuallibrary.org/jsource/isdf/text/Rubinstein.html>
- Navot, *The Constitution of Israel* 25-46.
- Navot, *The Constitutional Law of Israel* 40-50, 201-210.

Additional reading:

Gideon Sapir, *Constitutional Revolutions: Israel as a Case-Study*, 5(4) *International Journal of Law in Context* 355-378 (2009)

4. Judicial Review (10 November)

- *Mizrahi Bank* case, paragraphs 88-89, Shamgar C.J.; paragraph 80, Barak C.J.
- Barak Medina, *Four Myths of Judicial Review: A Response to Richard Posner's Critique of Aharon Barak's Judicial Activism*, 49 Harv. Int'l L.J. Online (2007), http://law.huji.ac.il/upload/Medina_response_to_Posner1.pdf
- Navot, The Constitutional Law of Israel 156-165.
- Navot, The Constitution of Israel 227-233

Additional reading:

- John Henry Merryman and Rogelio Perez-Perdomo, *The Civil Law Tradition* 134-142 (3rd edn., Stanford UP, 2006).
- Yoram Rabin & Arnon Gutfeld, *Marbury v. Madison and its Impact on the Israeli Constitutional Law*, 16(1) Miami Int'l & Comp. L. Rev. 303, 318-29 (2007).
- Daphne Barak-Erez, *From an Unwritten to a Written Constitution: The Israeli Challenge in American Perspective*, 26 Colum. Hum. Rts. L. Rev. 309, 326-31 (1994).
- Rivka Weill, *Hybrid Constitutionalism: The Israeli Case for Judicial Review and Why We Should Care*, 30 Berkeley J. Int'l Law. 349-411 (2012).

5. Basic Constitutional Principles: Rule of Law, Separation of Powers and Judicial Independence (17 November)

- Navot, The Constitution of Israel 71-90.
- Navot, The Constitutional Law of Israel 61-71

Section II: Israel's Bill of Rights

6. Freedom of/from Religion (24 November)

- Haim Cohn, *Religious Freedom and Religious Coercion in the State of Israel*, in *Israel Among the Nations* 79-85, 93-96, 100-06.
- Barak Medina, *Does the Establishment of Religion Justify Regulating Religious Activities?—The Israeli Experience*, 39(2) *Israel Law Review* 127 (2006)
- Ruth Lapidot, *Freedom of Religion and of Conscience in Israel*, 47 *Cath. U. L. Rev.* 441-465 (1998).
- Navot, The Constitutional Law of Israel 211-215.

Additional reading:

- David Ben-Gurion for the Jewish Agency Executive, *Status-Quo Agreement*, June 19, 1947, in *Israel in the Middle East* 58-59.
- Izhak Englard, *Law and Religion in Israel*, 35(1) *Am. J. Comp. L.* 185-208 (1987).
- Basheva E. Genut, *Competing Visions of the Jewish State: Promoting and Protecting Freedom of Religion in Israel*, 19(5) *Ford. Int'l. L. J.* 2120-2179 (1995).

7. Freedom of Speech (1 December)

- Navot, The Constitutional Law of Israel 234-242
- HCJ 73/53 *Kol Ha'am v. Minister of Interior*, 7(2) PD 871 (1953) (excerpts).
- HCJ 316/03 *Bakri v. Israel Film Council*, 58(1) PD 249 (2003) (excerpts).
- HCJ 6126/94 *Szenes v. Broadcasting Authority*, 53(3) PD 817 (1999) (pp. 339-340 and 374-375)

Additional reading:

- Aharon Barak, *Freedom of Speech in Israel: The Impact of the American Constitution*, 8 *Tel Aviv U. Stud. L.* 241 (1988)
- Pnina Lahav, *American Influence on Israel's Jurisprudence of Free Speech*, 9 *Hastings Const. L.Q.* 21 (1981-1982).

8. Equal Protection (8 December)

- Navot, The Constitution of Israel 233-244.
- Navot, The Constitutional Law of Israel 217-232.
- Stefan Gosepath, *Equality*, in *Stanford Encyclopedia of Philosophy* (Edward N. Zalta ed., 2011) paragraphs 1-2, <http://plato.stanford.edu/entries/equality/>
- HCJ 721/94 *EL-AL Airlines v. Danielowitz*, 48(5) PD 749 (1994) (excerpts).
- HCJ 4541/94 *Miller v. Minister of Defense*, 49(4) PD 94 (1995) (excerpts).
- HCJ 1067/08 *Noar KeHalacha Association v. Ministry of Education* (2009) (excerpts).
- HCJ 6698/95 *Ka'adan v. Israel Lands Authority*, 54(1) PD 258 (2000).

Additional reading:

- Yousef T. Jabareen, *Constitutional Building and Equality in Deeply-Divided Societies: The Case of the Palestinian-Arab Minority in Israel*, 26(2) *Wisc. Int'l L. J.* 345 (2008).

9. Human Dignity (15 December)

- HCJ 2605/05 *The Human Rights Division, The Academic Center for Law and Business v. Minister of Finance* (2009) (excerpts).
- Barak Medina, *Constitutional Limits to Privatization: The Israeli Supreme Court Decision to Invalidate Prison Privatization*, 8(4) Int'l J. Const. L. (2010).
- HCJ 7052/03 *Adalah v. Minister of Interior* (2006) (read only pg 2 (facts / held), pg. 125-126 (Justice Barak minority opinion) and pg. 218-224 (Justice Cheshin Majority Opinion)).
- Daphne Barak-Erez, *Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights*, 6(1) Int'l J. Const. L. 184-92 (2008).

Additional reading:

- Tamar Hostrovsky Brandes, *Human Dignity as a Central Pillar in Constitutional Rights Jurisprudence in Israel: Definitions and Parameters*, in *Israeli Constitutional Law in The Making* 267-284.

Section III: Constitutional Dilemmas

10. Jewish and Democratic (22 December)

- Aharon Barak, *The Values of the State of Israel as a Jewish and Democratic State*, in *Israel Studies: An Anthology*, <http://www.jewishvirtuallibrary.org/jsource/isdf/text/barak.html>
- Amnon Rubinstein, *The Curious Case of Jewish Democracy*, *Azure* 41 (2010).
- Ruth Gavison, *Jewish and Democratic?*, 4(1) *Isr. Studies* 44-72 (1999).

Additional reading:

- Israel and the Family of Nations 124-40.
- Gila Stopler, *National Identity and Religion – State Relations: Israel in Comparative Perspective*, in *Israeli Constitutional Law in The Making* 267-284 (Gideon Sapir, Daphne Barak-Erez and Aharon Barak eds., 2013) [hereinafter *Israeli Constitutional Law in The Making*].

11. Unamendability and Unconstitutional Constitutional Amendments

(29 December)

- EA 1/65 *Yardor v. Chairman of Central Elections Committee*, 19(3) PD 365 (1965) (excerpts).
- Aharon Barak, *Unconstitutional Constitutional Amendments*, 44 *Isr. L. Rev.* 321-341 (2011).
- Mazen Masri, *Unamendability in Israel- A Critical Perspective*, *Unamendable Constitutional Provisions* (in-progress, 2015).

Additional reading:

- Yaniv Roznai, *Unconstitutional Constitutional Amendments – The Migration and Success of a Constitutional Idea*, 61(3) *Am. J. Com. L.* 657-719 (2013).
- Sharon Weintal, *The Challenge of Reconciling Constitutional Eternity Clauses with Popular Sovereignty; Toward Three-Track Democracy in Israel as a Universal Holistic Constitutional System and Theory*, 44 *Isr. L. Rev.* 449 (2011).

12. Guest Lecture – Prof. Martin Loughlin (LSE): Fundamental Concepts in Public Law (5 January)

13. Human Rights in Time of Emergency (12 January)

- HCJ 769/02 *Public Committee against Torture in Israel v. The State of Israel* (2006) (excerpts).
- HCJ 5100/94 *Public Committee against Torture in Israel v. The State of Israel*, 53(4) PD 817 (1999) (excerpts).
- Daphne Barak-Erez, *The National Security Constitution and the Israeli Condition*, in *Israeli Constitutional Law in The Making* 429-444.

Additional reading:

- Navot, *The Constitutional Law of Israel* 242-249.