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Adrian and Brian Scenario: Non-Fatal Offences Against the Person

*Adrian and Brian were in a nightclub, where **Adrian took some drugs**. Shortly afterwards, Adrian began to act in a strange manner, giggling and stumbling about. When Adrian **clumsily spilt a drink over Chris**, Brian decided it was time to get him home. As they left the nightclub, **Chris and his friend, Don, followed them. Chris challenged Adrian to a fight and Adrian took off his jacket and then immediately lashed** out at Chris before Chris was prepared. The blow sent him **reeling backwards** and he **dislocated his knee** in a very awkward fall. Discuss Adrian's criminal liability in connection to the injury to Chris.*

As there is a substantial injury in the form of a dislocated knee, Adrian immediately goes beyond the realms of assault, as force was applied, and battery – as there was an injury. A section 47 offence also does not apply, as for this there needs to be "actual bodily harm" such as bruises, grazing and scratches; "any hurt or injury calculated to interfere with the health or comfort of the victim" (Miller (1954)); which I believe Adrian goes beyond. Adrian may be criminally liable according to section 20 of the Offence Against the Person Act 1861, which is triable either-way and carries a maximum sentence of 5 years. For the offence to be proved the defendants action must have wounded or inflicted Grievous Bodily Harm (GBH) on the victim, with this done intending for some injury to be caused or having been reckless as to whether GBH was inflicted. This can be a direct or indirect act or omission (Martin (1881))

Adrian did not wound Chris, as for that there needs to be a visible break in the "continuity of the skin" (Eisenhower (1983)). Indeed, even if Chris had broken, not dislocated his knee, this would not be a wound as the skin remains intact (Wood (1830)).

Adrian is almost certainly likely to be found to have inflicted GBH, as Chris suffered a dislocated knee. In law, you cannot separate the blow from the fall, as the fall is a direct consequence, and entirely foreseeable – it is one 'transaction'. GBH has been described as "really serious harm" in DPP v. Smith (1961) or even in Saunders – "serious harm". This has included serious psychiatric injury (Burstow (1997)) and biological infections (Dica (2003)).

The use of the word "inflict" was first believed to require a technical assault or battery, yet was interpreted widely as in Lewis (1974). Later however, in Burstow it was decided that this was not the case, and that all that was needed was that as a consequence of the defendant's actions, the victim suffered GBH. In this scenario, this is clearly the case, as it was Adrian's blow that made Chris suffer his fall.

The Mens Rea also needs to be satisfied in order to be convicted of a Section 20 offence. For this offence, this can either be an intention to do the harm done, or recklessness as to whether some harm should occur or not – the accused has realised the risk and taken it. This was decided in the case of Cunningham (1957), although in this case the defendant was found not guilty for "maliciously administering a noxious thing". In this case the defendant tore a gas meter from the wall of an empty house in order to get the money inside. The unintended and unrealised consequence of this was gas seeping into the house next door – he had no intention and no recklessness and so was not guilty. In Parmenter (1991) the House of Lords confirmed that this decision refers to all offences where the word used in the statute to describe the *Mens Rea* is "maliciously". As well as this, Parmenter also decided that although the *Actus Reus* required "serious harm", there is no requirement for the defendant to foresee serious harm, any type of harm or injury is enough.

So even if Adrian didn't foresee Brian falling awkwardly and dislocating his ankle, although this may be considered to be reasonably foreseeable, Adrian must have foreseen some harm as he punched him hard enough for him to go "reeling backwards"! I think, defences aside, that it is almost certain that a jury would convict Adrian of a section 20 offence.

The question then is, could Adrian be found guilty of the most serious non-fatal offence outlined in Section 18 of 1861's Offences Against the Person Act? The key differences between a S.18 offence and a S.20 offence is that committal of a S.18 offence can result in anything up to life imprisonment, whereas committal of a S.20 offence leads to a maximum of five years imprisonment. Reflected in the fact that a S.18 offence can only be tried on indictment in a Crown Court, whereas a S.20 offence is triable either-way. The difference between the two offences is not in the Actus Reus required, which is the same as S.20: wounding or "cause any GBH to any person" – with "cause" giving a wide degree of usage as the defendants act need not be the sole or even greater cause of the harm done, just a substantial cause. Again – the Actus Reus can be a direct or indirect act or omission that causes the victim's injury.

The difference between the two offences in the level of Mens Rea required as for S.18 it is mandatory for the defendant to have "specific intention to wound or to cause GBH, or specific intention to resist or prevent arrest plus recklessness as to causing injury" – Morrison (1989). As decided in Maloney, foresight of virtually certain consequences is not intention, only a source from which intention can be inferred. I believe that it is plausible that Adrian would be found to have the necessary intention for causing GBH, as the punch alone, even if Brian had not fallen so awkwardly may just as easily have caused GBH.

However, it is likely that Adrian will raise one or two defences if he were prosecuted for either offence. Adrian became voluntarily intoxicated and if he were to be prosecuted for the specific intent offence of S.18 he is likely to raise this. Intoxication does not work for basic intent offences such as S.20 because these can be satisfied by recklessness, and in law, the Reasonable Man on the "Clapham Omnibus" does not get voluntarily intoxicated. As this is considered a reckless course of conduct – it satisfies being reckless as decided in the case of Majweski (1977).

For specific Intent Offences however, such as S.18, intoxication can negate the Mens Rea, and so lead to a complete acquittal or conviction for a relevant basic intent offence, as found in the case of Sheehan and Moore (1975). However, in the case of Gallagher (1963), where the defendant drank heavily in order to give him the "Dutch courage" to kill his wife, intoxication is no defence: "a drunken intent is still an intent". Whether or not Adrian can be convicted depends wholly upon whether or not the jury decide that Adrian has the Mens Rea or not.

The final defence that Adrian might raise is that of self-defence and is perhaps far more likely to be successful than intoxication. Chris followed Adrian, and Chris challenged Adrian to a fight – Chris instigated and created the conditions in which Adrian punched him – it could be said that he was the aggressor. A pre-emptive strike as Adrian did is not outlawed by the excuse of self-defence. The question is still the same; whether or not the force used was reasonable in the circumstances: if the defendant had only done what he believed to be honest and if he thought it was necessary in the heat of the moment than this is strong evidence that his action was reasonable. The defendant is to be judges on his beliefs, even if these are mistaken (Williams (1987)). The force must be reasonable however, and not be motivated by retaliation or revenge (Martin), or be excessive as found in the case of Clegg (1995) where the threat was no longer there.

If the defence of self-defence fails, Adrian may consider the defence of Mistake, which must be about a fact that would either negate the Mens Rea or allow the defendant to rely on another defence. If Adrian made a mistake of fact by believing himself to be in immediate danger, even if this was unreasonable, by the rules of mistake, the jury have to decide whether they believe the force used was reasonable in the circumstances or not. If the mistake negates the Mens Rea for the offence then he will have the defence even if he was drunk. However, intoxication does not allow a defendant to make a "mistake" about the amount of force needed as found in O'Grady (1987). All these questions are to be decided by a jury on consideration of all the evidence.