

purpose. Therefore, the court held that although there was, in essence, consent to the nature of the act, there was no consent in relation to this quality. This case had overruled *Clarence*.

- ***R v Mohammed Dica***- Where a victim was not aware that the def. was intended, his or her consent to **unprotected sexual intercourse** was not to be seen as an implied consent to the risk of infection from the act of intercourse. It extended bodily harm to biological harm. (e.g. HIV)
- ***R v Barnes (2004)*, *R v Feston Konzani (2005)***- followed the case of *Dica*.
- ***R v Elbekkay (1995)*** - where the def was guilty of rape where he knew that the woman's consent was given under the **mistaken belief** that the def. was her boyfriend. (She was under the effect of sleepiness and drinks)
- Infliction of injury for sexual gratification [***R v Donovan***]

Public policy and the defence of consent

- Assuming that there is real consent, then whether the consent is accepted as a good defence really based on policy grounds.
- In ***AG Reference (No. 6 of 1980) (1981)***, Lord Lane CJ stated that it is not in public interest that persons should cause bodily harm for **no good reason**.
- In this case, the def and the victim involved in a fist fight. The V suffers a bleeding nose and bruised ac. The CA ruled that fights are ABH was caused or intended are unlawful regardless of consent.
- The same reasoning is used in ***R v Brown***.

Accepted categories of lawful activity (exceptions)

- Consent to rough play (**horseplay**) will be a good defence. However the consent given must be in relation to the play and not the harm
- ***R v Jones (1987)*** : Schoolboys throw other pupils into the air. One pupil suffers a ruptured spleen and a broken arm. The CA held rough and undisciplined play where there is no intention to cause injury, should be added to the list of lawful activities.
- ***R v Aitken (1992)*** : The def poured white spirit onto the V's fly suit and lit it. The V suffered life threatening burns on 35% of his body. It was held that rough and undisciplined mess games are a lawful activity as long as there is no intention to cause any injury.
- Consent, express and implied, is effective in relation to harms committed during **sexual activity**.
- In ***Slingsby (1995)***, D inserted his hand into V's vagina and rectum with her consent, a ring which he was wearing caused internal cuts, and V later died of septicaemia. In subsequent trial for manslaughter, D was held not to have committed assault and so could not be liable for m/s
- **Boxing** is a genuine exception to the rule that consent is ineffective in the case of deliberately inflicted injuries. However, wrestling and martial arts are probably not an exception vacate these sports unlike boxing, do not have **intentional infliction of injury** as the point of activities.
- **Games and Sports**, Injuries inflicted in the course of contact sports such as football and rugby will therefore be prima facie lawful unless deliberately inflicted, in which case consent, even where it to be present, is ineffective.
- **Reasonable force** to discipline or chastise a child or young person by a parent or other person in lawful correction defence- ***R v Hopley***: the **age** of the child and **mode of punishment** will take into consideration.