

Understanding Consent and Battery in the UK

This assignment will address the following question which is, the concept of consent in the UK and its role in cases involving battery. Understanding consent and battery in the UK is crucial. Consent is the focus of various legal contexts, whereas battery has implications for personal safety and individual rights. The purpose of this essay is to provide a thorough understanding of the legal concepts of consent and battery within the context of the UK and shedding light on how exactly it has a significance in the legal framework. This will be delving into real-life cases to explore how consent and battery impact individual rights, and the pursuit of justice. Whilst analyzing consent and battery in the UK, this essay explores their legal significance and the impact and controversy it has.

In the UK, consent is defined as a legal concept representing a voluntary, informed agreement granted by an individual with capacity to engage in a specific action or activity. Consent is a key element in many contents, including medical procedures, sexual relations, and more. The Sexual Offences Act 2003 provides concept for sexual consent, defining the conditions under which sexual activity is consensual. Consent forms a crucial element in safeguarding personal autonomy and individual rights within the UK's legal system (Sexual Offences Act 2003, Section 74). Consent in the UK hinges on several vital elements, with informed and voluntary consent at the forefront. Informed consent declares that an individual must possess a clear understanding of the nature and potential consequences of their agreement, such as seen in *Montgomery v Lanarkshire Health Board, 2015*. Voluntary consent is equally crucial, requiring freedom from any form of coercion, pressure, or duress, as outlined in the Sexual Offences Act 2003. However, consent cannot be given when an individual is incredibly young or extremely ill, mentally impaired or if they are unconscious or confused. People cannot give informed consent to emergency treatment either. Consent is important as it means to acknowledge an individual's freedom and independence to understand and choose what happens to their body and information about their own body. According to the Second Restatement of Torts Section 13, there are two forms of battery: one that results in harmful bodily contact and another that results in offensive bodily contact. There are two elements within battery, the actus reus in which the defendant had unlawfully touched or applied force to the victim. The mens rea concludes that the defendant intended or was reckless to the unlawful touch or application of force. An example of the actus reus within a battery law case would be in *R v Rolfe, 1952*, the defendant had unlawfully inflicted force upon the victim. In the case law *R v Venna, 1976*, this highlights the mens rea in battery as the defendant had intended to inflict force or was subjectively reckless as to whether that force was inflicted. Both cases

are relevant as they involve the interplay of consent and battery from the actus and mens rea perspective. According to the Criminal Justice Act 1988, s39 assault and battery are summary offences which means that the sentencing can range from nominal fines to a maximum punishment of six months imprisonment. Consent plays a vital role within battery and assault cases but cannot be used for murder offences. Within the medical intervention, without valid informed consent is a criminal offence, and the physician in charge of the patient can be charged with battery. This is due to include treatment against the patient's will or using a different treatment that they had already consented to. The difference that is between sexual battery and battery is how the crime is defined. A victim of sexual battery would have been fully clothed or naked at the time of the incident, anytime that a person is touched on an intimate part of the body when touching is not wanted is considered by the law to be sexual battery. Restraining a victim could also be included in the description of sexual battery. This means it requires an act of physical act without the victim's consent. This can be demonstrated in case law *R v Brown, 1993*, the appellants were tried on charges of assault and causing actual bodily harm, contrary to section 47 of the Offences Against the Persons Act 1861, and unlawful wounding contrary to section 20 of that Act. In this case, the appellants participated in acts in which they consented to the acts being committed, and although they were violent, none of them had not suffered any permanent injuries. If an individual agrees to any activity under pressure of intimidation or the slightest bit of threat, it is not considered consent because it was not given freely. Consent is about communication, and it should happen every time for every type of activity. If an individual gives consent for something on one occasion, that does not mean that they allow it to happen the next time. However, there are some instances in which consent is not clearly delivered which can be misinterpreted. For example, if someone is under the influence the use of alcohol or drugs will complicate the understanding of if consent was given freely. Another example would be if an individual agrees to engage in a particular activity but then later decides that they wish to withdraw their consent during the activity. This will become a grey area if their partner fails to recognize their change of mind and continues, despite them withdrawing their consent. This can be demonstrated in the case of *R v Evans, 2009*, which believes consent was given although the victim was asleep at the time. Looking at the defendant's mistaken belief and whether a reasonable person would hold the same belief. In the UK case *R v Ched Evans, 2016*, the focus relies on the controversies that may emerge when considering the issue of consent in cases of alleged sexual assault, especially in situations where alcohol is involved. In the first case study of *Evans* the ethical dilemmas focus on the belief in consent during sexual activity, particularly when the person is, as in this case, asleep. This case clearly highlights the ethical tension that is between respecting an individual's liberty and the

safeguarding against sexual assault. The case study of *Ched Evans* delves into the ethical dilemmas on consent within sexual contexts. The controversy surrounds issues that are related to alcohol consumption, the capacity of decisions, and boundaries of informed consent. This case may raise questions about the responsibility of individuals involved in an activity where one or both have consumed alcohol which affects their capacity to provide genuine, freely given consent. In criminal law, consent may be used as an excuse to prevent the defendant from incurring liability for what had been done in cases of battery. What this means is that the victim can prove that they had willingly and knowingly agreed to the activity that occurred, which can be served as a defense when proven correct. If there is consent involved it can influence the outcomes of a case, but only if it is genuine, informed and voluntarily given. The possible penalties that a perpetrator would face can include a 6-month imprisonment and/or a fine that can be up to £5000. However, if the assault is racially or religiously aggravated then the maximum sentence would be 2 years rather than 6 months. The public's awareness of consent and its significance in battery cases has developed due to education, high-profile cases, and campaigns. An example of a campaign would be the 2022 'Be Consent Aware' campaign made by Peter McCall who is a crime commissioner at Cumbria police. McCall's campaign highlights the message that consent cannot be bought and someone who is intoxicated cannot give consent and offers much advice for those who have been a victim of sexual assault. In society, many have different views or opinions on what consent and battery is, for example some may believe that silence equals consent or that being in a past relationship means that consent is already implied from before, without asking their partner more recently.

In conclusion, this assignment has been able to explore the critical role of consent in battery cases within the UK. It has shown an understanding of consent and battery whilst highlighting the legal significance and impact. The real-life cases such as *R v Rolfe, 1952*, *R v Venna, 1976*, *R v Brown, 1993*, and *R v Evans, 2009*, were examined to show how consent impacts the crime of battery and the complexities that follow. It is also vital in various contexts especially in medical procedures and sexual relations as it is a safeguard to individual rights. Battery, which considers what someone did and what they had intended says the actus reus and mens rea, has consequences for the people's safety and what happens to those who commit a battery crime.

Case List

Montgomery v Lanarkshire Health Board [2015] SC 11 [2015] 1 AC 1430

R v Brown (1994) 2 All ER 75

R v Ched Evans (2016) EWCA Crim 452

R v Evans (2009) EWCA Crim 650

R v Rolfe (1952) 36 Cr App R 4.

R v Venna (1976) QB 421

Reference List

Anon, (n.d.). *Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker – Sentencing*. [online] Available at:

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/> [Accessed:

08/11/2023]

Department of Health (2009). Reference guide to consent for examination or treatment Second edition. [online] Available at:

https://assets.publishing.service.gov.uk/media/5a7abdcee5274a34770e6cdb/dh_103653_1_.pdf

[Accessed: 07/11/2023]

Foote, A. & (2022). *Difference Between Sexual Assault and Sexual Battery*. [online] Andreozzi & Foote Attorneys at Law. Available at: <https://www.victimscivilattorneys.com/difference-between-sexual-assault-and-sexual-battery/> [Accessed: 08/11/2023]

Helpline, C.I. (2022). *Punishment for Assault & GBH - What are the Penalties?* [online] Criminal Injuries Helpline. Available at: <https://criminalinjurieshelpline.co.uk/blog/punishment-sentences-assault-gbh/> [Accessed: 08/11/2023]

IPSA LOQUITUR. (n.d.). *Criminal Law: Assault & Battery*. [online] Available at: <https://ipsaloquitur.com/criminal-law/assault-battery/> [Accessed: 08/11/2023]

Milligan, L. (2022). *Commissioner launches 'Be Consent Aware' campaign*. [online] Cumbria Police and Crime Commissioner. Available at: <https://cumbria-pcc.gov.uk/commissioner-launches-be-consent-aware-campaign/> [Accessed: 08/11/2023]

O'Neill, O. (2003). Some limits of informed consent. *Journal of Medical Ethics*, 29(1), pp.4–7. doi:<https://doi.org/10.1136/jme.29.1.4>. Available at: <https://jme.bmj.com/content/29/1/4> [Accessed: 08/11/2023]

Selinger, P C (2009). *The right to consent: Is it absolute? | British Journal of Medical Practitioners*. [online] Available at: <https://www.bjmp.org/content/right-consent-it->

[absolute#:~:text=A%20medical%20intervention%20without%20valid](#) Accessed: [08/11/2023]

The Law Dictionary (n.d.). *The Difference Between Sexual Battery, Sexual Assault, & Rape*. [online] Available at: <https://thelawdictionary.org/article/the-difference-between-sexual-battery-sexual-assault-rape/> [Accessed: 08/11/2023]

The Supreme Court (2015). *Montgomery (Appellant) v Lanarkshire Health Board (Respondent) (Scotland) - The Supreme Court*. [online] Supremecourt.uk. Available at: <https://www.supremecourt.uk/cases/uksc-2013-0136.html> [Accessed: 07/11/2023]

www.cirp.org. (n.d.). *Regina v. Brown [1994], House of Lords*. [online] Available at: <https://www.cirp.org/library/legal/UKlaw/rvbrown1993/> [Accessed: 08/11/2023]

www.cps.gov.uk. (n.d.). Rape and Sexual Offences - Chapter 6: Consent | The Crown Prosecution Service. [online] Available at: <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent#:~:text=Section%2074%20defines%20consent%20as> [Accessed: 07/11/2023]