

The 1952 law presented here is the official English translation. The approved 2005 amendments are printed in bold italics and were translated by Adalah.

Civil Wrongs (Liability of the State) Law, 5712 – 1952

1. Interpretation

In this Law –

“the Ordinance” means the Civil Wrongs Ordinance, 1944;

“act” includes omission;

“civil liability” means liability under the Ordinance for an act done after the coming into force of this Law;

“war operation” includes any action combating terror, hostile acts, or insurrection, and also an action intended to prevent terror, hostile acts, or insurrection that is taken in a situation endangering life or limb;

other terms have the same meaning as in the Ordinance.

2. Civil liability of the State

For the purpose of civil liability, the State shall, save as hereinafter provided, be regarded as a corporate body.

3. Act done within the scope of lawful authority

The State is not civilly liable for an act done within the scope of lawful authority, or *bona fide* in the purported exercise of lawful authority; but it is liable for negligence in connection with such an act.

4. Defamation

The State is not civilly liable for defamation.

5. War operation

The State is not civilly liable for an act done in the course of a war operation of the Israel Defense Forces.

5A. Claims arising from activity of security forces in the region

A claim against the State or its agents for injuries arising from an act done in the region by the Israel Defense Forces (hereafter – claim) shall be heard in accordance with the provisions of this section:

(1) In this section –

“region” means each of the following : Judea, Samaria, and the Gaza Strip;

“Israel Defense Forces” includes other security forces of the State that operate in the region.

(2) (a) The court shall not hear a claim unless the injured person or his guardian or another person on his behalf gave written notice, in the manner that shall be set forth in regulations, of the act that is the subject of the claim;

(b) The notice shall be given within 60 days from the day of the act; however, if, as a result of the medical condition of the plaintiff or his guardian, or for other justifiable reasons, he was unable to give the notice within the said period, the notice shall be given within 30 days from the day in which the impediment was removed;

(c) Where the injured person died and did not give notice while alive, and the time for giving notice pursuant to subsection (b) has not expired, the notice shall be given by his dependents or by his estate or by another person on their behalf within 60 days from the day of his death;

(d) Notwithstanding the aforesaid in this section, the court may, for special reasons that it shall record, hear a claim regarding an act as to which notice was not delivered in a timely manner.

[Note: The provisions of paragraph (2) above commence on the day of the commencement of the regulations enacted as stated in paragraph (6) of this section; the provisions will apply to claims whose cause of action is an act that occurred on or after the day of commencement of the said regulations.]

(3) The court shall not hear a claim filed more than two years from the day of the act that is the subject of the claim; however, the court may extend this period for an additional period that shall not exceed one year if it is convinced that the plaintiff did

not have a reasonable opportunity to file his claim earlier. Where the plaintiff is a minor on the day of the act, the said period of extension shall not exceed three years.

[Note: Notwithstanding the provisions of paragraph (3) above, a claim whose cause of action is an act that occurred prior to 1 August 2002 and the period of prescription has not expired, the times referred to in the paragraph shall be counted from that date, provided that in no event shall the period of prescription exceed the period of prescription that applied by virtue of the law on the day of the act.]

(4) The provisions of sections 38 and 41 of the Civil Wrongs Ordinance [New Version] shall not apply to the hearing of the claim; however, the court may rule that the provisions of these sections shall apply if it found that the circumstances of the matter so justify and for special reasons that it shall record.

[Note: The provisions of paragraph (4) above do not apply to a claim in which the hearing of evidence began prior to 1 August 2002.]

(5) If the court is convinced that the State has been denied a fair opportunity to defend the claim because the Palestinian Council did not comply with the provisions concerning legal assistance in accordance with the Agreement, it may, after giving the parties an opportunity to state their arguments on this matter, deny the claim; in this paragraph,

“the Agreement” has the same meaning as in the Extension of the Validity of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Offenses and Legal Assistance) Law, 5728 – 1967;

“the Palestinian Council” has the same meaning as “Council” in the said law;

(6) The Minister of Defense is responsible for implementation of this section, and may, upon consultation with the Minister of Justice, and with the approval of the Constitution, Law and Justice Committee of the Knesset, enact regulations relating to its implementation.

5B. *Claims by an Enemy, or an activist or member of a Terrorist Organization*
((Amendment No. 7) – 2005)

(a) Notwithstanding any other provision of law, the State shall not be subject to liability under the law of torts for damage sustained by any person included in paragraphs (1), (2) or (3), with the exception of damage caused in the types of claims or to the types of claimants set forth in the First Annex.

(1) A citizen of an Enemy State, unless he is legally in Israel;

(2) An activist or member of a Terrorist Organization;

(3) Anyone who incurred damage while acting as an agent for or on behalf of a citizen of an Enemy State, or an activist or member of a Terrorist Organization.

(b) In this section –

"Enemy" and "Terrorist Organization" – as defined in Section 91 of the Penal Law, 5737 – 1977¹;

The "State" – includes any authority, entity or person acting on its behalf.

5C. Claims in a Conflict Zone

(a) Notwithstanding any other provision of law, the State shall not be subject to liability under the law of torts for damage sustained in a Conflict Zone due to an act performed by the security forces, with the exception of damage caused in the types of claims or to the types of claimants set forth in the Second Annex.

(b) (1) The Minister of Defense shall appoint a committee, which shall be empowered to approve an ex gratia payment under special circumstances, to an applicant to whom subsection (a) applies, and to determine the amount thereof (in this subsection: the "Committee");

(2) The members of the Committee shall be:

(1) An attorney who is qualified to be appointed as a District Judge, who shall be the Chair; the Minister of Defense shall appoint the Chair in consultation with the Minister of Justice;

(2) A representative of the Ministry of Defense;

(3) A representative of the Ministry of Justice.

(3) The Minister of Defense, in consultation with the Minister of Justice, and with the approval of the Constitution, Law and Justice Committee of the Knesset, shall determine the minimal conditions for filing an application to the Committee, the manner in which the application is to be filed, the working procedures of the Committee, and the criteria for an ex gratia payment.

(c) The Minister of Defense is entitled to declare an area as a Conflict Zone; should the Minister so declare, he shall set forth, in the declaration, the borders of the Conflict

¹ *Book of Laws 5737 [1977], p. 322.*

Zone and the period of time during which the declaration shall be in effect; a notice of the declaration shall be published in Reshumot [the Official Gazette].

(d) Should notice in writing have been given pursuant to Section 5A (2) (in this section: "Notice in Writing"), the following provisions shall apply:

(1) Should the Minister of Defense have declared the area in which the damage was caused as a Conflict Zone, the declaration shall be brought to the attention of the person who filed the Notice in Writing, within 30 days of the date on which the Notice in Writing was received by the Ministry of Defense.

(2) Should the Minister of Defense not have declared the area in which the damage was caused as a Conflict Zone, he shall be entitled, within 90 days of the date of receipt of the Notice in Writing, to declare the area as a Conflict Zone; should he have so declared, he shall bring the fact of the declaration to the attention of the person who filed the Notice in Writing within the aforesaid period of 90 days; should the Minister of Defense declare the area as set forth above following the expiry of the aforesaid period of 90 days, the Court shall be entitled, for special reasons which shall be recorded, to accept the argument that the damage which constitutes the object of the Notice in Writing took place in a Conflict Zone.

(3) Failure to bring the declaration of an area as a Conflict Zone to the attention of a person who filed a Notice in Writing, as set forth in paragraphs (1) and (2), does not and shall not adversely affect the validity of a declaration pursuant to subsection (c).

(4) The Minister of Defense, in consultation with the Minister of Justice, shall determine the manner in which the declaration of an area as a Conflict Zone is to be brought to the attention of a person who filed a Notice in Writing.

(e) In this section –

"Conflict Zone" – a zone outside the territory of the State of Israel, which the Minister of Defense has declared as set forth in subsection (c), in which the security forces acted or were present in the zone within the context of a conflict.

The "State" – includes any authority, entity or person acting on its behalf.

"Conflict" – a state of affairs in which an event or events of a military nature is or are taking place between the security forces and regular or irregular entities which are hostile to Israel, or a state of affairs in which operations of an aggressive nature by an organization which is hostile to Israel are taking place.

5D. Amendment of Annexes by an order

The Minister of Defense, following consultation with the Minister of Justice, and with the approval of the Constitution, Law and Justice Committee of the Knesset, shall be entitled to amend the First Annex and the Second Annex by an Order.”

6. Injury sustained during military service

(a) The State is not civilly liable for an injury sustained by, or illness or aggravation of illness caused to, a person during and in consequence of his military service.

(b) In this section, “military service” has the same meaning as in the Invalids (Pensions and Rehabilitation) Law, 5709 – 1949.

7. Death caused during military service

(a) The State is not civilly liable for the death of a person resulting from injury sustained by, or illness or aggravation of illness caused to, a person during and in consequence of his military service.

(b) In this section, “military service” has the same meaning as in the Invalids (Pensions and Rehabilitation) Law, 5709 – 1949.

7A. Prescription with regard to Rehabilitation Laws

Where an action in tort has been filed against the State and has been dismissed by virtue of section 6 or 7, the period of prescription for the filing of an application for a gratuity or pension under the Invalids (Pensions and Rehabilitation) Law, 5709 – 1949 (Consolidated Version) or the Fallen Soldiers’ Families (Pensions and Rehabilitation) Law, 5712 – 1952), shall terminate on the date fixed in such Law or at the expiration of six months from the day on which a judgment is delivered from which no further appeal lies, whichever is the later date, provided that the action was filed not later than one year after the expiration of the period of prescription fixed in such Law.

7B. Exception from civil liability for State agents

(a) In circumstances in which the State is not civilly liable by virtue of sections 5 to 7, the person because of whom the State would have been civilly liable but for the said sections shall also be exempt from liability as stated.

(b) This section shall apply also to an act or omission done prior to the day of commencement hereof, but shall not prejudice a final decision given prior to the said day.

7C. Right of State to indemnification

The provisions of section 7B shall not prejudice the right of the State for indemnification from any person who would have been liable therefore but for the said provisions.

8. Property vested in the State

The State is not civilly liable as the owner of property vested in it solely by operation of law, so long as it has not taken possession thereof.

9. Preservation of special provisions of law

Nothing in this Law shall affect any provision of any of the following enactments which establishes, limits or negates the liability of the State or of its institutions:

- (1) the Land (Settlement of Title) Ordinance;
- (2) the Post Office Ordinance;
- (3) the Government Railways Ordinance, 1936;
- (4) the Absentees' Property Law, 5710 – 1950;
- (5) the German Property Law, 5710 – 1950;
- (6) the Postal Bank Law, 5711 – 1951.

9A. Preservation of laws

The provisions of Sections 5B and 5C do not and shall not derogate from any protection, immunity or exemption given to the State of Israel under any law.

10. Repeal

Section 4(a) of the Ordinance is hereby repealed.

11. Amendment of Crown Actions Ordinance

The Crown Actions Ordinance shall be amended as follows:

In section 3, subsection (1) -

- (1) the full stop at the end of paragraph (c) shall be replaced by a comma and the word “or” shall be inserted thereafter;
- (2) there shall be added the following paragraph:
“(d) of civil wrongs.”

First Annex (Section 5B (a))

A claim the cause of action of which is damage that was caused to a person as set forth in Section 5B (a) while said person was in the custody of the State of Israel, as a detainee or as a prisoner, and provided that said person, after having been held in custody, did not again become an activist or member of a Terrorist Organization and did not act on behalf of or as an agent for any such organization.

(Section 5B (b))

A claim the cause of action of which is injury sustained by a person as stated in section 5B(b) at the time that he was in custody of the State of Israel as a detainee or prisoner;

Second Annex (Section 5C (a))

1. *A claim the cause of action of which is damage that was caused by an act performed by a person serving in the security forces, provided that said person was convicted of an offense with reference to the aforesaid act, in a final judgment handed down by a military court or any court in Israel; for the purpose of this subsection, an “offense,” is as defined in Section 22 of the Penal Law, 5737 – 1977,² excluding an offense that is of the kind of offenses for which strict liability applies; in claims pursuant to this subsection, regarding the limitation period for*

² *Book of Laws 5737 [1977], p. 322.*

presenting claims, as stated in Section 5A (3), the day of the act that is the subject of the claim shall be the day on which the judgment became final.

2. *A claim the cause of action of which is damage that was caused in a Conflict Zone to a person who was in the custody of the State of Israel, as a detainee or as a prisoner, and provided that said person, after having been held in custody, did not again become an activist or member of a Terrorist Organization and did not act on behalf of or as an agent for any such organization.*
3. *A claim the cause of action of which is an act by the Civil Administration, as defined in the Implementation of the Agreement Concerning the Gaza Strip and Jericho Area (Economic Arrangements and Miscellaneous Provisions) (Legislative Amendments) Law, 5755 – 1994³ or an act of the Government, Coordination and Liaison Administration, provided that the act was done outside the framework of conflict.*
4. *A traffic accident, as defined in the Compensation to Victims of Road Accidents Law, 5735 – 1975,⁴ in which a vehicle of the security forces was involved, wherein the license number of said vehicle or the identity number of the person who drove it at the time it was involved in the accident is known, unless the accident took place as a result of operational activity by the vehicle or hostile activity by the injured person against the State or against a civilian population.*
5. *Property damage caused to a vehicle as a result of a traffic accident, as defined in the Compensation to Victims of Road Accidents Law, 5735 – 1975, even if bodily damage was not caused in said traffic accident, and provided that the remaining conditions set forth in Section 4 of this Supplement existed.*

³ *Book of Laws 5755 [1994], p. 326.*

⁴ *Book of Laws 5735 [1975], p. 234.*

(Section 5C(b)(2))

1. A claim the cause of action of which is injury sustained by a resident of a zone of conflict as a result of an act done by a person serving in the security forces, provided that the said person was convicted of an offense for the said act by a final judgment in a tribunal or court in Israel; in this matter “offense” excludes an offense the definition of which states that negligence is the mens rea necessary for its existence, or an offense that is of the kind of offenses for which strict liability applies [within the meaning of sections 21 and 22 of the Penal Law, 5737 - 1977⁵];

2. A claim the cause of action of which is injury sustained by a resident of a zone of conflict at the time that he is in the custody of the State of Israel as a detainee or prisoner;

3. A claim the cause of action of which is the act of the Civil Administration or the Government, Coordination and Liaison Administration that is done outside the framework of conflict or as the result of conflict;

In this section,

“Civil Administration has the same meaning as in the Implementation of the Agreement Concerning the Gaza Strip and the Jericho Area (Economic Arrangements and Miscellaneous Provisions) (Legislative Amendments) Law, 5795 - 1994⁶;

“Government, Coordination and Liaison Administration” has the same meaning as in the Order Establishing the Government, Coordination and Liaison Administration (Gaza Strip Area) (No. 110), 5755 – 1994;

4. A traffic accident has the same meaning as in the Compensation of Victims of Traffic Accidents Law, 5735 – 1975⁷, in which a vehicle of the security forces is involved, the registration number of which or the identity of the driver of the vehicle at the time of the accident is known, except where the accident occurred incidental to operations

⁵ Book of Laws 5737 [1977], p. 322.

⁶ Book of Laws 5755 [1994], p. 326.

⁷ Book of Laws, 5735 [1975], p. 234.

activity of the vehicle or to the hostile action of the injured person against the state or against a civilian population;

5. Property damage caused to a vehicle following a traffic accident has the same meaning as in the Compensation of Victims of Traffic Accidents Law, 5735 – 1975, even if bodily injury was not sustained in the said accident, provided that the other conditions set forth in section 3 are met.

The following provisions from the amending legislation provide, inter alia, that the amendments shall have retroactive effect. These provisions have been translated by Adalah.

Provisions concerning entry into force and applicability of Amendment No. 7 – 2005

(a) The provisions of Sections 5B to 5D of the Principal Law, in the wording set forth in Section 1 of this Law, shall apply to any act which took place on 29 September 2000 and thereafter, but with the exception of an act in respect of which a claim was filed and the hearing of evidence therein commenced prior to the date of publication of this Law.

(b) For a period of six months from the date of publication of this Law, the Minister of Defense shall be entitled, notwithstanding the provisions of Section 5C (d), to declare an area as a Conflict Zone with regard to the period between the 29 September 2000 and the date of publication of this Law.

Duty of appointment of a first committee and the initial enactment of regulations

(a) A first committee pursuant to Section 5C (b) of the Principal Law, in the wording set forth in Section 1 of this Law, shall be appointed within 60 days of the date of publication of this Law.

(b) Initial regulations pursuant to Section 5C (b) (3) of the Principal Law, in the wording set forth in Section 1 of this Law, shall be brought before the Constitution, Law and Justice Committee of the Knesset for approval within 60 days of the date of publication of this Law.