

RECORD EXPLAINER August 21, 2026

What Did Israel's Supreme Court Decide in the Elon Moreh Case?

Israel's Supreme Court struck down Order of Possession no. 16/79 on 22 October 1979, five justices to none. It did not rule settlement unlawful in principle.

LAW AND COURTS Supreme Court High Court Of Justice Hague Regulations Requisition



About 700 dunams at Rujeib were requisitioned for the settlement of Elon Moreh in June 1979, and Israel's Supreme

Court ruled the order invalid on 22 October 1979, five justices to none, as to the roughly 125 dunams the petitioners owned. The Court did not hold that requisition for a civilian settlement is unlawful in principle. It held that this requisition failed the test in Article 52 of the Hague Regulations on the facts, because the decision was taken by the political level and the military opinion followed it.

Figure	What it counts	Period
5 to 0	The panel's decision to make the order nisi absolute, on a bench of five	Judgment of 22 October 1979
17	Palestinian petitioners, registered owners of land at Rujeib near Nablus	Petition of 1979
about 125 dunams	The petitioners' registered plots, the land the annulment reached	Petition of 1979
about 700 dunams	The territory Order of Possession no. 16/79 covered	Order signed 5 June 1979
30 days	The compliance window the Court gave respondents 1 to 4	From 22 October 1979
Order no. 17/79	The access-road order, which drew no order because no petitioner held rights in the road land	1979

Source: Israeli Supreme Court sitting as High Court of Justice, HCl 390/79 Dweikat v. Government of Israel, judgment of 22 October 1979.

The Court did not rule settlement on private land unlawful in principle

Deputy President Landau held that “possession of privately owned land for the purposes of a civilian settlement is potentially justified under Article 52 of the Hague Regulations.” Deputy President

Landau then stated the condition: it is justified “when it is proved, according to the facts of the case, that military needs were those which in practice brought upon the decision to build a civilian settlement at the relevant site.”

The petition succeeded because that condition was not met here, on the record before Israel’s Supreme Court. A reader looking for a ruling that settlement is unlawful will not find one in this judgment, and the Court decided against an earlier judgment, in the Beit El case of 1978, which had upheld a requisition for a civilian settlement on the same Article 52 reasoning and which this judgment distinguished on its facts rather than overruled.

Israel’s Supreme Court found the political level decided first

Israel’s Supreme Court found the dominant purpose decisive: where a power is exercised for two or more purposes and only one is permitted, the legality of the act turns on which purpose dominated. Deputy President Landau found that the professional opinion of the Chief of the General Staff “would not, in itself, have led to the decision to build the settlement of Elon Moreh, but for further reason that was the propelling force behind the decision”, and that both the Ministerial Committee for National Security Affairs and the cabinet majority “were determinatively influenced by reasons stemming from a Zionist worldview as to the settling of the entire Land of Israel.”

The sequence was what decided it. In the High Court of Justice’s words, “the process was inverted: the initiative came from the

political echelons, which then reached out to the Chief of the General Staff for his professional opinion.” The Chief of the General Staff stated in answer to the High Court of Justice that he “did not approach the political echelons with a proposal to build the settlement in Elon Moreh”, and that no preexisting plan for a civilian settlement on the site had been approved by a competent military authority.

Article 52 covers the army’s needs, not a state’s general needs

Deputy President Landau held that “the military needs discussed in this article cannot be construed to include, by any reasonable interpretation, national security needs in their broad sense.” He grounded the reading in Oppenheim, that requisitions under Article 52 may be made only so far as they are really necessary for the army of occupation and “must not be made in order to supply the belligerent’s general needs.”

Justice Witkon held that the burden rests on the respondents, that the military commander’s assertion carries no presumption, and that a sincere belief is not enough: “We need not be convinced of the sincerity of the consideration, but rather of its correctness.”

A permanent settlement cannot rest on a temporary requisition, Landau held

Israel’s Supreme Court stated that one of Deputy President Landau’s reasons held “even without regard to the other reasons I

have so far detailed”: a permanent settlement cannot rest on a temporary requisition. A military administration, Deputy President Landau held, cannot create facts on the ground for its military needs that were “in advance intended to exist past the end of the military rule in that area, when the fate of the territory after the end of the military rule is yet unknown.”

The Court expressly left Article 49(6) undecided

Article 49(6) of the Fourth Geneva Convention, the provision most often raised about settlements, was not decided by Israel’s Supreme Court. Deputy President Landau held that the case should not be discussed in its terms, because as treaty-based international law it “is not binding law in an Israeli Court”, while the Hague Regulations bind the military administration as customary international law.

Justice Witkon held it open in the other direction. He stated that it is a mistake to think the Geneva Convention does not apply, that it does apply though it is not justiciable in that Court, and that whether voluntary settlement amounts to a transfer under Article 49(6) “is not easy, and as far as we know, it has yet to be resolved in international case law.” Justice Witkon closed by stating that his refraining from a determination “must not be interpreted as support for either of the parties.”

The annulment reached about 125 dunams, not the whole 700

Order of Possession no. 16/79 covered about 700 dunams. The petitioners' registered plots came to about 125 dunams, and Israel's Supreme Court ruled the order invalid "in terms of the lands owned by the petitioners", ordering respondents 1 to 4 to vacate the civilian settlers, the structures and any object brought onto that land. Order no. 17/79, which covered the access road, drew no order at all, because none of the petitioners held ownership rights in the road land.

The 30 days the High Court of Justice granted is a compliance window running from the judgment, not a record of when anything happened on the ground.

The State-land rule is a government resolution, not this judgment

The words "State land" appear nowhere in the judgment. The rule that Israeli settlements are to be established only on State land is a government resolution taken after this ruling, and the Prime Minister's Office published the record of it in March 2005, and that opinion reports the 1979 resolution as following the Elon Moreh decision. A page that needs the rule cites the resolution; a page that needs the holding cites the judgment.

Where these figures come from

Every figure and quotation on this page comes from the judgment in HCJ 390/79, in the English translation published by the Cardozo Israeli Supreme Court Project from a Hebrew version prepared by Nevo Press. There is no official English text: the Judicial Authority publishes none for a 1979 judgment, and a second English translation exists at 19 International Legal Materials 148, supplied to that journal by Israel's Ministry of Foreign Affairs. The Hebrew is the operative text.

The judgment is dated 1 Cheshvan 5740, which is 22 October 1979. It decides one requisition on its own facts and carries no settlement count, settler population or land-area series. The later line on outposts built on registered private land runs through the Migron and Amona judgments of 2011 and 2014, which are separate records.

Questions

What did the Court decide in the Elon Moreh case?

Israel's Supreme Court ruled Order of Possession no. 16/79 invalid as to the petitioners' plots on 22 October 1979, five justices to none, and ordered the civilian settlers and structures removed from that land within 30 days.

Did the Court rule that settlements are illegal?

No. Deputy President Landau held that requisition of private land for a civilian settlement "is potentially justified under Article 52 of

the Hague Regulations”, and the petition succeeded on the facts of this requisition.

What was the test the requisition failed?

The dominant purpose. Israel’s Supreme Court found the decision was taken by the political level, with the military opinion sought afterwards, so the military consideration was subordinate to a political one.

Who brought the case?

17 Palestinian petitioners, the registered owners of land at Rujeib, near Nablus.

How much land did the ruling cover?

About 125 dunams, the petitioners’ registered plots. The order itself covered about 700 dunams.

Why did the access-road order survive?

None of the petitioners held ownership rights in the road land, so Order no. 17/79 drew no order.

What does Article 52 of the Hague Regulations permit?

Requisition for the needs of the army of occupation. Landau held those needs cannot be read to include national security needs in their broad sense.

Who carried the burden of proof?

The respondents. Justice Witkon held that the commander's assertion carries no presumption and that sincerity is not enough, only correctness.

Did the Court decide the Fourth Geneva Convention question?

No. Deputy President Landau held Article 49(6) is treaty law and not binding in an Israeli court; Justice Witkon held the Convention applies but is not justiciable there, and expressly declined to determine the transfer question.

Was the decision unanimous?

Yes, five justices to none. Deputy President Landau wrote the leading opinion, and Justices Witkon and Bechor wrote concurrences.

What was the second, independent ground?

That a permanent settlement cannot rest on a temporary requisition, because a military administration cannot create facts intended to outlast military rule.

Does the judgment say settlements may only be built on State land?

No. That rule is a government resolution taken after the ruling, recorded in the Prime Minister's Office opinion of March 2005.

Is there an official English version?

No. The text used here is the Cardozo project's translation from a Nevo Press Hebrew version, and a second appears at 19 International Legal Materials 148, which that journal records as supplied by Israel's Ministry of Foreign Affairs, a party to the case. The Hebrew governs.

Sources

- Israeli Supreme Court sitting as High Court of Justice, 1979. HCJ 390/79 Dweikat and others v. Government of Israel, judgment of 22 October 1979.
- Prime Minister's Office of Israel, 2005. Summary of the Opinion Concerning Unauthorized Outposts.
- Israeli Supreme Court sitting as High Court of Justice, 2011. HCJ 8887/06 al-Nabut v. Minister of Defense, judgment of 2 August 2011.
- Israeli Supreme Court sitting as High Court of Justice, 2014. HCJ 9949/08 Hamad v. Minister of Defense, judgment of 25 December 2014.



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Every figure on this page names the body that published it and the period it covers. Where a figure is a party's own count of its own activity, the page says so and states the standard that

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