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Conflicts in a Conflict

A Conflict of Laws Case Study on Israel and the Palestinian Territories

Michael Karayanni

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To

Mousa, Jana, and Eyas

Foreword

In 1981 a fifteen-year-old Palestinian "worker" from the West Bank city of Ramallah was injured in a work-related accident. The factory in which he was employed and where the accident occurred was also located in Ramallah, owned by Palestinian residents of that city. The parents of the Palestinian worker filed a claim for personal injuries against the Palestinian employers—in an Israeli court. In the Israeli Supreme Court's decision the justices pronounced major holdings on the doctrine of forum non conveniens and choice of law in torts.

This is the case of *Abu Attiya v. Arabtisi* (CA 300/84, 39(1) PD 365 (1985)), which I teach in my civil procedure and private international law classes at the Hebrew University. Once the facts and holdings of the case are laid out, the discussion takes a long detour into the nature of the legal system in the Occupied West Bank and Gaza Strip. The first question I pose to my students is—why did this Palestinian family chose to adjudicate its local tort against two Palestinian defendants before an Israeli court? The uninformed response is often that the family had no other choice, because the Israeli military courts operating in the West Bank do not deal with such disputes. The students are usually surprised to learn that much of the local civil court system in the West Bank, as well as the civil law that existed on the eve of the 1967 Six-Day War, is maintained by the Israel Defense Forces. So these Palestinian family members could have filed their claims before the local courts, but preferred the Israeli forum instead. This then raises a host of other questions. What does filing a Palestinian civil claim before an Israeli court say about the condition of the local legal system in the West Bank? What are the ramifications of choosing the Israeli forum for Palestinian relations with and acquiescence to Israeli rule? What are the implications of local residents not having any political recourse by which to influence the norms of the local legal system or challenge the legitimacy of the local courts? Have things changed with the establishment of the Palestinian Authority? And should any of this be of concern to Israeli courts when considering the adjudication of such a case and the application of Israeli law?

I am always bewildered by how little my students know about the Occupied Palestinian Territories—so close geographically that West Bank towns and

villages are visible from the windows of our classroom at the Hebrew University on Mount Scopus in Jerusalem, yet so distant in their consciousnesses, as if they were located on another continent. It was this dislocation—territorial as well as cognitive—that brought me to write this book.

The genesis of this book is in two articles I published in 2008 and 2009. The first was titled "The Quest for Creative Jurisdiction: The Evolution of Personal Jurisdiction Doctrine of Israeli Courts Toward the Palestinian Territories" and was published in the *Michigan Journal of International Law* (volume 29, issue no. 4, 2008), and the second was "Choice of Law under Occupation: How Israeli Law Came to Serve Palestinian Plaintiffs," published in the *Journal of Private International Law* (volume 5, issue no. 1, 2009). While working on these articles I became aware that the adjudicative jurisdiction of the Israeli courts over civil disputes that are connected in one way or another to the West Bank and Gaza Strip, and the choice of law question in such disputes, is an exceptionally rich field that repays close investigation. A reworked version of the thesis offered in these two articles appears in Chapters Two and Three respectively. The chapters that follow test the compatibility of my findings with other conflict of laws spheres, such as jurisdiction in family law and real property matters; the sovereign immunity of the Palestinian Authority; the recognition and enforcement of Palestinian judgments in Israel; and the extent to which membership in the Israeli polity is based on notions of access to justice. The book thus uncovers the intimate relationship between the interests of the Israeli establishment and conflict of laws doctrines. Governmental interests are very much present, even if they are sometimes euphemistically expressed.

I owe a particular debt to a number of my colleagues. First and foremost I want to thank Celia Wasserstein Fassberg and Eyal Benvenisti. Their friendship, wisdom, academic work, and challenging observations have been instrumental in constructing this project. A substantial portion of the research and writing of the later chapters of this book was done while on sabbatical leave with a visiting professorship appointment at the Law School and the Ford Dorsey Program in International Policy Studies at Stanford University, in the fall of 2013. I would like to thank Michael Klausner, Larry Marshall, Lawerence Friedman, Larry Kramer and Amir Eshel who made my stay at Stanford both pleasant and enriching.

I owe a special thank you to Ron Brand, head of the Center for International Legal Education at the University of Pittsburg School of Law, for his patience and

support throughout the process of writing this book. I am also indebted to Ehud Brosh for his valuable research assistance.

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I cannot imagine completing this project without the support of my wife, Inas, whose devotion, encouragement, and support make my work possible, and meaningful.

Introduction

The Israeli occupation of the West Bank and the Gaza Strip (the "Palestinian Territories" or "PT") is deemed the longest occupation in modern history.[1] Israel's relations with the local Palestinian population in these territories has been fraught with tensions and violence throughout the over forty-five years of occupation, enduring two major uprisings, or *intifadas*, as they are locally known.[2] These relations have also seen a major peace process,[3] the establishment of Palestinian self-rule in what has come to be known as the Palestinian Authority (PA),[4] an internal Palestinian split between the West Bank and the Gaza Strip soon after Israel's unilateral disengagement from the latter territory in 2005,[5] and more recently the PA bid for statehood before the United Nations.[6] Additionally, Israel has actively promoted civilian settlement in the PT and today maintains over one hundred Israeli settlements there.[7]

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1 Eyal Benvenisti, The International Law of Occupation 203 (2d ed. 2012); Yoram Dinstein, The International Law of Belligerent Occupation 12–13 (2009). *See also* Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 Harv. Int'l L. J. 65, 67 (2003); Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories since 1967*, 84 Am. J. Int'l L. 44, 61 (1990).

2 *See* John Strawson, Partitioning Palestine: Legal Fundamentalism in the Palestinian-Israeli Conflict 168, 203 (2010); Mark Tessler, A History of the Israeli-Palestinian Conflict 677 (2d ed. 2009).

3 Nathan J. Brown, Palestinian Politics after the Oslo Accords (2003); Geoffrey R. Watson, The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements (2000).

4 Hiba I. Husseini, *Challenges and Reforms in the Palestinian Authority*, 26 Fordham Int'l L.J. 500, 503–05 (2003).

5 *See* Shane Darcy & John Reynolds, *"Otherwise Occupied": The Status of the Gaza Strip from the Perspective of International Humanitarian Law*, 15 J. Conflict & Security L. 211 (2010).

6 *See, e.g.*, Martin Wählisch, *Beyond a Seat in the United Nations: Palestine's U.N. Membership and International Law*, 53 Harv. Int'l L.J. Online 226 (2012); Khaled Elgindy, *Palestine Goes to the UN: Understanding the New Statehood Strategy*, 90 Foreign Aff. 102 (2011); William R. Slomanson, *Palestinian Statehood: A Successionist Dialogue*, 8 Miskolc J. Int'l L. 1 (2011).

7 *See* Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 Berkeley J. Int'l L. 515, 579–88 (2005). For a historical account of Israeli settlement policy, *see* Gershom Gorenberg, The Accidental Empire: Israel and the Birth of the Settlements, 1967–1977 (2006).

The extraordinary length of the occupation and this period's convulsive events may logically imply that many issues pertaining to the legal relations between the State of Israel and the PT are of a *sui generis* nature. Indeed, in many respects, Israel's relations with the PT are peculiar and unique. Yet these extraordinary conditions also provide an opportunity to examine certain norms and to learn more about their true characteristics.[8] It is a common exercise to test legal rules and standards in extreme and extraordinary conditions. Those of us who are engaged in legal education make particular use of the methodology when we have to choose the cases we want our students to read in a particular course of study. The more unusual the fact pattern of the case is, the better we are able to fathom the nature of norms. This same system of investigation is also an accepted facet of scientific procedure: hypotheses are subjected to rigorous examination, materials are tested in conditions far beyond those they are intended to function in, humans undergo stress tests to enable physicians learn more about their current state of health. Occasionally, exceptions can illuminate what norms really stand for. I relate here to the development of Israeli conflict of laws regarding the PT within this context.

Legal aspects concerning the actions taken by the State of Israel regarding the PT have drawn significant scholarly attention worldwide. Most writings focus on issues in the public eye, deemed to be of central importance to the Israeli-Palestinian conflict, particularly from the point of view of public international law.[9] These include issues such as the right of the Palestinian people to self-determination,[10] the status and nature of Israeli occupation and control over the West Bank and the

8 *See* Tobias Kelly, *Jurisdictional Politics in the Occupied West Bank: Territory, Community, and Economic Dependency in the Formation of Legal Subjects*, 31 Law & Social Inq. 39, 46 (2006).

9 *See, e.g.*, International Law and the Israeli Palestinian Conflict: A Rights-Based Approach to Middle East Peace (Susan M. Akram et al. eds., 2011); John Quigley, The Case for Palestine: An International Law Perspective (2005); International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip (Emma Playfair ed., 1992); Julius Stone, Israel and Palestine: Assault on the Law of Nations (1981); Henry Cattan, Palestine and International Law: Legal Aspects of the Arab-Israeli Conflict (1973).

10 *See, e.g.*, Eugene Rostow, *Palestinian Self-Determination: Possible Futures for the Unallocated Territories of the Palestine Mandate*, 5 Yale Stud. in World Pub. Order 147 (1979); John Collins, Note, *Self-Determination in International Law: The Palestinians*, 12 Case W. Res. J. Int'l L. 137 (1980); Sally V. Mallison & W. Thomas Mallison, *The Juridical Bases for Palestinian Self-Determination*, 1 Palestine Y.B. Int'l L. 36 (1984); Francis A. Boyle, *The Creation of the State of Palestine*, 1 Eur. J. Int'l L. 301 (1990); James Crawford, *The Creation of the State of Palestine: Too Much Too Soon?*, 1 Eur. J. Int'l L. 307 (1990); Peter Malanczuk, *Israel: Status, Territory and Occupied Territories, in* 2 Encyclopedia of Public International Law 1468, 1491–92 (Rudolf Bernhardt ed., 1995).

Gaza Strip,[11] and the extent to which access to human rights for the Palestinian population can be overseen and guaranteed.[12] Moreover, scholarly interest has intensified in recent years with the rise and demise of the Oslo Peace Process[13] and the international debate over the construction of the so-called separation wall/fence.[14] Interest is periodically kindled by recurring peace initiatives, in light of the Palestinian campaign for statehood, or the possible resort to international tribunals in order to address certain controversies of the conflict.[15]

Central as these questions may be, and despite the severe human cost and territorial upheavals endured by many who lived through this period, a private sphere of relations existed as well, whereby private corporations and individuals from

11 Yehuda Z. Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 ISR. L. REV. 279 (1968); Allan Gerson, *Trustee Occupant: The Legal Status of Israel's Presence in the West Bank*, 14 HARV. INT'L L. J. 1 (1973); Theodor Meron, *Applicability of Multilateral Conventions to Occupied Territories*, 72 AM. J. INT'L L. 542 (1978); ALLAN GERSON, THE WEST BANK AND INTERNATIONAL LAW (1978); Richard Falk, *Some Legal Reflection on Prolonged Israeli Occupation of Gaza and the West Bank*, 2 J. REFUGEE STUD. 40 (1989).

12 DAVID KRETZMER, THE OCCUPATION OF JUSTICE: THE SUPREME COURT OF ISRAEL AND THE OCCUPIED TERRITORIES (2002); Note, *Protection of Human Rights in Israeli-Occupied Territories*, 15 HARV. INT'L L.J. (1974); Theodor Meron, *West Bank and Gaza: Human Rights and Humanitarian Law in the Period of Transition*, 9 ISR. Y.B. HUM. RTS. 106 (1979); ESTHER R. COHEN, HUMAN RIGHTS IN THE ISRAELI-OCCUPIED TERRITORIES, 1967–1982 (1985); Wendy Olson, *UN Security Council Resolutions Regarding Deportations from Israeli Administered Territories: The Applicability of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 24 STAN. J. INT'L L. 611 (1988); Jordan J. Paust et al., *Report of ICJ Mission of Inquiry into the Military Court System in the Occupied West Bank and Gaza*, 14 HASTINGS INT'L & COMP. L. REV. 1 (1990); Eyal Benvenisti, *Responsibility for the Protection of Human Rights under the Interim Israeli-Palestinian Agreements*, 28 ISR. L. REV. 297 (1994).

13 THE ARAB-ISRAELI ACCORDS: LEGAL PERSPECTIVES (Eugene Cotran, Chibli Mallat & David Stott eds., 1996); Peter Malanczuk, *Some Basic Aspects of the Agreement between Israel and the PLO from the Perspective of International Law*, 7 EUR. J. INT'L L. 485 (1996); Jill Allison Weiner, Comment, *Israel, Palestine and the Oslo Accords*, 23 FORDHAM INT'L L.J. 230 (1999); WATSON, *supra* note 3.

14 Pieter H. F. Bekker, Comment, *World Court's Ruling Regarding Israel's West Bank Barrier and the Primacy of International Law: An Insider's Perspective*, 38 CORNELL INT'L L.J. 553 (2005); Robert A. Caplen, Note, *Mending the "Fence": How Treatment of Israeli Palestinian Conflict by the International Court of Justice at the Hague has Redefined the Doctrine of Self-Defense*, 57 FLA. L. REV. 717 (2005); Andrew R. Malone, Comment, *Water Now: The Impact of Israel's Security Fence on Palestinian Water Rights and Agriculture in the West Bank*, 37 CASE W. RES. J. INT'L L. 639 (2005); Barry A. Feinstein & Justus Reid Weiner, *Israel's Security Barrier: An International Comparative Analysis and Legal Evaluation*, 37 GEO. WASH. INT'L L. REV. 309 (2005); Sarah Williams, *Has International Law Hit the Wall? An Analysis of International Law in Relation to Israel's Separation Barrier*, 24 BERKELEY J. INT'L L. 192 (2006). See also a series of contributions in *Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory*, 99 AM. J. INT'L L. 1 (2005).

15 *See, e.g.*, Daniel Benoliel & Ronen Perry, *Israel, Palestine, and the ICC*, 32 MICH. J. INT'L L. 73 (2010); John Quigley, *Palestine Is a State: A Horse with Black and White Stripes Is a Zebra*, 32 MICH. J. INT'L L. 749 (2011).

both sides of the conflict interacted with each other. Occasionally, these interactions led parties to seek legal remedies to their disputes. In this context, the principles of private international law were implicated in an effort to untangle the set of conflict of laws issues that such disputes gave rise to. This particular sphere of the Israeli-Palestinian conflict has received only scant attention. In what follows, I offer an analysis of a set of Israeli conflict of laws doctrines that developed and took shape in the shadow of the conflict from 1967, when the PT were first occupied by Israel, through the present day. This body of doctrine has developed primarily as a consequence of the numerous civil actions related in one way or another to the PT that were filed before Israeli courts.

In this study, I also seek to shed light on an inter-jurisdictional dependency that has thus far also received very little attention in the conflict of laws literature: that which emerged between the belligerent occupant and the occupied territory.[16]

Conflict of laws theory and methodology has known major upheavals throughout history.[17] As a result, different rules have been offered to enable us to determine jurisdictional competency, choice of law, and the proper treatment of foreign judgments. But as the rules were modified in order to accommodate the evolving theory, another variable in the conflict of laws matrix drew attention; namely that of the jurisdictional kinship between the two or more jurisdictions that were involved. For indeed, the jurisdictions involved need not be those of two or more sovereign states;[18] such is the case, for example, in a federal scheme of government, where the separate states are united and maintained by a federal umbrella.[19]

16 One notable exception in the local Israeli context is Iris Canor, *Yisrael UhaShtahim: al Mishpat Binluimi Prati, Mishpat Binluimi Pumbi, uma Shibinihim [Israel and the Territories: The Interplay between Private International Law and Public International Law]*, 8 MISHPAT UMIMSHAL 551 (2005) (arguing that Israeli choice of law rules in respect of the PT developed in accordance with official Israeli public international law stands in respect of the PT).

17 *See* Friedrich K. Juenger, *A Page of History* 35 MERCER L. REV. 419 (1984); Hessel E. Yntema, *The Historic Bases of Private International Law*, 2 AM. J. COMP. L. 297 (1953).

18 Notably, at one point, A. V. Dicey defined a "country" for conflict of laws purposes as "the whole of a territory subject under one sovereign to one body of law." Later on, however, he substituted "country" with "law district," probably because not all conflict inquiries indeed involve "countries" in common parlance. *See* DICEY, MORRIS & COLLINS ON THE CONFLICT OF LAWS 30 (Lawrence Collins et al. eds., 14th ed. 2006). *See also* ARTHUR NUSSBAUM, PRINCIPLES OF PRIVATE INTERNATIONAL LAW 5–6 (1943).

19 *See, e.g.*, K. J. HOOD, CONFLICT OF LAWS WITHIN THE UK (2007); MICHAEL TILBURY ET AL., CONFLICT OF LAWS IN AUSTRALIA 9–12 (2002); J-G CASTEL, CANADIAN CONFLICT OF LAWS 2–3 (3d ed., 1994); ALBERT A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS 16 (1962). Indeed, in terms of the historical development of the discipline of conflict of laws generally, intra-territorial conflicts, such as between cities, have contributed substantially to the evolution of different conflicts of laws doctrines. *See, e.g.*, Alex Mills, *The Private History of International Law*, 55 INT'L & COMP. L. Q. 1, 4–12 (2006).

And precisely because of this federal kinship among states, intra-federal choice of law inquiries, as well as others pertaining to adjudicative jurisdiction and enforcement of judgments, were made subject to certain norms designed to accommodate the needs and interests of the federal system.[20] Similarly, confederate schemes of government have also entailed the design of special bodies of norms to accommodate conflict of laws issues among the confederate states. The most notable example of this process in recent history is the European Union.[21] So as separate jurisdictions become more interdependent and connected to each other, conflict of laws principles seem to evolve alongside in order to accommodate the special inter-jurisdictional settings, all taking place in tandem with the theoretical evolution of conflicts theory itself.[22]

One form of dependency between jurisdictions that seems to influence conflict of laws doctrine is that of occupation. Since under international law, an occupied territory is presumed to form a separate jurisdictional entity from that of the occupying power but at the same time is controlled and administered by it until an international settlement is reached,[23] inter-jurisdictional conflicts between the occupier and the occupied seem also to be guided by special considerations. But unlike the extensive research devoted to the implications of the federal and confederate structure of government on conflict of laws doctrine, those of occupation

20 *See* RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 585 (4th ed. 2001); W. Müller-Freienfels, *Conflicts of Law and Constitutional Law*, 45 U. CHI. L. REV. 598 (1978). Note, however, that in American conflicts jurisprudence, it was not always clear whether a distinction is necessary between the interstate and the international context; *id.* at 599. Moreover, in historical terms, conflict rules developed in a federal context that took account of the rules developed in the international context. *See* Yntema, *supra* note 17, at 299. This amalgamated American approach has been criticized, for in some spheres courts need to distinguish between the interstate and the international context. Therefore, for other states—where the generally assumed context for conflict of laws inquiries is the international one—much of American conflict of laws doctrines are unusable because they are derived from federal concerns. *See* Mathias Reiman, *Domestic and International Conflicts in the United States and Western Europe*, in INTERNATIONAL CONFLICT OF LAWS FOR THE THIRD MILLENNIUM: ESSAYS IN HONOR OF FRIEDRICH K JUENGER 109, 113–14 (Patrick J. Borchers & Joachim Zekoll eds., 2001); Mathias Reiman, *A New Restatement—For the International Age*, 75 IND. L. J. 575, 576 (2000). *See also* Eugene F. Scoles, *Interstate and International Distinctions in Conflict of Laws in the United States*, 54 CAL. L. REV. 1599 (1966).

21 *See* PETER STONE, EU PRIVATE INTERNATIONAL LAW: HARMONIZATION OF LAWS 3–10 (2006); Bernd von Hoffmann, *The Europeanization of Private International Law*, in EUROPEAN PRIVATE INTERNATIONAL LAW 13 (Bernd von Hoffmann ed., 1998).

22 *See* ROBERT LEFLAR ET AL., AMERICAN CONFLICTS LAW 9–10 (4th ed. 1986).

23 *See* GERHARD VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 94–100 (1957).

have only rarely been examined.[24] For the most part, occupation has been the object of analysis for public international law inquiries, especially the norms pertaining to the authority possessed by the occupying power during the period of occupation, and the observance of international norms pertaining to human rights.[25]

It is easy to understand why conflicts methodology has largely disregarded the condition of occupation, which almost by definition is presumed to be a temporary state,[26] and therefore generates no significant body of conflicts proceedings worthy of analysis or theorizing. However, occupation and other abnormal inter-jurisdictional relations can become protracted.[27] Over time, interactions between private entities from the different jurisdictions begin to amass, especially if the two jurisdictions lie in geographical proximity to each other. In due course, such interactions will necessitate addressal of conflict issues that arise between these jurisdictional entities and bring courts to assess the significance of their reciprocal relationships on the conflict issues at hand, be it adjudicative jurisdiction, choice of law, enforcement and recognition of judgments or any other matter.

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24 Conflict of laws issues in the context of international conflicts have periodically presented themselves before courts, thereby requiring judges to consider the application or the adaptation of existing rules to the new reality. *See, e.g.*, Kuwait Airways Corp. v. Iraqi Airways [1995] 3 All E.R. 694 (H.L.) (discussing the effects of the seizure and operation of civilian aircrafts owned by Kuwait Airways by Iraqi Airways after the invasion of Kuwait by Iraqi forces in 1990); Hesperides Hotels Ltd v. Aegean Turkish Holidays Ltd [1978] 1 Q.B. 205, 216–18 (C.A.) (*per* Lord Denning), appeal allowed in part, Hesperides Hotels Ltd v. Muftizade [1979] A.C. 508 (H.L.) (discussing the effect of laws enacted by the non-recognized Turkish Federated State of Cyprus in the territory that fell under its control following the 1974 invasion of the island by Turkish forces); Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Art Inc., 917 F.2d 278 (7th Cir. 1990) (recognizing the property claims of the Autocephalous Greek-Orthodox Church of Cyprus and the Republic of Cyprus over certain mosaics removed from a church that came under the territorial control of the Turkish Federated State of Cyprus following the 1974 division of the country); McDonnell Douglas Corp. v. Islamic Republic of Iran, 758 F.2d 341 (8th Cir. 1985), *cert. denied*, 474 U.S. 948 (1985) (resisting the enforcement of a forum selection clause designating Iranian courts, given the regime change in the country following the Iranian Revolution); Salimoff v. Standard Oil Co., 186 N.E. 679 (N.Y. 1933) (recognizing the effect of certain nationalization decrees on oil lands by the Soviet government, even though the USSR was not yet fully recognized by the United States). However, unlike the context of these reported decisions, this study and the methodological developments it seeks to highlight pertains to a systematic effort to develop conflict of laws rules of one party to the conflict (the occupying power) in the context of a special jurisdictional relationship that developed with the occupied territory.

25 *See generally* INTERNATIONAL LAW AND THE ISRAELI PALESTINIAN CONFLICT: A RIGHTS-BASED APPROACH TO MIDDLE EAST PEACE, *supra* note 9. .

26 DORIS A. GRABER, THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION 1863–1914—A HISTORICAL SURVEY 37 (1949).

27 Roberts, *supra* note 1, at 47.

This book is divided into five chapters. Chapter One surveys the major developments in the PT following the 1967 Six-Day War and offers a detailed analysis of the jurisdictional realities that took shape between Israel and the various territories it occupied in that war.

Chapter Two deals with the first core conflicts issue: personal jurisdiction. This chapter details how the personal jurisdiction doctrine of Israeli courts evolved over the years, reflecting the different stages of Israel's relations with the PT. This chapter also shows how personal jurisdiction doctrine accommodated Israel's policy of control over the PT. To facilitate this policy in the sphere of personal jurisdiction, some doctrinal innovations had to take place in existing conflicts law. These innovations are outlined and evaluated throughout the chapter. This chapter also shows the emergence of one important feature of Israeli conflict of laws towards the PT generally: the drawing of a legal distinction between intra-Palestinian civil disputes that are brought before Israeli courts, on the one hand, and intra-Israeli settlers or mixed Israeli-Palestinian civil disputes that are brought before the Israeli courts, on the other hand. Even though all such disputes are equally based in the PT, Israel's willingness to adjudicate such disputes on the merits has been differential. Intra-Palestinian civil dispute were kept out—but intra-settlers and mixed Israeli-Palestinian disputes were allowed in.

As I show in Chapter Four, this same reality dominated in the sphere of choice of law as well. Palestinians in their mutual civil disputes were assumed by Israeli choice of law rules to be governed by local PT law, whereas Israeli settlers in their mutual disputes and mixed Israeli-Palestinian disputes were assumed by the same rules to be governed by Israeli law. A prominent scholar, Eyal Benvenisti, labeled this state of being as that of "legal dualism."[28] I actually think of it as more than that. I posit that this state of being is a form of a modern-day civil *millet* system—analogical to the Ottoman *millet* system, in which local subjects were governed by different courts and different norms depending on their religious identity.[29] For one thing, the jurisdictional and choice of law design that Israeli conflicts law developed in respect of the PT was more than just about the existence of two systems of norms that govern two group of people. The design was also about why and how these groups were deemed to be different even if they happen to reside in the same territory and, more importantly, about who determines the rules

28 EYAL BENVENISTI, LEGAL DUALISM: THE ABSORPTION OF THE OCCUPIED TERRITORIES INTO ISRAEL (1989).

29 *See infra* Chapter Three, Section B.

that should govern. Yet the Ottomans applied their grand design primarily in the sphere of family law, whereas in the Israeli-PT context, it prevails in all spheres of private law.

Chapter Three is also concerned with jurisdiction. It deals with three forms of jurisdictional restrictions that became especially relevant in Israeli-PT relations. The first concerns whether Israeli courts could adjudicate disputes dealing with land situated in the PT; the second takes up the same question in respect to the family law matters of Palestinian residents of the PT; and the third deals with whether or not Israeli courts are willing to accord the PA foreign sovereign immunity in defending a civil action filed before an Israeli court. These issues raise some unique dilemmas in conflict of laws, and therefore they were signaled out and discussed in a dedicated chapter. One major finding in this chapter is the intimate connection between the overall political and control policies and the shape and substance of jurisdictional rules. The relationship reached a certain epic, as in the sphere of foreign sovereign immunity the question of whether the PA is entitled to sovereign immunity was deferred to the Israeli executive and legislative branches of government, leaving the judiciary with almost no say on the matter.

Chapter Four deals with choice of law. The focus of this chapter is on choice of law assessments made by Israeli organs and courts regarding PT-related disputes, with a special emphasis on the torts and contracts of employment. Here as well, we encounter a dominating civil *millet* conception. Yet, this chapter also points to a new trend. In two landmark Israeli Supreme Court decisions that dealt with a mixed Israeli-Palestinian dispute, the Court justified the application of Israeli law by reference to the equal treatment of Palestinians. This resolution was by no means to the detriment of the Palestinian plaintiffs; on the contrary—it was these plaintiffs who argued and fought their way up to Israel's highest court in order to have Israeli law apply, while the Israeli defendants, most of whom were part of the Israeli settlement project in the PT, argued against the application of Israeli law and sought the application of West Bank Jordanian law instead. These two decisions are critically evaluated in this chapter, exposing their anchor in the principle of equality as fictitious—even if well-intended—given the overall design of law and legal institutions in the PT over the years. Ultimately, however, I think that the result in both these cases is justified in reference to the principles of choice of law fairness, as they have developed under a modern choice of law theory.

The last chapter, Chapter Five, deals with PT judgments and access to justice rights of Palestinian plaintiffs as constitutionally protected rights under Israeli law. The