



Course program and reading list

Semester 1 Year 2019

School: Harry Radzyner Law School LL.B.

comparative law & religion

Lecturer:

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Course No.:	Course Type :	Weekly Hours :	Credit:
10452	Elective	2	2

Course Requirements :	Group Code :	Language:
Final Exam	191104521	English

Prerequisites

Prerequisite:

4 - Legal English Advanced 2 **OR** 10061 - Legal English Advanced for - Honors Program

 Course Description

The course focuses on law & religion, from a comparative perspective. The first theme of the course is what is the separation of church and state? What does it mean for religion, religious organizations and the government? What does it mean to be a separationist,

accommodationist, or a non-preferentialist? This course will cover all aspects of church/state separation: what it is, the difference between secular and religious institutions, major court cases and precedents, what sorts of positions exist, and more. The second theme would focus on the questions is secularism a nonnegotiable aspect of liberal constitutionalism and can non-secular state-church relationship models guarantee freedom of religion as an indispensable condition of liberal constitutionalism? Finally, the course would focus its attention to Israel, a liberal democracy with a very special accommodationist model, discussing the constitutional conflict between Jewish and the democratic character of the State of Israel.



Course Goals

The goal of the course is to help students understand how law and religion interact, how law shapes religion and how religion shapes law, particularly in the United States and in Israel, by using a comparative perspective.



Grading

Exam - 100%



Reading List

Class 1-

Reading:

IRS Checklist for defining a church

<https://www.irs.gov/charities-non-profits/churches-religious-organizations/churches-defined>

Class 2-

An introduction to First Amendment Jurisprudence and Law and Religion

Reading:

John Witte, Jr., The Essential Rights and Liberties of Religion in the American Constitutional Experiment, 71 Notre Dame L. Rev. 371 (1996)

The Free Exercise Clause and The Establishment Clause: Developments in Jurisprudence

Cantwell v. Connecticut, 310 U.S. 296 (1940)

Everson v. Board of Education, 330 U.S. 1 (1947)

Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. ____ (2017)

Class 3-

The "First Amendmentization" of Religion- Religious Law in American Law

Reynolds v. United States, 98 U.S. (8 Otto.) 145 (1878)

Handout (will be handed out during Class 2)

American and Israeli Reflections on a Jewish Democratic State

Avot 3:14

JT Nedarim 30b

BT Sotah 14a

Israeli Declaration of Independence

Justice Haim Cohn, The Spirit of Israel Law 9 Isr. L. Rev. 456 (1974)

Justice Elon - CrimA 3632/92 Gabay v. State of Israel, PD 46(4) 487, 490 (1992)

Justice Aharon Barak, THE JUDGE IN A DEMOCRACY 82-83 (2006)

Class 4 - Law and Religion in a Comparative Perspective

Dawood Ahmed, Religion-State Relations, International IDEA Constitution-Building Primer 8 (2017), 8-14 <http://www.constitutionnet.org/sites/default/files/2017-10/religion-state-relations-primer.pdf>

Gábor Halmai, Varieties of State-Church Relations and Religious Freedom Through Three Case Studies, 2017 Mich. St. L. Rev. 175 (2017), Available at: <https://digitalcommons.law.msu.edu/lr/vol2017/iss2/3>

Frank S. Ravitch, The Shinto Cases: Religion, Culture, or Both-The Japanese Supreme Court and Establishment of Religion Jurisprudence, 2013 BYU L. Rev. 505 (2013), <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1578&context=facpubs>

Class 5 – Jewish & Democratic and the Nation State Law

Suzie Navot, 'A new chapter in Israel's "constitution": Israel as the Nation State of the Jewish People', VerfBlog (July 27, 2018), <https://verfassungsblog.de/a-new-chapter-in->

[israels-constitution-israel-as-the-nation-state-of-the-jewish-people/](#)

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>

Gideon Sapir, 'Was it Right to Pass a Nation-State Law?', in Simon Rabinovitch (ed.), *Defining Israel: The Jewish State, Democracy, and the Law* (Hebrew Union College Press, 2018), 207-215.

Optional:

Ruth Gavison, 'Reflections on the Nation-State Law Debate', in Simon Rabinovitch (ed.), *Defining Israel: The Jewish State, Democracy, and the Law* (Hebrew Union College Press, 2018), 337-349

Gila Stopler, 'National Identity and Religion – State Relations: Israel in Comparative Perspective', in *Israeli Constitutional Law in The Making* (Gideon Sapir, Daphne Barak-Erez and Aharon Barak eds., 2013), 267-284.

Amnon Rubinstein, The Curious Case of Jewish Democracy, *Azure* 41 (2010).

Ruth Gavison, Jewish and Democratic?, 4(1) *Isr. Studies* 44-72 (1999).

Class 6 – European Court of Human Rights Perspective

Alice Ollino, 'Modes of neutrality in the ECtHR jurisprudence related to religious matters: some critical remarks', *Rivista telematica* (www.statoechiese.it), n. 31 del 2018, <https://riviste.unimi.it/index.php/statoechiese/article/view/10703> or <https://riviste.unimi.it/index.php/statoechiese/article/view/10703/10045>

Optional:

Howard Schweber, Text and textualism: religious establishment in the United States Supreme Court and the European Court of Human Rights, in *Comparative Constitutional Theory* (Gary Jacobsohn and Miguel Schor eds., EE, 2018), 248-268

Carolyn Evans and Christopher A. Thomas, Church-State Relations in the European Court of Human Rights, 2006 *BYU L. Rev.* 699 (2006), <http://digitalcommons.law.byu.edu/lawreview/vol2006/iss3/4>

Class 7 - Religions, Secularism and Eternity

Reading:

Yaniv Roznai, Negotiating the Eternal: The Paradox of Entrenching Secularism in Constitutions, 2017 *Mich. St. L. Rev.* 253-308 (the rest is optional) (2017), <https://digitalcommons.law.msu.edu/lr/vol2017/iss2/5>

Richard Albert and Yaniv Roznai, Religion, Secularism and Limitations on Constitutional Amendment (November 12, 2017). *Edward Elgar Research Handbook on Law & Religion*

(Rex Ahdar, editor, 2018), <https://ssrn.com/abstract=3069598>

Optional:

Mazen Masri, Unamendability in Israel - A Critical Perspective (September 19, 2016). in Richard Albert & Bertil Emrah Oder (eds), An Unconstitutional Constitution? Unamendability in Constitutional Democracies (Springer, Forthcoming), <https://ssrn.com/abstract=2840941>