

Legal Studies 190.3
Human Rights & Civil Rights in Israel
Fall 2021
TuTh 2-3:30
2038 Valley Life Science Building

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Office hours: by scheduling zoom
meetings

Human Rights & Civil Rights in Israel

Course Description

Does Israel have a bill of rights? Are human rights in Israel applicable in the relations between citizens?

Human rights in Israel have evolved in a unique way. Since the establishment of the State, the Supreme Court recognized and developed the rights through the interpretation of laws. All rights have evolved as relative rights that can be balanced with other rights and interests. In 1992, Israel underwent a “constitutional revolution” with the enactment of two Basic Laws focusing on protecting human rights. Some of the human rights are enshrined explicitly in the Basic Laws and other rights were interpreted by the Supreme Court as arising from "human dignity."

The course will deal with the development of human rights in Israel and their status. Special attention will be given to human dignity into which rights such as freedom of expression and equality have been read into. The special concept of Human Dignity in Israel has been a source of inspiration to other legal systems in the world. Indeed – this is one of number of reasons – which we will discover during the course for the subject to be most relevant nowadays.

Course Learning Objectives

By the end of the Course students will be able to:

1. Identify the forms/ways human rights evolved in Israel
2. Analyze the constitutional and legal principles and rules regarding the main rights
3. Read and understand legal courts documents dealing with infringements of rights
4. Think critically regarding human rights' conflicts in Israel
5. Be able to compare some aspect of Human rights in Israel and in The United States

Requirements and Grading

Participation	10%
Three assignment	45%
Final	45%

Participation – attendance, participation and reading. Students’ attendance is necessary to participate at this learning process. Students should come well prepared with a *close reading* of the material. I will monitor and encourage participation *each* class.

Assignments – There will be three assignments. The first two are written assignments and deal with analysis of Israeli cases (students will be encouraged to replace one of the written assignments with an oral presentation). The third assignment is oral and will be presented by students in class. The assignments and their grading are elaborated in Appendix A at the end of the syllabus.

Final – Take home exam. 72 hours. Due date. Tu 14 Dec 11 a.m. A thinking questions. Grading elaborated in Appendix B at the end of the Syllabus

Textbook

SUZIE NAVOT, THE CONSTITUTIONAL LAW OF ISRAEL- A CONTEXTUAL ANALYSIS (HART PUBLISHING, 2014) (hereinafter: NAVOT)

On-Line Sources:

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](#).

Teaching Method and Policies

The course will combine general lectures with students’ discussion. While lectures are necessary to introduce basic concepts and facts about the topic, most of the learning process will be based on the interaction between students and professor, as well as the interaction among students.

This role requires students to be *active learners*. Reading, writing, debating, challenging, thinking critically, doubting the texts and one’s own received knowledge are keys to the success of this learning experiment.

Please be on time. You are expected to prepare for each class. Take notes as you read (and in class) and refer to the study questions posted on bCourses. Research shows that you learn more when you take notes on paper and leave your networked devices off, so if you want to make the most of class, take notes on paper. If you want to use social media, send text messages, or

communicate with friends, do it outside of class. Drinking coffee, water, etc., in class is fine, but eating is a distraction to your fellow students, so do not eat in class. Basically, we are all adults here, so the expectation is that we will treat one another with respect.

please refer to Berkeley's Academic Integrity policy (<http://sa.berkeley.edu/conduct/integrity>). Integrity and honesty are highly important, and I take them seriously.

Students requiring [accommodation](#) for disability should also make sure that I get the official accommodation notice from DSP *by the third week of the semester*. Make sure to check bCourses daily, since that will be our medium of communication. Note—if problems with food or a place to live are getting in the way of academics, UC Berkeley has a resource, basicneeds.berkeley.edu

Course Readings and Schedule¹

Introduction to the Syllabus and getting to know each other (Th 8/26/21)

By the end of class student will understand why the course is relevant and get to know the professor and each other

The goal of the reading is to be familiar with the Israeli legal system

Comment – the class will include the first measure learning (this doesn't affect the grade in no way)

Reading

- Michal Tamir, *A Guide to Legal Research in Israel*, GLOBALEX, <https://www.nyulawglobal.org/globalex/Israel1.html> (Nov/Dec 2019), ch. 1-3

Further Reading

- BRENT E. SASLEY AND HAROLD M. WALLER, *POLITICS IN ISRAEL* (Oxford, 2017) 219-229

Israeli Constitutionalism

By the end of the topic students will be familiar with the Israeli complex constitutional background and be able to analyze the question of whether the Declaration of Independence is a constitutional document

The Declaration of independence (Tu 8/31/21)

- 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>
- Michal Tamir, *The Declaration of Independence as a Transitional Constitution: The Case of Israel*, 8 MIDDLE EAST LAW AND GOVERNANCE (University of Toronto) (2016) 57, 57-65.
- Navot, 4-12

Israeli Constitutionalism: An overview (Th 9/2/21)

¹ Readings subject to change at instructor's discretion. See bCourses for updates.

- Navot 12-46

Further Reading

- 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>
- Barak Aharon, *The Role of the Supreme Court in a Democracy* ISRAEL STUDIES 3 (1998), pp. 6-29.
- Dafna Barak-Erez, *From an Unwritten to a Written Constitution: The Israeli Challenge in American Perspective*, 26 COLUM. HUMAN RIGHTS L. REV. (1995) 309.
- 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).

Making Sense of Human Rights (Tu 9/7/21, Th 9/9/21)

By the end of the class students will be familiar with the theory of human rights and with essential distinctions and terms

- Nickel, James, "Human Rights", *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=rights-human>
- JAMES W. NICKEL, MAKING DENSE OF HUMAN RIGHTS (2nd ed. 2007), pp 9-14, 185-190.

The Development of Rights in Israel through Case Law (Tu 9/14/21)

By the end of the class students will be able to analyze cases in which the Israeli Supreme Court recognized human rights through interpretation of laws.

- Navot 221-226
- HCJ 73/53 Kol Ha'am v. Minister of Interior (1953), <https://versa.cardozo.yu.edu/opinions/kol-haam-co-ltd-v-minister-interior>

Further Reading

- HCJ 1/49 Bejerano v. Police Minister (1949), <https://versa.cardozo.yu.edu/opinions/bejerano-v-police-minister>

*Note - Th 9/16/21 – Yom Kipur there is no class session

Tu 9/23/21

Due date of submitting **assignment #1**

The class will be dedicated to a mutual discussion of the assignment and presentations of students who choose to replace the written assignment by an oral one

The Basic Laws of Human Rights (Th 9/23/21, Tu 9/28/21)

By the end of the topic students will be familiar with the basics law of human rights and with the way the Supreme Court deals with infringements upon rights entrenched in them.

- Basic Law: Human Dignity and Liberty (1992) https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm
- Basic Law: freedom of Occupation (1994)

https://www.knesset.gov.il/laws/special/eng/basic4_eng.htm

- Navot, 227-233
- Michal Tamir & Dalia Cahana-Amitay, *The Hebrew Language Has Not Created A Title for Me': A Legal and Sociolinguistic Analysis of New-Type Families*, 17 AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY AND THE LAW (2009) 545, 551-553.
- Mordechai Kremnitzer, *Constitutional Proportionality: (Appropriate) Guidelines* in Gideon Sapir, Daphna Barak-Erez and Aharon Barak (eds), ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Hart 2013) 225-238.

Further Reading

- CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village (1995) (Justice Barak opinion).
<https://versa.cardozo.yu.edu/opinions/united-mizrahi-bank-v-migdal-cooperative-village>

Human Dignity (Th 9/30/21, Tu 10/5/21)

By the end of the class students will be familiar with the special way the right of human dignity is interpreted in Israel. Comparison will be made with the interpretation of the right in Germany, South Africa and the United States. Demonstration of judicial review will be made by the case in which the Supreme Court invalidated the privatization of jails in Israel.

- Aharon Barak, Human Dignity: The Constitutional Value and the Constitutional Right (2015) 156-162.
- HCJ 2605/05 The Human Rights Division, The Academic Center for Law and Business v. Minister of Finance (2009) (Justice Beinisch Opinion)
<https://versa.cardozo.yu.edu/opinions/academic-center-law-and-business-v-minister-finance>

Further Reading

- Ariel L. Bendor and Michael Sacks, *The Constitutional Status of Human Dignity in Germany and Israel*, 44 ISRAEL LAW REVIEW 25 (2011).
- Barak Medina, *Constitutional Limits to Privatization: The Israeli Supreme Court Decision to Invalidate Prison Privatization*, 8(4) INT'L J. CONST. L. (2010).
- Tamar Hostrovsky Brandes, *Human Dignity as a Central Pillar in Constitutional Rights Jurisprudence in Israel: Definitions and Parameters*, in Gideon Sapir, Daphna Barak-Erez and Aharon Barak (eds), ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Hart 2013) 267-284.

Th 10/7/21

Due date of submitting **assignment #2**

The class will be dedicated to a mutual discussion of the assignment and presentations of students who choose to replace the written assignment by an oral one

Equality in General (Tu 10/12/21)

By the end of the class students will be familiar with basic distinctions regarding the right to equality

- Stefan Gosepath, *Equality*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N.

Zalta ed., 2011) <http://plato.stanford.edu/entries/equality/>

- Navot, 233-234
- Michal Tamir & Dalia Cahana-Amitay, *The Hebrew Language Has Not Created A Title for Me': A Legal and Sociolinguistic Analysis of New-Type Families*, 17 AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY AND THE LAW (2009) 545, 553-555.

Equality – Gender

By the end of the class students will identify the gaps between the right to equality as *law in the book* and the situation in reality (*law in action*) and suggest reasons for the discrepancy (Th10/14/21)

- Women's Equal Rights Law, 1951,
https://www.knesset.gov.il/review/data/eng/law/kns1_women_eng.pdf HCJ 104/87 Nevo v. National Labour Court, (1990)
<https://versa.cardozo.yu.edu/opinions/nevo-v-national-labour-court>.
- HCJ 4541/94 Miller v. Minister of Defense, (1995) (Justice Dorner Opinion)
<https://versa.cardozo.yu.edu/opinions/miller-v-minister-defence>
- Navot, 235-238

Gender Gaps in the IDF (Tu 10/19/21, Th10/21/21)

Watching the Israeli movie "zero motivation" and discussion of the way gender gaps are demonstrated

Equality in Private Law (Tu 10/26/21, Th10/28/21)

By the end of the topic students will understand the special problems regarding the application of equality in the private law and will be familiar with the phenomenon of exclusion

- Aharon Barak, *Constitutional Rights and Private Law* in Gideon Sapir, Daphna Barak-Erez and Aharon Barak (eds), ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Hart 2013) 379-400
- Michal Tamir, *The Freedom to Exclude: The Case of the Israeli Society*”, 49 ISRAEL LAW REVIEW (2016) 237, 237-252 http://journals.cambridge.org/abstract_S002122371600008X

Further Reading

- Michal Tamir, ‘Human Rights in Private Law: Hybridization of the Balancing Tests’ in Gideon Sapir, Daphna Barak-Erez and Aharon Barak (eds), ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Hart 2013) 401.

Tu 11/2/21

Due date of **assignment #3** – presentations of students

Equality – Sexual Orientation (Th11/4/21)

By the end of the class students will be aware of the achievements the LBGT community in Israel and the challenges they still face

- Michal Tamir & Dalia Cahana-Amitay, *The Hebrew Language Has Not Created a Title for Me': A Legal and Sociolinguistic Analysis of New-Type Families*, 17 AMERICAN UNIVERSITY JOURNAL OF GENDER, SOCIAL POLICY AND THE LAW (2009) 545, 555-559.
- HCJ 721/94 EL-AL Airlines v. Danielowitz, (1994) (Justice Barak Opinion)
<https://www.psakdin.co.il/Files/psak123.pdf>

- Navot, 238-239

Equality – Minorities (Tu 11/9/21; Tu 16/11/21)

By the end of the class students understand the challenge of equality to minorities in a Jewish and Democratic State.

- HCJ 6698/95 Ka'adan v. Israel Lands Authority (2000) (Justice Barak Opinion)
<https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administratio>
[n](https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administratio)
- HCJ 7052/03 Adalah v. Minister of Interior (2006) read Justice Barak minority opinion and Justice Cheshin Majority Opinion.
<https://www.adalah.org/uploads/oldfiles/eng/features/famuni/unifeng.htm>
- Navot, 239-243

Further 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)
- 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)
- SUZIE NAVOT, CONSTITUTIONAL LAW IN ISRAEL (2nd ed, 2016) 233-240.

Due Process (Tu 11/18/21; 11/23/21)

By the end of the class students will understand the way procedural rights were developed through the interpretation of substantive rights and the difference between the fruit of the poisonous tree in Israel and in the United states

- Aharon Barak, *Human Dignity: The Constitutional Value and the Constitutional Right* (2015) 300-301.
- CrimA 5121/98 Yissacharov v. Chief Military Prosecutor (2006),
<https://versa.cardozo.yu.edu/opinions/yissacharov-v-chief-military-prosecutor>

Final Class (Th 12/2/ 21)

Final remarks, potluck party

Comment – the class will include the final learning measure (this, again does not affect the grade)

Appendix A – Assignments (45%)

Assignments #1+#2

Course Goal#1: Identify the forms/ways human rights evolved in Israel

Course Goal #3: Read and understand legal courts documents dealing with infringements of rights

In-Class Activity: Analyzing the way rights were developed

1. The development rights in Israel through case law
2. The application of the Basics law of human rights

In-Class Activity Description:

Suggesting parameters to analyze a Supreme Court case:

- Who is the governmental authority that violated the right?
- What is the right that has been infringed upon?
- Who is the appellant?
- What are the sources on which the court relied?
- How did the court balance between the rights and interests?

Homework Assignment:

Read and analyze the case (appeal to High Court of Justice) according to the parameters elaborated in class

- Assignment 1 – due date 9/23/21 – HCJ 153/83 Levi v. Commander of the Southern District of the Israeli Police (1984)
<https://versa.cardozo.yu.edu/opinions/levi-v-commander-southern-district-israeli-police>
- Assignment 2 – due date 10/7/21 – HCJ 2887/04 Abu Madigam v. Israel Land Administration (2007), Justice Arbel Decision [Abu-Madigam v. Israel Land Administration | Cardozo Israeli Supreme Court Project \(yu.edu\)](#)

Grading of the assignment

Criteria	Possible Points	Feedback
Student applies the criteria discussed in class correctly – criteria 1-3	6	
Student applies the criteria discussed in class correctly – criteria 4-5	6	
The assignment is well organized and easy to understand/presentation is clear and fluid	3	
TOTAL	15	

Assignment #3

Course goal#4: Think critically regarding human rights' conflicts in Israel

Course goal#5: Be able to compare some aspect of human rights in Israel and in The United States

Due date - 11/2/21

In class action: Demonstrations of Exclusion of Women in Israel

Assignment: Find another demonstration of minorities' exclusion in Israel or somewhere else (An advertisement, a newspaper article, a movie etc.) and suggest solution to cope with the phenomenon.

Grading of the assignment

Criteria	Possible Points	Feedback
Relevance of the item found by the student	4	
The student applies the issue of exclusion and explains how it is demonstrated by the example	6	
Presentation is clear and fluid	2	
Originality	3	
TOTAL	15	

Appendix B – Final Exam (45%)

Take home exam on the issues covered in class. A thinking question that will require horizontal application of the materials studied throughout the semester.

72 hours. Due date Tu Dec 14, 11AM

Criteria	Possible Points	Feedback
The student applies correctly the subjects learned throughout the semester	10	
The student relies on and mentions resources	10	
The student uses convincing arguments	10	
The answer is well organized	5	
Originality	5	
General impression	5	
Total	45	