

Israeli law

Israeli law is based mostly on a common law legal system, though it also reflects the diverse history of the territory of the State of Israel throughout the last hundred years (which was at various times prior to independence under Ottoman, then British sovereignty), as well as the legal systems of its major religious communities. The Israeli legal system is based on common law, which also incorporates facets of civil law. The Israeli Declaration of Independence asserted that a formal constitution would be written,^[1] though it has been continuously postponed since 1950. Instead, the Basic Laws of Israel (Hebrew: חוקי היסוד, *huqey ha-yesod*) function as the country's constitutional laws. Statutes enacted by the Knesset, particularly the Basic Laws, provide a framework which is enriched by political precedent and jurisprudence. Foreign and historical influences on modern-day Israeli law are varied and include the Mecelle (Hebrew: מג'לה; the civil code of the Ottoman Empire) and German civil law, religious law (Jewish Halakha and Muslim Sharia; mostly pertaining in the area of family law), and British common law. The Israeli courts have been influenced in recent years by American Law and Canadian Law^[2] and to a lesser extent by Continental Law (mostly from Germany).^[3]



Israeli Supreme Court, 50th anniversary celebration

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History

The modern judicial system in Palestine, later the State of Israel, was established by a British senior judicial officer, Orme Bigland Clarke, who was appointed by General Edmund Allenby in 1918, following the British conquest.^[4] The British military administration was replaced with a civilian one which operated under the Constitution of Mandatory Palestine, promulgated through an Order in Council by the British monarch in 1922.

Britain, which was given a League of Nations mandate to govern Palestine, implemented the Common Law system, except for the jury system. Legal precedents in torts and contracts were borrowed from England, and certain legal areas were codified in order to assure legal certainty. Thus the Penal Code in

Israel was practically the same as those used by the British in India or other colonies and territories.

Upon Independence, a Bill of Independence was signed as a manifesto for the new State. While it was drafted as a universal and democratic declaration capturing noble ideas prevalent at the time, it is non-binding, although has occasionally been used as a guiding tool by the courts.

With the establishment of the state, English law as it was on the date of independence remained binding, with post-1948 English law developments being persuasive and not binding. This was enabled by the first legislative act of the Provisional State Council, which enacted a reception statute as part of the "Law and Administration Ordinance" published on 19 May 1948, four days following the Declaration of Independence.^[5]

Some aspects of Turkish Ottoman law still remain today, such as placing personal status and marriage law in the hands of the religious courts. Also the Turks adopted the Napoleonic Land Registration system, through a successive Block and Lot entries. Many Turkish land laws remain in force.

Since independence the young State of Israel was eager to gain recognition in the international arena by joining international treaties, and participating heavily in the negotiations of international treaties, e.g., the Warsaw convention.

During the 1960s there was a rush to codify much of the Common Law in areas of contracts and torts. The new laws were a blend of Common Law, local case law, and fresh ideas. In 1977 the Knesset codified the penal code. Since the 1990s the Israeli Ministry of Justice, together with leading jurists, has been laboring on a complete recodification of all laws pertaining to civil matters. This new proposed civil codex was introduced in 2006, but its adoption through legislation is expected to take many years, if not decades.

As a result of the "Enclave law", large portions of Israeli law are applied to Israeli settlements and Israeli residents in the occupied territories.^[6]

Israeli court system

The Magistrate Court (*Beit Mishpat Hashalom*) handles civil cases of less than 2.5 million shekels (but not disputes over the ownership of land), and criminal cases in which the maximum sentence is 7 years. Magistrate Courts are to be found in most Israeli towns. The Magistrate Court has 6 subdivisions. (1) The Juvenile Court deals with criminal offenses committed by people who were not 18 on the date of prosecution and some issues relating to the removal of children from parental custody. (2) The Family Court deals with all civil cases where the parties are close family members. (3) The Small Claims Court deals with cases of less than 30 thousand shekels. (4) "Hotsa'a Lapoal" is the bailiffs office for judgment debt collection. (5) The Traffic Court deals with all traffic offenses. (6) The Court of Local Issues deals with all offenses prosecuted by local authorities (parking tickets, planning violations etc.).

The District Court (*Beit Mishpat Mehozi*) deals with all civil and criminal matters not under the jurisdiction of the Magistrate Court including disputes over the ownership of land. This court also has jurisdiction over most administrative cases. This court also hears appeals from the Magistrate Court. There are six courts, one in each of Israel's districts: Jerusalem (also has extra jurisdiction of extra territorial matters), Tel Aviv, Haifa, Center (in Petah Tikva), South (in Beer-Sheva), and North (in Nazareth).

The Israeli Supreme Court (*Beit Mishpat Elyon*) mostly hears appeals from the District Court but also sits as the High Court of Justice and as such hears administrative cases not under the jurisdiction of the District Courts. Many political cases and cases of international interest are heard by the Supreme Court

sitting as the High Court of Justice.

The Labour Tribunals (*Batei Ha'din Le'avoda*) hears all cases where the parties are employer and employee, all cases against the National Insurance Institute and some other socially oriented matters. It is an independent system composed of 5 district tribunals (Jerusalem, Tel-Aviv, Haifa, South and North) and one national tribunal in Jerusalem (*Beit Ha'din Ha'artzi*).

There are also religious tribunals in Israel. Some specific legal matters in Israel (e.g., matters of personal status such as marriage and divorce) come under the jurisdiction of the religious tribunal system. There is a list of legally recognized religious communities: Jewish, Muslim, Greek Orthodox Christian, Catholic Christian etc. The small Protestant Christian community in Israel is not recognized; the Jewish community for this purpose does not include the non-Orthodox denominations, Reform and Conservative. Each religious community has its own religious court. For example, Jewish weddings are sanctioned only by the local Religious Council, and divorces of Jews are handled exclusively by the Rabbinical Courts. The judges (*dayanim*) of the Jewish Rabbinical Courts are all Orthodox rabbis. (Matters incidental to divorce such as distribution of property, child custody etc. are dealt with in the Family Courts, but the personal law of the parties will be applied.)

The judges of the various courts are chosen by a committee comprising 9 members: 3 Supreme Court Judges, 2 government ministers (one is the Minister of Justice), 2 members of the Knesset (one from the opposition), and 2 representatives of the Israel Bar Association. The composition of the committee is slightly different when it chooses Labour Court Judges or judges of the religious tribunals.

See also

- Crime in Israel
- Legal systems of the world
- Basic laws of Israel
- Land and Property laws in Israel
- Prevention of Infiltration Law
- Israeli nationality law
- Child support in Israel

References

1. ...*WE DECLARE that, with effect from the moment of the termination of the Mandate being tonight, the eve of Sabbath, the 6th Iyar, 5708 (15th May, 1948), until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948*
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3. Ruth Levush (15 January 2001). "Features – A Guide to the Israeli Legal System" (<https://www.llrx.com/2001/01/features-a-guide-to-the-israeli-legal-system/>). *LLRX*. Retrieved 7 May 2017.
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5. *Law and Administration Ordinance* (https://www.knesset.gov.il/review/data/eng/law/kns0_govt-justice_eng.pdf), 1948 – №1, *Section 11*
6. Orna Ben-Naftali; Michael Sfard; Hedi Viterbo (10 May 2018). *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (<https://books.google.com/books?id=Is5TDwAAQBAJ&pg=PA52>). Cambridge University Press. pp. 52–. ISBN 978-1-107-15652-4.

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External links

- [Israeli Law Guide \(https://web.archive.org/web/20090205220701/http://www.llrx.com/features/israel3.htm\)](https://web.archive.org/web/20090205220701/http://www.llrx.com/features/israel3.htm)
 - [Basic Laws of the State of Israel \(http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/basic%20laws%20of%20the%20state%20of%20israel.aspx\)](http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/basic%20laws%20of%20the%20state%20of%20israel.aspx) from the [Israel Ministry of Foreign Affairs](#)
 - [The Judiciary \(http://www.mfa.gov.il/MFA/Government/Branches%20of%20Government/Judicial/The%20Judiciary-%20The%20Court%20System\)](http://www.mfa.gov.il/MFA/Government/Branches%20of%20Government/Judicial/The%20Judiciary-%20The%20Court%20System)
 - [The Bar of Israel \(http://www.israelbar.org.il/english_index.asp\)](http://www.israelbar.org.il/english_index.asp)
 - [The Courts of Israel \(http://elyon1.court.gov.il/eng/home/index.html\)](http://elyon1.court.gov.il/eng/home/index.html) (Judicial branch of Israel)
 - [The Knesset \(https://www.knesset.gov.il/main/eng/home.asp\)](https://www.knesset.gov.il/main/eng/home.asp) (Legislative branch of Israel)
 - [Israeli Ministry of Justice \(http://www.justice.gov.il/mojeng\)](http://www.justice.gov.il/mojeng) (Executive branch body responsible for the judicial branch of Israel)
 - [Contract Law of Israel \(https://ssrn.com/abstract=1139775\)](https://ssrn.com/abstract=1139775)
 - [Regularly updating articles on law in Israel \(http://www.israelbar.org.il/english.asp?catId=246\)](http://www.israelbar.org.il/english.asp?catId=246)
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