

Workshop: Intermediate Verdicts in Criminal Justice and Beyond
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*The Israeli Intermediate Verdict:
Its Jurisprudence, Implications, and
Frequent Use in Practice*

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I. Introduction

- The birth and the development of “*acquittal for the benefit of the doubt*” (ABD) verdict in Israel.
- The main consequences of ABD.
- Empirical findings about ABD.



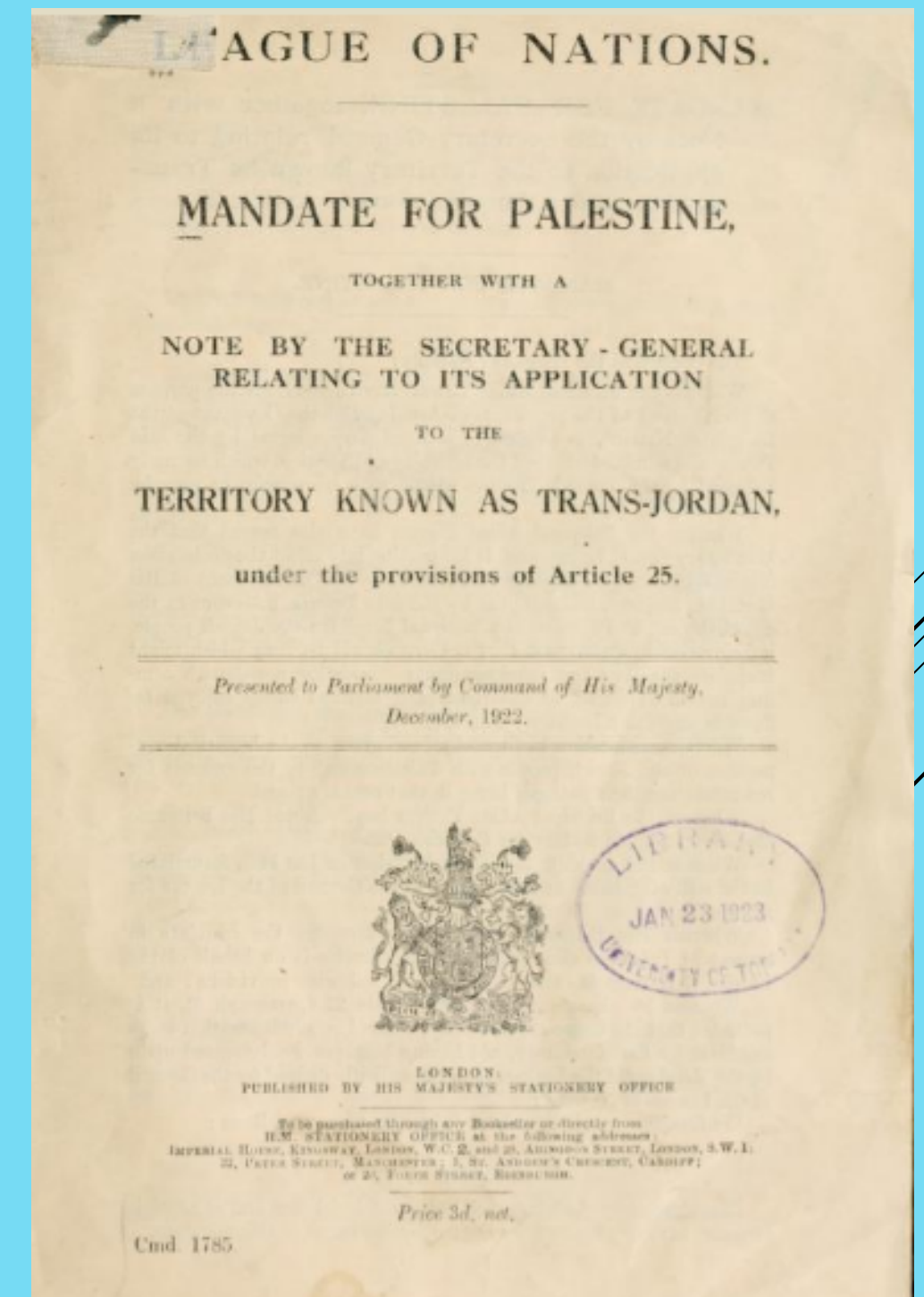
II. History of the ABD



The British Mandate period (1922-1948)

Criminal Procedure (Trial Upon Information) Ordinance, 1924:

“45. After the reply, if any, of the Attorney General or his representative, the court shall consider the whole case and, unless a majority of the court considers that the accused is *guilty*, it shall *acquit him*.” (Emphasis added)



II. History of the ABD



The Israeli period (1948 and onward)

CrimC (Tel Aviv District Court) **Attorney General v. Levy** (1949): [The accused] “should be acquitted of the charge of murder on the basis of doubt”.

Historical research and first insights



III. Implications of the ABD



The right to receive compensation for false imprisonment

Art. 80(a) of the Israel Penal Code, 1977:

“[w]here it appears to the court that there was no basis for the charge or that there were other circumstances justifying its doing so, it may order the Treasury to pay to the accused the costs of his defence and compensation for his detention or imprisonment in connection with the charge of which he has been *acquitted*.”

III. Implications of the ABD



The right to receive expenses from the complainant

Art. 81 of the Israel Penal Code, 1977:

“Where the court acquits an accused person after finding that the complaint which gave rise to the proceedings was made frivolously, vexatiously or groundlessly, it may . . . require [the complainant] to pay the costs of the defence of the accused and the costs of the public prosecution, as the court may prescribe..”



III. Implications of the ABD



Stigma and the right to reputation

Sofiov case (Tel Aviv District Court, 1996)

It is impossible to turn a blind eye to the state of mind of the public and ignore the fact that *those who were acquitted by ABD are suspected in the eyes of the public of having committed the crime* but managed to evade conviction by cunning and stratagems, or by taking advantage of technical problems and difficulties of proof from on the part of the prosecution. *Such a person will certainly not be considered blameless, whose name has been entirely cleared*, but will usually be seen as someone who in practice did commit the crime attributed to him, although he managed to evade conviction by various tactics" (authors' translation, emphases added).



III. Implications of the ABD



The right to appeal



IV. Frequent Use in Practice



Table 1. Total number of acquittals

Year	Magistrate's courts	District courts Criminal cases	District courts Criminal appeal cases	Total
2001	264	58	36	358
2003	538	72	26	636
2005	580	57	47	684
2007	381	82	39	502
2009	371	57	19	447
2011	151	55	23	229
2013	186	41	24	251
2015	211	49	13	273
2017	177	32	6	215
2019	140	21	7	168
Total	2999	524	240	3763

IV. Frequent Use in Practice



Table 2. ABD rates out of all acquittals

Year	Magistrate's courts	District courts Criminal cases + criminal appeal cases
2001	49.6%	15.8%
2003	51.3%	7.4%
2005	52.6%	7.4%
2007	51.4%	13.0%
2009	51.8%	8.9%
2011	49.7%	15.0%
2013	48.9%	14.5%
2015	41.7%	11.5%
2017	42.9%	10.0%
2019	40.0%	7.5%
Total	49.5%	10.4%

IV. Frequent Use in Practice



Table 3. ABD verdicts for sex and violent offences vs. all other offences in magistrate's courts

(N = 2995)

Type of offence	ABD rates in sex/violent offences	ABD rates in all other offences	Statistical significance
Violent offence	57.1%	44.9%	.001
Sex offence	56.8%	49.3%	.08
Violent + sex	57.0%	44.1%	.001

IV. Frequent Use in Practice



Table 4. ABD verdicts for sex and violent offences vs. all other offences in district courts
(N = 524)

Type of offence	ABD rates in sex/violent offences	ABD rates in all other offences	Statistical significance
Violent offences	58.6%	46.8%	.006
Sex offences	74.1%	49.9%	.011
Violent + sex	60.6%	44.4%	.001

IV. Frequent Use in Practice



Table 5. ABD verdicts for sex and violent offences vs. all other offences in criminal appeal cases in district courts

(N = 240)

Type of offence	ABD rates in sex/violent offences	ABD in a;; other offences	Statistical significance
Violent offences	57.4%	36.3%	.003
Sex offences	90.9%	39.3%	.001
Violent + sex	62.5%	32.7%	.001



Thoughts and comments?

