

## Chapter 6

***Martin is told by his doctor that he may be suffering from a sexually transmitted disease and is warned that he should not engage in sexual relations. He ignores the advice and has sexual intercourse with Steve, not telling Steve that he may be infectious. Steve subsequently discovers that he has caught a sexually transmitted disease from Martin, and suffers depression as a result. What offences has Martin committed? Would your answer be any different if Martin had warned Steve that he may be infectious? (To answer the second question you will need to read the next section of this chapter on consent and assault.)***

There seems no doubt following *Dica* that Martin has committed an offence under section 20, Offences Against the Person Act 1861. Martin has inflicted grievous bodily harm on Steve. Steve has not consented to running the risk of catching an STD. The only real defence would be if Martin truly believes that there is no risk that he will infect Steve. As to the depression this could amount to actual bodily harm or grievous bodily harm depending on its severity.

If Martin had warned Steve and Steve had agreed to run the risk of becoming infectious then *Dica* makes it clear that Martin will have a defence based on Steve's consent as regards the passing on of the STD. Although there is no authority to this effect presumably the same will be true of the depression.

***Tom (a tattooist) gives Viv an intimate body piercing. Tom does not normally perform piercings, but found Viv attractive and so agreed to do it. What offences (if any) has Tom committed? (Is this more like Brown or Wilson?)***

Tattooing and personal adornment is one of the 'exceptional categories of cases' that was recognized by the majority in *Brown*. Although their Lordships might not have had the more intimate piercings in mind, it is unlikely that the law would determine that they are unlawful. In *BM* removing an ear or nipple was found not to fall into the category of "tattooing or personal adornment" (nor indeed medical treatment), but intimate piercing are more mainstream than those and so it is likely that does fall within the exception. However, in this case there is a sexual motivation which makes the situation more complex in two ways. First it might be argued that Vic did not consent to a sexually motivated piercing (see *Tabassum*) and so any consent is invalid. Second, it might be said to be hard to distinguish a sexually motivated piercing and a sexually motivated piece of sado-masochism. If there is a distinction it lies in the role that causing pain is part of the intention (see the discussion in *Dica*).