

Index

Abduction, 129, 131 Ben Yehuda, Eliezer, 130 Abdulhadi, Majid (Justice), 71 Ben-Yishai, Ayelet, 11 Admissibility of testimony, 131-132 Bestiality, 24-25, 47 Adultery, 21 Bey, Naseeb Abcarius, 75, 131 Akila, Ali, 37 Beyond reasonable doubt standard, 7-8 Aldrich, Robert, 31 Blackstone, William, 108 Alper, Rivkah, 94 Blum, Binyamin, 3 Alyagon Darr, Orna, 3 Boulton, Ernest, 38 Anger regarding rape, 90-98, 103, 104 Bowman, Humphrey, 23 Anglicization of law, 19-20 British attitudes toward sexual offences, 69-73 overview, 66, 84 Arab attitudes toward sexual offences, 74-77 male sex, 33-34 overview, 66, 84 explicit ethnic references, 74 neutrality, 69-71 prejudice, 75-76 prejudice, 72-73 (See also Prejudice) stereotypes, 72-73 (See also Stereotypes) press coverage, 76-77 stereotypes, 75-76 British legal authority, challenges to, 130-134, 135-136 Arab-Jewish relations British legislation in Palestine common social ground model, 144 disproportionate power model, 144 CLAO (See Criminal Law Amendment dual society model, 144 Ordinance No. 2 1927) integration of activities, 146 competency of witnesses in, 28 rape, absence as military tactic, 145-146 corroboration in, 28-29 sexuality and, 145 Evidence Ordinance, 27-29 sources regarding, 144 jurisdiction, challenges to, 130-131 Arab national agenda, expression in court, 136 Ottoman legal system compared, 21, 27-29, Archbold, John Frederick, 109 Arondeker, Anjali, 32 protection and care of children as policy, 53-54 sodomy under, 33-34 Backhouse, Constance, 3 Baconian probability, 7 Brothels, 22, 23-24, 63, 142-143. See also 'Bad girls', 125 Prostitution Balance of probabilities standard, 8 Balfour Declaration, 93 Cafferata, Raymond, 145 Baradey, Mohammad (Judge), 125 Castration, 99-102 Bedouins, 62, 70-71, 75 Cattan, Henry, 126 Ben Avi, Ithamar, 130 CCO. See Criminal Code Ordinance (CCO) Bentham, Jeremy, 48 Central Zionist Archives, 14 Bentwich, Norman, 21-22, 65 Child prostitution, 63



195 Index

Children children, mistrust of, 119 ambiguous images of, 141 child witnesses and, 55, 56-57, 58, protection and care of as policy, 53-54, 107-108, 119 in common law, 105-110 rhetoric versus reality and, 140-141 fabricated charges and, 116 Child witnesses feminist theory and, 107 overview, 15-16, 50-51, 64-65 of gross indecency, 109 homosexuals, mistrust of, 119 attributes of victims, 51-53 consent to sex by, 60-61 identification and, 108-109, 112, 115-116, corroboration and, 55, 56-57, 58, 117-118 107-108, 119 immediacy and, 112 credibility of, 50-51, 64 inflexibility of rule, 113-118, 120 exclusion of testimony from, 56 locals, British mistrust of, 119 'habitual sodomists', 63 of male-to-male offences, 109 in Mandate Palestine, 28-29, 110-113 hearsay testimony from parents, 56 oath-taking by, 55-58, 64 medical examinations and, 112-115, perjury by, 58-60, 64 116-118 plausibility of, 50-51, 64-65, 139-140 'others', and mistrust of, 118-120 prostitution, relevance of, 63 in Ottoman legal system, 27 protection and care of children as policy, plausibility and, 116, 118-119 53-54 prejudice, effect of, 119-120 sexual history of, relevance of, 60, 62-63, 64 purpose of rule, 105-106 sexual offences and, 54 of rape, 106-107, 108-109, 114-115, unsworn testimony by, 56, 57-58 116-118 virginity, evidentiary significance of, 61-62 socio-cultural context of plausibility and, Circumstantial evidence, 3, 8 120-121 CLAO. See Criminal Law Amendment of sodomy, 113-114, 115-116 Ordinance No. 2 1927 (CLAO) stereotypes, effect of, 119-120 Clausen, Gerard Leslie Makins, 23-24 untrustworthy witnesses and, 105-106 Code Napoléon, 20 of witchcraft, 106, 107 Code of Criminal Procedure 1858 (Ottoman), women, mistrust of, 119 27, 28-29 Counter-narratives Cohen, Hillel, 145 overview, 17-18, 122-123, 134-136 Cohen, Jacob, 101 Arab national identity and, 136 Cohen, Jonathan, 7 British authority, challenges to, 130-134, Colonialism, 5 135-136 Communality, probability and, 9 hidden transcripts and, 122, 123, 130-136 Competency of witnesses inter-ethnic romantic love and, credibility and, 9-10, 107-108 123-126, 136 under Evidence Ordinance, 110 plausibility and, 134, 136 in Ottoman legal system, 27 political sentiments in, 130-134, 135-136 spouses, 28 story-telling and, 134-135 Consent to sex Court of Criminal Assize, 20 Credibility by children, 36, 42, 54, 55, 60-61, 125, 134–135, 136, 141, 143 of child witnesses, 50-51, 64 commonsense rules of, 11, 103, 112 rape and, 3-4, 36, 54, 60-61, 63, 89, 108-109, 116, 125, 136, 141, 143 competency of witnesses and, 9-10, 107-108 Corpus of cases, 12-14 evolution of, 9-10 of female witnesses, 119 Corroboration overview, 17, 105, 118-121 individual versus socially constructed blanket requirement of, 110-112 criteria, 51



196 Index

Credibility (cont.) collective nature of, 104 infamous witnesses, 9 complaints, reluctace to file, 97-98 plausibility versus, 9-12, 50-51 inter-ethnic rape and, 98-102 socio-cultural context, 10, 11-12 intra-Jewish rape and, 96-97, 103 socio-cultural context of plausibility and, 10, in judicial proceedings, 102-103 of perpetrators, 87-88 Criminal Code Ordinance (CCO) plausibility and, 86, 90, 104, 139 rape and, 86-87, 88-89 offences against the order of nature under, 40 rationality versus, 89 rape under, 61 sodomy under, 33-34, 35, 40 revenge, 98-102 text of relevant provisions, 168-175 shame, 90-98, 103-104 Criminal Justice and Public Order Act 1994, 33 silence as expression of, 90-98, 103-104 Criminal Law Amendment Act 1885, 26, as social construct, 104 111 177 of victims, 86-87 Criminal Law Amendment Ordinance No. 2 Ethnic-based attitudes toward sexual offences 1927 (CLAO) overview, 16, 66-67, 84-85 Arab attitudes, 74-77 (See also Arab attibestiality under, 24-25 evolution of, 23-26 tudes toward sexual offences) OPC compared, 22 British attitudes, 69-73 (See also British attitudes toward sexual offences) paradoxical outcomes of, 23-24 rape under, 129, 131 explicit ethnic references, 74, 77-80 failure of Jewish men to protect women, 82 sodomy under, 24, 25-26, 129, 131 text of relevant provisions, 160-163 generalizations, 79 Criminal Law Amendment Ordinance No. 30 gravity of offence and, 76 1934, 164-168 honour, 81 Criminal Procedure (Trial upon Information) inter-ethnic rape and, 67-69, 74-75, 81, Ordinance, 55-56 Cross dressing, 32, 44-45, 46-47 Jewish attitudes, 77-84 (See also Jewish Cultural interpretation, plausibility and, 138 attitudes toward sexual offences) Cultural knowledge, plausibility and, 143-144 neutrality towards, 69-71 Curry, William Clive (Judge), 1-2, 10, 72, 75, plausibility and, 79-80 86-87, 103, 105, 119, 138 prejudice, 72-73, 75-76, 80-83 Cyprus Criminal Code, 24, 26 racism and, 67-69 rape and, 67 Davar (newspaper), 130 sexual offences and, 67-69 De Haan, Jacob, 31 stereotypes, 72-73, 75-76, 80-83 Dennis, Ian, 2 Evidence Act 1843, 10 Dependency, emotions and, 97-98 Evidence law Dickinson, Peter G. (Judge), 72 overview, 26 Dikshtein, Paltiel, 80-81 admissibility of testimony, 131-132 Dinah (Bible), 92, 94 competency of witnesses (See Competency Din moser (law of informant), 97 of witnesses) Dori, Yaacov, 99 corroboration (See Corroboration) Dragomans (interpreters), 128 hearsay, 56, 131 Dual society model, 144 historical study, 2-3 in Ottoman legal system, 27–28 East African Code, 24 plausibility and, 29, 137, 138-139 Edelstein, Laurie, 107 probability and, 8 Emotions socio-cultural context of plausibility and, 29

overview, 16-17, 86-90, 102-104

anger, 98-102, 103, 104

testimony (See Testimony)

witnesses (See Witnesses)



197 Index

Evidence Ordinance No. 13 1924 Identification competency of witnesses, 110 Ottoman legal system compared, 27-29 spousal testimony, 132 Evidence Ordinance No. 68 1936, 110 Evidentiary rules. See Evidence law Ewick, Patricia, 134-135 Exclusion of testimony from child witnesses, 56 Farr, Samuel, 36 Feminist theory corroboration and, 107 rape and, 3-4 Fitzgerald, William (Chief Justice), 22 Forensic examinations. See Medical examinations Forensic medicine, 36-39 'Good' stories, 10, 47 Greek community in Mandate Palestine, 126 Gross indecency in England, 109 'Habitual sodomists', 37, 38-39, 41, 42, 63, Haganah, 14, 96, 98-102 Haifa, 79 Hale, Matthew, 9, 106-108, 109-110, 112 Hamad, Jamal Eff., 75, 89-90 Hamashkif (newspaper), 99 Haycraft, Thomas Wagstaffe (Chief Justice), 23 Hearsay, 56, 131 Heron, G.W., 23 Hidden transcripts, 122, 123, 130-136 Hiiras, 32 Hinchy, Jessica, 32 Historical background of Mandate Palestine, 4-5, 19-20 Homosexuality. See also Male-to-male offences British attitudes toward, 33-34 Jewish attitudes toward, 47 offences against the order of nature (See Offences against the order of nature) sodomy (See Sodomy) studies of, 31-33 use of term, 31, 39-40, 42, 48 Honour, sexual offences and, 1, 20-21, 22, 54, 75, 81 Horowitz, Dan. 144

corroboration and, 108-109, 112, 115-116, in sexual offences, 52, 56, 70-72, 74, 100, 112, 113-114, 115, 117-118 Ilany, Ofri, 31 Immediate complaint. See Recent complaint 'In action' analysis. See Law in action Inbar, Zvi, 96 India hijras, 32 rape, proving in, 3 sodomy, proving in, 40 Indian Evidence Act 1872, 19 Infamous witnesses, 9 Inter-ethnic rape anger regarding, 98-102 emotions and, 98-102 ethnic-based attitudes toward, 67-69, 74-75, 81. 83-84 Jewish attitudes toward, 81, 83-84 revenge for, 98-102 Inter-ethnic romantic love, 123-126, 136, 146 Intra-Jewish rape, 96-97, 103 Irgun, 98, 99 Iton Meyuhad (magazine), 124 Jaffa Workers' Council, 94 Jamaica, homosexuality in, 32 Jewish-Arab relations common social ground model, 144 disproportionate power model, 144 dual society model, 144 integration of activities, 146 rape, absence as military tactic, 145-146 sexuality and, 145 sources regarding, 144 Jewish attitudes toward sexual offences, 77-84 overview, 66-67, 84-85 explicit ethnic references, 77-80 failure to protect women, 82 homosexuality, 31, 39-40, 47 honour, 82 'hypersexed', stereotype of Arabs as, 82-83 inter-ethnic rape, 81, 83-84 in legal scholarship, 80-81 plausibility and, 79-80 prejudice, 80-83 press coverage, 77-79, 80, 81-84 stereotypes, 80-83 Jewish immigration to Palestine, 93-94

'Hypersexed', stereotype of Arabs as,

82-83



198 Index

Jones, Karen, 147 perjury in, 30, 35 Judicial prejudice, 12, 16, 72-73, 75-76, punishment for, 39, 40 109-110, 146-147 rhetoric versus practice in, 141-143 Juries, probability and, 7-8 sodomy (See Sodomy) theoretical setting of, 31-33 Kagan, Helena, 23 Mandate Palestine (League of Nations) Kamel, Ahmed, 37, 63 historical background, 19 Kassan, Shalom (Judge), 88-89 legal basis of, 19 Katznelson, Berl, 99 sexual offences in, 22 Keith-Roach, Edward, 126-127 A Manual of Medical Jurisprudence Kermack, Stuart Grace (Judge), 25 (Taylor), 38 Kolsky, Elizabeth, 3 Marital rape, 132 Kook, Abraham Isaac (Rav Kook), 92 Mavrogordato, Arthur Stephen, 23 McDonnell, Michael (Chief Justice), 24-25 Kozma, Liat, 31 Medical examinations LaFont, Suzanne, 32 corroboration and, 112-115, 116-118 Law in action, 2 offences against the order of nature and, League of Nations, 19 41 - 42Legal background rape and, 114-115, 116-118 overview, 14, 19-20 sodomy and, 37-39, 113-114, 116 CLAO (See Criminal Law Amendment Meir, Reuven, 101-102 Ordinance No. 2 1927 (CLAO)) Mejelle (Ottoman code of obligations), 27 evidence law (See Evidence law) Methodology of study, 12-14 Mandate Palestine (See Mandate Palestine Mnookin, Jennifer L., 3 (League of Nations)) Morality, male-to-male offences and, 15, 34, OPC (See Ottoman Penal Code (OPC)) 42, 54, 141-143 Ottoman legal system (See Ottoman legal system) National origin-based attitudes toward sexual Lewin-Epstein, Eliyahu Zeev Halevi, 81, offences. See Ethnic-based attitudes toward sexual offences The Life of a Worker in Her Homeland Neutrality towards ethnicity, sexual offences (Pekelman), 94-95 and, 69-71 Lissak, Moshe, 144 Nevo, Amos, 101 Nixon, Margaret, 23, 126-127, 131-132, 133 Male prostitution, 43-46, 60, 142-143, 146 Male-to-male offences Oath-taking by child witnesses, 55-58, 64 overview, 15, 30-31, 47-49 Occupied Enemy Territories Authority, 142 British attitudes toward homosexuality and, Offences against the order of nature anal sex prohibition, 39-40 consensual (See Offences against the order of carnal knowledge requirement, 42-43 nature) under CCO, 40 corroboration of, 109 cultural roles and, 40-41 enforcement of, 79, 141, 143 effeminacy and, 46-47 enforcement of, 143 Jewish attitudes toward homosexuality

and, 47 in military, 48

141-143

morality and, 15, 34, 42, 54,

non-consensual (See Sodomy)

offences against the order of nature (See

Offences against the order of nature)

'habitual sodomists', 41, 42

medical examinations and, 41-42

as lesser offence, 42.

'passive subjects', 41

plausibility of, 39-47

prostitution and, 43-46

punishment for, 39, 40, 41



199 Index

romantic love and, 46 cultural knowledge and, 143-144 witnesses, 43 defining, 6 Offences Against the Person Act 1861, 177 emotions and, 86, 90, 104, 139 Opaqueness of plausibility, 138 ethnic-based attitudes and, 79-80 OPC. See Ottoman Penal Code (OPC) evidentiary rules and, 29, 137, 138-139 Ordinance to Amend the Ottoman Criminal hidden assumptions regarding, 138-139 Law 1927. See Criminal Law Jewish attitudes toward sexual offences and, Amendment Ordinance No. 2 1927 79-80 Ottoman legal system legal history of, 2-3 Anglicization of, 19-20 legal rules, insufficiency of, 140 British legal system compared, 21, 27-29, of offences against the order of nature, 39-47 53-54 opaqueness of, 138 Code of Criminal Procedure 1858, 27, 28-29 power relations and, 136 competency of witnesses in, 27 probability versus, 7-9 socio-cultural context of (See Socio-cultural evidentiary rules in, 27-28 Mejelle, 27 context of plausibility) OPC (See Ottoman Penal Code (OPC)) of sodomy, 34-39 protection and care of children as policy, truth compared, 146-147 53-54 Prejudice Tanzimat, 20 corroboration, effect on, 119-120 two-evewitnesses rule, 27 inter-ethnic romantic love and, 123-126 Ottoman Penal Code (OPC) judicial prejudice, 12, 16, 72-73, 75-76, 109-110, 146-147 abduction under, 129, 131 CLAO compared, 22 rape, regarding charges of, 1, 16, 64, 72-73 criticism of, 21-22 sexual offences and, 72-73, 75-76, 80-83 efforts to amend, 23-26 Press coverage of sexual offences, 76-79, 80, 81-84 enactment of, 20 sexual offences under, 20-21, 129 Privy Council, 20 text of relevant provisions, 156-160 Probability Baconian probability, 7 Palestine (newspaper), 76-77 communality and, 9 Palestine Order in Council, 19, 132 dichotomy in, 7 Palestine Post (newspaper), 130 evidentiary rules and, 8 Papua New Guinea, homosexuality in, generalizations and, 8-9 32-33, 45 juries and, 7-8 Park, William, 38 Pascalian probability, 7 Pascalian probability, 7 plausibility versus, 7-9 'Passive subjects', 41 shared societal knowledge and, 9 Pekelman, Henya, 94-96 Prostitution Penetration, legal significance of, 81.90, 61, child prostitution, 63 123 - 124male prostitution, 43-46, 60, 142-143, 146 Perjury offences against the order of nature and, by child witnesses, 58-60, 64 43-46 in male-to-male offences, 30, 35 Queensland Criminal Code Act 1899, 24, Phipson, Sydney L., 56 Plausibility. See also specific topic 175-176 of child witnesses, 50-51, 64-65, 139-140 corroboration and, 116, 118-119 Racism, rape and, 67-69 counter-narratives and, 134, 136 Rape credibility versus, 9-12, 50-51 absence as military tactic, 145-146 cultural interpretation and, 138 anger regarding, 98-102, 103, 104



200 Index

Rape (cont.)	Salent, Ephraim, 55
under CCO, 61	Samuel, Herbert, 22
under CLAO, 129, 131	Scott, James C., 123
consensual sex with girls under age	Semerdjian, Elyse, 3
sixteen, 125	Semitic race, 71
consent to sex and, 3-4, 36, 54, 60-61, 63, 89,	Sengoopta, Chandak, 3
108–109, 116, 125, 136, 141, 143	Sexual history of child witnesses, relevance of,
corroboration of, 106-107, 108-109,	60, 62–63, 64
114-115, 116-118	Sexual offences. See also specific offence
emotions and, 86-87, 88-89	Arab attitudes toward, 74-77 (See also Arab
ethnic-based attitudes and, 67	attitudes toward sexual offences)
evidentiary difficulties, 106-109 (See also	British attitudes toward, 69-73 (See also
Corroboration)	British attitudes toward sexual
feminist theory and, 3-4	offences)
impossibility of, 36	British legislation in Mandate Palestine,
India, proving in, 3	21-26, 35, 40-41
inter-ethnic rape (See Inter-ethnic rape)	child witnesses and, 54
intra-Jewish rape, 96–97, 103	ethnic-based attitudes and, 67-69
marital rape, 132	explicit ethnic references, 74, 77-80
medical examinations and, 114-115,	honour and, 1, 20–21, 22, 54, 75, 81
116-118	identification in, 52, 56, 70-72, 74, 100, 112
myths regarding, 3-4, 36, 48, 67-68, 143	113-114, 115, 117-118
prejudice regarding charges of, 1, 16, 64,	inter-ethnic rape (See Inter-ethnic rape)
72–73	Jewish attitudes toward, 77-84 (See also
press coverage of, 76-77	Jewish attitudes toward sexual offences)
racism and, 67-69	legal background (See Legal background)
revenge for, 75-76, 98-102	local victims versus foreign victims, 73
shame regarding, 90-98, 103-104	myths regarding, 3-4
silence regarding, 90-98, 103-104	neutrality regarding, 69-71
statistics, 78	under OPC, 20-21, 129
stereotypes and, 72-73	prejudice and, 72-73, 75-76, 80-83
suicide and, 96	press coverage of, 76-79, 80, 81-84
virginity, evidentiary significance of, 61-62	revenge and, 75–76
Raptor, Berl, 99	rhetoric versus practice in, 140-141
Rationality versus emotions, 89	statistics, 78
Razi, Tammy, 31	stereotypes and, 72-73, 75-76, 80-83
Reasonable doubt standard, 7–8	as symbol of national weakness, 104
Recent complaint, 3-4, 109, 112	Shame regarding rape, 90–98, 103–104
Revenge for rape, 75–76, 98–102	Shapiro, Barbara J., 7
Rhetoric versus practice	Sharafi, Mitra, 135, 136
children and, 140–141	Shaw, Bernard Vidal (Justice), 71-72
in male-to-male offences, 141-143	Shehade, Salim George (Judge), 89
in sexual offences, 140-141	Shems, Aaron (Judge), 125
Rimon, Y.Z., 99	Silbey, Susan S., 134–135
Romantic love	Silence regarding rape, 90–98, 103–104
inter-ethnic romantic love, 123-126,	Smith, Sydney Alfred, 38–39, 40
136, 146	Socio-cultural context of plausibility
offences against the order of nature and, 46	overview, 2, 5–6, 137, 147
,	corroboration and, 120-121
Sadeh, Isaac, 100	credibility and, 10, 11-12
Salah, George, 131-132	evidentiary rules and, 29



201 Index

Sodomy British attitudes toward, 33-34 under CCO, 33-34, 35, 40 under CLAO, 24, 25-26, 129, 131 corroboration of, 113-114, 115-116 defined, 33, 35 enforcement of, 143 'habitual sodomists', 37, 38-39, 143 India, proving in, 40 under Mandate Palestine legal system, 33-34 medical examinations and, 37-39, 113-114, 116 minor victims, 35-36, 37 myths regarding, 36, 48, 143 under OPC, 26 plausibility of, 34-39 punishment for, 39, 40 statistics, 78 stereotypes and, 24-25, 47-49 Spicer, Roy Godfrey, 126-127, 131-132, 133 spousal testimony, 132 Stein, Alex, 2, 8 Stereotypes corroboration, effect on, 119-120 'hypersexed', stereotype of Arabs as, 82-83 inter-ethnic romantic love and, 123-126 rape and, 72-73 sexual offences and, 72-73, 75-76, 80-83 sodomy and, 24-25, 47-49 Stewart, Christine, 32-33 Story-telling, 134-135, 139-140 Suicide, rape and, 96 Szold, Henrietta, 83-84

exclusion of testimony from child witnesses, 56 inter-spousal testimony, 132 unsworn testimony by child witnesses, 56, 57–58

Theodoritas (Archimandrite), 128–129, 132

Tidhar, David, 48

Torian, Ohannes, 37, 58, 61, 116

Trusted, Harry Herbert (Chief Justice), 111

Truth, plausibility compared, 146–147

Twining, William, 2

United States, rape and racism in, 67–68

Unsworn testimony by child witnesses, 56, 57–58

admissibility of, 131-132

Vester, Martha Spafford, 23

Wagenaar, Willem Albert, 11

Weil, Kurt, 100 Weldon, Stewart W. (Judge), 34, 57-58, 71 Wigmore, John Henry, 119 Wilde, Oscar, 48 Witchcraft, corroboration of, 106, 107 Witnesses admissibility of testimony, 131-132 child witnesses (See Child witnesses) competency of (See Competency of witnesses) hearsay, 56, 131 infamous witnesses, 9 inter-spousal testimony, 132 offences against the order of nature, 43 untrustworthy witnesses, corroboration and, 105-106

Zionist National Committee, 83

Tabenkin, Isaac, 99

Testimony

Tanzimat (Ottoman legal reforms), 20

Taylor, Alfred Swaine, 36, 38