

# Severe injury to hutch law general essay

Law



The criminal liability of each of the parties is discussed in turns:

### **Crown and Ali:**

Severe injury to Hutch: 1) First in order comes that Ali drove the car at Starsky and Hutch, the police officers which resulted in injuring Hutch severely. There is not any definite picture about the nature of the injury. But if we get a clue from the word ‘severe’ there is a possibility that it is case of either Section 18 or Section 20 of the Offences Against the Persons Act 1861. It is to note that ‘but for test’ is easily satisfied.

### **Actus reus**

Section 18 deals with ‘wounding or causing grievous bodily harm with intent’. The elements of actus reus to be fulfilled in order to impose criminal liability on Ali under this section which are as follows: Causing grievous bodily harm: From the definition provided in Miller[1], actual bodily harm means any hurt or injury likely to interfere with the health or comfort of the victim. In DPP and Smith[2] it was held that grievous bodily harm means ‘really serious harm’. But later in Saunders[3], it was decided that it is not necessary to use the word ‘really’. There is no definition of what serious means but it would certainly include broken limbs, severe internal injuries, or anything which results in significant impotency of the victim, whether permanent or mere temporary.[4] The Court of Appeal in Bollom[5] confirmed that there is no need to prove the harm was ‘life threatening, dangerous or permanent or even required treatment. The court emphasised that the gravity of the injuries had to be assessed by reference to the particular individual so that what might be relatively trivial for a healthy adult could be grievous in case of a feeble, old or a very young child. The Crown

Prosecution service's non-statutory Charging Standard recommends as section 18 or section 20 charge only for injuries resulting in permanent disability or loss of sensitive function, non-minor permanent visible disfigurement, broken or banished limbs or bones, compound fractures, broken cheekbone, jaw ribs etc., injuries which cause substantial loss of blood and injuries resulting in lengthy treatment or inability. Wounding: for a wound to be suffered, both inner and outer skin, i. e., the dermis and epidermis must be broken.

## **Mens rea**

In every case the Crown must establish an ulterior intent which may be either intent to do grievous bodily harm or intent to resist or prevent the lawful apprehension or detainer of any person. Intention has the same meaning as in the law of murder.[6]The prosecution must prove either: i) that Ali's purpose was to cause grievous bodily harm, or if it was not his purpose, or, ii) that he knew that grievous bodily harm was a practically certain consequence of his act. In case, or, iii) the jury must then find that he had the requisite intent. The jury need not be directed on this oblique intention definition except in rare cases.[7]On the facts of this case, Ali drove the car on Starsky and Hutch. If his injuries consist of wound which is grievous in nature according to the criteria mentioned above, then the actus reus is condition is fulfilled. When it comes to mens rea, the test is very strict. The subjective recklessness as to causing harm or even grievous bodily harm is insufficient and Ali must have to be proved to have the aim or purpose of causing grievous bodily harm.[8]This is really difficult to establish in this scenario. As we observe he wanted to escape from rather than

intentionally causing them grievous bodily harm. We can consider minor offence under section 20 of Offences Against the Persons Act (OAPA) 1861

## **Actus reus**

When it comes to establishing actus reus, under this section, the language is slightly different as it uses the word ‘ inflict’ rather than ‘ cause’ under section 18 of the same act. Causing requires more to do opposite to inflict. So the test of inflicting can easily be satisfied. Other ingredients of actus reus are same as under section 18 of OAPA 1861.

## **Mens Rea**

The prosecution must prove that Ali has acted ‘ maliciously’. It means that Ali must intend or predict a particular result. In *Savage; R and Parmenter*[9], the House of Lords reaffirmed the interpretation of ‘ maliciously’ as follows:" It is quite unnecessary that the accused should have foreseen that his unlawful act might cause physical harm of the gravity described in the section, i. e., a wound or serious physical injury. It is enough that he [foresaw]..... that some physical harm to some person, though of a minor character, might result." Ali must have appreciated the risk associated with driving his car towards Hutch that it would result in some serious injury. When considering the two sections, it is easier to impose criminal liability on Ali under section 18 of OAPA 1861 as there is no specific requirement of having clear intention. *Punch to Starsky*: Firstly, we can consider whether Ali’s action amounts to assault or battery. Battery: A battery is ‘ the actual intended use of unlawful force to another person without his consent’. [10]The actus reus requires that there need to be some contact with the victim taking into consideration of the following: There should use of force <https://assignbuster.com/severe-injury-to-hutch-law-general-essay/>

which includes the merest of touching.[11]The application of force need not be aggressive.[12]The force need not to be applied directly[13]The force applied must be unlawful. A common example of unlawful use of force is where it was applied without the consent of the victim. The mens rea of the offence is satisfied where it is proved that the defendant himself was aware of the risk he was taking yet went on to take it regardless. On the basis of the facts provided, Ali's action of punching Starsky can easily satisfy the requisite actus reus and mens rea.

### **Crown and Hutch:**

Here it is not clear whether Ali's injury is from the Hutch's shot itself or from the windscreen that was broken by the shot. We are also not told about how badly Ali was injured from the incident. But whether the injury is from the broken windscreen or from the shot itself, we can assume that it was grave in nature. We can consider his liability under section 18 or section 20 of the OAPA 1861. If his injury is sufficiently serious enough to amount to GBH, then the required actus reus is easily satisfied under either section 18 or section 20. But for the mens rea, as mentioned above, more stringent test is required under section 18 than section 20 of the OAPA 1861. From facts given, Hutch only aimed to miss him, and only to terrify him. However, as per section 20, it is only required that he intended or anticipate the possible outcome of his action. It was laid down in Mowatt[14]that the defendant need only have intended or foreseen the possibility of some physical harm occurring to the victim, although neither serious nor a injury. The jury can validly think that firing from such a short distance can go wrong and the outcome can result into injuries like in this scenario. So, it is more possible to

establish Hutch's liability under section 20 of the OAPA 1861. If the injury is not grave enough then we can consider his liability under section 47 of the same act which is assault occasioning actual bodily harm. The main difference between offence under section 20 and section 47 is that no mens rea is required for actual bodily harm. According Lord Ackner[15]" the verdict of assault occasioning actual bodily harm may returned upon proof of an assault together with proof of the fact that actual bodily harm was occasioned by the assault. The prosecution are not obliged to prove that the defendant intended to cause some actual bodily harm or reckless as to whether such harm would be caused." So even if the harm is not a grievous one, liability under section 47 of the OAPA 1861 can be imposed.

### **Crown and Starsky:**

Starsky pulled out Ali, hit him over his head with intending to stun him but Ali suffered serious head injury. From the wording of the fact, we find out that Ali's head injury was serious. If the jury decides the effect of the injuries on the victim, taking into account his age and health, and the Prosecution Charging Standards, considers that it was sufficiently serious, they may return a judgment under section 20 of the OAPA. Since there is no intention on the part of the Starsky to cause any harm to Ali, it will not be possible to reach a decision under section 18 of the OAPA 1861. Again, to establish liability under section 20 of OAPA," It is quite unnecessary that the accused should have foreseen that his unlawful act might cause physical harm of the gravity described in this section, i. e., a lesion or serious physical injury. It is enough that he [foresaw]..... that some physical harm to some person, although of a minor character, might result." [16]The jury may come to

conclusion that Starsky must have foreseen some sort of physical harm to Ali from his action.

### **Defence:**

The essence of defence is that in circumstances the defendant is justified in using violence to meet unjustified hostility against an interest which the law seems worthy of protection. Such interests comprise self defending yourself or others, preventing crime, defending your own or another's property and lawfully arresting actual or suspected offenders. There exists two separate defences, one under the common law and the other a statutory defence governed by the section 3 of the Criminal Law Act 1967. In both cases, the essence of the defence is that a person is entitled to use reasonable force in self defence or the prevention of crime. The law in general is that, no matter how insignificant the offence, one is entitled to use reasonable force to prevent it. We can consider whether the parties in this case, can escape liability under these defences. Ali's defence: Ali was calm and content until the shot was fired at his car which struck him in his hand. Until this point, his behaviour was completely reasonable as he was trying to show his driving licence to the police officers. The common law authority for the proposition that the defendant should be judged on the facts as he subjectively believed them. [17] It does not matter his belief was unreasonable. Here the police officers were in plain clothes. So Ali had no idea that they police officers were trying to arrest an offender named Tariq resembling him. As soon as one of the police fired shot at his windscreen, he was in immediate fear of his life and acted to save himself. Ali can rely on the defence ' Duress of Circumstances'. According to R and Martin[18], "[T]he defence is available only if, from an

objective position, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious personal injury." In R and Conway[19], this defence was allowed as a defence to a charge of reckless driving when in a similar facts like this. The defendant saw two plain cloth police officers and incorrectly believed that they were his possible assassins. These two plain cloth police officers previously fired into a car in which the defendant was travelling injuring his fellow passenger and himself narrowly avoiding injury. Here in this case the police officers fired shot at this car without introducing themselves or giving any caution. So, Ali can rightfully rely on this defence. The only problem for Ali is that whether he used reasonable force or could he have taken any evasive action. What amounts to a reasonable force is a question of fact for the jury and not a question of law for the judge. The test is objective and depends on jury's view of whether a reasonable person would have used such force in the circumstances perceived by the defendant. The issue of proportionality is really important in this point. However, where the threat is impending as in this scenario, the courts take a strong view of the situation and recognise that the defendant will have no time to consider his reaction. Ali was inside the car and there were no other alternative to but to try and run away by his care. He can plead that he only tried to escape. He can also plead that he did not enough time to think about the action he took. Same thing can be said about his punch to Starsky. Starsky and Hutch's defence: Both the Police officers were in acting to prevent crime. They were there to track an alleged criminal named ' Tariq'. They had the information that he was dangerous and often armed. They were fooled by the resemblance between Ali, the victim and the offender they were trying to track down. When Ali made to

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get his driving licence from the glove compartment, they police officers incorrectly believed that Ali might be reaching for a weapon. It seems that the belief was honest which is sufficient to establish a self defence. The next question arises whether Hutch's action was reasonable. Hutch clearly did not want to hurt Ali but to scare him. It is also to be seen whether the pre-emptive strike is justified by Hutch. Some cases have accepted that it may be reasonable for the defendant to make a pre-emptive strike to prevent an attack which he captures is about to make.[20] So Hutch can surely rely on this self defence. For Starsky, it will be difficult to establish self defence as he pulled Ali after he hit his car with lamppost. He was severely injured from the firearm shot. By that time it was clear to Starsky that Ali had no arms. A good example of this would be Reed and Wastie[21] where a police officer was accused of using unreasonable force.