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Israel/Palestine Legal Issues

First Syllabus: Classes 1-8

Fall 2008

Duncan Kennedy

Course Summary

Part One: Background through 1950

Class 1: Historical background up to 1948

Class 2: The war and the displacement of the Palestinians

Part Two: The legal status of the Arab minority inside Israel

Class 3: The legalities of the appropriation of Palestinian land

Class 4: The public law structure of the Israeli polity

Class 5: The place of the Arab minority in the Israeli polity and economy

Class 6: The restriction of sale of land to Arabs

Class 7: The Arabs in the educational system: districting and funding

Class 8: "Jewish and democratic"

Part Three: The legal status of the occupation of the West Bank and Gaza

Class 9: The applicability of the Geneva Convention

Class 10: The legality of Israeli settlements in the Occupied Territories

Class 11: The issue of the duties of the occupier with respect to social and economic development: before Oslo

Class 12: Israel and the Palestinian Authority after Oslo: political, economic and legal developments

Part Four: The legal status of violent resistance and repression in the Occupied Territories

Class 13: The right of resistance in international law

Class 14: Palestinian resistance: the legality or not of violence in response to the occupation

Class 15: The issue of Palestinian violations of international humanitarian law: the targets of violence

Class 16: The issue of Palestinian violations of international humanitarian law: the techniques of violence

Class 17: The legality or not of Israeli responses to Palestinian resistance: torture and targeted assassination

Class 18: The legality or not of Israeli responses to Palestinian resistance: the Wall of Separation

Class 19: Are the settlements occupation or de facto annexation?

Part Five: Legal dimensions of deal breaking issues

Class 20: The status of Jerusalem

Class 21: The binational state proposal

Class 22: The right of return as a legal issue

Part Six: The role of the U.S. in Israel/Palestine Legal Issues

Class 23: Is there an Israel Lobby?

Class 24: Concluding class

**PART ONE: HISTORICAL BACKGROUND THROUGH
1950**

Sept. 4: Class 1: Historical background to 1948

Historical documents (except for the Fourteen Points, all are from The Israel-Arab Reader (Walter Laqueur & Barry Rubin, eds.))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

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)

Sept. 5: Class 2: The War and the displacement of the Palestinians

Israeli Declaration of Independence
U.N. Resolutions 194 & 303
Israeli Law of Return

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

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

Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003), ch. 2 (critique of Morris)

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

Efraim Karsh, *Fabricating Israeli History: The “New Historians,”* (London: Frank Cass, 200?) (critique of Schlam & Pappé)

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

PART TWO: INSIDE ISRAEL

Sept. 11: Class 3: 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)

Sept. 12: Class 4: The public law structure of the Israeli polity

Intro:

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

Suzie Navot, *Constitutional Law of Israel* (Amsterdam: Kluwer International, 2007)

Eyal Benvenisti & Dahlia Shaham, *Facially Neutral Discrimination and the Israeli Supreme Court*, 36 *N.Y.U.J. Int'l Law & Politics* 677 (2004)

Sept. 18: Class 5: The place of the Arab minority in the Israeli polity and economy

Amnon Rubinstein, *Israeli Arabs and Jews: Dispelling the Myths, Narrowing the Gaps* (The American Jewish Committee, 1993)

Baruch Kimmelman & Joel Migdal, *The Palestinian People: A History* (Cambridge: Harvard University Press, 2003) ch. 6 to p. 196

Yehouda Shenhav, *The Arab Jews: A Postcolonial Reading of Nationalism, Religion and Ethnicity* (Stanford: Stanford Univ. Press, 2006) (the mizrahim by a "new historian")

Sept. 19: Class 6: Restrictions on the sale of land to Arabs

Kaadan v. Israel Lands Authority et al. 54(1) Piskei Din 258 (1995)

Tom Segev, *A Decade of Dreams Down the Drain*, Haaretz 01/10/05

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)

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

Arnold Hirsch, *With or Without Jim Crow: Black Residential Segregation in the United States*, in Arnold Hirsch & Raymond Mohl, *Urban Policy in Twentieth-Century America* (New Brunswick: Rutgers University Press, 1993)

Sept. 25: Class 7: : The Arabs in the educational system: districting and funding

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)

Sept. 26: Class 8: "Jewish and democratic"

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

Ilan Saban, Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel, 36 N.Y.U. J. Int'l Law & Politics 885 (2004)