

Cara and David were on holiday, sunbathing by the hotel pool. They had only met that day. As a joke, David decided to throw sun cream over Cara whilst she was sleeping. Some of the sun cream landed under Cara's eye. Cara then developed a small red swelling under her eye.

Advise David as to his liability for an offence of assault occasioning actual bodily harm under s47 of the Offences Against the Person Act 1861. (6 marks)

Indicative content Marks for this question: AO1 = 2, AO2 = 3, AO3 = 1

AO1

- Definition of s47 ABH: actus reus – assault (battery) occasioning bodily harm; mens rea – common assault.
- Explanation of what could constitute ABH via a relevant case, e.g. T v DPP, Cole v Turner, Chan Fook.

AO2

- Application that the swelling was caused by a battery.
- Application as to the fact the swelling under the eye was ABH.
- Application as to the MR – David deliberately inflicted force as he threw the sun cream over Cara as a joke.

AO3

- Analysis and evaluation of constructive intent within ABH.

MODEL ANSWER

In advising David as to his liability for an offence of assault occasioning actual bodily harm (ABH) under s.47 of the Offence Against the Person Act 1861, it is necessary to prove that the defendant had the actus reus (AR) and mens rea (MR) for either assault or battery which occasioned ABH to the victim.

In this scenario, throwing an object at a victim indicates the presence of battery (**Cole v Turner**). Therefore, in establishing s.47 ABH, the AR of battery must be proved first, that is David's conduct was the application of unlawful force in Cara, and the conduct must either be voluntary or be one of the omissions under common law duty.

When David jokingly threw suncream over Cara's eye whilst she was sleeping amounts to a voluntary act (**Hill v Baxter, Woolmington**) of and as a result of which some of the suncream landed under her eye and she developed red swelling under her eye. This was an indirect application of unlawful force through the object of suncream (**DPP v K**) and is sufficient for battery (**Martin**), thus meeting the AR requirements of battery.

Furthermore, need to demonstrate that the battery itself occasioned ABH in the victim, it must be shown that the actual injury suffered interfered with the comfort and health of the victim (**Miller**). The harm can be either physical or any recognised psychological condition but it cannot be not mere emotional distress (**Chan Fook**). Not only does expert psychiatric evidence is required to establish that V's symptoms amounted to psychiatric illness or injury but also required is that it was caused by D's assault (**Morris (Clarence)** confirmed by **Dhaliwal**). Therefore, there needs to be a causal link, between the defendant's conduct and the injury suffered by the victim (**Roberts**).

Cara's swelling under the eye is a physical injury where it interferes with her comfort and health, although it may not be permanent, it is more than transient and trifling (**Donovan**). Even, loss of consciousness, even for a moment can constitute as actual bodily harm (**T v DPP**). This injury was caused directly by David's battery against Cara when he threw sunscreen over her and she developed a swelling under her eye regardless of it being temporary, thus amounting to ABH and satisfying the AR requirements of s.47.

In establishing MR of s.47, only necessary to prove the MR of battery, and nothing beyond that (**Roberts, Savage**). The defendant had the intention or was reckless in application of immediate and unlawful force against the victim. Did David have direct intention (**Mohan**) or indirect intention (**Woollin**) in apprehending fear in Erin or was reckless (**Cunningham**) to it.

On facts of the case, there could be an issue in proving that when David threw sunscreen over Erin it was done as a joke and therefore it was neither direct intention where it was his aim, objective and desire (**Mohan**) to use unlawful force, or indirect intention where jury can find intention when it is virtually certain that that the defendant's conduct to use unlawful force and that they appreciated this was the case (**Woollin**). In this situation constructive intent applies in which David may legitimately not have intended the consequences of his conduct but those consequences came to pass nonetheless, and those consequences were objectively and subjectively foreseeable. Therefore, at the very least David was reckless (**Cunningham**) as he realised there was a risk of using unlawful force, be it indirect application, when he threw sunscreen on Cara whilst she was sleeping but he took the unjustified risk anyway. Thus, amounting to ABH and satisfying MR requirement of s47 ABH.

In conclusion, David would be found liable for Cara's injuries for the offence of assault occasioning actual bodily harm, if the courts find even though the swelling is temporary it still amounts to ABH, and despite David throwing the sunscreen as a joke he was reckless to the application of unlawful force.