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BUSINESS

Active Academics

A college in Ramat Gan is determined to instill in its students a commitment to ethics in business

Ziv Hellman

THE CORPORATE SOCIAL Responsibility Institute at the Academic Center for Law and Business (ACLB) in Ramat Gan has only been in existence for about a year, but it is already regarded prominently enough to have been invited to present policy recommendations to the Trajtenberg Committee. The committee, commissioned in August by Prime Minister Benjamin Netanyahu to propose socioeconomic solutions in response to the summer protest demonstrations, issued its report in late September.

Ronit Donyets-Kedar and Ofer Sitbon of ACLB's Corporate Responsibility Clinic told the committee that in their view one of the main problems in today's corporate world is a prevalent attitude of seeking profits, even if they come at the expense of society in general. They pointed to a report they co-authored, along with Daniel Milo, director of the Jerusalem Center for Ethics, indicating that the 25 leading companies on the Tel Aviv Stock Exchange pay about three billion shekels less a year in taxes than they should be paying according to their declared earnings.

"Many of the largest firms make donations to the community in order to maintain their positive image," Prof. Moshe Cohen-Eliya, dean of the ACLB law school, tells *The Report*. "But when it comes to paying taxes, there is a big gap between their official tax brackets and the amounts that they actually pay."

Given the winds of change blowing in Europe and North America and also in Israel, where summer's social protest movement continues to push the political system to consider economic and social reforms that only a few months ago were not even under discussion, the core focus on ethics and responsibility in business in ACLB's curriculum suddenly seems exactly in tune with the times.

"As the wave of demonstrations this

summer in Israel stressed, fairness in business and economics is an important value that people care about," continues Cohen-Eliya. "We hope that our business and law students come away knowing that there is more to life than making money."

ACLB'S COMMITMENT TO ethics in business is expressed in several ways. All of its students are required to attend courses devoted to the issues of ethics, human rights and civil rights and their relationship to the practice of law and business. It publishes an academic journal titled "Law and Ethics of Human Rights," with many of its students involved in the editing and staffing of the journal. Its legal clinics provide law students with practical experience dealing with real-life cases involving civil and human rights. In addition, ACLB has created what is apparently a novel institution in local business schools – a clinic providing business students with exposure to practical experience in business ethics cases, similar to the clinics available for law students.

"Law clinics exist in just about every law school in the country," Gilead Barnea, a Jerusalem-based attorney who has worked with ACLB, tells *The Report*. "They serve two main purposes. They enable students to receive early on in their education exposure to real-life cases and experience working on the various aspects of legal cases. The focus on pro bono rights cases instills in the students a commitment to doing similar work throughout their careers."

This, says Barnea, is unique. "To the best of my knowledge, there is no other institution of higher learning in Israel that conducts clinics for business students similar to the ones for law students," he adds. "This is a significant contribution."

Founded as a private college in 1995, ACLB was initially accredited by the Council for Higher Education only to

grant law degrees. Three years ago it received approval from the council to grant bachelor's degrees in business management, and later accountancy degrees as well. Degree programs in communications are now being added.

ACLB is situated entirely in one nondescript office building that includes classrooms, study rooms, a well-stocked library and computer rooms, as well as faculty rooms and administration offices. The surrounding area, on the border between Ramat Gan and Bnei Brak, is very urban. Jabotinsky Street, a major thoroughfare choked with vehicles rushing to and from Tel Aviv at all hours, is at one end of the short street on which the ACLB building is located. The other end of the street leads directly to the main entrance of the National Stadium, and is a short walk from the large Ayalon shopping mall.

The lack of a sprawling green campus makes it feel not entirely collegiate (ACLB has installed an artificial lawn on the roof of the building for students seeking to sit on "the grass" while reviewing their studies.) The college has clearly invested heavily in the interior of the building, which looks ultra-modern and contains up-to-date facilities with cutting-edge educational tools.

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המרכז האקדמי למשפט ועסקי - 26330						



COURTESY ACLB

AN ACLB CLASS: A solid grounding in ethics

Cohen-Eliya earned a doctorate in law from Hebrew University in 2000 and joined the faculty at ACLB shortly afterwards. He took leave in 2002 to take up a position as a fellow at Harvard law school's Human Rights Program and later returned to Harvard University as a faculty fellow at the Edmond J. Safra Center for Ethics. Cohen-Eliya has also worked as a lawyer for the Association for Civil Rights in Israel.

A focused and fast talker, Cohen-Eliya likes to mention the assertive form of "active academics," combining academic research with active participation in the world outside the ivory tower that he has instilled in the

ACLB curriculum. "We do not simply want to talk about ethics. We want the subject of values to form an integral part of the subject matter," says Cohen-Eliya. Adapting ideas that Cohen-Eliya picked up at Harvard's Center for Ethics, the ACLB adopted an "ethics in the profession" approach.

"Teaching business and law also requires teaching ethics in business," stresses Cohen-Eliya. "Professionals cannot be technicians alone; they need to be aware of public missions in life. And if they do, they will be richly rewarded, not in money but in other ways."

ANY DISCUSSION OF BUSINESS and ethics eventually runs into questions touching on a business's main purpose, which is to make a profit. Is there a potential conflict of interest with respect to the fiduciary commitment that a business has to its shareholders to increase share value above all other considerations? Should a business lose money for the sake of someone's idea of what ethical behavior is required?

"These are very good questions, and there are disagreements on the answers to them," admits Cohen-Eliya. "There are two answers I can give. For one thing, a corporation

committed to social responsibility helps its commercial interests in the long run. There need not always be tension between the two. Secondly, professional people have commitments to society just as much as they have commitments to corporate shareholders.

"Every profession has a public mission, beyond making profit: a physician has to save lives, journalists should find the truth, and jurists must do justice. Business persons are no exception. In exchange for the recognition and prestige that society assures these professionals, they also need to give something back."

Barnea echoes Cohen-Eliya's sentiments. "Every individual in society has a responsibility to consider others and not selfishly work only for his or her own benefit," says Barnea. "This same principle extends to corporations, because corporations are, in the end, run by and for individuals. A corporation therefore must take social benefits into account."

Legal constraints help, he says, but they can only go so far. "There are obviously laws that prevent corporations from harming others," continues Barnea. "There is a bit of a paradox, for example, in anti-trust laws. We encourage corporations to succeed and grow as much as possible, but then tell them that if they grow too big, they will be punished. Where did anti-trust legislation originate? With the robber barons in America in the 19th century, because they operated solely for their own gains at the expense of society. That is one example of a law that explicitly takes into account the possibility that corporations acting only for themselves may harm others, and the law puts society's welfare ahead of that of the corporation."

ACLB'S CORPORATE SOCIAL Responsibility Institute has taken a special interest in studying the effects of privatization on the economy and society. Privatization was a major issue in the summer protests, due to a conviction among protest leaders that years of systematic privatization of state-run institutions has led to a deterioration in the basic services that citizens have a right to expect from government.

Yara Owayyed, who completed a law degree at ACLB and is now enrolled in a graduate program at the Hebrew University's Law School in Jerusalem, tells *The Report* that ACLB compares favorably with the university law schools with which it competes, especially with regard to accessibility of faculty and staff.

"The lecturers in ACLB are as good as the lecturers in the university," says Owayyed. "The atmosphere in ACLB was much more relaxed, and it was much easier to contact lecturers and administrative staff with any request. I got everything I needed as a student. I felt that the doors of the administrative staff were always open to me at ACLB, whereas at the university it is very difficult to get the attention of the administrative staff."

Cohen-Eliya, the founder and editor-in-chief of "Law and Ethics of Human Rights," has used his position as dean of the law school to fashion a curriculum focused on instilling a respect for ethics. Owayyed was a staff member on the journal, and she notes that "ethics and rights in our law studies were greatly stressed from the start. Ethics in law is a required course at ACLB, but not at the Hebrew University's law school."

18.42x24.31	33	34 עמוד	THE JERUSALEM REPORT	20/11/2011	29677093-3
המרכז האקדמי למשפט ועסקי - 26330					

BUSINESS

“There are certainly cases in which privatization has been to the benefit of our economy,” says Cohen-Eliya, pointing to the privatization of telecommunications as one example. “Problems arise most acutely when privatization removes power and enforcement from the state and gives them to private interests.”

Cohen-Eliya’s prime example of a state-run institution that should never be privatized is the prison service. The ACLB played a major role in stopping a scheduled privatization of prisons when it managed to persuade the Supreme Court to issue a landmark ruling in 2009 nullifying a prison services privatization bill in the Knesset on the grounds that it was unconstitutional. Cohen-Eliya is especially proud of that achievement and it is evident that he regards it as one of the crowning achievements both of his career so far and of ACLB’s involvement in public affairs.

The case involved a 2004 Knesset amendment to the Prisons Ordinance permitting the transfer of prison inmates to facilities managed by private firms. The amendment was intended to be a cost-saving initiative; the state would pay the private firms \$50 per day for each inmate, saving money by being spared the costs of constructing new prison facilities and expanding staff.

ACLB filed a petition before the Supreme Court challenging the amendment in 2005, adducing two main arguments in its petition. One argument claimed that the profit motive behind private prison management might lead private prisons to try to cut costs at the expense of prisoners and their rights. The other argument appealed to deeper principles, claiming that the very act of transferring prison powers away from the state and to private interests would be a violation of human rights to liberty and dignity.

In its November 2009 ruling on the case, the Supreme Court essentially accepted all of ACLB’s arguments in an 8-1 decision. Chief Justice Dorit Beinisch held that although the court usually does not intervene in economic-based decisions adopted by the Knesset, it felt compelled to strike down the Knesset amendment in this case because the legislation does indeed contravene basic constitutional rights. The ruling, which was issued about a year after the first private prison, near Beersheba, had already been completed, cost the

state hundreds of millions of shekels in compensation that it was forced to pay for canceling its contract.

“Our legal clinic was instrumental in one of the most important anti-privatization efforts in Israel, if not in the entire world,” says Cohen-Eliya. “It succeeded against all odds. It is very difficult to get an existing law struck down, if it does not involve a direct infringement of rights. The challenge here was to demonstrate that state’s action of divesting itself of its core responsibility for the penal system was in itself a threat to rights. And we managed to make the case. It was very exciting for the students involved.”

Barnea, who represented ACLB in the court deliberations on the petition to strike down the private prisons amendment, notes that the case focused on some of the most elementary issues relating to the proper role of the state in modern society, and set a global precedent that has been studied by legal scholars and legislators around the world. “The principle that we presented to the Supreme Court, and which was eventually accepted by the court, is that there is a hard core of services that a modern state must provide to citizens that is ‘inherently governmental’ and should never be privatized,” explains Barnea.

“This includes the national military, the police services, the prison services, courts, criminal prosecution and tax collection. Outside this hard core, there is a larger circle of services, such as education, health, welfare, and mail services, which may be privatized to some extent. However, the government should also offer a ‘public option,’ that is, the state should also provide these services alongside the private sector, and, in my opinion, the bulk of them. For example, in education, private schools may be opened, but the majority of the schools should be state-run. Finally, there is an outer circle of services that the government has a responsibility to see to it that they are provided to the public, but not necessarily by a government-run entity. An example might be public transportation. The state should ensure that public transportation is available, but for this purpose may grant licenses to private companies rather than providing it directly.”

Buoyed by its success in stopping the prison service privatization, ACLB published a report in August analyzing

in detail what it predicts will be the effect of a long list of privatization initiatives currently being pursued by governmental bodies in Israel, including prisoner rehabilitation services, municipal parking rules enforcement, substitute teacher services in public schools, water utilities, public parks maintenance, port authorities, rail services, and postal services. The report concludes that in some situations, mainly those involved in “core government responsibilities,” privatization may threaten to reduce state sovereignty, harm public interest, or damage the democratic character of the country’s governance. In some cases, however, the report states that the potential negative effects of privatization can be mitigated by regulation intended to protect the public interest, coupled with effective legal enforcement.

The proposed privatizations that ACLB regards as most problematic from the perspective of fundamental rights and the responsibility of the state to its citizens include the hiring of private instructors at the police and military training centers, and the privatization of fine collection services.

Cohen-Eliya also prominently mentions a proposal that court disputes meeting certain criteria be removed from courtroom deliberation. The disputing parties would instead be required to sit down with private-sector lawyers hired to serve as arbitrators whose decisions would be binding on the disputants, with no need to involve court judges. “That,” says Cohen-Eliya, “will effectively turn these lawyers appointed to be arbitrators into judges, contravening one of the inherent responsibilities of governments.”

COHEN-ELIYA LIKES TO STRESS the theme that guarding human and civil rights is not an issue that only legal scholars should be concerned with; business people, he says, should be just as involved in the subject, which was the impetus for the establishment of ACLB’s Corporate Social Responsibility Institute.

“There are quite a lot of organizations devoted to guarding human rights,” points out Cohen-Eliya. “But when it comes to corporate issues, which are extremely important for society, who is looking out for the public interest? Government regulators? They are too easily influenced by politics or powerful lobbyists. Our Corporate Social

18.54x23.04	34	34	עמוד 34	THE JERUSALEM REPORT	20/11/2011	29677100-2
המרכז האקדמי למשפט ועסקי - 26330						

Responsibility Institute gives voice to important matters that might not otherwise be mentioned."

As one example of a significant result that emerged from the work of the Corporate Social Responsibility Institute, Cohen-Eliya mentions the "Missing Billions" study published by the institute last year, which was the main subject that ACLB's representatives presented to the Trajtenberg committee. The report examined in detail the publicly available financial records issued by corporations listed on the Tel Aviv Stock Exchange's "Tel Aviv 25" index in the years 2006 to 2009, and found that by way of tax shelters and loopholes these companies were underpaying their potential tax bills by about three billion shekels per year. Seven of the corporations made use of one or more affiliated companies in well-known tax havens such as the Cayman Islands, the Virgin Islands and the Bermudas.

"And this report looked only at 25 companies," stresses Cohen-Eliya. "That is out of about 600 publicly traded Israeli corporations – imagine what the total tax loss to the state budget is from all of them together."

The authors of the report then went on to review philanthropic donations made by these same corporations during those years. They estimated that the combined annual donations of the 25 firms came to 274 million shekels per year, which sounds impressive until one considers that the companies are saving 11 times as much in unpaid taxes as they are giving in charity.

The report calls for the adoption of greater corporate responsibility norms that include paying taxes in full, as well as greater transparency in corporate tax policies. This touches on basic questions, such as to what extent a corporation should consider paying taxes and contributing to philanthropic causes as important relative to its commitment to maximize profits for its shareholders.

On this issue, Barnea is unequivocal. "Beyond what the letter of the law requires, corporations must consider others, even if that means less for shareholders," he says. "There are some corporations that give to philanthropic causes but do terrible things. They give a few pennies to charity, and thus try to clear their image, without really acting for the good of society. Sometimes their philanthropic giving is exploited for the sake of publicity for their products.



MOSHE COHEN-ELIYA: 'There is more to life than making money'

There are no wealthy individuals like Bill Gates or Warren Buffet in Israel, people who commit giving the vast majority of their wealth to philanthropic causes."

Barnea is also perturbed by the extent of tax avoidance implemented by wealthy corporations and individuals. "The wealthy pay far less taxes than you and I," says Barnea, with a hint of anger in his voice. "They find tax exemptions, they have armies of accountants and tax advisers, and they transfer wealth to foreign countries to avoid paying taxes. They also get significant breaks from banks – if the average person owes a debt to a bank and runs into difficulties making debt payments, the bank usually does not compromise on the debt, but for the wealthy they are willing to compromise significantly. I know this for a fact from my work as a lawyer representing clients in court."

STUDENTS WORKING WITH the Corporate Social Responsibility Institute are expected to gain a broad education in topics including environmental economics, international law as applied to multinational corporations and ethical risk management. It also conducts student clinics looking into the public interest in stock market issues, as well as studying specific issues in business and ethics, such as taxation policy and labor relations.

"The students who are in law school and business school today will soon be in major positions in the workplace," says Cohen-Eliya. "If we get them to think now about these issues, they will take that with them to their future jobs."

ACLB likes to stress its diversity in its student body. "We have young students and older students," says Nitza Mazar, ACLB's CEO. "In our courses there are some students who have already completed a BA, some have MAs and there are even students with PhDs who enroll. The student body includes Jews, Christians, Muslims, Armenians, Druze, and others. The diversity has an effect on classroom dynamics, such as when experienced business people are in class as students, contributing to the discussion."

"It should be stressed that although we are private, in the sense that we are not publicly funded, we are a not-for-profit educational institution," says Professor David Menashri, the president-designate of ACLB, "as distinct from a for-profit company. We think of ourselves as following on the motto of New York University, 'a private university in the public service.'"

"Colleges like ACLB are important for helping people from the periphery enter the halls of academia," Menashri tells *The Report*. "By periphery, I do not mean only towns far from the center of the country; there are people who are socio-economically peripheral even within Tel Aviv. We provide people with second and third opportunities to succeed, and provide generous scholarships for those who need it, without compromising on academic standards."

Owayyed, a 23-year-old Israeli-Arab student, agrees that ACLB has a diverse student body. Owayyed's family is originally from the north of the country, on the Lebanese border. Her family now lives in Jerusalem, where her father is a doctor and her mother used to run the Clalit health fund services in East Jerusalem – before she also enrolled to study law at ACLB.

Owayyed hopes to continue her studies and obtain a PhD in law in the United States after she completes a masters degree in Israel. "My long-term ambition is to serve as a Supreme Court judge in Israel," says Owayyed, "although there is no way really to plan for that. But I certainly expect that ethics in law will be important for me throughout my career."