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Rosh Hashanah, October 2016

The Tel Aviv University Buchmann Faculty of Law Magazine

Too Many Lawyers?

We've plunged four senior jurists into the heated debate on the oversupply of lawyers in Israel and the planned internship reform. A must-read for anyone interested in local legal practice.



Chapeau!

Student Michal Shachar has won the best debater award at the annual International Red Cross competition on humanitarian law.

Bulldozer

The Clinic for Housing, Community and Law advances large-scale urban renewal projects with a special social value.

Graduates in the Headlines

Judge Eithan Orenstein, Dr. Manal Totry Jubran and Dr. Sharon Yadin.



Mazel tov, TAU Law Review!

A special joint interview of the first TAU Law Review editor and the current chief editor, on the occasion of its fortieth volume celebration.

Thank You, Canada

Two donations from Friends of the Faculty in Canada open up new horizons in research and in clinical education.

Unreal Transaction, Real International Negotiations

Super-realistic simulation involves Buchmann Faculty and Northwestern law students.



Note from the Dean

A year of changes and anticipation

In the legal sector and at the Buchmann Faculty of Law in particular, we mark the end of a year that has brought extensive changes. As it befits the end of the year and the opening of a new one, we chose to devote much of the present issue to these changes. First and foremost, our cover story concerns the hot topic of the "saturation" of the Israeli legal market and the planned reform to lengthen the internship period. As members of one of the principal institutions for the training of jurists and the research of law, it is our duty to ask questions about our own methods as well, about current legal events, and about the direction in which the legal sector is headed. Loyal to knowledge-based discourse we have chosen to emphasize the perspectives of experts. I am certain that you will find the article about this sensitive issue instructive and informative.

In this issue we also report on two recent donations to the Faculty, from our friends in Canada, which enable us to develop in two important directions: the study of Jewish law and clinical legal education. In addition we focus on the experiential learning method that is gaining momentum at the Faculty in the form of a simulation of an international transaction, carried out in cooperation with two leading universities in the US. We further provide details about the upcoming conference to mark 40 years of *Iyunei Mishpat*, the Faculty's well-known law review—an excellent opportunity to look back at the contribution of the journal to theoretical legal research in Israel and to the people who served on its editorial board over the years. Another special item is dedicated to three graduates and a student who

made headlines this year, first and foremost the Honorable Judge Eitan Orenstein, who was appointed this year President of the Tel Aviv District Court. In addition, Dr. Manal Totry Jubran, graduate of the Zvi Meitar Center for Advanced Legal Studies, has joined this year the Bar-Ilan University Faculty of Law, and Dr. Sharon Yadin's book, published this year based on the dissertation she wrote within the framework of the Zvi Meitar Center, immediately became part of the well-publicized verdict of the Supreme Court regarding the natural gas deal complex. Last but not least, our student Michal Shachar won a prize for outstanding speaker at the last competition on international humanitarian law of the International Committee of the Red Cross. Special mention is also made in this issue of one of the eight excellent legal clinics operating at the Faculty, the Housing, Community and Law Clinic, and we also take a look at a refreshing initiative of the David J. Light Law Library of the Faculty.

The Jewish new year is an opportunity to be grateful to anyone who makes possible the activity of the Faculty as a leading and outstanding institution, to its academic staff, rich in achievements, to its dedicated and hard-working administrative staff, to its adjunct faculty and guest lecturers, who greatly enrich and diversify the curriculum, to its wonderful students and its graduates, who keep in touch with the Faculty through the course of their careers, and to the precious friends of the Faculty, whose contribution enables us to grow and further develop.

Happy New Year and happy reading,
Ron Harris, Dean of the Tel Aviv
University Buchmann Faculty of Law

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Recently, the assessment reports of the International Committee appointed by the Council for Higher Education for Israel to examine all local legal educational institutions was published. The recommendation of this important professional committee, whose members included senior professors from leading law schools worldwide, concerning the fair disclosure by the institutions of legal education regarding the likelihood of graduates to find work in the profession, is discussed in the issue at hand. It is strongly recommended to peruse the full reports of the Committee, by clicking [here](#).

With regard to the Tel Aviv University Buchmann Faculty of Law, I can only quote with pride the conclusions of the Committee: "The Tel Aviv University Law Faculty is world-class. With a top notch faculty, and top students, it provides an excellent legal education in which it exposes its students to both traditional doctrinal analysis as well as a variety of cross-disciplinary approaches."

We thank the CHE Committee for its confidence and appreciation, and promise to continue to meet the highest international academic standard in the field of law.



Save the Date

Upcoming Events at the Buchmann Faculty of Law

October 25-26 "Women Caught in a Trap?" Religious Law and Human Rights in Israel: The Minerva Center for Human Rights Bilingual Conference (Hebrew and Arabic).

November 16 Book Launch at the David Berg Foundation Institute for Law and History: Orit Rozin, *A Home for All Jews: Citizenship, Rights and National Identity in the New Israeli State*.

November 21-22 The Zvi Meitar Center for Advanced Legal Studies hosts the 4th Annual International TAU Workshop for Junior Scholars in Law: *Law in a Changing Society*.

November 22 Medical Research Ethics: An Edmond J. Safra Center for Ethics conference, in collaboration with the National Medical Ethics Committee on Research Involving Human Subjects.

December 20 Special Conference: 40 volumes of TAU Law Review, sponsored by Fischer Bahar Chen Well Orion & Co.

December 20-21 Psychological and Legal Aspects of Guilt. An Edmond J. Safra Center for Ethics conference, in collaboration with the TAU Psychotherapy Program.

December 28 Book Launch at the David Berg Foundation Institute for Law and History: Lena Salaymeh, *The Beginnings of Islamic Law: Late Antique Islamic Legal Traditions*.

January 3-5 The Cegla Center for Interdisciplinary Research of the Law hosts Theoretical Inquiries in Law (TIL) International Workshop: *Fifty Years of Class Action - A Global Perspective*.

January 8-9 Rethinking Care Responsibilities: Using Market Mechanisms to Promote Gender Equality. International Conference, held jointly by TAU and Bar-Ilan University. For details: ceglapost@tau.ac.il

January 11 Book Launch at the S. Horowitz Institute for Intellectual Property in Memory of Dr. Amnon Goldenberg: Oren Bracha, *Owning Ideas: The Intellectual Origins of American Intellectual Property, 1790-1909*.



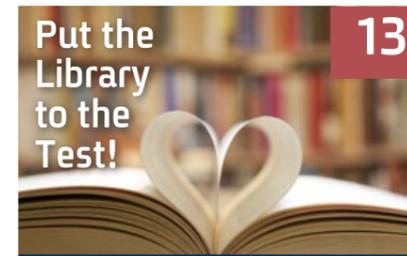
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Two important donations from Canada open up new horizons in the field of Jewish law as well as for the Clinical Education Program of the Faculty.



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Four senior jurists on the Israeli legal market "saturation" and the planned internship reform. All four agree: the reform makes little sense.



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We challenge you to find a topic on which the David J. Light Law Library would have no books, and lots of them.



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Forty Volumes of Legal History

TAU Law Review is turning 40, definitely warranting a joint interview with its first and its current chief editor.



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Bringing Home Gold

For the first time, the Faculty sent a team to the International Red Cross global competition on humanitarian law. Read how it turned out for them.



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The Housing, Community and Law Clinic converts complex urban renewal projects into a better living environment.



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Signing an international pharmaceutical transaction while still in law school? Meet the new teaching method led by DLA Piper partner, Att. Jay Finkelstein.



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The new President of the Tel Aviv District Court, a new Bar-Ilan University Law Faculty member, and a new book on regulatory contracts.

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A Double Dose of Maple Syrup



Two new donations from Friends of the Faculty in Toronto and Montreal allow the Faculty to develop in new and exciting directions

Prominent and important scholars of Jewish law over the years

The Buchmann Faculty of Law has benefitted over the years from prominent researchers in various areas of Jewish law. The late Prof. Aharon Kirshenbaum was among the greatest scholars of Jewish criminal law, and the late Professors Avner Shaki and Ariel Rosen-Zvi were groundbreaking researchers in the area of personal status law in Israel. Today as well, members of the Faculty include renowned researchers in their field, such as Prof. Elimelech Westreich, an important historian of medieval religious law and of the transition to the modern times; Prof. Arye Edrei, winner of the Zeltner Prize this year for his work in the study of Jewish law, is engaged in the study of Halakha in

the 20th century; Prof. Shai Lavi studies the law of circumcision and ritual slaughter in Jewish (and Muslim) communities in Germany; Dr. Shai Wozner, whose book on legal thinking in Lithuanian yeshivot was published this year by Magnes Press; and Dr. Lena Salaymeh, who applies a comparative perspective to Jewish and Islamic law. This year, Dr. Yifat Monnickendam joins this list, a scholar of Talmud, of ancient Oriental Christianity, and of Roman law, who studies the development of legal traditions in late antiquity. In addition, a regular visiting professor at the Faculty is Prof. Suzanne Stone from the Cardozo School of Law at Yeshiva University, together with other members of leading universities overseas. Within this framework, the Faculty welcomed this year Prof. Christine Hayes, a Talmudic and Jewish law scholar from Yale University, and next year it will host Prof. Leora Batnitzky, a researcher of Halakha and Jewish studies from Princeton University.

Workshop on Jewish law, conferences, and a special journal in Jewish law

The Faculty also conducts numerous activities in various areas of Jewish law. The prestigious law journal *Dine Israel* is published jointly by the Faculty and the Cardozo School of Law at Yeshiva University. Every year, a workshop on Jewish law is hosted by the Faculty on a different theme. This year, in addition to prominent researchers from Israel and from overseas, the workshop hosted four Supreme Court justices. Likewise, last summer an

international conference was held at the Faculty, devoted to new sources from Jewish courts in early modern times, both in Europe and in North Africa. Last July, the Faculty hosted the biennial conference of the International Association of Jewish Law (JLA), which lasted three days, featured about 60 lectures in various areas of Jewish law, and attracted dozens of participating researchers.

Important contribution to teaching and research of Jewish Law

At the same time, there has been no appropriate framework within the Faculty to promote research in Jewish law under one roof. This year, a first step in this direction was made thanks to a donation by the Eliyahu Fund for Instruction and Research in Mishpat Ivri, supported by the Koschitzky Family. This well-known Jewish philanthropic family, with roots in post-WWII Toronto, supports a variety of institutions of higher education in Israel and abroad. Thanks, among others, to Stephen Adler and the Canadian Friends of Tel Aviv University in Toronto (Ontario and Western Canada), the new fund has now been created, which supports research in this central legal field at Buchmann Faculty of Law. A first taste of the potential for the future research of Jewish law at the Faculty was offered this year, when it hosted the conference of the International Association of Jewish Law, mentioned above. And this is only the beginning.

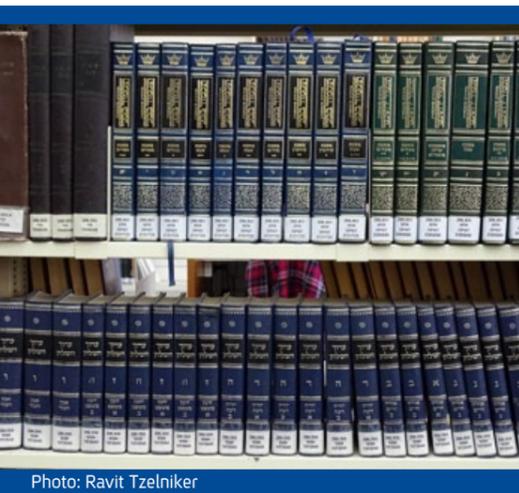


Photo: Ravit Tzelniker



At Left: Denis Coderre, Mayor of Montreal, receives a certificate of appreciation from Professor Joseph Klafter, President of Tel Aviv University.

Below: Left to right - Claire Dalfen, President of CFTAU in Ottawa, Quebec, and the Atlantic Provinces, Professor Herbert Marx, guest of honor at the special gala event to mark the 60th anniversary of Tel Aviv University, Judge Barbara Seal, National President of CFTAU, and Prof. Joseph Klafter, President of Tel Aviv University. Photos: Joel Goldenberg. Courtesy of The Suburban, Montreal

A special gala dinner for the Canadian Friends of Tel Aviv University

A special gala event of the Canadian Friends of Tel Aviv University (CFTAU) was held on August 21 at the Chevra Kadisha synagogue in the Snowdon neighborhood in Montreal, to celebrate the 60th anniversary of Tel Aviv University. The guest of honor at the ceremony, which was organized by Sharon Fraenkel on behalf of CFTAU, was Prof. Herbert Marx, who held various positions in academia, government, and the justice system of Quebec (Attorney General, Minister of Justice, Quebec Superior Court Justice, a member of the National Assembly), and who served as the National President of CFTAU. Another guest of honor was Denis Coderre, Mayor of Montreal, who also delivered the keynote lecture, spiked with Hebrew and Yiddish, and received a special award from the President of Tel Aviv University, Prof. Joseph Klafter. Justin Trudeau, Prime Minister of Canada, greeted the guest of honor by video.

An important contribution to strengthening the Faculty's Clinical Education Program

The contributions collected at the gala event are designated by CFTAU, among others, for the Clinical Education Program at the Buchmann Faculty of Law, the first program of its kind in Israel. It currently comprises eight law clinics and deals with a wide range of issues involving a disparity between justice on one hand, and the law and norms on the other, in general or in individual cases. The approximately 150 law students who are actively involved in the clinics acquire practical experience and develop social values (one of the clinics, the Housing, Community, and Law Clinic, is featured in this magazine).

The initiative of CFTAU to strengthen the Clinical Education Program at the



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Tel Aviv University is important to me. The state of Israel is important to me.

Prof. Herbert Marx, guest of honor at the special gala event of the Canadian Friends of Tel Aviv University, celebrating the university's 60th anniversary.

Buchmann Faculty of Law falls in line with the recommendation of the International Committee appointed by the CHE to examine all legal educational institutions in Israel, which recently released its recommendations. With the important contribution collected during the gala event, the Faculty will be able to continue living up to the praise of its Clinical Education Program, voiced by the Committee:

In the decade since its founding, the TAU Law School's Clinical Program has become recognized as a global model for state of the art clinical legal education ... The major conclusion we drew from our meeting with Tel Aviv clinicians was its impressive quality, in terms of faculty capacity, curricular/pedagogical innovation, student satisfaction, and its laudable level of social engagement.



Welcome to the profession?

The planned internship reform is a prime excuse for throwing the hot potato of the oversupply of lawyers in the Israeli legal practice market into the lap of four senior jurists, who espouse highly systematic perspectives that are quite different from one another. Spoiler: The reform doesn't come off very well here...



Prof. Neta Ziv: When the cake of legal services is not divided, we should not be surprised that there is an oversupply.

Prof. Neta Ziv, who for more than a decade headed the Faculty's Clinical Education Program, has been researching for years the legal profession in Israel. Her most recent book, *Who Will Guard the Guardians of Law? Lawyers in Israel between the State, Market and Civil Society*, was published last year.

"Regarding the oversupply," starts Prof. Ziv, "all professions, naturally, are concerned with competition, and develop a strategy to reduce or prevent it. For example, you can create sub-professions within the profession. In the medical profession there are nurses, X-ray technicians, laboratory workers, and only the most complicated matters require the maximum training that physicians undergo, which is unnecessary if you need only to draw blood from patients. As opposed to that, it is possible, as has been done in relation to the legal profession in Israel, to argue that every little thing having to do with the drafting of a document, the submission of an application, a registration, etc., requires the ultimate, comprehensive training, and then go and fight the writers of petitions of yore, or entities such as Livnat Poran (a firm providing non-legal advice for realizing one's rights vis-à-vis insurance policies and the state, especially under the Social Security Law) today. But if there were legal occupations that required short training, providing one with a profession, as is the case in England, for example, there would be less pressure on institutions training lawyers for three and a half years ahead of an internship of another year or year and a half, and then the bar examinations. In other words, when the legal services cake is not being divided, we shouldn't

be surprised that there is oversupply. Of course, it is no help that in 1995 there were four institutions for legal study and today there are 14, with the number of lawyers doubling in each of the past two decades. But for your information, in 1945 there were 500 lawyers in Palestine-Israel, and what was on the agenda of the Bar Association of Jewish lawyers? Oversupply in the market!"

Wait, would you go to a practitioner who studied only a year to draft a will?

"If you intend the inheritance to go first to your spouse and then to your children you don't need a will at all. It is likely to create only friction. But to register a company, or to draft a lease contract or a collection enforcement order, why not go to somebody who has learned everything about it and this is what he deals with exclusively? Is it preferable to go to a lawyer who studied and works in several domains of law, and whose knowledge in these semi-technical areas is not necessarily better? Let me ask you, who you would prefer to draw your blood, a physician or a nurse?"



In 1945 there were 500 lawyers in Palestine-Israel, and what was on the agenda of the Bar Association of Jewish lawyers? Oversupply in the market!

Then why doesn't the reform address the legal services profession as a whole or the number of institutions teaching law, but jumps on the internship instead?

"Because the Bar Association doesn't want to divide the pie of legal services, and it cannot touch the educational institutions or the law students. Therefore, what's left for the Bar Association is to raise the barriers before joining the profession—the internship and the bar examinations. Indeed, extending the internship, in my opinion, will deter and reduce demand, primarily for the colleges that teach law, because on top of the additional investment of half a year the intern must make, there are already academic institutions whose graduates have difficulty finding an internship. If the internship will

last a year and a half, despite the fact that graduates will continue to be injected into the market every year, internship positions will become available only every year and a half. This represents a significant additional hurdle. Therefore, the colleges opposed extending the internship to two years and have drafted the Student Associations to join the fight. And how did they manage to get them to agree to a year and a half? By including the additional condition of another degree, although what's that got to do with the legal profession? Thus, searching for a compromise we lost the rationale behind the reform."

In other words, the claim for an improvement of the skills of the interns is just a pretext?

"In law there has always been and always will be a tension between the profession taught in academia and practice. Academia will say, in our case, I train jurists with an emphasis on knowledge and discernment rather than on practical skills, I'm not training lawyers. But certainly, the opportunity to make money in the profession also attracts students to academia, not only knowledge. By contrast, for practice the lack of emphasis on practical skills in the studies may be regrettable; but at the same time, the profession that has been acquired in academia certainly enjoys a higher status than that learned from practice only. The tension, therefore, goes hand in hand with the mutual feeding on each other. It's about the endless debate how to prepare lawyers better and who should do it. I did two years of internship. Can I tell you that I ended up twice as good a lawyer as someone who does internship today? I don't know."

Then, essentially, the reform is an anti-competition tool?

"Absolutely. This fits a reality in which some of the graduates and lawyers are of a rather low quality, but the weak graduates in any case will not intern with good mentors, so what did we gain with another half a year? Running for another half a year to the land registry?"





Candidates for internship awaiting an interview. The planned reform of extending the internship to a year and a half instead of one year, with an option of offsetting the additional six months by studying for another degree, is controversial as far as its motives, final configuration, and contribution are concerned.

the lawyers and judges who employ interns. What I object to is the overlap between school and internship, because in this case both the school and the internship lose out. This sets us back twenty years, when the fourth year of law school was something like night school, which is against our trend today in which the fourth year is the climax of the program of study. I am naturally opposed also to a practical course (and again, we do not believe that a course like that is needed), conducted here, for our students, during the school year, with the Bar Association determining its content.”

There was a claim that an agreement has been achieved and that the heads of the faculties of law changed their minds.

“I did not agree, and as far as I know other deans did not agree either. Besides, the deans of faculties of law do not form an institutional body that makes collective and representative decisions. My faculty is part of a public research university, therefore I act according to the instructions of university management, the CHE, and its Planning and Budgeting Committee—and all three oppose the proposed practical course. Incidentally, I believe that even those who agreed in principle to the suggested practical course, did not agree to the format of it taking place within the academic institution, with the Bar Association determining its content. This detail appeared only in the draft memorandum.”

What about the incentive for an additional degree as part of the reform?

“What to study is a life decision that a person must reach without extraneous considerations. It is not true that any additional degree advances a lawyer professionally or that it advances one in life in general. The head of the Bar Association, however, promotes what he promised to do in his campaign, which is to extend the internship, and colleges will offer another degree to law students, and naturally charge more tuition, and these two forces will push the reform, but the bottom line is that this a classic compromise that various entities can live with, but it will not advance the legal profession or Israeli society in any way.”

or specialization courses, and in this way making a distinction between lawyers based on their training and experience. Note that this method is to be implemented with regard to lawyers, not interns. Even if we are talking about the small segment of the internship, I do not rule out a change, but it is not right to provide one solution for everyone. Those who serve their internship in big offices, in the Office of the Attorney General, in the High Court of Justice Department of the State Prosecutor’s Office, at the Securities Authority, or at the Antitrust Authority may not necessarily need the same enrichment as someone who works in the office of a lawyer engaged only in real estate. It is not reasonable to expect, in my opinion, for one course in “practical lawyering” to solve all problems of quality, and moreover, I have never heard from the places I mentioned that the level of the interns, our graduates, is not sufficiently high. I hear that they are excellent. Admittedly, to reach the forefront of the profession, for example in the field of mergers or acquisitions, a lot more is needed than the internship, even if it will be a year and a half. Five or ten years of work on many transactions are needed, in a team that contains senior lawyers.”

It sounds similar to the training of physicians...

“True. In many of the places where our graduates intern the work is extremely complex, which does not allow independent work after a year or a year and a half. Therefore, there is no logic in the current compromise that has been reached. I have no objection in principle to the internship being a year and a half or two years. Is that right? This question should be addressed to



Continued →



Prof. Ron Harris. How to reconcile the oversupply within the profession with the fact that 95% of debtors facing enforcement action against them are not represented by a lawyer?

Ron Harris, Dean of the Tel-Aviv University Buchmann Faculty of Law

“I don’t deny the oversupply in the profession—this is a fact; but I don’t feel it, for two reasons. First, because the graduates of the Law Faculty that I lead are filling the most coveted internship positions, and moreover, each graduate of ours receives several offers of internship from offices in high demand, so that our graduates receive good and varied choices. Second, in one of my fields of expertise, insolvency, about 95% of debtors dealing with enforcement of

collection are not represented by attorneys! In other words, despite the saturation of the profession, the fees have not gone down enough, or legal representation has not become social enough, to allow, economically, the use of legal services by the population that might need it most. Every person who is subject to collection enforcement can benefit from legal counsel: legal advice can help build a more just family life, design a better repayment plan, make a better choice whether or not to declare bankruptcy, plan for recovery... Therefore, even the oversupply in the profession does not advance the accessibility of legal services to the entire Israeli society, which is also something that the Bar Association needs to consider.”

Can legal services to debtors be profitable for an attorney?

“Lowering of the fees combined with better structuring of legal services to debtors, for example, representation for a shorter time, with less direct contact with the lawyer made possible by more extensive use of computers, together with some adjustments in the laws and regulations, could allow lawyers to provide services to debtors and still make a decent living. And this is only one area where there is huge, unsatisfied demand for lawyers in Israel. I’m sure that there are more. Change in these areas will be beneficial for society and also in the interest of members of the Bar Association.”

So the planned reform misses a real opportunity for addressing the oversupply?

“I’m afraid so. If we want fewer people to enter the profession, it must be done when

they choose to study law, not by preventing them from working in the profession after they learned it. It is important that young people in Israel be able to choose what to learn. They should, however, have sufficient information available to them about their choice, which is a critical one in their lives. For example, information about academic standards: Who are the teachers in every school, what is the threshold for admission to the institution (incidentally, an item that is not emphasized at all), how is the tuition they pay being put to use, whether it is invested in teaching or in paying some high executives (as is being done with respect to insurance companies: what percentage of premiums is returned to policyholders...), and of course, information about the employment prospects of graduates in the profession, which in the case of law schools is the percentage of graduates who find internships, pass the bar examination, work in the profession, and where. Today, the law curricula of some of the institutions are marketed in a way that presents a distorted picture, which attracts young people to study law, but if they had full information, perhaps a person who was not admitted into the law school of institution A might reach the conclusion that it makes more sense for him to study something else rather than apply to the law school of institution B. I would expect regulation on the part of the CHE to ensure access to important information by those who are planning their future. This is the recommendation of the international Committee appointed by the CHE to evaluate the legal education institutions in Israel. The market will do the rest.”

What if that person, who was rejected by institution A because he neglected his studies in high school, has the potential to be a good lawyer?

“In view of the data concerning the graduates of our faculty joining the profession, it is preferable for him to spend a year improving his SAT or matriculation exams scores then reapply here, than to attempt to expedite his studies and enroll in a college, because the shortcut may prove not to be to his benefit, at least if his goal is an internship in a place of interest, as a stepping stone to working in the profession.”

What about candidates with high accomplishments? Will the reform deter them from studying law?

“I talk with applicants who had been admitted to the faculty. They have many excellent alternatives: medicine, neuroscience, computer science, etc., and most of them were undecided. Few of them have dreamed from an early age to become lawyers. I don’t know whether another six months of internship will tilt the scales, and I don’t know whether it is socially undesirable for good people to be able to study something interesting that has some other social value rather than study law. But like I said, demand for outstanding jurists always exceeds supply.”

Then what will the reform achieve? Will it improve the quality of lawyers?

“If we want to enhance the quality of the profession, internship is one component, but not the only one. Mandatory enrichment courses for lawyers are much more important, in other words, creating areas of expertise that require an additional degree



Pictured: Prof. Miguel Deutch: Fighting against saturation in the profession is fighting yesterday's war. Even if not a single lawyer is added in the next decade, the market will still be saturated.

Prof. Miguel Deutch, rooted both in academia and in practice, has an impressive resume of working as a lawyer, academic, and principal investigator of the Codification Committee. In the past, he had also proposed the establishment of an internship school to the Bar Association.

"The current reform quite openly walks a thin line as far as legitimacy is concerned," assesses Prof. Miguel Deutch. "It is doubtful whether preventing new lawyers from joining the profession is in itself an appropriate goal. Competition is a healthy phenomenon, in every area. Admittedly, the reform combines limiting the oversupply in the market with improvement in the quality of lawyers, because indeed, as the Bar Association argues, the saturation also affects the quality of lawyers, but these are two separate matters. It is doubtful that limiting the oversupply is constitutional. Improving the quality has merit."

Regarding the quality of lawyers, Prof. Deutch notes that he often encounters contracts drafted unprofessionally, especially in real estate area. "The large offices have the ability to screen and choose the good lawyers. But what about the client who doesn't have the means to hire one of the large offices and turns to independent lawyers who have limited training? The client does not have the tools to evaluate the quality of the legal services he receives. The public needs better information. Lawyers should be required to present data on seniority, training, education, experience, and so on. Of course, it is not convenient for a lawyer to admit he has been only two years in the profession, but the client is entitled to know whether the lawyer is practicing at his

expense, and to decide whether to pay less and take the risk, or to opt for proven quality and pay more."

What change will the planned reform bring?

"I estimate that extending the internship by half a year will not deter candidates from the legal profession, so that it will not help prevent the oversupply. Moreover, extending the internship is not problem-free in itself. I don't believe in the effectiveness of the institution of a Commissioner of Interns. The option to buy off half a year of specialization with another degree appears to have merit, if it is intended to enrich the general education of lawyers. But there is also a downside in the fact that students complete two different degrees in parallel, which may affect the depth they achieve in each field. Moreover, if one year of internship is not effective enough, it cannot be right to allow such a trade-off. And there is no limitation on the type of the additional degree or its relevance to the legal profession."

"Even the proposed practical course, of 80 hours, raises difficulties. First, the proposal is that schools should not charge those who studied at their institution. What is the basis for interfering in the internal relations between institutions and their graduates, and dictate their economic arrangements? Second, the idea of a practical course is correct and important, but why exempt from it those who studied for an additional degree? Third, the proposal is that the content of the course be approved by a commission of examiners from outside the academic institution, with representatives of the Bar Association, and that schools should be required to consult with the Bar Association. Good academic institutions know very well how to teach in the field of practice, through internal and outside teachers, ensuring the quality of the lecturers. They do not need the mediation of this or that official at the Bar Association. The end result would be that the Bar Association is not responsible for the course and for the investment of funds in it, but it interferes in its content, and the academic institutions will become subcontractors of the Bar Association, at their own expense! This combination seems absolutely unacceptable to me."

Are there effective, alternative tools for improving the quality of lawyers?

"In practice, in every social framework, those who excel form a limited group. Only strict admission criteria to the academic institutions will ensure that the group of those who excel will be the dominant one. At the same time, it is necessary to create real incentives for improving the skills of lawyers. I would adopt the model

of medical education: those who finish the internship and pass the exams will be general attorneys, similar to the general practitioners. They can then pursue various options for obtaining a specialist license in one or more fields. These options will require certain years of experience, adequate enrichment studies under the supervision of the Ministry of Justice, rigorous exams, and other conditions. The specialist certificates will serve as clear criteria for the public in assessing the quality of a lawyer. Regarding the bar exams, it is best to adopt the German model. They have a mechanism that includes multiple exams in various fields, and several specialization phases in both the public and private sector. The exams address substance, and test understanding, skill, and knowledge in principle, and not strict memorization of orders... I suggested in the past the establishment of a central internship school, with various branches, where trainees arrive once a week for a full day for the purpose of in-depth training in such practical aspects as the preparation of contracts, writing of motions for claimant and defense, participation in mock trials, etc. Legal offices would be obligated to give trainees a free day per week to study at the Internship School. This program has not been promoted by the Bar Association."



It is not desirable for just anyone to receive a license to practice medicine, and the same is true for lawyers. But today it is no longer possible to change this substantively, certainly not in the short and medium terms.

Getting back to the saturation: What is the solution?

"Fighting against saturation in the profession is fighting yesterday's war. Even if not a single lawyer is added in the next decade, the market will still be saturated.

There is nothing wrong with the legislation that allowed the expansion of the diversity of academic institutions that offer legal studies as education for life. But when it comes to the licensing terms needed to engage in the profession, an altogether different model is required, which would take a cautious approach to substantive qualifications. It is not desirable for just anyone to receive a license to practice medicine, and the same is true for lawyers. But today it is no longer possible to change this substantively, certainly not in the short and medium terms."

What about the demand for institutions of legal education to publish data on the rate of admission to their ranks, the rate of integration into the profession, the income threshold of their graduates, etc.?

"The idea to provide adequate information is of course correct. The question is whether the data will be reliable and who will check them. This is a serious question. I'm not sure that institutions themselves should do so, but rather some central body. Again, the goal should not be to deter students from studying law, but they should be allowed to make an informed decision."

The bottom line?

"The market and natural selection will do their part. Indeed, they have already started. Anyone who is going to study law today knows that there is a serious problem finding a job. Those whose ambition is incompatible with the day-to-day struggle in the field of practice will cease to practice even if they do not give up their license. I assume also that there will be a decline in enrollment to law schools. It is important for the academic institutions not to lower their admission criteria as a result, but instead to settle for fewer students, the best candidates."



Attorney Israel Fischer: The practical jurist does not deal with formal law but with solving real-life problems, whose central element is usually, but not always, a legal problem.

Atty. Israel Fischer serves as professional manager of Fisher Behar Chen Well Orion & Co., and as such is responsible for the screening and training of interns and young lawyers in his office, one of the five leading firms in Israel.

"I find it difficult to identify with the goal of blocking entry to the sector through regulation," Atty. Fischer clarifies up front. "Moreover, for the largest firms, which are beginning to form into an Israeli version of big law, there is no problem of oversupply, but on the contrary. We are after good lawyers. Reducing the number of interns coming to us, and this is simple math—if in the course of three years we had three internship cycles, and we will have two, it means a reduction by one-third of the number of interns—will reduce our ability

to select and filter good lawyers from among them. Therefore, looking at the market as a monolithic block and roughly cutting it by one third reflects a lack of understanding of the stratification in the legal market. In the group of excellent interns and excellent lawyers, in fact there is a shortage."

And if we represent the reform not as an obstacle but as a move to improve the quality of lawyers?

"The question of the quality of lawyers is indeed of the essence, but the three new tracks the regulations provide to improve quality at the entrance to the profession—more academic study, although not necessarily in the legal field, more practicum, that is, a practical course, and more experience, which means extending the internship—do not enhance the skills of the practical jurist! I start with "more academic study." In my opinion, there is already too much unfocused academic training for the practical jurist—and I'm an advocate of broad education and critical discernment—but right now we are talking about how to train a good professional lawyer... The idea that lawyers are trained at universities is no more than 150 years old, and it is not essential. It has evolved when the law, and together with it legal practice, took on a scientific flavor, but what is being taught as "theoretical law" is only one of the tools that serve lawyers in their practical work. We can put it differently: what part of a lawyer's work does theoretical law take up? Lawyers deal with case management, courtroom tactics, opening positions, evaluating evidence, figuring out the people involved, discriminating between what is and isn't important, conceptualizing and formulating problems and solutions, conducting negotiations, knowing the market... all these are not part of theoretical



Looking at the market as a monolithic block and roughly cutting it by one third reflects a lack of understanding of the stratification in the legal market. In the group of excellent interns and excellent lawyers, in fact there is a shortage.



law. In other words, the theory of practice is only partly legal theory!”

So perhaps the solution should be a change in the legal curriculum, that is, teaching courses in game theory, psychology, logic, argumentation, etc., at the expense of theoretical law?

“I agree that there is a clear bias toward legal formality at the expense of the toolbox that will serve the practical jurist, and it has to do with the traditional view of universities as not being in the business of providing such a toolbox in the first place, however important it may be for the practical lawyer. And I say this without, God forbid, sneering at legal formalism, which without any doubt, is the foundation. So who will provide the additional tools? This brings us to two other tracks that the regulations offer. Extending the internship is pointless because the internship is only the first step in the training of the practical jurist, which takes several years. Indeed, extending the internship causes harm because those who can become successful practitioners show it quite clearly within a year, so why delay their starting on their working career? And those who show that they cannot join the profession or are not interested in doing so, why drag it out and punish them for six more months?”

What do you mean by training over several years?

“The large offices have both the means and the interest to fill the gap in the training of the lawyers. We do this by what we call FBCollege, not necessarily during the internship, but over a long period.”

Then why not make this training available to the market as a whole?

“There are two answers to this question. One is that the set of tools we provide to the intern or to the future lawyer includes not only ‘what’ we consider to be important for a practical jurist, but also a ‘how’ component, our own style of our legal practice. This is part of our Intellectual Property and we would not like to give it away to external entities. Law firms have an interest in preserving this knowledge in-house. The other answer is that there are specializations and sub-specialization in the law, which currently, in the absence of regulated and institutionalized norms for achieving these specializations (in contrast, for example, to the medical sector), this knowledge has not been formally defined. Under these circumstances, the law firms determine for themselves what expertise their lawyers need. It is debatable whether a lawyer specializing in litigation should also engage in transactions, real estate, and so on. The answer varies from office to office, and is part of its professional profile; therefore I do

“There is no other way except taking on the thing itself, and in the legal context, to sweat it out before and after the hearing, stand before the opposite side, etc., and preferably as early in the training of the jurist as possible.”

not expect agreement at this time on what is specialization and what is the right training of practical jurists.”

And what about the 80 hours of practicum proposed by the Bar Association?

“Interns don’t need more rules, even ostensibly practical rules, but to experience the work itself. It’s like learning to ride a bike. In theory you realize that you need to maintain your balance, but until you get on a bike you won’t know how to do it in practice. Knowing how does not depend on abstract knowledge. Consider the cross-examination of witnesses. I have here a 700-page book of rules on the subject. But there always remains a question of how, that is, whether in the course of the investigation you ask a certain question or abstain from it. You cannot provide a rule how to apply a rule. Therefore, a little bit here and a little bit there, an extra rule regarding betterment tax or the registration of an apartment will miss the objective of training a good practical jurist. In the Critique of Pure Reason, Kant spoke about the vicious circle between the ability to create rules and the power of judgment, whether something is subject to a given rule, and I quote: ‘to show generally how one ought to subsume under these rules, i.e., distinguish whether something stands under them or not, this could not happen except once again through a rule. But just because this is a rule, it would demand another instruction for the power of judgment, and so it becomes clear that although the understanding is certainly capable of being instructed and equipped through rules, the power of judgment is a special talent that cannot be taught but only practiced. Thus this is also what is specific to so-called mother-wit, the lack of which cannot be made good by any school,’ end of quote.”

I can guess what the answer of the Faculty will be: we both teach analytical thinking and test for it. In other words, those who have high grades, probably have, apart from the set of rules we taught them, also the correct judgment.

“The ability cannot be tested except in real life. It’s like the difference between playing chess or leaning above board and giving advice. Your psychology is different, the level of stress is different, your responsibilities are different. There is no other way except taking on the thing itself, and in the legal context, to sweat it out before and after the hearing, stand before the opposite side, etc., and preferably as early in the training of the jurist as possible. I’m referring here not only to the narrow psychological difference, but to the difference between the wealth of issues that a real-life circumstance provides and sterile laboratory conditions. I’ve seen quite a few excellent theoretical jurists who were foolish in applying their knowledge, and vice versa, perhaps not so good analytical jurists with good judgment about what to apply in the case at hand. Again, I see no problem, after a year of internship, to make the trainees face real professional situations that are suitable for them, something you cannot accomplish by more academic training or by 80 hours of Bar Association practicum. Therefore, the current balance of one year of internship is the correct one, and I don’t see any reason to change it, but the forces acting on the market are different.”

Do you agree, however, that the oversupply deters also good people from the profession?

“Yes. There is currently a negative feedback loop between excessive legalization of the Israeli market and the growing number of law students, but as I said, this is not our particular point of view, as a large office—and we exist in a competitive market—but it is a macro problem. The reform will not accomplish what is essential in my opinion: the optimal training of practical lawyers, which, of course, is an entirely different problem. If this were the goal, I would do the opposite: leave the internship at one year and shorten the academic course to three years.”



Photo: Michael Viazminski

Name a Topic!

The Law Library Presents: Literature on any Given Topic in the Headlines.

What is the role of books in the digital era? In the past year, the David J. Light Law Library answered this question with Current Affairs Table, a new exhibition at the entrance to the library, which provides a tangible indication, albeit in a nutshell, of the depth and richness of its treasures.

“The idea was to show our visitors the extent to which legal literature can have a bearing on our present time and place, in every aspect,” says Rhoda Davidian, director of the David J. Light Law Library. “We also wanted to pique the visitors’ curiosity to search, aside from legal textbooks, books, or DVDs on any subject, even in matters relating to general knowledge or to any topic in the headlines. This platform is also suitable for commemorating special dates, such as International Women’s Day, the Climate Change Conference, International Happiness Day, etc.”

Ina Dorossiev, who together with Hava Montauriano, is responsible for this ever-changing exhibition, adds: “We’ve also dedicated exhibitions to honorable legal personalities who passed away this year such as Antonin Scalia, the American Supreme Court Justice, Prof. Aharon Kirshenbaum, and Israeli Supreme Court Justice Jacob Kedmi, who have all left

behind voluminous literature, some of which they have written and some that has been written about them. I think that the Current Affairs Table is an excellent illustration of the fact that the library is a large and dynamic reservoir, from which one can draw information on any topic and for any purpose. This is especially important at a time when written paper is generally losing out to the screen. There is no substitute for the depth that you can find in books.”

How do the students react?

“Fantastic. It’s just like giving them a newspaper to read, only much more comprehensive and thorough-going than any newspaper. Indeed, many people stop, take a seat, browse through the books, and sometimes even borrow books from the table. It really warms our hearts. We also take pictures of the exhibitions and post them on our Facebook page, and we get lots of enthusiastic responses.”



Photos: Hava Montauriano

About values, 40 volumes, and dozens of editors

Tel Aviv University Law Review (Iyunei Mishpat), will celebrate its 40th volume at a special conference in December—an excellent reason to bring together its first editor, Prof. Nili Cohen, and the current chief editor, Prof. Daphna Hacker. Nostalgia, the importance of theoretical legal writing in Hebrew, and how Israeli law looks from the height of the forty volumes.

“Shall we start from the very beginning?” offers the President of Israel Academy of Sciences, Prof. Nili Cohen. “I was a student in the first class of the Faculty, in ‘67, that is, after it became an independent faculty rather than the Tel Aviv branch of the Faculty of Law of the Hebrew University. The classes were held in the evening, and most of the lecturers were lawyers and judges. Then, Amnon Rubinstein was elected dean, with a clear research orientation. He recruited like-minded professors, such as Daniel Friedman, and as part of the change it was also decided to start a journal, like the journals of the leading law schools in the US, where the editorial staff is composed of students. Here we did not go that far at first. The editorial staff was made up of both students and faculty. Prof. Ze’ev Zeltner, who was awarded the Israel Prize a year later, asked me to be the student editor, with a standing equal to his own! It was an offer you couldn’t refuse...”

“Today it’s a bit different,” explains Prof. Daphna Hacker, current chief editor of the TAU Law Review. “Today, the entire editorial staff is made up of students, with three students as editors and a faculty member as the chief editor, but it is

important to note that in contrast to legal academic journals in the US, the TAU Law Review combines the intention, which was present already at the establishment of the journal, to give students authority and educate them toward developing judgment and independence, with the requirement for reviewing the manuscripts submitted to the journal by experts in their field, as is customary in most areas of academia. Therefore, at the TAU Law Review students perform the initial screening, which is of utmost importance, and are also responsible for overseeing the writing and for improving the quality of articles with the authors, but in between there is also the assessment of academic experts in their fields.”

But isn’t it nevertheless exceptional within the academic landscape for undergraduates to make a decision regarding articles written by professors...

“For this very reason we imposed the requirement” adds Prof. Hacker, “that members of the editorial staff must first experience academic writing on their own, as a lesson in humility and as a way of understanding how difficult it is to carry out research and to write academic texts. It is always easier to reject.”



Prof. Nili Cohen (right), and Prof. Daphna Hacker (left). Forty volumes represent a significant time period, and through them important changes in Israeli law can be observed. Photo: Ravit Tzelniker.

How do you ensure continuity when the student editors are replaced every year, and the chief editor every two years?

“Just as you pointed out,” replies Prof. Hacker, “the chief editor is replaced every two years, so that on one hand there is renewal, different and new perspectives, and on the other, the turnover is not too quick. Besides, the student editors are selected from among the editorial staff of the previous year, so that they are with the journal for two years as well. In addition, Prof. Michael Birnhack, when he was the chief editor, established work procedures for the journal, which we follow meticulously, so that the editor is not required to reinvent the wheel, unless he or she has a really good reason to do it.”

What else is different today from the early days?

“Speed,” smiles Prof. Cohen. “Thanks to the revolution in information technology, the feedback on court rulings or legislation or any innovation in the world of law is immediate, as it should be, otherwise it would lose its sting. Of course, another big difference is that for the first issues we had to persuade people to submit articles to the journal, which at the time was new and unfamiliar... I remember that I contributed a seminar paper I had written in Amnon Rubinstein’s course! After me, the reins of student editor passed to the late Baruch Bracha, who organized a conference, focusing on the attempt to create a civil code for Israel. The Hoofien Hall, where the conference took place, was packed, and the lectures delivered served as a basis for the

journal’s articles. Slowly and gradually the Law Review made a name for itself.

Obviously, the way of looking at the law also has changed. The TAU Law Review never stagnated. It reflected the changes in the perception of the law, which is today much more interdisciplinary, and places greater emphasis on empirical research. The view that the law is a closed system has been abandoned, as it should be, in favor of the understanding that law is a social system that derives knowledge from other disciplines and is connected to them. This is reflected in both teaching and research writing. What we continually strive to preserve in the Law Review are the core values of critical independence and impartiality, which is, incidentally, the idea behind empowering the student editors. I think, looking back—and forty volumes is certainly a landmark that warrants looking back—that we were successful, and in a big way, too. The fact is that the editorial staff of the TAU Law Review have become the elite unit of the Israeli legal system. Among its former members it counts some of our most important judges, dozens of law professors, in Israel and abroad, and senior figures in lawyers’ offices, prosecution, military prosecutor’s office, and in business. In a historical perspective, there is definitely good reason to be proud.”

“The first thing I realized when I became chief editor of the Law Review was the excellence of the students,” adds Prof. Hacker. “They may not be legal experts—yet—but they are highly sophisticated and

intelligent. By the way, I don’t have a right of veto against the three student editors. I think that in principle this is right, but in truth, I also never found myself holding a single dissenting opinion against them, and that’s another thing to their credit. And if we mentioned today’s interdisciplinary emphasis, I deliberately chose editors who, each of them, have an additional background, not in law but in economics or social sciences, etc.”

“The main challenges,” says Prof. Cohen, “to which, by the way, we will devote an important part of the special conference that will take place at the University on December 20, in celebration of the forty volumes of the Law Review, concern

writing in Hebrew and competition with other journals, in an academic world that is becoming increasingly globalized and English-speaking. I think that a coordinated effort is needed here. First, university rectors must emphasize, through promotion, the significance of publishing in Hebrew, and provide incentives for it. Second is our moral commitment to speaking in the language of the people whom we address in our legal system. Judges, policymakers, and lawyers in Israel operate, read, and write in Hebrew, so it is only appropriate that relevant theoretical writing should be in Hebrew.”

What else is planned for the special conference in honor of the fortieth volume?

“We decided to take advantage of the significant landmark that forty volumes represent,” explains Prof. Hacker, “to examine how changes in Israeli law and through them, changes in Israeli society, are reflected in the articles published in the Law Review in specific areas... and it’s a lot of articles. Consider, for example, family law. This area of expertise underwent a transformation in the intervening time from being dominated by religious men to increasing involvement of secular women. Precisely because the Law Review is a leading legal journal published in Hebrew and focusing on Israeli law, it provides us with X-ray images of such changes, instructive to observe. This is only one of the highlights of the festive conference in honor of the fortieth volume. Incidentally, our deep gratitude goes to the Fischer Behar Chen Well Orion & Co. law office for helping make this special moment in the history of Israeli law into an exceptional event, both in spirit and in substance.”



Student editorial staff under the supervision of a faculty member. The successful format of the TAU Law Review.



Respectable legal tradition in 40 volumes. TAU Law Review.



The Faculty made its first appearance at the Global Red Cross Competition in International Humanitarian Law, making it to the semi-final and bringing home the best debater prize (OK, a watch... not a medal).

We chat with Michal Shachar, fourth year Law and Political Science student at Tel Aviv University, on a trans-Atlantic call as she currently attends Fordham University in New York. Michal participates in the Buchmann Faculty Student Exchange Program which offers the possibility to spend an academic semester at one of forty faculties and law schools around the world.



Michal Shachar, winner of the Gilbert-Apollis Prize for best debater.

The topic of our conversation, however, is Michal's previous trip abroad as part of her law studies, concluding with her winning the esteemed Gilbert-Apollis Prize, that is, the individual prize within the Global Red Cross Jean Pictet Competition in International Humanitarian Law.

Why the special interest in International Law and what brought you to get involved in this competition?

"I served in the army in the Strategic Planning and External Relations Division, in collaboration with the United Nations and other foreign entities, so I already knew that I would like to be engaged in the international sphere. When I started my studies in the Faculty, a former army colleague, Hila Shpis-Oren, Founder and then Director of the International Law Students Club, encouraged me to join the club and apply to the Red Cross Competition in International Humanitarian Law, in which she had taken part the previous year. By the way, there is a similar and more known competition, "JESSUP", for overall international law. Anyway, I followed this competition in humanitarian law, i.e. the laws of war.

Can you elaborate on the application process and on the competition in general?

All applicants complete several tests, all in English of course, and at the end two teams of three students are chosen to compete at the national level. The other members of my team were Or Elkayam and Roy Mattar. The teams go through 3-4 months of preparation which are mainly simulations, sometimes amongst ourselves and sometimes against the second team representing the Faculty. A simulation is, for example, to play a military

consultant to a dictator who is accused of war crimes or alternatively, to represent the Red Cross accusing this dictator of those crimes. The judges are lawyers in the field of international law, past competitors, members of academia in this field, and the supervisors of the teams. Our supervisor was attorney Tal Mimran, a researcher at the Israel Democracy Institute who had participated in the competition back when he was an undergraduate. Also, we were assisted by Mr. Yoav Rosenberg, our academic advisor was Professor Eyal Benvenisti.

And then come nationals...

And then came the national competition. It was five intensive days consisting of 2-3 simulations per day, against other teams from all over the country, with limited time to prepare, between a quarter of an hour to three hours before each. The judicial panel (consisting of four judges) ranged from those in the practice of international law, academia, and were not necessarily from Israel, including people who work at the Red Cross. One judge was Colonel (Res). Adv. Pnina Sharvit Baruch, Senior Research Fellow at the Institute for National Security Studies. The judges ask questions during the simulation in order to make sure you know what you are talking about, and scores are awarded for knowledge, argument and the ability to play your given role adequately. You are also judged by criteria such as comradery, co-operation and interaction with the other teams. On the last day, the best teams qualify for the semi-final of which three teams will eventually go through to the finals. We were among the three teams to enter the finals. Incidentally, it was the first time that a team representing the Buchmann Faculty of Law has reached the National finals!



The Global Red Cross Competition in International Humanitarian Law: scores are awarded for knowledge, argument and the ability to play your assigned role adequately. You are also judged by criteria such as comradery, co-operation and interaction with the other teams.

Before we discuss the final, how does a second year student answer a scenario within the context of the laws of war in 15 minutes?

It is possible, based on one's preparation plus some improvisation. Naturally, they do not expect you to an expert. Of course, the scenarios with the shortest preparation time dealt with the more straightforward topics. In addition, making it to this stage in the competition means you have gone over the material a sufficient number of times in order to reply. There is also a distribution of topics amongst members of each team, although you are expected to manage, however superficially, the topics of your other teammates.

Okay, and on to the finals!

The finals were held in Jerusalem and included a very complex scenario, 12 minutes presentation, and answering open questions...and we lost!, to a team from the Hebrew University. They won funding from the Red Cross to go to the global Competition and we thought this ended our experience. Several weeks later, however, an announcement was received from the Red Cross that we were also accepted to participate in the global competition. As it happens, prior to the national competition, each team applies anonymously to the Red Cross and they choose the best applications, meaning that there is no necessary correlation between the teams that are invited to participate in the global competition and the teams that won their respective national competitions. It came to be that two teams from the same small country of ours were admitted to the global competition.

What happened at the global competition this past March?

Prior to the global competition, we had to go over the preparation process all over again, especially topics we felt needed strengthening, as well as topics often addressed at the global competition like specific issues relating to the Red Cross. In addition and as I mentioned, we did not win funding from the Red Cross in order to participate. The Faculty, thanks to Professor Benvenisti, aided us with funding for the trip. In the competition and in comparison to us, most of the participants are graduate law students or practicing lawyers. There were 56 teams in the competition, divided into three groups; two for English speakers and the third for French speakers. Each group was given a different color. We were allocated the green group and once again, different scenarios with different preparation time for each.

Was there any difficulty to represent Israel in relation to the laws of war?

No. The scenarios are imaginative. They do touch on topics such as occupation or naval blockade but not in relation to a specific country. In fact, there was a general desire to hear our side, apart from the three girls representing the Palestine team from Birzeit University, also first time participants at the competition. Their team was not willing to participate in joint simulation with us, contrary to the values of the competition.

I am anxious to know who made it to the finals!

First there were the semi-finals, attended by twelve teams, four of each group including us and the Hebrew University team, whose members became good friends of ours. The semi-final simulation is far more difficult, whereby four teams compete against each other in the same round. Obviously at this level, each team is pretty good. Two teams

can represent the same side with a certain nuance. Let's say one represents the Minister of Justice of a certain country and the other the Ministry of Defense of the same country. Of each semi-final simulation only one team (out of four) goes through to the final. In the finals, one team was from Australia, one from the French speaking group and another from Geneva. The Geneva team won the semi-final in which we participated and eventually also won the entire competition. Once again, I had thought that this ended my experience, having gained various skills and networking with so many people including the judges who are all seniors in this field. Then, to my surprise, I was announced winner of the best debater prize for the Green group. The prize is awarded for argument but also for demonstrating the Pictet spirit of comradery within your own team as well as with the rest of the teams.

Did they play the national anthem? Did they fetch your parents? Did the Prime Minister call?

Not quite. I didn't get a medal either. I did get a watch...a very expensive one.

Along with the watch came job offers at the Red Cross?

Yes, the Red Cross uses the competition to recruit candidates because these are exactly the kind of people they wish to see in their service. However, I already applied for the internship which I had been dreaming of in international law, at the Israel Office of the Attorney General (International Law).

What next, are you going to represent Israel against the next Goldstone or Schabas report?

Let's first of all hope there will not be another bout of war...



Our agents in Evian... the Faculty's team for the Global Red Cross Competition in International Humanitarian Law 2016: Or Elkayam, Roy Mattar, Michal Shachar. Photo: Tal Mimran.



How to ease the concerns of various populations regarding urban renewal?

Home is more than real estate

The establishment of the National Authority for Urban Renewal and of municipal administrations for urban renewal indicates that the Ministry of Housing understands the significant obstacles before the “increased building rights” program (the national program for reinforcing structures against earthquakes) and “clearance and construction” projects. One of these problems is the cumbersome process of organizing tenants and reaching agreements; another involves the knowledge gaps, including legal knowledge, and disparities between the financial capabilities of the tenants and those of the contractor; the third is the need to take into account different populations within the given group of tenants; and finally, the desire of state and local authorities to plan the urban landscape and to distribute the new apartments in a way that provides housing to various social strata.

There are many obstacles before projects of “increased building rights” or of “clearance and construction,” especially when it concerns large-scale projects. This situation is changing thanks to the Housing, Community, and Law Clinic, which aims to promote urban renewal which is also social renewal. As a bonus, already in the upcoming academic year, the clinic will also run, as a public service, the “urban renewal hot line for tenants.”

Seven years ago, the Housing, Community, and Law Clinic jumped into the midst of this confusion, specifically in relation to mega-projects in areas like Jaffa, which need them most. Seven years later, and after having been awarded three years ago the Prize of the Emile Zola Chair for Human Rights by the College of Management Academic Studies, the clinic once again puts paid to another project in Jaffa. Equipped with the knowledge and the tools it has developed to overcome the obstacles faced by urban renewal, the clinic also runs training programs on the subject for managers in the Neighborhood Rehabilitation Department of the Ministry of Housing, in collaboration with the Faculty’s Hagar Center for Affordable Housing. In the coming year, the clinic is going to share this knowledge with the public through a “hot line for tenants” on “increased building rights” and “clearance and construction.”

How did the idea for a clinic that deals with housing come about?

Prof. Neta Ziv, who initiated the establishment of the clinic, explains: “Twelve years ago, Tel Aviv University received a contribution for academic-social activity in Jaffa as part of the Price-Brody Initiative. The Faculty of Law offered legal consultation to residents, and soon we discovered that the complaints had to do mostly with housing problems. Naturally, individual legal advice didn’t change anything in the big picture, so we decided to establish a clinic that would focus on initiatives in the field of urban renewal.

With the establishment of the clinic, a partnership was created with Dr. Efrat Tolkovsky from the Gazit-Globe Institute, in the Faculty of Management, and with Professor Tovi Fenster, from the Department of Geography. By the way, cooperation with



Prof. Neta Ziv: Our advantage, based on being part of an academic institution, lies in the ability to offer new models and solutions for various situations.

other university departments continues to this day. At present, the clinic cooperates with Prof. Ayala Ronel from the School of Architecture, Prof. Adriana Kemp from the Department of Sociology and Anthropology, and Dr. Nora Korin-Langer and Dr. Dafna Fromer from the School of Social Work.

After our first mission—rescuing a project in crisis—we submitted a social planning addendum to the Tel Aviv municipality, something that didn’t exist before, and the municipality grasped the potential of the clinic for addressing problematic areas. They understood that using their own welfare resources alone, they will have a difficult time promoting the renewal of the compounds in question, and that no developer will become involved in this situation. Buildings at the intersection of Jerusalem Boulevard and Ba’al Shem Tov street didn’t even have house committees. Today, three years later, we gave the developer the consent of the tenants on a silver platter, because the plan that was formulated met the specific needs of the residents. Of course, this was of interest to us also because it concerned a mixed residential complex—Jewish and Arab—a rare occurrence even in mixed cities, where usually the segregation is preserved, and we thought it was right to maintain its uniqueness.”

The clinic, directed by Anat Rudnitzky (previously together with Attorney Ora Bloom, now a doctoral student at the Meitar Center for Advanced Legal Studies), currently handles three large scale projects in various stages of implementation. The first project, the reinforcement of 64 apartments on the Tucholsky street (Jaffa C), has already received a building permit. In the second project, clearance and construction of at least seven “railway car buildings” from the 1950s, at the intersection of



Staff of the Housing, Community, and Law Clinic (right to left): Atty. Anat Rudnitzky, social worker Adi Abigail Cohen, community worker Samah Hamad, Prof. Neta Ziv. Photo: Hicham Chabaita

Jerusalem Boulevard and Ba’al Shem Tov street, the consent of 80% of the apartment owners has already been obtained to begin negotiations with the developer. In the third project, the reinforcement, via “increased building rights,” and construction of the Kedem / Shem Hagdolim urban complexes in Jaffa, the clinic is engaged in intensive negotiations, and possibly legal action against the Israel Lands Authority will follow.

“The law alone will not remove all the obstacles,” summarizes Atty. Rudnitzky the underlying idea of the clinic. “Various groups, such as public housing tenants, the poor, the elderly, the disabled, renters, women, children—all have different needs. We are driving complex projects by creating a mechanism for everyone to participate in shaping their future. To develop this mechanism, which includes extensive interaction with the residents, but also with the municipality and the developers, we employ two community workers. Being situated at Tel Aviv University, we also resort to academic partnerships with the School of Architecture, the School of Social Work, and with the for Research of Social Change Organizations track at the Department of Sociology and Anthropology. We carry out the overall supervision and legal guidance.”

Then why wasn’t the clinic established in the School of Social Work or the Department of Geography and Human Environment?

“Many times the question of who leads something,” explains Prof. Ziv, the academic supervisor of the clinic, “doesn’t depend on the discipline but on the ability to initiate and drive the process. We also had a history of working in Jaffa. But note that the name of the clinic is Housing, Community, and Law, in that order.”

Tell me a little about the work process.

“Let’s take the project at the intersection of Jerusalem Boulevard and Ba’al Shem Tov street,” says Atty. Rudnitzky. “Following a request from the municipality, we compiled, in cooperation with the Department of Sociology and Anthropology, a survey of needs and approached the residents. We discovered that there was no sense of a residential complex there, and that residents were not acquainted with each other. One of the reasons for this was that the public areas were neglected, which didn’t allow for social contact. We asked whether they would like to meet the tenants from the building across the yard and they said yes. After that, we approached an architect to plan shared courtyards that would promote a communal atmosphere. As the plan consolidated, we approached a developer.



Photo: Hicham Chabaita

Atty. Anat Rudnitzky. What distinguishes the clinic is the great investment in various aspects to ensure the creation of a better shared living environment for a diversified group of people.

We assembled the residents and elected representatives. About 80% of tenants signed the preliminary agreement, after which we started the legal negotiations. Here too, we stand by the representatives of the residents and make sure to update them, to involve the tenants in the planning, and to make sure they understand the meaning of the entire process. We also deal with target groups among the tenants for whom urban renewal is more complicated—public housing tenants, the elderly, the poor, renters, the disabled—because sometimes unique economic solutions are required for these populations.”

What can you do for renters? After all, they don't have rights to the property.

“Right, that's why they are so often overlooked. Therefore we make a point of thinking together with them about possible solutions, such as giving them first refusal of returning to the complex that will be constructed within the project for long-term rentals.”



Women and children are the ones who mainly use the public spaces, and women have different needs, for example, related to personal security. Children also have their independent needs in relation to the public spaces, which are usually ignored. I want a bench, my son wants a soccer field...



Compound at the intersection of Jerusalem Boulevard and Ba'al Shem Tov Street in Jaffa as it is now (top, photo: Hicham Chabaita) and as it will be in the future (below, courtesy Kislov Key Architects).

is, of course, in addition to strict adherence to the high involvement of tenants in each step of the process, which is also a social aspect.”

Why is involving tenants in planning social?

“Because it helps meet their needs. We involve the representatives of the tenants in planning, together with women and children, as unique interest groups. Women and children are the ones who mainly use the public spaces, and women have different needs, for example, related to personal security. Children also have their independent needs in relation to the public spaces, which are usually ignored. I want a bench, my son wants a soccer field... What really distinguishes the clinic is the great investment in various aspects to ensure the creation of a better shared living environment for a diversified group of people. We teach law students both social consciousness and interdisciplinary cooperation in matters of land and real estate—cooperation and finding legal solutions while partnering with students of social work, sociology, and architecture.”

What can you do to relieve the fears of another subgroup, the elderly, of leaving the complex for the time of construction?

“For example, by making the project into ‘construction-clearance-construction,’ i.e., first providing new housing for the population that finds it difficult to leave the neighborhood, to find rental apartments, etc., and only then continue with the rest of the project. Naturally, as a law clinic we work with law students, but also with students from the School of Social Work, who do their practical training here at the clinic, and they, for example, together with our community workers, guide the elderly residents.”

To further complicate matters: How do you give a poor tenant the opportunity to live in a building that is new and presumably more expensive to maintain?

“True, poor tenants might oppose the project or find themselves in a situation where they will have to leave the complex after failing to meet the costs of maintenance and property taxes, which are expected to grow, which for us is a very problematic result. A possible solution is to establish a dedicated fund financed by the sale of units to be added to the complex, which would cover maintenance costs in the complex for 30 years. This is exactly why the motto of the clinic is “socially-aware urban renewal.” This

Can we conclude that you find creative solutions for different populations?

“Both for different populations and for different situations in the field. Take, for example, the Kedem / Shem Hagdolim compounds. A hundred families live there, all except one Arab, and fifty percent of them in public housing. We started handling the legal problems of public housing tenants in the complex, such as evacuation orders and debts to the housing company, as well as the state of maintenance of the apartments, eight years ago. We concluded that what is needed there is a more inclusive solution, at the social level as well, a solution that may come from urban renewal. Another goal we wanted to achieve was converting the public housing rental into ownership, especially since this is a population that found itself in public housing not by choice, in a process that had not been fair. But urban renewal in this area is not economically feasible... So what's the solution? That the municipality would act as the developer, at cost. And the municipality agreed. And not only that; we're not interested in improving the living conditions alone, but in sweeping social change, and it was obvious to everyone that even if the complex is renewed, it will not solve the problems of poverty, crime, etc. But studies have shown that bringing in new tenants, not in public housing, and a stronger population—also of Jaffa Arabs suffering from severe housing shortage—will effect the change. Now we are negotiating with the head of the Israel Land Authority regarding the allocation of land for residential purposes adjacent to the complex. This is an example of a project that is not related to the free market at all.”

What happens in all the other places, where the clinic is not involved?

“Often, when the free market is doing its job the result is that the project is stalled because tenants fail to reach an agreement. Alternatively, the developer takes advantage of the disparity in knowledge and ability, and obtains, sometimes with threats, the signature of the tenants on contracts in which they sell their rights for a song, and he builds a fifteen- to thirty-story structure with a lobby and a guard, and weak tenants are ejected... but our means are limited. Following through a large construction project from beginning to end is a complex and long process, and our human resources are limited. At the same time, since we accumulated vast legal knowledge in these matters and since there is no body in civil society or outside it that would make such knowledge accessible to the public, we decided to establish an ‘information hot-line for tenants on urban renewal.’”

What does the future hold? Will the Urban Renewal Authority or municipal bodies to replace the clinic?

“Unfortunately, no. Apart from the fact that people have more confidence in an organization belonging to civil society than in a governmental entity, the Authority may coordinate the procedures for handling various populations, but the promotion of specific projects and the protection of residents in given cases will be carried out only by becoming involved on the ground, through contact with tenants. More regulation is not what's needed in the State of Israel. What's needed is supervision and guidance.”

So there is no specific guidance other than the one you provide!

“We are not going to become service providers to the State of Israel,” claims Prof. Ziv, “Our advantage, based on being part of an academic institution, lies in the ability to offer new models and solutions for various situations, as, for example, at Shem Hagdolim. What happens when there is public interest in the project but the project is not economically feasible? We present these models and solutions to appropriate officials, to be adopted by the state. This is what is expected of us as academia. We have the capabilities, and this is our contribution to policy change, of course alongside publishing theoretical research through academic platforms.”

Isn't the new information hot line a kind of public service?

“We see this as providing information but also as collecting information from the public. Each call will be recorded, and at the end of the process we will issue a report to the Urban Renewal Authority summarizing the extent and type of problems in the field. Each service we provide fulfills a pedagogical need and a research need or changes reality—for example, a legal case that produces a precedent, a change in procedure, training the staff of Ezra U Bizaron (Tel Aviv municipal housing company).”

Your ambition is then for the state should adopt the model of the clinic and for you to become redundant?

“We will not become redundant... We will seek a solution to the next failure in the field of urban renewal.”



The two "parties" to the transaction at a joint dinner (standing: Paul Chadha). Att. Jay Finkelstein (the photographer): "Personal relations are also part of business negotiations."



Nothing like any studying you've done before.

Negotiate an international transaction, while still in law school? This is exactly the curricular initiative of Jay Finkelstein, partner and specialist in corporate and securities law at DLA Piper, designed to introduce students to the complexities of global transactional practice. The recent version of the simulation which he has been teaching for twelve years involves two groups of law students from two different countries, say, from Tel Aviv University and Northwestern University.

Attorney Jay Finkelstein, When did you reach the conclusion that something was missing from the methods or contents of law studies?

After I began legal practice, I was frustrated that my legal education did nothing to prepare me for the transactional legal practice that I ultimately pursued. I was also disappointed that when I interviewed law students seeking positions at my law firm, most of them had no idea what transactional legal practice involved. I wanted to find a means to correct the absence of courses introducing students to transactional practice. After all, over half of practicing lawyers engage in transactional practice, so law school should provide an opportunity to learn these skills before entering practice.

What made you come up with the idea of an international business negotiations simulation?

The concept was originally conceived by my co-author, Prof. Daniel Bradlow at American University. He was using the original concept in a development finance class that he taught and decided that a negotiation

between counterpart classes would be an interesting pedagogic concept to explore. Our kids were in day school together, and during various conversations, I shared with him some of my frustrations with legal education and my desire to develop a vehicle to introduce law students to transactional practice. He invited me to co-teach one of the early international business negotiations classes with him and to add practical skills components to the class. Since then, I have been teaching the class in the many formats that it is now offered.

How can you explain the success of the simulation which you have created, having been adopted by so many law schools in the U.S. and abroad?

The combination of transactional law, practical skills, experiential learning and collaborative teaching is both novel and innovative and represents the cross-roads of a number of themes in law school curricular development. Showcasing how lawyers apply their doctrinal skills to address client issues is very appealing to students, particularly in the area of transactional law, and faculty interested in innovative learning approaches like new models of instruction. The international business negotiations class was expanding as law schools and the lack of practical skills training for law students/graduates was coming into focus following the financial crisis in 2007. The class fit a niche, and as a proven model that had already been taught successfully many times, it was attractive to many law schools to adopt.

Why did you choose the specific context of pharmaceuticals for the transaction?

The pharmaceutical industry is innovative, involves intellectual property, research and development, strong financial metrics, worldwide demand/presence, a need for new markets, a degree of controversy, regulation, and more. It is perfect for classroom discussion of issues involving a complex client.

Do issues of global responsibility and moral considerations arise during the simulation, perhaps stemming from the fact that one side represents the developed world while the other represents the underdeveloped world? Was that one of your goals, to ask such questions, especially in an international gain-oriented business transaction?

Most definitely, it was a goal. My colleague and co-author is from South Africa, so these issues of developmental economics were key. The simulation involves ethical issues (which we regularly discuss in class), questions of which party has "power," and to the extent there is a party with lesser power, how that party should approach the negotiation, how to understand and address the objectives of a developing economy in such a transaction, and issues of corporate reputation (the pharmaceutical company has had some prior issues in its history of working in the developing world). Each party has clear objectives as it approaches this transaction, and presenting these perspectives was a key component of the pedagogic objectives so that students could



An important aspect of having two law school classes involved, apart from diversity of experience of the students, is the element of the unknown. Neither class knows how the other class is preparing for the negotiation. Just as in legal practice, opposing counsel do not know what the other side is thinking or planning, but each must anticipate and then react to the reality of the negotiation as it unfolds at the negotiating table.

comprehend how many issues need to be considered for a successful transaction. Each party can also derive many benefits from a successful transaction, and a "win-win" result is attainable. Both parties need to come to this realization (as distinguished from the "win-lose" context of dispute resolution which is the principal focus of law school education) and appreciate the other party's needs while accomplishing their own objectives. The simulation facts are very nuanced, and many of the complexities are revealed as the simulation progresses, and this sense of discovery, analysis and reaction to evolving facts, including the ethical issues presented, is very much as part of transactional practice.

What gave you the idea of actually involving in the simulation two groups of law students from two different cultural backgrounds?

There are two distinct aspects of this: First, having the class conducted with students from diverse backgrounds gives reality to the simulation. When the class involves students from developing countries (whether they are LLM students studying in the US or students at a non-US law school), the challenges and objectives of the developing economy are issues that they know personally, and the negotiation takes on a very personal, and real, tone. The class is, however, also taught between classes at two US law schools, so unless international LLM students are part of the class, there is much less diverse experience, although the classes still wind up assuming



A "win-win" result is attainable. Both parties need to come to this realization (as distinguished from the "win-lose" context of dispute resolution which is the principal focus of law school education) and appreciate the other party's needs while accomplishing their own objectives.

the personalities of their respective clients. It is different, but still intense. The second important aspect of having two law school classes involved, apart from diversity of experience of the students, is the element of the unknown. Neither class knows how the other class is preparing for the negotiation. Just as in legal practice, opposing counsel do not know what the other side is thinking or planning, but each must anticipate and then react to the reality of the negotiation as it unfolds at the negotiating table. It requires comprehensive preparation and knowledge of facts and alternative positions to be able to react quickly to issues as they arise. This is the reality of legal practice that we are able to achieve in the classroom with the use of two collaborative classes conducting the simulation.

What is your perspective on this idea following the successful trial run in the TAU-Chicago/Northwestern joint simulations?

The so-called "Travel Class" where the US students travel to an international location to conduct the negotiations creates such a heightened intensity and reality that I would like to see the concept expand. We are already having conversations with other US law schools to bring classes to Israel, and this concept could expand to classes in other countries as well. It is a new frontier for legal education. I should add that for the "Travel Class" I do have collaboration instructors. In addition to Dr. David Schorr of TAU Buchmann Faculty of Law, who provides the administration and coordination for the class, this year Attorney Asaf Harel of Meitar Liguornik Geva Leshem Tal Law Firm and a graduate of TAU joined me in teaching the

TAU class. Paul Chadha, in-house counsel at Accenture in Chicago and an Adjunct professor at Northwestern, with whom I have collaborated for many years, taught the Northwestern class.

What is your impression, after teaching the simulation in Israeli law schools, as opposed to American law schools?

The Israeli students have a heightened sense of worldliness and maturity compared to some of their counterparts, most likely based on the fact that Israeli students start college later and have already had experience in the military. This adds perspective and it translates directly to the negotiation exercise. I once had an Israeli student who indicated that when he was in the military, they would task a group of colleagues to "think like the other side" so as to inform their preparation. The student wanted to know if it would be appropriate to have some members of his negotiating team engage in this exercise as they prepared for the negotiation. I confirmed that his thinking was perfect and that was precisely how a negotiation team should prepare. It was his prior experience, projected into the simulation, which enhanced the exercise.

And why was the Israeli group in the TAU-Chicago/Northwestern joint simulation chosen to play the American-based company, while the American group played the African side? Is there a message to the students in that choice?

No hidden message. When the TAU class was originally being discussed as a groundbreaking joint course with American law students, I turned to Paul Chadha, a colleague with whom I have worked for years

and who teaches the class at Northwestern. He happens to have spent a lot of time in Ethiopia and even started an orphanage there, so he has a lot of experience with the developing world. He is very comfortable teaching the developing country side of the negotiation, and so we decided that his class would take that side and we would have the TAU students represent the multinational.

Were you offered sponsorship for the simulation by any drug company?

No, this has never happened. However, I would very much welcome funding to expand this program, so if Teva, for example, is interested in supporting the expansion of this form of legal education, I would love to introduce them to the class concept and have that conversation.



It was truly an unforgettable experience. By far my favorite part of law school thus far.

As one Northwestern student summarized



A Graduate in the Headlines:

President of the Tel Aviv District Court, Judge Eitan Orenstein, class of 1981



Photo: The Judicial Authority of Israel web site

Honorable Judge Orenstein, allow us to take you back in time... What attracted you to studying law as a profession for life? What in particular interested you in the legal world?

"From a young age it was clear to me and to those around me that I will choose law school. I was considered to have independent views, arguing the correctness of my position with family and friends, trying to persuade others of the rightness of my views... and not always successfully. Among all the disciplines taught, I was attracted by civil law in general, and to the field of business in particular. The new contract laws: the General and the Remedies parts of the Contract law were enacted close to the beginning of my studies, and the interpretations of the new legislation were being debated, which increased my interest in the civil sphere."

Is there a particularly memorable experience that stayed with you since your undergraduate studies?

"During the public course in international law, which at the time was a mandatory course, the revolution broke out in Iran that brought about the rise of Khomeinism, the regime that did not abide by the rules of international law. The lecturer told us emphatically that the new Iranian leadership will fall in a short while, because the countries of the world will not allow those who behave in contempt of the rules of international law to stay in power. As we know, the reality proved otherwise. I learned from this incident, which is still etched in my mind, that it's better to be less adamant in matters that are uncertain and beyond our control."

Is there a faculty member or a course that you remember especially fondly?

"I keep particularly fond memories of one lecturer, the late Prof. Menashe Shawa, who taught personal status law. Prof. Shawa had vast knowledge in the field, as well as fascinating intellectual abilities. He was also a wonderful person, who knew how to combine in his lectures a refined sense of humor with the reality of everyday life. His lectures were captivating even for those who didn't hold this field close to their hearts."

Looking back, how much did the content and the values absorbed during your undergraduate studies at the Tel Aviv University Buchmann Faculty of Law shape your legal outlook?

"Teaching at the Faculty was characterized by openness and willingness to listen to the opinions of students, even if they didn't quite go along with the lecturer's opinion or with legal prescriptions and case law, and by acceptance of criticism. I learned how to listen and show restraint, and to be open to persuasion, and that even if at first I thought in a certain way, in the end the conclusion may be different."

As someone who went a long way in the Israeli legal system, as a lawyer and on the bench, would you change anything, such as a specific training course, a field of study, or even an emphasis that possibly was lacking, in your opinion, when you were a student?

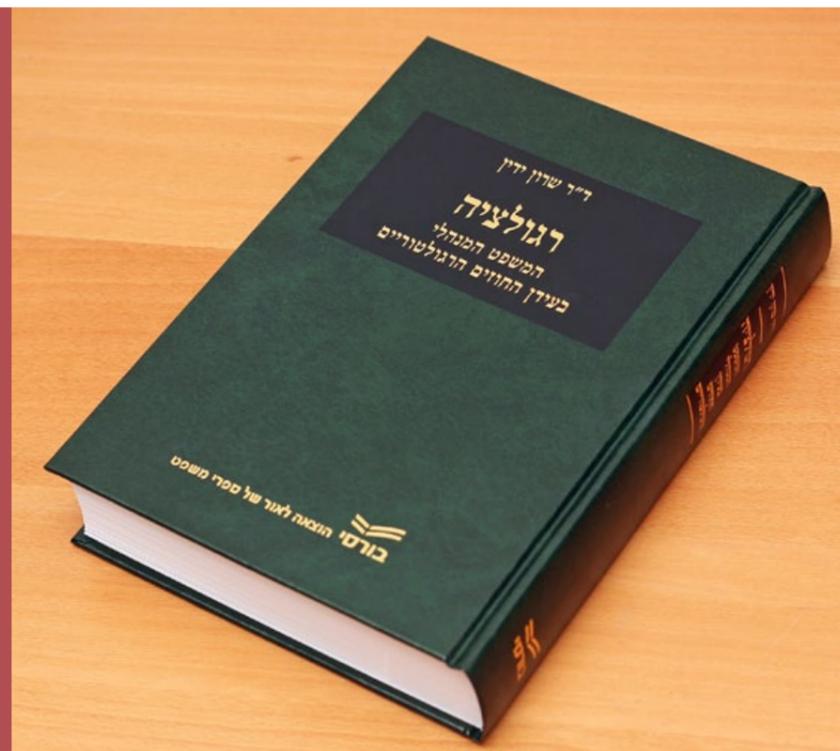
"Unfortunately, the studies lacked any practical training at all. The view that prevailed at the time across the faculties of law was that their job was to train jurists, not lawyers, which is the role of the Bar Association. This dichotomy complicated the students' transition to practical life, as we lacked useful tools, and that's a shame. Today the attitude has changed, and practicum courses are being taught, allowing students to become acquainted with practical work already during their period of study, take part in it, and acquire valuable tools. In my view, the practical studies should be strengthened because they are an integral part of academic studies, and similar to them."

Finally, what advice would you offer young law students today?

"In your hands will be deposited the important job of maintaining the rule of law in the country, regardless of your political views. Without the rule of law, we will lose our ability to be an independent and democratic state, and therefore, it is incumbent upon you to uphold this principle at all costs. The rule of law is expressed in all domains of law, and every one of you plays a part in preserving it."



A Graduate in the Headlines:



This year, Dr. Yadin published her book, "Regulation: Administrative law in the era of regulatory contracts" (Bursi, 2016), based on the doctoral thesis that she wrote at the Zvi Meitar Center for Advanced Legal Studies. In a widely reverberating ruling of the High Court of Justice that rejected the stability clause in the gas deal complex, Yadin's book was cited no fewer than 12 times, including a direct quotation from it in the statement of Justice Esther Chayut.

Dr. Sharon Yadin, graduate of the Zvi Meitar Center, 2014, senior lecturer on administrative law and corporate law at the Peres Academic Center.

Dr. Yadin, how does it feel to write a doctorate, turn it into a first book, and see it immediately adopted by case law, and especially at the respectable level of the Supreme Court, and in a key ruling?

"This is indeed very exciting and professionally satisfying. I was pleased that the Supreme Court accepted the model of regulatory contracts that I have proposed and developed in my book, and adopted it in the Israeli law. I think that the time has come, and the gas deal presents a great opportunity, to accept the administrative and legal model of contractual regulation and develop the law of regulatory contracts. In the era of regulation, it is important to understand that the power of coercion by the state can no longer be the only tool of control. Regulatory contract is a sophisticated, subtle, and focused control tool. It has a lot of advantages. It is also not free of shortcomings. One example is the way in which it is liable to grant greater weight to private stakeholders at the expense of public interest in the regulation, such as within the framework of a phenomenon known as 'regulatory capture.' I think the book has won wide

recognition in the Supreme Court because the tools of administrative law alone are no longer sufficient for analyzing the complex situations of economic regulation. The book contends that administrative law must be expanded and updated in the direction of regulation. Therefore, I expect that this central ruling will be the first in a series of decisions that will develop the regulatory laws. In my opinion, the academic and professional market thirsts for it."

Did you feel already when you were writing the dissertation that you were entering a field in Israeli law where something was lacking?

How did the idea come about to make it the subject of your doctorate?

"After studying for my Master's degree in commercial law, at the Buchmann Faculty of Law, I practiced for a short while in the legal department of a large bank. We routinely worked alongside regulators and cooperated with them. Often real negotiations were taking place between the parties about the wording of this or that document, about how a new service for customers should

be provided, and a range of other issues, to reduce future friction and ensure that the required authorizations are obtained, and to reduce the risk of sanctions. As a fresh law school graduate (I studied for the two degrees without interruption), I was surprised by these practices. Until then, based on reading the law and the court rulings, I was sure that the state regulator was the enforcing instance, authorized to impose fines if the company engages in prohibited activities. In reality it never happens this way. Issues are settled by talking, reaching understandings, persuasion, and only if everything fails, more serious tools are resorted to. This is how the idea to write about contractual regulation was born. I think it took time for me to realize how great the need was for works in Hebrew about regulation, even at the basic level of understanding what regulation is. There is no consensus about it, which is interesting. Jurists, economists, political scientists, and shapers of public policy—everyone thinks somewhat differently about what regulation is. The story of contractual regulation is neat because it has been known in the field for years, but academia didn't quite discover it and jurists didn't deal with it."

Did the Zvi Meitar Center for Advanced Legal Studies, and your Ph.D. advisors, Prof. Daphne Barak-Erez and Prof. Roy Kreitner, encourage and support your turning the doctoral dissertation into a book?

"Without any doubt, the support of the Faculty, and specifically of my advisors, gave me the motivation to publish my dissertation as a book. In this case, the issue of regulation was highly suitable for publication, which makes it accessible not only to academics. The book is addressed also to lawyers, who represent companies and businesses that are routinely dealing with regulation, and to legal advisors of the regulators in independent authorities, government ministries, and municipal government. When I was converting the doctorate into a book, I thought of these audiences and tried to edit out the parts that did not fit, for example, describing the methodology of writing a doctoral dissertation. In the course of a year and a half of work on the book I also updated many points relating to recent developments in Israeli regulation, which is very dynamic. Another audience I thought about in the book are students, so I included an introductory chapter to ease readers into the world of regulation and acquaint them with the basic concepts. There is also a separate chapter containing a literature review of prominent trends in

regulation. At the end of the book I also added a glossary with references to terms for those who wish to acquire an initial understanding in the field, as well as a short Hebrew-English lexicon. I hope that the book meets certain needs of those who deal with regulation in Israel."

From the perspective of someone who acquired all her legal degrees at the Buchmann Faculty of Law at Tel Aviv University, how would you summarize this track? And what was your most powerful experience while studying at the Zvi Meitar Center for Advanced Legal Studies?

"Indeed, I was at the Faculty continuously since 2001, and it seems like only yesterday that I learned administrative law with Prof. Daphne Barak-Erez, who later advised me in my doctoral studies. Prof. Barak-Erez made me realize, through her extensive research and in our conversations in the course of my writing the doctorate, that administrative law has unfairly acquired a "gray" image. It is a thrilling field, at the crossroads of social and economic decision-making in the country, and the gas deal is the best illustration of it. Besides, during my studies I also met my husband. Therefore, the Law Faculty at Tel Aviv University will always be home for me. As for the Zvi Meitar Center, I see it as an incubator, one of the best in the country for training researchers in the field of law. A generous scholarship that I received during all the years of research allowed me the space to study and write. My first publication also occurred during my years in graduate school, in the prestigious journal of the Faculty, the TAU Law Review. I highly recommend the research track at the Law Faculty of Tel Aviv."



Tools of administrative law alone are no longer sufficient to analyze complex situations of economic regulation.



A Graduate in the Headlines:

Dr. Manal Totry Jubran, graduate of the Zvi Meitar Center, 2015, lecturer on multi-culturalism and minority rights, municipal law, planning and construction law, and real estate tenders law, at Bar-Ilan University Faculty of Law.



Dr. Totry Jubran, in your doctorate you focus on a sociological analysis of the laws of real estate and planning and construction, and on where they meet human rights and equality. When did the desire to deal with this charged topic become clear to you and what were the conclusions of your doctorate?

"Already during my undergraduate studies I was interested in the way in which communities make use of real estate law. This interest was later developed in my MA thesis, concerning the implementation of the principle of public participation in the Israeli planning and construction law, where I focused on the implementation of this principle in the planning of an Arab neighborhood in Haifa. In my PhD I pursued this interest further, when I analyzed how public and private law promote spatial segregation. My main argument was that the claim of multi-culturalism and the protection of communities legitimizes the exclusion of members of other communities. There are, however, other ways, besides spatial segregation, of protecting communities."

How have you been pursuing this interest since your PhD?

"For example, I am now publishing a paper in which I examine what I call 'mixed cities in the making,' such as Nazareth-Illit, Karmiel, and the land bids affair in Afula, which made it to the headlines when a group of Arabs won the bids. I show that today the Arab

middle class migrates to these cities— which were intentionally founded as strictly Jewish cities—seeking to improve its quality of life, but relying on its home villages, which are not so far, for community services such as schools and mosques. In these newly mixed cities they encounter rejection, and more troubling, public discourse discriminating against them seems to find legitimacy... Neighborhoods undergo various social processes that result in being tagged Arab or Jewish, so segregation happens by itself. There are, however, different means of protecting communities and their ways of life, and I think that we need to reconsider the justifications for allocating lands to a specific group in the name of such protection."

Do you feel a trail blazer, as an Arab woman in Israeli legal academia and at Bar-Ilan University in particular?

"I definitely do not view myself as such. I think that Arab society in Israel is going through escalating processes of modernization. There are many deserving, talented Arab academics. The problem is that they are not properly integrated into the institutions of higher education. As far as I'm concerned, my career seems only natural to me. My mother wrote her doctorate in communication and political science and acted as the head of the Department of Civics at Oranim College, and she is also an adjunct faculty member at Haifa

University. My sister is currently writing her doctorate in urban planning at Ben-Gurion University. My younger sister works as an attorney in Tel Aviv for Meitar Liguornik Geva Leshem Tal... As far as trail-blazing by joining Bar-Ilan University, before that I attended for a year a researchers' seminar, held in Bar-Ilan, on no other topic than the national state. Despite that, the atmosphere was one of mutual respect for any person, even if one's religion or culture is different from that of the majority. This was also my impression at my job talk in Bar-Ilan. I do not feel out of place at the Faculty, but rather part of the community of the Faculty staff. True, I've had certain fears, especially in this last year. I was admitted to Bar-Ilan at the height of the wave of stabbings, and here I am, supposed to teach multi-culturalism and minority rights. The experience was, however, quite positive and the students were always eager to learn. Some of them disagreed, but the disagreement was voiced respectfully. You find cultural variety in the Faculty: secular Jews, religious Jews, some ultra-Orthodox Jews, and some Arabs, and a keen will to promote such minority groups. Within this framework, I'm trying to advance a mentorship program, similar to the one operating at the Tel Aviv Faculty of Law, and everyone I've approached with this idea, including the dean, the vice-dean, and other lecturers, have welcomed the initiative and offered to help make it happen."

As a relatively recent graduate of the Zvi Meitar Center, how would you sum up that experience?

"The Meitar Center feels as if it is located abroad. You get full support in the form of scholarship and your own room, something which is far from being a technicality. You also receive the support of the faculty and of your fellow doctoral students. Personally, I had a certain change of mind during my PhD, as I delivered my third son in the midst of the recent round of war in Gaza. Contrary to my opinion when I started my PhD, which rejected the application of the principle of equality in real estate law within the private sector, I finished my PhD with the firm conviction that the principle of equality must be implemented in the private sector as well. I realized the extent to which what is private and what is public are connected. Take, for instance, construction companies and contractors that won state-run tenders for plots of lands, and of course the state is obligated to maintain equality... I now hold that you must be paternalistic in some circumstances, even at the cost of forcing the principle of equality on the owner of the property. In my mind, this would constitute a strong legal and moral statement that must be made. Regrettably, however, we are not heading in that direction today."



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