

WEJDAN HLEIHEL, KARIN CARMIT YEFET & IDO SHAHAR

MUSLIM WIVES' MAINTENANCE BETWEEN THE
ISRAELI SHARI'A COURT AND THE FAMILY AFFAIRS
COURT: A CONSERVATIVE REVOLUTION IN LIBERAL
CLOTHING

The tail end of 2001 witnessed a watershed in the Israeli legal system. Amendment No. 5 to the Family Court Law cracked the juridical monopoly held by the Shari'a and Ecclesiastical Courts, and granted a civil instance concurrent jurisdiction over the personal status affairs of Israel's Muslims and Christians (not including marriage and divorce). This legislative reform was a jurisdictional change that preserved the substantive religious law applying to personal status affairs. This gave rise, however to a normative hybrid, which – for the first time in Israeli legal history – requires civil judges to apply non-Jewish religious law. Amendment No. 5 was meant, first and foremost, to aid women and provide them with a statutory right to choose between a religious tribunal that is perceived as patriarchal and conservative, and a civil tribunal, which is perceived as pro-women as well as an agent of gender equality.

Surprisingly, despite its historical importance and the fact that two decades have passed since it came into effect, no systematic study examining the 'civil transformation' of Islamic law in the family courts or its effects on the status and rights of women has been published to date. This article seeks to fill this lacuna through a comparative and integrative examination of the case law on wife maintenance in civil and religious tribunals.

The study concludes that the historically momentous statutory triumph was not as beneficial to Muslim women as envisioned by the women's organizations that initiated it: while Shari'a courts exhibit reformist tendencies and advance novel, pro-women and gender-sensitive interpretations of Islamic law, family court rulings tend to harm Muslim women and compromise their rights and interests. This tendency arises

from a combination of a patriarchal and conservative interpretation of the law that evinces a static, orientalist and androcentric approach to Islamic Law on the one hand, and a liberal-egalitarian approach that ignores the circumstances in which Israeli Muslim women live on the other hand. The proposed systematic comparison of the religious and civil instances destabilizes the Eurocentric and binary scholarly understandings of these tribunals, and provides us with sobering insights on the covert legal mechanisms that reproduce and reinforce a patriarchal social order and subordinate women who belong to religious and ethno-national minorities.

RONIT LEVINE-SCHNUR

PROPERTY RIGHTS IN THE OCCUPIED WEST BANK: RECOGNITION PROCEDURES, SUBSTANTIVE NORMS OF RECOGNITION, AND RULES OF PROTECTION

This Article presents a conceptual framework for evaluating the strength of a system of private property rights. This framework is comprised of three dimensions: (1) recognition procedures, namely, the processes required so that the person whose right is recognized based on these procedures is considered a legal owner. (2) The substantive norms of recognition of a private right, that is, the material rules a plaintiff claiming a property right must comply with in order to be the one who will be recognized as the right-holder at the end of a recognition procedure. (3) The rules for protecting a recognized right, governing the scope of protection granted to the right-holder against governmental and private takeovers through doctrines such as expropriation for public purposes, market overt or adverse possession. The framework developed in this article is then employed to examine recent developments in case law and policies that govern each of these dimensions concerning private rights in the Occupied West Bank.

In particular, the article analyzes the political intention to renew the process of settlement of title for registering rights in land in the area. It also discusses three recent Israeli Supreme Court decisions: one regarding the status of land that has been left uncultivated. The second regarding the arrangement of a “kind of market overt regulation” regarding transactions of the government property commissioner in the area, and the third ruling is the repeal of the “Regularization Law” which sought to “regulate” construction on private land in the area by expropriating the land and declaring it government property.

ASAF ECKSTEIN & KOBI KASTIEL

APPOINTMENT OF DIRECTORS IN ISRAEL: THEORY, EVIDENCE, POLICY

Corporate directors' elections lie at the core of corporate governance. The board of directors is tasked with the mission of shaping and overseeing corporate policies and operations. Hence, the importance and relevance of research that explores how directors are nominated and elected .

Using a hand-collected dataset of director elections in Tel-Aviv 125 companies between 2015-2018, we examine how directors are elected in public companies listed in Israel. We provide novel and unique data on the voting patterns for director elections and explore the role played by Israeli institutional investors and proxy advisors in the context of director elections.

ADAM HOFRI-WINOGRADOW & RAM RIVLIN

THE USE OF TRUSTS IN THE MATRIMONIAL PROPERTY
CONTEXT: CHALLENGES AND SOLUTIONS

Trusts are an important tool for undermining the purpose of Israeli matrimonial property law: an equal division of spouses' property following the end of their marriage. Trusts impede such division in two key ways. One way is by spouses holding their property not as owners, but as beneficiaries under trusts created by persons who are not parties to the marriage. The other way is by spouses creating trusts for various beneficiaries, including the settlor, and subjecting matrimonial property to those trusts. The possibility of the identities of trust beneficiaries and the extent of each beneficiary's entitlement staying undetermined for long periods intensifies the potential of trusts to serve to undermine matrimonial property law. Israeli courts that have encountered such use of trusts have permitted it without sufficient discussion, despite its conflict with other legal obligations. The present article is the first in Israeli legal literature to address this issue comprehensively. We describe the problematic potential of trusts in this context, delineate the boundaries of the legitimate use of trusts for changing the results of property division between ex-spouses, and suggest legal solutions for blocking illegitimate use of trusts to undermine matrimonial property law. We believe that a spouse's beneficial entitlement under a trust created by a non-partner should be subject to property division so long as it can be seen as consideration for acts and choices by the beneficiary during the relationship. When a spouse's beneficial entitlement under a trust created by a non-partner is donative in nature, rather than consideration for some act or choice, it may be subject to specific sharing between the beneficiary and his/her spouse. We propose strategies for valuing spouses' beneficial interests the extent of which remains undetermined when spouses' property is divided, as well as for valuing the interests of spouses who are candidates for beneficiary status but have not yet been named beneficiaries. As for trusts that a spouse has created during the relationship, we propose rules for

distinguishing trusts that cohere with matrimonial property law and thus trump the rights of the settlor's spouse, from trusts that contradict matrimonial property law and are trumped by that law. We conclude with a series of remedies intended to correct the consequences of a trust created by a spouse, funded with matrimonial property, in order to re-establish the results that would have been obtained under matrimonial property law had the trust not been created.

CHAGGAY YAKOBI

CULTURAL CONSENT? ON INFORMED CONSENT,
CULTURAL COMPETENCY AND COORDINATION
(FOLLOWING *PLONIT V. CLALIT MEDICAL SERVICES*)

Should medical treatment that was not adapted to a patient's personal and cultural characteristics be considered medical malpractice? This question was discussed in *Plonit v. Clalit Medical Services* (hereinafter: *Plonit*), and the Supreme Court firmly responded in the negative. This note analyzes the decision on a number of levels. First, at the highest level of abstraction, the note argues in favor of adapting medical care to a patient's personal and cultural characteristics and the need to support this obligation with tort sanctions—under a cultural adaptation obligation, which I will develop in the note. This concept is based on the vast literature on Cultural Competency, and on some features of medical practice. Second, working under the assumption that this cultural adaptation obligation should not automatically apply in every case, the note examines the specific aspect of medical practice that arose in *Plonit*—namely that of informed consent and the physician's obligation to disclose information. The note will discuss considerations for and against demanding cultural adaptation in medical disclosure, including a critical analysis of the reasons that form the basis of the Court's decision in *Plonit*. I will argue that the informed consent doctrine as well as policy considerations support recognition of an obligation to adapt medical disclosure to a patient's personal and cultural needs. Finally, on a practical level, the note lays out a preliminary outline for the cultural adaptation obligation. It suggests considerations and parameters that should be examined in establishing whether or not the cultural adaptation obligation arose in a particular situation and if its violation constitutes medical malpractice.

YONADAV SAMET & IDO SCHLESINGER

A CAMEL THROUGH THE EYE OF A NEEDLE:
RE-EXAMINING (THE) ONLINE CAMPAIGN
ADVERTISING LAW

The meteoric rise of the Internet has introduced a large variety of questions for the legal world, so much so that it is difficult to 'keep pace' with the technological world. One of the most significant outcomes of this phenomenon is the transition of political campaigning from assemblies and town halls to the virtual world. This article critically examines the applicability of Israeli electioneering law to the Internet, considering various approaches in the literature to the relationship between law and the Internet. We highlight the unique characteristics of the new mode of electioneering and argue that election campaigns in the age of social media pose challenges that did not exist in classic election campaigns, in three separate realms of 'fraud'. We argue that in practice, the law in Israel has not yet internalized the dramatic upheaval that electioneering has undergone, and that a paradigm shift is needed regarding relations between electioneering law and the Internet. We utilize the theoretical discussion and conceptual classification into three realms in order to draw up a number of guidelines for the regulation of freedom of expression in the Internet during an election period. Finally, we offer two concrete proposals and examine them using the guidelines suggested in the article.