

# SCHOOL OF LAW

## UG ASSESSED COURSEWORK COVER SHEET 2011-2012

### SEMESTER 2

This sheet **MUST** be completed **IN FULL** and stapled securely to the front of **EACH PIECE** of coursework

<b>STUDENT URN:</b> (7 digit number on Uni card)	
<b>MODULE CODE AND NAME:</b> (please refer to front of module handbook)	Law 1030 – Criminal Law II
<b>WORD COUNT:</b>	2941
<b>DATE OF SUBMISSION:</b>	28/05/2012

## Introduction

---

Jez's criminal liability will be discussed in this essay. This essay will examine his liability for theft-related offences, fraud, non-fatal offences against PC Henry and Chelsea, and sexual offences against Chelsea. He will be liable for these offences if he has performed the actus reus of the crime, with a corresponding mens rea<sup>1</sup>, without any valid defences. This essay will also discuss what the Crown Prosecution Service would likely charge Jez with.

## Theft Related Offences

---

Jez may be liable for burglary if he has entered a building, or part of a building as a trespasser with the intention to commit theft.<sup>2</sup> By going behind the counter, Jez has made a 'substantial and effective entry'.<sup>3</sup> Jez would be regarded as a trespasser because he either would have known that he wasn't allowed behind the counter, or he was acting recklessly as to whether or not he was lawfully entering behind the counter.<sup>4</sup> It is necessary that, at the moment of entry as a trespasser, Jez had formed the intention to commit theft. As such, he was not liable upon entering the shop. However, in *R v Walkington* it was held that behind a shop counter constituted a separate part of the building.<sup>5</sup> Therefore, Jez may be liable for burglary when he entered behind the counter, depending on whether or not he intended to commit theft.

---

<sup>1</sup> Common mens rea words phrases include: intention, recklessness, knowledge and dishonesty

<sup>2</sup> Theft Act 1968 s9(1)(a)

<sup>3</sup> *R v Collins* [1973] QB 100 (CA), 106

<sup>4</sup> *Ibid* 105

<sup>5</sup> [1979] 1 WLR 1169 (CA)

The basic definition of theft is dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.<sup>6</sup> Jez intended to appropriate the wallet by intending to assume the rights of the owner over it.<sup>7</sup> The wallet is personal property,<sup>8</sup> which belongs to the shop assistant.<sup>9</sup> The rule for theft is that a person is not to be regarded as intending to permanently depriving the owner of the property if they only intended to steal something of value, and after appropriating the item, they realise it is valueless and puts it back.<sup>10</sup> However, the rule for burglary is that 'an intention to steal can exist even though, unknown to the accused, there is nothing to steal'.<sup>11</sup> Section 2(1) of the Theft Act 1968 gives examples of acts which are not dishonest, however Jez would not fall into any of these because he would not believe he has the right in law to do appropriate the wallet, he does not believe he has consent, and he knows exactly who the owner of the wallet belongs to. As such, the Ghosh test will determine whether or not he is dishonest.<sup>12</sup> The test has two limbs to it, asking (1) whether a reasonable and honest person would think that the action was dishonest, and (2) whether the defendant realised that his actions were dishonest. A reasonable and honest person would find that his actions were dishonest, and as Jez ran away without taking the wallet once he saw the camera, it is submitted that he realised his actions were dishonest. Therefore, Jez would be liable for a s9(1)(a) Burglary with intent to commit theft, but would not be liable for a s9(1)(b) Burglary for attempted burglary, as his attempt was not more than merely preparatory to the commission of the theft.<sup>13</sup>

---

<sup>6</sup> Theft Act 1968 s1(1)

<sup>7</sup> *Ibid* s3(1)

<sup>8</sup> *Ibid* s4(1)

<sup>9</sup> *Ibid* s5(1)

<sup>10</sup> *R v Easom* [1971] 2 QB 315 (CA), 319

<sup>11</sup> *DPP v Nock* [1978] AC 979 (HL), 1000

<sup>12</sup> *R v Ghosh* [1982] QB 1053 (CA), 1064

<sup>13</sup> Criminal Attempts Act 1981 s1(1)

Jez is guilty of robbery if, immediately before or at the time of doing so, he uses force on any person in order to steal.<sup>14</sup> When Jez took Chris's wallet, he had dishonestly appropriated property belonging to another, and when he threw the wallet in the bin, it showed his intention to permanently deprive Chris of it, thus satisfying the theft element of robbery.<sup>15</sup> It is necessary to examine whether Jez has actually used force to commit theft. It has been held that jostling a person so as to make them lose their balance may be enough force to commit robbery;<sup>16</sup> and the force can be applied through property.<sup>17</sup> However, in a case regarding highway robbery, prior to the Theft Act 1968, Garrow B said that force 'must be of such a nature as to show that it was intended to overpower the party robbed and prevent his resisting, and not merely to get possession of the property stolen'.<sup>18</sup> The Criminal Law Revision Committee also shared this view when drafting the bill which became the Theft Act.<sup>19</sup> Therefore, it is submitted that Jez had not used force against Chris, and is only liable for theft, contrary to the Theft Act 1968 s1.

## Fraud

---

Jez would be liable for fraud by false representation if he dishonestly makes a false representation, with the intention of making a gain or loss to another.<sup>20</sup> When Jez showed the credit card to cashier, he made an implied representation<sup>21</sup> that he was the owner of

---

<sup>14</sup> Theft Act 1968 s8(1)

<sup>15</sup> See paragraph 3 above for discussion relating to theft

<sup>16</sup> *R v Dawson* (1976) 64 Cr App Rep 170 (CA), 172

<sup>17</sup> *R v Clouden* [1987] Crim LR 56 (CA)

<sup>18</sup> *Gnosil* (1824) 1 C & P 304

<sup>19</sup> Eighth Report: theft and related offences, Criminal Law Revision Committee (Cmnd 2977) para 65

<sup>20</sup> Fraud Act 2006 s2(1)

<sup>21</sup> *Ibid* s2(3)

the card, which was untrue and he knew that was so.<sup>22</sup> Jez intends to gain a shirt by the false representation.<sup>23</sup> Dishonesty is determined by the Ghosh test.<sup>24</sup> The reasonable and honest person would determine that his actions were dishonest, and Jez would have realised this. Although he was unsuccessful in obtaining the shirt, this is not relevant because fraud only requires an intention to make a gain. As such, Jez would be liable for fraud for attempting to by the shirt.

Jez would not be liable for making off without payment, contrary to s3 of the Theft Act 1978, when he didn't pay in the restaurant. A person is liable for this if they dishonestly make off without paying, when they knew that payment was expected on the spot, with the intention to avoid payment. However, in *R v Vincent*, the court said that an agreement to pay later, even if by deception, would defeat the expectation of payment.<sup>25</sup> Since Jez had reached an agreement with the manager, this defeated the expectation of payment requirement. Therefore, it is submitted that Jez would be liable for a second count of fraud by false representation instead. This is because Jez had made a false representation, not only when he said that Chris' name and address was his, but also regarding his state of mind when he said he would pay later.<sup>26</sup> He intended to not let the restaurant get the money they had earned, thus satisfying the loss requirement.<sup>27</sup> His actions would have been determined dishonest by the reasonable and honest man, and Jez realised this was so. Therefore, he would be liable for a second count of fraud by false representation.

---

<sup>22</sup> Ibid s2(2)

<sup>23</sup> Ibid s5

<sup>24</sup> *Ghosh* (n12)

<sup>25</sup> [2001] 1 WLR 1172(CA), 1176

<sup>26</sup> Fraud Act 2006 s2(3)

<sup>27</sup> Ibid s5(4)

Professor Ormerod questions whether someone who makes a false representation, to induce a wealthy banker to marry them, is capable of being guilty of fraud.<sup>28</sup> This may be the case for Jez, regarding his intentions to use his relationship for a financial advantage. It is possible that a jury may find that Jez has made an implied representation that his reasons for having a relationship are purely romantic, which he knows is false and he intends to gain from this relationship as well, and a reasonable and honest person may find that this is dishonest, and Jez realises this is so. It is submitted that, the sole act of entering a relationship, whatever the reasons, should not be the subject of a criminal prosecution because everyone has a right to respect for their private and family life.<sup>29</sup> However it is submitted that it is appropriate for the criminal law to intervene if he starts to abuse his relationship with her.

### Non-fatal Offences Against PC Henry

---

Jez may be liable for an offence under either section 18, or section 20 of the Offences Against the Persons Act 1861 (OAPA 1861), when he pushed past PC Henry. The actus reus for both these sections is wounding another person. Wounding is defined as a break in the continuity of the whole skin, which occurred when PC Henry fell on the shard.<sup>30</sup> Both sections have the same mens rea element, which is that the wounding must be malicious. This has been interpreted to mean that the defendant must foresee some physical harm to a defendant from his action, even if it is minor.<sup>31</sup> It is submitted that Jez would have foreseen

<sup>28</sup> Ormerod 'The Fraud Act 2006 - criminalising lying?' [2007] Crim L R 193, 203

<sup>29</sup> Article 8 of the European Convention of Human rights

<sup>30</sup> *R v Wood* (1830) 1 Moody 278, 281; *C (A Minor) v Eisenhower* [1984] QB 331 (CA), 341

<sup>31</sup> *R v Mowatt* [1968] 1 QB 421 (CA), 426

some injury, even a minor one, from pushing PC Henry over. The distinction between s18 and s20 is that the former requires an ulterior mens rea requirement, whereas the latter is satisfied with malice alone. As such, to be liable for s18, it must be proven that Jez had an ulterior intention to resist arrest. In *R v Bentley*, Talfourd J said that 'to support a charge of resisting a lawful apprehension, it is enough that the prisoner is lawfully apprehended, and it is his determination to resist it'.<sup>32</sup> Therefore, it is submitted that lawful apprehension is a necessary prerequisite to a s18 offence and, as such, Jez would only be liable for unlawful wounding, contrary to s20 OAPA 1861.

Jez may also be liable for assaulting a police officer, contrary to s89(1) of the Police Act 1996. He would be liable if he has committed an assault or battery against a constable in the execution of their duty. The actus reus of battery is the unlawful application of force upon another person, which Jez has done by pushing PC Henry over.<sup>33</sup> The mens rea requires that Jez had either intended to apply force, or was reckless as to the application of force.<sup>34</sup> It is submitted that Jez had intended to apply force against a constable, who was executing his duty to inform civilians of a wave of burglaries, and is therefore liable for this offence.

## Non-Fatal Offences Against Chelsea

---

It is submitted that Jez is liable for another count of unlawful wounding, contrary to s20 of the OAPA 1861, for when he slapped Chelsea. Jez had broken the continuity of Chelsea's skin when his sovereign ring caught her ear, and it is submitted that Jez had foresaw some

<sup>32</sup> (1850) 4 Cox C C 408, 410

<sup>33</sup> *R v Ireland, R v Burstow* [1998] AC 147 (HL), 162

<sup>34</sup> *R v Venna* [1976] QB 421 (CA), 429

harm to her when he slapped her, even if it was a minor harm.<sup>35</sup> However, CPS guidelines states that an 'offence contrary to section 20 should be reserved for those wounds considered to be really serious'.<sup>36</sup> It is therefore submitted that the most appropriate charge would either be assault occasioning actual bodily harm, or common assault.

Jez would be liable for an offence contrary to s47 OAPA 1861, if he performs an assault or battery, which results in actual bodily harm (ABH). It is submitted that Jez has applied unlawful force against Chelsea, and he has either intended to do so, or was reckless as to doing so, thus satisfying the actus reus and mens rea for battery.<sup>37</sup> His actions have resulted in the injuries, even if he did not foresee it, because they were a natural result of Jez' actions.<sup>38</sup> ABH is 'any hurt or injury calculated to interfere with the health or comfort', and need 'not be permanent, but must, no doubt, be more than merely transient and trifling'.<sup>39</sup> Besides this general definition, actual bodily harm is not clearly defined. CPS guidelines state that ABH is any injury which is serious and may need several stitches, or an operation under anaesthetics.<sup>40</sup> However, the guidelines explicitly state that if the injury only requires butterfly stitches, then this charge is inappropriate. It is therefore impossible to determine whether or not actual bodily harm has occurred, however it is submitted that Chelsea's ear would most likely be treated with butterfly stitches, and therefore may not amount to actual bodily harm, as it would be regarded as transient and trifling. As such, Jez would only be liable for common assault, contrary to s39 of the Criminal Justice Act 1988.

---

<sup>35</sup> See discussion at (n31)

<sup>36</sup> 'Offences Against The Person: Incorporating the Charging Standard' Crown Prosecution Service <[http://www.cps.gov.uk/legal/l\\_to\\_o/offences\\_against\\_the\\_person](http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person)> accessed 20<sup>th</sup> May 2012

<sup>37</sup> See (n33) and (n34)

<sup>38</sup> *R v Roberts* (1971) 56 Cr App R 95 (CA), 102

<sup>39</sup> *R v Donovan* [1934] 2 KB 498 (CA), 509

<sup>40</sup> CPS (n31)

## Sexual Offences

---

Jez may be liable for sexual assault, contrary to s3 of the Sexual Offences Act 2003 (SOA 2003) for putting his hands into Chelsea's pocket. To be liable for sexual assault, he must have intentionally touched Chelsea, in a sexual manner, in which she did not consent to and that Jez had no reasonable belief in consent. Jez has intentionally touched Chelsea, even though it was through her jeans.<sup>41</sup> When determining if an act is sexual, the jury must decide whether the nature of the act could be said to be sexual, and if it is, they should decide whether the circumstances or purpose of the person make it so.<sup>42</sup> It is submitted that a jury would answer positive to both these questions, because Jez said that he wanted to find out if she was wearing any underwear.<sup>43</sup> The final requirement is that Chelsea must not consent to the touching, and Jez does not hold a reasonable belief as to consent. It is clear that Chelsea does not consent to the touching, as she pulled away from Jez. Section 3(2) states that 'whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents'. It is submitted that Jez does not have a reasonable belief in consent, because it was evident from Chelsea pulling away that she does not consent, and Jez had taken no further steps to ascertain whether she consented to the touching. Therefore, he is liable for sexual assault, contrary to s3 SOA 2003.

Jez's liability for sexual assault may be changed to sexual activity with a child, depending upon his reasonable belief in age.<sup>44</sup> It is submitted that it is impossible to determine

---

<sup>41</sup> Sexual Offences Act 2003 s79(8)(c); *R v H* [2005] 1 WLR 2005 (CA), 2011

<sup>42</sup> SOA 2003 s78(b)

<sup>43</sup> This is also similar to the facts of *R v H* (n41) where the jury held that the touching was sexual.

<sup>44</sup> SOA 2003 s9

whether or not Jez holds a reasonable belief in Chelsea's age, just by knowing her Facebook accounts age, and to answer this question, the jury should determine whether there was anything in her 'physical appearance to suggest that [she was] under 16'.<sup>45</sup>

Jez may also be liable for rape, contrary to s1 of SOA 2003, as Jez has intentionally penetrated Chelsea's vagina with his penis. To be liable for rape, Chelsea must not have consented to the penetration, and Jez must not have a reasonable belief in consent. Chelsea would have consented if she 'agrees by choice, and has the freedom and capacity to make that choice' to the sexual intercourse.<sup>46</sup> Section 75 SOA 2003 contains a list of evidential presumptions about consent, which renders Chelsea's consent, and Jez's reasonable belief in consent, invalid unless a sufficient issue is raised to the contrary. One of the evidential presumptions applies to this case because Jez has used violence, immediately before the intercourse, against Chelsea when he pushed her to the ground.<sup>47</sup> Another of the presumptions is causing a person to fear that immediate violence would be used against another person.<sup>48</sup> The threat against Chelsea's sister would not fall within this, because the threats are in relation to an 'unspecified time in the future, [which] are too distant, too uncertain and unspecific'.<sup>49</sup> However, it is only necessary that one of the evidential presumptions exist and it is therefore submitted that Jez is liable for rape contrary to s1 of the SOA 2003. This rape charge would not be affected by Chelsea's age because there is no separate offence of raping a child between the ages of 13-15.

---

<sup>45</sup> *R v C* [2011] EWCA Crim 2153 [8]

<sup>46</sup> SOA 2003 s74

<sup>47</sup> *Ibid* s75(2)(a)

<sup>48</sup> *Ibid* s75(2)(b)

<sup>49</sup> Beverly Hughes, House of Commons Standing Committee B, col. 053, 14<sup>th</sup> October 2003.

Additionally he would be liable under s62 SOA 2003. Section 62 states that it is a criminal offence to commit any offence with an intention to commit a sexual offence. As Jez had pushed Chelsea over, he has committed a common assault, by intentionally applying unlawful force, and it is submitted that he intended to do this with an intention to commit rape.

## Conclusion

---

This essay has examined Jez's liability for theft-related offences, fraud, non-fatal offences against PC Henry and Chelsea, and sexual offences against Chelsea. It has also examined the likely charges which the Crown Prosecution Service may bring against Jez. As no valid defences have arisen from these facts, it is submitted that he would be found guilty of the aforementioned offences.

## Bibliography

---

### Primary Sources

---

#### Cases

*C (A Minor) v Eisenhower* [1984] QB 331

*DPP v Nock* [1978] AC 979

*Gnosil* (1824) 1 C & P 304

*R v Bentley* (1850) 4 Cox C C 408

*R v C* [2011] EWCA Crim 2153

*R v Clouden* [1987] Crim LR 56  
*R v Collins* [1973] QB 100  
*R v Dawson* (1976) 64 Cr App Rep 170  
*R v Donovan* [1934] 2 KB 498  
*R v Easom* [1971] 2 QB 315  
*R v Ghosh* [1982] QB 1053  
*R v H* [2005] 1 WLR 2005  
*R v Ireland, R v Burstow* [1998] AC 147  
*R v Mowatt* [1968] 1 QB 421  
*R v Roberts* (1971) 56 Cr App R 95  
*R v Venna* [1976] QB 421  
*R v Vincent* [2001] 1 WLR 1172  
*R v Walkington* [1979] 1 WLR 1169  
*R v Wood* (1830) 1 Moody 278

### *Legislation*

Criminal Attempts Act 1981  
European Convention of Human Rights  
Fraud Act 2006  
Offences Against The Person Act 1861  
Police Act 1996  
Sexual Offences Act 2003  
Theft Act 1968

Theft Act 1978

### Secondary Sources

---

*'Offences Against The Person: Incorporating the Charging Standard'* Crown Prosecution Service <  
[http://www.cps.gov.uk/legal/l\\_to\\_o/offences\\_against\\_the\\_person](http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person)> accessed 20<sup>th</sup> May 2012

Eight Report: theft and related offences, Criminal Law Revision Committee (Cmnd 2977)

House of Commons Standing Committee B, 14<sup>th</sup> October 2003

Ormerod, D, 'The Fraud Act 2006 - criminalising lying?' [2007] Crim L R 193

COPYRIGHT