UNIT 7 CRIMES AGAINST DIGNITY, REPUTATION AND FREEDOM OF MOVEMENT
CRIMINAL DEFAMATION

ELEMENTS OF THE CRIME:

- THE PUBLICATION
- OF DEFAMATORY MATTER
- WHICH TAKES PLACE UNLAWFULLY
- INTENTIONALLY
DOES NOT MEAN THAT THE ALLEGATIONS SHOULD BE MADE PUBLIC OR IN PRINTED FORM

IT ONLY MEANS THAT THE ALLEGATIONS MUST COME TO THE ATTENTION OF PEOPLE OTHER THAN Y

THE PUBLICATION CAN TAKE PLACE ORALLY OR WRITTEN

IF IT ONLY COMES TO THE ATTENTION OF Y – IT CAN AT MOST CONSTITUTE CRIMEN INIARIA (IF HIS DIGNITY IS INJURED)
READ THE HOHO CASE ON PAGE 142 AND SUMMARISE THE FACTS, LEGAL QUESTION AND DECISION OF THE COURT
ABDUCTION IS REGULATED BY COMMON LAW

DEFINITION
A person commits abduction if he unlawfully and intentionally removes an unmarried minor from the control of his parents/guardian without their consent intending that he or somebody else marry or have sexual intercourse with the minor.

LEGAL INTEREST PROTECTED:
- The interest protected are those of the parents or guardian of the minor since the minor’s consent to removal is not a defence.
ORIGIN OF THE CRIME

- COMES FROM A PERIOD OF IN HISTORY WHEN WOMAN (ECSP MINORS) PLAYED A VERY SUBORDINATE ROLE IN SOCIETY

- THEIR PARENTS / GUARDIANS EXERCISED CONSIDERABLE AUTHORITY OVER THEM – LITTLE FREEDOM OF MOVEMENT AND WAS REGARDED AS ECONOMIC ASSETS TO THEIR PARENTS

ABDUCTION

ELEMENTS OF THE CRIME:

- THE REMOVAL
- OF AN UNMARRIED MINOR
- FROM THE CONTROL OF HER PARENTS OR GUARDIAN
- WITH THE INTENTION TO MARRY OR HAVE SEXUAL INTERCOURSE WITH THE MINOR
- WITHOUT THE CONSENT OF THE PARENTS / GUARDIAN
- UNLAWFULNESS
- INTENTION
REMOVAL

- X MUST REMOVE Y FROM ONE PLACE TO ANOTHER
- X = MALE / FEMALE
- MAJORITY OF CASES – X=MAN AND Y=FEMALE
- THE REMOVAL DOES NOT NEED TO BE FORCIBLE – MOST CASES Y CONSENTS TO THE REMOVAL
- NOT REQUIRED THAT X SHOULD BE PRESENT AT THE TIME OF ARRIVAL
  - SUFFICIENT IF X ARRANGED TO MEET Y AT A PLACE AWAY FROM HER PARENTS
PERSON REMOVED

- PERSON REMOVED MUST BE AN UNMARRIED AND A MINOR
- CAN BE A MALE OR FEMALE
- A PERSON IS A MINOR IF HE IS BELOW THE AGE OF 18 YEARS
REMOVAL FROM THE CONTROL OF THE PARENTS

- Y MUST BE REMOVED FROM THE CONTROL OF HER PARENTS / GUARDIANS

- ABDUCTION IS COMMITTED AGAINST THE PARENTS / GUARDIANS AND NOT AGAINST THE MINOR (Y’S CONSENT IS NOT A VALID DEFENCE)

**IF Y HAS LEFT HER PARENTAL HOME TO GO LIVE AND WORK SOMEWHERE ELSE AND THE PARENTS NO LONGER KNOWS WHERE Y FINDS HERSELF OR CARES. WILL X COMMIT ABDUCTION IF HE TAKES Y FROM WHERE SHE IS STAYING TO ANOTHER PLACE?**
INTENTION TO MARRY OR HAVE SEXUAL INTERCOURSE WITH THE MINOR

- THE CRIME IS ONLY COMMITTED IF X REMOVES Y WITH A CERTAIN AIM IN MIND

- AIM: MARRIES Y / HAS SEXUAL INTERCOURSE WITH Y

- FOR THE CRIME TO BE COMPLETE IT IS NOT REQUIRED THAT THE MARRIAGE OR SEXUAL INTERCOURSE SHOULD ACTUALLY HAVE TAKEN PLACE

- ALL THAT IS REQUIRED IS AN INTENTION OR THE PART OF X TO ACHIEVE ONE OF THESE AIMS

- THE REMOVAL SHOULD NOT BE TEMPORARILY – THEN IT WILL NOT BE ABDUCTION – X MUST INTEND TO REMOVE Y FROM HER HOME EITHER PERMANENTLY OR FOR SUBSTANTIAL PERIOD
INTENTION TO MARRY OR HAVE SEXUAL INTERCOURSE WITH THE MINOR

- The intention to marry or have sexual intercourse with the minor must exist AT THE TIME OF THE REMOVAL.
- If the removal is for innocent purpose and X only decides thereafter to have sexual intercourse – THE CRIME IS NOT COMMITTED.
- Can also be committed if X removes the minor for another person.
WITHOUT THE CONSENT OF THE PARENTS OR GUARDIANS

- THE REMOVAL MUST BE WITHOUT THE CONSENT OF THE PARENTS OR GUARDIANS
- WHETHER Y HAS CONSENTED IS IMMATERIAL
- USUALLY Y WILL CONSENT OR EVEN ASK X TO TAKE HER AWAY
- IF Y DOES NOT CONSENT X CAN BE GUILTY OF A MORE SERIOUS CRIME – KIDNAPPING
- THE CONSENT OF THE PARENTS SHOULD NOT BE PRESENT
UNLAWFULNESS

- FOR THE ACT TO BE UNLAWFUL THERE MUST BE NO GROUND OF JUSTIFICATION
- REMOVAL MAY BE JUSTIFIED UNDER COMPULSION
INTENTION

- X’S INTENTION MUST RELATE TO ALL THE ELEMENTS OF THE CRIME
- X MUST KNOW THAT Y IS AN UNMARRIED MINOR AND THAT Y’S PARENTS DID NOT CONSENT TO REMOVAL
X, A 40 YEAR OLD FEMALE, ENTICES Y, A 17 YEAR OLD UNMARRIED GIRL TO LEAVE HER PARENTS’ HOME AND WORK AS A PROSTITUTE FOR X AND HER HUSBAND. Y LEAVES HER HOME VOLUNTARILY, BUT WITHOUT HER PARENTS’ CONSENT.

WHAT CRIME HAS X COMMITED?
KIDNAPPING

THE ELEMENTS OF THE OFFENCE:

- THE DEPRIVATION

- OF FREEDOM OF MOVEMENT (OR PARENTAL CONTROL)

- WHICH TAKES PLACE UNLAWFULLY AND

- INTENTIONALLY

THE CRIME IS A CRIME AGAINST A PERSON’S FREEDOM OF MOVEMENT OR AGAINST A PARENT’S OR CUSTODIAN’S CONTROL OVER A CHILD
KIDNAPPING

TAKE NOTE OF THE FOLLOWING IMPORTANT FEATURES OF THE CRIME:

- A PARENT CANNOT COMMIT THE CRIME IN RESPECT OF HIS OWN CHILD
- FORCIBLE REMOVAL IS NOT A REQUIREMENT
- THE LENGTH OF TIME OF REMOVAL IS IMMATERIAL
- MOTIVE IS IMMATERIAL (WILL ONLY BE CONSIDERED FOR SENTENCE)
- UNLAWFULNESS MAY BE EXCLUDED:
  - IF A PERSON ACTS IN OFFICIAL CAPACITY (POLICE OFFICER)
  - PERSON AGED 18 CONSENTS TO BE REMOVED
- INTENTION ALWAYS REQUIRES THAT X HAD KNOWLEDGE OF UNLAWFULNESS