

Seminar

# Israel/Palestine Legal Issues

## Syllabus

Duncan Kennedy

### Course Summary

Class 1: Historical background up to 1949

#### **Part one: Inside Israel**

Class 2: The legalities of the appropriation of Palestinian land

Class 3: The public law structure of the Israeli polity: "Jewish and democratic"

Class 4: The issue of discrimination against the Arab minority

#### **Part two: The West Bank and Gaza**

Class 5: Legal status of the occupation of the West Bank and Gaza, and of Israeli settlements

Class 6: The issue of the duties of the occupier with respect to social and economic development: before Oslo and after Oslo

Class 7: Are the settlements occupation or de facto annexation?

Class 8: Palestinian resistance: the legality or not of violence in response to occupation

Class 9: The targets and techniques of armed resistance: the issue of Palestinian violations of international humanitarian law

Class 10: The legality or not of Israeli responses to Palestinian resistance

#### **Part Three: Legal dimensions of deal breaking issues**

Class 11: Sovereignty: The status of Jerusalem and the binational state proposal

Class 12: The right of return as a legal issue

#### ***Class 1: Historical background***

Historical documents (except for the Fourteen Points, all are from The Israel-Arab Reader (Walter Laqueur & Barry Rubin, eds.))

The Fourteen Points from Wikipedia  
Sykes-Picot agreement  
MacMahon letter  
Balfour Declaration  
Emir Faisal – Chaim Weizmann agreement  
League of Nations Mandate for Palestine  
Israeli Declaration of Independence  
U.N. Resolutions 194 & 303  
Israeli Law of Return

Aaron Wolf, *Hydropolitics along the Jordan River: Scarce Water and its Impact on the Arab-Israeli Conflict* (New York: United Nations University Press, 1995) (background summary)

Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003), ch. 1

Benny Morris, *The Origins of the Palestinian Refugee Problem*, 2<sup>nd</sup> ed. (Cambridge: Cambridge Univ. Press, 2004), Conclusion

Nur Masalha, ch. 2 (critique of Morris)

Alan Dershowitz, *The Case for Israel* (New York: Wiley, 2003), Ch. 12

Ilan Pappé, *The Ethnic Cleansing of Palestine*, p. 39-49 (Oxford: Oneworld, 2006)

[OPTIONAL] Samuel Katz, *Battleground: Fact and Fantasy in Palestine* (New York: Bantam, 1973), ch. 2 (an Israeli narrative “pre-Morris”)

## **Part one: Inside Israel**

### ***Class 2: The legalities of the appropriation of Palestinian land***

David Kretzmer, *The Legal Status of the Arabs in Israel* (San Francisco: Westview, 1990) ch. 4

Sandy Kedar, *On the Legal Geography of Ethnocratic Settler States: Notes toward a Research Agenda*, 5 *Current Legal Issues* 401 (2003)

Joseph Singer, *Re-Reading Property*, 25 *New Eng. L. Rev.* 711, 718-722 (1992)

Joseph Singer, *Well Settled?: The Increasing Weight of History in American Indian Land Claims*, 28 *Ga. L. Rev.* 481, 528-32 (1994)

Guadalupe Luna, Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a "Naked Knife," 4 Mich. J. Race & Law 39, 39-50, 133-37 (1998)

***Class 3: The public law structure of the Israeli polity: "Jewish and democratic"***

Intro:

The Israeli Ministry of Foreign Affairs: Israel's System of Government

Ruth Gavison, The Jewish State: A Justification from David Hazony et al., eds., New Essays on Zionism (New York: Shalem Press, 2006)

Hassan Jabareen, The Future of Arab Citizenship in Israel: Jewish-Zionist Time in a Place with No Palestinian Memory, in D. Levy & Y. Weiss, eds., Challenging Ethnic Citizenship (NY: Bergahn Books, 2002)

Alan Dowty, Is Israel Democratic? Substance and Semantics in the "Ethnic Democracy" Debate, 4 Israel Studies, no. 2, p. 1 (1999)

Haaretz, Editorial, "A Racist Jewish State" and selected "Talkback" from readers, 7/20/07

***Class 4: The issue of discrimination against the Arab minority***

[OPTIONAL BACKGROUND] Eyal Benvenisti & Dahlia Shaham, Facially Neutral Discrimination and the Israeli Supreme Court

Yishai Blank, Brown in Jerusalem: A Comparative Look on Race and Ethnicity in Public Schools, 38 Urban Lawyer 367 (No. 3, 2006)

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)

Edgewood Independent School District v. Kirby, 77 S.W.2d 391 (Texas, 1989)

**Part two: The West Bank and Gaza**

***Class 5: Legal status of the occupation of the West Bank and Gaza and of Israeli settlements***

Paul Johnson, A History of the Jews (New York: Harper & Row, 1987)

Mike Berry and Greg Philo, Israel and Palestine: Competing Histories (London: Pluto, 2004)

Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley: Univ. of Cal. Press, 2005) p. 52-58

International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paras. 70-78, 86-113, 120

Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton Univ. Press, 1993) p. 7-9, 98-100, 105-106, 122-123, 140-41

David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: SUNY Press, 2002) p. 77-79

***Class 6: The issue of the duties of the occupier with respect to social and economic development: before and after Oslo***

Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton Univ. Press, 1993), p. 123-129, 141-144

Gunnar Myrdal, "The Drift Toward Regional Inequality in a Country," in *Economic Theory and Underdeveloped Regions* (London: Duckworth, 1957)

Meron Benvenisti, with Ziad Abu-Zayed & Danny Rubinstein, *The West Bank Handbook: A Political Lexicon* (Boulder: Westview, 1986)  
[Agriculture (Arab), Agricultural Land Use (Arab), Camp David Accords, Construction (Arab), Creeping Annexation, Economic Policy, Education (Arab), Electricity, Employment in Israel (Palestinians), Employment in Israel (Wages), Employment on the West Bank, Fiscal Burden, Foreign Aid, Foreign Trade, Health, Improvement of the Quality of Life, Industry, Interference with Private Land Ownership, Land Use, National Accounts, Parks and Nature Preserves, Physical Planning, Public Consumption and Investment, Sumud, Taxation and Revenues, UNRWA, Water]

Guy Mundlak, "Power-Breaking or Power-Entrenching Law? The Regulation of Palestinian Workers in Israel," 20 *Com. Labor Law & Policy J.* 569 (1999) p. 574-81

Mike Berry and Greg Philo, *Israel and Palestine: Competing Histories* (London: Pluto, 2004)

Hiba Hussein, "Challenges and Reforms in the Palestinian Authority," 26 *Fordham Int. L. J.* 501 (2002-2003)

Leila Farsakh, Independence, Cantons, or Bantustans: Whither the Palestinian State? 59 Middle East J. (No. 2, Spring 2003)

[OPTIONAL] Sara Roy, De-Development Revisited: Palestinian Economy and Society since Oslo, 28 J. Palestine Stud. No. 3 (Spring 1999) p. 64-82

[OPTIONAL] Peter Lagerquist, Privatizing the Occupation: The Political Economy of an Oslo Development Project, 32 J. Palestine Stud. No. 2 (Winter 2003), p. 5-20

***Class 7: The settlements: occupation or de facto annexation?***

Oren Ben-Naftali, Aya Gross & Keren Michaeli, Illegal Occupation: Framing the Occupied Palestinian Territory, 23 Berkeley J. Int. L. 551 (2005)

***Class 8: Palestinian resistance: the legality or not of violence in response to the occupation***

Richard Baxter, The Duty of Obedience to the Belligerent Occupant, 1950 Brit. Y.B. Int'l L. 235, 253-59

Karma Nabulsi, Traditions of War: Occupation, Resistance and the Law (Oxford: Oxford Univ. Press, 1999)

Richard Falk and Burns H. Weston, The Relevance of International Law to Palestinian Rights in the West Bank and Gaza: In Legal Defense of the *intifada*, 32 Harv. Int. L.J. 1 (1991).

Michael Curtis, International Law and the Territories, 32 Harv. Int. L.J. 457 (1991)

Richard Falk & Burns Weston, The Israeli-Occupied Territories, International Law and the Boundaries of Scholarly Discourse: A Reply to Michael Curtis, 33 Harv. Int. L.J. 191 (1992)

***Class 9: The targets and techniques of armed resistance: the issue of Palestinian violations of international humanitarian law***

Human Rights Watch, Letter to Ramadam Shalah of Islamic Jihad, and other statements on Palestinian suicide bombing and rocketing, 2/3/2006, 4/21/2006, 11/18/2006, 7/1/2007

Michael Walzer, Arguing About War (New Haven, Yale Univ. Press, 2005) chs. 3 & 4

Talal Assad, On Suicide Bombing (New York, Columbia Univ. Press, 2007) ch. 1

David Kennedy, The Dark Sides of Virtue: Reassessing International Humanitarianism (Princeton: Princeton Univ. Press, 2004) from ch. 8

***Class 10: The legality or not of Israeli responses to Palestinian resistance: before and after Oslo***

Adam Roberts, Prolonged Military Occupation: The Israeli-Occupied Territories since 1967, 84 Am. J. Int. L. 44 (1990)

Israeli Ministry of Foreign Affairs, Answers to Frequently Asked Questions: Palestinian Violence and Terrorism, 5 August 2002, website

Ruth Wedgwood, The ICJ Advisory Opinion on the Israeli Security Fence and the Limits of Self-Defense, 99 Am. J. Int. L. 52 (2005)

John Dugard, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (New York: U.N. Human Rights Council, 29 January 2007)

Lisa Hajjar, Courting Conflict: The Israeli Military Court System in the West Bank and Gaza (Berkeley: Univ. of Cal. Press, 2005)

Liav Orgad, The Fantasyland of Proportionality, ynetnews.com, Israel Opinion (8/3/2006)

**Part three: Legal dimensions of deal breaking issues**

***Class 11: Sovereignty: The status of Jerusalem and the binational state proposal***

UN General Assembly Resolution 303: On the Internationalization of Jerusalem (1949)

UN Security Council Resolution 242 (1967)

UN Security Council Resolution 338 (1973)

The Likud Party: Platform (March 1977)

The PLO: Six-Point Program (December 4, 1977)

U.S. Letter of Assurances to the Palestinians (October 18, 1991)

Nathaniel Berman, "But the Alternative is Despair:" European Nationalism and the Modernist Renewal of International Law, 106 Harv. L. Rev. 1792 (1993)

Adnan Abu-Odeh, Two Capitals in an Undivided Jerusalem, 71 Foreign Affairs 188 (1991)

Moshe Ma'oz, The Future of Jerusalem: Israeli Perceptions, in Moshe Ma'oz & Sari Nusseibeh, Jerusalem: Points of Friction—And Beyond (The Hague: Kluwer, 2000)

Jonathan Kuttab & Claude Klein, Aspects of Sovereignty: Introduction, in Ma'oz & Nusseibeh

Jonathan Kuttab, Thoughts on a Medical Model, in Ma'oz & Nusseibeh

Beshara Doumani, Palestine versus the Palestinians? The Iron Law and Ironies of a People Denied, 36 J. Pal. Stud. No. 4, Summer 2007, p. 49

Lama Abu-Odeh, The Case for Binationalism, The Boston Review, Dec, 2001-Jan. 2002.

Eight Responses to Abu-Odeh, The Boston Review, Dec. 2001-Jan. 2002

### ***Class 12: The right of return as a legal issue***

U.N. resolution General Assembly Resolution 194 (1948)

Israeli Ministry of Foreign Affairs, What is Israel's Position on the Palestinian claim of a "right of return? (Website, 5 August 2002)

Sari Hanafi, Opening the Debate on the Right of Return, Middle East Report No. 222 (Spring 2007) p. 2-7

Aron Harel, Whose Home is It? Reflections on the Palestinian's Interest in Return, 5 Theoretical Inquiries in Law 333 (2004)

Salim Tamari, Palestinian Refugee Property Claims: Compensation and Restitution, in Eyal Benvenisit, Chaim Gans & Sari Hanafi, eds., Israel and the Palestinian Refugees (--: Springer, 2007)

Nadim Rouhana, Zionism's Encounter with the Palestinians: The Dynamics of Force, Fear and Extremism, in Robert Rotberg, ed., Israeli

and Palestinian Narratives of Conflict: History's Double Helix  
(Bloomington: Indiana Univ. Press, 2006)

Raef Zreik, Palestine, Apartheid, and the Rights Discourse, 34 J. Pal.  
Stud. 68 (2004)