

Question 1 – Search Strings

a	Search both import and export: ie first, < <i>wheat OR grain import (russian OR "from russia") site:.nz</i> > then, < <i>wheat OR grain export "new zealand" site:.ru</i> > Try using <i>site:.govt.nz</i> for more reliable sources.
b	Advanced search, 'Commonwealth: all primary materials', search <(contraband or unauthorised or illegal or prohibited) near calcium and (certified or legitimate or legal or authorised) near calcium> "Near" searches within 50 words so may need to replace with "and" if nothing comes up.
c	LexisNexis AU, select Commentary, search <(damages or compensat*) and "loss of appetite" or "weight loss" w/100 "NSW">. Next try LawBook and, if also want journal articles, AGIS and AustLII. May also be some cases on this.
d	FirstPoint, select "Commonwealth" jurisdiction, then search <pinocchio and "price index*">. Including the citation for Pinocchio would assist. Alternatively, could look up Pinocchio and see the list of cases referring to it. Recommend doing similar searches on CaseBase and AustLII
e	Select Treaties Library, then search <(chemical or chemistry) near dilut*> Most materials on this page will be Australian so no need to search Australia, and AustLII automatically searches singular/plural.

Question 2 – Licensing and Registration

Step	Details
Relevance	<ul style="list-style-type: none"> - The case may not be relevant as it is a Victorian decision. However, it may consider a Victorian provision that is similar to the NSW provision. To determine conclusively whether the case is relevant, read the case or at least the head note.
Case law	<ul style="list-style-type: none"> - Licensing and registration are usually dealt with in legislation. For this reason, most relevant cases will refer to the appropriate legislation. Searching for cases that refer to the legislation is likely to provide the best results. - However, time-permitting, it would be prudent to do a free text search in each of the databases, eg <(licens* or licence) and (register or registration) and ozone>
Jurisdiction	<ul style="list-style-type: none"> - We first need to determine what legislation applies in NSW before we can find cases referring to it. - We have already located a NSW and Commonwealth Act. We should check the application of the Commonwealth Act. It may apply in NSW.

	<ul style="list-style-type: none"> - It may also be identical to the NSW Act, particularly given that they were made in the same year. We need to consider how the Acts affect each other. The Commonwealth may prevail over the NSW Act if there are inconsistencies. - It would also be prudent to identify corresponding legislation in other jurisdictions. This may assist us in interpreting the NSW Act. (For all searches recommended below, we may need to repeat these for the legislation in other jurisdictions.)
AustLII	<ul style="list-style-type: none"> - The results identify cases referring to s 7 of the Act. Try a note-up on the whole Act, and sort by database to assist in finding NSW cases. Second, try a note-up on the Commonwealth Act. Repeat this process for any other States' legislation. Finally, try a free text search.
CaseBase	<ul style="list-style-type: none"> - Use CaseBase. Search <i>Ozone Protection Act</i> in legislation. This will search references to both the NSW and Cth Acts. Select <i>cases only</i> to exclude journals. Select NSW and Commonwealth jurisdictions, to capture NSW and federal decisions. - Read the summaries of case results, and download the full text of the cases to determine their relevance. Check the list of cases referred to and referring to that case, and use the graphic indicators to assist you. - Time-permitting, check case law from other jurisdictions too (by selecting <i>all jurisdictions</i> and searching for other jurisdictions' legislation). - Try a free text search.
FirstPoint	<ul style="list-style-type: none"> - FirstPoint may provide different results to CaseBase. Similarly, try searching <i>Ozone Protection Act</i> in legislation field. If that does not return any results, try typing <i>Ozone Protection Act</i> into the free text field. Similarly, try restricting it to certain jurisdictions if too many results are obtained. Try a free text search.
CCH	<ul style="list-style-type: none"> - CCH will not be of any assistance, owing to the subject matter of our research.

Question 3 – RFID Chips

Books	<ul style="list-style-type: none"> - Before considering the databases, try to find the book chapter or any other related books. It would be worth considering the library catalogues of the large Australian universities as well as the state library, as you may be able to do an interlibrary loan. - As it is likely to be an international publication, copies might not be available in Australia, so try searching on Google Scholar, Google Books, or the Index to Legal Periodicals and Index to Foreign Legal Periodicals. These might contain a scanned copy of the book chapter, or it might provide you with information on where to obtain it from.
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	<ul style="list-style-type: none"> - On Google, an appropriate search string would be < +<i>monster</i> +(regulat* OR policy OR legislat*) +("radio frequency identification" OR RFID OR chip) > - Alternatively, try to find an online mailing list on the law of monsters, and see if anyone on that list might be able to provide you with a copy of the book section if they have it.
WestLaw	<ul style="list-style-type: none"> - Once you have tried locating books on the Internet, log on to WestLaw, and select World Journals. This database provides legal commentary from all jurisdictions and deals with many international and contentious issues. Start by selecting all journals ('Combined World Journals and Law Reviews), but you may need to narrow this down. You could also try restricting to last 3 years. - An appropriate search would be < <i>monster</i> & (regulat* policy legislat*) & ("radio frequency identification" RFID) OR (chip /p implant*> If there are too many results, try narrowing down to <i>monster</i> /5 (sea ocean), or even <i>green</i> /5 (sea & monster). Try to also see whether there are any articles written by Bart Smith: he may be a well-known publicist on the topic.
Hein Online	<ul style="list-style-type: none"> - Hein Online is another good source of international journals, although you need to first select a library to search in, and the image format of journals can make it difficult to use. - Start by using the Law Journal Library, although consider trying the Foreign & International Law Resources Database afterwards. Use the Advanced Search feature. Start by selecting all journals, and selecting articles, comments, reviews and notes. - An appropriate search would be < <i>monster</i>³ AND (regulat* OR policy OR legislat*) AND ("radio frequency identification" RFID) OR (chip ~50 implant*> As above, if there are too many results, try narrowing down to <i>monster</i> ~5 (sea OR ocean), or even <i>green</i> ~5 (sea AND monster).
LexisNexis Global	<ul style="list-style-type: none"> - In my experience, LexisNexis is better for case law than for journal articles. However it may have some journals that WestLaw and HeinOnline do not cover. You will need to conduct multiple searches on different journals, eg UK Law Journals, Canadian Law Journals. Use similar searches to those above. Remember to use "AND" and "OR" instead of the & sign and space as you did in WestLaw.

Question 4 – Research File

FACTS	
Background	<ul style="list-style-type: none"> - John and Sean Bailey are twins. - Spend 2 wk/month in Alice Springs; 2 wk/month in Sydney installing dishwashers. 2 mth/year in Vancouver with mother, snowboarding.
2006 Canada	<ul style="list-style-type: none"> - John posts a misleading profile on http://pickme.ca - n.b. John under age of 21
March 2008 Sydney	<ul style="list-style-type: none"> - John and Sean Bailey 21st birthdays - John posts misleading profile on http://dateme.com <ul style="list-style-type: none"> o Claimed to be a doctor, for Medecins Sans Frontières o Falsified his age: claimed to be 27 o Uses false photo: photo of Sean - Many people respond. He engages in conversations with: <ol style="list-style-type: none"> 1 Wendy- Doctor from Lajamanu, Aboriginal community, NT 2 Susan- Sydney 3 Clarice- Vancouver.
1 April 2008 Alice Springs	<ul style="list-style-type: none"> - John/Wendy meet at Café Metro. John admits to false information. - Wendy lost 1 day work, spent \$300 on bus ticket. - Wendy posts message saying he is not a doctor/attractive.
Apr-May 2008 Canada	<ul style="list-style-type: none"> - Clarice buys plane ticket to come to Sydney to meet John. Due to arrive 15 June, 2008.
Summary of issues	<ul style="list-style-type: none"> - Deception over internet - Claiming to be a doctor - False photo

NEW SOUTH WALES			
	Doctor claim	Fraud information	Personation
Legislation	<i>Medical Practice Act 1992</i> s 105	<i>Crimes Act 1900</i> s 180	<i>Crimes Act 1900</i> s 184
Interpretative materials			
Case law	Dix v Lin [2007] NSWSC 846	Petronius-Kuff v R [1983] 3 NSWLR 178	Clarkson v Regina [2007] NSWCCA 70

NORTHERN TERRITORY			
	Doctor claim	Fraud information	Personation
Legislation	<i>Health Practitioners Act</i> ss 103, 104	<i>Criminal Code</i> s 227 <i>Summary Offences Act</i> s 60A	<i>Criminal Code</i> s 272
Interpretative materials		Second Reading Speech , <i>Criminal Code Amend. Act (no. 3) 2001</i> Historical <i>Criminal Code Act</i> [26/09/01-22/10/01] s 227	
Case law	Barr v The Queen [2004] NTCCA 1		

BRITISH COLUMBIA, CANADA			
	Doctor claim	Fraud information	Personation
Legislation	<i>Medical Practitioners Act (RSBC 1996) Ch 285</i> ss 95-97	<i>Criminal Code (Canada)</i> ss 361, 362, 380	<i>Criminal Code (Canda)</i> s 403
Interpretative materials		Convention on Cybercrime , adopted 23 November 2001, ETS 185	Bill C-27, An Act to amend the Criminal Code (identity theft .. misconduct), 2007
Case law	Pound v. Lunney , 2007 BCSB 85.	R. v. Hamilton , 2005 SCC 47 R. v. Mastronardi , 2006 BCSC 1681	R v. Carew , 1992 CanLII 1530 (BC S.C.)

SECONDARY MATERIALS
Standing Committee of Attorneys-General, <i>Model Criminal Code: Identity Crime</i> (2007)
Nissenbaum, Gary, and Freedman, Laura, 'Wrongful Posting on the Internet' (April 2008) <i>New Jersey Lawyer</i> 20.
Harrold, Marc, Symposium: Prosecution Responses to Internet Victimization, 'Panel Discussion I The Decision to Prosecute' (Winter 2007) <i>Mississippi Law Journal</i> .
Daniel, Juanda, 'Virtually Mature: Examining the Policy of Minors' Incapacity to Contract Through the Cyberspace' (2007) 43 <i>Gonzaga Law Review</i> 239.

Question 5 – Memorandum

To	Jane Malonowski
From	
Date	10 May 2008
Matter No	10538424
Subject	Jacob Wood: false claims on internet dating website

1. Summary

The client may be guilty of having falsely claimed to be a medical doctor. To be guilty of any other offences there would need to be an intent to defraud. Consequently, it is unlikely that criminal proceedings would be commenced in any of the jurisdictions.

2. Claiming to be a doctor

New South Wales

A\$55,000 fine, or 12 months imprisonment, or both, for using a title or description that might lead others to infer they are qualified to practice medicine when they are not,¹ or for holding himself or herself out to be a qualified practitioner.² The client should argue s105(4) exception but may not succeed, and should distinguish *Dix v Lin*³ as he was not practising medicine.

Northern Territory

It is an offence to hold oneself out as being registered, or being entitled to practise, when one is not registered or qualified.⁴ It is also an offence for practising medicine under the title of Doctor when unqualified.⁵ Wood may have contravened the former offences. The maximum penalty for both of these provisions is A\$55,000.

British Columbia

It is an offence to represent oneself as a registered doctor, or to use the title doctor, when unregistered.⁶ Wood can argue the internet post was in Australia in 2008, he didn't claim to be a doctor in Canada. He may be liable for doing so in 2006. He should seek to rely on *Pound v Lunney*⁷ as was not actually practising, but that case is not on all fours since it related to chiropractors using the term Dr. Without actually practising medicine, the penalty for a first conviction has been C\$100 since 1979.⁸

¹ *Crimes Act 1900* s 105(1)

² ss 105(2), 105(3).

³ [2007] NSWSC 846.

⁴ *Criminal Code* s 103.

⁵ s 104.

⁶ *Medical Practitioners Act (RSBC 1996)* Ch 285 ss 94-95.

⁷ 2007 BCSB 85.

⁸ *Medical Practitioners Act (RSBC 1996)* Ch 285 s 96(1)(a); c.f. s 92.

2. Using his brother's photograph

It could be argued that Wood was personating his brother by using his photograph for his own internet profile.

New South Wales

It is an offence to falsely personate another with intent fraudulently to obtain property, penalty of 7 years imprisonment.⁹ Wood may have personated his brother but not for property, which is defined broadly in s 4. He had no enforceable property right, nor custody or control, over seeing Wendy. There is no evidence he was acting fraudulently. Despite the section being in its present form since 1900, it has only once been the subject of a reported case.¹⁰ Wood is not likely to be charged.

Northern Territory

Personation is subject to 3 years imprisonment.¹¹ If the offender represents that they are entitled to property, the penalty is 14 years. Wood did not claim to be entitled to property. It is not clear he had the intent to defraud.

British Columbia

The personation test in British Columbia is broader than in Australian jurisdictions. It is an offence to personate fraudulently with to gain advantage.¹² It is possible Wood acted to gain an advantage. However it is not clear he had a fraudulent intent. Penalty is 10 years imprisonment, or less if on summary conviction.¹³

Personation as a crime

Personation normally arises as a factor of a more serious crime, such as rape¹⁴ or drug dealing.¹⁵ In certain cases it rises to the level of identity theft, the subject of current reform proposals.¹⁶ However, that too requires a greater intent than what Wood demonstrated here. The Megan Meier suicide makes it clear that personation on the internet must be resolved.¹⁷ It was contemplated that this type of personation is a fraud on the website owner.¹⁸ However, there must be a greater intent for such crimes than merely obtaining greater popularity as is the case with Wood.

3. Obtaining benefit through fraud

New South Wales

There is a \$440 fine or 6 months imprisonment for obtaining a benefit by wilfully false representation.¹⁹ It would need to be argued that Wendy, or Clarice, visiting him was a benefit that Wood obtained.

⁹ s 184.

¹⁰ *Clarkson v Regina* [2007] NSWCCA 70, [47] (Beazley JA).

¹¹ *Criminal Code* s 272.

¹² *Criminal Code (Canada)* s 403(a).

¹³ *Criminal Code (Canada)* s 403.

¹⁴ *R v Pryor* [2001] QCA 341.

¹⁵ *R v Kemp* [1999] NSWCCA 404.

¹⁶ Standing Committee of Attorneys-General, *Model Criminal Code: Identity Crime* (2007).

¹⁷ Nissenbaum, Gary, and Freedman, Laura, 'Wrongful Posting on the Internet' (April 2008) *New Jersey Lawyer* 20.

¹⁸ *Ibid.*

¹⁹ *Crimes Act 1900* s 527A.

Alternatively, Wood must consider the offence of causing payment by false pretence, with 5 year penalty.²⁰ False pretence was the combination of misrepresentations. He caused Wendy and Clarice to spend money for his benefit. This may not rise to level of intent required.²¹ *Petronius-Kuff* held that this provision should be interpreted widely,²² but may be distinguished as it was about fraud to obtain luxury cars.

Northern Territory

NT deception is broader than NSW, requiring the person to obtain a benefit for himself or another by deception.²³ This formulation was adopted in 2001 to address computer related offences.²⁴ By expanding the definition from 'property' to 'benefit', it covers a wider range of crime. However it isn't clear the visit of Wendy and Clarice constitutes a benefit for Wood. There is a lesser crime in the *Summary Offences Act* that renders a person guilty for obtaining a benefit or advantage by fraud other than false pretences, with a penalty of \$2,000, 12 months imprisonment or both.²⁵

Canada

The Canadian *Criminal Code* has false pretences²⁶ and fraud provisions.²⁷ Wood did not have an intent to obtain property or 'benefit' within the meaning of s 362(c). He likely did not have the intent to defraud within s 380 either. Cases such as *Mastronardi*,²⁸ where fraud was used to rape a person off the internet, or *Hamilton*, where an individual was found guilty of counselling fraud to sell top-secret information and credit card software, are distinguishable.

4. Related issues

The offences may have been committed either at the place the information was uploaded on the internet or at the place that the information was read. The Australian authority on defamation may prove useful on this point: see *Dow Jones v Gutnick*.²⁹ In relation to the 2006 offences, there are not likely to be any complications by way of statute of limitations, age of Wood (18 years old),³⁰ or statutory amendments.

5. Conclusion

The internet has generated new levels of crime. Fraud will generally only be made out where the offender has obtained benefit equivalent to theft. It is clear that individuals make misrepresentations on internet dating websites and social networking sites all the time. It would not be possible to prosecute all the offenders.³¹ For the above reasons it is not likely that Wood will be prosecuted.

²⁰ s 180.

²¹ s 179.

²² [1983] 3 NSWLR 178, 181.

²³ *Criminal Code* s 227(1)(b).

²⁴ Second Reading Speech, *Criminal Code Amendment Act (no. 3) 2001*.

²⁵ *Summary Offences Act* s 60A.

²⁶ ss 361-362.

²⁷ s 380.

²⁸ *R. v. Mastronardi*, 2006 BCSC 1681.

²⁹ (2002) 210 CLR 575.

³⁰ Daniel, Juanda, 'Virtually Mature: Examining the Policy of Minors' Incapacity to Contract Through the Cyberspace' (2007) 43 *Gonzaga Law Review* 239.

³¹ Harrold, Marc, Symposium: Prosecution Responses to Internet Victimization, 'Panel Discussion I The Decision to Prosecute' (Winter 2007) *Mississippi Law Journal*.