

Law US/Israeli comparative Law Summer 2009
Naomi Gale, (Schusterman Visiting Professor)
University of Colorado, Boulder

Maymester: 5/13 – 6/2
Monday-Friday: 9:00am – 12:15pm
Wolf Law Building: Room 306
Office Hours: Tues 1:00pm-3pm

Course Description

This course compares the various facades of the Israeli and American Legal Systems. Both systems derived from the British Common Law System, however each developed its own uniqueness in accordance with societal and legal forces, each distinctive to its own society with its unique history. For example, the legal system of Israel today belongs to the family of mixed jurisdictions combining tenets of the Common Law and the Civil Law, with Israel's unique history and characteristics, and the revolutionary changes in the legal system since the independence of the state.

We will discuss the centrality of the Judiciary and compare the Supreme Courts and the High Courts of Justice in both countries, particularly their conduct in the arena of the protection human rights and civil rights, particularly of minorities, under the American Constitution and under the Israeli Basic Laws.

We will also study the structures of the general court systems in both, while paying special attention to specialized courts. Amongst those, a special attention will be given to the study of the religious court in Israel, its centrality in the life of Israelis and in the shaping of the laws of personal status, such as the absence of civil marriage and divorce and the position of women in Israeli society.

Major areas the course covers are: **Constitutional Law**: we will draw comparison between the American Constitution and the Basic Laws of Israel, which are of a higher normative status, and are a key component of Israel's constitutional law. These *Basis Laws* are viewed as the basis for the constitution to be; **Immigration Law**: This section compares **The United States Code** Title 8 of the Code, "Aliens and Nationality", with the Israeli Law of Return, the Israeli Citizenship and Entry into Israel Law, and the Israeli nationality law. There will be some emphasis on illegal immigration issues to both countries; **Criminal System**: Israel's criminal legal system is adversarial in nature, unlike the American system - there is no jury, and professional judges decide all cases. The Criminal Justice System is closely shaped by the common-law system. The Penal Law and the Evidence Ordinance both originated from the British Mandate days and the Criminal Procedure is heavily influenced by common law. **Time permitting** we will discuss **Military Penal Code** in both countries; **Israel National Health Insurance** and other health related laws, **Women's Rights**, in areas such employment, health, prevention of violence in the family, Sexual harassment and the conduct of the courts in these areas.

Required books

Harris, R., A. Kedar, P. Lahav & A. Likhovski (eds.) *The History of Law in Multi-Cultural Society Israel 1917-1967*, Ashgate Dartmouth Publishing Co. Ltd., 2002

Goldstein Stephen and Michael Joachim Bonell, *Butterworth Lectures: 1994* (Butterworth Lectures), (Paperback), edited by Roger Cotterrell, London Dublin and Edinburgh: Butterworths, 1995

Fallon H. Richard *The dynamic Constitution: An Introduction to American Constitutional Law*. Cambridge University Press, 2005

Course Requirements

Students are expected to prepare the readings for each class. Most of the materials is on the internet site of the course at the school of law and can be downloaded from the TWEN site. The rest will be handed during class.

Grades:

1. Class attendance, reading and participation (10%)
2. End-of-term take-home exam or submission of paper (90%)

1. Accommodations due to disability.

If you qualify for accommodations because of a disability, please submit a letter to the Disability Services in a timely manner so that your needs be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, Willard 322, and <http://www.Colorado.EDU/disabilityservices>

Disability Services' letters for students with disabilities indicate legally mandated reasonable accommodations. The syllabus statements and answers to Frequently Asked Questions can be found at: <http://www.colorado.edu/disabilityservices>.

If you have a temporary medical condition or injury, see guidelines at:

<http://www.colorado.edu/disabilityservices/go.cgi?select=temporary.html>

2. Religious observances.

Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance.

See full details at http://www.colorado.edu/policies/fac_relig.html.

Calendar of the religious holidays most commonly observed by CU-Boulder students is at <http://www.interfaithcalendar.org/>

3. Class room Behavior Conduct.

Students and faculty each have responsibility for maintaining an appropriate learning environment. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at <http://www.colorado.edu/policies/classbehavior.html> and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_cod

4. Policy on Discrimination and Harassment

If any student believes s/he has been the subject of sexual harassment or discrimination or harassment based upon race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH and the resources available to assist individuals regarding harassment or discrimination can be obtained at <http://www.colorado.edu/odh>

5. Honor Code

All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-735-2273). Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). Other information can be found at <http://www.colorado.edu/policies/honor.html> and at <http://www.colorado.edu/academics/honorcode/>

6. Requirements & Expectations

Students must be prepared for each class. Students are responsible for the preparation of all the material detailed in the syllabus below, as well as any additional texts and assignments that may be added during the semester. It is essential that all work must be completed and submitted on time. Extensions will be given only with the doctor's note.

Bibliography (a tentative list)

1. Introduction: The Separation and Powers: The Israeli Society:

5/13 Harris, R., A. Kedar, P. Lahav & A. Likhovski., (ed.) " Introduction" In *The History of Law in Multi-Cultural Society, 1917-1967*, Ashgate Dartmouth Publishing Co. Ltd., 2002. pp 1-36; Barak Aharon, "Israel Legal History" in Harris, R., A. Kedar, P. Lahav & A. Likhovski., (eds.) pp. 383-392; Fallon H. Richard *The dynamic Constitution: An Introduction to American Constitutional Law*. Cambridge University Press, 2005, "Judicial Power", pp. 189-206.

5/14 Bin-Nun, Ariel, *The Law of the State of Israel: An Introduction*, Jerusalem: Rubin Mass LTD, 1990, pp. 1-73.

2. Jewish and Arab Perceptions of Rights in Israel

5/15 Smooha Sammy., "Jewish and Arab Ethnocentrism in Israel", *Ethnic and Racial Studies*, Vol. 10, No. 1, January 1987, pp. 1-26; Zureik, E., Moughrabi, F. and Sacco, V.F., "Perceptions of legal inequality in deeply divided societies: The case of Israel", *Journal of Middle East Studies*, 1993, Vol. 25, pp. 423-442; Simon, R. J., Landis, J. and Amir, M., "Jewish and Arab Perceptions of civil rights in Israel", *Studies in Law, Politics and Society*, 1990, Vol. 10, pp. 245-262;

3. Human rights and civil rights

5/18 *The Universal Declaration of Human Rights; Israel Basic Law: Human Dignity and Liberty (1992)*; Barak-Erez Daphne, "The International law of human rights and constitutional law: A case study of an expanding dialogue", *Int. J Constitutional Law*, October 2004, Vol.2, pp. 611-632; Mudrik-Even Chen, Hilli and Mordechai Kremnitzer (2000) *Affirmative Action in Israel: Defining the Policy and Legislative Recommendations*, Policy Paper No. 24,

4. Israel Courts' Rulings in various areas of rights

5/19 Landau, Asher Felix (ed.) 1996 *The Jerusalem Post Law Reports*. The Magnes Press, The Hebrew University of Jerusalem The Faculty of Law (3rd. ed.), The right to Express Dangerous Ideas – Kahane v. The Broadcasting Authority 47-54; Supreme Court: Give Right of Appeal in the territories – Arjub v. IDF Commander in Judea and Samaria 55- 59; Rights of Detainees – Audeh and others v. IDF Commanders in Judea and Samaria 122-125; The limit to Censorship – Shnitzer v. Chief Military Censor 71-74; Freedom of expression – Avneri v. Shapira 111-115; No absolute right to demonstrate- Kach Movement v. Minister of Police. 162-167; *Judgments of the Israel Supreme Court: Fighting Terrorism within the Law*, 2005, Jerusalem, published by the Supreme Court of Israel, (Vol. 1): Recent Important Judgments: IDF Operations in Rafah; Israel's Security Fence: H CJ 4764/04 Physicians for Human Rights v. The Commander of IDF Forces in the Gaza Strip [The Rafah Case]; H CJ 2056/04 Beit Sourik Village Council v. The Government of Israel [The Fence Case] pp. 179-210, continues in Vol. 2 (2006) pp. 7-61.

5. The American Constitution Rulings in various areas of rights

5/20 Fallon H. Richard., 2005, Individual Rights under the constitution: "Freedom of Speech", pp. 31-56; "Rights to Fair Procedures" (in Criminal Cases, Civil Cases, Due Process in Administrative Proceedings), pp. 91-105; "Equal protection of the Law" (and the constitution, race, discrimination, affirmative action, gender and homosexuality), pp. 106- 137; "Fundamental Rights", pp. 138-156; "The constitution

in War and Emergency" (Federal Power, individual rights in war, the constitution and war on terrorism, limits on constitutional rights), pp. 236- 253.

5/21 Fallon H. Richard., 2005, "Introduction: the dynamic Constitution" pp. 1-30; Guminski Arnold T., (1985) "The Rights, Privileges, and Immunities of the American People: A Disjunctive Theory of Selective Incorporation of the Bill of Rights", *Whitter Law Review*, Vol. 7. No. 3, pp. 765-826.

6. Judaism and Democracy

5/22 *Law of Return 5710-1950*; Amendments to the Law, (1954, 1970); The Citizenship Law; *Israel Basic Law: Human Dignity and Liberty (1992)*; Gavison Ruth, (2003) "Democracy and Judaism – Between Conceptual Analysis and Public Discourse" in David, Joseph E. (ed.) *The State of Israel: Between Judaism and Democracy, The Israel Democracy Institute*. pp. 360-370; Shalev, Carmel "Within and Beyond the Limits of Human Nature", Heinrich Boll Foundation, Berlin, October 12-15, 2003; *Weighing and Balancing the Value of Jewish Democracy*; Landau Asher Felix, (1993) *The Jerusalem Post Law Reports*, The Magnes Press, the Hebrew University, Jerusalem. (Short extracts of 10 cases reported by the Jerusalem Post that have some implications on social processes in the dialectic relationship between Judaism and Democracy);

7. Religion, the Law and the State

5/26 Scolnicov Anat., "Religious law, religious Courts and human rights within Israeli constitutional Structure", *Int. J Constitutional Law*, (October 2006), 4: 732-740; Landau, Asher Felix (ed.) *The Jerusalem Post Law Reports*. The Magnes press, The Hebrew University of Jerusalem The Faculty of Law (3rd. ed.) 1996; Proper Permission for Sabbath Work – Eshkar LTD., v. Minister of Labour 1-5; In the interest of the children – Yehiel Nagar v. Ora Nagar 11-15; Forbidden Marriage – Tamar Forer v. Mario Forer; Reform Rabbis and Marriage Law – movement for Progressive Judaism v. Minister for Religious Affairs 103-110; Fallon H. Richard., 2005, "Freedom of Religion", pp. 57- 74.

8. Israel Basic Law: Freedom of Occupation (1994); Its contribution to the Changing the work practices' culture

5/27 Israel Basic Law: Freedom of Occupation (1994); Israel's Labor Law; Judge Stephen J. Adler (the president of the National Labour Court of Israel) 2007, pp. 1-40; Internationally-Recognized Core Labour Standards in Israel, Report for the WTO General Council Review of the Trade Policies of Israel (February 2006, pp. 1-11. (we will review several cases); Fallon H. Richard., 2005, "Protection of Economic Liberties", (the fourteenth Amendment, substantive due process), pp. 75-90.

9. Women equality: The law and practice

5/28 Halperin-Kaddari, Ruth., *Women in Israel and State of their Own*, Pennsylvania Studies Human Rights Series, University of Pennsylvania Press, 2003. "Gender Equality in the Legal System" (pp. 24-42); "The Promotion of Gender Equality" (pp. 43-68); "The Halachic Trap: Marriage and Family Life" (pp. 227-262);

10. The Judiciary

5/29 Shannon Ishiyama Smithey, *Judges as Constitution Makers: Strategic Assertions of Judicial Authority*, University of Pittsburgh (will be distributed in

class); Aharon Barak, the President of the Israel Supreme Court (2005) "A Judge on Judging: The Role of the Supreme Court in a Democracy", *in Judgment of the Israel Supreme Court: Fighting Terrorism within the Law*, Jerusalem, English publication of. pp. 9-23; 1-10; Mason Alpheus Thomas, and Donald Grier Stephenson Ju., 1999 *American Constitutional Law*, The Constitution, The Supreme Court and Judicial Review 29-43.

11. General Comparison

6/1 Goldstein Stephen "On Comparing and Unifying Civil Procedural systems" in Goldstein Stephen and Michael Joachim Bonell, *Process and Substance: Lecture on Comparative Law Butterworth Lectures: 1994* (Butterworth Lectures), edited by Roger Cotterrell, London Dublin and Edinburgh: Butterworths. 1995, pp. 1-43; Goldstein Stephen "Contrasting Views of Adjudication: An American-Israeli Comparison", 169-186; Friedman Lawrence M., "Legal History: Israel and the United States – Some Remarks", In Harris, R., A. Kedar, P. Lahav & A. Likhovski., (eds.) 2002, pp. 407-415; Fallon H. Richard., 2005, "Conclusion", pp. 269-278.

6/2 Conclusion: general summary of the course and Q@A

Additional materials: (for students who would like to further their knowledge).

5/29 *The United States Code* Title 8 of the Code, "Aliens and Nationality"; *The Israeli Law of Return*, 1950, The Amendments 1952, 1970; *The Israeli Citizenship and Entry into Israel Law*; *The Israeli nationality law*.

Fisher III, William W., "Property and Power in American Legal History", in Harris, R., A. Kedar, P. Lahav & A. Likhovski., (eds.) 2002, pp. 393-406.

Carmon, Arye (2006) "Give Israel a Constitution", *Jerusalem Post*, June 9.

Constitution for Israel, A Joint project of the Knesset and the Jewish Agency for Israel, North America by the Israeli American Forum, Can be found in the Knesset Internet Site in the English Language.

Fallon H. Richard *The dynamic Constitution: An Introduction to American Constitutional Law*. Cambridge University Press. 2005, Appendix: The constitution of the United States 279-298.

The Declaration of Independence, the State of Israel. www.Knesset.gov.il

The Israeli Basic Laws

The Law of Returns

The Israeli Citizenship and entry into Israel Law

The Israeli Nationality Law

National Health Insurance Law

Useful Internet Sites

The Knesset (Parliament) www.knesset.gov.il

The Judicial Authority www.court.gov.il

The Israel Bar Association

Israel Democracy Institute www.idi.co.il

B'TSELEM Israel Center for Human Rights

<http://www.adalah.org/newsletter/eng/dec04/ar1.pdf>

Guide to Law Online - Israel

Lexis