

Sebastian fortnightly- smythe critical thinking sample

[Law](#), [Evidence](#)



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Scenario One

Sebastian commits this offense when he dishonestly buys business class tickets with the intention to sell them. Evidence of further dishonesty is illustrated by his travelling in economy class while the company records indicate that he travelled in the business class. Even though no harm results to the company from his actions, the case of Attorney General's Reference (No. 3 of 2003) held that the key determinant in the offense is the conduct, not the results. Accordingly, Sebastian has committed the offense regardless of the outcome of his conduct.

It is however imperative to note that it may be difficult to prosecute Sebastian for this offense. This is because his official capacity at the Morgan Wetherby Investment Bank may not be considered as a public office, which as was held in *R v. Rembridge*, is a key element of the offense. Therefore, alternative offenses include abuse of power and appropriation. Appropriation is committed where a person uses property in their custody or possession in an authorized manner (Philip et. al., 2012). Appropriation is provided for

under section 3 of the Theft Act.

Sebastian commits appropriation when he sells the business class tickets. The intended and authorized use of the tickets is to travel, thus by selling them on the internet he puts them to unauthorized use. Moreover, he does not have the authority to sell them; his authority is limited to using them. Appropriation also is a common law offense (Jennifer, 2010), though some jurisdictions have codified it. The offense is in the class of felonies and is punishable by incarceration. Additionally, it is both a civil and criminal offense, thus the Bank may sue Sebastian for the offense. Should the Bank opt to sue, the court may compel Sebastian to account for the profits he made through selling the tickets.

Scenario Two

Sebastian commits the offense of theft (or the common law offense of larceny) when he takes the photocopier papers and coloured markers home for his children to use. The common law offense of larceny is codified under the Theft Act 1968, and is referred to as theft. The offense is committed when a person takes and carries away another person's property intending to permanently deprive the person of the property (Philip et. al., 2012). Ideally it involves the trespass to property. The person committing larceny must have custody over the property as opposed to possession (Jerome, 2005). This means that the person does not have ownership or title to the property, but has limited right of use over the property (Philip et. al., 2012). Custody also means that the person has little judgment over how the property is used. The key elements of are the taking away of the property

and the intent to deprive.

Taking or carrying away involves the movement of the property from its original place. This may be through direct physical transportation of the property by the person, or indirect transportation where the person acts through a third party (Philip et. al., 2012). The intent to deprive permanently on the other hand requires the person taking to have the intention of using the taken property at the exclusion of the owner or the person legally entitled to use the property. This intent essentially falls within the scope of traditional criminal intent otherwise referred to as the mens rea. Other important elements include the property being tangible and of ascertainable economic value (Jerome, 2005).

Thirdly, since he intends that the papers and pens be used as toys for his children, he forms the intent to permanently deprive the Bank, and by extension the employees, the stationery. Moreover, he does not intend to return them to the storeroom, which further shows permanent deprivation. Fourthly, the papers and markers have an ascertainable economic value. In conclusion therefore, Sebastian may be prosecuted for theft. Under section 7 of the Theft Act, the offense is punishable by imprisonment to a term not exceeding 7 years.

Scenario Three

The key elements of embezzlement are the intent to deprive and the conversion of the property by a person with legal possession. Unlike in larceny, the embezzler need not have a permanent intent to deprive, all that is required is that the person intends to deprive the rightful owner of the

property fraudulently (Philip et. al., 2012). In cases of embezzlement this intent is invariably concealed through falsification of records but becomes latent upon conversion of the property (Howard, 1997). Conversion simply means that the property is put to unauthorized use or for a purpose not intended by the real owner of the property. Though embezzlement appears similar to conversion and misappropriation, it is more encompassing than the two and requires the mens rea to deprive.

The facts in this scenario show that Sebastian has embezzled the Bank's property. Firstly, he has possession of the computers, though it is not physical possession, he nevertheless has authority over them. This is evident from the fact that he has been entrusted with overseeing the upgrade of the Bank's computers in his floor. Secondly, the computers are meant to be used in his floor, and by having the computer delivered to his wife he has converted the computer's use. The fraudulent conversion of the property is depicted by his changing of the contract without the consent or knowledge of the Bank. Thirdly, by knowingly changing the wording of the contract to benefit his wife, Sebastian shows the intent to deprive the Bank of its property. The intent is further evidenced by the fact that he actually never uses the computer himself. Had he used the computer himself, perhaps it would have been arguable that he did not intent to deprive the Bank.

It follows then that Sebastian may be prosecuted for embezzlement. Though the maximum sentence varies from jurisdiction to jurisdiction, the offense is in the class of felonies. Sebastian may thus be imprisoned. In some cases the court may require restitution of the embezzled property or payment of its

monetary equivalent, either in instalments or lump sum. Where payment is ordered, the convict may not be released until full payment is made.

Searches and the confession

The powers of search are stipulated under the Police and Criminal Evidence Act of 1984 (PACE) as read together with the Act's Code of Practice B (City University, 2008). Generally under these laws, searches may be conducted with a warrant or without a warrant. Sections 17 and 32 of the Act confer wide powers of search, and mostly relate to conducting searches during arrests. On the other hand, section 8 of the Act deals with warrants of search, which are issued by a justice of peace. Search warrants mostly apply to premises or places for which a person has a reasonable expectation of privacy.

Even though a person subjected to an illegal search may make a complaint, any evidence acquired through the search is still admissible. In *Jeffrey v. Black* the court held that evidence illegally obtained through a search is admissible in evidence. However, section 78 of PACE Act gives discretion to the trial court to exclude such evidence. For the court to exercise this discretion, the accused must convince the court that the admission of the evidence may prejudice the right to a fair trial (City University, 2008).

With regard to the facts in the scenario, the search conducted on Sebastian on the street is reasonable. This is because under section 17 of PACE Act a police officer may search a person whom they are arresting. Therefore, any evidence obtained from this search is admissible. The searches conducted in Sebastian's home and office are however illegal, as they were conducted

without a search warrant. This is because in both his home and office, Sebastian has a reasonable and legitimate expectation of privacy. Consequently, since the searches infringe his right to privacy, any evidence obtained in the search may be excluded under section 78. The confession may also be inadmissible as it was obtained in furtherance of an illegal search. In order for it to be excluded, Sebastian has to convince the court that the confession was precipitated by the illegal search as he wanted to avoid further embarrassment. Had the search been conducted in a reasonable manner, he would not have confessed. Further he may argue that being searched in front of his colleagues was a kind of oppression thus the confession should be inadmissible by dint of section 76 of PACE Act.

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