

Yitzhak Amin

v.

- 1. David Amin**
- 2. Batya (Sara) Amin Sharabi**
- 3. Avraham Amin**

The Supreme Court Sitting as the Court of Civil Appeals

[October 4, 1999]

Before Justices T. Or, I. Zamir, and I. England

Petition to the Supreme Court sitting as the Court of Civil Appeals.

Facts: Three children, orphaned of their mother, were emotionally abandoned by their father, who refused all contact with them. The emotional neglect caused them severe psychological damage that continues to impede on their adult lives. The children sued their father in tort for emotional damage and won at the district court. The father appealed.

Held: The father's severe emotional neglect of his children breached his duties under the Legal Capacity law, which, *inter alia*, requires parents to provide for the educational needs of their children. Education includes equipping children with the basic life skills. A parent must act for the benefit of his or her child, with the care that an ordinarily devoted parent would use. The severity of the father's neglect constituted a breach of his

duty of care, giving rise to an action in tort based on breach of statutory duty. Justice Or wrote to note that the egregiousness of the father's behavior made this case unique, and that in future cases, courts may have to draw more precise lines delineating parental duties.

Appeal denied.

For the appellant—Yisrael Shalev

For the respondents—Shlomo Kochli and Sara Sharvad

Appeal of the judgment of the Tel-Aviv-Jaffa District Court (Judge H. Stein) on 26 June 1998 in Civil Case 1016/98. Appeal Denied.

Legislation Cited:

Torts Ordinance [New Version], ss. 4, 35, 36, 63.

Legal Capacity and Guardianship Law, 5722, ss. 15, 16, 17, 22.

Penal Law, 5737-1977, ss. 323, 362, 365.

Interpretation Law, 5741-1981, s. 7.

Courts Law [Consolidated Version], 5744-1984, s. 79A.

Regulations Cited:

National Insurance Regulations (Determining Levels of Disability for Victims of Work Accidents), 5716-1956 (Addendum), ss. 34(e), 34(f).

Israeli Supreme Court Cases Cited:

[1] CA 245/81 *Sultan v. Sultan*, IsrSC 38(3) 169.

[2] CA 549/75 *Anonymous v. Attorney General*, IsrSC 30(1) 459.

American Cases Cited:

[3] *Burnette v. Wahl*, 588 P. 2d 1105 (1978).

[4] *Courtney v. Courtney*, 413 S.E. 2d 418 (1991).

Israeli Books Cited:

[5] 2 A. Barak, *Parshanut Bimishpat [Interpretation in Law]*,
Parshanut Hachakika [Statutory] (1993).

Israeli Articles Cited:

- [6] G. Tedeschi, *Mashber Hamishpacha Vichasidei Hamesoret [Family Crisis]*, in Mechkarei Mishpat Lizecher Avraham Rosenthal 282 (G. Tedeschi, ed., 1964).

Jewish Law Sources Cited:

- [a] Psalms 103:13.
[b] Yevamot 70:1.
[c] Deuteronomy 32:11.
[d] Rashi, Commentary on Deuteronomy 32:11, “As an eagle stirs up its nest”.
[e] Lamentations 4:3.
[f] Rashi, Commentary on Lamentations 4:3, “Even the jackals”.
[g] Maimonides (Rambam), *Mishnah Torah, Halchot Deot* (Laws of Characteristics) 7:10.
[h] Song of Solomon 8:7.
[i] Leviticus 19:18.
[j] Babylonian Talmud, Tractate Sota 8:2.
[k] Babylonian Talmud, Tractate Baba Metzia 51:1.
[l] Babylonian Talmud, Sanhedrin (Courts) 45:1; 52:1-2.
[m] Naftali Hertz Wiesel, *Exegesis of the Book of Leviticus*.
[n] Rabbi Yosef Karo, Shulchan Aruch, Yoreh Deah 240:1, 3, 8, 18.
[o] Rabbi Moshe Isserlish, Commentary on Shulchan Aruch, Yoreh Deah 240:1, 8, 18.
[p] Shiftei Cohen, Yoreh Deah 240:18.
[q] Torei Zahav, Yoreh Deah 240:1.

JUDGMENT

Justice Y. England

Are children entitled to compensation from a father whose neglect caused them severe emotional damage? This is the exceptional question we must decide in this appeal. Following an extensive, detailed, and in-depth discussion of the different aspects of the issue, the district court, in an opinion by Justice H. Stein, answered that question in the affirmative.

This issue is rare not just in our system of law but in other legal systems as well. A single prior decision addressing this issue was cited in the lower court, and a majority of judges in that opinion dismissed the claim.

I am referring to the decision by the Supreme Court of Oregon in the United States, *Burnette v. Wahl Or* [3]. The district court was unpersuaded by the explanations of the majority opinion in that case, preferring Justice Linde's dissenting opinion. It may very well be that the district court's decision obligating the father to pay compensation for the emotional harm he caused his children by neglecting them constitutes a global precedent. It may also be true, however, that the facts of this case are exceptional in their severity.

1. The facts surrounding the case of the Amin family are indeed extreme and tragic. I will describe them in abridged summary, based on the lower court's findings. The father has three children, a daughter and two sons (Sara, David, and Avi). Not long after the birth of the younger boy, the mother committed suicide. The children stayed with their grandmother for a short time, but that home was experiencing distress, and the welfare authorities transferred the children to educational institutions. Until they reached their majority, the children went back and forth from institution to foster family to institution, and from institution to institution and back again. The children were separated from each other. Their fate was poor and bitter. The older they grew, the more they deteriorated into lives of drug abuse and crime. One son started a family but is unable to work and lives off monthly National Insurance payments. The other son wandered from job to job, unable to keep a place of employment for long. The daughter married and divorced. She has six children: the eldest was given up for adoption, and the others were put in group homes; their mother's drug abuse renders her unable to care for them. The tragedy of the children passes from generation to generation.

2. In their bitterness and distress, the sons and daughter point accusatory fingers at their father; he turned his back on them throughout their childhood and youth and continues to do so today. The children sought and pleaded for fatherly attention, for a modicum of warmth and

concern and care, and for any measure of interest in them and in their lives from their father, but they hit a brick wall. The severance was intentional and absolute. It became clear that the primary reason for the separation originated in an agreement the father made with his second wife, in which he promised to build their new home with no foundations from the past: The father would cut off all connection with his children from the previous marriage, and his wife would do the same to her children from a previous marriage. The couple executed this “agreement” with such stringency, they did not allow the children to enter their home, and the children’s few visits to their grandmother met with loud disapproval from the father and the stepmother. Their eyes full of yearning, the children watched how the father showered his love on the two sons born to him by his second wife and ensured their education. And they were neglected and left to care for themselves!

3. The complaints – the cries – of the children are backed by testimony of social workers who took care of them. The court emphasized the testimony of Ms. Shoshana Samak, a social worker who cared for the Amin children:

When I received the children, they told me that they used to sit for hours by the fence of their father’s home. He would not open the door for them and *would ignore them when he saw them in the collective village*. In our line of work, we mix the therapeutic component with an emotional connection between the children and a relative. *These children were completely cut off and received only feelings of rejection from every direction*. As a social worker, I therefore had to take my children to attend Avi’s birthday in the morning. I desperately tried to get the grandmother and father to come, but they systematically *ignored the invitations*. During my tenure, no one visited the children in the institutions. *The father unequivocally did not visit ... our complaint against the father is that he denied his fatherhood of the children and absolved himself of all responsibility for their emotional suffering*. Pp. 13-15 of the

judgment (emphasis in original).

...

Every trip to the collective village was a setback in the children's progress. They would return traumatized. I don't know how to define it. *Id.* at 13.

On September 5, 1978, another social worker, Mr. Avraham Rachamim, wrote to the Ministry of Labor and Welfare (exhibit 3):

From their childhood, the children stayed in various institutions while *the father completely ignored them*. Every attempt by our office to involve him in their care and custody failed. Mr. Amin's second wife adamantly refuses to allow them into the house, such that *for years there has been no connection between the father and the children*. P.16 of the judgment (emphasis in original).

Mr. Yoel Ben-Yehuda, the head of social services in the Gezer Regional Council, described the children's plight in his testimony:

On a scale of 1 to 10, with 10 being the worst, I would classify the Amin children's case as a 10. P. 18 of the judgment.

Mr. Naftali Drazner, Director of the Raziel Institute in Herzliya where Sara was a resident, wrote to the father on May 21, 1979 (exhibit 5):

We have no choice but to write to you and draw your attention to the behavior of your daughter, Sara. It is true that, in the four years in which Sara has lived in the village, you have not visited the place nor expressed interest in her studies and behavior. However, because her behavior has worsened lately, we have seen fit to bring the issue to your attention, so that you will also be aware of it. P. 18 of the judgment.

The court also noted additional testimony by Mr. Drazer:

I remember turning to the family to tell them that Sara refuses to eat, and that we cannot be responsible for her health if she persists in her refusal. To the best of my recollection, the family did not respond. *We had almost no connection with the family.* P. 18 of the judgment (emphasis in original).

4. The experts testified to the severe psychological damage that the children suffered as a result of their father's behavior.

The court adopted the opinion of Dr. Shabtai Noi, a well-established expert in clinical and educational psychology who issued an expert report on behalf of the respondents (no opposing report was offered). Dr. Noi assessed the level of disability using the percentages established in the addendum to the National Insurance Regulations (Determining the Disability Level for Employment-Related Injuries), 1956. Dr. Noi determined that David and Avi had a disability level of 50% under Section 34(e) of the Addendum and that Sara had a disability level of 70% under Section 34(f) of the Addendum. Dr. Noi found David to be an intelligent person and determined that:

I have no doubt that David's disability is connected to and stems directly from the extreme way in which his father rejected him, his father's cruelty toward him, and the lack of parental care throughout his childhood ... in effect, he constantly lived in his father's shadow, with sporadic visits which revived in him, with renewed intensity each time, the need for a father and the burning frustration from being rejected and deprived of a parental relationship. The image of this adult shaped his personality into what it is today. P. 5 of the report.

Dr. Noi noted that memories of Sara's sporadic contact with her father had a "quality of traumatic memory which causes disability" (p.6 of the report) and he summarized her situation in the following way:

I am of the opinion that Sara demonstrates disability and tremendous suffering which were undoubtedly caused both by lack of care as well as active cruelty against her. *Id.*

Regarding Avi, Dr. Noi found that “He has post-traumatic thoughts about his past.” P.9 of the report. Dr. Noi summarized his report in the following words:

The personalities of the three siblings are characterized by a sense of trauma in their past which constantly endangers them with a flood of feelings too powerful for them to control ... for all three, this state of affairs causes severe disability which may never be able to be corrected.

In addition, the personalities of all three are at a childish stage of development ... the formal definition is personality disorder. It is difficult for children to grow in the absence of parental support. With their post-traumatic background, it is not clear if they will be able to develop even today. What is clear is that for the three, the developmental delay and the post-traumatic difficulty are related to their past, to the lack of parental support and what it is supposed to impart to a child, as well as the active cruelty toward them. P. 50 of the judgment, pp 9-10 of the report.

5. The father’s impenetrability regarding his children shocks the spirit. Our moral sense cries out against the cruelty of this estranged behavior. Isn’t the compassion of a father toward his children a basic natural feeling, common to the entire human species? Indeed, the Jewish psalms say: “As a father has compassion for his children, so the Lord has compassion for those who fear him.” Psalms 103:13. And the sources add: “This nation is distinguished by three characteristics: They are merciful, bashful and benevolent. ‘Merciful,’ for it is written, And shew thee mercy, and have compassion upon them, and multiply thee.” Yevamot 70:1 [b]. Even in nature, there is an instinctive feeling of this

sort, as we learn from the Bible: “As an eagle stirs up its nest, and hovers over its young; as it spreads its wings, takes them up, and bears them aloft on its pinions.” Deuteronomy 32:11 [c]. And Rashi, in his commentary on Deuteronomy 32:11, “As an eagle” [d], says: “He guides them with mercy and pity like the eagle which is full of pity towards his young and does not enter its nest suddenly – before it beats and flaps with its wings above its young, passing between tree and tree, between branch and branch, in order that its young may awake and have enough strength to receive it.” And: “Even the jackals offer the breast and nurse their young, but my people has become cruel, like the ostriches in the wilderness.” Lamentations 4:3 [e]. And Rashi, in his commentary on Lamentations 4:3, “Even the jackals” [f] writes that “Even though he is cruel, a demon who sees his son from afar, hungry, will take a blindfold from his breast to cover his eyes so as to avoid seeing his son, and he will retreat back the way he came.”

6. The matter is even worse: the children were orphaned of their mother’s physical and emotional care. A child who grows up without a mother’s love and comfort is harmed in any event. That situation creates special obligations:

A man ought to be especially heedful of his behaviour towards widows and orphans, for their souls are exceedingly depressed and their spirits low. Even if they are wealthy, even if they are the widow and orphans of a king, we are specifically enjoined concerning them, as it is said “Ye shall not afflict any widow or fatherless child” (Ex. 22:21). How are we to conduct ourselves towards them? One must not speak to them otherwise than tenderly. One must show them unvarying courtesy; not hurt them physically with hard toil, nor wound their feelings with harsh speech. One must take greater care of their property than of one’s own. Whoever irritates them, provokes them to anger, pain them, tyrannizes over them, or causes them loss of money, is guilty of a transgression, and still more so, if one beats them or curses

them. Though no stripes are inflicted for this transgression, its punishment is explicitly set forth in the Torah (in the following terms) “My wrath shall wax hot, and I will slay you with the sword” (Ex. 22:23). He who created the world by His word made a covenant with widows and orphans that when they will cry out because of violence, they will be answered; as it is said, “If thou afflict them in any wise – for it they cry at all unto Me, I will surely hear their cry” (Ex. 22:22). This only applies to cases where a person afflicts them for his own ends. But if a teacher punishes orphan children in order to teach them Torah or a trade, or lead them in the right way – this is permissible. And yet he should not treat them like others but make a distinction in their favour. He should guide them gently, with the utmost tenderness and courtesy, *whether they are bereft of a father or mother*, as it is said “For the Lord will plead their cause” (Prov. 22:23). To what age are they to be regarded in these respects as orphans? Till they reach the age when they no longer need an adult on whom they depend to train and care for them, and when each of them can provide for all his wants, like other grown-up persons. Maimonides, Mishnah Torah, Hilechot Deot, 6:10 [g] (emphasis added – Y.E.).

7. In effect, counsel for the father acknowledges that his behavior was inappropriate, but he consistently repeats that it is a breach of a moral duty for which there is no legal sanction. In other words, the moral defect in severing the relationship between the father and his children does not give rise to a cause of action in tort. It is argued that while there is a legal duty to provide children with their material needs, there is no legal duty, nor can there be such duty, regarding the psychological need for an emotional, fatherly connection as an expression of love, compassion, and kindness. Indeed, how is it possible to force a person to impart love? Furthermore, the argument goes, even if we were to recognize the legal character of a duty like this, it would be unwise to allow children to sue their fathers based on it. Who could stop the flood

of suits over withheld love and emotional harm which occur within families? For policy reasons stemming from the purpose of law and its effectiveness, we should not create a cause of action in tort allowing children to sue their parents for damages for emotional and psychological harm.

8. As for the distinction between morality and law, it is clear that we should not turn every worthy human characteristic into a legal duty, which we would recognize by threatening physically to compel compliance with them. The Jewish tradition recognizes a distinction between duties enforced upon a person by earthly courts and moral duties left to the heavens or to the conscience of a person who seeks self-improvement. The Jewish tradition and the modern liberal state, however, draw the boundaries between the two normative systems – law and morality – in very different places. According to Kant’s pure theory, the very enforcement of a duty deprives compliance of its moral character, because an action is moral only when carried out through internal-autonomous recognition of the duty. As noted, the father’s claim is that we cannot impose a duty for him to establish a “fatherly connection” with his children beyond taking care of their material needs.

The question, however, is not what the father thinks about the proper scope of legal duties in parental-child relationships; the question is what arises from the statutory provisions in this area.

9. The district court held that the father’s alienating behavior constituted a breach of his statutory duties toward his children as well as the duty of care imposed on him by Section 35 of the Torts Ordinance (New Version), 1968. The district court held that Sections 15 and 17 of the Legal Capacity and Guardianship Law, 1962 and Sections 323, 362, and 365 of the Penal Law, 1977, impose statutory duties on the father. According to the district court, breaching those duties constitutes breach of a statutory duty under Section 63 of the Torts Ordinance, a wrong which entitles the victims to damages.

10. I agree with the lower court that the duties imposed on

parents by Section 15 of the Legal Capacity and Guardianship Law are not limited to purely physical needs; the section explicitly states that “the parents’ guardianship includes the duty and the right to care for the needs of the minor, including educational needs, his or her studies, and his or her professional and vocational training.” The concept of education is broader than the ocean and deeper than its depths. According to the broadest conception (J.S. Mill), education is the entirety of personal, social, and even physical influences which operate – intentionally or unintentionally – on a person’s experience, character, and talents. Another approach distinguishes between education and training, assigning to education the task of shaping the entire personality of the pupil as a person by introducing him or her to values which constitute a purpose unto themselves. See “Education,” 17 Hebrew Encyclopedia at 612, 618. Indeed, Section 15 of the Legal Capacity and Guardianship Law itself does not limit education to studies and professional training. Assuming, however, *arguendo*, that the statute limited education to studies and professional training, the father would still have failed to fulfill this limited duty; he did not take the trouble to concern himself with his children’s educational and training difficulties while they were living in various institutions, despite the warnings of education officials. The absolute severance of any relationship with his children is a severe breach of the duty to take care of their needs in general, and their education in particular. However, there are clear limits to the extent to which law can invade the fabric of family life: there is no doubt that a child needs the love of his or her parents and that such love is a critical necessity. As is well known, withholding love is likely to adversely affect a person’s personality. Yet imparting love is beyond the capacity of the law, whose reach is both heavy-handed and short in the field of emotions. Therefore, in imposing a duty on parents to provide for the needs of minors, including education, the legislature did not intend to impose a legal duty to love, i.e. a requirement that a person develop an internal feeling. Indeed, He is who is wiser than any person said that, “Many waters cannot quench love, neither can floods drown it. If one offered for love all the wealth of his house, it would be utterly scorned.” Song of Solomon 8:7 [14]. This is true even of the commandment to love one’s neighbor as oneself (Leviticus 19:18), which is, in Rabbi Akiva’s

opinion, a greatly important rule in the Bible. The legal-religious aspects of the commandment – as opposed to its emotional duty – are expressed through external actions such as the rules related to the principle of ensuring a humane death even for someone sentenced to death. *See* Sota, 8:2 [j]; Baba Kama, 51:1 [k]; Sanhedrin 45:1 [l]; Sanhedrin 52:1,2 [l]. Similarly, the learned Naftali Hertz Wiesel said in his Exegesis of the Book of Deuteronomy (19:18) [m], “Neither love nor hate can be dictated, as no person can rule over them.”

11. It should be noted that the Legal Capacity Law does not require parents to succeed in seeing to the education of the child; they are only required, in the words of Section 17, to act for the benefit of the minor as devoted parents would act under the circumstances.

In other words, their duty is not to achieve the desired results of the education, studies, and training; they are obligated to make an attempt, according to the level of behavior that ordinarily devoted parents would display.

Furthermore, the legislature even went to the trouble of creating a certain immunity for parents from claims of damages caused to children as the result of their behavior (Section 22 of the Legal Capacity Law): “The parents will not be held liable for damages caused to the minor through the fulfilling of their duties of guardianship, unless they acted in the absence of good faith or did not intend the good of the minor.” Without going into the question of whether good faith, in this context, is examined through objective or subjective criteria, there is no doubt that the father in this case behaved as he did not in order to promote the good of his children but rather out of undeniably personal interest, whatever that interest may be. The father therefore has no defense under Section 22 of the above-mentioned law. We should also note that the meaning of Section 22 of the Legal Capacity Law is not limited to granting a certain immunity to parents from liability for damages caused to the minor through the fulfillment of their guardianship duties. The provision also contains a kind of imposition of direct liability on parents for the damages caused to the minor. Section 15, which defines the role of

parents, outlines their duties without determining their liability for damages that minors are likely to suffer as a result of the breach of those duties.

In my opinion, the legislature intended that Section 22 impose on parents – as evidenced by the footnote to the section – liability for damages caused to the minor by breaching their duties as natural guardians. It is indeed true that the parental duties outlined in Section 15 also fit into the general receptacle of Section 63 to the Torts Ordinance. This inclusion does not, however, significantly derogate from the independent meaning of Section 22 of the Legal Capacity Law as imposing direct liability on parents.

12. In contrast, I have certain doubts about the court's conclusion regarding the breach of duties imposed by the Penal Law. Indeed, there is no theoretical reason that the crimes listed in the Penal Law could not create statutory duties under Section 63 of the Torts Ordinance. *See* Justice S. Netanyahu's opinion in CA 245/81 *Sultan v. Sultan* [1]. However, considering the way the criminal provisions are formulated, I am not convinced that they apply beyond providing for the material necessities they detail.

It may very well be that the phrase, "other critical life necessities" within Section 362 of the Penal Law can be interpreted according to the rule of *eiusdem generic*, meaning according to the substance of the previously-listed issues: clothing, food, shelter. We might interpret it as such in spite of the provisions of Section 7 of the Interpretation Law, 1981 (2 A. Barak, *Parshabut Bimishpat [Interpretation in Law]* [5] at 129). Because, however, I have found that the father breached his statutory duty under the provisions of the Legal Capacity Law, I do not see a need to decide the question of whether he also breached statutory duties under the Penal Law.

13. I agree with the lower court's conclusion that the behavior of the father constitutes a certain breach of his duty of care toward his children, in the meaning of Section 35 of the Torts Ordinance, and

because such breach caused damage to his children, the elements of a negligence tort have been established.

The father's omissions rise to the level of unreasonable behavior, to say the least. The fact that the father intentionally ceased caring for his children does not take away from the possibility that the elements of negligence have been established. Negligence, in the technical sense, can also include intentional acts and omissions, because the test for negligence is the unreasonableness of the behavior and the foreseeability of the harm. Indeed, determining that the element of foreseeability has been established is a kind of value judgment, because we are talking not about the empirical possibility of foreseeability but rather about "normative" foreseeability: "which a reasonable person under similar circumstances would have foreseen in advance." As noted, counsel for the father asks us to negate the father's liability through a value judgment, based on the above-mentioned general considerations of legal policy. I am not convinced that, in the special circumstances of this case, these considerations require us to conclude that the father should not be held liable for the foreseeable emotional harm that his behavior was likely to cause his children. In summary: What could have been foreseen, should have been foreseen.

14. The negligence in this problem is, substantially, the twin sister of the breach of statutory duties outlined in the Legal Capacity Law. Therefore, if the father's behavior falls under the auspices of the immunity provision in Section 22 of the Legal Capacity Law, I would also tend to limit, in accordance with that section, the duty of care within the tort of negligence. In other words, I would not recommend expanding the scope of the negligence tort beyond the limits of the specific parental liability established by the Legal Capacity Law.

15. Section 15 of the Legal Capacity Law refers to the authority of parents as natural guardians of their minor children as "the duty and right to care for the needs of the minor." There is no doubt that people may waive their rights, but they may not shirk their duties. Therefore, so long as a parent is the natural guardian of his or her children, he or she

bears the duty established by statute to care for the needs of the child, needs which should be given a broad meaning, beyond purely material needs. The fact that the parent does not have custody over the children affects his or her rights, but not his or her duties. Those duties remain on his or her shoulders, subject, of course, to the concrete circumstances of the parent-child relationship. On this issue, compare CA 549/75 *Anonymous v. Attorney General* [2] at 465-66.

16. Counsel for the father raised the argument of the “slippery slope,” meaning that the recognition in principle of parents’ legal liability for emotional damages to their children will open the floodgates for damage claims, like the hairline crack in the dyke that threatens to flood an entire village. Judge H. Stein gave a resounding answer to that claim:

The “slippery slope” argument cannot withstand rejecting the doctrine of immunity. Courts have many “stop-gaps” in using different techniques for imposing liability, and they can sort cases according to their severity. Claims for *de minimis* harms will be dismissed immediately. P. 67 of the judgment.

17. The level of severity is not the only test for determining liability in tort. It should be noted, by the way, that rejecting liability for an act of limited significance is not unique to parent-child relationships; the legislature established a general principle that a tort does not include an act of which a person of ordinary intelligence and temperament would not complain under the given circumstances. Sec. 4 of the Torts Ordinance. An important additional test is the balance of interests between parents and children. With all the emphasis on the rights that children have with respect to their parents, an emphasis which is characteristic of current times, the personal autonomy of each parent to shape his or her private life is also important. The duty is to act as a devoted parent, not a tormented parent. The district court therefore correctly held that:

There are certain aspects of family life to which judicial

adjudication is foreign, as it should be. It is inconceivable that a minor can sue his or her parents in tort for emotional harm caused by the parents' divorce and break-up of the family unit, despite the damage which, at some level, is widely foreseeable and known. P. 71 of the judgment.

18. It should be noted that parent-child relationships are not one-sided, and in addition to the rights which children have with respect to their parents, they also have duties. This additional aspect occupies an important position in the Jewish tradition, and it is expressed in the commandment to honor one's parents. This commandment still echoes in Section 16 of the Legal Capacity Law: "*The minor is obligated, through honoring his or her father and mother, to obey his or her parents in every issue subject to their guardianship*" (emphasis added – Y.E.). On the history of the enactment of Section 16, see G. Tedeschi, *Mashber Hamishpacha Vichasidei Hamesoret [Family Crisis]* [6], 283-84. The religious commandment to honor one's parents applies throughout a person's life, even after the parents have died. And the learned author of the Shulchan Aruch summarizes these principles according to the religious sources, which are relevant to our subject:

1. One must be extremely careful to fear and revere one's father and mother.

...

3. To what degree shall parents be feared? If a son attired in costly garments, were to preside over a meeting, and his father or his mother came and rent his garments, and struck him on the head, and spat in his face he should not insult them [-- ed.] but he should remain silent and fear the King, who is the King of kings, the Holy One, blessed be He, who thus decreed.

...

8. To what degree shall parents be revered? Even if they took from his pocket gold coins and cast it into the sea in front of him, he should not insult them or show distress in their presence or display anger toward them but accept the decree as written and remain silent.

...

18. Even if his father is wicked and a sinner, he must fear and revere him. Shulchan Aruch, Yoreh Deah, 240 [n].

Despite these stringent rules, religious law includes a moderating trend which aspires to balance the rights of the son with the duties the commandment imposes toward the father. For example, Rabbi Moshe Isserlish, learned author of the *Mapa*, adds to the above-mentioned Section 8:

Some say that if the parent wants to throw coins belonging to the son into the sea, the son may prevent him and he need not honor him just because he is the son and it is his father. And there is no difference between honoring him and not showing him distress. If he has not yet thrown them, it is permissible to prevent him from doing so, but if he has already thrown them, it is forbidden to insult him but the son may sue him for the damages.

And Rabbi Isserlish comments on section 18, mentioned above: "Some say he need not honor a father who is wicked unless he has repented," and Siftei Cohen comments on this: "Even though he is not obligated to honor him, he may not insult him." *See* comments on Rabbi Isserlish. Similarly, on the court imposing the commandment, see the qualifying opinion in Rabbi Isserlish's comments on verse 1, and the expansive opinion in *Torei Zahav*. It would seem, then, that Jewish law, too, sets a balance between the different

purposes and conflicting interests in this complicated issue, and it in particular permits a son to sue his father in law if the father damages his property.

19. The conclusion arising from what I have said thus far is that we should evaluate the tort liability of a father toward his children for breaching the duty to care for their needs in light of the special circumstances of each case. A general statement like this does not seem to break new ground, because it is true of all cases of damage arising from negligence torts and breach of statutory duties.

However, the statement in this context relates to special considerations of balance, which differ substantively from other cases of harm. We are dealing with an intrusion into familial relationships, in which the rights of minors under the natural guardianship of their parents are likely to clash with the rights of the parents to shape their lifestyles autonomously. The modern legal system prefers the interests of minors, but it does not completely negate the freedom of the parents. While a parent cannot completely absolve himself or herself of the duties toward his or her children, the content of those concrete duties is likely to vary, depending on the special circumstances of the internal relationships within the family. We should recall that the legislature granted parents partial immunity in Section 22 of the Legal Capacity Law.

20. Given these considerations, I will now evaluate the special circumstances which will determine the question of a father's liability for harm caused to his children. As the court held:

The [appellant] knew that he was the father of the children and that they were not given up for adoption. He knew of their yearning for a relationship with him, and he cold-heartedly ignored them. He did not respond to a single one of the requests by the welfare authorities to extend a supporting hand to his children." P. 47 of the judgment.

The lower court expressed reservations about the very existence of the agreement between the father and his second wife, in which they agreed to exclude the children from his first marriage from their lives. The court added that it does not see a reason that the father could not have cultivated a relationship with his children, had he so desired, without violating the terms of the agreement. The court held:

Even if the father submitted to his wife's dictates not to bring the children from his first marriage into the house, not even for visits (something that, in my opinion, has no justification and cannot be condoned), that submission would not explain why the father did not visit the children in their place of residence in the institutions and in foster families. P. 48 of the judgment.

I agree with this finding by the lower court. It shows that even if we were to give the maximum consideration to the father's situation and his aspirations for an alternative family unit, there was still no need for him to display the level of cruelty which he displayed toward his children.

21. U.S. law contains formal and substantive obstacles to suits by children against their parents, including: the traditional common law principle of parental immunity from suits by their children and the reluctance to recognize a tort cause of action for the breach of a statutory duty which is of a penal character. *See* Justice Hollman's majority opinion in *Burnette v. Wahl*. And here, despite these obstacles – which do not exist in our legal system – U.S. courts have recognized the right of children to sue their parents in tort for intentional outrageous conduct. *Courtney v. Courtney* (1991) [4]. Unfortunately, we can assume that the shocking and disgraceful conduct of the father in the case before us would meet the stringent tests in the above-mentioned category of claims.

22. Under these circumstances, the lower court was correct in concluding that the elements necessary to impose tort liability on the father in our legal system have been established. The remaining question

is the level of compensation. The appellant complains that it is too high, both because of his financial situation and also because the goal of tort law is to restore the victim to his or her prior situation, not to deter tortfeasors. Without getting into the substance of these arguments – which on their face do not appear convincing – because the compensation was determined by an agreement under Section 79A of the Courts Law [Consolidated Version], 1984 a court of appeals is not inclined to intervene in the amount determined.

The appeal is therefore denied. The appellant will pay the respondents costs and attorney's fees in the amount of 10,000 NIS.

Justice T. Or

I agree with the opinion of my colleague, Justice England. I wish to emphasize a single point. Counsel for the [appellant-ed.] expressed his concern that recognizing the right of the respondents to compensation from their father for the emotional harm caused to them would lead the court down a slippery slope. In *Burnette v. Wahl* [3], mentioned by Justice England, the majority opinion by Justice Holman gave a resounding response to this concern:

There are probably as many children who have been damaged in some manner by their parents' failure to meet completely their physical, emotional and psychological needs as there are people. *Id.* at 1111.

Indeed, there is no doubt that the relationship between parents and children is often complex and emotionally-laden. It is not immune from frustrations, disappointments, and disillusionment, whether mutual or one-sided, which are likely to give rise to the feeling that one side has not fulfilled his or her duties with the appropriate amount of dedication. The court, therefore, should be doubly cautious in addressing these issues, and must take care not to intrude unnecessarily upon this delicate fabric of relations. It must not clear the way for a wave of tort claims of

children against parents, claims which are based in complex life circumstances which are difficult to judge in retrospect. Parents are not immune from errors in judgment during the course of such a long and complicated relationship. The court must exercise appropriate caution in drawing the line delineating when it will intervene by recognizing a cause of action in tort by a child against his or her parent. Appropriate judicial policy dictates that only in extreme cases will parents' acts or omissions rise to the level of the negligence sufficient to sustain a tort claim against them.

The case at bar does not require us to delineate where the line falls. The circumstances of this case are so extreme in their severity, the question of where to draw the line does not arise at all.

This is not the ordinary case requiring us to evaluate how a parent exercised his or her judgment. The appellant shirked all his parental duties completely and harshly. He simply abandoned his children and ignored their existence. His behavior is particularly harsh in light of the fact that the children had already been orphaned of their mother. Even worse: this case shocks the conscience in particular because of the fact that his children watched him establish a new family, which he nurtured and of which he took care. His children watched him do this from afar, while they yearned for him. The circumstances of this case are unique, and our recognition of the rights of the respondents to damages under the circumstances should not be seen as opening the floodgate to suits by children against their parents for every case of inappropriate behavior by parents toward their children. Indeed, ordinarily, parents are entitled to the defense imparted by Section 22 of the law of Legal Capacity and Guardianship Law, 1962.

Even if future cases require courts to address the question in depth and delineate the appropriate scope of parental duties, I agree with my colleague, Justice England, that courts are equipped with the legal tools to do so. The court will have to delineate rules which will, on the one hand, allow children, in appropriate cases, to claim compensation from their parents for emotional harm, and on the other hand, recognize

that a parent's judgment enjoys an autonomy which should not be unnecessarily infringed upon. In any event, the question is beyond the scope of the case before us, and so we will leave a discussion of the issue, with all the problems it raises, until such time as it becomes necessary to adjudicate it.

Justice I. Zamir

I concur with Justice Y. Englard's opinion and with Justice T. Or's comments.

Appeal Denied
October 4, 1999