



The Law Society
OF SOUTH AUSTRALIA

Mock Trial Competition

Lesson Plan Case Materials

Mock Trial Competition Contact:

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Case Information

Police v Peddler

Peter/Peta Peddler is being tried for illegally importing a prohibited narcotic substance (heroin) into Australia contrary to s9 of the Illegal Importation of Narcotics Act (Cth) 1992. The offence carries a maximum penalty of ten years. The case is to be heard by a mock judge sitting alone.

The procedures are set out in the manual. The matter will be heard in the Mock Court.

Each team will receive the following documents:-

1. The complaint
2. A certificate of analysis
3. Cases which can be used at precedent in legal argument
4. A statement by Peter/Peta Peddler
5. A statement by Thelma/Theo Probe
6. A statement by Makim/Makima Leery
7. A statement by Desiree/Desmond Ratchett

The charge sheet sets out the offense alleged, the Act and the section of the Act under which the charge is brought.

Section 39 of the Illegal Importation of Narcotics Act (Cth) 1992 provides:

S39 (1) A person commits an offence who:

- a. Without reason excuse (proof whereof shall lie on him/her) has in their possession, or attempted to obtain possession of, any prohibited drug to which this Section applies which have been imported into Australia in contravention of this Act.
- b. For the purposes of this Act a prohibited drug contained in a parcel, bag or suitcase may be deemed to be in the possession of a person if it bears an identifying label or other marking associating such parcel, bag or suitcase with the person in question.

Is it to be accepted for the purposes of this Competition that heroin is a “prohibited drug” within the meaning of s39. Formal proof is not required.

The prosecution must prove their case “beyond all reasonable doubt”.

Particularly the prosecution must prove:

1. The drug was a prohibited import;
2. The drug was imported into Australia;
3. Peddler was in possession of the suitcase;
4. Peddler intended to have a prohibited drug in his possession.

The defence must:

1. Cast sufficient doubt on the evidence of the prosecution to show that they have not proved their case beyond all reasonable doubt.
2. Satisfy the court on the balance of probabilities that Peddler did not know the drug was in his/her possession and the he/she did not have the drug in his/her possession.

NOTE: - The Statutory allocation of the burdens of proof:

The Crown bears the persuasive burden (beyond reasonable doubt) in establishing the offence –
LUXTON v VINES (1982) 85 CLR 352,358.

The effect of the Narcotics Act is such that once the accuser's possession of the prohibited substance has been established, the burden shifts to the accused to prove, on the balance of probabilities, there was a reasonable excuse for possession. –

DOWLING v BOWIE (1952) 86 CLR 136,139-40

Legal Notes

CASE LAW

Kural v R (1987)

Facts: Applicant was convicted on a charge of having imported into Australia, in contravention of the Customs Act, heroin. The Applicant claimed to be unaware of the presence of the heroin.

Held: An importing offence requires an intention to import a prohibited drug. Knowledge of a likelihood or a belief, provides a basis from which this intention could be inferred. The requisite intent might have rested on something less than actual knowledge. For example, an awareness of the likelihood of the drug's presence.

It would not necessarily suffice for the accused to simply close his/her mind to the nature of any substance put into a bag. Knowledge of likelihood is itself a sufficient for of subjective blame worthiness.

Proudman v Dayman (1941)

Per Dixon J:

As a general rule, an honest and reasonable belief in a state of facts which, if they existed, would make a defendants act innocent, afford an excuse for doing what would otherwise constitute an offence.

Donohue v Terry (1939)

Facts: Charge of driving care without owner's consent.

Held: Because facts peculiarly within the accused's knowledge formed an essential element of the statutory offence, little evidence was required of the prosecution to establish a case to answer on that question. In that case, the inferred absence of consent was proved beyond reasonable doubt because the accused failed to give an adequate explanation of the case to answer.

Information

For hearing at the: Mock Court on or about 202--
From: Federal Police

ACCUSED: PEDDLER, Peter/Peta
Date of birth: 19/8/1994
Address: 26 Charlotte Lane
ADELAIDE SA 5000

Sex: M / F

Occupation: Student

Date of accusation: 13 August 2015

Apprehending Officer: Detective Makim/Makima Leery
Drug Squad- Federal Police

Contrary to the provisions of the Illegal Importation of Narcotics Act (Cth) 1992, Section 39 (1).

SUMMARY OF OFFENCE:

That Eric/Elizabeth Elander did on the 11 May 2015 at Henley Beach Technical College in the State of South Australia, knowingly have in his/her possession a prohibited substance, namely Cannabis resin.

That Peter/Peta Peddler did on 13 August 2015 at Adelaide International Airport in the State of South, knowingly had in his/her possession and did import into Australia a prohibited substance, namely – Heroin.

Evidence

Police Department of South Australia

ANALYSIS CERTIFICATE

This is to certify that I, Dr Z Fitzpatrick, duly conducted according to the prescribed methodology an analysis of a substance handed to me by Detective Leery at 5:30pm on 13 August 2015.

Signed

.....ZFitzpatrick.....

Dr Z Fitzpatrick

Dated: 13 August 2015

STATEMENTS

First Witness for the Prosecution

Thelma/Theo Probe

1. My name is Thelma/Theo Probe and I live at 1/3 Rummage Drive, North Adelaide. I am a Customs Officer employed by the Australian Customs Service. I have been so employed for 13 years. I am stationed at Adelaide International Airport, Adelaide.
2. On 13th August 2015, I was studying on duty in the arrival hall of the Adelaide International Airport. My job is to randomly stop travellers passing through customs clearance and do a routine search of their luggage. Among other things, we are looking for prohibited substances such as drugs when conducting these searches.
3. To help us detect these prohibited substances, we use narcotic sniffer dogs. I have been a dog handler for 13 years.
4. On the arrival of AA Flight 13 from San Francisco to Adelaide on 13 August 2015, I set a narcotic sniffer dog on the passenger's luggage when it had been unloaded from the plane.
5. The dog I was handling, Fang, showed immense interest in a suitcase which had no name and no address tag. However, the bag bore an AA baggage collection claim tag (AA1313). I have been Fang's handler for 3 years.
6. I ran a computer search. AA records indicated this bag was checked in by Ms Desiree Dupre.
7. I took Fang around to the arrival lounge. I positioned him at the gate through which the passengers were disembarking from the aircraft. I instructed Fang to identify the owner of the suitcase.
8. As Peter/Peta Peddler passed, Fang raised his head, cocked his leg and began to shuffle forwards. This was an identifying signal. Fang thought that Peddler was the owner of the bag. Fang has a 70% accuracy level in identifying objects with their owners.
9. I then saw Peddler pick up two bags. One of these was the suspect bag. He then joined the line of people waiting for clearance.
10. I approached Peddler as he/she stood in the clearance line. I said, "I would like to search your bags please". He/she replied that he/she had nothing to declare.
11. I escorted Peddler down to the search area. He/she then opened the bag. I searched its contents, it contained nothing of interest.
12. I then asked the defendant to open the suspect bag. He/she refused. He/she said, "I do not have the key". I forced the bag open. It contained lingerie and a cosmetic case. I opened the cosmetic case. It was locked. I searched its contents. Pushed to the bottom of the cosmetic case were five small, rectangular foil envelopes. I opened one of these envelopes. It contained a small quantity of white powdering substance. I tasted the white substance. I concluded it was a prohibited substance.
13. I said, "Where did you get this?" The defendant said, "The bag belongs to Allison. She sat next to me on the plane. Why?"
14. I called the police from in the search area. Some twenty minutes later, Detective Leery arrived. He/she entered the search room. I told him of what I had found in the suspect's suitcase. I gave him the five foil packages.

15. Detective Leery asked the defendant, "Is what Ms/Mr Probe just told me a true and correct account?" The defendant said, "I don't know what is in the bad. It's not mine. I know nothing about drugs. I've never even seen drugs before. I was just doing Allison a favour.
16. The defendant and Detective Leery continued to speak. I did not hear what they were saying. An emergency call had come through for me from the Twilight Nursing home, where my mother is a guest. I was speaking on the telephone.
17. Approximately 10 minutes later, Detective Leery escorted the defendant to the Adelaide Police Station.

Second Witness for the Prosecution

Detective Makim/Makima Leery

1. My name is Makim/Makima Leery. I have been an active member of the Australian Federal Police Force for 20 years. I am currently a Detective with the Drug Squad. I have held this position for the last 13 years.
2. On 13 August 2008 I received a call from a Customs Official at approximately 3:13pm, requesting my presence at Adelaide International Airport.
3. Upon my arrival there, I saw the defendant and Ms/Mr Probe, a customs official. She/he showed me five small foil packages, she/he had found concealed in a cosmetic bag held inside the defendant's luggage. I introduced myself to the defendant as Detective Leery from the Federal Police Drug Squad.
4. Ms/Mr Probe then said, "At approximately 2:20pm I was on duty in the arrival hall of the Adelaide International Airport. Fang the narcotic sniffer dog I was handling identified this man/woman (indicating the defendant) as the owner of the bag containing the prohibited substance (monitoring towards the open bag in the room). I saw this man/woman pick up the bag and join the line of people waiting for clearance. I approached him/her, I said, "I would like to search your bags please". He/she replied that he/she had nothing to declare.
5. Ms/Mr Probe took a breath and continued, "Peddler opened one of the two bags he/she was carrying. I searched it. It was all clear. I forced the suspect bag open. It contained much lingerie and a cosmetic case. Pushed to the bottom of the case were five small rectangular foil envelopes. I opened them and tasted the contents. From its taste I concluded the substance was heroin. I said, "Where did you get this?" Peddler said, "Its Allison's bag. She sat next to me on the plane." I then called you detective".
6. I said, "Is what Ms/Mr Probe just told me true?" The defendant did not give me a direct answer. He/she said, "It's not my bag, I don't know anything about drugs. I was just doing Allison a favour".
7. I said, "And who is Allison?" The defendant replied, "She sat next to me on the plane." He/she then gave a garbled account of an "arrangement". He/she said, "She will come to my house in a few days to collect her bag. Her mother is dying in an Adelaide retirement village, you know".
8. Ms/Mr Probe handed me a baggage stub. She/he said, "This was attached to the bag containing the suspect substance". The defendant said, "The bag belongs to Allison".
9. I said, "Does Allison have a surname and address?" The defendant said, "I don't know".
10. I said to the defendant, "You know very well what was in that bag, didn't you?" You are telling me lies, are you not?" The defendant rested his/her head in his/her palms and cried.
11. I escorted the defendant down to the Adelaide Police Station, where he/she was formally charged.
12. I then made enquires at AA Airlines as to the baggage stub that Ms/Mr Probe had given me during my interview of the defendant at the Airport. I was told by an AA employee that the baggage claim stub was registered by a Ms Desiree Dupre. The employee also said that several months ago a suitcase containing drugs was found on an AA flight from San Francisco bearing an AA baggage claim tag that indicated that it belonged to a South Australian Supreme Court Judge. The Judge denied ownership of the case. The matter was dropped. The employee said it was not unusual for check-in personnel to "sometimes mis-identify bags".
13. I ran a passenger check. There was no one by the name of Allison or Desiree Dupre on AA Flight 13 from San Francisco to Adelaide on 13 August 2015.

14. I also took the packages given to me by Ms/Mr Probe to the Police labs for analysis, the analysis found the substance to be heroin.
15. I had the defendant house under constant police surveillance for one week after charging him. No one arrived there to pick up a bag.

First Witness for the Defence

Peter/Peta Peddler

1. My name is Peter/Peta Peddler and I live at 26 Charlotte Lane, Adelaide. I am a fulltime student at the University of Adelaide, studying Arts. I am currently undertaking an Honours degree in Anthropology.
2. On 17 February 2015, I was awarded a bursary to travel to San Francisco. This was a field trip to observe the social customs of aged Americans in rest homes and to apply various theories of practice to my findings. I left Adelaide for San Francisco on 13 June 2015.
3. On 13 August 2015, I was travelling to Adelaide on AA flight 13 from San Francisco.
4. During the flight I was seated next to a woman of about 20 years of age. We began to converse. She told me her name was Allison. I do not believe she told me her surname. We were talking about San Francisco when the drinks trolley arrived. I usually adverse to consuming hard liquor. However, Allison promptly ordered two Kaluha and milks. I took a gentle sip. It was really rather nice— just like iced coffee. I'm rather fond of iced coffee. I had another before the plane landed.
5. As the plane was circling Adelaide, Allison began to cry. She said she had brought too much luggage and that customs would never let her through with it all. She said she would not ordinarily mind the wait, but that she must dash to the death bed of her mother in an Adelaide rest home as soon as she possibly could. She asked me if I would pick up one of her cases for her. I agreed.
6. Allison asked me for my address, which I told her. She repeated the address, said she would remember it and promised to come and collect her bag from me within the next few days.
7. The plane landed and we proceeded to the baggage claim area. I saw Allison pick up several suitcases. She motioned me towards one. I then collected my own bag and the bag Allison motioned to. I then joined the line of people waiting for clearance. By the time I reached the line Allison had passed through it.
8. A custom's supervisor came up to me, she said, "I want to search your bags". I was still holding my suitcase and the suitcase I believed belonged to Allison.
9. I told her/him that I had nothing to declare.
10. I was marched down to the search area. The customs officers asked me to open the bags. I opened my own bag. It was inspected. The officer said, "Ok that one is fine, open the other".
11. I did not have a key to the other suitcase. I explained this to the officer. She forced the bag open. I could see the bag contained soft layers of women's intimate apparel and a cosmetic case. The cosmetic case was opened. I could see that it contained several small pieces of foil.
12. The officer un-wrapped the foil. She removed a small quantity of white powder from one of the foil packages with the tip of her/his index finger. She tasted it. She asked me where I had got it from.
13. I explained that the bag was not mine, that it belonged to another passenger on the plane called Allison. I said I had no idea what the white powder was.
14. The customs officer explained to the police officer that she had searched my bags and found a small cosmetic case containing drugs. I do not recall her precise words. I was a little distraught at the time.

15. The police officer asked me if what the customs officer had just said was true, I replied in a sobbing voice, "I didn't know what was in the bag. It's not my bag. I don't know anything about any drugs. I've never even seen drugs before. I was just doing Allison a favour".
16. The police officer asked me who Allison was. I told him she was my fellow passenger and gave the details of our arrangement; that she would come to my house in a few days to collect the bag.
17. I saw the customs officer hand the police officer a baggage stub. I presumed it had come from Allison's bag.
18. The police officer asked me whether "this Allison" had a last name and address. I said I did not know.
19. The police officer then said "You knew what was in that bag. I don't believe your story for a second". I wailed, thumped my head against the table several times and shouted that my story was true.
20. I was then taken to Adelaide Police Station and was charged.

Second Witness for the Defence

Desiree/Desmond Ratchett

1. My name is Desiree/Desmond Ratchett. I live at 20 Hardy Street, Goodwood. I am a matron at the Withered Oak Nursing Home for the Old and Weary at North Adelaide.
2. Before I took up this position, I was a nurse for 13 years with the defendant's mother Pricilla Peddler at the Royal Adelaide Hospital.
3. I was present at Peter/Peta's birth and have watched him/her grow into the fine, strapping young man/woman he/she is today. I have been a close friend to the Peddler family for nearly 30 years.
4. Peter/Peta is currently working very hard on his/her Honours Thesis on the inhabitants of rest homes and retirement villages. He/she is intelligent, kind and truthful.
5. Peter/Peta came to live with me for several years, 7 years ago. His/her mother left her husband, her family and her professions to pursue her dream of becoming famous, no matter what it took. She refused to answer to any name but Candi. She up and left and moved to the bright lights of Las Vegas. Peter/Peta's father took to drink. Peter/Peta needed a more stable home environment; he/she recognised this and asked if he/she could live with me. In that year we became very close. He/she trusted me implicitly. I came to love him/her as though he/she were my own child.
6. Peter/Peta is very eager to please. I attribute this to the breakdown of his/her family unit. He/she is so willing to trust, be loved and gain acceptance. He/she only wants to be loved and understood. I have always tried to shield him/her from the cold and cruel elements of life. I would never let him/her look up his/her mother's Vegas act, no matter how much he/she cried. He/she is a very trusting, kind creature.
7. As a result, Peter/Peta is not very worldly. But this is good. I would prefer that people call him/her naïve than have him/her associate with ungodly sinners. I have found Peter/Peta to be of excellent character. I'm sure once this horrid business is behind him/her; Peter/Peta will go on to do great things for Anthropology, his/her community and the world.
8. To the best of my knowledge and belief, Peter/Peta has never taken any narcotic drug whatsoever.
9. Peter/Peta came to me after he/she was charged. He/she was completely and utterly distraught. We spoke of the matter for some time. He/she always comes to me in time of emotional need. He/she does love his aunty Desiree/uncle Desmond. I personally believe, firmly and confidently, that the bag was not Peter/Peta's and it belonged to some floozy who called herself Allison; and Peter/Peta did not intentionally bring narcotic drugs into Australia.