

Answers to Exam questions

Chapter 7

Question 1

The provisions of the Offences Against the Person Act 1861 are out of date and no longer correspond with the application of the law in practice. To what extent do you agree with this statement? Discuss with reference to case law.

Bullets

- You should write a brief introduction explaining that the statement is criticising the Offences Against the Person Act 1861 and stating that the law is out of date and in need of reform in this area. You should draw from the recent Law Commission paper on the offences against the person in which the Law Commission proposes reforms to this area of law. The question criticises the OAPA 1861 for not corresponding with the application of the law in practice. Consider the Prosecution Charging Standards. You should also give some indication either in the introduction or at least in the conclusion of their opinions as to whether this is the case.
- The OAPA 1861 is a very old piece of legislation which was actually a consolidatory Act. Hence, it did not really create new offences against the person, but consolidated those that already existed. For this reason, the Act is not particularly consistent and there are problems with the hierarchy of the offences.
- You should also mention s.39, Criminal Justice Act 1988, which again does not create offences but sets out a sentence for assault and battery.
- There is a large base of common law explaining terms used in the OAPA 1861. You should discuss some of the problems faced with offences.
- Eg, the meaning of 'immediacy' (*Smith v CS Woking, Ireland, Constanza*), also the 'difference' between 'inflict' and 'cause' under s.20 and 18 (*Ireland*), the use and meaning of the word 'maliciously', the practical aspect of charging these offences (i.e., the fact that the theoretical law does not tally up with the CPS Charging Standards), the fact that a wound under s.20 is simply a break in the layers of the skin (so could be a pin prick which draws blood), which is more serious than a s.47 offence, which could be causing unconsciousness or psychiatric conditions.
- The hierarchy of these offences is confusing. The sentences are the same for s.47 and s.20.

- You should explore the Law Commission proposals and comment on these.
- You should then conclude that this area is in need of reform in order to create some consistency and certainty in the law. We are still reliant upon a piece of legislation which is over 140 years old.

Question 2

Carl and Daniel, two Professors of Philosophy, are on their way to watch a charity football match organised by their University. In their rush to catch the bus to the match, they push other passengers, causing them to lose their balance. When they arrive at the football stadium, Carl and Daniel sing songs with abusive lyrics, scaring Emma, who is sat in the row behind. During the match, one of the football players goes to tackle the centre forward. He misses the ball, so he kicks the centre forward in the head in anger, knocking him unconscious. After the match, Carl and Daniel go to the pub where they become embroiled in a philosophical debate with Frank, a Professor of History at the University. Frank throws his drink over Carl, but the glass slips out of his hand and breaks, cutting Daniel. Later that evening, Daniel sends Frank a text message which reads, 'this isn't over'.

Discuss the criminal liability of the parties.

Bullets

- This is a question on non-fatal offences against the person. There are 5 main offences to be discussed: assault, battery, assault occasioning ABH under s.47 OAPA 1861, malicious wounding or inflicting GBH under s.20 and wounding or causing GBH with intent under s.18.
- You should adopt a logical structure. Weaker answers will set out the law on the 5 main offences before tackling the problem scenarios. Better answers will incorporate the law into their discussion of the scenarios.
- The first incident raises consideration of battery. You should define battery in accordance with *Fagan v MPC* as intentionally or recklessly inflicting unlawful force on a person without consent. This offence is charged under s.39 CJA 1988.
- Carl and Daniel inflict force on the passengers as they push them. The force used is unlawful. Do they have the requisite mens rea for battery? They must intend to inflict such force or be (subjectively) reckless as to whether such force was inflicted – *Venna*.

- When they sing songs using abusive lyrics, they commit an assault. You should define this offence using the common law – intentionally or recklessly causing V to apprehend immediate and unlawful force – *Fagan v MPC* (1969). This offence is charged under s.39 CJA 1988 and is a summary offence.
- Words alone are sufficient for an assault: *Wilson*. Emma is scared, but does she apprehend unlawful force? The *mens rea* should also be discussed. Did Carl and Daniel intend to cause such apprehension or were they (subjectively) reckless as to whether such apprehension was caused? See *Venna*. They would be reckless if they foresaw the risk of causing such apprehension and went ahead and took that risk – *Cunningham*.
- The footballer kicking another player requires consideration of the offences of battery and ABH. You should apply the definition of battery in *Fagan v MPC*. The footballer inflicts force on the other player as he kicks him. The force used is unlawful. Does he have the requisite *mens rea* for battery. He must intend to inflict such force or be (subjectively) reckless as to whether such force was inflicted – *Venna*.
- As the kick has caused loss of consciousness, could this amount to ABH under s.47 OAPA 1861? This is likely if *T v DPP* is applied to the loss of consciousness. This is clearly not consented to so he will be liable under s.47, OAPA 1861.
- Frank throwing his drink over Daniel amounts to a battery. When the glass cuts him, this may be a s.47 or a s.20 offence.
- S.47, OAPA 1861 requires proof of a battery (intentional infliction of force is present here) which causes ABH. The degree of harm caused here as a minor cur may amount to ABH under the Prosecution Charging Standards.
- Alternatively, Frank might even be charged with s.20. The injury amounts to a wound as there is a break in the continuity of the skin: *Woods* and *JCC v Eisenhower*. The *mens rea* of s.20 is present if Frank intended or foresaw some harm: *Savage*; *Parmenter*.
- Lastly, sending the text may amount to an assault – intentionally or recklessly causing V to apprehend immediate and unlawful force – *Fagan v MPC* (1969). We do not know if sending the text caused such apprehension. Consider *Smith v CS Woking Police Station and Ireland*; *Burstow* (1997) for the immediacy issue. In this case, Lord Steyn held that ‘immediate’ means any time not excluding the immediate future. This is a very wide construction of the word ‘immediacy’ which would seem to encompass this scenario. The *mens rea* should also be discussed. Did he intend to cause such apprehension or was he (subjectively) reckless as to whether such

apprehension was caused? See *Venna*. He would be reckless if he foresaw the risk of causing such apprehension and went ahead and took that risk – *Cunningham*.