

The parties have committed certain crimes essay sample

[Law](#), [Crime](#)



The scenario is split in two sections; this report will deal with each in turn. The first section concerns the criminal act of theft, with surrounding issues such as joint enterprise and aiding, abetting, counselling and procuring the commission of the crime. It should also be noted that a discussion on some inchoate crimes is needed (Incitement and conspiracy). As well as a discussion on the crimes committed by the parties presented there must be a discussion on any possible defences that are available. Elizabeth's mental illness, could give a defence of (non/insane) automatism and Lucy's withdrawal from participation may have affected her liability for the crime.

The scenario explains how Jeff 'persuades' Elizabeth to go shoplifting. Even if the proposed crime is not later committed he is guilty of Incitement, however, if it was committed it would turn into a crime of counselling. His persuasion is the actus reus of the offence as outlined in Applin (73). Jeff also seems to fulfil the mental element as he obviously intended the crime to be committed and knew that the act he was inciting was criminal. Elizabeth would also have had to know it was a crime she was committing.

However at the point where there is an agreement to go shoplifting, the separate crime of conspiracy arises. According to the criminal law act 1977, the crime of conspiracy is committed on an agreement on a common criminal purpose with intent from at least one party³. It is clear that there is some agreement between Elizabeth and Jeff to commit the crime of theft⁴, however it is only Elizabeth who satisfies both the actus reas and mens rea of the crime of theft, both of which are set out in the theft act 1968, s. 1. The AR is the 'appropriation of property belonging to another'. While the MR is '

dishonesty with the intention to permanently deprive'. Elizabeth clearly appropriated the can of polish and coffee and 'assumed the rights of owner'. The leading case in this area is Gomez (92) the case mainly centred on where there were no stolen goods but also it was held that 'appropriation is an object description of an act done'. The polish and coffee is obviously classed as property and this is clearly set out in the theft act 1968 s. 4 (1). The final constituent of the AR of theft is 'belonging to another'.

The mental element of the crime of theft is, dishonesty with the intention to permanently deprive. There are exceptions of the theft act, s. 2 (1), which are belief that in law they have a right to it, belief consent would be given or belief that the person whom it belongs to cannot be found. After applying these the Ghosh test would be used. This was put forward by lord lane CJ, in Ghosh [82]. The two parts of the Ghosh test that would be applied are, whether it was dishonest by the standards of a reasonable and honest person, then if the answer is positive the second part is applied which is whether the defendant knew that this was dishonest. If on the evidence it could be found that her confusion caused her to believe what she was doing, was honest then she would be acquitted.

The final part of the mens rea of theft is the intention to permanently deprive. A case highlighting this is Lloyd [1985]9 she has clearly satisfied the requirements for her to be convicted of theft.

Elizabeth may wish to use the defence of automatism. Non-insane automatism can best be described as a spasm, reflex or convulsion it also

covers other forms of altered consciousness such as sleepwalking. In the attorney-generals reference (no. 2 of 1992)¹⁰ it was stated that there must be 'a total destruction of voluntary control' and that 'impaired, reduced or partial control is not enough'. It is made clear that in the scenario that Elizabeth was confused, and this would have to come under impairment. *Broome v Perkins* (1987) backs the reasoning that any 'control' at the time of the offence is enough to rule out a defence of automatism. *Hennessey* (1989) it was found stress could not cause automatism and that is Elizabeth's illness. However, if it was accepted it is also made clear that this was self-induced and as such there is evidence of prior fault, as she didn't take her medication and thus this defence would not be valid. If the defence of insane-automatism was gone for, the M'Naghten Rules would have to be used. Lord Tindall in the M'Naghten case said the defendant must be 'labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or, if he did... he did not know what he was doing was wrong'.

The major parts of these rules are defect of reason, disease of mind, the nature and quality of the acts as well as the knowledge that the act itself is wrong. On the first aspect of 'defect of reason', it would seem that this defence would also have to be rejected. In the case of *Clarke* [1972] it was stated that the M'Naghten rules were for those 'deprived of the power of reasoning', Ackner, J went on to say its not 'in moments of confusion' failing to use those powers. However if it were found that this was enough to satisfy, 'disease of mind' would be discussed. As external factors aren't

classed as disease of mind, then the defence of insane-automatism is only applicable to internal factors. In the case of Hennessey (89), stress is an internal factor and as Elizabeth has this it is applicable to the M'Naughten rules. Quick [73]15 highlights this. The nature and quality of the act is the physical character and was put forward in Codere (1916), this also showed the standard of knowledge was the 'reasonable man' test. It would seem that Elizabeth would be held liable for the theft with any defences being dismissed. If they did succeed the other parties can still be held liable as in Loukes17

Jeff and Lucy also played apart in the theft, yet were not the principals. As neither of them committed the act of theft. If Jeff and Lucy are liable to the crimes of complicity (aiding abetting, counselling, procuring and the joint enterprise extension, they must satisfy both the AR and MR. The AR of the crimes is normal meaning of the words used in the Accessories and abettors act 1861, s. 8. The case of Calheam (1985) 'counsel' was said to be incitement, but the crime must be committed. To 'abet' its incitement at the time of the crime, to 'aid' is obviously to help. Finally to procure a crime, it must be produced by endeavour and unlike the others no agreement is needed. The mens rea of crimes of complicity is firstly an intention to aid, this was raised in NCB v Gamble [1959]19, where as this is clear in Jeff's case if Lucy didn't know any crime was being committed there was no intention to aid.

This knowledge of circumstances was talked about in Johnson20 and recklessness to this in Blakely v DPP21. The second part of the mens rea is

the range of contemplation, as shown in Maxwell, simply if it is within the contemplation of the accessory. Jeff satisfies both the mens rea and actus reus of complicity as he aides, abets and counsels the offence of theft by Elizabeth, it could also be described as a joint enterprise as they agreed to commit the offence, if it was found to be joint enterprise then Jeff would be liable as co-principal to any crimes committed that he may have foresaw. It is debatable whether Lucy had an intention to aid or even contemplated the offence, and her withdrawal could be an indicator to show she didn't know a crime was being committed. It is proposed that Jeff would be held liable for aiding, abetting and counselling the commission of the theft. Lucy did withdraw but after the crime and just a 'change of place' may not be good enough, but in Becerra²³.

In the second part of the scenario it starts with what could be duress by Jeff to Elizabeth, but as there were no threats of death or serious injury, so it can not be classed as this, Singh (73) is an example of this, there must also be a present threat. However if they were seen as threats of that kind, it would be valid if they were against her mother as they are close relations, as shown in K (84)²⁵. There is a subjective and objective test for this. Firstly, is there good cause for them to fear of killing or serious injury and then whether a sober reasonable man with the same characteristics would act the same. This defence is not applicable to murder or attempted murder. So there is no other relevance to Duress in the scenario.

Once Jeff has given her the gun, he leaves and says he'll be back later to pick her up so she can kill Lucy. This upsets her and she has a drink. On his arrival back she is delusional, and kills him thinking he's a monster.

The next point of law in the second part of the scenario is the intoxication of Elizabeth and its effect on her liabilities and defences to murder. This is voluntary intoxication and therefore is only relevant to crimes of specific intent, and murder is one of those. The difference between the two intents was shown in *DPP v Majewski*²⁶, where basic intent crimes conducted through voluntary intoxication was said to be as good as mens rea. In the same case it was made clear that a person cannot rely on self-induced intoxication unless the law requires the actual beliefs of that person to be considered. A case that mirrors what occurred in the scenario is that of *Gallagher (61)*²⁷, in this case the defendant was drunk but the M'Naughten rules were applied before he was drunk, thus the case against him was later dismissed on appeal. This means that the M'Naughten rules (as above) must be applied even if the person is drunk.

This same matter was covered in *Davis (1881)*²⁸ but also discussed intoxication with diminished responsibility. If Elizabeth did not use a defence she would be guilty of murder, however the defences of insanity (as above) and diminished responsibility are open. Diminished responsibility is based on an abnormality of the mind as set out in *Byrne*²⁹, which is a state a reasonable man would call abnormal. The case of *Atkinson*³⁰, set out the two questions that must be asked, firstly would he have killed if not for the drink and secondly, would he have been under diminished responsibility. It is

unlikely that without the drink she would have killed because she is unlikely to have hallucinated due to her illness alone and also if she did not have a drink it would have been unlikely to be seen as diminished responsibility because her only abnormality of mind was slight confusion or impairment and it must be substantial (Byrne, above). However it is likely that if the M'Naughten rules are applied (as above), this defence is likely to succeed.

In all it would seem Lucy will not be charged unless there was more evidence of knowledge, e. g. to the theft, Jeff would have been convicted of the theft and may have been an accessory in his own murder if it weren't for the victim rule but as he is dead he can not be punished. Finally it would seem that Elizabeth would be found guilty of murder but is likely to get the special judgment of insanity.

References:

1 Race relations board v Applin [1973] QB 815, CA. Here Lord Denning stated that " A person may ' incite' another to do an act by threatening or by pressure, as well as by persuasion"

2 Curr [1968] 2 QB 944, CA. highlighted the mens rea of the crime of incitement, with knowledge a clear factor in this case.

3 A case highlighting both the actus reas and mens rea of the crime of conspiracy is that of R v Siracusa [1989] Crim LR 712, CA

4 It is not clear whether Lucy is party to the agreement but this will be discussed later, in reference to Lucy and Jeff's liabilities under complicity.

5 Theft act s. 3, description of appropriation

6 Gomez [1992] 3 WLR 1067, HL

7 The theft act 1968 s. 5 (1) discusses the term in detail and is highlighted in the case of Bonner [1970] 1WLR 838, CA

8 Ghosh [1982] QB 1053, CA

9 Lloyd [1985] QB 829, CA

10 Attorney-generals reference (no. 2 of 1992) [1993] 3 WLR 982, CA

11 Broome v Perkins (1987) 85 Cr App R 321, CA

12 Hennessey (1989) 89 Cr App R 10, CA

13 M’Naghten’ Case 918430 10 Cl & F 200

14 Smith, J. C. and Hogan, B., Criminal law: cases and materials (6th Edn, 1996) London: Butterworths

15 Quick and Paddison [1973] QB 910, CA

16 Codere (1916) 12 Cr App R 21, CCA

17 Loukes [1996] 1 Cr App R 444, CA

18 Calhaem (1985) QB 808, CA

19 National Coal Board v Gamble [1959] 1 QB 11, DC

20 Johnson v Youden [1950] 1 KB 544, DC.

21 Blakely and Sutton v DPP [1991] RTR 405, DC

22 Maxwell v DPP for N. Ireland.[1978] 3 All ER 1140, IHL

23 Becerra and Cooper (1975) 62 Cr App R 212 CA

24 Singh [1973] 1All ER 122, CA

25 K (1984) 78 Cr App R 82, CA

26 DPP v Majewski [1977] AC 443, HL

27 Attorney-General for Northern Ireland v Gallagher [1961] 3 All ER 299 HL

28 Davis (1881) 14 Cox CC 563, Assizes

29 Byrne [1960] 2 QB 396, CCA

30 Atkinson [1985] Crim LR 314, CA