

## Answers to problem solving questions

### Outline answer for question 1

Al and Beryl had a sexual relationship which Beryl decided to end after several months owing to Al's possessiveness. Al made many silent telephone calls and sent her several threatening letters causing Beryl some distress. Beryl began to go out with Clem with whom she liked to engage in aggressive spanking. On one occasion this caused Beryl minor grazes which became infected. She was successfully treated by Dr. Dave who concealed the fact that he had been struck off the medical register six months earlier. Al followed Beryl and Clem around a supermarket one day. Clem warned him that if he did not go away he would punch Al on the nose. They started to fight during which Al shoved a trolley towards Clem. It hit a stack of tins which fell on top of him. One hit Clem in the eye causing his sight to be permanently damaged. Al then head-butted PC Ed who had arrived on the scene. PC Ed hit his head on a check-out desk, causing his skull to fracture with a profuse loss of blood. After several months, Beryl discovered that she was HIV positive. She had not had sex with anyone but Al.

Discuss the criminal liability of Al, Clem and Dr. Dave.

Define each AR/MR element of each relevant offence. You would be expected to write an answer in full, supported by clearly explained authorities and statutory provisions.

**Al: Silent telephone calls and threatening letters to Beryl:** AR/MR. Assault/ABH depending on the gravity of psychological harm (*Ireland*). Consider all possible offences and explain AR/MR fully. **Assault: 10.1; ABH: 10.3.**

Stalking would also be covered by s2 or s4 Protection from Harassment Act 1997. **10.9.**

**Injury to Clem's eye:** AR/MR. s20 malicious infliction of GBH (*Smith/Mowatt/Parmenter*).

Harm does not need to be directly inflicted and there is no need for a prior assault (*Burstow*). Consent is no defence to unlawful activity falling outside the public interest (*AG's Reference (No 6)*). **10.4, 10.6.**

**Injury to PC Ed:** S20 malicious wounding/GBH or s18 wounding/GBH with intent to resist arrest. S18 MR: Wounding or GBH do not need to be intended if there is intent to resist arrest but should be at least foreseen (*maliciousness*). **10.4 and 10.5.**

**Sexual transmission of HIV:** s20 GBH (*Dica*). Defence of consent unavailable unless Beryl was informed of A's condition (*Konzani*). **10.4 and 10.6.**

**Clem: Verbal assault on Al** (*Ireland*). **10.1.**

**Cuts/grazing to Beryl through spanking: ABH** but defence of consent does not apply unless activity is lawful. It is unlawful and contrary to public interest to cause intentional sexual harm (*Brown*). No MR required in respect of harm. AR/ MR of assault required plus causation (*Roberts/Savage*). **10.3 and 10.6.**

**Dr. Dave: Assault.** Consent induced by fraud. Is it valid? Only fraud as to nature or identity will negate consent (*Clarence*). Where qualifications or status effect identity *Tabassum* now says that fraud as to this type of quality will negate consent and this was approved in *Dica*. **10.6.**

**This is an outline only. You would be expected to explore these issues in depth.**