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PLANT BREEDERS' RIGHTS LAW  
5733-1973

**CHAPTER ONE: INTERPRETATION AND APPLICATION**

**Definitions** (as amended in December 1983 and February 1996)

1. In this Law -

"examiner" - a person or institution appointed by the Minister as an examiner of and a advisor on applications and oppositions filed under some or all of the provisions of this Law;

"foreign application" - an application filed by a breeder or by the previous holder in one of the Union states;

"Convention" - the International Convention for the Protection of New Varieties of Plants, 1961, as revised in Geneva in 1972, in 1978 and in 1991;

"variety" - a group of plants within a single botanical taxon of the lowest known rank which, irrespective of the extent to which conditions for the grant of a breeder s' right have been met, can be –

(1) defined by the expression of the characteristics that result from a given genotype or combination of genotypes;

(2) distinguished from any other group of plants by the expression of at least one of the characteristics said in paragraph (1);

(3) deemed an independent unit in all respects of its suitability for being propagated without change;

“essentially derived variety” - within its meaning in section 36;

"harvested material" - a plant and any part of it, including its fruit, which is not intended for cultivation or propagation;

“propagating material” - a plant and any part of it, which is intended for cultivation or propagation, including seeds and tissue cultures;

"registered variety" - a variety in respect of which breeders' rights have been registered;

"this Law" - including regulations under it;

"Union State" - a foreign state, in respect of which the Registrar announced in Reshumot that, by virtue of the Convention, it is a member of the Union for the Protection of New Varieties of Plants;

"breeder" - a person who bred a new variety within its meaning in section 7, including his successors by process of Law, by transfer or by agreement;

"utilisation", for purposes of a variety -

- (1) its cultivation or propagation;
- (2) its preparation for propagation;
- (3) an offer for its sale;
- (4) its sale, export, import or marketing in any other manner;
- (5) its maintenance for purposes of one of the acts enumerated in this definition;
- (6) other acts, determined by the Minister with approval by the Knesset Economics Committee;

"development", of a variety - development thereof by means of artificial narrowing or the artificial broadening of genetic variation, the isolation of spontaneous genetic variation through self fertilization, crossing, back crossing or, vegetative isolation or any other method;

"basic characteristics" - one or a combination of characteristics, which are recognizable and can be described, and which differentiate the variety from all varieties of its taxon;

"the Minister" - the Minister of Agriculture;

"Breeders' Rights Committee" - the committee appointed under section 18.

**Effect** (*as amended in February 1996*)

2. The provisions of this Law shall apply to all botanical species and varieties.

## **CHAPTER TWO: RIGHTS AND QUALIFICATIONS FOR THEIR REGISTRATION**

**Breeders' right** (*as amended in February 1996*)

3.(a) Breeders' right in a variety bred in Israel can be registered in the Register of Rights in the breeder's name, on his application.

- (b) An Israel citizen, an Israel resident or a resident of a Union state - including a body corporate established by Law or registered in Israel or in a Union state - may apply for the registration of breeders' right in the Register of Rights also in respect of a variety bred outside of Israel.

**Protection of right**

4. Breeders' right in a variety shall be held. by the person, in whose name they are registered in the Register of Rights and they shall remain valid - subject to the provisions of this Law - as long as the registration exists.

## **Register of Breeders' Rights**

5.(a) A Breeders' Rights Register shall be kept for the registration of breeders' rights (in this Law: Register of Rights), and in it the following shall be recorded for each variety:

- (1) the name and address of the holder of the right;
  - (2) the denomination of the variety;
  - (3) concise description and specification of the variety's basic characteristics;
  - (4) in respect of a hybrid variety - the denomination of the variety's parents, if the Council so decides or at the breeder's request;
  - (5) the claims said in section 20(a)(5) accepted for purposes of registration;
  - (6) any other prescribed particular.
- (b) The Registrar may record in the Register of Rights additional particulars, which in his opinion, deserve registration.
- (c) The Register of Rights shall be kept in a place designated by the Minister, and shall be open to inspection by the public.
- (d) The Minister may prescribe, by regulations, ways of keeping and managing the Register of Rights.

## **Eligibility for registration** *(as amended in February 1996)*

6. A variety is eligible for registration of a breeder's right in the Register of Rights if all the following hold true for it:
- (1) it is new;
  - (2) it is sufficiently uniform in its basic characteristics, as stated in the application and taking the propagating method of the variety into consideration;
  - (3) its basic characteristics are stable, its description and characteristics are maintained even after repeated propagation, and - if the breeding constitutes a complete cycle - its characteristics are maintained at the end of each cycle.

## **What constitutes a new variety** *(as amended in February 1996)*

7.(a) A new variety is a variety that is clearly different from any other variety known when the application for the registration of breeders' rights is filed (hereafter: determining day).

- (b) Without derogating from the generality of the provisions of subsection (a), a variety shall be deemed to be known if an application for the registration of breeders' rights to the variety was filed to the official registers of any state whatsoever, on conditions that the application resulted in the grant of the right or in its registration in the Register, as the case may be.
- (c) A variety shall be deemed new even if - before the application for the registration of breeders' rights was filed - harvested material or propagating material of the variety was sold or otherwise transferred by the breeder of the variety or with his consent, during a period no longer than –
- (1) in Israel - one year from the determining day;
  - (2) outside Israel - in respect of grape vines, forest trees, fruit trees and ornamental trees - six years from the determining day, and in respect of other plants - four years from the determining day.
8. Repealed (*Amendment of February 1996*)

### **Priority**

9. Where several breeders applied for the registration of breeders' rights to a single variety, the right shall be registered in the name of the person who first lawfully applied for its registration.

## **CHAPTER THREE: COUNCIL, REGISTRAR AND BREEDERS' RIGHTS COMMITTEE**

### **Appointment of the Council and of its committees**

- 10.(a) The Minister shall appoint a Breeders' Rights Council (in this Law: the Council) with nine members, three of them Government representatives and six scientists, researchers, seed growers and variety breeders.
- (b) The Minister shall appoint the Council's chairman from among its members.
- (c) The Minister may, with approval of the Knesset Economics Committee, increase the number of Council members up to thirteen.
- (d) The Council may appoint committees of its own members and of persons who are not members, to make recommendations to it on matters or categories of matters to be prescribed by it.
- (e) The Council's term of office shall be three years from the day of its appointment.
- (f) If a Council member passes away or resigns or if his service was terminated, then the Minister shall appoint another person in his place, to serve until the end of the Council's term of office.

- (g) The Council shall determine its procedures and the procedures of committees appointed by it, to the extent that they are not prescribed by this Law.

### **Council's functions**

11. These are the Council's functions:

- (1) to consider and decide upon applications.
- (2) to guide the Registrar on any matter relating to the exercise of his powers and the performance of his functions;
- (3) to make recommendations to the Minister about regulations to be made for the purposes of this Law;
- (4) to perform any other function and to exercise any other power prescribed by the Minister under this Law.

### **Validity of acts**

- 12.(a) Half of the number of the Council's members shall constitute a quorum at its meetings, and it shall suffice that the quorum is present at the opening of the meeting.
- (b) The Council's existence, its powers and the validity of its decisions shall not be affected by the fact that a Council member's place is vacated, or by any defect in his appointment or in the continuation of his tenure.

### **Discussion and voting**

- 13.(a) Voting in the Council shall be secret, but at the request of a majority of Council members a vote in respect of the subject requested shall be by show of hands.
- (b) A person who has submitted an application to the Council may be present when the Council discusses his application; however, the Council may order that he not be present in part or all of the discussion, even if he is a Council member.
- (c) A Council member who has - directly or indirectly, in person or through a relative, agent or partner or through one of their relatives - any share or interest in any matter to be considered before the Council, shall so inform the chairman, in writing or orally, immediately after learning that the matter is to be considered, and he shall not participate in any voting on any question connected to it; where notice is delivered orally, it shall be recorded in the minutes of the next Council meeting.
- (d) For purposes of subsection (c), the "relative" of any person - within its meaning in the Land Appreciation Tax Law 5723-1963.

## **The Registrar and his functions**

- 14.(a) The Minister shall appoint a Registrar of Breeders' Rights from among the staff members of the Ministry of Agriculture (in this Law: the Registrar).
- (b) The following are the Registrar's functions:
- (1) to keep the Register of Rights and to deal with any matter relating to entries therein;
  - (2) to issue certificates and other documents on the registration of breeders' rights in the Register of Rights or on their cancellation;
  - (3) to perform any other function and to exercise any other power prescribed by the Minister under this Law.
- (c) The Registrar shall deliver reports on his activities to the Council, at times prescribed by it.
- (d) The Registrar shall participate in Council meetings, to which it invites him, and he may participate in all Council meetings.

## **Filing of application**

- 15.(a) In this Chapter, "application" - any application or opposition under Chapters Four or Ten.
- (b) Every application shall be filed with the Registrar.
- (c) When the Registrar finds that an application includes all the particulars which it must include under this Law, he shall bring it before the Council for consideration and decision.
- (d) When the Registrar finds that an application does not include all the particulars which it must include under this Law, he shall inform the applicant of the defects in it; if the applicant does not correct the defects indicated by the Registrar within the prescribed time, the Registrar shall reject the application.

## **Examination of application** (*as amended in December 1983 and February 1996*)

- 16.(a) The Council shall take any measures it deems necessary in order to examine an application, and it may –
- (1) invite examiners or other experts to give their opinion on professional questions;
  - (2) perform - by itself or through examiners chosen by it – research projects, examinations and tests needed in order to reach a decision; the applicant may follow the conduct of field trials at times, in a manner and on conditions prescribed;

- (3) transmit particulars of the application to an international institution, in order to search for material enabling an examination.
- (b) The applicant must pay the expenses involved in the examination of his application under this section, as the Registrar shall decide, and the Registrar may require him to make advance payments on account of the said expenses; the Registrar may withhold the examination of an application until expenses or advances have been paid, at their rates on the date of payment, and he may cancel an application, thirty days after he gave warning to the applicant..

### **Hearing**

17. Before reaching a decision on an application, the Council shall allow the applicant to testify before it.

### **Plant Breeders' Rights Committee**

- 18.(a) The Minister of Justice shall appoint a Plant Breeders' Rights Committee; the Committee shall have three members, including a District Court Judge, who shall be the committee chairman, the Registrar and a person with professional training in the field of plant variety breeding, who shall be appointed on the recommendation of the Minister of Agriculture.
- (b) The Minister of Justice may make regulations on procedure and fees in proceedings before the Plant Breeders' Rights Committee, as far as they have not been prescribed in this Law.

### **Secrecy**

19. No person shall reveal any information that came to his knowledge in proceedings under this Law, except for purposes of its implementation; a person who argues that something came to his knowledge otherwise than in proceedings under this Law, shall bear the burden of proof.

## **CHAPTER FOUR: REGISTRATION PROCEDURES**

### **Application for registration of breeders' right** *(as amended in December 1983)*

- 20.(a) An application for the registration of breeders' right in the Register of Rights shall be filed in the manner and on the conditions prescribed in regulations, and it shall include the following:
  - (1) name of applicant;
  - (2) an address for the delivery of documents in Israel, and if the applicant is not resident of Israel - the name of his representative, who is a resident of Israel and is authorized to represent him in any matter relating to the application;

- (3) the description of the variety and particulars of the variety bred, including particulars on its characteristics;
  - (4) the denomination proposed for the variety;
  - (5) a claim or claims that specify the distinctness of the variety, each claim reasonably arising from the particulars described under paragraph (3);
  - (6) any other particular related to the implementation of this Law, as prescribed.
- (b) Where the applicant represents a breeder, he shall indicate in his application the basis for his right .

**Additional particulars** (*as amended in December 1983 and February 1996*)

- 21.(a) For the examination of an application in accordance with section 20, the Registrar may demand from the applicant propagating material or any other material or additional particulars related to the subject of the application.
- (b) Where the applicant did not deliver the propagating material or other material or additional particulars demanded by the Registrar - on the conditions, in the manner and at the time prescribed - the Registrar shall reject the application, on condition that the applicant is given thirty days' advance notice and has not delivered the required material and particulars to the Registrar until the end of that period.

**Publication of application** (*as amended in December 1983 and February 1996*)

- 22.(a) Where an application for the registration of breeders' right has been filed and the Registrar has decided to bring it before the Council, the Registrar shall, within sixty days after he made his decision, publish a notice in Reshumot and in a professional journal in the field of agriculture, specifying the following:
- (1) the name of the applicant;
  - (2) the denomination proposed by the applicant for the variety, in respect of which the application has been filed;
  - (3) a description of the variety and the specification of its characteristics, as provided by the applicant.
- (b) The Registrar may - subject to the provisions of this Law - include in the notice any other particular which in his opinion should be included in it.

**Opposition to registration** (*as amended in February 1996*)

- 23.(a) When a notice according to section 22 has been published, any person may - within ninety days after the notice is published in Reshumot - file a reasoned written opposition of the registration of the right.

- (b) The following are grounds for opposition under this section:
  - (1) the opponent's right to be registered as the holder of the said variety outweighs the applicant's right;
  - (2) the variety does not meet the requirements enumerated in section 6.
- (c) Any opposition not based on one of the grounds enumerated in subsection (b) the Registrar shall reject, notwithstanding the provisions of section 15.

### **Registration**

- 24. Where it appears to the Council that a variety has been tested and examined, that the characteristics specified in section 6 apply to it, that all the material and literature relating to the variety, which was duly delivered to the Council, has been examined, and that no opposition that has been filed should be accepted, the Council shall order the Registrar to register breeders' right to the variety in the Register of Rights in the name of the applicant, and when the Registrar has registered the right then he shall publish notice thereof in Reshumot, all subject to the provisions of section 25.

### **Referral to Court**

- 25.(a) Where an opponent alleges, under section 23(b)(1), that his right outweighs the right of the applicant for registration, the Council shall suspend its deliberations and shall refer the opponent to the Court; when it has done so, and when the opponent has brought his action before the Court within the time prescribed to him by the Council, the Council shall make a final decision on the application for registration before it only after proceedings in the said action have been concluded and only in accordance with the judgment given therein.
- (b) If the Council found reasonable grounds for the assumption that an application brought before it is tainted with fraud, the Council shall communicate its reasons thereof to the Attorney General and it shall suspend deliberations of the application; in the light of the material brought before him by the Council, and in the light of any other material he deems it proper to collect, the Attorney General shall do one of the following:
  - (1) file an action with the Court for declaratory judgment that the application is tainted with fraud, the Council shall make a decision on the application only after proceedings in the said action have been concluded and only in accordance with the judgment given therein.;
  - (2) notify the Council that, in his opinion, the said material does not include evidence sufficient to prove fraud; such a notice shall bind the Council and it shall continue to consider the application.
- (c) The provisions of this section shall only apply when the Council has concluded that, a priori, the variety is eligible for registration in the Register of Rights.

### **Application for amendment in the Register of Rights** (*as amended in February 1996*)

- 26.(a) The holder of breeders' right of a certain variety may apply for the amendment of any particular or description of the variety in the Register of Rights , if that is necessary in order to clarify claims by the holder of a breeders' right, or to eliminate error - other than a mere clerical error - in the registration in the Register of Rights, on condition that that does not broaden the scope of the claims in the application under section 20, and does not add anything to it that was not essentially mentioned in it originally.
- (b) Within thirty days of the date of filing of an application under subsection (a) the Registrar shall publish a summary thereof in Reshumot and shall forward the application to the Council for consideration.
- (c) Where an application for an amendment under this section is filed while a proceeding for an infringement or revocation of breeders' right is pending in a Court the Council shall not consider it only with the permission of the Court.
- (d) Where permission has been given, the Council shall decide on the application after it has given all parties to that proceeding an opportunity to present their arguments before it.
- (e) Where proceedings for an infringement of breeders' right are initiated before a Court after an application for the amendment of a particular was filed under this section, the considerations of that application shall continue to be considered , unless the Court directs otherwise.

### **Opposition to registration of amendment** (*as amended in February 1996*)

27. Any person may file opposition under section 26 within sixty days from the date of publication in Reshumot on the ground that the amendment does not achieve the purpose for which it was requested.

### **Decision on amendment in the Register of Rights**

28. When the Council has decided on an application under section 26, the Registrar shall record the decision in the Register of Rights and shall inform the applicant accordingly, and if the decision is not a refusal, notice thereof shall be published in Reshumot.

### **Revocation of breeders' right** (*as amended in February 1996*)

29. (a) The Council may on its own initiative or on application by a person with revoke breeders' right to the variety, if it an interest in a registered variety concluded one of the following:
- (1) the variety does not, any longer, meet the requirements enumerated in section 6;

- (2) the breeder did not provide the Council - upon its request and within the time it prescribed thereof not shorter than one growing season - propagating material of the variety, and in a hybrid variety – propagating material of its parents, the basic characteristics of which are equal to the basic characteristics specified in the Register of Rights, in a quantity all as required for prescribed for it as well as documents and information, re-examination of the variety;
- (3) the breeder has not permitted an examination of the measures taken by him for the preservation the variety;
- (4) a Court decided that the right of another to be registered as the holder of breeders' rights outweighs the rights of the registered holder, the validity of a said prior right and the procedure of its registration shall be as prescribed by regulations.
- (b) Notice that the Council is about to hear an initiative to revoke breeders' right or an application filed to that end shall be delivered to the holder of the right and shall be published in Reshumot.
- (c) The Council shall not decide to revoke breeders' right before it has given the holder of the right and the applicant for its revocation an opportunity to present their arguments before it.
- (d) Repealed.
- (e) An application for revocation is filed while a proceeding for an infringement or for the revocation of breeders' right is pending before a Court, the Council shall not consider it unless with the Court's permission.
- (f) Where proceedings for an infringement of breeders' right are initiated before a Court after an application for its revocation has been filed , the Council shall continue to consider the application, unless the Court ordered differently..
- (g) For purposes of this section, the Council shall have all the powers said in section 16, even if it acted on its own initiative only.

**Breeders' right declared null and void** (*Amendment of February 1996*)

29A.(a) The Council may - at its own initiative or on application by a person with an interest in a registered variety - declare breeders' right to a variety to be null and void, if it concluded one of the following:

- (1) the variety did not meet the requirements enumerated in section 6;
- (2) the right was granted to a person not entitled to it unless it was transferred to a person who is entitled to it;
- (b) Notice that the Council is about to consider an initiative to declare breeders' right null and void or an application filed to that end under subsection (a)(1) shall be delivered to the holder of the right and shall be published in Reshumot.

- (c) The Council shall not declare breeders' right to be null and void under subsection (a)(1), before it has given the holder of the right and the applicant for the declaration an opportunity to present their arguments before it.
- (d) Where an application to declare breeders' right null and void has been filed while a proceeding for an infringement of the breeders' rights is pending before a Court, the Council shall consider it only with the Court's permission.
- (e) Where proceedings for an infringement of breeders' right were initiated before a Court after an application was filed with the Council to declare them null and void, the Council shall continue to consider the application, if the Court did not make a different order on this matter.
- (f) For purposes of this section, the Council shall have all the powers said in section 16, even if it acted on its sole initiative. only.

**Results of a decision to revoke breeders' right or to declare it null and void** (*as amended in February 1996*)

- 30.(a) A decision to revoke breeders' right in a variety or to declare breeders' right to a variety null and void shall go into effect fifteen days from the date of filing of an appeal against it under section 86; however, where an appeal has been filed, the Court may stay the coming into force of the revocation or attach conditions as it may think fit to the coming into force or the stay.
- (b) Where breeders' right to a variety have been declared null and void, as said in section 29A(a), the Registrar shall record the revocation in the Register of Rights and the right is deemed never to have existed.
- (c) Where breeders' right in a variety has been revoked, the Registrar shall record the revocation in the Register of Rights and the right is deemed to have been revoked as of the day of the decision on revocation, as said in section 29.
- (d) A notice that a breeders' right has been revoked and a notice that a breeders' right has been declared null and void shall be published in Reshumot.

**CHAPTER FIVE: DENOMINATIONS OF REGISTERED VARIETIES**

**Restrictions on the registration of variety denominations**

- 31.(a) A denomination of a variety shall not be registered in the Register of Rights if - in respect of agricultural crops of the same species - an identical denomination or an identical or similar description under the Merchandise Marks Ordinance (New Version) 5732-1972 is still registered, and no denomination shall be registered under the said Ordinance in respect of aforesaid crops, if - at any time - an identical or similar denomination of a variety was registered in the Register of Rights.

- (b) A denomination of a variety shall not be registered under this Law, if one of the following applies to it:
- (1) it is identical with the denomination of a registered variety of the same species, or it is similar enough to an aforesaid denomination of a variety to be misleading;
  - (2) it is identical with the denomination of another variety of the same species which is mentioned in an enactment within the scope of the Minister's authority;
  - (3) it is identical with a denomination accepted by the public as the denomination of another variety of the same species, even if the other variety is not mentioned in an aforesaid enactment;
  - (4) it is identical with the denomination of a variety of the same species registered in a Union state, or it is similar enough to an aforesaid denomination of a variety to be misleading;
  - (5) it is liable to violate public order or morality;
  - (6) it is liable to mislead the public in respect of the variety or its characteristics, or in respect of its differentiation from other varieties of the same species;
  - (7) it does not comply with accepted international rates on variety denominations.

### **Approval of variety denomination**

32. Where the Registrar sees no reason under section 31 for not registering the denomination of the variety proposed by the applicant in his application for the registration of breeders' rights, the Registrar shall approve the proposed denomination and it shall be included in the notice under section 24; where a reason as aforesaid exists, the applicant shall be asked to propose another denomination within the time set prescribed by the Registrar; if the applicant does not propose a denomination for the variety within the said period, the Registrar shall determine the denomination of the variety.

### **Contestation of determination of denomination of variety**

33. A person who deems himself aggrieved by a decision on the determination of the denomination of a variety, may - within one year after the notice under section 24 was published - file with the Registrar a reasoned opposition in writing; the Registrar shall decide the matter and he shall notify the opponent of his decision in writing.

### **Protection of denomination of a variety** *(as amended in February 1996)*

- 34.(a) When a variety has been given a denomination, such denomination must be used in respect of that variety, whether or not a trade mark was attached to the denomination of the variety.

- (b) When the denomination of a variety has been registered, then it - or a denomination sufficiently similar to it to deceive - shall not be used for any variety other than the registered variety.
- (c) For the purpose of the provisions of this section, it shall not matter whether or not at the time of the use of the denomination - the breeders' right is still registered .
- (d) On application made to him in writing, the Registrar may recommend to a person appointed for this purpose by the Minister, , that the applicant be authorized to use - on conditions prescribed in the authorization - a secret mark instead of the denomination of the variety; the Registrar shall in every case forward the application to that person whose decision shall be final.

**PLANT BREEDERS' RIGHTS LAW (AMEND. NO. 2)**  
5756-1996

Sections 1 -32 amendments of the Main Law.

**Commencement**

- 33.(a) This Law, except for sections 2, 9, 10, 11, and 12, shall come into force sixty days from the date of its publication.
- (b) The provisions of section 36(a) to (d) of the Main Law, as formulated in section 17 of this Law, shall apply to a breeders' right registered in the Register of Rights after this Law went into effect; the provisions of section 36, as they were immediately before this Law went into effect, shall apply to breeders' right registered in the Register of Rights before this Law went into effect.
- (c) The provisions of section 36(e) of the Main Law, as formulated in section 17 of this Law, shall also apply to breeders' right registered before this Law went into effect, but shall not apply to an essentially derived variety, which was registered in the Register of Rights immediately before this Law went into effect or for the registration of which an application was filed before it went into effect, provided that it ended with the registration of a right.
- (d) The provisions of section 38(a) of the Main Law, as formulated under sections 20(2) and (3) of this Law, shall apply to rights that existed when this Law went into effect according to section 38 of the Main Law.

**Transitional provisions**

- 34.(a) The provisions of sections 22(a) and 26(b) of the Main Law, as formulated according to sections 9 and 11 of this Law, as the case may be, shall also apply to application filed before the publication of this Law.
- (b) The provisions of sections 23(a) and 27 of the Main Law, as formulated according to sections 10 and 12 of this Law, as the case may be, shall also apply to the filing of

opposition to an application published before this Law was published, if the time for the filing of opposition under the Main Law - as it was immediately before this Law came into effect - had not elapsed.

### **Uniqueness of denomination of variety**

35. When the denomination of a variety has been registered, it can be changed only by proceedings under section 33.

## **CHAPTER SIX: PROTECTION OF BREEDERS' RIGHT**

### **Scope of breeders' right** (*as amended in February 1996*)

- 36.(a) Subject to the provisions of this Chapter and of Chapter Seven, utilisation of a registered variety requires authorization obtained from the holder of a breeders' right to that variety.
- (b) The holder of a breeders' right may prevent any other person from utilising - without his authorization or unlawfully - the variety in respect of which the right is registered (hereafter: protected variety); an aforesaid utilisation constitutes infringement.
- (c) The right of a holder of breeders' right shall also extend to harvested material, including entire plants and parts of plants, which were obtained by the unauthorized use of propagating material of the protected variety, unless the holder of a breeders' right was given a fair opportunity to realize his rights in respect of the propagating material.
- (d) The Minister may - with approval of the Knesset Economics Committee - prescribe that the right of a holder of a breeders' right also applies to products produced directly out of harvested material of the protected variety, including such as are produced out of whole plants or parts of plants, unless the holder of breeders' right has been given a fair opportunity to realize his right in respect of the harvested material.
- (e) The right of a holder of breeders' right, as said in subsections (a) to (d), shall also apply to -
- (1) a variety essentially derived from the protected variety, provided the protected variety itself is not an essentially derived variety; for this purpose, a variety shall be deemed essentially derived from another variety (hereafter: initial variety), if all the following hold true for it:
- (a) it is predominantly derived from the initial variety or from a variety which itself was predominantly derived from the initial variety, while retaining the expression of essential characteristics that result from the genotype or combination of genotypes of the initial variety; an essentially derived variety may have been obtained by the selection of a natural or induced mutant or of a somaclonal variant, by the selection of a

variant individual from plants of the initial variety, by backcrossing, by a transformation by genetic engineering, or by any other similar method;

- (b) it is clearly distinguishable from the initial variety;
- (c) except for differences which result from the act of derivation, it conforms to the initial variety in the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- (2) varieties which, in accordance with section 7, do not clearly differ from the initial variety;
- (3) varieties the production of which requires the repeated use of the protected variety.
- (f) A breeders' right shall be in effect vis-a-vis the State.

**Exhaustion of breeders' right** (*Amendment of February 1996*)

36A. The right of a holder of a breeders' right shall not apply to the utilisation of a protected variety and of a variety essentially derived from it, if the variety was sold or otherwise marketed - by the holder of the breeders' right or with his consent - in the territory of the State of Israel, unless the utilisation involves one of the following:

- (1) repeated propagation of the variety;
- (2) export of propagating material or of harvested material of the variety, which makes it possible to propagate it in a country that does not protect varieties of the genus or species to which the protected variety belongs, except aforesaid export for purposes of consumption.

**Permitted use of registered variety** (*as amended in February 1996*)

37. Notwithstanding the provisions of section 36, a person may without the consent of the holder of a breeders' right –

- (1) utilise propagating material of a registered variety only for experiments toward the development of a new variety; however, no person shall utilise the propagating material of a registered variety repeatedly - without permission from the holder of a breeders' right- for the commercial production of another variety;
- (2) utilise a registered variety for research, science or laboratory tests, and also for any act performed privately and not for commercial purposes.

**Period of breeders' right** (*as amended in February 1996*)

38.(a) Subject to the provisions of section 4 -

- (1) the period of a breeders' right is twenty years from the date of its registration;

- (2) the period of a breeders' right in varieties of vines, , fruit trees, forest trees and any other perennial plant is twenty-five years from the date of its registration.
- (b) The Minister may prescribe a longer period than that prescribed in this section in respect of a certain plant or a certain plant species.

**Weight of registration** (*as amended in February 1996*)

- 39. Notwithstanding the registration of a breeder's rights in a variety, and the specifications of its characteristics have in the Register of Rights, it is permissible to prove that the variety does not meet the requirements enumerated in section 6, that the right of another person to be registered as holder of the breeders' rights outweighs the right of the registered holder, or that the specification does not actually conform to the characteristics of the variety.

**Compulsory pharmaceutical license**

- (a) Where the Council finds it necessary to do so, in order to supply means of therapy in reasonable quantities and at reasonable prices to the public, it may - in consultation with the Breeders' Rights Committee - permit utilisation of the variety only for the production of a remedy without the consent of the holder of breeders' rights.
- (b) A license under this section shall be granted only to a person who has the ability and know how to utilise the registered variety under conditions set by the Council.

**Compulsory agricultural license or revocation of right** (*as amended in February 1996*)

- 41.(a) Where the Council concluded that the holder of a breeder's right did not utilise the registered variety, or that he utilised it under circumstances and under conditions not in the public interest, or that he prevented the holder of an essentially derived variety from utilising the derived variety, or that he set conditions for the utilisation of a variety that are not in the public interest, may – in consultation with the Breeders' Rights Committee - permit such variety to be utilised under conditions prescribed by it and without the consent of the holder of the right.
- (b) The Council may revoke a breeder's right in a variety if it demanded that the holder of the right deliver and provide propagating material of the variety, and in respect of a hybrid variety - propagating material of its parents, and if the holder of the right has not proved that he has done so. The Council may prescribe to whom the propagating material is to be delivered and provided, and on what conditions - including its quantity -, and the time during which it is to be delivered and provided, provided it is not shorter than one growing season; the Council may extend the period prescribed as aforesaid.
- (c) The Council shall not exercise its power under this section within two years from the date of registration of the breeder's right, unless - in its opinion - there are special reasons for doing so.

**Supplementary provisions**

42. A license under sections 40 or 41 –
- (1) shall be granted on application by a person qualified to receive it, after the holder of the right has been given an opportunity to present his arguments in the matter;
  - (2) shall specify its period and conditions including payment to the holder of the right;
  - (3) shall with its conditions constitute an agreement between the holder of the right and the licensee, in addition to or in the absence of any agreement between them;
  - (4) the Council may revoke it, if it concludes that an infringement of any of its conditions justifies doing so.

### **Transfer of a breeder's right**

43. A breeders' right and the right to apply for its registration are transferrable in writing and pass by virtue of Law, but the transfer of breeder's right otherwise than by virtue of Law shall not be in effect for anyone other than the transferor and the transferee, unless it has been registered in the Register of Rights.

### **Utilisation permitted in consequence of a *bona fide***

- 44.(a) A person who proves to the satisfaction of the Registrar that - for at least three years before the determining date and in good faith - he utilised in Israel the variety to which the application for the registration of a breeders right refers, shall be entitled to utilise the variety personally, and in the course of his business only; where the Registrar certified that the aforesaid proof was brought to him, the Breeders' Rights Committee shall - on request of the holder of a breeder's right - prescribe the consideration to be paid by that person for utilisation of the variety; the Committee's decision shall be enforceable in like manner as a final judgement of a court.
- (b) For the purpose of this section, "determining date" - the date on which the application for the registration of a breeders' right is filed in Israel, and where priority under Chapter Ten is claimed for that application - the date on which that application was submitted, in respect of which priority is claimed.
- (c) The right to utilise a variety under this section is not transferrable, it cannot be disposed of and it is not inheritable, except together with the business in which that variety was used.

## **CHAPTER SEVEN: VARIETY BRED DURING OR IN CONSEQUENCE OF SERVICE**

### **Notice of breeding of variety**

45. An employee must notify his employer - in writing –

- (1) of every variety bred by him during or in consequence of his service, and that as soon as possible after he has concluded breeding the variety and before an application under section 20 is filed;
- (2) of the filing of every application by him under section 20.

### **Variety bred in consequence of service**

- 46.(a) Where an employee has bred a variety in consequence of his service, the right to register a breeders' right in the said variety shall be the employer's property, unless otherwise agreed between them, or unless the employer made a written waiver of the said right within six months from the date on which the employee's notification under section 45 is delivered to him.
- (b) Where the employee said in his notification under section 45 that - in the absence of a contradictory reply from the employer within six months from the date of such notification - the breeder's right shall be the employee's property, and the employer does not give a contradictory reply as aforesaid - the right shall not be the employer's property.

### **Dispute in connection with a breeding of a variety**

47. Where a dispute arises as to whether a variety, in respect of which notification has been made under section 45, was bred in consequence of service, the employer or the employee may - three months from the date the notification was made - request the Registrar to decide the question.

### **Presumption of breeding in service**

48. Where an employee has bred a variety in the period of his service, he shall, pending proof to the contrary, be presumed to have bred it in consequence of his service.

### **Decision of Breeders' Rights Committee**

- 49.(a) In the absence of agreement between an employer and an employee, as to the consideration to which the employee is entitled for a variety which he bred in consequence of his service, the Breeders' Rights Committee shall determine to what extent and on what conditions the employee is entitled to a consideration.
- (b) The Breeders' Rights Committee is authorized to reconsider a decision under subsection (a), if - in its opinion - the circumstances that prevailed when it made its decision have changed, and if it was requested to do so; however, the Committee may order the applicant, to pay costs if it concludes that there was no occasion for the application.
- (c) The Breeders' Rights Committee shall take into consideration inter alia –
  - (1) the position which the employee held;

- (2) the nature of the connection between the breeding of the variety and the employee's work;
  - (3) the employee's initiative in breeding the variety;
  - (4) the possibilities for utilising the variety and its actual utilisation;
  - (5) expenses which under the circumstances, were reasonably incurred by the employee to secure protection of the variety in Israel.
- (d) The Breeders' Rights Committee shall hear matters under this section in camera, unless the Committee ordered otherwise.
  - (e) Decisions of the Committee under this section may be enforceable in like manner as a final judgment of a court.

### **Duties of State employee**

- 50.(a) A State employee, or an employee of a State institution or of a State enterprise designated by the Moister, or any other person who receives payment for services from one of these bodies who bred a variety during or in consequence of his service, shall inform his superior and also the State Service Commissioner or another designated public servant, as prescribed.
- (b) Notification under this section shall be delivered as soon as possible after the breeding of the variety but not later than the time the employee is about to submit an application under section 20 in respect of the variety, and it shall be delivered in a manner prescribed in consultation with the Minister of Finance.
- (c) A person bound to make notification under this section, shall not file an application for the registration of breeders' rights abroad or any other application for the protection of the variety bred unless –
  - (1) he has received advance permission from the State Service Commissioner or from another designated public servant; or
  - (2) within six months from the date he notified the breeding of the variety - it has not been decided that his rights in the variety have accrued, wholly or in part, under section 46 or by agreement, to the State or to the State enterprise or institution at which he worked.

### **Duty to make notification remains in effect**

- 51. The obligation to make notification under this Chapter shall remain in effect until it is complied with, even if the time prescribed for it may have elapsed.

### **Duty to disclose particulars**

52. A person who has made notification under this Chapter, and a person who has been obliged to make such notification, shall be under obligation to disclose to his employer, at any time, all particulars of the variety which he bred, as well as every additional particular of importance for the purposes of sections 46 and 53.

### **Duty to assist employer**

53. Where a person has bred a variety during service and if all or part of the right to register a breeder's right passed to his employer in accordance with section 46 or by agreement, shall do whatever his employer requires of him in order to obtain protection for the variety in any place to the employer's benefit, and he must sign any document required for that purpose; if he fails to do so, the Registrar may permit the employer to do so after giving the employee an opportunity to present his arguments.

### **Duty of secrecy**

54. So long as application for the registration of breeders' right to a variety bred under service has not been filed, neither the employee, nor the employer or any other person shall reveal particulars of the variety, which has been communicated to him in confidence.

## **CHAPTER EIGHT: INDICATION OF BREEDER**

### **Definition**

55. In this Chapter, "person who has bred a variety" - a person who has developed a new variety, within its meaning in section 7, exclusive of persons who have taken title from him by process of Law, by transfer or agreement.

### **Indication of name of breeder**

56. Where a person has bred a variety and an application for the registration of a breeder's right in its respect has been filed, he or his survivors may demand that his name be indicated in the Register of Rights and the Registrar shall comply with the request, subject to sections 57 and 58, provided that the request has been filed at the time and in the manner prescribed; notwithstanding the provisions of sections 98 to 100, when the name of the person who has bred the variety has been registered in the Register of Rights, it shall not be deleted except by a decision of the Court.

### **Hearing the breeder and the holder of right**

57. Where an application under section 56 has been filed, while the applicant making it is not entitled to apply for registration of breeders' right in his name, the Registrar shall give notice thereof to the holder of breeders' right or to the person who has the right to apply for aforesaid registration, and if opposition proceedings under section 23 are pending at that time - to every person who is a party to those proceedings; the Registrar shall give his decision after hearing the arguments of all parties concerned, if they so requested that during the prescribed time.

### **Refrain from dealing with request**

58. The Registrar may refrain from dealing with a request under section 56, if he believes that it is proper to deal with it like an application, on the grounds stated in section 23(b)(1) or in section 29(a)(4).

### **Indication of name cannot be waived**

59. A stipulation by which a person who has bred a variety waives the right to request that his name be indicated, shall be of no effect.

### **Indicating of name not to confer rights**

60. A person, whose name is stated as that of the person who has bred a variety, shall not for that reason alone - have any right in the variety and to the breeders' right therein.

## **CHAPTER NINE: INFRINGEMENT OF BREEDERS' RIGHT**

### **Actions for infringement**

61. Only the holder of a breeders' right or his agents shall be entitled to file an action for infringement.

### **Time for filing actions for infringement**

62. An action for infringement shall not be filed before the breeders' right has been registered; however, when an action for infringement has been filed, the Court may grant relief for an infringement committed after the date of publication under section 22.

### **Transfer of burden of proof** (*As amended in February 1996*)

- 62A. Where an action is brought by the holder of an original protected variety (hereafter: 'plaintiff) against the holder of a variety, in respect of which it is argued that it is an essentially derived variety (hereafter: defendant), the defendant shall bear the burden of proof that the variety is not essentially derived, if the plaintiff has proven one of the following:

- (1) genetic conformity between the original variety protected and the variety, in respect of which it is claimed to be essentially derived variety;
- (2) the variety, claimed to be essentially derived variety maintains, except for minor differences, the expression of the essential characteristics that arise out of the genotype or out of a combination of genotypes of the original protected variety.

### **Utilisation of forfeited product**

63. Where a product of a registered variety is lawfully forfeited , its utilisation shall not constitute infringement, unless it is the product of repeated cultivation.

#### **Invalid registration as defense of infringement** (as amended in February 1996)

64. Any grounds for the opposition of registration of a breeders' right, or any grounds specified in section 29(a)(1) and 29A(a)(1) shall be a good defense in an action for infringement; if the Court allows the defense, it shall order the particulars of the registration in the Register of Rights to be amended or the breeders' right to be revoked, as the case may be.

#### **Relief for infringement**

65.(a) In an action for infringement, the plaintiff is entitled to relief by way of injunction and by way of compensation.'

(b) When a Court is about to award compensation, it shall take the defendant's act of infringement into account, as well as the plaintiffs position in consequence of that act, and it may also take into account *inter alia* –

(1) the direct damage caused to the plaintiff-,

(2) the extent of the infringement;

(3) the profits derived by the infringer from the act of infringement;

(4) reasonable royalties, which the infringer would have had to pay, had he been given a license to utilise the breeders' right to the extent of the infringement.

(c) Where an infringement is committed after the plaintiff has warned the infringer, the Court may order the infringer to pay punitive damages in addition to the compensation set under subsection (b), but the amount shall not exceed that of the compensation.

(d) Where compensation is claimed , the Court may order the defendant to deliver a report as to the extent of the infringement; however, in fixing the amount of compensation, the Court shall not be bound by the report, but may set the amount in accordance with all the circumstances of the case; this provision shall not derogate from the rules of procedure concerning the rendering of accounts.

#### **Compensation where specifications has been amended**

66. Where a breeders' right was infringed before permission was given to amend any of the claims in the specification, and compensation for the infringement is claimed after permission to amend was granted, the Court may refrain from taking the permission to amend into account, if the claims in the original specifications were not formulated in good faith or were not formulated clearly.

#### **Restriction on the award of compensation for breeders' right partially revoked**

67. Where part of a breeders' right, for the infringement of which an action was brought is revoked, that alone shall not deny the plaintiff compensation for the infringement; however, the Court may refrain from awarding compensation if the claims in the original specifications were not formulated in good faith or were not formulated clearly.

### **Compensation in the case of a renewed breeder's right**

68. Where the Court is satisfied that there was no justified cause for failure to pay the fee under section 74, it may refrain from awarding compensation for an infringement of breeders' rights perpetrated during the period between the date for the payment of the fee under section 74, and its actual payment under section 75; a person who argues that there was a justified cause for failure to pay the fee, shall bear the burden of proof.

### **Declaration of non -infringement**

- 69.(a) A person who intends to perform any act in respect of a variety, may apply to the Court for a declaration that the act does not constitute an infringement of any breeders' right specified in the application.
- (b) The holder of the breeders' right shall be the respondent to the application.
- (c) The Court shall make the declaration only if the applicant delivered to the holder of the breeders' right full particulars of the act or of the variety in respect of which he applied, if he requested from him the declaration for which he now applies to the Court, and if the holder of the breeders' right refused to make it within a reasonable time; however, the Court shall not reject an application only because it was filed before the expiration of such time, as in the opinion of the Court; is reasonable for the making of the declaration by the holder of the right.
- (d) The costs of the parties shall be borne by the applicant for the declaration, unless the Court directs otherwise.
- (e) In proceedings under this section, the plea that the breeders' right is invalid shall not be heard, and the grant or refusal of the declaration shall not be deemed to decide the question of validity of breeders' right.

### **Powers of Court on refferal to Council (*as amended in February 1996*)**

70. Where the Court has permitted the Council to consider an application for amendment under section 26(c), or an application for revocation under section 29(e), or an application to declare null and void under section 29A(d), it may - for a time and on conditions set by it - stay the proceedings of a case pending before it in respect of the same breeders' right, but each party may at any time apply to the Court for the change or revocation of the stay order.

## **CHAPTER TEN: FOREIGN APPLICATIONS**

### **Application by non- resident** (as amended in February 1996)

71. The Minister may direct that also a person not included among those enumerated in section 3(b) may apply for the registration of breeders' right in the Register of Rights in respect of a variety bred outside Israel, if one of the following applies:
- (1) it is necessary to do so in order to comply with undertakings that relate to international agreements between Israel and another state, and the Minister is satisfied that the other state reciprocates in this matter;
  - (2) the Minister believes that the matter is of public interest.

### **Priority right** (as amended in February 1996)

- 72.(a) Where a breeder files an application for the registration of a breeders' right in a variety after he - or whoever preceded him in the right - has already filed a foreign application, may apply for a priority right under which - for purposes of sections 7 and 9 - the date of the foreign application shall be deemed the date of the application in Israel, provided that the application in Israel is filed within twelve months after the filing of the foreign application or after this section went into effect, whichever was later, and provided that other conditions prescribed by regulations are fulfilled.

### **Extension of application** (as amended in February 1996)

73. Notwithstanding the provisions of sections 72 and 102, the Minister may - by order - make the provisions of section 72 applicable to a state that is not a Union State, if he finds that such state accords reciprocity in this matter.

## **CHAPTER ELEVEN: FEES**

74. A breeders' right shall be valid if its holder has paid the prescribed fee at the prescribed times; where the fee is not paid, the right shall lapse at the time prescribed for payment of the fee.

### **Extension for payment of fees**

75. Notwithstanding the provisions of section 74, a fee may be paid within six months from the time prescribed for its payment, with the addition of a fee in a prescribed amount; when that is done, the fee is deemed to have been paid at the time prescribed for its payment, and the breeders' right shall be deemed not to have lapsed.

### **Publication of lapse of right**

76. Where the period said in section 75 has passed and the fee is not paid as provided therein, the Registrar shall publish a notice in Reshumot that the breeders' right has lapsed.

### **Application for restoration of breeders' right**

77. The holder of a breeders' right which has lapsed for non-payment of the fee, as said in section 75, may apply to the Registrar - in the manner and form prescribed - that the right be restored , provided that on filing the application he pays the restoration fee prescribed for this matter.

### **Publication of application for restoration**

78. Where the Registrar is satisfied that the fee has not been paid for reasonable cause, that the holder of the breeders' right was not aware of and did not desire the lapse of the right, and that the application for restoration of the right under section 77 was filed as soon as possible after the holder of the right - or the person responsible on his behalf for its payment - became aware that the fee had not been paid, he shall order the application to be published in Reshumot after the holder of the right paid the outstanding fee.

### **Opposition to restoration**

79. Any person may , within three months from the date of publication under section 78, file with the Registrar reasoned opposition in writing to the application for restoration of the right.

### **Order for restoration**

- 80.(a) Where no opposition has been filed under section 79, or where opposition has been filed and rejected, the Registrar shall make an order to restore the breeders' right (in this section: the order); the Registrar may make the restoration conditional, including, *inter alia*:
- (1) payment of compensation to any person adversely affected by the order;
  - (2) permission for a person who utilised the registered variety, in respect of which the order is made, to continue to utilise it only in the course of his business, with or without consideration and for a period prescribed by the Registrar.
- (b) A person who deems himself aggrieved in respect of the compensation set as said in subsection (a)(1) or in respect of the consideration for permission to continue utilising the variety as said in subsection (a)(2), may - instead of appealing against it under section 86 - lodge objection with the Breeders' Rights Committee.

### **Transfer of right**

81. The right to utilise breeders' right under section 80 cannot be transferred, endorsed to another or transmitted by way of inheritance , except together with the business in which the registered variety was used as aforesaid.

## **CHAPTER TWELVE: PENALTIES**

### **Infringement committed knowingly**

82. A person who knowingly infringes a breeders' right registered under this Law, is liable to one year imprisonment or to a fine of IL25,000; if previously he had already been convicted of an offense under this section, he shall be liable to two years imprisonment or to a fine of 11,30,000.

### **Act in respect of variety prior to registration**

83. A person who knowingly commits an act in respect of a variety during the period between the publication under section 22 and the registration of the breeders' right, and if that act would have constituted an infringement of breeders' right if the variety had been registered at that time, he shall be liable to six months imprisonment or to a fine of IL15,000; if previously he had already been found convicted of an offense under this section, he shall be liable to one year imprisonment or to a fine of IL15,000.

### **Failure to comply with obligation**

84. A person who failed to comply with an obligation imposed on him by sections 13(c), 19, 34, 45, 50, 52, 53 or 54, or a person has revealed anything from sessions of the Breeders' Rights Committee under section 49, held *in camera*, shall be liable to six months imprisonment or to a fine of IL2,000.

### **Competent Court**

85. The Court competent to try offences under this Chapter is the District Court of Jerusalem.

## **CHAPTER THIRTEEN: JURISDICTION, PROCEDURE and PRACTICE**

### **Appeal**

86. A person who deems himself aggrieved by a decision of the Council or the Registrar, and if no objection or opposition against that decision is provided under this Law, may appeal against it before the District Court of Jerusalem within thirty days from the day on which the decision came to his knowledge, and a person who deems himself aggrieved by a decision of the Breeders' Rights Committee, may appeal against it before the Supreme Court within the prescribed time.

### **Proceedings in camera**

87. An appeal against a decision of the Registrar rejecting an application under section 15(d) shall be heard *in camera*, unless the Court ordered otherwise on application by the appellant.

### **Evidence on appeal**

88. A Court which hears an appeal may accept evidence - either evidence already accepted by the Registrar or the Council or other evidence - and may demand that

that evidence be presented by affidavit or in any other manner it deems appropriate; where evidence is presented by affidavit, the Court shall upon request permit the person who made the affidavit to be cross examined, unless it sees reasonable cause not to permit it.

### **Scientific adviser**

- 89.(a) In proceedings under this Law, the Court may appoint a scientific adviser, who shall assist it in taking evidence and advise it, but shall not take part in giving judgment.
- (b) The Court shall set the remuneration of the scientific adviser who shall be paid by the State Treasury.

### **Power to direct amendment of specifications**

- 90. In any civil proceeding under this Law the Court may - on the application of the holder of breeders' right - direct an amendment of the specifications for one of the reasons stated in sections 26(a) or 99, and the provisions of sections 26(a) and (b) and 27 shall apply thereto, *mutatis mutandis*.

### **Extension of times (as amended in February 1996)**

- 91.(a) The Registrar may, if he sees reasonable cause for doing so, extend any time prescribed in this Law or in regulations under it for the performance of any act that is not an act before a Court, except for the times prescribed under sections 72, 74 and 75; however, the Registrar may extend the time prescribed under section 72, if he is satisfied that the application in Israel was not filed on time because of circumstances over which the applicant or his representative had no control and which they could not have prevented.
- (b) The Registrar may set any conditions he deems appropriate for an extension.
- (c) An application for extension may be filed either during the set time or after it.

### **Collection of evidence**

- 92. The Council, its committees, the Breeders' Rights Committee and the Registrar may collect evidence to the extent they deem necessary for the performance of their functions and the exercise of their powers.

### **Proceedings in contested case**

- 93.(a) In any contested case -brought under this Law before the Council or its committees, before the Breeders' Rights Committee or before the Registrar, the parties shall be given an opportunity to submit their evidence and to present their written or oral arguments in the prescribed manner and form and at the prescribed times.
- (b) The payment of reasonable expenses may be ordered by:

- (1) the Registrar - in proceedings before him or before the Council or its committees;
- (2) the Breeders' Rights Committee - in proceedings before it; and they may also prescribe, by order, which party shall pay the costs and how they shall be paid.
- (c) An order under subsection (b) may be executed, as if it were a court.
- (d) The Minister of Justice may prescribe by regulations - subject to the provisions of subsection (a) - the Law procedure for any contested case under this Law.

### **Special representation**

- 94.(a) The Minister of Justice and the Minister of Agriculture may grant a permit to represent a person for purposes of all proceedings under this Law, other than proceedings before a Court.
- (b) The Minister of Justice and the Minister of Agriculture shall – with approval of the Knesset Economics Committee - present conditions of eligibility for holding a permit under this section.
- (c) The provisions of this section shall not derogate from the right of representation, granted to an advocate by the Chamber of Advocates Law 5721-1961.

### **Preservation of documents** (*as amended in February 1996*)

- 95.(a) All documents held by the Registrar, the Council and the Breeders' Rights Committee and which relate to the examination of application for the registration of breeders' rights, to the validity of a breeders' right, or rights to it or of rights related to it, or to any other matter that is likely to affect the validity of a breeders' right, or rights in it or of rights related to it, shall be kept for at least seven years from the day on which the validity of the breeders' right has expired.
- (b) The provisions of subsection (a) shall not apply to internal correspondence between Council members, Council employees and the Registrar and to other documents, otherwise provided for by regulations.

### **Public inspection and receipt of certified extracts**

- 96.(a) The documents to be preserved under section 95 shall be open to public inspection, except for –
  - (1) documents relating to any application for the registration of a breeders' right , which has not yet been published under section 22, or documents relating to Breeders' Rights Committee hearings under section 49;
  - (2) documents that specify the denominations of the parents of a hybrid variety, which are not indicated in the Register of Rights, except when the Council so decides or the breeder otherwise requests.

- (b) Every person may obtain an extract certified by the Registrar's seal of anything in the Register of Rights or of documents open to public inspection under this section, provided he applied in the prescribed manner and paid the prescribed fee.

**Delivery of propagating material** (*Amendment of February 1996*)

- 96A. Propagating material held by the Council shall not be delivered to a third party, except when the breeder who delivered it to the Council so requested, and except when a Court so ordered, if it concluded that it would be just to do so.

**Registration of transfer of rights** (*as amended in February 1996*)

- 97.(a) When a person receives a transfer of rights in a variety - whether it is a registered variety or a variety in respect of which an application for the registration of breeders' right was filed - may apply to the Registrar for registration as the holder of those rights, and if the transfer has been proved to be to the Registrar's satisfaction and the prescribed fee has been paid, the transfer of the right shall be registered in the Register of Rights or in the application file, as the case may be.
- (b) The Minister of Justice may prescribe procedure for the delivery of Court judgments that prescribe a transfer of rights said in this section; when he has so prescribed and when a judgment has been delivered to the Registrar in the prescribed manner, the Registrar shall enter the fact of the transfer prescribed by the judgment, notwithstanding the provisions of subsection (a).

**Amendment of records and documents**

- 98.(a) The Registrar may - on application by an interested party, which was filed in the prescribed form and manner - amend entries in the Register of Rights and in any document issued by him or filed with him or with the Council, if - in his opinion - the Register of Rights or document does not reflect the facts, and if no other procedure for making the amendment is prescribed by this Law.
- (b) The Registrar shall publish a notice in Reshumot of any application under this section, and shall also give notice thereof to every person whom he believes liable to be adversely affected by the amendment including an invitation to file his arguments on the requested amendment to the Registrar within the prescribed time; the Registrar shall not decide on the application before the said time has elapsed.

**Correction of clerical errors**

99. The Registrar may correct any clerical error that occurred in a specification, in the Register of Rights or in a document issued by him, if he was requested to do so in the prescribed manner and form.

**Corrections on the Registrar's initiative**

100. The Registrar may also make amendments under sections 98 or 99 on his initiative, as prescribed for the purposes of those sections.

### **Restriction on acceptance of documents in support of breeders' rights**

- 1.(a) Any document or deed, by which rights to a variety were transferred - whether it is a registered variety or a variety in respect of which an application for the registration of breeders' right or interest was filed, shall not be admitted in Court as evidence to property rights in a variety, or to a breeders' right or to the transfer of any benefit, unless the transfer has been registered under section 97, or unless the Court has concluded that there is a reason to admit it.
- (b) Notwithstanding the provisions of subsection (a), aforesaid documents shall be accepted as evidence in any proceedings for an amendment of the Register of Rights under section 98.

## **CHAPTER FOURTEEN: MISCELLANEOUS**

### **Effect**

- 102.(a) This Law, except for section 72, shall come into force six months from the date of its publication in Reshumot.
- (b) Section 72 shall come into force on the day announced by the Minister, by notice in Reshumot, at least thirty days in advance

### **Transitional provisions**

- 103.(a) Where a breeder files an application for the registration of a breeders' right in a variety after he - or his predecessor in title- already received certification from an Israel institution before this Law went into effect, that the variety is a recommended variety under the Seeds Law 5716-1956, he may claim priority, according to which - for purposes of sections 7 and 9 - the date of the said certification shall be deemed the date on which application was filed for registration under this Law, on condition that the application for registration under this Law is filed within six months after this Law went into effect and that other requirements prescribed by regulations have been complied with; if his application is accepted with priority, then the period of breeders' rights shall be reckoned from the date of the said confirmation.
- (b) Where a breeder files an application for the registration of a breeders' right in a variety after breeders' rights in that variety has been registered in his name or in that of his predecessor in title before this Law went into effect, then he may claim priority, according to which - for purposes of sections 7 and 9 - the date of the application for the right in the Union State shall be deemed the date on which the application is filed for registration under this Law, provided that the application for registration under this Law is filed within twelve months after section 72 went into effect and that other requirements prescribed by regulations have been complied with; if his application is accepted with priority, then the period of breeders' rights

shall be reckoned from the date on which the breeders' rights has been registered in the Union State.

- (c) Notwithstanding the provisions of subsection (b) and of section 102, the Minister may - by regulations - make the provisions of subsection (b) applicable to any state, whether or not it is a Union State, if it appears to him that that state accords reciprocity to Israel in this matter.
- (d) Nothing in this Law shall be interpreted as providing relief for an infringement of breeders' rights during the period before the coming into force of this Law.

### **Implementation and regulations**

104. The Minister is charged with the implementation of this Law and he may make regulations on any matter related to such implementation, including
- (1) registration procedures;
  - (2) procedure in proceedings before the Council and before the Registrar under this Law;
  - (3) forms for applications under this Law, the manner of specifying and ways of demonstrating the specified variety;
  - (4) the fees payable for applications filed under this Law, for acts by the Registrar and Council, for the registration and renewal of breeders' rights and for other services under this Law;
  - (5) payments for opinions or for the performance of research;
  - (6) the preparation, preparation for printing, printing, publication and sale of digests of specifications, of specifications of breeders' rights and of other publications, by the Council or Registrar, or on their behalf,
  - (7) issuing certificates under this Law, in witness of the registration of a breeders' right in the Register of Rights;
  - (8) payment of expenses incurred by Council members for their participation in Council activities;
  - (9) payment of expenses of witnesses or experts, who testified or gave opinions before the Council or the Registrar;
  - (10) designation of experimental plots and laboratories for the testing of new varieties, within the farms of the Ministry of Agriculture or in other frameworks;
  - (11) the circumstances under which a member's participation in the Council shall be terminated.

### **Publication**

105. This Law shall be published in Reshumot within thirty days from the date of its adoption in the Knesset.

*ISRAEL PLANT BREEDERS' RIGHTS LAW 5733-1973*