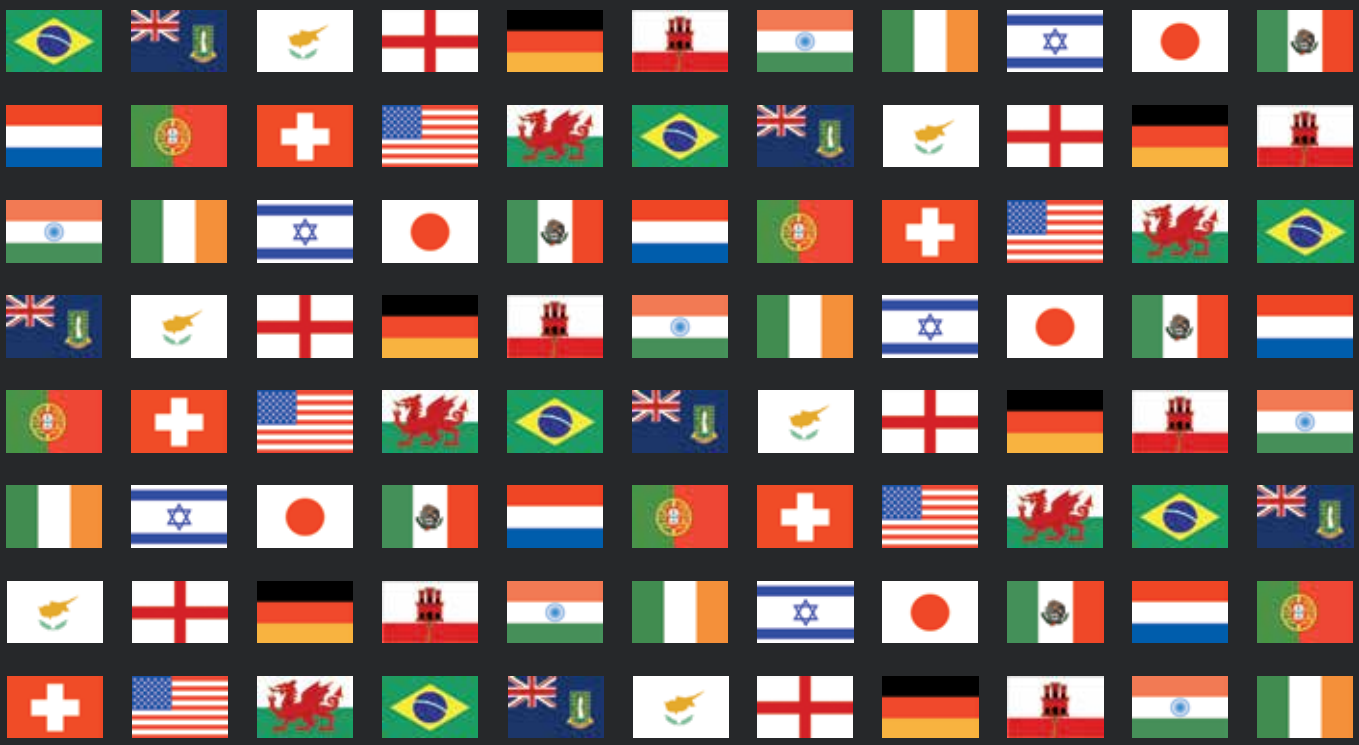
Complex Commercial Litigation

Contributing editors
Simon Bushell and Daniel Spendlove



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GETTING THE DEAL THROUGH

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Complex Commercial Litigation 2018

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Israel

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Background

1 How common is commercial litigation as a method of resolving high-value, complex disputes?

Litigation is a common method for resolving complex disputes in Israel, especially in certain types of disputes such as class actions and derivative claims. In recent years, there has been an increase in alternative methods – mainly arbitration and mediation – and this is particularly prominent when parties wish to ensure expedited resolution or avoid the publicity of litigation. The decision to engage in alternative dispute resolution (ADR) proceedings is voluntary and can be reached both before litigation is initiated (eg, through ADR clauses) or afterwards.

2 Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

While most of the disputes in the Israeli court system naturally involve Israeli parties, foreign and multinational parties regularly participate in commercial litigation in Israel. Moreover, Israeli civil procedure accommodates foreign parties, for instance, in provisions regarding jurisdiction.

3 What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

The Israeli legal system is rightfully considered a 'hybrid' jurisdiction as it contains elements of both common law and civil law. In the field of complex commercial litigation (CCL) this hybrid nature is evident as proceedings are adversarial, led by the parties and strongly influenced by case-law; however, like civil law jurisdictions, Israeli law uses detailed codes (eg, in the areas of contract law, corporate law and civil procedure) and cases are not tried by juries.

Bringing a claim – initial considerations

4 What key issues should a party consider before bringing a claim?

The obvious primary consideration is the chance that the claim will prevail on its merits. In addition, parties should also consider, inter alia, litigation costs, the publicity of court hearings and proceedings, the duration of litigation (often quite lengthy) and issues relating to collection (namely whether collecting the award will involve complex execution proceedings, such as in a case of an insolvent defendant). Another important consideration is where the claim will be filed; in 2010 a special economic division was established in the Tel Aviv district court, with expertise and experience in CCL cases. Lastly, there are several forms of civil proceedings in Israel (eg, fast-track proceedings); CCL is typically handled through the standard proceedings, as well as class and derivative actions.

5 How is jurisdiction established?

The following three aspects of jurisdiction must be established for an Israeli court to hear a case:

- international jurisdiction – for foreign defendants, jurisdiction may be established either through lawful service of process within the jurisdiction (eg, to the party itself or to an authorised representative) or extra-jurisdictional service pursuant to Rule No. 500 of the Civil Procedure Regulations (CPR) of 1984.
- Subject-matter jurisdiction – in monetary claims, the jurisdiction of the magistrates' courts is limited to claims in which the remedy sought does not exceed 2.5 million shekels; higher value claims are adjudicated in district courts. Non-monetary claims are also governed by certain subject-matter jurisdiction provisions, and district courts have residual subject-matter jurisdiction.
- Territorial jurisdiction – Israel is divided in six judicial districts.

A defendant may challenge a court's jurisdiction in all aforementioned aspects. Regarding international jurisdiction, the defendant may also argue that Israeli courts are not the proper forum (according to the forum non conveniens doctrine).

In order to avoid overlapping proceedings (ie, a proceeding in Israel and in a foreign court), Israeli courts may stay the Israeli proceeding using the lis alibi pendens doctrine, dismiss the proceeding (in exceptional cases) and issue anti-suit injunctions.

6 Res judicata: is preclusion applicable, and if so, how?

Issue preclusion and claim preclusion are both applicable in Israel. The basic rule of claim preclusion is that a party may not initiate a claim that was already adjudicated by a competent court. The necessary requirements for claim preclusion are, therefore, the identity of the parties and a valid final judgment. It is not necessary, however, that the claims be fully identical; the court will conduct a material examination of both claims. Under Israeli law, claim preclusion is one of the grounds for dismissal with prejudice. As mentioned, issue preclusion is also available in Israeli law, and when conditions are met, the result may be the dismissal of the case.

7 In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

Israeli courts apply foreign law pursuant to applicable conflict of the rule of law in the relevant legal area, or to valid contractual 'governing law' clauses, which are usually interpreted narrowly, especially in standard form contracts or the like. Israeli evidence laws provide that foreign law ought to be proven as a matter of fact (in practice this is done by submitting expert opinions), as opposed to Israeli law, which does not require proof.

8 What initial steps should a claimant consider to ensure that any eventual judgment is satisfied? Can a defendant take steps to make themselves 'judgment proof'?

Israeli law provides claimants with a variety of interim and preliminary relief or injunctions to ensure that a judgment is satisfied and that the proceeding is not thwarted. These include freezing orders and personal restraining orders. Interim relief is available prior to the initiation of a claim, provided that the claim is filed within seven days.

In general, a defendant may not become 'judgment proof' and lack of funds will not constitute a defence in legal proceedings.

9 When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

In monetary claims, a claimant may move for a freezing order on the respondent's assets in Israel (up to the amount claimed). Pursuant to CPR Rule No. 374, the court will issue such order when convinced – based on prima facie evidence – that there is reasonable suspicion that not issuing the order would undermine the ability to satisfy the judgment. The court would also consider the balance of convenience between the parties, and the prima facie merits of the claim. A claimant may also move for a worldwide freezing order (*Mareva* order) regarding assets located outside the jurisdiction. This order against the defendant is issued only if the aforementioned conditions are met and if the court is convinced that the respondent does not have sufficient assets within the jurisdiction to satisfy the judgment. The court may also appoint an interim receiver in respect to some of the defendant's assets, for instance, in order to prevent depreciation. As a prerequisite for such remedies, the claimant is obligated to provide sufficient securities (eg, personal guarantee and injunction bonds) to compensate the respondent for harms suffered should freezing orders be wrongfully issued.

10 Are there requirements for pre-action conduct and what are the consequences of non-compliance?

There are currently no pre-action protocols in most areas of civil litigation, but proposed draft regulations aim to change this. In exceptional areas some pre-action conduct is required (eg, before filing a derivative action on behalf of a company, a demand letter must be sent, otherwise the claimant has no standing, subject to certain exceptions). In administrative law, a pre-action demand to the relevant authority is generally required before initiating a proceeding.

11 What other forms of interim relief can be sought?

Interim relief is aimed at ensuring satisfactory judgment (see above) as well as ensuring the effectiveness of the legal proceeding. Such relief includes *Anton Piller* orders, which allow a court appointee to seize evidence (including computer material) if the court is convinced that the evidence may be compromised or destroyed. The claimant may also seek personal restraining orders and appoint a receiver in appropriate circumstances. Another form of relief is a stay of exit order; however, this is only used in rare cases, mainly family law and collection proceedings. As a general rule, the court has the power to order any interim relief it deems appropriate.

12 Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

Generally, parties are not expected to engage in alternative dispute resolution (ADR) at the pre-action stage. As for later stages, the court may – and in practice does – propose and encourage parties to engage in ADR when suitable. While there are no formal implications for refusing or failing to engage in ADR, from a tactical perspective parties may prefer to accept the court's proposals.

13 Are there different considerations for claims against natural persons as opposed to corporations?

There are certain, though not many, differences in the manner in which Israeli law treats individual and corporate defendants, both in statutes and in case law. The main difference is that, in the case of corporations, it is usually easier to meet the conditions for awarding interim relief (eg, freezing orders), in part due to the existence of public records, including indications of the corporation's financial status. In the same vein, a corporate plaintiff is more likely to provide security for the defendant's costs than an individual plaintiff.

14 Are any of the considerations different for class actions, multiparty or group litigations?

Collective litigation is usually adjudicated in court and less prone to being referred to ADR mechanisms (although recently there have, for the first time, been indications of openness to ADR in class actions). Class actions are governed by the Class Actions Law of 2006 and its related regulations; derivative claims are governed by the Companies Law of 1999, and other types of collective litigation (eg, insolvency cases) are also subject to modified procedures. There are no special rules or procedures for classic multiparty litigations.

15 What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

There is neither a statutory prohibition nor case law regarding restrictions or limitations on third-party funding. However, rules of ethics for attorneys prohibit attorneys from funding a client's claim.

In recent years, a statutory fund was established to assist plaintiffs in bringing about class actions of public or social interest. Moreover, plaintiffs filing class or derivative actions under securities laws may request public funding from the Israel Securities Authority.

The claim

16 How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Typically, claims are launched by filing particulars of claim to court (and paying court fees). The length and structure of written pleadings depends on the type of proceeding, and they mainly describe the factual accounts of each party. Usually, no affidavit is required. In other types of proceedings (eg, class actions), pleadings include the legal argument as well, and should be supported by an affidavit. A party is required to append any documents that are mentioned in the pleadings. In some proceedings, expert opinions should also be filed with the pleadings.

17 How are claims served on foreign parties?

Usually, claims can be served on foreign parties in two ways:

- service within the jurisdiction to the foreign party themselves when present in Israel, or to an authorised representative of the party in Israel, eg, a person conducting business in Israel on behalf of the party (interpreted broadly in case law), or to his or her attorney (by a valid POA); or
- extra-jurisdictional service under CPR Rule No. 500.

The court may permit extraterratorial jurisdictional service in a wide variety of cases, but mainly when the party or the dispute has a sufficient connection to Israel, such as when the party resides in Israel, a contract was entered or breached in Israel, the alleged unlawful conduct was done in Israel, etc. Some of the case law provides that the claimant should also show that Israel is the adequate forum (forum conveniens), ie, the 'centre of gravity' of the case.

18 What are the key causes of action that typically arise in commercial litigation?

CCL raises a wide range of causes of action, including, inter alia:

- contract-based causes of action;
- tort-based causes of action;
- statute-based causes of actions in various fields (eg, intellectual property, antitrust, corporate law, securities law); and
- unjust enrichment.

19 Under what circumstances can amendments to claims be made?

The CPR provides that the court may allow or instruct the parties to amend their pleadings at any stage of the proceeding to allow the court to decide the underlying disputed issues between the parties. Courts would be more inclined to permit the amendment of pleadings in earlier stages. When a party amends its pleadings, the other party is entitled to amend its pleadings accordingly. Generally, unless permitted to amend the pleadings, a party is not allowed to change its claims or raise new claims after the pleadings stage is over.

20 What remedies are available to a claimant in your jurisdiction?

Article 75 of the Courts Act (Consolidated Version) of 1984, states that in civil matters, courts may issue declaratory judgments, injunctions, specific performance orders, and any other remedy it finds appropriate. The remedies usually available in CCL proceedings include damages, specific performance, restitution, injunctions, and declaratory judgments. The availability of remedies is subject to applicable substantive law.

21 What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

As with most legal systems, compensatory damages are recoverable. Liquidated damages are also recoverable, pursuant to Israeli contract law. Statutory damages are also available under several statutes. As for punitive damages, while Israeli courts may formally award them, they do so in extremely rare cases.

Israeli law is favourable to plaintiffs in terms of remedies in several ways, including:

- relatively large non-pecuniary damages (eg, for injury to autonomy, mental anguish);
- availability of expectation damages for breach of the duty to negotiate in good faith (in exceptional cases);
- wide recognition of restitutionary remedies based on unjust enrichment; and
- a specific performance remedy (which is the main remedy in contracts, rather than damages).

Responding to the claim

22 What steps are open to a defendant in the early part of a case?

A defendant can submit motions to dismiss on several grounds. Under the CPR, the court may dismiss a case with prejudice in case of res judicata, lack of jurisdiction (unless it can be fixed by transferring the case to a competent court) and for any other appropriate reason. According to case law, such reasons may include, inter alia, statutes of limitations and lack of rivalry between the parties. The defendant may also move for dismissal (without prejudice) when the claim shows no recoverable cause of action (based on applicable substantive law), when the claim is harassing or when court fees were not paid in full. Note, however, that case law illustrates that, other than in clear-cut situations, Israeli courts are reluctant to dismiss cases in their early stages.

In most forms of proceedings, a defendant may file a counterclaim against the plaintiff. The counterclaim is treated as an independent claim, which is typically adjudicated jointly with the original claim (unless directed otherwise by court). Alternatively, the defendant may raise an offsetting claim, according to which any amount awarded to the plaintiff should be offset by the damages suffered by the defendant due to the plaintiff's wrongdoing. In most proceedings, the defendant may introduce a third-party claim (see question 25).

23 How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

The structure of defences depends on the type of proceeding and usually correlates with the structure of the claim. Normally, the defendant submits its statement of defence within 30 days (in practice, the defendant may move for extensions, especially in complex disputes). The defendant has to deny each factual statement in the claim (save for the magnitude of damages) and may not deny the claims in general. The defence should also raise any other defence claim, such as limitations or jurisdictional challenges, and some of these claims must be raised by the defendant at first opportunity. In other types of proceedings the time limits may differ, and the defendant may have to present affidavits and legal arguments as well. The defendant is required to append any documents mentioned in the defence.

24 Under what circumstances may a defendant change a defence at a later stage in the proceedings?

A defendant may change a defence by amending the pleadings, according to the terms listed in question 19. When the change is permitted in a later stage, costs will be typically awarded to the other party.

25 How can a defendant establish the passing on or sharing of liability?

Pursuant to CPR Rule No. 216, the defendant may send a third-party notice (third-party claim) to a party, against which it is entitled to reimbursement or indemnification. The third party may defend against both the third-party claim and the original claim brought by the plaintiff, and the court may give instructions regarding the third-party claim (eg, splitting the third party claim from the original suit). In some proceedings, such as class actions, permission is required in order to send a third-party notice.

As for the sharing of liability, Tort Ordinance (New Version) articles 11 and 84 provide that while joint wrongdoers are liable jointly and severally for the plaintiff's damages, the court may order one of the wrongdoers to indemnify the others in part, or in full, based mainly on each wrongdoer's degree of liability. Another form of liability sharing is vicarious liability, which may be applicable, for example, in the context of employers and employees.

26 How can a defendant avoid trial?

At any stage the parties may settle the case in order to avoid trial. In some proceedings (eg, class actions), a settlement requires the court's permission. The defendant may also avoid trial by filing a motion to dismiss on the grounds set forth above, including lack of jurisdiction (see question 22). However, case law in Israel provides that dismissal is only granted in very limited circumstances. A defendant may also avoid court trial by engaging in ADR proceedings, but it requires the other party's consent. A counterclaim would not enable the defendant to avoid trial, but rather present a counterweight against the primary claim.

27 What happens in the case of a no-show or if no defence is offered?

When no defence is offered, CPR Rule No. 97 states that the court shall issue a judgment in favour of the plaintiff. In very exceptional cases, the court may ask the plaintiff to prove his or her claim (in part or in full) before rendering the decision. The defendant will be able to move for cancellation of the ex parte judgment if he or she is able to provide reasons for the failure to offer a defence.

In the case of failure to appear in court, the framework is provided by CPR Rule No. 157 as follows:

- when the defendant fails to appear, the plaintiff may prove his or her claim and be awarded the remedy sought; and
- when the plaintiff fails to appear, the court may dismiss the claim without prejudice.

28 Can a defendant claim security for costs? If so, what form of security can be provided?

Pursuant to CPR Rule No. 519, the court may order any plaintiff to deposit a security for the defendant's costs. Case law provides that in light of the constitutional rights to property and access to courts, security for costs will be demanded from an individual plaintiff in limited circumstances, such as when it is suspected that the defendant will not be able to satisfy the claimed award if the claim is denied and when the claim is not likely to succeed. In case of a corporate plaintiff, however, the default rule changes: according to article 353A to the Companies Law of 1999 and relevant case law, the court will order the plaintiff to provide a security adequate for the defendant's costs, and in order to avoid provision of such security, the plaintiff must show sufficient financial stability.

Progressing the case

29 What is the typical sequence of procedural steps in commercial litigation in this country?

A full commercial litigation proceeding typically consists of the following main stages:

- pleadings;
- discovery and preliminary proceedings;
- pretrial hearing;
- submission of evidence and witness statements;
- cross-examinations;
- closing arguments; and
- judgment.

30 Can additional parties be brought into a case after commencement?

CPR Rule No. 24 provides that, at any stage of the proceedings, the court may order additional parties to be included in a case, whether as plaintiffs or defendants, as necessary to allow the court to decide the disputed issues in a full and efficient manner. The regulations also authorise the court to remove a party that was improperly included in

the claim. Courts are open to adding parties and are more inclined to add parties in early stages of the proceedings. Any addition or deletion of a party requires parties to amend their pleadings accordingly, unless instructed otherwise by court.

31 Can proceedings be consolidated or split?

When proceedings raise similar matters of fact or law, the court may decide to consolidate them (if proceedings are heard in different judicial districts, the permission of the Supreme Court is required). A proceeding cannot formally be split into two separate proceedings without the parties' consent. However, the court may, at its discretion, split the hearing of some of the issues in the case (split trials). For instance, a common practice in tort cases is to split and postpone the hearing regarding the damages until after the question of liability is decided.

32 How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

Generally, according to the 'preponderance of the evidence' standard, the plaintiff must prove all of the elements comprising the cause of action, and the court will base its decision on the evidence brought by both parties during the proceeding. Some specific claims and elements, such as fraud, may require a higher standard of proof. In some circumstances, such as under the 'evidential damage' doctrine, the burden of proof is shifted to the defendant. In defence claims, the burden of proof lies with the defendant, also pursuant to 'preponderance of the evidence' standard. In interim motions, the burden of proof usually lies with the claimant.

33 How does a court decide what judgments, remedies and orders it will issue?

While the court has the power to grant any remedy it deems appropriate, in any particular case the court is limited to the remedies sought in the statement of claim. Within these boundaries, the court will decide the remedies and orders based on the evidence in the case, and the limits set in legislation and case law (eg, statutory damages are not available in class actions).

34 How is witness, documentary and expert evidence dealt with?

Parties must submit all witness statements and evidence, including expert opinions, during the evidentiary stage. Most evidence is submitted in writing, rather than orally. Save for very exceptional cases, witness statements are also submitted in writing. Cross-examinations are conducted orally, being the only chance the court has to form its opinion about the witnesses' reliability.

35 How does the court deal with large volumes of commercial or technical evidence?

Large volumes of evidence are quite common in CCL cases. Generally, the court – comprising a professional judge or judges, rather than juries – reviews the (admissible) evidence before it, including expert or technical evidence, and assigns such evidence the appropriate weight. In matters of expertise, the court may appoint an expert on its behalf, regardless of whether expert opinions were submitted by the parties.

36 Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

The issue of compelling foreign testimony in Israeli courts and Israeli witnesses' evidence in foreign courts is governed by the International Legal Assistance Law of 1998 and its regulations, as well as the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, to which Israel is a party. In general, a foreign state may send a formal request to collect evidence or to depose an Israeli witness. In such case, the witness would enjoy all defences provided to him or her under Israeli law, and would not be required to disclose any evidence he or she would not have to disclose in an Israeli court. In the same manner, an Israeli court may request that a foreign state collect evidence from a foreign witness. Note that if for some reason the foreign witness is present during the Israeli court's hearings, the court may question the witness and request that he or she present documents.

37 How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

The Evidence Ordinance (New Version) of 1971 and relevant case law provide that each party has the right to cross-examine the other party's witnesses. Cross-examination is not limited to the primary testimony or statement of the witness, and questions may be asked, inter alia, in order to undermine the witness's reliability and credibility. If, during a witness's testimony, a surprising claim or fact was raised, the other party can move to bring rebuttal witnesses or evidence. In addition, when a witness testifies against the party on whose behalf he or she appeared, the party can move to declare him or her a 'hostile witness' and cross-examine that witness.

38 How long do the proceedings typically last, and in what circumstances can they be expedited?

CCL proceedings may take a year or more, but typically not more than two or three years. The appeals process may also last between a few months and two or three years. This is one of the main reasons for engaging in ADR in complex disputes. In recent years, following extensive data collection, a systemic administrative reform was conducted in courts in order to shorten the length of proceedings. However, long proceedings are inevitable in complex cases due to the need to collect and examine large volumes of material, both by the parties and the courts.

Generally, the supervision and management of the proceeding is at the discretion of the sitting judge. A proceeding can therefore be expedited if the judge finds it appropriate. When time is of the essence (for example, in insolvency cases or interim remedies), courts may render expedited decisions. In addition, in exceptional and appropriate circumstances, the court may order a pretrial testimony (for instance, when a witness is sick or about to leave the country) and such order may expedite the proceeding.

39 What other steps can a party take during proceedings to achieve tactical advantage in a case?

Tactical advantages during proceedings can be achieved through various mechanisms, as partially discussed above and below. In addition, pursuant to CPR Rule No. 122, the party may obtain default judgment when the other party does not comply with the court's orders regarding discovery or other preliminary proceedings. A defendant can also move for default judgment if the plaintiff does nothing to advance the case. Furthermore, both parties may move for a default judgment in a case of failure to appear (see question 27). Lastly, a defendant may argue 'no case to answer' (ie, the evidence brought by the plaintiff is insufficient to justify a judgment in favour of the plaintiff). However, this claim is risky as case law provides that if the claim fails, the defendant will not be able to bring further evidence, and will effectively lose the case.

Trial

40 How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

For length of proceedings in general, see question 38.

As for the trial phase, courts usually prefer to hear a case in consecutive sessions conducted within a period of a few days or weeks. The length of the trial phase and number of sessions depends on the number of witnesses and the complexity of the issue, and varies from case to case.

41 Are jury trials the norm, and can they be denied?

Jury trials are not available in Israel; all cases are heard by professional judges.

42 How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

Pursuant to article 68 of the Courts Act (Consolidated Version) of 1984, court hearings are open to the public, save for limited exceptions that typically do not apply in commercial cases. The evidence and pleadings are not published, yet any interested party may move to review and copy the court files, and such motions are usually accepted. Pursuant to article 23 of the Commercial Torts Law of 1999, the court may issue

a protective order to prevent the publicity of a party's trade secret (a term which is interpreted broadly in Israeli case law), and in some circumstances may order that certain evidence containing trade secrets is privileged and need not be disclosed in court. The court may also give instructions as to the submission of evidence containing trade secrets (eg, in a sealed envelope or for attorneys' review only). Furthermore, in some circumstances a party may also argue that certain evidence and information is privileged due to privacy considerations.

43 How is media interest dealt with? Is the media ever ordered not to report on certain information?

As mentioned above, court hearings and files are typically open to the public and therefore the media may report on them. While filming of hearings is not allowed, reporters often attend hearings in high-profile cases. However, the media is sometimes subject to gag orders (issued in exceptional cases, and usually not in commercial cases).

44 How are monetary claims valued and proved?

Assessment of damages in monetary claims is one of the most challenging tasks in CCL. As in other legal systems, common disputes may arise is respect to the appropriate method for evaluation of damages, the amount of damages and the extent to which damages are recognisable and recoverable. Some questions may require expert opinions. The decision whether to hear evidence regarding the damages during the trial or in a separate phase is subject to the court's decision, although in most cases all questions are heard during trial. Split trials are used mainly in tort claims, class and derivative actions, and in cases where the damages assessment poses complex challenges that would overly complicate adjudicating the case.

Post-trial

45 How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

In general, the 'loser pays' and 'costs follow the event' rules apply for costs. The amount of the costs awarded is subject to the court's discretion, usually in light of the estimated work put in the case, the value of the claim, etc. There are no tariffs or clear instructions as to how to set the amount of costs. In practice, costs awarded usually fall far short of reimbursing the successful party for its real costs and attorney fees. Pursuant to CRP No. 192, typical parts in a judgment would include a brief description of the matter (and the parties' claims), the court's findings of fact, the issues in question (and applicable law), the holding and its reasoning, and the operative judgment and remedy. Judgments are public and easily accessible using legal databases, unless directed otherwise by the court (which happens in extremely rare situations and almost never in commercial disputes). All judgments are written in Hebrew.

46 When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

In general, Israel's civil court system is comprised of three tiers:

- magistrates' courts;
- district courts, which also sit as an appellate court; and
- the Supreme Court, which functions as the highest court of appeal and also sits as the High Court of Justice, having sole jurisdiction over several administrative and constitutional matters.

Pursuant to article 17 of Basic Law: The Judiciary, there is the right to appeal any final judgment of a court of first instance, whether it be magistrates' or district court. Other judgments, namely interim decisions and judgments of a district court sitting as an appellate court, require permission to appeal. Due to their high value, most CCL cases are tried in district courts meaning that only one stage of appeal is usually available; in extremely exceptional cases, a motion for further hearing (a unique proceeding before a larger panel) is permitted. The appeals process may last between several months and a few years.

47 How enforceable internationally are judgments from the courts in your jurisdiction?

The recognition and enforcement of Israeli judgments is governed by the foreign jurisdiction's laws or by bilateral treaties. Israeli judgments are recognised and enforceable in many legal systems. In addition, Israel has signed four bilateral treaties regarding mutual recognition and enforcement of judgments (with Austria, Germany, the UK and Spain).

48 How do the courts in your jurisdiction support the process of enforcing foreign judgments?

The Foreign Judgments Enforcement Law of 1958 provides the framework for enforcing and recognising foreign judgments in Israel. In general, there are several conditions to enforcing a foreign judgment in Israel:

- the judgment was rendered by a competent foreign court and is not subject to appeal;
- such judgment would be enforceable if rendered in Israel;
- the judgment is executable in the foreign jurisdiction; and
- the motion to enforce the judgment was submitted within five years of the judgment date.

An additional condition for enforcement is mutuality. Save for exceptional matters, Israeli courts would enforce judgments only from jurisdictions that enforce Israeli judgments. If the status is unclear, case law provides that a reasonable potential for mutuality would suffice. The law also provides a list of situations in which a judgment would not be enforceable, such as:

- when the judgment was achieved fraudulently;
- if a similar case was pending in Israel during the submission of the case in the foreign jurisdiction; and

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- if the defendant in the foreign jurisdiction did not have reasonable opportunity to argue his or her case.

Israeli courts may also enforce interim foreign judgments if all aforementioned conditions are met and the claimant provides sufficient justification for such enforcement, and may also enforce foreign arbitration judgments (pursuant to the Arbitration Law of 1968, article 29A).

Other considerations

49 Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

Each advantage to one party may be a disadvantage to the other in a given context, and most were addressed above. As a general matter regarding CCL, due to their expertise and experience, Israeli courts are equipped to deal with complex matters. Additionally, as mentioned, in 2010 a special economic division was established in Tel Aviv district court, which serves as a source of expertise in complex corporate litigation.

50 Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

The main disadvantages are the length of the proceedings and reluctance to award full reimbursement of costs and attorney fees.

51 Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

All main considerations were discussed above. See, for example, questions 4, 22, 25, 26 and 28.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
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Data Protection & Privacy
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Dominance
e-Commerce
Electricity Regulation
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