The Social Revolution in Israeli Contract and Business Law

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Private law in Israel has been undergoing significant social change in recent years. The development of social justifications attendant on the broad implementation of such principles as good faith, trust, public order and human rights in interpersonal relations, reveal the “social revolution” affecting Israeli law. This trend rests on an approach that emphasizes individual liberties and individual autonomy, but also stresses the responsibility of all those involved in social interactions for taking the other’s justified expectations into account.

This phenomenon does not take place in a vacuum. It is part of new developments in the world and in Israel in such areas as fair trade and human rights in the private sector, of new approaches concerning the purpose of business companies in the modern era, and of their growing commitment to their employees, their clients, the environment, and indeed the public as a whole. These come to the fore in the frequency of ethical programs in business companies, in the prosperity of “ethical funds” focusing on investments in companies with social and environmental commitments, in the emergence of social indices for traded securities, in the development of a norm of social reporting in business companies, in the expansion of the fiduciary duties of directors and managers, in the constant updating of proper and fair corporate governance, and so forth. These developments, as well as many local and international initiatives in the business-social realm, signal that a new world is dawning, one where “market forces” themselves encourage taking into account not only egoistic and utilitarian considerations but also social, ethical, and humanitarian ones. This integration of many, usually mutually complementary, considerations illustrates the development of a holistic and creative approach on the back of a capitalistic view.

The “social revolution” in the jurisprudence of the Israeli Supreme Court appears to unfold today, quite surprisingly, mainly through doctrines anchored in contract law—the domain of private and voluntary law—on the backs of corporate and business bodies. These legal institutions—contracts and companies—have traditionally been perceived as the quintessential representatives of private law, focused on the self-interest of realizing the individual’s autonomy (contract law) and in promoting business considerations meant to maximize profits (companies law). Israeli law, therefore, appears to be experiencing a genuine transformation in its attitude to the interpersonal and social aims of these laws, in the social commitment of all the elements interacting in the legal context, and in the assimilation of a culture of interpersonal trust.

The use of contract and corporate law is not accidental. These institutions may emerge as agents of real social and legal change, both because they deal with the most common daily interactions and because of their growing social stature at a time of a weakening state and increasingly stronger “private” players.

This process, however, combining individualist and social outlooks, has not yet consolidated, and Israeli law is at a crossroads in all that concerns the essence and the dosage of the social considerations that should be taken into account in the context of contract law and companies law.

Contractual and corporate structures—both basic, recurrent, and diversified institutions—touch upon and involve many social values, thus making the temptation to “load” upon them the responsibility for preserving and substantiating these and other values hard to resist. Imposing intensive dosages of social responsibility without sufficient consideration for
the main aims of contract law and companies law, however, may undermine the delicate balance between the concepts of freedom and responsibility, weaken both the contractual and the corporate institution, and hinder the future development of the social transformation taking place in Israeli law.

One of the project's main goals is to illustrate ways of incorporating the approach regarding mutual trust and social responsibility through contract and corporate law, and suggest improved criteria for their implementation.