

Answers to self-test questions

Chapter 7

1. What is the *actus reus* of an assault?

Causing another person to apprehend immediate and unlawful personal violence.

2. How is “immediate” interpreted by the courts? Support your answer with case law.

Since the case of *Constanza* (1997) the immediacy element has been very widely construed. Schiemann LJ held that there would be an assault where the apprehension was of violence “at some point not excluding the immediate future”. In *Ireland; Burstow* (1998), Lord Steyn held that the immediacy requirement might even be satisfied in a situation involving a silent caller, because the victim may fear that the silent caller is outside the door; it is sufficient that the victim fears the possibility of immediate personal violence.

3. What is the significance of *Tuberville v Savage* (1669)?

It is authority to suggest that words can negate an assault.

4. What is the *mens rea* of assault occasioning ABH?

Simply the *mens rea* of the required assault or battery. No further *mens rea* is required in respect of the degree of harm caused: *Savage; Parmenter* (1991).

5. Define “wound” and “grievous bodily harm”. Support your answers with case law.

“Wound” requires the continuity of the skin to be broken: *Moriarty v Brookes* (1834).

“Grievous bodily harm” means “really serious harm” (*DPP v Smith* (1961)) or “serious harm” (*Saunders* (1985)).

6. What is the *mens rea* of the offence under s.20, OAPA 1861?

Intention or recklessness as to causing some harm: *Savage; Parmenter* (1991).

7. In what circumstances may consent be relied upon as a defence?

The general rule is that consent is a defence to assault or battery only. However, consent may be a defence to ABH or GBH in certain exceptional circumstances, such as body piercing, tattooing, property regulated sports, medical or cosmetic surgery, “rough horseplay”, lawful chastisement, dangerous exhibitions.

8. John receives threatening text messages and silent telephone calls from his neighbour, Suzy. As a result, John suffers sleepless nights and becomes severely depressed. Discuss Suzy’s criminal liability.

Suzy might be liable for assault occasioning actual bodily harm under s.47, OAPA 1861. The elements of an assault are present because Suzy causes John to apprehend immediate and unlawful violence: *Fagan v MPC* (1969). The immediacy requirement is satisfied as a result of *Ireland; Burstow* (1998) and *Constanza* (1997). Immediacy means any time not excluding the immediate future. The *mens rea* of assault is also present: Suzy intends to cause such apprehension (or at the very least she is reckless). The degree of harm caused amounts to ABH. ABH is defined in *Miller* (1954) as “any hurt or injury calculated to interfere with health or comfort”. This includes clinically recognised psychiatric conditions: *Chan-Fook* (1994).

9. Whilst racing around a supermarket with their trolleys, Owen and David deliberately strike each other with their trolleys, causing severe bruising to their legs. Owen accidentally bumps into another shopper, Anna. Angrily, Anna pushes Owen hard in the back. Owen slips over and hits his head on the floor, fracturing his skull. Discuss the criminal liability of the parties.

Owen and David may consent to battery, but if the injuries are more serious, consent might not provide a defence. Severe bruising may be charged as assault occasioning ABH under s.47 OAPA 1861. This could be regarded as “rough

horseplay” (*Aitken* (1992) and *Jones* (1986)) and thus fall under one of the exceptions to the general rule. So, consent may be a defence.

Owen accidentally bumping into Anna constitutes a battery. He has inflicted force on her: *Fagan v MPC* (1969) and the least touching will do (*Cole v Turner* (1705)). He has not done this intentionally, and is not reckless he did not recognise the risk: *Cunningham*. Consider whether the defence of consent might be available under *Collins v Wilcock* (1984). Does this amount to a situation in which there is implied consent?

Anna might be liable for maliciously inflicting GBH under s.20 OAPA 1861. She causes really serious harm (*DPP v Smith* (1961)). She also has the *mens rea* because she intends, or at least is reckless as to causing some harm: *Savage; Parmenter* (1991). If she intended to cause GBH, she will be guilty under s.18 OAPA 1861.

10. Raj puts a quantity of laxatives into a drink which Bill consumes. Has Raj committed any offence?

He might be guilty of administering a noxious thing under s.24 OAPA 1861. He has unlawfully administered a substance to Bill. “Noxious thing” has been given a wide meaning under *Marcus* (1981). It is a matter of fact and degree, so much will depend upon the quantity administered. The administration was clearly intentional, so Raj will be guilty if he has the intention to injure, aggrieve or annoy.