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Answering Legal Problem Questions in a Grid Format

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Professional disciplines tend to develop their own specialised forms of reasoning and problem solving, that are adapted to be the most efficient for issues arising in that discipline. There are undoubtedly strengths and weaknesses to such forms of reasoning, and certainly within the legal discipline there is an ongoing debate about the emphasis to be placed on legal forms of reasoning and analysis in legal education when compared to alternative approaches to analysis (see eg Sullivan et al (2007), Stuckey et al (2007)).

However, it is generally acknowledged that an apprenticeship in legal reasoning skills is a prerequisite of a graduating law student. These skills, sometimes referred to as “thinking like a lawyer” encompass in their narrower sense the ability to, inter alia, mentally problem solve, ask legally relevant questions and identify legal issues, search for coherence in fact patterns, think linearly, perceive ambiguity, appropriately engage in deductive and inductive reasoning, see all sides of an argument, and simultaneously pay attention to detail while recognising which issues are more important than others (for a detailed analysis see Gannt (2007)).

These skills represent difficult threshold competencies. Until acquired, students have difficulty reading primary sources or extrapolating principles to different scenarios. Primarily Australian law students learn these skills through a combination of in-class discussion of legal judgments, group analysis of fact pattern scenarios and through essay style answer problem questions based on ambiguous fact patterns (both of which amount to problem based learning (PBL) in legal education).
Thinking like a lawyer

One of the important threshold tasks in a law degree is to explain to students how thinking like a lawyer is different from thinking like a historian, psychologist, mathematician, nurse or construction manager. Students may also enter law school believing that ‘thinking like a lawyer’ is also burdened by negative connotations, such as being unfeeling, uncritically bound to tradition, and effectively disempowered from questioning the status quo. None of these connotations need be true. One key aim of a law school education should be to help students develop these analytical skills, but with an awareness of their place in broader professional role of a lawyer, and to alert them to the importance of being able to call on more than one way of thinking when considering a problem in the real world.

In this paper we outline two variants on approaches to teaching these skills via PBL. Typically PBL in a law context takes the form of scenarios in which the relevant issues are buried in a fabricated narrative – one that is often long, complex and contains information of no relevance to the area of law being assessed.

Hypotheticals or scenarios are a well trodden path in legal education. (Ancient Greek and Chinese philosophy used hypotheticals to develop an apprentice’s ability to think from theory to practice.) As many authors note the skill that is being developed is the art and craft of judicial reasoning, or more instrumentally expressed, as applying the law to the material facts (Farrer 2010, MacAdam & Pyke 1998, Davies 1994). In effect, these kinds of activities more directly involve students by challenging them to make critical judgments based on competing ‘narratives’.

The threshold nature of lawyerly analysis has been described by the authors of Educating Lawyers: Preparation for the Profession of Law (Carnegie Foundation for the Advancement of Law) as follows:

In learning to pay attention to some aspects of the cases they read, while discarding others, students are, in effect, learning a new definition of what constitutes a fact. In the law, they are gradually being led to see, facts are only those details that contribute to someone’s staking a legal claim on the basis of precedent. ... It is important, therefore that instructors ... give students experience with fuller accounts of cases in which students can grasp the different meaning of “facts” from opposing points of view. (Sullivan 2007: 56)

This is achieved in many Australian law schools by in class discussion of the application of relevant facts to legal principles in the reasoning of exemplar legal judgments, and in the setting of long-form fact scenario problem questions as assessment – both formative and summative.

The Value of Problem Assignments in Law

The value of both practical and problem based learning is widely recognised because it allows students to ‘do something with’ the legal material, rather than just ‘reacting passively to it’. It has become a staple of Australian legal education in the last few decades. Le Brun and Johnstone in their study of
approaches to Australian legal education (1994) identified that student engagement with learning in a more active manner would enable both a higher standard of student achievement and a more stimulating environment for teaching. The *Educating Lawyers* report (2007) into legal education in the USA noted that the use of hypothetical ‘problems’ can help students to frame their thinking along lines more expected once they graduate. Stuckey (2007: 49) describes this attitude as acculturating a skill of ‘practical judgement’. Additionally, making something more hands-on can help students overcome what has been described as the potential for ‘lethargy’ in the later years of studying law (Gulati et al 2001 examining US Law Schools). It can help create connections with everyday life, and make students more empathetic; complex problem based questions can also help students make the link between experiential (or clinical-based) learning and the doctrinal or case-based learning in the classroom. While many of these observations are drawn from the USA experience (which is mostly a graduate degree), LeBrun & Johnstone (1994) point out that similar observations have been made about the Australian experience.

It is also important to note that such problem-based legal analysis need not, and should not, occur in a values-free vacuum. It is important wherever possible in legal education to make clear the connections to the values or principles underlying the profession of law. Stuckey (2007) amongst many others point to the crucial role that values play in anchoring the tangible learning to something far deeper. This kind of learning also frames the disciplinary focus of studying law because it encourages students to learn the process of constructing a legal narrative and counter-narrative. Setting problem based questions in an environment that highlights the degree to which choices act to privilege some factors over other also serves to reinforce the underlying values issues in legal analysis.

**Problem analysis as a threshold concept**

Part of the challenge for students is to pick apart the story, identify the appropriate legal issues and then extract the facts which are material to these legal issues. The most challenging part of this format is the detailed application of discrete facts to the component elements of the relevant legal statute or rule. Much of their previous schooling has not prepared them for this task. Typically, students will read the factual narrative in overview and make informed guesses as to the legal issues it contains. They will then re-read the facts more closely to expose the key facts that prove the legal elements underlying the assumed issue. For most students this second “sweep” of the facts is an awkward and unnatural way to read narratives, and understanding this way of reading a text can be described as a threshold concept. Threshold concepts are forms of knowledge that are troublesome for students to achieve, but that are transformative in the sense that having achieved such a knowledge their perception of the issue is permanently altered (see eg Ricketts (2004)). One characteristic of threshold concepts is

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that they are difficult for students to grasp, and that often there is an extended period of liminality prior to grasping the concept (Meyer et al (2010)). Achieving this transformation with a minimal degree of liminality is a significant task for law teachers.

However, once a student has achieved a post-liminal understanding of the threshold concept of “thinking like a lawyer”, the increasing ease with which the student can competently perform such analysis tasks can tend to mask deeper levels of ambiguity or critical details in a fact scenario. Consequently this article also discusses the value of using a grid answer approach to problem questions both in order to help students achieve the threshold of lawyerly analysis, and also to take them back to this initial scaffolded approach to analysis at a later more expert stage in order to demonstrate to students that the skills of legal analysis are learnt in an iterative and ongoing way.

The advantages of a grid answer format

One issue that has been identified in studies of law students learning patterns is the difficulty that students face passing the threshold concept of legal fact analysis and the extended time spent in a state of liminality. By liminality is meant “a suspended state of partial understanding, or ‘stuck place’, in which understanding approximates to a kind of ‘mimicry’ or lack of authenticity” (Meyer 2010: x). One US study has found that students take at least a full semester to fully appreciate the approach to defining or re-defining fact to fit legal rules (Mertz, quoted in Sullivan).

Typically law schools expect students to answer long-form problem scenarios in a similar style to that of a legal judgment. This is to provide a detailed element by element analysis, but in a discursive essay format. Logically, the skill of essay writing that is developed should be post the development of the skill of “thinking like a lawyer”. However, the standard essay format requires students to acquire both the analytical skill and also the writing skill simultaneously. This creates a much greater cognitive load for the student. It also means that any feedback received on the assignment answer can range across both analytical and style issues in a way that can confuse students and stunt the efficacy of the feedback.

The method proposed in this chapter, is one of an enforced grid pattern answer. Its most obvious effect on a student is to reduce or eliminate the requirement of essay style and narrative and to force a concentration on the analytical aspects of the problem scenario. There are two main challenges for students when attempting to answer a PBL question: what should the end product look like; and what is the process to reach this end product. The grid is useful because it helps to address both challenges.

Appendix I is an example from Torts, a first year core course, which operates as the student’s introduction to legal problem solving within a specific context. In this course the grid is used to introduce students to legal thinking patterns, and combines a number of aspects of reasoning into one
cell. Appendix 2 is derived from an advanced criminal law elective on fraud law. In this course the separation of issues in the grid is more fine grained and the use of the grid is intended to both confirm what students already know, and also to demonstrate that there is a degree of complexity and nuance in construction of the legally relevant fact that students are likely to have not grasped – largely because of their belief that they can already “think like a lawyer”, as well as to embed their knowledge into the conceptual nuances of criminal proceedings.

General advantages of grid format

These grids are useful both in the classroom, as well for personal study. For example, teachers can use the grids to help students identify each of the elements of an issue, rather than cherry picking those which appear to be most at issue. So, the grid helps students see the need to be methodical in their overall approach, as well as answering a particular question. Additionally, they are able to see the more complex underlying legal issues which could ‘make or break’ a legal argument in practice. When teaching, we often take students back to these overlooked elements, in order to problematise the underlying issues in a general discussion. This is all part of the deconstruction of “facts” and reconstruction of them as legally relevant “facts”.

The grid, as a result, also leads to a better use of interactive learning (often described as ‘Socratic’ or ‘Langdellian’ in legal education). Class discussion is anchored to a fixed point and students can be led back to critically examine issues that they initially thought had been resolved. Interactive learning in this form becomes both an example of formative assessment which will help students with a ‘live’ assessment, and simultaneously, a way to help them self assess, as it is relatively simple to compare what they have thought or written with another student’s version of the answer. The grid format means that although class discussion can range across a range of issues, the students have in front of them a checklist of issues to resolve, both in terms of their own thought processes, but also as a way of accurately directing the teacher to the key issue they would like further discussed. The combination of the grid with the ensuing discussion allows students to better transfer what they have discussed in class to their own written assignments, and provides a visual and mental schema that they can easily replicate in solving future legal problems.

Grid format early in the degree

As such the grid approach is a method to scaffold students in the fundamental aspect of legal problem solving. A fundamental aspect of law is that it is based on categories, so the analysis must fit within the correct category. Legal problem solving has a number of well-known methods with handy acronyms which are easily remembered and also a clear indicator of the
steps involved in ‘thinking like a lawyer’. A well known acronym is known as MIRAT (eg Wade 1990). Each letter corresponds to a specific question which forms part of legal problem solving:

- what are the Material facts?
- what is the legal Issue?
- what Rule (law) is relevant?
- Apply the rule to the material facts.
- what is your Tentative conclusion?

For students this basic set of steps can be summarised in the grid form (an example is in Appendix 1). The titles used in the top row of the grid provide a visual cue to students, helping them to distinguish and identify the important questions they need to get into the habit of asking themselves. Integrating these questions is the key, and the grid provides the ‘raw material’ to help students prove whether an element is proved or not, and importantly which elements will be more controversial than others, therefore, will require more time for analysis.

In the example of a Torts in-class problem scenario and partial grid answer in Appendix 1, many of these aspects of helping students develop their ability to organise their ideas appear. The law of torts is based on the accidents of everyday life between two people (or organisations) where the injury is caused because one person did not meet the standard commonly agreed by society (what is called the standard of the ‘reasonable person’). Like the majority of law courses the cases which are discussed in the set readings are sourced from the appellate courts at the top of the judicial hierarchy, for example, the High Court of Australia, or Supreme Court of NSW. What this means is that the judgments that students read, are focussed on conceptual issues in which the material facts often appear to be tangential. Additionally, these judgments are mainly extracts, so students’ first encounter of law is fragmented into separate discussions of discrete issues and also often involves a conceptual debate about law rather than about facts. Adding to the complexity is the overlay of statutory rules that further atomise the issues of standing and liability. In this course use of the grid in-class thus acts as a way of reassembling these fragmented analyses of sections of the legal problem into an integrated whole – and in a way that is more transparent than a discursive discussion or lecture.

The grid based answer in Tort law helps to illustrate to students the fundamental organisation of law in categories. Categories are based on legal issues, and then facts are organised in such a way that they fit into these legal categories. Organising these facts occurs by building on patterns of similarities between previous fact scenarios (often called Fact and Rule Fit Analysis). The aim is to show how the present scenario is similar to, or different from, previous fact scenarios and the legal decision which resulted. The repetitive and predictable nature of filling in the grid reinforces the correct approach to legal problem solving, and helps to prevent the student from engaging in inappropriate forms of reasoning – such as intuitive leaps
or emotional resonances. When students engage in these forms of analysis in class the mismatch with the grid enables an opportunity to discuss the appropriate place for such reasoning. For example, if interviewing a client, the lawyer should always look for emotional resonances in order to be able to understand what the client may be feeling, but should not allow that approach to the problem to influence the analysis of the legal position. Grid based answers appeal to early degree students who still find oral in-class discussion confusing or overly complex. It also appeals to students who can understand better through visual representation, or through seeing the various components, as well as seeing the big picture. It helps in allowing students to empower themselves because the grid provides an easily replicated reasoning schema for use in an exam situation or for a take home research assignment.

Higher year and postgraduate use of the grid format

The example in Appendix 2 shows how the grid format answer can remain of usefulness to later year, and postgraduate students. This is a set assignment students must complete out of class. At this level students are required to identify offences arising out of a complex problem scenario and then asked to analyse each such offence in a separate table, the format of which is handed out with the problem question. This means that students at this level are required to produce multiple grids, and to exercise judgement as to when the facts give rise to a legal issue justifying a grid response.

In each grid table the students are required to discuss each offence element in a separate row and to place in separate cells the various components of legal reasoning in a form similar to the MIRAT approach.

Students are required to put the same amount of effort into filling these cells irrespective of whether they consider the element appears obviously proved or not. The aim is to show the need to forensically prove all aspects of a case even if it appears clear. It also helps more impulsive students to see the value in a methodical approach. As such it trains and assesses Fact And Rule Fit analytical skills. It also provides a form of immediate formative assessment of the student's analysis. If there is nothing to put into the cell, there may have been a failure of analysis. The artificiality of having to fill in each cell also helps students to reflect on what is the appropriate professional approach to such analysis – at what point can they be certain they are overanalyzing the issue? This sort of answer is not the sort of detail that one would expect in any client letter, but it is the sort of painstaking approach that could be expected to underlie a trial brief.

Over the years many of the authors' students have given feedback that they found the grid very helpful in demonstrating how patchwork their approach had previously been. Many think initially that the grid format seems easier than an essay but then find it to be more work – a valuable insight about the level of their previous approach to analysis. Conversely, those students who have a tendency to be verbose encounter the need to set out
their reasoning in a concise format equally tough. One option for teachers is to not set any word limit to grid assignments, but instead tell the students that they will lose marks for both an overly brief or an overly verbose answer. This then focuses attention on communication of reasoning rather than word limits, and begins a notion of a professional approach to legal advice without the scaffolding of pre-set word limits suggesting the appropriate level of analysis.

This fraud law grid example has been applied across a number of different learning settings and cohorts from business law students, undergraduate law students and postgraduate lawyers and it seems to work in all contexts. Surprisingly, the postgraduate lawyers seem to find it the most useful – perhaps because they see the practical applications more clearly.

Further uses of grid format answers

Other formative and summative tasks that involve professional issues can be bolted onto the grid answer. It is possible to add a short answer question below each grid that asks: "(If you had to choose between more than one offence for this set of facts) Why is the offence chosen the most appropriate to charge?" This is designed to also require the students to think tactically and professionally about which offence to choose, and to justify that choice on grounds that range beyond the mere fact and rule fit analysis. Another more expanded version requires students to complete the full grid answer and then attach a one page letter of advice to the client. This highlights to the students the degree to which detailed background analysis informs a summary advice and the complexity of professional choices that need to be made in deciding to what level of detail the client letter should go.

Teacher perspectives on a grid format

From a teacher's perspective, the level of analysis expected can be established by giving the students a set list of elements, even if artificial. For example in a criminal law problem an answer to a single element of “an unlawful act causing death” requires less detailed analysis than three elements of “an act”, “which causes death” and “which is unlawful.” This approach allows students to learn the technical terms and rhetorical discourse relevant to that particular subject. By contrast the Torts example in Appendix 1 is an example of a threshold approach to these issues where there is less precision with the issues raised in the left column in favour of an emphasis on a direction of the students thinking towards the relevant legal categories applicable.

There are also some efficiencies in grading offered by the grid answer. This is because the student's answers all follow the same format and do not require the grader to go hunting for the aspects worth marks. The grid in effect embeds a criteria based grading scale into the answer. In many cases
the right hand cell containing the reasoning is where a grader can concentrate, merely skimming the other columns to make sure the data is correct. That is, while the other cells primarily show simple achievement of criteria, the reasoning column at the right contains the primary basis for differentiation of correct answers on the basis of standards of achievement. Odd answers in the reasoning column also highlight potential problems in the cells to the left. Also, if the students follow the required formatting, there are more white spaces around the sections of text than in an essay answer, and this also can speed up grading.

If the letter to the client is attached to the grid answer there is also a clear separation of the skills of analysis and synthesis and this can aid in providing feedback to students about higher level competencies.

Conclusion

The grid format reveals a number of layers in which students learn to reason like lawyers. First, the skills of legal analysis are hierarchical, so the further students progress in their studies, their analysis is expected to be both more focussed and considered of other contexts. In a sociological way of thinking, this kind of thinking reveals that students are always ‘becoming’ lawyers. Second, and intimately linked to the first point, is that these skills require constant practice; it is a kind of learning through doing, which reflects traditional means of learning the law through observation in court, or being an articled clerk, on the job learning. Third, the skills needed for legal analysis whether in spoken or written form are essentially the same in that the same reasoning process is required. What changes is the context in which they are applied; the further advanced in the law degree the student is, the more complex and specific the contexts become. So, a considered use of the grid format answers to problem questions at the appropriate points of a law degree can reinforce and support the achievement of these skills and the students appreciation of the complexity of legal reasoning.

References

Appendix 1 – Tort law

This is a sample answer to an in-class examination of threshold standing issues that need to be satisfied to sue for negligent causing of mental illness under the New South Wales Civil Liability Act 2002.

Facts: Miguel has just returned from the ultimate Frisbee championships in Finland. He decides to celebrate his ‘International Frisbee Player of the Year’ award with two friends, Sonia and Nadine, in the park adjoining the beach. The park is maintained by Fairlight City Council, including six freestanding picnic huts. There was a major storm 4 weeks before, and some of the corrugated iron roofing of the huts is a little unstable. One corner of the roof has rusted through. Because of the state of the roofing Fairlight City Council put a note on their website: ‘Huts are a little dangerous. Please avoid unless in emergency.’ This note is filed under the tab: ‘Parks & Garden Maintenance’, rather than under the more easily accessible tab: ‘Storm damage’. All three friends enjoy a couple of glasses of champagne, but Miguel has a few more: ‘I always have to train hard, so it’s nice to let go once in a while.’ After lunch Nadine joins Miguel in throwing the frisbee. Miguel tries to attract Sonia’s attention by throwing the Frisbee towards the hut which is about 20 metres away. Just at that moment, there is a stiff breeze and the frisbee thuds into the roof with enough force that a piece of rusted guttering is dislodged. After hearing the sound, Sonia opens her eyes and is struck by a piece of rusted guttering. She screams. Nadine is looking up into the sky at the approaching storm, but turns around immediately. She is short sighted, so without her glasses can only see blurred outlines. She runs to the hut, and is frozen in shock at the sight of Sonia’s injury. Nadia faints as it reminds her of an injury suffered by her younger sister 10 years before when her sister was hit in the eye by a falling tree branch in a storm. Sonia is unable to see out of her eye for six months but eventually her vision is restored to about 60%. A month later Nadine is diagnosed with post traumatic shock by her GP doctor.

Advise Nadine has a basis to sue Fairlight City Council for negligent duty of care to prevent mental harm under s32 Civil Liability Act 2002?
<table>
<thead>
<tr>
<th>s32 Legal issues</th>
<th>Relevant sub-section</th>
<th>Material/relevant facts</th>
<th>Rule: Relevant case law</th>
<th>Analogy with previous case law</th>
<th>Apply law to material facts (Reasons for decision)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the plaintiff suffer a recognised psychiatric illness?</td>
<td>s27, s31</td>
<td>A month after the incident, Nadine suffers symptoms defined by her GP as post traumatic stress disorder.</td>
<td>Seedsman: Spigelman J PTSD conforms to the symptoms set out in DSM-IV</td>
<td>Wicks/Sheehan: PTSD symptoms suffered by rescuers after seeing injures</td>
<td>While the test for a recognised psychiatric illness is defined in DSM-IV, it is the Court’s decision to judge whether it is a recognised psychiatric illness.</td>
</tr>
<tr>
<td>Would a person of normal fortitude suffer in a similar way?</td>
<td>s32 (i)</td>
<td>Nadine suffered PTSD afterward as a result of what she saw. She heard screams, saw physical injuries, and arrived only a few minutes after accident. Her injury was exacerbated by recalling a similar injury suffered by her sister ten years before.</td>
<td>Tame/Annetts: The harm was of a kind that defendants of normal fortitude would suffer in these circumstances.</td>
<td>Tame/Annetts: parents who suffered mental harm as a result of hearing about son’s death in outback. Wicks/Sheehan: rescuers suffered mental harm and frozen in shock.</td>
<td>A friend who witnessed through such a horrific injury would have a similar response. The influence of previous depression may be seen as idiosyncratic response.</td>
</tr>
<tr>
<td>Was the suffering reasonably foreseeable in the circumstances?</td>
<td>s32 (2) (a)-(d)</td>
<td>She heard screams, saw physical injury, and arrived minutes after accident. She did not see accident as she was looking in the opposite direction. Sonia still in physical agony.</td>
<td>Wicks/Sheehan: victims were still in peril even though plaintiffs did not witness the accident. Jaensch v Coffey: plaintiff suffered mental harm as a result of seeing/hearing the aftermath, but not actual incident.</td>
<td>Wicks/Sheehan: police officers arrive at scene of horrific train accident and were able to show duty of care because victims still in peril, even if not witness harm occurring. Only arrived after some minutes, but victim still in agony, and plaintiff frozen at scene because of seeing blood. Plaintiff heard screams even if not see the victim injured.</td>
<td>The plaintiff arrived very soon after and heard the screams, so not direct perception. The severity of the injury caused her to be frozen at the scene which is similar to sudden shock. The victim was still in extreme pain and the physical signs were obvious, So, it could be argued that still in peril, but accident is of quite different type to Wicks which was a major train disaster with dozens of bodies, and the ongoing danger of being injured by overhead wires.</td>
</tr>
</tbody>
</table>
Appendix 2 – Fraud law

This is a sample answer handed out to students with their problem question and blank answer grid. It is based on the New South Wales offence of receiving stolen property.

Sample Problem Answer

(please note that the reasoning in the answer may not be correct. The sample is in relation to style only)

Facts: Kensington Police have been rung by Australia Post, alerting them to the fact that a suspicious crate of what appear to DVD players are passing through the Sydney Mail Sorting Centre, addressed to a “Mr Smith” but with no delivery address other than a mobile phone number. Holmes goes to the mail sorting centre and opens the mail on the basis that he suspects they may be stolen goods. He copies down the serial numbers of the players and repacks the crate. He then asks Australia Post to process the crate in the normal way, but to inform him of when it will be delivered and to not make the crate available for pick-up until he has officers conducting surveillance nearby. Australia Post complies with Holmes’ instructions and when asked by Holmes rings the contact number on the crate to inform “Mr Smith” that his crate has arrived and is ready to be picked up. When “Mr Smith” arrives to pick up the crate, Holmes recognises him as Mario Mandalby, a person “known to police” as being suspected of a number of small scale frauds, but a person who has no criminal convictions. Mario takes the crate home and unpacks the players. He scratches off the serial numbers from the back of the players and takes 5 of them to the local Kensington markets where he offers them for sale at $250 each.

Name of potential offence committed: Receiving stolen property – s 188 Crimes Act 1900 (NSW)

Name of offender: Mario

Name of victim/s: unknown
<table>
<thead>
<tr>
<th>Elements of Offence</th>
<th>Relevant facts</th>
<th>Legal issue</th>
<th>Relevant case-law/ section on element scope</th>
<th>Do facts prove element? (Y/N/unclear)</th>
<th>Reasons for decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property (as defined)</td>
<td>DVD players</td>
<td>Is it tangible property within the meaning of section.</td>
<td>s188/s189; s4.</td>
<td>Y</td>
<td>There is evidence that the players received by Mario were the same as those stolen from the Brisbane warehouse.</td>
</tr>
<tr>
<td>Which is stolen</td>
<td>Facts state stolen from a Brisbane warehouse, were sent to an alias belonging to Mario and collected by him from Australia Post. Police move crate in warehouse open box and copy down numbers.</td>
<td>S187 – stealing includes taking. But must not be restored to legal possession. Police deemed to be agents of victim. Is degree of interference sufficient to restore possession?</td>
<td>S187, Walters v Lunt [1951] 2 All ER 645, R v Alexander and Keely [1981] VR 277</td>
<td>Y</td>
<td>The fact scenario states that the DVDs were stolen from the Brisbane warehouse. Box is opened and examined, but there is no control amounting to possession. Facts are similar to Alexander and Keely. Parcel was not taken out of its normal transit so unlikely to be construed as an intent to assert control.</td>
</tr>
<tr>
<td>Receiving or disposing of that property</td>
<td>Mario's phone number is on the crate containing the players; he picks up the crate from Australia Post, modifies the players, and offers a number of them for sale at Kensington markets</td>
<td>Question is one of asserting control over the property, as opposed to assisting someone else to deal with it or merely touching it.</td>
<td>Hobson v Impett (1957) 41 Cr App R 138</td>
<td>Y</td>
<td>Mario purchased the players by cash cheque, took charge of them when he was notified of their arrival, and subsequently offered them for sale. Hence he asserted control over the property.</td>
</tr>
<tr>
<td>Knowing that the property was stolen</td>
<td>Mario claims that he ordered the DVD players from an online wholesaler whose name he cannot recall. He presumably asked when so</td>
<td>The defendant's actual belief will be determinative, that is, there must be more than mere suspicion – but such a suspicion combined with a</td>
<td>R v Parker [1974] 1 NSWLR 14, R v Schipanski [1989] 17 NSWLR 618</td>
<td>Y</td>
<td>Belief is held to amount to knowledge in this offence. The cumulative effect of the circumstances in which Mario purchased and dealt with the stolen DVD players suggest that there was at least a suspicion that the players were stolen. He</td>
</tr>
<tr>
<td>Action</td>
<td>Reasoning</td>
<td>Legal Reference</td>
<td>Outcome</td>
<td></td>
<td></td>
</tr>
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</tr>
<tr>
<td>Ordering that the crate be addressed to 'Mr Smith.' Upon receiving the players he removed the serial numbers before offering them for sale.</td>
<td>Deliberate failure to make further inquiries may be sufficient evidence to conclude that there was actual knowledge or belief that the property in question was stolen. The surrounding circumstances can provide sufficient evidence of this.</td>
<td><em>R v Sharra (1918) 13 Cr App R 118</em></td>
<td>Made no further inquiries as to whether this was indeed the case, which is essentially wilful blindness as to the true state of affairs. His somewhat unusual explanation for the removal of the serial numbers would need to be tested – given how far removed it is from what the reasonable person might suspect or do it is unlikely that this explanation would stand.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With a guilty knowledge at the time of the receiving or disposing.</td>
<td>The guilty knowledge must coincide with the receiving [and the disposing or attempted disposing?].</td>
<td>Implied</td>
<td>Mario’s behaviour seems to indicate a guilty knowledge, particularly his attempted escape, when considered in light of the other circumstances.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>