



# Interactive Teaching and Learning A Manual for Teachers of Law in Palestine\*

\* Trainers Edition

## **Arkan Project**

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## **TRAINER'S EDITION NOTE**

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This edition of the text “Interactive Teaching and Learning” is designed for those who are training Palestinian teachers in the methods which the Manual describes. The trainer should have studied the Manual, worked with an experienced trainer, and applied the methods in the classroom before attempting to train others. Practical experience is essential. Notes for teachers are in italics in each Chapter, except where the italics are in boxes.

## I. CHAPTER 1: WHY INTERACTIVE TEACHING?

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*Changing teaching habits is not easy, and reluctant learners will find many reasons to resist it. The hardest task for some teachers will be finding an intellectually satisfying reason to change their teaching methods. It is likely that they were taught in the same way that they are teaching, and didn't they turn out well? And haven't the many, many students whom they have taught over the years turned out well enough?*

*Some of these teachers in fact will not change. Do not be concerned. If three or four teachers from an institution make the change, that is progress, and more will come. Their example may inspire others already teaching; new teachers will be able to study these methods; and in any case students will benefit .*

*In talking with those reluctant to learn, you may emphasize some or all of these points:*

- *We understand more now about the ways people learn most efficiently.*
- *You know from your own life that you have learned fast and permanently when you have been personally engaged in the process.*
- *Personal engagement means more than listening; it means asking questions and discussing and thinking.*
- *It was not because he lectured that Socrates was thought the greatest teacher in the classical world. It was because he asked questions and forced his students to think when they answered.*

“I taught that subject, but my students didn't learn it.” Probably every teacher has said something like that at one time or another, or at least has thought it. But we would not accept a comparable statement from others – “I sold it to him, but he didn't buy it,” or “I put it in her hand, but she did not receive it.” Often what the teacher means is that he presented the subject in a way that was understandable to him, but unfortunately not to his students.

This is a failure, and in times when learning is vital to the future of a nation, it is a tragedy. But it does not have to happen. We know a lot about the ways people learn, and there are tested methods that incorporate that knowledge. Teachers who are willing to learn some new methods and techniques will find that their work is more productive, varied, and enjoyable. One of those methods is that of interactive teaching.

There are additional benefits to interactive teaching of particular interest to the teacher of law. When a law professor calls on a student to describe a case or to answer questions about it, the selection of the student should be unpredictable (except by the professor). If the students know that any of them may be called on, then all of them have a powerful incentive to come to class well-prepared. In addition, they are more likely to pay close attention during the class session itself, so that if their turn comes next they will be ready.

*It is helpful to place law teaching in a larger context. Palestine will become a State. In preparation for that, and after it happens, Palestine needs leaders not only in government but in*

*the private sector as well, to build a civil society. The need is not for more bureaucrats, but for people whose vision, knowledge of history, and critical thinking skills help to shape and advance the public and private agenda. Law schools can train such leaders, but not with traditional speak/listen/repeat methods. Students must learn to think!*

## II. CHAPTER 2: WHAT IS INTERACTIVE TEACHING?

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### **Teaching Methods and Style**

*The purpose of this Manual and of the ideas behind it is not to drive the lecture out of the classroom. Far from it: the lecture is probably the most efficient way to transmit information, if that is what is wanted. But it is only one of the tools in the master teacher's tool chest.*

*At the beginning of the training teachers should be reassured that they are being asked not to abandon everything they have done, but rather to add new techniques to the old. Once they have mastered them, they will choose among all of their teaching options to find the right one for the task at hand, just as the carpenter chooses among his tools to find the best one for the job.*

*The trainer can reinforce the point by reporting what students say: that they learn best when they are personally engaged in the instruction, by discussion or question and answer. The trainer may also illustrate the point by conducting an experiment with the teachers. Attachment A outlines such an experiment.*

*Note in the experiment that one version uses more than one teaching method. The combination of lecture and an interactive teaching method is ideally suited for a class in which the teacher wishes to pass on factual information and then involve the students.*

There are many different styles of teaching, and an expert teacher will use all of them. None of the methods is suitable for all situations, but each method suits some occasions, and the resourceful teacher will select the one which matches the purpose of the class.

In some class meetings the teacher is the sole source of substantive information about the law, and the students are the recipients of the information. In such circumstances a lecture, often accompanied by written materials, is the appropriate teaching method for the day. If on the other hand students are presenting reports to the class, the teacher may act as the analytical observer, making comments which show the relationship of the reports to each other and to the subject of the course.

On another day, the teacher may decide that the best way to present the lesson is to simulate a trial or an appeal. Or, wishing to find out if the students have understood what they have read or heard, the teacher may devote part of the class to questions and answers or a short written test.

If the teacher wishes to train the students in critical thinking and analysis – skills which all lawyers need, and which take time and practice to learn -- it will be necessary to probe their thinking, to ask unexpected questions, to challenge them. There are widely-used methods for that kind of teaching.

Among those methods are those which will be discussed in the following pages: the Socratic Method of teaching by asking questions, the close study of cases, both real and hypothetical, and classroom simulations.

### III. CHAPTER 3: THE SOCRATIC METHOD

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*The Socratic Method has been used in American law schools, particularly the more prestigious ones, for a hundred years. It was revolutionary in its time, as was the practice of examining real cases rather than studying theories of law. Nowadays it is not as popular as it once was, but it still an effective technique.*



*As the text below points out, the method is easy to abuse. As the teacher training progresses, the trainer should give the teachers a chance to practice the Socratic method, listening very carefully for any tendencies toward argumentative questions or an overbearing manner. Emphasize to the teachers that, as the text says, it is not much of a challenge for a law professor to confuse a young law student.*

About a hundred years ago, Christopher Columbus Langdell, then Dean of Harvard Law School, introduced to his law school a teaching method which he called the Socratic Method, because it resembled the questioning technique which Socrates used to find the truth. This method of teaching is still practiced in many leading law schools in the United States.

A class using the Socratic Method typically starts with a student reciting the facts and law of a case which has been assigned to the class to read. The professor asks questions about the details of the case:

- Are the facts clear from the student's presentation?
- Are there facts omitted from the court's report which appear to be necessary for a full understanding of the case?
- What exactly did the court rule?
- Does the ruling apply to all such cases?
- Does it apply to cases similar to this one but with slightly different facts?

The professor also asks questions which change the facts of the case, in order to investigate the effect the change will have on the legal result. Take for example a case involving injury to a child of 12 caused when the child fell into an excavated hole on a neighbor's land. The neighbor is found liable. After establishing the facts as the court reports them, the professor would seek from a student the legal rule that applies to the case. The professor would then test the validity of the rule by asking questions which introduce new, hypothetical facts:

- What if the child was injured while on public property? On private property?
- What if the neighbor had invited the child onto the land?
- What if the child did not have permission to go onto the land?
- What if the neighbor had told the child not to go onto the property?
- What if there was a sign warning of the dangerous condition on the land?
- What if there was no sign?
- What if the danger was obvious – an untended fire, a growling dog?
- What if the dog was known to growl but had never bitten anyone before?

- What if the child was 8 years old instead of 12? 4 years old? 15 years old?

At each stage of the questioning the teacher seeks a rule that arises from an answer or a series of answers, then tests the rule by further questioning. In the case above, for example, rules might emerge and be tested as follows:

*RULE: A person is liable for injuries which occur on his land.*

Question: Is he liable for all injuries that occur on his land, even those caused by another?

Answer: No; he isn't liable when the injury is caused by someone else.

*NEW RULE: A person is liable for injuries which occur on his land, unless the injury is caused by another.*

Q: So if the neighbor did not dig the hole, he is not liable?

A: No. He is liable, but only if he knew about the hole.

*NEW RULE: A person is liable for injuries which occur on his land, except when the injury is caused by another – unless the landowner knows about the condition causing the injury.*

Q: Assume that the contractor who dug the hole telephones the owner and tells him that the hole is finished. Five minutes later someone falls into the hole and is injured. The owner is twenty kilometers away. Is he liable?

A: No, that can't be right.

Q: What if the injury occurs twenty-four hours after the telephone call?

A: Then he would be liable.

Q: Two hours after the telephone call?

A: He would probably be liable.

Q: Then the rule is based on time?

A: No; it is based on knowledge.....

Q: But we already said that knowledge wasn't enough!

A: ... and opportunity to guard the site.

*NEW RULE: A person is liable for injuries which occur on his land, even if caused by another, if the landowner had knowledge of the likelihood of injury and sufficient opportunity to prevent it.*



This is not the final rule, and there are more questions to come. It is an illustration of how questioning and rule-testing might go in a class session.

*Here the trainer should press the class to go further with the hypothetical, developing additional refinements and subsections of the rule, on such topics as*

- *The reasonableness of the owner's precautions (a high wall, a single sign, multiple signs, signs in several languages, a guard, etc.)*
- *Whether the event causing the injury was foreseeable (a bolt of lightning splits a tree, a lion escapes from a passing circus, a shallow hole fills with enough water to drown a child, etc.)*
- *The amount of care expected of the 12-year-old (or, by changing the facts, the 3-year-old, the 18-year old, the blind and deaf pedestrian, the drunken adult, and the like)*

There are several purposes in using this method. One is to develop flexibility of mind, the ability to respond to changed circumstances, and skill in analyzing the meaning of a court's ruling when it is applied to similar sets of facts. Another is to show how important facts are, how new facts may require a changed legal result, and how lawyers must listen carefully and investigate fully before reaching a legal opinion. Skillfully managed, the Socratic Method trains law students in skills which they need as lawyers: analysis, critical thinking, flexibility, focus.

*At this point in the course the trainer should have several other hypothetical situations ready for use as further illustrations of the method. There are examples of such hypothetical situations in Attachment B. It is best, however, if the trainer invents the situations, drawing from his experience of local culture and local law.*

*The trainer may demonstrate once or twice by taking the part of the teacher, with one of the course participants playing the student. After that the participants should ordinarily play both parts. The trainer may on occasion wish to be the student, in order to give answers that require quick thinking by the teacher.*

*Once the class participants have been introduced to the method, it is a good idea to begin each class session with some Socratic questioning, to warm up minds, and to end it the same way, to show the day's progress.*

### **Hypothetical cases and real cases**

The Socratic Method can be used both with hypothetical cases and with actual cases. The facts of hypothetical cases are usually created to emphasize a single legal principle. Using the hypothetical case, the teacher can focus his questions and the class discussion narrowly on the particular legal issue that the case concerns. Hypothetical cases can of course be made complex, but simplicity is often their strength.

Real cases, like reality, are more complex. They may involve several legal issues; they may require the student to balance and choose between two legal principles, each valid and applicable. They often require the student to master a complicated fact pattern. They are for the student who has gained skill in analyzing simpler cases.

*Just as the trainer has used hypothetical cases as warm-up exercises, he will want to challenge the course participants by introducing real cases of greater complexity. They will learn by doing.*

#### IV. CHAPTER 4: SIMULATIONS

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Another tool that a skillful teacher uses is the simulation. A case is invented or described, and students are assigned roles to play. The class simulates an interview with a witness, or an appeal to a panel of judges, or a court trial. Students may play the parts of parties, witnesses, prosecutors, defense counsel, and judges. After the simulation the teacher leads a discussion of what has happened – successes, mistakes, surprises – in order to illustrate the legal issue which was the focus of the simulation. This method of teaching gives students an experience of the law in action, in a way that a lecture cannot.

A simple example is the trial of the case of the injured child described above. The students who take the parts of the prosecuting and defending lawyers must gather information, prepare their witnesses, organize the case in the most effective way, and present their evidence and legal arguments to the court. Students acting as judges must research the law that applies to the facts which the lawyers present to them, and they must listen with great care in order to sort out the truth and give a fair judgment.

A good simulation requires preparation by the teacher, but over time students will be able to help with the task. For younger students, the teacher will create the facts of the case, identify the law that applies to them, assign roles, and act as judge. As the students mature in knowledge and judgment, the teacher may do little more than present the facts, leaving the students to find the appropriate law, apply the law to the facts, assign the roles, manage the simulation, and lead the discussion.

**A general note:** It is best not to rush into simulations. They tend to take a good deal of time, and students who are unprepared for them will waste a lot of that time. They may at first do better at the appeal than at either of the more fact-centered exercises. There is no reason not to begin with an appeal, as a way of introducing the case and the method, then return to it later for a simulated trial or client interview.

*Law professors may be uncomfortable with simulations. For the present it is enough to introduce the idea and to promise an opportunity for full discussion when simulations are discussed in greater detail. (See the trainer's notes to the subsection titled 'Simulations in Use' in the next chapter.)*

## **V. CHAPTER 5: USING INTERACTIVE METHODS OF TEACHING**

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### **The Socratic Method in Use**

While the Socratic Method is a valuable teaching tool, it is very easy to misuse – easier than it is to use it well. There are thousands of lawyers in the United States who still remember the sadistic or lazy law professors who used the Socratic Method to humiliate and embarrass them in front of their classmates. It is not very hard, after all, for an experienced professor to confuse a young law student. Used poorly, the Socratic Method is the opposite of educational; instead of inviting the student into an exploration of the law, it merely reinforces the idea that law is arbitrary, chaotic, and beyond understanding.

A teacher who intends to use the Socratic Method as an effective teaching tool should observe the following rules:

- Decide on the legal principle that the students are to understand
- Choose or invent a case that will reveal that principle, but not immediately
- Devise a line of questioning that will lead students toward the principle
- For each question, require the student to take a position
- Permit the student to re-examine his position if he is uncomfortable with it
- Complicate the situation: “What if this happened?”
- Require the student to take a position each time the facts change
- From time to time, summarize what has been resolved and what has not
- Throughout the questioning, be polite and good-humored

Like any other skill, the Socratic Method requires practice. No one should expect to master the technique with its first use, but it is not hard to improve quickly, and the method can soon become one of the teacher’s most valuable tools.

### **MISTAKES TO AVOID**

Here are ways to abuse the Socratic Method – all of them techniques to avoid if learning is the goal:

- Make the student try to guess what you are thinking
- Allow no wavering; pounce on any change of position
- Make the questioning a contest of wills and skills; the teacher is sure to win, and the student will learn little

## Simulations in Use

*Teachers who are comfortable with the Socratic method may be reluctant to use simulations. They seem more like playing than studying, and they are hard to control – impossible to control completely.*

*Doing a simulation with the teachers will take away some of the mystery. It will also require careful preparation by the trainer. Attachment C contains material for a simulation, including the facts of a case, texts for use by parties and witnesses, and the applicable law. Again, the trainer may have more success with the case he invents himself.*

There are several steps necessary for a successful simulation:

- **Teacher preparation.** One may use an existing case, adapt it, or invent a wholly new one. Each has its advantages: using an existing case will give the class the benefit of the actual court decision (although of course the decision should be revealed only when the simulation is done). Inventing a case permits the teacher to arrange the facts in a way that illuminates the particular legal principle that is the subject of the class.
- **Choice of the best simulation.** The facts can be explored in a number of ways.
  - One is to simulate a client interview, where the lawyer’s task is to find out from the client everything relevant; this may be supplemented by an investigation, in which student “witnesses” also have information which the lawyer need.
  - Another is to conduct a trial. Students are assigned roles as lawyers, witnesses, and judges. The teacher will prepare a description of the case, background briefings for the witnesses (which will be seen by no one else), and a bench memorandum for the judges. It is important to establish strict time limits for the presentation by each side of its case, and it may be that the trial will last for two or three class sessions.
  - Or the teacher may wish to focus on legal issues alone. In that case there should be a description of the evidence produced at trial and a summary of the decision by the trial judge. The task of each side is to present an appeal in written briefs, oral argument, or both.
- **Assignment of roles.** If the simulation is of a trial, the investigation and presentation must be of manageable length; thus the teacher needs to limit the number of witnesses. It is a good idea to assign several students to each side of the case and require them to act as a team. In that way the tasks of presentation can be efficiently divided, the stronger students can help the weaker, and there will be greater opportunity for the sort of discussion and debate which aids understanding.

- **Student preparation.** Students will do the greater part of the preparation, but the teacher should be available to clarify, explain, and suggest direction.
- **Presentation.** The teacher, with greater experience of how interviews, trials, and appeals are actually conducted, should structure the event to resemble a real-life case. An exception to this rule is that time limits must be imposed in order to meet the class schedule.
- **Discussion.** This is a crucial part of the teaching. It is the time when the teacher can comment on, and ask questions about, what he has seen and heard – how the law was applied, where a team went wrong or did things right, how the judges might have ruled, and the like. The aim of this part of the exercise is to demonstrate how the law is applied in practice and how changes in facts may lead to a variation in the law’s application or to a search for new legal principles.

#### **MISTAKES TO AVOID**

Don’t do too much. Descriptions, factual summaries, and briefings should be as short as possible.

Don’t do too little. Younger students will need guidance not only in the law but in the practicalities of presenting a case.

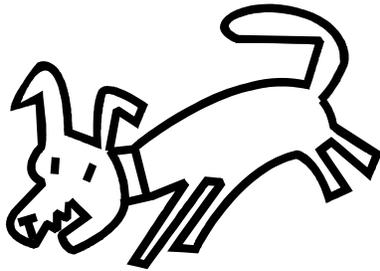
Don’t interfere unnecessarily. The students will get things wrong, and they will learn from their mistakes.

## VI. CHAPTER 6: A HYPOTHETICAL CASE

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### The Facts

Ali and Khalil are neighbors. A stream runs through their properties, coming down the hill on the north side of Khalil's land, crossing it, and then flowing across the land behind Ali's house. Khalil maintains flowerbeds around his house, and to keep the flowers healthy he applies fertilizer to the beds every month and waters them regularly, taking the water from the stream. One of the beds is next to the stream, and if Ali waters too generously some fertilizer leaches into the stream. When that happens, the fertilizer flows with the stream onto Khalil's land, some of it leaching into his soil.



Ali's dog likes to rest in the shade of a tree in the back yard. On hot days, he drinks from the stream. One day the dog becomes sick, and Ali is convinced it is from the fertilizer in the water. He demands that Khalil pay for the dog's medical treatment and stop using any fertilizer on the land. Khalil does pay for the medical treatment, but Ali still worries about future problems.

Ali tells his old friend Mustafa about the situation. Mustafa is Khalil's uphill neighbor, and the stream runs across his land as well. In order to protect his old friend Khalil, Mustafa decides to change the route of the stream. After the change, the stream skirts Ali's land and enters Khalil's land at a different location.

### The law

A person who by his action or inaction causes harm to the person or property of another is liable for all foreseeable damage that results from the action or inaction.

### The questions

*At the end of these suggested questions is a recommendation that the teacher help students develop the rules of law that follow from the answers. In the same way the trainer can help the teachers. At this stage of the training, however, the teachers should be able to do much of the development by themselves.*

*Interspersed with the questions are shorthand references to the rules of law that may arise from the answers.*

After the students have understood the facts of the case, the teacher begins to ask questions. Here are some that might be asked:

- Has Ali caused damage to Khalil? What is the damage? How is it measured?
- Has Ali admitted liability by paying for the dog's medical treatment?

- Assume that the only presently known effect of the fertilizer has been to sicken the dog. Will Ali's agreement to pay medical bills mean that he is liable if a year later Khalil claims that the fertilizer has caused damage to the fish in the little pond two meters away?
- Assume that the dog is old and has been sick a few times in the past, even before Ali moved into the property. Does this matter to the analysis of liability?

*Foreseeability; causation; extent of damages; waiver of defense.*

- If Ali had not voluntarily paid for the dog's treatment, what would Khalil have to prove to establish liability?
- If Ali had not paid for the dog's treatment, would the dog's age and medical history change Khalil's proof?
- Assume that Ali has not paid for the dog's care. What is his defense to Khalil's claim for damages?

*Nature and elements of proof; burden of proof.*

- Before the dog got sick, Khalil had signed an agreement to sell his property at a good price. The potential buyer hears of the problem and refuses to complete the sale because, he says, the property is contaminated. Can Khalil claim his loss of the sale as damages from Ali? If he can, what is the amount of the damage?

*Foreseeability of damage; measure of damages; possibility of third-party claim.*

- Does Ali have a claim against Mustafa? If so, what is his damage, and how is the amount of it measured?
- Should Ali's claim against Mustafa include a claim against Khalil? What is the claim?
- If Ali succeeds in a claim against Mustafa, what is his remedy? Is money enough?

*Joint or joint and several liability; third-party claim; remedies.*

The learning will be much more effective when the teacher gets the students to develop rules of law as they gain greater understanding of the case.

## VII. CHAPTER 7: USE OF THE CASE FOR SIMULATIONS

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Using these same facts, the teacher may wish to conduct a simulated interview, trial, or appeal. The object of this work is to improve practical skills: obtaining information in order to give legal advice, presenting factual proof to a trial court, preparing legal arguments and making them orally, and the like.

*The best way for class participants to understand the benefits and pitfalls of a simulation is to do one themselves. Because the simulation is new, tricky, and uncontrolled, law professors may be overly cautious in avoiding mistakes that will embarrass them in front of their peers. The text for participants notes that law students will learn from their mistakes, and of course the same is true for their teachers. The trainer should keep the atmosphere in the class relatively light, so that errors are not taken very seriously. In the discussion that follows the simulation it will be possible to turn a mistake into an insight.*

*As noted in the text below, simulations require preparation and take time. Client interviews and appeals can be done in a class hour, but the trainer should be prepared to spend two or three class hours on a simulated trial, plus time outside class for preparation.*

### **The Client Interview**

A student can play the part of any one of the principals, Ali, Khalil, or Mustafa. The student should be given all of the facts that that person would know. Mustafa, for example, might not know about the fish pond and the dog's medical history; Ali might not know anything about Khalil and Mustafa's friendship. The teacher should decide how much information to supply, bearing in mind that the purpose of the exercise is for the lawyer to probe for facts that will help him to understand the case. In any event, the student playing the client should not supply all the facts at once. Most of us from time to time forget things, exaggerate and minimize, scramble a sequence of events, and it is part of the lawyer's job to untangle stories and establish objective facts.

The student playing the lawyer should have a statement of the applicable law, but not the facts.

The lawyer's task is to find out the facts, relate them to the law, and explain the legal situation to the client.

The interview should last no more than twenty minutes.

After the interview the teacher should lead a discussion: How well did the lawyer understand the case? What questions should have been asked that were not? Did the lawyer explain the applicable law to the client and put the facts in context? Did the lawyer tell the client what to expect? Did the lawyer explain the client's options?

## **The Trial**

This is the most time-consuming of the three simulations. It requires considerable student preparation outside of the classroom, and the trial itself cannot be finished in less than 90 minutes or two hours. Everything will take longer than expected.

The trial requires a prosecuting team, a defending team, witnesses, and a judge. If there are several students on the teams, they may wish to divide their tasks: one makes an opening statement to the court, several others are responsible for the examination of one witness each, one makes the closing statement.

Witnesses get statements of the facts they know. A clever teacher may choose to give to the witnesses some facts which contradict each other. This will increase the lawyers' fact-finding burden, but it will also teach them how to shape the presentation most favorably for their client.

The teams of lawyers must meet outside of class time to divide responsibilities, meet with witnesses, discuss the case, and decide on a strategy.

The trial should be conducted in accordance with local court procedure to the extent practical, and the teacher should explain the procedure well before the trial begins. It is necessary to impose strict time limits on both sides.

After the trial is over, the teacher may choose to lead two open discussions. One discussion is among the members of the two teams, to talk about their strategic decisions, the choices they made in presenting the strongest case, their mistakes, their successes. The other discussion asks the spectators in the class to comment on what they saw. The teacher's role is to organize and direct the discussion, to keep it from stalling or repeating, to clarify muddled thinking. It is helpful to write the major points of the discussion on a blackboard or other display surface.

## **The Appeal**

The appeal focuses on the legal issues in the case rather than the facts. In order to make things fair, the teacher should prepare a record of the trial which contains at least one potential error of law, serious enough to justify an appeal but capable of a defense from the other side.

Only the oral argument will take place in class. The writing and preparation of the briefs will be done by the team members outside class hours.

The opposing sides will deliver both written and oral arguments. The written briefs should be the product of discussions by all the members of each team. If there is only one issue on appeal, it is best that one student present it. If there are two, they can be argued by different team members.

After the arguments are finished the teacher should lead a discussion among the students who have been spectators. It should include not only the legal quality of the presentations but also the skill displayed in making the argument – the speaker's voice, posture, gestures, emphasis. If the other students have seen the briefs and there is time to discuss them, that discussion too should include both style and content.

## VIII. CHAPTER 8: A CASE STUDY

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Case studies differ from hypotheticals because they are actual cases reported in the records of a court. There are two good reasons for using a real case rather than a hypothetical. The first reason is that the real cases are harder, because they come from reality and not theory. Hypotheticals are excellent for analyzing particular principles of law, but they do not have the complexity and subtlety – the messiness, if you will – of real life. Cases from the real world challenge students just as they challenge judges.

The second reason for studying a real case rather than a hypothetical is that it has been decided by a court. There is a record of the way a professional judge – skilled in the law, experienced, and conscientious – has evaluated the facts and applied the law. The judge’s decision gives the class more information to examine and understand.

It is important to give students the facts of the case without including the court’s decision. Only after there has been full discussion of the case should students be told how the court judged it, and the court’s decision should not be presented as the right answer or the only answer. Law is not mathematics: often there is more than one way of judging facts, and we have courts of appeal exactly because the same facts can be interpreted differently. The teacher should certainly treat the court’s decision with proper respect, but in a classroom it is never the final word.

Here are the facts of an actual case decided in the last part of the nineteenth century.

A man decides to sail his boat across the Atlantic Ocean. He finds three others to go with him, two adult males as crew members and a 14-year-old cabin boy. None of the four has the experience and skill to undertake such a difficult voyage. After ten days at sea, and far out into the Atlantic, the boat has a massive leak. It sinks within minutes, and the four barely have time to get into the small lifeboat.

The lifeboat has food and water in it, but within a few days the supply is exhausted. The three men and the boy grow weaker from hunger and thirst. After twenty days one of the men dies. The others throw his body over the side into the water.

Within a few days afterward, the three who remain are very weak from the continued lack of food and water and believe that they are near death. The two men decide that they will survive only if they kill the cabin boy and eat him. They do so.

Four days later their lifeboat is seen by a passing ship and they are rescued.

When they return home, they are understandably quiet about what has happened. But there are hints and questions and rumors, and within a few months the truth of the situation becomes clear.

This information comes to the attention of the prosecutor. What should he do?

This is a famous case, decided by a British court in the nineteenth century. It has been discussed and debated ever since. One of the reasons for that, no doubt, is because of the gruesome facts. But the case is also an excellent vehicle for interactive learning through the Socratic Method.

A class session might go like this: First a student is asked to recite the facts of the case. All of the facts are important, and the teacher should press the student until they are precise and clear. Then the questioning starts:

Q: What is the crime alleged here?

A: Murder.

Q: So the two men should not have killed the boy?

A: Correct.

Q: But if they had not, all three lives would have been lost.

A: That would have been better. Killing another is always wrong.

*RULE: Killing another human being is always wrong.*

Q: Is that rule true in war?

A: No....

Q: Is it true if someone is trying to kill you?

A: No....

Q: Is it true if you are defending the life of another?

A: Probably not.

*NEW RULE: Killing another human being may be justified in war, for self-defense, and for the preservation of life.*

Q: But weren't the two men in the lifeboat preserving their lives?

A: Yes, but that is different, because there was no immediate deadly threat to them.

*NEW RULE: Killing another human being may be justified in war, and in the case of an immediate and deadly threat, for self-defense and the preservation of human life.*

There are of course many other lines of questioning to pursue in the case, and many twists of fact which will challenge the student. With practice, you will master this technique.

*By now the teachers should be able to formulate good questions for a Socratic dialogue and should be able to vary the facts in pressing for answers. Here are some directions in which the questioning might go:*

- *The case involves the sacrifice of one life in order to save two. Is the alternative of three deaths better?*
- *What if instead of the two men agreeing to kill the boy, all three had drawn lots? There is an ancient tradition of deciding questions by lot, in the belief that fate, not man, determines the outcome.*
- *If the victim were not a boy but a grown man, would the result be different?*
- *If all three of the grown men agreed among themselves that one should die, and then voted on the victim, what result?*

- *What if one had volunteered to be killed? (He was old and likely to die soon; he faced a bleak future if he survived; he wanted to put into practice his sincere belief in personal sacrifice for the greater good.)*
- *May one defend against a charge of murder by claiming necessity – it was the boy's life or mine?*
- *If necessity is a viable defense, will it succeed on the actual facts of the case?*
- *What facts would make the defense of necessity more likely to succeed?*

*The case is Regina v. Dudley and Stephens, a famous case decided in 1885 in a British court. The two survivors had been greeted like heroes when they returned from their ordeal. Even when the facts leaked out and the prosecutor decided to charge them with murder, there was considerable public opposition to the prosecution. At trial the men claimed necessity as their defense. The court rejected the claim, found the men guilty of murder, and sentenced them to death. The verdict and sentence aroused strong feelings, both of support and opposition, and there was a passionate public debate about the case. Before the sentence could be carried out, Queen Victoria pardoned the men.*

ANNEX 1  
ADDITIONAL TEXTS  
FOR DISCUSSION



## ADDITIONAL TEXTS FOR DISCUSSION

Discussion is an interactive method of teaching which many teachers use in their classrooms. It requires little explanation, but it may be helpful to have some additional legal texts for the discussion.

Below are excerpts from the Palestinian Basic Law and the International Covenant on Civil and Political Rights. Both are in force in Palestine. The excerpts are of Articles concerned with human rights, and they are followed by brief hypothetical cases. The immediate task is to identify the Articles which apply to the hypothetical cases. This can extend into further discussion about the Articles, their scope, and the differences between the two laws.

Article 4 of the ICCPR requires particular attention. It concerns the situation which authorizes the State to change or limit – the technical term used is “derogate from” – the rights described in other Articles. That situation is precisely described: There must be (a) an emergency which (b) threatens the life of the nation and (c) has been officially proclaimed. Under that sole circumstance, States may derogate from their obligations to the extent strictly necessary, and no more. Even if all of these conditions are met, the State still may not take actions which result in discrimination on the basis of race, color, sex, language, religion or social origin. Moreover, there are Articles from which there can be no derogation no matter what the circumstances: Article 6 (right to life), 7 (prohibition of torture), 8.1 and 8.2 (slavery and servitude), 11 (imprisonment for breach of contract), 15 (*ex post facto* law), 16 (legal personhood), and 18 (freedom of thought, conscience, and religion).

ANNEX 2  
EXCERPTS FROM THE  
PALESTINIAN BASIC LAW

## **EXCERPTS FROM THE PALESTINIAN BASIC LAW**

### **TITLE ONE:**

#### **Article 6**

The principle of the rule of law shall be the basis of government in Palestine. All governmental powers, agencies, institutions and individuals shall be subject to the law.

### **TITLE TWO: PUBLIC RIGHTS AND LIBERTIES**

#### **Article 9**

Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.

#### **Article 10**

1. Basic human rights and liberties shall be protected and respected.
2. The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.

#### **Article 11**

1. Personal freedom is a natural right, shall be guaranteed and may not be violated.
2. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall specify the period of prearrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.

#### **Article 12**

Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay.

#### **Article 13**

1. No person shall be subject to any duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.

2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

#### Article 14

An accused person is considered innocent until proven guilty in a court of law that guarantees the accused the right to a defense. Any person accused in a criminal case shall be represented by a lawyer.

#### Article 15

Punishment shall be personal. Collective punishment is prohibited. Crime and punishment shall only be determined by the law. Punishment shall be imposed only by judicial order and shall apply only to actions committed after the entry into force of the law.

#### Article 16

It is unlawful to conduct any medical or scientific experiment on any person without prior legal consent. No person shall be subject to medical examination, treatment or surgery, except in accordance with the law.

Transplantation of human organs and new scientific developments shall be regulated by the law in order to serve legitimate humanitarian purposes.

#### Article 17

Homes shall be inviolable; they may not be subject to surveillance, broken into or searched, except in accordance with a valid judicial order and in accordance with the provisions of the law.

Any consequences resulting from violations of this article shall be considered invalid. Individuals who suffer from such violation shall be entitled to a fair remedy, guaranteed by the Palestinian National Authority.

#### Article 18

Freedom of belief, worship and the performance of religious functions are guaranteed, provided public order or public morals are not violated.

#### Article 19

Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law.

## Article 20

Freedom of residence and movement shall be guaranteed within the limits of the law.

## Article 27

1. Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law.
2. Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws.
3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling.

## Article 30

1. Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek redress in the judicial system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases.
2. Laws may not contain any provisions that provide immunity to any administrative decision or action or against judicial review.
3. Judicial error shall result in a remedy by the National Authority. Conditions and methods of such remedy shall be regulated by law.

## Article 31

An independent commission for human rights shall be established pursuant to a law that will specify its formation, duties and jurisdiction. The commission shall submit its reports to the President of the National Authority and to the Palestinian Legislative Council.

## Article 32

Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.

ANNEX 3

EXCERPTS FROM THE  
INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS

# EXCERPTS FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

## PART II

### *Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### *Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

#### ***Article 5***

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### ***Article 6***

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### ***Article 7***

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

### ***Article 8***

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

### ***Article 9***

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a

reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### ***Article 10***

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### ***Article 11***

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

### ***Article 12***

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

### *Article 13*

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

### *Article 14*

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### ***Article 15***

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### ***Article 16***

Everyone shall have the right to recognition everywhere as a person before the law.

#### ***Article 17***

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

### ***Article 18***

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### ***Article 19***

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

### ***Article 20***

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

### ***Article 21***

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public

order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

### ***Article 22***

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

### ***Article 23***

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### ***Article 24***

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

### ***Article 25***

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

### ***Article 26***

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### ***Article 27***

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

ANNEX 4  
HYPOTHETICAL SITUATIONS

## HYPOTHETICAL SITUATIONS

### BASIC LAW OF PALESTINE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

In discussing all of these examples, the aim is to identify the right violated (if any), the specific Articles of the Basic Law (BL) and of the ICCPR involved, and the proper procedural and substantive remedy.

1. An employer forbids his employees to join public demonstrations against the government and fires those who do. No law prohibits this practice. **BL Articles 19, 20; ICCPR Articles 2, 18, 19, 21, 22.**
2. A lawyer defends her client by quoting certain ICCPR provisions to the court. The judge says that he knows nothing of the Convention, has not been instructed by the Ministry of Justice to use it, and will apply local law. **BL Article 6; ICCPR Article 2. 3. c.**
3. The State arrests the leaders of a group which publicly urges that all religions except one be outlawed, and which has blocked the entrances to places of worship. The group defends its action as an example of freedom of expression and association. **BL Articles 18, 19; ICCPR Article 5.1: convention cannot be used to limit freedoms guaranteed by convention.**
4. An opponent of the government has put up posters throughout the city criticizing the governor of the province in which the city is located. The provincial government declares a public emergency, enacts regulations forbidding such posters, and charges the opponent with violating the regulation. **BL Articles 19, 27; ICCPR Article 4, derogation (standard for public emergency); Article 15, ex post facto law.**
5. A person accused of crime is detained in a prison with the general population of convicts. When charged with a violation of ICCPR Article 10, the State says that it has no separate facilities for detainees who are likely to be violent. **ICCPR Article 10; Article 2: obligation to make rights accessible.**
6.
  - (a) The State forbids foreign travel by people with SARS.
  - (b) The State forbids foreign travel by people with flu.
  - (c) The State forbids foreign travel by those who have in the past been convicted of a crime.

**BL Articles 2, 20; ICCPR Article 12**

7. Because of local religious conflicts, a province declares a state of public emergency. It forbids attendance at a particular house of worship, and it forbids the leaders of that house to conduct services. **BL Article 18; ICCPR Article 18 (non-derogable).**

8. A person convicted of murder and sentenced to death claims a violation of ICCPR Article 6 because he has exhausted his appeals. **(Article 6 requires an appeal procedure but does not forbid the death penalty.)**
9. “Village courts”, which are created by traditional tribal custom but not by law, have on a few occasions sentenced offenders to death and carried out the sentence. The State has not interfered in such practices. **BL Articles 6, 14, 30, 32; ICCPR Articles 2, 6.**
10. The State has declared a public emergency because of terrorist activities, including a string of bombings in major cities. One person is arrested because the authorities believe that he knows the location of the next bomb. In fact he does know the location (in a crowded market) and the time of detonation. The authorities torture him until he reveals the information, and they are able to defuse the bomb. **BL Article 13; ICCPR Article 7 (non-derogable)**
11. The State has declared a public emergency and requires all persons of African origin to be detained. **BL Article 9; ICCPR Article 4: even in emergency, no discrimination solely by race or social origin.**
12. The State has enacted legislation forbidding pregnant women to work at jobs which require heavy physical labor. A pregnant woman loses her job because of this law. **BL Article 9; ICCPR Article 3.**

ANNEX 5  
ATTACHMENT A TO THE TRAINER'S EDITION

## **ATTACHMENT A TO TRAINER'S EDITION**

### **A DEMONSTRATION OF DIFFERENT TEACHING METHODS**

We have emphasized throughout this manual that there is no single teaching method that is suitable for every occasion. The trainer can, however, show his class that some methods are more effective at involving students, and that methods which involve students result in better learning.

You will present to the class four different lessons, each one taught in a somewhat different way.

- The first is delivered only orally: the trainer reads a written passage to the class.
- The second asks the students to read as well as listen. You will give the students a handout of written material, ask them to read it, and then you will give a short lecture on the subject.
- The third involves discussion and question and answer. You will assign a short written passage, speak briefly about the subject, then lead a discussion among the students.
- The last is a hybrid: the trainer lectures briefly, then involves the student in discussion or question-and-answer.

It is best for the trainer to select subjects which in his judgment will be of interest to the class. Since the purpose of the exercise is to show the relative effectiveness of teaching methods, the subjects chosen may or may not be law-related. The written material should not exceed two pages, and the lectures should be limited to eight minutes or so.

Learning theory would predict that retention is best for subjects which the students hear about, read about, and discuss. It is the engagement of the mind that leads to learning.

If the trainer wishes to test retention rates, a short quiz the following day on all three subjects will provide useful information.

ANNEX 6  
ATTACHMENT B TO THE TRAINER'S EDITION

## ATTACHMENT B TO TRAINER'S EDITION

### HYPOTHETICAL CASES FOR DISCUSSION

The trainer will become skilled at inventing hypothetical cases which provoke discussion. In the meantime, here are some cases that can be used:

A and B agree to split the cost of a party they are giving for their families and friends. A is in charge of the invitations, B is in charge of the food, drink, and entertainment.

- B spends much more than A anticipated. A is willing to pay part of the cost, but not half. What is A's legal position, expressed as a principle of law? Does B have a remedy? If he does, what is the legal principle that supports it?
- A forgets to invite the mayor of the town. The mayor is insulted, and he gets back at A and B by blocking a license that B needs for his business. Can B claim against A? On what principle?

A merchant telephones his regular fruit supplier and orders 50 kilos of oranges. The supplier agrees, but he delivers only 30 kilos, and about 10% of them have been damaged in transit. From their past experience in business with each other, both the merchant and the supplier know that the 10% damage figure is normal.

- Is the merchant obliged to pay for the oranges? Why? Why not?
- If he must pay, then for how many – 50 kilos, 30 kilos, 27 kilos, some other amount?
- May the merchant require the supplier to find and deliver the additional 20 kilos?
- May he do so even if there has been an unexpected orange shortage, and the supplier can find oranges only at twice the normal price?

A store owner decides to use a new kind of floor wax in his store. The company that makes the wax advertises it as "Just what you need!" The morning after the wax has been applied to the floor, a customer slips and breaks his arm.

- Is the store owner liable to the customer?
- Is the manufacturer liable to the store owner? to the customer?
- Was it reasonable for the store owner to rely on the manufacturer's advertising? What if the ad had said, "Safe underfoot in all conditions"?

Three friends rent a boat and go fishing. None is experienced on the water. A storm comes up, the boat capsizes, and one of the three is drowned.

- Does the family of the drowned man have a claim against the other two?
- Does anyone have a claim against the person who owns the boat and rented it to the three fishermen?
- What if the boat capsized because one of the three fishermen leaned over the side to pull up the fish he had caught? Does it matter which one that is?
- What if they were not friends, had never met before, and agreed to share the boat only because no others were available at the time?

A man builds a garage next to his house. Neither he nor his neighbor realizes that the land on which the garage was built actually belongs to the neighbor. When they discover the mistake,

- Who owns the garage?
- Can the neighbor require the builder to tear the garage down?
- Can the neighbor use it for his own car?
- Can the neighbor charge the builder rent for the use of the land?
- What are the legal principles behind your answers?

Assume the same mistake about the ownership of the land. A man buries a valuable vase in the ground in order to protect it from thieves. When it is discovered that the neighbor owns the land where the vase is buried,

- Who owns the vase? Why? On what principle?

Assume the same mistake, but on a much larger scale. When the mistake is discovered, a hospital has been built on the land and is serving patients.

- Who owns the hospital?
- Can the true landowner require that the hospital be torn down?
- Does it make a difference that the hospital serves an important public purpose?
- How is this case distinguished from the one with the garage? The one with the vase? What are the legal principles involved?

ANNEX 7  
ATTACHMENT C TO THE TRAINER'S EDITION

## **ATTACHMENT C TO TRAINER'S EDITION**

### **SIMULATION MATERIALS**

The following are materials for a simulation. They supply an example of what is usually required for an effective presentation. You may wish to change these materials in order to suit your time requirements and the level of sophistication of the law professors.

**THE BARE FACTS** (to be told to all participants EXCEPT the lawyers, who must discover them by investigation)

Hamid was a member of the Parliament in Country X. He has just lost the last election and has returned to his work as a farmer.

Ghassan is a university professor who teaches chemistry. He lives in the same village as Hamid. Just before the election in which Hamid was defeated, Ghassan wrote a newspaper article in which he described Hamid as "an example of the worst in politics, a man who does not deserve to belong to the governing body of any society. He has misled the people more than once."

Hamid has brought suit against Ghassan for libel. He claims 500,000 NIS in damages to his reputation, his livelihood, and his mental health.

### **THE LAW**

The elements of a claim of libel are:

1. a statement
2. of fact
3. made to at least one other person
4. which is false
5. and which causes damage.

People in public life must also prove actual malice -- evil intent -- by the person who made the statement. This is because they have chosen to make their lives more public than others, and because they have a greater opportunity than the average person to defend themselves publicly.

**ADDITIONAL INFORMATION** (to be given only to the person named)

### **HAMID'S FACTS AND BELIEFS**

He did not read the newspaper article until after the election, which he lost by only twenty votes. He has always tried to conduct himself honorably, and he believes that those who have attacked him in the past have done so for political reasons.

After the election he heard people laughing behind his back and believes that they did so because of Ghassan's article.

His job in Parliament paid well, and his income will be reduced by half when he relies on farming alone.

All of this has caused him serious emotional distress and required him to consult his family doctor. The doctor told him to rest and think about other things.

### **GHASSAN'S FACTS AND BELIEFS**

He believes that in a free society he is entitled to his opinion and entitled to express it, and he believes that freedom of expression is even more important when an election is at stake. In fact he knows many, many bad things about Hamid, but he chose not to reveal them in the newspaper article.

Since the election Ghassan has seen Hamid in the local café with his friends. All of them appeared to be having a good time.

### **WITNESS 1**

He is a colleague of Ghassan at the university. He resents Ghassan's professional success, which is greater than his own. Two years ago he overheard Ghassan saying, "That Hamid! I'm going to get him sooner or later!"

### **WITNESS 2**

Many years ago Hamid's father cheated him, he believes, out of some land. The land was added to the property which Hamid's father already owned, and it is part of the farm which belongs to Hamid today. He once asked Hamid to return the land, and Hamid just laughed at him. Since that time and for that reason he has had nothing to do with Hamid, but he has heard many stories from reliable people about Hamid's bad record as a member of Parliament.

### **THE TASKS:**

Members of the class should be assigned the four parts listed above, and also the roles of prosecuting and defending attorney. If the class is large, create a prosecuting and defense team of three or four people. If there is to be a simulated trial, one person – perhaps the trainer – should be the judge.

The parties and the witnesses should see only the information known to them or believed by them. They are permitted to make up other facts and beliefs, so long as they do not contradict or nullify the information that has been given to them. Hamid does not have to talk to Ghassan's lawyer if he does not want to, and Ghassan does not have to talk to Hamid's lawyer.

At the beginning, the lawyers see only the statement of the law. They will get additional information by asking questions.

**CLIENT INTERVIEW:** You may wish to begin with the client interview. The lawyer's job is to get as many facts as he can from his client (and later from witnesses), to apply the law to those facts, and to advise his client. The participants should act out the interview before the class.

***TRIAL:*** If there is to be a simulated trial, preparation is absolutely necessary. The prosecuting and defending teams should be expected to gather their facts and prepare their presentations outside of class. In a training session for law teachers, two days should be long enough for that.

The trainer must control the trial. Each side should have no more than 45 minutes in which to make a statement of the case, present the proof, and draw a conclusion for the judge. The time can be divided as each side chooses, but time limits must be observed with care.

***APPEAL:*** The trainer should prepare a summary of the facts presented at the trial. The appellate lawyers (or teams) will make legal arguments to the High Court. These should last no more than 15 minutes each.

***DISCUSSION, DISCUSSION, ALWAYS DISCUSSION:*** After each simulation the trainer should engage the participants and the spectators in discussion about what they have seen. This is a very important part of the process. It is the opportunity for all to learn how things went well, how they went badly, what could have been done differently. Much learning takes place in this discussion.