

Bankruptcy Law in Israel – Between the Traditional and Economic Approaches

Omer Kimhi

This article deals with the subject of executory contracts in bankruptcy. Contrary to prevailing opinion in Israel, which adheres to a more social approach, we present an economic analysis of bankruptcy law. We make the claim that the role of bankruptcy law is to maximize the value of the debtor's estate. Bankruptcy should not take into account redistributive or welfare considerations, but rather should serve as a collective collection mechanism to the benefit of the creditors. This approach decreases the price of credit in the market and creates social gains.

Applying the economic approach to executory contracts leads to several conclusions. First, we discuss the assumption of executory contracts, arguing that in case of a debtor's breach, the debtor should not be allowed to assume the contract without a prior cure. In order to assume, the debtor should compensate the contractual party for any loss resulting from the breach, and provide adequate assurance for future performance. Second, we discuss the rejection of executory contracts. Here we make the claim that the debtor should be allowed to reject any contract the rejection of which will bring benefit to the estate. This derives from the principle of equality among the creditors, which is one of the basic principles of bankruptcy law.

Taxing Communities: The Taxation of the Traditional and the Renewed Kibbutz

Tsilly Dagan and Avital Margalit

This article examines the complex interaction between tax laws, communities and individuals, using the unique example of the Israeli kibbutz. Kibbutz members provide services and share economic resources based on an ideology of "from each according to her ability, to each according to her need". The kibbutz was subject to distinctive tax treatment under the Israeli Income Tax Ordinance. The first part of this article argues that this distinctive treatment reflects a general inclination on the part of tax law to tax (only) "market" transactions, and to avoid taxing non-market interactions. In recent years, the Israeli kibbutz has been undergoing major privatization. This market-oriented transformation necessitates a rethinking of the traditional tax regime. The second part of this article argues that while a major part of the interactions within the kibbutz—those subject to market norms—should be taxed like any other market transactions, tax laws should distinguish these transactions from the non-market interactions that still characterize certain aspects of the renewed kibbutz. Tax laws should therefore afford a certain level of deference to the kibbutz's community norms and avoid taxing such remaining non-market elements. Tax mechanisms for the renewed kibbutz should reflect