Mick and Steve are keen bodybuilders and regularly work out at the gym. One method they adopt in order to strengthen stomach muscles is for one of them to lie on a bench while the other drops a heavy ball onto his stomach. Reggie, the gym manager, has warned them that he considers this to be a potentially dangerous activity. Tony, a new member at the gym, is told by Mick that he has to undergo an initiation ceremony. Tony reluctantly allows himself to be held down on a bench by Mick and Steve then produces the heavy ball which he proceeds to drop onto Tony's stomach. This activity causes Tony an internal rupture.

Realising that Tony is injured, Mick and Steve lift him up to carry him to a car to get him to hospital. At this point, Reggie, the gym manager, arrives from the pub somewhat the worse for wear with drink. He thinks that Mick and Steve are physically forcing Tony to engage in what he considers to be their dangerous activities. Reggie pulls Steve to the floor saying, "I have warned you about this", causing Steve to be severely bruised.

Consider the possible criminal liability arising in the above circumstances.

The defendants may be liable for causing grievous bodily harm with intent contrary to **s. 18 Offences Against Persons Act (OAPA) 1861**, maliciously inflicting grievous bodily harm, contrary to **s. 20 OAPA 1861** or assault occasioning actual bodily harm, contrary to **s. 47**.

Tony's Internal Rupture

This could be a serious enough injury to constitute grievous bodily harm (defined in **DPP v Smith [1961]** as a "really serious harm" and in **Saunders [1985]** as "serious harm"). **S. 18 OAPA 1861** requires that grievous bodily harm be caused with intent to do so, while **s. 20 OAPA 1861** requires that grievous bodily harm be inflicted maliciously. If the internal rupture does amount to grievous bodily harm, then the actus reus of either offence is satisfied as the harm has clearly been 'caused' or 'inflicted' on these facts. If the harm is not serious enough to amount to grievous bodily harm, then it must at least be the offence under **s. 47 OAPA 1861**, assault occasioning actual bodily harm. Actual bodily harm was defined in **Chan-Fook [1994]** as "any hurt or injury which is not so trivial as to be wholly insignificant."

With **s. 18**, there is doubt as to whether Steve intended serious harm to Tony. Although intent may be direct (in the sense that it was desired) or oblique (in that it could be decided by a jury that serious harm was foreseen by the defendants as virtually certain and hence the jury could find that there was intent (**Woollin [1997]**), there does not seem to be any evidence here of intent to do such harm to Tony. Hence, **s. 20 or s. 47 OAPA 1861** seem the more likely bases for liability. The mens rea of either offence requires the harm to be committed 'maliciously', which mean intentionally or subjectively recklessly. This would require Steve to have foreseen a risk of some physical harm to Tony, albeit not necessarily the more serious harm, which is in fact, caused (**Mowatt [1968]**, approved in **Savage & Parmenter [1991]**).

Steve could plead the defence of consent. In addition, **Attorney-General's Reference (No. 6 of 1980) [1981]**, the Court of Appeal said that "…it is not in the public interest that people should try to cause or should cause each other actual bodily harm for no good reason…", but added that, "Nothing we have said is intended to cast doubt on the accepted legality of properly conducted games and sports". Presumably harm incurred during intensive fitness training, as well as sport per se, which involves a risk of injury, may be consented to. Similarly, in **Aitken [1992]** the Courts-Martial Appeal Court appeared to accept that injuries incurred during initiation ceremonies involving "robust games" may also be consented to. The fact that serious harm has been caused to Tony does not preclude the defence; otherwise all such injuries incurred during boxing matches would be criminal assaults.

There is a possible prosecution argument that the injury to Tony was in circumstances more akin to sadomasochistic, physical torture than fitness training. If this is the case then the defence would be denied, following **Brown [1993]**, where the House of Lords

said that, "It is not in the public interest that people should try to cause or should cause each other bodily harm for no good reason."

Although it was Steve who dropped the ball, Mick could be held liable as a secondary party, under the terms of **s. 8 of the Aiders and Abettors Act 1861**. In holding down Tony, he was clearly aided and abetted Steve. As mens rea is concerned, it must be shown that he **intended** to assist Steve, and had **knowledge** of the circumstances which constitute the offence (this does not mean he has to know that Steve is committing an offence). Subject to this, Mick is liable to be punished as a principal.

Steve's Severe Bruising

Severe bruising probably amounts to actual bodily harm. It could possibly amount to grievous bodily harm, if the bruising is serious enough. The mens rea of either **s. 20** or **s. 47** requires subjective recklessness that is proof that the defendant foresaw the risk of some harm, not necessarily the harm which is in fact caused (**Mowatt [1968]**).

It would be no defence for Reggie to plead intoxication, as the House of Lords has held in **Majewski [1977]** that self-induced intoxication is no defence to any offence not requiring specific intent. Any offence which may be committed recklessly does not involve specific intent (according to a majority of the House of Lords in **Caldwell [1982]**). Neither of these offences require such an intent (**Majewski [1977]** itself involved several counts of **s. 47** actual bodily harm**)**, and hence the jury should be instructed to disregard any evidence of intoxication in assessing whether Reggie foresaw the consequences of his actions.

If Reggie had been sober he may have been able to plead **s. 3 of the Criminal Law Act 1967**, which provides inter alia, that "a person may use such force as is reasonable in the circumstances in the prevention of crime". Where the defendant mistakenly thinks that force is required to prevent a criminal offence, it has been held that what is reasonable is assessed on the facts as the defendant honestly believed them to be (**Gladstone Williams (1984)**; **Beckford [1988]**). Provided this belief was honestly held it need not, objectively speaking, be reasonable. However, where the defendant was intoxicated, then this defence is denied (**O'Grady [1987]**, **O'Connor [1991]**). Thus it would seem that Reggie has no defence and faces liability for **s. 47** actual bodily harm at least.