

Antisemitism and the Law Class #: LEGALST 129-SEM-001 (4 Units)
Prof. Steven Davidoff Solomon

Course Time/Dates

Sept 9, 2024 - Dec 02 2024

Monday: 2:00 pm - 4:59 pm

Office Hours: 10am-11:00 Monday (or by appointment) at 693 Simon (my office)

Location

B51 - Hildebrand

Course Description

This class will explore the intersection of antisemitism and the law. It will begin by covering the history of law as a vehicle for institutionalizing antisemitism, law as a vehicle for combating antisemitism, and law as a political tool to combat antisemitism. Historical topics will include, the Dreyfus case, the Holocaust denial trial of Irving v. Lipstadt, the Damascus blood libel trial of 1840, the blood libel trial of Mendel Beilis, and the impact of the lynching of Leo Frank. We will also review discriminatory laws in the United States and other areas and countries against Jews, including in Nazi Germany. Other topics covered will include the intersection of legal antisemitism definitions and anti-Zionism, the intersection of free speech laws and antisemitism (e.g., the Skokie march), the historical discrimination of college and university campuses against Jews through admission quotas as well as the modern day application of Title VI of the Higher Education Act to issues of antisemitism on college and university campuses.

Grading

The course will be graded as follows

15% Attendance and active and informed participation in the course

15% Paper #1

15% Midterm – There will be one, and only one, midterm exam given.

30% Paper #2

25% Final – There will be one, and only one, final exam given. However, if there is significant and good class participation we will waive the final.

Schedule:

Paper #1 -- to be due at Week 5 – instructions for paper Number 1 to be issued in Week 2

Midterm – To be in Week 7

Paper #2 -- To be in due in Week 10 – instructions for Paper Number 2 to be issued in Week 7

Assigned Books (Please Purchase):

Kenneth L. Marcus, *Jewish Identity and Civil Rights in America* (Cambridge 2010).

Michael Bazlyer, *Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust* (Oxford World Reprint Edition 2017)

Late Paper, Extension, And Course Incomplete Policies

Hard copies and electronic copies of paper assignments are due on the date and time given in the syllabus and paper assignment prompts. Requests for paper extensions and/or an incomplete grade for the course must go through the professor and will be granted only under the most extenuating of circumstances. These generally involve last minute family or health problems and do not include conflicts with other academic, athletic, work, etc. commitments. Late papers will be penalized 1/3rd of a letter grade (e.g., A- to B+ or B+ to B) beginning immediately after they are due and another 1/3rd of a letter grade for every 24 hours of lateness thereafter. No late papers will be accepted a week past their assigned due date. Plan ahead.

Academic Integrity

The student community at UC Berkeley has adopted the following Honor Code: “As a member of the UC Berkeley community, I act with honesty, integrity, and respect for others” (<http://teaching.berkeley.edu/berkeley-honor-code>). In this spirit, you must adhere to the highest standards of academic integrity. Anyone contemplating anything less should be forewarned: any plagiarizing on papers (as per the definition below) or cheating on exams will result in failure for the course and will be pursued to the fullest extent through the Center for Student Conduct as spelled out here: <http://sa.berkeley.edu/code-ofconduct>.

The Center for Student Conduct offers the following definition of plagiarism, the first part of which is also included in the Berkeley Campus Code of Student Conduct:

Plagiarism is defined as use of intellectual material produced by another person without acknowledging its source, [including] for example: Wholesale copying of passages from works of others into your homework, essay, term paper, or dissertation without acknowledgment [such as the use of quotation marks and proper citation in footnotes or endnotes]. Use of the views, opinions, or insights of another without acknowledgment [such as proper citation in footnotes and endnotes]. Paraphrasing of another person’s characteristic or original phraseology, metaphor, or other literary device without acknowledgment [such as proper citation in footnotes and endnotes]. For more information about plagiarism (and how to avoid it), see: sa.berkeley.edu/cite-responsibly.

Computing Devices in Class

With the exception of an iClicker, unless you have a formal accommodation that requires it and is presented to the professor, the use of computing devices (laptops, iPads, iPhones, etc.) is forbidden. They are temptations to students who use them to divert their attention elsewhere besides the educational task at hand, distractions to students who do not use them, and less effective as tools for assimilating information presented in class than old-fashioned note-taking and attention-paying.* * See, for example, “Why You Should Take Notes by Hand – Not on a Laptop” (<http://www.vox.com/2014/6/4/5776804/note-taking-by-hand-versus-laptop>)

No Commercial Use

Do not forward or sell materials from this course to any individual or business, online or otherwise.

Schedule of Class and Assignments (Note: Exact pages and reading to be confirmed)

1. What is antisemitism?
 - a. European Antisemitism: <http://www.ushmm.org/confront-antisemitism/european-antisemitism-from-its-origins-to-the-holocaust>
 - b. AJC The State of Antisemitism in America 2022: <https://www.ajc.org/news/the-state-of-antisemitism-in-america-2022-insights-and-analysis>
 - c. The Eternal Jew: <https://www.youtube.com/watch?v=RIHVin56U2w>
 - d. Antisemitism in our Midst: Past and Present: <https://jewishstudies.berkeley.edu/antisemitism-education/antisemitism-antisemitism-training-film/>
 - e. The U.S. National Strategy to Counter Antisemitism (May 2023): <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>
2. Legal definitions of antisemitism
 - a. Background
 - i. Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987), available at <https://supreme.justia.com/cases/federal/us/481/615/>
 - ii. Espinoza v. Farah Mfg. Co., Inc., 414 U.S. 86 (1973), available at <https://supreme.justia.com/cases/federal/us/414/86/>
 - b. IHRA Definition: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>
 - c. State Department Antisemitism: <https://www.state.gov/defining-antisemitism/>
 - d. Antisemitism Awareness Act of 2018: <https://www.congress.gov/bill/115th-congress/senate-bill/2940/text>

- e. ACLU Statement on Introduction of Antisemitism Awareness Act:
<https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act>
3. Free speech, antisemitism, antizionism (Skokie, etc.)
 - a. David Downs, Skokie Revisited: Hate Group Speech and the First Amendment:
<https://scholarship.law.nd.edu/ndlr/vol60/iss4/1/>
 - b. Would the ACLU Still Defend Nazis' Right To March in Skokie?:
<https://reason.com/2020/12/20/would-the-aclu-still-defend-nazis-right-to-march-in-skokie/>
 - c. Reno v. ACLU, 521 U.S. 844 (1997): <https://www.oyez.org/cases/1996/96-511>
 - d. Student Activity Fees, FIRE's Guide to Student Activity Fees, Funding, and Legal Equality on Campus: <https://www.thefire.org/research-learn/fires-guide-student-fees-funding-and-legal-equality-campus>
 - e. Penalizing Free Speech/Boycotts/Anti-BDS: A & R Eng'g & Testing v. City of Houston, Civil Action No. 4:21-CV-03577 (S.D.Texas 2022):
<https://casetext.com/case/a-r-engg-testing-v-city-of-houston>
4. Holocaust denial (Irving v. Lipstadt)
 - a. Deborah E. Lipstadt, History on Trial: My Day in Court with a Holocaust Denier:
https://www.thriftbooks.com/w/history-on-trial-my-day-in-court-with-a-holocaust-denier-ps_deborah-e-lipstadt/379089/item/15933189/?utm_source=google&utm_medium=cpc&utm_campaign=pmax_high_vol_midlist_under_%2410&utm_adgroup=&utm_term=&utm_content=&gclid=CjwKCAjwI6OiBhA2EiwAuUwWZQRxpsnt9HxRDxbsypjc7EEUBQGg7xFM9Inyq9Et5XUZ967Z1fiFChoCImgQAvD_BwE#idq=15933189&edition=3218022
 - b. Germany's Holocaust denial laws:
<https://www.pbs.org/wgbh/frontline/article/germanys-laws-antisemitic-hate-speech-nazi-propaganda-holocaust-denial/>
5. Campus issues (Part I – Jewish Quotas, Racial Preferences)
 - a. Letter of Lawrence A. Lowell:
<https://www.nytimes.com/1922/06/17/archives/lowell-tells-jews-limit-at-colleges-might-help-them-says-it-might.html>
 - b. Stephen Steinberg, How Jewish Quotas Began:
<https://www.commentary.org/articles/stephen-steinberg/how-jewish-quotas-began/>
 - c. Brief of ACLU in Students for Fair Admissions v. Harvard, Campus issues:
<https://www.adl.org/resources/amicus-brief/students-fair-admissions-inc-petitioner-v-president-and-fellows-harvard>
 - d. Brief of Brandeis Center, https://www.supremecourt.gov/DocketPDF/20/20-1199/173420/20210331104529484_Amicus%20brief.pdf

6. Campus issues (Part II: Title VI)

- a. Marcus, K. L. (2004, September 13). Title VI and Title IX religious discrimination in schools and colleges: <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf>
- b. Marcus, K. L. (2017). Best practices guide for combating campus anti-Semitism and anti-Israelism. Louis D. Brandeis Center: https://brandeiscenter.com/wp-content/uploads/2017/10/guide_01.pdf
- c. U.S. Department of Education, Office for Civil Rights. (2013, July 17), Letter to Mr. Klein, Ms. Tuchman and Mr. Marcus: <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/2013-0717-first-amend-anti-semitism-harassment.pdf>
- d. U.S. Department of Education, Office for Civil Rights. (2021, January 19). Questions and answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's enforcement of Title VI of the Civil Rights Act of 1964: <https://www2.ed.gov/about/offices/list/ocr/docs/ga-titleix-anti-semitism-20210119.pdf>
- e. U.S. Department of Education, Office for Civil Rights. Combating Discrimination Against Jewish Students: <https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>
- f. Cal Senators sit out vote: <https://jweekly.com/2022/11/16/5-student-leaders-at-cal-protest-antisemitism-resolution/>

7. Religious expression and antisemitism (Part I)

- a. Marc Stern, Antisemitism and the Law: Constitutional Issues and Antisemitism, in Jerome Chanes (Ed.), Antisemitism in America Today: Outspoken Experts Explode the Myths, pps. 385-407.
- b. Religious Freedom Restoration Act: <https://www.congress.gov/bill/103rd-congress/house-bill/1308>
- c. Burwell vs. Hobby Lobby: <https://www.law.cornell.edu/supremecourt/text/13-354>

8. Religious expression and antisemitism (Part II)

- a. Circumcision
 - i. Boldt v. Boldt: <http://www.publications.ojd.state.or.us/docs/S054714.htm>
 - ii. San Francisco Ballot Initiative controversy: <http://web.archive.org/web/20141119064257/http://www.sfcityattorney.org/index.aspx?page=374>
- b. Kosher
 - i. Rich vs. Secretary – Florida Department of Corrections:

<http://www.becketfund.org/wpcontent/uploads/2013/05/Richop.pdf> and Commack

- ii. United States Commission on International Religious Freedom. Factsheet Ritual Slaughter:

<https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20Ritual%20slaughter.pdf>

- iii. Self-Service Kosher Meats vs. Rabbi Weiss et al:

<http://caselaw.findlaw.com/us-2nd-circuit/1355808.html>

- iv. The Secret Kosher Tax:

<https://www.radioislam.org/judaism/kosher.htm>

9. Dreyfus, Beilis trial, Leo frank (in two classes)

- a. Anthony Julius, Trials of the Diaspora, Chapter 2 (Defamations):

http://www.engageonline.org.uk/journal/index.php?article_id=42&journal_id=12

- b. CRUSADES – Leon Paliakov, THE HISTORY OF ANTISEMITISM, volume 1, pps 56-64

- c. Stormfront on Jewish Ritual murder:

<https://www.stormfront.org/forum/t234045/> and

<https://www.stormfront.org/forum/t876292/>

- d. Messina NY blood libel incident, NPRR:

<http://www.northcountrypublicradio.org/news/story/19305/20120214/massena-s-history-still-tied-to-1928-blood-libel-incident>

- e. MEMRI -- Blood Libel: Jews Murder A Christian Child to Get The Blood

<https://www.youtube.com/watch?v=KHqXtJNSt8>

- f. Dreyfus

- i. Emancipation of Jews

https://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0006_0_05916.html

- ii. Albert S. Lindemann, The Jew Accused: Three Anti-Semitic Affairs –

Dreyfus, Beilis, Frank 1894-1915 (Cambridge: Cambridge University Press, 1991), pp. 79-128.

- iii. Poliakov, Volume 4, pp. 46-57, available at

http://www.amazon.com/History-Anti-Semitism-Suicidal-Europe-1870-1933/dp/0812218663/ref=sr_1_7?ie=UTF8&qid=1314641087&sr=8-

- iv. Emile Zola, "J'Accuse: Letter to the President of the Republic,"

<https://en.wikisource.org/?curid=6792>

10. Nazi Germany

- a. Assigned readings from Michael Bazlyer, Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust (Oxford World Reprint Edition 2017)

11. Nuremburg

- a. Robert Jackson, Opening Statement: <https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/>

- b. Telford Taylor on Nuremburg: <https://www.youtube.com/watch?v=xkC93mQd1-0>

- c. The Doctors Trial: U.S.A. v. Karl Brandt et al.: The Doctors' Trial,
https://nuremberg.law.harvard.edu/nmt_1_intro
- d. Video: The Nuremberg Trial, writer/producer Anne Dorfman, Court TV

12. The Genocide Convention

- a. Convention on the Prevention and Punishment of the Crime of Genocide:
https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf
- b. The story of Raphael Lemkin:
<https://encyclopedia.ushmm.org/content/en/article/coining-a-word-and-championing-a-cause-the-story-of-raphael-lemkin>

13. The legal case for Zionism

- a. The Displaced Persons Act: <https://perspectives.ushmm.org/item/the-displaced-persons-act-of-1948>
- b. The Land Question in Palestine, 1917-1939 (excerpts)
- c. Balfour Declaration (1917):
<http://www.milestonedocuments.com/documents/view/balfour-declaration/text>; see also Mayir Vereté,
- d. The Partition Plan: G.A. Res. 181 (II), U.N. Doc. A/RES/181(II) (Nov. 29, 1947) (approved in Lake Success, N.Y., November 29, 1947 with 33 votes in favor, 13 against, 10 abstentions and 1 absent).
- e. The expulsion of Jews from Arab Countries and Iran:
<https://www.worldjewishcongress.org/en/news/the-expulsion-of-jews-from-arab-countries-and-iran--an-untold-history>
- f. Draft Law by the Arab League (1947): https://zionism-israel.com/hdoc/Arab_League_Law_Jews.htm
- g. Bell, Abraham and Kontorovich, Eugene, Palestine, Uti Possidetis Juris and the Borders of Israel (March 8, 2016). Arizona Law Review, vol. 58, pages 633-692 (2016), Northwestern Public Law Research Paper No. 16-04, San Diego Legal Studies Paper No. 16-214, available at SSRN: <https://ssrn.com/abstract=2745094> or <http://dx.doi.org/10.2139/ssrn.2745094>