

Video transcript
Video Tutorial (j): Sexual offences (chp 8)

Hi! In this video I want to talk to you about sexual offenses. Of course they are in more detail within Chapter 8 of the textbook; particularly thinking about if you're answering a problem type question how you can identify which one those offenses you're going to apply to your problem facts.

Now this is particularly challenging in relation to sexual offenses simply because the Sexual Offences Act 2003 introduces such a variety in such an extreme amount of offenses many of which overlap considerably with one another. So one of your main challenges is not simply to apply the offenses but actually the first step of identifying which offense you are going to discuss in detail can itself be quite challenging. Now in recognition of that sometimes your lecturers will be nice and they will tell you at the bottom of the problem question discuss liability for and then name the particular offense. So they might discuss David's potential liability for sexual assault, describe or discuss Paul's potential liability for rape or whatever it might be. Now in those scenarios, of course, you have your direction, you have your offense already picked out for you and all of your discussion within the problem question should be about potential liability for that particular offense.

However, there will be problem questions of course which simply say discuss potential liability and in these scenarios you will need to identify a particular offense. Now, to try and help you with that within the textbook we have a chart where we basically detail the types of offenses and try to give you a kind of a route through to identifying which offenses are probably more likely to be or a little more appropriate to be applied and we do that in a couple ways. The first way and often a useful starting point is to look at the age of the victim. So within the flow chart we give you within the chart that we give you within the textbook that's on the left hand side where we have 18 plus at the top then 16-17-year olds, 13 to 15, and 0 to 12, those are the ages of the victim. Now the reason that's important is particularly in relation to the very young victims, we have offenses which recognize that if the defendant is committing the actus reus of a sexual crime in relation to that very young victim then issues that are often quite complex such as consent aren't really at issue they're not relevant to those offenses. The very fact that our defendant has chosen to do that to a very young person we don't have to engage with whether that young person willingly accepted that contact or not, rather it's simply enough to say if the defendant did it and if the victim was that young then there will be liability. So if you have a particularly young victim as we state across there, we've got sections for example 1 to 4 wouldn't be necessary in all cases. They will still apply but for sections 1 to 4 we need to demonstrate a lack of consent which is often very difficult. Rather than more appropriate offenses will be sections 5 to 8 for example, where simply a very young victim in itself satisfies that requirement and there's no need to go on to look the issues consent.

So, first of all as I say you can place the types of offenses that are most appropriate depending on the age of the victim from there you can then also start to think about other potential vulnerabilities. So, for example we have specific offenses that deal with sexual contact where the defendant is in a position of trust, so having

identified the age of your victim in you can then look for those other potential vulnerabilities - or if for example the defendant is a family member of the victim - or for example if the victim has a particular mental disorder that impedes their ability to make a choice. Now in each of those scenarios, you basically can cross section along and identify which is the most likely offense you should apply in practice. Now this kind of chart should be useful to you obviously in courseworks when you have time to think over a longer period of time about which offenses you think are more appropriate but equally if you get used to using it when you're doing your practice essays it should become more of a second nature to you then in the exam as well to identify what are the crucial points what's the age of our victim are there any other associated vulnerabilities and in that sense help you to identify what is the most relevant offense that you should be looking at.

Now generally when we think about that choice of offense there are three other factors we need to consider. The first one is, generally speaking, we will be applying the most serious potential offence. That's a general rule across the criminal law that the prosecution would look to what is the most serious description of our defendant's behaviour and that will usually be the more appropriate offense. But secondly, you've got to look at the more appropriate label. So, for example, if you have sexual assault by the defendants in a position of trust even though it perhaps might be just as easy to charge a simple sexual assault under Section 3 you might say to your reader within your problem answer that either offense could be charged but actually it looks like a more appropriate label to charge the offense based on the abuse of a position of trust. And finally, and this is also important of course for sexual offenses in particular, you want to think about what's the most likely to actually be satisfied. So if you were the prosecuting authority which offense do you think will be easiest for you to prosecute for you to demonstrate the elements of. And this is why in particular although sections 1 to 4 are the most serious, generally perceived as the most serious offenses, because they require a demonstration of a lack of consent there are often very difficult to prosecute, which is why the variety of other offenses where you don't have to demonstrate that lack of consent are often more appealing. So, again, within your problem question answer you may well say this potentially could be for example even a rape under Section 1. However, because of the victims' age or because of other and aspects of vulnerability, it is likely that a prosecution would actually charge this alternative offense, although perhaps the full offense of rape could be charged, an alternative might be more appropriate because it doesn't require us to engage with questions of non-consent.

Ok so that might sound kind of convoluted. There are a number of different factors at play when you're choosing your offense but hopefully as I say the chart will help you but also consider those three factors in terms of seriousness (generally the more serious is the one you would apply), in terms of appropriate labelling (what is the best description the defendant's behaviour) and finally, in terms of which is going to be the easiest for the prosecution to demonstrate. As long as you take account of those you tell you reader it why you are choosing the offense that you are choosing that can only be the right way forward.

Thank you!