Preliminary Part (626/1996)

Legality of Punishment

Title One

Basic Provisions

1. There shall be no offence and no penalty unless determined by or under Law.

2. (a) The power to make regulations for the implementation of a Law includes the power to determine offences under the regulations and the penalties therefor: Provided that where a penalty of imprisonment is prescribed by regulation its period shall not exceed six months, and if a fine is prescribed, its amount shall not exceed the fine capable of being levied for an offence whose penalty is a fine of undetermined amount.

(b) Regulations which prescribe offences and penalties require Knesset approval.

3. (a) An enactment creating an offence shall not apply to an act done before the date of its publication in accordance with law or the date it takes effect, whichever is later.

(b) An enactment prescribing for an offence a penalty more severe than that which had been prescribed at the time of the commission of said offence, shall not apply to an act done before the date of its publication in accordance with law, or the date it takes effect, whichever is later; however, an update in the amount of a fine shall not be considered an increase in the severity of a penalty.

Title Two

Incidence of Penal Law in Respect of Time

4. Where the prohibition of an offence is abrogated after its commission, criminal responsibility for doing it shall cease; proceedings which have been commenced shall be discontinued; if a sentence has been passed, its execution shall be discontinued; and consequences arising out of the conviction shall no longer exist.

5. (a) Where an offence has been committed and, before a final judgment has been given in respect thereof, a change occurs in an enactment as to the definition thereof or the liability therefor, the enactment more favourable to the offender shall apply; "liability therefor" includes the application of defences as to the criminal liability for the act.

(b) Where a person is convicted of an offence by final judgment and an enactment subsequently prescribes for the offence a penalty which by its measure or nature is lighter than that imposed on him, the penalty shall be the maximum penalty prescribed by the enactment as if it had been originally imposed.

6. The provisions of sections 4 and 5 shall not apply to an offence under an enactment by or in respect of which it is provided that it shall be in force for a specific period or which by its nature is of temporary validity.

Title Three
Incidence of Penal Law in Respect of Place

Chapter One: General Provisions

7. (a) "Domestic offence" means:
   (1) an offence committed, wholly or in part, in the territory of Israel;
   (2) any act preparatory to an offence, and any attempt to commit or to instigate another to commit an
       offence, and any conspiracy to commit an offence, done or made outside the territory of Israel, provided
       that the offence is intended to be committed in the territory of Israel wholly or in part.
   (b) "Foreign offence" means an offence other than a domestic offence.
   (c) "Territory of Israel," for the purposes of this section, means the area of the sovereignty of the State of
       Israel, including the territorial waters, and the vessels and aircraft registered in Israel.

8. Where an offence consists of an omission, its place of occurrence is the place where the omitted act
   should have been done.

9. (a) The incidence of Israeli penal law, including in the case of a foreign offence, is not restricted by any
    foreign law or foreign res judicata unless otherwise prescribed by Law.
    (b) There shall be no prosecution for a foreign offence save by the Attorney-General or with his written
        consent, upon his determination that such is in the public interest.
    (c) Israeli penal law shall no longer apply to an offence if the person in question has been tried for it
        abroad at the request of the State of Israel and, if he has been convicted there, has also undergone his
        punishment for it.
    (d) The incidence of Israeli penal law which is less restricted shall prevail over that of one which is more
        restricted, in respect to the same offence.

10. (a) Where a person has been sentenced abroad by final judgment for an offence to which Israeli law
    applies and has not wholly undergone his penalty there, the Attorney-General may, instead of prosecuting
    him, apply to the court to direct that the penalty imposed abroad or the unexecuted part thereof by carried
    out in Israel as if it has been imposed in Israel by final judgment: Provided that the total penalty shall not
    be heavier than the maximum penalty which could have been imposed for that offence under Israeli penal
    law.

11. Where a person has undergone a penalty, or been detained, abroad for any offence, the penalty or
    period of detention shall be deducted from the penalty which he has to undergo in Israel for that offence.

Chapter Two: Incidence in Respect of Domestic Offences

12. Israeli penal law shall apply to all domestic offences.

Chapter Three: Incidence in Respect of Foreign Offences

13. (a) Israeli penal law shall apply to foreign offences against:

    (1) the security, foreign relations or secrets of the State;
    (2) the governmental system of the State;
    (3) the proper functioning of the authorities of the State;
    (4) the property and economy of the State and its transport or communication links with other
        countries;
    (5) the property, rights and proper functioning of any association or body specified in, or designated
        under, the provisions of subsection (c).

    (b) Israeli penal law shall apply also to foreign offences against:

    (1) the life, person, health, freedom or property of an Israeli national, resident of Israel, or public
        servant as such;
(2) the life, person, health, freedom or property of any Jew as such or the property of any Jewish institution as such.

(c) "Association or body," for the purposes of subsection (a)(6) means:

(1) the World Zionist Organization;
(2) the Jewish Agency for Eretz-Israel;
(3) the Keren Kayemet Le-Israel;
(4) the Keren Ha-Yesod - United Israel Appeal;
(5) an inspected body, within the meaning of the State Comptroller Law (Consolidated Version), 5718-1958.

The minister of Justice may, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, designate by regulations, further associations or bodies for the purposes of this section.

14. (a) Israeli penal law shall apply to foreign offences against the life, person, health or freedom of an Israeli national or resident of Israel the maximum punishment for which is imprisonment for one year or more.
(b) Where the offence is committed within the territory under the jurisdiction of another state, Israeli law shall apply to it only if:

(1) it is an offence also under the law of that state;
(2) under the law of that state there is no defence to criminal liability for that offence;
(3) the person concerned has not already been acquitted of it in that state and, if he has been convicted of it there, has not served the penalty imposed on him therefor.

(c) There shall not be imposed for that offence a heavier penalty than could have been imposed under the law of that state.

15. (a) Israeli penal law shall apply to foreign offences of the category of felony or misdemeanor committed by a person while being - either at the time of or after committing the offence - an Israeli national or resident of Israel; once extradited from Israel for that offence to another state and tried there for it, Israeli penal law shall no longer apply for that offence.
(b) The restrictions imposed by section 14(b) and (c) shall regulate the application of Israeli penal law also under this section: Provided that the restriction imposed by section 14(b)(1) shall not apply if the offence is bigamy.

16. (a) Israeli penal law shall apply to foreign offences which Israel, by multilateral international conventions, has undertaken to punish even if they are committed by a person who is not an Israeli national or resident of Israel regardless of where they were committed.
(b) The restrictions imposed by section 14(b)(2) and (c) shall regulate the incidence of Israeli penal law also under this section.

17. (a) The State of Israel may by international convention, at the request of a foreign state and on the basis of reciprocity, undertake to apply its penal law to foreign offences, or to apply the provisions of section 10, also in cases other than those mentioned in sections 13 to 16; Provided that all the following conditions are met:

(1) the penal law of the requesting state applies to the offence;
(2) the offence is committed by a person who is within the territory of Israel and is a resident of Israel, whether or not he is an Israeli national;
(3) subject to the full enforcement of the law being applied in Israel to the person in question, the requesting state, in its request, forgoes the incidence of its own laws in the matter at hand.

(b) There shall not be imposed in Israel, for the offence, a heavier penalty than it would have been possible to impose according to the laws of the requesting state.
(c) All the other conditions shall be prescribed by convention.

**GENERAL PART**

**Title Four: Offence and Criminal Liability**

*Chapter One: The Factual Element*

18. (a) "Ingredient," in relation to an offence, means the act, in accordance with the definition of the offence, and a circumstance or consequence of the act which is part of the definition of the offence. (b) "Act," unless otherwise provided, includes an omission. (c) "Omission" means refraining from doing what is a duty under any law or contract.

*Chapter Two: The Mental Element of the Offence*

19. A person commits an offence only if he does the act with *mens rea*, unless -

   (1) it is expressly provided in the definition of the offence that negligence is a mental element required for its formation; or
   (2) the offence belongs to the category of strict-liability offences.

20. (a) *Mens rea* means awareness of the nature of the act, of the existence of the circumstances and of the possibility of the consequences of the act being brought about, such nature, circumstances and consequences being ingredients of the offence, and as regards the consequences, means also one of the following:

   (1) "intention" to bring about the consequences;
   (2) "Recklessness," being one of:
      (i) "indifference" to the possibility of bringing about the consequences;
      (ii) "rashness" - assumption of an unreasonable risk as to the possibility of bringing about the consequences hoping that it will be possible to prevent them.

   (b) For the purposes of intention, foreseeing the consequences as almost certain to occur shall be deemed to be an intention to bring them about.

   (c) For the purposes of this section:

      (1) a person is deemed to be aware of the existence of the circumstances if he suspects the possibility of their existence and refrains from clarifying the matter;
      (2) It is immaterial whether the act is done in respect of a person or property other than that in respect of whom or which it was meant to be done.

21. (a) Negligence means unawareness of the nature of the act, of the existence of the circumstances or of the possibility of consequences of the act being brought about, such nature, circumstances and consequences being ingredients of the offence, when a reasonable person could, in the circumstances of the case, have been aware of it: Provided that -

   (1) as regards the other ingredients, there is at least negligence as aforesaid;
   (2) the possibility of the consequences being brought is not a reasonable risk.

   (b) Negligence may be declared sufficient only in the case of the offence other than a felony.

*Chapter Three: Strict Liability*

22. (a) A person shall bear strict liability for an offence if an enactment prescribes that an offence thereunder shall not require proof of *mens rea* or negligence; provided that the provisions of this
subsection do not eliminate such strict liability for offences as is implied by the object or nature of enactments made before the coming into force of this Law.
(b) A person shall not bear liability according to this section if he behaved without mens rea and without negligence and he did everything possible to prevent the offence; one claiming so, bears the burden of proof.
(c) A person shall not be sentenced to imprisonment according to this section, if mens rea or negligence has not been proved.

Chapter Four: Criminal Liability of Body Corporate

23. (a) A body corporate shall bear criminal liability -

(1) in accordance with section 22, for an offence committed by a person in the course of fulfilling his functions in the body corporate;
(2) for an offence requiring proof of mens rea or negligence if, in the circumstances of the case and in the light of his functions, powers and responsibility in managing the affairs of the body corporate, the act of the person by which he committed the offence, and his mens rea or negligence, should be regarded as the act, mens rea or negligence of the body corporate.

(b) In the case of an offence by omission in which the duty of acting falls directly on the body corporate, it shall be immaterial whether or not the offence can be attributed also to a particular functionary.

Chapter Five: Offences According to Gravity

24. The following are the classes of offences according to gravity:

(1) "felony" is an offence to which a penalty heavier than imprisonment for a term of three years in assigned;
(2) "misdemeanor" is an offence to which a penalty of imprisonment for a term exceeding three months and not exceeding three years or, if the penalty is only a fine, a fine exceeding the amount capable of being levied for an offence whose penalty is a fine of undetermined amount, is assigned;
(3) "contravention" is an offence to which a penalty of imprisonment for a term not exceeding three months or, if the penalty is a fine, a fine not exceeding the amount capable of being levied for an offence whose penalty is a fine of undetermined amount, is assigned.

Title Five

Derivative Offences

Chapter One: Attempt

25. (a) A person attempts to commit an offence if, with an aim to commit it, he does any act which is not merely preparatory, but without the offence being completed.

26. With regard to an attempt, it is immaterial whether the commission of the offence is impossible owing to a state of things of which the person attempting is not aware or about which he is mistaken.

27. A provision which prescribes for an offence a mandatory penalty or which prescribes a minimum penalty shall not be applied in a case of attempt.

28. A person who attempts to commit an offence shall not bear criminal liability for the attempt if he proves that, solely of his own accord, and from repentance, he abstained from completing the act or contributed substantially to the prevention of the consequences on which the completion of the offence depended; however, the aforesaid shall not derogate from criminal liability for another, completed, offence involved in the act.
Chapter Two: Parties to the Offence

29. (a) "Author" as to the commission an offence includes every person who commits it jointly with others or indirectly through the intermediary of others.
   (b) "Joint-authors" are person participating in the commission of an offence by doing acts for its commission. It is immaterial whether all the acts are done together or whether some are done by one person and some by the others.
   (c) "Indirect-author" is a person who contributes to the doing of the act by another person, who serves as a tool in the first person's hands, while the other person was in a condition such as one of the following, as defined in this code:

   (1) in a state of minority or mental incapacity;
   (2) without voluntariness;
   (3) without mens rea;
   (4) without being aware of the true state of things; or
   (5) under duress or with justification.

   (d) For the purposes of subsection (c), where it is a condition of the offence that the act be done by a specific person, a person shall be the author of the offence even if only the other person meets that condition.

30. A person who prompts another to commit an offence by demanding its commission of him or by urging or encouraging him or by any other means that mount to imposing pressure, is an instigator of the offence.

31. An abettor is a person who, before or during the commission of an offence, does any act in order to enable, facilitate or ensure the commission or to prevent the apprehension of the offender, the discovery of the offence or its loot, or otherwise to contribute to the creation of conditions favourable to the commission of the offence.

32. The abettor of an offence shall be liable to half the penalty prescribed by an enactment to the commission of the offence; if the penalty so prescribed is:

   (1) the death penalty or mandatory life imprisonment, the penalty shall be a term of imprisonment of twenty years;
   (2) life imprisonment, the penalty shall be a term of imprisonment of ten years;
   (3) a minimum penalty, the penalty shall be less than one half the minimum penalty;
   (4) any other mandatory penalty, the penalty shall be the maximum penalty, the minimum penalty being one half thereof.

33. An attempt to instigate a person to commit an offence shall be punishable with one quarter of the penalty prescribed to the commission of the offence; however, if the penalty so prescribed is:

   (1) the death penalty or mandatory life imprisonment, the penalty shall be a term of imprisonment of twenty years;
   (2) life is imprisonment, the penalty shall be a term of imprisonment of ten years;
   (3) a minimum penalty, the penalty shall be less than one half the minimum penalty;
   (4) any other mandatory penalty, the penalty shall be the maximum penalty, the minimum penalty being one half thereof.

34(a) A person who instigates or abets shall bear no criminal liability for the instigation, the abetment or the attempt to instigate if he prevents the commission or completion of the offence or if he informs the authorities of the offence in time in order to prevent its commission or completion and acted otherwise to the best of his ability to such purposes; however, the aforesaid shall not derogate from criminal liability for another, completed, offence involved in the act.
   (b) "Authorities," for the purpose of this section -- the police or other body authorized by law to prevent
the commission of the offence or its consummation.

34A(a). Where incidentally to the commission of an offence, another or additional offence is committed by the author, which according to the circumstances of the case, a reasonable person could have been aware of the possibility of its commission:

(1) liability for it shall be borne also by the other authors; However, had the other or additional offence been committed with intent, the other authors shall bear liability for such as for an offence of indifference only;
(2) the instigator or the abettor shall bear criminal liability for it, as an offence of negligence, if there is such an offence with the same factual elements.

(b) A court convicting an accused per subsection (a)(1) for an offence for which a mandatory penalty is prescribed, may impose a lighter penalty.

34B. A datum which is a condition of an offence shall apply to all parties involved in its commission, once it exists with regard to one party; however a personal datum the effect of which, by virtue of any enactment, is to aggravate, reduce or otherwise alter the punishment or to prevent punishment shall have such effect in relation only to such party in respect of whom it exists.

Chapter Three: Common Provisions

34C. Any attempt at, and any instigation, attempted instigation or abetment of, an offence being a contravention are not punishable.

34D. Save as otherwise provided or implied in any enactment, any law applying to the commission of a completed offence shall apply also to any attempt at, and to any instigation, attempted instigation or abetment of, that offence.

Title Six

Defences to Criminal Liability

Chapter One: General Provisions

34E. Unless stated otherwise in another enactment, it is presumed that an act is performed under conditions lacking any defence as to criminal responsibility.

Chapter Two: Defences as to Criminality of Act

34F. A person is not criminally responsible for an act done by him before he has completed his twelfth year.

34G. A person shall bear no criminal liability for an act done by him while unable to choose between doing and not doing it, due to lack of control over his bodily movements for such act, such as an act done in consequence of physical coercion which he cannot overcome or by way of reflectory or spasmodic reaction or while asleep or in a state of hypnosis.

34H. A person shall bear no criminal responsibility for an act done by him if, at the time of the act, because of an illness affecting his psyche or a defect in his intellectual ability, he is not actually able -

(1) to understand what he is doing or the wrongness of his act; or
(2) to refrain from doing the act.

34I. (a) A person shall bear no criminal liability for an act done by him in a state of intoxication not caused by him voluntarily or consciously.
(b) Where a person does any act in a state of intoxication caused by him voluntarily and consciously he shall be regarded as doing the act with mens rea if the offence is one of conduct or with indifference if the offence is conditional also upon consequences.

(c) Where a person causes the state of intoxication in order to commit an offence while in that state, he shall be regarded as committing the offence with mens rea, if it is an offence of conduct or with intention if it is conditional also upon consequences.

(d) In this section, "state of intoxication" is a state in which a person is under the influence of an alcoholic substance, a dangerous drug or another intoxicating substance and is, as a result, at the time of the act, unable to actually understand what he is doing or the wrongness of the act or to refrain from doing the act.

(e) Subsections (a), (b) and (c) shall apply also to a person who is not unable as specified in subsection (d) but who, in consequence of partial intoxication, is not, at the time of the act, aware of some ingredient of the offence.

34J. A person shall bear no criminal liability for an act required to have been done immediately by him to repel an unlawful attack creating an imminent danger of injury to his or another's life, freedom, body or property; however, a person does not act in private defence when his own improper conduct brought about the attack whilst he foresaw the possibility of such development.

34K. A person shall bear no criminal liability for an act required to have been done immediately by him to save his or another's life, freedom, body or property from an imminent danger of serious injury deriving from the circumstances at the time of the act, and for which no alternative act was available.

34L. A person shall bear no criminal liability for an act he was ordered to do by a threat with grave and imminent injury to his or another's life, freedom, body or property and was coerced to do the act.

34M. A person shall bear no criminal liability for an act done by him under any one of the following:

1. he is bound or authorized to do it under law;
2. he does it on the order of a competent authority while bound under law to obey such authority, save where the order is manifestly unlawful;
3. where the act requires consent under law - he does it while having reason to assume that it must be done without delay to save a person's life or bodily integrity, or in order to prevent serious injury to a person's health and, in the circumstances of the case, the doer of the act is unable to obtain consent;
4. he does it with consent in the course of a medical intervention or treatment designed to benefit the patient or another person;
5. he does it in the course of a sports activity, or a game, not contrary to law and according to the accepted rules of such activity or game.

34N. (a) The provisions of sections 34G, 34K and 34L shall not apply where a person was aware, or where a reasonable person in his place could, in the circumstances of the case, have been aware before the creation of the situation in which he does the act, that he was likely to do the act in that situation and where he voluntarily and by improper behaviour placed himself in that situation, provided that the object of the act is not the preservation of another person's interest.

(b) In the case referred to in subsection (a), the person shall be regarded as having done the act with mens rea if the offence is one of conduct or with indifference if the offence is conditional also upon consequences. If he enters the situation in order to commit the offence and it is conditional also on consequences, he shall be regarded as having committed it intentionally.

34O. The provisions of sections 34K and 34L shall not apply where the person concerned is required by law or by virtue of his office to face the threat of danger.

34P. The provisions of sections 34J, 34K and 34L shall not apply where, in the circumstances of the case, the act is not a reasonable means to prevent the injury or damage.

34Q. A person shall bear no criminal liability for an act where, in view of the nature, circumstances and
consequences of the act, and of the public interest, the act is too trivial.

34R. (a) A person who does any act imagining a state of things which does not exist shall bear no criminal liability save to the extent as he would bear it if the state of things were in fact as he imagined it to be. (b) Subsection (a) shall apply also to offences of negligence provided that the mistake is reasonable and, subject to the provisions of section 22(b), to strict-liability offences.

34S. For the purposes of criminal liability, it is immaterial whether a person, owing to a mistake as to the existence or meaning of a penal enactment, imagines that his act is not prohibited, unless the mistake could not reasonably have been avoided.

Title Seven

Miscellaneous Provisions

34U. Should a law be given to several reasonable interpretations according to its purpose, the interpretation to be chosen shall be the interpretation most lenient with he who would bear criminal responsibility according to such law.

34V. (a) One shall not bear criminal responsibility for an offence unless it is proven beyond a reasonable doubt; (b) Should a reasonable doubt arise whether a defence to criminal liability exists, and such doubt not be dispelled, such defence shall apply.

34W. In the absence of a contradicting provision, the provisions of the preliminary part and the general part shall apply also to offences not under this law. The text of section 499 of the principal law shall be marked subsection (a), and the following added: (b) A person who conspires shall bear criminal responsibility also for an offence subject of the conspiracy or for an offence committed for its purpose, only if such person is a party to the commission of such offence according to sections 29 to 34D.