

# THE CONTRACTS LAW OF ISRAEL

## Chapter A: Formation of the Contract

### 1. Formation of a contract

A contract is made by way of offer and acceptance together with an act of acquisition, in accordance with the provisions of this Chapter.

#### Civil Law:

A contract is made by way of offer and acceptance in accordance with the provisions of this Chapter.

### 2. Offer

A person's approach to another person constitutes an offer if it attests to the offeror's resolve to enter into a contract with the offeree; A proposal may be to the public.

#### Civil Law:

A person's approach to another person constitutes an offer if it attests to the offeror's resolve to enter into a contract with the offeree and is sufficiently definite to enable the contract to be concluded by acceptance of offer; A proposal may be to the public.

### 3. Revocation of the offer

(a) The offeror may withdraw the offer at any time prior to the performance of an act of acquisition.

(b) Even if the offeror has declared that the offer is irrevocable or has set a time for its acceptance, he may withdraw it at any time prior to the act of acquisition.

#### Civil Law:

(a) The offeror may withdraw the offer by notice to the offeree, provided that the notice of withdrawal is delivered to the offeree before he has given notice of acceptance.

(b) Where the offeror has declared that the offer is irrevocable or has set a time for its acceptance, he may not withdraw it after it has been delivered to the offeree.

### 4. Lapse of the offer

The offer lapses:

(1) When the offeree has rejected it in the presence of the offeror or with the knowledge of the offeror, or the time for its acceptance has elapsed

(2) When the offeror or offeree dies or becomes legally incompetent, all prior to the act of acquisition; However, where acceptance may be effected without the knowledge of the offeror pursuant to Section 6(a), the offer does not lapse by reason of the offeror's incapacity.

**Civil Law:**

The offer lapses:

- (1) When the offeree has rejected it or the time for its acceptance has elapsed;
- (2) When before notice of acceptance is given the offeror or offeree dies or becomes legally incompetent, or a receiving order or winding-up order is made against him.

## **5. Acceptance**

Acceptance shall be by notice delivered by the offeree to the offeror and attesting to the offeree's resolve to enter into the contract in accordance with the offer.

**Civil Law:**

Acceptance shall be by notice delivered by the offeree to the offeror and attesting to the offeree's resolve to enter into the contract with the offeror in accordance with the offer.

## **6. Acceptance by conduct**

(a) Acceptance may be effected by any conduct that demonstrates the offeree's intention to accept, if done in the presence of the offeror or if such mode of acceptance is implied by the offer; And for purposes of Sections 3(a) and 4(2), such conduct is treated as notification of acceptance.

(b) Silence may constitute acceptance if it unequivocally evidences the offeree's intention.

**Civil Law:**

(a) Acceptance may be by an act in implementation of the contract or by other conduct, if these modes of acceptance are implied by the offer; And for purposes of Sections 3(a) and 4(2), conduct as aforesaid is treated as notification of acceptance.

(b) A declaration by an offeror that the absence of any response on the part of the offeree shall be regarded as acceptance is of no effect.

## **7. Presumption of acceptance**

An offer which is exclusively for the benefit of the offeree is presumed to have been accepted by him, and the offeror may transfer ownership to him by an act of acquisition without his knowledge; however, if the offeree heard about this and immediately protested, the acquisition is void.

**Civil Law:**

An offer which is exclusively for the benefit of the offeree is presumed to have been accepted by him, unless he notifies the offeror of his opposition to it within a reasonable time after it comes to his knowledge.

## **8. Time for acceptance**

(a) An offer can only be accepted within the period fixed therein, and if no period has been fixed, within a reasonable time.

(b) A notice of acceptance that did not reach the offeror in due time is invalid, even if it was delivered by the offeree within a reasonable time.

**Civil Law:**

(a) An offer can only be accepted within the period fixed therein, and if no period has been fixed, within a reasonable time.

(b) Where an offeree gives notice of acceptance in due time, but its delivery to the offeror is delayed for a reason not dependent upon the offeree and unknown to him, the contract is regarded as having been made unless the offeror notifies the offeree of the rejection of the acceptance immediately after the notice of acceptance is delivered to him.

## **9. Acceptance after lapse**

Acceptance of an offer after it has lapsed is equivalent to a new offer..

**Civil Law:**

Acceptance of an offer after it has lapsed is equivalent to a new offer..

## **10. Revocation of acceptance**

The offeree may withdraw his acceptance by notice to the offeror, provided that notice of the withdraw is nor delivered to the offeree before to the act of acquisition.

**Civil Law:**

The offeree may withdraw his acceptance by notice to the offeror, provided that notice of the withdraw is nor delivered to the offeree after the notice of acceptance has been delivered to him or after he has become aware of the acceptance in manner indicated in Section 6(a).

## **11. Acceptance with modification**

An acceptance that contains an addition, limitation, or other change compared to the original offer is considered a new offer .

**Civil Law:**

An acceptance that contains an addition, limitation, or other change compared to the original offer is considered a new offer..

**11A. Act of acquisition**

Methods of acquisition shall be effected :out as follows

(1) In a contract for the transfer of property:

(A) Land may be acquired by providing money or a deed, by an act of possession by the recipient, or through symbolic acquisition (kinyan sudar).

(B) Movable property may be acquired by pulling, lifting, bringing it into the recipient's personal domain or control, or by handing the item over in a place where pulling or lifting is not possible

(2) In an employment contract, acquisition is effected by giving money, a deed, a through symbolic acquisition (kinyan sudar) or by pulling the worker's tools

(3) In a commitment, acquisition may be effected by symbolic acquisition (kinyan sudar) by making a declaration before witnesses according to law, or by delivery , of a deed

(B) In addition to the types of acquisition listed in subsection (A)(1)-(3), any method of acquisition that is accepted and customary in such cases shall be considered an act of acquisition, known as situmta

**12. Negotiation in good faith**

In negotiating a contract, a person shall act in customary manner and in good faith. He is also prohibited from doing anything or saying anything that might cause the other party to err in the nature of the transaction or its details.

**Civil Law:**

(a) In negotiating a contract, a person shall act in customary manner and in good faith.

(b) A party who does not act in customary manner and in good faith shall be liable to pay compensation to the other party for the damage caused to him in consequence of the negotiations or the making of the contract, and the provisions of sections 10, 13 and 14 of the Contracts (Remedies for Breach of Contract) Law, 5731-1970), shall apply with the necessary changes.

## **Chapter B: Cancellation of the Contract Due to a for Defect in Formation**

### **13. Sham contract**

- (a) A contract concluded for appearance only is void.
  
- (b) Even a right acquired by a third party in reliance, in good faith, upon the existence of such contract is void.

#### **Civil Law:**

A contract concluded for appearance only is void; however, This provision shall not affect a right acquired by a third party in good faith reliance on the existence of the contract.

### **14. Mistake**

- (a) Where a person has entered into a contract in consequence of a mistake, and it may be assumed that but for the mistake he would not have entered into the contract, he may rescind the contract, whether or not the other party knew of the mistake.
  
- (b) “Mistake” for this purpose - means a mistake of fact or of law, provided that the mistake existed at the time of the transaction.

#### **Civil Law:**

- (a) Where a person has entered into a contract in consequence of a mistake, and it may be assumed that but for the mistake he would not have entered into the contract, and the other party knew or should have known this, he may rescind the contract.
- (b) Where a person has entered into a contract in consequence of a mistake, and it may be assumed that but for the mistake he would not have entered into the contract, but the other party did not know and need not have known this, the Court may, on the application of the party who has mistaken, rescind the contract if it considers it just to do so; Upon doing so, the Court may require the party who was mistaken to pay compensation for the damage caused to the other party in consequence of the making of the contract.
- (c) A mistake is not a ground for rescission if the contract under this section if the contract can be preserved by rectifying the mistake and the other party, before the contract has been rescinded, gives notice that he is prepared to rectify it.
- (d) For the purposes of this section and of section 15' “Mistake” means a mistake of fact or of law, but does not include a mistake as to the worthwhileness of the transaction.

## **15. Deceit**

(a) A person who has entered into a contract in consequence of a mistake resulting from deceit practised upon him by the other party or by a person acting on his behalf, may rescind the contract; For this purpose, "deceit" includes the non-disclosure of facts which, according to law, custom, or the circumstances, the other party should have disclosed.

(b) The aggrieved party may not claim deceit where, even if misleading information was provided to it, if, under the circumstances, it appears that he knew the true facts.

### **Civil Law:**

A person who has entered into a contract in consequence of a mistake resulting from deceit practised upon him by the other party or by a person acting on his behalf, may rescind the contract; For this purpose, "deceit" includes the non-disclosure of facts which, according to law, custom, or the circumstances, the other party should have disclosed.

## **16. Clerical error**

Where a clerical error has occurred in the contract, and the error is evident from the contract itself, the contract is valid and the error will be corrected. If the error is not evident from the contract without external evidence, the contract is void.

### **Civil Law:**

Where a clerical error or similar error has occurred in the contract, the contract shall be rectified according to the presumed intention of the parties; and the error shall not be a ground for rescission of the contract.

## **17. Coercion**

(a) A person who has entered into a contract in consequence of coercion applied to him by the other party or another person acting on behalf of the other party, by force or threat, may rescind the contract.

(b) If the coerced party gave notice prior to the formation of the contract that the contract was made under coercion, the contract is void.

(c) A bona fide warning of the exercise of a right is not considered a threat for the purposes of this section.

### **Civil Law:**

- (a) A person who has entered into a contract in consequence of coercion applied to him by the other party or another person acting on behalf of the other party, by force or threat, may rescind the contract.
- (b) A bona fide warning of the exercise of a right is not considered a threat.

## **18. Extortion**

(a) Where a person has entered into a contract in consequence of the other party or a person acting on behalf taking advantage exploitation of his distress, shall pay only the customary price in such cases. However if the other party's losses exceed the customary remuneration, and compensation was agreed, he must compensate accordingly.

(b) If the agreed price has been paid in advance, or if the contracting party has undertaken to pay, or if the contracting party's distress stems solely from concern for his property, the contract shall not be canceled.

### **Civil Law:**

Where a person has entered into a contract in consequence of the other party or a person acting on behalf taking advantage exploitation of his distress, mental or physical weakness or inexperience, and the terms of a contract are, to an unreasonably degree, less favourable than customary, he may rescind the contract.

## **19. Partial rescission**

Where a contract is severable and the ground for rescission relates only to one part thereof, such part alone shall be capable of rescission; However, if it is to be assumed that a party would not have entered into the contract but for that ground, he may either rescind the said part or the whole contract.

### **Civil Law:**

Where a contract is severable and the ground for rescission relates only to one part thereof, such part alone shall be capable of rescission; However, if it is to be assumed that the party entitled to rescind would not have entered into the contract but for that ground, he may either rescind the said part or the whole contract.

## **20. Manner of rescission**

Rescission shall be by notice to the other party and operates retroactively.

### **Civil Law:**

Rescission of the contract shall be by notice by one party to the other party given within a reasonable time after becoming aware of the ground for the rescission or, in the case of coercion, within a reasonable time after becoming aware that the coercion has ceased.

## **21. Restitution**

Where a contract has been rescinded, each party shall restore to the other party what he has received under the contract or, if restitution is impossible or unreasonable, pay him the value of what he has received and the fruits he ate

**Civil Law:**

Where a contract has been rescinded, each party shall restore to the other party what he has received under the contract or, if restitution is impossible or unreasonable, pay him the value of what he has received.

## **22. Saving of remedies**

The provisions of this chapter shall not derogate from any other remedy.

**Civil Law:**

The provisions of this chapter shall not derogate from any other remedy.

## **Chapter C: Form and Content of the Contract**

### **23. Form**

A contract may be made orally, in written or in some other form, unless a particular form is a condition of its validity by virtue of law or agreement between the parties.

#### **Civil Law:**

A contract may be made orally, in written or in some other form, unless a particular form is a condition of its validity by virtue of law or agreement between the parties.

### **24. Contents of contract**

(a) The contents of a contract may include any monetary obligation, even if conditional, as agreed by the parties; however, it cannot require either party to perform an act.

(b) A contract does not apply to intangible property or to property that does not yet exist or is not yet in the possession of the party obligated to transfer it, unless the contract is made in a manner that is customary in the country for granting such liens.

(c) A contract cannot impose a penalty on a person that is unreasonable in relation to the losses incurred; however, such a penalty may be imposed if it is expressly stipulated that the encumbrance shall take effect upon the completion of the transaction, or if it is granted before a competent court, or if the deed explicitly refers to a statutory provision, or if the encumbrance is created by means customarily used in that jurisdiction for such purposes.

#### **Civil Law:**

The contents of a contract may be whatever is agreed upon the parties.

### **25. Interpretation of contract**

(a) A contract shall be interpreted according to the language commonly used in the place where it was drawn up; and if it cannot be interpreted according to the language commonly used, the contract shall be interpreted in accordance with the intention of the parties, as implied by the contract, and to the extent that it is not implied by the contract, according to the circumstances.

(b) A contract whose language is open to different interpretations, an interpretation preserving its validity is preferable to an interpretation according to which it is void.

(c) Expressions and conditions in a contract that are commonly used in contracts of the same type shall be interpreted according to their meaning in such contracts in the place where the contract was drawn up. If they have two meanings in that place, each party shall be bound by the more restrictive meaning.

**Civil Law:**

(a) A contract shall be interpreted in accordance with the intention of the parties as appearing therefrom or, in so far as it does not so appear, as appearing from the circumstances.

(b) Where a contract is capable of different interpretations, an interpretation preserving its validity is preferable to an interpretation according to which it is void.

(c) Expressions and stipulations in a contract which are customarily used in contracts of that kind shall be interpreted in accordance with the meanings assigned to them in such contracts.

(d) Sections 2, 4, 5, 6, 7, 8, and 10 of the Interpretation Law, 5741-1981, and Section 57c of the Evidence Ordinance (New Version), 1971, shall apply, with the necessary modifications, also to the interpretation of a contract, unless otherwise provided in the matter in question and unless there is anything in the matter in question or in its context that is inconsistent with such application.

## **26. Supplementary particulars**

Particulars not determined by or under the contract shall be in accordance with the practice obtaining between the parties or, in the absence of such a practice, in accordance with the practice customary in contracts of that kind, and such particulars shall also be regarded as having been agreed

**Civil Law:**

Particulars not determined by or under the contract shall be in accordance with the practice obtaining between the parties or, in the absence of such a practice, in accordance with the practice customary in contracts of that kind, and such particulars shall also be regarded as having been agreed.

## **27. Conditional contract**

(a) A contract may depend on the fulfillment of a condition (hereinafter: a "suspensory" condition) or may cease to exist upon the fulfillment of a condition (hereinafter: a "resolutive" condition), provided that the terms are formulated correctly.

(b) Where a contract requires the consent of a third party or a license under any enactment, the receipt of such consent or license is presumed to be a suspensory condition.

(b) Where a contract requires the consent of a third party or a license under any enactment, the receipt of such consent or license is presumed to be a suspensory condition.

**Civil Law:**

(a) A contract may depend on the fulfillment of a condition (hereinafter: a "suspensory" condition) or may cease to exist upon the fulfillment of a condition (hereinafter: a "resolutive" condition).

(b) Where a contract requires the consent of a third party or a license under any enactment, the receipt of such consent or license is presumed to be a suspensory condition.

(c) Where a contract is subject to a suspensory condition, each party is entitled to relief to prevent its breach, even before the condition is fulfilled.

## **28. Frustration of condition**

Where a contract is subject to a condition, each party may prevent fulfillment of condition and thereby release himself and void the contract.

**Civil Law:**

(a) Where a contract is subject to a suspensory condition and one party prevents fulfillment of the condition, such party is not entitled to rely on the non-fulfillment.

(b) Where a contract is subject to a resolutive condition and one party prevents fulfillment of the condition, such party is not entitled to rely on the non-fulfillment.

(c) The provisions of this section shall not apply where the condition is something that according to the contract a party is at liberty to do or not to do, or where a party does not prevent or cause the fulfillment of the condition wilfully or negligently.

## **29. Avoidance of contract or condition**

Where a contract is subject to a condition and the condition is not fulfilled within the period fixed therefor, then, in the case of a suspensory condition, the contract or, in the case of a resolutive condition, the condition shall become void. No period has been set for this - the condition is never canceled, except with the consent of the parties.

**Civil Law:**

Where a contract is subject to a condition and the condition is not fulfilled within the period fixed therefor or, where no period has been fixed, within a reasonable time after the making of the contract, then, in the case of a suspensory condition, the contract or, in the case of a resolutive condition, the condition shall become void.

## **30. Invalid contract**

A contract the making, contents or object of which is or are illegal, immoral or contrary to public policy, the contract exists, but the part that contradicts Jewish law will not be enforced.

**Civil Law:**

A contract the making, contents or object of which is or are illegal, immoral or contrary to public policy is void.

### **31. Application of provisions**

The provisions of sections 19 and 21 shall apply, with the necessary modifications, also to the nullity of a contract under this chapter.

#### **Civil Law:**

The provisions of sections 19 to 21 shall apply with the necessary modifications to the avoidance of a contract under this chapter. Provided that in the case of avoidance under section 30 the Court may, if it deems it just so to do and on such conditions as it sees fit, relieve a party of the whole or part of the duty under section 21 and, in so far as one party has fulfilled his obligation under the contract, require the other party to fulfil the whole or part of the corresponding obligation.

### **32. Gambling, lottery or betting contract**

A gambling, lottery or betting contract under which a party may win some benefit, and the winning being dependent on fate, guess-work or a chance occurrence rather than on understanding or ability, is not actionable and does not give rise to compensation. unless the parties have deposited their obligations in advance, or the obligor has explicitly stated that his undertaking shall apply from the moment of the transaction, or the transaction was executed before a distinguished court, or the document contains language indicating a regulation.

#### **Civil Law**

(a) A gambling, lottery or betting contract under which a party may win some benefit, and the winning being dependent on fate, guess-work or a chance occurrence rather than on understanding or ability, is not actionable and does not give rise to compensation.

(b) The provisions of this section shall not apply to gambling, a lottery, or betting regulated by law or for the conduct of which a permit has been issued under any law.

### **33. Contract for giving marks**

Where under any contract a mark, title, prize or the like is to be given according to a decision or evaluation by one of the parties or a third party, such decision or evaluation shall not be the subject of courts proceedings.

#### **Civil Law**

Where under any contract a mark, title, prize or the like is to be given according to a decision or evaluation by one of the parties or a third party, such decision or evaluation shall not be the subject of courts proceedings.

## **Chapter D: Contract in favour of Third Party**

### **34. Conferment of right**

An obligation assumed by a person by contract by act of acquisition in favour of a person who is not a party to the contract (hereinafter: “the beneficiary”) confers on the beneficiary the right to demand fulfilment of the obligation

#### **Civil Law:**

An obligation assumed by a person by act of acquisition in favour of a person who is not a party to the contract (hereinafter: “the beneficiary”) confers on the beneficiary the right to demand fulfilment of the obligation, if the intention to confer this right on him is apparent from the contract.

### **35. Repudiation of right**

The beneficiary’s right to demand fulfilment of the obligation becomes void retroactively if he informs of the repudiation of the right immediately upon becoming aware of it.

#### **Civil Law:**

The beneficiary’s right to demand fulfilment of the obligation becomes void retroactively if within a reasonable time after one of the parties to the contract informs him of the right he informs one of them of his repudiation thereof.

### **36. Revocation of right**

(a) Until an act of acquisition has been performed in favor of the beneficiary, the parties may amend or revoke the right by modifying the contract.

(b) In the case of an obligation to be fulfilled in consequence of a person's death – by virtue of an insurance contract or membership in a pension or provident fund or on some

other similar ground – the creditor may, by notice to the debtor or by a will of which notice is given to the debtor, terminate the beneficiary's right or replace him with another beneficiary, even after he has been informed of his right.

**Civil Law:**

(a) So long as neither of the parties has informed the beneficiary of his right under the contract, they may vary or terminate such right by varying the contract.

(b) In the case of an obligation to be fulfilled in consequence of a person's death – by virtue of an insurance contract or membership in a pension or provident fund or on some other similar ground – the creditor may, by notice to the debtor or by a will of which notice is given to the debtor, terminate the beneficiary's right or replace him with another beneficiary, even after he has been informed of his right.

### **37. Plea available against the beneficiary**

Any plea available to the obligor against the creditor in connection with the obligation is also be available to him against the beneficiary.

**Civil Law:**

Any plea available to the obligor against the creditor in connection with the obligation is also be available to him against the beneficiary..

### **38. Preservation of Creditor's Right**

The beneficiary's right shall not derogate from the creditor's right to demand from the debtor the fulfilment of the obligation in favour of the beneficiary.

**Civil Law:**

The beneficiary's right shall not derogate from the creditor's right to demand from the debtor the fulfilment of the obligation in favour of the beneficiary.

## **Chapter E: Performance of the Contract**

### **39. Performance in Good Faith**

An obligation arising out of a contract shall be fulfilled in customary manner and in good faith; the same applies to the exercise of contractual rights.

#### **Civil Law:**

An obligation arising out of a contract shall be fulfilled in customary manner and in good faith; the same applies to the exercise of contractual rights.

### **40. Performance by whom**

An obligation may be fulfilled by a person other than the debtor unless according to the nature of the obligation or to the agreement between the parties the debtor must fulfil it personally.

#### **Civil Law:**

An obligation may be fulfilled by a person other than the debtor unless according to the nature of the obligation or to the agreement between the parties the debtor must fulfil it personally.

### **41. Date for performance**

An obligation the date for the fulfilment of which has not been agreed upon shall be fulfilled immediately upon request by the other party.

**Civil Law:**

An obligation the date for the fulfilment of which has not been agreed upon shall be fulfilled within a reasonable time after the making of the contract, at a date of which the creditor has given the debtor reasonable notice in advance.

**42. Early performance**

An obligation may be fulfilled before the due date, provided the creditor is not adversely affected.

**Civil Law:**

An obligation may be fulfilled before the due date, provided the debtor has given the creditor reasonable notice in advance and the creditor is not adversely affected.

**43. Postponement of performance**

(a) The date for the fulfilment of the obligation is postponed -

(1) If its fulfilment at the due date is prevented by a circumstance depending on the creditor – until the obstacle has been removed.

(2) If its fulfilment at is conditional upon the prior fulfilment of an obligation of the creditor – until such obligation has been fulfilled.

(b) If the date for fulfilling the obligation as stated in subsection (a) is postponed, the obligor shall not be liable for damages caused by the postponement, and shall even be entitled to payment from the other party for damages caused to him directly by the postponement.

**Civil Law:**

(a) The date for the fulfilment of the obligation is postponed -

(1) If its fulfilment at the due date is prevented by a circumstance depending on the creditor – until the obstacle has been removed.

(2) If its fulfilment at is conditional upon the prior fulfilment of an obligation of the creditor – until such obligation has been fulfilled.

(3) If the parties must fulfil their obligations *pari passu* – so long as the creditor is not prepared to fulfil the obligation imposed on him.

(b) Where the date for the fulfilment of an obligation has been postponed under subsection (a), the Court may, if it deems it just so to do, require the creditor to pay compensation for the damage caused to the debtor by the postponement even if no infringement of the contract by the creditor is involved and, if the debtor is bound to make periodical payments until the fulfilment of the obligation, release him from these payments during the period of postponement.

#### **44. Place of performance**

(a) An obligation the place for the fulfilment of which has not been agreed upon may be performed in any place of residence; likewise, the creditor may sue for it in any place.

(b) An obligation that is the delivery of property may be sued for by the creditor only in the place where the transaction was made or in the place where the property is currently located; however, the debtor may bring it to the creditor in any place of residence.

##### **Civil Law:**

(a) An obligation the place for the fulfilment of which has not been agreed upon shall be fulfilled at the creditor's place of business or, if he has no place of business, at his permanent place of residence.

(b) Where the creditor changes his place of business or residence after the making of the contract, he shall bear the additional expenses arising out of the fulfilment of the obligation at the new place.

#### **45. Medium performance**

An obligation to provide a commodity or service the kind and quality of which have not been agreed upon shall be fulfilled by providing a commodity or service of any type and quality that the obligor wishes to provide.

##### **Civil Law:**

An obligation to provide a commodity or service the kind and quality of which have not been agreed upon shall be fulfilled by providing a commodity or service of medium kind and quality.

#### **46. Performance by paying appropriate amount**

An obligation to pay for a commodity or service for which the rate has not been agreed upon shall be fulfilled by paying the lower of the rates customary in that place for such commodity or service at the time the contract is performed.

##### **Civil Law:**

An obligation to make for a commodity or service a payment the amount of which have not been agreed upon shall be fulfilled by paying an amount which according to the circumstances at the time the contract was made it would have been appropriate to pay.

#### **47. Israeli currency**

An obligation to make in foreign currency in Israel a payment the making of which in that currency is forbidden by law shall be fulfilled by making it in Israeli currency at the official rate of exchange obtaining on the day of payment.

##### **Civil Law:**

An obligation to make in foreign currency in Israel a payment the making of which in that currency is forbidden by law shall be fulfilled by making it in Israel currency at the official rate of exchange obtaining on the day of payment..

#### **48. Conditional fulfilment**

(a) Where for the purpose of fulfilling an obligation the debtor transfers to the creditor a right in respect of a third party shall be discharged as regards the debtor, even if such right has not been realised.

(b) Where for the purpose of fulfilling an obligation the debtor assumes another obligation towards the creditor shall not be discharged as regards the debtor unless:

(1) An act of acquisition has been effected in respect of the obligation;

(2) It has been explicitly stipulated that discharge will only be effected in such manner.

##### **Civil Law:**

Where for the purpose of fulfilling an obligation the debtor assumes another obligation towards the creditor or transfers to him a right in respect of a third party, it is presumed that it is not intended to terminate such first-mentioned obligation unless the other obligation has been fulfilled or the right realised.

#### **49. Appropriation of payments in the case of one obligation**

The amount that can be written off for a single obligation, which includes various components or to which various components have been added over time, shall be treated as follows in section 50.

##### **Civil Law:**

An amount paid towards the discharge of a single obligation shall first be appropriated to the account of expenses which the debtor has undertaken to pay in respect of that obligation, then to the account of interest and finally to the account of the obligation itself.

#### **50. Appropriation of payments in the case of several obligations**

Where an amount is paid to the creditor while the debtor has several obligations towards him, the creditor may indicate the obligation to the account of which the amount is to be appropriated, even if at the time of payment the debtor stipulated that the amount be appropriated to another obligation and the creditor remained silent.

##### **Civil Law:**

Where an amount is paid to the creditor while the debtor has several obligations towards him, the debtor may indicate at the time of payment the obligation to the account of which the amount is to be appropriated: if he does not, the creditor may do so.

#### **51. Choice between alternative obligations**

(a) In the case of alternative obligations, the debtor may, by notice to the creditor within the period fixed therefor or, where no such period has been fixed, within a reasonable time prior to the date of fulfilment, choose the obligation he will fulfill; if he does not do so, the court shall proceed against his assets as it would with any debtor who fails to pay his debt.

(b) Where it has been agreed that the right of choice shall be vested in the creditor and he has not exercised it, the debtor shall discharge the obligation in one of the alternative ways.

**Civil Law:**

(a) In the case of alternative obligations, the debtor may, by notice to the creditor within the period fixed therefor or, where no period has been fixed, within a reasonable time prior to the date of fulfilment, choose the obligation which he will fulfil. If he does not do so, the creditor may choose the obligation by notice to the debtor.

(b) Where it has been agreed that the creditor shall have the right of choice and he does not exercise it within the period fixed therefor or, where no period has been fixed, within a reasonable period prior to the date of fulfilment, the debtor may choose the obligation by notice to the creditor.

## **52. Substituted fulfilment**

Where the fulfilment of an obligation has become impossible, and the debtor has accordingly a right to compensation or indemnification against a third party, the debtor shall transfer the right or what he has received thereunder to the creditor to the extent of the value of the obligation.

**Civil Law:**

Where the fulfilment of an obligation has become impossible, and the debtor has accordingly a right to compensation or indemnification against a third party, the debtor shall transfer the right or what he has received thereunder to the creditor to the extent of the value of the obligation.

## **53. Set-Off**

(a) Monetary obligations owed by parties to one another, for which the time of performance has arrived, shall be set off against each other, and only the balance may be collected; however, in the collection of assets that differ in type or nature, each party is entitled to collect from the other and not to set off.

(b) The provisions of sections 49 and 50 shall also apply, mutatis mutandis, to discharge by way of set-off.

**Civil Law:**

- (a) Mutual monetary obligations arising out of one transaction the time for the fulfilment of which has arrived may be set off by notice by one party to the other. The same applies to monetary obligations not arising out of one transaction if they are liquidated obligations.
- (b) An obligation the right to the fulfilment of which is not attachable shall not be set off.
- (c) The provisions of sections 49 and 50 shall also apply, mutatis mutandis, to discharge by way of set-off.

## **Chapter VI: Several Debtors and Creditors**

### **54. Multiple debtors**

Where two persons are under one obligation, it is presumed that they are liable equally; however, each is liable for the obligation of the other.

#### **Civil Law:**

Where two persons are under one obligation, it is presumed that they are liable jointly and severally.

## **55. Joint and several liability**

(a) Where two persons are jointly and severally liable, the creditor may demand fulfilment of the whole or part of the obligation from both of them together, or from each of them separately, provided that he does not recover more than is due to him.

(b) Where the obligation of one of the debtors is void or has been voided, the obligation of the other is also void, unless the voidance results from a defect in the competence or representation of the first-mentioned debtor.

### **Civil Law:**

(a) Where two persons are jointly and severally liable, the creditor may demand fulfilment of the whole or part of the obligation from both of them or from each of them separately, but he shall not recover more than is due to him.

(b) If the obligation of one of the debtors becomes void or is voided, the obligation of the other also becomes void unless the voidance arises out of a defect in the competence or representation of the first-mentioned debtor.

(c) If the creditor discharges one of the debtors of the whole or part of the obligation, by way of waiver, remission, compromise or otherwise – the other is discharged to the same extent unless a different intention appears from the discharge.

## **56. Apportionment of obligation between debtors**

(a) Where two people are bound by a single obligation, it is presumed that, as between themselves, they share the burden of the obligation equally.

(b) Where one debtor pays the creditor more than his share of the obligation, he is entitled to recover from the other debtor according to their respective shares.

(c) Where there are more than two debtors and it is not reasonably possible to collect from one of them, the remaining debtors shall bear his share in proportion to their respective shares.

(d) Where the obligation of one debtor is voided as set out in section 55(b), the other debtor has no right of recovery against him; if one debtor is discharged as set out in section 55(c) and the discharge does not extend to the other, the discharge does not affect the right to recover from the other debtor under this section.

### **Civil Law:**

(a) Where two persons are under one obligation, it is presumed that as between themselves they bear it in equal shares.

(b) Where one debtor has paid to the creditor more than his share of the burden of the obligation, he is entitled to recover from the other debtor in accordance with their respective shares.

(b) Where there are more than two debtors and there is no reasonable possibility of recovering from one of them, his share shall be borne by the other debtors in accordance with their respective shares.

(c) Where the obligation of one debtor becomes void under section 55(b), the voidance arising from a defect in his competence or representation, the other is not entitled to recover from him. Where one debtor is discharged under section 55(c) and the discharge does not include the other, the discharge does not affect the right of recovery against the other under this section.

## **57. Restriction on right of recovery**

A debtor who has fulfilled the obligation in excess of his share is not entitled to recover from another debtor in so far as he could have been discharged vis-à-vis the creditor by virtue of a plea which was known to him but of which he did not avail himself.

### **Civil Law:**

A debtor who has fulfilled the obligation in excess of his share is not entitled to recover from another debtor in so far as he could have been discharged vis-à-vis the creditor by virtue of a plea which was known to him but of which he did not avail himself.

## **58. Transfer of security**

A charge or other right granted to a creditor as security for the obligation shall not pass to a debtor who has fulfilled the obligation in excess of his share, unless the creditor has transferred his right to that debtor in accordance with the standard procedure for the assignment of obligations

### **Civil Law:**

(a) Any charge or other right given to a creditor as security for the obligation shall pass, in so far as the creditor is not adversely affected by such passing, to a debtor who has fulfilled the obligation in excess of his share as security for his right to recover from another debtor.

(b) Where a charge or right has passed under subsection (a), the parties shall, on the demand of the debtor who has fulfilled the obligation, do the acts necessary in order that the transfer may be valid in all respects.

## **59. Several creditors**

(a) Where two persons are entitled to a single obligation, they may demand its fulfilment only if both act jointly, or if one acts with the knowledge of the other; the debtor may discharge the obligation towards one of the creditors, provided this is done with the knowledge of the other creditor.

(b) Creditors are presumed to share the obligation in equal parts; if the obligation has been fulfilled towards one of them, the other may demand his share from him.

### **Civil Law:**

(a) Where one obligation exists vis-à-vis two persons, it is presumed that each of them may demand its fulfilment, but they shall not recover from the debtor more than is due from him. The debtor may at his choice fulfil the obligation towards one of his creditors so long as judgment has not been given in favour of the other.

(b) Creditors as aforesaid are presumed to be entitled in equal shares. If the obligation has been fulfilled towards one of them, the other may demand his share from him.

## **Chapter VII: Miscellaneous**

## **60. Manner and time of giving notice**

(a) Notice under this Law shall be given in the manner customary in the circumstances of this case.

(b) Notice under this Law shall be taken to have been served when it reached the addressee or his address.

**Civil Law:**

(a) Notice under this Law shall be given in the manner customary in the circumstances of this case.

(b) Notice under this Law shall be taken to have been served when it reached the addressee or his address.

**Sections 61-64 are repealed.**

**61. Scope of application**

(a) The provisions of this Law shall apply where no other Law contains special provisions regarding the matter in question.

(b) The provisions of this Law shall, as far as appropriate and mutatis mutandis, apply also to legal acts other than contracts and to obligations not arising out of a contract.

**62. Repeal**

There are hereby repealed =

(1) Articles 658, 948, 949 and 1003 to 1007 and the Twelfth Book of the Mejlle.

(b) Article 64 of the Ottoman Code of Civil Procedure of the 2<sup>nd</sup> Rejeb, 1296 (21<sup>st</sup> June, 1879).

**63. Autarky of Law**

Article 46 of the Palestine Order in Council, 1922-1947, shall not apply to matters dealt with by this Law.

**64. Commencement and transitional provision**

This Law shall come into force on the 1<sup>st</sup> Elul, 5733 (29<sup>th</sup> August, 1973), Contracts made before the coming into force of this Law shall continue to be governed by the previous law.