The Evolution of Trust Law and Case Law in Israel

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Introduction

The concept of the trust in Israeli law is unique: it draws on both civil law traditions inherited from the Ottoman and British Mandate periods, The Charitable Trust law 1924 , and on common-law equitable principles. This mixed legal heritage culminated in the enactment of the Trust Law, 5739–1979, which is the cornerstone of Israeli trust law. Since then, Israeli courts—particularly the Supreme Court—have played a decisive role in shaping and expanding the doctrine of trusts, often filling in statutory gaps with principles akin to equity.

This article reviews the legislative framework, the evolution of case law, and recent developments that continue to influence trust practice in Israel.

The Trust Law, 1979: Structure and Innovations

The Trust Law, 1979 provides a statutory definition of the trust: a relationship in which property is held by a trustee for the benefit of beneficiaries or for a specified purpose. The statute sets out:

- Ways to create a trust: by law, by contract with a trustee, or by unilateral hekdesh-private endowment - deed (dedication).
- Separation of property: trust property is distinct from the trustee's personal property.
- Duties of the trustee: loyalty, prudence, accounting, and impartiality.
- Rights of beneficiaries: to demand enforcement, disclosure, and in certain cases, removal of a trustee.

One of the Law's key innovations was the statutory recognition of hekdesh, a trust created by unilateral declaration, which became a popular vehicle for estate planning.

Hekdesh: Private and Public Endowments

In practice, Israeli families often use a private hekdesh for planning and management of family assets and succession planning. Since a trust is not a separate legal entity, the assets of a hekdesh are often held through a company controlled by the trustee, (an" underlying company").

Public hekdesh are recognized by the trust law and supervised by a registrar of public Hekdesh and the civil courts, which must approve amendments to their purposes.

Trusts for Islamic population: dates back to the Ottoman period as a Moslem Waqf. The Wakf exist today and regulated by a special Sharia court which also has jurisdiction over Sharia family law issues.

The Courts and the Rise of Equitable Principles

An important development in Israeli trust law has been the courts' embrace of 'equitable-style' doctrines, especially in property transactions.

- Aharonov v. Bari (CA 189/95): The Court recognized the purchaser of land under contract as holding an 'equitable proprietary right' even before registration. This right was enforced against third parties and treated as having near-ownership qualities.

- In Batawi v. Bank Mizrahi (CA 6906/00): The Court clarified that, when a seller contracts with two purchasers, the first buyer acquires an equitable right, and the seller effectively holds the property in trust for that buyer. This reasoning echoes the English constructive trust and significantly impacted priority disputes in real estate.

These cases demonstrate how Israeli law, while codified in statute, has been interpreted in a way that integrates common-law trust principles into a civil-law setting.

The law confirms exclusive jurisdiction on trusts to the District court but certain court rulings of the Family court agreed to deal with trust issues when family disputes were involved.

Trusts and Limitation of Actions

Recent rulings extend this equitable logic to the law of limitation. Where a constructive trust arises, such as when a seller holds property for a first buyer, the statute of limitations may be suspended, allowing claims to be brought decades later. This underscores the practical power of judicially created trusts in Israel.

Taxation of Trusts

A comprehensive reform in 2006- Law for taxation of trusts- introduced rules for taxation of trusts. The law was updated in 2014 and governs most trusts with Israeli beneficiaries, and certain trusts with foreign settlors. The law levies reporting duties on trustees. For practitioners, the distinction between Israeli and foreign settlors and the residence of the beneficiaries is crucial for tax exposure.

Recognition of Foreign Trusts

Israeli law generally recognizes foreign trusts, provided they are not contrary to public policy. Importantly, Israeli law does not impose a rule against perpetuities on inter vivos trusts,

allowing for long-term planning. Certain Foundations are specifically mentioned as recognized by law.

Current Challenges and Trends

- Sham or nominee arrangements: Courts are wary of structures that purport to be trusts but are in substance agency or concealment arrangements.
- Supervision of the Israel Tax authority obliging filing annual tax reports by trustees.
- International practice: Global families increasingly combine Israeli hekdesh with foreign law trusts, or assets in Israel or in foreign jurisdictions. This requires careful attention to cross-border tax and succession issues.

Conclusion

The Trust Law, 1979 provided Israel with a clear statutory foundation for trusts. But it is the Court's jurisprudence that has infused the Israeli system with equitable principles, giving trusts a central role in property, succession, and tax planning. The evolution of Israeli trust law reflects a hybrid legal tradition, where codified law and judge-made equity coexist. For practitioners, the field remains dynamic, particularly at the intersection of trusts, taxation, and international estate planning.

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