

Tort Ordinance (New Version)

Chapter One: Interpretation

1. Subject to the Interpretation Ordinance, this Ordinance will be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it will be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to the corresponding expressions in English law and will be construed in accordance therewith.

Definitions

2. In this Ordinance—

- **"Parent"** includes grandparents and step-parents;
- **"Animal"** includes birds, fish, insects and reptiles;
- **"Wild animal"** – any animal that in Israel is not usually kept in captivity or under the control of man;
- **"Child"** includes grandchild, step-child and a fetus, and any out of wedlock or adopted child; and in deducing any relationship which under the provisions of this Ordinance is included within the meaning of the expressions "Parent" and "Child" any born out of wedlock and any adopted person will be treated as the legitimate offspring of his mother and reputed father or, as the case may be, of his adopter;
- **"Movable property"** – any inanimate object or any animal, and includes money, the produce of trees and vines, cereals, vegetables and other crops and water, whether severed from the land or not;
- **"Employer"** – a person who, in relation to another, has complete control of the way in which such other performs his work for such person and is not himself subject to any similar authority in respect of the same work, and "employee" means any person whose work is so controlled: Provided that no person in the service of the State or of a local authority or of any other person will be deemed to be an employer or employee of anyone else in such service;
- **"Immovable property"** – land, trees, houses, buildings, and walls or other constructions;
- **"Damage"** – loss of life, or loss of, or detriment to, any property, comfort, bodily welfare, reputation or other similar loss or detriment;
- **"Financial Loss"** – any actual loss or expense which is capable of estimation in money and of which particulars can be given;
- **"Property"** – immovable or movable property;
- **"Defendant"** includes a defendant to a counterclaim or cross-action;
- **"Injury"** – any unlawful interference with a legal right;
- **"Plaintiff"** includes a counter-claimant and a claimant in a cross-action;
- **"Action"** – any civil proceeding before a court and includes a setoff and a counterclaim;

- **“Occupier”** – any person lawfully occupying, or entitled against the owner thereof to occupy or use, any immovable property, and if there is no such person then the owner of such property;

Chapter Two: Rights and Liabilities in Tort

Civil Wrong and Right to Remedy

3 .The matters in this Ordinance hereinafter enumerated will be civil wrongs, and subject to the provisions of this Ordinance, any person who suffers any injury or damage by reason of any civil wrong committed in Israel will be entitled as against the person committing or liable for such civil wrong to the remedy hereinafter specified.

Trivial Act

4 .An act which if repeated would not tend to establish an adverse claim and which is an act of which in the circumstances a person of ordinary sense and temper would not complain will not be deemed to be a civil wrong.

Voluntary Exposure to Risk

5. (a) It will be a defense in any action brought in respect of a civil wrong that the plaintiff knew and assumed or must be taken to have known and assumed the state of affairs causing the damage and voluntarily exposed himself or his property thereto.

(b) The provisions of this section will not apply to any action brought in respect of any civil wrong when such wrong was due to the non-performance of a duty imposed upon the defendant by any enactment.

(c) No child under the age of twelve years will be deemed to be capable of knowing or assuming such state of affairs or of voluntarily exposing himself thereto or of exposing his property thereto.

Act in accordance with Statutory Provision

6. With regards to any action filed in respect to a civil wrong, except for negligence, a defense may arise where the action which is the subject of dispute was committed in accordance with and under the provisions of any enactment or within the bounds of the legal license or in reasonable belief and in good faith as to the existence of legal license; in this section, "action" – including omission

Definitions

7 .In sections 7A thru 7F–

“action” – includes omission;

“State employee” – including a state organ and any person who fulfills a public office on behalf of the State in accordance with an enactment, including persons serving in the Israel Defense Forces, Israel Police, Prison Services and other State security organizations, and other than on contract as denoted in section 15;

"public office employee" – including an organ of a public office and any person who is serving a public position on behalf of a public office as provided, excluding a contractor as defined under section 15;

"Public employee" – a State or public office employee, as the case may be;

"Public office" – municipal office, and any corporation established under the law specified in the schedule;

"Governmental position" – a public position under the law as defined under section 15(d)(2) of Basic Law: The Judiciary.

Immunity of Public Employee

7A. (a) No claim shall be brought against a civil service employee in respect of an action performed within the mandate of his governmental position as a civil service officer, which is subject to liability for damages; this provision shall not apply to said action which was knowingly committed with the intent to cause damage or due to carelessness of the possibility of causing said damage.

(b) The provisions of subsection (a) shall not derogate from the responsibilities of the State or of a public office pursuant to sections 13 and 14 and under any law.

(c) Immunity under this section shall also apply to any person who was a civil service employee when the action subject of the claim was carried out.

Claim against a State Official

7B. (a) Where a claim has been filed against a State official for an action carried out while holding public office, and the state, in a statement to the court, has claimed immunity under section 7A with regard to the action of the official, if such action was committed, the State shall be adjointed to the proceedings, if not previously adjointed as a defendant.

(b) Where the State has requested in its statement, pursuant to subsection (a), that the claim against the State official be denied, then the claim against him shall be denied, and the claim shall be deemed as if it was submitted against the State by virtue of its responsibility for the action of a State official under sections 13 and 14, and the action of a State official shall be regarded to be an action performed in the due course of his duties.

(c) Notwithstanding the provisions of subsection (b) a claimant may request, within the period prescribed in the regulations, that the court rule that the conditions for immunity have not been met in accordance with section 7A; Where the court ruled as such, then the claim against a State official shall not be denied and the provisions of subsection (b) shall not apply.

(d) Where the State had not delivered a statement, pursuant to subsection (a), or did not request to dismiss the claim against the state official under subsection (b), then the state official may request, within the period prescribed by the regulations, that the court rule that the conditions for immunity are met pursuant to section 7A; Where the official made such request, the State shall be adjointed to the proceeding, if it has not been adjointed already as defendant; Where the court ruled that the conditions for immunity are met pursuant to section 7A, then the claim against the State official shall be dismissed, and the provisions of subsection (b) shall apply, mutatis mutanda; Where the court ruled that a state official

committed said action outside the scope of his capacity, then the claim against the state shall be dismissed.

(e) The court shall rule on the request of the claimant, pursuant to subsection (c) or at the request of state official, as said under subsection (d), immediately.

Claim against an Employee of Public Office

7C. (a) Where a claim has been filed against an public office employee with respect to an action carried out while holding office as an employee of a public office, the public office or the employee may request, within the period prescribed in the regulations, that the court rule that the conditions for immunity are met pursuant to section 7A with respect to the employee's action, where such action was carried out; where the request thereto has been filed, the public office shall be adjoined to the proceeding if it has not been adjoined as a defendant, and the court shall decide whether the conditions for immunity are met pursuant to section 7A.

(b) Where the court has ruled that the conditions for immunity are met pursuant to section 7A, the claim against the public office employee shall be dismissed, and the provisions of section 7B(b) shall apply, mutatis mutandi; Where the court has ruled that a public official committed the action outside the scope of his capacity – the claim against the public office shall be dismissed.

(c) The court shall decide on the request of a public office or employee as aforesaid in subsection (a), immediately.

Adjoining a Civil Service Official as Defendant in Claim

7D. A public employee may be adjoined as defendant in a claim filed against the State or against a public office, as the case may be, with respect to an action for which he would have been held responsible in the absence of the provision of section 7A(a), or to preserve his position as a defendant in a claim filed against him, notwithstanding the provisions of sections 7A to 7C.

Regulations

7E. The Minister of Justice may, with the authorization of the Constitution, Law and Justice Committee of the Knesset, enact regulations for performance of the provisions of sections 7B to 7D, including with respect to –

- (1) legal procedures and times;
- (2) the requirement to notify the State or public office of filing of a claim;
- (3) the conditions for filing of notice by the State as aforesaid in section 7B(a), and the person authorized to certify the fact of filing.

Compensation and Damages of the State or Public Office

7F. (a) Where a civil service official acted with severe deviation of the appropriate behavior expected from a civil service official, the State or the public office shall be entitled, as the case may be, a despite the provisions of section 7A –

- (1) Where the employee has committed an action which gives rise to tortious liability – to compensation from him.

(2) Where the state or public office is found liable for an action committed by the public employee – to damages from him.

(b) In proceedings concerning damages in accordance with this section, the damages shall be in an amount to be decided upon by the court as just and fair.

Judicial Authority

8. No claim shall be brought against any person constituting, or being a member of, any court or tribunal or against any person lawfully performing the duties of any such person, or against any other person performing judicial functions, including an arbitrator, in respect of any civil wrong committed by him in his judicial capacity.

Minor

9. (a) No action in respect of any civil wrong shall be brought against any person who committed said act when such person was under the age of twelve years. (b) A person under the age of eighteen years may sue in respect of a civil wrong and, subject to the provisions of subsection (a), be sued in respect for the wrong, however, no action shall be brought against any such person in respect of any civil wrong which arises, directly or indirectly, out of any contract entered into by such person.

Corporation

10. A corporation shall not recover any compensation in respect of any civil wrong unless it caused it damage.

Joint civil Wrong Doers

11. Where each of two, or more, persons are liable under the provisions of this Ordinance, for any act and such act constitutes a civil wrong, such person will be jointly liable as joint civil wrong doers and may be sued therefor jointly or separately.

Liability of person joining and soliciting

12. For the purposes of this Ordinance, any person who joins himself or aids in, counsels, or solicits any act, or omission, done or about to be done by any person, or commands, permits or authorizes them, shall be deemed liable for such act or omission.

Liability of Employer

13. (a) With respect to this Ordinance, an employer shall be deemed liable for any act committed by his employee –

(1) if he authorized or ratified that act;

(2) if it the act was committed by the employee in the capacity of his employment;
However –

(a) an employer shall not be deemed liable for any act committed by any person who is not an employee, but to whom his employee has delegated his duty without his expressed or implied authorization.

(b) a person who is compelled by law to use the services of another person, in the choice of whom he has no discretion, shall not liable for any act committed by such person in the capacity of said employment.

(b) An act shall be deemed to have been done in the course of an employee's employment if it was performed by him in his capacity as an employee and while he was performing the usual duties, and incidental tasks thereof, of his employment, notwithstanding that the act was an improper mode of performing an act authorized by the employer; However, an act shall not be deemed to have been so done if it was performed for the personal purposes of the employee and not on behalf of the employer.

(c) For the purposes of this Section, act – including omission.

Liability of Principal

14. For the purposes of this Ordinance, any person who employs an agent, not being his employee, to perform an act or a type of acts on his behalf shall be liable for anything executed by such agent in the performance of, and for the manner in which such agent performed them.

Liability of Party to Contract

15. For the purposes of this Ordinance, a person who enters into any contract with any other person, not being his employee or agent, to do any act on his behalf shall not be liable for a civil wrong arising during the doing of such act; This provision shall not apply in the following cases:

- (1) he was negligent in the selection of his contractor;
- (2) he interfered with the work of the contractor in such a way as to cause the injury or damage;
- (3) he authorized or ratified the act causing injury or damage;
- (4) he was liable under an enactment for the doing of an act the performance thereof has been delegated to an independent contractor;
- (5) The subject for which the contract was entered into was unlawful.

Saving of Liability

16. Nothing in section 12, 14 and 15 shall derogate from the liability of any person for an act committed by such person, and nothing in section 13 shall derogate from the liability of any employee for any act committed by such employee.

Knowledge of Agent or Employee

17. Where under the provisions of this Ordinance it is necessary to argue or prove knowledge, the knowledge of an agent or of an employee shall be deemed to be the knowledge of his principal or employer, provided that such knowledge was acquired by the agent whilst acting on behalf of his principal, or by the employee in the course of his employment, with regards to the matter or subject for which the knowledge is necessary.

Spouse

18. No spouse shall be deemed liable for any civil wrong committed by his spouse thereto save under the provisions of sections 11 to 16.

Effect of Death on Cause of Action

19. (a) Where a person had passed all causes of action in respect of any civil wrong claimed with respect to him shall remain standing, pursuant to the provisions of this section, for the benefit of his estate, or contrary thereto.

(b) Where a cause of action remains as aforesaid for the benefit of the estate of a deceased person, and the act or omission which is deemed to be the cause of death, then the compensation recoverable for the benefit of the estate shall be calculated without reference to any loss or gain to his estate consequent to the death, except that a sum in respect of burial expenses may be included.

(c) Where damage has been incurred due to an act or omission which would have served as cause of action for a civil wrong against any person, except such person passed prior to or during the time the damage was incurred, then the cause of action standing against him due to such act or omission performed prior to his passing shall be deemed, for the purpose of this Ordinance, as though it had subsisted against him prior to his passing.

(d) The rights conferred by this Ordinance for the benefit of the estate of a deceased person shall be in addition to, and not in derogation of, any rights conferred on the dependents of the deceased pursuant to this Ordinance or any other enactment.

Insolvent Estate

20. Where a claim may be filed against an insolvent estate under section 19, any liability in respect of the cause of action shall be deemed to be a debt provable against the estate, even though it is naturally a demand to unliquidated damages not arising from a contract, promise or breach of trust.

Bankrupt

21. Notwithstanding the provisions of the Bankruptcy Ordinance, 1936, a bankrupt may sue and be sued with respect to a civil wrong, but no action for wrong thereof shall be brought on behalf of, or against, the estate of any bankrupt. However –

(1) the right to sue for any wrong which caused monetary damage to the estate of a bankrupt shall pass to or be exercised by his trustee;

(2) a judgment in respect of a civil wrong obtained against a bankrupt before the date of the receiving order shall be provable in bankruptcy;

(3) this section shall be subject to the provisions of section 19.

No Transfer under Torts

22. The right to remedy for any civil wrong, or liability thereof, shall not be transferable other than by operation of law.

Chapter Three: Civil Wrongs

Article One: Assault

Assault

23. Assault consists of intentional application of any kind of force, by way of striking, touching, moving or otherwise, to the body of a person, directly or indirectly, without his consent, or where the consent is obtained by fraud, as well as any attempt or threat by act or gesture to apply said force against the body of a person, if the person making the attempt or threat causes another to believe with reasonable cause that he has at the time the intention and ability to effect his plan.

(b) "Application of force" – for the purposes of this section, including application of heat, light, electricity, gas, odor or any other substance or matter, where applied in such a degree as to cause damage.

Special Defense

24. In a claim dealing with assault, a defense may arise to the defendant if–

(1) He reasonably committed the act for defending himself or another from a threat to life, body, freedom or property, and the damage expected to be caused from doing so is reasonable proportionate to the damage expected to be prevented by him;

(2) He use reasonable amount of force to prevent the plaintiff from unlawfully entering any immovable property, or in order to eject the him therefrom once entered or occupied thereupon unlawfully, given than the defendant was the one to seize them, or he acted on their; however, if the plaintiff entered, or attempted to enter, to an immovable property by no means of force, then the defense may be on the condition that the defendant first requested from the plaintiff to refrain from entering thereupon, or having entered upon, to depart from the property thereof, and the plaintiff was given a reasonable opportunity of peaceably complying with his request;

(3) he used a reasonable amount of force to protect his possession of any movable property which he has the right over, or to bring back such property from the plaintiff who unlawfully possessed them, or detained them; However, if the plaintiff take or attempted to take such movable property by no means of force, a defense may arise on the condition that the defendant requested the plaintiff to refrain from taking, or having taken, to restore to the defendant, such movable property, and the plaintiff was given a reasonable opportunity of peaceably complying with his request;

(4) he was acting during the execution of, or in lawfully assisting the execution of any warrant of detention, search, order of commitment, warrant of arrest or writ of attachment issued by any court or other authority having jurisdiction thereto, provided that the act subject of the complaint was permitted in the aforesaid warrants even if there was a flaw in the warrant, or in their granting thereof;

(5) the plaintiff was of unsound mind or was suffering from infirmity of mind or body and that the force used by the plaintiff was, or appeared to be, reasonably necessary for his own protection or for the protection of other persons and was exercised in good faith and without malice;

(6) the plaintiff and defendant were both soldiers of the Israel Defence Forces and the defendant acted under the authority of and in accordance with any law applicable to the Army;

(7) repealed;

(8) he committed the act in good faith where he had reason to believe to be for the benefit of the plaintiff, though was unable to obtain the consent of the plaintiff before doing such act, as the circumstances were such that it was impossible for the plaintiff to certify his consent or that the person lawfully in charge of the plaintiff could not consent on his behalf and the defendant had reason to believe that it was for the benefit of the plaintiff that he should not delay the doing of such act.

25. Repealed.

Article Two: Imprisonment

False Imprisonment

26. False imprisonment is the deprivation of the liberty of any person, unlawfully and absolutely, for any period of time by physical means or by a show of authority.

Special Defense

27. In any claim filed in respect of any false imprisonment a defense may arise to the defendant if –

(1) he was committing the act in the execution of, or lawfully assisting in the execution of, any warrant of detention or search, order of commitment, warrant of arrest or writ of attachment issued by any court or other authority having jurisdiction thereto, provided that the act subject of complaint was permitted by such warrants even if there was a flaw in the warrant, or in the granting thereof;

(2) the plaintiff was detained in lawful custody in accordance with the provisions of any enactment;

(3) the plaintiff was of unsound mind or was suffering from some infirmity of mind or body and that the deprivation of his liberty was, or appeared to be, reasonably necessary for his own protection or for that of other persons and was exercised in good faith and without malice;

(4) the act of which the plaintiff complains was an act, where the person committing such act would have faced penalty for non- performance under the provisions of any enactment;

(5) the plaintiff and defendant were both soldiers of the Israel Defence Forces and the defendant acted under the authority of and in accordance with any law applicable to the Army;

(6) the defendant was the parent, guardian or teacher of the plaintiff or a person whose relationship to the plaintiff was similar to that of his parent, guardian or teacher, and he only temporarily deprived the plaintiff of his liberty for a time reasonably necessary for the purpose of correction of his ways.

28. Repealed.

Article Three: Trespass

Trespass to Immovable Property

29. Trespass to immovable property consists of any unlawful entry upon, or any unlawful damage to or interference with any such property by a person; a plaintiff shall not recover compensation in respect of trespass to immovable property unless he incurred monetary damage thereby.

Onus of Showing

30. In a claim brought in respect of any trespass to immovable property, the Onus of Showing shall be upon the defendant to show that the act which is the subject of complaint was not unlawful.

Trespass to Movable Property

31. Trespass to movable property consists of unlawfully taking goods out of the possession of another or forcibly interfering with them while they are in his possession; a plaintiff shall not recover compensation in respect of any trespass to movable property unless he has suffered monetary damage thereby.

Onus of Showing

32. In a claim brought in respect of any trespass to movable property, the onus of showing shall be upon the defendant to show that the act of which is the subject of complaint was not unlawful.

Mistake with regards to Right Ownership or Possession

33. A mistake with regards to ownership or right of possession, even in good faith, as well as intent to act for the benefit of the rightful owner, shall not serve as justification for interference to the property of another; however –

(1) a carrier of goods, or any person undertaking the carriage or custody of goods as a public service does not commit a trespass by dealing with goods in the ordinary way of that service and solely by the direction and on behalf of a person who delivered to him those goods for that purpose and where he believes in good faith that such carrier is entitled to deal with those goods;

(2) a worker or employee does not commit a trespass by dealing with any property in the ordinary way of his employment and in a manner authorized by his employer and where he believes in good faith that his employer to entitle such authorization.

Claiming of Right does not Constitute Trespass

34. The mere claim of a right to deal with property or to prevent another from dealing with does not constitute a trespass.

34A. Repealed.

Article Four: Negligence

Negligence

35. Where a person commits an act which a reasonable and prudent person would have committed under those circumstances, or fails to commit an act which a reasonable and prudent person would have committed under those circumstances, or fails to use skill or take proper precaution in the exercise of any occupation as a reasonable and prudent person qualified to exercise such occupation would use or take under those circumstances, then such act or failure thereof shall constitute negligence; where a person was negligent with regards to another person, for whom he has the obligation not to act as he did under those circumstances, it shall constitute as negligence. Any person who causes damage to another by his negligence commits a civil wrong.

Duty towards all

36. The duty enumerated under section 35 shall be vested towards all persons and towards the owner of any property, where a reasonable person ought to have foreseen that they might be affected by an act, or failure to commit an act, under those circumstance as enumerated under the section.

Duty of Owner of Immovable Property towards Trespasser

37. The duty under sections 35 and 36 of the owner or occupiers of any immovable property, due to the condition thereof, or, their maintenance or repair shall not apply towards a person who entered the property as a trespasser unless the plaintiff proves that he entered in good faith and without intent to commit an offence or a civil wrong.

Duty towards Trespasser in Military Zone

37A. (a) The duty under sections 35 and 36 with regards to the condition, maintenance, repair or use of a military zone shall not apply towards a person who entered the zone thereof as a trespasser unless the plaintiff proves that he entered in good faith and without intent to commit an offence or a civil wrong and that the person responsible of that zone or the person acting on his behalf at the place of entry knew of his presence in the area at the time the damage was incurred.

(b) In this section, "military zone" –

(1) immovable property occupied by the Israel Defense Army or by some other branch of the security operations which has been approved by the Minister of Defense for this purpose;

(2) immovable property used for a security purpose which guard has been posted to the entrance therein or that the entrance is restricted by a notice displayed outside it;

(3) immovable property which include installations intended to prevent entry into or exit from Israel; for this purpose, a certificate from a person authorized to do so by the Minister of Defence, that the installation is intended to prevent entry into or exit from Israel shall be conclusive proof of such fact.

(c) This section shall only apply during a state of emergency in the State by virtue of a declaration under section 9(a) of the Law and Governance Procedures Ordinance, 5708–1948.

Onus of Showing in Negligence with respect to Dangerous Subjects

38. Where a claim brought in respect of any damage in which it is proved that such damage was caused by any dangerous subject, except for fire or an animal, or by the escape of anything which may cause damage in doing so, and that the defendant was the owner of, or the person in charge of the subject, or the occupier of the property from which such subject escaped, the burden of proof shall be upon the defendant to show that there was no negligence for which he is liable in respect to the dangerous subject or the escape thereof.

Onus of Showing of Negligence with respect to Fire

39. Where a claim brought in respect of any damage in which it is proved that such damage was caused by, or in consequence of, a fire, and that the defendant started such fire or was liable for the starting of such fire or was the occupier of the immovable property or the owner of the movable property on which such fire originated, the burden of proof shall be upon the defendant to show there was no negligence for which he is liable with regards to the origin or spread of the fire.

Onus of Showing of Negligence with respect to Animal

40. Where a claim brought in respect of any damage in which the following two are proved:
(1) that such damage was caused by a wild animal, or by an animal, other than a wild animal, which the defendant knew, or is presumed to have known, had a propensity to do the act which caused damage;
(2) Where the defendant was the owner of, or the person in charge of, such animal, the burden of proof shall be upon the defendant to show that there was no negligence for which he is liable with regards to such animal.

Onus of Showing of Negligence where Facts Speak for Themselves

41. Where a claim brought in respect of any damage in which it is proved that the plaintiff had no knowledge or way of knowing the actual circumstances which caused the occurrence which led to the damage and that the damage was caused by some property of which the defendant had full control, and it appears to the court that the occurrence causing the damage is consistent with the defendant having failed to exercise reasonable care than with his having exercised such care, the onus of showing shall be upon the defendant to show that there was no negligence for which he is liable with regards to the occurrence which led to the damage.

Article Four "A": Damage Caused by Dog

Damages caused by Dog

41A. Where a claim brought in respect of any damage to person caused by a dog, the owner of which, or the person regularly in charge of which (hereinafter – the owners), must compensate the injured person, whether or not the owners were negligent.

Defense

41B. No defense shall be provided to the owners in a claim under this article, unless the damage was caused by one of the following:

- (1) the dog was provoked by the person injured;
- (2) the owner, their spouse, parent or child were attacked by the person injured;
- (3) the immovable property of the owners were trespassed by the person injured.

Saving of Laws

41C. This Article shall not derogate from any rights under this Ordinance or any other Law.

Article Five: Nuisances

Public Nuisances

42. A public nuisance constitutes an unlawful act, or omission to discharge a legal duty, where such act or omission endangers the life, safety, health, property or comfort of the public or obstructs the public in the exercise of a common right.

Action for Public Nuisance

43. No action shall be brought in respect of a public nuisance, except for –
(1) by the Attorney General or his representative for the purpose of granting an injunction;
(2) by any person who has suffered monetary damage thereby.

Nuisance to Individuals

44. (a) A nuisance to an individual constitutes a person conducting himself or his business or using any immovable property occupied by him in a manner which substantively interferes with the reasonable use and enjoyment of the immovable property of another, having regard to the situation and nature thereof; no person shall recover compensation in respect of any nuisance to an individual unless he will have suffered damage thereby.
(b) The provisions of this section shall not apply to any interference with daylight.

Special Defense

45. A defense may arise to a claim brought in respect of any nuisance to an individual where the act subject of the complaint was committed under the terms of any agreement or contract binding upon the plaintiff which work for the benefit of the defendant.

Existing Nuisance

46. A defense may arise to a claim brought in respect of any nuisance to an individual merely due to the fact the nuisance existed before the plaintiff's occupation or ownership of the immovable property affected thereby.

Saving of Laws

47. The provisions of Sections 42 to 46 shall be in addition to, and not in derogation of, any provisions as to nuisance laid down by any other enactment.

Interference with Daylight

48. Any person shall be deemed to commit a civil wrong if he, by obstruction or otherwise, prevents the enjoyment by the owner or occupier of any immovable property of a reasonable amount of daylight, having regard to the location and nature of such immovable property, when such light has been continuously enjoyed by such owner or occupier or his or their predecessors in title, other than under the terms of any agreement or contract, for a period of no less than fifteen years immediately preceding such obstruction or prevention.

Prevention of Support

48A. Where any property provides support to a neighboring property, the doing of anything which prevents or denies such support shall constitute a civil wrong.

Use Required for Public Interest

48B. Any use of immovable property required for the public interest shall not constitute a nuisance for the purpose of this article even if it causes damage to a neighboring property or deprives the owner thereof the full enjoyment of the property, provided that the damage incurred is within tolerable degree and the user has taken reasonable steps to reduce the damage as far as possible. However, the Court may award compensation, in a one- time payment or in recurrent payments, if the owner of the property has suffered monetary damage.

Article Six: Misappropriation

Unlawful Detention of Property

49. Unlawful detention consists of the unlawful withholding of movable property from any person entitled to the immediate possession thereof.

Burden of Proof

50. In a claim filed in respect of any unlawful detention, the burden of proof that the withholding was lawful shall be upon the defendant.

Return of What is Detained

51. In a claim brought in respect of any unlawful detention the Court may, with regard to the circumstances, order the return of the property detained in addition to, or in substitution for, any other remedy prescribed by this Ordinance.

Conversion

52. Conversion consists where the defendant's wrongfully takes to his possession movable property of which the right of possession belongs to the plaintiff, by taking it away, detaining it, destroying it, delivering it to a third person or otherwise depriving the plaintiff of it.

Special Defense

53. In a claim brought in respect of the conversion of any movable property, a defense may arise to the defendant if he purchased such property in good faith in accordance with section 34 of the Sale Law, 5728- 1961.

Right of Third Party does not Constitute Defense

54. In a claim brought in respect of the conversion of any movable property, the defendant shall claim as defense the right of a third person against the person entitled to the immediate possession of such property.

Return of Conversion

55. In a claim brought in respect of the conversion of any movable property the Court may, with regard to the circumstances, order the return of the property converted in addition to, or in substitution for, any other remedy provided by this Ordinance.

Article Seven: Deceit

Fraud

56. Fraud constitutes false representation of fact, made while knowing it is false or without belief in its truth or carelessly, with no regard whether it is true or false, and with the intent that the person deceived shall act upon such representation; however, no action shall be brought in respect of such representation unless it was intended to and did deceive the plaintiff and he has acted upon it and has thereby suffered monetary damage.

Reservation on Action of certain Kinds of Fraud

57. No claim shall be brought in respect of a representation under section 56, made in relation to the character, conduct, credit, ability, trade or occupation, of any person in order to obtain for him credit, money or goods, unless the representation is in writing and signed by the defendant himself.

Injurious Falsity

58. (a) Injurious falsity constitutes the malicious publication of a false statement, whether oral or otherwise, concerning the trade, occupation or profession, or the goods, or the title to property, of a person; no person shall recover compensation in respect of any such publication unless he has suffered monetary damage thereby. (b) "publication", for the purposes of this section – as defined in section 2 of the Defamation Prohibition Law, 5725-1965.

59. Repealed.

Article Eight: Malicious Persecution

Malicious Persecution

60. Malicious prosecution consists of instigating or carrying on with a failed proceeding, actually and maliciously, and without reasonable and probable cause, against a person, in criminal, bankruptcy or dismantling proceedings, where such proceedings caused damage to the credit or good reputation of, or possibly endangered his liberty, and terminated in his favor, if in fact they were capable of so terminating; if no action for malicious prosecution is brought against a person only by reason that he furnished information to a competent authority by whom any proceedings were instigated.

61. Repealed.

Article Nine: Causing Breach of Contract

Unlawfully Causing Breach of Contract

62. (a) Any person who knowingly and without sufficient reason causes another person to breach a legally binding contract with a third person commits a civil wrong against such third

person, however, the third person shall not recover compensation in respect of such civil wrong unless he has suffered monetary damage thereby.

Article Ten: Breach of Statutory Duty

Breach of Statutory Duty

63. (a) A person who is in breach of a statutory duty is any person who fails to perform a duty imposed upon him by any enactment, other than this Ordinance, and the enactment, on a proper construction thereof, was intended to be for the benefit or protection of another person, and such breach caused the person damage of a kind or nature intended by such enactment; however, the other person shall not be entitled by reason of such breach to any remedy specified in this Ordinance if, on a proper construction of such enactment, the intention thereof was to exclude such remedy.

(b) For the purposes of this section, an enactment shall be deemed to be for the benefit or protection of a person if, according to the proper construction thereof, it is intended for the benefit or protection of that person or of persons in general, or of any class or description of persons to which that person belongs.

Chapter Four: Fault

Causing Damage by Fault

64. "Fault" constitutes of an act or omission by any person, which are a civil wrong under this Ordinance, or are a civil wrong if damage is caused thereby, or are negligent thereby causing damage to the person himself, and a person shall be deemed to be at fault for such damage by when the fault was the cause or one of the causes of the damage; however, such person will not be so deemed if one of the following applies:

(1) the damage occurred due to some extraordinary natural occurrence which a reasonable person would not have anticipated and the consequences of which could not have been prevented even by the exercise of reasonable care;

(2) it was the fault of another person and is the decisive cause of the damage; (3) he is a child under the age of twelve years and is the subject of the damage, after the person causing such damage invited him, or allowed him, to stay in the property, at which or in relation thereof the damage occurred, or to be so near to such property as in the usual course of things to be likely to be affected by the fault of that person.

Conduct of Plaintiff

65. Where a defendant has caused damage by his fault, but his fault was brought about by the conduct of the plaintiff, the court may exempt him from liability to pay compensation to the plaintiff, or reduce the amount thereof, as the Court may think is just.

Conduct of Defendant

66. Where both the plaintiff and the defendant caused the damage by their fault, but it is the conduct of the defendant which brought about the fault of the plaintiff, the court may

increase the compensation payable by the defendant, had it not been for section 64, and provided that the amount is not exceeding the payable amount payable by the defendant had the plaintiff not caused the damage by his fault.

What is Fault of Person

67. The fault of a person, for the purposes of sections 64 to 66, including the fault of a person for which the person is responsible for, and where no other meaning is derived from the relation.

Contributory Fault

68. (a) Where a person has suffered damage, in part as a result partly of his own fault and partly of the fault of another person, a claim for compensation shall not be defeated by reason of the fault of the person suffering the damage but the compensation recoverable may be reduced in respect thereof to such extent as the court thinks is right and just having regard to the plaintiff's share in the responsibility for the damage; however, the provisions of this subsection shall not operate to defeat any defense arising under a contract, and where any contract or law providing limiting the liability is applicable to the claim, the amount of compensation recoverable by the claimant shall not exceed the maximum limit so prescribed.

(b) Where compensation has been reduced pursuant to subsection (a), the Court shall find and record the total compensation which would have been recoverable had the plaintiff not been at fault.

(c) The provisions of sections 11 and 83 shall apply in any case where two or more persons are liable under subsection (a) for damage caused to another person, or would have, had they been sued thereby.

Contributory Fault Causing Death

69. Where a person suffered death as a result of his own fault or the fault of another, and if an action were brought for the benefit of the estate under Section 19, the court would reduce the compensation recoverable under Section 68(a), thus any compensation recoverable in an action brought for the benefit of the dependents of that person under Section 78 shall be reduced to a proportionate extent.

Statute of limitation

70. Where, in any case to which Section 68(a) applies, and one of the persons at fault excuses himself from liability towards another person or to his legal representative by pleading any statute of limitation, he shall not be entitled to recover any compensation or contribution from said person or representative thereof by virtue of the said section.

CHAPTER FIVE: REMEDIES FOR CIVIL WRONGS

Any Court Competent to Grant Remedy

71. Any civil court shall be certified within the limits of its jurisdiction to grant remedy for civil wrongs in accordance with this Ordinance, subject to the provisions of any statute applying to such Court, and it may also grant an injunction in respect of any civil wrong where no compensation or other relief has been claimed or granted.

Injunctions

72 .An injunction may be mandatory or prohibitory, temporary or permanent.

Conditions for Grant of Injunction

73. The court shall not grant a temporary injunction unless it has been satisfied, by affidavit or otherwise, that there is a serious query to be discusses, and that it is probable that the plaintiff is entitled to relief and that unless a temporary injunction is granted it will be difficult or impossible to bring justice at a later stage.

Cases where no injunction shall be Granted

74. The court shall not grant an injunction where it believes the injury or damage caused to the plaintiff are miniscule and estimable and can the plaintiff can be adequately compensated by such payment, the grant of such injunction is oppressive to the defendant. Nevertheless, it may award such compensation.

Saving of Powers

75. The provisions of sections 72 to 74 will be in addition to, and not in derogation of, any of the powers the courts to grant an injunction under any other statute.

Compensation

76. Compensation may be awarded exclusively, or in addition to, or in substitution of, an injunction; unless–

(1) Where the plaintiff has suffered damage, compensation shall awarded only in respect of such damage which may naturally arise in the usual course of things and which directly arose from the defendant's civil wrong;

(2) Where the plaintiff has suffered monetary damage, no compensation in respect thereof shall be awarded unless the plaintiff has given particulars of such damage in or together with the statement of claim.

Compensation to be Recovered Once

77. (a) Subject to the provisions of Sections 83 to 85, a person who recovered compensation or other relief in respect of a civil wrong, and any person claiming through or on the account of such person, shall not recover any further compensation for the same civil wrong.

(b) No person shall recover compensation or other relief in respect of a civil wrong if such civil wrong also entails a breach of contract or obligation resembling a contractual obligation, where a court, tribunal or arbitrator had previously awarded compensation for the breach to such person through or on account of whom such person claims.

(c) No person shall recover any compensation in respect of breach of contract or obligation resembling a contractual obligation, if such breach also constitutes a civil wrong and the court has previously awarded compensation or other relief for such civil wrong to such person or to a person through or on account of whom such person claims.

Right of Dependents to Compensation

78. Where the death of any person is caused by a civil wrong and such person, had he not passed, would have been entitled at the time of his death to compensation under the provisions of this Ordinance for a bodily injury caused to him by such civil wrong, then his spouse, parent and child shall be entitled to compensation from the person responsible for such civil wrong.

Person Entitled to Bring Action

79. An action for compensation under section 78 shall be brought by the executor, administrator or heirs of the deceased for the benefit of his spouse, parent and child, or for the benefit of any living remainder. If no action has been brought within six months of the death of the deceased person, any of the persons for whose benefit the action could have been brought may bring it in the name thereof, in all or part thereof.

Compensation and Calculation Thereof

80 .In an action under section 78, particulars shall be given of the persons for whose benefit such action is brought, and of the monetary loss suffered by such persons respectively due to the death of the deceased person, and compensation shall be awarded for the monetary loss which has been or will be actually suffered by them, including the burial expenses. Upon deducing from the compensation any legal costs not recovered from the defendant, the Court shall determine at the time of trial the share of each of the persons entitled in the residual amount.

Sums not to be Taken into Account

81. In assessing compensation the following shall not be taken into account—

- (1) any sum received or receivable on the death of the deceased under any contract of insurance;
- (2) any sum paid or payable in respect of mourning of the deceased.

Compensation and National Insurance Pension

82. (a) Where a person insured under Part Two of the National Insurance Law, 5714–1953 (hereafter in this Chapter – "the Law"), including a dependent thereof pursuant to section 22(b) of the Law, are entitled under this Ordinance, in consequence of an event, both to compensation from the employer as well as to a pension under Part Two of the Law, then the amount of the pension deducted from the amount of compensation which would be due to them from his employer had it not been for this Section.

(b) For the purposes of this Section—

“Pension” – the monetary value of a pension, other than a pension in kind, which has been or is due to be given under Part Two of the Law, including the amount of injury fees payable under Section 38 of the Law, and a pension which has been reduced or denied in consequence of any act or omission by the employee or for which no option for another

benefit under the Law has been given, shall be deemed to have been given, or due to be given, in full; the provisions enacted by the Minister of Labor under section 49(b) of the Law for the Capitalization of Pensions and for the calculation of the monetary value of pensions in kind shall apply also to the determination of the monetary value of pensions for the purposes of this subsection;

"Employer" – Anyone liable under the Law to pay contributions for an insured person, including a person for whose acts the employer is liable under section 13 of this Ordinance.

(c) Under the circumstances referred to in subsection (a), the employer shall not, for the purpose of section 70 of the Law, be regarded as a third party towards which rights are transferred to the National Insurance Institute.

Claim and Indemnity for Joint Civil Wrong Doers

83. (a) Where a person suffered damage as a result of a civil wrong, judgment recovered against a civil wrong doer liable for that damage shall not obstruct any an action against another person who would, if sued, have been liable as a joint civil wrong doer in respect of the same damage.

(b) If more several actions are brought in respect of the same damage by the person who incurred the damage, or for the benefit of the estate, or of his spouse, parent or child, of that person, against civil wrong doers liable in respect of the damage, whether as joint civil wrong doers or otherwise, the sums recoverable under the judgments given in those actions by way of compensations shall not exceed the aggregate amount of the compensation awarded by the judgment first given which is not reversed on appeal, or as altered on appeal, and in any of those actions, other than that in which judgment is first given as aforesaid, the plaintiff shall not be entitled to costs unless the Court believes that there was reasonable ground for bringing the action; where the judgment first given is given against an employer, as defined under section 82, and the circumstances referred to therein, the amount of the compensation awarded by the judgment first given shall, for the purposes of this subsection, be replaced by the amount which would have been awarded had it not been for section 82.

Indemnity between Civil Wrong Doers

84. (a) Any civil wrong doer liable for the damage may recover contribution from any other civil wrong doer who is liable, or would have been if sued, for the same damage, whether as a joint civil wrong doer or otherwise. However, no person shall be entitled to recover contribution under this subsection from whoever is entitled to indemnity from him in respect of the liability for which the contribution is sought.

(b) In any proceedings for contribution under this section, the amount of the contribution recoverable shall be in the amount determined by the court to be just and right with respect to that person's responsibility for the damage; the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person will amount to a complete indemnity.

Definition

85. "Civil wrong" in sections 83 and 84 – whether a criminal offense or not, and nothing in those sections shall affect a criminal proceedings in respect of any wrongful act or render

enforceable any agreement for indemnity which would not have been enforceable had not been for those sections.

Insurance Sums not to be taken into Account in Assessing Compensation

86. In assessing any compensation payable for a civil wrong, no sum paid or payable under any contract of insurance that is deserving due to such civil wrong shall not be taken into account.

Compensation for Defamation Published in a Newspaper

87. (a) Where a plaintiff who won an action brought against the proprietor of a newspaper in respect of the publication therein of defamatory matter, demonstrates to the Court before which the action was heard that he is not able to procure the holding of the judgment by way of execution against the immovable or movable property of the defendant, the court may order that the judgment be enforced against the signatories of any bond given by or on behalf of the defendant under section 5(1)(d) of the Press Ordinance and to order execution of the security given by the signatories of such bond, provided that the liability of the signatories shall not exceed their liabilities under such bond.

(b) A plaintiff as said in subsection (a) shall furnish the Minister of Finance a copy of any court order made under this section.

(c) The Minister of Justice may enact regulations for regulating the practice and procedure and prescribing the fees to be paid in respect of any proceedings under this section.

Civil Wrong which is also a Criminal offence

88. Where the facts upon which an action is based constitute a criminal offense, the fact thereof shall not serve to obstruct any action, however if it appears to the Court, at any stage of the proceedings, that the fact constitute, or may constitute, a felony, the Court shall delay further proceedings until it is satisfied that those facts have been reported to the police or the police is aware of the facts thereof.

Commencement of Limitation

89. For the purposes of the period of limitation in actions for a civil wrong – "the day on which the cause of action ensues" shall be one of the following–

(1) where the cause of action is an act or omission – the day on which such act or omission occurred; if the act or omission is ongoing, the day on which it ceased ;

(2) where the cause of action is damage caused by an act or omission – the day on which such damage occurred; where the damage was not discovered on the day on which it occurred – the day on which the damage was discovered, unless that in the latter case the action shall be subject to limitation unless it is brought within ten years from the day on which the damage occurred.

CHAPTER SIX: MISCELLANEOUS

Saving of Laws

90. Nothing in this Ordinance shall be deemed to affect jurisdiction in accordance with the Admiralty laws vested in any court in Israel, or the provisions amending the Civil Procedure Law (The State as a Party), 5718– 1958, or of an enactment repealed by it.

Provisions on the Ruling “Diyeh”

91. No court other than a Muslim Religious Court or a Tribal Court shall rule diyeh; Courts as said shall not rule diyeh in respect of any act for which compensation has been awarded under this Ordinance, and a court shall not award compensation under this Ordinance for any act for which diyeh has been ruled.

Cancellations and their Reservations

92. The Minister of Justice, with the authorization of the Constitution, Law and Justice Committee of the Knesset, may, by order, amend the Schedule.

Commencement

93 .This new version shall come into force on the 9th of Tishrei, 5729 (October 1st, 1968).

SCHEDULE

(Sections 7 and 92)

(Corporations established by force of Law)

- 1 .The Bank of Israel
- 2 .The National Insurance Institute
- 3 .The Employment Services
- 4 .The Authority for the Conservation of Nature and National Gardens
- 5 .The Agency for Agriculture Control
- 6 .Israel Security Commission
- 7 .The Authority for Archaeology
- 8 .Second Network Channel for Television & Radio
- 9 .The Airport Authority, relating to its functions according to the Aviation Law (Security in Civil Aviation), 5737– 1977, and Maintaining Security in Public Bodies Law, 5758– 1998.

Yaacov Shapira

Minister of Justice