

Criminal Law – Practice Question and Answer

Session: The Elements of a Criminal or Regulatory Offence

Topic: The “Act” of Possession

Recommended time: 1 hour

Score: 100 Marks

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Facts

Joel, Singh and Sebastian were travelling in a car on the 401 towards Kingston when they were pulled over by the police for exceeding the speed limit. While the police officer was questioning Joel who was behind the wheel, he noticed that Sebastian was nervous and fidgeting, and sweat had started to break out on his forehead. He then decided to conduct a search of the vehicle. A bag held by Sebastian was discovered to contain 26 stolen and forged credit cards.

The trio was charged with using forged credit cards, possessing credit card data fraudulently and possessing, using or trafficking in the credit card data of 26 people fraudulently and without color of right. Singh and Sebastian pleaded guilty and were convicted.

But Joel pleaded not guilty on the ground that he only offered the two men a ride as passengers and never knew what was in their bag, though they mentioned to him that they wanted to run some stuffs. Joel also mentioned that he knew Singh and Sebastian and had an idea that they were involved in credit card frauds. He also admitted that he was in control of the car on the day of the incident. There was no direct evidence to contradict Joel’s statement.

At the trial, the question turned on the provisions of s. 4(3) of the Criminal Code which defined possession in the following words:

- (a) a person has anything in possession when he has it in his personal possession or knowingly

- (i) has it in the actual possession or custody of another person, or
 - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

Question

Your principal has requested you to write an opinion on whether Joel can be convicted of possession of the credit cards, given the facts of the case. Prepare a draft of your opinion.