

Doctrine Of Consent In  
Criminal Law

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DOCTRINE OF CONSENT IN  
CRIMINAL LAW

Chapter 1

Introduction

One of the primary aims of Criminal Law is the protection of life and the integrity of the body. In other words, man's life is not being taken away as any way by anybody who wishes to do so. Like a proverb of an Englishman; God gives us life and He's the only one who has the right to take it back. General speaking, a person who kills or injures another is punished and this may extend even to an act which has been consented to. Consent is not a defence to killing,<sup>1</sup> mayhem or abortion.<sup>2</sup> The law however, does not pursue this aim without due consideration being given to individual liberty. Consent may exculpate a person from criminality; if not a doctor can be charged for assault even though the patient had consented to the operation.<sup>3</sup> There are certain acts which are lawful despite the need of consent. The right of reasonable chastisement is given to the parents, guardians, masters and school teachers.<sup>4</sup> While the scope of the operation of consent is clearly defined in certain areas. But the extent to which it puts an end to the act of criminal is not always clear. Therefore, it is proposed in this paper to consider the rationale of the doctrine of consent and some of the more controversial areas of uncertainty.

## Chapter 2

### Rationale Of The Doctrine Of Consent

#### (A) Mayhem

Consent was not a defence to mayhem<sup>5</sup> as at common law. An example is by Lord Coke in 1604<sup>6</sup> where a young man asked his friend to cut off his hand so that he might avoid work and be able to beg. Lord Coke C.J held that, if it amounted to mayhem, consent was no defence. Therefore, every injury which would disable a person from the performance of his duty was a mayhem.<sup>7</sup> For example, the extraction of foreteeth was a mayhem while the cutting off an ear or a nose was not a mayhem.

A person may consent to suffer an injury less than a mayhem. Sir James Stephen in his Digest of the Criminal Law said: "...everyone has a right to consent to the infliction upon himself of bodily harm not amounting to maim." The difficulty then, lies in determining the extent to which personal violence short of mayhem may be allowed. Sir James Stephen pointed out: "It is uncertain to what extent any person has a right to consent to his being put in danger of death or bodily harm by the act of another."

There are two cases in determining the extent to which consent would put an end to criminality. They are R V Coney<sup>8</sup> and R V Donovan.<sup>9</sup>

(B) R V Coney

In Coney's case, the accused, Coney and a few others were present at a prize - fight. They were tried for common assault on the ground that by their presence they aided and abetted men who were engaged in the fight. The court held that mere presence at a fighting did not render them guilty as accessories to the fight. The question as to whether the consent of the persons actually involved in the fighting was a defence, Stephen J said:<sup>10</sup>

"The principle as to consent seems to be this: When one person is indicted for inflicting personal injury upon another, the consent of the person who sustains the injury is no defence to the person who inflicts the injury, if the injury is of such a nature, or is inflicted upon such circumstances, that its infliction is injurious to the public as well as to the person injured."