



Rothberg International School  
בית הספר לתלמידים מחו"ל ע"ש רוטברג  
THE HEBREW UNIVERSITY OF JERUSALEM  
האוניברסיטה העברית בירושלים



Faculty of Law

הפקולטה למשפטים

Rothberg International School  
Department of Summer Courses  
and Special Programs

ביה"ס לתלמידים מחו"ל ע"ש רוטברג  
המחלקה לקורסי קיץ  
ותוכניות מיוחדות

Asper International Program 2.0

## **Decision Making During Crises: *Strategic Thinking in Times of Peril and Uncertainty (48871)***

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May 3 – May 27, 2021

45 Academic Hours | 3 Academic Credits

### **SYLLABUS**

#### **Course Description and Objectives**

This multidimensional, interdisciplinary and integrative course explores how policy makers, including government, legislatures and courts, can and do reach decisions in times of societal-wide stress and uncertainty.

The course will be divided into two components. The first part of the course looks at Canada and the general theory of decision making. It will be led and taught by Dr. Bryan Schwartz, (doctorate in law, Yale) Asper Chair of International Business and Trade Law at the University of Manitoba. Drawing on insights that have already had an impact on legal thinking including decision theory, behavioral economics and some of the literature on trauma and resilience, it will examine the Canadian and United States legal framework for emergency powers of government and discuss the wider question of how individuals, groups and societies make decisions in times of crises.

The second part explores Israel as a crucible for decision making in times of crises. Featuring a variety of lecturers from the Hebrew University of Jerusalem, it will be led by Dr Daniel Ohana, a Canadian-educated jurist now teaching in Israel. It includes introductory classes designed to provide general knowledge of Israeli history and

society and the basic concepts and institutional framework of Israeli law and government. It also comprises guest lectures on more specific issues related to the coronavirus crisis that will be given by leading academics and experienced practitioners, who will supply students with information on the latest developments in their fields of expertise. It will be seen that Israel, the home of much of the most influential theories of decision-making, has had over the years to address many crises – wars, invasions, terrorism, massive waves of immigration, economic crises, and social divisions. Attention will focus on such questions as: What is the legal, political and social framework for decision-making in such a society? How do democratic institutions continue to function in times of epidemic, military conflict, civil unrest and economic crashes? What has been the role of the Israeli High Court of Justice, including in the latest coronavirus outbreak, in properly moderating by law the tendency of the executive towards rule without parliamentary oversight and judicial checks during times of crises?

### **Format**

The format will be four classes a week for four weeks, starting on Monday, May 3<sup>rd</sup>, 2021 delivered online (via Zoom). The Canadian classes will be delivered at 6:00 PM CT each day and run for 2 hours, including a break. The classes delivered from lecturers based in Israel will be offered at 9:00 AM CT each day and run for 2 or 3 hours, including a break. All lectures will be available online throughout the program for the students to view when convenient to their schedule. Students must attend at least half (8) of the live sessions in real-time.

The course is conducted exclusively in English; proficiency in spoken or written Hebrew is not a prerequisite for participation in the program. Israeli statutes and Supreme Court decisions relevant to the topics taught in class are often available online in English translation.

An online site administered by the Rothberg International School at the Hebrew University will be available to enable easy interaction between students and the academic coordinators throughout the course of the program. By accessing the sites, students will be able to obtain general information and announcements about the course. Background material and course readings will be posted online, so as to give students the opportunity to familiarize themselves in advance with the various topics addressed in the course of the program.

It should be noted that the program is subject to changes based on developments caused by the coronavirus pandemic, such that it may undergo last-minute modifications due to health-related restrictions imposed by the authorities on universities and other public institutions.

### **Assessment**

Students will receive 3 credit hours from the Hebrew University for the basic course, evaluated by submitting 4 reflection papers on themes of the course, to be chosen by the student. These should be 3-4 pages on one of the topics (student's choice) covered

in the lectures. The reflections should show that the assigned materials have been read, with the students' thoughts on its value, their agreements or disagreements, and application to legal matters of interest to them or their own experience and observations.

Students who wish to receive an additional 3 credit hours can register for a second course at the Rothberg International School of the Hebrew University, which involves writing a more substantial research paper (7500 words) on a topic selected by the student in agreement with the instructor related to the course's main themes. The research paper must demonstrate a suitably high level of complexity and depth. Evaluation of the paper will be based on the following criteria: thoroughness of research and scholarly nature of sources; presentation and organization (including references and a bibliography); quality and style of writing; and the strength of the presented argument, including demonstrated comprehension of pertinent materials, clarity of reasoning, and originality of the ideas developed in the paper.

Students at Robson Hall have the option of applying to do a three-credit paper related to the themes of the course as part of their fall term program, under the Research Paper rubric; <https://law.robsonhall.com/student-resources/course-descriptions/research-paper> Permission is required from both Dr. Schwartz and the Office of the Associate Dean for students: <https://law.robsonhall.com/student-resources/course-descriptions/research-paper/>.

## **Schedule**

Canada-Based Lectures May 3<sup>rd</sup>-13<sup>th</sup> | Start Time: 6PM CT

Israel-Based Lectures May 18<sup>th</sup>-27<sup>th</sup> | Start Time: 9AM CT

## **PART 1**

*Lectures from Canada led by Dr. Bryan Schwartz on Mondays to Thursdays from May 3<sup>rd</sup>-6<sup>th</sup> and May 10<sup>th</sup>-13<sup>th</sup>.*

*A three hour zoom slot will be booked for each of these classes, but they will generally run for only 2 hours. Dr. Schwartz has tentatively planned an extra hour for discussion in his first, fourth and eighth classes*

### **Lecture 1: Introduction**

- *No required readings*

### **Lecture 2: Legal and Constitutional Framework for Decision Making**

- Peter Rosenthal, "[The New Emergencies Act: Four Times the War Measures Act](#)", *Manitoba Law Journal* (1991)
- Kim Lane Scheppele, "[North American Emergencies: The Use of Emergency Powers in Canada and the United States](#)", *International Journal of Constitutional Law* (2006)

### **Lecture 3: General Theories of How Decisions are Made**

- Katie Steele and H. Orri Stefansson, “[Decision Theory](#)”, *Stanford Encyclopedia of Philosophy* (2015)
- Marije H. Bakker et al, “[Decision-making during a crisis: the interplay of narratives and statistical information before and after crisis communication](#)”, *Journal of Risk Research* (2018)

### **Lecture 4: Behavioral Economics and Decision Making in Times of Crisis**

- Alain Samson, “[An Introduction to Behavioral Economics](#)”, *Behavioral Economics* (2014)
- Cass R. Sunstein, “[Nudging: A Very Short Guide](#)”, *Harvard DASH* (2014)

### **Lecture 5: Game Theory, Group Psychology, Recognition-Primed Decisions and Rhetoric: Theories of Decision Making in Emergencies**

- “[What is Groupthink?](#)”, *Corporate Finance Institute* (2020)
- Randal C. Picker, “[An Introduction to Game Theory and the Law](#)”, *University of Chicago* (1994)
- Christian List, “[Social Choice Theory](#)”, *Stanford Encyclopedia of Philosophy* (2013)
- Yakov Ben-Haim, “[Info-Gap Decision Theory](#)”, *Decision Making Under Deep Uncertainty* (2019)
- “[Legal Maxims](#)”, *Encyclopedia Judaica* (2008)

### **Lecture 6: World Health Organization and International Institutions in Times of Crisis**

- “[A Brief History of the World Health Organization](#)”, *The Lancet* (2002)
- Ken Bredemeier, “[WHO at Forefront of Coronavirus Fight But Not Without Controversy](#)”, *VOA News* (2020)
- Michael W. Doyle, “[Making War and Building Peace: The United Nations Since the 1990’s](#)”, *Columbia University* (2005)

### **Lecture 7: Individual and Social Psychology in Times of Crisis and Trauma**

- Orla T. Muldoon et al, “[The social psychology of responses to trauma: social identity pathways associated with divergent traumatic responses](#)”, *European Review of Social Psychology* (2019)
- Center for Substance Abuse Treatment, “[Chapter 3: Understanding the Impact of Trauma](#)”, *Trauma-Informed Care in Behavioral Health Services* (2014)

### **Lecture 8: Jewish Civilization as an Adaptation to Crises**

- Leslie Susser, “[Changing the refugee paradigm](#)”, *The Jerusalem Post* (2012)
- Joseph Katz, “[A History of the Jews, a list of expulsions for 2000 years](#)”, *EretzYisroel* (2001)

- Meir Elran et al, "[Social resilience in the Jewish communities around the Gaza Strip Envelope during and after Operation Protective Edge](#)", *Military and Strategic Affairs* (2015)

## PART 2

*Lectures from Israel led by Dr. Daniel Ohana on Mondays to Thursdays from May 18<sup>th</sup>-20<sup>th</sup> and May 24<sup>th</sup>-27<sup>th</sup>.*

Note that class will not be held Monday May 17<sup>th</sup>, due to the Shavuot holiday.

**Background Lectures (I-V)** by Dr. Daniel Ohana, Hebrew University of Jerusalem:  
Introduction to Israeli Constitutional and Human Rights Law and Recent Developments in the Wake of the Coronavirus Outbreak

*Lectures will be recorded and uploaded online.*

### **I. Judicial Review in the High Court of Justice (2 academic hours)**

- Suzie Navot, *The Constitution of Israel* 1-47, 193-219 (2014).
- HCJ 910/86 Ressler v. Minister of Defence (1988) IsrSC 42(2) 441.
- HCJ 3094/93 The Movement for Quality of Government in Israel v. The State of Israel (1993) IsrSC 47(5) 404.
- HCJ 4797/07 Association for Civil Rights in Israel v. Airports Authority.
- HCJ 3458/17 Hiddush – For Religious Freedom and Equality v. Respondent: Israel Defense Forces.

### **II. The Constitutional Revolution (2 academic hours)**

- HCJ 98/69 Bergman v. Minister of Finance, (1969) IsrSC 23(1) 693.
- HCJ 6821/93 United Mizrahi Bank v. Migdal Cooperative (1995) IsrSC 49(4) 221.
- HCJ 6055/95 Tzemach v. Minister of Defense (1999) IsrSC 53(5) 241.
- CrimA 5121/98 Issacharov v. Chief Military Prosecutor (2006) IsrSC 320 421.
- Daphne Barak-Erez, "From an Unwritten to a Written Constitution: The Israeli Challenge from an American Perspective" 26 *Columbia Human Rights Law Review* 309 (1995)
- Talya Steiner, "Proportionality Analysis by the Israeli Supreme Court" in Mordechai Kremnitzer, Talya Steiner, Adreja Lang, *Proportionality in Action: Comparative and Empirical Perspectives* 285-384 (2020).

### **III. Between Judicial Activism and Measured Restraint: Current Trends in the High Court of Justice's Decisions (2 academic hours)**

- HCJ 3429/11 Alumni Association of the Arab Orthodox School in Haifa v. Minister of Finance.
- HCJ 7146/12 Adam v. The Knesset.
- HCJ 5239/11 Avneri v. The Knesset.

- HCJ 8665/14 Desete v. Minister of the Interior.
- HCJ 4374/15 Movement for Quality of Government v. Prime Minister.
- HCJ 1892/14 The Association for Civil Rights in Israel v. Minister of Public Security.
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution 189-196*, 303-337 (2016).
- Gideon Sapir, *The Israeli Constitution: From Evolution to Revolution* (2018).
- Suzie Navot & Yaniv Roznai, "From Supra-Constitutional Principles to the Misuse of Constituent Power in Israel", 21 *European Journal of Law Reform* 402 (2019).
- Ruth Levush, *Israel: Exclusion of Single Men and Same-Sex Male Spouses with Genetic Affinity for the Newborn from Surrogacy Agreements Held Unconstitutional* Library of Congress, *Global Legal Monitor*, March 24, 2020.
- Ruth Levush, "Israel: Supreme Court Voids Law Legalizing Settlements Built on Unauthorized and Privately-Owned Land in West Bank" Library of Congress, *Global Legal Monitor*, July 14, 2020).
- Jacob Magid, "In Victory for Asylum-Seekers, High Court Repeals Law Taking 20% of their Pay" *Times of Israel*, April 23, 2020.

#### **IV. The Increasing Politicization of the Process of Appointment of Judges and the Attorney General (2 academic hours)**

- Suzie Navot, *The Constitutional Law of Israel* 137-167 (2007).
- Daniel Friedmann, *The Purse and the Sword: The Trials of Israel's Legal Revolution* 29-31, 52-63, 197-211, 237-251 (2016).
- Shimon Shetreet, "Courts and Judiciary" in Christian Walter, Barak Medina, Lothar Scholz and Heinz-Bernd Wabnitz (eds), *The Israeli Legal System: An Introduction* 27-38 (2019).

#### **V. The Legal Aspects of the Government's Response to the COVID-19 Pandemic in Israel (2 academic hours)**

- Avinoam Sharon, "COVID-19 Roundup", *VERSA*, May 27, 2020.
- HCJ 2109/20 Ben Meir v. Prime Minister.
- Aeyal Gross, "Rights, Restrictions and Securitization of Health in Israel During COVID-19" *BILL OF HEALTH*, Harvard University (May 29, 2020).
- Tehilla Shwartz Altshuler and Rachel Aridor Hershkovitz, *Digital Contact Tracing and the Coronavirus: Israeli and Comparative Perspectives* (August 2020).
- Pnina Sharvit Baruch and Nadiv Mordechai, *The Covid-19 Pandemic and Democratic Resilience in Israel* INSS Special Publication (September 2, 2020).
- Ruth Levush, "Regulating Electronic Means to Fight the Spread of COVID-19: Israel" *Global Legal Monitor*, June 2020.
- Ruth Levush, *Israel: Government's Extended Authorization for Coronavirus-Related Surveillance Approved*, *Global Legal Monitor*, Nov. 4, 2020.

- Ruth Levush, Law Granting Government Special Authorities to Combat Novel Coronavirus Adopted Library of Congress, Global Legal Monitor, July 29, 2020.
- Ruth Levush, Israel: Temporary Restriction on the Right to Protest during Coronavirus Lockdown Adopted, Global Legal Monitor, October 9, 2020.
- Ruth Levush, Israel: Privacy Protection Requirements for Conducting COVID-19 Epidemiological Investigations Issued, Global Legal Monitor, Dec. 10, 2020.

**Lecture 9:** Decision Making During Crises in the Long History of Jewish Civilization (Dr. Yonatan Kaplan, Rothberg International School, Hebrew University of Jerusalem)  
[The lecture is recorded and uploaded online]

**Lecture 10:** The Political History of the Establishment and Experience of the State of Israel

**Guest Lecturer:** Dr. David Mendelsson, Hebrew Union College

- Gideon Kouts, Jacob Katz, Shmuel Ettinger, Arthur Hertzberg, Moshe Medzini and Chaim Yahil, "Zionism" in Michael Bernbaum and Fred Skolnik (eds) Encyclopaedia Judaica (Vol. 21, 2<sup>nd</sup> ed., 2007).

**Lecture 11:** Israel as the Start-Up Nation: The Role of the High-Tech Sector in Coping with the Coronavirus

**Guest Lecturer:** David Rosenberg, Business Journalist, *Ha'aretz*

- David Rosenberg, Israel's Technology Economy 1-10 (2018).

**Lecture 12:** The Position of the Ultraorthodox under the Constitutional System in Israel, and Issues Arising During the Coronavirus

**Guest Lecturer:** Dr. Gilad Malach, Israel Democracy Institute

- Lee Cahaner and Gilad Malach, Statistical Report on Ultra-Orthodox Society in Israel (Israel Democracy Institute, 2020)
- Gilad Malach and Leehe Friedman, "Curbing the Coronavirus among the Ultra-Orthodox: An Explainer" Times of Israel, April 2, 2020.
- Gilad Malach and Ruben Gorbat, "Integrating the Ultra-Orthodox in the Wake of Coronavirus" Israel Democracy Institute, June 11, 2020.
- Yohanan Plesner, Shuki Friedman, Gilad Malach, "The Ultra-Orthodox and the Corona Crisis: Briefing" Israel Democracy Institute, October 14, 2020.

**Lecture 13:** Law Enforcement & Intercommunal Tensions and Cooperation During the Coronavirus Outbreak

**Guest Lecturer:** Dr. Gali Perry, Institute of Criminology, Hebrew University of Jerusalem

- Gali Perry and Tal Jonathan Zamir, "Expectations, Effectiveness, Trust and Cooperation: Public Attitudes Towards Israel Police during the Covid-19 Pandemic" Policing (2020).

**Lecture 14:** The Precarious Position of Asylum-Seekers and Refugees in the Midst of the Coronavirus Crisis

**Guest Lecturer:** Sigal Rozen, The Hotline for Refugees and Migrants

- Hotline for Refugees and Migrants, Special Report: Immigration Detention in Israel, 1998-2018 (2019).
- Hotline for Refugees and Migrants, Special Report: Falling on Deaf Ears – Asylum Proceedings in Israel (2018).
- Hotline for Refugees and Migrants, Special Report: *Trapped in Limbo – Israel's Policy of Avoiding Making Decisions in Well-Founded Asylum Claims* (2020)
- Joy Bernard, "For African Migrants in Israel, COVID-19 Means Health, Jobs, Homes All at Risk" *Times of Israel*, April 11, 2020.

**Lecture 15:** The Role of International Law and Institutions in Crises pertaining to the Israeli-Palestinian Conflict

**Guest Lecturer:** Prof. Guy Harpaz, Faculty of Law, Hebrew University of Jerusalem

- Guy Harpaz and Yuval Shany, "The Israel Supreme Court and the Incremental Expansion of the Scope of Discretion under Belligerent Occupation Law", 43 *Israel Law Review* 514 (2010).

**Lecture 16:** The Impact of National and International Law on Decision Making During Crises

**Guest Lecturer:** Dr. Amos Guiora, S. J. Quinney College of Law, University of Utah

- Amos Guiora, "9/11 to 2019 -- An 18-Year Retrospective: "The Mission was NOT Accomplished"" in Afshin Ellian, Bastiaan Rijpkema and Gelijn Molier (eds) *Terrorism and Counter-Terrorism after the Caliphate* (Forthcoming, 2020).