Actus Reus and Mens Rea Case Studies

Name: _____ **Date:** _____

R. v. *Yang,* [1999] Ont. C.A. C29539

On the evening of March 10, 1996, a party at the Star Cafe in Kitchener, Ontario, progressed in an uneventful fashion until closing time. At that point, Bobby Rampersaud verbally abused several guests by using racial slurs. In retaliation, Rampersaud was attacked by three people, beaten, kicked, hit over the head with a beer bottle, and stabbed in the back seven times. He survived, but his lung was punctured and his kidney was lacerated, causing potentially fatal bleeding.

At trial, Nguyen was found to be the perpetrator, the person who stabbed Rampersaud. He was sentenced to 15 months in prison. Yang and Thangsavath were convicted as parties to common intention under s. 21(2) of the *Criminal Code.* They were each sentenced to 11 months in prison. Their appeal was dismissed by the Ontario Court of Appeal.

The Court of Appeal accepted the Crown's submission that Yang and Thangsavath assisted Nguyen, the stabber, so that three were fighting against one. The Court stated: "Parties to the offence are bound by the consequences in the same manner as the perpetrator."

Analysis:

1. S. 268(1) of Canada's Criminal Code regarding assaults states "Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant." What is the *actus reus* of aggravated assault? What did Yang and Thangsavath do to make themselves parties to the offence of aggravated assault?

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2. Compare the perpetrator's sentence (15 months) with the sentences received by the parties to the offence (11 months each). Do you believe that Yang and Thangsavath should have received the same sentence as the perpetrator? Explain your answer.

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3. Considering that Rampersaud could have died from his injuries, some people may feel that the punishment did not "fit the crime." Do you agree with the severity of the sentences imposed? Why or why not? What sentences would you impose if you were the judge in this case?

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R. v. *MacGillivray,* [1995] 1 S.C.R. 890

On a clear summer day, MacGillivray drove his boat at considerable speed toward a known swimming area off Cribbons Point in Nova Scotia. As he approached, a group of swimmers waved their arms and shouted to alert the accused of a dangerous situation. The bow of the boat was up at such an angle that MacGillivray could not see in front of the boat. It was possible to have some visibility ahead by leaning over the side and looking forward. The trial judge specifically found that this was not done. The boat ploughed through the group of seven teenagers, and one of them was struck and fatally injured by the propeller.

The accused was charged with dangerous operation of a motor vehicle causing death, contrary to s. 249(4) of the *Criminal Code.* The trial judge considered the circumstances and all the evidence, and convicted the accused. The conviction was upheld by the Court of Appeal of Nova Scotia, and the Supreme Court of Canada also dismissed MacGillivray's appeal. In its majority decision, the Supreme Court identified the *actus reus* for dangerous operation of a motor vehicle as "the creation of a significant risk of danger to others by a significant departure from the standard of a reasonably prudent person."

Analysis:

1. How did the defendant's actions conform to the *actus reus* for dangerous driving as defined by the Supreme Court?

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2. The Criminal Code states that anyone convicted under s. 249 (4) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years for the dangerous operation of a motor vehicle causing death. Do you think this offence should have a longer prison sentence? Explain.

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R. v. *Hebert,* [1989] 1 S.C.R. 233

Hebert gave false evidence at a preliminary hearing and was charged with perjury (giving false evidence with the intent to mislead) and obstructing justice (interfering with the course of justice). At trial, Hebert relied on s.17 of the *Criminal Code* and said he was compelled to give false evidence because of death threats made against him. The trial judge acquitted Hebert on the charge of perjury. The Crown appealed, and the acquittal was reversed. Hebert then appealed to the Supreme Court of Canada.

The Supreme Court ruled that s. 17 did not apply in this case but found there were legitimate grounds for appeal based on Hebert's argument that he had no *mens rea* to commit perjury. While Hebert admitted to deliberately lying, he said he had no intent to mislead in doing so. On the contrary, he intended that his testimony would be so obviously false that it would attract the judge's attention, and he could then tell the judge about the threats made against him.

The Supreme Court ordered a new trial on the charge of perjury. In its decision, the Court stated, "For there to be perjury, there has to be more than a deliberate false statement. The statement must also have been made with intent to mislead. While it is true that someone who lies generally does so with the intent of being believed, it is not impossible, though it may be exceptional, for a person to deliberately lie without intending to mislead."

Analysis:

1. In this case, what did the Supreme Court identify as the *mens rea* for perjury?

2. Does the criminal offence of perjury show a general or specific intent? Explain.

3. Suppose you were the judge in Hebert's new trial on one count of perjury. How would you decide whether he was telling the truth about his reasons for giving false testimony? If he was telling the truth, should he be acquitted? Explain.

R. v. *Adey,* [2001] Nfld. P.C. 1300A-01I58

Adey bought a stolen satellite dish from a stranger at the Viking Mall in St. Anthony, Newfoundland. He paid $175 for the dish and had it set up at his house. The dish had originally been purchased by a Mr. Russell in St. John's. He had paid $349 (plus tax). The dish was stolen from him on a flight through St. Anthony.

Adey was arrested and charged with possession of stolen property contrary to s. 3 54(1) of the *Criminal Code.*

> *"***354.** (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from
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> (*a*) the commission in Canada of an offence punishable by indictment; or
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> (*b*) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment."

The Crown argued that the *mens rea* for the offence was established in this case by the defendant's wilful blindness. Adey had ignored a number of "red flags" and proceeded in his purchase despite knowing that he should inquire further into the dish's origin. Counsel for the accused argued that the price paid for the dish was not so outrageously low that it should have caused the accused to be suspicious; therefore, the Crown had not established that wilful blindness applied.

In his decision, the trial judge noted that wilful blindness "requires suspicion, combined with a conscious decision to refrain from making inquiries. This is why our law equates it with having actual knowledge. An accused cannot deliberately remain ignorant and escape criminal liability as a result."

The judge found Adey not guilty, stating that the Crown had not proven that the accused had the necessary *mens rea.* The judge accepted Adey's argument that the price of the satellite dish was not low enough to raise his suspicion that the dish was stolen. To establish wilful blindness, it is not enough for the Crown to prove that the accused "ought to have known"; the Crown must show that suspicion actually existed on the part of the accused.

Analysis:

1. Read the excerpt from the Criminal Code of Canada that deals with possession of stolen property in s. 354(1) of the *Criminal Code.* Which word indicates the *mens rea* of the offence?

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2. Explain why, in Canadian law, wilful blindness is equated with having the knowledge necessary to demonstrate *mens rea.*

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R. v. *Kerster,* [2001] B.C. S.C. CC000227

Background:

Kerster, using a false name, exchanged several e-mails with Detective Constable Headridge, a member of the Vancouver Police, who was also using a false name. The accused said he was willing to pay for the sexual services of a person under 18 years of age. Headridge said his wife would meet with the accused to make final arrangements for him to have sex with her 11-year-old daughter

Daryl Heatherington posed as Headridge's wife. She and Kerster met in a Vancouver restaurant, where Kerster described the kind of sex he wanted to have with the girl. Heatherington told the accused that her daughter's name was Leez. When she asked if he had brought the money, Kerster showed her several $100 Canadian bills.

Kerster accompanied Heatherington to a hotel. Outside room 326, Heatherington called, "Leez, open the door." A detective from the Vice Squad opened the door and arrested the accused. The 11-year-old girl, Leez, did not exist. Kerster was charged with attempting to obtain the sexual services of a person he believed was under 18.

Legal Question:

Should the accused be convicted of an attempt to commit the offence if the person under the age of 18 did not exist?

Decision:

The Court found the accused guilty. On the question of whether a crime could have been committed when the victim did not exist, the Court referred to legal precedents to establish that an attempt is by its nature an incomplete offence and its *actus reus* will always be deficient. In this case, the absence of an 11-year-old girl in the hotel room is a deficiency in the *actus reus* that makes the *completion* of the offence impossible. The accused can still be convicted of the *attempt* to obtain a child's sexual services. The Crown can establish *mens rea* in such a case by proving that the accused had the necessary intent to commit the offence. *Actus reus* can be established by showing that the accused took steps beyond mere preparation for carrying out his intent. The actual performance of

the sexual act is irrelevant to the *actus reus* of attempt.

Legal Significance:

The Court's decision affirmed earlier rulings involving "sting" operations where it was found that the actual existence of illicit goods or persons is not necessary to convict the accused of criminal attempt.

Analysis:

1. Section 24(1) of the Criminal Code states "Everyone who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out his intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence. Describe the steps the accused took to fulfill the *actus reus* for criminal attempt.

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2. Describe how the accused showed the necessary intent or *mens rea* for attempting to obtain the sexual services of a person under 18.

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3. Which do you think was more important for the Crown to establish in this case, *mens rea* or *actus reus?* Explain.

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4. Do you think it is right for the police to organize this kind of "sting" operation? Debate this issue in class; defend your point of view.

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