

De jure

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She Can Hack It

After years of social and academic activity in Israel, Prof. Daphna Hacker is moving on to the international arena. In a fascinating interview, she reveals what was behind the scenes in the process initiated by the Foreign Ministry, that took even her by surprise | p.6



Our Faculty is Much More Diverse than What People Think”

A short and compelling talk with Prof. Yishai Blank, the incoming Dean of Faculty



Yishai Blank

Photo: Israel Hadari

➔ A few months ago, Prof. Yishai Blank was appointed Dean of the Faculty of Law. For Blank, who became a member of the Faculty exactly two decades ago, this was the realization of a dream. He began his journey in the Faculty as a Law and Philosophy student and later served as an esteemed interdisciplinary researcher, and is about to live up to his worldview of research in the current administration. In other words, Prof. Blank hopes to turn the leading Faculty of Law in Israel into a term synonymous for “interdisciplinary teaching of Law” by establishing additional research centers (such as the Edmond J. Safra Center for Ethics and The Meir Shamgar Center for Digital Law and Innovation— already up and running in the faculty), and by condensing inter-faculty academic programs. His future aide-de-camp is his deputy, Dr. Yofi Tirosh—who is also a researcher with an interdisciplinary orientation.

“When I was a B.A. student, I was the only one in my year who combined Law with the Humanities,” Prof. Blank asserts in a conversation with De Jure. “Today, we can see a much greater tendency in this direction, and each year there are ten to twenty students who study Law combined

with Humanities. But I firmly believe that this movement must continue. Members of the Faculty teach the students to think, and in my opinion, it is impossible to deeply comprehend phenomena and trends without deep-rooted thinking possessing an interdisciplinary nature. By ‘interdisciplinary’, the tendency does not just take into account the Humanities together with Law, but other disciplines as well. There is advanced research that addresses the connection between Law and Economics; many of our students combine these two disciplines as well as Accounting and Management, but we are seeking to strengthen other, less conventional combinations, for example, Law and courses in the Faculty of Exact Sciences. Lately, we have been developing this aspect. The Meir Shamgar Center for Digital Law and Innovation, getting underway as we speak, is a testament of this, and soon we will be able to offer students courses in Data Science.”

Among the diverse fields of thought that might interact with Law, are there any that you are especially pre-occupied with in your role as Dean?

“As I see it, there are three challenges that humanity is facing today and we, as a faculty see ourselves in a place where world problems are considered, and we would like to focus on them. The first challenge is technology, and we are already expanding and expect to continue to broaden research and teaching vis-à-vis the confluence of Law and Technology. The second challenge is ecology, meaning research and teaching in the field of environment and animal rights. I would like to see an interdisciplinary research institute established in the Faculty that addresses these topics, and I hope it comes to fruition. The third challenge is socio-political, which relates to the crisis our democracy is facing today, especially the rise in inequality, internal-social tensions that are the cause of the internal divide of our society, and withdrawal from globalization in favor of isolation, a situation in which societies see only themselves and cease to take interest in world projects. We certainly are planning to focus on this challenge.”

Prof. Blank, 53, was raised in a modern-orthodox Jewish home in Tel Aviv. He was educated in B’nei

Akiva in Yeshivat Nehalim, served in the I.D.F. Intelligence Unit and later left the religious fold. Following his release from the army, he studied Law and Philosophy. He completed his studies Summa Cum Laude and did his internship in the Chamber of the Supreme Court’s President, Aharon Barak. After dedicating himself to an academic career, he succeeded in working for a year as a lawyer in the Gornitzky Law Firm after which he traveled to Harvard University, where he completed his doctorate, which received lofty commendations, and returned to Israel. At age 33, he was appointed member of faculty, and since then he has conducted research and given lectures on Local Government Law, Administrative Law, and Law and Political Thought. Concurrently, he has been teaching in a number of international institutes in Europe and the U.S., such as Harvard and the Paris Institute of Political Studies (Sciences Po).

As one who has spent a great deal of time in many academic institutions abroad, how is the Faculty perceived there?

“The faculty holds an excellent reputation, and there are a number of specific fields in which we take the lead on a global level. One only needs to take note of our brilliant researchers in the field of Corporate Governance, for example, and it is immediately recognized that we are placed in the forefront worldwide. The same goes for The Legal History and International Law, as well as several other fields.”

When asked about the differences between students in Tel Aviv and those in Harvard, for example, Blank replies, “The students in Tel Aviv are just as smart as those in Harvard, however, there are differences. Americans are more polished, they read more between classes, and they write well. They tend to hesitate before speaking in class, and there is no doubt that they are far more stressed than the students in Tel Aviv, who seem to be considerably more relaxed.”

Prof. Blank is especially proud of the Faculty’s diversity and indicates the figures proving this fact: the number of Arab and ultra-Orthodox students who study in the Faculty is on the rise, as well as those from the geographic and cultural periphery of Israel. “Sometimes the Faculty is referred to as homogenous, but that is far from the reality. Our faculty is much more diverse than what people tend to think.” ■

Faculty News in Brief

➔ A radiant achievement for the Faculty of Law on the latest test results for the Israel Bar Association. Analysis of the test results indicate that 100% (!) of all the faculty's graduates passed the Bar on their first try. Even when including the graduates who took the test more than once, the faculty still takes the first place with outstanding percentages of a passing grade (94%) – placing them before The Hebrew University of Jerusalem (88%) and Haifa University (87%). All in all, 43% of the examinees passed the test. The Faculty's grades also place them on top, with an average grade of 72% for all graduates. The Hebrew University came out in second place with an average of 71%, followed by Haifa University, with an average of 69%.

➔ Two graduates of the faculty were appointed for the two most important positions in the Israeli judicial system: Gali Baharav-Miara was appointed to serve as the Attorney General of Israel, and Sharon Afek was appointed as second-in-command to the attorney general, as Legislative Advisor for the Ministry of Justice.

➔ Prof. Hila Shamir from the Faculty is the recipient of the

prestigious Fattal Prize for Legal Research in 2022.

➔ Dr. Kobi Kastiel is the recipient of the Zeltner Prize for young researchers.

➔ The Faculty distributed certificates of excellence for the first time to outstanding adjunct lecturers. The two prize recipients this year are Dr. Roy Bar-Kahan and Dr. Rachele Hassan.

➔ A graduate of the Zvi Meitar Center Dr. Abigail Faust, is the recipient of the Polonsky Scholarship. This prestigious scholarship is awarded to annually to seven outstanding researchers



Kobi Kastiel

Photo: Israel Hadari

from Israel and around the world from the field of the Humanities. The Meitar Center is supported by the Zvi and Ofra Meitar Family Fund.

➔ Seventeen students took part in the Parasol Foundation International LL.M Program. Participants in the program were from the United States, Germany, India, Brazil and Ethiopia. The program is supported by the Parasol Foundation Trust.

➔ Hisham Shabaita and Adi Nir-Binyamini from the Faculty's Human Rights Clinic were appointed for judgment in the Court of Family Law and the Magistrates Court respectively. In addition, Idit Zimmerman, previously a lawyer in the Faculty's Human Rights Clinic, was appointed as registrar for the Regional Labor Court in Tel Aviv. Two new lawyers will join both clinics: Sausan Zahar, the Human Rights Clinic, and Michal Tagar, the Worker's Rights Clinic.

➔ The High Court of Justice determined earlier this year that electricity is a right for preserving the minimum of human respect, and protecting this right is within the framework of the legislative right for human dignity. The implication: The Electric

Company is obliged to amend its cut-off policy, prohibiting cutting off supply of electricity as a consequence of a person's inability to pay their electric bill due to poverty, or health-related financial problems. This ruling was the response to a petition submitted by the Faculty's Human Rights Clinic, together with the Association for Civil Rights in Israel, Physicians for Human Rights in Israel, The Israeli Union of Social Workers and citizens whose electricity had been cut off owing to debt.

➔ Two seminal achievements for the Environmental Justice Clinic and the Protection of the Rights of Animals: The Clinic took part as an amicus curiae in an appeal in which High Court deliberated over whether imported animals are included as protected natural assets. The clinic - that represented the NGO "Let the Animals Live-Israel" in a legal proceeding regarding protected natural assets - claimed that there is no relevance as to how the animals arrive to Israel. The Court accepted their plea. In addition, thanks to the Clinic's effort and a number of additional bodies, the Education Committee of the Knesset authorized ordinances that prohibit confining chickens in cages for the egg industry.



Students from the Parasol Foundation International LL.M. Program

➔ In the upcoming academic year, a new clinic for privacy will open with the support of The President Meir Shamgar Center for Digital and Innovative Law. The clinic, led by Prof. Michael Birnhack and Noa Diamond, LLB, will supervise students in writing position papers and heading legal proceedings related to issues of privacy, a topic that is gaining momentum in the public arena in Israel and worldwide. The Shamgar Center is supported by the Shamgar family.

➔ The Batya and Isachar Fischer Center for Corporate Governance and Capital Markets Regulation continues to position itself as a central arena for research in fields of corporate responsibility. This year, a number of international activities took place, among which was a workshop that addressed the question of the future of the world tendency for promoting environmental and social corporate governance (ESG –

investments based on indices that examine the companies' performance regarding environmental, social and corporate governmental issues), in which researchers from leading institutions such as Harvard, NYU, and Berkely took part. The Center also hosted a round-table session and various conferences in which many jurists participated. The Center supported the arrival of Prof. Ed Rock, from the Faculty of Law at NYU – one of the leading researchers in the world for corporate law. "The main emphasis as far as I can see is that the Fischer Center combines academic excellence of the corporate group in the Faculty and the Ministry of Justice, supervising parties, courthouses and practices," says Prof. Assaf Hamdani, the Head of the Center. "The Center serves as a hostel for multi-disciplinary deliberations regarding current issues, based on research insights and the Faculty's excellent connections with leading academics and industries in the world". ■



Photo: Gal Hermoni

“There is a rise in forces that seek to backslide women’s rights”

Last June Prof. Daphna Hacker from the Faculty was chosen to become a member of the prestigious United Nations Committee on the Elimination of Discrimination against Women – (CEDAW). In an interview with De Jure, she tells of her nomination to the sought-after appointment, as well as her aspirations to precipitate changes that will make the world a better place – and not only for women

About two years ago, Professor Daphna Hacker was summoned without warning to a meeting in the Foreign Office. She was informed of the possibility to select her as a nominee for the Committee on the Elimination of Discrimination against Women, for a four-year term. The notion of serving on this committee had occurred to Hacker on many occasions, but she had no idea of how to make

it happen. And alas, in this same meeting, not only was she asked if she would be interested in serving on the committee, but would she want the Foreign Office to endorse her nomination and run a campaign in her favor. She responded positively on the spot.

“One must realize that the campaigns for electing committee members who oversee the implementation of international



Abortion rights protesters in New York

Photo: Wikipedia, Frances Raday



Israelis have difficulty being elected for international committees and other United Nations bodies due to Israel's political-diplomatic position”

“I hope to promote a number of issues, the first is the urgent necessity to examine the solutions for the aged through the lens of gender”



treaties are conducted by the nominees' country of origin, but the election is supposed to be a-political and only consider attributes relevant to the committee. The moment a member is voted in, they are autonomous and are expected to preside by virtue of their expertise, regardless of their country of origin,” Prof. Hacker says in a conversation with De Jure. “But of course, the question of what country is running the election campaign is influential. It is known that Israelis have difficulty being elected for international committees and other United Nations bodies due to Israel's political-diplomatic position, but ironically, for the elimination of all types of discrimination against women, Israel has secured an impressive history. Dr. Carmel Shalev, Prof. Frances Raday, and Prof. Ruth Halperin-Kaddari were members of the committee. Prof. Halperin-Kaddari succeeded in being elected three times – a rare achievement even in international terms, and served as deputy chair. Her positions and viewpoints I heard throughout her 12-year tenure on the committee were a source of inspiration and had an impact on my aspiration to arrive at this international arena.

Following that meeting, Prof. Hacker and the Foreign Office

began their work together, and in the past two months a campaign was led for her nomination. Within the framework of the campaign, video clips were made, lectures were delivered to international forums, and meetings were held with dozens of representatives worldwide. In each of these encounters, Prof. Hacker told of her career, and of her personal life: her parents who were lawyers and instilled her love of the law, as well as of an incident in which she had been sexually abused when she was eight years old, which influenced her desire to act for the sake of women. The campaign exceeded all expectations.

“There were 23 nominees who were competing over 12 positions,” she explains. “In the elections for these committees, at least half of the countries that are signed on the treaty must vote for the nominee. There are 189 countries signed on the CEDAW, so it's a huge undertaking. On June 23, I sat in front of the computer and I watched the live broadcast of the elections in New York. The chairperson called out the names of the electees in descending order of the number of supporting countries. I could not believe it when my name was the sixth on the list, with 115 countries behind me.”

What does this position entail?”

The main role of the committee is examining the reports that countries that have ratified the treaty must submit. The committee issues its conclusions regarding the implementation of the treaty by the country being examined, in light of reading the report and meetings with representatives of the country and representatives of social civil organizations. In addition, the committee issues recommendations and guidelines and thus it introduces interpretative and current content into the sections of the treaty. Additionally, in a semi-judicial process, the committee listens to personal complaints of female citizens who claim having experienced discriminatory behavior from their country. Not all the countries that have ratified the treaty allow the submission of individual complaints, Israel's citizens included. The committee can also initiate an investigation in a certain country, and hold pointed debates that address particularly critical issues.

Patriarchal conservatism in ostensibly enlightened countries

Prof. Hacker is a senior staff member of the Buchman Faculty

of Law and Head of the Women and Gender Studies Program at the Faculty of Humanities at Tel Aviv University. She completed her Master's Degree at the American University in Washington on a scholarship from the New Israel Fund. Upon her return to Israel, she completed her doctorate in sociology at Tel Aviv University. As a researcher, she specializes in the connection between law and society, while focusing on the gender perspective of family law. Furthermore, beyond the walls of academia, she has been active throughout the years in various social concerns, including the NGO “Itach-Maaki Women Lawyers for Social Justice” – established two decades ago, with the aim of promoting the rights of underprivileged women in Israel - of which she was a founding member. In this vein, Hacker's transition into social activity on an international scale seems to be completely obvious – almost taken for granted.

What are the principles of CEDAW?

“The platform of the treaty is quite comprehensive, and includes the prohibition of discrimination against women in every facet of life: education, occupation, family,

political representation, etc. This treaty is a seminal tool for international law to promote equality for women.”

What are the major challenges you face in the current time?

The committee is obliged to address negative responses to feminist achievements and with rising patriarchal conservatism, even in ostensibly enlightened countries. There is a rise in forces that seek to backslide on issues regarding women's rights for equality; for example, powerlessness in divorce proceedings. Another significant challenge is examining the impacts of the Covid-19 crisis and ways in which different countries chose to deal

with it. There are countries in which the strive towards gender equality remains as lip service only, having a high rate of violence against women, excluding women from powerful entities, and withholding education from girls from a young age. And this is despite the fact that they are signed on the treaty. How can the committee motivate these countries to implement the treaty? That is the million-dollar question.”

What do you hope to promote during your term?

“I hope to promote a number of issues; the first is the urgent necessity to examine the solutions for the aged through the lens of gender. My research in the field, as well as the academic supervision of the clinic for the rights of Holocaust survivors and the aged in the Faculty, taught me just how gender-oriented aging is. The world has not yet found satisfying solutions for the challenges of the longer life span and lack of care, and the fact that women live longer than men and die after many more years of widowhood than men, allocate most of the care of the elderly – both from family members and from salaried caregivers - requires a consistent and creative approach from the committee. ■



Frances Raday

Niva Elkin-Koren



Photo: Moshé Bedarshi

Q&A: Prof. Niva Elkin-Koren

Head of The President Meir Shamgar Center for Digital and Innovative Law and a world-renowned researcher who has been working for years on the crossing point between law and technology

Why was the Shamgar Center founded and what importance, in your opinion, does it play?

“The Shamgar Center was established in order to develop an academic foundation to provide a judicial solution for living in an era of perpetual technological change. Technological innovation generates social change and requires the modification of current judicial rulings, that were designed in accordance with the previous social order. Questions arise such as: what is the scope of responsibility that a social network has for the public discourse it contains? Does a digital application or platform carry any responsibility for consumer business transactions that promote their trade? How is it possible to ensure the rule of law when the administrative authority implements its authority through algorithms based on artificial intelligence? The judicial challenge stems among other things, from the fact that technological change is constant and is continuing at an increasing rate. This requires not only technical accommodation of judicial rulings for new technology, but also a reexamination of the legal agreement in light of social changes generated by technology.”

What activities will the Center incorporate?

“The Center will function in four areas of interest: inter-disciplinary academic research of law and technology; policy-oriented research through position papers, activity in the Legal Clinic for Privacy (led by Prof. Michael Birnhack) and organizing seminars and workshops with the participation of representatives from the private sector and governing factions; fostering practical research for inspiring technological innovation

that provides a solution for legal issues; managing knowledge of topics related to law and technology, through grants, program development and organizing seminars.”

To what extent can legal academia influence decision makers when it comes to legislature that will narrow the gap between technology and the society in which it operates?

The role of academia in the field of law is to create a research foundation for designing legal policy. Research in technology and law might illuminate the implications of adopting one judicial agreement over another, analyzing the dilemmas that arise within various legal contexts, and indicate legal solutions for existing problems. Legal academia can support interdisciplinary research for the development of technological innovation in the field of law (Legal Tech), and strive to implement moral considerations in designing systems that have an impact on civil rights.”

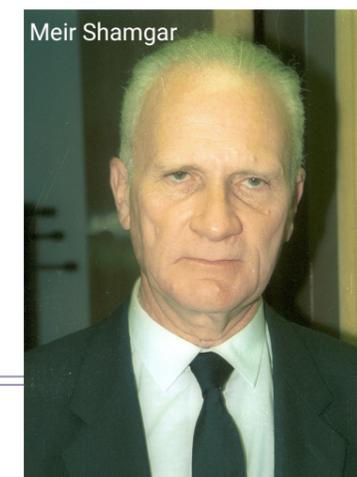
One of the problems related to issues of digital privacy is that the law itself cannot keep up with the rate of the development of technology. To what extent is the Center going to address this gap?

“The fact that technological change is continuous, is the most salient characteristic of the

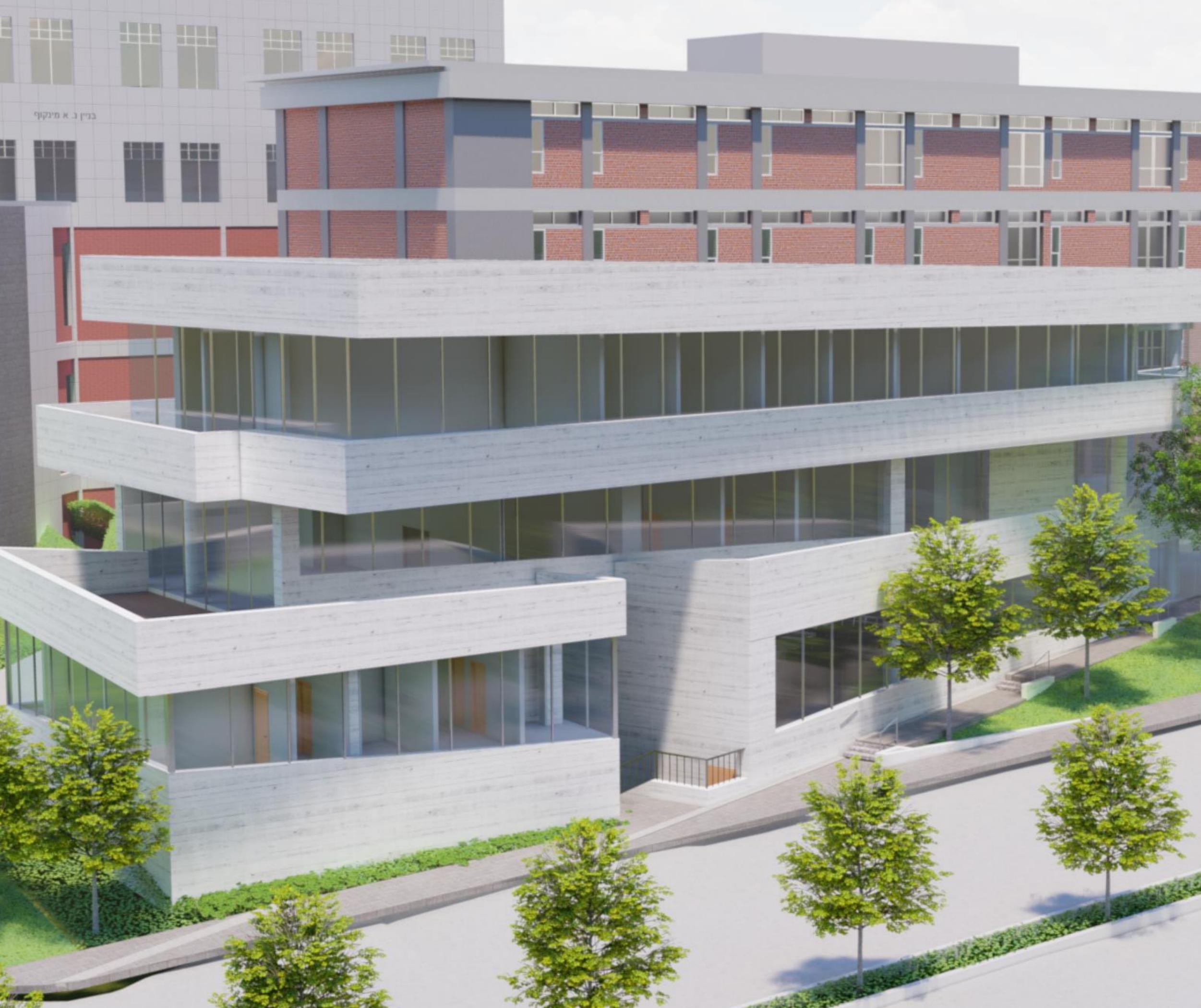
legal technological challenge. Technological applications enable new capabilities that often require accommodation of rulings. This need creates a completely different type of legal challenge. Decision makers in the legal field – from lawyers, legal advisors of companies, and of course judges and legislators – are obliged to re-adjust the law for an everchanging reality. This requires a new tool box; developing these tools is found in the core of the vision in the Shamgar Center.”

Where, in your opinion, does Israel stand on its attitude towards the right for its citizens’ privacy in comparison with other countries worldwide?

“Groundbreaking technologies are developed in Israel all the time, but on a practical level, regulatory difficulties place a burden on the implementation of new applications. The built-in discrepancy between the rapid rate of technological change, work pace of the legislator, mainly in the Israeli political reality, left the lion’s share of the weight on the legal system to provide a solution for the technological challenge. Courts take an active role within this context on a number of issues, from restricting the use of surveillance technology by the General Security Services during the Covid-19 crises, to placing responsibility on sharing denigrating information on social media, determining a legal framework for the use of digital means during election campaigns, or protection of small businesses from harm from digital platforms. Of course, the best-case scenario is defining a balanced agreement in the legislation. However, without it, the task of designing the agreement and protecting the rights is carried out by the courts.” ■



Meir Shamgar



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