

Examination of the Merits in Class Action Certification

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Israeli law requires class actions to be certified before they are litigated on their merits. To certify the class action, the plaintiff is required to show that there is a reasonable likelihood that substantive common issues of fact or law pertaining to the class will be decided in favor of the class.

This article draws up guidelines for examining this requirement in the certification stage, in motions to dismiss, and in discovery motions. It also offers an alternative approach according to which the plaintiff is required to satisfy a low default burden of proof with respect to this certification requirement, without being granted access to the defendant's documents, or she can agree to a higher burden in return for additional discovery. This approach is shown to maximize the deterrent effects of class actions and at the same time minimize their chilling effects on desirable activity.