

Gina and Harry, who were dating, had recently started to argue a lot. During an argument, Harry became so angry he punched Gina in the back. Unknown to Harry, Gina had a weak kidney. Gina was in pain for a few days before she went to the doctor. By the time she went for medical advice she was diagnosed with a permanently damaged kidney.

Gina's sister Irene was a national kick boxer. When Irene found out about Gina, she sent a text to Harry saying, 'I will make you pay for what you have done'. Harry was shaken by the text and suffered mild depression.

Consider the criminal liability of Harry in relation to Gina's permanently damaged kidney and of Irene in relation to Harry's reaction to the text. [20 marks]

AQA Exam Paper 7161/1 2019

Indicative content            Marks for this question: AO1 = 7, AO2 = 7 and AO3 = 6

#### AO1

- Identification and definition of **GBH** in relation to Harry and Gina.
- Outline and explanation of the actus reus and mens rea issues of **s20 GBH**.
- Outline explanation of causation issues, in particular thin skull rule and intervening acts.
- Identification and definition of **ABH** with reference to assault in relation to Irene.
- Outline and explanation of actus reus and mens rea issues in relation to **ABH**. Identification of assault as relevant MR.
- Reference to supporting case authority (**Smith v Superintendent of Woking Police, Lamb, Blaue, Burstow, Bollom**).

#### AO2

- Application as to the fact Gina suffered serious harm as she had a permanently damaged kidney.
- Application as to causation in particular the thin skull rule (possible relevance also to Irene and Harry below).
- Application as to mens rea issues: did Harry intend some harm? If not, then he would have seen a risk of some harm when punching someone in the back. Alternatively, application to s18.
- Application as to the actus reus of ABH with reference to assault; in particular the issue of immediacy needs to be considered – where was Irene when she sent the message? The ABH was Harry's mild depression.
- Application as to the mens rea. Irene possibly had intent to cause Harry to fear immediate unlawful personal violence as she deliberately sent the text in revenge.

#### AO3

- Analysis and evaluation of alternative routes to actual bodily harm.
- Analysis and evaluation of causation rules relating to the thin skull rule and intervening acts. Did Gina's own act of delaying before seeing the doctor break the chain? Probable conclusion that the original injury was still the operating and substantial cause – **R v Cheshire**.
- Use of supporting legal authority – **Blaue, Chan Fook, Smith, Savage**.  
Credit any other relevant point(s).

#### MODEL ANSWER

In this scenario, we need to consider two possible criminal liabilities; Harry's liability for Gina's permanent kidney injury and Irene's liability for Harry's mild depression.

When considering criminal liability of Harry in relation to Gina's permanently damaged kidney, the scenario suggests the offence under s20 of the Offence Against the Person Act 1861 needs to be considered. It is necessary to prove that the Harry had the **actus reus (AR)** and **mens rea (MR)** for either malicious wounding or inflicting GBH. Gina damaged her kidney and it being permanent makes it a severe internal injury (**Janjua and Choudhury**), and would constitute **s20 inflicting GBH** which means 'no more and no less than really serious injury' (**DPP v Smith**). AR conduct must either be voluntary (**Hill v Baxter, Woolmington**) or be one of the omissions under common law duty. When Harry punched Gina in the back this amounted to a voluntary act. Furthermore, the jury when assessing the seriousness of the injuries will take into account that Harry hit a female (**Bollom**).

Furthermore, to complete AR, need to establish **causation**, for causation in factual, it needs to demonstrate that but for Harry's punching Gina, she would not have suffered a permanently damaged kidney (**Pagett & White**). Moreover, for causation in law Harry act of punching Gina's back is substantial and operative cause (**Smith**) of Gina's kidney injury. However, Harry may argue that there are intervening acts that breaks the chain of causation. Firstly, he was not aware of Gina's weak kidney, and secondly, she delayed her treatment and went to see the doctor after a few

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days in pain, and this could be self-induced injury i.e made it permanent. Firstly, under the 'thin skull rule' Harry must take his victim as he found them (**Blau**), that means that Harry has to take Gina as she is with a weak kidney even if he did not know her pre-existing condition, under the this rule it does not break the chain of causation. Secondly, victim own act can break the chain of causation, if victim act is deemed unreasonable and disproportionate as demonstrated in **William** as opposed to **Roberts** where victims conduct was deemed reasonable. This is something for the jurors to decide on the facts of the case of Gina's delayed treatment. Nevertheless, it must be emphasized that Harry's punching of Gina's back is still the sole and significant cause of the original injury. Therefore, most likely courts will not find a break in causation as both factual and legal causation are satisfied, and thus satisfying AR.

In establishing **MR**, Harry must either have the intention or was reckless to inflicting some harm, it need not be serious harm (**Mowatt**). For intention, it needs to be either direct (**Mohan**) or indirect (**Woolin**). When Harry angrily punched Gina in the back, for direct intention it would be difficult to prove that it was his aim, objective and desire (**Mohan**) to harm her, because Harry punch was in anger. However, for indirect intention, jury can find that it was virtually certain that that the Harry's conduct would result in Gina suffering some harm (**Savage**) and Harry must have appreciated this when he punched Gina (**Woolin** reaffirmed in **Mathew and Alleyne**). At the very least, Harry was reckless (**Cunningham**) where he foresaw the risk of some harm occurring (**Mowatt, DPP v A**) but took the unjustified risk anyway. Thus, satisfying MR and consequently Harry would be found liable to s20 inflicting GBH on Gina for her permanently damaged kidney.

Having discussed Harry's liability, need to now consider Irene's potential liability in relation to Harry's depression, this scenario suggests the offence under **s47 Assault occasioning actual bodily harm (ABH)**. In establishing AR of s47, need to demonstrate that either assault or battery occasioned ABH. When Irene sent a text to Harry saying, 'I will make you pay for what you have done', this indicated assault, where she apprehended immediate unlawful force in Harry. This conduct was a voluntary act (**Hill v Baxter, Woolmington**) of threat, where words can amount to assault (**Ireland and Burstow**). However, it can be argued that the threat is not one of an immediate and therefore does not meet assault. In **Constanza**, courts stated that it's only necessary to prove that victim apprehended violence 'at some point, not excluding the immediate future', meaning 'about to happen' and is a matter for courts to decide. In this scenario, Harry knows that Irene can actually carry out her threat because she was a national kick boxer. It is sufficient that Harry fears personal violence is happening at some point (**Smith v Superintendent of WPC**, and thus amounts to assault.

Any injury suffered by Harry must interfere with his comfort and health (**Miller**) and can be physical or any recognised psychological condition but not mere emotions (**Chan Fook**) such as for Harry being shaken. Furthermore, Harry's mild depression could also be argued as an emotional reaction rather than a recognised psychiatric illness. Expert psychiatric evidence is necessary to establish that Harry's mild depression amounts to psychiatric injury (**Morris (Clarence)** confirmed by **Dhaliwal**), psychiatric injury alone is insufficient for ABH. Therefore, courts must find Harry's mild depression amounts to ABH to satisfy it.

Furthermore, the assault must occasion ABH, and therefore under factual causation, that but for Irene's conduct Harry would not have suffered mild depression (**Page, White**) and under legal causation, her conduct was the operative and substantial cause (**Smith**). There are no intervening events that break the chain of causation. Thus, satisfying causation, and that Irene's assault was occasioned Harry's mild depression.

For MR, Irene needs to either have the intention or be reckless to assault, that is to apprehend fear of immediate unlawful force in Harry. Irene's intention needs to be either direct (**Mohan**) when Irene's sent the text message it is difficult to establish that it was her aim, objective and desire (**Mohan**) to cause fear of immediate unlawful force in Harry. However, under indirect intention jury can find indirect intention where it was virtual certainty that that the Irene's conduct would result in Harry apprehend immediate unlawful force and that she appreciated this (**Woolin** reaffirmed in **Mathew & Alleyne**). At the very least Irene was reckless (**Cunningham**) as she can realise there is a risk of causing fear but she took the unjustified risk anyway, especially when she knew that she was a national kickboxer so any threat would cause the risk of fear of immediate personal violence as she has the skills and knowledge. Thus, satisfying MR and consequently Irene would be found liable under s47 assault occasioning ABH, providing that courts find that Harry's depression amounts to ABH.