

SPECIAL FEATURE

Requirements for the American Lawyer to Practice Law in Israel

LARRY M. ROTH*

Introduction

With the advent of multinational corporations, it becomes not uncommon to have American lawyers practicing in foreign countries, but usually there only for business reasons. Less obvious is the phenomenon of American lawyers moving to foreign countries permanently to live, and to ply their profession in distant lands. There are certain motivating factors to be sure which induce a lawyer to live in another country, with all the attendant difficulties of cultural, religious and language problems. Not the least of these problems would be the ability to maintain and carry on a profession under a different legal system.

On a recent trip to Israel, I explored the likelihood and the possibilities of an American lawyer moving to Israel to live and to practice law. The incentive for the investigation grew out of a discovery that, in fact, quite a number of lawyers have made the one-way journey to Israel. Although English is not the national language of the country, it is widely and diversely spoken by the people. In addition, because of the British Mandate over the former land of Palestine, the State of Israel has a common law tradition, despite the presence of strong Moslem and Jewish legal influences.¹

How many American lawyers are now Israeli citizens and practicing law? Certain estimates have put the number of American lawyers in Israel at 350-500;² others put the numbers much higher because the migration encompasses some thirty-odd years of Israeli independence. Yet, whatever figures used are probably deceptive. Because of the language problems, and the necessity of taking qualifying tests, some lawyers never practice but have been retrained or have taken a more sedentary orientation by settling on a *kibbutz* (communal farm) or upon a *moshava* (industrial based com-

*Mr. Roth practices law in Orlando, Florida.

¹See generally BAKER, THE LEGAL SYSTEM OF ISRAEL (1968); Cohn, *An Introduction Into the Law of Israel*, 5 N.Y.L.F. 1 (1959); Warsoff, *The Legal System of the State of Israel*, 2 N.Y.L.F. 379 (1956).

²Unofficial Israel Bar Association figures, as per conversation of October 14, 1980.

munal life). In these places, usually rural in nature, the need for a lawyer is not dominant. Another reason may be that Israel, not unlike the States, has an abundant crop of attorneys with no pressing need to have more. But, again, one must look at that with a demographic eye. In Tel Aviv, for instance, there are approximately 10,000 lawyers; in Jerusalem, a sizable city, perhaps 400.³ In one conversation with an American who made the transformation, the number of American lawyers in Jerusalem numbers less than ten.

Whatever the actual statistics, the bottom line is that one is able to make the transition; the question then becomes, what does it take to become a member of the Israel legal profession? This article will attempt to provide a general canvas of these requirements.

For lawyers coming from the United States, there are essentially two requirements (1) a written examination, and (2) a clerkship or apprenticeship period.

Structure of the Legal Profession

The practice of law in Israel, or stated as the profession of advocacy, is regulated by the state (national government). In that sense the profession is integrated, similar to the thirty-three states having unified bars in this country.⁴

To practice law in Israel an advocate (lawyer) must receive a certificate from the Chamber of Advocates.⁵ The Chamber is a self-governing body created by the passage of the Chamber of Advocates Law in 1961. Even in the British Mandate period, license to practice as an advocate was regulated by the governing authority.

The qualifying conditions, set forth below, are those requirements that must be satisfied before the Chamber issues a certificate to practice law. As stated in the Chamber of Advocates Law:

[T]he Chamber shall inscribe him on the Roll of Members of the Chamber and shall issue him a certificate of membership; the person inscribed may practice the profession of advocacy from the day of his inscription.⁶

The qualifying requirements vary somewhat for foreigners as opposed to Israelis. Generally, however, the minimum standard for all advocates is that the person must be:

[A] resident in Israel and has attained 23 years of age, has qualified as an advocate by passing the prescribed examinations and serving two years as a law apprentice, and has been accepted as a member of the Chamber.⁷

³Conversation of author and Marty Katz, in Israel, October 7, 1980.

⁴See 9 *ENCYCLOPEDIA JUDAICA* 646 (1972). See *Nat'l L.J.* Jan. 5, 1981, col. 1, at 8.

⁵Chamber of Advocates Law 5721-1961 ch. 4, § 46 (Israel).

⁶*Id.*

⁷*Id.* § 42; *JUDAICA supra* note 4, at 645.

Aside from the written test and age requirements, the Chamber can, despite qualification, refuse admission to practice under certain circumstances such as conviction for a criminal offense, character deficiencies, or by engaging in certain occupations prohibited to an advocate.⁸ There are provisions in the law, however, for the Israeli Supreme Court to void the Chamber's refusal to admit a candidate to the profession.⁹

The Chamber operates under the general aegis of the government's Minister of Justice, and prescribes all rules and regulations relating to the Chamber itself, and to the profession.¹⁰

Qualifications

To the American reviewing the requirements of Israeli law, the qualifications for becoming an advocate, or lawyer, is a strange amalgam of our present American practices and the former practices of "reading for the law." Part of the strangeness stems from the fact that the Chamber of Advocates law was not enacted solely for American emigres. There is also the natural semantical difficulties always apparent in the translation of the Hebrew to English.

As noted below, different criteria pertain to American lawyers depending upon their individual degree of experience. As in the United States, the Israeli bar is set up to accept applicants who come right from their educational training. The same holds true for Americans who graduate from our law schools and immigrate to Israel without spending any time practicing law. Generally, however, the American coming to Israel is not doing so right after law school. There will be some period of time in practice, or working in other fields, before immigration. There is usually an extent of time required for professional disenchantment, the fruition of religious beliefs, the rooting of Zionism, or just the plain excitement of the challenge in a foreign land, to take hold and motivate the individual.

There are three general qualifications for becoming an Israeli lawyer:¹¹

1. attainment of a higher legal education;
2. successfully passed written examinations;
3. qualifying service as a clerk.

As defined under Israeli law, higher legal education for an American, may be *either* (a) graduation from an American law school which is "recognized by the Hebrew University in Jerusalem," or, (b) two or more years of practice as an attorney in the States.¹²

Since most Americans will move to Israel after some years of actual work as an attorney, the requirement of having a law school qualified will generally not apply; the two years or more of actual practice obviate the need to

⁸Chamber of Advocates Law 5721-1961 ch. 4 § 44 (Israel).

⁹*Id.* § 46.

¹⁰*Id.* ch. 10, § 109.

¹¹*Id.* ch. 4, § 25(1)-(3).

¹²*Id.*

have the school qualified. This experiential requirement is similar to the now antiquated system of reading for the law, where a formalized legal education was substituted with an apprenticeship service.

For those persons having practiced fewer than two years, the law school attended would need recognition by the Hebrew University. Being admitted to practice law in the States first presumes graduation from an accredited law school. This American requirement, because of the control factors for the schools, actually gives American lawyers a better educational foundation for practice in Israel as opposed to other foreign lawyers.

To satisfy this educational standard through practical experience, the American lawyer must have actually practiced law, and this must have been for not less than two years.¹³ Therefore, a law degree without actual experience probably will not satisfy category (b) above. Instead, in that instance, recognition of the law school would be required, as under category (a). The two years of experience requirement may equate as either the actual practice of law or service in a "judicial function."¹⁴ The law states no definition of "judicial function," but does qualify that status by specifying such position as one "for which only a person with a legal education is qualified."¹⁵ This last qualification more rightly applies to foreign lawyers who emigrate from civil law countries where judicial functions may vary greatly from our common law experience.¹⁶

Documents to Bring

Next to the obvious need to pack appropriately it is necessary for one to take certain documentation which will be included with the admission application.¹⁷ The necessary documents include: (1) certified copy of transcript from law school; (2) copy of law school diploma; (3) letter from state and/or local bar association certifying the length of membership in the bar, or the state supreme court certificate which certifies bar admission; and (4) letter from employer(s) about length of work or experience, or if self-employed, an affidavit to the effect of the length of practice.¹⁸

Whenever possible, all such documents should be in their original form. For letters or affidavits that will pose no problem. The copies of other documents need first to be certified by the source from where they are requested. They must next be notarized by an Israeli consular officer.¹⁹ Although this will initially pose some time delay, there are several Israeli

¹³*Id.* § 25(3).

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷Chamber of Advocates Regulations 5723-1962 ch. I, § 2 (Examinations in Laws of State of Israel and Practical Subjects, Kovetz Hatakanof 5723: 704, 5729: 588, 5734: 3182).

¹⁸Basic Requirements for Admission to the Israel Bar PP 6 (b), at 2 (published by Israel Bar Association).

¹⁹*Id.*

consulates across the country, usually located in the center of regionalized areas such as Atlanta.

The Written Examination

A written examination on Israeli law is required of each applicant. There are a total of nine (9) topics or subject matters covered by these written exams. These nine areas are:²⁰

1. Hebrew language;
2. Obligations (Tort and Contract and Labor Law);
3. Property Law;
4. Family and Succession Law;
5. Criminal Law and Procedure;
6. Commercial Law A (corporation; partnership and other associations);
7. Commercial Law B (bankruptcy, liquidations, bills of exchange, tax law, and other commercial subjects);
8. Civil Procedure and Professional Ethics;
9. Constitutional and Administrative Law.

Not every foreign applicant, however, must take all nine tests. The number of tests taken depends upon the lawyer's prior work experience, or membership in a foreign bar. If the applicant has less than two years of practical experience, then that person must take all the examinations. These persons must first take six of the eight substantive exams before beginning their clerkship training. The remaining two exams can be taken during the clerkship, or afterwards. For those attorneys having more than two years of practical experience, the eight substantive law tests may be taken either before or after the clerkship, at the discretion of the applicant.²¹

The regulations governing the professional in Israel provides for exemptions from given tests "if it appears that the laws upon which such person was examined in that institution (legal studies in a foreign institution) on that subject are similar to the laws of Israel."²² Thus, for American lawyers exemptions will be granted for Commercial Law A, Commercial Law B, (except for the tax section), Criminal Law, and the Tort questions on the Obligations tests.

There is one examination from which no one is exempt; that is the Hebrew language test. This applies to all immigrants, regardless of their background. The reason is because Hebrew is the official language of Israel, and regardless of the person's legal experience, he must become knowledgeable in Hebrew in order to practice law.

The written examinations are given twice a year; in July and December. They are only administered in Jerusalem. Each examination lasts three

²⁰Chamber of Advocates Regulations, *supra* note 17, § 4(a)(1)-(8).

²¹Basic Requirements, *supra* note 18.

²²Chamber of Advocates Law, *supra* note 8 § 6(a), (b).

hours.²³ Tests are given on Sundays, Tuesdays and Thursdays. Passing score is 61 percent. Somewhat differently, the Hebrew tests are given four times yearly, in April, July, October, and December.

For Americans in earlier years the written examinations were given in English, and the answers could also be written in English. Now tests are given only in Hebrew, although written answers may be in English. The applicant must make arrangements to have a translator read and mark these answers, and must bear the cost for the translation.²⁴ Books containing Israeli statutes, printed in Hebrew or English, can be brought and used during the exam, but without any comments, explanations, annotations, and the like.²⁵

The Clerkship

Clerkship or apprenticeship programs were early followed as integral parts of American legal education. Although abandoned some time ago, the trend is now to return to a mandatory clerking program before admission to the bar is accomplished.²⁶ The purposes for clerkships are probably two fold: first to allow the student to apply their abstract knowledge to the practical requirements of a law office or similar type environment; and second, to aid in the familiarization and adjustment to the profession which is all new to the nascent lawyer. Movies and television dramas have been poor examples of the legal profession, and how it operates.

In Israel, there is a mandatory clerkship requirement that must be served by everyone. The Hebrew term for this clerkship is *stag*, or in rough translation, "articles."²⁷ In the training for the profession chapter under the Chamber of Advocates Law, this clerkship period is referred to as "clerk under service."

Israelis are required to undergo a two-year period of "articles." Americans who come to Israel with less than two-year membership in the bar will likewise serve a two year clerkship.²⁸ Upon request, however, the Chamber is authorized to reduce that time, but to no less than one year.²⁹ Those individuals with two or more years experience will clerk for one year, with the Chamber empowered to reduce that term to not less than six months.³⁰ Generally, persons with more than six to eight years of experience will be

²³Chamber of Advocates Regulations, *supra* note 17, § 3(b).

²⁴*Id.* § 3(a).

²⁵*Id.* § 9. For more on the tests, any prospective applicant should contact: Chamber of Advocates, New Gad Building, Rechov Ha Soreg 2, Jerusalem, Israel.

²⁶*See, e.g.,* Cavers, *A Proposal Renewed: Legal Education In Two Calendar Years*, 66 A.B.A.J. 973, 976 (1980); Devitt, *Law School Training: Key to Quality Trial Advocacy*, 65 A.B.A.J. 1800 (1979).

²⁷The Basic Requirements published by the Israel Bar Association refer to the *stag* as "articles."

²⁸Chamber of Advocates Law, *supra* note 8, 335.

²⁹*Id.* § 35(b).

³⁰*Id.*

serving only a six month clerkship period. Whatever prescribed articles period applies, that term may always be reduced at the discretion of the Chamber upon consideration of practical experience, and on a case by case basis.

The "articles" period may be served before the substantive legal topic written examinations are taken and passed; or the written tests may be taken during the articles period. The Hebrew test, however, must first be taken before the clerkship begins. This seems reasonable as the work in an office or related function would require some knowledge of Hebrew.

The tutelage of the clerkship period is, by law, served under the auspices of an "instructor." These instructors may include one of the following:³¹

1. a judge of the Israeli Supreme Court, or the district court, or of the labor court;
2. a judge of the magistrates court whose membership in the Chamber and on the bench exceeds five years;
3. a military judge whose membership in the Chamber and length of service as a judge combine to exceed five or more years;
4. a member of the Chamber (equivalent of our bar member) for five years or more, and who has been qualified to be an instructor; and
5. a Chamber member of five years, "who holds one of the functions in the legal service which the Minister of Justice has designated by order for the purpose of this provision."

The law prescribes that not every Israeli attorney can serve as an instructor; thus, the applicant must search with some diligence to find the qualified "instructor." For those persons serving a clerkship in excess of one year, at least six months of that service must be with a qualified private advocate, the state attorney, or the district attorney's office.³² These individuals must serve part of the "articles" in the office of an attorney actually in practice so that first hand knowledge may be acquired of the realities of being an "advocate." This is done as many serving clerkships may otherwise perform their articles for one of the many different government ministries or judicial offices. This six month requirement enables one to experience first hand the advocate profession which may be shrouded in a judicial type of clerkship or government position. Requiring this for clerkships of more than one year reflects the lesser exposure to experience of the American lawyer who must serve the longer clerkships.

During the "articles" period, clerks may perform only legal related work.³³ The number of clerks which an instructor may have at one time is controlled by regulations of the Ministry of Justice.³⁴ A clerk wishing to change instructors during the "articles" may do so only by permission from

³¹*Id.* § 29.

³²*Id.* § 35(c).

³³*Id.* § 33.

³⁴*Id.* § 32.

the Chamber of Advocates.³⁵ This would include the longer clerkships which must be served at least six months in the private law office, or at the state's or district attorney's offices.

Similar to the third year practice laws in many states, a clerk may represent clients or appear before the magistrates court during the last six months of the clerkship period.³⁶ This representation must be with the "instructor" present, although the magistrates court is empowered to permit the clerk to represent clients in the absence of the instructor.

Oral Examinations

The Chamber of Advocates Law also provides for oral examinations, in addition to the requirements already cited. These oral exams, also known as "qualifying examinations" and "stage examinations," are not required for everyone.

An American lawyer with five or more years of practice, who commences the clerkship service within ten years from the date of immigration into Israel, will be exempt from these oral examinations.³⁷ If the attorney does not satisfy these dual requirements, the oral exam must be taken. These oral exams will be taken after the clerkship is completed. Further, the "stage exams" are not administered until the written examinations on the Israel law are passed.³⁸ The attorney with the required practical experience will certainly avoid this additional examination.

The oral exams are comprised of what the Israeli statutes refer to as "practical subjects."³⁹ The tests include questions being asked from one or more of the following subjects:⁴⁰ procedures in the courts and in the execution of offices; procedures for the registration of land and interests in land; procedures for registration and dissolution of companies and partnership; interpretation of statutes and legal documents; rules of professional ethics; drafting of pleadings; interlocutory applications and drafting of and the substantive nature of criminal informations.

The "stage examinations" are administered three times yearly.⁴¹ A separate application for this test will need to be submitted to the Chamber of Advocates.⁴² That application must be filed not later than fifteen days before the date of the proposed test.⁴³ The application is required to have documentation attached to it verifying the applicant's right to take the

³⁵*Id.* § 34.

³⁶*Id.* § 37. Third year Practice Acts allow third-year law students to perform clinical type work by actually appearing in court while working for a prosecutor's or public defender's office.

³⁷*Id.* § 38(a).

³⁸*Id.* § 38(b).

³⁹*Id.* § 38(a).

⁴⁰Chamber of Advocates Regulations, *supra* note 17, § 18(b).

⁴¹*Id.* § 15.

⁴²*Id.* § 16(a).

⁴³*Id.*

exam. This documentation can be secured from the Chamber. An applicant may satisfactorily complete all prior requisites yet not pass the oral qualification. This will not negate these other prior results. Examinations may be retaken until the test is passed.⁴⁴

Real People

All the technical requirements aside, the true test of an American becoming a lawyer in Israel is measured by those who have actively made the transition. On my trip I was able to meet a few. They form a diverse cross-section of legal backgrounds and training. Yet, I think their common experiences can be generalized. A few of their insights are briefly shared below.

Marty Katz had nearly completed his five months at an "absorption center," a residence type program which instructs new immigrants on Hebrew and other adjustments to Israeli life, when we spoke. Before coming to Israel he had practiced law in New Jersey for ten years, and specialized in maritime law. Because of his prior legal experience his clerkship was for six months. He was about to take the Hebrew test which he believed to be the most difficult. "I found Israeli law very similar to the states. The adjustment has not been that great."⁴⁵ Katz had already secured a qualifying clerk position with a Tel Aviv law firm. According to Katz's experiences looking for clerking jobs, the top pay is about \$700 per month. He can expect to make as a lawyer, between \$12,000 and \$14,000 per year. He had no comparison specifically to American salaries, but he said only that in New Jersey he lived "very comfortably."⁴⁶

In an overview analysis of the Israel legal profession and the role of American lawyers, Katz stated:

[T]here is a pretty good need for lawyers in Israel. The American lawyer seems to be better rounded than either Israeli lawyers, or English or Russian lawyers. That's because American attorneys have B.S. or B.A. degrees prior to receiving the J.D. These other lawyers go directly to law studying without the intermediate college education. . . . There is a good need for American lawyers. A lot of Americans live in Israel and they feel better about going to American speaking lawyers. Also, Israeli firms like to have American lawyers because they can use them to attract American clients and American business.⁴⁷

For Stuart Wurtman, an attorney from Philadelphia, the transformation to Israel has not been difficult. He is now editor of the *Israel Law Review*, which is published through Hebrew University. Although Wurtman has not completed the written examinations or stage requirements, he plans to do so; in his editorial *qua* academic position, those completions are not

⁴⁴*Id.* § 21.

⁴⁵Conversation with Marty Katz, October 7, 1980.

⁴⁶*Id.*

⁴⁷*Id.*

mandatory.⁴⁸ Wurtman says that the sensitivity to an entirely different legal system has not been an elusive factor. "It is coming to grasp with the Hebrew," he analyzed as the most awesome hurdle. Wurtman recommends that any lawyer deciding to come to Israel undertake a one-year preliminary residence, with a return to the United States before making the final decision to immigrate. That was the format he followed some two years before, which he believes made the ultimate transition easier.⁴⁹

Marvin Hankin has been in Israel over ten years. He was an attorney in Kansas City with a background in commercial and tax law. He was also experienced in banking, having worked for a banking firm. His decision to come to Israel was made for the challenge of a new way of life. He is now working as an attorney with the government, and has been in that field since passing the Israel bar requirements.

[T]he great problems for American lawyers are the language and the adjustment to a less material way of life. I make as a salary about one-third of what I made in the states before I immigrated to Israel.⁵⁰

When he took the written examinations on Israel law, the questions were given in English. That has, of course, since changed. But he maintains that Americans still have the advantage. "There are Americans," he said, "who give bar review courses without charge before the tests for the American lawyers."⁵¹

Dr. Richard E. Laster is a unique individual. He comes from a good academic background, having law review experience in law school, and having worked for the Nader organization and EPA. With several years of work experience behind him, he decided to immigrate to Israel in the early 1970s. His entire family now lives there, including his father, who is a retired judge from Virginia. In Israel, Laster worked for several years in various government ministries, and played an integral role in establishing the Israeli equivalent to the Environmental Protection Agency. For the past year he has operated a small private law office in Jerusalem with Donald Zisquit, a lawyer from Baltimore. Dr. Laster also periodically publishes a book for assisting English speaking lawyers in preparation for the Israel bar exams.⁵² He recited his experience as a lawyer in Israel in the following terms:

[A] lawyer from the states can make it here with no problem. The law is not that difficult. It is the language and cultural problems that predominate. The quality of life here is much better than in the states—even without all the material things. My children have a good life.

. . . The legal profession is much more relaxed; less pretense. My relationship with the office people is much more informal than in American offices. Our idea

⁴⁸Conversation with Stuart Wurtman, October 11, 1980, at the Eilon Tower Hotel, Jerusalem.

⁴⁹*Id.*

⁵⁰Conversation with Marvin Hankin, October 11, 1980, at the Eilon Tower Hotel, Jerusalem.

⁵¹*Id.*

⁵²LASTER, *HOW TO SURVEY ISRAELI LAW* (1979).

for opening up a small private office, in retrospect, was crazy because of the uncertainty. But it worked out well. The office is open from 9:00 A.M. to 1:00 P.M. and then from 4:00 P.M. to 6:00 P.M. The time in between I spend with my family.⁵³

There is one thing that all these former American lawyers have in common; they have no regrets about coming to Israel.

Conclusion

There is no easy decision to be made about immigration to Israel. The usual difficulties involve coming to grips with a Jewish identity, and the necessity of establishing an Israeli citizenship with all the responsibilities incumbent upon that classification. Demands beyond the ordinary rigors are involved for attorneys who seek to become lawyers in Israel. From the legal requirements imposed by law, and from the common experiences of those American lawyers who have gone to Israel, several conclusions can be reached.

First, the theoretical transition from American to Israeli law is not conceptually a great hurdle to overcome. There are more similarities than differences between the two.⁵⁴

Second, the language barrier poses the more insurmountable obstacle. It is not that English isn't readily spoken in Israel, for it is. Yet, to be able to function entirely within a foreign legal system, knowledge of the national language must be mastered. Some individuals are more adept at language than others. It is suggested that initiation into the language be begun in the United States substantially before embarkation to Israel. Hebrew courses are readily available in most cities through religious organizations, local colleges, and private tutoring. This early exposure will further accentuate some of the real problems to be confronted prior to leaving so that a full knowledge of the difficulties can be appreciated before the decision to go is made.

Third, for American lawyers the best time to make the move is between the second and fifth year mark in practice. With this degree of experience several of the tests can be minimized. During this period of time the lawyer has gained valuable experience but has not become so entrenched that financially the move could not be made, or even considered. Also, these early years in practice will enable the attorney to take the initial one year trial period in Israel for purposes of seeing if one's life and law can survive that country. Partnership and other vested interests have normally not become entrenched within the second through fifth years so that such a move can be logically, and realistically, considered.

And fourth, the person must evaluate his own goals to be achieved in the law. There are no discriminations placed upon an American lawyer com-

⁵³Conversation with Dr. Richard Laster, October 10, 1980, at the Law Offices of Laster and Zisquit.

⁵⁴*Id.* See Cohn, *An Introduction Into the Law of Israel*, 5 N.Y.L.F. 1, 2 (1959).

ing to Israel. But the nature of the society, and the day-to-day operation of the legal system is attuned differently from what the American system offers. To be sure, such a move and transition is not for all lawyers. Equally sure, however, for many it is the right thing for which no regret will ever surface. One must introspectively examine himself, as any lawyer must analyze all the facts before reaching a decision.

Information is the key. This is why this article has been written; to provide some of the necessary facts upon which to base a decision.⁵⁵ Biblically, Israel is the land of milk and honey. It may also be the land where one's own legal frontier may be successfully forged. For the American lawyer, he or she is already one step ahead toward that goal.

⁵⁵*See generally* ZIMMERMAN, *COMING HOME: A PRACTICAL PLANNING GUIDE FOR LIVING IN ISRAEL* (1976).