



UNIVERSITATEA
„ALEXANDRU IOAN CUZA“
din IAȘI

**Practical Judicial-Therapeutic Model (JTM) For
Resolving Disputes in Divorce Proceedings
Long Abstract**

By

Galit Gilvarg Keidar

**Alexandru Ioan Cuza University of Iasi
Faculty of Law**

This dissertation is submitted for the degree of Doctor of Philosophy (Law)

June 2021

Ph.D. Scientific Coordinator: Prof. Dr. Valerius M. Ciucă

Table of Contents

Research Theme and the Importance of the Subject Matter	4
The Dissertation's Contribution	5
The Novelty of the Study	5
The Study Aims	6
Research Questions	7
The Theoretical and Methodological Contribution of the Study.....	7
Psychological Aspects of Divorce	8
Sociological Aspects of Divorce	10
Israeli Law	13
American Law	19
French Law	26
The Therapeutic Law and the Judicial System-Therapeutic Model – JTM - for Resolving Disputes	34
Bibliography	52
Books.....	52
Articles	54
Israeli Legislation.....	60
Israeli Jurisprudence.....	60
American Legislation	62
American Jurisprudence.....	62
French Legislation.....	62
European Jurisprudence	62
Other Legislation.....	63
Other Sources	63

Long Abstract

The purpose of this work is to produce a dialogue that will lead to an innovative judicial-therapeutic model for judges who deal with family law in general and divorce proceedings between spouses in particular.

Therefore, the study develops a judicial-therapeutic model that anchors procedures for resolving disputes in divorce proceedings.

The starting point of this work is that the law is a social-cultural institution, based on rules that regulate human activity and the distribution of resources in a particular area while using controlled power and the ability to impose sanctions¹. The place of the "players" in the legal process - the lawyers, the parties and the judge, in any legal tradition, allows for a different platform for the assimilation of dispute resolution processes.

The study deals extensively with the psychological and sociological aspects related to divorce proceedings and their short and long-term effects on the parties, their children and society as a whole.

The study also identifies how divorce law works in three main legal systems - Israeli, American and French. The study compares the three legal methods in order to identify the parallel lines between the methods when it comes to divorce proceedings as well as the differences between them.

The study also deals extensively with various aspects of therapeutic law, including the intra-judicial perception of retired family judges regarding the analysis of the judicial conception in divorce proceedings and the role of therapeutic law in family disputes in general and divorce proceedings in particular.

¹Alberstein Michal, "Judicial Dispute Resolution: Towards the Theory of Law Beyond Controversy", 11 *Din Udvarim - Haifa Law Review* 17, 27 (2020) (Hebrew) (Hereinafter: "**Judicial Dispute Resolution – 2020**").

The study offers a Practical Judicial-Therapeutic Model (JTM) that can be incorporated into any of the legal methods, with the necessary adjustments, to bring about legal, emotional, psychological, personal, economic and family conflict in a way that will benefit most parties relating to the conflict.

The model should significantly reduce the level of conflict involved in the dispute and provide a holistic response to all aspects related to the conflict, including the interests, aspirations, feelings and needs of the parties, alongside addressing the immediate legal aspects. In this way, using the model will significantly reduce the filing of future claims related to the dispute by the parties and will, in the long run, reduce the burden on the judiciary - judges and caregivers.

A combination of the researcher's academic-theoretical experience in the field of family law, conflict resolution, ethics and bioethics and practical experience as a family lawyer, indicated a large gap between the prevailing ("existing") state of the modern Western legal system and the special nature of divorce disputes that require a different approach.

The study is a theoretical study that examines academic aspects alongside practical ones in order to examine a large-scale phenomenon concerning multidisciplinary aspects.

Research Theme and the Importance of the Subject Matter

The main issue that has led to this study is a gap between the legal approach that is used in judicial proceedings in divorce cases and the special nature of these proceedings.

Divorce is a traumatic event, affecting all areas of life in a multidimensional way - personal, family, economic, social, legal and religious between which there is a circular and reciprocal connection².

² Janoff-Bulman Ronnie, *Shattered Assumptions: Towards a New Psychology of Trauma*, p. 256 (New York: Free Press, 1992).

Divorce is a social phenomenon with long-term effects. In the Western world, there is a steady increase in the divorce rate in general and in the conflict-ridden divorce rate in particular³. Adversarial litigation between parties in a complex and sensitive situation raises many ethical and moral questions about its implications.

While at the end of a "normal" legal process, the relationship between the parties for the most part ends, the divorce does not end the family relationship but requires a re-institutionalization of parenting relationships, marital relationships and the creation of a "post-divorce family".

The Dissertation's Contribution

The study suggests a fundamental change in the prevailing legal and social approaches and offers a novel judicial-therapeutic model (JTM) for conflict resolution in divorce proceedings.

In this way, in the absence of a holistic response to divorce disputes, the study seeks to fill the existing legal-therapeutic lacuna.

The Novelty of the Study

The adversary system focuses on judicial rights and obligations. However, the JTM considers wide spectrum like Needs, Targets, Feelings, Relationships and Personal Development. By putting those elements into the equation, a much better result to all parties involved (the couple, their children, their families, the judicial system itself, the state and society at large) can be achieved.

³ Loyta Ziva "Conflict-intensive divorce: clinical and practical aspects". In *Psychology Law and Ethics in Israel: Psychological Evaluation, Psychotherapy and Judicial Decisions*, p. 237 (Yagil David, Carmi Amnon, Zaki Moshe & Livni Anat eds., 2008).

The adversary system focuses on the opposing sides. The JTM recognizes the relational orientation of relationships⁴ – see the law as a positive interpersonal agent that deals with emotional, personal and social issues.

The adversary system fosters a culture of criticism - the use of conflicting arguments and threats between the parties⁵. The JTM fosters connection between cognition, feeling and behavior – the three elements of Emotional Intelligence⁶.

The adversary system is a binary perception of the law – black or white, a victory for one side is a loss for the other side⁷. The JTM identifies the complexity of the dispute and suggests alternative solutions.

The adversary system imposes decisions on the parties. The JTM allows the parties to be part of the process - to understand their wishes, needs and interests.

In the adversary system there is an increased repetition of use of the judicial systems – repetitive claims, difficulties in enforcing judgments and need for social workers' intervention⁸. These episodes are much less to occur in the JTM thanks to the collaboration between the parties.

The model would create an internal judicial mechanism that would apply to the top of the judicial system. Thus, will lead to a change in the socio-moral perception of the entire legal system and of various legal agents - judges, lawyers, social workers and law enforcements workers. The major importance of the model is that it would be applicable in any legal system (with necessary adjustments in accordance with the local laws).

The Study Aims

⁴Perlman Karni "The Role of the Therapeutic Judge and Its Reference to Ideas Derived from the Legal Realism School", 26 *Bar Ilan Law Studies*, 415, 429-430 (2010) (Hebrew).

⁵ Ibid, p. 432.

⁶ Goleman Daniel, *Emotional Intelligence* (10th Anniversary ed.) (Bantam Pub. 2005) (Hereinafter: "**Goleman -2005**").

⁷ Menkel-Meadow Carrie, "Mothers and Fathers of Invention: The Intellectual Founders of ADR", 16(1) *Ohio St. J. Disp. Resol.*, 1 (2000).

⁸Proposed Law for the Settlement of Disputes in Family Disputes, 5774 -201, Bill 885 (2014).

The research deals with this legal Lacuna and installs a new judicial system, that is the JTM. This new model is translated into practical and applicable legislation in order to create a synergic process.

The goal is to anchor this model at the top of the judicial system, through appropriate and suitable legislation, in order to create a fundamental change in the prevailing legal approach in divorce procedures.

The research produces legislative tools and means in order to create the necessary "after divorce family", thus will create a much more practical in real life supporting legal system.

Research Questions

1. What are the consequences of divorce in psychological and social aspects?
2. How are family disputes different from other civil disputes?
3. How can the principles of therapeutic law, in its broadest aspect, be harnessed to build an alternative model for divorce disputes?

The Theoretical and Methodological Contribution of the Study

The study proposes a judicial-therapeutic model (JTM), which takes into account the broad psychological and sociological consequences of divorce proceedings, understands them in depth and gives them conceptual and practical expression in the judicial-therapeutic process in order to maximize the outcome of the legal process in a multi-dimensional way - horizontally and vertically.

In the horizontal sense, the model gives response to litigants in personal, family, economic, social and legal aspects.

In the vertical sense - the model also takes into account needs, goals, emotions, relationships and personal development.

The judicial-therapeutic model has the power to influence the interpersonal processes of the parties (including other family members who are not a direct part of the

discussion such as children whose voices are not always heard in the process, grandparents, etc.) and bring about greater satisfaction not only from the results of the procedure but from the process itself which will be perceived as less traumatic, offensive and energy consuming.

The model also has the power to change the perception of the judicial system in family disputes, not only in the judge himself/herself but also in other legal agents such as lawyers, enforcement systems and involved therapeutic parties (e.g. social workers), in a way that the legal process around the dispute will have therapeutic signs alongside the legal ones and there will be a significant reduction in the prominent adversarial signs.

Psychological Aspects of Divorce

Jurisdiction is a unique occupation. This is not just a profession but a real mission⁹. Jurisdiction includes the whole range of human problems. It places an unparalleled responsibility in the hands of the judge who decides the fate of others, including the denial of liberty for many years; In the finances of the other, in personal rights vis-à-vis the government and in the ways in which the government conducts itself towards the citizen and the resident¹⁰. But jurisdiction is not just about common sense, trial and law. Jurisdiction also deals with emotional aspects. The law has effects on the psychological well-being of the individual. This is because man is a very complex creature. A person's happiness and functioning depend on many and varied variables. This is true in all areas of law and twice as true in the area of family law. In family law there is centrality to the emotional experience and subjective world of the litigants. Many times, the emotional experience is the main thing and therefore these laws require a different and unique discourse. The judge must place himself/herself between the aspiration of the judicial process to objectivity, uniformity, coherence and formalism and the emotional worlds unfolding before him/her¹¹.

⁹ Rubinstein Elyakim, "Hearing Heart" - On the Act of Judgment ". In *Yoram Danziger's Book* (Limor Zer-Gutman and Ido Baum eds.), 47-61 (2019).

¹⁰ Idem.

¹¹ HaCohen Menachem, "The Interpersonal Discourse Folded in The Legal Hearing in The Family Court", 2 Family in the law (Journal of Academic Center for Science and Law), 385 (2008) (Hebrew).

Divorce is one of the most difficult life events, involving stress, conflict of desires, confusion, loss and stress¹². Divorce is traumatic and affecting all areas of life. Due to changing the trajectory of family life, divorce requires the integration of events, re-learning of roles and the formation of alternative patterns in family life¹³.

Given the special nature of divorce proceedings and the far-reaching effects of various psychological aspects, both on the parents themselves and their children, including the implications of the divorce experienced by children in childhood on their adult lives, this study first reviews the psychological aspects of divorce.

In the last two decades, studies have begun to address the positive effects resulting from the traumatic event associated with divorce. Many studies show that a traumatic event can lead to post-traumatic growth¹⁴. Alongside the cognitive process, within the growth process there is an emotional component. The person enters a state of survival in order to cope with the trauma. If the coping is successful, growth occurs. The more significant the coping, the greater the growth¹⁵.

Defining divorce in terms of trauma predicts increased difficulty in advance. Therefore, despite the many difficulties that accompany the divorce process, divorce should be conceptualized into adaptive, optimistic and hopeful family systems. Such a conceptualization can identify the crisis as an opportunity for growth by giving meaning to the crisis experience by providing a subjective interpretation of the event of the crisis or transition¹⁶.

¹² Rabin Claire, *The New Divorce: Positive Change During and After the Transition Period* (Even Yehuda: Amatzia, 2010) (Hebrew).

¹³ Godley Jenny et al., "A Generation at Risk: Growing up in an Era of Family Upheaval", 78 *Social Forces*, 396 (1999); Amato Paul R., "The Consequences of Divorce for Adults and Children", 62 *Journal of Marriage and Family*, 1269 (2000); Hetherington Eileen Mavis & Kelly John, *For Better or for Worse* (W. W. Norton & Company, 2002).

¹⁴ Calhoun Lawrence G. et. al., "Positive Outcomes Following Bereavement: Paths to Posttraumatic Growth", 50 *Psychologica Belgica*, 125 (2010); Tedeschi Richard G, "Violence transformed", 4 *Aggression and Violent Behavior*, 319 (1999).

¹⁵ Tedeschi Richard G. & Calhoun Lawrence G. Calhoun, "Posttraumatic Growth: Conceptual Foundations and Empirical Evidence", 15 *Psychological Inquiry*, 1 (2004) (Hereinafter: "**Tedeschi & Calhoun – 2004**").

¹⁶ Taylor Shelley E., *Adjustment to threatening events: A theory of cognitive adaptation.*, 38 *American Psychologist*, 1161-1173 (1983).

Divorce has short-term and long-term effects on both divorcing parents and their children. Studies have found negative effects on the immediate adjustment of children and adolescents, in a variety of emotional, educational, behavioral, and social metrics. Short-term effects on mental well-being, self-esteem and relationships with parents were also found¹⁷. Along with the short-term effects, long-term effects of parental divorce on children were also found. A variety of areas of adaptation in adulthood were examined, such as academic, occupational and economic adaptation¹⁸, physical health indices¹⁹ and adaptive difficulties such as tendency to use psychoactive substances²⁰. In addition, emotional aspects²¹, self-image²², mental well-being and mental health²³, and the ability to cope with stressful situations²⁴ were examined. The coping ability of divorced parents' children in interpersonal and intimate relationships was also examined²⁵. The long-term effects can be explained using various theories such as Social Learning²⁶ Theory; Accumulative Stress Model; Attachment Theory; Binuclear Family and long-term effects of divorce in gender aspects.

Sociological Aspects of Divorce

Divorce is not just a transition that changes the development of the family, but it brings about changes in social processes. There is a reciprocal influence between the changes of the divorce proceedings at the level of the individual and the changes at the level of

¹⁷ Amato Paul R. & DeBoer Danelle D., "The Transmission of Marital Instability Across Generations: Relationship Skills or Commitment to Marriage?", 63 *Journal of Marriage and Family*, 1038 (2001).

¹⁸ Amato Paul R. & Keith Bruce, "Parental Divorce and The Well-Being of Children: A Meta-Analysis", 110 *Psychological Bulletin*, 26 (1991).

¹⁹ Wadsworth Michael et al., "Children of Divorced and Separated Parents: Summary and Review of Findings from a Long-Term Follow-Up Study in the UK", 7 *Family Practice*, 104 (1990).

²⁰ Amato Paul R. & Rivera Fernando, "Paternal Involvement and Children's Behavior Problems", 61 *Journal of Marriage and the Family*, 375 (1999).

²¹ Blakeslee Sandra et al., *The Unexpected Legacy of Divorce* (Hachette Books, 2000).

²² Clifford Terry & Clark Roger, "Family Climate, Family Structure and Self-Esteem in College Females", 23 *Journal of Divorce & Remarriage*, 97 (1995).

²³ Chase-Lansdale P. Lindsay et al., "The Long-Term Effects of Parental Divorce on the Mental Health of Young Adults: A Developmental Perspective", 66 *Child Development*, 1614 (1995).

²⁴ Irion Jane C. et al., "The Influence of Divorce On Coping in Adolescence", 17 *Journal of Youth and Adolescence*, 135 (1988).

²⁵ Mirowsky John & Ross Catherine E., "Well-Being Across the Life Course", In A. V. Horwitz & T. L. Scheid (Eds.), *A Handbook for The Study of Mental Health: Social Contexts, Theories, And Systems* (pp. 328-347) (New York, NY, US: Cambridge University Press, 1999).

²⁶ Bandura Albert, *Social Learning Theory* (General Learning Press, New York, 1971).

society. This influence leads to the formation of new social patterns²⁷. Divorce is a cultural phenomenon that goes beyond the sole interest of the couple and their children. This phenomenon is affected by systems tangent to the family unit and society as a whole. Therefore, the personal divorce experience will carry a different character from society to society.

First, it is necessary to clarify what culture is. Culture is a set of lifestyles, values and meanings shared by a particular collective entity²⁸, which has a unique and characteristic set of values, beliefs, meanings and traditions common to all its members and which determine their behavior²⁹.

Also, culture is the set of activities and objects through which meanings are produced and transmitted in those collective entities³⁰.

Every culture, traditional or modern, deals with the same problems, but the difference between cultures is the way culture deals with the problem. The way culture deals with the problem reflects its scale of values³¹.

There are six dimensions of culture. A dimension is an aspect of a culture that is measurable in relation to other cultures³².

The six dimensions are: Power Distance (small to large); Collectivism versus Individualism, Femininity versus Masculinity, Uncertainty Avoidance, Long-term vs. Short-term Orientation³³ and Indulgence versus Restrain³⁴.

²⁷ Amato Paul R., "The Post-Divorce Society: How Divorce Is Shaping the Family and Other Forms of Social Organization", In *The Postdivorce Family: Children, Parenting and Society* (p. 161) (R. A. Thompson, & P. R. Amato ed.) (Sage Publications, 1999).

²⁸ Regev Motti (Mordechai), *Sociology of Culture: A General Introduction* (The Open University of Israel, 2011) (Hebrew).

²⁹ Ibid., p. 14-15.

³⁰ Ibid., p. 16.

³¹ Hofstede Geert, Hofstede Gert Jan & Minkov Michael, *Cultures and Organizations: Software of the Mind (3rd Edition)*, p. 29 (McGraw-Hill Publishing, 2010).

³² Ibid., p. 31.

³³ Ibid., p. 37; Hofstede Geert & Bond Michael Harris, "The Confucius Connection: From Cultural Roots to Economic Growth", 16 *Organizational Dynamics*, 5 (1988); Hofstede Gert Jan, *Cultures and Organizations: Software of the Mind* (McGraw-Hill Publishing, 1991); Hofstede Gert Jan, *Culture's Consequences: Comparing Values, Behaviors, Institutions, And Organizations Across Nations* (2 Ed. Thousand Oaks, Calif; Sage Publications, 2001).

³⁴ Hofstede Geert, "Dimensionalizing Cultures: The Hofstede Model in Context", 2 *Online Readings in Psychology and Culture*, 9 (2011).

Of all the dimensions of culture, Individualism - Collectivism (IND-COL) is the most relevant to aspects of divorce. IND-COL is often perceived as a factor that unites the beliefs, norms, laws and values of a cultural group in relation to the individual's friendships within the group as well as in the individual's relationship with others³⁵.

Divorce culture is a culture of symbols, beliefs and practices that observe and reinforce divorce, and in the process, redefine the term "marriage." A culture in which the divorce phenomenon has been assimilated will be more egalitarian in relation to the institution of the family, which stems from an awareness of the fragility of the family unit, as opposed to a culture in which marriage is perceived as a perpetual obligation, where there is less equality between spouses³⁶.

For many hundreds of years around the Western world and in other parts of the world, marriages have been indestructible. Today, however, divorce is possible in almost all industrialized countries and developing societies in the world³⁷. Divorce became more and more common around the world in the late 20th century³⁸. The explanations for the increase in the divorce rate are divided into several levels: explanations at the individual level, explanations at the macro level that include structural and cultural changes, and explanations related to the changes in the religious attitude.

One of the relevant aspects for examining the divorce phenomenon is the demographic and social aspects of the couple and their impact on the stability of the marriage. The cultural consequences of divorce do not only concern their social aspect at the general level but also have an impact on the phenomenon at the individual level. Marriage patterns result from the interaction between three social forces: the individual's preferences for certain traits in a partner, called homogamy - people will prefer to marry

³⁵ Triandis Harry C., "The Psychological Measurement of Cultural Syndromes", 51 *American Psychologist*, 407 (1996).

³⁶ Yodanis Carrie, "Divorce Culture and Marital Gender Equality", 19 *Gender & Society*, 644, p. 645 (2005).

³⁷ Anthony Giddens; Philip W Sutton, *Sociology* (6th ed. 2009) (Hereinafter: "**Giddens – 2009**").

³⁸ Amato Paul R., "Research on Divorce: Continuing Trends and New Developments", 72 *Journal of Marriage and Family*, 650 (2010); Hill Paul B & Kopp Johannes, "Editorial on the Special Issue 'Research on Divorce Causes and Consequences'". In *Research on Divorce: Causes and Consequences*, 40(3) *Comparative Population Studies*, pp. 219–228 (2015); Wang Cheng-Tong Lir & Schofer Evan, "Coming Out of the Penumbra: World Culture and Cross-National Variation in Divorce Rates", 97 *Social Forces*, 675, 676 (2018).

people who are similar to them in their traits³⁹; The influence of the social group in which the individuals are members; and the constraints of the marriage "market" where individuals are looking for a mate⁴⁰. In terms of aspects of homogeneity and divorce, homogeneous marriages are more stable than mixed marriages.

It is important to examine the psychological and sociological aspects of divorce in order to understand the contexts in which marital relationships take place in different societies and how they are perceived in the eyes of individuals. It is also important to understand the implications of divorce in psychological aspects in order to produce a basis for a therapeutic model, as proposed in this paper.

Israeli Law

The chapter dealing with Israeli law in divorce matters has two main purposes. The first goal is to obtain a factual-chronological picture of the development of divorce law in Israeli law in recent decades and the changes that have taken place in law by virtue of modernization and globalization. The second goal is a deep understanding of the legal-philosophical level of these laws in order to penetrate the depths of the rationales underlying them in order to create a basis for building judicial alternatives and improving the existing law on divorce in Israeli law.

Jurisdiction in Israel is enshrined in the Basic Law: Judiciary⁴¹ and is vested in courts, tribunals and other authorities.

The judiciary system is divided into several subsystems. The two main ones are the court system, which includes the Magistrates' Courts, the District Courts and the Supreme Court, and alongside it the court system designed to deal with specific matters

³⁹ Kalmijn Matthijs, "Intermarriage and Homogamy: Causes, Patterns, Trends", 24 *Annual Review of Sociology*, 395, 398-399 (1998) (Hereinafter: "**Kalmijn – 1998**").

⁴⁰ Kalmijn Matthijs, "Shifting Boundaries: Trends in Religious and Educational Homogamy", 56 *American Sociological Review*, 786 (1991).

⁴¹ Par. 1 of the Basic Law: The Judiciary, Law Book 1110 - 5744 (1984).

that require special expertise - the Labor Court, Religious Courts, Military Courts and the Traffic Court. The courts and tribunals are associated with the judiciary⁴².

The roots of the system of religious courts in Israel are inherent in the legal systems of the end of the Ottoman period and of the Mandatory period. The operating religious courts are the most significant remnant that the Israeli legal system preserves from the Ottoman legal heritage. "Personal Status Matters" is a fundamental concept, both in the choice of law and in the determination of judgment. The meaning of this term is matters in respect of which the legislature saw fit to apply the personal law to the litigant⁴³.

In Israel there are many recognized religions, each religion has its own unique laws concerning the personal status of members of the same religion. Thus, there is a system of religious courts, which have been given powers to discuss, rule and decide on the personal status of members of the recognized religious communities in Israel - marriage, divorce, alimony, guardianship, adoption, inheritances and wills⁴⁴. There are rabbinical courts for Jews, Sharia courts for Muslims, Druze courts and courts for the Christian community. Their powers, especially in matters of marriage and divorce, are unique and limited to litigants from the same religion only. In other matters of personal status, the religious courts have jurisdiction parallel to the jurisdiction of the Family Court, which is usually conferred by the consent of the parties⁴⁵.

Alongside the religious courts, the family courts operate. The Family Court was established about two and a half decades ago under a special law passed in the Knesset (the Israeli Parliament) in 1995⁴⁶. With the enactment of the law, all family matters previously discussed in the civil courts were transferred to the jurisdiction of the Family Court and so were all matters of personal status. The aim was to concentrate under one judicial roof all the jurisdiction of the courts on family matters and to discuss one family dispute in all its shades in the same court, and as far as possible before one judge⁴⁷.

⁴² Deshe Vered, *The Israeli Judicial System*, p. 371 (Nevo Publishing, 2019) (Hebrew) (Hereinafter: "**The Israeli Judicial System – 2019**").

⁴³ Tedeschi Gad, "Personal Status", 22 *Hapraklit*, 171 (Hebrew).

⁴⁴ The Israeli Judicial System – 2019, above footnote 36, p 404.

⁴⁵ *Ibid*, p. 405.

⁴⁶ The Family Court Act, 1995 – 5755. Law Book 1537 (1995) (Hereinafter: "**The Family Court Act – 1995**").

⁴⁷ The Israeli Judicial System – 2019, above footnote 36, p. 377; Sochat Shaul, "The Family Court - A house indeed?", 2 *Family in the Law*, 375 (2008) (Hebrew).

The authority of the Family Court is conferred on the existence of two cumulative conditions - there must be a family relationship between the parties to the lawsuit as defined in the Family Court Law; The cause of the conflict or its origin must be in the family relationship⁴⁸.

Civil marriages of Jews who are citizens of Israel and its inhabitants are now recognized following the "Bnei Noach" ruling⁴⁹. These are spouses who married in another country, outside the borders of Israel. Unlike Western legal systems, divorce in Jewish law is not a judicial action. It is not the court that terminates the marriage relationship but the parties themselves, by mutual consent⁵⁰. In the case of spouses who married in a civil marriage abroad, the authority to hear their divorce claim will still be the Rabbinical Court since there is no civil divorce in the State of Israel. Spouses who are married in a civil marriage abroad are not married according to the religion of Moses and Israel, but they are married according to the rulings of the "Bnei Noah", which are part of Jewish law, and therefore they need a divorce judgment. A "Get" (a document in Jewish religious law which effectuates a divorce between a Jewish couple) and divorce are the same⁵¹. The need for a stringently divorce (a divorce designed to remove doubt and make it unequivocally clear that the woman is single) depends on the circumstances of each case. The cause of divorce is "the end of the marriage."

When it comes to mixed couples, meaning that each belongs to a different religion, there is a separate arrangement. The Family Court has general and residual jurisdiction to hear and rule on divorces between mixed spouses. The procedure is not called a divorce but rather a "marriage annulment"⁵².

Beyond the aspects related to the divorce itself, Israeli law is required to deal with issues related to the divorce - matters of minors, child support and property matters.

⁴⁸ Pars. 1 & 3 to the Family Court Act – 1995.

⁴⁹ The High Court of Justice 2232/03 An. v. Tel Aviv-Jaffa Regional Rabbinical Court, 60(3) 496 (2006) (Hereinafter: "**HCJ Bnei Noah**").

⁵⁰ Schiffman Pinchas, *Family Law in Israel* (Volume 1, Second Edition) (Hebrew University Press, 1995) (Hebrew).

⁵¹ HCJ Bnei Noah, above footnote 43, Par. 29.

⁵² Par. 1 of Determination of Jurisdiction Regarding the Dissolving of Marriage (Special Cases and International Authority), 5729-1969, Law Book 573; Family Appeal Permission (Jerusalem) 41782-04-10 An. v. An. (published in Nevo Legal Database, 23.3.2011).

The relationship between parents and children is measured not only by the term "custody" but is also shaped by two additional concepts - guardianship and length of stay. Guardianship defines parental responsibility. It gives the parent the right to make decisions concerning the child including receiving medical care, caring for various needs, caring for the child's assets, deciding on the educational institutions the child will attend, determining the type of education to be given to him/her and so on⁵³. Stay times determine the division of time of each of the children with the parents⁵⁴. In essence, the length of stay deals with the distribution of childcare time - on what days the children will be in each of the homes. The issue of custody, on the other hand, deals with certain powers and rights given to the custodial parent, regardless of when the children will be at home and when with the other parent⁵⁵.

The issue of alimony in Israeli law among Jews is a "hot" issue that has undergone significant upheavals in the past two years.

The obligation to pay child support and the division of the child support burden among Jews is determined according to Hebrew law. Under Hebrew law, the basic obligation of child support is for their necessary needs until the age of 6. Beyond this obligation, there is a Halachic (the collective body of Jewish religious laws derived from the written and Oral Torah) safety net of "charity law", which states that the relatives of a person in financial distress must help him, as much as they can. In 1944 the Chief Rabbinate enacted a regulation that extended the child support obligation for the necessary needs of children up to the age of 15⁵⁶. The ruling set a minimum threshold of "necessary needs" that the father owes and set it at NIS 1,400 per child (about 380

⁵³ Mazeh Yoav, "Children's Custody: A Substantive Term or a Hollow Notion?", 28 *Law Studies - Bar-Ilan University Law Review*, 207, 219-220 (2012) (Hebrew) (Hereinafter: "**Mazeh – 2012**").

⁵⁴ Ibid, p. 222; Novinson Steven L., "Post-Divorce Visitation: Untying the Triangular Knot", *U. Ill. L. Rev.*, 121(1983); McGavin Kim H., "Child Custody and Visitation in Maryland: In the Best Interests of the Child", 26 *U. Balt. L.F* 3 (1995); Blecher-Prigat Ayelet, "Rethinking Visitation: From a Parental to a Relational Right", 16 (1) *Duke Journal of Gender Law & Policy* (2009); Larson Meredith, "Child Custody, Visitation & Termination of Parental Rights", 10 *Geo. J. Gender & L.* 713, (2009).

⁵⁵ Mazeh – 2012, above footnote 47, p. 222; Family Case (Eylat) 1724/00 K.d v. K.I. (Published in Nevo Legal Database 20.3.2008); Family Case (Jerusalem) 1886/04 A.L v. P.L. (Nevo Legal Data Base, 19.8.2006); Family Case (Hadera) A.B.Z v. A.B.Z. (Published in Nevo Legal Data Base, 26.7.2006); Family Appeal (District Court Jerusalem) 1099/06 An. V. An. (Not yet published, 10.4.2007); Family Case (Kfar Saba) 11657/03 A.A.I v. A.B (Published in Nevo Legal Database 16.6.2011).

⁵⁶ Mazeh Yoav, "The Child Support Revolution: Following the Supreme Court's ruling in Family Appeal Case 919/15" (to be published, 2018) (Hebrew) (Hereinafter: "**Mazeh – 2018**").

EURO) per month⁵⁷, in addition to 30% to 50% (depending on the number of children) of the mother's housing costs ("housing") where the father is committed to the children⁵⁸. In addition to these expenses, the father has to bear half of the "exceptional expenses" which include education expenses, health expenses that are not covered by the Health Maintenance Organization - HMO, dental care, orthodontics, glasses, psychological treatment, tutoring, summer camps and classes. It is also the mother who receives the allowances and additional benefits for the children (for example, a child allowance from the National Insurance Institute paid for each child)⁵⁹.

The discussion should be divided into three age groups. The first is 0 to 6. The second is 6 to 15 and the last 15 to 18. Regarding ages 0-6, the common opinion is that the obligation in the necessary needs of the children applies only to the father⁶⁰. With regard to ages 15-18, the Supreme Court ruled that the child support obligation for all the needs of the children is a state of charity and therefore applies equally to both parents⁶¹. The main controversy is over child support for ages 6-15 and how the Chief Rabbinate Regulation should be interpreted.

⁵⁷Ibid, p. 2; Family Case (Family Tiberias) 1216-08-12 An. V. An. (Published in Nevo Legal Database, 02.02.2015); Family Appeal permission (Central District) 14655-06-17 RC v. D.C. (Published in Nevo Legal Database, 26.9.2017).

⁵⁸ Maze – 2018, above footnote 50, p. 2; Civil Appeal 3301/92 Shai Talmor v. Ofra Talmor, par. 3-4 (Published in Nevo Legal Database, 08.07.1993).

⁵⁹ Maze – 2018, above footnote 50, p. 2.

⁶⁰ See extensively the sources according to the Jewish law for billing in child support up to age 6 at Maze Yoav, "Child Support - Between Myth and Reality: The Gap between the Religious Law and the Case Law", 11 *Din Udvarim* (Haifa Law Review) 501, 515-517 (2018) (Hebrew).

⁶¹ Maze – 2018, above footnote 50, p. 3; Civil Appeal 166/66 Liora Goldman v. David Goldman, HC Rul. PM(2) 533 (1966); Civil Appeal 425/68 Nissan Maskil Leitan, minor v. Aaron (Arthur) Maskil Leitan, HC Rul. 23(1) 309, 321 (1969); Civil Appeal 508/70 Vered Netowitz, Minor (through her mother, legal Guardian, Hannah Natev (Netowitz) v. Jacob Netowitz, HC Rul. 25(1) 603 (1971); Civil Appeal 109/75 Amir Avraham v. Aharon Avraham, HC Rul. 29 (2) 690, 696 (1975); Civil Appeal 254/76 Miriam Jankowitz v. Aaron Jankowitz, HC Rul. 31(3) 169 (1977); Civil Appeal 466/82 Nathan Grubstein v. Nir Grubstein, HC Rul. 36(4) 157 (1982); Civil Appeal 744/80 Shulamit Notkovich v. Yael Notkovich, HC Rul. 39(4) 197 (1983); Civil Appeal 210/82 Lydia Gelber v. Sinai Gelber, 38(2) 014 (1984); Civil Appeal 4523/90 Moshe Kahn v. Linor Kahn, minor, HC Rul. 45(5) 529, 531 (1991); Civil Appeal 591/81 Yechiel Portugez v. Ravit Portugez, HC Rul. 36(3) 449 (1982); Civil Appeal 687/83 Yaffa Mazor v. Zion Mazur, HC Rul. 38(3) 29, 35 (1984); Civil Appeal 130/84 Arie Cronberg v. Roy Cronberg, minor, HC Rul. 39(3) 358 (1985); Civil Appeal 93/85 Orit Segev v. Shlomo Segev, HC Rul. 39(3) 822 (1985); Civil Appeal 514/89 Iris Mord, Minor v. Nadia Mord (Published in Nevo Legal Database, 31.12.1989); Civil Appeal 4523/90 Moshe Kahn v. Linor Kahn, minor, HC Rul. 45(5) 529, 531 (1991); Civil Appeal 5265/92 Ravit Ben Moshe, Minor v. Yehezkel Ben Moshe (Published in Nevo Legal Database, 10.02.1994); Bazak Jacob, "The Mother's Duty to Attend Her Child Support According to Jewish Law", 32 *Hapraklit - Israel Bar Association Law Rev.* 357 (1988) (Hebrew); Shawa Menash, "Minor Child Support in Jewish Law and Positive Law," 7 *TAU Law Review*, 316, pp. 585-586 (1989-1990).

The Supreme Court discussed the issue of child support for ages 6-15⁶². The court ruled that from the age of 6, the child support obligation is not gender dependent. In the case of joint custody (i.e., equal distribution of stay time), there will be a division between expenses related to the stay, including housing expenses and maintenance, where these expenses will be offset between the parents since each spends them directly while the children stay with each one. In exceptional expenses, the parents will divide the cost of the expense among themselves. With regard to non-deductible expenses (things that the child does not need two of and pass with him/her from house to house such as a schoolbag, mobile phone, bicycle, watch, etc.), this decision remains at the discretion of the trial court that hears the specific case⁶³.

Another major aspect of Israeli law concerns the division of property in divorce proceedings.

Until 1973, the "Presumption of Sharing Property" (hereinafter: "the Presumption of Sharing") applied to married spouses. This is a presumption that is a creation of the ruling in civil law. This means that the assumption is that spouses who lead a normal lifestyle through joint effort, the property accumulated during their joint life is in their joint ownership⁶⁴. The courts have over the years created various sub-rules for determining the presumption of sharing. Since the purpose of the presumption of sharing is to mimic the presumed preference of the parties, it has been determined that it should be exercised flexibly and in accordance with the concrete intention of the parties⁶⁵. Consequently, the presumption of sharing is contradictory, and the burden is on the applicant to contradict⁶⁶.

On January 1, 1974, Property Relations between Spouses Law came into force. The law is intended to establish a property arrangement that will apply to all couples who married after 1.1.1974. The division of property is made according to the value of the

⁶² Family Appeal Permission 919/15 An. V. An. (Published on Nevo Legal Data Base, 19.7.2017).

⁶³ Mazeh – 2018, above footnote 50, p. 12.

⁶⁴ Lifshitz Shachar, *The Spousal sharing*, p. 118 (Nevo Pub, 2016) (Hebrew) (Hereinafter: "**Lifshitz - 2016**"); Civil Appeal 253/65 Zehava Bricker v. Israel Bricker, HC Rul. 20(1) 589, 595 (1966); Civil Appeal 135/68 Tova Shimon Ze'ev Barely v. Estate Tax Administration, Jerusalem, HC Rul. 23(1) 393, 399 (1969).

⁶⁵ Lifshitz – 2016, above footnote 58, p. 122; Civil Appeal 66/73 Bracha Penono v. Shimon Penono, HC Rul. 29 (2) 181 (1975).

⁶⁶ The High Court of Justice 2222/99 The High Court of Justice 2222/99 Angel (Ora) Gabay v. The Grand Rabbinical Court, HC Rul. 54(5) 401, 413 (2000).

parties' assets only upon the expiration of the marriage, whether due to divorce or due to the death of one of the spouses. The balancing of assets is done by assessing the assets of each of the parties and paying the difference. That is, it is a deferred obligatory sharing. The Property Relations between Spouses Law has not been explicitly applied to common law spouses and therefore the main discussion in the ruling is the application of the presumption of sharing to common law spouses⁶⁷.

The ruling developed another sharing mechanism - specific sharing by virtue of general law. This mechanism applies to couples who married after 1.1.1974. There are three main streams in this aspect: The first stream takes a restricting approach, requiring proof of a specific sharing intent. The second stream takes the middle approach that is, the application of the third generation of the rule of sharing according to the family community model, also with regard to sharing by the general law without distinction between the arrangements⁶⁸. The third stream is a more radical stream which takes a broader approach of marital sharing and contains by virtue of general law also external assets⁶⁹, even if the threshold conditions of a common way of life have not been met and the spouses have not expressed intent to share⁷⁰.

American Law

Divorce in America is governed by the laws of the country in which it takes place. It is a legal proceeding in which a judge or some authority legally terminates the marriage. Divorce proceedings also include matters of alimony, child custody, child support, division of property and division of debts. American divorce law is intra-state and divorce laws vary from state to state.

Divorce laws in the United States have undergone many changes in recent decades. This has to do with changing the perception of the marital relationship and the social and legal acceptance of formal and informal alternatives to marriage. There have also

⁶⁷ Lifshitz Shachar, *Common-Law Marriage in The Civil Theory of Family Law*, p. 157 (Nevo Pub., 2005) (Hebrew).

⁶⁸ Lifshitz – 2016, above footnote 58, p. 176; Family Appeal (Tel Aviv-Jaffa District) 1055/06 A.D v. G.D (Published in Nevo Legal Database, 22.11.2006).

⁶⁹ Family Appeal Request 5939/04 An. v. An., HC Rul. 59(1), 665, 671 (2004).

⁷⁰ Lifshitz – 2016, above footnote 58, pp. 178-179.

been changes in cultural norms, especially in relation to society's attitude towards divorce, changes in population migrations between countries, changes in the political climate as a result of movements to promote civil rights (movements supporting child rights, women's rights and fathers' rights) and due to changes in the legal structure (improving access to legal representation, court structure and the availability of alternative dispute resolution methods such as mediation and arbitration).

Most divorce disputes in the United States end outside the courtroom through bargaining between attorneys, which takes place in an informal setting without adhering to the rules of procedure and evidence, with the court approving the settlement reached by the parties⁷¹.

In order to file a divorce claim in the state, the applicant had to reside in the state for a variable period that was subject to state laws, with the length of time expressing the state's perception towards the institution of marriage. The longer the residence requirement, the more the state treats marriage as a significant institution that must be preserved⁷².

In the United States there are two types of divorce - divorce with guilt and divorce without guilt. Until the creation of the divorce without guilt model, the American divorce proceeding was, and still is, as far as divorce with a guilt is concerned, a proceeding based on the adversarial model – a non-guilty party sues the other party in court⁷³. The plaintiff party is required to bring evidence to prove his/her claim, for example evidence of cruelty, unilateral departure or treason. Without proof of the ground, the consent of the divorce court could not have been obtained.

In the 1960s and early 1970s, the legal system and the legislature understood the unfortunate state of divorce and practice laws⁷⁴. The California State Government Committee has found that guilt-related divorce laws are no longer effective and must

⁷¹ Katz Sanford N, *Family Law in America*, p.88 (Oxford University Press, 2014) (Hereinafter: "**Katz – 2014**").

⁷² *Ibid*, p. 90.

⁷³ Foster Henry H., "Common Law Divorce", 46 *Minn. L. Rev.* 43, 58–62 (1961).

⁷⁴ Kay Herma Hill, "Beyond No-Fault: New Directions". In *Divorce Reform at The Crossroads*, p. 6 (Sugarman Stephen D. & Kay Herma Hill eds.) (New Haven and London: Yale Univ. Press, 1990).

be converted into laws that allow for guilt-free divorce. As a result, the state of California became, in 1969, the first state to implement guilt-free divorce laws⁷⁵. Notwithstanding the foregoing, due to the opposition of certain conservative population groups, only a few states have condemned the divorce with guilt. Only in 2011 did all fifty states apply certain types of divorce without guilt as part of their divorce laws⁷⁶.

A guilt-free divorce model only affects the determination of the termination of the marriage and it does not affect the division of property or the determination of custody of minors, which constitute separate issues for which a determination of guilt is required⁷⁷.

With the creation of the divorce without guilt model, the emphasis in divorce proceedings has shifted from the determination and proof of guilt to a hearing regarding the parties' property and how it is divided.

There are two parallel systems for property distribution: the common law system and the community property system⁷⁸. In countries where the common law system applies, the motto is: "He who holds title takes the property". That is, the property belongs to the same party on whom it is registered. In contrast, in countries where community property system applies, the principle is that each spouse owns half of all the common property, which is accrued during the marital life⁷⁹. In recent decades, there has been a significant decrease in the number of countries in which the model of common law system applies (in law or in case law). The method is now called "equitable distribution". The key word is "contribution" and the key question is who should actually be listed on the property⁸⁰.

Laws have been developed to give the courts the tools and guidance in determining whether this is joint or separate property. The courts have built three guidelines: Tracing - determining the source of the property, whether it was received as an inheritance, as a gift or through the use of the parties' money; Commingling - when funds of each of

⁷⁵ Katz – 2014, above footnote 65, p 93.

⁷⁶ Elrod Linda D. & Spector Robert G., "A Review of the Year in Family Law: Numbers of Disputes Increase", 45 *Fam. L.Q.*, 492, 620 (2012).

⁷⁷ Katz – 2014, above footnote 65, p 95.

⁷⁸ Glendon Mary Ann, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe*, pp. 116-147 (University of Chicago Press, 1989).

⁷⁹ Katz – 2014, above footnote 65, p 99.

⁸⁰ *Ibid*, pp. 99-100.

the parties were brought into the marriage and mixed in an undetectable manner; Transmutation - a change in the nature of the property from a separate property to a joint or vice versa, usually by giving a gift or drafting a contract⁸¹.

The nature and enactment of equal distribution regulations vary from state to state, although the Uniform Marriage and Divorce Act (hereinafter: "UMDA") provides a framework for most regulations⁸².

The "divorce without guilt" revolution was accompanied by a fundamental change in the law with regard to the economic consequences of marriage. The reform, in essence, is that a system of "divorce without guilt" and a fair distribution of the property of the parties under the assumption of "partnership" should replace the alimony as a major remedy given in the dissolution of the marriage⁸³. This policy has been embedded in the UMDA and many states that hold the approach of common law when it comes to property rights have introduced a new and equal division, while relying on laws that apply in countries with access to community property.

The division of property in a divorce is only one part of the economic consequences of the divorce. Alimony and child support are other aspects of economic considerations. Both have undergone significant changes in the last thirty years.

Today, alimony can be given to husband and wife⁸⁴. The amount of alimony is derived from the standard of living in which the parties lived during the marriage and the assessment of the value of the property that belonged to the wife before handing it over to the husband at the marriage⁸⁵. Alimony can be granted as a fixed payment at any given time period or a lump sum payment. If the alimony is stipulated in the agreement, the method of payment is already fixed in the agreement, in accordance with what the

⁸¹ Ibid, p. 100; *Quinn v. Quinn*, 512 A.2d 848 (R.I. 1986).

⁸² Uniform Marriage and Divorce Act of 1970 (UNIF. LAW. COMM'N 1970).

⁸³ Estin Ann Laquer, "Marriage and Divorce Conflicts in the International Perspective", 27 *Duke Journal of Comparative & International Law* 485, 506 (2017); Garrison Marsha, "Good Intentions Gone Awry: The Impact of New York's Equitable Distribution Law upon Divorce Outcomes", 57 *Brook. L. Rev.* 621, 627-632, (1991).

⁸⁴ *Orr v. Orr*, 440 U.S. 268 (1979).

⁸⁵ Clark Homer Harrison, *The Law of Domestic Relations in The United States*, p.619 (West Publ, 1987).

parties have decided, in accordance with the economic circumstances of the paying party and tax considerations⁸⁶.

Alimony is the economic connection that continues the relationship between the divorced couple, especially when alimony is paid regularly (rather than a lump sum). Today, long-term alimony is not a routine thing even after a very long marriage (over twenty years of marriage) and exists only in exceptional cases⁸⁷. Instead, short-term alimony is used for a few years in order to help the woman in the first period after the divorce and in the rehabilitation process (rehabilitative alimony)⁸⁸. This change is a function of a new conception of the role of women in society, a change that was reflected in The Massachusetts Reform Act of 2011⁸⁹ (hereinafter: "The Massachusetts Reform Act").

Another major issue discussed in American law is child support. Child support has undergone a process of revolution⁹⁰. In order to determine child support, there are clear guidelines that judges must follow in order to justify their decisions regarding the determination of child support⁹¹. Child support is the court's determination of the payments to be made by one parent to the custodial parent to support the costs of raising the children. Their purpose is to ensure that the child receives equal support from both parents, as the child would have received had it not been for the divorce.

Chapter 2 of the Principles defines who has a relationship of rights and obligations with the child i.e., who is entitled to seek state protection in this regard⁹².

For how to calculate child support, there is the Child Support Guidelines (CSGs). Each country has a table that includes the same variables however the content varies

⁸⁶ Katz – 2014, above footnote 65, p. 105.

⁸⁷ Ibid, p. 107.

⁸⁸ Idem.

⁸⁹ Mass. Gen. Laws Ann. ch. 208, §§ 48–55; Frolin Fern L., "Tips for Handling Cases under the New Alimony Law", 56 *Bos. B. J.* 19 (2012); Morgan Laura W., Where Are We Now? Current Trends in Alimony Law, 34 *Fam. Advoc.* 8 (2012).

⁹⁰ *Principles of the Law of Family Dissolution: Analysis and Recommendations*, p. 67–85 (American Law Institute Publishers. 2002) (Hereinafter: "**Principles**").

⁹¹ Laura W. Morgan, *Child Support Guidelines—Interpretation and Application* (Aspen Law & Business, 1996) (Hereinafter: "**Child Support Guidelines – 1996**").

⁹² Principles at § 2.04(1).

depending on the jurisdiction. The guidelines are summarized in a simple table from which each family can determine the amount of child support⁹³. Child support is charged within each state in accordance with its laws, with each state responsible for developing its own child support guidelines.

Although the intervention of the federal government in child support programs began long before, the Social Services Amendments of 1974⁹⁴ marked the beginning of the federal-state partnership approach to child support. In 1987 the Advisory Panel of the Office of Child Support Enforcement prepared its recommendations for the development of guidelines for child support for intra-state use⁹⁵. As a result, Congress enacted the Family Support Act of 1988⁹⁶.

The most significant federal child support legislation is from 1996, when Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)⁹⁷. This law ended the eligibility for federal support for needy families and replaced it with grants provided by the state called TANF (Temporary Assistance to Needy Families)⁹⁸. Each state, in response to the federal amendment, has created child support guidelines. The amendment required each state to establish clear guidelines to be adopted in law, administrative or judicial guidelines⁹⁹.

In order to achieve these goals, countries have implemented three basic child support calculation models: the "Income Shares model", "Percentage of Income" model (either flat percentage (F) or varying percentage (V) ¹⁰⁰, and the "Melson Formula" model. Although there are three models, all models have a common denominator. First, most guidelines include a "self-support reserve" for the debtor. That is, the debtor is allowed to hold a certain amount of income below which no smaller support will be calculated.

⁹³ Allen Douglas w. & Brinig Margaret f., "Child Support Guidelines: The Good, the Bad, and the Ugly", 45(2) *Family Law Quarterly*, 135, 136-137 (2011).

⁹⁴ Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified at 42 U.S.C. Q 1305).

⁹⁵ Williams Robert, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Dep't of Health and Human Services, Office of Child Support Enforcement, 1987).

⁹⁶ Family Support Act of 1988, Pub. L. No. 100-485, 8 103, 102 Stat. 2343, 2346 (1988) (codified at 42 U.S.C. § 667 (1988) (Hereinafter: "**42 U.S.C.**").

⁹⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in sections of 8 U.S.C. and 42 U.S.C.).

⁹⁸ Child Support Guidelines – 1996, above footnote 86, § 1.01(3).

⁹⁹ 42 U.S.C. § 667(a).

¹⁰⁰ Child Support Guidelines – 1996, above footnote 86, § 1.03 [a].

Second, all guidelines have a reference to reported revenue¹⁰¹. Third, under the federal regulation¹⁰², all guidelines take into account the health expenses of children, through insurance or other means, however the methods by which these expenses are taken into account vary from state to state according to its guidelines¹⁰³. Fourth, since the enactment of the Family Support Act of 1988, most guidance provisions have incorporated a special addition of child support expenses¹⁰⁴, special formulas for joint custody¹⁰⁵, split custody¹⁰⁶, extraordinary visits¹⁰⁷ and special child support deductions from previous marriages and additional marriages¹⁰⁸ into the formula.

Another aspect related to divorce is child custody. In the 1980s the agenda that dominated child custody disputes was that of “primary caregiver preference,” a concept inherited among scholars, judges, and family law reformers¹⁰⁹. The “primary” caregiver is defined as a person who before the divorce managed and supervised the child's daily activities and met the child's basic needs: feeding, clothing, bathing, maintaining his/her health and physical integrity. It is assumed that the primary caregiver will continue in this role after the divorce¹¹⁰.

Joint custody or “joint parenting” has become an alternative to the traditional model of granting custody to one parent and the child's visit to another¹¹¹. Today, almost all states approve or allow joint custody as an alternative. Joint custody means that both parents are jointly responsible for making decisions regarding their children. They are equally responsible for raising the child, who has an ongoing relationship with both. The

¹⁰¹ 45 C.F.R. § 2.04.

¹⁰² 45 C.F.R. § 302.56(c)(8).

¹⁰³ 45 C.F.R. § 3.01.

¹⁰⁴ 45 C.F.R. § 3.02.

¹⁰⁵ 45 C.F.R. § 3.03[a].

¹⁰⁶ 45 C.F.R. § 3.03[b].

¹⁰⁷ 45 C.F.R. § 3.03[c, d].

¹⁰⁸ 45 C.F.R. § 3.04.

¹⁰⁹ Katz – 2014, above footnote 65, p. 116; Mercer Katharine L., “A Content Analysis of Judicial Decision-Making—How Judges Use the Primary Caretaker Standard to Make a Custody Determination”, 5 *Wm. & Mary J. Women & L.*, 1 (1998); Chambers David, “Rethinking the Substantive Rules for Custody Disputes in Divorce”, 83 *Mich. L. Rev.* 477 (1984); Elster Jon, “Solomonic Judgments: Against the Best Interests of the Child”, 54 *U. Chi. L. Rev.* 1 (1987); Fineman Martha, “Dominant Discourse, Professional Language and Legal Change in Child Custody Decisionmaking”, 101 *Harv. L. Rev.* 727 (1988).

¹¹⁰ Katz – 2014, above footnote 65, p. 116.

¹¹¹ Kelly Joan, “The Determination of Child Custody”. In *The Future of Children*, p. 121, vol. 4(1). (Princeton University, 1994).

success of joint custody depends on the cooperation of the parents who have the financial capacity to meet it and a child who agrees to the arrangement.

In conclusion, American divorce law has evolved considerably over the last few decades to create an orderly doctrine in all divorce matters. Still, the American legal system is of an adversarial nature. Over the years, in order to reduce legal chaos, uncertainty and enforcement options, a federal intervention in child support has emerged and mechanisms and formulas have been created to ensure payments and enforcement. This policy provides a point-by-point legal solution, but the approach is not a legal-therapeutic one but a pragmatic approach aimed at reducing the burden on the court system and streamlining enforcement. Therapeutic law has a place in American law, but it still lives "alongside" the adversarial law that is the main stream and does not form an integral part of it.

French Law

In France, the main source of family law is encoded in the French Civil Code (FCC)¹¹². The law regulates the entire issue of divorce¹¹³ and child welfare (parental responsibility, child support, custody, etc.)¹¹⁴. Another legal arrangement can also be found in the French Code of Civil Procedure (FCCP)¹¹⁵. In addition, a legal arrangement can be found in international conventions.

French family law reform, including divorce proceedings, has been in development since the late 1990s. The French Divorce Reform Act was substantially amended in 1975, when the Divorce Reform Act 75-617 Act (1975 Act)¹¹⁶ came into force. The main purpose of the 1975 Act was to "de-dramatize" divorce. Although divorce is experienced as a difficult personal experience for those involved, the procedure is designed to reduce the component of conflict inherent in divorce. The 1975 Act created two forms of divorce by mutual consent: joint application and receipt of unilateral

¹¹² French Civil Code (FCC) (hereinafter: "FCC").

¹¹³ Articles 229-309 of the FCC.

¹¹⁴ Articles 311-348 of the FCC

¹¹⁵ France - Code of Civil Procedure - Book IV - Arbitration in force 14 May 1981 (Hereinafter: "FCCP").

¹¹⁶ Loi no 75-617: réforme du divorce (1975).

application. However, despite the innovations, divorce on the basis of guilt still formed the basis for almost half of all divorce cases¹¹⁷.

Especially when it comes to EU member states, the dissolution of the marriage often means that the father or mother returns to their home Member State.

In order to prevent parallel litigation in the home state and the host state that may produce conflicting rulings, it is important to determine the court which will be given jurisdiction in marriage matters as well as on the issue of parental responsibility when there are children involved¹¹⁸. This was the purpose of Regulations No. 2201/2003, known as "the Brussels II bis Regulation"¹¹⁹. The Brussels II bis Regulation applies only in matters of divorce, legal separation and annulment of the marriage, i.e., the dissolution of the marriage. The regulations do not deal with issues such as grounds for divorce, division of property or other ancillary measures¹²⁰.

The ruling of the European Court of Justice (ECJ) focused mainly on the provisions of the Brussels II bis Regulation which establish rules of jurisdiction in cases of conflict of jurisdiction in matters of parental responsibility¹²¹.

Article 17 of the Brussels II bis Regulation sets out 7 grounds giving jurisdiction to the courts of the Member States. These grounds are not placed in any hierarchical order, but operate alternately¹²². If there is no court having jurisdiction in accordance with the regulation in any Member State, the requested court may derive its jurisdiction on the basis of its intra-state rules relating to international civil proceedings¹²³.

¹¹⁷ Dadomo Christian, "The Current Reform of French Law of Divorce", 4 *International Family Law*, 218 (2004).

¹¹⁸ Lenaerts Koenraad, "The Best Interests of the Child Always Come First: The Brussels II Bis Regulation and the European Court of Justice", 20(4) *Jurisprudencija*, 1302, 1303 (2013).

¹¹⁹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ [2003] L 338/1 (hereinafter: "**Brussels II bis Regulation**").

¹²⁰ Preamble 8 of the Brussels II bis Regulation; Ní Shúilleabháin, Máire, *Cross-border Divorce Law: Brussels II Bis*, (Oxford: Oxford University Press, 2010) (Hereinafter: "**Cross-border divorce – 2010**").

¹²¹ Case C-68/07 Sundelind Lopez [2007] ECR I-10403; Case C-168/08 Hadadi [2009] ECR I-687.

¹²² Article 17 of the Brussels II bis Regulation.

¹²³ Article 7 of the Brussels II bis Regulation; Cross-border divorce - 2010, above footnote 116, Par. 3.

The grounds for jurisdiction in section 3 can be classified according to the main issue for the ground of jurisdiction - Habitual Residence or nationality. Habitual Residence includes 6 different grounds of jurisdiction¹²⁴. Nationality includes one ground of jurisdiction¹²⁵. Under the category of other grounds there are two more grounds¹²⁶.

French family law has a number of normative sources from which it derives its power. The main sources of family law are in the context of codification. With regard to marriage, the relevant provisions are Articles 143 to 226 of the FCC. The provisions applicable to the dissolution of the family unit are Articles 227 to 309 of the FCC. The FCC contains the sources of private international law. In addition, sources of private law can also be found in international conventions as well as in EU regulations. In the case of divorce proceedings, the French court first applies the Brussels II bis Regulation¹²⁷. The Brussels II bis Regulation establishes the jurisdiction, recognition and enforcement of judgments in matters of marriage and in matters of parental responsibility. Determining the jurisdiction of the French courts in relation to divorce; Legal separation; Annulment of marriage; Cases of parental responsibility; Enforcement of family law judgments.

Title VI of the Brussels II bis Regulation incorporates sections 229-310 of the Civil Code.

The law recognized four grounds for divorce:

Divorce for mutual consent¹²⁸; Divorce by acceptance¹²⁹; Divorce for definitive alteration of the bond of marriage¹³⁰; Divorce for fault¹³¹

On January 1, 2017, the amendment to the law that adds a fifth type of divorce - divorce by mutual contractual agreement, that is to say without a judge - came into force¹³².

¹²⁴ Article 3.1.a of the Brussels II bis Regulation.

¹²⁵ Articles 4 & 5 of the Brussels II bis Regulation.

¹²⁶ Article 3.1.b of the Brussels II bis Regulation

¹²⁷ *International Comparative Legal Guide to: Family Law, 3rd Edition* (Bradley Charlotte, Napley Kingsley eds.), p.73 (2020) (Hereinafter: "**Family Law – 2020**").

¹²⁸ Articles 230,232 of the FCC.

¹²⁹ Articles 233-234 of the FCC.

¹³⁰ Articles 237-238 of the FCC.

¹³¹ Articles 242, 244, 245, 245-1, 246 of the FCC.

¹³² LOI N° 2016-1547 Du 18 Novembre 2016 De Modernisation De La Justice Du Xxie Siècle (1).

With the exception of the two cases of consensual divorce, the divorce takes place in two stages¹³³: The first proceeding includes temporary interim proceedings. After a preliminary hearing in the presence of the parties, temporary instructions are given. The judge orders the parties to live separately. Temporary custody of the minors and temporary visitation arrangements are also provided. Alimony and child support are temporarily determined and the judge rules which of the parties will remain living in the parties' house¹³⁴. The second procedure is the divorce procedure. The judge announces the divorce, again determines custody and visitation arrangements, child support, the Compensatory Allowance to be paid to the Impoverished Spouse and continues to divide the couple's assets¹³⁵.

In March 2019, the French legislature imposed a new procedure affecting divorce proceedings¹³⁶. Under the new procedure, interim proceedings do not constitute an obligation for the parties. Moreover, the document that must be submitted for the opening of the proceedings, now includes two proceedings that were reserved only for the second stage of the divorce proceedings and can now be submitted at the beginning of the proceedings and these are: a description of the causes of divorce and presentation of the parties' assets. Hence, the divorce claim already includes all the aspects associated with the divorce. Second, the initial hearing is now called an "orientation hearing" and is aimed at an exchange between the parties, their lawyers and the judge in order to decide what the next steps in the procedure are. The goal is to lead to a comprehensive divorce agreement¹³⁷. Divorce cannot be made final without settling all the issues related to the divorce, except in cases where the French court has no jurisdiction over these matters¹³⁸.

In the case of marital systems, not by way of marriage, the FCC defines civil partnerships - (Pacte Civil de Solidarité) (PACS) - as "a contract entered into by two adults, of a different sex or of the same sex, to organize their life together"¹³⁹.

¹³³ Articles 237-238 of the FCC.

¹³⁴ Family Law – 2020, above footnote 123, p. 74.

¹³⁵ *Ibid*, p. 74.

¹³⁶ *Idem*.

¹³⁷ *Idem*.

¹³⁸ *Idem*.

¹³⁹ Articles 515-1 of the FCC.

If the parties agree to declare PACS after January 1, 2007 (following an amendment to the PACS provisions in the law dated June 23, 2006), they will be deemed to have implicitly adopted the property separation regime by default¹⁴⁰. Since the enactment of Law No. 2013-404 of 17 May 2013¹⁴¹, which allowed same-sex marriage, sections 202-1 and 202-2 of the FCC apply to same-sex marriage.

In direct continuation, French law addresses all aspects of property division. As stated above, the judge in the Family Court also rules on the matter of the division of property between the spouses and appoints a Notary for the continuation of the property proceedings. The new section 267 gives the judge powers to rule as he/she sees fit in relation to the property matters of the parties¹⁴².

French law distinguishes between two types of financial division in divorce - "compensation" for the dissolution of the marriage (des prestations compensatoires) and asset liquidation (liquidation et partage). With respect to compensation, an important principle under French divorce law is an equal distribution of the resources accumulated during the marital life to ensure that neither party unjustly makes wealth as a result of the divorce process. The purpose of the compensatory payments is to compensate financially and bring the woman who is in a financially disadvantaged position, as far as possible, to the standard of living to which she was accustomed during her married life. Therefore, even though a marriage terminates any support obligation between spouses, a party can claim "compensation" from the other party, which will reflect the financial gap created between the parties as a result of the divorce. It is usually a one-time payment, which is determined by the court¹⁴³. The compensation can be paid in one of four ways: as a one-time payment; as an interest in the property (usually use of the couple's property)¹⁴⁴; as index-linked periodic payments for a

¹⁴⁰ Chauveau Veronique & Butruille Charlotte, "Family Law in France: Overview", available at: <http://uk.practicallaw.com/6-615-3545>, p. 29 (Hereinafter: "**Family law in France: overview**").

¹⁴¹ Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe.

¹⁴² Article 267 of the FCC.

¹⁴³ Bell John et al., *Principles of French Law* (2nd ed.), p. 253 (Oxford: Oxford University Press, 2008).

¹⁴⁴ Article 274 of the FCC.

maximum period of eight years¹⁴⁵ or in exceptional cases, payment by way of living allowance (rente viagère) which acts similarly to the payment of a pension¹⁴⁶.

If there is an agreement between the spouses regarding compensation or in the case of a consensual divorce, the parties have freedom of action to determine the manner of distribution of the compensation payments and their amount¹⁴⁷.

In order to determine which property regime will apply to the parties, there are three parallel systems that depend on the date of marriage of the parties. If the parties were married before 1.9.1992, the French ruling requires a presumption that the marital property regime is determined, in the absence of a choice, under the Post-Marriage Residence Act. If the parties married after 1.9.1992, the Hague Convention of 1978 applies to the laws applicable to the marital property regime¹⁴⁸. If the parties do not make a positive choice in the marital property regime that will apply to them, the default is the first place of residence¹⁴⁹.

If the parties married after 29.1.2019 or signed a prenuptial agreement before that date, the Council Regulation 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes will apply¹⁵⁰.

During the interlocutory proceedings one of the spouses may remain in the joint residence of the parties. Most often, this right is granted to the spouse with custody rights in order to allow the children to stay in the home to which they are accustomed and live.

¹⁴⁵ Article 275 of the FCC.

¹⁴⁶ Article 276 of the FCC.

¹⁴⁷ Article 278 of the FCC.

¹⁴⁸ Act of 20 November 1991 (Stb. 1991, 628), regulating conflicts of laws concerning matrimonial property regimes and property relations of the spouses towards third parties, also in connection with the ratification of The Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes (Treaty Series 1988, 130) (Hereinafter; "**The 1978 Hague Convention Concerning the Law Applicable to the Matrimonial Property Regime**").

¹⁴⁹ Article 4 of The 1978 Hague Convention Concerning the Law Applicable to The Matrimonial Property Regime

¹⁵⁰ Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Alongside property aspects, stand alimony. Among the main roles of the couple, is the duty to financially support each other and contribute to the family expenses¹⁵¹. If one of the spouses fails to honor this obligation during the marriage, a family judge has the authority to order maintenance alimony towards the spouse who needs it, with the aim of covering the family expenses for the financially weak spouse's contribution to the marriage (contribution aux charges du mariage). Intermediate alimony is determined at the conciliation hearing stage. Unless there is a change in circumstances that justifies its termination, it will be terminated only after the divorce order. After the divorce, the compensation benefit (which is usually in the form of a one-time payment as stated above) will replace the existing interim support.

Apart from spousal support, there is also the issue of child support. Until a few years ago, judges in France did not receive official instructions or even guidelines for issuing child support orders. However, the practice is determined by certain general principles (the interests of the child, joint parenting, the interests of spouses). As a result, the French judicial context provides a significant space for decisions at the discretion of the judges, which creates inconsistencies between families¹⁵².

The FCC imposes an obligation on both parents, whether married or not, to meet the needs of their children¹⁵³. Child support payments can be made in many ways. The main accepted method is monthly payment. The payment is a derivative of the living expenses of the child's main residence (the place of residence of the custodial parent). In order to ensure adequate child support, the law has been amended so that a civil fine can be imposed on the parent who is charged child support and does not pay it¹⁵⁴.

Child support is calculated while weighting the parents' income, assets and the child's needs. The court also examines the child's time spent with each of his/her parents. In most cases where the length of stay between the parents is equal (joint custody), no child support will be determined for the minor, even if the parents' income is not similar

¹⁵¹ Article 212 of the FCC.

¹⁵² Bourreau-Dubois Cécile, et al. "Child Support Order: How Do Judges Decide Without Guidelines? Evidence from France." 38(3) *European Journal of Law and Economics*, 431,434 (2014).

¹⁵³ Article 372 of the FCC.

¹⁵⁴ Family law in France: overview, above footnote 136, p. 17; Article 373-2 & 373-2-6 of the FCC.

and there are earnings gaps between them. Child support does not end with the minors reaching the age of 18. Child support is paid until the children no longer rely on their parents' table and are able to bear their financial needs.

Additional aspects of French law concern child custody and visitation. Parental responsibility (*autorité parentale*) and custody (*fixation de la résidence*) are two different terms. Parental authority dominates the rights and obligations of each parent towards their children in relation to essential issues such as residence, education, health, religion, etc., while custody dominates only one question - the child's place of residence (i.e., with which of the parents the child will live)¹⁵⁵. Consequently, divorced parents, whether married or not, continue to share parental responsibility towards their children, except in exceptional circumstances such as the abuse of a minor by one of the parents. Minors' matters can always be reopened according to the change of circumstances and the principle of the best interests of the child. The 2002 law (2002-405) establishes a basic principle that in the event of parental separation, a joint or alternative residence order (*résidence alternée*) may be established, as far as the circumstances allow¹⁵⁶. In most cases of cohabitation, the child will stay with each of the parents on a weekly basis (one week with one parent and one week with the other parent). The ruling stated that cohabitation does not necessarily indicate that the child will stay with both parents in equal time distribution¹⁵⁷. Usually, in the case of children under the age of 6, only in a small percentage of cases will equal stays be set (13%). When it comes to children over the age of 6, it is also a low percentage of cases (21%). In the vast majority of cases, custody will be determined by the mother and the father will have visitation rights. Rights to communicate with the child will be denied only in very severe cases and rarely¹⁵⁸. In addition, the court has the authority to determine that the relationship between the non-custodial parent and the child will take place only at the contact center or to set conditions and restrictions for the visits¹⁵⁹.

French law does not recognize a minor's right to be a party to a proceeding concerning him/her. However, children have the right to be heard in all proceedings concerning

¹⁵⁵ Family Law – 2020, above footnote 123, p. 78.

¹⁵⁶ Article 372-2-9 of the FCC

¹⁵⁷ Family law in France: overview, above footnote 136, p. 20; Civ 1st, 25 April 2007.

¹⁵⁸ Family law in France: overview, above footnote 136, p. 21.

¹⁵⁹ Articles 373-2 and 373-9 of the FCC

them whether directly or through a legal aid lawyer appointed by the court for this purpose¹⁶⁰.

With regard to alternative dispute resolution procedures in French law, alongside the adversarial legal process, an alternative dispute resolution system is anchored in France. The system includes proceedings of Conciliation¹⁶¹, Mediation¹⁶², Collaborative law¹⁶³ and Arbitration¹⁶⁴.

In summary of French law, it should be noted that the FCC is not static and in accordance with the change of period and cultural, legal and social developments, undergoes changes and updates. The latest update in 2017 produced new legislation regarding family law. Additional amendments from 2019 also affected all procedures related to the divorce proceedings, simplification of the proceedings and its shortening.

The Therapeutic Law and the Judicial System-Therapeutic Model – JTM - for Resolving Disputes

The final part of the thesis discusses the therapeutic aspects of the law and proposes an alternative judicial model, JTM, for resolving divorce disputes.

Legal systems do not function only in a sterile legal environment, but affect the emotional lives of litigants and others. The perception is that the task of the court is not only to decide the specific case before it, but also to resolve the underlying problem that gave rise to the dispute. This requires a holistic view of the parties, their relationship and the different situations in which they operate. A court ruling that takes into account the environment in which the dispute arose will have a much greater chance of preventing further litigation¹⁶⁵.

¹⁶⁰ Article 388-1 of the FCC; Family law in France: overview, above footnote 136, p. 22.

¹⁶¹ Articles 252-252-4 of the FCC; Articles 1108 -1113 of the FCCP.

¹⁶² Article 255 of the FCC; Family law in France: overview, above footnote 136, p. 29.

¹⁶³ Articles 2062-2067 of the FCC

¹⁶⁴ Articles 2059 and 2060 of the FCC; Family law in France: overview, above footnote 136, p. 29.

¹⁶⁵ Marcus Philip, "The Israel Family Court - Therapeutic Jurisprudence and Jurisprudential Therapy from the Start", 63 *International Journal of Law & Psychiatry*, 68 (2019) (Hereinafter: "**Marcus - The Israel Family Court – 2019**").

Therapeutic jurisprudence is the investigation of a judge's role as a "therapeutic agent"¹⁶⁶. Therapeutic law seeks to look at the law as it actually affects people's lives and focuses on the impact of the law on the life of emotion and psychological well-being¹⁶⁷.

An adversarial approach assumes that there is a conflict between the parties arising from opposition between conflicting conceptions of rights, goals and values, or a problem in the distribution of resources. In essence, this approach sees conflict as an area for the struggle for a limited resource. A kind of "cake" to be shared. Winning one side of the fight will inevitably reduce the other party's share of the resource and cause it to lose¹⁶⁸. Due to the lawyers' central role in managing the adversarial proceedings, the role of the judge is like that of a "supervisor" restraining himself/herself from interfering in the proceedings¹⁶⁹.

The collaborative approach to conflict management, on the other hand, is a non-adversarial approach. This approach grasps the essence of the conflict and various ways of resolving it differently.

The collaborative approach believes that a conflict or controversy deserves to be examined in a multidimensional way and conducted in a non-contrarian way, since the conflict consists of several layers.

The first layer is the visible layer, in which the positions of the parties are located. At a deeper level, which is not visible and should be revealed, are the interests of the parties, their needs, feelings and desires. The collaborative approach holds that a discourse that

¹⁶⁶ Wexler David, Winick Bruce (eds), *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*, (Carolina Academic Press, Durham, North Carolina, 1996) xvii (Hereinafter: "**Law in a Therapeutic Key**").

¹⁶⁷ Perlin Michael L.; Lynch Alison J., "How Teaching about Therapeutic Jurisprudence Can Be a Tool of Social Justice, and Lead Law Students to Personally and Socially Rewarding Careers: Sexuality and Disability as a Case Example," 16 *Nevada Law Journal*, 209 (2015); *Law in a Therapeutic Key*, above footnote 162.

¹⁶⁸ Perlman Karni, *Dispute Resolution—Applying Non-Adversarial and Therapeutic Justice*, p. 5 (Bursi Publishing, 2015) (Hebrew) (Hereinafter: "**Perlman – 2015**").

¹⁶⁹ Schwartz Dudi "The Contents of the Principle of Good Faith in Civil Procedure" 21 *TAU Law Review* 215, 307 (1998) (Hebrew).

gives expression to all levels of the conflict will allow for an in-depth discussion of the dispute and will allow for a quality and more effective resolution of the conflict¹⁷⁰. The collaborative approach proceeds from the premise that although the positions of the parties to the conflict are conflicting, the needs and interests are not necessarily conflicting but rather they may be common or complementary.

Divorce proceedings are a good example of such a situation as the parties can file pleadings within the framework of the classic judicial proceeding which raise opposing positions regarding the property and its division, custody and more. At the same time, in examining the deeper layer, of the needs and interests of the parties, it can be seen in many cases that the parties have common interests of the best interests of the children and a mutual desire to maintain good communication between them to enable optimal parenting for their children¹⁷¹.

A collaborative approach emphasizes a relational orientation that emerges from the perception that intra personal relationships and interpersonal relationships influence human behavior. Relationships between human beings have a central factor in shaping human consciousness, ways of expression and ways of behaving¹⁷².

Therapeutic jurisprudence began to develop in the early 1990s. The pioneers of the movement are Wexler and Winick, who published their first publication in 1991, which served as the basis for the movement's formation¹⁷³. Therapeutic jurisprudence seeks to examine the effects of law on the psychological well-being of the individual. The movement sees law as a source of social power with therapeutic results. That is, positive, constructive and restorative results along with anti-therapeutic results that can produce negative, debilitating and even offensive emotional results¹⁷⁴.

The jurisprudence of conflict resolution incorporates a number of narratives.

¹⁷⁰ Perlman – 2015, above footnote 164, p. 9.

¹⁷¹ Idem.

¹⁷² Ibid, p.10; Conley John M. & William M. O'Barr, *Rules versus relationships: the ethnography of legal discourse* (University of Chicago Press, 1990).

¹⁷³ Wexler David B., & Winick Bruce J., *Essays in therapeutic jurisprudence* (Carolina Academic Press, 1991).

¹⁷⁴ Perlman – 2015, above footnote 164, p.39.

The first is an emphasis on the procedure. According to this principle, applying legal rules requires a process of balancing the purposes and principles that underlie the legal rules. A problem-solving judge not only strikes a balance between values and principles, but must re-adapt the procedure to each and every dispute and the rules are only helpful in dealing with the new case¹⁷⁵. The second narrative is a constructive approach that focuses on the future. This is the idea that the law should be presented most clearly as an expression of the community's coherent moral voice¹⁷⁶. The third narrative is deconstruction and hybridization. Legal disputes, especially when formally worded in pleadings, often represent binary and conflicting images of the conflict that the judge must choose between. A judge who seeks to achieve justice, will create a balance between the polar images, will work to break them down into factors and decide on each of the elements. Each conflict has multiple dimensions, multiple interests, multiple participants (overt and covert, direct and indirect) and multiple solutions and it is necessary to understand these components and address them separately in order to produce a process of change¹⁷⁷. The fourth narrative is an emphasis on the hidden layer, which is not visible to the naked eye. The intention is to appeal to social interests while adopting the perception that they do not necessarily contradict each other but need balance in concrete cases. Focusing only on the superficial and visible appearance produces a fixed-sized cake experience and fixes the thought¹⁷⁸. The fifth narrative is an emphasis on emotions and the perception of a new family subject. In the concept of jurisprudence of conflict resolution along with the study of emotions in the field of neuroscience, a field of scientific research that has developed and occupies a significant place in recent years¹⁷⁹, it is assumed that judges should promote the depersonalization of the dispute not only through decision-making through rules but also through advancing the perception of the legal dispute as a common problem, behind which there are also emotional motives, which the court can help the parties resolve or propose solutions. This is on the assumption that the parties to the conflict are not separate from each other but a relationship exists between them¹⁸⁰. The sixth narrative is community

¹⁷⁵Alberstein Michal, "Judicial Dispute Resolution: Towards the Theory of Law Beyond Controversy", 11, 32, *Din Udvarim - Haifa Law Review* 17, 27 (2020) (In Hebrew) (Hereinafter: "**Judicial Dispute Resolution – 2020**").

¹⁷⁶Dworkin Ronald, *Law's Empire* (Harvard University Press, 1986).

¹⁷⁷Judicial Dispute Resolution – 2020, above footnote 171, p. 33.

¹⁷⁸ *Ibid.*, p. 34.

¹⁷⁹ Fulmer Ingrid, Barry Bruce & Goates Nathan, "Bargaining with feeling: Emotionality in and around negotiation". In book: "*Negotiation Theory and Research*", pp.99-127 (Editors: L. Thompson, 2006).

¹⁸⁰ Judicial Dispute Resolution – 2020, above footnote 171, pp. 34-35.

work from the bottom up. The assumption is that constructive intervention in a legal dispute will give rise to its own wisdom and creative solutions, which could not be reached only from the exercise of authority from the top. Judicial action may be aided by a multidisciplinary team that will integrate its insights and skills into the conflict resolution process or will enable dialogue to strengthen communication channels in order to encourage the parties themselves to find solutions spontaneously¹⁸¹.

There are different types of dispute resolution procedures - The Adversarial Trial; Arbitration; Mediation; Med-Arb; ENA - Early Neutral Evaluation; Collaborative Divorce / Law; Consensus Building; Negotiation; The Settlement Conference.

Each of these procedures is created from a different discipline, serves different purposes and is suitable for different types of procedures.

In Israel, the reference to therapeutic law is complex.

Although the foundations of the Israeli Family Court system were laid before the concept of "therapeutic law" came into use in the public domain, the Israeli legal system serves as an example of the application of its basic concepts in practical and everyday contacts between courts, litigants and their families. The system takes into account the psychological and emotional aspects of family problems and the possible harm of conducting proceedings on the parties, especially the children involved, an inevitable result of adversarial litigation, as detailed above and extensively in the chapter dealing with the psychological aspects of divorce. The law, regulations and legal systems are designed to minimize short and long-term damages¹⁸².

In 1995, the Knesset, the legislature in Israel, enacted the Family Courts Law, which included the establishment of a family court with comprehensive and exclusive jurisdiction to deal with all family disputes; Appointment of judges, in the Family Court, only of lawyers who have knowledge and experience in family law; Assigning all cases pertaining to a particular family to a specific judge (one family - one judge); Allow judges to deviate from the usual rules of procedure and evidence, where the

¹⁸¹ Ibid, p. 35.

¹⁸² Marcus - The Israel Family Court – 2019, above footnote 161, p. 68.

interests of justice so require; Establishment of Family Court Supporting Services (FCSS), which will sit next to each Family Court¹⁸³.

According to this view, the effects of family conflict on the whole family should be addressed, not just the disputing parties. This consideration requires that welfare officials begin their involvement at the earliest possible stage, even before the start of litigation, before filing the pleadings that raise reciprocal claims that may block the parties from accessing negotiations and increase their vulnerability and opposition to each other¹⁸⁴.

The FCSS are connected to all family courts and religious courts (for Jews, Muslims and Druze). The FCSS belong to the Ministry of Welfare, which is responsible for providing welfare services in Israel. The FCSS are staffed by treatment, mediation and counseling professionals, including diagnostic services, whose job is to provide a professional service to the court¹⁸⁵.

In the discourse that preceded the establishment of the Family Courts and the FCSS, the inherent connection between the "legal" and the "therapeutic" stood out¹⁸⁶. One reason for this is the special nature of family law that requires a distinct institutional approach involved in therapeutic aspects, given the crisis point in time in which the legal system intervenes in the lives of the parties. The central worldview of the FCSS is the resolution of the conflict through mediation and reaching agreements.

The FCSS work in collaboration with the judge. As stated above, it is therapeutic judgment that sees the management of the procedure and its outcome as an opportunity to achieve positive, rehabilitative and constructive behavioral and emotional results. The judicial process does not only deal with legal rights and obligations but is a forum

¹⁸³ Ibid, p. 69.

¹⁸⁴ Idem.

¹⁸⁵ Meller-Shalev Hila, "The 'Legal-Therapeutic' Space: The Encounters between the "Legal" and "Therapeutic" in the Work of the Family Court Supporting Services", 23 *Hamishpat Law Rev.* [The College of Management Academic Studies (COLMAN)], 87, 88 (2019) (Hebrew).

¹⁸⁶ HaCohen Menachem, "The Interpersonal Discourse Folded in The Legal Hearing in The Family Court", 2 *Family in the law (Journal of Academic Center for Science and Law)*, 385, pp.386-387 (2008) (Hebrew) (Hereinafter: "**The Interpersonal Discourse Folded in The Legal Hearing in The Family Court – 2008**").

for dealing with disputes through looking at interests, needs, feelings, relationships and more¹⁸⁷.

Therapeutic judgment has an educational purpose, a healing purpose and even a rehabilitative purpose. It aims to find a pragmatic solution to a conflict taking into account human aspects with the understanding that the person involved in the conflict is an individual with needs and desires. The judge's behavior gives the jurisdiction a human face and creates a new paradigm for the role of the judge. The judge is not perceived as a formalist, who uses the distant adversarial method, but as one who takes a collaborative and involved approach¹⁸⁸. The judge is a "human being"¹⁸⁹.

In the legal system, it is possible today to identify lines of "treatment culture", which calls for the application of the characteristics of the therapeutic method outside the special courts and its application to the general legal system, including civil proceedings¹⁹⁰.

Adjudication with therapeutic indications also takes place in ordinary courts and not only in problem-solving courts. The judge is not only a "mouthpiece" of the law but he/she settles disputes and has the ability to motivate emotional processes and shape behavior among the litigants¹⁹¹.

The new roles of the judge require, alongside legal aspects, additional knowledge and skills. Today, a therapeutic judge needs knowledge from extra-legal disciplines, especially in the social sciences and behavioral sciences (psychology, sociology) in order to create interpersonal communication for the creation of internal motivation in the individual to change his/her behavior¹⁹².

¹⁸⁷ Perlman – 2015, above footnote 164, p. 191.

¹⁸⁸ *Idem*.

¹⁸⁹ Frank Jerome, "Are Judges Human? Part 1: The Effect on Legal Thinking of the Assumption That Judges Behave Like Human Beings", 80 *U. Pa. L. Rev.* 17 (1931).

¹⁹⁰ Perlman – 2015, above footnote 164, p. 202; Jones Michael, "Mainstreaming Therapeutic Jurisprudence into the Traditional Courts: Suggestions for Judges and Practitioners", 5(4) *Phoenix Law Review*, 753 (2012).

¹⁹¹ Perlman – 2015, above footnote 164, pp. 2010-2011.

¹⁹² *Ibid*, p. 212; Winick Bruce J., "Therapeutic Jurisprudence: Enhancing the Relationship between Law and Psychology". 9 *Law and Psychology: Current Legal Issues*, 30 (2006)

In addition, a therapeutic judge needs to know how to manage the dispute in a therapeutic approach and recognize not only the legal aspects but also the needs and interests of the parties. Skills required of a therapeutic judge are mastery of interpersonal skills and interpersonal communication¹⁹³; Emotional intelligence¹⁹⁴; Ability for creative and integrative thinking that will allow for conceptual openness, flexibility and originality¹⁹⁵; Ability to work in a team and manage a team, since, as stated, together with the judge, a professional-multidisciplinary professional team works¹⁹⁶.

In the Family Court there is a uniqueness to the judicial role in therapeutic aspects. One uniqueness that characterizes family law is the centrality of the emotional experience. Family court judges deal with emotionally charged and emotionally evolving disputes to vast content-worlds, beyond the concrete conflict¹⁹⁷. The second characteristic is the ongoing relationship between the parties. The relationship lasts beyond the specific legal dispute¹⁹⁸. A third characteristic stems from the fact that in family law, as in other laws, there is no single factual truth. But in addition to the absence of one factual truth, there is also no one value truth. The difficulty, as stated, is in the inability to know the facts, when the solutions are also valuable and relative¹⁹⁹. Another difficulty lies in the paradox of the judicial process. There is a built-in contradiction between the purpose, which the family judge seeks to reach, that the person will function normatively, take responsibility for himself/herself, his/her family, feed and support his/her family, and regulations, prohibitions, restrictions, sanctions, punishment, execution, etc. There is a built-in contradiction between our desire to bring the individual to harmonious functioning, autonomy and happiness, and the measures we take throughout this process²⁰⁰.

¹⁹³ Perlman – 2015, above footnote 164, p. 213; King Michael, "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice", 32 *MELBOURNE UNIVERSITY L. REV.* 1096 (2008).

¹⁹⁴ Goleman – 2005.

¹⁹⁵ Perlman – 2015, above footnote 164, p. 215.

¹⁹⁶ *Idem*.

¹⁹⁷ The Interpersonal Discourse Folded in The Legal Hearing in The Family Court, above footnote 182, pp.386-387.

¹⁹⁸ *Ibid*, p. 389.

¹⁹⁹ *Idem*.

²⁰⁰ *Ibid*, p. 391.

The emotional world and subjective experiences are central to a family process, and therefore a professional, not just human, reference is needed to the fact of the centrality of the emotional world of the litigants. It is important to note that the goal is not to replace or fill in for professional therapists such as psychologists or social workers. But in order to produce a professional and accurate judgment, which will yield the positive therapeutic results to which it aspires, the emotional discourse must be conducted skillfully and professionally²⁰¹.

The last part of the thesis deals with JTM - the proposed model for therapeutic jurisprudence in divorce proceedings.

The judicial worldview is subjective. Judges do not tend to share the emotional experience with each other (as opposed to professional consultations) and may not even tend to share the emotional experience at all. Since this is a subjective experience that this research seeks to examine from the world of the one who experienced it, tools from qualitative research are used. Qualitative research, focusing on the human experience, seeks to learn about a particular phenomenon from the world of the individual through the meanings and interpretations that the individual gives to a particular phenomenon²⁰². The purpose of the method is to observe the experience as it is presented by the experienced person, without limitations of beliefs, traditions and prejudices on the part of the researcher or the research literature²⁰³.

Qualitative research uses descriptive, inductive, and interpretive methodology to express the "living experience." The descriptive power underlying the approach allows for a dimension of depth, understanding and meaning for the study of human phenomena²⁰⁴. In applying this study, judicial-therapeutic processes should be examined from the subjective point of view of those who experience it - Family Judges - with reference to the time, place and meaning given by them to the judicial experience.

²⁰¹ Ibid, p. 389.

²⁰² Patton Michael Quinnwo, "Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective", 1(3) *Qualitative Social Work*, 261 (2002) (Hereinafter: "**Patton – 2002**").

²⁰³ Moustakas Clark E., *Phenomenological Research Methods* (Sage Publications, Inc (1994).

²⁰⁴ Smith Jonathan. A., "Semi-Structured Interviewing and Qualitative Analysis", *Rethinking Methods in Psychology*, 9–26, London: Sage Publications, 1995) (Hereinafter: "**Smith – 1995**").

For the purpose of the present study, the semi-structured interview was chosen, which allows the researcher to arrive with a basic structure of questions but at the same time allows flexibility according to the development of the interview and the topics that arose during it²⁰⁵. A semi-structured interview allows interviewees the space and freedom to talk about their experience with minimal intervention on the part of the researcher, with the researcher's prior knowledge of the subject, based on literature review and personal experience, serving as a framework and guide for generalizing and expanding topics²⁰⁶. The interview focuses on the professional life world of the interviewee and seeks to understand the meaning of the phenomenon in his/her life. The interview is an interpersonal interaction. The researcher chose a semi-structured interview over an open interview because it allows for a narrow focus on a specific focus, in this case, on the emotional aspect of the judicial experience²⁰⁷.

The interviews were conducted with a limited number of judges and their role is not purely research but to add personal, human and emotional weight to the theoretical aspects that have been extensively reviewed in this thesis including psychological, sociological and therapeutic aspects.

Four retired family judges were interviewed.

The interviewees were asked 16 open-ended questions and they answered openly that created a conversation between the researcher and the interviewee. A number of key themes emerged from the interviews:

The first theme is "**interpersonal and intrapersonal emotional aspects in family law litigation**". This theme relates to the judges' position regarding the existence of emotional aspects in a judicial proceeding, both in the recognition of such proceedings among the litigants and / or between the litigants and the judge and in the recognition of emotional proceedings within the judge himself/herself.

The second theme is "**the place of therapeutic law in judicial proceedings in family law de jure and de facto**". This theme relates to the stand point of the judges regarding

²⁰⁵ Becker, Howard S., "The Epistemology of Qualitative Research". In R. Jessor, A. Colby, & R. A. Shweder (Eds.), *The John D. And Catherine T. Macarthur Foundation Series On Mental Health and Development. Ethnography and Human Development: Context and Meaning in Social Inquiry* (p. 53–71) (The University of Chicago Press, 1996); Howard Lune Bruce & L. Berg, "Qualitative Research Methods for the Social Sciences", *5 Teaching Sociology*, 18 (2004).

²⁰⁶ Patton – 2002, above footnote 199.

²⁰⁷Smith – 1995, above footnote 201.

the role of the therapeutic court in judicial proceedings in family matters in the desired aspect compared to the existing one. This stand point reveals a certain gap between the need to use tools from therapeutic law and the complex judicial reality that makes it difficult to use such tools.

The third theme is "**the areas of knowledge and skills required of a family judge for a quality judicial procedure**". This theme examines the judges' stand point regarding interpersonal and personal skills required of a family judge as well as areas of acquired legal and extra-legal knowledge required to fulfill the judicial role in family proceedings.

Relying on the broad theoretical research that includes the psychological and sociological aspects of divorce proceedings, the laws applicable in Israel, the United States and France and relying on approaches from therapeutic law combined with ongoing interviews, the researcher constructed the JTM.

The JTM model was built during the years of research to provide an alternative response, in a judicial-therapeutic framework, to divorce disputes between spouses in a proactive manner that will ensure the well-being of all parties involved in the conflict, directly (the parties themselves and their children) and indirectly (family members and society as a whole).

The proposed model has four main objectives. The first goal is to help the parties enable the divorce crisis to produce the beginning of a process of growth, improvement and benefit in lifestyle by influencing the meaning attributed to the divorce crisis²⁰⁸. A second goal is to reduce the mental and psychological damage that may be caused to the children of the litigants. A third goal of the model is a social goal. Divorce in society reflects structural, cultural, value²⁰⁹, demographic and social changes²¹⁰. A model that weighs these social aspects, will be able to create harmony and balance between them and bring them, in practice, to a judicial application. A fourth goal, and is the main goal for this model, is a therapeutic goal. Therapeutic justice strives to manage the procedure and achieve positive, restorative and constructive behavioral and emotional outcomes

²⁰⁸ Anderson Mary L et al., *Counseling Adults in Transition* (Springer Pub., 2012).

²⁰⁹ Giddens – 2009, above footnote 31.

²¹⁰ Kalmijn – 1998, above footnote 33.

that allow room not only for legal rights and obligations but for interests, needs, emotions, relationships and more²¹¹. This purpose derives, among other things, from the special nature of family law in general and of divorce proceedings in particular. One characteristic is the centrality of the emotional experience²¹². A second characteristic is the ongoing relationship between the litigants²¹³. A third characteristic stems from the absence of unequivocal truths both in the factual aspect and in the value aspect. There are some subjective truths that are all true²¹⁴.

The model is divided into three parts. The first part deals with the first stage of the judicial process and is the training of judges for family matters upon their appointment. The second part deals with the long run of the procedure and offers means for further implementation of the model objectives throughout the judge's tenure as a family judge and as a general model in family court proceedings. The third part deals with daily aspects of judicial proceedings and the creation of mechanisms for sharing and listening between colleagues of the judiciary and between judges and professional bodies.

Another emphasis of the model is that it is universal and appropriate, with the required modifications, to any legal system that gives some place to therapeutic aspects within its framework. The JTM is a model that adapts itself to an existing legal method. The model produces another "toolbox" that is available to the judges' training system and the judges themselves so that each judicial system can adopt and embrace those "tools" relevant to its method and use them in a manner appropriate to it.

The model is processual and structured in a way that produces internalization and is based on the "internalization circle" model. The "internalization circle" model is based on the humanistic conception and therefore addresses the whole personality of the individual²¹⁵. The internalization circle model allows for systematic learning. The

²¹¹ Perlman – 2015, above footnote 164, p. 191.

²¹² The Interpersonal Discourse Folded in The Legal Hearing in The Family Court – 2008, above footnote 182 p. 389.

²¹³ Idem.

²¹⁴ Idem.

²¹⁵ Reiter Shunit, "Circles of Brotherhood: Breaking the Link between Disability and Loneliness: The Social Inclusion of People with Disabilities, Proposing an Educational Program for Social Integration" (Achva, 2004) (Hebrew); Traves Carmit, The Circle of Internalization as A Means of Educational Renewal in an Experimental School". In Chen David (Ed.), *Experimental Schools: The Creator's House*

assumption is that in order to internalize academic, theoretical, or performance material, learning must be meaningful and relate to the learner's life experiences. A distinctive feature of the method is its circularity. The ability to return to the same subject in different ways and from different perspectives²¹⁶.

Process learning makes it possible to produce meaningful learning. For an experience to become an experience of meaningful learning it needs a kind of cognitive processing of consciousness that makes it inspiring, influential and such that changes the understanding or perception of those who have experienced it²¹⁷. Meaningful learning is learning that is perceived as meaningful to the learner, and that has value for him/her. The learner recognizes the value before learning, during the learning process or in retrospect, after it²¹⁸.

As mentioned, one part of the model is the creation of an extra-legal curriculum for the training of new family judges. Upon the appointment of family judges, the model offers a broad curriculum in an academic format, which includes compulsory study of introductory courses in a variety of extra-legal topics relevant to the adjudication of family disputes amounting to 30 SH per course.

The first proposed course is an Introduction to Psychology in Family Procedures. This course will address the biological and evolutionary foundations of behavior; Learning and analyzing behavior; Cognitive processes; Human development during life; Motivation; Emotion; Understanding the personality; Psychological disorders; Social processes, society and culture.

The second course is an introduction to sociology in family proceedings. It is important that judges recognize the academic literature related to divorce in sociological aspects in order to expand the conceptual "canvas" regarding the broad implications of divorce, not only at the individual level, but at the level of society as a whole from various social

for Innovation in Education, Vol. II (pp. 131-180) (Tel Aviv: Ramot, 2008) (Hebrew) (Hereinafter: "**The Circle of Internalization – 2008**").

²¹⁶ The Circle of Internalization – 2008, above footnote 212, pp. 135-136.

²¹⁷ Frenpas Orit & Weinstock Moshe, "A Significant Learning Experience", 2(1) *Echo of Education*, 82 (2013) (Hebrew).

²¹⁸ Glassner Amnon, "A Teaching That Increases the Likelihood of Experiencing Feelings of Meaningful Learning", 52 *Mofet Institute Bulletin*, 79 (2014) (Hebrew).

aspects. A course dealing with the sociological aspects of family law will provide an introduction to the sociological perspective as a way of understanding the social reality and its components.

The third course is an introduction to emotional intelligence for judges in family proceedings. Human communication - brain, emotion and behavior (Emotional Intelligence - EI) is a conscious and intelligent connection of thought and emotion that leads to behavior that promotes relationships and brings a person to an optimal state with himself/herself and his/her environment²¹⁹. The dynamics between the judge and the litigants affect the emotional, cognitive and behavioral conduct of both the judge and all the persons operating in the courtroom. Through conscious and intelligent use of emotional intelligence and interpersonal communication (verbal and non-verbal), judges will be able to direct, navigate, and influence the thoughts and actions that result from them.

The fourth course is Ethics and Judicial Bioethics in Family Procedures. Values education is the foundation for optimal human communication from an early age. In this course, the judges will acquire content in the fields of ethics and bioethics in theoretical and practical aspects of legal ethics relevant to proceedings in family matters and in the areas of interpersonal interaction.

The four areas offered as compulsory courses in these multidisciplinary areas will provide a solid and meaningful basis for acquiring the skills required of a family court judge and equipping him/her with a broad "toolbox" for resolving various and varied issues that arise in the legal world - whether these are issues with a pure legal answer or whether they are human issues that require a broad-based methodology.

The second part of the model offers a permanent program for advanced training in extra-legal issues for incumbent judges. The areas offered for advanced training are diverse and multidisciplinary.

²¹⁹ Keidar Daniella, "Emotional Intelligence and Humor", 1 *Online Humor*, 5, 6 (2011).

The first topic is gerontology²²⁰. In the last decade, many theoretical links have been established between the theory of therapeutic law and the subject of old age²²¹. It is desirable and proper that family judges should study aspects dealing with the connection between old age and law and family proceedings.

The second subject is developmental psychology. As part of their judicial work in family matters, judges are required, in almost every divorce dispute and other family disputes, to decide the case of minors. The "therapeutic judge" who deals with minors should be aware of the therapeutic and anti-therapeutic results of the manner in which the legal proceedings are conducted. The legal process actively deals with the implementation of beneficial practices, in order to promote the psychological well-being of the children whose case and/or the procedure concerning them is discussed before the judge²²². Advanced training in developmental psychological aspects can help judges in procedures related not only to the child's hearing, but in general to understanding his or her stand point in the specific conflict between the parents and the implications of the conflict on the child in the short-term and long-term aspects and on a variety of life areas.

The third issue is dealing with stressful situations. Stress has been recognized for several decades as a cause of increased morbidity, exacerbation of diseases such as influenza, diabetes and more, or the development of cardiovascular disease, pain and physical problems and more²²³. Stress is also associated with emotional difficulties, such as nervousness, anger, and depression, which cause personal distress and damage to interpersonal relationships²²⁴. The judicial role involves many stressors. When judges have the appropriate resources to perform their job, an increase in requirements

²²⁰ *Practical Gerontology: A Multi-Professional Perspective on Working with Older People* (Prilotsky Dana, Cohen Miri Eds.) (2015) (Hebrew).

²²¹ Doron Israel et al, "Prevention and Legal Planning in Old Age", 16 *Hamishpat Law Rev.*, 36 (2003).

²²² Boker Yaniv, *Conversation Between a Judge and a Child*, p. 14 (2018) (Hebrew); Shili-Yerihover Dalia & Gal Tali "On Bottles, Wines and Vineyards: The Youth Law (Care and Supervision) in the Mirror of Therapeutic Law" 22 *Hamishpat Law Rev.*, 9, 26 (2009) (Hebrew).

²²³ Aronsson Gunnar & Theorell Töres & Grape Tom & Hammarström Anne & Hogstedt Christer & Marteinsdottir Ina & Skoog Ingmar & Träskman-Bendz Lil & Hall Charlotte, "A Systematic Review Including Meta-Analysis of Work Environment and Burnout Symptoms". 17 *BMC Public Health*, 264 (2017).

²²⁴ Egozi Lalib et al., "Stress, Burnout and Employee Health", 387 *Safety*, 26 (2020) (Hebrew) (Hereinafter: "**Egozi – 2020**").

related to skills and the meaning of doing will increase motivation and satisfaction and reduce the risk of burnout²²⁵.

A judge's response to stressors depends largely on the tools and resources available to him/her to deal with the task. Various resources can mitigate the effects of the load on the negative outcomes to the judge. The purpose of this training is to offer ways to prevent burnout and reduce stress, while looking at the factors related to the judge's mental resilience, in order to improve his/her well-being and performance while focusing on changing the stressors on the one hand, along with strengthening the resources for dealing with the task of judgment on the other hand²²⁶.

The fourth topic is NLP - Neuro-Linguistic Programming. Language has a great impact on any interaction. Language is also a showcase of subjective experience and gives a reference regarding a person's cognitive, emotional and behavioral state. The use of language creates neural and neuropsychological stimuli in the brain that provoke the person to different responses. Through language one can motivate, influence, persuade, encourage, glorify, empower or inhibit, humiliate, tease, suppress motivation. The judge's central and main tool is language - written and spoken. In the courtroom, there is a dialogue between the judge and the litigants and their attorneys, between the judge and the minors, between the judge and expert witnesses and treatment factors. The purpose of this training is to equip the judges with another tool in the judicial toolbox, allow the judge to learn about the essence of the N.L.P, about language as a representation of experience and the uses of language as an effective tool for managing an effective, collaborative, proactive and motivating process.

The third and final part of the model deals with aspects related to day-to-day judicial proceedings and offers an array of professional-social sharing and support. One of the issues that came up in the interviews was the loneliness of the judge. An array of sharing and listening serves several purposes: First, it is a starting point for the transition from an external "viewer" to one who "belongs." Sharing and listening allows those who take

²²⁵ Bakker Arnold. B., & Demerouti Evangelia, "Multiple Levels in Job Demands-Resources Theory: Implications for Employee Well-Being and Performance". In E. Diener, S. Oishi, & L. Tay (Eds.), *Handbook of Wellbeing* (Salt Lake City, UT: DEF Publishers, 2018).

²²⁶ Egozi – 2020, above footnote 221, p. 27.

part in them to find out which points are similar and which points are different. A sense of belonging is very important among judges, especially as the role is very "lonely" - a judge sitting alone in the courtroom or in his/her room for a whole day without interaction with colleagues but in deliberate breaks or gatherings, as a sense of belonging is one of the essential psychological needs for human development and growth²²⁷.

Second, sharing allows for the expression and learning of different ways of group members coping with the same situations.

Third, sharing produces resonance. The concept of resonance describes the transition of the effect that one participant in the group has on other participants. The group is like a string of strings. According to this conception, every human theme has its own sound. When a string produces a sound, the strings in the other instruments tuned to the same frequency also vibrate, presenting a variety of response options²²⁸. Enabling emotional discourse is a kind of "amplifier" for creating options for solutions to a particular situation and is a safe haven for judges who are subjected to enormous emotional and psychological stress at work.

In order for the circle of sharing to be practical, the model proposes to include various professional factors and not just judges in family law. The model suggests that in this circle, at least once a week or for a short period, a social worker on behalf of the FCSS and once a month the psychologist of the FCSS will be present.

A combination of these therapeutic-judicial procedures proposes to change the face of jurisdiction in Israel and other countries.

This research paper offers, in effect, an alternative to Freud's statement. Not only is the judging profession possible, but it is an important, necessary and even sublime profession since the judge has the power to divert the train track on which parties in a

²²⁷ Osterman Karen f., "Students' Need for Belonging in the School Community", 70(3) *Review of Educational Research*, 323.

²²⁸ Schwartz Tal, "Our Artwork Is a Glance, A Window, A Mirror: Resonance in Group Therapy", 22(1) *Mikbatz: The Israel Journal of Group Psychotherapy*, 29, 30 (2017)

family dispute in general and a divorce dispute in particular are speeding and lead that train safely to the station. This is not the end station of the train, but a kind of central station, where the parties can choose the next train they want to board, equipped with a detailed map showing them alternatives that can lead them to new destinations that promote and even heal, if they choose to do so.

Bibliography

Books

1. Anderson Mary L et al., *Counseling Adults in Transition* (Springer Pub., 2012).
2. Anthony Giddens; Philip W Sutton, *Sociology* (6th ed. 2009).
3. Bandura Albert, *Social Learning Theory* (General Learning Press, New York, 1971).
4. Bell John et al., *Principles of French Law* (2nd ed.), p. 253 (Oxford: Oxford University Press, 2008).
5. Blakeslee Sandra et al., *The Unexpected Legacy of Divorce* (Hachette Books, 2000).
6. Boker Yaniv, *Conversation Between a Judge and a Child* (2018) (Hebrew).
7. Clark Homer Harrison, *The Law of Domestic Relations in The United States* (West Publ, 1987).
8. Conley John M. & William M. O'Barr, *Rules versus relationships: the ethnography of legal discourse* (University of Chicago Press, 1990).
9. Deshe Vered, *The Israeli Judicial System*, p. 371 (Nevo Publishing, 2019) (Hebrew).
10. Dworkin Ronald, *Law's Empire* (Harvard University Press, 1986).
11. Glendon Mary Ann, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (University of Chicago Press, 1989).
12. Goleman Daniel, *Emotional Intelligence* (10th Anniversary ed.) (Bantam Pub. 2005).
13. Hetherington Eileen Mavis & Kelly John, *For Better or for Worse* (W. W. Norton & Company, 2002).
14. Hofstede Geert, Hofstede Gert Jan & Minkov Michael, *Cultures and Organizations: Software of the Mind (3rd Edition)* (McGraw-Hill Publishing, 2010).
15. Hofstede Gert Jan, *Cultures and Organizations: Software of the Mind* (McGraw-Hill Publishing, 1991).
16. Hofstede Gert Jan, *Culture's Consequences: Comparing Values, Behaviors, Institutions, And Organizations Across Nations* (2 Ed. Thousand Oaks, Calif; Sage Publications, 2001).

17. *International Comparative Legal Guide to: Family Law, 3rd Edition* (Bradley Charlotte, Napley Kingsley eds.) (2020).
18. Janoff-Bulman Ronnie, *Shattered Assumptions: Towards a New Psychology of Trauma* (New York: Free Press, 1992).
19. Katz Sanford N, *Family Law in America* (Oxford University Press, 2014).
20. Kelly Joan, "The Determination of Child Custody". In *The Future of Children*, vol. 4(1). (Princeton University, 1994).
21. Laura W. Morgan, *Child Support Guidelines—Interpretation and Application* (Aspen Law & Business, 1996).
22. Lifshitz Shachar, *Common-Law Marriage in The Civil Theory of Family Law*, (Nevo Pub., 2005) (Hebrew).
23. Lifshitz Shachar, *The Spousal sharing* (Nevo Pub, 2016) (Hebrew).
24. Moustakas Clark E., *Phenomenological Research Methods* (Sage Publications, Inc (1994).
25. Ní Shúilleabháin, Máire, *Cross-border Divorce Law: Brussels Ii Bis*, (Oxford: Oxford University Press, 2010).
26. Perlman Karni, *Dispute Resolution—Applying Non-Adversarial and Therapeutic Justice* (Bursi Publishing, 2015) (Hebrew)
27. Prilotsky Dana, Cohen Miri (Eds)., *Practical Gerontology: A Multi-Professional Perspective on Working with Older People* (2015) (Hebrew).
28. Rabin Claire, *The New Divorce: Positive Change During and After the Transition Period* (Even Yehuda: Amatzia, 2010) (Hebrew).
29. Regev Motti (Mordechai), *Sociology of Culture: A General Introduction* (The Open University of Israel, 2011) (Hebrew).
30. Reiter Shunit, *Circles of Brotherhood: Breaking the Link between Disability and Loneliness: The Social Inclusion of People with Disabilities, Proposing an Educational Program for Social Integration* (Achva, 2004) (Hebrew).
31. Schiffman Pinchas, *Family Law in Israel* (Volume 1, Second Edition) (Hebrew University Press, 1995) (Hebrew).
32. Wexler David B., & Winick Bruce J., *Essays in therapeutic jurisprudence* (Carolina Academic Press, 1991).
33. Wexler David, Winick Bruce (eds), *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Carolina Academic Press, Durham, North Carolina, 1996).

34. Williams Robert, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Dep't of Health and Human Services, Office of Child Support Enforcement, 1987).

Articles

1. Alberstein Michal, "Judicial Dispute Resolution: Towards the Theory of Law Beyond Controversy", 11 *Din Udvarim - Haifa Law Review* 17 (2020) (Hebrew).
2. Alberstein Michal, "Judicial Dispute Resolution: Towards the Theory of Law Beyond Controversy", 11, 32, *Din Udvarim - Haifa Law Review* 17 (2020) (Hebrew).
3. Allen Douglas w. & Brinig Margaret f., "Child Support Guidelines: The Good, the Bad, and the Ugly", 45(2) *Family Law Quarterly*, 135 (2011).
4. Amato Paul R. & DeBoer Danelle D., "The Transmission of Marital Instability Across Generations: Relationship Skills or Commitment to Marriage?", 63 *Journal of Marriage and Family*, 1038 (2001).
5. Amato Paul R. & Keith Bruce, "Parental Divorce and The Well-Being of Children: A Meta-Analysis", 110 *Psychological Bulletin*, 26 (1991).
6. Amato Paul R. & Rivera Fernando, "Paternal Involvement and Children's Behavior Problems", 61 *Journal of Marriage and the Family*, 375 (1999).
7. Amato Paul R., "The Post-Divorce Society: How Divorce Is Shaping the Family and Other Forms of Social Organization", In *The Postdivorce Family: Children, Parenting and Society* (p. 161) (R. A. Thompson, & P. R. Amato ed.) (Sage Publications, 1999).
8. Amato Paul R., "Research on Divorce: Continuing Trends and New Developments", 72 *Journal of Marriage and Family*, 650 (2010).
9. Amato Paul R., "The Consequences of Divorce for Adults and Children", 62 *Journal of Marriage and Family*, 1269 (2000).
10. Aronsson Gunnar, Theorell Töres, Grape Tom, Hammarström Anne, Hogstedt Christer & Marteinsdottir Ina, Skoog Ingmar, Träskman-Bendz Lil & Hall Charlotte, "A Systematic Review Including Meta-Analysis of Work Environment and Burnout Symptoms", 17 *BMC Public Health*, 264 (2017).
11. Bakker Arnold. B., & Demerouti Evangelia, "Multiple Levels in Job Demands-Resources Theory: Implications for Employee Well-Being and Performance". In E.

- Diener, S. Oishi, & L. Tay (Eds.), *Handbook of Wellbeing* (Salt Lake City, UT: DEF Publishers, 2018).
12. Bazak Jacob, "The Mother's Duty to Attend Her Child Support According to Jewish Law", 32 *Hapraklit (Israel Bar Association Law Rev.)*, 357 (1988) (Hebrew).
 13. Becker Howard S., "The Epistemology of Qualitative Research". In R. Jessor, A. Colby, & R. A. Shweder (Eds.), The John D. And Catherine T. Macarthur, Foundation Series On Mental Health and Development. *Ethnography and Human Development: Context and Meaning in Social Inquiry* (p. 53–71) (The University of Chicago Press, 1996).
 14. Blecher-Prigat Ayelet, "Rethinking Visitation: From a Parental to a Relational Right", 16 (1) *Duke Journal of Gender Law & Policy* (2009).
 15. Bourreau-Dubois Cécile, et al. "Child Support Order: How Do Judges Decide Without Guidelines? Evidence from France." 38(3) *European Journal of Law and Economics*, 431 (2014).
 16. Calhoun Lawrence G. et. al., "Positive Outcomes Following Bereavement: Paths to Posttraumatic Growth", 50 *Psychologica Belgica*, 125 (2010).
 17. Chambers David, "Rethinking the Substantive Rules for Custody Disputes in Divorce", 83 *Mich. L. Rev.* 477 (1984).
 18. Chase-Lansdale P. Lindsay et al., "The Long-Term Effects of Parental Divorce on the Mental Health of Young Adults: A Developmental Perspective", 66 *Child Development*, 1614 (1995).
 19. Chauveau Veronique & Butruille Charlotte, "Family Law in France: Overview", available at: <http://uk.practicallaw.com/6-615-3545>.
 20. Clifford Terry & Clark Roger, "Family Climate, Family Structure and Self-Esteem in College Females", 23 *Journal of Divorce & Remarriage*, 97 (1995).
 21. Dadomo Christian, "The Current Reform of French Law of Divorce", 4 *International Family Law*, 218 (2004).
 22. Doron Israel et al, "Prevention and Legal Planning in Old Age", 16 *Hamishpat Law Rev.*, 36 (2003).
 23. Egozi Lalib et al., "Stress, Burnout and Employee Health", 387 *Safety*, 26 (2020) (Hebrew).
 24. Elrod Linda D. & Spector Robert G., "A Review of the Year in Family Law: Numbers of Disputes Increase", 45 *Fam. L.Q.*, 492 (2012).

25. Elster Jon, "Solomonic Judgments: Against the Best Interests of the Child", 54 *U. Chi. L. Rev.* 1 (1987).
26. Estin Ann Laquer, "Marriage and Divorce Conflicts in the International Perspective", 27 *Duke Journal of Comparative & International Law* 485 (2017).
27. Fineman Martha, "Dominant Discourse, Professional Language and Legal Change in Child Custody Decisionmaking", 101 *Harv. L. Rev.* 727 (1988).
28. Foster Henry H., "Common Law Divorce", 46 *Minn. L. Rev.* 43 (1961).
29. Frank Jerome, "Are Judges Human? Part 1: The Effect on Legal Thinking of the Assumption That Judges Behave Like Human Beings", 80 *U. Pa. L. Rev.* 17 (1931).
30. Frenpas Orit & Weinstock Moshe, "A Significant Learning Experience", 2(1) *Echo of Education*, 82 (2013) (Hebrew).
31. Frolin Fern L., "Tips for Handling Cases under the New Alimony Law", 56 *Bos. B. J.* 19 (2012).
32. Fulmer Ingrid, Barry Bruce & Goates Nathan, "Bargaining with feeling: Emotionality in and around negotiation". In book: *"Negotiation Theory and Research"*, pp.99-127 (Editors: L. Thompson, 2006).
33. Garrison Marsha, "Good Intentions Gone Awry: The Impact of New York's Equitable Distribution Law upon Divorce Outcomes", 57 *Brook. L. Rev.* 621 (1991).
34. Glassner Amnon, "A Teaching That Increases the Likelihood of Experiencing Feelings of Meaningful Learning", 52 *Mofet Institute Bulletin*, 79 (2014) (Hebrew).
35. Godley Jenny et al., "A Generation at Risk: Growing up in an Era of Family Upheaval", 78 *Social Forces*, 396 (1999).
36. HaCohen Menachem, "The Interpersonal Discourse Folded in The Legal Hearing in The Family Court", 2 *Family in the law* (Journal of Academic Center for Science and Law), 385 (2008) (Hebrew).
37. HaCohen Menachem, "The Interpersonal Discourse Folded in The Legal Hearing in The Family Court", 2 *Family in the law* (Journal of Academic Center for Science and Law), 385 (2008) (Hebrew).
38. Hill Paul B & Kopp Johannes, "Editorial on the Special Issue 'Research on Divorce Causes and Consequences". In *Research on Divorce: Causes and Consequences*, 40(3) *Comparative Population Studies*, pp. 219–228 (2015).
39. Hofstede Geert & Bond Michael Harris, "The Confucius Connection: From Cultural Roots to Economic Growth", 16 *Organizational Dynamics*, 5 (1988).

40. Hofstede Geert, "Dimensionalizing Cultures: The Hofstede Model in Context", 2 Online Readings in *Psychology and Culture*, 9 (2011).
41. Howard Lune Bruce & L. Berg, "Qualitative Research Methods for the Social Sciences", 5 *Teaching Sociology*, 18 (2004).
42. Irion Jane C. et al., "The Influence of Divorce On Coping in Adolescence", 17 *Journal of Youth and Adolescence*, 135 (1988).
43. Jones Michael, "Mainstreaming Therapeutic Jurisprudence into the Traditional Courts: Suggestions for Judges and Practitioners", 5(4) *Phoenix Law Review*, 753 (2012).
44. Kalmijn Matthijs, "Intermarriage and Homogamy: Causes, Patterns, Trends", 24 *Annual Review of Sociology*, 395 (1998).
45. Kalmijn Matthijs, "Shifting Boundaries: Trends in Religious and Educational Homogamy", 56 *American Sociological Review*, 786 (1991).
46. Kay Herma Hill, "Beyond No-Fault: New Directions". In *Divorce Reform at The Crossroads* (Sugarman Stephen D. & Kay Herma Hill eds.) (New Haven and London: Yale Univ. Press, 1990).
47. Keidar Daniella, "Emotional Intelligence and Humor", 1 *Online Humor*, 5, 6 (2011).
48. King Michael, "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice", 32 *Melbourne University L. Rev.* 1096 (2008).
49. Larson Meredith, "Child Custody, Visitation & Termination of Parental Rights", 10 *Geo. J. Gender & L.* 713, (2009).
50. Lenaerts Koenraad, "The Best Interests of the Child Always Come First: The Brussels II Bis Regulation and the European Court of Justice", 20(4) *Jurisprudencija*, 1302 (2013).
51. Loyta Ziva "Conflict-intensive divorce: clinical and practical aspects". In *Psychology Law and Ethics in Israel: Psychological Evaluation, Psychotherapy and Judicial Decisions* (Yagil David, Carmi Amnon, Zaki Moshe & Livni Anat eds., 2008).
52. Marcus Philip, "The Israel Family Court - Therapeutic Jurisprudence and Jurisprudential Therapy from the Start", 63 *International Journal of Law & Psychiatry*, 68 (2019).

53. MazeH Yoav, "Child Support - Between Myth and Reality: The Gap between the Religious Law and the Case Law", 11 *Din Udvarim* (Haifa Law Review) 501 (2018) (Hebrew).
54. MazeH Yoav, "'Children's Custody': A Substantive Term or a Hollow Notion?", 28 *Law Studies - Bar-Ilan University Law Review*, 207 (2012) (Hebrew).
55. MazeH Yoav, "The Child Support Revolution: Following the Supreme Court's ruling in Family Appeal Case 919/15", 12 *Hearat Din* (Haifa Law Review), 1 (2018) (Hebrew).
56. McGavin Kim H., "Child Custody and Visitation in Maryland: In the Best Interests of the Child ", 26 *U. Balt. L.F* 3 (1995).
57. Meller-Shalev Hila, "The 'Legal-Therapeutic' Space: The Encounters between the 'Legal' and 'Therapeutic' in the Work of the Family Court Supporting Services", 23 *Hamishpat Law Rev.* [The College of Management Academic Studies (COLMAN)], 87 (2019) (Hebrew).
58. Menkel-Meadow Carrie, "Mothers and Fathers of Invention: The Intellectual Founders of ADR", 16(1) *Ohio St. J. Disp. Resol.*, 1 (2000).
59. Mercer Katharine L., "A Content Analysis of Judicial Decision-Making—How Judges Use the Primary Caretaker Standard to Make a Custody Determination", 5 *Wm. & Mary J. Women & L.*, 1 (1998).
60. Mirowsky John & Ross Catherine E., "Well-Being Across the Life Course", In A. V. Horwitz & T. L. Scheid (Eds.), *A Handbook for The Study of Mental Health: Social Contexts, Theories, And Systems* (pp. 328-347) (New York, NY, US: Cambridge University Press, 1999).
61. Morgan Laura W., "Where Are We Now? Current Trends in Alimony Law", 34 *Fam. Advoc.* 8 (2012).
62. Novinson Steven L., "Post-Divorce Visitation: Untying the Triangular Knot", *U. Ill. L. Rev.*, 121(1983).
63. Osterman Karen f., "Students' Need for Belonging in the School Community", 70(3) *Review of Educational Research*, 323.
64. Patton Michael Quinnwo, "Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective", 1(3) *Qualitative Social Work*, 261 (2002).
65. Perlin Michael L. & Lynch Alison J., "How Teaching about Therapeutic Jurisprudence Can Be a Tool of Social Justice, and Lead Law Students to Personally

- and Socially Rewarding Careers: Sexuality and Disability as a Case Example," 16 *Nevada Law Journal*, 209 (2015).
66. Perlman Karni "The Role of the Therapeutic Judge and Its Reference to Ideas Derived from the Legal Realism School", 26 *Bar Ilan Law Studies*, 415 (2010) (Hebrew).
 67. Rubinstein Elyakim, "Hearing Heart" - On the Act of Judgment ". In *Yoram Danziger's Book* (Limor Zer-Gutman and Ido Baum eds.), 47-61 (2019).
 68. Schwartz Dudi "The Contents of the Principle of Good Faith in Civil Procedure" 21 *TAU Law Review* 215 (1998) (Hebrew).
 69. Schwartz Tal, "Our Artwork Is a Glance, A Window, A Mirror: Resonance in Group Therapy", 22(1) *Mikbatz: The Israel Journal of Group Psychotherapy*, 29 (2017).
 70. Shawa Menash, "Minor Child Support in Jewish Law and Positive Law", 7 *TAU Law Review*, 316, (1989-1990).
 71. Shili-Yerihover Dalia & Gal Tali "On Bottles, Wines and Vineyards: The Youth Law (Care and Supervision) in the Mirror of Therapeutic Law" 22 *Hamishpat Law Rev.*, 9, 26 (2009) (Hebrew).
 72. Smith Jonathan. A., "Semi-Structured Interviewing and Qualitative Analysis". In *Rethinking Methods in Psychology*, 9 (London: Sage Publications, 1995).
 73. Sochat Shaul, "The Family Court - A house indeed?", 2 *Family in the Law*, 375 (2008) (Hebrew).
 74. Taylor Shelley E., "Adjustment to Threatening Events: A Theory of Cognitive Adaptation", 38 *American Psychologist*, 1161-1173 (1983).
 75. Tedeschi Gad, "Personal Status", 22 *Hapraklit*, 171 (Hebrew).
 76. Tedeschi Richard G, "Violence transformed", 4 *Aggression and Violent Behavior*, 319 (1999).
 77. Tedeschi Richard G. & Calhoun Lawrence G. Calhoun, "Posttraumatic Growth: Conceptual Foundations and Empirical Evidence", 15 *Psychological Inquiry*, 1 (2004).
 78. Traves Carmit, The Circle of Internalization as A Means of Educational Renewal in an Experimental School". In Chen David (Ed.), *Experimental Schools: The Creator's House for Innovation in Education*, Vol. II (pp. 131-180) (Tel Aviv: Ramot, 2008) (Hebrew).
 79. Triandis Harry C., "The Psychological Measurement of Cultural Syndromes", 51 *American Psychologist*, 407 (1996).

80. Wadsworth Michael et al., "Children of Divorced and Separated Parents: Summary and Review of Findings from a Long-Term Follow-Up Study in the UK", 7 *Family Practice*, 104 (1990).
81. Wang Cheng-Tong Lir & Schofer Evan, "Coming Out of the Penumbra: World Culture and Cross-National Variation in Divorce Rates", 97 *Social Forces*, 675 (2018).
82. Winick Bruce J., "Therapeutic Jurisprudence: Enhancing the Relationship between Law and Psychology". 9 *Law and Psychology: Current Legal Issues*, 30 (2006).
83. Yodanis Carrie, "Divorce Culture and Marital Gender Equality", 19 *Gender & Society*, 644, (2005).

Israeli Legislation

1. Basic Law: The Judiciary, Law Book 1110 - 5744 (1984).
2. Determination of Jurisdiction Regarding the Dissolving of Marriage (Special Cases and International Authority), 5729-1969, Law Book 573.
3. Proposed Law for the Settlement of Disputes in Family Disputes, 5774 -201, Bill 885 (2014).
4. The Family Court Act, 1995 – 5755, Law Book 1537 (1995).

Israeli Jurisprudence

1. Civil Appeal 109/75 Amir Avraham v. Aharon Avraham, HC Rul. 29 (2) 690 (1975).
2. Civil Appeal 130/84 Arie Cronberg v. Roy Cronberg, minor, HC Rul. 39(3) 358 (1985).
3. Civil Appeal 135/68 Tova Shimon Ze'ev Barely v. Estate Tax Administration, Jerusalem, HC Rul. 23(1) 393 (1969).
4. Civil Appeal 166/66 Liora Goldman v. David Goldman, HC Rul. PM(2) 533 (1966).
5. Civil Appeal 210/82 Lydia Gelber v. Sinai Gelber, 38(2) 014 (1984).
6. Civil Appeal 253/65 Zehava Bricker v. Israel Bricker, HC Rul. 20(1) 589 (1966).
7. Civil Appeal 254/76 Miriam Jankowitz v. Aaron Jankowitz, HC Rul. 31(3) 169 (1977).
8. Civil Appeal 3301/92 Shai Talmor v. Ofra Talmor, par. 3-4 (Published in Nevo Legal Database, 08.07.1993).

9. Civil Appeal 425/68 Nissan Maskil Leitan, minor v. Aaron (Arthur) Maskil Leitan, HC Rul. 23(1) 309 (1969).
10. Civil Appeal 4523/90 Moshe Kahn v. Linor Kahn, minor, HC Rul. 45(5) 529 (1991).
11. Civil Appeal 4523/90 Moshe Kahn v. Linor Kahn, minor, HC Rul. 45(5) 529 (1991).
12. Civil Appeal 466/82 Nathan Grubstein v. Nir Grubstein, HC Rul. 36(4) 157 (1982).
13. Civil Appeal 508/70 Vered Netowitz, Minor (through her mother, legal Guardian, Hannah Natev (Netowitz) v. Jacob Netowitz, HC Rul. 25(1) 603 (1971).
14. Civil Appeal 514/89 Iris Mord, Minor v. Nadia Mord (Published in Nevo Legal Database, 31.12.1989).
15. Civil Appeal 5265/92 Ravit Ben Moshe, Minor v. Yehezkel Ben Moshe (Published in Nevo Legal Database, 10.02.1994).
16. Civil Appeal 591/81 Yechiel Portugez v. Ravit Portugez, HC Rul. 36(3) 449 (1982).
17. Civil Appeal 66/73 Bracha Penono v. Shimon Penono, HC Rul. 29 (2) 181 (1975).
18. Civil Appeal 687/83 Yaffa Mazor v. Zion Mazur, HC Rul. 38(3) 29 (1984).
19. Civil Appeal 744/80 Shulamit Notkowitz v. Yael Notkovich, HC Rul. 39(4) 197 (1983).
20. Civil Appeal 93/85 Orit Segev v. Shlomo Segev, HC Rul. 39(3) 822 (1985).
21. Family Appeal (District Court Jerusalem) 1099/06 An. V. An. (Not yet published, 10.4.2007).
22. Family Appeal (Tel Aviv-Jaffa District) 1055/06 A.D v. G.D (Published in Nevo Legal Database, 22.11.2006).
23. Family Appeal permission (Central District) 14655-06-17 RC v. D.C. (Published in Nevo Legal Database, 26.9.2017).
24. Family Appeal Permission (Jerusalem) 41782-04-10 An. v. An. (published in Nevo Legal Database, 23.3.2011).
25. Family Appeal Permission 919/15 An. V. An. (Published on Nevo Legal Data Base, 19.7.2017).
26. Family Appeal Request 5939/04 An. v. An., HC Rul. 59(1), 665 (2004).
27. Family Case (Eylat) 1724/00 K.d v. K.I. (Published in Nevo Legal Database 20.3.2008).
28. Family Case (Family Tiberias) 1216-08-12 An. V. An. (Published in Nevo Legal Database, 02.02.2015).

29. Family Case (Hadera) A.B.Z v. A.B.Z. (Published in Nevo Legal Data Base, 26.7.2006).
30. Family Case (Jerusalem) 1886/04 A.L v. P.L. (Nevo Legal Data Base, 19.8.2006).
31. Family Case (Kfar Saba) 11657/03 A.A.I v. A.B (Published in Nevo Legal Database 16.6.2011).
32. The High Court of Justice 2222/99 The High Court of Justice 2222/99 Angel (Ora) Gabay v. The Grand Rabbinical Court, HC Rul. 54(5) 401 (2000).
33. The High Court of Justice 2232/03 An. v. Tel Aviv-Jaffa Regional Rabbinical Court, 60(3) 496 (2006).

American Legislation

1. Mass. Gen. Laws Ann. ch. 208.
2. Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified at 42 U.S.C. Q 1305).
3. Uniform Marriage and Divorce Act of 1970 (UNIF. LAW. COMM'N 1970).

American Jurisprudence

1. Family Support Act of 1988, Pub. L. No. 100-485, 8 103, 102 Stat. 2343, 2346 (1988) (codified at 42 U.S.C. (1988)).
2. Orr v. Orr, 440 U.S. 268 (1979).
3. Quinn v. Quinn, 512 A.2d 848 (R.I. 1986).

French Legislation

1. France - Code of Civil Procedure - Book IV - Arbitration in force 14 May 1981.
2. French Civil Code (FCC).
3. Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe.
4. LOI N° 2016-1547 Du 18 Novembre 2016 De Modernisation De La Justice Du Xxie Siècle (1).
5. Loi no 75-617: réforme du divorce (1975).

European Jurisprudence

1. Case C-68/07 Sundelind Lopez [2007] ECR I-10403; Case C-168/08 Hadadi [2009] ECR I-687.

Other Legislation

1. The Hague Convention Concerning the Law Applicable to The Matrimonial Property Regime (entered into force on 14 March, 1978).
2. The Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes (Treaty Series 1988, 130).
3. Act of 20 November 1991 (Stb. 1991, 628).
4. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ [2003] L 338/1.
5. Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Other Sources

1. *Principles of the Law of Family Dissolution: Analysis and Recommendations*, p. 67–85 (American Law Institute Publishers. 2002).