### **Contents**

Table o	of Cases —— XXVII
Table o	of Legislation —— XXXVII
Glossa	ry —— XLV
About	the Authors —— XLVII
Part I	: Jewish Law
Chapte	r 1: The Emergence and Development of Jewish Law —— 3
1.	The Classical Sources of Jewish Law —— 5
2.	The Relationship between Biblical and Rabbinical Law —— 10
3.	Post-Talmudic Developments —— 11
	A. Commentaries — 12
	B. Codifications — 13
4.	Developing Law through Responsa, Takkana, and Minhag —— 14
Chapte	r 2: Jewish Law as a Pluralist Phenomenon —— 16
1.	Orthodox Judaism —— 16
2.	Reform Judaism —— 18
3.	
4.	
5.	The "Law of the Land" and Jewish Law —— 28
	A. Jewish Law in the State of Israel — 29
6.	Jewish Law as the Embodiment of Jewish Ethics and the Quest for Justice —— 31
Part I	: Legal Culture and System of Government in the State
	of Israel
Chapte	r 3: General Introduction —— 37
1.	Country Basic Data —— 37
2.	Legal Culture —— 37
3	Constitutional Infrastructure —— 41

4.	Sources of Law —— 43					
5.	The Role of Custom in Israeli Public Law —— 56					
	A. The Elements of Custom in Public Law —— 59					
	B. Custom Contrary to Law —— 61					
	C. Unique Aspects of the Enforcement of Custom in Public					
	Law —— 65					
6.	The Impact of International Law on Domestic Law and Human					
	Rights — 67					
Chapte	r 4: System of Government —— 70					
1.	The Basic Values of the Democratic System of Government — 71					
	A. Representativeness — 71					
	a. General — 71					
	b. Proportional Representation versus Plurality Voting					
	Systems —— 76					
	c. "Personality" and Ideology: Personalization of Politics — 78					
	B. Stability — 79					
	a. General —— <b>79</b>					
	<ul> <li>b. Comparative View of Stability Mechanisms —— 83</li> </ul>					
	(1) Substantive limitations on political parties —— 83					
	(2) Threshold limitations —— 83					
	(3) Parliamentary vote of no-confidence —— 85					
	(4) The PM's authority to dissolve the parliament — 86					
	C. Governance — 87					
	a. General —— 87					
	b. Governance in Israel —— 89					
	D. Efficiency —— 93					
	E. Accountability —— 95					
	F. Public Confidence in Government — 97					
	Criminal Proceedings against an Acting Prime Minister — 98					
	G. The Reforms Regarding the Government and the Knesset in					
	2014 —— 100					
	a. General —— 100					
	<ul> <li>Restrictions on the Government Composition and Size — 101</li> </ul>					
2.	The Institutions of the State —— 101					
	A. The President —— 101					
	B. The Knesset —— 102					
	C. The Executive —— 107					
	D. The Judiciary — 110					
3.	The Political System —— 128					

4. Reforms and Government System -- 132

#### Part III: Fundamental Legal Doctrines of Israeli Law

### Chapter 5: Basic Principles of the Israeli Legal System — 137

- Introduction —— 137
- 2. Constitutional Protection of Human Rights 141
- 3. The Fundamental Principles of the Legal System 147
  - A. The Government and Ministers as Trustees of the People —— 148
  - B. The Duty to Respect Human Rights 150
  - C. The Rule of Law Principle 156
  - D. Israel as a lewish and Democratic State 158
  - E. The Separation of Powers 162
    - a. General -- 162
    - b. The Separation of Powers in Israel -- 165
- 4. The Relationship between the Executive and Legislative 167
  - A. The Interaction between the Executive Branch and the Judicial Branch —— 168
    - a. General -- 168
    - b. The Involvement of the Executive Branch in the Powers of the Judiciary Branch —— 169
- 5. Iudicial Review of Legislative Actions 173
- The Interaction between the Judicial Branch and the Legislative Branch —— 179
- 7. The Legal Norms 185
  - A. Basic Laws 185
  - B. Legislation --- 192
  - C. Administrative Regulations and Orders 197
  - D. Local Government Bylaws —— 198

#### Chapter 6: Judicial Role in Society - 200

- 1. Introduction --- 200
- 2. System Factors Affecting Judicial Role in Society 202
- 3. The Rules of Justiciability and Standing 205
- 4. The Development of the Judicial Review of Laws in Israel 207
  - A. Iudicial Review Prior to 1992 207
  - B. The Constitutional Discourse on the Appropriate Model of Judicial Review after 1992 209

- 5. Judges in Democracy 212 A. The Judicial Review of Security Decisions — 214 B. Judges as Chairmen of Commissions of Inquiry — 216 C. The Judicial Resolution of Sensitive Cases - 217 Drawing the Proper Boundaries of Judicial Function — 220 A. Procedural Tools and Substantive Tests for Fine Tuning of Judicial Roles in Society: The Israeli Experience - 220 B. Classification of Models of Constitutional Adjudication - 224 Ideas for Reform - 228 A. Past Proposals --- 228 B. A Three-Step Proposal - 229 C. Public Confidence in the Courts - 230 D. Attempts to Resolve the Controversy between the Judicial Role and the Other Branches --- 233 E. Strengths of the Israeli Supreme Court --- 234 Executive and Legislative Intervention in the Justice System --- 235 G. The Need for Constitutional Protection of the Judiciary — 240 Chapter 7: Culture of Judicial Independence — 242 1. Introduction —— 242 2. Creating a Culture of Judicial Independence in Domestic Law — 243 A. Institutional Structures — 247
- - B. Constitutional Infrastructure 253
  - C. Legislative Provisions and Constitutional Safeguards 254
  - D. Adjudicative Arrangements and Jurisprudence 257
  - E. Ethical Traditions and Code of Judicial Conduct 259
  - The Fundamental Values of the Administration of Justice 261
  - 4. The Conceptual Foundations of Judicial Independence 265
  - The Principle of Democratic Accountability 268
  - The Preferred Relationship between the Judiciary, Executive, and Legislative Branches — 272
    - A. The Principle of Mutual Respect between the Branches of Government — 272
    - B. Post Decisional Independence: Legislative Reversal of Judicial Decisions and Executive Enforcement of Judgments — 277
    - Executive Delegated Legislation and Preemptive Actions in Pending Matters before the Courts — 280

## Part IV: Executive Powers and National Security Powers

Cha	pter	8: 1	The Executive and Legislative Power —— 285				
	1.	Treaty Making & Conducting Foreign Affairs — 285					
	2.		ing and Spending Power — 288				
	3.		Budget Law —— 288				
	4.	Om	nibus and Appropriation Acts — 292				
Cha	pter	9: \	War Powers—Relations between Civil Authorities and the				
Mil	itary		· 295				
	1.	War	time and State of Emergency Powers — 295				
	2.	Sta	te of Emergency and Related Legislation —— 298				
		Α.	Regulatory Statutes — 298				
			a. Defense (Emergency) Regulations 1945 — 298				
			b. Commodities and Services Supervision Act 1957 — 299				
			c. Basic Law: The Government — 299				
		В.	Declaring a State of Emergency — 299				
			a. Definition of the Term — 299				
			b. Declaration Procedures — 299				
			c. State of Emergency in Israel —— 300				
		C.	The Government's Power to Legislate Emergency				
			Regulations —— 301				
		D.	The Prime Minister's or Other Minister's Power to Legislate				
			Emergency Regulations —— 302				
		Ε.	The Power of Emergency Regulations —— 302				
		F.	Restrictions on Emergency Regulations Power —— 303				
		G.	Time Limits, Publication, and end to State of Emergency — 303				
		Н.	Defense Regulations—Future Glance——303				
		H1.	Israel's Struggle to Meet the Challenge of Covid-19 — 304				
			Chronology of Legislation —— 306				
			Closing of the Knesset and the Courts — 307				
			Legal Proceedings in the High Court — 308				
		١.	Section 40—Declaration of War —— 309				
			a. Section 40 in General — 309				
			b. Historical Development of the Power to Declare War —— 310				
		J.	Section 41: The Inapplicability of Emergency Regulations —— 311				
	3.	Jud	icial Review of Security Decisions —— 311				
		A.	The History of Judicial Review of Security Decisions — 312				
		В.	Elon Moreh Case and the Rise of Judicial Review of Security				

Decisions — 314

C.	An	Example:	<b>Protections</b>	of	Freedom	of	Speech		31	5
----	----	----------	--------------------	----	---------	----	--------	--	----	---

### Part V: Israel as a Jewish and Democratic State

Chanter	10. 1:	hae we	Religion	in	Israel — 321
Chabler	IU: L	aw anu	Kension	***	121061 757

- 1. Sources of Protection of Freedom of Religion in Israel 321
  - A. The Palestine Mandate 321
  - B. The Declaration of Independence and Israeli Statutory
    Law —— 322
- 2. The Scope of Protection of Religious Liberty 323
  - A. Religion-State Relationship and Freedom of Religion 325
  - B. Conceptual and Comparative Analysis -- 325
- 3. State and Religion and Freedom of Religion 326
- 4. An Absence of Separation 333
- 5. The Enforcement of Religious Norms 335
- 6. Analysis of Freedom of Religion in Specific Matters --- 338
  - A. The Right of Marriage —— 338
  - B. Kosher Rules 339
  - C. Civil Burial 340
  - D. Conversion 341
  - E. Status of Religious Court Judges 342
  - F. Transportation and Commerce on the Day of Rest --- 342
  - G. Developments in the Protection of Religious Liberty: The New Era of Basic Laws —— 344
  - H. Impact of the jurisprudence of the Supreme Court on the Protection of the Freedom of Religion —— 344
  - I. State Funding of Religious Institutes 345
  - J. State and Religion in Israel: Challenges and Problems 346

# Chapter 11: The Historical Roots of Israel as a Jewish and Democratic State: The Founding Fathers Agreement of 1947 —— 348

- 1. The Historical Role of Religion in the Zionist Movement —— 350
- 2. The Developments Leading to the Status Quo Letter: 353
- 3. The Historical Challenge of Ingathering the Exiles: Separate and Together —— 359
- 4. Implementing the Founding Fathers Agreement: The Heritage of Israel and Other Matters 360
- 5. Comparative Aspects: The EU Model—Humanist and Religious Inheritance —— 364

- 6. The Status Quo Letter Is A Founding Fathers Agreement: 367
- 7. Conclusion 368

The Nation Law --- 370

## Chapter 12: The Jurisprudence of the Supreme Court on Non-Orthodox Communities —— 375

- Early Case of Renting Hall for High Holiday Worship: Peretz v. Kfar Shmaryahu Municipal Council — 375
- 2. Legal Recognition of Non-Orthodox Jewish Conversion 375
- 3. Status of Female Members of Public Bodies Concerned with Religious Affairs —— 379
- 4. Status of Non-Orthodox Members of Public Bodies Concerned with Religious Affairs, Religious Services Councils, and Councils to Elect Rabbis —— 381
- 5. Prayer of Non-Orthodox Women in the Western Wall --- 382
- 6. Non-Orthodox Communities Issues in Overseas Jurisprudence 383
  - A. Jewish Free School Case in the UK Supreme Court —— 383
  - B. Ran-Dav's Case NJ Invalidating Exclusively Orthodox Kosher Regulation —— 385

#### Part VI: Law and Religion: International Perspectives

# Chapter 13: Selected Jewish and Other Religious Issues in International Jurisprudence —— 389

- 1. Religious Holidays and Days of Rest 389
- 2. Circumcision 394
  - A. An Oral Suction (Metzitzah B'peh) 395
- 3. Ritual Slaughter of Animals (Shechitah) 397
- 4. Exhuming the Dead 401
- The Enforcement in Civil Court of the Duty to Deliver Get (Divorce Certificate) — 403
- 6. Jurisprudence Relating to Islamic Sharia and Religious

Practice --- 404

- A. Workplace Accommodation --- 404
- B. Clothes Regulations 404
- C. Circumcision and the Right to Bodily Integrity 405
- D. Forced Divorce 406
- 7. The Debate in India on Implementing Uniform Civil Code in Personal Matters 407

### Part VII: Equality in Israeli Law

# Chapter 14: Promoting Equality for Women, Minorities, and Jews from Different Countries —— 411

- 1. The Social Gap among Jews in Israel and Positive Preference 411
- 2. Distribution of Wealth and Power 413
- 3. Negative Attitudes towards the Sephardim —— 414
- 4. The Role of Non-Ashkenazi Jews in Lessening Social Inequality -- 415
- 5. Equality in Education 419
- 6. Other Programs --- 421
- 7. Justifications for Positive Preference in Israel 423
- 8. Women's Rights --- 428
  - A. Women in the Army --- 430
  - B. Women on the Bench 431
- 9. Equality on the Basis of Sexual Orientation 432
- 10. Miscellaneous Topics 434
  - A. The Court's Correction of Inequalities 434
  - B. Extremism and Freedom of Speech --- 436
  - C. Citizenship and Aliens -- 438

### Part VIII: Israel Meets the Challenges of Holocaust Dilemmas

#### Chapter 15: Holocaust Dilemmas in Israel - 445

- 1. Grappling with the Memory of the Holocaust -- 448
  - A. Establishment of Yad Vashem 448
  - B. Legislation of the Law of Remembrance of Shoah and Heroism—
     Yad Vashem 450
  - C. Legislation of the "Holocaust and Heroism Remembrance
    Day" —— 453
    - Commemorating the Holocaust 454
- 2. The Reparations Agreement 455
  - A. Formulation of the Agreement and Its Signing 457
  - B. Compensation Agreement for Templer Property 460
- 3. The Kastner Trial 461
  - A. Hungary and Hungarian Jews in the Second World War --- 462
  - B. Kastner's Efforts to Save Hungarian Jewry 464
  - C. The Unfolding of the Kastner Affair as It Occurred 467
  - D. The Murder of Kastner -- 469

4.	The Eichmann Trial —— 470
	A. The Course of the Trial and Its Aftermath —— 473
	B. The Knesset's Intervention in Setting the Composition of the
	Court —— <b>480</b>
5.	Demjanjuk Trial —— 485
	A. Competence to Try Matters of Genocide —— 489
	B. The Trawniki Certificate — 490
	C. Identification Line-ups —— 492
	D. The Decision of the District Court —— 493
	E. New Evidence during the Appeal Stage — 494
	F. Decision of the Court on Appeal —— 495
	G. The Objective of the Trial and Public Opinion in Its Course — 497
6.	Failure to Bomb Auschwitz —— 499
	A. The Public Trial (Moot Court) Conducted by the Lapid Movement
	over the Question of Allied Guilt for Not Bombing
	Auschwitz —— 505
7.	The Efforts for the Holocaust Survivors —— 507
	A. The Dorner Commission Conclusions —— 507
	B. The Restitution of Holocaust Victims' Assets —— 511
	C. The Commission for Location and Restitution of Holocaust Victims'
	Assets that Are in Israel —— 514
	D. A Class Action against the Swiss Banks over Hiding Assets of
	Holocaust Victims —— 517
8.	The Impact of the Holocaust on Court Decisions —— 519
9.	Concluding Remarks — 525
Part IX	K: Israeli Private and Commercial Law
Chaptor	16: Commercial and Business Law —— 529
-	Mixed Jurisdiction —— 529
	•
۷.	A. The Corporation — 530
	B. The Agent Issue — 531
	C. The Enactment of the Companies Act of 2000 —— 532
3.	Labor and Employment Law — 534
٠.	A. Statutory Frame — 534
	B. Key Non-Statutory Elements — 537
	C. Recent Trends — 537
	c. Recent fielius — JJI

4.	Eco	nomic Law —— <b>538</b>						
	A.	Custom System and Law —— 538						
		a. Import Policy — 538						
		b. Export Policy — 539						
	В.	Foreign Trade System and Law — 540						
		a. The Multi-Lateral Channel —— 540						
		b. The Bi-Lateral Channel —— 543						
		c. Economic Relations with Middle Eastern Neighbors - 544						
	C.	Foreign Direct Investment System and Law — 546						
		a. The Development of the System —— 546						
		b. Culture of Peace and Economic Growth — 547						
		c. Law for Encouragement of Capital Investments — 551						
		(1) Tax Benefits —— <b>552</b>						
		(2) Grants —— <b>552</b>						
		d. Investments in Israel by Non-Residents — 553						
		e. Limits on Government's Undertaking to Investors — 553						
	D.	Monetary and Banking System and Law — 555						
		a. Monetary Policy — 556						
		b. Supervision of Banks — 557						
		c. Money Laundering —— 559						
Chapter	17:	Private Law 561						
•		tract Law — 561						
	Α.	Contract Principles — 561						
	В.	Contract Formation — 562						
		a. Offer — 562						
		b. Acceptance — 563						
		c. Definiteness — 563						
		d. Intention — 564						
		e. Form — 564						
	c.	Interpretation of Contract —— 565						
2.		perty Law —— 565						
	A.	`_, ``_						
	В.	The Remains of the British Mandate — 566						
	C.	Laws — 567						
3.	Law	of Torts — 569						
	A.	History —— 569						
	В.	Tort Ordinance — 570						
		a. The Structure of the Cause of Action in Tort — 571						
		b. Levels of Tort Liability — 572						

C. Specific Acts Dealing with Tort Law outside the Tort Ordinance —— 573

#### Chapter 18: Environmental Law --- 574

- 1. Laws --- 574
- 2. Environmental Protection and the Kyoto Protocol 576
- 3. Proposal for a Kyoto Protocol Model for Water resource 578

#### Chapter 19: Dispute Resolution --- 580

- 1. The General Law Courts --- 580
- 2. Arbitration and Mediation 582
  - A. Arbitration 582
  - B. Mediation 584
- 3. International Agreements and International Litigation 585
- 4. Recognition and Enforcement of Foreign Judgements --- 586
- 5. The Exercise of Jurisdiction 588

Index ---- 590