

# A Brief Review of the Israeli Judicial System

*by Adv. A. Amos Fried*

The renowned English commentator and Reform rabbi Lionel Blue observed that “Jews are just like everyone else, only more so.” Nowhere is this demonstrated more clearly than when comparing the litigious nature of the general public as opposed to that of the Israelis.

The United States has a population of approximately 335,000,000 out of which some 1,350,000 are practicing lawyers. That makes a ratio of around 1:250. The United Kingdom is home to about 128,000 employed solicitors out of a general population of 68,000,000, making a ratio of 1:531. Japan has a ratio of 1:3486.

In Israel, that thin strip of land off the Mediterranean with a population just over 8.5 million, the ratio is somewhere around 1:126. That’s right, the highest ratio of lawyers to population in the world is in the Jewish homeland.

With so many licensed attorneys here, is it any wonder Israel’s court system is inundated with layers upon layers of judicial tribunals? Labor courts, family courts, religious courts, municipal courts, juvenile courts, military courts, traffic courts, administrative judiciaries of various kinds, and so on.

As every litigator knows, proper choice of venue is crucial to the success or failure of any given case. Determining where an action should be filed is at times an art in itself, made all the more difficult when certain judiciaries have synonymous and overlapping personal and material jurisdictions. A sorrowful issue of contention for example, is the ongoing battle in Israel between family and rabbinic courts regarding matters of personal status, domestic relations and the like. Unique among modern legal systems, the law in Israel authorizes rabbinic courts to adjudicate according to Jewish religious law matters related to marriage and divorce, including division of joint property, spousal support, child custody and maintenance, etc. Family courts, on the other hand, are part of the civil judiciary and, except for the issuing of actual divorce decrees, are vested with comparable jurisdiction over all other matters related to domestic relations and personal status. As a result, these two judicial forums are in a constant struggle over the question of to what extent Hebrew law should apply and how it is to be interpreted.

The three primary venues that comprise the mainstay of Israel’s judiciary system are the Magistrates (Shalom) Court, the District Court and the Supreme Court.

**Magistrates (Shalom) Courts:** For the vast majority of cases, this is the court of first instance. There are some 30 Shalom Courts spread throughout Israel from the Golan Heights down to Eilat. Civil claims with a monetary value of up to NIS 2.5 million (approximately \$735,000) and actions involving use, possession, or dissolution of a partnership in land are all heard before the Shalom Court. Criminal prosecutions for crimes carrying a sentence of up to seven years’ imprisonment, as well as pre-indictment detention hearings, are also brought before this venue.

**District Courts:** There are currently six District Courts in Israel, from Haifa in the North to Be’er Sheva in the South. They are authorized to adjudicate capital crimes as well as those involving sentences of over seven years’ incarceration. This is the court of appeals for almost all decisions entered by the Shalom Court, both civil and criminal. It is the court of first instance for claims exceeding NIS 2.5 million, various administrative petitions, disputes involving intellectual property, corporate and securities law, questions involving title to real property, and more. District courts also enjoy residual jurisdiction over matters not under the sole jurisdiction of another tribunal.

**Supreme Court:** At the pinnacle of the Israeli judicial system sits the Supreme Court. Its primary function – as defined in Basic Law: The Judiciary – is to hear appeals on District Court decisions. In addition, the Supreme Court serves as the High Court of Justice, empowered with discretion to adjudicate “matters in which it deems it necessary to grant relief for the sake of justice and which are not within the jurisdiction of another court or tribunal.” Moreover, the High Court of Justice is authorized to grant writs of habeas corpus; issue decrees against State and local authorities; enjoin courts, religious tribunals and other quasi-judicial forums and authorities to adjudicate or refrain from adjudicating particular cases; quash proceedings held and rulings entered without authority, and so on.

Governmental separation of powers, with its delicate system of checks and balances, has never been one of Israel's stellar achievements. This becomes apparent most vividly in the growing tendency by the Supreme Court, in its capacity as the High Court of Justice, to officiate as the ultimate supervisor of all State agencies – intervening, superseding and administering authority over practically every realm of public policy in Israel. Richard Posner, former judge of the U.S. Court of Appeals for the Seventh Circuit, has gone so far as to refer to this process as “judicial piracy.”

Take, for example, the question of judicial review. Despite the fact that Israel has no formal constitution but rather a series of “Basic Laws,” the High Court of Justice is fond of declaring a vast array of laws and state actions as “unconstitutional.” And as if that weren't enough, the High Court has recently expressed its willingness to consider petitions challenging the “constitutionality” of the recently enacted Basic Law: Israel -- the Nation-State of the Jewish People. In other words, after decades of bestowing constitutional status upon Israel's collection of Basic Laws, it now appears that the Supreme Court is ready to position itself above the very “constitution” its own jurisprudence has conceived.

It should come as no surprise, therefore, that this inclination to usurp powers at an ever-accelerating pace has landed Israel's Supreme Court in the crosshairs of some of the country's most heated political debates. Frequent polls have repeatedly shown that no small part of the Israeli public (apparently over 50%) express little to no faith in the integrity and impartiality of the Supreme Court and its justices. In refusing to exercise judicial restraint and abstain from taking charge of issues of a clearly political, social, and even religious nature, the Court can no longer ignore the obvious fact of its being perceived as just another player in the dirty world of politics.

While a growing movement to stem this tide of judicial despotism has been gaining momentum, its efforts have been stymied time and again by none other than the Knesset (Israel's parliament) itself -- that is, the very branch of government most adversely disadvantaged by the judiciary's overreach. Sadly, no cogent remedy seems currently in sight, at least not for the foreseeable future. Evidently, Israel's 70,000-some practicing attorneys have yet to exhibit the wherewithal required to effect the necessary correctives to a judiciary gone awry.

*A. Amos Fried, Advocate, a native of Chicago, is a licensed member of both the Israel and New York State Bar Associations and has been practicing law in Jerusalem for over 27 years. He specializes in civil litigation, criminal representation, and commercial law. His private law firm is located at 5 Ramban St. in Rehavia, Jerusalem, and he can be reached at 011-972-544-931359, or [aafried@aafriedlaw.com](mailto:aafried@aafriedlaw.com).*