

### **Question**

Cat, a female prostitute, and Mouse, a male prostitute lived in 2 separate rooms of a house. These rooms were rented to them by Dog. These 2 rooms only took up a small part of Dog's house. When Cat and Mouse 'entertained' their clients, they provided all types of sexual service. Dog knowingly managed their prostitution activities. He also collected rent from them. The rent was well above the market rate.

On one occasion, Cat agreed to perform sexual services for Cow, a 'patron'. These services involved both parties engaging in cruel and violent activity as well as sexual intercourse. In fact, Cow was suffering from gonorrhoea (a sexual disease) but he did not tell cat about this. Cat was infected with gonorrhoea. She also sustained many cuts on her body because of Cow's cruel treatment.

Discuss the criminal liability of Dog and Cow. What if Cat was the only prostitute in Dog's house? Support your answer with the reasons and authorities where appropriate.

### **Suggested Solution**

#### **Dog's Criminal Liability**

Dog was the owner of a house, provided that two prostitutes lived in 2 separate rooms of a house. Also, Dog knowingly managed their prostitution activities. It is the finding facts of inference of Dog to be found guilty under the convictions of the offences (Cap200) s.139(1)(a) and (b). In virtue of Dog's conducts was knowingly to keep and manage the said premise as a 'vice establishment'. The appellants shall be liable on summary conviction to imprisonment for 3 years or indictment to imprisonment for 10 years.

In contrast, the "vice establishment" shall be legitimately within the meaning of (Cap200) s.117(3) for the premise which were used wholly or mainly for, or in connection with the organizing and arranging of prostitution. Notwithstanding the wording is so absurd in s.117(3), the Hong Kong case, Attorney General v Tang Ping-Wing [1982], the judgments had been given the decisions as "if for any period of time a set of premise is used for the purposes of prostitution or for arranging prostitution such set of premises at that particular period of time must be regarded as a vice establishment". By presumption no finding evidences would be concluded to

what extent of premise used for prostitution. But, it is the fact no time limit to be set of premises as supported by the interpretations of the courts.

In addition, Dog was the owner of the premise who knowingly let the part of his own premise kept as a vice establishment. Finding facts supported of inference that he was convicted with the offence under (Cap 200) s.143(a) and shall be liable on conviction on indictment to imprisonment for 7 years.

Eventually, Dog knowingly lived in part of earnings in return of higher rent from their prostitution activities to be convicted with the seriously offence under (Cap 200) s.137(1) and shall be liable on the conviction on indictment to imprisonment for 10 years.

### Cow's Criminal Liability

Cow's cruel treatment to Cat who suffered many cuts on her body. From the given evidences, Cat was suffered many cuts that it may be inferred as physical injuries and termed as ruptured skin within the legitimately meaning of "wounding", Moriarty v Brookes [1834]. From this starting point, Cow may be found guilty either under Wounding 17 or Wounding 19 of the Offence Against the Person Ordinance. Then, it is the question whether Cow's cruel act was satisfied as "unlawfully" and "maliciously", in respect to Wounding 17 and 19, but specific intent of mens rea only requires for Wounding 17 (like murder, wounding 17 demand an intention to cause either wounds another person or inflicts GBH).

It is inference from the evidences given that Cow did not have the factors as followings in supporting any specific intent of mens rea in connection with his cruel act to Cat as:

- A repeated or planned attack to victims.
- Deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack to victims.
- Making prior threats to victims.
- Using an offensive weapon against, or kicking, the victim's head

Under this circumstance, it is rather difficult to charge Cow with the conviction of serious offence under Wounding 17, but how about to convict under Wounding 19.

In order to satisfaction with the offence in contrary to Wounding 19, requires “maliciously”. Maliciously means intentionally or recklessly to do some kind of bodily harm. Recklessness is subjective in the Cunningham sense.

Follows the judgment in English Case of R v Mowatt [1968], the prosecution requires to prove that the defendant acted maliciously. It is sufficient to prove that he intended his act to result in some unlawful bodily harm to some other person, albeit of a minor nature, or was subjectively reckless as to the risk that his act might result in such harm.

Also, the leading legal authorities in English Cases R v Savage; DPP v Parmenter [1991], a defendant could be guilty of the offence if he punches a victim foreseeing that he might cause bruising, but actually cuts his face with the force of the blow.

It can be concluded that Cow’s cruel act was likely to be within the meaning of “maliciously” in subjective recklessness to cause body harm to Cat (without intend or foresee the causing or inflicting of a wound or grievous bodily harm). Cow may be liable to the conviction of Wounding 19 of the Offence Against the Person Ordinance.

In addition, Cow was suffering from gonorrhoea (a sexual disease), but he did not tell Cat about this. Eventually, Cat was infected with gnorrhoea. Cow may be liable to inflict body harm to Cat either under the offences of Wounding 19 inflicting GBH or assault occasioning actual bodily harm (AOABH) of s.39.

It is necessary to look into the English Case of R v Clarence [1888]. Clarence had gonorrhoea, and knew it. He had consensual intercourse with his unknowing wife. She contracted the disease, and Clarence was prosecuted under Sections 20 and 47 of the Offences against the Person Act 1861. He was convicted, evidently because the jury concluded that his wife, not being in possession of all the relevant facts, had not truly consented. His conviction was quashed. The Court of Appeal said that there is no consent. If there is a mistake as to the nature and quality of the act, but that here there was no such mistake: the act was simply sexual intercourse, and the wife knew perfectly well that it was intercourse she was agreeing to.

Firstly, Clarence [1888] established that the only types of deception or mistake that would vitiate consent were those relating to the nature of act in being consented.

Secondly, ratio decidendi of Clarence [1888], a decision of the Court for Crown Cases

reserved (as modified but not overruled) where there was no "infliction" even though there was direct physical contact. This can only be because the presence of consent to sexual intercourse in this case meant that the physical contact involved did not constitute force (see Smith and Hogan 1993, p 426; Smith 1996, pp 333 -334). It is submitted that the application of force physically to the body of the victim is a prerequisite for a conviction under s 20 on the basis of inflicting GBH.

It is possibility to infer under the leading legal authorities of Clarence [1888] that Cow did not have the application of force physically to the body of Cat, only physical contact not satisfied with the requirement of the offences of inflicting GBH.

### Only Cat in the premise

If Cat was the only prostitute in Dog's house, Dog is not liable for the conviction of those offences related to "vice establishment" of (Cap200) s.139(1)(a) and (b) and s.143(a), in virtue of the satisfaction of the legitimately meaning within (Cap 200) 117(3) that the premise was taken as a "vice establishment", unless there were 2 or more persons for the purpose of prostitution.

However, Dog was still knowingly lived with the earning in return of higher rent from Cat's prostitution activities and may be liable to conviction of offence in contrary to (Cap 200) s.137(1) and shall be liable on the conviction on indictment to imprisonment for 10 years.