

Production of Lawyers in Israel – What Does Unauthorized Practice of Law Have to Do With It?

NETA ZIV*

Ziv, N., 2013. Production of Lawyers in Israel – What Does Unauthorized Practice of Law Have to Do With It?. *Oñati Socio-legal Series* [online], 3 (3), 430-449. Available from: <http://ssrn.com/abstract=2281810>



Abstract

Discussions about the "flooding" of the legal profession have focused on jurisprudence and legal culture (how people resolve disputes); accessibility to legal education and the acceleration in the number of law schools; social and cultural factors (professional status), and structural entry barriers to the professional. This paper analyzes the reality of the growing number of lawyers in Israel with reference to an additional factor: the most extensive rules regarding **Unauthorized Practice of Law**, strictly guarded by the Israeli Bar Association. As law had become an accepted forum for resolving private and public disputes, any kind of activity entailing provision of legal advice, legal documentation or representation is restricted to lawyers only. Consequently, entry into the profession becomes the only way to take part and become engaged in the field of legal services.

Key words

Legal profession; Legal Ethics; Unauthorized Practice of Law

Resumen

Los debates sobre la "inundación" de la abogacía se han centrado en la jurisprudencia y la cultura legal (en la forma de resolver disputas); la accesibilidad a la educación en derecho y el aumento del número de escuelas de derecho; los factores sociales y culturales (estatus profesional), y las barreras de acceso estructurales a la profesión. Este artículo analiza la realidad del número creciente de abogados en Israel, haciendo referencia a un factor adicional: la normativa más amplia relacionada con la práctica no autorizada del derecho, vigilada estrechamente por la Asociación de Abogados de Israel. Está asumido que el derecho es el foro en el que resolver disputas privadas y públicas, por lo que cualquier actividad que implique la provisión de consejo legal, documentación legal,

Article resulting from the paper presented at the workshop "Too Many Lawyers? Facts, Reasons, Consequences and Solutions" held in the International Institute for the Sociology of Law, Oñati, Spain, 19-20 April 2012, and coordinated by Eyal Katvan (College of Law and Business, Ramat Gan), Carole Silver (Indiana University) and Neta Ziv (Tel Aviv University).

* Director of The Cegla Clinical Law Programs at the law school. Academic supervisor of the Housing, Community and Law Clinic and teaches courses on Legal Ethics and the Legal Profession, Law and Social Change and Rights of People with Disabilities. Prof. Ziv received her LL.B. from the Hebrew University Law Faculty in 1983, and her LL.M. from The American University in Washington, DC in 1986. Tel Aviv University. Law Faculty. Trubowicz - Law building, room 40. Tel Aviv 69978, Israel zneta@post.tau.ac.il



o representación, está limitada únicamente a los abogados. De esta forma, acceder a la profesión se convierte en la única forma de participar e implicarse en el campo de los servicios legales.

Palabras clave

Profesión legal; ética legal; práctica no autorizada del derecho

Table of contents

1. Introduction.....	433
2. Legalization, litigiousness and lawyers	434
3. Legal framework of UPL and practical implementation	436
3.1. Enemies from within and from the outside: pursuing lawyers and commercial companies	437
4. UPL litigation.....	438
4.1. Clearing the UPL field – The Pitsuy Nimratz case.....	438
4.2. Stage II: litigation against The Center for Realization of Medical Rights..	439
5. Is there competition with the legal profession?.....	442
6. The health professions: doctors, nurses and paramedics – a proliferated regulatory regime.....	443
7. Conclusion: UPL and the flooding of the profession	446
7.1. Competition	446
7.2. Excluding areas of practice from section 20 (by legislative amendment) .	446
7.3. Market expansion.....	446
7.4. Creating new professions, reducing the number of lawyers.....	447
Bibliography	447

1. Introduction

The vast literature attempting to explain the growing number of lawyers in modern societies has addressed the topic from various perspectives. Jurisprudential explanations connect people's increasing turn to law with the emergence of more lawyers to handle legal procedures. Accordingly, legal culture (especially litigiousness) directly bears on the number of lawyers a society produces; in a less legalized culture there would not be as much of a need for lawyers.¹

Others target the expansion of legal education and the growing number of law schools as a significant contributor to this phenomenon.² To be sure, the rising numbers of students who choose legal education in and of itself reflects changes in legal culture. However there are external reasons – beyond general trends of "legalization" – that may have led to the expansion in legal education. These include the development of a market of law teachers who spur the demand for teaching institutions, changes in regulation relating to opening new law schools and legal education considered a jumping board for public service work. Accordingly, the excessive number of law school graduates infuses higher entry levels into the profession.

Another explanation points to structural barriers imposed by the state or bar associations upon entry into the profession as a central cause for lawyers' influx. The claim is that the lax in closure measures, which have traditionally limited entry into the legal profession (including bar exams, clerkship periods) have led to the "flooding" of the legal profession (Larsen 1977, Abel 1988, Paterson 2012, pp. 24-28).

Not surprisingly, many law societies and bar associations follow this reasoning and ground their policy in such claims. They constantly worry about professional overcrowding and competition. They move to tighten entry barriers in order to control the number of entrants into the profession. Such restrictive measures, in turn, spur demand for lawyers, causing a circular cause-effect dynamic that fuels this process and keeps it thriving.

In this paper I explain the growing number of lawyers in Israel - now the highest per capita in developed countries - in reference to an additional factor: the most extensive rules regarding ***Unauthorized Practice of Law***, which in practice have been strictly guarded and enforced by the Israeli Bar Association. To be sure, I recognize the impact of other factors (legal culture, legal education, structural barriers and social status) upon this occurrence. In general, there is and can be no single or overriding explanation for the increase in the number of lawyers anywhere, Israel included. Nonetheless, in this paper my goal is to shed light on one factor – albeit a central one – to comprehending this phenomenon.

In order to understand why people become lawyers, we must inquire into the division of labor within the field of legal services, and inquire within it *who is allowed to do what*. A good starting point for this discussion can be legal culture, in the sense of people's belief that they need professional assistance in certain life occurrences and circumstances, and act upon this belief. We then have to inquire how and from whom they can obtain these services – both de jure and de facto.

Rules relating *Unauthorized Practice of Law* rules (hereinafter UPL) are central to this discussion. If law broadly defines exclusive activities and jurisdictions within which only lawyers are permitted to operate, and against trends of expanding legalization, we can expect a steady inclination to become a lawyer. This is a dual sourced dynamic: the first is a monopolized territory within which assistance from experts and professionals becomes essential; the second is a UPL regime which

¹ Rhode questions such popular assumptions about the connection between litigiousness and the number of lawyers, prominent in public discourse (Rhode 1998, 993-994).

² See, in this volume, Levin & Alkoby (2013), Zer-Gutmann (2013), Silver (2013), Katvan (2013).

restricts non-lawyers from providing services within this defined terrain. This combination evidently leads to a rise in the number of entrants into the legal profession.

I suggest this process carries significant force in explaining the sharp rise in the number of lawyers in Israel. Israeli law restricts any kind of activity entailing provision of legal advice, preparation of a legal document and representation before designated administrative and all judicial and quasi judicial tribunals - to lawyers only. The Israel Bar Association (IBA) vehemently enforces these rules: it initiates legal proceedings against "intruders" who allegedly trespass the restricted jurisdiction, as well as against lawyers who collaborate with them. The IBA is mostly concerned with commercial bodies that have entered the field, but since 2007 has also targeted non-profit organizations that seek to provide legal services for fees (although usually at a lower rate than private firms) assisted by law students, volunteers and paralegals.

Thus amidst an expanding legalized culture and popular turn to law, joining the legal profession becomes the only way to take part in providing legal services and assistance. Hence UPL rules and practices constitute an important contribution to the growth in the number of lawyers in Israel to unprecedented comparable rates.

In this article I connect between trends of legalization and litigiousness in Israeli society and UPL normative arrangements, as enforced by the IBA. I analyze litigation initiated by the Israel Bar Association enforcing UPL rules against "trespassers", and inquire into the extent to which the services they offer posit a competition with lawyers. I then compare the UPL rules with similar regulatory arrangements of the health profession in Israel, and demonstrate that the medical field – despite a similar initial stance regarding unauthorized practice – operates under a different normative and practical arrangement. I conclude with a note on competition between non-lawyers and lawyers, and a proposal to change the rules of UPL which, I believe, may impact upon the demand to enter the legal profession and mitigate this trend.

2. Legalization, litigiousness and lawyers

Since the 1990s, the Israeli legal profession has grown dramatically in size. Already in 2006 the number of lawyers per capita in Israel was among the highest in the world—one lawyer per 200 residents. From 1968 to 2005 the number of lawyers had increased by 1552 percent, while the population grew by 246 percent (Barzilai 2007, pp. 256-257). In 2012 there were over 50,000 registered lawyers in the country, bringing ratio to one lawyer to 160 residents. Concomitantly, the number of law students entering law schools had continued to rise over the last decades. In 1996 6,000 (six thousand) students began their law studies; in 2006, the number rose to 15,000 (fifteen thousand).³ The demand for legal education was met with more liberalized state policies on the supply side. Israel's Council for Higher Education had adopted a liberal policy of approving new law schools – and in the last decade alone had authorized the opening of three private law schools in the Northern and Southern parts of the country, joining four research-based public law schools, and five private colleges, altogether graduating over two thousand law

³ Isr. Council for Higher Educ., Students in Institutions of Higher Education by Level of Degree, Type of Institution and Field of Study tbl.10, <http://www.che.org.il/download/files/table10.xls> (last visited Jan. 29, 2009), Isr. Council for Higher Educ., Students in Institutions of Higher Education by Level of Degree and Field of Study 1996, 2001, 2004–05, tbl. 9, http://www.che.org.il/download/files/table_9_3203.xls (last visited Jan. 29, 2009).

students per year.⁴ In 2010 13,000 out of the 16,000 law graduates studied in law colleges, and only 3,000 in research based universities.⁵

The growth in the number of law students and lawyers emerged as Israeli society became more legalized. Since the mid 1980's a consciousness of rights and legality has become salient, reflected in an increasing turn to adjudication for resolving individual, social, and political conflicts. Israeli society has also become highly formal and bureaucratized, making it harder for lay people to maneuver within the public benefit system. This legalization process has been twofold. First was the increasing turn to the Supreme Court to resolve public and public disputes that beforehand remained in the political, communal, or public realm.⁶ Second was the augmenting turn to adjudication to resolve personal and commercial disputes. The number of court cases in all categories and all courts has risen at a much higher pace than demographic growth (Barzilai 2007, pp. 265-267), and according to Barzilai "one in every six citizens in Israel has litigated a case in the courts" (Barzilai 2007, pp. 265-266).⁷ To be sure, much of this legalization process was itself led by jurists—judges and lawyers alike, who created demand for lawyers' services, broadening the scope of judicial intervention. The point remains, nonetheless, that it is becoming hard to navigate the judicial or bureaucratic system without the assistance of an expert, namely, a lawyer.

Notwithstanding, similar to indications from other countries, a growth in the number of licensed or practicing lawyers has not guaranteed more equitable access to justice in Israel. Indeed, Parker claims that "[i]t is naive to expect the market in justice ever to be organized so efficiently that the majority will be able to afford the services they need." (Parker 1999, p. 41)⁸ Evidence indicates that the legal needs of the poor in Israel are not met by the growing number of lawyers entering the profession.⁹ Data from The Israel Court Administration shows that in 2007, 78% of defendants were not represented by a lawyer in litigation. In debt collection proceedings 95% of debtors were not represented (while 6% of creditors were appeared without a lawyer).¹⁰

This is a crucial point for our discussion. The combination of a highly legalized socio-political sphere, the expanding needs for professional assistance in everyday life and numerous barriers in actual access to justice have spurred the emergence of lay and non-lawyer activities. They have developed as a market response, in order to address these needs. Concerned with lawyer competition, the IBA harnessed UPL to halt the acclaimed threat to lawyers' monopoly in providing legal services.

⁴ The new colleges that were approved were The Haifa Law College, The Zefat Law College in the Galilee, and the Sapir Law College in Sderot. See also Eyal Katvan (2013).

⁵ Council for Higher Education, 2010, table 10 (can be accessed at: http://che.org.il/?page_id=6802), last visited 26.6.12.

⁶ The legacy of this development is associated with Chief Justice Aharon Barak and has drawn much controversy (Sapir 2008, Rabin and Shany 2003-2004, pp. 2-3).

⁷ According to Barzilai, "[I]itigation in circuit courts has grown by 2265 per cent, in district courts it has increased by 4843 percent, and in the High Court of Justice (HCJ) by 667 per cent. In all categories of the judiciary, litigation has increased more rapidly than the pace of demographic growth".

⁸ Parker provides information on discrepancies between increased market competition for legal services and availability of lawyers, depending on the type of service and clients; see also Rhode (2000, p. 118): "For most Americans, the most significant problem involves not too much but too little: too little access to justice and too few choices about legal services and dispute resolution processes".

⁹ There is no official research on the legal needs in Israel. Information on the availability of legal services to the poor, however, illustrates a growing want in this area. See Shai (2004), noting the rise in people requesting state legal assistance as well as assistance from non-governmental organizations between 2001 and 2003; see also Knesset, Committee of Public Complaints, Protocol of Proceedings (2004), discussing the immense unmet legal needs which are not addressed by the state, the bar and civil society.

¹⁰ Data provided by Deputy Court Administration Director, Judge A. Gilon, in a letter dated March 1, 2009 to attorney Ela Alon from Tel Aviv University Program "law in the Service of the Community" (on file with author). Data about debt collection can be accessed at: http://www.knesset.gov.il/committees/heb/material/data/H17-05-2011_11-58-01_reslut87b2010.pdf.

3. Legal framework of UPL and practical implementation

The strengthening role of law in Israeli polity and society has taken place against broad restrictive Unauthorized Practice of Law (UPL) rules. The current normative arrangement was adopted five decades ago, in 1961, when there were less than 2,000 lawyers in Israel, and has not been amended since. To be sure, struggles to entrench lawyers' jurisdictional exclusivity are not unique to the Israeli legal profession; they occur in many countries, where lawyers claim exclusivity for their services. They also vary according to the legal culture and beliefs about the nature of legal services in each society, the makeup of the legal profession and its relation to other institutions (Rhode 1981, Auerbach 1976, Halliday and Karpick 1998, Abel 2010).

Comparatively Israel's UPL law is one of the broadest arrangements both historically as well as currently (OECD 2007, pp. 138-341). Israeli polity at the time of the IBA's enactment - under which lawyers were not considered part of the ruling elites and were somewhat alienated from the state's national ethos - generated the first arrangement. It situated the legal profession within the private sphere and secured a strong monopoly for lawyers. The lack of significant challenges to the bar's monopoly for over four decades enabled this arrangement to endure with no significant alteration (Ziv 2003).

Section 20 of the Israel Bar Association Act of 1961 (hereinafter – section 20) sets the jurisdictional boundaries to lawyers' exclusive right of practice. The law confines the following activities to lawyers (Israel Bar Association 1961):

1. Representation of another person before any judicial or quasi-judicial tribunal.
2. Representation of another person before designated administrative agencies.¹¹
3. Preparing documents of a legal nature on behalf of another person or negotiating towards preparation of such document.
4. Legal consultation and provision of a legal opinion.

Sections 1-2 restrict representation, and are bounded by the nature of the body at stake (judicial/quasi judicial), or its inclusion in a closed list of administrative agencies.¹² Sections 3 and 4 are broad and versed in vague language: they apply to the preparation of a "document of a legal nature", to the provision of "legal advice", or a "legal opinion".

Clearly, it is difficult to set the boundaries between a document that is legal in its "nature" and one that is not: is a standard rental contract a document of this sort? What about a "do it yourself divorce kit"? A computer form for filing employment compensation? Similarly, the boundary between provision of legal information and legal opinion or advice is murky, and varies according to the circumstances. Is assisting a person to file a claim before a health insurance company considered provision of a legal opinion? Does preparation of a tax return fall within this definition?

Section 20 represents an essentialist methodology. It assumes that we can distinguish between what is "legal" or "non-legal" based on the nature of the task and its inherent characteristics. Obviously, this is not the case; what is considered legal in one place and time may not be regarded as such in another (compare with Rhode 1981). It is very hard to draw stable lines between what lawyers do and

¹¹ These include: The Debts Execution Registrar; The land registration Registrar; The Companies Registrar; The Partnership Registrar; The Patent and Trademark Registrar; The Copyright Registrar; The Income Tax, Land Tax and Inheritance Tax Officers.

¹² Courts have rules that the list mentioned in section 20 (2) is closed, see, for example, Civ.A.4405/02 The Israel Bar Association v. Ravivo (Takdin-34, 12(02)(2) 2002 (Decision rendered November 13, 2005).

what other professionals do, as "[m]any individuals, including accountants, bankers, real estate brokers, insurance agents, and title and trust officers, cannot provide competent services without referring to legal concerns" (Rhode 1990).

Beyond the essentialist critique, these are not the important inquiries we need to probe into, if we care about access to justice and qualitative legal services. However, section 20 channels the deliberations into inquiries of this sort, situating the legal and public debate on UPL and provision of legal assistance within an fundamental framework.

As for enforcement and implementation, the Israel Bar Association has been enforcing UPL rules vigorously. It wishes to ensure that the expanding demand for legal assistance will remain within the exclusive jurisdiction of lawyers. For the most part, the bar has grounded its justification for this approach in altruistic reasoning: the need to protect clients and to ensure legal services of good quality. It claimed that lawyers are best suited to guarantee these objectives since they possess distinctive knowledge and unique, acquired expertise, which they had gained through formal education, clerkship and entry exams. In addition, it is claimed, lawyers only are bound by ethical rules, enforced by a formal disciplinary process.

Despite these altruistic claims, as we have learned from other jurisdictional professional struggles, it is the vocational self-interest of lawyers the bar actually seeks to protect. In Israel this is quite apparent: the IBA professional committee overseeing UPL is named "The Committee to Protect the Profession".¹³ This committee targets a variety of activities deemed as trespassing lawyers' jurisdiction, and pursues action. The committee pursues debt collection by companies that receive and redeem (cash)checks, bills and banknotes; it tracks instances where legal services are provided by lawyers employed by non-profits. In the following cases it sees improper trespassing of lawyers' boundaries: representation of commercial companies in small claims court by non-lawyers; representation of students in academic disciplinary hearings by law students; work conducted by patent writers; non-lawyer representation of holocaust survivors in quasi-judicial proceedings; non-lawyer advice in debt collection proceedings; tenders issued by public agencies inviting proposals to provide debt collection services; tax calculation, under which lawyers and non-lawyers operate together (Israel Bar Association 2012a, pp. 136-137). In all these instances, the bar initiated investigations on its own behalf to inquire about the activities, in addition to processing complaints from lawyers, judges and the public. UPL is a topic in which the IBA prides itself as being innovative, proactive and vigorous – all in the name of public, and private, interest.

3.1. Enemies from within and from the outside: pursuing lawyers and commercial companies

The bar's most extensive efforts to counter UPL have targeted companies that engaged in realizing legal entitlements, mainly in the area of medical, health and disability benefits. In the early 1990s several companies identified the potential market of claims for monetary compensation due to illness, disability, accidents and other injuries. Claims of this sort could be filed against the state (The National Insurance Institute and other public agencies), as well as private insurance companies and sick funds.¹⁴ Since the mid-1990s the IBA instigated civil actions against numerous companies, asking for an injunction to stop them from carrying out activities that allegedly violated section 20. In most cases these proceedings were not based on complaints from dissatisfied clients, but on the bar's proactive initiative.

¹³ See, for example, The Israel Bar Association (2010, pp. 122-124, 2011, pp. 136-138, 2012a, pp. 154-156).

¹⁴ On the development of this trend see Ziv (2008, pp. 454-456).

Following these proceedings most companies negotiated concessions with the bar. They consented to limit their scope of activities to fit the boundaries of section 20; eventually many were driven out of the market. One company, however, decided to "fight all the way". As will be described ahead, Pitsuy Nimratz continued to litigate the law suit initiated by the IBA, and requested that the court interpret section 20 narrowly, and to define its activities as falling within its boundaries.

Parallel to these proceedings, the bar realized it had to cope with a growing number of lawyers who identified the advantages embodied in this emerging field of market activity. These lawyers chose to cooperate with the companies through various arrangements - some were employed by the companies; others set up referral agreements. Lawyers were needed in cases that required litigation or more complex legal proceedings. Not surprisingly, most of these lawyers were new entrants into the profession or lawyers with lesser social capital from which they could entice clients (Auerbach 1976).

To tackle the problem from within, the bar utilized a disciplinary rule, enacted in 1998 for this purpose, and which restricted provision of legal representation in specific circumstances. Section 11B.(a) of the Israel Bar Association Rules (Professional Ethics) prohibits lawyers from providing services to clients referred to them by an entity which is not a law firm, if it is a for-profit body and advertises that it provides legal services. Rule 11B.(b) prohibits lawyers employed by entities other than law firms to provide legal assistance to anyone other than their employer, if the employer is a for-profit company and collects fees for the services it provides (Israel Bar Association 1986). Disciplinary rule 11B. was used, therefore, to deter lawyers from cooperating with commercial bodies operating in the vicinity of section 20. The bar hoped that by use of a two-prong approach – civil action and disciplinary rules - it would succeed in eradicating the encroachment on its once exclusive jurisdiction.

However, the struggle for territorial exclusivity is an infinite endeavor; professions are constantly on guard for novel forms of threats to their jurisdictional turf, and at the same time need to police its members from cooperating with the perpetrators (Abel 1989, pp. 112-115 (external competition), pp. 115-122 (restricting internal competition)).

4. UPL litigation

4.1. Clearing the UPL field – The Pitsuy Nimratz case

At the first stage of the IBA's struggle against UPL, all but one company, *Pitsuy Nimratz*, terminated their operations or altered them significantly. The main business of *Pitsuy Nimratz* was processing individual monetary claims due to disability, illness or injury against public and private agencies. It operated by way of filling forms on behalf of clients, writing letters to apply for compensation, assisting in filing claims before administrative agencies and appeals before quasi-judicial panels.¹⁵ It employed doctors and other experts, and referred cases to lawyers when appropriate.

As Pitsuy Nimratz refused to concede to the bar's demands, the IBA filed a suit before the Jerusalem District Court, requesting a temporary and a permanent injunction to prevent the company from overstepping section 20, basing its argument on the exclusive jurisdiction reserved for lawyers. As part of the proceedings the presiding judge ordered the company to notify its customers that

¹⁵ The exact activities of the company were never fully portrayed or contested, as the parties agreed on the facts that would constitute the basis of the legal ruling.

the lawyers to which they are referring cases might be violating Disciplinary Rule 11B.¹⁶

Pitsuy Nimratz was apparently harmed by this decision, as customers were hesitant to approach lawyers who might be in disciplinary quandary. The company challenged the legality of Rule 11B. in the Israeli Supreme Court, but the petition was rejected.¹⁷ Although the court acknowledged that the rule infringes upon a number of rights and interests (freedom of vocation of the company, the individual freedom to choose a lawyer and furthering access to justice), it affirmed the rule. The court accepted that rule 11B. serves an appropriate objective- the prevention of bypassing certain ethical rules binding lawyers (including prohibition of advertising, conflict of interests), and continued to hold that the means purported to achieve this end are proportionate.¹⁸

Shortly after this decision, the Jerusalem District Court ruled in the civil case against Pitsuy Nimratz, in which the bar requested to curb its activities based on Sec. 20. The court opened its decision with a caveat, alerting itself to the problematic nature of restrictive directives such as sec. 20. It identified the existing arrangement as monopolistic, and stated that although the IBA claims to be furthering a public interest, it may well be that the explicit altruistic reasoning disguises lawyers' self-interest.¹⁹

Notwithstanding this caveat, the court accepted the suit in part, and rejected it in part. The decision appears to be a well-intentioned, albeit a hopeless attempt to draw the lines between what is permitted and what is prohibited under section 20, according to the type of task performed and its inherent characteristics. For example, the IBA argued that the decision whether a claim is legal or not is in and of itself "legal" in its nature, and that accordingly, Pitsuy Nimratz may not perform the initial screening and channeling of its caseload. The court rejected this claim as unreasonably broad and tautological. On the other hand, it accepted the argument that addressing agencies on behalf of clients in a way that goes beyond describing "the dry facts of the case" is prohibited, since it constitutes the drafting of a document of a legal nature or the provision of legal advice. Neither party appealed this decision.

Pitsuy Nimratz itself ceased to operate; however new commercial entities entered the field of "medical rights". The IBA continued its struggle against the principal new entrant to the field: *The Center for Realization of Medical Rights*.

4.2. Stage II: litigation against *The Center for Realization of Medical Rights*

The Center for Realization of Medical Rights (CMR) was established in 2003.²⁰ It is the largest and most well-known company of this sort in Israel, very much due to an aggressive advertising and marketing campaign on street billboards, radio

¹⁶ This order was issued as part of the temporary injunction hearings against Pitsuy Nimratz. This is a rather irregular decision. The civil courts do not have jurisdiction against lawyers, and disciplinary Rule 11B. governs lawyers only, not the commercial company. Nevertheless, the court ordered Pitsuy Nimratz to notify its customers that the lawyers may be in violation of the disciplinary rule (Civ. Req. 423/02 (Civil Claim 4033/02 The Israel Bar association v. Pitzuy Nimratz Ltd), decision rendered 10.4.2002). This decision was confirmed by the Supreme Court (Civ. Ap. Req. 4196/02 Pitzuy Nimratz v. The Israel Bar Association, decision rendered 4.7.2002, Justice A. Grunis).

¹⁷ H.C. 9596/02 Pitsuy Nimratz v. The Israel Bar Association *et al.* PD 58(5) 792 (2004).

¹⁸ The decision did not impose a heavy burden upon the Israeli bar association to demonstrate that there is no alternative to restricting lawyers from cooperating with commercial entities. In this sense the court quite easily supported the IBA, and did not take up a critical stance in scrutinizing the legitimacy of the restriction.

¹⁹ Civil Claim 4033/02 (Jslm, Dis.) The Israel Bar association v. Pitzuy Nimratz Ltd. decision rendered 13.11.2005.

²⁰ I base my analysis on an interview conducted on March 2012 with CMR's CEO (Livnat Poran), on information published on CMR's website and on a review of litigation by and against the company in the last 5 years. see (<http://www.medical-rights.co.il/>). Ms. Livnat Poran had worked in a similar enterprise in the past (Bar Medics, Ltd.), which terminated its operations in the early 2000s.

stations and other media.²¹ Most of the company's clients are claimants of monetary allotments from The National Insurance Institute due to illness, injury or other physical or mental condition.²² The rest are divided between claims against pension funds, The Ministry of Defense, and the IDF.²³

CMR adopted a practice that alleges to work "around" section 20. It claims the company does not perform any activity reserved for lawyers only, and sees itself as abided by the Pitsuy Nimratz ruling. The company's work method consists of "preparing the case" for clients who had been accepted for service following some initial screening process. The company works with a number of doctors who specialize in preparing an "expert opinion" in support of the claim. According to their director, CMR consultants are well trained, and have acquired distinctive and specialized expertise in the area of "medical rights".²⁴ The most crucial input for the client is the capability to conceptualize complaints and events which the client portrays in lay terms into an actionable claim under the law. For example, while the client says "my shoulder hurts", the consultant and then doctor conveys this information into a phrase such as "I cannot lift my arm more than 45° (degrees) above my hip" - a condition which creates an entitlement. As part of the service, CMR puts together the clients' "claim files", it refers clients to specialist doctors who are familiar with the entitlement system and advise them which examinations to take (CMR pays for the medical opinion prepared by the doctor); it channels the claim into the appropriate administrative course; prepares all necessary documentation for review by the Medical Committee at the National Insurance Institute. CMR does not represent the client before the committee. If the claim is dismissed the client is not referred to a lawyer, and may choose for herself if to appeal the decision.

According to the company's founder and CEO, "the law" is not a resource reserved for lawyers exclusively; suggesting that CMR is doing the work of lawyers upsets her. Beyond the principle assertion that not everything that is "legal" belongs to lawyers, she expresses a negative perception of lawyers. The complaint is that many lawyers are not familiar with the field which is not their field of expertise; most are not interested or well organized to handle these types of claims, especially for small amounts. Another accusation is that lawyers are too contentious and escalate the controversy rather than find a practical solution, and they have no personal or social skills to deal with people, who must expose private and sensitive personal details as part of their quest for help (a skill highly underscored in her enterprise). Moreover, CMR director asserts that the services her company offers increase access to justice for people who otherwise would not have had any effective recourse.²⁵

²¹ A similar enterprise is Zchuti – The Experts for Realization of Medical Rights. Interviews with Zchuti management was conducted in April 2012 by author. See

(http://www.zhuti.co.il/landing_page.asp?id=47263232371&qclid=CPyVmvzag68CFcgntAoddFoR4A)

²² A public body which operates as Israel's central social security institution, responsible for most welfare and other social assistance programs.

²³ It is of course problematic that people need mediators of this sort to realize their rights and entitlements vis a vis state institutions, such as The National Insurance Institute.

²⁴ Training is conducted in-house and on a continuing basis. It includes the study of the substantive area (types of entitlements, conditions for their fulfillment), review of common illnesses and exams, how to evaluate a disability, and consultants must pass a test to pass from one stage of training to another. Staff consultants are also trained on client service and management. They have an apprenticeship period and progress gradually within the organization. Interestingly in CMR all consultants but one are female. According to Poran, they have better client management skills, a crucial point her view as a major part of the service includes empathy and listening to the client's complaints and conditions.

²⁵ According to the company's website they believe in the following principles: the rights of every citizen to know how to assert one's rights; fiduciary towards the client and assistance vis a vis institutions (without legal counsel); direct professional work, accurate and targeted towards relevant authorities; full transparency towards the client; client participation throughout the process in all information, estimates and evaluations. <http://www.zhuti.co.il/about.asp?id=9>.

In 2007 The Israel Bar Association sued The Center for Medical Rights in the Jerusalem District Court, asking for an injunction to halt its activities (as well as monetary damages). The bar claimed that CMR's practice constitutes unauthorized practice of law as it prepares cases to be considered by the National Insurance Medical Committees, represents clients before these committees, and refers clients to lawyers.²⁶

The reasoning articulated by the IBA in the lawsuit was 'altruistic': lawyers are bound by a set of substantive norms aimed at protecting clients' interests. These include fiduciary and confidentiality duties, prohibition on conflicts of interest, solicitation, advertising and fees. In contrast, CMR is unregulated and acts under no constraints; hence clients remain unprotected.

In April 2012 the Jerusalem District Court accepted the IBA's suit and issued an injunction preventing CMR from engaging in a series of activities, which lie at the core of the company's operations. The injunction prohibited representing or arguing on behalf of clients before quasi-judicial bodies, preparing legal documents, including preparation of appeals on administrative rulings if they include any reference to law and judicial decisions; prohibition on assisting clients to fill forms if this entails any kind of wording beyond technical details; prohibition on filing medical expert opinions (by doctors) attached to claim forms; providing legal opinions and legal advice; prohibition on approaching designated bodies with a request for compensation and damages (including the NII).

In its ruling the court interpreted section 20 broadly, reiterating that the rule's rationale is to protect the quality of service provided to clients, not the profession's interests. The court underscored the fact the employees within CMR receive no formal training, and that its activity is unregulated, in contrast to that of lawyers. CMR appealed the decision to the Israeli Supreme Court, which issued a stay on the lower court's orders pending resolution of the appeal.²⁷ A number of non-profit organizations asked to join the appeal as *amicus curiae*, in order to present before the court the broader aspects of this legal issue, in particular the implications of the ruling on nonprofit organizations assisting in fulfillment entitlements and rights, with or without lawyers.²⁸ The case is pending a decision.

Indeed, CMR operates in a regulatory void: there are no formal educational and training requirements for its employees and service providers, no licensing or official oversight, no ethical rules that govern its operation, despite the fact that the work involves exposure to clients' personal and intimate information. Given the lack of any regulatory framework, quality of service depends on voluntary measures adopted by companies. The only recourse available for unsatisfied clients is private litigation, which is not a common venue many tend to utilize.²⁹ A search in Israeli legal data bases reveals that between 2005 – 2011 CMR was involved in 9 (nine) legal disputes: in four of them CMR was the plaintiff (sued for payment against services) and in five it was a defendant (in suits claiming overpayment or other monetary disputes). Although there may have been other disputes in which the parties reached a compromise without court intervention, it seems that the number of cases in which clients had sued CMR is quite low.

²⁶ C.A. 9270/07 (Jerusalem District Court), *The Israel Bar association v. The Center for medical Rights*, decision rendered April 4, 2012.. The claim was made under section 20 as well as section 386 of the National Insurance Act , which restricts representation before the National Insurance to a lawyer, a CPA, a close friend, a representative of a workers' union or employers' union, or any other person who had received authorization or permission to do so.

²⁷ C.A. 4223/12 *The Center for Realization of medical Rights v. The Israel Bar Association*. The stay on the district court's decision was issued by Justice E. Arbel (CM 3522/12).

²⁸ Nine organizations that either provide legal assistance directly or work on access to justice. Amici are represented by author.

²⁹ It is not possible to ascertain whether the low number of claims is a result of high client satisfaction or due to barriers to litigation.

To be sure, the lack of regulation is an issue for concern. As Rhode has suggested, the need for regulation increases when the service at stake is in a vital area of life, when lay oversight of market failure is difficult to attain and when the topic is highly complex and requires standardized skills and training (Rhode 1981). It seems that statutory or administrative oversight of enterprises like CMR is a preferable arrangement. However, this debate does not take place in Israel at present, since the dispute has been channeled solely to the boundaries of UPL, rather than examining alternative arrangements and regulatory regimes.³⁰

5. Is there competition with the legal profession?

The IBA heralded the District court's decision in the CMR case, calling it "a dramatic victory" (Israel Bar Association 2012c). It appealed to the public to prefer lawyers over CMR, underscoring the court's contention that the IBA's objective is to protect the public, rather than lawyers. Nonetheless, it is hard to escape the notion that the motives underlying the bar are, at minimum, mixed, and that this project is motivated at least partially to curb competition.³¹ To what extent does CMR and other companies constitute a competitive threat to lawyers? Numerous indicators indicate that some competition exists.

Despite limitations on lawyers' advertisement, an internet search reveals there are a number of law firms that handle monetary claims against the National Insurance Institute (together with damages claims against public and private authorities and medical negligence suits). Some have adopted the term "medical rights realization" in their professional profile.³² These are mostly small firms; therefore it is unlikely they can serve mass claimants as CMR does, with its 100 consultants and medical experts. One of these law firms explicitly warns prospective clients of the hazards of turning to the commercial companies that offer services in the area of "medical rights realization". It spells out anecdotal cases in which clients were harmed by such companies, explains lawyers' advantages over them (for example the ability to provide legal representation), and cites judicial decisions stating the companies are in violation of section 20. More so, following the CMR ruling the IBA announced it was establishing a lawyer referral database for clients with "medical rights cases", and held some conferences on the topic, to discuss the legal success (Israel Bar Association 2012b).

Whether competition is real or imagined, the fact remains that the IBA believes lawyers are harmed by CMR and companies likewise. It is not clear, however, whether the public is harmed by this competition. Data shows that there has been a constant increase in the number of claims filed before the NII in the area of disability allowances of various sorts (general disability, work related disability, allowance for a disabled child, etc). In 2000 there were about 130,000 claims for disability allowance, in 2005 the number increased to around 170,000 and in 2010 to more than 200,000.³³ Despite governmental measures to tighten eligibility criteria for disability entitlement in 2004, the rates of entitlement for disability

³⁰ In the UK, for example, The Services Act of 2007 abolished almost all exclusive arrangements reserved for solicitors, to be replaced by a regulatory arrangement of other legal professions in designated areas of practice. See, for example, Flood (2008).

³¹ In a personal message following the ruling the head of IBA, attorney Doron Barzilai, stated: "We will not be deterred, we will continue the struggle against professional trespassers, we will continue to preserve our livelihood..." (Barzilai 2012).

³² See, for example, <http://www.barac.co.il/> (Meir & Daniel Barak); http://www.davidsaar.co.il/newlanding3/tviot_bituah.htm?gclid=COaN7am-jq8CFcgw3wodU2Edww (law firm of Dr. David Saar, who states that the law firm's staff includes a doctor and an 'economist'); <http://www.ashkenazi-law.co.il/100740/> (Tsafrir Ashkenazi Law Firm); <http://www.herzog-lawyers.com/> (Zvi Herzog Law office); http://www.law-shalev.co.il/פ/רפואיות_זכויות_מימוש_ק/ (Arik Shalev, law firm for "medical Rights Realization"); <http://www.bechar.co.il/profile.html> (Bechar law offices); <http://www.navot.co.il/> (Barak Nevot law Firm); http://www.abclaw.co.il/site/detail/detail/detailDetail.asp?detail_id=2842631 (Amir Bitton Law Firm).

³³ Table taken from interview with outgoing director of NII, Esther Domincini (Domincini, Arlozorov 2012).

allowance continued to rise, although at a slower pace.³⁴ The NII has reported that over the last decade there has been a continuing increase in the number of claimants recognized as eligible for disability allowance, which exceeds population growth. For example, in 2010 disability eligibility rate increased by 3.7%, while population grew by 1.7% (National Insurance Institute 2010, p. 2).

The NII explains this finding in changes in substantive eligibility criteria rather than greater accessibility to realizing personal entitlement; however this explanation can be contested. It may well be that better access to "medical rights" has also contributed to this situation, and that the entrance of commercial companies into the field of medical rights had an impact on the public's potential to realize entitlements of this sort.

6. The health professions: doctors, nurses and paramedics – a proliferated regulatory regime

In contrast to the regulatory and practical arrangement in the field of legal services, the medical profession in Israel exemplifies an alternative regulatory regime. Under this arrangement doctors operate alongside semi (or sub) professions.³⁵

Medical services can be discussed comparatively to law despite inherent differences between medicine and law in the principles underlying their allocation. As in many other countries, in Israel health services have for the most part been considered a public resource, and many medical professionals (doctors, nurses, lab technicians) are employed in public institutions. The Israeli medical profession underwent significant changes in its locus – it shifted from the private to the public sphere between 1948-1963, and again in 1991 with the enactment of National Health Insurance Act (Filc 2009). In contrast, law has always been considered a resource allocated within the private sphere and according to market principles – as most lawyers work in private law firms.

Notwithstanding, the question of Unauthorized Practice (in this case - of Medicine) is common to both professions, historically and at present. The dynamics of the division of labor between nurses and doctors, doctors and podiatrists, doctors and homeopathic healers, psychiatrists and psychologists, to mention a few – all reflect what Abbott labels the "diagnosis, inference and treatment" trilogy, i.e. the struggle for exclusive jurisdiction based on the group's acclaimed special and exclusive knowledge (Abbott 1988, pp. 40-52). Very much like lawyers, doctors too have contested encroachment of their professional turf by groups within the medical profession as well from the outside (Abbott 1988, pp. 71-72).

The starting point of the Israeli law governing the work of doctors incorporates explicit and quite broad instructions about Unauthorized Practice. Section 1 of The Physicians' Ordinance (hereinafter Ordinance) broadly defines the activities within the "medical vocation" ("Isukberefua"), reserved for doctors only, if performed towards the ill or injured. These include examining, diagnosing, curing, issuing prescriptions, supervising in situation of pregnancy and birth, or providing other services which are usually provided by a doctor, including acupuncture healing. Section 3 of the Ordinance prohibits any person who is not a doctor to work in the medical vocation as defined above, excluding dentists, pharmacologists, midwives, nurses (or anyone else providing nursing activities), as well as podiatrists and surgical podiatrists (Physicians Ordinance 1976, section 3). Section 5 reserves the right to use the title "doctor", "surgeon, or "acting in the medical vocation" to

³⁴ See Knesset Research and Information Center Letter to MK Haim Oron, November 2, 2010 – "Disability Allowance in Israel". According to information provided by the NII in 1998, 3.7% of the population was entitled to disability allowance, and in 2009 – 4.7%. The growth rate has decreased (from 4.5-6.4% to 2.6-4.5%) (Letter to Knesset Member H. Oron, pp. 3-4). The threshold for entitlement was increased from a 40% to a 60% requirement of medical/ functional limitation (Letter to Knesset Member H. Oron, p. 4).

³⁵ On semi-professions see Ezioni (1969).

doctors only; section 6 prohibits doctors from employing non-doctors to perform activities defined within the "medical vocation". However, section 7 permits doctors to employ, under their supervision, nurses, paramedics and other aids, as long as they do not perform medical tasks – including care, supervision or surgery of a patient – if these entail the use of discretion or of a professional skill of a doctor. In addition, section 8 bars a person that conducted an act reserved for doctors only from suing (in court) for fees to be awarded for his work.³⁶

We see, in fact, that this legal framework is very restrictive. It is structured in a similar manner to the IBA Act, including a broad and vague referral to terms such as "medical vocation", "examining" and "curing" patients. It prohibits the use of a title without authorization, and restricts collecting fees for unauthorized practice.

Notwithstanding, there is a critical difference between the two fields of practice, which opens up the possibility for non-doctors to provide medical services. Section 59 of the Ordinance authorizes the Ministry of Health to define exemptions and exceptions to the Ordinance in relation, among other things, to exclusive practice (Physicians Ordinance 1976, section 59 & 59A).

Exemptions may be applied to nurses or aids who can be authorized to "diagnose" and "cure" patients, as designated by the state official; to medical students, dentists and foreign doctors. Nurses (and authorized aids) may be permitted – by the state official and by way of administrative regulations – to carry out designated activities under the conditions set forth by the regulations (Israel Bar Association 1961, Sec. 59 (a) (1), 59 (b)). In accordance with the regulations prescribing these "designated activities", a director of a hospital or a clinic may permit the nurse or aid to conduct them, an authorization which may be extended, in specific regulations set forth by the state - to performing these tasks at the patient's home (Israel Bar Association 1961, Section 59 (b) & 59 (b1.)). Section 59A. includes a general authorization (to be stipulated in regulations) for the performance of acupuncture, under the supervision of a licensed doctor.

Based on this general authorization the Minister of Health issued detailed regulations prescribing activities that can be performed by a group of non-doctor professionals. The Physicians Regulations (Capacity to Perform Exceptional Activities) (2001) lays out, in minute details, those medicals measures which can be carried out by nurses and other aids, providing they have the necessary qualifications to do so.

The regulations distinguish between two types of nurses ("authorized nurse" and "practical nurse"), and assign particular permitted tasks to each. For every set of tasks there are specific conditions which must be satisfied for the nurse to be allowed to carry them out. Measures include the removal of an arterial line during birth, defibrillation in intensive care units for cardiac arrhythmias, intravenous insertions for oncology patients, adjustment of respiratory equipment during emergency situations, insertion of morphine for terminal patients, of radioactive substance for epilepsy monitoring – to mention a few measures indicated in the regulation.

For each measure specific training preconditions are set, as well as supervisory requirements. The regulations specify which measures can be carried out at the patient's home and which must be conducted with a doctor's presence. They differentiate between types of nurses according to their level of prior education and training.

The regulations continue to define a number of assistants and aids, which are also permitted to perform specific medical tasks. Paramedics, lab technicians, X-Ray

³⁶ A similar provision is included in The Israel Bar Association Act (section 98), however it is worded as a prohibition imposed upon a court from hearing a fee claim if it is based on an activity restricted to lawyers only (Israel Bar Association 1961).

machine technicians, heart-lung machine operators, blood donation takers, physiotherapists – are all allowed to perform measures which are in no doubt "medical" in their nature. They include the adjustment of a cardiac pace-maker, operation of a plasma machine, connecting and disconnecting a heart-lung machine, suction of respiratory system – to mention a few of such tasks, each according to the training and expertise of the medical aid.

The Ordinance, although laying down exclusive jurisdictional boundaries, incorporates a mechanism that enables sub professions to perform medical work with patients. The arrangement defines a specific task, designates it to a particular professional, and requires ample training and, at times, supervision.

In addition to the arrangements included in the Doctors' Ordinance, in 2008 The Regulation of the Medical Professions Act was enacted. This law regulates the work of a number of professions that provide treatment alongside the traditional medical profession: speech therapists, physiotherapists, occupational therapists, dietitians, clinical criminologists, podiatrists and surgical podiatrists, and chiropractors (*Regulation of the Practice in the Health Professions Act 2008*, p. 720). The law sets out requirements for receiving a professional certificate (education, practical training, exams), creates an advisory board, establishes ethical standards and disciplinary process and – of course – sets exclusive practice rules accordingly.

Hence regarding the medical profession – a classic, traditional profession similar to law – the field of medical services has evolved. To be sure, doctors have always worried about competition – from curing and healing professions of a non-Western tradition (acupuncturists and other Eastern/Chinese doctors), from professionals who specialize in a narrow field (podiatrists, chiropractors), from developmental and rehabilitative professionals (speech and occupational therapists), and of course from the sub-professions of the traditional medical profession (nurses, paramedics, technicians).

Indeed, doctors did not give in easily on attempts to encroach upon their turf, but have been steered to some type of territorial truce with other professionals in the healing and curing business. In Israel it is the state – rather than the professional association – that defines the division of responsibilities and authorization to practice medicine and it has led to the current arrangement described above.

This process can be characterized as social openness, rather than social closure. The proliferation of medical knowledge and medical practice to new professions, and the redrawing of boundaries between traditional doctors and the new professionals strengthen their unique, perhaps elevated, status. This is particularly so towards the professionals regulated in The Doctors' Ordinance (nurses, X-ray technicians), whose roles are strictly defined and fixed, while doctors maintain a residual authority to continue and control the field. Whether this arrangement was imposed upon doctors against their will or accepted by way of concession, the current state of affairs is clear: the medicine and health field is open to more than one profession. To practice medicine and to be part of the praxis of people's treatment and cure, one does not have to become a doctor. There is a choice to become a nurse, a paramedic, a physiotherapist or to learn how to operate a heart-lung, an ultra-sound or an X-ray machine. The questions asked in this context are not if the nurse is performing "a medical act", but whether she has the qualifications to do so; not if the radiology technician is using a "medical device", but whether he has been trained to do so. Making sure these questions are answered in a satisfactory manner will protect the public interest in qualitative health services more than a continued struggle to keep the turf under the exclusive jurisdiction of doctors.

As for the numbers – there are not "too many doctors" in Israel; on the contrary. In 2009 the State Comptroller published a report describing the severe shortage of

doctors in the country.³⁷ The Israel Medical Association is troubled by the low number of doctors in Israel, and has advocated the state to take corrective measures. Similar to the question why there are too many lawyers, to which many answers exist, the reasons for the lack of doctors is complex and can be attributed to a number of causes. Among these are low pay in the public sector, competition of private medicine (and attractiveness of work abroad), insufficient positions in the public sector, etc.³⁸ Whatever the reasons may be it is clear that part of the supply-demand dynamic is fuelled by the question jurisdiction and unauthorized practice and the regulatory arrangement of this topic.

It is crucial that UPL be considered a significant factor in the question of lawyers' flux. A new regulatory approach needs to be adopted in the area of legal service provision. To date - entry into this field immediately encounters the profession's gatekeepers, armed with UPL laws as their primary weapon. It is therefore not a wonder that so many people opt to become lawyers.

7. Conclusion: UPL and the flooding of the profession

What conclusions can we draw from UPL about the number of lawyers in Israel? Is it a significant factor in the flux of lawyers? To be sure, it is possible only to contemplate upon this question, and I will try to do so based on the following considerations.

7.1. Competition

At the margins of UPL a new practice has evolved in the last decade: thousands of people a year are being served by non-lawyers in realizing their entitlements in the area of disability, injury and illness. Many of them would probably not have had access to lawyers. This practice challenged the conception that rights are only the business of lawyers – a position vehemently rejected by the IBA. The bar sees this development as harsh competition with the profession, especially as the growing number of lawyers has led to difficulties in finding work for all.

7.2. Excluding areas of practice from section 20 (by legislative amendment)

It is possible to amend the law and define designated areas of practice that would be removed from the definition of UPL and from the exclusive jurisdiction of lawyers, albeit with a tradeoff. In exchange, legislation and regulation (entry requirements, supervisory board and ethical standards) would impose conditions to ensure quality control and oversight of the new service providers, who would begin the process of "professionalization". Medical rights are but one area in which this change could take place; others are employment law, real estate transactions, family and estate law.

7.3. Market expansion

If UPL rules are relaxed, additional providers could choose to enter the newly regulated area of practice. A development of this sort would in all likelihood expand supply, as well as entice clients to seek service within a competitive regulated market. The new service providers could work laterally, alongside lawyers, or horizontally - under their supervision (similar to the doctor-nurse arrangement).

³⁷ State Comptroller, Report 59B., 2009 Medical and Nursing Human Resources, p' 355-389, can be accessed at:

<http://www.mevaker.gov.il/serve/contentTree.asp?bookid=545&id=0&contentid=10196&parentid=undefined&bctype=10195&sw=1280&hw=954>

³⁸ See, for example, The Israel Medical Association:

<http://www.ima.org.il/Heskem/ViewCategory.aspx?CategoryId=5505> (Hebrew).

7.4. Creating new professions, reducing the number of lawyers

Narrowing UPL rules could open up new possibilities for the development expertise and specialization in the legal field. It would probably dissuade potential law school candidates from entering the full "lawyer-track", and divert them into choosing a sub or semi legal profession in its stead.

It is not coincidental that Israel has both the highest numbers of lawyers per capita, as well as the broadest UPL rules. Although UPL may not be the only reason for this occurrence (or even main one), its impact on the flooding of the profession is very likely. UPL creates a bottle-neck that directs any person interested in providing legal services or legal assistance to the full track of becoming a lawyer. Despite the growing number of lawyers in Israel, data does not indicate better and more equal access to justice. In this paper I argued that relaxing UPL rules, in tandem with the introduction of proper regulatory entrance requirements and oversight, may in all likelihood increase competition and improve access to justice.

It may well be that the changes proposed in this paper will work to lawyers' advantage. Similar to doctors who have situated themselves at the top of the medical "professional chain", acquiescing to the new professions by way of subordination, lawyers too could distinguish themselves from other legal providers, by building expertise and accepting subordinate new providers, albeit leaving for themselves all residuary professional territories. This could lead to a decline in the number of lawyers in Israel, but to the rise of new legal professions, benefitting both the public and the profession, and making law more accessible to all.

Bibliography

- Abbott, A., 1988. *The System of Professions – An Essay on the Division of Expert Labour*. University of Chicago Press.
- Abel, R.L., 1988. *The Legal Profession in England and Wales*. Oxford; New York: Blackwell.
- Abel, R.L., 1989. *American Lawyers*. New York: Oxford University Press.
- Abel, R.L., 2010. *Lawyers on Trial: Understanding Ethical Misconduct*. New York: Oxford University Press.
- Auerbach, J.S., 1976. *Unequal Justice, lawyers and Social Change in Modern America*. New York: Oxford University Press.
- Barzilai, D., 2012. *Hesseg hassar takdim lelishkat orhey hadin bma'avak neged hassagat gvul hamikstoa* [online]. Jerusalem: Israel Bar Association. Available from: http://www.israelbar.org.il/article_inner.asp?pgId=128503&catId=3082 [Accessed 20 June 2013].
- Barzilai, G., 2007. The Ambivalent Language of Lawyers in Israel: Liberal Politics Economic Liberalism, Silence and Dissent. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds. *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*. Oxford: Hart, 247-277.
- Domincini, E., Arlozorov, M., 2012. In Israel Many are Spoiled; I don't Understand Why People hate the NII. *The Marker* [online], 27 Mar. Available from: <http://www.themarker.com/career/1.1672800> [Accessed 20 June 2013].
- Ezioni, A., 1969. *Semi Professions and their Organization: Teachers, Nurses, Social Workers*. New York: Free Press.
- Filc, D., 2009. *Circles of Exclusion: The Politics of Health Care in Israel (The Culture and Politics of Health Care Work)*. Ithaca: ILR Press/Cornell University Press.

- Flood, J., 2008. Will There be a Fallout from Clementi? The Global repercussions for the Legal Profession after the UL legal Services Act of 2007. *The Jean Monnet/Robert Schuman Paper Series*, 8 (6). Available from: <http://aei.pitt.edu/9010/1/FloodLong08ClementiEdi.pdf> [Accessed 19 June 2013].
- Gavison, R., Kremnitzer, K. and Dotan, Y., 2000. *Judicial Activism For and Against: The Role of The Supreme Court in Israeli Society*. Jerusalem: Magnes Press.
- Halliday, T.C. and Karpick, L., 1998. *Lawyers and the Rise of Western Political Liberalism*. Oxford University Press.
- Israel Bar Association, 1961. *Bar Association Law, 5721 - 1961* [online]. Available from: http://www.israelbar.org.il/uploadfiles/Bar_Association_Law_english_nov_2008.doc [Accessed 19 June 2013].
- Israel Bar Association, 1986. *Bar Association Rules (Professional Ethics), 5746-1986* [online]. Available from: http://www.israelbar.org.il/uploadFiles/Bar_Association_Rules_Professional_Ethics_nov_2008.pdf [Accessed 19 June 2013].
- Israel Bar Association, 2010. *Annual Activity Report 2009*. Jerusalem: Israel Bar Association.
- Israel Bar Association, 2011. *Annual Activity Report 2010*. Jerusalem: Israel Bar Association.
- Israel Bar Association, 2012a. *Annual Activity Report 2011*. Jerusalem: Israel Bar Association.
- Israel Bar Association, 2012b. *For the first time: Establishment of Lawyer database to refer medical rights cases* [online], 12 May. Jerusalem: Israel Bar Association. Available from: http://www.israelbar.org.il/article_inner.asp?pgId=130629&catId=3082 [Accessed 20 June 2013].
- Israel Bar Association, 2012c. *Benitsahon Dramati Lelishkat Orhey Hadin al Livnat Poran Vehamerkaz Lemimish Zchuyot Refuiot, kava beit hamishpat: "Hashsah Mamashi lifgi'a betsibur nirhav" (In a Dramatic Victory (in the case of) the bar association against Livnat Poran the court decided: a well founded fear of public harm)* [online], 4 Apr. Available from: http://www.israelbar.org.il/article_inner.asp?pgId=128475&catId=6 [Accessed 20 June 2013].
- Katvan, E., 2013. "Overcrowding the Profession" – An Artificial Argument?. *Oñati Socio-legal Series* [online], 3 (3), 409-429. Available from: <http://ssrn.com/abstract=2298419> [Accessed 29 July 2013].
- Knesset, Committee of Public Complaints, Protocol of Proceedings, 2004. *Public Inquiries of People with Legal Needs who Cannot Afford to Purchase Legal Services* [online], 17 Mar. Available from: <http://www.knesset.gov.il/protocols/data/html/zibur/2004-03-17.html> [Accessed 18 June 2013].
- Larsen, M.S., 1977. *The Rise of Professionalism: A Sociological Analysis*. Berkeley: University of California Press.
- Letter to Knesset Member H. Oron from the Knesset Research and Information Center (Shira Levi)*, Nov 2, 2010: Disability Allowance in Israel (on file with author).
- Levin, A. and Alkoby, A., 2013. Barriers to the Profession: Inaction in Ontario, Canada and its Consequences. *Oñati Socio-legal Series* [online], 3 (3), 580-

594. Available from: <http://ssrn.com/abstract=2283823> [Accessed 28 July 2013].
- National Insurance Institute, 2010. *Annual Report 2010* [online]. Available from: http://www.btl.gov.il/Publications/Skira_shnatit/2010/Documents/nechut.pdf [Accessed 20 June 2013].
- OECD, Policy Roundtables, 2007. *Competitive Restrictions in Legal Professions* [online]. Paris: OECD. Available from: <http://www.oecd.org/regreform/sectors/40080343.pdf> [Accessed 19 June 2013].
- Parker, C., 1999. *Just Lawyers: Regulation and Access to Justice*. Oxford University Press.
- Paterson, A., 2012. *Lawyers and the Public Good. Democracy in Action?* Cambridge University Press.
- Physicians Ordinance* [Revised], 1976, section 1.
- Physicians' Regulations (Capacity to Execute Exceptional Measures)*, 2001. Kovets HaTakanot (Collection of Regulations) 6122, 23.8.2001.
- Public Interest Law Center, Tel Aviv University, Letter to Attorney Ela Alon from Deputy Court Administration Director, Judge A. Gilon, March 1, 2009.
- Rabin, Y. and Shany, Y., 2003-2004. The Israeli Unfinished Constitutional Revolution: Had the Time Come for Protecting Economic and Social Rights. *Israel Law Review*, 37 (3), 2-3. Available from: <http://ssrn.com/abstract=706001> [Accessed 19 June 2013].
- Regulation of the Practice in the Health Professions Act, 5678 - 2008*, 2172 Israel Laws (Sefer hachukim).
- Rhode, D.L., 2000. *In the Interests of Justice: Reforming the Legal Profession*. Oxford University Press.
- Rhode, D.L., 1981. Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions. *Stanford Law Review*, 34 (1), 1-112.
- Rhode, D.L., 1990. The Delivery of Legal Services by Non-Lawyers. *Georgetown Journal of Legal Ethics*, 4 (2), 209-233.
- Rhode, D.L., 1998. Too Much Law, Too Little Justice; Too Much Rhetoric, Too Little reform. *Georgetown Journal of Legal Ethics*, 11 (4), 989-1018.
- Sapir, G., 2008. The Israeli Constitutional Revolution—How Did it Happen? *Bar Ilan University Public Law Working Paper* No. 08-02. Available from: <http://ssrn.com/abstract=1082230> [Accessed 19 June 2013].
- Shai, Y., 2004. *Bodies Providing Free Legal Services to People with Limited Means*. Background Paper for Discussion. Jerusalem: The Knesset Research and Information Center.
- Stern, Y., 2012. *Judicial Activism at Its Height* [online]. Jerusalem: Israel Democracy Institute. Available from: <http://en.idi.org.il/analysis/articles/judicial-activism-at-its-height/> [Accessed 19 June 2013].
- Zer-Gutman, L., 2013. The Acceleration in the Number of Lawyers in Israel- What have Changed? *Oñati Socio-legal Series* [online], 3 (3), 512-532. Available from: <http://ssrn.com/abstract=2276872> [Accessed 28 July 2013].
- Ziv, N., 2008. On Unauthorized Practice of Law in Israel. *Bar Ilan Law Studies*, 24 (2), 439-489.