CONTENTS

	Preface	page xi
	Table of cases	xiv
	Table of treaties	xxii
	Table of UN Resolutions	xxix
	List of abbreviations	XXX
1.	The general framework	1
	I. Belligerent occupation as a natural phenomenon in war	1
	II. Belligerent occupation and the legality of war	2
	III. The strata of the international law of belligerent occupation	4
	A. Customary international law	4
	B. The Hague Regulations	4
	C. Geneva Convention (IV)	6
	D. Additional Protocol I	7
	IV. A brief historical outline	8
	A. The past	8
	B. The last decades	10
	V. The case of Israel	12
	A. The Sinai Peninsula and the Gaza Strip	13
	B. The West Bank	15
	C. The 'Oslo Process' Accords	16
	D. East Jerusalem	18
	E. The Golan Heights	19
	F. The general applicability of Geneva Convention (IV)	20
	G. Judicial review by the Supreme Court sitting as a High	
	Court of Justice	25
	H. The domestic applicability of Geneva Convention (IV)	28

2.	The legal nature and basic principles of belligerent	
	occupation	31
	I. Conditions for the establishment of a belligerent occupation	
	regime	31
	A. Belligerent occupation and inter-State armed conflicts	31
	(a) The linkage of belligerent occupation to war	31
	(b) Occupation following unconditional surrender	32
	(c) Non-international armed conflicts	33
	B. The non-consensual nature of belligerent occupation	35
	(a) Coercion as the key to belligerent occupation	35
	(b) Occupation based on agreement following war	36
	(c) Consensual occupation of Allied territory during war	37
	(d) Occupation by UN forces	37
	C. The distinction between belligerent occupation and	
	invasion	38
	D. The indispensability of effective control	42
	E. Some ancillary comments	46
	(a) Jurisdictional rights	46
	(b) Outlying land areas	46
	(c) Maritime areas and air space	47
	(d) Proclamation	48
	(e) Several Occupying Powers	48
	II. Sovereignty and belligerent occupation	49
	A. Sovereignty and non-annexation	49
	B. Transfer of title over an occupied territory	51
	C. Nationality and allegiance	52
	III. The military nature of the government in an occupied territory	55
	A. The administration of an occupied territory	55
	B. The overall responsibility of the Occupying Power	57
	C. Self-government	57
	D. The employment of local officials	59
	IV. Protected persons in occupied territories	60
	A. The scope of protection D. The treatment of schotours	60 63
	B. The treatment of saboteurs V. Protecting Powers	63 64
	A. The theory	64
	B. The practice	66
	D. The practice	00
3.	Human rights and belligerent occupation	67
	I. The international law of human rights	67
	II. The application of human rights law in occupied territories	69

	CONTENTS	vii
	III. Derogations from obligations to respect human rights	71
	A. Derogations and war	71
	B. Procedural and substantive requirements	73
	IV. Non-derogable human rights	74
	V. Built-in limitations of human rights	77
	A. Explicit limitations	77
	B. Implicit limitations	78
	VI. Balance between competing human rights	80
	VII. The interaction between the law of belligerent occupation and	
	the law of human rights	81
	A. Convergence and divergence	81
	B. The advantages of the law of belligerent occupation	82
	C. The advantages of human rights law	84
	D. The lex specialis rule	85
4.	The maintenance of law and order in occupied	
	territories	89
	I. Hague Regulation 43	89
	II. The structure and scope of Regulation 43	90
	III. Restoring and ensuring public order and life under	
	Regulation 43	91
	IV. Individual resistance to occupation	94
	A. Saboteurs and prisoners of war	94
	B. Levée en Masse	96
	V. Riot control	98
	VI. Hostilities in occupied territories	99
	A. The duality of hostilities and occupation	99
	B. Direct participation in hostilities	101
	C. 'Human shields'	105
5.	Legislation by the Occupying Power	108
	I. The meaning of the phrase 'les lois en vigueur'	108
	II. The meaning of the phrase 'empêchement absolu'	109
	III. Article 64 of Geneva Convention (IV)	110
	IV. The specific categories of necessity	112
	A. Security legislation	112
	B. Repeal of legislation inconsistent with Geneva	
	Convention (IV)	113
	C. Legislation geared to the needs of the civilian population	115
	D. Other legislation	116
	V. Prolonged occupation	116

	VI.	The litmus test	120
	VII.	Institutional changes	123
	VIII.	Taxation	125
	IX.	Limitations of the legislative power	128
	X.	Settlers	130
6.	The	judicial system in occupied territories	132
	I.	The double-tiered system of courts	132
		A. Local courts	132
		B. Military courts	136
		C. Concurrent jurisdiction	139
	II.	The right to a fair trial	141
	III.	Capital punishment	143
7.	Protection of the civilian population under belligerent		
	occu	pation	146
	I.	Freedom from genocide and the right to life	146
		A. The prohibition of genocide	146
		B. The individual right to life	148
	II.	Ensuring the survival of the civilian population	148
		Respect for the rights of protected persons	151
		The prohibition of hostage-taking	151
	V.	Collective penalties and reprisals	154
		A. Collective penalties	154
		B. Demolition or sealing off of houses	156
		. C. Reprisals	159
	VI.	Deportations and transfer	160
		A. Voluntary departure, deportation and relocation	160
		B. The Israeli practice	162
		C. Individual versus mass deportations	164
		D. 'Exclusion' versus deportation	166
		E. The State of nationality versus other countries	168
		F. Occupying versus occupied territory	169
	VII.	Evacuation	171
	VIII.	Internment (administrative detention)	172
	IX.	Assigned residence	176
	X.	Compulsory work	178
8.	Special protection in occupied territories		
	I.	Refugees	180
	II.	Women and children	183
		A. Women	183
		B. Children	183

	CONTENTS	ix
	III. Medical services	187
	IV. Civil defence	190
	V. Humanitarian relief	191
	A. Relief consignments	191
	B. Relief personnel	193
9.	Destruction and pillage of property in occupied	
	territories	195
	I. Destruction of property	195
	A. The general prohibition	195
	B. Special protection	199
	C. Demolition of a house as a sanction	202
	II. Pillage	207
10.	Seizure and use of property in occupied territories	210
	I. General observations	210
	A. The prohibition of spoliation	210
	B. The distinction between public and private	
	property	211
	C. The temporal problem	212
	II. Public property	213
	A. Immovable property	213
	B. Movable property	218
	C. Extraordinary property	220
	(a) Property of municipalities	220
	(b) Cultural property	220
	(c) Medical property	221
	(d) Civil defence matériel	223
	(e) Submarine cables	224
	III. Private property	224
	A. Immovable property	226
	B. Movable property	227
	(a) Ordinary property	227
	(b) Munitions de guerre and related items	232
	IV. The right of angary	236
11.	Other major issues relating to belligerent occupation	n 238

238

240

242

I. Settlements

A. Geneva Convention (IV)

C. The Judgments of the Supreme Court of Israel

B. The Israeli settlements

CONTENTS

	II.	The security barrier	247
		A. The setting	247
		B. The Beit Sourik case	248
		C. The Advisory Opinion of the International Court of Justice	250
		D. The Alfei Menashe case	255
	III.	Reunion of families	259
	IV.	Political activities and elections	264
	V.	Freedom of the press	265
	VI.	Freedom of religion	267
	VII.	Human dignity	268
12.	The	termination of belligerent occupation	270
	I.	The complete end of belligerent occupation	270
		A. Treaty of peace	270
		B. Prescription	271
		C. Withdrawal from an occupied territory	272
		D. Binding decision by the UN Security Council	273
	II.	Partial end of belligerent occupation	274
		A. Agreement between the parties	274
		B. The tide of hostilities	276
		C. Unilateral decision of the Occupying Power	276
	III.	Post-hostilities belligerent occupation	280
	IV.	The consequences of the termination of occupation	283
	Cor	nclusion	286
	Inde	ex of persons	288
		ex of subjects	293