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INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW PLANT VARIETIES

COUNCIL

Fifth Session

Geneva, October 13-15, 1971

PLANT BREEDERS' RIGHTS BILL
PRESENTED TO THE PARLIAMENT OF ISRAEL

The attached document is a photographic reproduction of a translation into English of the Bill, placed at the disposal of the Council by the Delegate of Israel.

PLANT BREEDERS' RIGHTS BILL, 5731-1971

Chapter One : Interpretation and Application

Definitions. 1. In this Law -

- "examiner" - means any person or institution, approved by the Minister as an examiner or adviser for the purposes of applications and ^{objections} ~~oppositions~~ filed under all or part of the provisions of the Law;
- "the convention" - means the Paris Convention for the Protection of New Varieties of Plants 1961;
- "variety" - means a group of plants, capable of reproduction, which may be regarded as an independent unit for purposes of ^{propagation} ~~reproduction~~ or constituted to renew each time in accordance with its defined characters, and includes any such selection, strain ^{or} and hybrid of a ^{higher} ~~superior~~ plant ~~as is in process of breeding.~~ ^{capable of being bred}
- "registered variety" - means a variety in respect of which a breeder's right has been registered;
- "this law" - includes regulations
- "Convention state" - means a foreign state in respect of which the Register ^{has} ~~is~~ given notice in Rashumot that it is a member of the Union for the Protection of New Varieties of Plants by virtue of the Convention and grants protection to breeders of varieties in Israel on a basis of reciprocity;
- "breeder" - means a person who has developed a new variety, within the meaning of section 7, or a modification or improvement, within the meaning of sections 29 and 30, and includes those taking title from him by operation of law or by assignment or agreement;

"utilization" - includes every form of use of the variety including production, marketing and any other form of deriving benefit from it.

"development" - in relation to any variety or modification or improvement of a variety, means the development thereof by means of the ^{narrowing} artificial concentration or expansion of ^{variability} genetic difference through self-fertilization, ^{crossing} hybridization or ^{back-crossing} re-hybridization;

"plant" ^{fundamental} - includes a part of a plant;

"basic characters" - means such a combination of characters as is capable of distinction ^{and description} and as sets a variety apart from ^{other} the generality of varieties of ^{the} its species;

"the Minister" - means the Minister of Agriculture.

- Application 2 (a) The provisions of this Law shall apply to the plants and species of plants specified in the Schedule.
- (b) The Minister may add to, or replace, the Schedule, provided that he ~~makes no deletion in it.~~ ^{does not delete any part of it.}

Chapter Two : Rights and Eligibility Thereof for Registration

- Breeders' right, 3 A breeder's right in a variety is capable of registration in the Register of Rights.
- Safeguarding of rights 4 A breeder's right in a variety accrues to a person when it has been registered in his name in the Register of Rights, and, subject to the provisions of this Law, it shall exist so long as the registration exists.
- Register of Plant Breeders' Rights 5 a "Register of Plant Breeders' Rights" shall be kept for the registration of breeder's rights in which the following particulars shall be recorded in respect of each variety:
 - (1) the name and address of the ^{holder} proprietor of the right;
 - (2) the name of the variety;
 - (3) a description and summary specification of the basic characters of the variety;
 - (4) in the case of a hybrid variety - the names of the parents, unless the Council, in respect of a particular variety, has decided that they shall not be recorded;
 - (5) any other particulars which have been presented.

- (b) The Registers may record additional particulars in the Register which, in his opinion, deserve registration.
- (c) The Register of Rights shall be kept at such place as the Minister has directed and shall be open for inspection by the public.
- (d) The Minister may by regulations prescribe the modes of arranging and keeping the Register of Rights.

Eligibility 6 A variety eligible for registration of a breeder's right there-
for registration^x in its ^A variety in respect of which all of the following apply:

- (1) it is new;
- (2) it is uniform as to its basic characters, as indicated in the application;
- (3) its basic characters are stable, and its description and characters as preserved also after reproduction and when breeding involves a whole cycle, are preserved at the termination of each cycle.

What is a 7 A new variety is a variety in respect of which the following
new variety two apply:

- (1) it is different as to at least one basic character from any other variety which was a known variety at the time the application for registration of a breeder's right therein was filed; for this purpose, "known variety" means a variety the reproduction material of which was exploited at or before the time the application was filed, or a variety in respect of which a publication was made demonstrating its mode of production and characters;
- (2) it has not been published in or outside Israel, before the application for registration of a breeder's right therein was filed, either by way of description, or by way of sale, display or other exploitation, ^{person with professional training} so that a ~~man of the art~~ can reproduce it in accordance with the particulars thus become known.

Publications 8 Notwithstanding the provisions of section 7(2), a breeder's
not ~~preventing~~ ^{preventing} right to registration of a breeder's right in his name shall
registration be affected by reason only that the variety was published as
aforesaid in one of the following ways:

- (1) use of the variety at the time of exhibition, whether at

- the place thereof or outside it, provided that the application for registration of the right is filed within six months after the opening of the exhibition;
- (2) a lecture by the breeder before a scientific society or publication of the lecture in official publications of such a society, provided that the application for registration is filed within six months after the lecture;
- (3) the delivery of particulars of the variety during the period of breeding for examination or testing thereof with a view to the filing of an application for registration of a breeder's right therein.

Priority right 9 When several breeders have applied for registration of a breeder's right in the same variety, the right shall be registered in the name of the one who first validly applied for its registration.

Chapter Three: The Council and the Registers

- Appointments of Council and its Committees** 10 (a) The Minister shall appoint a Plant Breeders' Rights Council (in this Law referred to as "the Council") with such numbers of members as he shall prescribe.
- (b) The members of the Council shall be representatives of the government, ^a person versed in plant variety breeding and ~~representatives~~ ^{representatives} of the community dealers in plant varieties. The number of government representatives shall not exceed one third of the number of members of the Council, and the Minister shall appoint one of them to be chairman of the Council.
- (c) The Council may appoint committees, from among its members or otherwise, which shall make recommendations to it on such matters or classes of matters as it shall prescribe.

- Functions of Council** 11 The Council shall -
- (1) examine and decide upon applications;
- (2) guide the Registers ^{на 2} as to any matter relating to the exercise of his powers and the carrying out of his functions;

(3) make recommendations to the Minister as to the making of regulations for the purposes of this Law;

(4) carry out any other functions and exercise any other power conferred by the Minister under this Law;

Validity of Acts 12

(a) Half of the number of the members of the Council shall be a quorum at its meetings, and it shall be sufficient if such a quorum is present at the time of the opening of the meeting.

(b) The existence of the Committee, its powers and the validity of its decisions shall not be affected by the vacancy of the place of a member of the Council or by a deficit in the appointment or continued tenure of a member.

Deliberation and Voting 13

(a) Voting in the Council shall be secret; ^{except} ~~Provided~~ that at the request of a majority of the members, voting shall be by a show of hands in respect of the subject of the request.

(b) A person who has filed an application with the Council may be present at the time of the deliberation of the Council regarding his application; ^{except} ~~Provided~~ that the Council may direct that he shall not be present at the time of the deliberation, even if he is a member of the Council.

(c) A member of the Council who directly or indirectly, himself or through his relative, agent or partner or through a relative of any of these, has any share or interest in any matter scheduled for deliberation by Council, shall give notice of such fact to the chairman, in writing or orally, immediately after learning that the matter is scheduled for deliberation and shall not take part in voting or any question connected therewith. Where notice is given orally, it shall be recorded in the minutes of the next meeting of the Council.

(d) For the purposes of subsection (c), "relative", in relation to a particular person, has the same meaning

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as in the Land Appreciation Tax Law, 5723-1963.¹

The Register and his functions,

- (a) The Minister of Agriculture shall appoint a Register of Plant Breeders' Rights (in this law referred to as "the Registers") from among the employees of the Ministry of Agriculture.
- (b) The Registers shall -
 - (1) Keep the Register of Rights and deal with any matter relating to entries therein;
 - (2) issue certificates and other documents for the purpose of the registration or deletion of a breeder's right in or from the Register of Rights;
 - (3) carry out any function and exercise any power prescribed by the Minister under this Law.
- (c) The Register shall make a report to the Council on his activities at such time as it shall prescribe.
- (d) The Register shall take part in the meetings of the Council to which it invites him and may take part in all its meetings.

Filing of Application.

- (a) In this chapter, "application" means any application or opposition under Chapter Four or Ten and an advance application.
- (b) Every application shall be filed with the Register.
- (c) The Register shall examine ~~if~~ ^{whether} the application contains the particulars required to be contained therein under this Law.
- (d) Where it appears to the Register that an application does not comply with the provisions of subsection (c), he shall notify the applicant of the defects therein. If the applicant does not within the time prescribed eliminate the defects notified to him by the Register ^{7a.1} ~~for~~ the Register shall reject the application.
- (e) An application which complies with the provisions of subsection (c) shall be forwarded by the Register ^{7a.2} to the Council for deliberation and decision.

Examination of application

- (a) For the purpose of examining an application, the Council may take such measures as it thinks fit, and inter alia -

1. Sefer Ha-Chukkim of 5723 p. 156

- (1) invite testers and other experts to give an opinion as to technical questions;
 - (2) itself carry out, or ask testers to carry out for it, any work of research, testing or examination required for ^{making} giving a decision;
 - (3) transmit the particulars of the application to an international institution for the purpose of a search for material enabling an examination.
- (b) The applicant shall pay the expenses involved in examining his application under this section, and the Register may require him to make advance payments on account of such expenses.

Hearing 17 Before giving a decision on an application, the Council shall enable the applicant to testify before it.

Secrecy 18 A person shall disclose nothing that came to his knowledge in proceedings under this Law, save for the purpose of its implementation; whoever alleges that something came to his knowledge otherwise than in proceedings under this Law shall bear the burden of proof.

Chapter Four: Registration Proceedings:

Application for 19 (a) An application for registration of breeder's right in protection of the Register of Rights shall be filed in the manner and on the conditions prescribed by regulations and shall contain the following:

- (1) the name of the applicant;
- (2) an address for service of documents in Israel;
- (3) particulars concerning the variety which has been bred;
- (4) the name of the variety, which shall be such as will enable its identification;
- (5) a claim or claims defining the variety; each such claim shall reasonably arise out of particulars given in accordance with paragraph (3);
- (6) any other particular which has been prescribed.

(b) When the applicant is a person taking title from the breeder, he shall indicate the basis of his right in the

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application.

Further particulars

20. (a) For the purpose of examining an application under section 19, the Register may request of the applicant any further material or particulars relating to the subject of the application.

(b) If the applicant does not furnish the material and particulars requested by the Register, or such conditions, in such manner and at such time as ^{the} ~~he~~ ^{the registrar} has prescribed, the Register may refrain from forwarding the application to the Council for deliberation.

Publication of application

21. (a) When an application for registration of a breeder's right has been filed and the Register has decided to forward it to the Council, the Register shall, within thirty days, from the date of his decision, publish a notice in Rashumot, in a daily newspaper and in an agricultural journal, specifying the following;

- (1) the name of the applicant;
- (2) the name proposed by the applicant for the variety in respect of which the application has been filed;
- (3) a description of the variety and a summary specification of its characters.

(b) The Register may include any other particulars in the notice which in his opinion should be included therein.

objection
Opposition to registration

22. (a) When a notice has been published under section 21, any person may, within thirty days from the date of publication of the notice in Rashumot, file reasoned opposition in writing to 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 ~~pro-~~ ^{holder} ~~jector~~ of the breeder's right in the variety is better than the applicant's rights;
- (2) the variety does not meet all the requirements stated in section 6.

(c) Notwithstanding the provisions of section 15, where the opposition is not based on one of the grounds indicated in subsection (b), the Register shall reject it in limine.

Registration 23. Subject to the provisions of section 24, when it appears to the Council that the variety has been tested and examined, that it possesses the characters specified in section 6, that all material and technical literature relating to the variety and ^{supplied to the council} ~~properly furnished to it~~ have been examined and that no opposition filed should be allowed, it shall direct the Register to register a breeder's right in the variety in the Register of Rights in the name of the applicant, and when the Register has registered the right, he shall publish a notice of the fact in Rashumot.

Referred to Court 24. (a) When the opponent alleges, under section 22 (b) (1), that his right is better than that 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 the opponent has filed an action with the Court within the time prescribed to him by the Council, the Council shall not ^{make a final decision} ~~finally decide~~ on the registration application before it save after termination of the proceedings in the action and in accordance with the judgement given in it.

(b) If otherwise than upon opposition, the Council has reasonable grounds for believing that an application filed with it is tainted with fraud, it shall notify such grounds to the Attorney-General and shall suspend its consideration of the application. The Attorney-General, in the light of the material brought before him by the Council and of any other material he sees fit to collect, may -

(1) file an action with the Council for a declaratory judgement that the application is tainted with fraud; and the Council shall not decide upon the application save after termination of the proceedings in the action and in accordance with the judgement given in it; or

(2) notify the Council that ⁱⁿ ~~it~~ his opinion the material ^{does not} contains ~~no~~ sufficient evidence of fraud; such notification shall bind the Council and it shall continue its consideration on the application.

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(c) The Council shall not suspend its deliberations under this section unless it finds that the variety in question is prima facie eligible for registration in the Register-Register of Rights.

Advance 25.
Application

When a person filed an application for registration of a breeder's right in any variety while the particulars required in the application form were not all in his possession (such an application hereinafter referred to as an "advance application"), the Council shall prescribe that for the purposes of sections 7 and 8 the complete application, if filed within six months, from the date of the advance application, shall be deemed to have been filed on the date of the advance application.

Application 26.
for amendment in
Register of Rights

- (a) The proprietor of a breeder's right in a particular variety may apply for an amendment of the specification of the basic characters of the variety, or of its description, in the Register of Rights if the same is required for the classification of claims of the proprietor of the right or for the elimination of a mistake, other than a mere clerical error, in the registration in the Register of Rights; but this shall not involve a widening of the scope of the claims stated in the application under section 19 or an addition of something not originally contained in it in substance.
- (b) Within thirty days of the date of filing of an application under subsection (a), the Register shall publish a summary thereof in Rashumot and shall forward the application to the Council for consideration.
- (c) When an application for an amendment under this section is filed while a proceeding for infringement or revocation is pending in court, the Council shall not consider the application save with the permission of the ~~Council~~ ^{Court}.
- (d) When permission has been given, the Council shall decide on the application after giving all the parties ^{es} ~~in~~ in that proceedings an opportunity to bring their argument before it.
- (e) When court proceedings for infringement of a breeder's right are instituted after an application for an amendm~~ent~~

- ment of particulars has been filed under this section, deliberations on that application shall continue unless the Council otherwise directs.
- Opposition to 27. Any person may file opposition to an application under registration of amendment section 26 within thirty days from the date of publication in Rashumot on the ground that the amendment does not achieve the purpose ^{of the application} ~~for which it is applied for~~.
- Decision as to 28. When the Council has decided upon an application under amendment to be section 26, the Register shall record the decision in recorded in Register of Rights and shall give notice to such effect to the applicant and, unless the decision is a refusal, notice thereof shall be published in Rashumot.
- Application for 29. The proprietor of a breeder's right in a variety in which registration of additional breeders' rights he has developed a modification or improvement which, having regard to the characters of the variety, does not justify the grant of a breeder's right in the variety as modified or improved, may ask that an additional breeder's right be registered in his name in respect of the modification or improvement. The Council may, with the approval of the Minister, prescribe by rules what shall be a modification or improvement for the purposes of this section.
- Subsidiary 30. (a) When a person has developed a modification or improvement breeders' rights in a variety as to which another person has made application for the registration of a breeder's right, whether the right has been registered or whether the application is pending (such a variety being in this section referred to as "the principal variety"), and, having regard to the characters of the principal variety, the modification or improvement does not justify the grant of a breeder's right in the variety as modified or improved, the Council may direct that after registration of the principal variety a breeder's right in the modification or improvement be registered as a right subsidiary to the breeder's right in the principal variety.

(b) When a subsidiary breeder's right has been registered as aforesaid, the proprietor of the right may not exploit the variety for six years from the date of filing of his application for registration, of that right or for the remainder of the period of the breeder's right in the principal variety, whichever ends first, save with the consent of the proprietor of the breeder's right in the principal variety.

Applications of provisions: 31. The provisions of this chapter relating to breeder's rights, except section 25, shall apply ~~mutatis~~ *mutandis* to additional breeder's rights and subsidiary breeder's rights.

Revocation of breeder's right 32.(a) The Council may at its own initiative or on the application of a person interested in a registered variety, revoke the breeder's right therein if one of the following appears to it to be the case:

- (1) The variety no longer meets the requirements stated in section 6;
- (2) it has requested the proprietor of the right to furnish, within a period, not shorter than one growing season, prescribed by it, reproduction material from the variety as stated in the Register of Rights, and he has not done so;
- (3) a Court has decided that the right of another to be registered as the proprietor of the right is better than the right of the registered proprietor;

(b) Notice that the Council will deliberate or an initiative it has taken to revoke a breeder's right or on an application to do so filed as aforesaid shall be given to the proprietor of the right and shall be published in Rashumot.

(c) The Council shall not entertain, an application for revocation filed after the expiration of twenty-four months from the date of registration of the right in the Register of Rights: Provided that the time when proceedings

under subsection (a) (3) of which notice was given to the Council upon their institution were pending shall not be taken into account in calculating that period.

(d) The Council shall not entertain an application for revocation filed while a proceeding for infringement or for revocation of the breeder's right is pending, save with the permission of the Court. When permission has been given, the Council shall decide upon the application after giving all the parties to that proceeding an opportunity to be heard before it.

(e) When proceedings for infringement of a breeder's right are instituted after an application for its revocation has been filed with the Council, the Council shall continue its deliberations on the application unless the Court otherwise directs.

(f) For the purpose of this section, the Council shall have all the rights mentioned in section 16 even if its acts ~~at~~ ^{only on} its own initiative ~~only~~.

Coming into Force and registration of revocation 33.

(a) A decision to revoke a breeder's right shall come into force at the expiration of fifteen days after the period for filing appeal against it under section 87. But if an appeal has been filed, the Court may stay the coming into force of the revocation or attach such conditions as it may think fit to the coming into force or the stay.

(b) When a breeder's right has been finally revoked, the Register shall register the fact of the revocation in the Register of Rights and the right shall be deemed not to have existed.

(c) Notice of the revocation of a breeder's right under this section shall be published in Rashumot.

Chapter Five: Registered Names of Varieties

Restrictions on registration of names of varieties 34.

(a) The name of a variety shall not be registered in the Register of Rights if an identical name or description has at any time been registered under the Trade Marks Ordain, 1938², and a name shall not be registered under

2. Palestine Gazette of 1938, Suppl.1, p. 126 (English Ed.)

this Law if one of the following applies to it:

- (1) It is identical with the name of a registered variety or so similar to it as to be misleading;
- (2) It is identical with the name of a variety mentioned in any enactment within the sphere of jurisdiction of the Minister;
- (3) it is identical with a name accepted by the public as the name of a variety even though such variety may not be mentioned in an enactment as aforesaid;
- (4) it is identical with the name of a variety registered in a Convention state or so similar to it as to be misleading;
- (5) it is likely to ~~mislead the~~ ^{be injurious to} public with regard to ~~order or to morality,~~ ^{the}
- (6) it is likely to mislead the public with regard to the variety or to its characters or to its distinction from other varieties;
- (7) it does not conform to accepted international rules regarding names of varieties.

Approval of 35.
name of variety

When the Registrar is satisfied that no bar exists under section 34 to the registration of the name of the variety proposed by the applicant in his application for the registration of the breeder's right, he shall approve the proposed name. When a bar as aforesaid exists, the Registrar shall prescribe the name of the variety.

Contestation of 36.
determination of
name of variety

A person who considers himself aggrieved by a decision prescribing the name of a variety may, before the expiration of one year from the date of publication of the notice under section 23, file with the Register a reasoned contestation in writing. The Register shall decide the matter and shall notify ~~his decision to~~ the contester, in writing, *of his decision.*

Protection of 37.
Name of Variety

- (a) When a variety has been given a name, only such name shall be used for it.
- (b) The registered name of a variety or a name so similar

to it as to be misleading, may only be used for a variety which has characters identical with the characters of such first-mentioned variety.

- (c) For the purposes of the provisions of this section, it shall be immaterial whether or not at the time of the use of a name the breeder's right was still registered.

Registered 38.
name to be
the only name

When the name of a variety has been registered, it can only be changed in proceedings under section 36.

Chapter Six: Protection of Breeder's Rights

Scope of 39.
breeder's right

Subject to the provisions of this chapter and of Chapter Seven, the proprietor of a breeder's right may ^{prevent} ~~provide~~ any other person from exploiting without his permission or unlawfully the variety in respect of which the right has been registered. Exploitation as aforesaid shall be called infringement.

Permitted use 40.
of registered
variety

Notwithstanding the provision of section 39, a person may with the consent of the proprietor of the breeder's right -

- (1) exploit reproduction material of a registered variety for the sole purpose of experiments toward the development of a variety or of any modification or improvement thereof; however, no person shall without permission from the proprietor of the breeder's right in the registered variety sell the results of the developments unless a breeder's right in a new variety or, subject to the provisions of section 30 (b), a subsidiary breeder's right, as the case may be, has been registered in his name or in the name of his principal;

(2) use a registered variety for purposes of research, science or laboratory tests only.

- Period of breeder's right. 41. (a) Subject to the provisions of sections 2 and 4 -
 (1) the period of a breeder's right is fifteen years from the date of its registration;
 (2) the period of a breeder's right in varieties of vines, fruit trees, forest trees and any other perennial plant is eighteen years from the date of its registration.
 (b) The Minister may, in respect of any particular plant or class of plants, prescribe a longer period than that prescribed by this section.
- Weight of registration 42. Notwithstanding the registration of a breeder's right in a variety and the specification of its characters in the Register of Rights, it shall be permissible to prove that the breeding of the variety involves no innovation, that it is of no benefit, or that the specification does not conform with the actual characters of the variety.
- Compulsory pharmaceutical licence. 43. (a) When it appears to the Council that it is necessary so to do in order that medical supplies may be available to the public in reasonable quantities and at reasonable prices, it may, without the consent of the proprietor of the breeder's right, permit a substance derived from a registered variety to be exploited for the sole purposes of manufacturing a medicament.
 (b) A licence under this section may only be issued to a person having the ability and know-how to manufacture the medicament ^{under} or the conditions prescribed by the Council.
- (Agricultural Compulsory licence 44. (a) When it appears to the Council that the proprietor of a breeder's right has not made use of the registered

to it as to be misleading, may only be used for a variety which has characters identical with the characters of such first-mentioned variety.

- (c) For the purposes of the provisions of this section, it shall be immaterial whether or not at the time of the use of a name the breeder's right was still registered.

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(b) A licence under this section may (only) be issued to a person having the ability and know-how to manufacture the medicament ^{under} of the conditions prescribed by the Council.
- (Agricultural Compulsory licence 44. (a) When it appears to the Council that the proprietor of a breeder's right has not made use of the registered

variety or has made use thereof under circumstances and ^{under} on conditions not in the public interest, it may permit the use of such variety without the consent of the proprietor of the right.

- (b) 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 45.
provisions

A licence under section 43 or 44 -

- (1) shall be issued on the application of a person qualified to receive it and after the proprietor of the right has been given an opportunity to state his case.
- (2) shall specify its period and conditions, including payment to the proprietor of the right;
- (3) shall with its conditions, become an agreement between the proprietor of the right and the licencer, in addition to or without any other agreement between them;
- (4) may be revoked by the Council if it appears to it that an infringement of any of its conditions justifies the same.

Transfer of 46.
breeder's right

A breeder's right and the right to apply for its registration are transferable in writing and pass by operation of law but the passing of a breeder's right otherwise than by operation of law shall be of no effect vis-a-vis any person other than the transferor and the transferee unless it has been registered in the Register of Rights.

Exploitation 47. (a) permitted in consequence of bona fide earlier use

A person who proves to the satisfaction of the Register that during the three years preceding the determining date he exploited in Israel in good

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faith the variety to which an application for registration of a breeder's right relates, may personally exploit such variety in the course of his business without paying a consideration.

- (b) For the purpose of this section, "the determining date" means the date on which the application for registration of a breeder's right in Israel was filed or, when a priority right is claimed for that application under Chapter Ten, the date on which the application on the basis of which the priority right is claimed was filed abroad.
- (c) The right to exploit a variety under this section is not capable of transfer, divolution or transmission by way of inheritance save together with the business in which the variety was used.

Chapter Seven: Variety Bred in Service

- Notification of breeding of variety 48. An employee shall notify his employer in writing -
- (1) of any variety bred by him in the period of his service or in consequence of his service as soon as possible after completing the breeding of the variety and before filing an application under section 19, 25 or 30;
 - (2) of the filing of any application by him under section 19, 25, or 30.
- Variety bred in consequence of service. 49. When an employee has bred a variety in consequence of his service, the right to register a breeder's right in such variety shall accrue to the employer, unless otherwise agreed between them or unless the employer waives such first-mentioned right within six months from the date on which the employee's notification under section 48 was delivered to him.
- Dispute in connection with breeding of variety 50. Where a dispute arises as to whether a variety in respect of which notification has been made under section 48 was

bred in consequence of service, the employee or the employer may, upon the expiration of three months from the date of delivery of the certification, request the Register to decide the question.

- Presumption of breeding in service 51. 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.
- Royalties Committee 52.(a) The Minister of Justice shall appoint a Royalties Committee, which shall, in the absence of agreement, determine whether, to what extent and on which conditions an employee is entitled to a consideration for a variety bred by him in consequence of his service.
- (b) the members of the Royalties Committee shall be a Judge of the Supreme Court, the Register, and a person with professional training in the breeding of plant varieties appointed upon the proposal of the Minister of Agriculture.
- (c) The Royalties Committee may, on application, reconsider a decision under subsection (a) if, in its opinion, the circumstances which existed at the time the decision was given have changed.
- (d) The Royalties Committee shall take into account, inter alia -
- (1) the capacity in which the employee was employed;
 - (2) the nature of the connection between the breeding of the variety and the employee's work;
 - (3) the initiative displayed by the employee in breeding the variety;
 - (4) the possibilities of exploiting the variety and its actual exploitation;
 - (5) expenses which according to the circumstances were reasonably incurred by the employee to secure protection of the variety in Israel.

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Duties of State employee

53. (a) A State employee, or an employee of a State enterprise or agency designated by the Minister by order, or any other person who receives payment for a service from the State or from any such enterprise or agency as aforesaid, who has bred a variety in the period of his service or in consequence of his service shall notify such fact to his superior, as well as to the State Service Commissioner or to some other public servant, as may be prescribed.
- (b) Notification as aforesaid shall be such in the manner prescribed in consultation with the Minister of Finance as soon as possible after the breeding of the variety, but not later than the time at which the employee proposes to file an application under section 19, 25 or 30 in respect of the variety.
- (c) A person bound to make notification under this section shall not file outside Israel an application for registration of a breeder's right or an application for other protection of the variety bred by him unless -
- (1) he has received advance permission therefor from the State Service Commissioner or from some other public servant empowered in that behalf; or
 - (2) within six months from the date on which he notified the breeding of the variety under this section it has not been decided that his right in the variety ^{has} passed, wholly or in part, under section 49 or by argument, to the State or to the State enterprise or agency at which he worked.

Duty of notification to continue

~~54. A person who has in service bred a variety as to which the right to registration or breeder's right has wholly or partly passed to him~~

The duty of notification under this chapter shall continue until its fulfillment, even though the time prescribed for it may have elapsed.

- Duty to disclose particulars** 55. A person who has made or is bound to make notification under this chapter shall at any time disclose to his employer all the particulars of the variety bred by him and any further detail relevant for the purposes of sections 49 and 56.
- Duty to assist employer** 56. A person who has in service bred a variety as to which the right to register a breeder's right has wholly or partly passed to his employer under section 49 or by agreement shall do everything required of him by the employer for obtaining protection of the variety in any plan in favour of the employer and shall sign every document required therefor. If he ~~fails~~ fails to do so, the Register may permit the employer to do so after giving the employee an opportunity to state his case.
- Duty of secrecy** 57. So long as application for registration of a breeder's right in a variety bred in consequence of service has not been filed, the employee, the employer and every person to whom particulars of the variety have been communicated in confidence shall not disclose the same.

Chapter Eight: Indication of Name of Actual Breeder

- Indication of name of breeder** 58. ~~Where~~ a person has bred a variety, and an application for registration of a breeder's right therein has been filed, that person or his survivors may request that his name be indicated in the Register of Rights, and the Register shall ~~accord~~ to the request subject to the provisions of sections 59 and 60, provided that the request has been filed at the time and in the manner prescribed by regulations.

- Hearing of 59. When a request under section 58 is filed which the breeders and ^{holder} proprietor of right shall give notice of the fact to the proprietor of the breeder's right or to the person entitled to apply for registration as aforesaid and, if opposition proceedings under section 22 ^{are} pending at the time, to every person who is a party to such proceedings. The Register shall give his decision after hearing the persons concerned if they apply therefor within the time prescribed.
- Non-entertain- 60. The Register shall not entertain a request under ment of request section 58 if he is of the opinion that it should be dealt with like an application on the ground stated in section 22(b) (1) or 32 (a) (3).
- Indication of 61. A stipulation by which a person who has bred a variety name cannot be waived, waives his right to request the indications of his name shall be of no effect.
- Indication of 62. A person whose name has been indicated as that of the name not to confer rights, person who bred a variety shall not for that reason alone have any right in the variety or in the breeder's right therein.

Chapter Nine: Infringement of Breeder's Right

- Actions for 63. Only the proprietor of a breeder's right or his agents infringement shall be entitled to file an action for infringement.
- Time for filing 64. An action for infringement shall not be filed before actions for infringement, the breeder's right has been registered. However, when an action for infringement has been filed, the Court may grant relief for an infringement committed before

the date of publication under section 21.

Exploitation 65. The exploitation of a validly forfeited product of
of forfeited a registered variety shall not constitute an infringe-
product. ment.

Invalidity of 66. Any ground on which the registration of a breeder's
registration a right may be opposed shall be a good defence in
defence in an action for infringement. If the Court allows the
action for defence, it shall order that the breeder's right be
infringement. revoked, wholly or in part, as the case may be.

Relief in 67.(a) In an action for infringement, the plaintiff shall be
action for entitled to relief by way of injunction or damages.
infringement. (b) In awarding damages, the Court shall have regard to
the act constituting the infringement and to the
position of the plaintiff in consequence of that act,
and it may 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} ~~infringer~~
^{act} ~~here~~ constituting the infringement;
- (4) reasonable royalties which the infringer would
have had to pay if he had been granted a licence
to exploit the breeder's right to the extent to
which he infringed it.

(c) Where an infringement was committed after the plaintiff
had warned the infringer, the Court may order the
infringer to pay punitive damages, in addition to
damages fixed under subsection (b), of an amount not
extending the amount of such last-mentioned damages.

(d) When damages have been claimed, the Court may require
the defendant to make an account of the extent of
the infringement, however, in fixing the amount ~~of~~

of the damages, the Court shall not be bound by the account but may fix 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.

Damages where: 68.
specification
has been
amended

Where a breeder's right was infringed before leave to amend one of the claims in the specification was given, and damages for the infringement ^{were} claimed after the giving of such leave, the Court may refuse to take the giving of leave into account if the claims in the original specification were not worded in good faith or were not worded clearly.

Damages in 69.
the case of
a breeder's
right which
has been
renewed.

The Court may refuse to award damages for the infringement ^{during} of a breeder's right which was committed in the period between the time for the payment of the fee under section 76 and its actual payment under section 75.

Declaration of 70.(a)
non-infringement

- (a) A person who intends to exploit any variety in any manner may petition the Court for a declaration that such exploitation is not an infringement of a breeder's right specified in the petition.
- (b) The proprietor of the breeder's right shall be the ^{ent}responded to the petition.
- (c) The Court shall not grant the declaration unless the petitioner has given the proprietor of the breeder's right full particulars of the product or process he wishes to use, has requested of him the declaration for which he now petitions the Court, and the proprietor of the right has refused to give declaration or has not given it within a reasonable period; but the Court shall not reject a petition by reason only

that it was filed before, in the opinion of the Court, the reasonable time for the giving of the declaration by the respondent had passed.

- (d) The costs of the parties shall be borne by the petitioners for the declaration unless the Court ~~is~~ otherwise directs.
- (e) In the proceedings under this section, the plea that the plant breeder's 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.

Powers of 71.
Court on
referral of
matter to
Council

Where the Court has given the Council permission to consider an application for amendment under section 26(c) or an application for revocation under section 32(d), it may for such period and on such condition as it shall prescribe, stay the proceedings in a case pending before it in respect of the same breeder's right; but each party may at any time apply to the Court for variation or revocation of the stay order.

Chapter Ten: Foreign Applications

Priority 72.
right

Where a breeder files an application of a breeder's right in a variety after he, or his predecessor in title, has already filed an application for protection in a Convention state (such an application hereafter referred to as a "foreign application"), he may apply for a priority right under which, for the purposes of sections 7 and 9, the date of the foreign application shall be regarded as the date of the application filed in Israel, provided that the application in Israel is filed within twelve months after the filing of the foreign application and that other conditions presented by regulations are fulfilled.

Extension of applicationx 73. Notwithstanding the provisions of sections 72 and 102, the Minister may, by regulations, apply the provisions of section 72 to any state, whether or not it is a Convention state, if it appears to him that such state accords reciprocity to Israel in this matter.

Eleven
Eleventh Chapter: Fees

Payment of fees, 74. A breeder's right shall be valid if its proprietor has paid the prescribed fee at the prescribed times. When the fee has not been paid, the right shall lapse at the time prescribed for the payment of the fee.

Extension of time for the 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 of a prescribed amount, and when this is done, the fee shall be deemed to have been paid at the time prescribed for its payment and the breeder's right shall be deemed not to have lapsed.

Publication of notice of lapse of right. 76. When the period stated in section 75 has passed without the fee having been paid as provided therein, the Register shall publish a notice of the lapse of the breeder's right in Rashumot.

Application of restoration of expired right, 77. The proprietor of a breeder's right which has lapsed by reason of non-payment of a fee may apply to the Register, in the means and form prescribed, for the restoration of the patent, provided that on filing the application ~~for~~ he pays the fee prescribed for that purpose.

Publication of application for restoration 78x If the Register is satisfied that the fee has not
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been paid for reasonable cause, that the proprietor of the breeder's right did not know of and did not desire the lapse of the patent and that the application for restoration of the right under section 77 was filed as soon as possible after the fact of non-payment of the fee had become known to the proprietor of the right or the person responsible on his behalf for payment of the fee, he shall direct publication of the application in Rashumot after the proprietor of the breeder's right has paid the fee which had not been paid.

Opposition to restoration 79.

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

Order for restoration, 80.

Where no opposition has been filed under section 79 or when opposition has been filed but has been rejected, the Register shall make an order for restoration, and he may make restoration subject to conditions prescribed by him, including payment of damages in the amount prescribed by him, to a person adversely affected by the restoration.

Exploitation of variety the right in which had lapsed and is subsequently restored, 81.

When the breeder's right in a registered variety has lapsed, and a person exploits such variety for one year after publication of notice of the lapse in Rashumot under section 76, such person is entitled to continue exploiting such variety without charge, in the case of his business only, even after the breeder's right has been restored, for a period prescribed by the Register according to the circumstances of the case.

Transfer of right of exploitation, 82.

The right to exploit a breeder's right under section 81 is not capable of transfer, devolution or trans-

mission by way of inheritance, save together with the business in which the registered variety was used as aforesaid.

Chapter Twelve: Penalties

- Infringement committed knowingly** 83. A person who knowingly infringes a breeder's right registered under this Law is liable to imprisonment for a term of five years or a fine of 25,000 pounds.
- Act in respect of variety prior to its registration** 84. A person who, in the period between publication under section 21 and the registration of the breeder's right, knowingly commits an act in respect of the variety which, had the variety been a registered variety at the time, would have constituted infringement of a breeder's right, is liable to imprisonment for a term of three years or a fine of 15,000 pounds.
- Non-fulfillment of duty** 85. A person who does not fulfil a duty imposed on him by section 13(a), 18, 37, 48, 53, 55, 56 or 57 is liable to imprisonment^{ment} for a term of six months or a fine of 2,000 pounds.
- Competent Court** 86. The court competent to try offences under this chapter shall be the District Court of Jerusalem.

Chapter Thirteen: Jurisdiction, Procedure and Practice

- Appeal** 87. A person who considers himself aggrieved by a decision of the Council or the Register which is no longer subject to contestation or ^{objection} ~~opposition~~ under this Law, may appeal against it to the District Court of Jerusalem within thirty days from the day on which it came to his knowledge as prescribed.

- Proceedings
in camera.** 88. An appeal against a decision of the Register re-
jecting an application under section 15(d) shall be
heard in camera unless the Court, on the application
of the applicant, otherwise directs.
- Evidence in
appeal** 89. The court which hears the appeal may take evidence,
both evidence already taken by the Register or Council
and other evidence, and may require that such evidence
be presented by affidavit or in such other manner as
it may think fit. When evidence is presented by
affidavit, the Court shall, upon request, permit the
deponent to be cross-examined unless it sees a reason-
able ground for not permitting it.
- Scientific
adviser.** 90. (a) In proceedings under this Law, the Court may appoint
a scientific adviser, who shall assist it in taking
evidence and shall advise it, but shall not take
part in giving judgement.
(b) The remuneration of the scientific adviser shall be
fixed by the Court and shall be paid out of the
Treasury.
- Power to
direct amendment
of specification** 91. In any civil proceeding under this Law, the Court may,
on the application of the proprietor of the breeder's
right, direct an amendment of the specification for
one of the reasons stated in section 26(a) or 99,
and the provisions of sections 26(a) and (b) and 27
shall apply thereto mutatis mutandis.
- Extension of
times.** 92. (a) The Register may, if he sees reasonable grounds for
doing so, extend any time prescribed by this Law
or by regulations thereunder for doing anything
otherwise than before the Court except a time pre-
scribed by sections 22, 72, 74 or 75; Provided that

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the Register may extend the time under section 72 if he is satisfied that the application in Israel was not filed in time because of circumstances over which the applicant and his representatives had no control and which they could not have prevented from arising.

- (b) The Register may make the extension of time subject to such conditions as he may think fit.
- (c) An application for extension of time may be filed either within or after the time originally allowed.

Collection 93.
of evidence.

The Council, its committees and the Register may collect evidence to the extent deemed necessary by them for the carrying out of the functions and the ~~exercise~~^{exercise} of their powers.

Proceedings 94.
in contested
case.

- (a) In any contested case brought before the Register or the Council under this Law, the parties shall be given an opportunity to ~~present~~ produce their evidence and to present their arguments in writing and orally in such way and form, at such times and in such manner, as shall be prescribed.
- (b) The Register may order the payment of reasonable expenses in proceedings before him or before the Council or its committees and direct which of the parties shall pay the expenses and how they shall be paid.
- (c) An order under subsection (b) shall be enforceable as if it were a court judgement.
- (d) The Minister of Justice may prescribe by regulations ^{the} rules of procedure for any contested case under this Law.

Preservation of 95.
documents.

- (a) All documents in the possession of the Register or the Council relating to the examination of an application for a breeder's right on his or its behalf or to the validity of, or any rights in, a breeder's right or to any other matter likely to affect the validity of, or

any rights in a breeder's right shall be preserved for at least seven years from the day on which the validity of the breeder's right expires.

- (b) The provisions of subsection (a) shall not apply to internal correspondence of the members of the Council, its employees and the Register ^{among} ~~or between~~ themselves or to other documents otherwise provided for ~~the~~ by regulations.

Inspection by public and receipt of certified extracts

96. (a) The documents to be preserved under section 95, except documents relating to any such application for registration of a breeder's right as has not yet been published under section 21, shall be open to inspection by the public.
- (b) Every person shall be entitled to receive an extract certified by the seal of the Register from anything contained in the Register of Rights or from the documents open for inspection under this section if he applies therefore in the manner prescribed and pays the prescribed fee.

Registration of transfer of rights

97. (a) A person to whom any right in variety have been transferred, whether it be a registered variety or a variety in respect of which an application for registration of a breeder's right has been filed, may apply to the Register for registration as the proprietor of those rights, and if the transfer has been approved to the satisfaction of the Register and the prescribed fee has been ~~paid~~ paid, the transfer of the rights shall be registered in the Register of Rights or in the application file.
- (b) The Minister of Justice shall prescribe ^{the} procedure for the service of judgements ~~prescribing~~ prescribing a transfer of rights as referred to in this section, and when he has done so and a judgement is served

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upon the Register in accordance with such procedure, the Register shall register the transfer prescribed by the judgement notwithstanding the provisions of subsection (a).

Amendment of records and documents

98. (a) The Register may on the application of an interested person, filed in the manner and form prescribed, amend an entry in the Register of Rights or 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 of making the amendment is prescribed by this Law.
- (b) The Register shall give notice of an application under this section to every person likely to be adversely affected by the amendment within the time prescribed by the notice, and he shall not decide upon the application before the expiration of that time.

Correction of clerical errors

99. The Register may, on the application in the manner and form prescribed, correct a clerical error in a specification, the Register of Rights or any document issued by him, after giving the proprietor of the breeder's right an opportunity to be heard.

Rectification on the initiative of the Register

100. The Register may make a rectification under section 98 or 99 of his own notion after giving every person who in his opinion is likely to be adversely affected by the rectification an opportunity to be heard.

Restriction on admission of documents attesting to breeder's rights

101. (a) No document or deed transferring any right or interest in a variety - whether it be a registered variety or one in respect of which an application for a breeder's right has been filed - shall be admitted in Court as evidence of title to the variety or to a breeder's

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right or to an interest in either unless such document or deed has been registered under section 97 or the Court sees a reason to admit it.

- (b) Notwithstanding the provisions of subsection (a), documents as aforesaid shall be admitted as evidence in any proceeding concerning an amendment of the Register of Rights under section 98.

Chapter Twelve: Miscellaneous

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

- Transitional provisions 103. (a) When a breeder files an application for registration of a breeder's right in a variety after ~~he~~ or his predecessor in title, before the coming into force of this Law, received a confirmation from a government institution in Israel that the variety is a 3) recommended variety under the Seeds Law, 5716 - 1956, he may apply for a priority right by which, for the purposes of sections 7 and 9, the date of the confirmation shall be deemed to be the date of filing of the application for registration under this Law, provided that the application for registration under this Law is filed within six months of the coming into force thereof and other conditions prescribed by regulations are fulfilled. If the application for a priority right is granted, the period of the

3) Sefer Ha-Chukkim of 5716, p. 97

breeder's right shall be reckoned from the date of the confirmation as aforesaid.

- (b) When a breeder files an application for registration of a breeder's right in a variety after a breeder's right in that variety was registered in a Convention state in his name, or in that of his predecessor in title, before the coming into force of this Law, he may apply for a priority right by which, for the purposes of sections 7 and 9, the date of the application for the right in that Convention state shall be deemed to be the date of filing of the application for registration under this Law, provided that the application for registration under this Law is filed within twelve months from the date of coming into force of section 72 and other conditions prescribed by regulations are fulfilled. If the application for a priority right is granted, the period of the breeder's right shall be reckoned from the date of registration of the breeder's right in that Convention state.
- (c) Notwithstanding the provisions of subsection (b) and section 102, the Minister may, by regulations, apply subsection (b) in respect of any state, whether or not it is a Convention state, if it appears to him that that state accords reciprocity to Israel in this matter.
- (d) Nothing in this Law shall be considered as granting relief for infringement of a breeder's right in respect of the period before the coming into force of this Law.

Implementation 104. The Minister is charged with the implementation of this Law and may make regulations as to any matter and regulations.

relating to such implementation, including -

- (1) registration procedure;
- (2) procedure in proceedings before the Court or the Register under this Law;
- (3) forms for applications under this Law, graphic representation, the mode of drawing up specifications, and the mode of demonstration of a variety in the specification.
- (4) the fees payable in respect of applications filed under this Law, acts of the Register or the Council, the registration and renewal of registration of a breeder's right, and other services under this Law;
- (5) payment for an opinion or the carrying out of research;
- (6) the publication and sale of abridgements of specifications on behalf of the Register and the regulations of other publications carried out by the Council or the Register;
- (7) the preparation, printing, publication and sale of specifications of breeder's rights by the Register;
- (8) the payment of expenses incurred by the members of the Council by ~~thix~~ their participation in the activities of the Council;
- (9) the payment of expenses to witnesses and experts who have given evidence or opinions before the Council or the Register;
- (10) the assignment of experimental plots and laboratories, for the testing of new varieties, within the framework of farms of the Ministry of Agriculture or within some other framework.

SCHEDULE

(Section 2)

Plants to which the Law Applies

Vetch	Peanuts	Pepper
Wheat	Onion	Horse-bean
Barley	Carrot	Marrow
Sorghum	Pumpkin	Potato
Chick-pea	Eggplant	
Safflower	Cauliflower	
(Ricinus) <i>Castor-plants</i>	Celery	
Oats	Muskmelon	
Clover	Cucumber	
Lucerne	Beetroot	
Watermelon	Tomato	