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# MISHPATIM 2012:

## THE ISRAEL AND INTERNATIONAL LAW PROGRAM THROUGH THE UNIVERSITY OF MANITOBA AND THE HEBREW UNIVERSITY OF JERUSALEM

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**SYLLABUS**



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THE HEBREW UNIVERSITY OF JERUSALEM

Rothberg International School ביה"ס לתלמידים מחו"ל ע"ש רוטברג

Department of Summer Courses

המחלקה לקורסי קיץ

and Special Programs

ותוכניות מיוחדות



**Manitoba Mishpatim Program 2012**

**Traditional Peoples and Newcomers in the Startup Nation**

**Adv. Ofer Shinar Levanon**

Office Hours: By appointment

ofer.shinar@gmail.com

**May 6<sup>th</sup>, 2012 – May 25<sup>th</sup>, 2012**

## Course Description

The course is aimed at law and commerce students from Canada staying in Israel for a three week program. The course aims to explore how and why Israel came to be the startup nation, and the challenges of integrating various social groups such as Arab Israelis, immigrants, etc. into that society.

The course will include several field trips allowing the students to experience, on the one hand, Israel as a Startup nation and on the other key aspects of Israel law and society. The course will be taught by Ofer Shinar Levanon, a legal scholar and clinical lawyer. The course will additionally include guest lectures by prominent Israeli scholars as well as high tech and social entrepreneurs.

## Grades

Students will be required to take an open book exam on the last day of the course. The exam will be three hours long. You are welcomed to bring with you all material to the exam: your notes, articles etc.

## Syllabus

All readings are mandatory except when marked \*

Mon., May 7<sup>th</sup>,

14:00-15:30

### Introduction to Israel as a Society and State

*Adv. Ofer Shinar Levanon*

- Daniel Bar-Tal, Evaluating the 60 Years: The Half Full and Half Empty Glass, Palestine Israel Journal (2008) 15, 14-22.
- The Declaration of the Establishment of the State of Israel (1948), available at: [http://www.knesset.gov.il/docs/eng/megilat\\_eng.htm](http://www.knesset.gov.il/docs/eng/megilat_eng.htm)
- OECD (2011), Society at a Glance – OECD Social Indicators, available at: <http://www.oecd.org/dataoecd/38/50/47573464.pdf>

16:15-17:45

### Jews and Arabs in Israel

*Prof. Michael Shalev, Department of Sociology and Anthropology, Hebrew University*

Rosenhek, Zeev & Michael Shalev, The Contradictions of Palestinian Citizenship in Israel: Inclusion and Exclusion in the Israeli Welfare State, in Nils Butenschon, Uri Davis and Manuel Hassassian (Eds.), *Citizenship and the State in the Middle East: Approaches and Applications*, Syracuse: Syracuse University Press (2000), Pp. 288-315.

Tue., May 8<sup>th</sup>

9:30-11:00

### **Society of Innovation or Innovating Society**

*Mr. Michael Eisenberg*, General Partner Benchmark Capital

- Umair Haque, *The New Capitalist Manifesto: Building a Disruptively Better Business*, Harvard Business Review Press (2011).

11:15-12:15

### **History and Current Challenges of the Hebrew University**

*Mr. Shimon Lipsky*, Vice Provost, Rothberg International School

13:30-15:00

### **Introduction to Israel's Legal System**

*Adv. Ofer Shinar* *Levanon*

- Aharon Barak, Some Reflections on the Israeli Legal System and Its Judiciary, vol 6.1 *Electronic Journal of Comparative Law*, (2002)
- Doron Shultziner, *Between Basic Norms and Basic Laws: Human Rights and the Supreme Court in Israel*, *Israel Studies: An Anthology*, Ed. Mitchell Bard and David Nachmias. Washington DC: Jewish Library, (2009).
- Basic Law: Human Dignity and Liberty
- Basic Law: The Judiciary
  - \* Aharon Barak, *Human Rights in Israel*, 39 *Israel Law Review* (2006), 12-23.
  - \* HCJ 4541/94 *Miller v. Minister of Defence*

Wed., May 9<sup>th</sup>

10:30-12:00

### **Legal Framework for Innovation in Israel**

*Dr. Lital Helman*, Kernochan Center for Law, Media & the Arts, Columbia University

- Mark A. Lemley & Brett M. Frischmann, Spillovers, 107 Colum. L. Rev. 257 (2007)
- Tim Wu, Intellectual Property, Innovation, and Decentralized Decisions, 92 Va. L. Rev. 123 (2005)
- Jonathan Barnett, Is Intellectual Property Trivial, 157 U. Pa. L. Rev. 1691 (2009)

Fri., May 11<sup>th</sup>

10:00-11:30

### **Labor Law in Israel-Current Challenges**

*Ms. Hanna Zohar*, Founder and Former General Manager, Worker's Hotline

- HCJ 4542/02 Kav LaOved Worker's Hotline v. Government of Israel, Israel Law Reports [2006] (1) IsrLR 260
- Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5766 – 2006

Sun., May 13<sup>th</sup>

9:00 - 14:30

### **Field Trip – The Israeli Supreme Court and Ministry of Foreign Affairs**

Instructions: The only items you are allowed to bring are pens and booklets to write in (but not during the court session), a bottle of water, cell phone (turned off during the visit).

Please note: **Laptops, cameras & bags** are not allowed for both institutions.

**Bring your passports for the Foreign Ministry**

Thur., May 13<sup>th</sup>

11:00-12:00

**The Israeli Supreme Court – A View from the Chambers**

Mr. Fady Khoury, Intern of Supreme Court Justice Joubran

\* Aharon Barak, Forward: A Judge on Judging: The Role of a Supreme Court in a Democracy, 116 Harv. L. Rev. 16 (2002).

Mon. May 14<sup>th</sup>

8:30-10:00

**Israel Trade Issues**

Dr. Guy Harpaz, Hebrew U. Law Faculty

Readings TBA.

10:15-11:45

**International Law-Introduction**

Dr. Guy Harpaz, Hebrew U. Law Faculty

- G. Harpaz and Eyal Rubinson, 'The Interface between Trade, Law and Politics and the Erosion of Normative Power Europe: Comment on Brita', European Law Review (2010, forthcoming).

12:00-13:30

**The Israeli High Court of Justice and International Law**

Dr. Guy Harpaz, Hebrew U. Law Faculty

- Amichai Cohen, Rules and Standards in the Application of International Humanitarian Law 41/1-2 Israel Law Review (2008) 41.

Thur., May 17<sup>th</sup>

10:300-11:30

**Two Legal Perspectives: Jewish and Democratic State**

*Dr. Yehiel Kaplan, Hebrew U. Law Faculty*

- Izhak Englard, Law and Religion in Israel, *The American Journal of Comparative Law* 35, (1987),185-208

Thur., May 17<sup>th</sup>

12:00-13:00

**Jewish Law in the State of Israel**

*Dr. Yehiel Kaplan, Hebrew U. Law Faculty*

- Foundations of Law, 5740–1980

Mon. May 21<sup>st</sup>

11:00-12:30

**Human Rights and Privatization in Israeli Law**

*Adv. Ofer Shinar Levanon*

- HCJ 2605/05 Academic Center of Law and Business, Human Rights Division v. Minister of Finance, Available at: [http://elyon1.court.gov.il/files\\_eng/05/050/026/n39/05026050.n39.htm](http://elyon1.court.gov.il/files_eng/05/050/026/n39/05026050.n39.htm)

Mon. May 21<sup>st</sup>

13:00-14:30

**The Asper Empowerment Program in East Jerusalem**

*Mr. Fuad Abu-Hamed, East Jerusalem BizCamp*

- Susan Goldberg, Empowerment through Entrepreneurship by

*Syllabus – Mishpatim 2012: Israel and International Law*

Tue. May 22<sup>nd</sup>, 9:00-10:30

**Counter-Terrorism: Part I**

*Prof. Amos Guiora*, S. J. Quinney College of Law, University of Utah

Readings TBA.

11:00-12:30

**Counter-Terrorism: Part II**

*Prof. Amos Guiora*, S. J. Quinney College of Law, University of Utah

Readings TBA.



## **CONSOLIDATED REPORT**

### *Mishpatim II Report Installment I.*

The theme this year is Newcomers and Traditional Peoples in the Start Up Nation.

We will continue to provide a general introduction to students to the nature of the Israeli legal system, its constitutional developments and its interaction with public international law. Israel has had to face, often at an especially intensive and complicated level, many of the challenges that Canada has had in respecting individual and minority rights in general, and in the particular context of addressing security threats, including terrorism.

We will also look at how and why Israel became the start-up nation; a world leader in high tech research and development and entrepreneurship, despite all of its apparent obstacles, including small size, social divisions and strategic peril. We will look at many of these challenges were overcome, and how the need to do so actually boosted Israel's ability to become a global leader in innovation. We will have some lectures on how the intellectual property regime in Israel maintains appropriate incentives for risk-taking. We will pay special attention to the challenges of integrating traditional peoples and newcomers into that society. How does Israel integrate into this cutting-edge society ultraorthodox Jews? Minorities, such as Palestinian Arabs and the Druze? Newcomers such as Ethiopian Jews? Guest workers? Refugees?

We are hoping that the lessons learned will give Canadian student much to think about in terms of lessons to be emulated or avoided in addressing some of the comparable problems in Canada - itself a society with traditional peoples, such as First Nations citizens, many newcomers from all over the world, and interested in developing a culture of risk taking and innovation. We are very grateful to the provincial government for its financial support this year, which is linked to its interest in having our students exposed to the various comparisons and lessons to be learned from Israel's own successes and setbacks.

Last year's successful pilot run - a start up, if you wish - is being expanded in another ways. We are joined by two commerce students from the Asper School of Business at the University of Manitoba and three students from the University of Saskatchewan law school. The hope is eventually to have a program that has a Manitoba core, but accessible to students across Canada in both law and business.

It took an intense effort from all of us involved in organization this year to line up events and guest speakers, but the results look very promising. Unlike last year, we will have some organized out of city field trips for students. We will visit Haifa, home of the Baha'i temple, a thriving Druze population, and known for the amicable relationships between its Jewish and Arab population. It

is the site of Technion, a world leader in high tech innovation and business development. We hope to hear about Technion's success in integrating Arab Israeli students (about 20% of its student population, which matches the share of the Arab Israeli population generally), and about some specific Israel government programs to assist Arab Israelis in general, and women in particular, in joining the high tech economy.

We will also visit Tel Aviv, hear from a pioneer in advocating for rights of migrant and other workers, and also visit Better Place, the locus of the private-public partnership in Israel to create the infrastructure for electric cars.

The program so far has got off to an excellent start. Our guest speakers have been impressive.

I sought out Michael Shalev, who visited Winnipeg last year under the aegis of the "Best of HU" program. He is a sociologist at HU interested in income inequality in Israel. He provided a statistical portrait of disparities in incomes in Israel, and focused largely on how they are the result of government policies or could be addressed by redistributive efforts. I arranged to have him invited this year based on our course theme and the informative nature of his talk here in Winnipeg. Professor Shalev was gracious enough to address our group just yesterday, despite his very busy schedule.

Michael Eisenberg who is with a major venture capital fund in Israel provided a riveting lecture just this morning on Israel as the start up nation. In his view, Israel is ground zero for innovation throughout the world, and this will include a new form of politics. The older generation of politicians, he believes, is out of touch with the younger generation, and there will be much tension and excitement as the later seek to recreate the forms and outcomes of politics based on their own values, which include connectivity, innovation and initiative.

Michael's focus was on integrating traditional peoples and newcomers into the start up nation by empowering them to participate - to obtain skills and get jobs or start businesses. He believes that the redistributive model is not sustainable; it is not supported by those who must underwrite it (including Israelis who do not receive comparable subsidies and must serve in the army or national service) and fosters dependency by the recipients. He believes that there is a desire on the part of many traditionalists to join the future, which they can do without compromising their beliefs and identities. He pointed out that Israel is the only place in the world where ultraorthodox Jews do not routinely participate in the paid work force.

Obviously, the two Michaels see the world in very different ways, but the aim of *Mishpatim* is to expose students to a wide variety of different assessments of where Israeli stands and visions of what it could become.

I arranged for Shimon Lipsky a professor at the Rothberg School for Overseas Students, to talk about the history of Hebrew University today and its current operations and challenges. It is an

amazing story - from the creation of HU in a desolate Turkish Palestine, to Einstein and Freud serving on its board of governors, to its military defence during the War of Independent, its two decades of isolation and dormancy as an enclave inside Jordanian lines, and its ascendancy to its current ranking among top universities and its production of ten Nobel prize winners.

Shimon, many of you will know, was my first contact at HU when I wandered Israel several years ago looking for an academic partner. It was his immediate “can do” response that triggered all that has followed.

My thanks to everyone who supported this second installment of Mishpatim including Canadian Friends of Hebrew University and the government of Manitoba, and the law and business schools at U of M.

I will provide some updates, all going well, as the program proceeds

### *Mishpatim II Report Installment II.*

On May 9, we heard a lecture from Dr. Lital Helman on the legal framework for innovation in Israel. It was a broad introduction to the law of patent, copyright and other formats for the protection of intellectual property, and the advantages and disadvantages of each for the purpose of stimulating creative through a reward system while at the same time promoting public accessibility and benefit. Our students this year are almost all in first year, and have not yet studied intellectual property, so Dr. Helman's lucid introduction to these complex areas of law and policy was highly informative, I believe, for all of them.

Moving from the theoretical to the practical, we visited Izun Pharma in Jerusalem. This start up has been working for over a decade on developing products that will simultaneously address inflammation and infection. Their early results show great promise of providing vastly improved treatment for conditions that have so far proved difficult or intractable, such as treating mouth ulcers experienced during chemotherapy or ulcers of the limbs due to diabetes that can eventually result in amputations. The CEO and CFO were able to explain to us the science, the regulatory challenges to approvals, and the legal and financial environment in which they have been operating. When we visited Izun last year, it did not yet have any products available in the commercial mainstream. It now has several, and its most significant products are still to come. It has again proved highly education to actually visit a start up, to speak with the pioneers and risk takers, to have them explain how the general concepts of "Start Up Nation" are realized in the real world.

May 10 marked the first time Mishpatim has included an organized overnight field trip. We began in Haifa, at the Baha'i gardens. The 19 city streets of terraced gardens is a modern wonder of the world. The tour included an explanation of the history of this new religion, from its persecuted origins in Iran to the complete of the gardens in the past decade, and its regular programs of

conventions for members of the faith throughout the world. The story might be thought of as the tale of a start up religion; about how a faith that now has millions of adherents around the globe began small, survived and persisted despite persecution, and continues today through an amazingly decentralized, organic method of self-governance.

At lunch we heard from the former mayor of a Druze village who is now a lecturer at the University of Tel Aviv. The Druze are a minority throughout the region, and have often been persecuted. Their faith and philosophy includes loyalty to whatever state in which they find themselves. Within Israel, the Druze have in many ways achieved success in many ways. Their youth generally join the army, where they do well, and often remain for long professional careers. They enjoy local democracy at the village level, and participate in national politics - and in many different parties across the political spectrum. Our speaker explained that Druze are becoming more Jewish in many ways - more and more interested in having their sons and daughters become highly trained professionals, and more imbued with chutzpah as they take on the world. At the same time, he stated that full equality and integration is not always achieved in Israeli society. He is grateful for the support that the Druze have received not only from the Israeli government but from Jewish communities in North America in attempting to achieve full social and economic equality within Israel.

Next stop was Technion, Israel's leading engineering university. We received a presentation on innovation that included some remarkable insights. One of them is that innovation is not synonymous with high tech. A challenge for Israel is how to promote growth in traditional industries, such as manufacturing juice or clothing. Experts at Technion are working with these industries to find new ways to achieve efficiency and growth through improvements in production and distribution processes, and not only in the content of the product itself.

Haifa has always been known for the harmonious relationship of its Jewish and Arab populations, Technion has a population of Arab students that is proportionate to the Arab population in general in Israel, and includes many young Arab women as well as men.

The learning day concluded with a visit to Better Place, which is attempting to revolutionize commuter transport throughout the world.

Better place is producing all-electric cars - not hybrids - for commercial use. It is investing heavily in producing the infrastructure in Israel to permit drivers to easily fuel up, whether through plug-in locations or places where they can exchange their run-down battery for a fully-charged one in less than two minutes. The car is already in use in Denmark as well as having been sold in Israel. Better place is targeting a number of places throughout the world. Many of our students took test drives. It is not known yet whether Better Place will succeed; like many start-ups, it is a big risk with uncertain returns. If it proves commercially viable, its impact may prove enormous. If not, even the

lessons learned from failure will be recycled back into the start-up nation and bear fruit in some other way some other time.

On Friday, May 10 we visited workers hotline in Israel. It is an NGO dedicated to protecting the rights of all workers, be they Israel Jews or Arabs, recent immigrations or guest workers Hannah Zohar is the founded, and we had the honour of hearing from here. Part of her focus was on her organization`s tremendous triumph in addressing abuse of guest workers. After the intifadehs made it problematic for Israel to use as much labour from the territories, many guest workers were brought in from faraway places to do work in the construction, agriculture and domestic services sectors. There was a black market run by intermediaries who illegally charged these workers large fees for finding employers. The system also was fraught with oppressive behaviour by employers who exploited the “binding contract” feature of the laws; a guest worker could be deported the moment he or she left the employer of first hire. Hanna`s group fought on many fronts. It brought lawsuits to help individual employees and develop a database of information; it sought out and informed journalists, who began the process of exposing and shaming culprits; it lobbied politicians for changes in the laws. All these efforts bore fruit. Recently, the Supreme Court in Israel struck down the binding contract system. Hannah says due to this and many other reform measures, the situation of guest workers in Israel is now much improved. I am sure the students benefited greatly from hearing about the many different ways an NGO can address a social issue, and play a pivotal role in eventual reform.

In the afternoon, we went on a walking tour of Jaffo, conducted by a doctoral student in land use planning. Jaffo is a beautiful place with some very violent history. There were a number of pogroms against Jewish immigrants at the port in the twentieth century, and in the nineteenth it was the site of a massacre of the local population by Napoléon`s troops. Our guide was able to tell us about some of the impact of land use laws on the city scape - perhaps most remarkable, on the design of a high rise that has very high ceilings in its bottom floors. The architect realized that there was no limit on the height of building, only on the number of stories. Surprised and indignant municipal officials eventually compromised with his desire to have a very tall building by agreeing that he could make the bottom floors very high, but not the top ones.

In the evening we had a shared dinner. I spoke about the historical and spiritual origins of the Sabbath in Jewish tradition, its adopting in Christianity and Islam, and asked the students about the potential impact in modern times of the blurring of time - how we have effectively abolished day and night, days of work and days of rest. Afterwards, Professor Rachelle Alterman, who holds a chair in land use planning at Technion, gave a brief talk, and then answered student questions for over an hour on all aspects of life and politics in Israel.

After a free day in Tel Aviv, we spent Sunday on a tour of the Supreme Court of Israel. Our HU academic coordinator, Ofer Shinar, spoke about the history and current politics of the court`s role in Israeli society. After many years of being dominated by appointees of left-wing parties, there are

now some senior appointees from the right of centre. The early signs are that this will not result in a major retreat by the court from its doctrines, including its orientation towards expansive interpretations of the human rights protecting provisions of the Israeli constitution, and a view that just about everything is justifiable rather than being a matter to be resolved by politicians or military administrators. We heard an excellent talk at noon from an Israeli Arab who is currently clerking the court. The Supreme Court has one permanent member who is an Israeli Arab - and who in fact sat on the appeal from sentence and conviction by former President of Israel Katsav. (The trial judge, incidentally, was a Christian Arab who is a highly respected jurist. It is a remarkable feature of this whole story that the former head of state in Israel could be charged, tried and convicted in Israel, and that no one considered it worthy of comment or complaint that the judges involved included, very prominently, non-Jewish citizens of Israel.)

In the afternoon we visited the Ministry of Foreign Affairs. We heard from analysts of the situations in Syria and Lebanon - both deadlocked situations with unknown but worrisome outcomes - and then a presentation on international law and organizations in connection with Israel's security situation, including a talk about the flotilla incident and investigations.

This coming week will focus more on human rights and constitutional affairs in Israel, rather than the start-up nation dimension. Our main speakers are returning from last year's program, so I know their presentations will be first rate.

### *Mishpatim II Report Installment III.*

On Tuesday, May 14, we heard a series of lectures from Dr. Guy Harpaz, vice Dean of Hebrew University Law School. Guy is a superb lecturer; he is able to take highly complex and technical matters, distill the key points, and convey them without any compromise in accuracy. His task was to introduce students to the basic nature of international law generally, and trade law in particular, and explore some current challenges involving the mix of politics and business in the area of trade relations.

Israel has been able to diversify its trade relations; its major partners include the EU, North American, India and China. It is always eager to enter into trade agreements with other states that promote liberal or free trade and provide a stable framework for ongoing economic relations. With Canada, Israel entered into a deal that is modest in scope; it is confined mostly to trade in goods, and does not address wider issues such as human rights and peace. With the EU, the arrangement is much broader, and Israel benefits from this. For example, it has access to EU funding for research, which greatly benefits Israeli universities. The flip side is that the EU takes a strong interest in Israel's political affairs. Israel's wish to further strength its trade relations with Europe is hampered at times by EU concerns over whether Israel is adopting policies, such as settlement expansion, that impede the peace process.

Most of our students had no previous background in either public international or trade law. To be introduced to these areas by a teacher as lucid and insightful as Guy is a major plus for their overall education. To have the interaction of trade and human rights explored in such a perplexing context as Israel was a bonus. I attempted to assist the students in comparing and contrasting with Canadian legal experience by explaining how Canada's legal system addresses comparable issue with respect to public international law and trade.

At the end of Guy's talk, Guy and I conducted a more general discussion of the challenges of achieving peace in the region, and the role that trade with the neighbours could play with that. I had a chance to set out my own views on some of the paradoxes and challenges in achieving peace, including my thoughts on the need for an Israel Peace Initiative as an official and visionary response to the Arab Peace Initiative of several years. (Anyone interested can find my extensive article on this at the Winnipeg Jewish Review).

The middle of the program was deliberately programmed to allow the students two free days to explore Israel on their own. Some explored Jerusalem; others went to Eilat and then Petra, in Jordan. Part of the learning experience, we have considered at the planning level, is enabling students to experience Israel in its own way, following their own interests, rather than being conducted on programs the whole time. I think the free days again worked well. On the other hand, we introduced two group trips away from Jerusalem this year - and I believe now that we have the benefit of experience and feedback, that this is an innovation we should maintain. It enables us to visit sites that enhance the educational themes of our program, reinforces the camaraderie among the students, and is much appreciated by students who are less experienced in travel abroad, and are more comfortable in seeing places like Tel Aviv Ein Gedi when they don't have to worry about figuring out itineraries and logistics for themselves.

On May 17 we heard a lecturer from another returnee from Mishpatim 2011, Dr Yehiel Kaplan, who is an expert in Jewish and family law, and teaches at the University of Haifa. He explored the ongoing debate in Israel about the extent to which traditional Jewish law should be incorporated into the state of Israel legal system. Israel has largely been governed by secular Jews, who had only a limited knowledge or traditional Jewish law, or concern about whether that law is adapted to modern complexities or contains some attitudes (e, concerning the role of women) that are not in sync with modern notions of equality. One area where religious law continues to apply is the family law area. Legal relations in this area are generally governed by the religious affiliation of the individuals involved; e.g., Jewish law might apply to Jewish divorce, Islamic law to an Islamic divorce. This situation has lead to a welter of complications (mixed marriage, situations where persons belong to religions or worldviews with no recognized institutional apparatus in Israel, modern issues (such as cohabitation) which are not addressed in many religious legal systems. The complexities are dealt with in practice by a variety of practical expedients and compromises - e.g., couples going to Cyprus for civil marriages, when are then recognized in Israel.

The simple solution of establishing a common, secular family law for everyone is apparently unattainable due to the intensity of the potential backlash from traditionalists.

On these issues, as with some others, Israeli society works out practical accommodations, but tries to avoid overtly adopting overt and official solutions that might provoke division. (There are comparable problems in the peace process. The practical management of the Temple Mount seems to work in a tolerable manner, but it is extremely difficult for Jews and Muslims to agree on a final and official characterization of that arrangement.)

In the afternoon, the group travelled to the Mevasseret Zion absorption centre for Ethiopian Jews I added this too the program as part of the overall theme of addressing the challenges of integrating newcomers into the Start Up Nation. We heard from an Ethiopian Israel who described his own incredible journey to Jerusalem, away from it, and back again. His father was sentenced to death for teaching in a Jewish school in Ethiopia, and spent two years fleeing soldier. He finally escaped to Sudan, where he wrote some letters to various authorities, including American, requesting help. Eventually agents of Israeli intelligence contacted him, and working with Americans, began building the Sudanese way station for the Ethiopian exodus. Our speaker described the perilous walk to Sudan, the hundreds who died along the way, the flight to Jerusalem and the arrival in Israel - and the astonishing discovery that most Jews are not black. He served in a combat unit of the Israeli army, but after a friend and fellow soldier fell in Lebanon, decided he wanted to live in a safe country. So he went to the United States. He awoke one day in Manhattan, looked out his window, and saw the emptiness where the twin towers had stood He decided that no place is safe, returned to Israel, and now is engaged with helping members of his community to adapt and integrate.

We then visited an after-school centre where Ethiopian Jewish children come for help with their homework and general adaptation into Israeli life. The children we encountered there shone with joy. I asked about some of the problems experienced by Ethiopian Jews, including high rates of unemployment. One official at the centre expressed the view that the problem is not so much systematic discrimination, or even personal prejudices, so much as that Israel is a society where advancement depends to a considerable extent on personal connections with those in positions of power and influence. It will take time, he thought, for Ethiopians to integrate into these networks - although he indicated that eventually they likely would in the same way as Sepharid Jews (those from the Islamic world) have achieved social and political equality with European Jews.

We then travelled to the Dead Sea as part of our second and final organized field trip. I arranged there for a showing of "Strangers no More", the Academy-award winning documentary about a school in Tel Aviv that is the home for every kind of resident of Israel, including the children of refugees from the Sudan and Eritrea. The principal and staff exhibit caring and ingenuity of the highest order in welcoming and helping them. The arrival in Israel of non-Jewish refugees raises some excruciating questions for the state. The memory of exile and abuse creates a natural



solidarity with the oppressed who arrive here. At the same time, Israel, as a tiny state trying to preserve its Jewish majority, is limited its ability to go beyond sheltering refugees and accept them as immigrants. It may be that Israel will have to seal its border to deal with the increasing security threat in the Sinai, and fewer refugees will succeed in crossing into Israel.

Today was spent exploring Ein Gedi, Massada, and the Dead Sea: waterfalls in the desert, a ruined palace in the mountains; a sea below sea level. All mentioned in the bible or the histories of Josephus.

Tonight, the Canadian Friends of Hebrew University are sponsoring a Shabbat dinner here at the Meirsdorf Residence where we are staying. My sense so far is that the program has been a resounding success; the students are enjoying it even more and learning even more than last year. Here`s hoping the final week will bring the program this year to a fitting conclusion.

### *Mishpatim II Report Installment IV.*

On Sunday, our students visited Yad Vashem, the Holocaust memorial museum outside of Jerusalem. We were fortunate to have as our guide Dr. George Lebovitz, who is a former educator in the United States, now living in Israel. Our tour began with George showing us the pass that Raoul Wallenberg issued to his mother, enabling her to survive the attempted deportation of the entire Jewish population of Hungary to death camps. George then led us through the exhibits with over three hours of highly informed narration. He improvised his presentation to address issues he considered might be of special relevance to Canadian students, such as Canada’s “none is too many” policy towards receiving Jewish refugees prior to the exterminations.

Parenthetically, I would note that there is considerable controversy back in our Winnipeg, Canada, over the prominence and presentation of the Holocaust as part of the Canadian Museum of Human Rights. There is a desperate need, in my view, for museums specifically dedicated to the Holocaust, but how is its portrayal to be linked to a more generally themed museum? I have expressed my views in the brief I helped to write several years ago for the Jewish Heritage Centre of Western Canada. The Holocaust should be integrated into the story of *the overall development of the political and legal conceptions of human rights* that have been adopted in the modern world. The Holocaust was a major factor in the post-war reformation of the international legal order to include human rights as a major element, including not only the Genocide Convention, but the Universal Declaration of Human Rights and the many more specific conventions it inspired. The story of the Holocaust should also be integrated into the distinctively *Canadian* experience of human rights. Canada’s own history intersects with the Holocaust in many important ways. Prior to the war, Canada was a leader in denying Jews any exist from the Third Reich; its role at the Evian conference is a black mark in Canadian history. Hitler’s demonic anti-semitism was a driving factor in his rise to power and wars of aggression. Canada’s fighting role in the second world war, by contrast, was heroic, and contributed very significantly to the defeat of the Axis. A number of

concentration camps, including several in Holland, were eventually liberated by Canadian troops. After the war, Canada became a haven for some refugees and some war criminals. It struggled for decades afterwards, and still does, to address its admission of the latter.

On Monday, we returned to the lecture halls. We had two talks, both related to the themes of our course. Ofer Shiner gave a thoughtful lecture about a recent decision of the High Court of Israel to hold that it is a breach of Israel's basic law, and its guarantee of human dignity, to set up prisons operated by commercial operators. It is not appropriate, ruled the court, to have situations in which the extent of a person's deprivation of human rights in the hands of individuals whose motive may be personal profit and who may unduly exacerbate those deprivations in the interests of maximizing their gains. The case is an interesting test of the limits of the extent to which even an increasingly entrepreneurial nation, committed to experimentation and innovation through private effort, can and should extend a business model to sensitive areas of governmental activity.

Our second speaker of the day was Fuad Abu Hammad, who is an East Jerusalem entrepreneur. He has risen from poverty to considerable commercial success as a builder and operator of medical clinics. He is currently pursuing an advanced degree in public administration from Hebrew University, and is involved with a program – supported by the Asper Family Foundation of Winnipeg – to promote entrepreneurship among the women of East Jerusalem.

Fuad believes that whatever final political settlement is reached, Jerusalem should not be a divided city. Yet he does not believe it can have a peaceful future as long as the Arab East Jerusalem is poorer, in both its public infrastructure and family wealth, than the Jewish West side. He cautioned that not all discrimination is based on a simple preference by government authorities for the Jewish population. He argued that if you study how politics and public administration works, considerable progress can be made by knowing the appropriate ways and means of influencing government decision making. He also noted that many Jews had been very helpful to his own education and activities.

As have many speakers, Fuad mentioned the extraordinary role played by the Courts in Israeli society. He stated that faced with inadequate school facilities in his community, he went to the Israel High Court and won a court order to the government to build two schools at a cost of millions of dollars.

With Fuad's talk, we had yet another perspective on the challenge of integrating traditional peoples as well as newcomers into the increasing sophistication and prosperity of Israeli society as a whole.

Our final set of lectures was by Amos Guiora. Now a professor at the law school of the University of Utah, and a prolific author on international humanitarian law, Amos spent several decades in the Israeli army developing and teaching its doctrines concerning the laws of war and counter-terrorism. He presented some of the agonizing scenarios in which he, as a legal advisor, had to

make life or death decisions about whether lethal force could be used to pre-empt a possibly unfolding terrorist attack. He brought to life some of the operational practicalities, such as making decisions in which every second counts, based on partial and debateable information, and at the stake are the lives of a possible terrorist his potential victims and young soldiers. Amos spoke approvingly of how the Supreme Court of Israel exercised a rigorous supervisory role over military commanders, and insisted on the rule of law and rigorous application of humanitarian standards. The doors of the courts were open to anyone in the occupied territories as well as Israel, and even in the worst of times, such as after terrorist massacres, the Court insisted on enforcing the rule of international law with respect to issues such as due process and the avoidance of excessive punishment.

Amos' view on coercive interrogative is that torture is inherently evil, and in any event, ineffective. He spoke of how successful interrogation depends on persistence and psychological insight, not violence. He discussed some landmark decisions in which the courts of Israel have imposed restraints on coercive tactics during interrogations.

With respect to targeted killing, Amos argues that it is justified in some circumstances under international law as active defence against imminent attacks, but must be severely limited by legal standards, and its use overseen by the courts. His views are at odds with the current thinking and practice of the United States government.

Amos discussed how Israeli soldiers were ordered to take the extra second to ensure , before shooting, that they were faced with a genuine threat and there were no less lethal alternatives. He gave these kinds of instructions to groups of young soldiers - on one occasion including his own son - who did not readily embrace the added risk. But Amos insisted that IDF soldiers must obey the rule of humanitarian law even if at time that may cost a soldier his life.

The day before Amos' lecture, the senior commander of the Iranian military stated, publicly, that Israel should be completely annihilated. Amos briefly identified, at my request, some of the issues that arise with respect to possible preventative or pre-emptive actions aimed at the Iranian nuclear weapons program.

Amos is a remarkably experienced, incisive, independent-minded and original thinker in the area of international humanitarian law, and his closing contribution to our series of lectures were among the most enlightening aspects of a course which I think had a great many.

### *Conclusion*

I believe that Mishpatim II has been ever more successful than our inaugural project. It introduced students in both law and commerce to a wide range of issues that intertwine law, politics, sociology and economics. Our speakers and material were diverse in perspective. I believe that the unifying

theme – traditional peoples and newcomers in the Start Up Nation – provides a coherent and unifying framework in which to identify and explore the issues in the course.

From the point of view of Manitoba law and business students, I believe that the comparison and contrast with issues of our society was an instructive one. We face very similar challenges in attempting to compete, through innovation, in a global market, and in integrating into the prosperity of our society our own traditional peoples and newcomers.

If funding can be obtained, I am hoping that there can be a program again this year, available for a core of law and business students at the University of Manitoba, but also with spaces available for their counterparts from schools across Canada, or at the very least, Western Canada. With the experience, ideas and network of contacts we have developed these past two years, I believe we have platform on which to take a first rate program and make it even better and more widely accessible. I suggest we aim at creating at least forty places next year, and as many as fifty (about a full bus load).

For Mishpatim to proceed successfully next year, however, the decision to proceed with it, and available funding, should be lined up very quickly.

The late start this year, due to uncertainties over funding, made it a daunting challenge to put in place all the speakers and other programming. Issues arose with respect to availability of places at the Meirsdorf Residence, although these were ultimately resolved. We also had only very limited time to contact the Asper School of Business students and students at the University of Saskatchewan Law School (We are told we could likely have recruited 5-10 students if we had started earlier there, rather than the three we lined up).

If we can plan well in advance, we can have the spaces set aside in residence, and put in place and publicize a complete academic program, sequenced in the most logical way possible, and with the readings and speakers known well in advance. This would assist us as well in giving the students who do attend a better understanding of the overall academic plan, so that they can better appreciate how the specifics fit into the overarching theme.

My thanks to CFHU for its support, the Winnipeg Chapter and Yude Henteleff for its extraordinary fund raising effort this year, the provincial government of Manitoba for its very significant financial contribution, and all those who helped us at the program delivery end at Hebrew University, including Ofer Shiner, Keri Rosenbluh and Mimi Ajstendstadt. The Faculty of Law at the University of Manitoba, including Dean Lorna Tunrball, Associate Dean Lisa Fainstein and Director of the Desautels Centre John Pozios and my administrative assistant Larissa Weber all provided their full support, and the Asper School of Business and its new Dean, Michael Benaroché, supported our experimental introduction of business students into the program, a collaboration that we hope to explore further in the year ahead.

## **FEEDBACK**

### **TRANSCRIPTIONS OF VIDEOTAPED STUDENT INTERVIEWS**

(Available at [www.youtube.com](http://www.youtube.com))

Selected students who had completed the Mishpatim program in 2012 were approached for commentary to be filmed and placed on youtube.com. The following three transcriptions are a result of that process.

#### **Lalitha Ramachandran, J.D. Candidate 2014:**

Hi my name is Lalitha Ramachandran and I'm a first year law student from university of Manitoba. I'm part of the Mishpatim program here at Hebrew university.

I decided to do this because I always wanted to travel abroad, and I considered doing a semester abroad. I decided this would be probably a lot more interesting, because we're going as a group.

I've had a fabulous time here and really enjoyed all the lectures. The counter-terrorism one we're in the middle of hearing is especially interesting. As well, the field trips to Masada, the Dead Sea, Yad Vashem have been really fascinating and I'm having a great time.

One thing that really struck me throughout this whole program was the old city of Jerusalem and the contrast that you see there with the different quarters. Simply walking around, you can clearly notice when you move from one to another. I think everyday I've been in the old city and its just been fabulous.

#### **Erica Grant, J.D. Candidate 2014:**

Hi I'm Erica, originally from Vancouver Canada, here through the University of Manitoba, on the Mishpatim program at the Hebrew university. I originally chose to come here because I love to travel and I thought it was a good excuse to come to this part of the world.

So far all the classes have really been excellent; we've had really great exposure to different people and ideas, and opinions. I think it's been both really eye-opening, and also kind of confusing at the same time, because there are just so many layers and complexities here. We've learned a lot, and I'm really going to take away a better picture of what's going on in this part of the world as well as a lot of the history.

Career wise I am really interested in international law, and human rights law, and I feel like there are a lot of applicable relevant situations here.

If there is one piece of advice that I could give to a future student coming on Mishpatim, it would be to take advantage of every minute that you have here, and spend as much time as you can in the old city, and around campus; really taking advantage of the variety of cultures and people and getting to know people and talking about different people about their languages and their experiences here.

**Carolyn Reimer, J.D. Candidate 2014:**

Hi I'm Carolyn Reimer, and I'm here in Israel on the Mishpatim program. I'm a law student from the University of Manitoba. I chose to come and do this program, in part because it sounds like a great way to do a course; it's a great course option for an elective. Also in part, it sounded like a great way to get one of my second year courses out of the way during the summer. But I would say the most, or the greatest reason why I chose to do it is because I expected it to be life-changing, and I would say that it has been. It's exceeded my expectations.

The lectures have been incredible, and we've had opportunities to hear from people that you wouldn't imagine you'd be able to hear from. Just now in fact we had a course on counter-terrorism. Our lecturer has been involved in responding to different threats in the Gaza strip, and has actually been the legal advisor to commanders on making decisions on targeted killing, and counter terrorism operational decisions like that. So that's really an incredible opportunity.

Israel, they keep telling us, is a small area where huge world conflicts happen. So, it's a great place to learn about the entire world through kind of a small lens. Conflict, Terrorism, Religious issues, political issues, legal issues, and so I figure it would be naïve to think that won't apply to the rest of your life and any type of career you chose, legal or otherwise.

So, I think if you are considering this program, you can rest assured that you will find application for everything you learn, and at the very least you will definitely grow and change as a person.

I could say a lot of things if asked about a highlight of the program for me. But for some reason I know the memory I'll take away is just spending time in the old city. Not actually just visiting holy sites and taking pictures, but spending time with Arabic families there. We actually met a specifically affluent Arabic family at a store, and spent many hours there, drinking tea with them, and hearing about Israel from their perspective, and their plans for the future. It is pretty incredible to hear the academic side from lecturers, and then go into the old city and actually sit down with local people and find out if, that academic perspective of what they think is actually true, and how they see the world, so that's something I'll take with me.

And I think that's the difference between learning about Israel at home and learning about Israel in Israel is the opportunity to go out and see it for yourself, and talk to people yourself. So that's pretty incredible.

## **FEEDBACK LETTERS**

### **Alexandra Miles:**

Dear Professor Schwartz/Mrs. Chlopecki,

I found the Misphatim program to be an invaluable opportunity to get to know a nation's legal system and in particular, its nascent constitutional framework. The program provided a wide variety of experiences that coalesced to demonstrate the unique features of Israeli society. We were able to visit the Supreme Court of Israel, test drive electric cars at Better Place (a company whose mission is to bring affordable electric cars to mainstream culture), and hear from a legal advisor to the IDF counter-terrorism division.

Each of these experiences, along with many others, presented a different side of Israel and reflected the struggles that the nation faces and the solutions that are being implemented to address those issues.

In addition to the academic component of the course the organizers planned numerous field trips to showcase the history and beauty of Israel. We visited the Ein Gedi oasis, the Dead Sea, the beautiful Baha'i Gardens in Haifa, Tel Aviv-Yafo, and Yad Vashem, the Holocaust memorial situated in Jerusalem. The Hebrew University of Jerusalem can only be described as picturesque, boasting an amazing view of the city. We were also privileged to visit an Ethiopian Absorption Center, which despite its vaguely ominous name, is an impressive facility/community designed to integrate Ethiopian Jewish immigrants into Israeli society as seamlessly as possible. The program also affords some free days which allowed us to travel to Eilat, Israel and Petra, Jordan. In Eilat many of us snorkelled along the coral reefs and in Petra we rode horses up over the mountain pass and then walked down the steps to see the ancient city.

In conclusion I am extremely grateful to have been afforded the opportunity to take part in this program thanks to the Asper Foundation, the Canadian Friends of Hebrew University and the Manitoba Provincial Government. I would recommend this program to anyone as it brought me into contact with people I would otherwise never have had the opportunity to interact with. Having read and heard so much about Israel in the news over the years it was fantastic to experience the nation firsthand and form my own opinions on the distinct issues it faces in both the domestic and international spheres.

### **Patrick J McKenna**

Bryan Schwartz was good enough to pass on your email so that I might thank you and the Canadian Friends of Hebrew University directly. Without your generous support, we would not have been able to attend the University of Manitoba's Mishpatim course on international and humanitarian law this past May 2012.

I say "we" because I know I can speak for my wife who joined me, and the other law students who partook in the course. It was the chance of a lifetime which none of us will ever forget. Jerusalem, Israel, and the people there are wonderful. Thanks for making this happen.

Hebrew University's Mt. Scopus campus is gorgeous and was a great base from which to complete our course studies. The accommodations at the Maierdsdorf Faculty Club were perfect for our collective and

*FEEDBACK – Mishpatim 2012: Israel and International Law*

individual needs. From there we could make it to class on time and also catch a city bus downtown after the day's lectures had finished.

While in class, our professor Ofer Shinar proved to be very knowledgeable about the history, evolution and current state of Israel and its legal system. As Canadians, this comparative course was fascinating. The readings were well chosen and the lectures illuminating. If anything, the only thing I could have asked for was MORE! We were given a brief survey of this intellectually fertile area of law given us all taste for more in depth and critical analysis.

This one criticism is minor however. The course was a real treat and something I certainly hope other students will have the opportunity to benefit from as well.

Thanks again,

Your support was greatly appreciated and not soon forgotten.

**Janine Seymour**

Describing the Mishpatim course as a life-changing experience would be an understatement. The 3-week program not only exposed students to renowned lecturers and brilliant academics at Hebrew University, such as Ofer Shiner, but also provided amazing opportunities to explore a beautiful country.

This incredible opportunity was provided to a broad spectrum of law students through the generous funding and support of the Canadian Friends of the Hebrew University, to whom I am most grateful.



## **PRESS**

The following includes an excerpt of a story posted on The Canadian Lawyer as well as links to other news on the Mishpatim program.

### **MISHPATIM PROGRAM LIFE-CHANGING EXPERIENCE**

*First-year law students get a wholly different perspective during trip to Israel*

Written by Myron Love - Posted Date: July 09, 2012 on Canadian Lawyer (4Students)

*A group of first-year University of Manitoba law students – participating in the Winnipeg chapter of Canadian Friends of the Hebrew University of Jerusalem’s second annual tour of Israel under the Mishpatim program received a different perspective on the law.*

For Caroline Reimer, it was a “life-changing experience.”

“It exceeded my expectations,” she says.

Alexandra Miles notes that she found the Mishpatim program to be an invaluable opportunity to get to know a nation’s legal system and in particular, its nascent constitutional framework.

“The program provided a wide variety of experiences that coalesced to demonstrate the unique features of Israeli society,” she says. “We were able to visit the Supreme Court of Israel, test drive electric cars at Better Place [a company whose mission is to bring affordable electric cars to mainstream culture], and hear from a legal adviser to the [Israel Defence Forces’] counter-terrorism division. Each of these experiences, along with many others, presented a different side of Israel and reflected the struggles that the nation faces and the solutions that are being implemented to address those issues.”

Erica Grant spoke of the exposure to a lot of different people and ideas.

“It was really eye-opening,” she says. “There are so many different layers.”

**For more, see Online at the Canadian Lawyer:**

**<<http://www.canadianlawyermag.com/4225/mishpatim-program-life-changing-experience.html>>**

**Further Press on the Mishpatim Program:**

**The Jewish post:**

<http://www.jewishpostandnews.com/local/749-mishpatim-program-life-changing-experience-for-first-year-university-of-manitoba-law-students>

**Winnipeg Jewish Review (2 Installments)**

**Installment 1**

[http://www.winnipegjewishreview.com/article\\_detail.cfm?id=2571&sec=2&title=BRIAN\\_SCHWARTZ\\_REPORTS\\_FROM\\_ISRAEL\\_ON\\_HEBREW\\_US\\_MISHPATIM\\_II\\_LAW\\_EXCHANGE\\_PROGRAM](http://www.winnipegjewishreview.com/article_detail.cfm?id=2571&sec=2&title=BRIAN_SCHWARTZ_REPORTS_FROM_ISRAEL_ON_HEBREW_US_MISHPATIM_II_LAW_EXCHANGE_PROGRAM)

**Installment 2**

[http://www.winnipegjewishreview.com/article\\_detail.cfm?id=2608&sec=6&title=BRYAN\\_SCHWARTZ: SECOND REPORT ON HEBREW US EXCHANGE PROGRAM WITH U OF M LAW SCHOOL MISHPATIM II](http://www.winnipegjewishreview.com/article_detail.cfm?id=2608&sec=6&title=BRYAN_SCHWARTZ:_SECOND_REPORT_ON_HEBREW_US_EXCHANGE_PROGRAM_WITH_U_OF_M_LAW_SCHOOL_MISHPATIM_II)