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# **Encyclopedia of International Commercial Litigation**

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The Hon. Sir Anthony Colman**



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# Israel

## Author

*Eric Sherby* founded the law firm of Sherby & Co., Advs., in 2004.

The firm specializes in representing foreign companies in commercial disputes before Israeli courts and arbitrators. Our attorneys have litigated before the trial courts of Tel Aviv, Jerusalem, and Haifa, as well as before the Israeli Supreme Court.

Sherby & Co., Advs. is frequently retained in connection with parallel proceedings – cases in which the litigants before an Israeli court (or arbitrator) are also involved in litigation or arbitration before a *non-Israeli* tribunal.

The firm's typical cases include corporate governance disputes, disputes between non-Israeli manufacturers and their former Israeli distributors, licensing disputes, insurance coverage disputes, aviation claims, enforcing foreign judgments and arbitral awards, estate disputes, and defence of product liability claims.

In addition to Israeli clients, clients of Sherby & Co., Advs. include some of the world's largest manufacturers in the energy and automotive fields, some of the world's largest financial services providers, and one of the world's best-known Internet companies.

Sherby & Co., Advs. also frequently represents Israeli parties in international arbitrations, and the firm regularly advises Israeli clients with respect to litigation before courts in the United States.

Mr Sherby is a member of the board of arbitrators of the Israeli Institute of Commercial Arbitration (Tel Aviv), and he served as the draftsman of the International Rules (adopted in March 2007) of the IICA.

Prior to founding Sherby & Co., Advs., Mr Sherby headed the international litigation department of Yigal Arnon & Co., one of Tel Aviv's largest firms.

Mr Sherby is a graduate of Columbia University in the City of New York and The Benjamin N. Cardozo School of Law (of Yeshiva University). Before moving to Israel, Mr Sherby litigated at Fried, Frank, Harris, Shriver & Jacobson in New York City, where he represented American and other clients in litigation matters throughout the US. In addition to being a member of the Israeli Bar, Mr. Sherby is admitted to practise in the State of New York, the District of Columbia, and several federal courts, including the United States Court of International Trade.

Attorneys of Sherby & Co., Advs. have published extensively (in Hebrew and in English) in the fields of international litigation, international arbitration, and international business law. Articles authored by attorneys in the firm have been published by the American Bar Association, the New York State Bar Association, the *ISILS International Law Journal*, the Israeli Bar Association (Hebrew), and Israel's business newspaper, *Globes* (Hebrew).

Mr Sherby serves as co-chairman of the New York State Bar Association's Israel Chapter, and he is an active member of the American Bar Association's International Dispute Resolution Committee.

Address:

South Africa Building  
12 Menahem Begin Street  
Ramat Gan 52521  
Israel

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## INTRODUCTION

Until the end of the First World War, the territory known as Palestine (including Israel) was part of the Ottoman Empire. During the British Mandate over Palestine (1922 to 1948), Ottoman law continued to be applied, except to the extent that the Mandatory Authority felt it necessary to apply English law.

With the establishment of the State of Israel in May 1948, the provisional government of the infant State decided to continue with the existing legal order, except to the extent that such laws were repugnant to the establishment of the new Jewish State, and subject to legislative modification.

Thus, the State of Israel began its existence in 1948 with a statutory system consisting of a mix of Ottoman and English law. Although Israel's legislature, the Knesset, adopted numerous laws relating to commerce and litigation, Israeli legislation in these areas was not revolutionary, and the influence of English law remained (and arguably remains to this day) in many areas of the law.

None the less, Israel formally ended any *direct* dependence upon English law in 1980, with the enactment of the Foundations of Law statute, which repealed the prior statute that required Israeli courts to look to English law and which provides that, when an Israeli court is faced with a legal question and finds no answer to it in statutory law, in case law, or by analogy, the court is required to decide the legal question 'in light of the principles of freedom, justice, equity, and peace found in Jewish tradition'.

The 1980 statute does *not* require application of Jewish religious law; certainly in areas such as companies law, contract law, civil procedure, evidence, intellectual property, securities regulation, and negligence, the influence of Anglo-American jurisprudence is far more significant than that of any other source or legal system.

Although the Arab-Israeli conflict influences certain aspects of Israel's criminal law, it has little direct effect on commercial law.

Israel is the only Middle Eastern country to have signed each of (a) Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, (b) Convention Abolishing the Requirement of Legalization for Foreign Public Documents, (c) Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and (d) Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

As Israel nears the celebration of its 60th anniversary of independence, the State prides itself in having a modern, Western economy very much based upon a modern, Western legal system.