

Table of Contents

R v Abdul Rasool	20
R v Blaue	13
Brady v Schatzel	17
Bouhey v R	26
R v Brown	3
R v Butcher	27
R v Campbell	19
R v Coleman	20
Collins v Wilcock	19
R v Crabbe	24
R v Evans and Gardiner	8
Fagan v Metropolitan Police Commissioner	14
R v Falconer	5
DPP v Farquharson	24
R v Galas	28
R v Hallet	6
R v Instan	31
R v Ireland	15
R v Jordan	9
R v Lamb	28
R v Lavender	30
R v Malcharek and Steel	10
Meyers v R	25
Miller	31
Nydam v R	30

R v Pagett	8
Pallante v Stadiums Pty Ltd	22
R v Patton	15
R v Pemble	28
R v Rhodes	26
Royall v R	11
Rozsa v Samuels	18
Ryan v Kuhl	17
Ryan v R	23
R v Ryan and Walker	27
R v Saunders and Archer	27
DPP v Smith	26
R v Smith	7
R v Stein	29
Stephenson v State	12
R v Stone and Dobinson	32
DPP v Sutcliffe	21
R v Taktak	32
Thabo Meli v R	14
Tuberville v Savage	18
Ugle v The Queen	22
R v Westaway	20
R v Wilson	4
Wilson v R	29
Zanker v Vartzokas	17

R v Brown:

Facts:

Each of the defendants participated in sado-masochistic homosexual activity in which the victims in each case consented to the activity and did not suffer permanent injury. The defendants faced charges of assault occasioning actual bodily harm and unlawful wounding and plead guilty when the trial judge ruled that consent was not a defence. The defendants appealed on the consent issue.

Issue:

Is consent a defence to an assault causing grievous bodily harm?

Holding and Rule:

No. Consent is not a defence to an assault causing grievous bodily harm.

Consent is immaterial when the unlawful act involves a degree of violence such that the infliction of bodily harm is a probable consequence. A defendant may be convicted of unlawful wounding and assault occasioning actual bodily harm for committing sado-masochistic acts which inflicted injuries neither transient nor trifling, despite that the acts were committed in private, the person whom the injuries were inflicted consented to the acts, and the victim did not sustain permanent injury.

Lord Templeman: "Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised. I would answer the certified question in the negative and dismiss the appeals of the appellants against conviction."

Lord Lowry: "What the appellants are obliged to propose is that the deliberate and painful infliction of physical injury should be exempted from the operation of statutory provisions the object of which is to prevent or punish that very thing, the reason for the proposed exemption being that both those who will inflict and those who will suffer the injury wish to satisfy a perverted and depraved sexual desire. Sadomasochistic homosexual activity cannot be regarded as conducive to the enhancement or enjoyment of family life or conducive to the welfare of society. A relaxation of the prohibitions in sections 20 and 47 can only encourage the practice of homosexual sadomasochism and the physical cruelty that it must involve (which can scarcely be regarded as a "manly diversion") by withdrawing the legal penalty and giving the activity a judicial imprimatur."

Public Policy:

Society must be protected against a cult of violence which presents the danger of proselytization and corruption of young men and the potential for the infliction of serious personal injury.

There is no evidence to support the assertion that sado-masochistic activities are essential to the happiness of the defendants or any other participants or a violation of their civil rights. Sadomasochism is not only concerned with sex; it is concerned with violence. These practices were unpredictably dangerous and degrading to body and mind and were developed with increasing barbarity and taught to persons whose consent was dubious or worthless. The defendants were middle aged men and the victims were introduced to this activity by the defendants before they were 21. Evidence showed that alcohol and drugs were used to obtain consent and increase enthusiasm.

Dissent:

Lord Mustill: "The issue before the House is not whether the appellants' conduct is morally right, but whether it is properly charged under the Act of 1861. When proposing that the conduct is not rightly so charged I do not invite your Lordships' House to endorse it as morally acceptable. Nor do I pronounce in favour of a libertarian doctrine specifically related to sexual matters. Nor in the least do I suggest that ethical pronouncements are meaningless, that there is no difference between right and wrong, that sadism is praiseworthy, or that new opinions on sexual morality are necessarily superior to the old, or anything else of the same kind. What I do say is that these are questions of private morality; that the standards by which they fall to be judged are not those of the criminal law; and that if these standards are to be upheld the individual must enforce them upon himself according to his own moral standards, or have them enforced against him by moral pressures exerted by whatever religious or other community to whose ethical ideals he responds. The point from which I invite your Lordships to depart is simply this, that the state should interfere with the rights of an individual to live his or her life as he or she may choose no more than is necessary to ensure a proper balance between the special interests of the individual and the general interests of the individuals who together comprise the populace at large. Thus, whilst acknowledging that very many people, if asked whether the appellants' conduct was wrong, would reply "Yes, repulsively wrong", I would at the same time assert that this does not in itself mean that the prosecution of the appellants under sections 20 and 47 of the Offences against the Person Act 1861 is well founded."

Disposition:

Affirmed

R v Wilson:

Facts:

The appellant branded his initials on his wife's buttocks with a hot knife. She had asked him to do so. Her skin became infected and she sought medical treatment from her doctor. The doctor reported the matter to the police and the husband was charged with ABH under s.47 Offences Against the Person Act 1861.

Decision:

The wife's consent was valid. The branding was more akin to tattooing and cosmetic enhancement rather than infliction of pain for sexual gratification. The court further held that consensual activity between husband and wife in the privacy of the matrimonial home was not a matter for the courts.

As well as this, since they had safety guidelines as well it wasn't a sadistic or masochistic behaviour akin to *R v Brown*.

R v Falconer:**Facts:**

50 year old woman shot husband after 30 years of abusive marriage. She gave evidence that he had entered the house unexpectedly, sexually assaulted her and taunted her with tales of sexually abusing a 7 year old girl and that if her daughters gave evidence, no one would believe them. Accused states that he reached out with the intention of grabbing her hair and from that point she remembers nothing until she woke up on the floor with a shotgun in her hand and him dead on the floor.

Defence:

Sought to rely on involuntary act (sane automatism), and gave evidence of dissociation by 2 psychiatrists.

Judgement:

Toohey J: A person will not be criminally responsible for an act or omission which occurred independently of the will (committed in a 'dissociative state'). This can often be caused by an external psychological factor (a 'psychological blow').

There is a distinction between actions of a sound mind affected by an external psychological blow as opposed to those of an unsound mind. Actions of an unsound mind are still voluntary acts. They are, however, governed by the rules of the insanity defense and result in a special verdict. Actions of a sound mind affected by an external psychological blow are not voluntary acts. Since there is no voluntariness, they will result in an outright acquittal.

Procedure:

1. The prosecution needs to prove voluntariness. If voluntariness is not proved there is an outright acquittal.
 - a. Act brought about by sound mind due to a psychological blow are not voluntary

- b. Acts brought about by an unsound mind are voluntary (but will be subject to insanity blow)
- 2. If voluntariness is proven, it is still open to argue that the actions were due to insanity (insane automatism – actions of unsound mind)
 - a. If insanity is proven – special verdict of not guilty by mental illness (indefinite detainment)
 - b. If not, conviction

Result:

In this case, the evidence of the psychiatrists was relevant even to the defense of sane automatism. This is because the Defendant sought to argue that due to an external psychological factor, she was acting in a dissociative state (as opposed to a mental illness)

Defendant wins, and a new trial is ordered.

R v Hallett:

Facts:

The Defendant and the victim's car got stuck in the sand. They began fighting and ended up fighting nearby the water. After having beaten the victim up, the Defendant left the victim slumped, but still moving, at the water's edge. The victim was lying on his back, a few inches from the water's edge. The Defendant then went to cool off. When the Defendant came back, the victim was floating dead in the water.

Medical evidence suggests that the victim may have been knocked unconscious, was choked to some degree and dies as a result of drowning in the water.

Legal Issues:

Was beating up and leaving the victim by the water enough to satisfy causation or was the chain of causation broken?

Judgement:

If at the time of death the original wound is still operating and is a substantial cause then there is a causal connection, even if the other cause is also in operation.

If the Defendant causes a situation, which puts the victim in danger of being affected by another perilous situation, and the victim ends up dying because of the new situation, the chain of causation remains unbroken (since the first is still a substantial cause)

If the new situation happened completely of its own accord (act of god) then the causal link is broken.