

DANA PUGACH & EITHAN Y. KIDRON

NEW AGENTS IN CRIMINAL LAW: EXTENDING CRIME VICTIMS' RIGHTS TO CORPORATIONS

This article examines the notion of extending crime victims' rights to corporations, addressing two key developments in Anglo-American criminal law: the recognition of corporations as parties engaged in criminal proceedings and the acknowledgment of human victims in the legal process. Despite the rising awareness of crimes targeting corporations, the normative framework concerning corporations as victims of crime is rarely discussed.

This article explores the normative issues entailed in extending these rights to corporations and examines theories of the nature and legal identity of corporations to justify granting them victim status. While there are grounds for granting victims' rights to corporations based on prevailing approaches, these rights may differ from those granted to human victims. This paper aims to deepen our understanding of the status of corporations in the criminal sphere, particularly in economic crimes, and its potential impact on both criminal and civil proceedings.

YUVAL PROCACCIA & ASSAF JACOB

DOUBLE LIABILITY FOR A SINGLE TORT: ON THE
TRIPARTITE RELATIONSHIP – TORTFEASOR, VICTIM,
AND INSURER

When harm arises from a tortious act, victims often file claims for both tort compensation and insurance benefits. This article examines the relationship between these two entitlements and the legal frameworks governing them. Current law alternates between two regimes: subrogation, which ensures that damages are recovered only once from the tortfeasor; and cumulative entitlement, which permits dual recovery from both the tortfeasor and the insurer.

The article argues for a broad application of subrogation and elimination of cumulative entitlement. This shift requires modification of established case law. The article highlights the necessary modifications, and offers a theoretical and doctrinal basis for their implementation. The recent case of *Yona v. Clal* illustrates the issue's practical relevance and significance.

The preferable legal framework is driven by two distinct considerations: the objectives of tort law and the purpose of insurance. While both regimes meet the goals of tort law by holding tortfeasors liable, the insurance perspective clearly favors subrogation. It ensures that insurance coverage applies solely to risks with a valid insurable interest. In private insurance, subrogation allows parties to realize the full value of an insurance contract. In public insurance arrangements, it prevents the arbitrary and inequitable distribution of public funds.

BARAK MEDINA

THE POWER OF COURTS OTHER THAN THE HIGH COURT OF JUSTICE TO EMPLOY JUDICIAL REVIEW OF LEGISLATION THAT VIOLATES HUMAN RIGHTS

Until recently, the prevailing doctrine recognized the authority of every court to employ judicial review of legislation when necessary, in resolving a legal dispute, similar to their power to review other actions taken by the state. Furthermore, in numerous cases petitions filed with the High Court of Justice were dismissed based on the availability of collateral challenge in other courts. Recent decisions by the Supreme Court have introduced a radical change, significantly restricting the right to challenge legislation collaterally. This approach was also included in the government's plan for judicial overhaul.

This article suggests that courts have the power to determine collateral challenges and to declare invalid legislation that violates human rights. This power, however, is limited to proceedings initiated by individuals with a personal interest in the matter. The HCJ has exclusive jurisdiction only when the legislation in question does not directly harm a private interest. The article explores the relevant positive and normative considerations surrounding this issue.

SHAHAR LIFSHITZ & RAM RIVLIN

**FAULT BY AGREEMENT? MARITAL CONTRACTS THAT
ASSIGN ECONOMIC CONSEQUENCES TO INFIDELITY,
AND THE LIBERALIZATION OF FAMILY LAW**

The past 50 years have witnessed a revolution in Western family law that is often described as “liberalization”. This encompasses two key trends: a decline in the significance of fault-based factors such as infidelity, and a rise in the importance of marital contracts. While these trends generally complement one another, they are liable to clash when couples attempt to dictate the economic consequences of infidelity by contract. Should such agreements be legally enforceable? Which trend aligns more closely with a “true liberal” perspective: de-emphasizing fault, or prioritizing contractual freedom?

This paper proposes a new approach that goes beyond a simple contest over which trend should dominate. Drawing on mediation vocabulary, we examine the underlying motivations for each trend and demonstrate how the supposed conflict between proponents of sexual and contractual liberalization actually presents a range of potential common ground. Individuals from opposing camps, who share a core commitment to liberalism (regarding neutrality, autonomy, equality, or pragmatic considerations), can potentially reach agreements within this framework. We then explore legal mechanisms that might facilitate broad consensus, and apply the conclusions to specific legal contexts that are currently debated in Israeli law. Beyond normative conclusions about the enforceability of such agreements, the discussion also offers a nuanced and multidimensional understanding of the process of liberalization in family law.

HAIM SANDBERG

TAKING OF PRIVATE PROPERTY IN URBAN RENEWAL PROJECTS

The normative framework of urban renewal projects in Israel imposes a uniform and coercive standard on land owners: In exchange for vacating their land and bearing the many risks involved in leaving and demolishing their properties, they are forced to accept only one apartment, equal in size or slightly larger than the apartment they are vacating. This standard - which is supported by legislation, but is mainly based on government policy - is imposed on property-owners in complexes designated for urban renewal through a multi-armed, coercive mechanism that exploits their weaknesses, including their fragmentation, their low social status, and various cognitive biases. As a result, the lion's share of the profit obtained from urban renewal projects goes to entrepreneurs or local authorities rather than to the landowners. This offensive standard is also embedded in urban plans that restrict the scope of construction, thus hindering both urban renewal and impeding the much-needed increase in housing supply. In this article I argue that imposition of this coercive standard constitutes an unconstitutional violation of private property rights. It lacks explicit authorization in primary legislation; it is doubtful that it serves any proper public purpose; and, to the extent that it does serve such a purpose, it is not proportionate. It also leads to results that conflict with the values of the State of Israel as a democratic country since it undermines the values of equality and distributive justice. Therefore, I suggest that the coercive standard be canceled or, at the very least, be applied and interpreted in a way that prevents these violations of the constitution.

ISRAEL GILAD & YEHONADAV SAMET

NO REIMBURSEMENT= NO REDUCTION? THE YONA V. CLAL CASE

Quite often, damage caused to a victim by a liable tortfeasor is partially or fully remedied through benefits provided by other systems of compensation and repair. Basically, there are three major ways by which such situations are regulated. One way is to allow the victim to collect both full tort compensation and the full collateral benefits (*accumulation*). Another way is to deduct these benefits from the victim's entitlement to compensation and from the tortfeasor's tort liability (*reduction*). A third way is to reduce the victims' entitlement, but to grant the benefit provider a right to reimbursement of the benefits from the tortfeasor (*reduction+indemnity*). As a rule, the third way is preferable and for good reason. The other ways (accumulation and reduction) are exceptions, which require justification and are usually specified by legislation.

In the *Yona v. Clal* case, the victim was entitled to tort compensation and to benefits provided by the state. Since the state had no right of indemnity, and in the absence of clear legislative guidance, the court had to choose between accumulation, which leads to over-compensation from the victim's point of view, and reduction, which leads to reduced liability from the tortfeasor's point of view. Judges of three instances differed on the issue. Finally, the scale tilted toward accumulation.

In this article we argue that given the core rule of tort compensation - "restoration to the original position" - the appropriate course would have been reduction rather than accumulation. By deciding otherwise and in favor of over-compensation, the decision deviated from this leading rule and undermined it without sufficient justification. It also applied considerations of fault-based liability to a regime of strict liability, thereby ignoring loss-spreading considerations.