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ABSTRACTS

Michal Aharoni, *The Crab and Oyster Cocktail that Won the Legal Argument: On the Statement of Facts in Lawyers' Briefs*

What is the best way for lawyers to outline the facts of their cases in order to influence the court decision? This is the main question I discuss in my article. Surprisingly, lawyers' narratives are rarely discussed in Israeli legal literature, while the narratives of judges in their judgments are extensively addressed.

In the US and the UK, however, a movement called Applied Legal Storytelling deals with lawyers' writings from a practical angle - the desire to improve legal representation. In this article, I discuss the main principles of the "winning story" that this movement recommends.

In doing so, I rely on a re-trial application, filed by the Clinic of Rights in Criminal Law at Tel Aviv University in the case of a man convicted of murder and robbery. This article focuses on the Attorney General's response to this application, demonstrating how his writing perfectly follows the winning story principles and how, ultimately, he indeed wins.

Asaf Harduf, *The Slayer of Our Enemy is Our Son: Resolution Gaps between Criminal Law and Society, Life and Death, and Victim and Offender*

In 2017, IDF soldier Elor Azaria was found guilty of manslaughter by the District Military Court. He was indicted for killing an injured terrorist by shooting him in the head after his attack was thwarted. The Azaria case sparked an unprecedented public debate in Israel. This article refers on that debate, pointing out major gaps between formal criminal law and social realities. Criminal law, in substantive aspects, does not accurately reflect social values due to gaps regarding the importance of certain parameters. These wide gaps reflect diverse views on manslaughter, victims' and offenders' personalities, and even the values of life and equality. While formal law is indifferent to certain parameters such the identities of the offender and the victim,

society finds them crucial. While society is indifferent to certain parameters of self defense, such as the timing of the injury inflicted upon the attacker, the law looks at them as central.

A criminal code that adheres to the community's notion of justice expresses moral fiber, which is essential when combatting crime and designing social norms. A criminal law that contradicts social intuitions and prevalent norms loses its moral and expressive power.

Though undesired, large gaps between law and society are not disastrous. They are inherent to multicultural and dynamic societies. When a gap is exposed, it reveals painful truth. This unpleasant exposure reflects an opportunity to make a change, to reevaluate or revise the specifics of the norm. Acknowledging the importance of the social focus is crucial to challenging social conceptions, instead of ignoring them in favor of academic and legal romanticism. The law can conceptually equate people, lives, and offenses, but cannot make them socially even.

Yuval Livadaro, *Alternative Prison Sentences: A New Model of House Arrest*

In recent years, calls in the Israeli criminal field of law have been increasing for alternative incarceration sentences that do not include actual imprisonment. These calls reflect the public's awareness of the prices associated with this punishment, including the impact of imprisonment on convicts and their families, its high economic costs, and the huge overcrowding in Israeli prisons that led to widespread violations of prisoners' and detainees' rights.

As part of this article, I sought to test a new prison sentence model: Convicts serve their time not behind prison bars, but at home, subject to human supervision and electronic monitoring. This model is known and implemented in many countries, but has not yet been accepted as a type of punishment in Israel, and is only applied to supervision measures during detention or early release from prison

In this article, I examine the current legal climate in the Israeli-criminal justice field, and I argue that against this background - which includes legislative amendments, Supreme Court rulings, and the establishment of public committees - and since most of those recommendations have even been adopted by the government, it would be appropriate to accept the new model proposed in Israel. As part of the article, I discuss the shortcomings of imprisonment and the only alternative that currently exists in Israel (community service), highlighting the advantages of the new model

proposed, outlining a new penal model for Israel, and considering similar practices overseas.

For the first time in Israel, this paper proposes a neat and detailed plan for the assimilation of the new model, a plan that takes into account the characteristics of the criminal justice system in Israel, its needs, types of cases where the proposed punishment may be used, problems that might arise from the proposed model, and solutions to these problems. The article concludes that the proposed house-arrest model is not only possible and worthy of absorption in Israel, but should be applied as soon as possible.

Eyal Gruner & Doron Menashe, *The Right to Self-Representation in Legal Proceedings (Following Rabeea Assy's: INJUSTICE IN PERSON: THE RIGHT TO SELF-REPRESENTATION)*

In his book *INJUSTICE IN PERSON: THE RIGHT TO SELF-REPRESENTATION*, Rabeea Assy argues that a right to litigate in one's own defense, without legal representation, ought not be recognized in civil law. According to his approach, which argues that the right to litigate in person emerges from the right of personal autonomy, the principle is applicable only in criminal law, but not in civil law.

This article contends that the duty of representation applies to civil law, but also to criminal law, and that the argument for autonomy does not invalidate the argument for a representation duty. The article argues that autonomy does not provide the basis for in-person litigation in criminal law because the allocation of risks of error in criminal law dictates that an erroneous conviction is worse than an erroneous exoneration, and in-person litigation increases the risk of erroneous conviction. Similarly, the duty of representation in criminal law is consistent with the theories of rules of evidence in criminal law as proposed by Stein, Laudan, and Shohat.

The article contends with and rejects the argument that the representation duty increases the risk of erroneous exonerations. We further argue that increasing the risk of erroneous conviction impinges on autonomy, excluding situations in which the argument for the autonomy to litigate in person is based on freedom of conscience, and when potential penalty is mild, moderate, or other than incarceration.

In addition, the article takes issue with and rejects three critical approaches: a) the claim that the representation duty inevitably impinges on autonomy; b) the argument

whereby in criminal law, defendants do not subject themselves to this peril, but rather the state compels them to undergo the proceeding; and c) and the argument that the lack of cooperation between the defendant and the defendant's counsel might harm the defendants' case.

Finally, the article contends that the argument re the risks of error constitutes another justification for the duty of representation in civil law, in addition to the arguments propounded by Assy in his book. The article rejects the argument of consent, which states that the defendant who waives representation consents, by the power of dispositive justice, to undertake and assume the risk of error.

Manal Totry-Jubran & Shimon Dayan, *Towards the Regulation of Acquisition Groups*

This article examines the development of the acquisition groups phenomenon, its key motivating actors, and the groups' modus operandi. Listing its advantages and disadvantages, the article reviews the unique characteristics of those groups and the Israeli housing market as a whole. The Acquisition Groups phenomenon started out as a way for private individuals to organize in order to bring down independent construction costs of residential buildings by saving on taxes and developers' fees. Over the past decade, this phenomenon expanded and grown into a brand, marketed by private real-estate companies specializing in the formation of Acquisition Groups in various cities.

The main assertion made in this article is that various relevant Israeli laws in this area do not embody comprehensive systemic thinking concerning this tool, nor do they form an ordered policy in relation to housing in general and Acquisition Groups in particular, and mainly do not address its social aspects. Regulation enacted to date or currently considered merely deals with ad-hoc issues and problems as they arise, putting out occasional fires that give rise to additional problems requiring solutions, including social implications to Israeli society and space as a whole. Therefore, the ensuing conclusion is that, in order to exploit this phenomenon's potential and for it to continue evolving properly, there is a need for comprehensive regulation that accounts not only for its economic aspects, but also for the associated consumer, social, and community ones.