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The Magistrates Court in Jerusalem  
Civ. 3906/96  
Abu Laban v. Yizhari  
Opening date: 22 February 1996

### **At the Magistrates Court in Jerusalem**

In the matter of:

1. **The Estate of the Late \_\_\_\_\_ Abu Laban**
2. **\_\_\_\_\_ Abu Laban**
3. **\_\_\_\_\_ Abu Laban**

all from the Duheisha Refugee Camp, District of  
Bethlehem

all represented by attorneys Badrah G. Huri and/or Hala Huri of  
HaMoked: Center for the Defence of the Individual  
founded by Dr. Lotte Salzberger  
4 Abu Obeidah Street, Jerusalem  
Tel. 02-283555; Fax 02-276317

**The Plaintiffs**

v.

1. **\_\_\_\_\_ Yizhari, through the Israel Defence Forces**
2. **Israel Defence Forces**
3. **Minister of Defence, Mr. Shimon Peres**

defendants 2 and 3 represented by the Tel Aviv District  
Attorney's Office (Civil Department)  
1 Henrietta Szold Street Tel Aviv

**The Defendants**

Nature of the claim: **Tortious**

Amount of the claim: **NIS 106,500**

## **Complaint**

The Plaintiffs hereby respectfully address the Honorable Court, while stating that all of their arguments are asserted severally and/or cumulatively and/or alternatively, all as the context prescribes, and that all of the exhibits attached to the complaint constitute an integral part hereof.

1. Plaintiff 1 is the estate of the late \_\_\_\_\_ Abu Laban (hereinafter: the Deceased), who was killed on 17 April 1989 by IDF gunfire.
2. Plaintiffs 2 and 3 are the parents of the Deceased. Defendant 1 is the soldier who shot the Deceased, causing her death. His details and address are known to Defendant 2, but were censored and not divulged to the Plaintiffs. The Plaintiffs therefore ask that process of court be served upon him through Defendant 2.
3. Defendant 2 is the state army, which is subject to the government's authority and comprises land, navy and air forces.

The minister in charge of the functioning thereof on behalf of the government is the Minister of Defence, namely Defendant 3.

4. The Plaintiffs shall claim that on 17 April 1989 (the day of the incident) at around 10:00, the Deceased, who was 13 years old at the time, left her house in the Duheisha Refugee Camp, District of Bethlehem, to look for her minor brother who had gone out of the house.

The funeral of an Intifada casualty, killed the previous day by IDF fire, was taking place at the camp on the same day. The Deceased walked, together with her friend, towards the nearby hill, called "Jabal Al-Kharas", to bring her brother home.

5. When the Deceased arrived at the area of the hill with her friend, they noticed soldiers and several young men who had gathered around in the area. The Deceased and her friend understood that there were probably trouble and rioting in the area, and intended to leave the place and return to their home in the camp.
6. The soldiers were approximately 30 meters away from the Deceased and her friend. They started shooting in the direction of the two girls, using live ammunition. The Deceased and her friend started running. The Deceased ran in front of her friend, until she was shot in the head and fell down. Her friend was injured by a gunshot to the left side of her waist. She was scared and kept running, leaving the Deceased behind.
7. When the Deceased was shot, she fell down near a stone fence. One of the men who were in the area noticed her, lifted her up, and realized that she had been injured in her head from behind and was losing a lot of blood. He saw her face in a scary state, with a hole opened on her forehead, between her eyes, above her nose. He picked her up and started running towards the camp, ducking to avoid being seen by the soldiers.
8. The young man arrived at the house of one of the camp residents, and brought the Deceased into the house. All of his clothes were covered in blood. He put her down on a blanket in the house. Several people from the camp who were at the place

believed she had passed away but, wanting a doctor to pronounce her death, transferred her to the Mount of David orthopedic hospital in Bethlehem.

9. At the Mount of David hospital, the Deceased was examined by a doctor, who pronounced her dead. He delivered a medical report in which he described the gunshot wound to the head. A copy of the medical certificate and of a translation thereof are attached hereto as Exhibits A and A(1).
10. After being pronounced dead, \_\_\_\_\_ was buried in the cemetery in Artas, a village near the Duheisha Refugee Camp. Her funeral was attended by her parents and people from the village.

The funeral was documented by the Canadian television. The Plaintiffs have in their possession a video tape with a copy of the story that was broadcast on the funeral.

11. A curfew was imposed on the Duheisha Refugee Camp, but people came to Plaintiffs 2 and 3's house to pay their condolences despite the curfew.
12. On the day of the incident, the Military Governor and his Aide came to Plaintiffs 2 and 3's house. They tried to convince Plaintiff 2 to have an autopsy performed on his daughter, but he refused on religious grounds – once his daughter was buried, he was not prepared to have her exhumed for an autopsy. The Governor and his Aide tried to convince the Plaintiff that his daughter had been killed by “Shabab” [youth], before an investigation of the circumstances of the incident had been carried out by the competent entities. The Plaintiff was in shock and in a state of deep mourning, and did not want to talk to them at all.
13. The Plaintiffs learned that the army had also visited the house of the people to whom \_\_\_\_\_ had been brought after being shot by the soldiers. The soldiers looked for her – they followed the blood trail but did not find her body, seeing that, as aforesaid, she had been transferred to the hospital in Bethlehem.
14. The Plaintiffs shall claim that the circumstances of the Deceased's death by the gunshot of an IDF soldier, who is the Defendants' agent, call for the filing of a claim in torts by the Plaintiffs against the Defendants, for compensation for the killing of the Deceased. The Plaintiffs are therefore filing this complaint against the Defendants, for compensation for the damages they suffered due to [Abu Laban's] killing.
15. a. After their daughter was killed, Plaintiffs 2 and 3, through HaMoked: Center for the Defence of the Individual, filed an application for an inquest.

- b. The Investigating Military Police, in its investigation into the circumstances of [Abu Laban's] death, determined that the "investigation found no support for the claim that the girl was killed owing to a hit to the head by a plastic bullet". Consequently, the Advocate General of the Central Command ordered the case closed.
- c. A parallel request to investigate the incident was initiated by MK Yair Tsaban, who addressed the Minister of Defence on 1 June 1990 [sic] with a request to perform several inquests, including for the incident which is the subject matter of this complaint.
- d. The then Minister of Defence, the late Mr. Yitzhak Rabin, answered MK Tsaban that "on 17 April 1989 a curfew was imposed in Duheisha. An IDF patrol identified a riot and the soldiers acted to disperse it. At a certain point in time the rubber ammunition ran out. The soldiers' lives were at risk, owing to stone throwings... one of the commanders fired two plastic bullets, but deviated, in this shooting, from the operational orders. It appears that one of these bullets hit the deceased and caused her death. Since more than three months have passed since the soldier was discharged, no disciplinary action may be brought against him... However, it should be emphasized that the Military Advocate General ordered the censure despite the mortal danger with which the force was faced." A copy of the Minister of Defence's response is attached hereto as Exhibit B.
- e. The Minister of Defence's response is inconsistent with the Advocate General's reply. When asked for an explanation therefore, the Advocate General sent a letter dated 26 August 1990, which denies the medical certificate (Exhibit A hereto), and which does not explain the discrepancy between the two answers given for the circumstances of the Deceased's death.

Copies of the Advocate General's replies are attached hereto as Exhibits C and D.

16. The investigation material was photocopied at the offices of the Advocate General. The perusal of the investigation material strengthens the Plaintiffs' claim that [Abu Laban's] death was caused by an unjustified and unlawful shooting, in violation of the open-fire regulations, and through no fault of her own.

17. The Plaintiffs shall claim that the conflicting versions given by the authorities point to an attempt to cover up for the soldiers, to obscure the investigation and to avoid uncovering the truth.

The Minister of Defence's response probably relied on the correct version of the circumstances of the incident. The Minister of Defence's answer points to a connection between the said shooting and the girl's death.

Finally, the Military Advocate General decided to ignore the details mentioned in the Minister of Defence's reply. It was also decided to ignore the medical documentation on the Deceased's death, and it was further decided that no support was found for the claim that the death resulted from the soldiers' fire. This strange conclusion does not explain why the shooters who killed \_\_\_\_\_ were not found, if they were indeed not soldiers, why the doctor who prepared the medical document was not questioned, and why the learned Advocate General made do with the testimonies of one side only, without attempting to hear other versions.

The lack of explanations for these questions, casts a doubt on the investigation of the Investigating Military Police and on the decision of the Military Advocate General.

18. a. The Plaintiffs shall claim that the Defendants are obligated to compensate them for their damages, due to their negligence per se and the shooting which caused the Deceased's death.

The Plaintiffs shall claim that the Defendants' negligence per se is expressed in their breach of the statutory duty of the "open-fire regulations for IDF soldiers", which are designed for the benefit and/or protection of people, including the Deceased. The breach has caused the Deceased damage of the type or nature of the damage at which the statute is aimed.

- b. The Plaintiffs shall claim that the negligence per se is expressed in the shooting at the Deceased, without the soldiers' being in mortal danger, because the open-fire regulations prescribe that "no fire shall be opened, other than against a specific aggressor who has been identified as endangering human life. Strict caution should be used to avoid hitting others". The Deceased posed no risk and took no part in the rioting. She was killed in cold blood and through no fault of her own.
- c. The Plaintiffs shall claim that the negligence per se was expressed in the shooting at the Deceased's head, in violation of the regulation: "No deliberate shooting shall be aimed at the suspect's upper body".

- d. The Plaintiffs shall claim that the negligence per se was expressed in the shooting toward a little girl, in violation of the regulation: “Shooting at women and children should be avoided as much as possible”.
  - e. The Plaintiffs shall claim that the negligence per se was expressed in shooting without warning and contrary to the stages of firing for the purpose of detaining a suspect under circumstances of mortal danger.
19. The Plaintiffs shall claim that the Deceased’s death was caused due to the *negligence* of the Defendants’ agents, and since they are the Defendants’ agents, the Defendants are indirectly liable for compensating the Plaintiffs for their damages. Defendants 2 and 3 are also liable for acts of direct negligence. The Defendants’ negligence is expressed in the followings acts and omissions:

The liability of Defendant 1 and of the other soldiers for the damage caused to the Plaintiffs.

The Plaintiffs shall claim that the incident and the damage there from were caused due to the negligence and/or lack of caution and/or recklessness and/or disregard and/or per se negligence of Defendant 1 and/or of other soldiers who did the shooting that caused the Deceased’s death, as expressed in the following acts and/or omissions, namely that they:

- a. Opened fire from a short range and/or from a range endangering human life and/or in violation of the open-fire regulations.
- b. Used fire negligently and/or in violation of the use of [sic] fire regulations.
- c. Opened fire while facing no material danger and with no justification or cause to open fire.
- d. Fired at the Deceased’s head and not at her legs, contrary to the open-fire rules which require a call to stop, shooting into the air and shooting towards the legs.
- e. Fired without checking and ensuring that innocent passersby will not be hit thereby.
- f. Fired without permission from the soldier authorized therefore.
- g. Acted against high command orders and/or against the general staff orders and/or against IDF commanding and/or regional orders and/or against the open-fire regulations and/or against orders given to them by law and/or

against statutory duties designed to safeguard the body and health of persons of the Deceased's type.

- h. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
  - i. Failed to act as would have a reasonable soldier under the circumstances.
- 20. In the event that any act or omission constituting the negligence that caused the incident were performed by another person who acted on behalf of Defendants 2 and 3 and/or in their service and/or on behalf thereof, the Defendants bear vicarious liability for the outcome of the incident and for payment of the damages caused to the Plaintiffs.
- 21. Defendants 2 and 3 are liable for the negligence of Defendant 1 and/or of the soldiers who carried out the shooting, in their capacity as their agents and/or as acting on their behalf.
- 22. Defendants 2 and 3 are liable for the incident and for the damages there from due to the negligence and/or lack of caution and/or negligence per se of their own and/or of their agents and/or of another on their behalf, as expressed in the following acts and/or omissions, namely that they:
  - a. Failed to supervise and/or properly supervise all of the acts and/or omissions of IDF soldiers in the territories in general and/or in the region and/or in the place of the incident in particular.
  - b. Failed to fulfill their lawful duties and/or missions, including ensuring the safety of the residents of the region, including the Deceased.
  - c. Failed to foresee, although they ought to have foreseen, the incident and/or the course of events which led to the incident and/or foresaw the incident and/or the course of events that led to the incident and yet did nothing and/or did not do enough to prevent the incident and/or prevent the damage and/or mitigate the same.
  - d. Dispatched an unskilled force and/or a force lacking the appropriate commanding function to deal with a breach of peace incident, if any took place.
  - e. Failed to clarify the open-fire regulations to the soldier or soldiers.
  - f. Failed to observe and/or teach and/or supervise the observance of the open-fire regulations and/or improperly supervised and taught the open-fire

regulations and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly the soldier or soldiers who carried out the shooting, were familiar with or observed the same.

- g. Failed to do everything in their power and/or everything they should and/or ought to have done and/or were required to do in order to prevent the incident and the damages there from and/or acted recklessly and/or incautiously and failed to pay attention and/or watch over the persons under their charge.
  - h. Acted other than as a responsible, cautious and sensible person would have acted under the circumstances of the location, the subject matter and the case to prevent the occurrence of the incident.
  - i. Acted in violation of the rules of safety and in per se negligence.
  - j. Acted negligently by allowing the shooting soldier or soldiers to shoot unlawfully.
  - k. Acted negligently by allowing the firing soldier or soldiers to fire unlawfully.
23. Plaintiffs 2 and 3 shall claim that as a result of the acts of the Defendants and/or their agents, the Deceased and they suffered heavy damages and losses, as specified below:
- a. The Deceased was 13 years old at the time of her death. She was an outstanding student at school, active and talented, and would have had a brilliant career. As a result of her death, she lost that chance of a good life.
  - b. Plaintiffs 2 and were the Deceased's parents, who were supposed to rely in the future on their daughter for financial and moral support. Her death cut off this eventuality.
  - c. Plaintiffs 2 and 3 suffered terrible anguish and torment due to the premature death of their daughter.
24. The damages of the estate, which are due to Plaintiffs 2 and 3 in their capacity as the sole heirs of the Deceased, are as follows:
- a. Burial and mourning expenses                      NIS 1,500
  - b. Shortening of the Deceased's lifespan      NIS 35,000
  - c. Deceased's pain and suffering from the  
moment of the shooting until her death      NIS 20,000
25. Plaintiffs 2 and 3' damages are as follows:

Pain and suffering

NIS 50,000

Total damages

NIS 106,500

26. The Honorable Court has the territorial and the subject matter jurisdiction to hear the complaint.
27. In view of all of the aforesaid, the Plaintiffs move the Honorable Court to summon the Defendants and to charge them with compensating the Plaintiffs for the killing of \_\_\_\_\_ Abu Laban, which was caused by a failure to exercise caution, negligence and negligence per se.

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Badrah G. Huri, Att.

Counsel for the Plaintiffs

Jerusalem, today 22 February 1996

## Exhibit B

[Emblem of the State of Israel]

**Ministry of Defence, The Minister of Defence**

Ha-Qiryia 15 March 1990

Member of Knesset  
Yair Tsaban  
The Knesset  
Jerusalem

Dear Mr. Tsaban,

In reply to your letter of 4 December 1989 and following my letter of 2 August 1989, please find below a completion of my answer, as received from the Judge Advocate General:

...

[paragraphs relating to others]

...

The legal opinion on the circumstances of \_\_\_\_\_ Abu Laban's death determines as follows: On 17 April 1989 a curfew was imposed in Duheisha. An IDF patrol identified a riot and the soldiers acted to disperse it. At a certain point in time the rubber ammunition ran out and the soldiers' lives were at risk from stone and bottle throwings. One of the commanders fired two plastic bullets, but deviated, in this shooting, from the relevant operational orders. It appears that one of these bullets hit the deceased and caused her death. Since more than three months have passed since the sergeant was discharged, no disciplinary action may be brought against him, and considering the fact that [missing from original] circumstances stand in his favor (a feeling that his life and the lives of his soldiers were at risk), and the fact that at this stage the rubber ammunition in his possession had run out, the Advocate General of Central Command ordered the Regiment Commander to reprimand him for deviating from the orders. It should be emphasized that the Advocate General had ordered the censure despite the mortal danger with which the force was faced.

...

[paragraphs relating to others]

## Exhibit C

Israel Defence Force, Judge Advocate General Headquarters, Judge Advocate  
General

Ref: 0958 RB-2

Date: 18 April 1990

Ms. Zilli Goldenberg

HaMoked: Center for the Defence of the Individual

2 Abu Obeidah Street

Jerusalem

Re: **Circumstances of death of \_\_\_\_\_ Al-Qasas and \_\_\_\_\_ Abu Laban**

Ours: TE 2640-102 of 17 July 1989

Yours: TP 632 Document 75 of 27 March 1990

1. Following are the results of the Investigating Military Police's investigation into the circumstances of death of \_\_\_\_\_ Abu Laban of RC [Refugee Camp] Duheisha and of \_\_\_\_\_ Qasas of RC Duheisha.
2. a. The Investigating Military Police's investigation into the circumstances of death of \_\_\_\_\_ Abu Laban has revealed that she passed away at the Duheisha refugee camp on 17 April 1989, but no support was found in the investigation for the claim that the girl was killed by a plastic bullet hit to the head. (This determination is based on an investigation in the hospitals, the collection of testimonies from doctors, family members and an examination of the IDF shooting in the area on the relevant date).  
  
The Advocate General of Central Command has therefore ordered the case closed.
- b. The Investigating Military Police's investigation into the circumstances of death of \_\_\_\_\_ Qasas has only recently ended (after the investigation material was returned by the Advocate General of Central Command to be completed). The Advocate General's opinion on this case has not yet been given.

Sincerely,

[ signature ]

Major Enat Ron

Deputy Judge Advocate General

on behalf of the Judge Advocate General

## Exhibit D

Israel Defence Force, Judge Advocate General Headquarters, Judge Advocate  
General

Ref: 1929 RB-2

Date: 26 August 1990

Att. Alliza Herman

HaMoked: Center for the Defence of the Individual

2 Abu Obeidah Street

Jerusalem

Re: Abu Laban

Ours: TE 0958 RB-2 of 18 April 1989

Yours: TP 632 of 29 July 1990

1. Indeed, as stated in your above-referenced letter, MK Yair Tsaban was answered by the Minister of Defence with regard to the findings of the investigation into the circumstances of death of \_\_\_\_\_ Abu Laban.

Unfortunately, an error has occurred in the drafting of the answer, from which it may have been understood that there was a connection between the shooting by the said soldier and the death.

2. Once the error had been discovered, we issued an amended version to the bureaus of the Chief of Staff and of the Minister of Defence.

My answer to you is identical with the amended version. For the sake of clarification and to shed light on the matter, following is, again, the course of events which took place:

- a. On 17 April 1989 a 13-year old girl, \_\_\_\_\_ Abu Laban, was killed in the Duheisha Refugee Camp. An investigation was started by the Investigating Military Police into the circumstances of her death.
- b. From the investigation material delivered to the Advocate General of Central Command, it appeared that the girl's father, who did not witness the death, said that she had been shot in the head by soldiers. The girl was buried without being brought to a hospital for her death to be pronounced. The

Military Governor's request to have her exhumed for an investigation into the circumstances of death was denied by the Abu Laban family.

- c. On the same day, a curfew was imposed on the Duheisha Refugee Camp, during a riot that took place in the camp, which included stone and bottle throwings, 2 plastic bullets were fired by an IDF soldier. This shooting was preceded by rubber bullet shootings, the IDF soldiers did not identify any hit, as a result of the shots fired by them<sup>1</sup>.
- d. Based on the investigation material, the Advocate General of Central Command determined that no connection could be found between the shooting in the Duheisha Refugee Camp by IDF soldiers and the girl's death, "in view of where the shooting took place and where the girl was found".
- e. The Advocate General further determined that the soldier who fired the plastic bullets did so without first firing a warning shot into the air, thus deviating from the orders on the use of plastic bullets.

It should be emphasized that this determination by the Military Advocate General is unrelated and unconnected to the death.

- f. Since the shooting soldier was no longer subject to the Court-Martial Law, it was decided to close the investigation file and not to charge him with deviating from the firing orders – a deviation which, as aforesaid, according to the Advocate General's conclusions, is unrelated to the death.
3. As for Article 4 of your letter: From the aforesaid it appears that *no* connection was found between the shooting performed by the soldier and the death.

Sincerely,

[ signature ]

Major Enat Ron

Substitute Judge Advocate General

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<sup>1</sup> Translator's note: The punctuation of this paragraph corresponds to the original text.