

# Introduction to the Law of Israel

Edited  
by

Amos Shapira  
*(Editor)*  
*Professor of Law*

and

Keren C. DeWitt-Arar  
*(Associate Editor)*  
*Juris Doctor*

*The Cegla Institute for Comparative and Private International Law  
Faculty of Law, Tel Aviv University*

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# INTRODUCTION TO THE LAW OF ISRAEL

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# Preface

The legal system is a mirror of a nation's normative life. It displays the polity's cultural (including linguistic) heritage, religious tradition, economic ethos, social organization, and form of government. It reflects the community's particular mix of public order and individual freedom, equality and liberty, social welfare and party autonomy, orthodoxy and secularism, paternalism and self-determination, proscription and permissiveness. It portrays society's commitment to the principles of the Rule of Law, separation of powers, administrative legality, and human rights. It presents its own notions of constitutionalism, legislative style, legal interpretation, and judicial discretion. It endows such general conceptual frames as 'good faith', 'reasonableness', and 'public policy' with a unique meaning. Sometimes it echoes certain unresolved communal existential dilemmas – such as, in the case of Israel, predicaments of nation-building, ethnic and cultural identity, religion and State relationships, national security, and physical survival.

To treat all these displays, reflections, portrayals, presentations, endowments, and echoes in a single, space-limited volume entitled 'Introduction' is certainly presumptuous and very likely unattainable. Our goal has been far more modest: to introduce the main features of the Israeli legal culture in its historical perspective; to identify the basic legal sources, institutions and processes; and, to provide adequate information about the principal branches of the law. This book is hardly a definitive, detailed, and all-encompassing analysis of the Israeli legal system. Rather, it aspires to offer the reader an authoritative, summary, but coherent, compact, yet systematic account of the major contours of the law of Israel. It is addressed to a diversified, primarily foreign readership including legal practitioners, government officials, administrators, businessmen, students, and – last but not least – researchers and scholars interested in an informative orientation and a reliable overview of Israeli law and legal institutions. A selected bibliography – compiled by the various authors themselves – is appended to each of the volume's chapters. It is designed to refer the interested reader to supplementary materials relevant to the topic under discussion. Hebrew language publications – not accessible to most foreign readers – were generally not included in the selected bibliographies.

The various chapters of this volume were contributed by different authors – all established experts in their respective fields. The writers' biographical professional credentials are acknowledged at the beginning of the book. Such a collaborative effort definitely enhances scholarship and expertise. But, at the same time, it inevitably compromises uniformity of method, structure, style, extent of detail, and usage of footnotes. Thus, some contributors are practice-oriented while others tend to indulge more in theory. Certain legal fields are

canvassed descriptively with a sole focus on the *lex lata* while others are treated critically with an eye to the *lex ferenda*. Heavy-handedness aspiring to force the various authors into uniform molds of composition has not been our preferred editorial policy. In all likelihood, such a policy would have failed anyway if tried on senior scholars cherishing their academic freedom. Hopefully, the composite entity portrayed in this volume does preserve a tolerable level of consistency and coherence. And what it may lack in pedantic uniformity is more than compensated for, we venture to suggest, by the work's inherent quality of fertile versatility.

The main beneficiary of a series of introductions to different legal systems is clearly the science of comparative law. It is no accident that the several authors were required to keep in mind, while portraying Israeli law, the fact that the bulk of their potential readership is likely to consist of jurists schooled and trained in foreign legal methods. A comparative law orientation is inherent to any exposition of the Israeli legal system. Due to historical and cultural factors, multi-systemic influences garnered in a somewhat eclectic fashion have contributed considerably to the evolution of Israeli law. Initial links to the law of the Ottoman Empire, long-lasting and deep roots in the English common law, latter-day ties to modern American law and European law, and an overarching inspiration derived from the fundamentals of the traditional Jewish law system (*Halacha*) have all combined to render the Israeli legal system a happy hunting ground for curious comparativists. Israeli law (including its legislative style and judicial attitudes toward statutory interpretation and judge-made common law) breathes comparative law. This volume, we believe, is a vivid testimony to this significant feature of our legal system.

This preface cannot be complete without an expression of well-deserved credits and acknowledgments. With deep gratitude I would like to thank all the authors for their creative contribution and collegial collaboration; the Associate Editor, Ms. Keren DeWitt-Arar, for her editorial expertise and relentless endeavor to put this volume together; Ms. Dana Rothman, Ms. Mauri Kazin, Ms. Dana Miller, Mr. Joshua Mitnick, Ms. Stephanie Pik, and Ms. Sally Zimmerman for their research and technical services to the overall production effort; the General Editor of this series, Prof. Tugrul Ansay, for initiating the idea and his general friendly backing; the people at Kluwer for their cooperation and expertise; and, last but not least, the Cegla Institute for Comparative and Private International Law at the Tel Aviv University Faculty of Law and its secretary Mrs. Osnat Cohen for providing an institutional – and a logistical – support system without which this project could not have come to fruition.

Amos Shapira

# List of Abbreviations and Hebrew Materials

C.A.	Civil Appeal
C.C.	Civil Claim
Cr.A.	Criminal Appeal
D.K.	<i>Divrei HaKnesset</i> – Protocols of Knesset proceedings
D.M.I.	<i>Dinei Medinat Israel (Nusach Hadash)</i> – Ordinances promulgated during the British Mandatory period and revised by the Knesset (published in L.S.I.(N.V.))
<i>Dine Israel</i>	Annual of Jewish Law
F.H.	Further Hearing
H.C.	High Court
H.C.J.	High Court of Justice
H.H.	<i>Hatza'ot Hok</i> – Bills presented to the Knesset
<i>HaPraklit</i>	Law journal of the Israel Bar Association
I.R.	<i>Iton Rishmi</i> – Official Gazette during the Provisional Council of State
K.T.	<i>Kovetz HaTakanot</i> – Regulations issued by government ministries
L.S.I.	Laws of the State of Israel
L.S.I.(N.V.)	Laws of the State of Israel (New Version)
<i>Mishpatim</i>	Hebrew University Law Review
P.D.	<i>Piskei Din</i> – Official publication of judgments of the Supreme Court of Israel
P.E.	<i>Pesakim Elyon</i> – Unofficial publication of decisions of the Supreme Court of Israel
P.M.	<i>Pesakim Mehoziim</i> – Unofficial publication of decisions of the District Court
S.H.	<i>Sefer HaHukim</i> – Laws promulgated by the Knesset
Sp.C.	Special Case
Y.P.	<i>Yalkut HaPirsumim</i> – Government Notices

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