

Disability, Rights, and the Construction of Sexuality in Tort Claims

Sagit Mor

Rina B. Pikkell

This study empirically investigates how courts define sexuality of disabled persons in the absence of a formal right to sexuality. The focus of the study is tort law, a field ungoverned by direct disability rights legislation, assuming that tort law is the law of disablement as it concerns the transformative process of becoming disabled. The study investigates the types of damages courts have awarded for harm to sexual functioning, inquiring to whom and under what conditions have they been awarded. Additionally, it examines the discourse that characterizes each type of damages, and the legal, social, medical, and healthcare policy developments that have affected courts' rhetoric and reasoning. Our findings reveal shifting trends in scale, content, and inclusiveness of beneficiaries in terms of gender and age. Over time, courts have adopted a more hopeful and dynamic approach to disabled persons' sexuality while remaining within an individual-medical framework. We suggest that these shifting trends can be linked to the slow diffusion of the social-affirmative approach to disability, the limits of tort law as a field, and the role of healthcare policy in shaping the landscape of tort claims.

Disability is intrinsic to the human condition and part of human variation, yet sexuality of disabled persons challenges existing social perceptions of both sexuality and disability. While traditional views of the two were developed within the medical framework of normalcy and deviance, contemporary theories push for an affirmative view that upholds a rights-based approach to disability and sexuality and emphasize disability pride and sexual pleasure (Shakespeare 2000; Swaine and French 2000).

International and domestic civil and human rights instruments have failed to address and develop the right to sexuality of

This research was supported by the Israeli Science Foundation (ISF), grant no. 719/16. We are grateful to Orna Rabinovich-Einy, Katharina Heyer, Avital Mentovich, Tamar Kricheli-Katz, Ariel Porat, Yair Sagy, Doron Dorfman, Roni Holler, and the anonymous reviewers for their insightful suggestions to previous versions of the text. We are particularly thankful to Susan Sterett, LSR Editor, for her close guidance and invaluable support.

Both authors contributed equally to this manuscript.

Please direct all correspondence to Sagit Mor, University of Haifa, Faculty of Law, Israel; e-mail: smor@univ.haifa.ac.il and to Rina B. Pikkell, University of Haifa, Faculty of Law, Israel; e-mail: rbudnits@campus.haifa.ac.il.

Israel Science Foundation
719/16

Law & Society Review, (2019)

© 2019 Law and Society Association. All rights reserved.

disabled persons despite its clear importance to identity and social movements (Perlin and Lynch 2016; Schaaf 2011). Sexual rights activism, initially led by the LGBTQ movement, has defined sexual expression and pleasure as its core, yet its legal achievements have mostly been in the arenas of sexual health and reproduction (Bell and Binnie 2000; Seidman 2001). At the same time, disability rights activism has developed a comprehensive rights framework encompassing almost all spheres of life but has been rather quiet about the disabled body as a sexual body (Shakespeare and Richardson 2018; Tepper 2000).

This study is about how courts define the sexuality of disabled persons in the absence of a formal right to sexuality. It examines the diffusion of a disability rights approach into tort law as a realm of law that is ungoverned by direct disability rights legislation. Tort law has emerged as a significant arena in which to observe the ways courts shape the meaning of disability and sexuality as they converge in the lives of disabled persons.

We provide a disability legal studies analysis of compensation for harm to sexual functioning in Israeli personal injury law and interrogate how legal, social, medical, and healthcare policy developments have affected courts' rhetoric and reasoning, and the types of remedies that have been provided. Disability legal studies combines the tenets of disability studies and critical legal theory, including sociolegal theory. Together with disability activists, disability studies scholars have endeavored to transform the prevailing social and cultural meanings of disability from an individual and medical approach to a social and affirmative approach that accepts disabled persons as full and equal members of society (Oliver 1990; Shakespeare, 2006; Swaine and French 2000). The legal manifestations of this shift are the introduction of disability rights discourse and the enactment of national and international disability rights instruments (Heyer 2015a; Stein and Stein 2007). These instruments cover a wide range of rights, from access and employment to housing and education.

In addition, disability scholars and activists have become interested in sexuality as an essential part of human life and as emblematic to the marginalized place of disabled persons in society (Shakespeare 2000; Shuttleworth and Mona 2002). Sexuality poses a unique challenge to the prevailing individual-medical model of disability and to a human rights framework: it assumes an affirmative, nontragic understanding of life with a disability, and it is yet to be acknowledged as a formal legal right in national and international law. Studying sexuality also raises questions concerning other marginalized bodies, such as females' and older persons' bodies, and calls attention to intersectionality and its implications.

Our work looks into the role of courts in the legal construction of sexuality and disability, with special attention to relationships between the language they employ and the remedies they provide (Rollins 2002; Vanhala 2011; Vogler 2016). We observe changes in the understanding of sexuality of disabled persons in personal injury court decisions and detect the presence of a social approach to disability even if only implied or unintentional. We view tort law, specifically personal injury law, as the law of disablement; that is, a field of law that concerns the transformative process of becoming disabled and the state's response to that process (Bloom and Miller 2011; Mor 2018). We study the evolution of various remedial avenues offered by courts for disabling injuries that result in harm to sexual functioning and consider the role of national healthcare policy in shaping court responses to such harm, specifically healthcare coverage for sexual treatments.

Israel provides a fruitful ground for this study with its rich multilayered legal framework that includes well-developed liberal rights mechanisms with comprehensive disability rights legislation (Rimmerman et al. 2015), an extensive welfare system (Gal 2004) with advanced national healthcare policies (Rosen et al. 2015), and an advanced tort system (Rivlin 2012). These legal mechanisms shape the landscape of available legal avenues for claiming disability-related rights, benefits, and remedies.

As we study court responses to harm to sexual functioning, we seek to answer the following questions: What types of damages have Israeli district courts awarded, to whom, and under what conditions, and how has the changing understanding of disability and sexuality affected court decisions, reasoning, and outcomes?

We offer the notion of *sex damages* to denote the remedial schemes that address the sexual needs of claimants following a disabling event. Our preliminary research revealed four types of sex damages: (1) Nonmonetary compensation for loss of sexual enjoyment; (2) Monetary compensation for sexuality-related medical treatments; (3) Monetary compensation that covers escort services; and (4) Monetary compensation for sexual rehabilitation expenses.

We focused our research on Israeli district court trial decisions from 1991 to 2015, for several reasons. First, these were the years in which awareness about disability rights arose and expanded. Second, lower courts are the frontier of legal claims (Mather 1998; Silbey 1981) and therefore allow us to closely trace doctrinal changes and the forces that shape them. Third, since district court decisions concern severe injuries they are likely to involve harm to sexual functioning and relationships.

We conducted empirical research using a mixed-method model for content analysis of the above selection of judicial decisions. We performed a quantitative analysis of the timeline of

rulings mentioning sex damages and a qualitative analysis of the meaning of disability and sexuality in those rulings. To those results we added a layer of intersectionality analysis that examines the role of gender and age in sex damages case law. Our major conclusion is that while the field of sex damages is limited in scope, a close inspection reveals a nuanced picture of shifting trends in scale, content, and inclusiveness of beneficiaries. We found that Israeli district courts, while remaining within an individual-medical framework, have become more open to disabled persons' sexuality despite the absence of a formal right. We link these findings to the slow diffusion of the social-affirmative approach to disability, the constricting nature of tort law as a field, and the role of healthcare policy in shaping the landscape of legal claims in a state where torts and welfare are interconnected.

1. The Changing Understanding of Disability

Disability studies is the theoretical field of disability research that conceptualizes, studies and informs social and cultural developments pertaining to the changing meaning of disability. The disability studies critique uses the term *models* of disability to denote various meanings of disabilities. We prefer the term *approaches* instead of *models* as a looser term that allows for more variation in its usage and application. Accordingly, we contrast the individual-medical approach with the social-affirmative approach to disability as two oppositional discourses with which we can measure and assess the changes in courts' rulings.

The individual-medical approach to disability represents a pre-disability rights understanding of disability, which assumes that disability, is a personal tragedy and an inherent inferiority. It is individual in the sense that it views disability as an immutable trait that is located within the disabled person's physical body (Goodley 2010; Oliver 1990); it is medical because it views disability as deviance and pathology and gives the medical profession the authority to define and explain the experience of disability (Davis 1995; Drum 2009; Goodley 2010; Linton 1998).

In contrast, the social approach employs a social constructionist view of disability, which substantiates the disability rights discourse. It stands for a cluster of views that share an understanding of disability as a dynamic and interactive phenomenon, shaped by social, cultural, and political processes—a product of social relations and interactions that result in stigma, segregation, and environmental barriers (Drum 2009; Goodley 2010). The social approach resists the medical approach to disability as it views professional knowledge as biased knowledge and prefers the experiential knowledge of

disabled persons (Davis 1995; Linton 1998). When complemented by an affirmative view of disability it advances a hopeful, nontragic, understanding that celebrates disability pride, identity, and culture (Swaine and French 2000).

These theoretical developments have grown out of the disability movement and have been accompanied by the introduction of disability rights. The disability rights approach translates the demands of the disability movement into a political and legal framework that offers a new vision of disability equality, dignity, access, and participation (Bagenstos 2009; Heyer 2015a; Silvers 1998; Stein and Stein 2007).

Disability rights activism arrived in Israel in the 1990s (Mor 2009; Ziv 1998). In 1998 disability rights were first enacted into law with the passage of the Equal Rights for Persons with Disability Law (ERPDL) (Equal Rights for Persons with Disability Law, 1998), and in 2012 Israel ratified the 2006 International Convention on the Rights of Persons with Disabilities (CRPD) (The United Nations, 2006). Since the enactment of the ERPDL its provisions have been further implemented, disability rights legislation expanded, and additional legal fields were affected by the rise of disability rights, though change was slow and incremental (Mor 2009; Rimmerman et al. 2015).

This study draws on these developments and employs a disability legal studies approach to the study of disability in tort law. A disability legal studies analysis investigates the ways by which biases and assumptions about disability permeate all fields of law, shape the design of legal norms and institutions, and are in turn shaped by them (Heyer 2015b; Kanter 2011; Mor 2006). Extensive legal literature has examined the changes in various domains of disability law, including employment, access, education, independent living, and legal capacity. Previous sociolegal research that studied the implementation of disability rights has focused on areas of antidiscrimination law such as employment law and administrative law (e.g., Vanhala 2011). Other realms of law, such as torts, contracts, and family law, have been less studied. The latter pose a challenge for sociolegal research as they are not governed by direct disability rights legislation or characterized by the involvement of disabled persons' organizations. This research shifts the focus from the impact of disability rights to changes in the social understandings of disability. It investigate how such changes manifest in judicial responses to disablement and its consequences in the context of harm to sexual functioning.

2. Disability and Sexuality

Both realms of sexuality and disability have undergone significant changes, most evident is the shift from a highly medicalized

framework toward a more social constructionist approach (Foucault 1978; Shakespeare 2000). The prevalent social perceptions of disability and sexuality have developed within medical frameworks of normalcy and pathology, which have historically served to justify state intervention in the sexuality and reproduction of disabled persons, reaching a peak during the Eugenic era (Lombardo 2008; Perlin and Lynch 2016). The shift in the meaning of sexuality entailed a moving away from notions of normalcy and deviance toward plurality and nonbinary understandings of sex and gender (Garton 2004; Weeks 2007). It also entailed a change in the understanding of sex from a means of reproduction to a basic human need, a form of self-expression, and a source of pleasure (Richardson 2000; Weeks 2007).

Prevalent social perceptions regarding disabled persons' sexuality assumed that disabled people are nonsexual individuals with no significant interest in sexuality, incapable of sexual pleasure, undesirable as potential partners (Shakespeare et al. 1996; Shildrick 2007; Tepper 2000), and sometimes incapable of consenting to sexual acts (Boni-Saenz 2015; Lyden 2007). In response, the social approach to disability and sexuality has shifted focus to the social barriers to sexual life, including physical barriers to public spaces, social exclusion, lack of social skills, limited possibilities for sexual interaction, and most importantly misguided beliefs about disability and sexuality (Shakespeare 2000; Shuttleworth and Mona 2002).

This new approach has drawn on earlier and parallel developments in related fields. Thus, queer theory has been helpful in generating an affirmative notion of sexual identity and pleasure (Rubin 1984; Seidman 2001); feminist scholarship has struggled to construct positive female sexuality, beyond traditional concerns of reproduction or sexual violence (Franke 2001; Rubin 1984); and literature on old age has suggested a concept of sexuality for the seemingly imperfect, asexual body (Boni-Saenz 2015; Doron et al. 2018).

Medical advances have assisted in tackling some of the barriers faced by disabled persons in pursuit of sexual life, including advances in sexual therapy (Freckelton 2013; Mona et al. 2014) and the approval of the Viagra pill by the FDA in 1998 (Perlman 2001; Tepper 2000). So much so that both media and academic researchers have viewed the introduction of potency pills as a second sexual revolution which has turned the loss of sexual functioning into a treatable condition, without the pain and discomfort that accompanied former treatments (Gacheru 1998; Hitt 2000; Loe 2004; Perlman 2001). At the same time, Viagra has also deepened gendered conceptions of sexuality and overshadowed women's needs (Marshall 2002; Potts et al. 2003).

Most recently, a human rights framework has emerged concerning disabled persons' rights to sexual autonomy, sexual services and support, sexual pleasure, and sexual self-expression (Miller 1999; WHO 2002: 5; Corrêa et al. 2008). This human rights framework emphasizes access (Shuttleworth and Mona 2002; Sanders 2007: 451) and requires the state to make "intimate realms" available and accessible for disabled persons in order for them to express their sexuality (Emens 2009).

Nevertheless, these efforts are still limited in their impact as even the CRPD, the most comprehensive and progressive document of disability rights, has not acknowledged the sexual rights of disabled people as an integral part of the disability rights scheme (Schaaf 2011). The challenge to future disability and sexuality scholarship, as articulated by Shakespeare and Richardson (2018), is to focus on "the extent to which everyone is able to attain the sexual citizenship and sexual rights to which they are legally and morally entitled to." (ibid:90).

3. Tort Law and Disablement

Our study of tort compensation for harm to sexual functioning is part of a wider effort to deepen our understanding of the role of tort law, specifically personal injury law, as a mechanism of state response to injurious events and their disabling consequences (Mor 2018). We consider tort law as the law of disablement: a primary arena for sorting out questions regarding the process of disablement, ranging from assigning responsibility for disabling events to awarding damages to injured persons to cover disability-related needs. We focus on damages as a platform for examining the bodily, material, social, and legal implications of disablement and the envisioned trajectories of life with a disability (Bloom and Miller 2011; Mor 2018).

The study of tort law from a disability perspective is quite recent, but its roots are older. Already in 1966 Jacobus TenBroek identified tort law liability rules as the foundation of the right of disabled people "to live in the world" (TenBroek 1996). More recently, there has been a growing interest in disability and tort law. Beginning with early writing on tort law's limited protection of disabled plaintiffs (Milani 1998), continuing to an abundance of writing on wrongful life and wrongful birth claims (e.g., Hensel 2005; Perry 2007), and then on to more recent exploration of dignitary torts as an avenue for protecting disability rights (Weber 2012).

Such studies align with those perspectives of tort law that seek to expose its underlying biases, from egalitarian (Able 1989; Keren-Paz 2013) and feminist or race-based perspectives (Bender

1993; Bitton 2003; Chamallas and Wriggins 2010), to studies regarding the role of tort law in constituting sexual identities (Bloom 2010; Pollard 2008), and in defining the “proper body” (Doron et al. 2018; Yucht 2019).

This study focuses on tort law’s underlying biases as they manifest in its interaction with persons who become disabled, rather than those with pre-existing disabilities. It follows the pioneering work of Bloom and Miller (2011) on the role of stigma in personal injury law, the writing on the bias that damages for pain and suffering entail regarding life with a disability (Bagenstos and Schlanger 2007), and the interrogation of injury from a disability perspective (Mor 2018). Personal injury court decisions exhibit those biases as lawyers and judges inevitably work under certain assumptions regarding life with a disability. Yet these biases and assumptions are also shaped by the legal framework within which they are formed and operationalized (Vanhala 2011), as the following analysis demonstrates.

4. Compensation for Harm to Sexual Functioning in Israeli Tort Law

So far, literature on tort law and sexuality has focused on *sex torts*, the branch of civil wrongs that addresses infringements of one’s sexual autonomy, including injuries resulting from sexual misconduct or relating to transmission of sexual diseases (Pollard 2008). Our study shifts the focus from sex torts to *sex damages* and sheds light on compensation to those whose sexual functioning was affected following an injurious event.

Our preliminary research revealed four types of sex damages that Israeli courts have developed and utilized throughout the years: (1) Nonmonetary compensations for loss of sexual enjoyment; (2) Monetary compensation that covers escort services; (3) Monetary compensation for sexually related medical expenses, including medical treatments and medications (e.g., pills, injections, and surgical interventions); and (4) Monetary compensation for sexual rehabilitation expenses, including sexual therapy, sexual rehabilitation, surrogate treatment, or any needed assistive equipment. The following provides a short explanation of each type and situates these damages in doctrinal and social context.

Sex damages attracted legal and public attention in Israel for a brief moment when the Supreme Court issued a decision in the matter of *Pedro v. Migdal Insurance Company* (2006) (hereinafter: *Migdal*) and announced that the awarding of damages to cover escort service-related expenses is illegal since it contradicts public policy by indirectly legitimizing prostitution and the trafficking of women.

Initially, the plaintiff requested the lower court to cover surrogate treatments and potency pills. The lower district court partly rejected his claim and awarded him instead with escort services and potency pills, anchoring its decision in the plaintiff's "inability to engage in a meaningful long-lasting relationship with a woman" (*Ploni v. Migdal Insurance Company* 2004: §7). On appeal, the Supreme Court ruled that awarding such compensation was illegal and replaced the lower court's award for escort services with an award for damages for loss of sexual enjoyment. The Supreme Court further framed the issue of sex damages in the broader context of sexual rights, announcing that "sexual relations are inseparably linked to the human life ... and [that] the suppression of such a vital instinct harms the dignity and ability of a person to fulfill his life as a human being" (*Migdal* 2006: §12). Subsequent court decisions continued to compensate for harm to sexual functioning by awarding different types of damages, but overlooked sexual rights.

The awarding of tort damages for escort services may sound odd, but rests on a world-wide phenomenon of extensive use of sexual services by disabled persons, mainly disabled men who use women's services (Sanders 2007). Societal and state responses to that phenomenon vary. While in the U.S. prostitution is mostly illegal and is largely socially condemned (Weitzer 2010), Germany and the Netherlands offer state funded escort and surrogate services, making sex services and support a matter of state subsidy (McRuer 2011; Perlin and Lynch 2016). In comparison, Israel has not criminalized prostitution but sanctions the profiting from another's prostitution (Penal Code 1977: §199), though it recently forbade the purchase of sex services (Penal Code [Amendment No. 132] 2018 (effective 2020)).

While damages for escort services attracted most public attention, it was the award of damages for loss of sexual enjoyment that paved the way for sex damages altogether. Loss of sexual enjoyment is a form of nonmonetary damages for harm to sexual functioning. US courts compensate for such harm under the umbrella of hedonic damages for loss of enjoyment of life, including four types of such damages that compensate plaintiffs or their spouses: loss of sexual function, loss of sexual organ, loss of sexual enjoyment (Bagenstos and Schlanger 2007; Ireland 2012), and loss of consortium (Carlile 2005; Sylvest 2004). In comparison, Israeli tort law applies only one type of nonmonetary damages, loss of sexual enjoyment, and does not acknowledge the spouse as an injured party entitled to such compensation.

Hedonic damages have already been criticized for showing a disability bias and for assuming that a life with a disability is a life of lesser value, or a less pleasurable life (Bagenstos and Schlanger

2007). As the disability critique shows, these assumptions are unfounded and grounded in a nondisabled perspective concerning the tragedy of becoming disabled; they overlook existing research regarding “hedonic adaptation” and ignore the role of society in disablement processes (Bagenstos and Schlanger 2007). Our study furthers this perspective and applies it to sex damages more broadly.

The *Migdal* decision highlighted an additional path of sex damages: monetary compensation for medical expenses. Medical expenses are a traditional form of monetary damages to cover needed treatments, therapies, rehabilitation programs, or assistive equipment. Receiving such compensations in Israeli tort law depends on two parameters: proving the medical needs of the plaintiff and showing that such needs are not already covered by the plaintiff’s healthcare insurance.

Damages for medical expenses are therefore directly affected by Israeli fiscal policy and its healthcare coverage policy. The Israeli National Health Insurance Law 1995, unified Israeli healthcare policy but left healthcare providers with leverage to decide what treatments and services to offer. Following the 1995 legislation, Israeli courts decided to compensate only for the expenses that exceed or differ from the plaintiff’s healthcare coverage (Karako-Eyal and Vered 2001). Accordingly, through the years, healthcare providers have voluntarily expanded their coverage for various treatments including sexual treatment and courts have covered the added expenses. Since 2012, sexual treatments have become officially part of Israel’s national healthcare plan, though actual coverage and co-pay policies vary, depending on each provider’s insurance scheme. In 2010 additional legislation passed that limits the claimed amounts from private insurance companies following a car accident to those provided by the public healthcare system (The Economic Efficiency Law 2010). As we show, these legislative and policy changes have affected court decisions concerning sex damages.

We divide medical expenses into two groups: medical treatment and sexual rehabilitation. Along with loss of sexual enjoyment and escort services, medical treatment is the third category of sex damages in our study, and refers to those damages that cover various medical treatments, such as pills, injections, and surgical procedures. The epitome of these treatments is the Viagra pill, which was introduced as a pain-free opportunity to treat male sexual dysfunction (Perlman 2001; Tepper 2000).

Sexual rehabilitation is the fourth category of sex damages explored in our study. It refers to various therapies and forms of support that aim to improve one’s overall sexual functioning, including counseling, dynamic therapy, surrogate treatment, and

assistive technologies. Among these various therapies, surrogate treatment has been, and still is, the most controversial because it involves actual sexual contact and is often confused with or compared to paid sex (Jeffreys 2008). In Israel, however, it has become a more established practice since eligible disabled soldiers have received sexual therapy, including surrogate treatment, as part of their state-sponsored rehabilitation program (Rosenbaum et al. 2014). Other claimants could enjoy such treatment to the extent that their healthcare provider chose to provide it. The 2012 reform expanded the scope of beneficiaries, though, as mentioned, actual coverage continues to depend on each provider's insurance scheme.

After presenting the theoretical and doctrinal background to our study we now present our methods, findings, and analysis.

5. Method and Analysis

This study offers a comprehensive analysis of the place of disability and sexuality in personal injury district court decisions. It examines whether and how courts' responses to harm to sexual functioning has changed over a 25-year period between 1991 and 2015: what remedies they offered, what understandings of disability and sexuality these court rulings manifested, and whether such changes were affected by the rise of disability rights and the changing understanding of sexuality. The main hypothesis for this study was that judicial decisions on harm to sexual functioning will demonstrate a shift, though probably a limited one, from an individual-medical to a more social-affirmative understanding of disability and sexuality.

We utilized a mixed-method model for content analysis of judicial decisions (Crocker 2005). We integrated quantitative and qualitative methods of content analysis to gain a thick understanding of the sociolegal construction of disability and sexuality in Israeli tort law. Content analysis has been described as the best method for quantitative research of judicial decisions (Hall and Wright 2008). Our study combined Hall & Wright's methods of quantitative coding and analysis of different measurable variables with a close reading of the cases, which provided us additional elements of the sociolegal construction of disability that a quantitative analysis alone cannot capture (Nielsen 2010; Webley 2010).

We used *Nevo*, the principal Israeli database of court decisions, to identify and locate all personal injury district court decisions from 1991 to 2015 that mention or address harm to the plaintiff's sexual functioning following an injurious event. We also searched additional databases to make sure we had gathered all available cases on the matter.

We focused on district courts, when sitting as trial courts. When sitting as first instance, Israeli district court decisions concern severe injuries that result in permanent disabilities that substantially impact various aspects of one's life and likely involve some harm to sexual functioning.¹ Moreover, trial courts have a unique role in the judicial system which makes them the frontier of legal claims; they are subordinated to higher court directives yet responsive to litigants and attorneys (Mather 1998; Silbey 1981). Their decisions are also based on unmediated assessment of all facts and evidence.

Case selection took several steps. First, we located all personal injury district court decisions by using the keywords: *accident*, *bodily harm*, *personal injury*, and *medical malpractice*; and searching for references to Israel's two major tort statutes: Torts Ordinance [New Version] (Torts Ordinance 1968), and Road Accidents Victims Compensation Law (1975). We then screened for final decisions, in which the court was sitting as first instance, that involve permanent disabilities (excluding interim and appellate decisions). We identified over 2000 personal injury cases that matched our criteria.

Next, we searched for those district court decisions that mention harm to sexual functioning, using the following keywords: *sexuality*, *sexual functioning*, *impotence*, *sexual relations*, *sexual intercourse*, *sexual services*, *escort services*, *sexual rehabilitation*, and *sexual therapy*. We started with a shorter list and expanded it as the research progressed until we were certain that we had covered all relevant keywords. The search yielded 99 district court decisions that mention, address, or compensate for harm to sexual functioning. Among these we were able to obtain a full text of 98 court decisions.²

We coded each case to gather relevant data, which included: case number, cause of action, name of judge, year of injury, plaintiff's age at time of injury, plaintiff's gender, and type of compensation awarded: loss of sexual enjoyment, medical treatment, escort services, or sexual rehabilitation.

We coded for gender and age since plaintiffs could vary by both parameters and since judges could also interpret the meaning of sexuality differently for both. In order to simplify our data analysis, we recoded the age variable into two binary categories: *Under 30* years of age and *Over 30* years of age. The cut-off age of

¹ Israeli district courts' jurisdiction as a trial instance in civil disputes extends to matters with estimated worth that exceeds 2.5 million NIS (approx. 715,000 USD).

² Because we could not find the full text of one ruling, we used the partial text that a later decision provided. Therefore, on some parameters our total number of cases is 98.

30 was chosen as a point in one's life where identity formation, including sexual identity, is considered complete and the phase of early adulthood ends (Erikson 1975; Sheehy 1996). This binary division also made age analysis more consistent with our gender analysis which also assumes binary categorization.

After locating all relevant court decisions, we performed a limited descriptive statistical analysis that allowed us to identify the trends and patterns of sexuality-related compensation. We could not perform a complete statistical analysis since our final population of cases was relatively small and because we were interested in tracking change over time and not in an aggregated analysis.

Next, we performed a document-based content analysis on all available court decisions (Crocker 2005), using all the parts in the text that mentioned, addressed, or compensated for harm to sexual functioning. Our goal was to enrich and thicken our quantitative analysis and to link courts' perceptions of disability and sexuality with the type of remedies that they award. We read each court decision closely to identify what discourse characterized each type of sex damages: the individual-medical approach, which exhibits a tragic, static, and medicalized view of disability, or the social-affirmative approach, which presents a hopeful, dynamic, and contextual view of disability.

Our main challenge was that judicial texts that discuss compensation are instrumental in their nature and typically produce a relatively thin and quite limited text for a full textual analysis. Accordingly, the part that discusses sexual harm and sexual damages is often short but may still contain controversies concerning the plaintiff's actual needs and revealing statements by experts' testimonies, the plaintiff's own testimony, and the court's overall assessment. In order to learn more about each decision's overall tone, we read the entire part that discusses compensation and searched for the meaning of disability that emerges from that text as a whole.

After completing both quantitative and qualitative analyses, we incorporated our findings into an integrated analysis. The combined analysis allowed for a full and comprehensive understanding of when and how courts address harm to sexual functioning, who are the compensated plaintiffs, and how court perceptions of sexuality and disability resonate in their decisions.

Our data collection method has several limitations resulting from the study's focus on published final judicial rulings. First, it disregards unpublished court decisions the number of which is unknown. This limitation stems from the publishing practices of legal databases. Second, it does not account for out-of-court or in-court settlements, which have become the dominant form of

settling disputes in the age of the vanishing trial (Alberstein 2018; Galanter 2004). Third, our database does not include the entire court file which would have allowed for a richer account of interpretations of disability and sexuality within decisions, particularly given the limited nature of our judicial texts. Finally, we do not have a full account of the entire claiming process regarding unfiled claims, nor litigants' or lawyers' perspectives on the matter.

6. The Timeline of Sex Damages

This section traces the changes in personal injury court decision concerning harm to sexual functioning over time. We located a total of 99 personal injury district court decisions that mentioned, addressed, or compensated for harm to one's sexual functioning, out of over 2000 decisions that were published between the years 1991 and 2015.

Table 1 organizes our data in a cumulative manner by year. It shows that 48 percent of court decisions (47/99) eventually awarded at least one type of sex damages. The most prevalent type of sex damages was rehabilitation (53 percent), followed by medical expenses (38 percent), then loss of enjoyment (28 percent), and, lastly, escort services (15 percent).

When placed on a timeline, as demonstrated in Chart 1, a general trend appears of a gradual increase followed by a gradual decrease in the number of cases that mention harm to one's sexual functioning and a similar pattern of increase and decrease in the number of cases that compensate for such harm.

Table 1 and Chart 1 combined show that the year 1994 marks the beginning of interest in sex damages with the first documented district court decision that mentioned harm to sexual functioning and compensated for such harm. The type of awarded damages was loss of sexual enjoyment. Between the years 1998 and 2000 courts acknowledged three additional forms of sex damages: compensation for medical expenses, escort services, and sexual rehabilitation.

In the following years, an increasing number of court decisions mentioned harm to sexual functioning, reaching a peak in 2006. Similarly, cases that awarded damages for such harm increased and reached a peak in 2007. The increase was evident in all types of sex damages, with plaintiffs occasionally receiving more than one type of damages.

From 2007 onwards we witness a gradual decline in the number of cases that mention and compensate for harm to sexual functioning. This decline characterizes both the general pattern of all cases and the pattern for each type of damages.

Table 1. Overall Cases by Compensation, Type of Damages, Gender, and Age across Time

General	Types of Damages			Gender		Age		Overall Compensated	Rehabilitation	Services	Escort	Overall Compensated	Overall Compensated	Overall Compensated	Overall Compensated
	Loss of			Male	Female	Young	Older								
	Employment	Medical	Expenses												
1991	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1992	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1993	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1994	1	1	0	1	0	0	1	1	0	0	1	1	1	0	0
1995	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1996	3	1	0	3	0	0	3	3	0	0	1	1	1	2	0
1997	1	0	0	1	0	0	0	0	0	0	0	0	0	1	0
1998	4	3	2	4	3	0	4	3	0	0	2	2	1	0	0
1999	4	1	0	2	1	0	4	1	2	0	4	1	0	0	0
2000	4	1	0	4	1	0	4	1	0	0	4	1	0	0	0
2001	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0
2002	8	4	1	7	4	1	0	4	1	0	4	3	4	1	1
2003	7	5	1	6	5	1	0	5	4	3	5	4	2	1	1
2004	5	5	3	5	5	0	0	3	3	3	3	2	2	2	2
2005	4	2	1	4	2	0	0	2	1	0	2	1	2	1	1
2006	11	2	0	9	2	0	0	7	2	1	7	1	3	1	1
2007	10	7	4	10	7	0	0	7	5	3	7	5	3	2	2
2008	7	3	1	5	2	2	0	3	2	2	3	2	4	1	1
2009	7	4	1	7	4	0	0	6	3	2	6	3	1	1	1
2010	3	2	0	3	2	0	0	2	0	0	2	1	1	1	1
2011	5	1	0	3	1	2	0	4	2	0	4	1	1	0	0
2012	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0
2013	4	2	0	4	2	0	0	2	1	1	2	1	2	1	1
2014	4	2	0	3	1	1	1	1	1	1	1	1	3	1	1
2015	4	1	0	3	0	1	1	1	1	1	1	1	0	3	1
Total	99	47	13	87	47	12	4	60	32	38	14	38	38	14	14

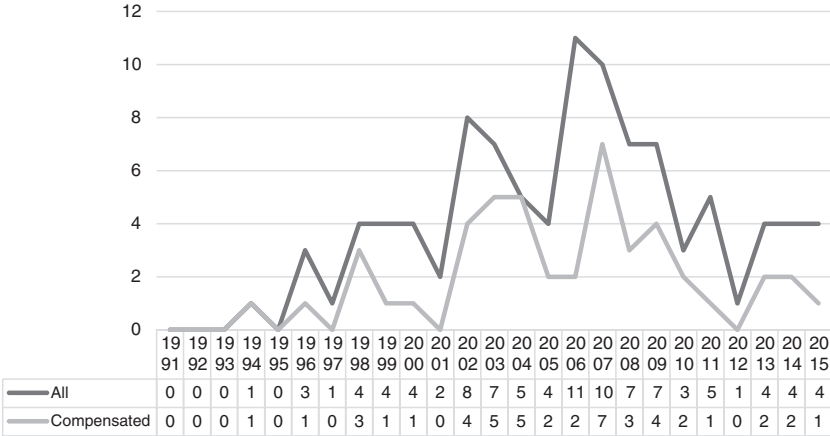


Chart 1. Sex Damages Cases across Time.

A more nuanced picture emerges when looking at specific types of sex damages, as presented in Charts 2–5. These charts reveal that each category of sex damages follows its own course. First, we witness the rise and fall of damages for loss of sexual enjoyment. It is the first category of damages and it appears in 1994 and 1996, then resurfaces in 2002, grows dominant in 2007, declines afterwards and totally vanishes by 2010.

Second, we notice the relatively steady presence of damages for medical treatment from 1998 onward with a slight peak in 2003–2004. After 2010 we see the irregular appearance of such damages, with zero to one cases per year, which we link to the changes in healthcare coverage for medical treatments.

Third, we observe the appearance of damages for escort services in 1998 and their dramatic disappearance following the 2006 *Migdal* decision. Between the years 1998–2006 such damages are largely steady with one case per year until they are banned.

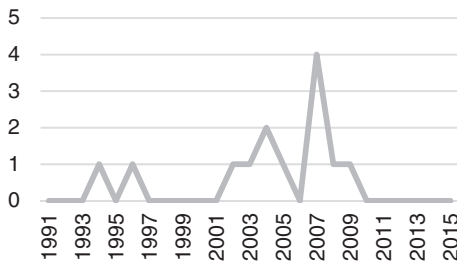


Chart 2. Damages for Loss of Sexual Enjoyment across Time.

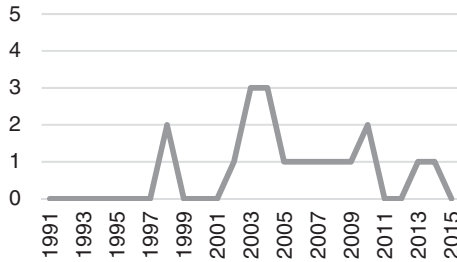


Chart 3. Damages for Medical Treatment across Time.

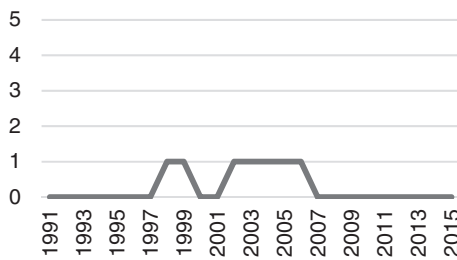


Chart 4. Damages for Escort Services across Time.

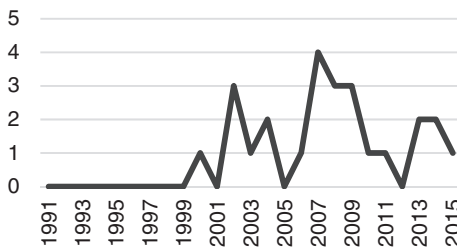


Chart 5. Damages for Sexual Rehabilitation across Time.

Fourth, we identify the growing dominance of damages for sexual rehabilitation, which have declined but not vanished. Damages for sexual rehabilitation first appear in the year 2000, grows dominant after 2002, and reaches a peak in 2007. Undoubtedly, from 2007 onwards, despite an apparent decline—which is, too, at least partially, related to changes in healthcare coverage—sexual rehabilitation has become the ruling form of sex damages.

6.1 Gender and Age across Time

A striking finding of our research is that sex damages overwhelmingly benefit males over females and younger persons over

older persons, although both trends are changing. We found gender disparities at all levels of analysis, including overall cases, compensated plaintiffs, and the type of compensation awarded. Thus, only 12 percent of all relevant cases involved female plaintiffs (12/99) and only 9 percent of the cases that awarded sex damages benefitted women (4/47). The disparities in success rates show that 49 percent of male plaintiffs eventually received sex damages (43/86) compared to 33 percent compensated female plaintiffs (4/12). Moreover, even though females asked courts for sex damages already in the year 2000, they were awarded such damages only in 2008, 14 years after the first male. Remarkably, during the period of increase in sex damages, from 1994 to 2007, no woman has been awarded such compensation.

A closer look at gender disparities within each type of sex damages reveals another layer of bias: while male plaintiffs received all four types of sex damages females received damages only for sexual rehabilitation and loss of sexual enjoyment. While we found no record of a female plaintiff who requested compensation for medical treatment, three women asked for escort services, and even evoked the issue of gender bias, but all were rejected. All four compensated female plaintiffs received damages for sexual rehabilitation. One female plaintiff received damages for loss of sexual enjoyment together with sexual rehabilitation.

The two age groups examined in our study, above and under the age of 30, have also demonstrated distinct patterns of compensation, which reveal an apparent age bias in mentioning and compensating for harm to sexual functioning. Our total population of cases for age analysis was 98 since age was missing from one court decision. Only 39 percent of court decisions that mentioned harm to sexual functioning involved plaintiffs over the age of 30 (38/98) and only 30 percent of compensated plaintiffs were over 30 (14/46). Moreover, success rates within each age group show that 53 percent of plaintiffs under the age of 30 (32/60) received sex damages, compared to 37 percent above 30 (14/38).

When placed on a timeline, as presented in Table 1, we see that plaintiffs over 30 started requesting sex damages in 1996, but received such compensation only 6 years later, in 2002. However, as time progressed, the gaps have narrowed and starting from 2010 the numbers of compensated plaintiffs are quite similar and in the last 2 years older plaintiffs take the lead in raising claims regarding harm to sexual functioning.

A closer examination of age patterns by type of damages reveals additional disparities. While both groups received all four types of damages, compensation rates and patterns vary. Plaintiffs under the age of 30 received mostly sexual rehabilitation (53 percent), then medical expenses (38 percent), loss of enjoyment

(19 percent), and escort services (17 percent). Among plaintiffs over the age of 30, sexual rehabilitation was also most common (57 percent), but was followed by loss of enjoyment (50 percent), then medical expenses (36 percent), and escort services (7 percent). Note, that plaintiffs sometimes received more than one type of damages.

When comparing compensation rates within each type of sex damages we see that older plaintiffs, particularly males, received more damages for loss of enjoyment but less damages that enabled them to enjoy sex. Thus, older males, over age 30, eventually comprised nearly half of compensated plaintiffs who received damages for loss of sexual enjoyment (6/13), 17 percent of those awarded escort services (1/6), 29 percent of those awarded medical treatments (5/17) and 32 percent of those awarded sexual rehabilitation (8/25).

Combining age and gender altogether reveals that young males were 65 percent of all compensated plaintiffs while older males comprised 26 percent of all compensated plaintiffs. In contrast, young females and older females have an equal share of 4 percent each among compensated plaintiffs.

7. The Changing Meaning of Disability and Sexuality

The following presents our insights from a close reading of all relevant cases. We grouped those cases by type of sex damages and analyzed the understanding of disability and sexuality that each type employs, the plaintiffs it benefits, the evolutionary path that each type presents, and the overall story they tell.

7.1 Loss and Suffering

Loss of sexual enjoyment was the first type of sex damages that Israeli district courts awarded. It was on the rise from 1994 to 2007, then started to decline and disappeared as of 2010. It began with a strong gender and age bias, as it benefitted solely young males. However, with time, older males, above 30, became a majority among its beneficiaries, while females remained marginal, with only one woman in our survey who received this type of sex damages.

Our textual analysis revealed that decisions that award this type of damages are typically highly tragic, highly individual, mostly medical, focus on the functioning of male genitalia, and emphasize the devastating impact of the injury on the plaintiff's future chances of forming a family and have children. The following substantiates these observations.

The tragic tone of these decisions is already implied in the very notions of *pain and suffering* and of *loss of sexual enjoyment*, which convey the message that the prospects of pleasure and joy are gone and cannot be corrected. If tort law's compensation is primarily about corrective justice and "making the person whole again" then this type of sex damages compensates for the lost opportunity to become whole again, specifically in terms of sexual and reproductive functioning. From a disability perspective, this is the epitome of tort law's bias against disabled persons' life as life of misery and despair (Bagenstos & Schlanger, 2007).

The lack of prospects to marry and form a family has played a central role in this narrative of tragedy, mostly in early decisions, as the following passage demonstrates: "The plaintiff was injured while he was a young person. He will be confined to a wheelchair for many years. He has fecal incontinence and is dependent upon others' assistance. His sexual functioning has been harmed and he is impaired by impotence. He has not formed a family yet, he should undergo sexual rehabilitation treatments, but it is doubtful that he would ever be able to get marry and form a family" (*Agbaria v. Zamir Construction* 2004). This close link between sexuality, marriage, and young age was particularly evident in several rulings where courts compensated for "impotence and loss of prospects to marry" altogether (e.g., *Avitan v. Clalit Medical Services* 2007; *Fanon v. State of Israel* 1996).

The overall text of rulings that awarded damages for loss of enjoyment was not only tragic but also individualistic in that they typically focused on the individual's impairment and overlooked social biases and barriers when discussing the implications of the injury on the plaintiff's life. Such rulings often assumed and emphasized the plaintiff's inability to work (e.g., *Agbaria v. Zamir Construction* 2004; *Fanon v. State of Israel* 1996).

Compensation for loss of sexual enjoyment was measured in terms of basic sexual functioning and relied on medical documentation regarding the claimant's impotency or severe urological harm. Rejected claims involved severe injuries to sexual functioning that did not meet the court's medical standards for compensation and left claimants with no remedy. In those cases, sexual rehabilitation could have been suitable, but it seems that lack of awareness among lawyers, judges, and even medical experts prevented such compensation.

The gender bias in those decisions was implicit but still evident. All claims that female plaintiffs raised involved highly tragic stories, yet all except one were rejected. Medical experts played a crucial role in those rejections, presenting narrow medical understanding of sexuality. In one rejected claim the court adopted the gynecology expert's diagnosis of the plaintiff as "suffering from lack of

enjoyment during sexual intercourse ... which may severely affect her during sexual contact and in labor but has no impact on her daily functioning” (*Shirav v. Ararat Insurance* 1999). Another rejected claim demonstrates the construction of female sexuality as elusive against the perceived tangible anatomy of male sexuality. The gynecology expert supported the plaintiff’s testimony regarding “lack of sensation in her sex organs and loss of enjoyment from sexual intercourse,” yet treated it as a subjective feeling: “you can either believe it or not. Only a psychiatrist can medically help, we [gynecologists] have nothing to offer” (*Ericson v. Kibbutz Zikim* 2002). Moreover, the expert testified that “anatomically, she maintained all possibilities of having sex,” thereby ignoring all nonanatomical aspects of sexuality and pleasure.

With time, court decisions that awarded damages for loss of sexual enjoyment were less focused on procreation and more on enjoyment. They still focused on basic sexual functioning and relied on medical diagnosis of impotence and urological impairment, but also considered the plaintiffs’ experience of pain. These rulings included older plaintiffs who were married with children. Among them was the only ruling that awarded such damages to a 40-year-old woman who experienced birth complications that left her in the hospital for a long time, away from her baby, and that resulted in severe injury including the loss of sensation in sexual organs (*Socher v. Wolfson Medical Center* 2008).

The essence of the tragedy in the majority of those decisions that discuss loss of sexual enjoyment, particularly the early ones, was the plaintiff’s perceived inability to form a family and to have children. Experiencing severe pain during sexual intercourse was insufficient to establish such claim. The title of this type of damages is therefore misleading as it seemingly concerns loss of enjoyment, but implies loss of ability to procreate. This may be the reason why young males who had not yet formed a family were initially the only, and later the majority, beneficiaries of this type of damages. It may also explain why the only compensated woman was a mother who was separated from her baby immediately after giving birth. Still, the very existence of damages for loss of enjoyment demonstrate a recognition that sexuality matters and that disabled people have sexual needs.

7.2 Neutralizing Sexuality

Compensation for medical treatment first appeared in two cases in 1998, then resurfaced in 2002, and throughout the years became the second most dominant form of sex damages, after sexual rehabilitation. This form of compensation shows a particularly strong gender bias since available medical treatments focus

on men with difficulties relating to strictly anatomic sexual functioning (i.e., erection and penetration), and offer them treatments that involve injections, pills, and surgical interventions (prostheses implants). Consequently, no woman has ever requested or received such damages. It also shows an age bias as it initially benefitted young males, but with time it expanded to older males.

Court decisions that awarded such compensation were of mixed nature. Unlike the highly tragic tone of decisions that awarded damages for loss of sexual functioning, the tone of these decisions was inconsistent. They were more optimistic with regard to the prospects of sexual life but they comprised a mix of tragic and nontragic views with regard to the plaintiffs' future possibilities in other realms, such as spousal relationships or employment. These decisions were nevertheless strictly medical and focused on basic functioning of male genitalia.

While loss of sexual functioning is inherently rooted in a tragic understanding of disability as misery and a deficit, medical treatment provides a less tragic and more neutral remedy, both from medical and legal perspectives. Since medical expenses are a standard noncontroversial form of compensation, granting such compensation plainly relied on medical experts' testimonies and did not rest on a narrative of misery and loss. The spread of this remedy may be therefore closely tied to its relative ease of proof as it has largely depended on simple medical assessment. When a dispute has emerged, it has mainly focused on the coverage provided by the plaintiff's healthcare plan. Throughout the 2000s, partial coverage for potency pills has risen, and since 2012 it has officially become part of the national healthcare scheme. Receiving court compensation therefore requires plaintiffs to prove that their coverage is only partial or insufficient.

The nature of these claims has also allowed judges to separate reproduction and family life from sexual life. In one case, the defendants argued that the plaintiff would not need pills since "he would not be able to bring children to the world" (*M.T. v. HaMagen Insurance* 2010). To this the judge replied: "I cannot accept the claim that in absence of ability to have children the plaintiff will not need this medication" (ibid). Most cases in this group, though, plainly awarded medical treatment without addressing the plaintiff's prospects for any kind of relationships. When they did, age became an important factor. Thus, cases that involved a married, and often older, plaintiff presented medical treatment as a means to maintain relationships. When the case involved a single, and often younger, plaintiff, courts tended to assume very low chances of establishing long-term relationships. Still, this assessment relied on medical experts' testimonies, even though a plaintiff's marriage prospects are not a matter of

medical knowledge. Thus, in *Ploni*, the court stated that “according to the medical experts the plaintiff’s chances of finding a spouse are low to highly unlikely” and that he “will not be able to establish meaningful long-term relationships” (*Ploni v. Migdal* 2004).

This form of damages also demonstrated how medical developments affect the understanding of disability as suffering. The tone of these court decisions varied according to the type of medical treatment they provided. When the remedy was Viagra, the tone was more tolerant. It seems that the liberating message of the Viagra pill has also liberated courts from linking sexuality to spousal potential. Other cases, which discussed injections or prosthetic devices, expressed hesitation and emphasized the complexities that such treatments entail, describing for instance injection-based treatment as making “any sexual contact unpleasant” and hinting that the plaintiff is better off without them (*Abu Ahmad v. Migdal Insurance* 1998; see also *Shay v. Lod Cigarettes, LTD* 2005).

Some of these rulings exhibited growing awareness of social barriers that the plaintiffs experienced or might experience in other realms, such as employment. Thus, courts mentioned the higher chances of disabled persons to be discharged from work in times of economic strain, the problem of inaccessible work environments, and difficulties in discussing one’s disability in a job interview.

All in all, it seems that the emergence and success of damages for medical treatment were closely linked to Viagra’s sexual revolution as it turned loss of sexual functioning into a treatable condition. With time, these types of damages have also expanded to benefit older males. Both the understanding of disabled persons as sexual persons and the growing awareness of social barriers suggest that court decisions were affected, at least to some extent, by broader developments regarding the meaning of disability and the status of disabled people in society. Nevertheless, the understanding of disability and sexuality in the majority of those decisions was limited in several respects: it benefited males only, focused on male anatomy, and overlooked the relational aspects of human sexuality.

7.3 Sex with Despair

Compensation for escort service-related expenses tells the most dramatic story. Between 1998 and 2006, Israeli courts awarded sex damages in the form of escort service expenses. As discussed earlier, this practice stopped abruptly in 2006 when the Supreme Court declared in *Migdal* that such compensation contradicts public policy. Throughout the years, seven plaintiffs were awarded damages for escort services and 12 more requested such damages but were rejected. Damages for escort services were

particularly biased as they overwhelmingly benefitted very young males: five out of six compensated plaintiffs were under age 30 (16–23 years old) and no female ever received such compensation, though three female plaintiffs requested it.

Perhaps because of their controversial nature, court decisions that contemplated damages for escort services included elaborate and revealing discussions. Overall, they demonstrated a partial shift in the understanding of disability and sexuality: they acknowledged that disabled people can have sexual lives, but these were still seen as highly tragic since such life was portrayed as miserable and lonely and the need for sex services served to attest to such misery.

In acknowledging that disabled people can have sexual lives, these court decisions have also shifted the emphasis from sexual anatomy to sexual relations. Courts were not focusing on the narrow physical aspects of sexuality, but rather on their relational aspects. Nevertheless, they could not envision those plaintiffs in long-term relationships. In *Ken-dror v. Cllal Insurance* (1999), a 17-year-old plaintiff experienced a traumatic head injury in a motorcycle accident leading to a full paralysis. The court stated that “there is no doubt that the plaintiff has no chance of establishing normal relationships with women,” and added that if he ever expressed sexual needs, he should be satisfied through sex services (ibid:§37). These court decisions have generally manifested a tragic view of life with a disability and disbelief in a plaintiff’s potential to lead a meaningful life, including work or family life.

The assumption that the plaintiff will not be able to have normal relationships has led courts to award damages for escort services even when a plaintiff has in fact requested sexual rehabilitation. Sexual rehabilitation has apparently been reserved only for those with positive prospects for family life or stable relationships. In *Migdal’s* first round in court (*Ploni v. Migdal Insurance Company* 2004), the plaintiff requested surrogate treatments, but was denied because of his “inability to engage in a meaningful long-lasting relationship with a woman.” The court reasoned that “the essence of the surrogate treatment is to enable someone who has found a partner and has difficulties in sexual functioning, to receive guidance... in order to actualize their intimate relations” (id). However, according to medical expert testimonies the chances for that to happen are “extremely low to none” (id). It is only ironic that *Ploni* will eventually be remembered as the plaintiff who wanted escort service.

Court decisions have also been inconsistent in assessing the likelihood that the plaintiff will actually use sex services. In one case the court awarded escort services while stating that “although

the plaintiff did not testify, it seems reasonable to assume that he will need this service” (*Sharon v. Mizrahi Moshe* 2002). In another case, even though the expert’s testimony did not mention escort services, the judge awarded such compensation “in order not to treat the plaintiff unfairly” (*Mimony v. City of Jerusalem* 2005). In contrast, in other cases, courts insisted on sufficient proof for the need and actual use of escort services (*Dahari v. Navaro* 2004).

Courts have been particularly strict with female plaintiffs. Three female plaintiffs requested compensation to cover escort services expenses; none won. Two of them highlighted the possible gender bias in this type of compensation. While the court agreed, it eventually denied compensation because of lack of evidential support for past or future use of sex services (*Aikin v. The Israeli Phoenix Insurance Company* 2006; *Mizrahi v. Arie* 1999). Two of the above cases raised possible emotional difficulties. In one case the court reasoned that “the mental willingness to receive sex services, apart from any emotional attachment, and in return for a payment is a matter of personal taste and not a standardized uniform solution” (*Mizrahi v. Arie* 1999). In another, the court discussed the plaintiff’s past sexual encounters with men which left her with feelings of “disgust and self-hatred” (*Aikin v. The Israeli Phoenix Insurance Company* 2006) that may arise again following “an episode of ‘Love for an Hour’ without any emotional connection” (ibid). Such protective comments and concerns were never directed toward men.

Damages for escort services, then, exhibited a transitional phase in the awarding of sex damages: they allowed young males to engage in nonprocreational sexual activity, but realized that their sexuality depended on female prostitution. While early decisions dismissed this difficulty by explaining that they merely acknowledged a reality, and were not affirming or encouraging it (e.g., *Ken-dror v. Cllal Insurance* 1999), eventually the Supreme Court announced that such damages are illegitimate. It seems, though, that banning escort services has paved the way to the dominance of damages for sexual rehabilitation, while also contributing to the overall decline of sex damages.

7.4 Relationships and Hope

Compensation for sexual rehabilitation was the last type of sex damages to emerge. It first appeared in 2000 and gradually turned dominant, until eventually, after 2007, in the aftermath of the *Migdal* decision, it became the ruling form of sex damages in Israeli law. Moreover, over time, court decisions that awarded sexual rehabilitation have tended to be less tragic and more diverse in age and gender, including four cases of compensated females and a growing number of compensated plaintiffs over 30 years old.

Our reading of the cases reveals a gradual yet fundamental shift from a tragic and narrow approach to disability and sexuality, to a more affirmative, comprehensive, and inclusive approach. While these decisions were still individual and medical in their understanding of disability, they expressed a more dynamic and hopeful view of disabled person's sexual functioning and sexual relations.

Early cases involving sexual rehabilitation demonstrated a highly medicalized understanding of disability and a significant reliance on medical experts' opinions. These rulings awarded damages almost exclusively to male plaintiffs, mostly to those with urological harm, who lack physical capacity to engage in sexual acts through penetration. They also tended to focus on fertility and required stable relationships as a precondition for sexual rehabilitation. Thus, the first decision that awarded sexual rehabilitation portrayed the plaintiff as someone who "will be denied any sensation of enjoyment and his ability to fertilize a future spouse is doubtful" and described sexual rehabilitation as a process of "producing semen for fertility purpose" (*Furman v. The Pool* 2000). Such assumptions sometimes prevented younger plaintiffs from receiving sexual rehabilitation in the form of surrogate treatment and led courts to award damages for escort services instead (e.g., *Ken-Dror v. Cllal Insurance* 1999; *Ploni v. Migdal Insurance* 2004).

The early narrow understanding of sexual rehabilitation has led courts to dismiss many claims for such damages, often without much elaboration. In others, courts seem to confuse sexual rehabilitation with sex services. In one case the court reasoned that since "the plaintiff expressed his desire to have sex, he should be allowed to do so," but "due to his severe disabilities he should receive these services by a skilled surrogate ..." (*Chibotaro v. Sahar Israeli Insurance Company* 2002). Still, these decisions presented a change because rehabilitation offered a hope for maximizing one's functioning.

Over time, compensation for sexual rehabilitation has become routinized. Often, damages have been awarded without much elaboration, similarly to other medical expenses, together with additional damages for rehabilitation-related needs (e.g., *Shachar v. Cllalit Medical Services* 2009). These decisions were characterized by dry and straightforward language, but presented a new understanding of sexual rehabilitation as "medicines and treatments intended to improve the insured's sexual functioning" (*Ploni v. City of Jerusalem* 2008), shifting the focus from *loss* to *improvement*. Eliminating damages for escort services therefore forced lower courts to reconsider sexual rehabilitation.

In 2008, the first woman to receive sex damages was awarded compensation for sexual rehabilitation. It was also the first

decision to awarded “a sequence of therapy sessions for instruction and guidance” (*Gorodtzky v. Elite Insurance Company* 2008). From this point onward, the framing of sexual rehabilitation has largely changed from fertility and functioning to counseling and guidance. In *Shamir v. Orenbuch* (2009) the plaintiff (age 18) was awarded compensation for “assessment and instruction in a sexual rehabilitation clinic” as well as possibly “future fertility related counseling and therapy.” Procreation was no longer the sole focus of sexual rehabilitation but rather an optional addition.

The two last decisions in our survey have further expanded sex damages to the realms of assistive technology and couples’ intimacy. In one case the court awarded a 55-year-old man with a sum to purchase a designated chair to be used during sex (*A.K. v. The Pool* 2014). In another case the court insisted on providing the plaintiff, a 35-year-old woman, with an accommodated double bed to restore intimacy with her husband (*M.T. v. Abu Midgam* 2015). The judge rejected the expert’s recommendation of a single bed, explaining that “her opinion addresses only the plaintiff’s physical needs.” The judge wondered further why the plaintiff and her husband should “be separated in their own bedroom due to the accident and why the plaintiff’s husband should be ‘exiled’ from her till the end of their shared life. ... This is inconceivable ... these are trivial human needs of a couple” (ibid). The inclusion of a double bed indicates a broad understanding of sexual intimacy and a rejection of narrow medical standards in tort compensation. The decision’s overall positive and hopeful view of disability is illustrated though the plaintiff’s own words, as reiterated by the court: she “just wants to be home and be happy in her life” (ibid).

A shift was evident also in professional knowledge relied upon by the court: from strictly medical knowledge and expertise to other forms of therapeutic care. While in early rulings medical experts have dominated the field, with time, rehabilitation experts turned dominant. Moreover, with time the role of sexual therapists has changed from marginal and discredited profession to independent expertise with distinctive knowledge that is not inferior and possibly superior to that of other medical and rehabilitation experts. This development seems to be a part of a larger trend of growing participation and differentiation of rehabilitation experts in tort litigation. We have noticed that in those cases that awarded sexual rehabilitation courts relied on various rehabilitation experts, including physical therapy, hydrotherapy, speech therapy, and therapeutic horseback riding (see e.g., *A.K v. The Pool* 2014).

Despite these seemingly positive developments, establishing such claims had its toll as it posed two major difficulties. First,

such damages required a complex rehabilitation assessment that necessitated expensive expert opinions. Second, ever since sexual rehabilitation became part of the healthcare national insurance coverage scheme in 2012, claiming such damages have become harder, as courts have tended to dismiss such expenses as already covered, often neglecting to inquire whether that coverage suffices the plaintiff's needs or whether a co-pay is fairly priced.

With time, damages for sexual rehabilitation have shifted to employ a broader understanding of sexual relations, a more progressive approach to sex damages as a means to restore sexual enjoyment, and a more inclusive approach to sexual pleasure. In return, the growing inclusion of women and older persons, have contributed to the further expansion of sexual rehabilitation to the realms of guidance, counseling, intimacy, and assistive equipment. Their decline may be related to inherent difficulties in establishing such claims, on the one hand, and to the greater success of sexual rehabilitation, on the other hand, which resulted in their "mainstreaming" into the national healthcare plan. The provision of sexual treatment as part of general healthcare services made sexual rehabilitation financially available to a broader group of injured persons without the need to turn to courts, though coverage was sometimes partial.

8. Conclusion

This study explores how courts define sexuality of disabled persons in absence of a formal right to sexuality. It examines whether and how changes in the understanding of disability and sexuality have infiltrated judicial decisions in the realm of tort law, a field that we characterize as the law of disablement, but which is ungoverned by direct disability rights legislation.

The study provides empirical insights on the scope of torts compensation for harm to sexual functioning and the rhetoric of judicial decisions awarding such compensation in Israel between the years 1991–2015. The findings show that overall courts awarded such compensation in a limited number of cases: in a period of 25 years only 47 plaintiffs received sex damages while a substantially higher number of plaintiffs received no such compensation.

However, those cases that awarded compensation, show important variance and change over time with respect to the scope of compensation, the types of sex damages awarded, their underlying logic, the identity of their beneficiary, and the meaning of disability and sexuality that those decisions embody.

With regards to the trends in the scope of sex damages, compensation rose between the years 1994 to 2007 and then dropped

between 2007 and 2015. The overall majority of compensated plaintiffs were young males, even though over time the composition of compensated plaintiffs became more diverse. Our study identified four types of sex damages and found that each type shows a distinctive evolutionary path and benefits a different group of beneficiaries along age and gender lines.

The combined quantitative and qualitative analysis allowed us to identify several overarching shifts. First, it reveals a change in the understanding of disability from a tragic view to a more hopeful view, though still largely individualistic and medical in its orientation. Second, it shows a change in the view of sexuality from one that focuses on male anatomy and procreation to one that acknowledges the relational aspects of human sexuality. Third, it identifies a change in the form of awarded compensation from nonspecific damages for loss of sexual enjoyment to specific damages for medical treatment and sexual rehabilitation. Last, it presents a change in the characteristics of compensated plaintiffs from such that exclusively benefit young males to a more inclusive group that includes females and older plaintiffs.

How do we understand the connection between the social changes in the understanding of disability and sexuality and the changing patterns and meanings of sex damages? Clearly, our findings do not allow us to draw a causal link between the two. This is mostly because the judicial decisions in our pool do not reference to these changes, either explicitly or implicitly.

Nevertheless, we can point at some of the sources, processes, and forces that have shaped these shifts. The overall rise and decline in compensation for sex damages and the changing rationales and composition of beneficiaries is associated with larger developments, some legal, some nonlegal, some within and some outside the court setting.

The rise in compensation for sex damages and the changes in judges' rhetoric and in the type of awarded damages demonstrate a move toward a more social, affirmative, and inclusive approach to disability and sexuality. Such move was not facilitated by a direct disability rights legislation or by conscious legal mobilization of tort claims but it correlates with the growing acceptance of both disability and sexuality. It was clearly supported by changes in the medical and therapeutic arenas regarding sexual treatment, notably the introduction and the growing availability of potency pills and the growing acceptance of sexual rehabilitation treatments, including surrogate services. When plaintiff brought such claims before lower courts they were accepted by courts with the usual tools they use to assess specific damages for medical treatment.

Still, change was slow and limited both in scope and in orientation as decisions remained mostly individual and medical

though more dynamic and hopeful. We attribute this to the following factors. First, the absence of a formal right to sexuality or an available relevant disability rights framework courts operate with no legal vision or guidance that could steer them in that direction. Second, the slow diffusion of the social-affirmative approach to disability and sexuality to all realms of law, whether or not governed by direct disability rights legislation. Third, the nature of tort law as a field and the legal environment in which such decisions are produced: prevalent understanding of tort law does not view it as disability law, let alone the law of disablement; moreover, the nature of the judicial texts in compensation law is instrumental, thin, and narrowly focused on the injuries and the related needs of the plaintiffs.

The subsequent decline in sex damages raises different questions, mainly because it seems to contradict the social, affirmative, and inclusive trend described above. We attributed this post 2006 shift to several developments. First, is the *Migdal* decision, which blocked damages for escort services. Immediately after that decision damages for sexual rehabilitation have risen and eventually became the dominant form of compensation. However, establishing such claims posed greater difficulties for plaintiffs as it required complex medical assessment.

Outside courts, two separate reforms directed plaintiffs to seek sexual rehabilitation through the national healthcare insurance scheme. One was the Economic Efficiency Law of 2010 that limited claimants to the medical treatment provided by the public healthcare system. The second was the change in healthcare policy which exhibited growing acceptance until in 2012 sexual rehabilitation became part of the national healthcare insurance scheme. Consequently, some claims were already covered by the claimant's healthcare insurance, yet others were too easily rejected by courts due to the existence of such coverage, often neglecting to inquire whether specific coverage was sufficient for the plaintiff's actual needs. Nevertheless, the availability of such coverage attests to the growing acceptance of treatments relating to sexual functioning, whether they are injury related or not.

The picture that emerges from this study is one in which courts have responded—intentionally and unintentionally—to the shifting social understanding of disability and sexuality, both in their decisions whether to recognize and award particular types of damages and in their choice of language and rhetoric accompanying such decisions. At the same time, additional arenas and institutions play a central role, operating alongside and in tandem with courts, in shaping the trends of sex damages, and, ultimately, in forming the options available to individuals following a disabling event.

Ultimately, we see how the three layers of the Israeli legal framework, comprising of disability rights, healthcare policy, and tort law, altogether, shape the landscape of legal claims and demonstrate how in such multilayered scheme, torts, welfare, and rights are interconnected. Despite the expected slow and limited change, tort law indeed emerges as a significant arena to observe the ways courts shape the meaning of disability and sexuality. This study calls for further research on additional factors and actors that operate at intermediate levels, shape the claiming process, and become significant in forming judge's rulings.

References

- Able, Richard L. (1989) "A Critique of Torts," 37 *USLA Law Rev.* 785–831.
- Alberstein, Michal (2018) "Judicial Conflict Resolution: Towards a Jurisprudence beyond Dispute," 11 *Dim Udvarim* 17–76 [Hebrew].
- Bagenstos, Samuel R. (2009) *Law and the Contradictions of the Disability Rights Movement*. New Haven, London: Yale University Press.
- Bagenstos, Samuel R. & Margo Schlanger (2007) "Hedonic Damages, Hedonic Adaptations, and Disability," 60 *Vanderbilt Law Rev.* 697–745.
- Bell, David & Jon Binnie (2000) *The Sexual Citizen: Queer Politics and Beyond*. Cambridge: Polity Press.
- Bender, Leslie (1993) "Overview of Feminist Torts Scholarship," 78 *Cornell Law Rev.* 575–96.
- Bitton, Yifat (2003) "Feminine Life-Experience and the Foreseeability of Harm," 33 *Hebrew Univ. Law Rev.* 585–654 [Hebrew].
- Bloom, Anne (2010) "To be Real: Sexual Identity Politics in Tort Litigation," 88 *North Carolina Law Rev.* 358–425.
- Bloom, Anne & Paul Steven Miller (2011) "Blindsight: How We See Disabilities in Tort Litigation," 86 *Washington Law Rev.* 709–53.
- Boni-Saenz, Alexander (2015) "Sexuality and Incapacity," 76 *Ohio State Law J.* 1201–53.
- Carlile, Alisha M. (2005) "Like Family: Rights of Nonmarried Cohabital Partners in Loss of Consortium Actions," 46 *Boston College Law Rev.* 392–421.
- Chamallas, Martha & Jennifer B. Wriggins (2010) *The Measure of Injury: Race, Gender, and Tort Law*. New York: NYU Press.
- Corrêa, Sonia, Rosalind Petchesky, & Richard Parker, eds. (2008) *Sexuality, Health and Human Rights*. London, New York: Routledge.
- Crocker, Dianne (2005) "Regulating Intimacy—Judicial Discourse in Cases of Wife Assault (1970 to 2000)," 11 *Violence Against Women* 197–226.
- Davis, Lennard J. (1995) *Enforcing Normalcy: Disability, Deafness, and the Body*. London, New York: Verso.
- Doron, Israel, Benny Spanier, & Eugenio Mantovani (2018) "Ageism, Human Rights, and the European Court of Human Rights: A Critical Analysis of the *Carvalho v. Portugal* Case (2017)," 11 *DePaul J. for Social Justice* Art. 2.
- Drum, C. E. (2009) "Models and Approaches to Disability," in Drum, C. E., G. L. Krahn, & H. Bersani, eds., *Disability and Public Health*. Washington, DC: American Public Health Association & American Association on Intellectual and Developmental Disabilities.
- Emens, Elizabeth F. (2009) "Intimate Discrimination: The State's Role in the Accidents of Sex and Love," 122 *Harvard Law Rev.* 1307–402.

- Erikson, Erik H. (1975) *Childhood and Society*. Harmondsworth: Penguin.
- Foucault, Michel (1978) *The History of Sexuality. Volume I: An Introduction*. New York: Pantheon Books.
- Franke, Katherine (2001) "Theorizing Yes: An Essay on Feminism, Law and Desire," 101 *Columbia Law Rev.* 181.
- Freckelton, Ian S. C. (2013) "Sexual Surrogate Partner Therapy: Legal and Ethical Issues, Psychiatry," 20 *Psychology and Law* 643–59.
- Gacheru, Margareta Wa (1998) "Potency pill' Viagra Kicks off a Sexual Revolution" *Daily Nation*, May 24, 1998.
- Gal, John (2004) *Social Security in Israel*. Jerusalem: Magnes. [Hebrew].
- Galanter, Marc (2004) "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," 1 *J. of Empirical Legal Studies* 459–570.
- Garton, Stephen (2004) *Histories of Sexuality Antiquity to Sexual Revolution*. New York: Routledge.
- Goodley, Dan (2010) *Disability Studies: An Interdisciplinary Introduction*. London: Sage.
- Hall, Mark A. & Ronald F. Wright (2008) "Systematic Content Analysis of Judicial Pinions," 96 *California Law Rev.* 63–122.
- Hensel, Wendy. F. (2005) "The Disabling Impact of Wrongful Birth and Wrongful Life Actions," 40 *Harvard Civil Rights-Civil Liberties Law Rev.* 141–95.
- Heyer, Katharina (2015a) *Rights Enabled: The Disability Revolution, from the US, to Germany and Japan, to the United Nations*. University of Michigan Press.
- (2015b) "Law and Disability," in Sarat, Austin & Patricia Ewick, eds., *Handbook of Law and Society*. New York: Wiley.
- Hitt, Jack (2000) "The Second Sexual Revolution," *New York Times*, Feb. 20, 2000
- Ireland, Thomas R. (2012) "Trends in Legal Decisions Involving Hedonic Damages from 200 to 2012," 19 *J. of Legal Economics* 61–88.
- Jeffreys, Sheila (2008) "Disability and the Male Sex Right," 31 *Women's Studies International* 327–35.
- Kanter, Arlene S. (2011) "The Law: What's Disability Studies Got to Do with It or an Introduction to Disability Legal Studies," 42 *Columbia Human Rights Law Rev.* 403–79.
- Karako-Eyal, Nili & Ron Vered (2001) "Global Compensation for Medical Expenses," 12 *HaMishpat* 76–82.
- Keren-Paz, Tsach (2013) *Torts, Egalitarianism and Distributive Justice*. Farnham: Ashgate.
- Linton, Simi (1998) *Claiming Disability: Knowledge and Identity*. New York: New York University Press.
- Loe, Meika (2004) *The Rise of Viagra: How the Little Blue Pill Changed Sex in America*. New York: New York University Press.
- Lombardo, Paul A. (2008) "Disability, Eugenics, and the Culture Wars," 2 *Saint Louis Univ. J. of Health Law & Policy* 57–80.
- Lyden, Martin (2007) "Assessment of Sexual Consent Capacity," 25 *Sexuality and Disability* 3–20.
- Marshall, Barbara L. (2002) "'Hard Science': Gendered Constructions of Sexual Dysfunction in the Viagra Age," 5 *Sexualities* 131–58.
- Mather, Lynn (1998) "Theorizing about Trial Courts: Lawyers, Policymaking, and—Tobacco Litigation," 23 *Law and Social Inquiry* 897–940.
- McRuer, Robert (2011) "Disabling Sex: Notes for a Crip Theory of Sexuality," 17 *GLQ* 107–18.
- Milani, Adam A. (1998) "Living the World: A New Look at the Disabled in the Law of Torts," 48 *Catholic Univ. Law Rev.* 323–417.
- Miller, Alice M. (1999) "Human Rights and Sexuality: First Steps toward Articulating A Rights Framework for Claims to Sexuality Rights and Freedoms," 93 *Proceedings of the Annual Meeting (American Society of International Law)* 288–303.
- Mona, Linda R., Maggie L. Syme, & Rebecca P. Cameron (2014) "Sexuality and Disability: A Disability-Affirmative Approach to Sex Therapy," in

- Binik, Yitzchak M. & Kathryn S. K. Hall, eds., *Principles and Practice of Sex Therapy*. New York: Guilford.
- Mor, Sagit (2006) "Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy," 18 *Yale J. of Law and the Humanities* 63–137.
- (2009) "Disability Rights in Israel: Between Socio-Political Conceptualization and Legal Recognition," in Gal, J. & M. Ajzenstadt, eds., *Access to Justice and Social Rights Jerusalem*. Taub Center for Social Policy Studies in Israel. [Hebrew].
- (2018) "The Meaning of Injury: A Disability Perspective," in Bloom, Anne, David Engel, & Michael McCann, eds., *Injury and Injustice: The Cultural Politics of Harm and Redress*. Cambridge: Cambridge University Press.
- Nielsen, Laura Beth (2010) "The Need for Multi-Method Approaches in Empirical Legal Research," in Cane, Peter & Herbert Kritzer, eds., *The Oxford Handbook of Empirical Legal Research*. Oxford: Oxford University Press.
- Oliver, Michael J. (1990) *The Politics of Disablement: A Sociological Approach*. New York: Palgrave Macmillan.
- Perlin, Michael L. & Alison J. Lynch (2016) *Sexuality, Disability and the Law: Beyond the Last Frontier?* New York: Palgrave Macmillan.
- Perlman, Michael A. (2001) "The Impact of the New Sexual Pharmaceuticals on Sex Therapy," 3 *Current Psychiatry Reports* 195–201.
- Perry, Ronen (2007) "It's a Wonderful Life," 93 *Cornell Law Rev.* 329–400.
- Pollard, Sacks, Deana (2008) "Intentional Sex Torts," 77 *Fordham Law Rev.* 1052–94.
- Potts, Annie, Nicola Gavey, Victoria M. Grace, & Tiina Vares (2003) "The Downside of Viagra: Women's Experiences and Concerns," 25 *Sociology of Health & Illness* 697–719.
- Richardson, Diane (2000) *Rethinking Sexuality*. London: Sage.
- Rimmerman, Arie, Michal Soffer, Dana David, Tsilly Dagan, Roni Rothler, & Lior Mishaly (2015) "Mapping the Terrain of Disability Legislation: The Case of Israel," 30 *Disability & Society* 46–58.
- Rivlin, Eiezer (2012) "Israel as a Mixed Jurisdiction," 57 *McGill Law J.* 781–90.
- Rollins, Joe (2002) "AIDS, Law, and the Rhetoric of Sexuality," 36 *Law & Society Rev.* 161–92.
- Rosen, Bruce Waitzberg, Ruth and Merkur, Sherry (2015) "Israel: Health System Review." 17:6 *Health Systems in Transition*. World Health Organization, Copenhagen, Denmark
- Rosenbaum, Talli, Ronit Aloni, & Rafi Heruti (2014) "Surrogate Partner Therapy: Ethical Considerations in Sexual Medicine," 11 *J. of Sexual Medicine* 321–9.
- Rubin, Gayle (1984) "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in Vans, C., ed., *Pleasure and Danger: Exploring Female Sexuality*. Boston, London, Melbourne & Henley: Routledge & Kegan Paul.
- Sanders, Teela (2007) "The Politics of Sexual Citizenship: Commercial Sex and Disability," 22 *Disability & Society* 439–55.
- Schaaf, Marta (2011) "Negotiating Sexuality in the Convention on the Rights of Persons with Disabilities," 8 *SUR International J. on Human Rights* 113–32.
- Seidman, Steven (2001) "From Identity to Queer Politics: Shifts in Normative Heterosexuality and the Meaning of Citizenship," 5 *Citizenship Studies* 321–8.
- Shakespeare, Tom (2000) "Disabled Sexuality: Toward Rights and Recognition," 18 *Sexuality and Disability* 159–66.
- (2006) *Disability Rights and Wrongs*. London: Routledge.
- Shakespeare, Tom, Kathy Gillespie-Sells, & Dominic Davies (1996) *The Sexual Politics of Disability: Untold Desires*. London: Cassell.
- Shakespeare, Tom & Sarah Richardson (2018) "The Sexual Politics of Disability, Twenty Years On," 20 *Scandinavian J. of Disability Research* 82–91.
- Sheehy, Gail (1996) *New Passages: Mapping your Life across Time*. Collins.

- Shildrick, Margrit (2007) "Contested Pleasures: The Sociopolitical Economy of Disability and Sexuality," 4 *Sexuality Research and Social Policy* 53–66.
- Shuttleworth, Russell P. & Linda Mona (2002) "Disability and Sexuality: Toward a Focus on Sexual Access: Introduction to the Symposium," 22 *Disability Studies Q.* 2–9.
- Silbey, Susan S. (1981) "Making Sense of the Lower Courts," 6 *Justice System J.* 13–27.
- Silvers, Anita (1998) *Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy*. Lanham: Md: Rowman & Littlefield Publishers.
- Stein, Michael M. & P. J. Stein (2007) "Beyond Disability Civil Rights," 58 *Hastings Law J.* 1203–40.
- Swaine, John & Sally French (2000) "Towards an Affirmation Model of Disability," 15 *Disability & Society* 569–82.
- Sylvest, Flynn (2004) "New Tort Rules for Unmarried Partners: The Enhanced Potential for Successful Loss of Consortium and NIED Claims by Same Sex Partners in New Mexico after Lozoya," 34 *New Mexico Law Rev.* 461–87.
- TenBroek, Jacobus (1996) "The Right to Live in the World: The Disabled in the World of Torts," 54 *California Law Rev.* 841–919.
- Tepper, Mitchell S. (2000) "Sexuality and Disability: The Missing Discourse of Pleasure," 18 *Sexuality and Disability* 283–90.
- The United Nations (2006) "Convention on the Rights of Persons with Disabilities," 2515 *Treaty Series*.
- The World Health Organization (2002) *Defining Sexual Health—Report of a Technical Consultation on Sexual Health*. Geneva: World Health Document Series.
- Vanhala, Lisa (2011) *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*. New York: Cambridge University Press.
- Vogler, Stefan (2016) "Legally Queer: The Construction of Sexuality in LGBTQ Asylum Claims," 50 *Law & Society Rev.* 856–89.
- Weber, Mark C. (2012) "A Common Law of Disability Discrimination," 2012 *Utah Law Rev.* 429–72.
- Webley, Lisa (2010) "Qualitative Approaches to Empirical Legal Research," in Cane, Peter & Herbert Kritzer, eds., *The Oxford Handbook of Empirical Legal Research*. Oxford: Oxford University Press.
- Weeks, Jeffrey (2007) *The World We Have Won*. New York: Routledge.
- Weitzer, Ronald (2010) "The Movement to Criminalize Sex Work in the United States," 37 *J. of Law & Society* 61–84.
- Yucht, Adi (2019) "The Plasticity of the Body, the Injury, and the Claim: Personal Injury Claims in the Era of Plastic Surgeries," 25 *William & Mary J. of Race, Gender, and Social Justice* 353–404.
- Ziv, Neta (1998) "Disability Law in Israel and the United States—A Comparative Perspective," 28 *Israel Yearbook on Human Rights* 171–202.

Statutes Cited

- Equal Rights for Persons with Disability Law, 5758-1998 (Isr.).
- National Health Insurance Law, 5755-1995 (Isr.).
- Penal Code, 5737-1977 [Amendment No. 132] 2018 (effective 2020) (Isr.).
- Road Accidents Victims Compensation Law, 5735-1975 (Isr.).
- The Economic Efficiency Law (Legislative Amendments to Implement the Economic Plan) For the years 2009 and 2010, 5769-2009 (Isr.).
- Torts Ordinance [New Version], 5728-1968 (Isr.).

Cases Cited

- A.K. v. The Pool*, CC (HI) 121/05 (2014) (Isr.).
- Abu Ahmad v. Migdal Insurance*, CC (JER) 141/95 (1998) (Isr.).
- Agbaria. v. Zamir Construction*, CC (HI) 252/01 (2004) (Isr.).
- Aikin v. The Israeli Phoenix Insurance Company*, CC (HI) 679/98 (2006) (Isr.).
- Avitan v. Cllalit Medical Services*, CC (JER) 6359/04 (2007).
- Chibotaro v. Sahar Israeli Insurance Company*, CC (TA) 78/94 PM 289(2) (2002) (Isr.).
- Dahari v. Nevaro*, CC (TA) 569/96 (2004) (Isr.).
- Ericson v. Kibbutz Zikim*, CC (TA) 1362/96 (2002) (Isr.).
- Fanon v. State of Israel*, CC (JER) 82/94 (1996) (Isr.).
- Furman v. The Pool*, CC (HI) 1845/94 (2000) (Isr.).
- Gorodtzky v. Elite Insurance Company*, CC (HI) 1548-98 (2008) (Isr.).
- Ken-dror v. Cllal Insurance*, CC (TA) 754/93 (1999) (Isr.).
- M.T. v. Abu Midgam*, CC (CT) 217-02-08 (2015) (Isr.).
- M.T. v. HaMagen Insurance*, CC (Jer) 7470-05 (2010) (Isr.).
- Mimony v. City of Jerusalem*, CC (JER) 1433/96 (2005) (Isr.).
- Mizrahi v. Arie*, CC (HI) 709/93 (1999) (Isr.).
- Pedro v. Migdal Insurance Company*, CA 11152/04, 310(3) PD 61 (2006) (Isr.).
- Ploni v. City of Jerusalem*, CC (JER) 3198/01 (2008) (Isr.).
- Ploni v. Migdal Insurance Company*, CC (TA) 1553/99 (2004) (Isr.).
- Shachar v. Cllalit Medical Services*, CC (TA) 1273/00 (2009) (Isr.).
- Shamir v. Orenbuch*, CC (JER) 7233-05 (2009) (Isr.).
- Sharon v. Mizrahi*, CC (HI) 1269/93 (2002) (Isr.).
- Shay v. Lod Cigarettes, LTD*, CC (TA) 2686/00 (2005) (Isr.).
- Shirav v. Ararat Insurance*, CC (HI) 514/93 (1999) (Isr.).
- Socher v. Wolfson Medical Center*, CC (TA) 1975/02 (2008) (Isr.).

Sagit Mor is a Senior Lecturer at the Faculty of Law, University of Haifa, Israel. She is the Head of the International Center for Health, Law, and Ethics at the University of Haifa. Her research focuses on the study of disability and the law from a disability legal studies perspective, currently centering on employment law, tort law, and bioethics.

Rina B. Pikkel is a doctoral student at the Faculty of Law, University of Haifa, Israel. Her research focuses on disability, law, and sexuality.