

# **UK CRIMINAL LAW**

## **CASE NOTES**



**LAWSKOOL.CO.UK**

**LAWSKOOL UK**

## Contents

<i>R v Brown</i> [1993] UKHL 19.....	3
<i>R v Wilson</i> (1996) 2 Cr App Rep 241.....	5
<i>R v R</i> [1991] UKHL 12.....	9
<i>R v Emmett</i> [1999] EWCA Crim 1710.....	13
<i>R v Dudley and Stephens</i> (1884) 14 QBD 273 DC.....	14
<i>R v Caldwell</i> [1928] AC 341.....	22
<i>R v G</i> [2003] UKHL 50.....	24
<i>R v Woollin</i> [1999] 1 A.C. 82.....	26
<i>R v Blaue</i> (1975) 61 Cr App R 271.....	28

Sample

## ***R v Brown* [1993] UKHL 19**

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** House of Lords

**Procedural history:** The case was on appeal to the House of Lords

**Facts:**

- Five of the appellants of the case engaged in sadomasochistic sexual acts, consenting to the harm which they received.
- While none of these individuals complained against any of the acts in which they were involved, they were uncovered by an unrelated police investigation.
- Upon conviction, the appellants argued that they could not be convicted under the *Offences against the Person Act 1861*, as they had in all instances consented to the acts they engaged in.

**Issue:**

- A group of men were convicted for their involvement in consensual sadomasochistic sexual acts over a 10-year period.
- They were convicted of "unlawful and malicious wounding" and "assault occasioning actual bodily harm" contrary to sections 20 and 47 of the *Offences against the Person Act 1861*.
- The key issue facing the Court was whether consent was a valid defence to assault in these circumstances.

**Reasoning / Decision (Commentary):**

- The certified question of appeal which the House of Lords was asked to consider was:

Where A wounds or assaults B occasioning him actual bodily harm in the course of a sado-masochistic encounter, does the prosecution have to prove lack of consent on the part of B before they can establish A's guilt under section 20 or section 47 of the *Offences against the Person Act 1861*?

The Lords — by a bare majority, Lords Mustill and Slynn dissenting — answered this in the negative, holding that consent could not be a defence to offences under sections 20 and 47 of the *Offences against the Person Act 1861*.

**Ratio:**

- Lord Templeman stated:  
"It is not clear to me that the activities of the appellants were exercises of rights in respect of private and family life. But assuming that the appellants are claiming to exercise those rights I do not consider that Article 8 invalidates a law which forbids violence which is intentionally harmful to body and mind."

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 Templeman's judgment also makes clear that he was concerned that the activities were:

"unpredictably dangerous and degrading to body and mind and were developed with increasing barbarity and taught to persons whose consents were dubious or worthless."
- However, it could be argued that the reference to consents being "dubious or worthless" was particularly difficult, given that for the purposes of the appeal it was accepted that the victims had fully consented to the activities.
- In Lord Mustill's view, the degree of consent involved could negate the criminality:

"In my opinion it should be a case about the criminal law of private sexual relations, if about anything at all ... [leaving aside] repugnance and moral objection, both of which are entirely natural but neither of which are, in my opinion, grounds upon which the court could properly create a new crime."

◆◆◆◆

**To order the complete version of the Lawskool Criminal Law Case Notes  
please visit [www.lawskool.co.uk](http://www.lawskool.co.uk)**