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Abstracts

Ruth Plato-Shinar, Michal Ofer Tsfoni, *The Law for Reducing Cash Use in Israel: Marking Five Years in Force*

This article examines Israel's Law for the Reduction of Cash Use in light of global and local cash usage trends. While digital payments are growing, cash remains essential for certain populations in Israel, such as the ultra-Orthodox and Arab communities, and in crises like the COVID-19 pandemic and the military operation Swords of Iron.

The article explores whether restricting cash usage is justified and what the optimal regulatory approach should be. On the one hand, cash facilitates tax evasion, money laundering, and serious crime. On the other hand, it remains essential for vulnerable populations, provides a sense of financial security in times of crisis, and helps individuals control their spending. The article concludes that a complete ban on cash use would be inappropriate. Instead, it advocates a cash-limit mechanism, similar to the one introduced by the current law.

However, a detailed analysis of the law reveals significant complexities: The restriction mechanism is overly complicated, listing transaction types, the parties involved, and numerous exceptions. The law sets dual thresholds for cash payments based on the lower of two values, making it difficult to understand and apply. Key terms lack clear definitions, and enforcement provisions raise some concerns and might undermine the law's objectives.

The article calls for substantial amendments to the law, including clarifying terminology, simplifying the restrictions, and considering a gradual reduction of the cash payment cap in the future to balance financial inclusion with crime prevention.

Hadara Bar-Mor, Meir Assaraf, T*rade Union Challenges in the Era of Digital Management in the Financial Sector*

This article discusses the impact of the AI (artificial intelligence) revolution on labor relations in the financial sector, focusing on the changing role of labor unions. The digital and the AI revolutions bring about far-reaching changes in the financial sector, where tasks such as risk analysis and portfolio management, henceforth viewed as the core of the human labor, are being assigned to sophisticated algorithms. The structural changes in the industry - including the rise of fintech companies and the introduction of large technological players into the financial arena - require that managements and

labor unions develop expertise in new areas and expand their activities beyond the traditional boundaries of labor relations.
The artificial intelligence revolution is actually affecting professionals and educated workers in "white-collar" positions.
According to the World Bank, AI increases creativity in knowledge-intensive jobs, but its impact on physical professions is limited. That impact is particularly significant in the financial sector, where most menial tasks are assigned to AI technologies sooner or later, and the nature of work and job requirements undergo fundamental changes.
Labor unions currently face significant challenges. They must reconceptualize their roles and action strategies. Technological changes and algorithmic management exacerbate the inherent imbalance of power between employees and employers, mainly when considering the enormous amounts of information collected about employees. The challenges include protecting employee privacy in an era of constant digital surveillance, developing expertise in new technological fields, and adapting collective negotiation mechanisms to the changing reality.
The article suggests that legislative amendments - such as the Protection of Privacy Act (Amendment No. 13) of 2024 - can help labor unions address the complexity of AI systems that impact on employees' performance evaluations. The article emphasizes that labor unions need to adopt a proactive approach that includes the promotion of professional training and retraining, the development of new contractual mechanisms for the protection of workers' privacy, and their active participation in the design of policies and regulations adapted to the new technological reality.
In conclusion, the article emphasizes that labor unions must evolve and face the new challenges, while maintaining their traditional role in protecting workers' rights and social progress. They must find a delicate balance between organizational efficiency and the protection of workers' rights, particularly when the financial sector undergoes rapid technological changes.

Tamir Shanan, Doron Narotzki, *Taxation of Virtual, Encrypted, and Decentralized Payment Methods in Israel*

This article critically examines the regulatory tax approach in Israel as adopted in recent years by the Israeli legislature, Government, and Tax Authority, comparing it with global regulatory frameworks for taxing virtual and decentralized payment methods, cryptocurrencies, and cryptographic tokens. These digital assets/money serve as an independent and alternative payment methods that operate without governmental or central bank oversight, while challenging traditional financial institutions' roles in

investments, raising capital, and other financial services. The authors argue that the current tax framework - adopted by many countries, including Israel - undermines the tax authorities' ability to effectively tax cryptocurrency currently. This framework does not only discourage the widespread adoption of cryptocurrencies but ultimately proves counterproductive. The authors suggest examining an alternative tax regulatory framework that would enable more effective taxation of cryptocurrency gains currently while accounting for the industry's unique characteristics and the distinctive nature of cryptocurrency assets.

Galit Wellner, *The Platformization of Fintech Systems*

In recent years, various financial technologies have become a distinct category known as fintech. This category has an additional identifier, beyond designating the field of operation, which hints at a technological and business model known as platform. Both fintech and platform are multidisciplinary concepts involving diverse fields of knowledge including law, economics, technology, sociology, and more. This article presents insights from the field of critical theory that can contribute to the regulation of fintech.

Discussing these issues, this article is divided into two main parts: one is dedicated to understanding the concept of fintech platforms, and the other to the modes of their regulation.

The first part begins with a brief explanation of what fintech is and what this concept includes, acknowledging that its boundaries are not clear and are constantly being redefined. Next, the article outlines the characteristics of platforms, offering a brief history of the concept. These explanations then form the basis for understanding the critical concept of platformization, examining the rise of platforms and companies' motivations to invest in that business model. Whereas most of the critical research on platformization deals with media platforms, the focus of this article is on fintech platforms. The challenge is to show how some of the media-oriented conclusions may also be relevant to fintech platforms.

The second part of the article is dedicated to the new regulation of fintech platforms. The existing literature separately discusses financial technologies regulation and platform regulation. Initial discussions of fintech platforms regulation of has started in the early 2020s, but they were often limited to the perspectives of the United States, the European Union, and China, and thus were not always applicable to small and medium-size countries. The combination of critical thinking and the regulation of fintech on one hand and platforms on the other provides a foundation for guidelines for the regulation of fintech platforms.

Dalit Flaiszhaker, *Israeli CBDC - A New Shekel?*

In recent years, global discussions regarding the issuance of a Central Bank Digital Currency (CBDC) have intensified. CBDC is issued by the state and exclusively exists in digital form. Technological changes are referred to as necessitating this transition, since digital money is said to symbolize the future. The issuance of CBDC could potentially change existing relationships between the state and the market in the financial context, and gives rise to questions about the new collaboration between them. In Israel, the issuance of a CBDC - the digital shekel - is being considered. This article analyzes the concept, examining the motivations for its issuance and the expected challenges that would follow. A key motivation for the CBDC is to develop an innovative state-issued means of payment that would be efficient, secure, inexpensive, and could compete with private digital payment methods. A second motivation is the CBDC potential to increase financial inclusion. However, being an innovative currency, concerns regarding its interaction with cash have been voiced. Additional concerns address anonymity and privacy issues. Other challenges relate to the operation of the banking system and monetary policy as they pertain to CBDC. These motivations and concerns are reviewed based on the academic literature, as well as on policy documents published by central banks and global regulatory bodies.

Subsequently, the current situation in leading countries regarding the issuance of CBDCs is reviewed, providing background for discussions of the new digital Shekel that Israel considers. The article then examines the expected design of the digital shekel and the associated legal framework. It argues that the transition from physical to digital money still preserves the view of money as merely a means of payment. In fact, the expected design reflects a general tendency to preserve the status quo. The article argues that the technological change is not being utilized for a deeper examination of what money actually is. A more innovative point of view could insist on asking how the new digital shekel could benefit the economy and society in a much broader sense than just a technical addition of a means of payment, and how these benefits could be achieved. To this end, a conceptual change is required regarding the understanding of what money is, what the financial system is, and how both could be utilized for sustainable welfare and prosperity, and not just for the economic growth of a (small) part of the population.

Oleg Komlik, *The Founding of a State-led, Bank-based Financial System: The Case of Israel, 1948-1973*

At the time of the establishment of the State of Israel, more than one hundred midsize and small banking institutions—including credit unions, banks, and lending and savings funds—operated within its territory. These institutions functioned under a lax legal framework inherited from the British Mandate and with minimal supervision. That banking system was highly decentralized, engaged in significantly diversified business activities, and was divided along political and social lines. Consequently, most of the banking institutions in the nascent state - with the exception of APC (later Bank Leumi) and Bank Hapoalim - seldom aligned with urgent national-economic objectives and, in some cases, even contravened Israeli Government directives regarding capital flows and credit allocation.

A quarter of a century later, the Israeli financial system was completely transformed. The fragmented system, comprising more than a hundred independent banking institutions that often disregarded the government's instructions, had consolidated into one dominated by three major banks (Hapoalim, Leumi, and Discount) which maintained extensive and close cooperation with state authorities, effectively performing as government agents.

In this article, I argue that a coalition of state and political organizations has gradually formed a state-led financial system, explicitly designed to serve national economic development goals. I contend that the establishment of this state-led, bank-based financial system stemmed from three factors: Complex challenges posed by budget deficits and balance of payments deficits that hindered the nation's economic development; reliance on prevailing economic knowledge of the period; and a need to address partisan-political imperatives.

Structurally, this financial system was intentionally shaped through a deliberate policy of preferential treatment for the three selected banks (Hapoalim, Leumi, and Discount); systematic discrimination against and weakening of other banks and credit unions; and the promotion of mergers between smaller, weaker banks and the state-favored banks. Institutionally, this system was crafted through hundreds of decisions by various government levels that included laws, regulations, and both formal and informal directives. In essence, the process of forming the financial system was gradual and continuous, as the accumulation of government acts and policies over the years led to a revolutionary transformation of the system's characteristics. Furthermore, in terms of banking practices, the state directly and indirectly encouraged the widespread adoption of the universal banking model because it supported the national economic development agenda and facilitated its realization.

Ilana Lipsker Modai, *On the Difficulty of Proving Insider Trading Violations in Israel and Worldwide, and Potential Solutions*

The prohibition on the use of inside information by insiders is a widely accepted restriction in legal systems worldwide and one of the most significant and severe offence in securities law. The justifications for this prohibition, as established in the literature and case law, are diverse – maintaining investor confidence in the capital market; ensuring information equality and/or access to information in the capital market; preventing insiders' breach of trust towards companies and their shareholders; and protecting inside information as a corporate asset while preventing its misuse.

Israel's Securities Act cites criminal offences and administrative violations to prohibit the use of inside information by insiders as well as receiving from them and using such information by their associates.

According to the Israel Securities Authority's annual reports, in the decade since the implementation of administrative enforcement procedures in the Securities Act (2011), most cases of illegal insider trading have been referred to criminal investigation despite the existence of a parallel administrative enforcement channel. However, despite broader investigative powers in the criminal sphere success in solving these cases was limited and many of these cases were closed due to evidentiary difficulties, combined with the heavy burden of proof required in criminal proceedings.

This article presents an extensive comparative study that reveals practical and structural difficulties of proving insider trading violations that the various legal systems experience, even though these challenges are more evident in the criminal sphere. One key challenge is that cases often rely on circumstantial evidence, as there are typically no confessions nor directly incriminating evidence against suspects. Additionally, detecting insider information violations is complex, as trading activities often appear "innocent" and suspects have all types of legitimate explanations for their actions, making it difficult to prove the receipt of information prior to trading.

This article presents several solutions as developed by various legal systems that aim at enhancing enforcement and deterrence by regulators across criminal, civil, and administrative spheres regarding insider trading prohibitions. I examined the benefits of these solutions, the challenges of their implementation, and their compatibility with the Israeli legal system.

Some solutions adopted in foreign jurisdictions have been implemented in Israel for years. These include stock exchange trading monitoring and surveillance, and wiretapping in criminal cases when appropriate and in more serious cases. Additional solutions successfully implemented in American law include whistleblower reward programs and self-disclosure rules for companies and individuals that offer information

about other parties involved in exchange for immunity from prosecution or reduced sanctions. I focused on two types of solutions that could be implemented in Israel without additional legislation, but rather through policy changes by the Securities Authority and courts:

1. Increased use of administrative proceedings for handling insider trading cases. Several legal systems have adopted the approach of administrative/civil proceedings within regulators' authority while reducing criminal proceedings, thereby enhancing enforcement.
2. Formulating lists of characteristic circumstantial evidence in administrative proceedings which, when present, could establish a presumption of violation, shifting the burden of proof or rebuttal to suspects.

Given the existing enforcement data regarding criminal insider trading offences, it appears necessary to strengthen enforcement in this area and to consider additional methods to enhance both enforcement and deterrence regarding insider trading violations or offenses.

Karnit Malka Tiv, Daniella Asaraf, *On the connection between the use of cash and the black economy - the cash law in Israel as a case study*

Over the years, many countries have struggled against black-market economy. In Israel, one of those countries, the scope of the black market is estimated at billions of shekels annually. It expands during economic crises when tax collection becomes critical for closing budget deficit gaps. The need to address the black economy gains additional urgency when the state attempt to avoid tax hikes so as to minimize harm to law-abiding taxpayers.

In 2019, the law for reducing the use of cash came into effect. It was heralded as a significant tool for minimizing cash transactions, based on the premise that cash interactions are a key enabler of black market activities.

This article examines the connection between cash usage and the scope of the black economy by evaluating, among other factors, the law’s implementation, enforcement, and the challenges it has faced since its enactment. Additionally, the article attempts to identify the factors that influence cash usage habits, and the extent to which the law has been internalized by the citizens, while drawing some conclusions regarding ways of optimizing its application as a means to attain its original objective—reducing the scope of black economy.

The article incorporates an analysis of data published by the Tax Authority and other bodies, and presents the findings of a quantitative study conducted among 239

respondents. The study examined factors that could impact on cash usage habits and the internalization of the law that restricts cash payments. The research results present an inconclusive picture of the impact of cash usage on the black market, and doubts that the law could attain the goal of eradicating the black market, which is due to the law's inherent challenges, and particularly because a large black market segment comprises criminal activities that the examined law does not address.

Daniella Asaraf, *A Reflection on the Status of the Law of Negotiable Instruments in the 21st Century*

The view by which the law of negotiable instruments needs to be a separate branch of law has been criticized for dozens of years. The prevalent view is that the law of negotiable instruments refers to an obsolete, stagnant, and formalistic field of law that ignores social and technological changes that society is undergoing. That ignorance of new social trends and changes cast doubt on the very necessity of this field of law. It has led to the recent statements about "the death of the negotiable instrument." This is expressed in greatly decreased academic research and in the subject's declining status in the curricula of law schools. Furthermore, new payment means, including debit cards, have replaced checks.

For the first time in the literature, this article reviews the veracity of this concept by using a quantitative study that provides quantitative, empiric, and objective data. This methodic review helps formalizing substantiated conclusions about the prevalent course and case-law trends in the law of negotiable instruments, considering the importance, necessity, and justification of keeping it as a separate field of law in the 21st century.

This article is important due to the findings it presents. In it, we show that the concept that the law of negotiable instruments is formalistic, when compared with other fields of law, is misguided and based mainly on an information gap. Though the law of negotiable instruments tends to be formalistic (as shown in our quantitative research), it does not exceed other branches of law in that respect. Rulings of Israeli Magistrate and District Courts do reflect that formalistic tendency, but that seems to be the general trend as civil law and other fields when addressed by the Supreme Court.

Moreover, we found a difference between prevalent concepts and practical reality. Practically, "The death of the negotiable instrument" does not reflect reality. Findings presented in this article indicate that even in the 21st century, negotiable instruments enjoy a high status as a means of payment, security, and funding.

The first part of the article (Part B) presents the prevalent view of the law of negotiable instruments as a relatively conservative and classic branch of law. That view has been met with numerous objections, the strongest of which denies that the law of negotiable instruments is even a separate branch of law. In this part, we further review preliminary calls for a change of trend as expressed in the literature and in the case law. The next article section (Part C) is applicative and based on our quantitative research. The objective of this part is to show how the

law of negotiable instruments has been methodically and constantly embodied into all court rulings in a given certain time, revealing where in the literature it is located on the formalism-anti-formalism axis. A statistical analysis of those rulings led us to forming scales of formalism with which to evaluate the level of formalism in the law of negotiable instruments. In this Part of the article, we analyze relevant rulings using answers to a coding questionnaire, which is meant to methodically, objectively, uniformly, and consistently examine the embodiment of formalism in case law. The questionnaire addresses 11 parameters of variables that we extracted by historically reviewing the term "legal formalism" and the shift from form to substance. The 11 parameters follow from various questions that distinguish between formalistic and the non-formalistic rhetoric in the rulings. Each parameter consists of several (binary variables), mostly yes/no questions.

Part D of the article focuses on three practical claims that could undermine the status and necessity of the law of negotiable instruments in the 21st century. The first claim refers to the tension between the nature of the law of negotiable instruments and the recent consumeristic trend. The second claim refers to the fact that new means of payment have started to replace negotiable instruments in 2010s. The third claim refers to the scarcity of precedents and renovations in the law of negotiable instruments. Part E of this article reviews the impact of the Israeli Reduction of the Use of Cash Law -2018 on the status of the law of negotiable instruments. This new law imposes several restrictions that could change classic instructions contained in the law of negotiable instruments. These instructions might cast doubt on the status and necessity of checks as negotiable instruments. The last part (Part F) is a summary of the article.

Dikla Peleg, T*he Hidden Reason for the Fintech Market Growth – the Role of Post-Financial Crisis Regulation in Creating a New Market*

The rise of fintech players in financial markets occurred mainly between 2013 and 2017. In the broader sense, fintech refers to the application of innovative technologies to products and services in the financial industry. The fintech market devolved in several key areas, including funding and investments via platforms, digital currencies, risk management, payments and infrastructure, knowledge management, data security, and cyber.

The rise of fintech in the financial sector is mainly the result of expedient technological progress; expanded digital services due to growing Internet accessibility; and the rising use of Artificial Intelligence. This was coupled by the nature of the millennial generation and its obvious preference of electronic means.

However, there are factors that relate to the financial crisis of 2008, especially the post - crisis banking regulations, that can be identified as contributing to the development of the fintech market.

That 2008 crisis originated in the US sub-prime loan market and spread to other markets and sectors, eventually affecting the global financial market. The financial crisis was followed by regulatory reforms and rules of policy, the most dominant of which were the American Federal Dodd-Frank Act and Basel III rules, which were subsequently adopted as international standards. The main purpose of these reforms was to strengthen the regulation of large financial institutions, specifically banks, in order to prevent the occurrence of systemic risks. An intended consequence of those reforms was the rise of fintech players.

This article focuses on the (unintended) connection between these post-crisis banking regulations and the emergence of the fintech market, in the USA and in the UK – financial markets that were highly affected by the financial crisis and became centers for the development of fintech.

This article introduces innovative inspection methods of two specific submarkets: the provision of credit to individual and small business through P2P platforms; the provision of services to banks by fintech companies to help them comply with regulatory requirements in risk management, regulatory reporting, compliance and non-tradeable financial derivatives.

The contribution of post-crisis banking regulation to the emergence of the fintech market represent a wider phenomenon of unintended consequences of financial regulation, in a way that the design of regulation on financial institutions such as banks created incentives that motivated technological players which compete with banks. In addition, the impact of financial regulation on the rise of fintech raises a normative question regarding ways to justify the application of regulation on fintech players that is similar to the regulation that prevails on banks – which is what makes this article important.

Prima facie, fintech players have unique characteristics that differ from the banks'. They are decentralized, small (in both size and capital), and technology-based. Nevertheless, their activities might be as risky as that of the banks' before the 2008 crisis, which is mainly due to those very characteristics and, as this article shows, are subject to insufficient supervision, while having a relatively limited ability to influence the financial system. Therefore, fintech players should be subject to "smart regulation" that would suit their unique characteristics and risks, using the technology on which their activity is based.

Tal Meler, *Raghda Alnabilsy and Miri Bernstein, Arab-Palestinian Women in Debt Due to Economic Abuse*

Debt is an inherent aspect of human economic behavior, but only in recent decades has it been acknowledged as a social issue and a subject worthy of academic research. This study focuses on the phenomenon of coerced debt as part of a broader spectrum of gender-based economic abuse of Arab-Palestinian women in Israel. Such debts are often accrued by partners, ex-partners, or other family members, but assigned to the abused women.

The study of gender-based violence against Arab-Palestinian women in Israel has primarily addressed physical, sexual, and psychological abuse. Economic abuse, including coerced debt, accompanies these forms of abuse or manifests independently. Coerced debt serves as a control mechanism in violent relationships, where women either play no role in accruing those debts or are unable to pay them because they are constantly abused and marginalized. Consequently, these women often lose access to essential financial services such as bank accounts, credit lines, and loans, or face exorbitant economic or psychosocial costs when they do access them.

Living under economic abuse, particularly when in debt, has profound and multifaceted consequences, including harm to one's mental and physical health, disruption of family life, and limitations on key aspects of livelihood. Such harm isolates women, increasing their vulnerability and making it even harder for them to break free from abusive relationships, even post-separation.

This article draws on a qualitative study, based on semi-structured, in-depth interviews with Arab-Palestinian women in debt, and supplemented by the content analyses of legal cases. The study intends to improve our understanding of the unique challenges these women face, and to make practical recommendations for policymakers to amend that situation. These recommendations include ensuring the realization of rights, implementing supportive policies for survivors of violence, creating appropriate legal frameworks, and facilitating rehabilitation through insolvency proceedings. Additionally, the study advocates the development of intervention programs to enhance financial literacy among Arab-Palestinian girls and women.

Yael Iosilevich, *Global Insurance Regulation as a Mechanism for Enhancing International Responsibility for Climate Crisis Resilience in Developing Countries*

In recent years, there has been a drastic increase in climate events that caused extensive physical and economic damage to individuals and countries. This is the result of the frequency and severity of extreme weather events that follow climate change. The impact of these events is not evenly distributed globally, mostly affecting developing countries. At the same time, though developed countries generally suffer less from such damages, they bear a greater responsibility for the climate crisis. One solution that could help developing countries are climate-related insurance policies that could cover for such damages. For such insurance to exist, developed countries need to extend economic and practical support. While climate-related insurance and aid programs by the Global North to the Global South are being discussed in international and diplomatic forums, effective agreements have not yet been reached.
This article analyzes the application of international financial-regulation mechanisms that had proven practically successful. It suggests incorporating mechanisms that are commonly used in the international financial sphere into the challenges of non-compliance with aid agreements between the Global South and the Global North regarding climate-related insurance.

Royi Ashkenazi, *On the Israeli Banking Fee Transparency Requirement*

This paper discusses the recently imposed transparency requirement whereby Israeli banks must update clients of the banking fees they had paid in the previous month. Although highly important for advancing transparency and competition in the banking sector, the transparency requirement has encountered fundamental problems that prevent it from attaining these goals. First, the notice merely presents the total sum of fees, without detailing which fees have been incurred or what alternatives may be available to customers. Thus, the information provided in the notification is partial and inadequate. Second, the general climate of consumer protection, with its plethora of disclosure in many industries, might lead to information overload – even more so in this case, since bank customers are typically unsophisticated financially. Third, the ultra-centralized and uncompetitive Israeli banking sector structurally limits the ability of customers to seek cheaper alternatives, even with the improved transparency of fees. To deal with these concerns, mainly the first one, this paper suggests a balancing approach by adding to the monthly notice a link to an external document that contains details

about the fees and additional related information. In this way, the notification remains simple and concise on the one hand, while containing all necessary information required for them on the other hand. Nevertheless, broader structural reforms in the banking system are needed, since transparency requirements alone cannot adequately improve competition in this centralized market.