CHAPTER SEVEN

Sexual Offences

7-01 Sexual are considered almost as serious as murder, hence rape being tried in the Central Criminal Court along with homicide offences. Historically, sexual offences against women started as offences against the property of their fathers or husbands. The area has been modified considerably with the advent of feminism, which influenced, for example, the "rape shield laws" which prevent a victim being cross-examined as to her sexual history. Nonetheless, nineteenth-century legislation is still very influential.

Section 2 Rape

Rape is a common law offence which was codified by section 2 of the Criminal Law (Rape) Act1981 as amended by the Criminal Law (Rape) Amendment Act 1990. The penalty for which is set by s 48 of the Offences Against the Person Act 1861. Section 2 provides as follows:

> *"2(1) A **man** commits rape if—*
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> *(a) he has unlawful intercourse with a **woman** who at the time of the intercourse **does not consent** to it, and*
> *(b) at that time **he knows** that she does not consent to the intercourse **or he is reckless** as to whether she does or does not consent to it,*
>
> *and references to rape in this Act and any other enactment shall be construed accordingly.*
>
> *(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed."*

7-02 Only a man can commit a rape, a woman can commit the offence as a principal, by operation f the Doctrines of Innocent Agency or Common Design or as an accessory. Woman in the context of the Act, may include post-operative male-to-female transsexual. According to a decision of the Reading Crown Court in *R. v Matthews*.[1]

Actus Reus

Capacity

At common law, certain types of man were considered incapable of rape. Boys under 14 this was removed by S. 6, Criminal Law (Rape) (Amendment) Act, 1990 ('the 1990 Act'). The presumption was removed by the 1990 Act. Nonetheless, boys under 12 now protected by rules of *doli incopax* at any rate, with the advent of the Children Act 2001 and in particular S. 52, as amended.[2] Similarly, a husband was at law incapable of raping his wife. This exemption was

[1] *R. v Matthews* Reading Crown Court, unreported, October 28, 1996
[2] Section 76C of the 2001 Act as inserted by section 134 of the 2006 Act states that where a child under 14 years is

also removed by the 1990 Act, however, s 5(2) of the Act requires that the consent of the Director of Public Prosecutions be obtained before prosecuting a man for raping his wife.

Prior to the commencement of the 1990 Act, a man could not be guilty of raping his wife. This is no longer the case. The marital exception was removed by S.5(1) of the 1990 Act, which states:

> *"Any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished;' s. 5(2): 'Criminal proceedings against a man in respect of the rape by him of his wife shall not be instituted except by or with the consent of the Director of Public Prosecutions."*

Sexual Intercourse

7-03 The 1981 Act does not define exactly what constitutes intercourse for the purposes of section 2 and so one is required to return to the definition rendered under the 1861 Act[3] S. 63, which defines intercourse as penetration of a woman's vagina by a man's penis. Ejaculation is not necessary (*R v Gaston*)[4] and any slight penetration will suffice (*AG v Dermody*)[5]

Consent

This is perhaps the most critical element in a rape Prosecution and often the trial will centre around this issue. It is obviously difficult to prove by way of evidence as these offences by their nature are conducted in private, meaning independent witnesses are unlikely. Thus it can come down to something of a "swearing match" between the Accused and the Complainant, although advances in forensic science have helped in that corroborative medical details can be more readily identified if necessary.

It is crucial to note from the outset that consent is an element of the *actus reus* of rape: not just the *mens rea*. As an element, it is something the Prosecution must prove rather than a defence, which the Accused might wish to raise.

Consent must be full and free, but includes situations of acquiescence. This was noted by Murray J. (as he then was) in *DPP v C.*[6] However in *R v Camplin,*[7] the Accused was convicted of rape even where the victim went along with it because he had caused her to become very drunk, which vitiated her consent. It was clarified in *R v Lang*[8] that it is not the amount of drink that is important but the effect that the alcohol consumed had on the victim's mind, which will be probed by way of evidence. It is enough that a woman withdraws her consent during intercourse. The instructive case on this is *Kaitamaki v R.*[9]

Also instructive, in terms of the likely sentence is the case of Magnus Meyer Hustveit. On the 15th of March 2016 Hustveit was found guilty of one count of rape and one count of sexual assault when he raped his girlfriend when she was asleep. McCarthy J in the High Court sentenced him to a seven year suspended sentence, however, Birmingham J in the Court of Appeal overturned the 'undue leniency' of this sentence given the seriousness and unusual nature of this crime. Birmingham J sentenced him to 15 months imprisonment.

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charged with an offence, the Court may, of its own motion or the application of any person, dismiss the case on it merits if, having had due regards to the child's age and level of maturity, it determines that the child did not have a full understanding of what was involved in the commission of the offence

[3] The Offences Against the Person Act 1861, discussed in earlier chapters relating to assault.

[4] *R v Gaston* (1981) 73 Cr App Rep 164

[5] *People (Attorney General) v Dermody* [1956] IR 307

[6] *People (DPP) v C* Unreported, Court of Criminal Appeal, 31 July 2001

[7] *R v Camplin* (1845) 1 Cox CC 220

[8] *R v Lang* (1975) 62 Cr App Rep 50

[9] *Kaitamaki v R* [1984] 2 All ER 435

Fraud and Consent

7-04 Fraud as to some things will vitiate consent whereas fraud as to others will not. Fraud as to the nature of the act will render any purported consent void. If the woman does not realize it is a sexual act she is consenting to, consent will be meaningless.[10] For example, in *R v Flattery*,[11] the girl consented to a "surgical procedure" which consisted of intercourse. The perpetrator was convicted of rape due to fraud vitiating consent. Similarly in *R v Williams*,[12] the Accused had sex with the victim under the pretext of improving her singing voice. He was convicted of rape. Again in *R v Tabussum*,[13] consent given by a number of women to a breast examination was negated by the fact that the Accused was not medically qualified. They were consenting to a sexual act and they did not know it, therefore they could not be said to have understood the nature of the act undertaken.

However, mere presence of fraud will not undermine consent unless the fraud goes to the nature of the act itself. In *R v Linekar*[14] the Accused had agreed to pay for sex and the woman consented on this basis. Afterwards he refused to pay and she made a rape complaint, arguing that her consent was obtained on the basis of a fraudulent promise without which she would not have had sex with him. The Court of Appeal held that mere presence of fraud was not sufficient to negate the consent and given the Complainant had understood the nature of the act. Her consent was valid. The court also commented *obiter* that had the Accused had HIV, for example, and not disclosed this to a sexual partner, that would still not undermine any consent given so long as she understood the nature of the act.

Rape, Sexual Assault and STDs

The issue of the nexus between rape, sexual assault and STDs has been considered in *R v Mabior*. In *R v Mabior* [2012] 2 SCR 584, Mabior's house was known as a "party place" as he regularly provided his guests with strong "Black Ice" beer and drugs. Mabior was diagnosed as HIV-positive on January 14, 2004. He was informed of this diagnosis no later than January 27, 2004 and underwent regular anti-retroviral therapy. Notwithstanding this his "party lifestyle" continued and between his diagnosis and the end of December 2005, Mabior had sex with a number of women, on some occasions with a condom, on others without.

Of the 9 Complainants, one was 12 at the time of the sexual encounters; four others were aged 17, another four were adults. He did not inform these women of his HIV status, indeed, he replied in the negative when one of them asked if he had any STDs. Two of the complainants were informed by others of his HIV-positive status, and one of them continued to have sex with him thereafter. Eight of the nine complainants gave evidence that they would not have consented to sex with Mabior had they known he was HIV-positive. None of the complainants contracted HIV.

In Canada, non-consensual sex is a sexual assault contrary to section 265 of the Criminal Code, 1985. Under section 265 of that code fraud can vitiate consent to sex.

In *R v Cuerrier* [1998] 2 SCR 371, the Supreme Court of Canada held that the failure to disclose one's HIV-positive status constitutes just such a fraud. As exposure to HIV, "endangers the life of the complainant", this is an offence of aggravated sexual assault, under section 273. The Canadian Supreme Court in Mabior examined Section 265 and the decision in *R v Currier*. It

[10] *R v Clarence* (1888) 22 QBD 23
[11] *R v Flattery* (1877) 13 Cox CC 388
[12] *R v Williams* [1922] All ER Rep 433
[13] *R v Tabussum* [2000] 2 Cr App R 328
[14] *R v Linekar* [1995] 3 All ER 69

typified the test as requiring both a "*misrepresentation or nondisclosure of HIV*", and a "*significant risk of bodily harm*" for the Complainant.

Thus, for aggravated Sexual Assault to occur via an STD non-disclosure, the required elements are;

i. a misrepresentation of the presence/absence of the STD, and
ii. a significant risk of infection.

In *Mabior* Court held that:

> *… as a general matter, a realistic possibility of transmission of HIV is negated if The accused's viral load at the time of sexual relations was low, and Condom protection was used.*

In *R v Dica* [2004] QB 1257 The Court of Appeal held that, where a person, A, knows he or she carries HIV (or any other sexually transmitted disease), and engages in consensual sexual relations with another, B, without informing B of the fact he or she is HIV-positive, and not intending to infect B; A will be liable for conviction under section 20 of the Offences against the Person Act 1861, for inflicting grievous bodily harm on B. However, If B knew of A's HIV positive status, she could be taken to have consented to that harm being inflicted; but where A undertook a concerted campaign of infection, B could not consent to that infection

In Australia in six of the nine jurisdictions, exposure to HIV without transmission of the virus is not criminalised. In South Australia, reckless exposure is criminalised. In Victoria and the Northern Territory, they apply lesser offences to cases where there was exposure, but no transmission of the virus. In New Zealand, section 128A (7)62 of the Crimes Act 1961, provides that

> *"A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality."*

No cases of HIV transmission have arisen under this section to date.

A somewhat novel approach was taken in *R v Mwai* [1995] 3 NZLR 149 where a man was convicted of criminal nuisance for recklessly exposing a number of people to HIV through unprotected sex. In upholding Mwai's conviction, the Court of Appeal typified his bodily fluid containing the HIV virus as a "dangerous substance" under his control, and for which he was liable.

s. 3, Criminal Law Amendment Act, 1885:

> *"Any person who —*
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> *(1) By threats or intimidation procures o attempts to procure any woman or girl to have any unlawful carnal connexion, either within or without the Queen's dominions, or*
> *(2) By false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either within or without the Queen's dominions,*
>
> *shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years…."*

7-05 In England, consent is now expressly deemed to have been negated in any case of deceit as to the nature of the act or impersonation by section 78 the Sexual Offences Act 2003. Section 75

of the Act also creates a presumption that consent is lacking where violence has been used or threatened or where the Accused is detained. This mirrors a presumption in international humanitarian law that persons in the captivity of the other side in an armed conflict are presumed not to consent to any sexual activity. The English presumption also operates as against situations where the Complainant is asleep or unconscious; drugged; or unable to communicate her consent or absence thereof to the Accused by reason of physical disability.

There was a particular offence of impersonating a woman's husband under section 4 of the Criminal Law Amendment Act 1885. This had been the position in the Irish common law at any rate,[15] though not in the English. The English position was simply to charge people with assault. In the Irish case of *R v Dee*, the Accused climbed into the Complainant's room, where she had been sleeping. She thought he was her husband and thought she said something to him, he made no reply and penetrated her. It was at this point she realized he was not in fact her husband. He tried to rely on English cases regarding consent to marital sex but the court found this "revolting to common sense" and his conviction for rape was upheld. Therefore if the Accused knows the woman has consented because she thinks it is someone else, he has sufficient *mens rea* for rape.

Resistance

At one time it, it was (controversially) necessary for the Prosecution to adduce evidence showing that the victim did not physically resist the act done. Failure to resist was taken as suggesting consent. This is another area feminism has made great inroads into and section 9 of the Criminal Law (Rape) Amendment Act 1990 has clarified any doubts that might have remained:

> *"9. It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person any failure or omission on the part of that person to offer resistance to the act does not of itself constitute consent to the act."*

Therefore submission does not amount to consent. In *R v Olugboja*[16] the Accused had sex with a girl following a disco. She was sixteen years of age and had already been raped by his friend and when he asked her to removed her trousers, she did so without question. The Accused argued that he had "persuaded" her to consent, which she finally did as evidenced by the fact that she removed her trousers voluntarily. The Court of Appeal held that a jury in a rape trials should be told that submission and consent are not the same. The jury should take into account the Complainant's state of mind and note the circumstances surrounding the incident.

Nonetheless, evidence of force is still helpful in negativing any argued consent.

Mens Rea

7-06 Section 2(1)(b) of the 1981 Act above sets the mental element for rape at knowledge or recklessness that the other party was not consenting. Recklessness, as in most other place in Irish law, is subjective. Therefore the Accused must have actually adverted to the possibility that the complainant might not have been consenting and proceeded anyway. Because of this, the defence of "honest belief" as to consent grew up as a defence to rape. Because the minimum *mens rea* required was recklessness; and because recklessness was defined from the Accused's standpoint only, it was a valid defence to say he genuinely did not think of the possibility that the Complainant was not consenting, even if the Reasonable Man would have. This proved another point of controversy.

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[15] *R v Dee* (1884) 15 Cox CC 579
[16] *R v Olugboja* [1981] 3 All ER 443

In *DPP v Morgan*[17] A man invited a group of friends home to have sex with his wife. He told them she would struggle but that this was just an act, which was part of the fun, and that they should disregard it. All three of them were convicted of rape and the husband of aiding and abetting rape. They appealed their convictions on ground that the jury had been told that irrespective of whether the men honestly believed the victim was consenting, the jury should consider whether there were reasonable grounds for that belief or not (thus importing an objective element to the *mens rea* required). The House of Lords upheld their convictions on grounds that they did not believe any of the Accused had held an honest belief, but agreed with the principle that an honest belief should not be assessed by reference to presence or absence of reasonable grounds. They held that honest belief is sufficient to negate *mens rea* and that reasonable grounds or absence thereof for that belief should not be considered. The Heilbron Committee in England reviewed this decision and found it to be a correct statement of the law. Consequently it was codified in the Sexual Offences (Amendment) Act 1976, which specifically provided for consideration of the presence or absence of reasonable grounds. The wording of the equivalent Irish, section 2 of the 1981 Act, is virtually identical. Subsection 2 expressly provides that at the trial of a rape charge, the jury in assessing honest belief is to have regard to the presence or absence of reasonable grounds. The Law Reform Commission, writing in 1988, saw no reason to change this.[18]

Section 4 Rape

7-07 This is a relatively new offence created by section 4 of the Criminal Law (Rape) Amendment Act 1990. It effectively plugs the gap left by the narrowness of the tradition definition of rape in section 2, following recommendations by the Law Reform Commission:

> *"4(1) In this Act "rape under section 4" means a sexual assault that includes—*
>
> *(a) penetration (however slight) of the anus or mouth by the penis, or*
> *(b) penetration (however slight) of the vagina by any object held or manipulated by another person.*
>
> *(2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life.*
>
> *(3) Rape under section 4 shall be a felony."*

Therefore they can be committed by either sex against the other or against a member of the same sex.

The Commission had also recommended categorizing penetration of the anus with an object as rape but this suggestion was not taken up, leaving it to be dealt with as a sexual assault.[19]

Sexual Assault

Sexual Assault is merely the new name for the common law offence of indecent assault, as named by s 2 of the Criminal Law (Rape) Amendment Act 1990. Thus the common law offence continues to exist under a new name, on a statutory footing.[20] The penalty imposable for sexual

[17] *People (DPP) v Morgan* [1975] 2 All ER 347
[18] Law Reform Commission, *Report on Rape and Allied Offences* (1988)
[19] *Ibid*
[20] This was confirmed in *DPP v EF* Unreported, Supreme Court, 24 January 1994

assault is a fine or up to ten years imprisonment.[21] This rises to fourteen years imprisonment where the victim is under seventeen.[22]

Actus Reus

The physical element of sexual assault requires assault plus circumstances of indecency.

Assault

7-08 Assault has already been dealt with in an earlier chapter and the same definitions apply here. It will be recalled that the *actus reus* of assault is the application of force without consent; or causing someone to fear the immediate application of such force. It is the circumstances of the assault, which mark it out as sexual, or not. Obviously a sexual element to an assault will take it into an entirely more serious realm than regular assault. In *Fairclough v Whipp*,[23] the Accused invited a child to touch his penis. The court held that there was no assault and therefore no sexual assault. It will be recalled that there must be some force or threat of immediate force to effect an assault. So advancing towards the victim menacingly, for example, might suffice to ground an assault. In *R v Rolfe*,[24] a man who exposed himself to the would-be victim and advanced towards here threateningly was convicted of indecent assault: the assault being his moving towards her in such a fashion and the indecent circumstances being the exposure. It is to this element, which we now turn.

Circumstances of Indecency

This is an area, which can cause some difficulty where the circumstances in which the assault occurs are ostensibly innocent of sexual overtones. In *R v Court*,[25] the Accused had slapped a girl across the buttocks twelve times. He said he was unsure why he had done it but that it was possible that there was some element of fetish. Lord Ackner devised the following three categories of behaviour:

(1) behaviour which is inherently not indecent; He gave the example of removing someone's coat.
(2) behaviour which is inherently indecent (removing someone's clothes for instance); and
(3) behaviour with may or may not be indecent depending on the circumstances.

The court opined that this last category should be judged according to the standards of "right-minded people" and should take into account the relationship between the parties and how the activity involved had come about. Only if this consideration led to an "irresistible inference" of indecency should the jury convict. So Lord Ackner has once again re-iterated the old criminal law principle that any doubt must be resolved to the benefit of the Accused, tailoring it to the particular circumstance of indecent assault.

Consent

7-09 As will be recalled, absence of consent is a constituent part of the physical element of assault. It must be established as an external fact, independent of the Accused's state of mind. This means that in a hypothetical situation where he actually thought the victim was not

[21] s 37 Sex Offenders Act 2001
[22] *Ibid*
[23] *Fairclough v Whipp* [1951] 2 All ER 834
[24] *R v Rolfe* (1952) 36 Cr App Rep 4
[25] *R v Court* [1987] QB 156

consenting and it turned out that in fact she was, he would not be guilty of sexual assault. It will also be recalled, however, that certain serious assaults cannot be consented to. The famous *R v Brown*[26] case is illustrative of this in the context of sexual assaults.

Section 14 of the Criminal Law Amendment Act 1935 sets the age of consent as regards sexual assault at fifteen. S. 14, Criminal Law Amendment Act, 1935:

> *"It shall not be a defence to a charge of [sexual] assault upon a person under the age of fifteen years to prove that such person consented to the act alleged to constitute such [sexual] assault."*

Consent is not, strictly speaking, a defence to a criminal charge. Rather the absence of consent is an essential component of the *actus reus* of many offences. The absence of consent is of particular relevance to assault-based, sexual and dishonesty-related offences. In some instances the presence of consent will not constitute a defence, e.g., murder, unlawful carnal knowledge.

The People (DPP) v C.[27] [2001] 3 IR 345, per Murray J (Court of Criminal Appeal):

> *"Consent means voluntary agreement or acquiescence to sexual intercourse by a person of the age of consent with the requisite mental capacity. Knowledge or understanding of facts material to the act being consented to is necessary for the consent to be voluntary or constitute acquiescence."*

R. v Olugboja:[28]

> *"Although "consent" is [a] … common word it covers a wide range of states of mind in the context of intercourse between a man and a woman, ranging from actual desire on the one hand to reluctant acquiescence on the other."*

Mens Rea

7-10 The mental element of sexual assault can be broken into two parts: guilty mind as required for ordinary assault (intention or subjective recklessness) plus an additional guilty mind as to the indecency. It appears nothing short of intention will suffice for this aspect of the element. In *R v Court*,[29] Lord Ackner layed out the *mens rea* as follows:

> "(1) that the accused intentionally assaulted the victim; (2) that the assault, or the assault and the circumstances accompanying it, are capable of being considered by right-minded persons as indecent; (3) that the accused intended to commit such an assault as is referred to in (2) above."

Hanly makes the point that sexual assault is therefore unusual among assault offences in that it requires proof of full intention.[30]

Aggravated Sexual Assault

Section 3 of the 1990 Act provides for aggravated sexual assaults, which are assaults with all the components of section 2 compounded by circumstances of serious violence or threats of serious violence; grave humiliation; degradation or injury. The more serious nature of the aggravated offence is reflected in the increased sentence of up to life imprisonment.

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[26] *R v Brown & Others* [1994] 1 AC 212. Full facts are given in the Chapter on Non-Fatal Offences
[27] *The People (DPP) v C.* [2001] 3 IR 345
[28] *R. v Olugboja* [1982] QB 320 (Court of Appeal)
[29] *R v Court* [1987] QB 156
[30] Hanly C., *An Introduction to Irish Criminal Law*, 2nd ed., Gill & Macmillan, 2006, p.293

Unlawful Carnal Knowledge

The age of consent for full sexual intercourse is seventeen. Under the Criminal Law Amendment Act 1935, there were two distinct offences of so-called "statutory rape". Section 1 pertained to defilement of girls under fifteen and section 2 to girls under seventeen. These provisions have now been superseded by sections 2 and 3 of the Criminal Law (Sexual Offences) Act 2006 respectively, which have been enacted to bring about the amendment required by the *CC* case discussed below. Evidence of the girl's age is an essential proof for the Prosecution of any defilement charge. This is usually established by production of a birth certificate.

Genuine (or even reasonable) belief that the girl is over the age of consent used to provide no defence to a charge of defilement. In this respect, the offence was one of strict liability and the onus fell entirely on the man to be sure that his partner was over the age of majority. The strictness of the offence was heavily criticized by the Law Reform Commission in 1988, which recommended that some form of "reasonable belief" defence be introduced.[31] This suggestion was not taken up. The Commission also recommended that intercourse with a girl of fifteen or over should not be an offence unless her partner was at least five years older than her or stood in some position of authority, such as a teacher or supervisor. This proposal has not been implemented either, presumably because it is such a politically charged topic.

7-11 At any rate, a Constitutional challenge was brought on this point in *CC v Ireland*, which effectively forced the legislature's hand. The Supreme Court held that that section 1 of the 1935 Act (defilement of girls under fifteen) was unconstitutional because it did not provide for any defence of mistake. The court held that this was repugnant to the Constitution given the nature of the offence and the penalties it attracted.[32] As a consequence, the Criminal Law (Sexual Offences) Act 2006 was promulgated to establish the new defence. It applies to intercourse, buggery, aggravated sexual assaults and section 4 rape. It re-states each of the old offences, maintaining the same categories in age etc. Each provision, however, contains an explicit defence of honest mistake as to the Complainant's age. To quote section 2 for example (defilement of girls under fifteen):

> "(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, this child against whom the offence is alleged to have been committed had attained the age of 15 years.
>
> (4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances."

Thus the defence has been established with the familiar mix of subjective and objective elements encountered in other areas of the criminal law. Section 3 of the new (2006) Act contains an identical defence in relation to defilement of girls under seventeen. Finally, section 5 of the Act provides that a girl under seventeen will not be guilty of an offence under the Act merely by engaging in an act of sexual intercourse.

The point has been laboured a number of times that the purpose of the law in this area is not just to protect young girls from inappropriate suitors but to protect them from themselves.

[31] Law Reform Commission, *Report on Rape and Allied Offences* (1988)
[32] *CC v Ireland* [2006] 2 ILRM 161

Jurisprudence scholars cite this area of the law as an example of paternalism in the criminal law. Thus it goes without saying that any ostensible "consent" rendered has no value in law, save that it may go to mitigating penalty depending on the circumstances. If there was any doubt as to whether this was the case or not, is has been robustly clarified in the 2006 Act. Sections 2 and 3 provide stipulations that it will not be a defence to proceedings under the respective sections for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

Young boys do not have the same protection in law as young girls and the most serious charges, which could be brought in an older woman/ young boy scenario, are sexual assault. This will only be possible if the boy is under fifteen as after this, his consent to sexual assault will be valid and the woman will therefore have a full defence.

Professor Barry McAuley and Mr. Geoffrey Shannon were appointed as Special Rapporteurs to the Oireachtas on the subject of Child Protection in the Criminal Law. In 2007, they recommended a re-introduction of the strict liability offence for defilement of minors.[33] There were also proposals to amend the Constitution to allow stricter laws in this area but this has not come about to date. Students will also be aware that mandatory reporting requirements are currently being considered in relation to child sex abuse, which would be another big development in this area.

Also relevant in this area is the question of whether the Defence in sexual assault case are entitled to disclosure of counselling notes. In *Director of Public Prosecutions v P.B.* [2015] IECA 81 Sheehan J in the Court of Appeal dismissed an appeal by a schoolteacher from convictions in Circuit Court of indecent and sexual assault. The defence had argued, *inter alia,* that the decision of the trial judge in refusing to Order the disclosure of the counselling records of two of the complainants was incorrect. The appellant relied on an unreported decision of the *The People (at the suit of the Director of Public Prosecutions) v Kavanagh* (Unreported, O'Flaherty J, Court of Criminal Appeal, 6th February, 1996) a case where the failure by the prosecution to disclose a counsellors statement concerning sexual abuse resulted in a re-trail being ordered.

In *P.B.* Sheehan J dismissed an appeal the appeal finding that: 1) the trial judge was correct in the circumstances of case not to order the disclosure of counselling notes made by some of the complainants; 2) the trial judge exercised his discretion properly in not transferring the trial to Dublin due to the large number of complainants and witnesses in the County Clare area; 3) the counts on the indictment were sufficiently particularised; 4) the judge's charge was adequate and satisfactory. In relation to the non-disclosure Sheehan J held it relevant that that unlike in the *Kavanagh* case the prosecution were not in possession of the counselling records and the DPP had not conceded the that documents ought to have been disclosed.

Admissibility of evidence

A judge is entitled to give an explanation to a jury as to why certain evidence was inadmissible. This was recently endorsed by Sheehan J in *DPP v DM* [2015] IECA 295. The Court of Appeal dismissed an appeal of sexual assault convictions, where the trial judge had refused to discharge the jury following the introduction of remarks attributed to the appellant's brother by the complainant in the course of her evidence in chief that "he wanted to ring the guards" and, where the judge had given an explanation to the jury as to why they were not allowed to hear certain evidence, on the grounds that he had correctly exercised his discretion in each instance.

[33] F. McAuley, *Report of the Criminal Law Special Rapporteur on Child Protection*, November 2007

Possible Future Reforms

The LRC in the *Report on Disclosure and Discovery in Criminal Cases* LRC 112-2014 recommended legislation to set out the scope of prosecution duty of disclosure in indictable and summary prosecutions; and for judicial resolution of claims of privilege made by prosecution or third parties.

Buggery of Persons Under Seventeen

This was traditionally outlawed between any combination of partners in the Offences Against the Person Act 1861. The Act also contained provisions relating to buggery of animals that remain. The Irish legislature then was forced to revise this position following the decision of the European Court of Human Rights in *Norris v Ireland*.[34] Thus section 2 of the Criminal Law (Sexual Offences) Act 1993 abolished the offence of buggery between persons aged seventeen and over. Curiously, it is a defence to a charge of buggery to show that the Accused thought parties were married at the time of the offence.

Sexual Offences Against Children

7-12 The Criminal Law (Sexual Offences) Act, 2006 repealed ss. 1(2) and 2, Criminal Law (Amendment) Act, 1935, and ss. 3 and 4, Criminal Law (Sexual Offences) Act, 1993.

S.1 of the Act contains, *inter alia*, the following definitions:

'person in authority' means (a) a parent, step-parent, guardian, grandparent, uncle or aunt of the victim, (b) any person who is, for the time being, in loco parentis to the victim, or (c) any person who is, for the being, responsible for the education, supervision or welfare of the victim;

'sexual act' means (a) an act consisting of (i) sexual intercourse, or (ii) buggery, between persons who are not married to each other, or (b) an act described in section 3(1) or 4(1) of the [Criminal Law (Rape) (Amendment) Act, 1990].

S. 2(1) makes it an offence for any person to engage in a sexual act with a child who is under the age of fifteen years. S. 2(2) proscribes attempting such offence. The maximum punishment for both offences is life imprisonment.

Meanwhile, s. 2(3) enacts, '[i]t shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years.' (Emphasis added.) According to s. 2(4) the court must 'have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.'

Finally, s. 2(5) enacts that consent is not a defence to an offence under s. 2.

7-13 Under s. 3(1) it is an offence to engage in a sexual act with a child who is under the age of 17 years. The maximum punishment for a first offence is 5 years' imprisonment, but for each subsequent conviction 10 years' imprisonment (s. 3(1)(a) and (3)(a)). However, if the accused

[34] *Norris v Ireland* (1991) 13 EHRR 212

is a 'person in authority' the maximum punishment for a first offence is 10 years' imprisonment, and for each subsequent conviction 15 years' imprisonment (s. 3(1)(b) and (3)(b)).

Under s. 3(2) it is an offence to attempt such offence. The maximum punishment for a first offence is 2 years' imprisonment, but for each subsequent conviction 4 years' imprisonment (s. 3(2)(a) and (4)(a)). However, if the accused is a 'person in authority' the maximum punishment for a first offence is 4 years' imprisonment, and for each subsequent conviction 7 years' imprisonment (s. 3(2)(b) and (4)(b)). According to s. 3(8) this is an arrestable offence for the purposes of the Criminal Law Act, 1997.

S. 3(5) enacts, '[i]t shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years.' (Emphasis added.) According to s. 3(6) the court must 'have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.'

S. 3(7) enacts that consent is not a defence to an offence under s. 3.

According to s. 3(9), '[n]o proceedings for an offence under this section against a child under the age of 17 years shall be brought except by, or with the consent of, the Director of Public Prosecutions.'

Finally, s. 3(10) enacts:

> A person who –
>
> (a) has been convicted of an offence under this section, and
> (b) is not more than 24 months older than the child under the age of 17 years with whom he or she engaged or attempted to engage in a sexual act,

shall not be subject to the provisions of the Sex Offenders Act, 2001.

The 'attempt offences' under ss. 2(2) and 3(2) may be tried summarily in the District Court if the usual conditions are satisfied – s. 4(1). The maximum punishment that the District Court can impose is 12 months' imprisonment and a fine of €5,000 – s. 4(2).

According to s. 5, '[a] female child under the age of 17 years shall not be guilty of an offence under this Act by reason only of her engaging in an act of sexual intercourse.' (Emphasis added.)

> *Criminal Justice (Sexual Offences) Bill 2015* – ***reforms the law, including stronger sanctions, aimed at protecting children from sexual exploitation, child pornography and online grooming.***

Main Changes the Act Will Introduce:

The repeal of section 5 of the Criminal Justice Act 1993, which is titled protection of mentally impaired persons. It has been argued that s.5 needs to be repealed because it fails to facilitate the full participation in society of disabled persons and the full expression of their human rights. There has been much debate whether s.5 should be repealed, in particular from Senator Katherine Zappone, because s.5 is failing to achieve the necessary balance between mentally impaired persons' rights and ensuring appropriate protection. As a result, the Oireachtas has indicated amendments will be made to address the weaknesses of s.5.

In relation to the amendments to the Sex Offenders Act 2001, the drafting of these provisions is also continuing. Legal issues which are to be addressed as well as the need to update the provisions to reflect operational advancements have been the primary cause of delay. However, many of those matters are now resolved. The Oireachtas has indicated these provisions will be brought forward as a separate piece of legislation amending the 2001 Act.

Changes under the Criminal Justice (Sexual Offences) Bill 2015.

Part 2 of the Bill addresses the sexual exploitation of children are among the most important criminal law provisions to be brought forward. Part 2 introduces measures which will strengthen existing law in the area of child pornography as well as new offences targeting child sexual grooming which focus on those who use modern technologies to engage with children with the purpose ultimately of sexually exploiting those children.

Section 3 makes it an offence to obtain or provide a child for the purpose of sexual exploitation. S.3 will build upon the existing offence of sexual exploitation under the Child Trafficking and Pornography Act 1998. In terms of paying a child or another person for the purpose of sexually exploiting a child the provision is clear that such would include "any other form of remuneration or consideration" other than monetary. For example, the giving of a computer game or such to a child would fall under the provisions of this section. The section also criminalises offering a child or obtaining a child without reference to monetary or other form of remuneration.

EXAM NOTE: Please be aware of this especially regarding a problem a question.

What constitutes sexual exploitation is defined in section 2 and includes engaging a child in prostitution or child pornography, the commission of a sexual offence against the child or causing another person to commit such an offence. In line with the offence of sexual exploitation under the 1998 Act, and the requirements of an EU Directive on combating the sexual abuse and sexual exploitation of children, the offences targeting these pre-emptive steps to the exploitation of children apply to children up to the age of 18 years.

Section 4 should close a lacuna in the existing law in relation to the sexual assault of children. Under the current law, a child under the age of 15 years cannot consent to an act which, without consent, would amount to sexual assault. While the touching of a child would amount to sexual assault, section 4 of the 2015 Bill clarifies that a person who invites a child to touch them or another person is committing an offence. The penalty of up to 14 years is the same as for sexual assault.

Sections 5, 6, 7 and 8 concern offences connected with the sexual grooming of children. Sections 5 and 6 provide for offences relating to sexual activity in the presence of a child or causing a child to watch sexual activity. Familiarising children with such activity or material can take place during the early stages of the predatory process leading to more serious forms of child sexual exploitation.

Section 7 makes it an offence where s person meets with a child or makes arrangements to meet with the child. This targets activity prior to actual exploitation of a child.

Section 8 contains two new offences addressing the use of modern communication technologies in the grooming and exploitation of children. Modern communication technologies and social media generally are incredibly useful tools for everyone. However, children and young people in particular are vulnerable to unwanted and seemingly innocuous contact by those who may prey on them. The offence under section 8 is an acknowledgement of that risk. It criminalises the initial stages of grooming where communication via, for instance, the internet is the first step in facilitating the sexual exploitation of children. Section 8 offers further protection to

children from unwanted advances by including an offence of sending sexually explicit material to a child by mobile or internet communication.

EXAM NOTE: Please be aware of this especially regarding a problem a question.

The seriousness of these offences is reflected in the potential penalties which may be imposed of between 10 and 14 years.

Sections 9 to 14 amend the Child Trafficking and Pornography Act 1998. Although there are currently significant offences under Irish law relating to child abuse material or child pornography as defined under the 1998 Act and the provisions in the 2015 Bill aim to strengthen those provisions. In terms of new offences, recruiting or causing a child to participate in a pornographic performance is now a specific offence as is attending a live pornographic performance including viewing such by means of information and communication technology.

Sections 16 and 17 of the Bill provide for offences of a sexual act with a child below the age of 15 and 17 respectively. These offences replace the existing defilement offences under the Criminal Law (Sexual Offences) Act 2006. There are two notable amendments to the existing offences. Firstly, there is a change in relation to the defence of 'mistake as to age'.

Under the 2006 Act, an accused could rely on a defence of honest belief as to the age of the complainant. This is a subjective test requiring the accused to prove that **he or she honestly believed** that the other party had not reached the specified age.

Under the Bill 2015, the defence will be one of **reasonable mistake** as to the age of the complainant. This is an objective test under which the court shall consider whether in the circumstances of the case a reasonable person would have concluded that the child had attained the required age.

The second issue to highlight is the recognition in the 2015 Bill of under age, consensual, peer relationships through the introduction of a 'proximity of age' defence. Under this provision, a person charged with an offence of engaging in a sexual act with a person between the ages of 15 and 17 years can rely on a defence where the act is consensual, non-exploitative and the age difference is no more than two years.

Part 3 of the Bill deals with the criminalisation of the purchase of sexual services. Part 4 of the Bill modernises and restates the law in relation to incest. It corrects a gender anomaly with regard to the penalties for an offence of incest by a male and incest by a female. At present, incest by a male is punishable by a maximum sentence of life imprisonment whereas incest by a female is punishable by a maximum sentence of up to 7 years imprisonment. Under this Part, both offences will be subject to penalties of up to life imprisonment.

Part 5 of the Bill provides for a number of amendments to the Criminal Evidence Act 1992 designed to support and protect victims of sexual offences during the criminal trial process. Measures to further protect child victims of sexual offences from any additional trauma during the giving of evidence include giving evidence from behind a screen. Provision is also included preventing a person accused of a sexual offence from personally cross-examining a person under the age of 14 years of age unless the interests of justice require such cross-examination. A court may also direct that an accused may not personally cross-examine a child between the ages of 14 and 18 years. Safeguards to protect the rights of the accused to a fair trial are included such as directing the jury that no inferences may be drawn from the fact that an accused has been prevented from conducting such a cross-examination.

A further provision of importance is section 33 which concerns the disclosure of third party records in certain trials. The appropriateness of the disclosure of such records will be the subject of a pre-trial hearing and any disclosure will, while respecting the rights of an accused to a fair trial, take account of the right of a victim of a sexual offence to privacy. Only records, or parts thereof, which are likely to be relevant to an issue at trial and which are necessary for the accused to defend the charges against him or her should be disclosed.

Part 6 of the Bill deals with amendments to existing jurisdiction legislation to include new offences created under this Bill to enable the prosecution of offences committed against children outside the State by citizens of the State or by persons ordinarily resident in Ireland.

Part 7 of the Bill. Section 39 contains an offence of exposure and offensive conduct of a sexual nature. The existing offence of public indecency has been struck down by the courts on the grounds of vagueness and the new offences contained in section 39 clarify the acts and activities which give rise to an offence.

Section 40 introduces harassment orders whereby a court can impose an order prohibiting a convicted sex offender from contacting or approaching his victim for a specified period of time. The order can be imposed at the time of sentence or at any time prior to the offender's release. The order may be imposed where the court is satisfied that the offender has behaved in such a way as to give rise to a well-founded fear that the victim may be subject to harassment or unwanted contact by the offender such as would give rise to fear, distress or alarm or amount to intimidation.

Part 3 of the Bill. This Part contains two sections providing for the criminalisation of the purchase of sexual services. This is a matter which has already been the subject of considerable debate in nationally and internationally.

The two offences contained in the Bill – the first is a general offence of paying to engage in sexual activity with a prostitute and the second the more serious offence of paying to engage in sexual activity with a trafficked person. It will be an offence for a person to pay, offer or promise to pay, a person for the purpose of engaging in sexual activity with a prostitute. The person providing the sexual service – the prostitute – will not be subject to an offence. The purpose of introducing these provisions is primarily to target the trafficking and sexual exploitation of persons through prostitution. Both the Council of Europe and the European Parliament have recognised the effectiveness of the criminalisation of the purchase of sexual services as a tool in the fight against human trafficking. Criminalisation is seen as the most direct way of combating this form of exploitation is to send the message to those who pay for these services, and who ignore the exploitation of the women and men involved, that their behaviour is unacceptable and that their behaviour supports the exploitation of other people. On the other hand, there are issues regarding the impact of these provisions on the safety, health and wellbeing of those who work in prostitution. There are concerns that these changes will drive prostitution further underground as well as arguments that women and men can freely and voluntarily provide these services without experiencing the exploitation which I believe is widely and normally associated with prostitution.

The 2015 Bill will substantially strengthen Irish law to target those who target our most vulnerable – our children – and to send a message to all victims of sexual offences that we recognise the unfathomable harm and trauma inflicted upon victims.

Knowledge of the 2015 Bill and the Changes are Extremely Important for the Exam

Incest

7-14 Section 5 of the 2006 Act, contains a much criticised *lacuna.* Section 5, as set out above, means that a girl aged of 17 years who engaged in sexual intercourse with a boy under the age of 17 years has committed no offence, whereas a boy has. This criminalises the male who is involved in teenage sexual activity while not criminalising his consensual partner. This issue was tested in the case of *MD (a minor) v Ireland, the Attorney General and the Director of Public Prosecutions*.[35] The appellant was charged with an offence contrary to section 3(1) of the 2006 Act. At the time of the alleged offences the appellant was 15 years of age and the complainant was 14 years old. The complainant was not charged with any offence. The appelleant sought a declaration that section 5 of the 2006 Act was repugnant to the Constitution as it discriminated against him on the basis of gender, contrary to Article 40.1 of the Constitution. Denham CJ summarised:

> *"The appellant's case, in essence, is that this provision is gender biased and discriminatory and that it exposes the underage male to the real risk of criminal sanctions based on the traditional sexual stereotype where it is legislatively assumed that the male is the guilty predator and the female is the innocent comely maiden. It is submitted that the fact that the female alone can become pregnant is not a ground which justifies an immunity of this kind."*

Dunne J in the High Court concluded that there was discrimination but that it was legitimate because it was founded on difference in capacity, physical or moral or difference of social function of men and women in a manner that was not invidious nor arbitrary nor capricious. The difference was that the risk of pregnancy was only borne by girls. Dunne J explained this by saying that:

> *"The adverse consequences that flow from under age sexual activity fall to a greater extent on girls than on boys. Far from being an example of good old fashioned discrimination against young boys as contended by counsel for the plaintiff or a form of "rough equalisation", the Act provides a limited immunity to girls in the one area of sexual activity that can result in pregnancy. Society is entitled to deter such activity and to place the burden of criminal sanction on those who bear the least adverse consequences of such activity. The Act goes no further than is necessary to achieve this object."*

The Supreme Court noted that section 5 expressly differentiated between males and females but only in relation to sexual intercourse and only where the female is under the age of 17 years. Denham CJ referred to authorities in other jurisdictions and commented that decisions on matters of such social sensitivity are a matter for the legislature:

> *"The Oireachtas made a choice, and such a legislative decision reflects a social policy on the issue. While the legislature could have enacted another social policy, it was an approach the legislature was entitled to take, it was an issue in society to which the legislature had to respond. The danger of pregnancy for the teenage girl was an objective which the Oireachtas was entitled to regard as relating to "differences of capacity, physical and moral and of social function", as provided for in Article 40.1 of the Constitution. The Court would dismiss the appeal and reject the claim that s. 5 of the Act of 2006 is invalid having regard to the Constitution."*

The Supreme Court rejected the claim that section 5 was unconstitutional.

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[35] *MD (a minor) v Ireland, the Attorney General and the Director of Public Prosecutions* [2010] IEHC 101 (High Court, Dunne J); [2012] IESC 10 (Supreme Court).

Care must be taken in relation to the categories of relations to which incest laws apply. The Punishment of Incest Act 1908 provides for incest offences. Knowledge of the fact that parties are related is a constituent element of the offences. Acts falling short of full intercourse do not fall under the provisions of this Act.

It is an offence, contrary to s. 1, Punishment of Incest Act, 1908 ('the 1908 Act'), for a male person to have sexual intercourse with a woman who, to his knowledge, is his granddaughter, daughter, sister or mother. Consent is not a defence. The Criminal Law (Incest Proceedings) Act, 1995 increased from 20 years' to life imprisonment the maximum penalty for those convicted under s. 1 of the 1908 Act. According to s. 2 of the 1908 Act, it is an offence for a female person, aged at least 17 years, to consent to sexual intercourse, knowing the man to be her grandfather, father, brother or son. S. 2 prescribes a maximum penalty of 7 years' imprisonment for females convicted of incest.

Blood relatives may legally engage in consensual sexual activity except sexual intercourse. A man does not commit incest by having sexual intercourse with his aunt or grandmother. A female may legally consent to sexual intercourse with her uncle or grandson. The offence of incest does not criminalize sexual intercourse with step-, adoptive or fostered relations. It does, however, criminalize sexual intercourse between a half-brother and half-sister.

Mental Impairment

7-15 Section 5 of the Criminal Law (Sexual Offences) Act 1993 sets out a specific offence of engaging in buggery or sexual intercourse with a person who is mentally handicapped. The section does not apply where parties are married. It is a defence if the Accused can show that he did not know or have reason to know that the other party was mentally handicapped as defined in the Act.

> *"5.—(1) A person who—*
>
> *(a) has or attempts to have sexual intercourse, or*
> *(b) commits or attempts to commit an act of buggery,*
>
> *with a person who is mentally impaired (other than a person to whom he is married or to whom he believes with reasonable cause he is married) shall be guilty of an offence and shall be liable on conviction on indictment to—*
>
> *(i) in the case of having sexual intercourse or committing an act of buggery, imprisonment for a term not exceeding 10 years, and*
> *(ii) in the case of an attempt to have sexual intercourse or an attempt to commit an act of buggery, imprisonment for a term not exceeding 3 years in the case of a first conviction, and in the case of a second or any subsequent conviction imprisonment for a term not exceeding 5 years.*
>
> *(2) A male person who commits or attempts to commit an act of gross indecency with another male person who is mentally impaired shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.*
>
> *(3) In any proceedings under this section it shall be a defence for the accused to show that at the time of the alleged commission of the offence he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired.*
>
> *(4) Proceedings against a person charged with an offence under this section shall not be taken except by or with the consent of the Director of Public Prosecutions.*

> *(5) In this section "mentally impaired" means suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation."*

Facilitating Offences

Section 6 of the Criminal Law (Sexual Offences) Act 1993 as inserted proscribes the soliciting or importuning of a child or mentally impaired person for purposes of any sexual offence (not just prostitution).

Cases of Note – Rape

AG v Dermody [1956] IR 307: Slight penetration will suffice.

R v Olugboja [1981] 3 All ER 443: Failure to resist cannot be construed in favour of an accused.

Kaitamaki v R. [1984] 2 All ER 435: Consent is ongoing.

R. v Morgan [1976] AC 182: *Mens rea* is subjective and the question is whether it was an honestly held belief.

DPP v Creighton [1994] ILRM 551: Heedless decision not to even consider was consent present or not.

R v Malone [1998] 2 Crim LR 834: An intoxicated person does not have the requisite judgment to consent.

R v Linekar [1995] 2 Cr. App. R. 49: Failure to pay a prostitute does not of itself vitiate consent, as the fraud must relate to the act of intercourse, thereby negating consent.

CC v Ireland, AG and DPP [2006] 2 ILRM 161: it is unconstitutional to deny an accused person the right to rely on the defence of honest belief as to age.

DPP v C [2001] 3 IR 345: If a person knew that consent to sexual intercourse was given because the woman concerned believed him to be another person, then he knew that there was no consent to having sexual intercourse with him.

DPP v GK [2007] 2 IR 92: That the fact that the complainant had engaged in sexual behaviour with other boys did not of itself undermine the complainant's evidence that she was sexually abused by the accused.

Cases of Note – Sexual Assault & S. 4 Rape

*DPP v Creighton [*1994] 1 ILRM 551: The type of recklessness required in a rape case is heedless conduct on the part of the accused.

DPP v McDonagh [1996] 2 ILRM 468: Where an accused person pleads they honestly believed the woman was consenting, evidence as to the presence or absence of reasonable grounds justifying that belief must be considered under S.2(2) of the 1981 Act but only where the evidence is the woman did not consent and the accused person is seeking to rely on their belief.

DPP v JD (Unrep) CCA, July 29, 1997: Only in extraordinary circumstances could a non-custodial sentence be imposed for very serious sexual offences.

CC v Ireland (as above)

Doolan v DPP [1993] ILRM 387: It is unnecessary to include a separate count of common assault in the indictment as a person may be convicted of common assault on a count for indecent assault.

R. v Court [1988] 2 All ER 221: The prosecution have to show that the accused intended to assault the victim in a way that right-minded persons would think indecent.

Cases of Note: Infancy

MD (a minor) v Ireland, the Attorney General and the Director of Public Prosecutions [2010] IEHC 101 (High Court, Dunne J); [2012] IESC 10 (Supreme Court): Legislative inequality permissable based on social policy.

Recommended Reading

Leahy, "'In a woman's voice' –A feminist analysis of Irish Rape Law" (2008) 26 I.L.T. 203

O'Gara, "Protecting young girls from themselves: Mistakes as to age in Ireland" (2007) 25 I.L.T. 176

"Editorial: Sentencing Rapists: The Supreme Court Clarifies the Law" (1988) 6 I.L.T. 129

Criminal Law (Rape) Act 1981

Criminal Justice (Sex Offences) Act 2006

Recommended Reading – Sexual Assault

Leon, "Recorded Sexual Offences 1994–1997: An Overview" (2000) 10(3) I.C.L.J. 2

Leahy, "Hard cases and bad law: An overview of the Criminal Law (Sexual Offences) Act 2006" (2008) 26 I.L.T. 38

Williams, "Voluntary intoxication, sexual assault and the future of Majewski" (2007) C.L.J. 66(2) 266

Gillespie, "Muddying the waters: indecent or sexual assault" (2006) N.L.J. 156(7207) 50

Ryan, "Queering the Criminal Law" (1997) 7 I.C.L.J. 38 I.C.L.S. (2003) Issue 2: Special issue on sexual offences

Rumney, "Policing male rape and sexual assault" (2008) J. Crim. L. 72(1) 67

Criminal Law Rape (Amendment) Act 1990

Sex Offenders Act 2001

Criminal Law (Sexual Offences) Act 1993

Recommended Reading – Consent and Corroboration

Temtin and Ashworth, "Rape, sexual assault and the problems of consent" (2004) Crim. L.R. 328

Ferguson, "Reforming rape and other sexual offences" (2008) Edin. L.R. 12(2) 302

Ring, "Trial and Error: Current Problems in the trial of sexual offences: a prosecutor's perspective" (2003) 13(2) I.C.L.J. 3

Hanly, "Corroborating Rape Charges" (2001) 11 I.C.L.J. (4)2

Criminal Justice (Sex Offences) Act 2006