

## UNDERGRADUATE LAWS BLOG

## Rent for Sex

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Using one's power and influence to secure sexual favours is in the news at the moment. Whether this could result in a conviction for rape depends upon whether the complainant consented or not. And herein lies the problem. What is it to consent to sex? In the field of rape and sexual offences the notion of consent is inherently unstable. A major reason for this instability is the way that consent is conceived. Section 74 Sexual Offences Act 2003 states that a person consents to sex 'if he agrees by choice, and has the freedom and capacity to make that choice'. There is no requirement that the defendant threatens the complainant with violence or some other injurious consequence, such as withdrawing food or shelter. It is simply a question of choice. Did the complainant choose intercourse or simply submit to it, and what is the difference? Does a person who resigns herself to the sexual demands of her long term partner because she feels it is easier than triggering an unpleasant scene choose or simply submit? There is a fine line to be drawn between reluctant acquiescence and mere submission and, as *Olugboja* tells us, the line has to be drawn by juries using their common sense and everyday experience rather than anything more concrete. In recent years this instability has been made manifest in cases involving complainants who were duped into having sex or who were profoundly intoxicated, without being unconscious or otherwise incapable. But the problems surrounding the concept of consent go deeper than this. In *Ali and Ashraf* a young girl who was groomed into having sex with the groomer was held not to have consented although, on her own frank admission, she embraced the experience wholeheartedly. In *Kirk* the Court of Appeal again upheld the trial judge's decision to allow the question of consent to go to the jury in a case where a young, homeless, woman was given money for food conditional on her having intercourse with the defendant. Both of these cases involved clear exploitation of the complainant, which the court considered capable of compromising free choice. Unobjectionable you may think given the egregious behavior of the defendants. But consider the potential consequences. Does this mean, for example, that prostitution or less obvious forms of transactional sex are incipiently unlawful on ground of absence of true consent?

A recent television documentary by investigative journalist Ellie Flynn gives us a taster of where this might lead. She reports that offering 'Rent for Sex' - where landlords offer free rooms in their properties in exchange for 'sexual favours' - are on the increase in the UK. All the landlords investigated in the documentary were of the opinion that offering accommodation for sex is acceptable, either as a simple business transaction or, even as a pleasurable means of helping people with their finances and accommodation. There is in fact an offence designed specifically for the purpose of criminalizing the sexual exploitation of the young. Section 47(1) of the Sexual Offences Act 2003 makes it an offence for an individual to exchange money or anything else of financial worth for sexual acts with a person under the age of 18. Just so, but as *Kirk* and *Ali and Ashraf* indicate such cases, are increasingly being brought within the protective umbrella of the law of rape. Why is this when, at least in the case of under 18's there is a wrong specifically designed for the

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purpose? More broadly, is rape the correct label to ascribe to sexual exploitation of the poor and vulnerable? If so, these two cases may be just the tip of a very big iceberg. There are a lot of people out there, mainly men, who use their power and influence to secure sexual favours. And this state of affairs is clearly not limited to the film industry.