

Criminal Law: Arson, Assault and Battery

Student's Name

Institutional Affiliations

Date

Criminal Law

Malik's failure to take reasonable care has resulted to destruction of property by fire causing damages to the club owner. To add on to his actions, bodily injuries were incurred by Emilia and Gavin. Upon realizing his mistake, he failed to act like a reasonable person and raise an alarm to alert nearby persons in the club thereby endangering their lives and apply a duty of care that since he was responsible for causing it, he should have at least attempted to solve one item.

First Degree Arson with the Intent to Damage Property

The first offence that the prosecution will charge against Malik is first degree arson with the intent to damage property. Arson is a person who without a lawful excuse damages property belonging to someone else with the intention or being reckless as to whether such property will be destroyed in fire. Malik's inability to apply reasonable care while smoking the cigarette, led to a deliberate arson attack against the owner of the club. His ignorance to the use the ash tray that his friend Leila paid a careful attention to led to negligent act where damages were incurred. Moreover, both of them were able to capture the bits of lighted cigarettes that flew into an industrial bin nearby. He further aggravated the scenario by another ignorance to take action to confirm whether the bits of lighted cigarettes were not burning inside the bin.

A good reference at this juncture is the case *Miller vs. House of Lords (1983)*¹ where a vagrant fell asleep on a mattress while holding a cigarette. He woke up only to find the mattress had caught fire and instead of putting the fire off, he moved on to a different area. The court of appeal argued that the defendant failed to take any steps to extinguish the fire or prevent damage being caused to the property by the fire. Furthermore, once Miller was aware the fire had existed,

¹ *Miller vs. House of Lords (1983) 2AC 161*

he was under duty to put the fire off. The court concluded that the conduct of the defendant, the actions and omissions were viewed as one uninterrupted process (Herring, 2011).

For an individual to be prosecuted with an account of arson with the intent to damage property, first of all the prosecution must prove; one that the defendant knowingly set fire, secondly, the fire was set to burn or cause to burn, third to a building, property or an occupied structure² (according to *Criminal Damage Act 1971* property is strictly limited to tangible property) and lastly the property must belong to another person (you cannot be convicted for damaging your own property).

Fourth Degree Arson with the Endangerment of Lives

The second charges that Malik faces are fourth degree arson with the intention to endanger lives. For this charges, a part from the three basic element of arson, a fourth clause of intent of endangering the life of another person through destruction or damage is added. Malik's action's threatened the lives of nearly a thousand persons. Though the person himself endangered the lives of other person, it cannot be the accused himself/herself. For the charges to sustain, the prosecution must show an intent or recklessness as to the endangerment. In short, endangering of life doesn't require an attempted murder/homicide or an actual death

In *Sangha (1988)* All ER 385³, the defendant lit a fire in his room and left out. The court found him guilty of endangering the lives of those dwelling in the building even though he never knew the building was highly fireproofed although there was no danger to anyone. Likewise, Malik actions endangered the lives of nearly a thousand individuals, even though all of them were evacuated to a safer region, he is still liable. Malik knew that the destruction of property

² Criminal Damage Act 1971

³ Sangha (1988) All ER 385

was more than likely to endanger the lives of the people in the club, this enough is sufficient that lives were threatened.

The third charge that Malik is facing is an assault occasioning actual bodily harm on Emilia. Assault occasioning actual bodily injuries is contained in the Offence Against the Person Act. ⁴Malik gave her a push that caused her to stumble and fell on a broken bottle causing her to cut herself. Simply put, battery is an offensive touching (Brody, 2011). For a person to be convicted on account of battery, several elements have be ascertained. The first one is the *actus reus* of battery is unjustified offensive touching. The actor doesn't have to physically touch the victim. The second element is that an individual who commits an unjustified offensive touch either intentionally or knowingly has committed battery and lastly harm or injury must occur to the victim.

Assault Occasioning Actual Bodily Harm

The defendant will be convicted on assault occasioning actual bodily harm if; it is proved in court that there was an assault (meaning either an assault or battery or both). Secondly, the victim must suffer actual bodily harm. The actual bodily harm is used to refer to level of harm greater than a mere touch. Lastly, the prosecution must show that the actual bodily harm was occasioned by a common battery or assault. Occasioned is used in this context to refer to cause (Herring, 2011).

A contradiction to the assault occasioning actual bodily harm is that the push he gave to Emilia which consequently led to her fall seemed unintentional. He simply gave her a push to prevent her from uttering the statements that he was a suspect but unfortunately she feel and cut her arm on a piece of broken bottle. From the argument raised in the case of Collins vs. Wilcock

⁴ Sec 47 Offences Against the Person Act

(1984)⁵ this was an assault. The case is about two police officers approaching two women who have been suspected of soliciting money through prostitution. One of the officers took her hand and the woman responded by scratching her back. The woman was convicted of assault.

An important key in distinguishing assault occasioning actual bodily harm is that there isn't need to show the defendant foresaw the actual bodily harm (like in the case of assault). The only item that is required is proof that the bodily injuries were caused in fact and in law by the assault. This distinction was made clear in the House of Lords' decision in *Savage and Parmenter (1992)*⁶.

Assault

Another charge that Malik faces is assault. An assault is defined as an offence where the defendant knowingly and without lawful authority engages in conduct which places another person in reasonable apprehension of receiving bodily harm or a physical contact of a provoking nature. Upon seeing his girlfriend injured by Malik, Gavin openly declares to him of his intention to call the police. Upon hearing those words, the victim gets apprehended.

For an individual to face or be charged on account of assault, first there must be an apprehension of violence. There is no assault if victim doesn't apprehend immediate violence. Threats that the victim does not perceive to be imminent violence cannot amount to assault. Similarly, actions that apprehend the victim such as posture (*Smith vs. Chief Superintendent of Woking Police Station (1983)*)⁷, phone calls, utterance or psychological harm that signal violence to him or her are considered as battery *Reg vs. Ireland (1998)*⁸

⁵ Collins vs. Wilcock (1984)

⁶ Savage and Parmenter [1991] 4 All ER 698, [1991] 3 WLR 914

⁷ Smith vs. Chief Superintendent of Woking Police Station [1983] 76 Cr App R 234

⁸ Reg vs. Ireland (1998) AC 147

Another element of assault is that victim's apprehension must cause imminent harm. Lord Stern in Ireland indicated that fear of violence within a minute or two is sufficient enough to cause an assault. A threat to injure someone in three weeks does not amount to an assault. The significance of this element was revealed in *Constanza (1997) Cr App R492 (CA)* where the defendant sent more than 800 letters to the victim two of which were threatening and the court found the defendant guilty of assault.

To conclusion, the defendants' failure to take reasonable care led to an arson lawsuit. The defendant, Malik should bear the cost of all damages incurred. The offence was further worsened by an assault occasioning bodily harm to the witnesses of the crime.

References

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