



HERBERT  
SMITH  
FREEHILLS



UNIVERSITY OF  
CAMBRIDGE  
Faculty of Law

**VERSION 2**

## HERBERT SMITH FREEHILLS DISABILITY MOOTING CHAMPIONSHIP: OXFORD v CAMBRIDGE

**R v Dwinn**

**IN THE SUPREME COURT OF THE UNITED KINGDOM**

### **A. Facts**

1. Ms Vacon, who has a **detachable** prosthetic leg, lives in a house in the surroundings of the City of Oxford.
2. Mr Toon, who also lives in Oxford, also uses a prosthetic limb, having lost his right arm. Mr Toon left his prosthesis on top of the bin at the end of his driveway as he had just bought a new one.
3. In the afternoon of the 29 July 2020, Ms Dwinn was walking past Mr Toon's house when she noticed the prosthesis on top of the bin. Thinking it might be valuable, Ms Dwinn took the prosthesis and hid it under her jacket.
4. Ms Vacon was coming down the same street as Ms Dwinn. Noticing Ms Vacon's expensive jewellery and handbag, Ms Dwinn positioned two fingers of the prosthesis into the material of the jacket with the rest of the arm hidden from view and demanded that Ms Vacon hand over the jewellery and handbag.
5. Ms Vacon, thinking that Ms Dwinn had a firearm, went to hand over the handbag but, as Ms Dwinn grasped the bag, Ms Vacon noticed Ms Dwinn did not actually have a firearm. Ms Vacon was unaware that it was a prosthetic arm until later.
6. Ms Vacon drew back and started to resist. In order to take the handbag, Ms Dwinn started to attack Ms Vacon. Ms Vacon's prosthetic leg was significantly damaged in the attack.
7. The defendant was arrested and charged with (i) actual bodily harm contrary to section 47 of the Offences against the Person Act 1861; and (ii) possession of

an imitation firearm during the commission of an offence contrary to 17(2) of the Firearms Act 1968.

## **B. Decision of the Crown Court**

8. In the Crown Court, the trial judge provided the jury with a written route to verdict containing the following questions:
  - i. Are you sure that Ms Vacon's prosthetic leg is a part of her body? If yes, go to question (ii). If no, return a verdict of 'Not Guilty' on count 1 [s47 ABH].
  - ii. Are you sure that Ms Vacon's prosthetic leg was damaged? If yes, go to question (iii). If no, return a verdict of 'Not Guilty' on count 1.
  - iii. Are you sure that the damage to Ms Vacon's leg was caused as a result of Ms Dwinn's assault on Ms Vacon? If yes, return a verdict of 'Guilty' on Count 1. If no, return a verdict of 'Not Guilty'.
9. Ms Dwinn was convicted of assault occasioning actual bodily harm and possession of an imitation firearm.

## **C. Appeal to the Court of Appeal**

10. In the Court of Appeal, Ms Dwinn submitted:
  - i. Following the decision in *R v Bentham* [2005] UKHL 18, [2005] 1 WLR 1057, the court cannot consider a prosthetic to be an imitation firearm, as all of the considerations relevant in that case are equally applicable to prosthetic limbs.
  - ii. The jury could not have been sure that 'Ms Vacon's prosthetic leg is a part of her body' because a prosthetic leg does not fall under the definition of 'the body' laid out in *R v Chan-Fook* [1994] 1 WLR 689 and, therefore, as a matter of law, damage to a prosthetic leg can be no more than property damage.
11. The prosecution argued:
  - i. The decision in *R v Bentham* [2005] UKHL 18, [2005] 1 WLR 1057 only applies where the thing is connected to the body such that it cannot be removed, which is not the case in the current situation.
  - ii. *DPP v Smith* [2006] EWHC 94 (Admin), [2006] 1 WLR 1571 states that something can be considered to be a part of the body if it is connected, and is intrinsic, to the individual and their identity, which means that damage to a prosthetic leg can be considered actual bodily harm.
12. The Court of Appeal quashed the conviction for actual bodily harm, but allowed the conviction for possession to stand, stating:

- i. 'For a count of actual bodily harm, it has always been necessary that some semblance of bodily harm is found. This principle remains unchanged in the face of recent caselaw. The fact that there was only harm to the prosthetic leg means that there can be no more severe a conviction than a battery.'
- ii. 'Under certain circumstances, any object, including a prosthesis, can be considered an imitation firearm. As it is clear that Ms Vacon perceived it as a firearm, such circumstances can be considered as having arisen. It does not matter that Ms Vacon realized, later, that it was not a firearm, but a prosthesis.'
- iii. 'To abolish the distinction between property and persons in the way that has been suggested would not be useful and would confuse the law. This would cause far greater harm and distress to many more people than the present law.'

13. Ms Dwinn appealed the conviction under the Firearms Act to the Supreme Court and the prosecution cross-appealed the quashing of the conviction under the Offences against the Persons Act.

14. Ms Dwinn was granted permission to appeal to the Supreme Court on the following ground:

The Court of Appeal erred in law in holding that a prosthetic arm can be considered an imitation firearm.

15. The prosecution was granted permission to cross-appeal on the following ground:

The Court of Appeal erred in law in holding that damage to a mobility aid cannot amount to actual bodily harm.

#### **D. Authorities**

Pursuant to rule 4(2) of the Rules of the Championship, the following cases only may be cited in the moot:

- *R v Donovan* [1934] 2 KB 498
- *R v Morris* (1984) 79 Cr App R 104
- *R v Thomas* (1985) 81 Cr App R 331
- *R v Chan-Fook* [1994] 1 WLR 689
- *R v Stoddart* [1998] 2 Cr App R 25
- *T v DPP* [2003] EWHC 266
- *R v Bentham* [2005] UKHL 18, [2005] 1 WLR 1057
- *R v Williams* [2006] EWCA Crim 1650
- *DPP v Smith* [2006] EWHC 94 (Admin), [2006] 1 WLR 1571

You are further permitted to refer to:

- Any other cases to the extent that they are referenced in the cases above; and
- Such other legislation and such academic commentary as may be relevant.