

Motion To File Class Action Suit For Breach of Privacy Denied by Israeli Supreme Court

On November 7, 2019, the Israel Supreme Court issued an important ruling in case **411/18 Jane Doe vs. Kadima Life Education Science Ltd** which materially affects the ability of those whose right to privacy has been infringed to receive remedy through a class action suit. The above case dealt with the question of whether a class action suit can be filed in response to violations of the Privacy Protection Law – 1981 (the “Privacy Protection Law”). The court ruled that a class action suit cannot be pursued based *solely* on the grounds of the Privacy Protection Law and that in order to pursue action in response to a privacy infringement, such action must meet the thresholds set forth in the Class Actions Law – 2006 (the “Class Actions Law”).

Legal background

The Class Actions Law establishes uniform rules regarding the filing and litigation of a class action suit, including certain threshold conditions, according to which only upon their fulfillment may such a claim be approved for litigation as a class action suit. Section 3(a) of the Class Actions Law states that “no class action may be filed, except as set forth in the Second Schedule or regarding a matter which another law specifically provides for litigation as a class action suit.” The Second Schedule to the Class Actions Law (the “Second Schedule”) provides a closed list of causes of action for which a class action may be filed. For example, the Second Schedule states that it is possible to file for approval of a class action suit for grievance relating to an infringement of the Economic Competition Act or when, or in the event the infringement took place within the context of a customer-dealer relationship.

Empirically, the most common cause of action in class action suits is that of a customer against a dealer, whether a transaction was made between them or not. The Second Schedule uses the term “dealer”, as defined in the Consumer Protection Law – 1981. The broad wording permits the filing of a class action against a vendor, supplier, manufacturer, importer or marketer of a product or service, with regard to the relationship between it and a customer, whether with or without consideration, including in a matter that preceded the engagement, and even if no engagement was actually made. The customer need not necessarily be a private consumer, but also a commercial entity.



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The Facts of the Kadima Life Education Science Ltd Case

By virtue of the Free Education Act for Sick Children Law - 2001, Kadima Science-Education for Life Ltd. (the "Defendant"), an Israeli company, provides out of school education services. The appellant, a 16-year-old girl, and her parents, together, filed a motion for a class action against the company claiming that the names of students and teachers who use the services provided by the Defendant were leaked from the Defendant's remote learning website. This, according to the motion, violated the appellant's right to privacy as protected by the Privacy Protection Law.

Summary of the judgment

For the first time, the Supreme Court dealt with a request for approval of a class action suit brought solely based upon a violation of the Privacy Protection Law. The court ruled that this law alone is not mentioned in the Second Schedule, and therefore no class action can be brought for any allegation of violation of the law. The court clarified that other legal mechanisms have been provided for through the Privacy Protection Law which are intended to facilitate the enforcement of its provisions through civil claims, such as the ability to claim compensation without proof of damages in an amount not exceeding NIS 50,000.

Despite the Supreme Court's determination that the class action mechanism cannot be used were the only cause of action is a violation of privacy under the Privacy Protection Law, the court held that litigating a class action suit in response to a breach of privacy may be possible in those situations where this violation occurred within the confines of one of the special relationships listed in the Second Schedule, such as dealer-customer, insurer-insured, bank-client, financial services provider-client, employer-employee, and others.

In the case discussed in the judgment, it was determined that the state (Israel) was the entity with the obligation to provide the educational services for the sick children, and it is also responsible for the costs involved. The court further noted that this is an activity that is "at the core of government/public service". Therefore, the fact that the state provides these services through a private company does not establish a service provider-customer relationship between the Respondent and the Appellant.



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Notes and Conclusions

The importance of this judgment goes beyond the specific circumstances of this case. It emphasizes the need for a "special relationship" between the plaintiff and the defendant in a class action. With regards to a breach of privacy, this matter is often relevant in connection with activity on social networks, online trading platforms, and other digital services. In order to seek relief through a class action suit, the existence of a Dealer-Customer relationship between the parties will need to be ascertained. This may prove difficult to prove in cases where the existence of an economic transaction between a user and an online platform exists, so long as the online platform is offered free of charge. This is more often than not the case, as the business models of most social media platforms are not dependent upon paywall subscriptions, but upon the sale of advertising space on those platforms. Essentially, the underlying question which courts will need to contend with will be whether the "User" of an online platform is to be considered a "Dealer", as such term is defined in the Class Actions Law. If free social media and search engine platforms (such as Facebook, Instagram, Twitter, Google, etc.) are able to prove that a Dealer-Customer relationship does not exist, it may be difficult for users whose privacy has been infringed to receive remedy through a class action suit.

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Schuman & Co. Law Offices
9 Hartom Street, P.O.Box 45392
Har Hotzvim, Jerusalem 97774 Israel
Tel: +972-2-581-3760, Fax: +972-2-581-5432
<http://www.schumanlaw.co.il/>