(Official summary translated from the original Hebrew to English by Adalah)

The Supreme Court of Israel

HCJ 2311/11, 2504/11 *Sabah v. The Knesset*

In the matter of the constitutionality of the Admissions Committees Law

Summary of the Ruling

In a ruling handed down today (17 September 2014), an expanded panel of nine Supreme Court justices discussed two constitutional petitions against the arrangement defined by the Knesset in 2011 in Amendment No. 8 of the Cooperative Societies Ordinance, also known as the Admissions Committees Law.

The Admissions Committees Law allows small communities located on state lands in the Negev or Galilee to require new residents to receive approval by an admissions committee before joining the community. This committee is composed of representatives of that community, among others. The law specifies a list of reasons for which the committee is entitled to refuse to accept a candidate into the community, including: The candidate is not suitable for the social life of the community or the candidate does not fit into the social-cultural fabric of the communal community. The law also states that the admissions committee is prohibited from rejecting a candidate for reasons of race, religion, gender, nationality, disability, marital status, age, parenthood, sexual orientation, country of origin, viewpoint or political-party affiliation.

In a majority opinion, Chief Justice A. Grunis, Deputy Chief Justice M. Naor and justices E. Rubinstein, E. Hayut and H. Melcer decided to reject the petitions as "not ripe" for decision. The dissenting opinion of Justice (Emerita) E. Arbel and justices S. Joubran and Y. Danziger argued that the sections in the law that allow an admissions committee to refuse to accept a candidate into a community (sections 6C(A)4 and 6C(A)5 of the law) should be revoked. According to Justice N. Hendel's dissenting opinion, the directive defining the composition of an admissions committee should be cancelled.

Summary of the opinion of Chief Justice A. Grunis

Chief Justice A. Grunis, who wrote the central opinion in the proceeding, argued that the petitions should be rejected because they are not ripe for decision.

The Chief Justice focused extensively on "the ripeness doctrine" in his opinion. This doctrine may justify, in appropriate cases, the rejection of a petition when no administrative decision has yet been made based on the relevant law that is under judicial review, and when there are no concrete petitioners, and when it is not yet clear how the law will actually be implemented in practice. The chief justice explained in his opinion that the ripeness is not a new ground that was recently added to Israeli law, and that it is not an "avoidance technique" aimed at evading discussion of constitutional petitions. The importance of this ground lies in the fact that the court, in its limited resources, will not engage in adjudicating hypothetical and theoretical arguments.

In his opinion, the chief justice outlined criteria for exercising the ground of ripeness in constitutional petitions submitted to the Supreme Court. The Chief Justice's approach calls for applying a two-stage

test in assessing the ripeness of a constitutional petition. In the first stage, the court must determine whether it was presented with the factual foundation required for ruling on the questions the petition raises. If the question discussed in the petition is essentially a legal one, the response to it will require a limited factual array, and Deputy versa. In other words, the question is how necessary the implementation of the law is for judging its constitutionality. In the second stage of the test, the court is called upon to examine whether there are reasons that justify adjudicating the petition even if no sufficient factual foundation was presented – that is, even before the law is implemented. According to the Chief Justice, in this stage, it is necessary to examine whether there is a real interest in adjudicating the petition at that time. The Chief Justice noted that the main exception that justifies adjudicating a case before it is ripe is the "chilling effect" exception.

In the case before us, the Chief Justice argued that it is not possible to rule on the constitutional questions the petitioners raise at the current time and in the current proceeding. According to the Chief Justice, as long as the law has not been implemented, and decisions based on it have yet to be made, the violation of basic rights (including the question of the constitutionality of the violation) is only a possibility; at the early stage we are in, it is impossible to know whether such violation will in fact occur. In this context, the Chief Justice noted that the central argument in the petitions is that the general sections in the law, which allow a candidate to be rejected for lack of suitability to community life or to the cultural-social fabric of the community, will provide a pretext for discrimination in practice. In the Chief Justice's opinion, a simple reading of the language of the law does not support this conclusion, since the law includes an explicit clause prohibiting discrimination. Therefore, proof of a hidden mechanism of discrimination would be possible only after implementation of the law. The Chief Justice explained that we cannot dismiss the possibility that hidden discrimination may occur in practice in the future. Furthermore, in the Chief Justice's opinion, there is no public interest justifying the adjudication of the petitions before they are ripe. The Chief Justice also noted that there is no indication of fear of a chilling effect in the current case. For these reasons, the Chief Justice argued that the petitions should be rejected as " not ripe" for ruling at this stage of the constitutional deliberations.

Chief Justice Grunis emphasized in his opinion that rejection of the petitions does not constitute an expression of opinion vis-à-vis the law's constitutionality or lack thereof. The decision means that at the current time the court does not have a sufficient factual foundation for ruling on constitutional questions of substantial weight, and that it is necessary to wait for the implementation of the law in the future.

Summary of the opinion of Justice S. Joubran

Admissions committees stand at the entrance to communities in the Negev and Galilee, and are responsible for opening their gates to new residents. They are empowered to determine that the state's lands will not be allocated to those who are found unsuitable to live in the community at whose gates they stand. Against this backdrop, the petition under discussion was submitted, which centers on an argument of discrimination in the admissions proceedings for these communities.

Justice S. Joubran thus recognized that the admissions proceeding for the community is not in itself the greatest of evils, and may sometimes help in developing and sustaining a community, particularly when the community's unique characteristics comprise a significant part of the identity of its sons and daughters. Nonetheless, Justice Joubran explained that in the current reality in Israel, the legal fence built by the admissions committees is planted on disputed ground; there are numerous disputes regarding how this ground should be settled and regarding the legitimacy of exclusion from these areas, aimed at preserving this character.

Against this background, Amendment 8 of the Cooperative Societies Ordinance was born. It placed the key to the community's gate in the hands of the admissions committee and formalized the discretion granted to it. After studying Amendment 8 of the ordinance, Justice Joubran found that the discretion granted to an admissions committee is broad, and provides an opening for excluding entrance to these communities based on irrelevant considerations. In light of the current mosaic of communities, and the accumulated experience of many years in which admissions committees have exercised discretion, Justice Joubran found it to be a mechanism that anchors and perpetuates a discriminatory reality.

Justice Joubran argued that Amendment 8 does not present something new and, consequently, there is no reason to apply "the ripeness doctrine," which seeks to prevent the court from discussing legislation when its ramifications and implementation lack accumulated and clear experience. Justice Joubran argued that Amendment 8 of the ordinance is similar in essence to arrangements that preceded it, which also anchored an ongoing practice of exclusion based on considerations that are irrelevant in part – and thus discriminatory.

Justice Joubran emphasized that he is not seeking to accuse the legislature or the sponsors of the law of harboring an intention to discriminate, and explains that the discriminatory reality that has developed is a result of the existing practice of the admissions committees themselves. Justice Joubran also emphasized that while the ordinance's amendment defines oversight mechanisms aimed at preventing discrimination, he found that in reality these mechanisms are unable to mitigate the excessive discretion of the admissions committees.

Justice Joubran sought to emphasize that it was not a light decision to invalidate a law passed by the legislature. He also explained that in light of the complex and complicated nature of allocating lands, and the various views on community planning – which is first and foremost the purview of the legislature – the declaration invalidating such an arrangement becomes even more difficult. Ultimately, however, due to the discriminatory reality and considerable experience from the gates of these communities, Justice Joubran found that sections 6C(A)(4) and 6C(A)(5) of the Cooperative Societies Ordinance, which anchor into law the excessive discretion of the admissions committees, should be revoked.

Summary of the opinion of Deputy Chief Justice M. Naor

Deputy Chief Justice M. Naor concurred with the opinion of Chief Justice Grunis that the petitions are not ripe for adjudication. However, the Deputy Chief Justice noted that the Israeli version of the doctrine of "lack of ripeness" should be developed one step at a time.

The Deputy Chief Justice also noted that she remained steadfast in her view after reading the opinions of justices Hendel and Joubran. In regard to the opinion of Justice Hendel that the arguments concerning section 6B(B)(1), which pertain to the composition of the admissions committee, are ripe to adjudicate, the Deputy Chief Justice noted that since there is an objective oversight mechanism for reviewing the admissions committees' decisions, it would be best to wait and see if this mechanism is able to contend with the fears Justice Hendel expressed vis-à-vis the composition of the admissions committees.

In regard to the opinion of Justice Joubran, who expressed concern that the lack of criteria to limit the discretion of the admissions committees will lead to hidden discrimination, the Deputy Chief Justice noted that these arguments also lack ripeness in light of the committee's obligation to explain its decisions and the mechanisms for reviewing these decisions. In addition, there is no basis for fearing that someone rejected by the admissions committee would refrain from seeking judicial

recourse due to a sense of embarrassment. There are quite a few petitions and lawsuits filed in cases of discrimination, not only in housing but also in other areas, such as education and discrimination in entrance to public places.

The Deputy Chief Justice noted that this is sufficient to blunt the sting of the opinions of justices Hendel and Joubran, and to reinforce the lack of ripeness of the petitions at this stage, in the absence of an array of concrete facts on which to adjudicate the arguments.

Summary of the opinion of Justice (Emerita) E. Arbel

Justice (Emerita) E. Arbel concurred with the ruling of Justice Joubran, and likewise argued that the petitions are ripe for ruling, and that there is no alternative but to order the revocation of sections 6C(A)(4) and 6C(A)(5) of the Cooperative Societies Ordinance.

The reasons permitted for rejecting a candidate for residence are ambiguous and enable the admissions committees to define them as they wish. On the individual level, this mechanism gives an admissions committee, which is composed mainly of private people, the power to make almost any decision on an arbitrary basis. The impressions members of the admissions committee receive from the candidates that come before it are completely subjective, are liable to be influenced by prejudices and stereotypes, even if these do not pertain to group affiliation, and are dependent to a great extent on the examiner and not only on the person under examination. This arbitrariness provides a foundation for a serious blow to equality between individuals in the allocation of public lands. Suitability tests are not an index that nullifies this blow, without clear directives vis-à-vis the essence of these suitability tests and without a basis for the assumption that they can predict suitability for community life. In addition, there is the violation of the dignity and privacy of the candidate, who is compelled to reveal details about his private life and prove the suitability of his personality and characteristics for residence in the place. Choosing a place of residence is part of an individual's personal autonomy, part of an individual's right to weave his life's story, and part of his self-expression, which are protected by the right to human dignity.

At the level of the collective blow to equality, Justice (Emerita) Arbel concurred with the concerns of Justice Joubran that the mechanism stipulated in the amendment does not enable the prevention of discrimination against groups, whether knowingly or unknowingly. Discrimination on a collective basis will be difficult to discern and counter because it is easy to hide it under other considerations of the candidate's unsuitability for residence in the community.

The selection allowed in the framework of the admissions committees is liable to have negative repercussions not only for the individual, but also for Israeli society. It sends a divisive and alienating message to the society – a message of separation and exclusion of the other and the different. Such separation does not enable mobility between weak and strong groups, does not enable groups to become familiar with each other, and thus further weakens the social cohesion in Israel.

In addition, as we know, rights are not absolute and must be balanced against other rights or interests relevant to the question. In our case, there is the interest of the individual to experience regular community life and to define the character of his chosen place of residence. This interest can affect the quality of a person's life and is included in the framework of his personal autonomy. Consequently, it cannot be ignored and its importance should not be diminished. However, this interest is usually achieved in a natural way, and in any case must be balanced against the severe injury caused to the individual. Thus, it would be justified to protect the communal interest only in small localities, where there is a dominant and strong communal character and when there is a concern about a massive entry of a population that is liable to significantly harm or change the

communal nature of the place. The amendment to the ordinance does not suitably balance these rights and interests. Nonetheless, this does not mean that a formula cannot be found to proportionally balance and assign weight to the communal interest.

Summary of the opinion of Justice E. Rubinstein

Justice E. Rubinstein concurred with the opinion of A. Grunis to reject the petition due to lack of ripeness, and agreed with the comments of Deputy Chief Justice M. Naor. The question was: When will the court examine with constitutional spectacles whether the legislature is acting under false pretenses? If a violation of a constitutional right is not easily discernible in the text of legislation, but the legislation includes "space for implementation" that could create an opening for such violation if not fairly implemented, even though the legislation includes built-in controls regarding implementation – should its constitutionality be invalidated in advance?

According to Justice Rubinstein, the targeted sections of the law will only be examined in the crucible of experience, with lights flashing in regard to the fairness of the admissions proceedings. The question of the law's essentiality does not need to be addressed, because it is not the court's role to examine the wisdom of the legislature; it is only to examine the constitutionality of the law, according to its content and history, while the door is not locked to legal developments following implementation. In his opinion, Justice E. Rubinstein refers to the discussions of the law in the Knesset Constitution, Law and Justice Committee, which indicate that while the amendment's sponsors and supporters regarded it as protecting, developing and preserving community life, its opponents saw it as a prescription for excluding particular populations, and latched onto certain statements heard in the Knesset. Thus, in his opinion, the amendment to the law must be examined as time passes, in accordance with concrete cases, and the ultimate question is whether it will be implemented with integrity and fairness, in the spirit of the letter of the law, or whether there will be those who see it as an opportunity to "outsmart" the system. However, we cannot say in advance that we are dealing with "a conspiracy of exclusion," while the fears raised by the petitioners will be subject to examination in concrete cases.

In regard to the argument of inequality in the allocation of state lands, Justice E. Rubinstein stated that no one can dispute, certainly after the ruling in HCJ 6698/95 *Ka'adan v. Israel Lands Administration* 54(1) 218 (2000), that the state is prohibited from discriminating against its residents in allocating lands. This stems from the important right of equality, which derives from the right of dignity. Accordingly, there is no contradiction in the fact that the State of Israel is a Jewish and democratic state, and the law in question also prohibits this type of discrimination – section 6C(C) of the law states that "the admissions committee will not refuse to accept a candidate for reasons of race, religion, gender, nationality, disability, marital status, age, parenthood, sexual orientation, country of origin, viewpoint or political-party affiliation"; and complaints against the admissions committee can be argued before the objections committee, an independent committee; and it is also possible to argue against this appeals committee in the Court for Administrative Affairs. These things speak for themselves, therefore, and should be examined with the test of action.

Justice Rubinstein notes that the petitioners, as well as justices S. Joubran and E. Arbel, believe, on the other hand, that there is an apparent disparity between the explicit language of the amendment and the alleged hidden intentions underlying it, and that the vagueness of the law and the excessive representation of the community in the admissions committee are liable to facilitate discrimination in practice. In Justice Rubinstein's view, these fears should not be taken lightly. However, at the same time, there is no cause to invalidate legislation *a priori* based on these fears, portraying the Knesset from the outset as hostile to various minorities and without any "evidence from the field" for this.

We should beware of labeling the admissions committees and the objection committees as inherently unfair, and implicitly, the legislature that is behind them, without examining this in the crucible of practical action. We should not place the cart before the horse at this time, to construct a building of discrimination whose foundations have yet to be laid, and whose walls have certainly not been raised. Time will create the appropriate ripeness. And if, unfortunately, these fears turn out to be justified, there is remedy available, and this court also is not disbanding in retirement. Therefore, Justice E. Rubinstein concurred, as noted, with the opinion of Chief Justice A. Grunis that the petition should be rejected due to lack of ripeness.

Justice Rubinstein added that equality for minorities is one of the public issues in which there are deficiencies in Israel, but efforts have been made over the years to repair them, and these efforts should be welcomed and intensified. We are dealing with a complex reality – but it should not be portrayed as monolithic. There was also awareness of the complexity in the Knesset discussions: questions were not forgotten, but "security belts" were defined. Time will tell, and the challenge of integrity and fairness stand before us.

Summary of the opinion of Justice Y. Danziger

Justice Y. Danziger joined the ruling of Justice S. Joubran and the comments of Justice (Emerita) E. Arbel. Justice Danziger noted that it was not easy to reach this conclusion, which means declaring as invalid sections 6C(A)(4) and 6C(A)(5) of the Cooperative Societies Ordinance, which were enacted following long legislative proceedings, due to the unconstitutionality of these sections, and even more so when a section prohibiting discrimination was added alongside them. Justice Danziger noted that the principal difficulty arising from the two sections is that they do not include clear criteria for examining the extent of a candidate's suitability to "the social-cultural fabric" or "the social life in the community." He determined that in practice it is a "vague" legislative arrangement that creates a wide opening for introducing irrelevant considerations and for actual discrimination, while eviscerating the directive prohibiting discrimination that is contained in another section of the ordinance. The justice noted that the court assumes that the Knesset's aim was to allow for a non-discriminatory selection mechanism – that is, there is no underlying intention to discriminate in these two sections. However, in the end, a discriminatory and disproportional arrangement was created.

Justice Danziger commented that no one disputes the fact that a person's choice to live in a particular environment and in a community with a particular character is a natural and legitimate choice that constitutes a part of the personal autonomy of each person. Nonetheless, he noted that the question arising in these petitions is not whether each person has a right to choose to live in a community with a particular character. Rather, the question is what legal protection, if any, should be granted to the members of that community against those who seek to join as residents and perhaps are not suitable to its character. In other words, the question is whether to allow certain communities to determine who will come through its gates and who will remain outside them, and to anchor (and protect) this possibility in law. Justice Danziger noted that it is a particularly complicated question, because it entails the allocation of public lands for the benefit of these communities. In this context, it was noted that the Amirim and Klil communities, which are cited in the petitions as examples of unique communities that should be allowed mechanisms of selection and admissions, indeed constitute a "point of reference," and in comparison to them, doubt arises as to whether communities that are subject to the ordinance's amendment have unique characteristics that justify such selection mechanisms.

Finally, Justice Danziger concurred with Justice Joubran and Justice (Emerita) Arbel that communities with unique characteristics or a dominant and strong communal nature can define clear and

transparent conditions for selection in the community's bylaws, in accordance with Section 6C(A)6 of the Cooperative Societies Ordinance, and subject to the judicial review of the Registrar of Cooperative Societies and of the court.

Summary of the opinion of Justice N. Hendel

Justice N. Hendel's opinion is that most of the questions that the petitions raise – the constitutionality of sections 6C(A)(4) and 6C(A)(5) of the law – are not ripe for ruling at the current stage. Thus, he joins the opinion of Chief Justice A. Grunis, while disagreeing with it on one particular question – the composition of the admissions committees.

According to Justice Hendel, the doctrine of "partial ripeness" can be applied in the circumstances of this case. According to this doctrine, at a particular point in time, parts of the petition will be ripe for adjudication while others will not be ripe. This doctrine is accepted in American jurisprudence, and it fulfills the intentions underlying the general doctrine of ripeness – efficiency in deliberation, maintaining public trust in the judicial authority and improving adjudication. According to Justice Hendel, an examination of the question of the composition of the admissions committees indicates that it meets the conditions defined for partial ripeness, and it is correct to discuss this issue at this stage.

The current composition of the committees gives a majority status to members of the community to which the candidate seeks to be accepted. The existence of a majority on the committee on behalf of the community influences the processes of choosing candidates and is liable to create unconscious discrimination. Evidence for this phenomenon can be found in studies in the field of social psychology indicating that it is easy for us to develop feelings of alienation and revulsion toward those who are different from us. A group of people, as such, aspires to "clone" itself and choose as its members those who are similar to it. We cannot allow this situation in the case of public lands. It is true that the law includes control mechanisms for the admissions committee's decision, such as the objections committee or an appeal of the latter's decision to the Court for Administrative Affairs. However, the "court of first instance" – in this case, the admissions committee – has particular importance (also from the perspective of the theory of legal realism). The first stage is the most critical one. The current composition of the committees entails a chilling effect in that people are less likely to apply to it from the outset, or to appeal its decisions – even if such options exist.

Against the problematic background inherent in the current composition of the Admissions Committees, the next stage was to examine whether it meets the conditions of the limitation clause. In Justice Hendel's opinion, the current composition of the admissions committees is not proportional because its attendant blow to constitutionality outweighs the benefit it entails, and there are less harmful means of achieving the legislative purpose. The conclusion arising from these things is that the composition of the Admissions committees should be changed so that members of the community do not constitute a majority on it.

Summary of the opinion of Justice E. Hayut

Justice E. Hayut concurred with Chief Justice Grunis' conclusion in determining that the law under judicial review appears to be constitutional in light of the explicit prohibition of discrimination stipulated in section 6C(C). Therefore, at this stage, and prior to the actual implementation of the law by admissions committees, the question of its constitutionality is not ripe to adjudicate. However, Justice Hayut noted the substantial differences between the Israeli system of law and the American

system of law from which the doctrine of ripeness is drawn. These differences affect the scope of the judicial review exercised in each of the systems and call for a softened application of the ripeness doctrine in our system.

In addressing the concerns Justice Joubran expressed in his opinion regarding hidden and undetectable discrimination, Justice Hayut noted that while these fears cannot be dismissed, the wording of the law the Knesset ultimately approved, and which now stands under judicial review, includes a section prohibiting discrimination and thus is unlike Resolution 1195 of the Israel Lands Authority that preceded Amendment 8 of the Cooperative Societies Ordinance. Justice Hayut argued that the directive prohibiting discrimination sends a stern message to the admissions committees in these communities, forbidding them from rejecting a candidate based on the reasons listed in this directive. Nonetheless, Justice Hayut dismissed the possibility of interpreting this directive as one that fully adopts a "color blind" approach. In her opinion, this directive should be interpreted as one that seeks to balance the principle of constitutional equality with counter considerations reflected in the directives that "permit refusal," seeking to protect the freedom of communal organization. Justice Hayut also emphasized that in weighing this balance, the directive prohibiting discrimination takes prominence in light of the fact that we are dealing with state-owned lands, especially when the communal characteristics of the community are not sufficiently clear and when there is a relatively large number of households in the community and there is no real family-like communal intimacy. Justice Hayut added that it would be appropriate to apply the familiar methods from the discourse of equality in this context, including the "dominance test." She also stated that the burden of proof should be shifted to the admissions committee, which would need to show that the reason for rejecting a candidate who belongs to one of the groups protected from discrimination under section 6C(C) is a legitimate reason that does not stem from his group affiliation.

Finally, Justice Hayut noted the principle according to which a reasonable interpretation of a law is preferable to a decision on the question of its constitutionality. She determined that in order to minimize the vagueness of the directives in sections 6C(A)4 and 6C(A)5, we should read into these directives a way of interpreting objective criteria for their implementation. Thus, Justice Hayut stated that the professional opinion on which the admissions committee is entitled to rely in its decision to refuse to accept a candidate as unsuitable for the social life in the community must be given by an independent entity. She also stated that the social-cultural fabric of the community – on which the admissions committee bases its refusal to accept a candidate as unsuitable – must receive clear and declared expression in the bylaws of the society and should be expressed in the communal life of the community in practice; otherwise, there would be no foundation for assuming that this fabric would be harmed with the admissions of the candidate into the community.

Summary of the opinion of Justice H. Melcer

Justice H. Melcer concurred with the conclusion reached by Chief Justice A. Grunis, according to which there are grounds to reject the petitions in this case under the doctrine of "ripeness" because the petitions lacked a clear and concrete factual foundation, which is essential for adjudication. Nonetheless, in his view, this does not mean that in other, appropriate cases the subjects raised in a constitutional petition cannot be divided between those that are ripe for discussion and those that are still not ripe, to the extent that they can be separated from each other, as in the approach of Deputy Chief Justice M. Naor and of Justice N. Hendel.

The justice also stated that in his view the criterion that calls for "color blind" equality cannot serve as an exclusive criterion for invalidating the alleged discrimination, or for invalidating affirmative action. According to Justice Melcer, in addition to "neutral equality" there are other interests for the

purpose of distinguishing between forbidden discrimination and permitted distinction, or affirmative action, such as: the goal of the directive, the need to preserve the social fabric, encouraging diversity and involvement in society, and more. However, camouflage will not rescue discrimination. The essence is what matters, not the form. (Thus, for example, the attempt to cling to an ostensible religious reason in order to justify ethnic discrimination was found to be invalid in the past, as in the ruling in the case of the school for girls in Immanuel.) Moreover, if a "camouflage" attempt is made in a future decision, this will indicate that the person behind the camouflage knows and understands that it is a case of prohibited or inappropriate discrimination. On the other hand, if the reasons for rejection or affirmative action are transparent and the decision meets the obligation of argumentation – we will be able to assess and check whether the things are justified or invalid. Thus, in the future, we will be able to examine each decision of refusal according to its circumstances, goals and reasons, and the relevant social fabric.

Justice Melcer concluded his ruling with a comment once made by the late Deputy Chief Justice, Justice Menachem Elon:

> "The demand for *tolerance* on behalf of the majority vis-à-vis the minority should be balanced with a certain amount of *patience* on behalf of the minority vis-à-vis the majority, a balance that will be found according to the unique weight of each of the two opposing values"
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> (Civil Appeal 294/91 *Hevra Kadisha [Burial Society] of the Jerusalem Community v. Kastenbaum,* PD 46(2), 464, 507 (1992).