

## THE NON-ENFORCEMENT OF WILL CONTRACTS REVISITED

SHELLY KREICZER-LEVY

Israeli law does not recognize will contracts and consequently offers no remedy when such a contract is breached. This rule has been severely criticized over the years, both in court cases and in academic works. However, contrary to this mainstream view, the article suggests that the rule does have merit. It therefore explains the rationale behind the rule and situates it within the broader discussion of the justifications of inheritance law. The article argues that the rule promotes the testator's vision of continuity, a value associated with her identity and integrity. Thus, the rule protects the testator's ability to constantly re-evaluate her vision of continuity until her demise. In addition, I look into the ramifications of the existing rule and argue that it creates incentives to receive care within the family, thus limiting the options of elderly people to receive appropriate care, as in the current reality, relying on family members for care and support is not always possible. Finally, I suggest restructuring the existing rule. While will contracts remain invalid, an unjust enrichment rule would compensate caretakers for their work.

## CALCULATING THE PERIOD OF LIMITATION IN CLAIMS FOR ONLINE TORTS

ELAD PELED

The article explores a novel question, located at a unique crossroads of the law of limitation with the freedom of speech on the one hand and the right to dignity on the other: the manner in which the period of limitation should be calculated in claims for online torts, especially with regard to the constantly expanding phenomenon of Internet publications harming reputation, privacy and copyright. The conflict between two plausible modes of analysis which arise in the aforementioned context, each of which practically dictates limitation periods of differing lengths, stands at the center of the article. According to one approach, uploading the offensive material is a one-time action, therefore, the limitation period runs from the date of the initial publication. Under the second approach, the defendant should be held responsible for the re-dissemination of the publication every day in which it continues to appear on the Internet and accordingly, any occasion on which the publication is viewed (in fact or even potentially) by a surfer effectuates an independent cause of action and starts a new limitation period. The law of limitation does not provide a clear solution for the depicted dilemma, nor do foreign legal systems provide a uniform solution thereto. The situation is further complicated by the clash between the personal and social constitutional interests that are involved in long-term online publications: on the one hand, a person's right not to be harmed by a publication which might potentially appear in the public domain up to her death and even thereafter, and on the other hand, the ability of society to enjoy free access to extensive online archives which document modern human history. The article presents the main policy considerations pertaining to the issue at hand and recommends subjecting it to an explicit statutory settlement, while portraying its desirable content.

II

## EX-ANTE AND EX-POST LIMITATIONS ON LAND EXPROPRIATION

YIFAT HOLZMAN-GAZIT

In February 2010, the Israeli legislature passed an amendment to the Land Acquisition (for Public Purposes) Ordinance. This was the first reform made to the Land Acquisition Ordinance since its absorption into Israeli law in 1948. This paper uses the theoretical framework of ex-ante and ex-post limitations to analyze the new rules of land expropriation and their effect on the status of property rights. It is argued that the reform failed to provide greater protection to landowners. On the one hand, the new rules do not entail efficient ex-ante safeguards against overuse of expropriation powers, while on the other hand, the ex-post remedies for non-implementation of the public purpose are severely limited. The common law style of this new legislation is likely to narrow the scope of judicial intervention and limit the ability of the judiciary to protect owners against misuse of expropriation powers.

## ECONOMIC ARRANGEMENTS LAW, THE SUPREME COURT AND THE RIGHT TO HEALTH IN ISRAEL: A TEST-CASE FOR NEO-INSTITUTIONAL ANALYSIS

DANIEL SPERLING & NISSIM COHEN

For three decades, Israeli society has faced a variety of institutional changes that have significantly altered the nature of the Israeli welfare state and the healthcare system in Israel. The difficult problems of non-governability facing Israeli society go a considerable way toward explaining these changes and how they take place. Under structural conditions of non-governability, most players in the policy arena turn to two main channels which have proven to be effective: the submission of petitions to the High Court of Justice and the drafting of legislative amendments through the Economic Arrangements Law (hereinafter: "the Law"). These two channels have received a great deal of criticism in Israeli literature and public discourse. Yet analysis of the principal trends emerging from High Court of Justice rulings and legislative amendments through the Law, with emphasis on the centrality of the structural conditions and interests of these institutional forces, indicates that these channels are primarily open to the influence of forces which are essentially neo-liberal.

We argue that the nature of relations between the Ministry of Finance, which serves as the central player in legislation through the Law, and the Supreme Court, where petitions challenging this legislation are heard, is such that the Supreme Court allows the Ministry of Finance to be a dominant player in the formulation of public policy, thereby fulfilling its goal of strengthening its position as a political institution that aspires to increase the public's trust in the judiciary and especially in the Supreme Court itself.

Thus, social-democratic forces are relegated to working through "regular" legislative means, which have been proven to be less effective in light of existing structural conditions. The results of these institutional developments include the

strengthening of the trend toward neo-liberal public policy, the decline of the welfare state, the privatization of the healthcare system in Israel, and a significant weakening of the legal protection of the right to health.

REPARATION AND INDIVIDUAL COMPENSATION:  
REVOCATION OF HOLOCAUST DISABLED ISRAELI  
CITIZENS' ENTITLEMENT TO COMPENSATION FROM  
GERMANY AND LEGISLATION OF "THE DISABLED  
VICTIMS OF NAZI PERSECUTION LAW, 1957"

YOSSI KATZ

The reparation agreement signed between Israel and Germany in 1952 was intended to generate significant income for the State of Israel, whose coffers in the early 1950's were empty, jeopardizing the future of its very existence. The immediate need for a financial life preserver, in the form of the reparation payments, not only explains the numerous concessions Israel made to Germany – which, given the perspective of time, have proven to be extremely substantial – but also explains just how far the individuals who were entitled to benefit directly from this agreement were pushed aside. Holocaust disabled Israeli citizens were unable to confront either Israel or Germany through the legal system.

The Israeli government backed itself up legally. The Attorney General provided the necessary umbrella. However, the individuals who were harmed as the result of the agreement, i.e. the Holocaust disabled, were not familiar with the legal arena. The fact that they were ultimately treated inequitably relative to their counterparts abroad is inconceivable. They told themselves that it would have been one thing if they had at least been awarded compensation, which was paid to the State because of them, in the same sums as their counterparts who remained abroad. Not only was that not the case, but they were also then removed from what German law granted to the disabled, which was beyond all reasonable logic and the basic rules of justice.

When those individuals turned to their representatives in the Knesset, those representatives understood that they were right. Senior officials such as the

Attorney General and the State Comptroller admitted that the claim made by the disabled individuals was largely justified. Thus the government was forced by the Knesset to submit a bill that would achieve individual justice. But the bill that was formulated was very minimal and far from the compensation sums that Germany granted those disabled who had not come to Israel. Thus, the Knesset members were unable to accept the proposed bill and increased the overall compensation inestimably. Yet, it must immediately be stated that even under the law that was ultimately approved the overall compensation received by disabled Israeli citizens was still 39%-49% less than the sums received by their disabled counterparts under the German compensation law of 1953.