Tanya Palmer  
Socio-Legal Studies Association Annual Conference  
Sexual Offences Stream  

Hard Cases in Sexual Offences Law: Using ‘freedom to negotiate’ as a model for distinguishing sex from sexual violation: Abstract

This paper – based on a chapter of the author’s forthcoming monograph Re-Negotiating Sex and Sexual Violation in the Criminal Law – draws on data from 21 qualitative interviews and 2 focus groups, in which respondents were asked to categorise the following four scenarios as either sex or sexual violation:

- A 14 year old willingly engaging in sex with a 27 year old
- A person engaging in sexual activity they do not enjoy, in order to please their partner
- A person engaging in sexual activity they do not enjoy, for payment
- A person engaging in sexual activity within the context of an abusive/controlling relationship

Based on an analysis of the reasons why respondents categorised these scenarios (and variations on these starting points) as sex or sexual violation, and the factors they considered relevant in making that determination, the paper argues that ‘freedom to negotiate’ is a more appropriate model for distinguishing sex from sexual violation than consent.

The paper concludes by looking at some of the key cases on consent, exploring how the reasoning and/or outcome may have differed under a freedom to negotiate model.