DISPUTE RESOLUTION

Israel

LEXOLOGY
Getting The Deal Through

Consulting editor
Latham & Watkins LLP

Dispute Resolution

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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LITIGATION

Court system

What is the structure of the civil court system?

The Israeli court system, in the civil branch, is comprised of three instances. Magistrate courts are the lowest level of trial courts, and they preside over most cases, in particular monetary claims that are under 2.5 million shekels. Cases in the magistrate courts are heard by a single judge.

The district courts are an intermediate level instance. They serve as an appellate court for the magistrate courts (normally in panels of three judges) and serve as the court of first instance for monetary claims exceeding 2.5 million shekels (typically with one judge hearing the case). In addition, the district court has jurisdiction in certain matters defined by the law, including real estate ownership claims, certain corporation matters, corporations' bankruptcy and administrative matters. Furthermore, the district court has residual jurisdiction over civil matters that are not covered by the magistrate courts; that is, jurisdiction to hear any matter that is not within the jurisdiction of another court.

There are several specialised courts, such as traffic, labour, juvenile, military, family, and municipal courts. Cases of personal status are typically decided by religious courts that have exclusive jurisdiction in matters of matrimony and divorce, and may have consensual jurisdiction on matters such as maintenance, guardianship and adoption. This applies to couples from the same religion, who are obligated to the tribunals of their religious communities (eg, Jewish rabbinical courts, Muslim Sharia courts, Druze religious courts and ecclesiastical courts of the recognised Christian communities in Israel).

The Supreme Court is the ultimate appellate jurisdiction nationwide. In civil matters it normally sits in panels of three justices, except for certiorari requests that are normally decided by one justice. In rare cases, the Supreme Court enlarges its panel with an uneven number of justices (eg, in cases of retrial). In constitutional cases, the Supreme Court often serves as the court of first instance when presiding as a High Court of Justice.

Law stated - 28 March 2022

Judges and juries

What is the role of the judge and the jury in civil proceedings?

Israeli civil courts are comprised of professional judges. There is no jury system. The legal system is basically adversarial. Nonetheless, the judges have discretion to exercise some inquisitorial elements and characteristics. Hence, occasionally, during the pretrial the judge may even cross-examine a key witness or a party in certain circumstances to decide on some of the issues at an early stage. Also, later, during the cross-examination of witnesses, the judge may intervene and ask witnesses some questions. This may be attributed to the classification of the Israeli system as a mixed legal system, with Anglo-American and continental influences. Following a recent civil procedure reform (2021), the judges received broadened authorities to conduct legal proceedings in an efficient and just manner. This reform, which is in its nascent stages, is likely to be implemented in a manner that is more inquisitorial than beforehand.

Law stated - 28 March 2022

Limitation issues

What are the time limits for bringing civil claims?

The default limitation time for bringing civil claims to court is seven years, according to the statute of limitations.

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Certain claims are subject to shorter or longer limitation periods. For example, the limitation period for real estate claims is 15 or 25 years, depending on the type of land registry, and in insurance claims the limitation period is three years. In rare cases, a lawsuit may be dismissed due to delay, even if it was submitted within the time frame of the statute of limitations.

The parties may contractually agree, in an agreement that solely addresses this matter, on a longer limitation period, or on a shorter longer limitation period if the matter is not related to real estate and the limitation period is longer than six months.

Law stated - 28 March 2022

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

In civil proceedings, there are normally no prerequisites for submitting a lawsuit. Administrative petitions, however, require the exhaustion of remedies with the relevant public authority before filing the petition.

In cases of a special relationship between the parties (eg, a partnership), a plaintiff may submit a preliminary claim for accounts to quantify his or her damages.

Law stated - 28 March 2022

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Civil proceedings commence when the plaintiff submits a statement of claim to the competent court. The statement of claim, along with a summons to court, is served to the defendant either by courier service or by registered mail.

The courts in Israel are under a heavy workload. The workload affects the management of the cases and their duration, which normally takes several years to be fully conducted. Some tools to alleviate the burden in courts are mandatory mediation in most cases submitted to magistrates' courts, constant pressure by judges to reach settlements and referral of disputes to arbitration.

Law stated - 28 March 2022

Timetable

What is the typical procedure and timetable for a civil claim?

Once the plaintiff submits his or her statement of claim to court, and the defendant is duly served, a statement of defence must be submitted within 30–120 days, depending on the kind of the claim, as follows:

- small claims: 30 days;
- rapid procedures: 45 days;
- regular claims: 60 days; and
- medical malpractice claims: 120 days.

Once all statements of defence are submitted, in regular claims the plaintiff may (but does not have to) submit a reply

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to the statement of defence within 14 days.

After the last pleading is filed in court (either the last statement of defence or the reply to statement of defence), in regular claims the parties have 30 days to exchange demands for disclosure of documents and questionnaires. Each party should reply to these demands within 30 additional days. Following such demands and responses, motions may be submitted with regard to them, according to a strict timetable prior to the first pretrial hearing. Thereafter, such motions and other procedural issues may be decided in pretrial.

Usually, pretrial hearings are scheduled according to the judge's calendar pursuant to the submission of the last statement of defence or reply to statement of defence and following disclosure of documents between the parties.

Law stated - 28 March 2022

Case management

Can the parties control the procedure and the timetable?

The parties have limited control over procedures and timetable. Normally, the timetable is set by regulations and the decisions of the court. If the parties grant time extensions to each other or reach procedural agreements, the court may accept them, but it may also reject such motions and insist on enforcing another timetable. Nonetheless, time extensions are frequently requested and granted, particularly if no previous time extension was requested.

Law stated - 28 March 2022

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Parties are obliged to full mutual disclosure of the documents that are relevant to the case. During the disclosure phase, each party must disclose to the other party all the documents and correspondence relevant to the case in its possession – including those unhelpful to their case. Following a recent civil procedure reform (2021), the parties must mutually disclose documents in a joint meeting, similar to depositions, which should take place within a month of the submission of the last statement of defence (or reply to statement of defence).

Law stated - 28 March 2022

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

'Privileged documents' include attorney–client correspondences or documents that were prepared towards legal proceedings. Nonetheless, it is customary to let the other party to know about their existence, and to indicate that these documents are privileged. As for attorney–client privilege, the client may waive confidentiality. Advice from an in-house lawyer is usually considered to be part of attorney–client privilege. Other privileges and immunities include clergy, psychologists, spouses, journalists and self-incrimination.

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Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

In most cases, instead of oral testimony, the witnesses (including experts) submit their testimony in the form of a written affidavit (or a written expert opinion). The witnesses and experts are then subjected to cross-examination in court. Following a recent civil procedure reform (2021), preference will be given to hearing oral evidence.

Law stated - 28 March 2022

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The court has discretion to rule whether witnesses shall give oral evidence or file affidavits. In most cases, witnesses submit affidavits that serve in lieu of oral testimony. Nonetheless, following a recent civil procedure reform (2021), preference will be given to hearing oral evidence. The affidavits (or expert witness written opinions), including the documents that are attached to them as appendices, serve as evidence, as long as the witness is willing to be subject to cross-examination. The opposing party may object to the admissibility of documents that were attached to the affidavits, or that were submitted as part of a cross examination, if these documents were not disclosed during preliminary proceedings.

Law stated - 28 March 2022

Interim remedies

What interim remedies are available?

There are several interim remedies available, including temporary restraining orders, temporary foreclosure decrees, stay of exit orders, seizure of assets orders, Mareva orders, Anton Piller orders, etc. Typically, an interim remedy intends to maintain the status quo at the time the lawsuit is filed and until the lawsuit is settled, to ensure the implementation of the final judgment when granted. Usually, there is no such formal procedure that supports foreign proceedings.

Law stated - 28 March 2022

Remedies

What substantive remedies are available?

There is a variety of remedies available. These include enforcement of contracts, where applicable and appropriate, and declaratory relief. Damages are a common remedy, but are normally limited to actual damages. Punitive damages are rare.

Once a party receives a monetary judgment, he or she is entitled to linkage differentials and interest as set forth by law.

Law stated - 28 March 2022

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Enforcement

What means of enforcement are available?

The enforcement of court judgments and especially monetary compensation according to a judgment is made via the execution and collection authority, which has tools to enforce judgments and collect money (eg, foreclosures, the limitation of driver's licence and a stay of exit order).

If a court order or a court decision is disobeyed, the court has the authority to issue a contempt order against that party. If the party disobeys the court order, the court has the authority to fine him or her or sentence him or her to jail. However, contempt orders are usually not applicable with respect to monetary verdicts.

Law stated - 28 March 2022

Public access

Are court hearings held in public? Are court documents available to the public?

In general, court hearings are open to the public. In certain cases, court hearings are held behind closed doors, for example, to protect a minor or helpless people, to maintain national security or to protect trade secrets.

Once a hearing is held in open court, the decisions and final judgment may be accessible to the public online. The parties have further access to all court documents. If a third party wishes to access court documents, he or she may submit a relevant request to court.

Law stated - 28 March 2022

Costs

Does the court have power to order costs?

The court has the power to order costs.

The winning party may submit proof of its actual expenses (eg, fee agreement and receipts), which in principle should be reimbursed if they were reasonable and required. Nonetheless, the court has discretion whether to order full costs or just a partial amount, and it is very common that the court rewards partial or even no costs to the winning party, according to the circumstances. Following a recent civil procedure reform (2021), the court's criteria for ordering costs have been slightly altered, and as there is no sufficient data on the implementation of these criteria, it is hard to determine if there has been any practical shift in this regard.

The defendant may request the court, at the beginning of the proceedings, to order the plaintiff to deposit collateral for expenses. This is prevalent in cases where the plaintiff is a limited liability company, where the burden of proof to demonstrate that the plaintiff should be exempted from depositing the collateral lays upon the plaintiff. When the plaintiff is a human, there is a heavy burden of proof on the defendant to persuade the court that the plaintiff should deposit collateral to guarantee the defendant's expenses.

Law stated - 28 March 2022

Funding arrangements

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Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

There is great flexibility in setting fee agreements between lawyers and their clients, including 'no win, no fee' or other types of contingency or conditional fee arrangements. Some areas of law set limitations or caps on such arrangements (eg, claims for social security benefits or car accident compensation). In any case, lawyers are barred from paying court fees or giving loans to their clients. Third-party financing of claims is permissible and has become prevalent in recent years. An assignment of a right of action can be done in certain circumstances.

Law stated - 28 March 2022

Insurance

Is insurance available to cover all or part of a party's legal costs?

Insurance is available to cover legal costs. Terms may vary in accordance with the insurance policy coverage.

Law stated - 28 March 2022

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions are available for litigants with similar claims and with respect to certain areas of the law. Class actions are common in matters such as banking, securities, insurance, environment, antitrust and consumer protection. The class action lawsuit makes it possible to conduct legal proceedings that would otherwise not have been carried out if each of the litigants had to represent themselves. Some causes of action are also available for litigants against the state, in cases of tax overcharge.

Law stated - 28 March 2022

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The right to appeal on a final civil judgment is typically automatic for the first appeal, while a second appeal requires certiorari. Grounds for appeal are usually focused on legal mistakes in the judgment, as the appellate court does not tend to intervene in factual findings. Certiorari is usually granted when the issue at hand involves a legal question that goes beyond the applicant's private case or if a gross injustice or overwhelming mistake was made. Following a recent civil procedure reform (2021), the court is authorised to dismiss an appeal without even hearing the other party.

Law stated - 28 March 2022

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Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Enforcement of foreign judgments is regulated by the Enforcement of Foreign Judgments Act (1958). It may rely upon bilateral agreements, which exist between some countries and Israel. If a final judgment is given in a foreign country, in which the parties had due process and fair access to court, an Israeli court would tend to recognise the foreign ruling. There is a requirement for reciprocity to recognise the judgments from a particular country (except in exceptional cases).

Considerations that may bar the recognition and enforcement of a foreign judgment relate to those rulings the enforcement of which is likely to infringe on Israel's sovereignty or security; judgments that are unenforceable in their country of origin; rulings that their content may contradict public policy, etc.

Law stated - 28 March 2022

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Israel is a signatory to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. It provides apostille services and recognises legal documents from foreign countries that are party to the convention, which were authenticated according to the Convention.

Law stated - 28 March 2022

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Act (1968) was founded primarily on British law and was not based upon the UNCITRAL Model Law.

Law stated - 28 March 2022

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The Arbitration Act (1968) requires a written agreement for arbitration. The writing requirement can be fulfilled as a clause in a general agreement. If the parties' intent to resolve their differences via arbitration is clear and was not neglected, the court will enforce the arbitration clause.

Law stated - 28 March 2022

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration clause is silent on the matter, and the parties fail to agree on the identity of the arbitrator, then any party may request the competent court to appoint a single arbitrator. The court has discretion to appoint whoever it sees fit as an arbitrator. The court may remove an arbitrator from his or her position if the arbitrator is not worthy of the trust of the parties (eg, there is a conflict of interest), if the arbitrator's conduct during the arbitration causes distortion of justice or if the arbitrator is unable to fulfil his or her role.

Law stated - 28 March 2022

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Unless the parties agree on the identity of the arbitrator, the court appoints him or her. There is no formal pool of arbitrators from which the court chooses candidates. Nonetheless, the court will often appoint a retired judge or an esteemed lawyer who has the necessary qualifications to adjudicate on the matter.

There are also several arbitration establishments that have a pool of arbitrators. If the parties agreed to hear the case via these institutions, typically the president of the establishment will appoint an arbitrator from the arbitrators' list or offer a few options from the list to the parties.

Law stated - 28 March 2022

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act (1968) sets default rules for arbitration, some of which may be consensually altered. The default rules exempt the arbitrator from civil procedure rules, substantive law and evidence law, and require the arbitrator to detail his or her reasoning.

Law stated - 28 March 2022

Court intervention

On what grounds can the court intervene during an arbitration?

Normally, the court does not intervene during an arbitration except for in specific circumstances; for example, if the removal of the arbitrator is being requested by one of the parties.

In addition, the court has auxiliary powers to assist the arbitrator in areas such as the invitation of witnesses; contempt of court against witnesses; the collection of evidence; the foreclosure of assets; temporary restraining orders; and interim relief.

However, if a party addresses the court during a pending arbitration process, the arbitration proceedings are not ceased unless the court instructs otherwise.

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Interim relief

Do arbitrators have powers to grant interim relief?

Generally, the arbitrator may request the competent court to use its auxiliary powers for granting interim relief. In addition, he or she may grant interim relief in some cases.

Law stated - 28 March 2022

Award

When and in what form must the award be delivered?

The arbitration award must be in writing and signed by the arbitrator indicating the date of signature . The arbitration award should be given within six months of the beginning of the arbitration. However, this requirement seldom occurs, as the parties usually agree on a longer period.

Law stated - 28 March 2022

Appeal

On what grounds can an award be appealed to the court?

There are three alternative appeal options with respect to an arbitration award :

- There are 10 narrowly tailored grounds for the cancellation of an arbitration award. Each arbitration award is subject to cancellation due to these grounds within 45 days of its delivery (or within 14 days of a request to authorise the award – the earlier of the two). The cancellation grounds include, for example, lack of authority to decide on a specific issue, lack of reasoning if the parties agreed that the arbitration award will include reasoning, the award contradicts public policy, the arbitrator was not appointed lawfully and a party was not granted the opportunity to argue his or her arguments and present his or her evidence.
- The parties may agree that an appeal will be heard by an appellate arbitrator. In this case, the award shall be final, unless there are extraordinary circumstances that may justify the reopening of a final court judgment (eg, evidence of bribery).
- If the arbitration agreement stipulated a right to appeal to court, the parties may request to appeal to the court in cases where a fundamental mistake in the application of the law made by the arbitrator caused grave injustice. Once a court decides on an appeal on an arbitration award or on a request to cancel an arbitration award, further appeal requires certiorari.

Law stated - 28 March 2022

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

A domestic award can be authorised and enforced if submitted by the winning party to the competent court for approval, and if the other party does not submit a request for cancellation within 15 days of being served with the request to authorise the award, or within 45 days of the receipt of the award (the earlier of the two). If a request for cancellation was submitted and declined, the court will authorise the award even if was not requested by the winning

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party.

A foreign award may be approved according to the New York Convention. Israel is a party to the Convention, and it was incorporated into domestic law in 1978 in the regulations for the enforcement of the New York Convention.

Law stated - 28 March 2022

Costs

Can a successful party recover its costs?

A successful party can recover its costs. The arbitrator is entitled to determine costs, similarly to a judge in court.

Law stated - 28 March 2022

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

The most common ADR processes in Israel are mediation and arbitration. Mediation is most common, and even mandatory in most cases in a magistrates' court. A special regulation exists in family courts that mandates the parties to file a request for settlement prior to submitting a claim. The family courts also have an auxiliary unit, with specially trained social workers, who attempt to bring the parties to a settlement.

Law stated - 28 March 2022

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

It is very common for the court to ask the parties to consider ADR before or during proceedings. The Civil Procedure Regulations set forth a mandatory mediation meeting in most cases in a magistrates' court to be held by a court-appointed mediator, prior to the first hearing of the case. However, if this meeting was not successful, the court will not compel the parties to continue to participate in the ADR process.

Law stated - 28 March 2022

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Israel is considered a mixed legal system. It had great British influence, as the laws from the British mandate served as its default rules upon establishment of the state in 1948. Nonetheless, it has Turkish law residues, continental influences (particularly in fields of private law) and American influences (particularly since the 1980s, and in areas of commercial law and corporation law). These eclectic features make Israel a very diversified legal system.

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UPDATE AND TRENDS

Recent developments

Are there any proposals for dispute resolution reform? When will any reforms take effect?

In January 2021, a civil procedure reform took place. The reform replaced the 1984 Civil Procedure Regulations in a manner that is partly innovative and partly mimicking the old regulations. In general, the regulations aim to give judges broader discretion to manage their cases and emphasise the efficiency of the proceedings. Since this reform is in its early stages, it is hard to determine to what extent it will bring substantial changes to the manner in which civil cases are heard.

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Jurisdictions

Jurisdiction	Firm
Australia	Clayton Utz
Austria	OBLIN Attorneys at Law
Belgium	White & Case LLP
Cayman Islands	Campbells
China	Buren NV
Cyprus	AG Erotocritou LLC
Denmark	Lund Elmer Sandager
Ecuador	Paz Horowitz
Egypt	Soliman, Hashish & Partners
Germany	Martens Rechtsanwälte
Greece	Bernitsas Law
Hong Kong	Hill Dickinson LLP
India	Cyril Amarchand Mangaldas
Indonesia	SSEK Legal Consultants
Israel	Lipa Meir & Co
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Marxer & Partner Rechtsanwälte
Luxembourg	Baker McKenzie
Malaysia	SKRINE
Malta	MAMO TCV Advocates
Pakistan	RIAA Barker Gillette
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