

A photograph of a modern university hallway. The floor is made of light-colored tiles. On the left, there is a long, low-slung bench with a curved backrest. Large windows on the left wall offer a view of a city street with buildings, trees, and parked cars. The ceiling is white with integrated linear lighting. A series of wooden doors are visible along the right wall.

DECEPTION, CONSENT TO SEX, AND *R v LAWRENCE*

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Background

- The protection of sexual autonomy is central to the purposes of the SOA 2003.
- V's sexual autonomy means she has absolute authority to choose when, and on what terms, to engage in sexual activity.
- The process of granting consent to sexual activity usually involves a largely visceral rather than cerebral exercise of sexual autonomy.

A ‘Disjunctive Approach’

- We should adopt a ‘**Disjunctive Approach**’, distinguishing between visceral and cerebral grants of sexual consent, when considering how the falseness of a belief affects sexual consent.
- Making the truth of a belief a precondition for granting sexual consent takes a cerebral exercise of sexual autonomy. Only where V did this, does the falseness of the belief vitiate sexual consent.

Implications (Basic)

- This means
 - a. V can make the truth of any belief a precondition for her consent, but only if she cerebrally exercises her sexual autonomy to do so, and
 - b. as a matter of principle, it doesn't matter how V came to hold the belief.

Implications (Extended)

<u>Consistent with/achieves</u>	<u>Rejects</u>
<i>IM v LM</i> (on capacity to consent)	<i>R v Lawrence</i>
<i>R v A(G)</i> (on capacity to consent)	<i>R v McNally*</i>
<i>R v C</i> (on capacity to consent)	Ratio decidendi of <i>R v Devonald</i> (liability preserved)
<i>Assange v SPA</i>	Ratio decidendi of <i>R v Matt</i> (liability preserved)
<i>R(F) v DPP</i>	
<i>R(Monica) v DPP</i>	
<i>R v Flattery</i>	
<i>R v Williams</i>	
<i>R v Jheeta</i>	
<i>R v Bingham</i>	
Protects sexual autonomy	
Not over-inclusive	
Setting the Boundaries report [2000] re sexual autonomy, and meaning of 'deception as to purpose'	

* But it's complicated – see blogpost for more.

Links to Blogpost

- Part 1 (What's wrong with the doctrinal logic in *R v Lawrence* [2020] EWCA Crim 971): <https://www.ucl.ac.uk/criminal-law/news/2020/aug/deception-consent-sex-and-r-v-lawrance-part-1>
- Part 2 (The 'Disjunctive Approach' to considering how false beliefs affect sexual consent): <https://www.ucl.ac.uk/criminal-law/news/2020/aug/deception-consent-sex-and-r-v-lawrance-part-2>