

STATEMENT OF FACTS

1. Diana White and Elizabeth Brown joined the offices of Brown, Fitch & Gump (**BFG**) in the summer of 2018. The firm was a leading publishing house in the city-state of Erewhon, and ran numerous dailies and magazines in English. Elizabeth was the daughter of Jack Brown, a founding partner in the firm, and was joining after completing her journalism degree. Diana was her classmate and had landed the job thanks to a word by Elizabeth, who was convinced of her friend's ability with a pen.
2. Given her position, Elizabeth was not treated like a newcomer - many of the senior management had seen her grow up in the hallways of the firm. This explained why, despite being a newbie, she was made part of a strategy team set up in BFG to chart expansion plans. The publishing house was finding it difficult to cope with the information age and sought to expand its digital footprint.
3. The strategy team hoped Elizabeth could help provide a breath of fresh air to their brick and mortar business ideas. They had pooled in substantial resources — time and money, both — into developing a “BFG Reader” App, to make the firm's content available on a user-friendly platform and get new subscriptions with exclusive content for members. The firm had lagged behind its competitors in this regard, and so the Strategy Team set June 2019 as a deadline to release a beta version for the App.
4. Only, it had yet to come up with any bright ideas for the exclusive content that would help attract more subscribers. Elizabeth had been trying her best to come up with new directions to experiment with but wasn't able to convince the Team on the viability any of her ideas. In her desperation, she turned to her brilliant friend, Diana.

5. At this point, Diana was a copy-editor in one of BFG's fortnightly magazines, *The Voice*, and thus had no idea about the Strategy Team's work. Her one year in the firm had thoroughly disillusioned Diana about the business. By May 2019, she had already spent months developing content to publish pseudonymously with a rival publishing house. This included a series on law and cinema, a set of vignettes based on her experiences as a member of the LGBTQ community, and reviewing obscure Nordic and Scottish crime dramas. Diana had kept this a secret as she feared it would jeopardise her job.
6. Elizabeth did not tell Diana anything about the BFG Reader App when she called her on May 19 to meet. Diana invited her over for dinner at her house the same evening. She hinted in her texts to Elizabeth that she had some things to discuss with her too.
7. When Elizabeth went to Diana's house that evening, she spent some time going around the place and came across a stack of papers with the top page marked "vignettes" with a post-it. After tea, Elizabeth went back to the room on the pretext of going to the bathroom. Realising that she hadn't told her where the bathroom was, Diana went to help her friend, and saw her peering over the papers with a phone. Startled, Elizabeth made some excuse and went off to the bathroom, which was three doors down.
8. On June 1, 2019 a beta version of the BFG Reader App was released on all platforms. It received good reviews across the board. One of the most well-received aspects was a series of vignettes on the App that were written from the perspective of an LGBTQ woman dealing with life in Erewhon. These were published under Elizabeth's name.
9. Diana was shocked when she saw the App. She knew her writing deal was in tatters and skipped work on June 1 to meet her friend Max, an inspector in the

Erewhon police. On his instructions, Diana filed a complaint for theft against Elizabeth and BFG.

10. The first thing that the investigating team did was to search Elizabeth's house to find out if there were copies of Diana's papers there, and seize her phone and other digital devices. They did not get a prior warrant for this citing a possibility of Elizabeth destroying evidence on her phone and computers, and raided her house on the morning of June 2.
11. Elizabeth cooperated with the search. She told the police that she owned one mobile phone and one laptop computer, and handed both devices over. Both devices were locked. The police searched the house but found no copies of Diana's writing, or any other incriminating writings for that matter. On the same day, BFG offices were raided by the police. They searched only Elizabeth's office but found no papers there either. The police seized one desktop computer, which was also locked by a password.
12. The police then sent these digital devices for forensic analysis. The Forensic cyber expert ran a series of tests and was able to discern the following in their Report dated August 15, 2019: (i) digital devices seized from Elizabeth's house were registered in her name, while the desktop seized from BFG offices was not; (ii) all devices were locked and required passwords / biometric information for access; (iii) the camera could be used without unlocking the phone and provided a thumbnail depiction of the last picture taken. This photograph appeared to be of a printout with a post-it with some marking on top.
13. On August 30 2019, Elizabeth was called in for questioning. She admitted that she went to Diana's house on May 19, 2019 and saw some printouts there. But she denied that she made any copies of any writings by Diana or other persons. She also refused to give passwords for any of the digital devices seized from her home

and office. She was allowed to leave after this, but was asked to return on August 31.

14. Overnight, the police consulted the prosecutors' office who advised them that while Elizabeth could not be forced to give her passwords, she could be forced to give her fingerprints for comparison. When Elizabeth came for questioning again on August 31, she was told to give her fingerprints on a scanning pad that recorded them. It was made plain to her that she had no choice in the matter.
15. The police used these fingerprints to map them on to dummy fingers and then used them to unlock the digital devices. They found photographs of some printouts on her phone. The photos matched some printouts handed over & seized from Diana, who confirmed that these pictures had been taken by Elizabeth without her consent.
16. The police also accessed Elizabeth's messages and saw her chat history with Diana for the day of the incident. The messages revealed a somewhat different story and suggested that not only had Diana willingly told Elizabeth about her stories, but had later thanked Elizabeth for reading them as well.
17. The police obtained duly certified copies of the photographs on September 5, 2019. The prosecutor's filed a case against Elizabeth on September 7, 2019 in the District Court of Erewhon. She was prosecuted under Section 380 of the Erewhon Penal Code (**EPC**) — punishing Theft in a Dwelling House — and Section 411 — punishing the receipt or retention of stolen property. The court issued a summons to Elizabeth, asking her to appear on September 9 for a pre-trial hearing.
18. On September 9, the court heard arguments on the admissibility of the phone, and printouts obtained from it in evidence. It agreed with Elizabeth's counsel that not only was the search illegal, but also that her client had been illegally coerced into giving fingerprints. Since the phone was accessed using these fingerprints and the

photos were obtained from the said phone, they had to be excluded for being fruits of the poisonous tree.

19. At the same time, the court was less convinced by the argument that the prosecution had to file a copy of the messages exchanged between Elizabeth and Diana that were found on the former's phone, which messages had not been filed as part of the initial case record. The prosecutor invoked Sections 173 and 207 of the Erewhon Criminal Procedure Code, which required the prosecution to file "relied upon" materials in a case and provide copies of the same. The court agreed with the prosecution.
20. Accordingly, the pre-trial court passed the following order: (i) Elizabeth's fingerprints and all derivative evidence were excluded from evidence; (ii) The seizure was not bad for want of warrant (iii) Since the text messages had not been relied upon by the prosecutor, the same were not part of the record and could not be referred to during trial. The case was posted before a different judge for trial on October 15.
21. After a short trial, the Court found that the prosecution had proved that Elizabeth went to Diana's house on May 19, 2019, had specifically gone to the room where the papers were, and but for being found by Diana at the time, she would have moved the papers to take them. It ruled that the information contained in a document could not be the subject of theft, and thus remembering the contents of a document, or taking a photograph of a document, was not "moving" anything for the purposes of Section 378 EPC.
22. On November 15, Elizabeth was found guilty of an attempt to commit the offence punishable under Section 380 EPC. The sentencing hearing was fixed for November 17, 2019. For her conviction under Section 511 EPC read with Section 380 EPC, Elizabeth was sentenced to 2 years in prison and a fine of 10,000

Erewhon Dollars, payable as compensation to the victim. She was released on bail the same day.

23. The prosecutor's office considered the matter and decided to challenge the pre-trial ruling that excluded the mobile phone from evidence, and also challenge the final judgment itself. Elizabeth also filed an appeal against her conviction on the attempt charge. She also challenged the pre-trial ruling, arguing that the suppression of evidence by the prosecution vitiated the trial.
24. The state appeals came up before the Erewhon High Court on December 1, 2019. Elizabeth's counsel mentioned the fact of their cross-appeals, and the High Court agreed that both sets of appeals should be heard together. The details are as follows:
 - a. Appeal No. 10 of 2019: State's appeal against pre-trial ruling.
 - b. Appeal No. 11 of 2019: State's appeal against acquittal on Section 380 EPC.
 - c. Appeal No. 12 of 2019: Elizabeth's appeal against pre-trial ruling.
 - d. Appeal No. 13 of 2019: Elizabeth's appeal against conviction under Section 511 read with 380 of the EPC.
25. The matters have been posted for hearing before the High Court of Erewhon on 18th to 20th January 2020.

Notes for Counsel

1. Erewhon is a constitutional republic that follows the common law system.
2. The Erewhon Constitution guarantees the same set of fundamental rights to persons as Part III of the Indian Constitution.
3. Erewhon follows a system of trial by judge and not by jury.
4. Erewhon has adopted the Indian Penal Code 1860 with the following modifications:
 - a. The words “movable property” in Section 378 IPC are replaced with the words “anything, whether animate or inanimate”.
5. There is no distinct offence of “data theft” in Erewhon. It has not yet adopted India’s Information Technology Act 2000 or any similarly worded law .
6. Erewhon has adopted the Erewhon Procedure Code 1973 which is a verbatim copy of the Indian Criminal Procedure 1973 (CrPC) with the following modifications:
 - a. Pre-trial judges decide issues of whether any evidence has to be excluded / included at trial from the initial case file. Decisions are appealable, and a successful appeal warrants a re-trial or a vitiation of proceedings if the error satisfies the tests of Section 465 CrPC.
7. Erewhon has adopted the Erewhon Evidence Code 1973 which is a verbatim copy of the Indian Evidence Act 1872.