



Con/Text: “The Citizen in a Democracy”

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1. Justice Menachem Elon, Civil Claim 350/77, Kitan Ltd vs. Sarah Weiss et al., Ruling 33 (2), 785 1
2. Justice Meir Shamgar, Civil Claim 350/77, Kitan Ltd vs. Sarah Weiss et al., Ruling 33 (2), 805 1



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1. Justice Menachem Elon, Civil Claim 350/77, Kitan Ltd vs. Sarah Weiss et al., Ruling 33 (2), 785

...it is a Jewish tradition and a fundamental principle in Jewish law that, along with strict legal liability, there is an additional obligation to act *lifnim mi-shurat ha-din*. It is of particular significance here that this obligation found one of its chief expressions in Jewish law in the field of torts, in a case precisely in point with the instant case.

...Under our current legal system, we cannot force a person to act beyond the letter of the law; it is up to the initiative and goodwill of the litigant. But it appears to me that, under certain circumstances, it is appropriate for the sitting judge to make such a suggestion . . . I myself would exhort the vindicated party to behave in a manner beyond the letter of the law and compensate the claimants as she originally intended, so that she can fulfill the instructions of our Sages, so that you should walk on the path of goodness, and preserve the ways of the wise (Mishlei 2:20), the source of the principle of going beyond the letter of the law.”

2. Justice Meir Shamgar, Civil Claim 350/77, Kitan Ltd vs. Sarah Weiss et al., Ruling 33 (2), 805

I strongly dissent from the objective revealed between the lines of the opinion of my distinguished colleague that seeks to elevate payment of compensation *lifnim mi-shurat ha-din* to the status of a settled general principle of the law of torts...such an approach will necessarily bring about the filing of frivolous appeals...My concern here is not for the time of the court, but for the resulting consequence, namely, the adverse effect on those appellants whose appeals have merit and who will have to wait even longer for a decision in their cases.

Moreover, a legal system that deliberately chooses to abandon the boundary lines marked out in the substantive law and to add, as an additional and alternative stratum and as an established part of the system, a recommendation for the payment of compensation beyond what the law requires, necessarily acts according to impossibly vague standards, which ultimately depend on the fortuity of which particular judge sits when the case is reached. Such a system will, over the course of time, bring about confusion in the law and adversely affect the rights of the parties. The absence of clear standards may also often actually produce inconsistent results.

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