

Israel Law Review

Vol. 19

Spring 1984

No. 2

SHALEV GINOSSAR—*IN MEMORIAM*

With profound sorrow we regret to inform our readers of the death of Professor Shalev Ginossar, one of the founders of the Israel Law Review. Professor Ginossar was a member of our Editorial Board since the inception of the Review, and for many years served as its Chairman. He not only frequently contributed articles and notes, but gave unstintingly of his time and wisdom to assure the standard and regular publication of the Review. The eulogy below was delivered by Professor Izhak Englard, Dean of the Faculty of Law at the Hebrew University of Jerusalem, at the memorial held at the Faculty on November 12, 1984.

In remembering the late Professor Shalev Ginossar tonight, I do not come merely in my official role as Dean of the Faculty of Law, but I eulogize him as his student and friend. Prof. Ginossar was my teacher and mentor and many memories bind me to him. He stands before me, a smiling, pleasant figure with the gay bow-tie he used to wear.

I loved Prof. Ginossar, appreciated his friendship, was impressed by his culture and wide scope. Even in the many years since his retirement, he often came to my office. He once showed me an impressive poem in German which he told me was composed by his father who, under the pseudonym Heinrich Grünau, was a famous Zionist poet. His late mother, too, was a Zionist and founded the Zionist Women's Organization in Belgium. He thus was imbued with Zionism in his parents' home and was very active in the Zionist youth movement in Belgium. After he came to Palestine in 1939 he volunteered for the British Army in World War II and served in a Palestinian unit.

He was a great Zionist and remained so until the end of his days. The discriminatory attitude of the world towards the Jewish people always infuriated him and he often expressed his annoyance at our inability to respond adequately to the actions of our friends and enemies.

One of my hardest moments in our long acquaintance occurred when I was still a student in the Faculty and he asked me to assist him in teaching procedure, and to devote myself to this field, which was dear to him. His friendly request made me quite emotional and I found it hard to refuse and

explain to him that I felt drawn to another field. Having to disappoint a teacher as dear and a man as pleasant as him caused me to feel real sadness which remained for many years and which came back, though muted, in our meetings. I was able to feel his affection for me and my conscience was never completely stilled for disappointing him by my refusal.

I saw in Prof. Ginossar the ideal of a man comprising a poetic soul, musical spirit and keen legal mind. My admiration was great and sincere since, I must confess, I am not of such a marvellous blend, and I don't know many blessed with it — they are few and far between. I can recall my great surprise when I first saw him playing the viola in an orchestra — and not, as he once corrected me, the violin — the same person who taught me civil and criminal procedure, subjects considered technical if not dry.

My greatest wonder, however, was the quality of his legal research in the field of jurisprudence. His analysis was extremely sharp, and of rigorous, consistent logic — what a distance from the man of the muse!

His great contribution to research and his lasting professional love regarded the problem of classification of rights — property and obligations. In his report to the then dean, Prof. Klinghoffer on his activities during the 1960 sabbatical, he wrote:

My main aim was to use the absence to finish this work, which I have always regarded as my professional life's work.

Since finishing my studies, I have been impressed by the famous distinction between rights *in rem* and rights *in personam* which is accepted and recognized all over the world, despite the difficulty in fixing a criterion for the distinction, and I thought of suggesting a new, more certain proposal. During all my years of development, my interest in the above problem did not cease, and I managed to build a new theory of the definition of the various rights. While I tried to set it down on paper several times I came to realize that only a lengthy period of quiet and concentration would allow me to conclude my work, and the sabbatical provided me with the required conditions.

Since almost all the material I collected over nearly forty years was from French sources, I chose Paris as the center of my work. . . .

Before my book was published, I thought it worthwhile to present its main points before an appropriate audience and thus expose it to the criticism of the listeners. Thus I was received as a guest lecturer in several foreign universities and I may add that my lectures were received with great interest, and sometimes more than that. . . .

I placed great importance on the opportunity given me, not only to create ties between our University and others, but also to demonstrate the universal value of law as a science even in the restricted field of

private civil law which is considered the special preserve of each nation. The problems with which I dealt were not ones which affect only jurists from Israel or Belgium, France or Canada but rather problems of general application and basic importance in whose clarification any jurist, irrespective of background, can do his share.

The fruit of the intellectual effort was two books in French¹ which aroused tremendous interest mainly in France and Belgium and in whose wake special articles were written. I had many conversations with Prof. Ginossar on his first book — he was always open to any critical, relevant comment — and if he was to be believed, my remarks and questions contributed to the writing of the second book.

Prof. Ginossar's original theory was not forgotten; in the newest, most important series on private law in France, edited by Prof. Ghestin² a chapter is devoted to his theory under the title: "*La Thèse de M. Ginossar*" (pp. 168–172). The authors open the discussion "M. S. Ginossar a élaboré une construction originale qui bouleverse la distinction classique des droits réels et des droit de créance." The reluctance of academics, especially jurists, to abandon traditional classifications is well-known.

More than once, Prof. Ginossar complained that "there is no prophet in his own country" and that in Israel his theory was not accorded sufficient importance. The matter distressed him but it seems that our generation is less interested in abstract theories which require precise and disciplined thought; the approach today is more pragmatic. However, I am convinced that the vast intellectual effort of Prof. Ginossar was fruitful and even if his ideas were not fully accepted, they enriched, and will continue to enrich our thoughts and those of our successors.

His refined theoretical approach did not prevent Prof. Ginossar from being aware of the practical needs of legal education. When I perused the material concerned with his activities in the Faculty, I found to my immense surprise that ideas on practical education for fourth year students with the participation of expert lawyers which I just raised in the academic committee had already been carried out by the late Prof. Ginossar in the early days of our Faculty, over thirty years ago in 1953. i.e. varied lectures on *Advocacy and Professional Ethics* by the most respected members of the bar.

Prof. Shalev Ginossar, our respected teacher, the dear and beloved man, who did good deeds until his last day, has left us and is no more. ת.נ.צ.ב.ה

¹ *Droit réel, Propriété et Créance*, Elaboration d'un Système Rationnel des Droits Patrimoniaux. (Lib. gén. de droit et de jurispr., Paris, 1960) 212 p.; *Liberté Contractuelle et Respect des Droits des Tiers*. Emergence du délit civil de fraude. (Libr. gén. de droit et de jurispr., Paris, 1963) 108 p.

² Ghestin et Goubeaux, *Traité de droit civil I*, Introduction générale (Paris, 1977) 168–172.