

The harm suffered by arthur law general essay

Law



A crime is committed when two elements are satisfied. Firstly, the physical element or actus reus which means the offender must have voluntarily carried out some act, or in certain circumstances, omitted to act. Secondly; the mental element or mens rea which is a blameworthy state of mind. These two elements vary from crime to crime, although in most circumstances the mens rea will correspond with the actus reus. In this scenario, the issue is thus to figure out whether Jason has committed a criminal act, and is blameworthy to an extent that would render him criminally liable. To find this out, we shall look firstly at Jason's liability in relation to Arthur, and then secondly consider his liability for the harm suffered by Betty. The harm suffered by Arthur is a spinal injury rendering him unable to walk. As he is alive, Jason would be charged with a non-fatal offence, the majority of which are contained within the Offences Against the Person Act 1861[1]. The most serious of these offences is causing Grievous Bodily Harm (GBH) with intent, defined in s18 of said Act, which carries a maximum penalty of life imprisonment. The actus reus is to "wound or cause any grievous bodily harm to any person".[2]For there to be a wound, the continuity of the skin must be broken, which implies something serious. This ties in with the definition of GBH laid down by the House of Lords in DPP v Smith[3]as "really serious harm". Cases like Ireland[4]show that it is not only physical harm that can constitute GBH, but that even recognised psychiatric illnesses may suffice. Whether the harm is GBH or the lesser Actual Bodily Harm (ABH) is something that the jury can decide, even after the prosecution have brought forward their charge. On the question of 'causing' GBH, it was held in Mandair that this means something "wider or at least not narrower than the word 'inflict'".[5]Therefore if something has not

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been 'inflicted', it cannot be said to have been 'caused'. The exact meaning of the word 'inflict' is unclear, but it can be taken that where the harm is physical, there must be some indirect or direct application of force.

[6]Applying this to Arthur, his inability to ever walk again definitely constitutes 'really serious harm'. As there is no mention of a wound we must decide whether this harm was indeed caused by Jason. As Jason applied direct physical force onto Arthur by landing on him after jumping, he can be said to have caused Arthur's harm. We must also look at Mary's involvement, and whether this breaks the chain of causation as if she hadn't pulled Jason into a sitting position, his injury would not have been as serious. It was held in Kennedy No 2 that in order to break the chain of causation, any intervention by a third party must be "free, deliberate and informed".

[7]Furthermore, Smith[8]elaborated that the intervening act must be so "overwhelming as to render the first act merely part of the history"?. In this case Mary's act was not independent, as it was only because of Jason's action that she then acted, and his act still remained the operating cause. Thus the chain of causation is not broken. Since Jason fulfils the actus reus requirement, we must now look at the accompanying mens rea; to commit the actus reus maliciously, and with either intent to cause GBH or intent to resist arrest.[9]' Maliciously' was held in Mowatt[10]to mean foresight of some physical harm, a meaning approved by the House of Lords in Savage.

[11]This physical harm must be subjectively foreseen by the defendant. We know that James was aware he could potentially injure people, but he did not care. Thus he can be said to have acted maliciously. As for whether James intended to cause GBH, intention can either be direct, where the result was intended by the defendant; or oblique where the defendant intends a

different result, but in achieving this, the harmful unintended result is inevitable. In Nedrick it was held that where the defendant knew that the result was "virtually certain"[12], he can be said to have had oblique intention regarding that result. Jason decided to throw himself into stalls where people were sat, and realised the high possibility of him injuring others. Whether him seeing serious injury as 'most likely' means it was 'virtually certain' is arguable, and it is for the jury to infer intention if they feel that really serious bodily harm was virtually certain following James' actions, and that he was aware of this. Clarkson writes, "If a consequence is foreseen as extremely likely this will presumably still amount to recklessness whereas if it is foreseen as virtually certain it can count as intention".[13]Therefore I feel the jury would probably fail to find the necessary intention, therefore Jason could instead be charged with inflicting GBH. The actus reus of this crime is to wound or inflict GBH.[14]As James fulfilled the actus reus of s18, which cannot be anything less than inflict, then he can definitely be said to have inflicted GBH on Arthur. The mens rea is to act maliciously, which as discussed earlier; James did by foreseeing the risk of harm but acting nonetheless. Therefore I think the jury is more likely to find James liable under s20 rather than s18, which carries a maximum penalty of 5 years imprisonment, bar where there is racial or religious aggravation which increases the maximum penalty to 7 years. As for Betty, the harm she has suffered is psychiatric and since Ireland[15]it is clear that recognised psychiatric illnesses can amount to bodily harm. The meaning of GBH as earlier explained is "really serious harm", which applies even where the harm is psychiatric. In Betty's situation, given that her psychiatric harm was relatively minor for many weeks before progressing into Post-traumatic

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Stress Disorder, and her absence from work was only temporal, means it is highly unlikely that her harm will be judged to be GBH. Thus, we must instead look at whether her harm falls under the scopes of ABH. The case of Miller not only held that ABH is "hurt or injury calculated to interfere with the health or comfort"[16] but went further to include psychiatric injury. "If a person is caused hurt or injury resulting...in an injury to her state of mind for the time being, that is within the definition of actual bodily harm".[17] Using these remarks, we can conclude that Betty's harm amounts to ABH. There must be an assault occasioning ABH.[18] 'Occasioning' simply means the assault must be the cause of the actual bodily harm suffered. An assault, in these circumstances, can either be a technical assault or a battery. The actus reus is thus the actus reus of the assault (be it a technical assault or a battery) and the mens rea is the mens rea of a technical assault or a battery, depending on which has been carried out. The actus reus of a technical assault is to cause apprehension of immediate force. This apprehension can be caused by spoken words or by actions.[19] Here James did not cause Betty to apprehend immediate force thus we shall move on to see if he committed the actus reus of a battery, which is the infliction of unlawful force. James had no physical contact with Betty, thus did not commit a battery against her. As James has not committed the actus reus of an assault occasioning ABH, it is clear without even looking at the mens rea, that he cannot be held criminally liable under s47.[20] He cannot also be held liable for the lesser offences of a technical assault or a battery[21], as he has not committed the actus reus of either of these summary offences. Therefore, we can conclude that James can be held criminally liable for the damage suffered by Arthur, under the charge of inflicting GBH[22], but cannot be held criminally liable for <https://assignbuster.com/the-harm-suffered-by-arthur-law-general-essay/>

Betty's injuries. She may however, be able to bring a claim against him in the civil courts.