

CRIMINAL LAW

H was a world famous darts player. He was demonstrating his skill at an outdoor fete in aid of a charity. H offered 50 to anyone who would place an apple on his head and permit H to throw a dart at it. H contemplated the risk of hitting such a person. I volunteered, placing the apple on his head. H threw the dart but sudden gust of wind caused the dart to deviate from trajectory and hit I's ear. I's blood dripped onto I's coat. The dart continued on to hit an electric cable, setting fire to a fete tent.

SUGGESTED ANSWER

In advising H of his criminal liability, the possible charges that can be brought against him are under the **OFFENCES AGAINST PERSONS ACT 1861** for the injury caused against I, for criminal damage when the blood dripped on to I's coat and when the tent caught on fire.

I's Injury

When the dart that H threw had injured I's ear. He could be charged under the **OFFENCES AGAINST PERSONS ACT (OAPA) 1861**. The first offence is under **S18** of the same Act, where it is defined as an offence when *a person maliciously wounds or causes grievous bodily harm with the intent to cause grievous bodily harm*. The injury to I's ear would constitute a wound. As a wound has been defined in **JJC v Eisenhower** as that the inner and outer skin must be broken. Further blood must spilt even one drop is enough. This is satisfied on the fact as I was bleeding.

The mens rea for **S 18** is intention to cause grievous bodily harm. Being a specific intent crime it has to be proof that the defendant must intent the act and also the consequences. According to **R v Bryson** and **R v Belfon**, intention must be proved and that recklessness is not sufficient. Applying this to the question, it is difficult to establish the required mens rea , as H only intended the act of throwing the dart but as regard to the consequence he only contemplated the risk of hitting such person. Therefore H cannot be charged for an offence under **S 18 OAPA 1861**.

The next possible charge would be under **S 20 of OAPA 1861**. The actus rea for **S 20** is the same as **S 18** where wounding must be proved the only different would be as regard to the wording, S18 uses the term "cause" instead of "inflict" GBH. The mens rea for **S 20** is that defendant must have acted maliciously. **R v Cunningham** has defined maliciously as either intention or recklessness. According to **R v Savage** and **DPP v Parmenter** the test for recklessness is the subjective test ie Cunningham recklessness the

D must appreciate the risk but nevertheless went on to take it. This is where further to the intention towards the act the defendant must also foresee the risk of injury albeit slight injury on the consequence. In the given question, H had contemplated the risk of hitting such person. Therefore it would seem that the mens rea would be satisfied. However it should be noted that H is a world famous darts player and as such after contemplating such as a risk he may decided that there is no such risk ie he appreciated the risk of hitting the person but concluded that he would not by his experience. If this is the view that H cannot be charged with **S 20**.

Alternatively H can be charged for a **S. 47 OAPA 1861**. Where it is defined as assault occasioning actual bodily harm (ABH). Assault here is used in the broad sense. It includes both assault and battery. On the fact when H's dart struck I ear, battery is satisfied. Whereby any act by the D which inflict immediate personal violence. Following the analogy by **Scot v Shepherd** it is not essential that the force should have been directly inflicted ie force need not be directly applied. As such the is battery even though the injury was indirect, by the sudden gust of wind which cause the dart to deviate.

Actual bodily harm was defined in the case of **R v Miller** as act which interferes with the health and comfort of the victim. Clearly this is satisfied as I's ear is injured. And further it must be proof that actual bodily harm was occasioned by assault or battery. According to **R v Roberts** the word occasioned means simply a question of causation. Therefore H must be cause in fact and law for liability to attach. Applying this to the fact, "*But For*" H's act of throwing the dart I would not have injured and further his act is the "*Operative and Substantive*" cause to I's ear injuries. In **R v Savage** and **DPP v Parmenter** it was stated that the mens rea required is the same as assault or battery **DPP v Little**. This mean H either intentionally or recklessly inflict force on another. On the facts this is satisfied as H appreciated the risk of hitting the victim but nevertheless went on to take it ie Cunningham recklessness. Therefore H can be charged for I's injury under **S. 47 OAPA 1861**.

The next question is whether H can raise the defence of consent where I had volunteered to place the apple on his head. According to **R v Donovan, AG v Reference (No. 1 of 1976)** and the case of **R v Brown** whether the victim consented or not is irrelevant if there is bodily harm. Therefore the fact that I had volunteered is irrelevant and H would still be liable for the injuries caused by him on I.

Damage to I' coat

When the blood drips onto I's coat, H can be charged under the **Criminal Act 1971 (CDA 1971)**. The offence would be under **S. 10(1) of CDA 1971** where it states that the defendant must have destroyed or damaged property belonging to another.

Each element of actus reus will be examined. There must be property capable of being damaged under **S. 10(1) CDA 1971**. This is satisfied as a coat is a property with **S. 10(1)**. Next the property must belong to another as stated under **S. 10(2)** where someone for example in our question, I must have custody or control over the property. The next element is either damage or destroy more to the point of our question, damage will be discussed. Damage is where there is an impairment of the property's use or value. Damage is where there is impairment of the property's use or value. Damage need not be permanent. The fact that the blood stains can be washed out still constitute damage according to the cases of **Roe v Kingerlee, Hardman v Chief Constable of Avon & Somerset** and **R v Henderson**.

The mens rea required is either intention to destroy or damage or reckless as to whether the property would be destroyed or damaged. Here in this question, clearly there is no intention, it would be easier to prove recklessness as the test applied is the objective test according to the cases of **R v Caldwell** and **Elliot v C**. Therefore H can be charged under **S 1(1) CDA 1971**.

It is very doubtful whether H can raise the defence of lawful excuse under **S. 5 (2) (a)** or **S. 5 (2) (b)**. According to **S. 5(2) (a)** H must have the belief that I had consented to the

damage caused to the coat. The belief here need only be an honest belief **Jaggard v Dickson**. However it is very unlikely that H would be able to rely on this defence.

Damage to the tent

When the dart hit an electric cable, setting fire to a fete tent. H could be liable under **S. 1(2) CDA 1971**. The actus reus for **S. 1(2)** is the same as **S. 1(1)** where D must have destroyed or damaged property belonging to another. The elements have been discussed above. The mens rea for **S. 1(2)** is also the same as **S. 1(1)** but under **S. 1(2)** it must further be proved that D intended by the destruction or damage to endanger the life of another or that he was reckless as to whether the life of another would be thereby endangered. Here it must be shown that either H entered or was received as to whether life would be endangered by the fire on the tent as was stated in the case of **R v Steer** and **R v Parker**. It would seem that it is rather difficult to prove the mens rea as the act is too remote as we are comparing with a reasonable man, whether a reasonable man would foresee that the dart would hit the electric cable and cause fire to the tent. Therefore it would seem that it would be difficult to charge it under **S 1(2) CDA 1971**.