



Course program and reading list

Semester 1 Year 2023

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

Introduction to Israeli Constitutional Law

Lecturer:

Dr. Dana Wolf dana.wolf@runi.ac.il

Teaching Assistant:

Adv. Noa Shamir noa.shamir@post.runi.ac.il

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

Course Requirements :	Group Code :	Language:
Final Exam	231416401	English



Course Description

This course is designed to introduce students to Israeli constitutional law on normative and institutional levels. The course will cover the theory and history of Israeli constitutional law, the development and practice of judicial review, the power of, and limitations on judicial power, the allocation of powers among the legislative, executive, and judicial branches, and the central role of the Supreme Court. 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 course's goal is to provide the students with familiarity with the features and normative framework of Israeli constitutional law and to provide the students with basic tools for a rational analysis of issues related to constitutional law.



Grading

Exam – 90%

Class Presentation and Reflection – 10%

Starting from week 6 you will be assigned to groups of 5–6 students, and you will be asked to present a topic, selected in advance, from the syllabus. Each week two groups will present the assigned topic. The presentation shall be of 10–15 minutes, which is 5% of the class grade. Following the presentation, each student shall submit via email a reflection paper discussing the topic presented either by the student group or the other group. The reflection paper shall be up to 1 page (font Times New Roman size 12 double space) and submitted as a Word document. The reflection memo is 5% of the class grade.



Lecturer Office Hours

By appointment dana.wolf@runi.ac.il



Tutor Office Hours

By appointment Noa.Shamir@runi.ac.il



Teaching Assistant

Adv. Noa Shamir



Additional Notes

Israeli decisions are rendered in Hebrew but there are a number of authorized translations in English on the Israel Supreme Court website: <https://supreme.court.gov.il/>

[sites/en/Pages/home.aspx](https://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/default.aspx)

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://m.knesset.gov.il/en/activity/pages/basiclaws.aspx>

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 and Basic Constitutional Principles (October 30, 2022)**
 - Louis Henkin, *Constitutionalism and its Values, in Israel Among the Nations* 227-240 (Alfred E. Kellermann et al eds., 1998) (hereinafter: *Israel Among the Nations*).
 - Suzie Navot, *The Constitutional Law of Israel* 55-56, 61-71 (2007) (hereinafter: *Navot, The Constitutional Law of Israel*).
 - Suzie Navot, *The Constitution of Israel – A Contextual Analysis* 80-91 (2014) (hereinafter: *Navot, The Constitution of Israel*).

Additional Reading:

- David S. Law and Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 *L. Rev.* 1163, 1194-1201(2011).

2. **Historical Background (November 6, 2022)**

- Suzie Navot, The Constitution of Israel 1-25.
- Suzie Navot, The Constitutional Law of Israel 35-40, 192-201.
- 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).
- Israel's Declaration of Independence, May 14, 1948, available at

<https://www.gov.il/en/Departments/General/declaration-of-establishment-state-of-israel>

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 Jakobson, *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 (November 13, 2022)**

- Basic Law: Freedom of Occupation
- Basic Law: Human Dignity and Liberty
- CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village (1995) (hereinafter: *Mizrachi Bank case*). Read Justice Barak opinion p. 256-258.
- Amnon Rubinstein, *Israel's Partial Constitution: The Basic Laws*, in *Israel Studies: An Anthology* (Mitchell G. Bard & David Nachmias eds., 2009), available at <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) *Int J Law Context* 355-378 (2009).

4. **Judicial Review (November 20, 2022)**

- *Mizrachi Bank case*, para. 88-89, Shamgar C.J.; para. 80, Barak C.J.
- Richard A. Posner, "Enlightened Despot", *The New Republic* (April 23, 2007), available at <https://newrepublic.com/article/60919/enlightened-despot>.
- Barak Medina, *Four Myths of Judicial Review: A Response to Richard Posner's Critique of Aharon Barak's Judicial Activism*, 49 *Int'l L.J. Online* (2007), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=992972.
- 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 and 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 *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).

Section II: Israel's Bill of Rights

5. Freedom of/from Religion (November 27, 2022)

- Navot, *The Constitutional Law of Israel* 211-215.
- David Ben-Gurion for the Jewish Agency Executive, *Status-Quo Agreement*, June 19, 1947, in *Israel in the Middle East* 58-59.
- Haim Cohn, *Religious Freedom and Religious Coercion in the State of Israel*, in *Israel Among the Nations* 79-85, 93-96, 100-106.

Additional Reading:

- Izhak Englard, *Law and Religion in Israel*, 35(1) *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).
- Ruth Lapidot, *Freedom of Religion and of Conscience in Israel*, 47 *U. L. Rev.* 441-465 (1998).

6. Freedom of Speech (December 4, 2022)

- 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)
- Guy E. Carmi, *Digitizing Free Speech in Israel: The Impact of the Constitutional Revolution on Free Speech Protection*, 57 *McGill L. J.* 791 (2012). Read p. 793-802, and 804-815.

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).

7. Equal Protection (December 11, 2022)

- Navot, *The Constitution of Israel* 233-244.
- Navot, *The Constitutional Law of Israel* 217-232.
- 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:

- Stefan Gosepath, Equality, in Stanford Encyclopedia of Philosophy (Edward N. Zalta ed., 2011) paragraphs 1-2, available at <http://plato.stanford.edu/entries/equality/>.
- Yousef T. Jabareen, *Constitutional Building and Equality in Deeply-Divided Societies: The Case of the Palestinian-Arab Minority in Israel*, 26(2) Int'l L. J. 345 (2008).

8. **Human Dignity (December 18, 2022)**

- Navot, The Constitution of Israel
- HCJ 2605/05 The Human Rights Division, The Academic Center for Law and Business v. Minister of Finance (2009) (excerpts).
- HCJ 7052/03 Adalah v. Minister of Interior (2006) (read only p. 2 (facts / held), p. 125-126 (Justice Barak minority opinion), and p. 218-224 (Justice Cheshin Majority Opinion).

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 (2013).
- 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).

Section III: Constitutional Dilemmas

9. **Jewish and Democratic (December 25, 2022)**

- Basic Law: Israel – The Nation State of the Jewish People, 2018.
- Channel 4 News, Israel Approve Law to Become a Jewish Nation State (July 19, 2018), available at <https://www.youtube.com/watch?v=mNWykMEBIK8> (watch until minute 2:59)
- Navot Suzie, *A new chapter in Israel's "constitution": Israel as the Nation State of the Jewish People*, available at <https://doi.org/10.17176/20180727-124823-0>.
- Aharon Barak, *The Values of the State of Israel as a Jewish and Democratic State*, in *Israel Studies: An Anthology*, available at

<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) Studies 44-72 (1999).
- HCJ 3648/97 Stamka v. Minister of Interior, PD 53(2) para 1-27 of Justice Cheshin,
- HCJ 6698/95 Ka'adan v. Israel Land Administration, PD 34(1) 258.

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]).

- Ruth Gavison "Israel as a Jewish and Democratic State", Weinberg College (June 15, 2017), watch from minute 11:33, available at

<https://www.youtube.com/watch?v=lyyD6kAAcVc>

10+11. Human Rights in Time of Emergency (January 1, 2023, & January 8, 2023)

- 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.
- HCJ 2109/20 Ben Meir v. Prime Minister (April 26, 2020). Read: President Hayut Judgment Intro, para. 1-2, 4, 6-8, 9-10, 12, 14, 16-17, 20-21, 23-24, 25-27,35-42,46-47. Available at <https://versa.cardozo.yu.edu/opinions/ben-meir-v-prime-minister-0>
- HCJ 2435/20 Loewenthal v. Prime Minister (April 7, 2020). Available at: <https://versa.cardozo.yu.edu/opinions/yedidya-loewenthal-adv-v-prime-minister>

Additional Reading:

- Navot, The Constitutional Law of Israel 242-249.
- Yuval Shani on Human Rights and Counter-Terrorism in Israel, IDI (April 6, 2013), available at

<https://www.youtube.com/>

[watch?v=1hEWHzYQcA8&list=PLmCtYOSs2DQwsBdAPbmXuHPITbs109a4g&index=21](https://www.youtube.com/watch?v=1hEWHzYQcA8&list=PLmCtYOSs2DQwsBdAPbmXuHPITbs109a4g&index=21)

12. The Rule of Law and Human Rights in the West Bank and Gaza (January 15, 2023)

- David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002)
- Law for the Regularization of Settlement in Judea and Samaria, 2017.
- Michal Luft, *Living in a Legal Vacuum: The Case of Israel's Legal Position and Policy Towards Gaza Residents*, 51(2) Law Rev 193.
- Tamar Hostovsky Brandes, *Constitutional Adjudication of International Law Violations: The Israeli Supreme Court's Invalidation of the Settlement Regularization Law*, Verfblog (June 14, 2020), available at <https://verfassungsblog.de/constitutional-adjudication-of-international-law-violations/>
- HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel (June 30, 2004), available at <https://versa.cardozo.yu.edu/opinions/beit-sourik-village-council-v-government-israel>

Additional Reading:

- *Israeli Passes Controversial Law on West Bank Settlements*, The BBC News, available at <https://www.bbc.com/news/world-middle-east-38888649>.
- One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, The

Association for Civil Rights in Israel, October 2014. Available at <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>.

13. **13. Conclusion (January 22, 2023)**

- Roznai Yaniv, *Israel – A Crisis of Liberal Democracy?*, in *Constitutional Democracy in Crisis?* (forthcoming, Mark A. Graber, Sanford Levinson, and Mark Tushnet eds., Oxford University Press) available at <http://dx.doi.org/10.2139/ssrn.3157986>.