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A2 GCE LAW

G154/01/RM Criminal Law Special Study

PRE-RELEASE SPECIAL STUDY MATERIAL

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G154 CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

Extract adapted from the judgment of James J. in *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439 (Divisional Court).

In our judgment the question arising, which has been argued on general principles, falls to be decided on the facts of the particular case. An assault is any act which intentionally – or possibly recklessly – causes another person to apprehend immediate and unlawful personal violence. Although "assault" is an independent crime and is to be treated as such, for practical purposes today "assault" is generally synonymous with the term "battery" and is a term used to mean the actual intended use of unlawful force to another person without his consent. On the facts of the present case the "assault" alleged involved a "battery." Where an assault involves a battery, it matters not, in our judgment, whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender […]

To constitute the offence of assault some intentional act must have been performed: a mere omission to act cannot amount to an assault. Without going into the question whether words alone can constitute an assault, it is clear that the words spoken by the appellant could not alone amount to an assault: they can only shed a light on the appellant's action. For our part we think the crucial question is whether in this case the act of the appellant can be said to be complete and spent at the moment of time when the car wheel came to rest on the foot or whether his act is to be regarded as a continuing act operating until the wheel was removed. In our judgment a distinction is to be drawn between acts which are complete – though results may continue to flow – and those acts which are continuing. Once the act is complete it cannot thereafter be said to be a threat to inflict unlawful force upon the victim. If the act, as distinct from the results thereof, is a continuing act there is a continuing threat to inflict unlawful force. If the assault involves a battery and that battery continues there is a continuing act of assault […]

There was an act constituting a battery which at its inception was not criminal because there was no element of intention but which became criminal from the moment the intention was formed to produce the apprehension which was flowing from the continuing act. The fallacy of the appellant's argument is that it seeks to equate the facts of this case with such a case as where a motorist has accidentally run over a person and, that action having been completed, fails to assist the victim with the intent that the victim should suffer.

SOURCE 2

Extract adapted from the judgment of Lord Steyn in *R v Ireland; R v Burstow* [1997] 3 WLR (House of Lords).

Harassment of women by repeated silent telephone calls, accompanied on occasions by heavy breathing, is apparently a significant social problem. That the criminal law should be able to deal with this problem, and so far as is practicable, afford effective protection to victims is self-evident. […]

It is to the provisions of the Offences against the Person Act 1861 that one must turn to examine whether our law provides effective criminal sanctions for this type of case […]

An ingredient of each of the offences is "bodily harm" to a person. In respect of each section the threshold question is therefore whether a psychiatric illness, as testified to by a psychiatrist, can amount to "bodily harm." […] [I]f the answer to the question is yes, it will be necessary to consider whether the persistent silent caller, who terrifies his victim and causes her to suffer a psychiatric illness, can be criminally liable under any of these sections. […]

[T]he correct approach is simply to consider whether the words of the Act of 1861 considered in the light of contemporary knowledge cover a recognisable psychiatric injury. […]

The proposition that the Victorian legislator when enacting sections 18, 20 and 47 of the Act 1861 [*sic*], would not have had in mind psychiatric illness is no doubt correct. Psychiatry was in its infancy in 1861. But the subjective intention of the draftsman is immaterial. The only relevant enquiry is as to the sense of the words in the context in which they are used. […]

[Accordingly] […] "bodily harm" in sections 18, 20 and 47 must be interpreted so as to include recognizable psychiatric illness. […]

[In *Burstow*] […] counsel laid stress on the difference between "causing" grievous bodily harm in section 18 and "inflicting" grievous bodily harm in section 20. […] But counsel had a stronger argument when he submitted that it is inherent in the word "inflict" that there must be a direct or indirect application of force to the body. […]

The question is whether as a matter of current usage the contextual interpretation of "inflict" can embrace the idea of one person inflicting psychiatric injury on another. One can without straining the language in any way answer that question in the affirmative. […]

It is now necessary to consider whether the making of silent telephone calls causing psychiatric injury is capable of constituting an assault under section 47. […]

It is necessary to consider the two forms which an assault may take. The first is battery, which involves the unlawful application of force by the defendant upon the victim. […] The second form of assault is an act causing the victim to apprehend an imminent application of force upon her […]

The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible. A thing said is also a thing done. There is no reason why something said should be incapable of causing an apprehension of immediate personal violence, e.g. a man accosting a woman in a dark alley saying "come with me or I will stab you." I would, therefore, reject the proposition that an assault can never be committed by words.

That brings me to the critical question whether a silent caller may be guilty of an assault. The answer to this question seems to me to be "yes, depending on the facts." It involves questions of fact within the province of the jury. After all, there is no reason why a telephone caller who says to a woman in a menacing way "I will be at your door in a minute or two" may not be guilty of an assault if he causes his victim to apprehend immediate personal violence. Take now the case of the silent caller. He intends by his silence to cause fear and he is so understood. The victim […] may fear the *possibility* of immediate personal violence. As a matter of law the caller may be guilty of an assault: whether he is or not will depend on the circumstance and in particular on the impact of the caller's potentially menacing call or calls on the victim. Such a prosecution case under section 47 may be fit to leave to the jury. […] I conclude that an assault may be committed in the particular factual circumstances which I have envisaged. For this reason I reject the submission that as a matter of law a silent telephone caller cannot ever be guilty of an offence under section 47.

SOURCE 3

Extract adapted from *Criminal Law*. 4th Edition. Alan Reed and Ben Fitzpatrick. Sweet and Maxwell. 2009. Pp 380, 395.

There are many offences whose function is to deal with unlawful harm being inflicted upon another individual […] the four offences most commonly seen in our courts […] in order of increasing gravity [are] common assault, assault occasioning actual bodily harm [under the Offences Against the Person Act 1861 s.47] […]

Section 20 provides:

"Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon another person, either with or without any weapon or instrument, shall be guilty of an offence triable either way and being convicted thereof shall be liable to imprisonment for five years."

Section 18 provides:

"Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause grievous bodily harm to any person *with intent to do some grievous bodily harm to some person, or with intent to resist or prevent the lawful apprehension or detaining of any person*, shall be guilty of an offence, and being convicted thereof shall be liable to imprisonment for life."

By way of introduction to these offences we can say that today, for all intents and purposes, the actus reus of the two offences is the same. The main distinction lies in the ulterior intent within s.18 (italicised). It should also be noted that s.18 carries a possible life sentence while s.20 has a maximum sentence of five years, the same as that provided for the offence of assault occasioning actual bodily harm (s.47). This may seem odd since s.20 is clearly regarded by all as a far more serious offence than the s.47 offence. The reason is simply that the 1861 Act was a consolidating statute, into which a whole host of existing offences were placed without any rationalisation.

SOURCE 4

Extract adapted from *Criminal Law*. 9th Edition. Catherine Elliott and Frances Quinn. Pearson Education Ltd. 2012. Pp 155–158.

The meaning of the word 'inflict' in this section [s.20 Offences Against the Person Act 1861] has caused considerable difficulty. For many years it was held that 'inflict' implied the commission of an actual assault. Thus, in **Clarence** (1888), the Queen's Bench Division decided that a husband could not be said to have inflicted GBH on his wife by knowingly exposing her to the risk of contracting gonorrhoea through intercourse; the wife had not feared the infliction of lawful force at the time of the sexual intercourse. In **Wilson** (1984) the House of Lords stated that an assault is not necessary; the word 'inflict' simply required 'force being violently applied to the body of the victim, so that he suffers grievous bodily harm'. Thus it was thought that under s. 20 grievous bodily harm had to be caused by the direct application of force. This meant, for example, that it would cover hitting, kicking or stabbing a victim, but not digging a hole for them to fall into. In practice, the courts often gave a wide interpretation as to when force was direct […]

However, following the decisions in **R** *v* **Ireland and Burstow**, the word inflict no longer implies the direct application of force. […] [Burstow's] behaviour caused his victim to suffer severe depression, insomnia and panic attacks. For this subsequent behaviour he was charged with inflicting grievous bodily harm under s. 20 of the Offences Against the Person Act 1861. The trial court convicted, stating that there was no reason for 'inflict' to be given a restrictive meaning. On appeal against his conviction the appellant argued that the requirements of the term 'inflict' had not been satisfied. The appeal was dismissed by both the Court of Appeal and the House of Lords. The House stated that s. 20 could be committed where no physical force had been applied (directly or indirectly) on the body of the victim.

The offence can be committed when somebody infects another with HIV. […]

The *mens rea* for this offence is defined by the word 'maliciously'. In **R** *v* **Cunningham** it was stated that for the purpose of the 1861 Act maliciously meant 'intentionally or recklessly' and 'reckless' is used with a subjective meaning. […]

[For s.18 Offences Against the Person Act 1861]. Wounding and grievous bodily harm are given the same interpretation as for s. 20. In **R** *v* **Ireland and Burstow** Lord Steyn said that the word 'cause' in s.18 and 'inflict' in s. 20 were not synonymous, but it is difficult to see how they differ in practice. Both refer to the need for causation. […]

[For s.18] […] the prosecution must prove intention. The intent must be either to cause grievous bodily harm (by contrast with s. 20, where an intention to cause some harm is sufficient) or to avoid arrest.

In addition, the section states that the defendant must have acted 'maliciously'. This bears the same meaning as discussed for s. 20, so if the prosecution have already proved that the defendant intended to cause grievous bodily harm, 'maliciously' imposes no further requirement: a defendant who intends to cause grievous bodily harm obviously intends to cause some harm.

SOURCE 5

Extract adapted from the judgment of Robert Goff LJ in *JJC (a minor) v Eisenhower* [1983] 3 All ER 230 (Queen's Bench Division).

In my judgment, having regard to the cases there is a continuous stream of authority – to which I myself can find no exception – which establishes that a wound is, as I have stated, a break in the continuity of the whole skin. I can see nothing in the authorities which persuades me to think otherwise. This has become such a well-established meaning of the word "wound" that in my judgment it would be very wrong for this court to depart from it.

We now turn to the case stated for our consideration by the justices. The justices concluded that there was a wound because, although they described the injury as a bruise just below the left eyebrow with fluid filling the front part of his left eye for a time afterwards which abnormally contained red blood cells, they thought that the abnormal presence of red blood cells in the fluid in Martin Cook's left eye indicated at least the rupturing of a blood vessel or vessels internally; and this they thought was sufficient to constitute a wound for the purposes of section 20 of the Offences against the Person Act 1861.

In my judgment, that conclusion was not in accordance with the law. It is not enough that there has been a rupturing of a blood vessel or vessels internally for there to be a wound under the statute because it is impossible for a court to conclude from that evidence alone that there has been a break in the continuity of the whole skin. There may have simply been internal bleeding of some kind or another, the cause of which is not established. In these circumstances, the evidence is not enough, in my judgment, to establish a wound within the statute. In my judgment, the justices erred in their conclusion on the evidence before them. The question posed for the opinion of this court is whether, in the light of the facts found by the justices and the law applied to those facts, they were right to find the defendant guilty of the offence with which he had been charged, viz., the unlawful and malicious wounding of Martin Cook contrary to section 20 of the Offences against the Person Act 1861. I would answer that question in the negative.

SOURCE 6

Extract adapted from *Unlocking Criminal Law*. 5th Edition. Jacqueline Martin and Tony Storey. Routledge. 2015. P 395.

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