

# De jure

*The Buchmann  
Faculty of Law Magazine*

SEPTEMBER 2023

## STAR TREK

Professor Kobi Kastiel has become a prominent name in corporate governance research in recent years. His most current essay critically examines the “Superstar CEO Phenomenon,” spearheaded by some of the most renowned companies worldwide. | p.8



# Message from the Dean



The past year has been one of the most challenging times in the history of Israel. Each one of us affected by the judicial revolution, and we are all taking some part in the discourse or activities related to it, taking an interest, or possibly feeling anxious and expressing deep concern. The role of academia, as a unique institution in which knowledge is created, preserved, and disseminated, is to shed light on extraordinary political and social events such as those presented by this crisis. The advantage that our researchers have is their obligation to pursue impartial and unequivocal truth, from different perspectives, and grounded in scientific knowledge. As academics, we are committed to academic freedom, knowing that it cannot exist without an ongoing commitment to an ecosystem of liberal rights, a thriving democracy, and pluralism.

To this end, approximately twenty researchers from the faculty are involved in “The Israeli Law Professors’ Forum for Democracy”, whose objective is to provide access of complex legal knowledge to the public. In this Issue, you will learn more about the Forum, whose role is

crucial at the present time. Though the Forum’s activity is an independent initiative of its individual members, I am proud of this endeavor and believe it is critical for the sake of protecting Israel’s democracy. Our faculty does this while remembering that not everyone who is part of our community thinks or feels the same about the situation, and we remain committed to being an inclusive home for every member of our community.

We have also launched an initiative in which faculty members meet with small groups of students from the Faculty for a friendly, informal discussions. The aim is to strengthen the ties between the faculty and the students, and to enable the students to share their dilemmas, raise questions and acquire knowledge from their teachers outside of the classroom.

Concurrent with these exceptional activities, the Faculty continues its activities as the leading law school in the country and as one of the finest globally. We are continuously working to promote academic excellence, and innovative and pioneering legal research. In this Issue, you can read the fascinating story of one of our wonderful researchers, Prof. Kobi Kastiel. Kobi joined the faculty five years ago and since has become extremely successful as one of the most promising researchers in the field of corporate law and governance.

I would like to take this opportunity to share with you several exciting developments. We have completed the renovation of the ground-floor of the library, transforming it into a space entirely dedicated to the students’ comfort and wellbeing: student lounge and group-learning rooms, where students rest, converse, and learn in shared spaces. In addition, during this year the Faculty launched a new research center: The President Meir Shamgar Center for Digital

Law and Innovation. The Center was officially launched this past January, with the participation of Nobel Prize Laureate, Daniel Kahneman, top scholars, and leading technological companies and law firms. The Shamgar Center is dedicated to investigating the interface between law and technology, and to fostering collaboration between the academia, the tech industry, and the regulator.

Concurrently, the new Buchmann building is under construction and is making rapid headway. Its construction was made possible through the generous donation by Mr. Josef and Bareket Buchmann, along with the aid from the Edmond J. Safra Foundation and the late Ms. Juliette Danon. The completion of the Buchmann building will promote the Faculty’s growth and development.

This year, we will be saying farewell to two prominent members of the faculty: Prof. Hanoch Dagan, who will be joining the faculty at the University of California, Berkeley; and Prof. Miguel Deutch, who is retiring. Please allow me to extend my heartfelt appreciation to them for their outstanding and immeasurable dedication to the faculty.

I would like to conclude with a heartfelt ‘thank you’ to the entire Faculty: academics, the administrative staff, clinicians and library staff, students, alumni, fellows, and our supportive and generous donors. Without each and every one of you, we would not have reached the exceptional level of achievement that we have. Despite these challenging times, we continue to thrive and move forward as a community.

I hope you enjoy reading the following Issue and wish you Happy Holidays and Shana Tova.

**Prof. Yishai Blank, Dean  
The Buchmann Faculty of Law**

Photo: Israel Hadari



# Faculty News in Brief

➡ Prof. **Yoram Dinstein**, former Dean of Faculty, was awarded the Israel Prize for Law Research.

➡ Prof. **Hila Shamir** has been awarded the esteemed ERC grant of the EU of €1,000,000, for the second time. After being awarded the grant for the first time in 2018, Prof. Shamir founded Trafflab – a research team that conducted in-depth research of the human trafficking phenomenon. This year's grant will provide aid in researching issues related to promoting rights for workers on the global supply and production chains network.

➡ Prof. **Issi Rosen-Zvi** was awarded the Zeltner Prize for Senior Researchers.

➡ Prof. **Neta Ziv** has been appointed Vice President of Tel Aviv University for equity, diversity and community.

➡ Dr. **Natalie Davidson** was awarded the Rector's Prize for innovation and creativity in teaching, for the course entitled "Defense Export and Human Rights."



Hila Shamir



Neta Ziv

➡ **Rachel Levitan** and Dr. **Levi Cooper** were awarded prizes for teaching excellence for inter-university lecturers.

➡ **Tamar Luster** and **Anat Ovadia-Rosner**, doctoral students at the Zvi Meitar Center for Advanced Legal Studies, were awarded the prestigious Azrieli Fellowship for 2023-2024.

➡ **Shani Schnitzer** was awarded honorable mention for young researchers from the Israel Legal Association for her outstanding essay on Law and Society "Ben Gurion, the High Court of Justice and the Israeli Constitution that Never Was."

➡ The faculty has begun to offer an innovative academic program that combines law (LL.B.) with Artificial Intelligence and Data Sciences.

➡ Following a particularly tumultuous election, **Amit Bachar**, Esq., faculty graduate, was elected as the new head of the Israel Bar Association. Seventy-three percent of the votes were in favor of Bachar.



The legal clinics' staff members in Paris



Niva Elkin-Koren and her research team

➡ An Israeli research team headed by Prof. **Niva Elkin-Koren** from the Faculty and Prof. **Avigdor Gal** from the Technion, conducted three workshops for a group of American Members of Congress. These workshops were intended to enhance the participants' ability in using Artificial Intelligence responsibly for public interest.

➡ Last March, staff members from legal clinics participated in a conference in Paris that included meetings with clinical staff members from law schools and the local Sciences Po University. During the visit, the Heilbronn-Boisson scholarship was launched. The faculty thanks Collete Kerber and François Heilbronn, for their support, and Odile Cohen for her assistance.

➡ The faculty was awarded second place for the national



Amit Bachar



Hanoch Dagan

mock trial. The statements of claims prepared by the team of experts that represented the faculty were commendably rated both by the petitioner and by the respondents.

➡ Two highly admired professors will be ending their tenure in the faculty. Prof. **Miguel Deutch** is retiring, and Prof. **Hanoch Dagan**, the head of the Edmond J. Safra Center for Ethics is ending his tenure as faculty member, as he is taking on a position at University of California at Berkeley School of Law. Prof. **Issi Rosen-Zvi** will be filling his position in the faculty.

➡ "The Global Connection," a podcast by The Lowy International School at TAU, hosted Turkish attorney **Nurgul Gokpinar** and Nigerian lawyer **Olivia Mbonu** – two students in the **Parasol Foundation International LL.M. Program at Tel Aviv University** – to chat about law and tech, comparative law in a global context, and the current challenges with regulating artificial intelligence, and more.





**There is a great deal of misinformation. We have the pertinent legislative knowledge, so we decided to make it accessible to the public"**

**"The Law Professors' Forum for Democracy," founded by staff members in the Faculties of Law has become an additional tool in the struggle against the judicial reform that is taking the country by storm.**

These recent months have been turbulent for the State of Israel. This past January, Minister of Justice, Yariv Levin, presented a plan to execute significant reforms in the judicial system ("Judicial Reform"). Among these reforms are: authorizing the overriding clause; annulling the reasonableness standard, in which the Supreme Court can apply its authority to pass judicial review, and a modification of the structure of the judicial selection committee. Following the presentation of this reform, demonstrations began to erupt countrywide, where hundreds of thousands of Israelis took to the streets weekly, and are continuing to do so until today. Israelis, who ordinarily do not take an interest in legal-judicial issues, became deeply involved in the judicial reform. The intense debate over this issue, spilling into other momentous political arenas, has divided the Israeli population into two factions.

While the details of the reform comprise numerous judicial issues, many Israelis were in need of assistance in order to

comprehend this new reality: What is an overriding clause? What is reasonableness? Why does it matter who the members of the judicial selection committee are?

Based on the need to mediate this new reality for the Israeli public and the issues at hand, about 130 members of legal faculties in Israel joined forces and together they founded the "Israeli Law Professors' Forum for Democracy." The members of the forum created a website in which they explain their decision to take action as they are "of one opinion that the government's proposal – which is an unprecedented attack on judicial independence, legal advice, the police force, the military and public broadcasting – severely infringes upon the rule of law and its democratic makeup of Israel."

On the forum's website as well as on other platforms, members of the forum offer the Israeli public professional opinion on multiple topics related to the reform. "I heard someone say that just like the epidemiologists mediated



Protesters in Tel Aviv, July 2023

informative issues to the public during the Covid-19 epidemic, we are mediating to the public judicial issues as they arise - and that's spot on," says Dr. Yofi Tirosh, Deputy Dean of Faculty and forum member. Other than Tirosh, there are another 20 members from the faculty in the forum, among whom are the Dean of the faculty, Prof. Yishai Blank, Vice-President of the University Prof. Neta Ziv, Prof. Eliav Lieblach, Dr. Ofra Bloch and the most recent Zeltner Prize recipient, Prof. Issi Rosen-Zvi. The members of the forum are active on Twitter, offering lectures for the greater public, who are thirsty for information. "The forum, successfully led by Dr. Ronit Levine-Schnur from Reichman University, was established based on the understanding that the coalition, while promoting the judicial reform, is spreading a great deal of misinformation related to many aspects of the judicial reform," says Prof. Rosen-Zvi, who along with the members of the forum established a headquarters for the struggle that operates today throughout the university. "Because we, the legal



Issi Rosen Zvi



Ofra Bloch

scholars, have the relevant legal knowledge, we decided to make it accessible and are striving to make it public."

The faculty members' activity in the forum is only one of many activities associated with the judicial reform. Recently, the faculty launched a new activity in which a staff member will meet with students for lunch, during which they will discuss issues at hand, mainly the judiciary repercussions of the reform and various elucidations of the pros and cons.

To this end, Prof. Ariel Porat, President of the University and Dean Emeritus of the faculty, announced that he would curtail all campus activity if Israel finds itself in a judicial crisis, meaning, if the government refuses to comply with the Supreme Court's ruling. Prof. Porat called upon various organizations to follow his suit so that the government would internalize what the price of refusing to comply with the Supreme Court is before it's too late. Porat is the first among university presidents to propose this type of motion. ■



Kobi Kastiel.  
"Like in the movies"



# The Company Man

At age 45, Prof. **Kobi Kastiel** is one of the most prominent scholars in the world in the field of companies law. This is how it happened.

On September 15, 2008, the Lehman Brothers Investment Banking Company crashed, signifying the height of the financial crisis, denoted as the most devastating since the 1929 stock-market crash. It was a day of turmoil for capital markets and the business world became a cauldron of upheaval.

Of all days, it was also Kobi Kastiel's first day at Paul, Weiss - a leading law firm in the hub of Wall Street. Kastiel, who was fresh out of

Harvard after completing his LL.M., could not have imagined a more chaotic day to begin his new career.

"I remember getting off the subway and just like in the movies I saw lots of recently unemployed people carrying their belongings in office cartons," recalls Kastiel, who today is a professor and university faculty member. "Our offices were adjacent to Lehman's. Later on, the lay-offs filtered into law firms and I was sure that I, the heavily-accented Israeli who had just recently come







Harvard University



**The complex question really has to do with the way the judicial system has to deal with these CEOs, whose control of the company doesn't stem from their voting power, but from their dominance and charisma"**

on board, would be the first to be laid off, but I wasn't."

Kastiel lasted four years out of perseverance and ambition, working well into the wee hours of the night. "It's an excellent firm. I dealt with cases that were written up in the Wall Street Journal and the conditions were outstanding, but deep down, I felt like I wasn't in the right place for me," he recalls.

At some point, he recognized an opportunity to do something different for a while. In 2011, Prof. Lucian Bebchuk was appointed special advisor for the Economic Concentration Committee established in Israel. The role assigned to Prof. Bebchuk, an esteemed scholar from Harvard, was to examine the structure of business corporations in the Israeli market, which was characterized as having high centralization and a pyramidal holdings structure. Bebchuk needed a research assistant and Kastiel, who had taken a few months' leave of absence from Paul, Weiss, was the right person in the right place at the right time.

Following the project's denouement, Kastiel experienced a feeling of lackluster. The collaboration with Prof. Bebchuk made it clear that his vocational passion was elsewhere. After several

months, he decided to follow his heart; he applied for a doctoral degree at Harvard. He was accepted to the program, and scheduled a meeting with his supervisor at Paul, Weiss to notify them of his leaving. The senior partner eyed him in disbelief and cried: "You worked so hard here; you're going to throw all that down the drain to write essays?!"

### Elon Musk and Mark Zuckerberg

Indeed – Kastiel began writing articles. Not just any articles, but the kind that made him into one of the most well-known names among corporate governance researchers in Israel and across the sea. His articles have been cited numerous times in academia, and in 2021 and 2022 three of them were included in the list of the "ten best corporate law review articles of the year" (chosen annually from hundreds of published articles in law journals in the United States). They also pique interest in business magazines, as they are often germane to current-event issues.

So, for example, an essay he co-authored with Prof. Assaf Hamdani from the faculty, addresses the way corporate law deals with "superstar CEOs," a phenomenon that is

becoming more and more common these days. The names will ring a bell for all of those who read financial newspapers: Larry Ellison, Mark Zuckerberg, Jeff Bezos, Elon Musk, Adam Neumann as well as Elizabeth Holmes (who was convicted for several accounts of fraud). There are many others.

The essay distinguishes between two scenarios: the first, is where the CEO controls the voting rights (Mark Zuckerberg is a noteworthy example of this). The second, is where the CEO does not control the voting rights but is still considered crucial to the company success.

The essay, recently cited by a Delaware court, analyzes the unique status of these superstar CEOs. "The complex question really has to do with the way the judicial system has to deal with these CEOs, whose control of the company doesn't stem from their voting power, but from their dominance and charisma", Kastiel states, while adding: "On the one hand, it's obvious that they rule the roost, but on the other hand, they do not have absolute control; if their stardom should one day dwindle, it would be possible to oust them," Within this context, the article points to a current example that illustrates one of the problems that might surface when there is

a dominant CEO who does not have official control. It refers to the incident in which Elon Musk forced an interested parties' transaction on Tesla Motors, and as a result was subject to a derivative lawsuit. The trial dealt with the following query: Does Elon Musk have control (a question bearing importance for the judicial standard of review that will be applied to the deal)? As shareholder of 20% of Tesla's stock, he does not have voting control (as does Zuckerberg of Facebook, for example), but the court decided to let the plaintiff proceed with the suit, as it is quite clear that Musk is the powerful persona of Tesla.

### From local government law to corporate law

Kobi Kastiel, (45), was born and raised in Bat Yam, a large bedroom city of Tel Aviv. During his adolescence he lived with his family in Paris in light of his father's work, an emissary for the Ministry of Defense. He served in the Israel Defense Force in the Intelligence Unit 8200, and later began studying law and economics at Tel Aviv University. "The students who studied with me in the joint program did not miss a single economics class; the subject matter was challenging, and

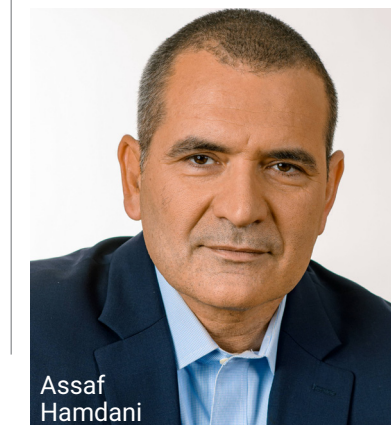
one had to be physically present to successfully get through. However, these same students might have missed a class or two in law. I was exactly the opposite. I attended every single law class. I found them fascinating." That might explain why his name had appeared so often on the Dean's list.

He interned under Judge Asher Grunis in the Supreme Court followed by pursuing his LL.M. at Harvard University. As aforementioned, following his LL.M., and four years at Paul, Weiss, he returned to Harvard to get his doctorate under the supervision of Prof. Bebchuk, and specialized in the field of corporate governance.

In 2018, a year after receiving his doctorate, he became a faculty member at Tel Aviv University Law faculty. Since then, he has

accrued status in several fields: He was awarded the Zeltner Prize for outstanding Young Researchers, he became a popular lecturer (receiving the rector's award for excellence), and was appointed as a tenured professor. In addition, he is continuously involved in academic activity in the Fischer Center for Corporate Governance and Capital Markets Regulation, which holds annual roundtables that draw the cream of the academic crop in the field, along with senior figures from the practice.

Concurrent with his activity as a faculty member, Prof. Kastiel teaches a course each year at Harvard, and this coming academic year, he will spend with his wife and two children in New York. Albeit, this time he is not returning as a commercial lawyer working from morning till night, but as a researcher and visiting professor at NYU, where he will teach corporate law and give a seminar on corporate governance theory. This year is predicted to be an entirely different New York experience for Kastiel. When asked about this, there is no doubt in Kastiel's voice expressing his excitement about closing the circle and returning to the Big Apple, a decade after leaving the city to fulfill his dream to become an academic. ■



Assaf Hamdani

Photo: Israel Hadari





The basement  
floor, The David J.  
Light Law Library,  
The Buchmann  
Faculty of Law

#### De jure

The Magazine of the  
Buchmann Faculty of  
Law at Tel Aviv University

**Chief Editor:**

S. Aspril

**Translation:**

Ruthie S. Almog

**Graphics:**

Michal Gizbar

**Cover photograph:**

Gal Hermoni

**Back cover photo:**

Gidon Levin

<https://en-law.tau.ac.il> |  
[deanlaw@tauex.tau.ac.il](mailto:deanlaw@tauex.tau.ac.il)

