

Chapter 7: Non-fatal offences against the person

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (i.e., not bullet-points).

Geraldine and Stavros start dating, having previously met through a mutual acquaintance. Stavros has only just moved to England and has no fixed address so Geraldine asks him to move straight into her flat. Within a matter of weeks Geraldine begins to monitor Stavros' movements, concerned that he might be seeing other women. She starts by checking his mobile phone and Facebook account daily to ensure he is not cheating on her. Convinced he is still having an affair, Geraldine starts to follow Stavros every day when he visits the Job Centre. Stavros notices that he is being watched by someone and begins to feel very anxious. At home Geraldine begins to make comments that he is too ugly to find another girlfriend and tells him that he is not to go out with his friends as most of them think he is an idiot not worthy of their attention. Stavros begins to feel frightened of what Geraldine might do if he leaves her, plus he has nowhere else to live. As a result of her actions, Stavros becomes depressed and feels that he is no longer able to go out with his friends or have visitors to the house.

On returning home one evening from the Job Centre, Stavros finds Geraldine waiting for him at the top of the stairs. She is convinced that he has been out looking for other women and calls him upstairs. When he gets to the top she punches Stavros straight in the face and shouts, "no immigrant scum is going to make a fool out of me". Stavros falls back hitting his head on the corner of the banister causing a graze on the back of his head which instantly begins to bleed. Now lying on his back at the top of the stairs, Geraldine rushes towards him with what he thinks is a sharp object. He leans forward grabbing Geraldine by her collar and pulls her over his head. Geraldine launches head first down the stairs breaking her neck on one of the steps as she falls. It turns out that Geraldine was still clutching a pen she had been using to write a letter. Geraldine is later rushed to hospital where the doctors tell her she will never walk again.

Discuss the potential criminal liability of both Geraldine and Stavros and any defences which might be available.

Introduction: Briefly introduce the topic of the problem question – non-fatal offence offences – and indicate to your reader how you are going to structure your analysis. Here, a chronological identification of potential liability seems most appropriate.

Step 1: The first potential criminal event arises where Geraldine (G) follows and insults Stavros (S), making him feel depressed.

Step 2: S's depression could amount to a criminal harm (if it is clinical depression as opposed to just feeling low), and depending upon the severity, this could even amount to grievous bodily harm. Therefore, we should start our analysis with the most serious non-fatal offence, section 18 OAPA 1861, and work down.

Step 3:

- Section 18 – cannot be this offence because the mens rea (intention to cause GBH) does not seem to be present;
- Section 20 – G could have committed a section 20 offence if she foresaw some harm (quite possible on the facts), but there is still the issue of whether S's injury amounted to GBH;
- Section 47 – cannot be this offence because there is no battery or assault, which are required base offences within section 47;
- If, as is likely, G's conduct does not come within any of these standard offences, it is likely that she would be better charged with one of the harassment or stalking offences.
 - Protection from Harassment Act 1997, s2 or 2A;
 - There is also the possibly a section 4 offence if S fears violence will be used against him.

Step 4: There does not appear to be any applicable defences.

Step 5: It is likely that G commits an offence of harassment or stalking.

Step 1: The second potential criminal event arises where G punches S.

Step 2: The injury suffered by S is unlikely to be classed as GBH, but it may have been a wound. Therefore, we must again begin with the most serious non-fatal offence.

Step 3:

- Section 18 – This would apply where S's injury classifies as a wound. However, it is unlikely that G intended to cause GBH with a single punch, and so the mens rea is probably missing.
- Section 20 – This also relies on S's injury being classified as a wound. If so, it is likely that G will have acted with the required mens rea, likely to have foreseen the chance of causing some harm to S.
- Section 47 – If the graze did not break all the layers of S's skin (ie, if it was not a wound), then a charge under section 47 would be appropriate. The elements of this offence (battery + causing actual bodily harm) are likely to be satisfied on the facts.
- Having established liability for an offence (section 20 or 47 depending upon the level of harm), it is now appropriate to consider possible aggravation. On the facts, it relates to possible racial aggravation. The relevant legislation is section 28 of the Crime and Disorder Act 1998.
 - The most common approach is to focus on actus reus aggravation as opposed to 'motivated by' aggravation. This is very likely to be satisfied on the facts.

Step 4: There does not appear to be any applicable defences.

Step 5: It is most likely that G commits an offence under section 47, and that this will be aggravated by her demonstration of racial hatred.

Step 1: The third potential criminal event arises where S throws G down the stairs, leading to paralysis.

Step 2: Paralysis clearly amounts to GBH, and so we should begin with the most serious non-fatal offences.

Step 3:

- Section 18 – Although the actus reus is clearly satisfied, there may be some doubt as to whether S intended to cause GBH.
- Section 20 – If S did not intend to cause GBH, however, he will have at least foreseen the chance of causing some harm. Thus, he will certainly be liable for a section 20 offence.

Step 4: S is likely to raise the public and private defence (self-defence). There are two central elements to this defence:

- Subjective: Did S genuinely believe the use of force was necessary?
 - Yes – as long as S believed that G was coming at him with a sharp object. It does not matter that S was mistaken and/or even unreasonable in that mistake.
- Objective: Was the degree of force used by S reasonable on the facts as he believed them to be?
 - Possible – it may be that throwing someone down the stairs would have been a reasonable response to being attacked with a sharp object, but this requires some discussion. For example, discussion of section 76 of the Criminal Justice and Immigration Act 2008 – S does not have to weigh niceties etc.

Step 5: It is likely that D will be able to rely on the public and private defence, and will not therefore be liable for any offence.

Conclusion: A brief conclusion would be useful to summarise the potential liability of both defendants within the question.

Essay Questions

There are several areas of interest for essay-type questions in relation to the non-fatal offences. For example, the role of consent, constructive liability, the use of new aggravating factors, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (i.e., not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject of the debate within the question, not simply listing information about the relevant topic.

What aspects of the offences against the person do you consider most in need of reform?

Introduction:

- When writing an essay about potential reform, it is useful to introduce the reform agenda around the topic. So, for example, you could comment that the offences against the person are still governed by a statute for 1861, and that this is the case despite several attempts at reform. Indeed, there was a recent Law Commission project looking at possible legislative reform in this area.
- Most importantly, because the question is very open in terms of focus, it is important for your introduction to tell your reader which areas within the offences against the person you are going to focus on. You also need to choose whether you are going to look at a few areas in detail, or more in lighter detail. The former is usually better.

Body of the essay:

- There are several areas within the offences against the person you could focus on, and there is no 'correct' answer as to which you should choose. Just remember, in each case, to say why you think the area is problematic, highlight where it has been discussed academically and within the courts, highlight any potential reform options, and evaluate whether such reforms would be beneficial. Always discuss, make sure you provide the case against the potential reform as well as the one in favour.

- Potential areas of focus include:
 - The archaic language within the statute;
 - The potential for constructive liability within several of the core offences;
 - The presence of 'wounding' as an injury alongside GBH;
 - Confusion as to the role and definition of consent, etc.

Conclusion:

- Your conclusion should summarise your discussion, highlighting the areas you think are most important for reform.

- It is also useful to look forward briefly, questioning which areas (if any) that you have highlighted are likely to be the subject of reform. For example, although the Law Commission looked at these offences again recently, it did not consider issues of consent within that review.