

# Sexual Offences

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Notes:

- I'll focus on rape, but most elements are similar in ss 1, 2, 3 SOA 2003
- All cases cited, with the exception of Bree (2007), Jheeta (2007) and Devonald (2008), were decided under the old law. *One cannot assume without argument* that they are still relevant to the present law (in an exam, show awareness of this).

## 1. AR-CONDUCT: Penetration (continuing act: s79(2))

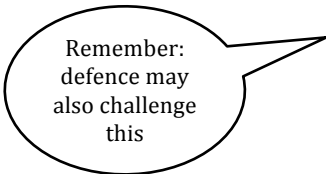
## 2. AR-CIRCUMSTANCE: Lack of V's consent

### a. s76: Conclusive presumptions:

- i. Deception about the nature or purpose of the act:
  - Nature: Williams, Flattery
  - Purpose: Green, Tabassum ('quality'), Devonald
    - Held *not* to be deception about nature or purpose: EB (HIV), Jheeta ('situation'), Linekar
- ii. Impersonation of someone known personally to V
  - Not in Elbekkay (D had not impersonated boyfriend)

### b. s75: Evidential presumptions:

- i. Presumption arises:
  - Any of the circumstances (a) – (f) existed; AND
  - D knew it
- ii. Presumption is rebutted:
  - If D 'raises an issue' to show that, despite the circumstance (a) – (f), *V may nevertheless have consented*



Remember:  
defence may  
also challenge  
this

### c. s74: General meaning of consent:

- i. Positive/factual agreement: not just lack of resistance; explicit, but not necessarily verbal
- ii. Capacity: no capacity if...
  - Mental disorder (if serious, special offences in SOA)
  - Under age (special offences in SOA)
  - Drunkenness:
    - Bree: capacity to consent may evaporate before unconsciousness; but on facts, prosecution could not prove that V did not consent (!)
    - R v H (2007): clarifies Bree: the fact that V doesn't remember doesn't *mean* that she didn't consent
- iii. No coercion (freedom): expansive interpretation in Olugboja and Kirk (it's not about nature of threat but its *effect* on V)
- iv. No deception:
  - Expansive interpretation in Jheeta
  - Restrictive interpretation in Linekar and EB

### 3. MR-CONDUCT: Intent to penetrate

### 4. MR-CIRCUMSTANCE: Lack of reasonable belief that V consented

#### a. s76: Conclusive presumptions (as above)

- i. MR conclusively presumed, since D intentionally deceived V

#### b. s75: Evidential presumptions:

- i. Presumption arises:

- Any of the circumstances (a) – (f) existed; AND
- D knew it

- ii. Presumption is rebutted:

- If D 'raises an issue' to show that, despite the circumstance (a) – (f), *D may nevertheless have reasonably believed that V consented*

#### c. s1(2): General meaning: 'having regard to all the circumstances, including any steps taken by D to ascertain whether V consents' – what does this mean? In the absence of cases, consider...

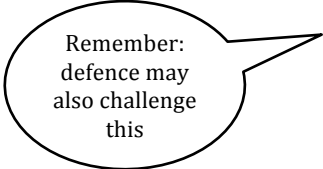
- i. Old law: which the SOA aimed to depart from: not reasonable belief if someone else told you (Morgan)

- ii. Wording:

- 'all the circumstances': during the SOA drafting process, 'reasonable person' replaced by 'reasonable in the circumstances', especially to take account of D with leaning disabilities (S. Gardner: reasonable belief formation)
- "steps taken": easy to ask V if consents, helpful for prosecution

- iii. Other areas of the law: rather objective:

- loss of control: normal person of D's age and sex
- harassment: objective test (Colohan: D had psychological disorder, yet was held liable)



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