

CONSENT

INTRODUCTION

In *A-G's Reference (No 6 of 1980)* [1981] (see below), the Court of Appeal held that, subject to exceptions mentioned below, a person's consent is irrelevant and cannot prevent criminal liability for an offence if actual bodily harm was intended and/or caused. This strict rule was based on the view 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. In some cases there may be a good reason, and the Court of Appeal was at pains to emphasise that the above rule did not affect the accepted legality of certain situations, referred to below, in which the consent of the victim is legally relevant and renders the conduct in question lawful.

The Court of Appeal's views were applied and developed by the House of Lords in *R v Brown and Others* [1993] 2 All ER 75. The law about the validity of a consent to bodily harm is now as follows:

CONSENT TO INTENTIONAL ACTUAL BODILY HARM

One cannot consent to the intentional causing of actual bodily harm, except in certain recognised cases. See:

R v Brown and Others [1993] 2 All ER 75
R v Wilson [1996] 3 WLR 125.

Where persons quarrel and agree to settle their differences with a fight, the injuries can amount to an assault and the unlawfulness cannot be denied by pleading that the other consented to the fight. See:

A-G's Reference (No 6 of 1980) [1981] 2 All ER 1057.

EXCEPTIONS

As the House of Lords recognised in *Brown* there may be 'good reason' for the intended infliction of actual bodily harm, in which case a valid consent to it may be given. The exceptional cases where a person may validly consent to intentional actual bodily harm are situations where the law regards the public interest to require the exception. The main exceptions are reasonable surgical interference, a properly conducted game or sport, and tattooing and ear-piercing.

REASONABLE SURGICAL INTERFERENCE

Surgical interference will involve a wound and can therefore be described as harm to the body. However the law does permit the consent of a patient to surgery performed by a suitably qualified doctor. Clearly there is social utility in such operations being performed.

PROPERLY CONDUCTED GAME OR SPORT

Boxing and wrestling, for example, can be regarded as properly conducted sport. They are 'manly diversions, they intend to give

strength, skill and activity, and may fit people for defence, public as well as personal, in time of need' (Foster, *Crown Law*, 1792, p259).

It is generally accepted that this exception now covers organised sports, played according to recognised rules with appropriate supervision from a referee or umpire. A prize fight (a fight with bare fists until one participant is unable to continue) is not regarded as a properly conducted sport (*R v Coney* (1882) 2 QBD 534).

The consent in boxing is only to intentional harm within the rules; a boxer does not consent to being intentionally harmed by, for example, a blow delivered between rounds. In games such as football and rugby the common sense approach is to say that the players consent to such contact as is incidental and normal to the game (see below for further details).

TATTOOING AND EAR-PIERCING

These activities could be regarded as involving actual bodily harm, but in *R v Brown* Lord Templeman regarded these activities as ones to which a valid consent could be given.

CONSENT TO RISK OF UNINTENTIONAL A.B.H.

A person can validly consent to the risk of being unintentionally harmed. For example, a person who takes part in a football, rugby or cricket match validly consents to the risk of such bodily harm (eg, bruises or a broken nose or leg) as can reasonably be expected during the match. However, such a player does not, and could not, consent to deliberate acts of violence "off the ball"; as where a player kicks or pushes another not in the course of play. See:

R v Billinghamurst [1978] Crim LR 553.

Consent by boys to rough and undisciplined play may be a defence to a charge of inflicting grievous bodily harm if there is no intention to cause injury. Consent, or a genuine belief in consent, even an unreasonable belief will be relevant. See:

R v Jones (Terence) (1986) 83 Cr App R 375.

In one case, the victim's participation in practical jokes played on RAF companions was accepted as evidence suggesting that he too could become a victim and consented to this. See:

R v Aitkin and Others [1992] 1 WLR 1066.