EYAL ZAMIR

A CONTINGENT FEE OF 100%

A seller filed a lawsuit for liquidated damages against a buyer who breached a sales contract. The defendant and her attorney agreed orally that the attorney's fee would be the difference between the sum claimed by the seller and the sum she would actually have to pay. The court of first instance accepted the attorney's claim for that fee, the court of appeal reduced the fee to a certain extent and the Supreme Court of Israel rejected a petition for a second appeal.

This Note presents the economic, behavioral and legal background of contingent-fee arrangements. It claims that, in essence, the agreement in the present case provided for a fee rate of 100% of the client's benefit from the legal representation. It further argues that this agreement should have been deemed unenforceable because it was unfair and incompatible with the attorney's fiduciary obligations. Beyond this particular case, the Note criticizes the regulation of contingent fees in Israel. It argues that the law should require that such agreements be made in writing and calls attention to several deficiencies in the statutory provision authorizing the Bar Association to supervise the fairness thereof.

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MICHAEL BIRNHACK

ONLINE EXPOSURE, LEGAL EXPOSURE: PRIVACY AND THE PUBLICATION OF COURT CASES

The way in which judicial opinions are distributed is changing: instead of physical copies to subscribers, most decisions are made available online. This change is the principle of open courts, but it increases the online exposure of parties and their personal data. The socio-commercial-technological change raises a normative question: should we prefer openness to privacy? This Article examines the underlying purposes of the two opposing principles, with examples from Israeli law. The Article criticizes the Israeli balancing framework as inadequate for the complexities and principles at stake. Instead, it frames the issue as one of informational process. This requires taking into account additional players, such as lawyers, judges, the judicial administration, online commercial data services, search engines and others. The informational framework further enables us to seek additional legal, technological and organizational solutions. For example, among other things, the Article proposes that lawyers should have the duty to inform their clients of the expected online exposure, it promotes the use of a special public/private form at the outset of the procedure and a change in the distribution of cases.

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GUY PESSACH

THE ISRAELI SUPREME COURT AND THE POLITICS OF MEMORY: THE VIENNA COMMUNITY ARCHIVE DECISION AND BEYOND

In a decision from 2015, the Israeli Supreme Court determined that the Vienna Jewish Community is not entitled to restitution of the community's archival materials that were deposited in the Israeli Central Archive for the History of the Jewish People. The purpose of this article is to analyze this decision from the perspective of cultural property law.

Although, formally, the decision dealt with the interpretation of private law doctrines (e.g. the Israeli Rental and Lending Law, 1971), in substance, the decision was about the politics of collective memory. The decision to deny the Vienna Jewish Community restitution of its archival materials was a decision to deny the community's attempt to rebuild its enduring collective identity, preferring, in its place, the Zionist ethos of Israel as the sole repository of any Jewish cultural heritage. The article argues that from a cultural property law perspective, the decision could and should have been constructed differently, acknowledging and enforcing the symbolic ramifications of returning the archive materials to their origins in the Viennese Jewish Community.

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ELI BUKSPAN & EYLON YADIN

CORPORATE LAW AND FAMILY BUSINESSES

Family-owned companies are a growing part of the regional and global economy. Although they hold a place of honor in academic literature in fields such as management and finance, they are quite absent in the field of law. In addition to ownership and control interests, there are also family considerations in these businesses that are not necessarily economic or rational which both positively and negatively challenge the assumptions underlying accepted corporate analysis. These issues require reexamination. In this article, we first seek to lay out a conceptual and theoretical basis for a legal discussion of the complex world of private family companies. Second, we seek to examine the suitability of "ordinary" corporate law and prevailing theory for family companies, particularly private companies. We present the familiar Agency Theory along with the Stewardship Theory, which we expect to have a persuasive and significant impact on the functioning and performance of family companies. Third, we examine the lack of systematic corporate law treatment in Israel of the family organization and those who function on its behalf. Fourth, we propose a new model for measuring the intensity of family control in companies subject to judicial review, and suggest voluntary adoption of professional and independent counseling mechanisms that will improve their management and minimize their legal exposure. In our opinion, this model will be of use to family firms, especially those which are a priori susceptible to significant conflicts of interest because of overlapping family, business and ownership interests. Our purpose is to enrich and refine the conventional discussion of corporate law and improve the reciprocal relationship between ordinary companies and family companies, both theoretically and practically.

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ADI LIBSON

CROSS-LISTING AS AN ANTITAKEOVER MECHANISM: IMPLICATIONS FOR THE INTERPRETATION OF SECTION 46B OF THE SECURITIES LAW

This Article offers a novel aspect of the phenomenon of cross-listing, namely the possibility of utilizing cross-listing as an antitakeover mechanism. The cross-listing of a potential target increases the cost of hostile takeover and thus generates a chilling effect on potential acquirers that may prevent hostile takeovers from taking place. This possibility has ramifications on the interpretation of section 46b of the Israeli Securities Law which prohibits firms with a dual stock structure from listing on the Tel-Aviv Stock Exchange (TASE) and was recently discussed in the Economic Division of the Tel Aviv District Court in Israel. The Israeli Securities Agency has adopted a broad interpretation of the section as prohibiting a firm with any anti-takeover mechanism, such as poison pills, from listing on the TASE. The question raised in *Mylan v. Perrigo* was whether this broad interpretation should also apply to foreign firms that cross-list on the TASE. The court decided to adopt a narrow interpretation for foreign firms. The decision was motivated by policy considerations, designed to ease the listing on the TASE for foreign firms in order to attract them, as a means of relieving the liquidity drought of the TASE. The Article argues, however, that the possibility of utilizing cross-listing as an antitakeover mechanism justifies the opposite conclusion based on the same policy considerations. Increasing the level of regulation, by adopting the broad interpretation of section 46b, may actually be the most effective measure for increasing the number of foreign firms that will list on the TASE.

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ILAN BENSHALOM

THE MISSING PARTNER: THE LIMITS OF JUDICIAL LEGISLATION IN TAX LAW

This article examines the law and policy considerations of partnership taxation in Israel. It explains how the case of partnership tax law, which has largely been a product of judicial law making, exemplifies the institutional limits of courts in regulating complicated tax issues.