

The concept of consent in the UK and its role in cases involving battery.

In this essay, the concept of consent in the UK and its role in cases involving battery will be researched and evaluated to further understand the subject and expand knowledge on the UK's laws surrounding these topics, it will involve cases for further insight to show the importance of consent and cases showing different examples of battery and the laws surrounding these topics. It will also show examples of Acts put in place in the UK and how they affect the decisions made by courts past and present. There will be a few key points throughout this assignment, like valid consent where decisions are informed, the grey areas when it comes to consent and how consent can affect a legal outcome in court. Reliable sources will be used to gather and backup certain points throughout this work and this will be assured through using reputable sources.

The definition of consent in a legal mind set is, as of the Sexual offense Act 2003, 'to be able to have the choice to agree to something and said person has the capacity to agree' An example of someone who does not have the capacity to consent are those who have things like learning disabilities and dementia. This is because people with these disabilities may not fully understand what is being offered to them, therefore they 'consent' to something that they thought was something else. Age can also play a factor in the capacity to consent. There is also something called valid consent, this is when the person being asked for the consent is making an informed decision and isn't being pushed to make the decision, they also have to have the capacity to consent in order for it to be valid.

For example, Janey is going in for surgery, the doctors have informed her of what the surgery is, it's possible outcomes, side effects and its recovery time, this allows Janey to evaluate and decide whether she wants to go through the surgery or not. It is extremely important to inform a person on what they are agreeing to because if they don't know the full details and go through with something and aren't happy that something happened that they weren't informed about, that's grounds for them to take a person/ people to court.

There is actually a case where this happened and that is the case of Montgomery V Lanarkshire Health board. This was a case where the nurses did not inform Montgomery of the risks that the baby may face if she was to do a vaginal delivery instead of a caesarean and because of this, the baby unfortunately came out disabled. This ended up going to supreme court and Ms Montgomery was found to have the right to be informed.

For battery, the definition as by e-lawresources.co.uk, 'an act committed either recklessly or intentionally that applies an unlawful force to another.' as stated by the Lord Chief of Justice, Lord Hale.

Battery is a summary offense in England and Wales it is seen as unlawful entry into another's space, this could be things like spitting, pushing and even acting to punch or physically harm a person can be counted as battery. This is under the Criminal Justice Act 1988. The website legislation.gov states that being charged of common assault and battery is a summary offense that the perpetrator pays a fine that cannot go over level 5 and cannot

be kept in jail for any longer than 6 months. As of the criminal justice act 1988 '...battery is a summary offence...' and acts like Spitting is to be considered as battery under this act.

If a person does not consent to be physically touched but another touches them anyway, it can be considered assault due to this. A case that shows this is the case of *Collins V Wilcock* 1 WLR 1172, 1984. This case is about a police officer who expected that a woman was a prostitute, she tried to walk off to which he grabbed her and she started trying to get free from the grip to which she ended up scratching the officer. The courts were in her favour as it was seen as an act of self-defence and the officer was faced with the charge of battery. The high court made the decision of Battery on the police officers' part due to them finding that 'the officer had not been acting in the lawful exercise of her duty'.

The difference between consensual activities and battery is that one has been agreed upon and the person or people that agreed knows what they are in for, they must be able to make these decisions though and if they are drunk for example, they do not have the capacity to agree, battery is when one does not agree to something, for example, they do not want to be touched by another but the other touches them anyway. It also doesn't count as consent if they don't say no or yes, the only time its consent is when someone clearly says yes. It can also count as battery when someone who did previously consent, has withdrawn it but the other party keeps going anyway. An example of a case of battery is the case of *R V Rolfe* 1952.

There are grey areas when it comes to consent, for example, many people argue, especially during an intimate act, that the person first consented to it but then withdrew the consent, it's also very hard to determine if the consent came through word of mouth as generally it's never recorded therefore it's harder to prove whether someone gave consent or not if there's no physical embodiments to show, e.g., marks, bruises, cuts etc. It can also get controversial because some people do consent to more physical acts that result in pain and the appearance of marks. In the case of *R V Brown* there was a police investigation going on with a group of homosexual men, the police found videos of the men engaging in sadomasochism and as a result charged them with actual bodily harm (ABH). Due to the controversies of this case, it has brought up the legality of cases where the harm is consensual. For example, sports like boxing where the harm is consensual, and participants of the sport are informed and know what to expect when engaging in the sport.

How consent affects the legal outcomes of battery. A defendant can actually use consent as a defence to a battery charge, it would be made easier for them if it was a form signed by the other party as anyone can use the defence of the other party consented to the act when they actually didn't. Signed papers or physical proof show that the person has understood and agreed to the terms. This can change the outcome of the charge to a lesser sentence or no sentence at all, it depends on the amount of harm that had been inflicted in the case of *Leach* 1969, even though the victim consented to having nails inserted into his hands, they still got found guilty and were not supposed to depend on the victims consent.

This is a case of when the defence of consent was not valid, a case where there was the valid defence of consent is the case of *Richardson* 1998 where the defended was a

suspended dentist, the patients consented to the dental work only to later find out he was suspended. The courts ultimately accepted the defence of consent, and no charges were placed. Some ethical dilemmas may pop up due to this though as people could use the consent defence when they know that ethically, what they did was wrong e.g. tattooing underage persons. Or in sports like boxing where harm is going to come, they could, for example, punch harder than they should and could argue that the other party consented as they know that the sport entails harm to come to both parties.

The public especially today- are very aware of consent and what it is. Especially with movements like the MeToo movement and how much consent is taught to children in school. The public knows how to properly attain consent and know to not push it on to others. The public also understands the importance of consent as it can be the difference between getting a sentence or not. The significance of consent for battery cases is also very substantial as it can change the charge as seen in above cases Richardson 1998, the charges got dropped as it was found that the patients consented.

Some misconceptions of battery are that a person has to seriously hurt the other for it to be battery, but that's not the case and it's as simple as someone mimicking hitting another. Some societies actually don't see the point of informed consent with some saying they see the point but most scenarios it's not needed. A quote from the National Library of Medicine is 'um, don't really see a need in some situations'

As a conclusion, it has been discovered that consent can play a big role in cases involving battery, but for the defence to be valid it must be informed, and the level of harm brought upon a person, even if they consented can still result in a battery charge. Consent has evolved throughout the years as beforehand it did use to be if you consented in the first place it's legal, but now it has broadened its definition to informed consent and now cases where a person withdrew consent are valid. Sexual Offence Act 2003, 'to be able to have the choice to agree to something and said person has the capacity to agree'. It has been found how the different ranges in consent can affect the outcome when it comes to court through the cases shown in this assignment and how ethical problems may arise from these different types of consent. It was also found that consent can be used as a defence in certain cases of battery highlighting the importance of consent.

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