

Q. When, if ever, should one be criminally liable for infecting another person with a disease?

The legality of disease transmission is an increasingly relevant topic in today's climate as the global COVID-19 pandemic continues to kill hundreds in the UK, and tens of thousands globally, every day. However, COVID-19 is not the only disease that can have legal implications. For example, the *R v Dica* case (2004) saw Dica prosecuted for infecting two women with HIV (human immunodeficiency virus). Due to the length restrictions of the essay, the discussion shall be focused primarily on conditions such as recklessness, intent, and ignorance, as well as the impact of criminalizing disease transmission, and only UK law will be discussed.

For example, many would argue that reckless disease transmission is a ground for prosecution. If an individual knows of their disease and does not take reasonable precautions to protect others from infection, resulting in transmission of the disease, there will be grounds for prosecution as the diagnosed individual has harmed others without their knowledge or consent. In the case of *R v Dica* (2004), Dica was prosecuted under Section 20 of the Offences Against the Person Act 1861 for infecting two unknowing and non-consenting women with HIV. Dica had failed to inform his sexual partners of his diagnosis and the intercourse that caused the transmission was unprotected. Therefore, one could argue that he did not take reasonable precautions to prevent transmission, making him guilty. This is a convincing argument as it holds people responsible for the harmful outcome of their actions, even if the act is not inherently malicious.

However, others may argue that it is difficult to press charges for disease transmission outside of sexually transmitted disease. For instance, COVID-19 is an incredibly infectious disease, which has taken countless lives, however it would be very difficult to gather sufficient evidence to prosecute an individual for reckless transmission of said disease. While HIV is transmitted through bodily fluids, such as blood and sexual fluids, which are easy to trace back to one individual, COVID-19 is transmitted

through respiratory droplets in the air, which then land on surfaces that are touched by others, who then touch their faces. This makes it significantly more difficult to trace the transmission back to one individual. The argument against prosecution for recklessness in the case of all diseases is rather convincing as it emphasises the fact that it is incredibly difficult to trace infection back to one person, unlike HIV which can be traced through DNA or information such as with whom the infected last engaged in sexual intercourse.

An arguably blatant reason one may wish to press charges for disease transmission, is if the infection was deliberate. Intentionally infecting another person with a disease would demonstrate clear malicious intent and make the individual a danger to others in society. In cases such as this, an individual would be prosecuted under Section 18 of the Offences Against the Person Act 1861 for grievous bodily harm with intent. However, it is exceedingly difficult to prosecute an individual under Section 18 without clear proof of intent, such as confession of intent. For example, in the case of *R v Dica*, the Judge explained, "We repeat that the Crown did not allege, and we therefore are not considering the deliberate infection, or spreading of HIV with intent to cause grievous bodily harm," (Judge LJ, *R v Dica* 2004), demonstrating a court's need for evidence and not accusations or subjective views- even if the act seemed intentional, one cannot be prosecuted for intent without sufficient evidence. This view is considerably unconvincing, especially when considering that this limitation in the law becomes even more significant in the case of diseases such as COVID-19 as, like with recklessness, it is impossible to prove intent if the court cannot even trace the perpetrator.

A defense that an individual may wish to use when being prosecuted for infecting another person with a disease may be claiming ignorance. This may be ignorance of the law or ignorance of how to prevent the transmission of their disease. However, in a UK court of law, this would not be a viable defense, nor should it be. Regardless of one's own ethical system, that of the law should be to protect society.

Therefore, every individual should take responsibility for themselves by learning the law and how they

themselves can help protect society too. In the context of disease transmission, ignorance becomes an even less viable defense as infecting another person with a disease could ultimately take their life.

Because of this, it should always be an individual's responsibility to have a thorough understanding of their diagnosis. This appears to be a very convincing argument as it would cause chaos in society if individuals refused to take responsibility for their own actions and their impact.

Although, it could also be argued that one's knowledge of their diagnosis could be greatly dependent on the resources available to them, such as medical professionals and alternative resources such as foundations for their disease and informative text. If an individual did not have access to useful resources such as these, one may argue that they should be able to use the defence of ignorance. However, this is, of course, circumstantial and a large majority of cases will be within the bounds of a defence of ignorance being unviable and unreasonable. This is a somewhat weak argument in favour of the defence of ignorance in cases of disease transmission as it is incredibly subjective. However, it could also be argued that the circumstantial nature of the argument is a strength as it considers a case's nuances, as opposed to a generic case which is the same as the rest.

However, turning to the impact of different conditions for prosecution, one may also argue that, if the court took a more subjective approach to cases of disease transmission, there may be an increased chance of the public challenging the legal system as, while it is arguably fairer to analyse each case individually, the general public may not understand the nuances that the court does and therefore view it as inequality if different people receive different punishments for seemingly the same crime.

Furthermore, if infecting another person with a disease recklessly and/or intentionally were to be criminalised, technical issues may arise in that prisons are already overcrowded, and a new law against disease transmission would cause this overcrowding to increase, putting further strain on the justice system. A further impact of criminalising disease transmission, especially HIV, may be an increase in stigmatisation. For example, HIV is a highly stigmatised disease due to its links to homosexuality. Even

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though HIV is not a disease solely infecting the homosexual community, many still view it as such. Therefore, if HIV transmission is criminalised, it may create further stigma towards homosexuality, potentially increasing the level of hate crimes and general prejudice. The impacts of criminalisation must be carefully considered when deciding whether to create a law as there is the chance of the law harming minorities as opposed to protecting the majority, making the impacts stated a rather significant argument against criminalisation of disease transmission.

After weighing the evidence, it seems that whether one should be held criminally liable for infecting another person with a disease is an incredibly circumstantial issue. For instance, without advances in technology, it would be nearly impossible to garner sufficient evidence against an individual in order to prosecute them for the transmission of non-sexual diseases. This is because many diseases of this kind are spread indirectly, such as COVID-19 being spread through respiratory droplets, making the perpetrator difficult to trace. However, in the case of sexually transmitted diseases, such as HIV, the evidence seems to strongly favour the view that one should be criminally liable for infecting another person with a disease, if the transmission is intentional or reckless. Although, proving intent may pose an issue in court. For example, in the case of *R v Dica*, as the court did not have sufficient evidence to prove Dica had the intention of infecting his victims with HIV, they had to prosecute him under Section 20 rather than Section 18 of the Offences Against the Person Act 1861. However, there have been multiple cases in which an individual has been prosecuted for the reckless transmission of HIV.

Therefore, it seems reasonable that one should be prosecuted for reckless transmission of a sexual disease, where they have not taken reasonable precautions to prevent themselves from infecting others. Furthermore, evidence would suggest that in a large majority of cases ignorance should not be a viable defence against being held criminally liable for infecting another person with a disease.

Overall, one should be held criminally liable for infecting another person with a disease if the transmission was reckless or intentional, recklessness encapsulating the court's rejection of a defence of

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ignorance. However, as always it is essential to consider the nuances of every case, and ignorance may sometimes be an acceptable defence, if accurate information about the individual's disease, and the prevention of its transmission, was not available to them.

### **References:**

- **R v Dica (2004) (Access Date: 20/01/21)**

<http://www.e-lawresources.co.uk/R-v-Dica.php>

- **Intentional or Reckless Sexual Transmission of Infection (Access Date: 21/01/21)**

<https://www.cps.gov.uk/legal-guidance/intentional-or-reckless-sexual-transmission-infection>

- **Terrance Higgins Trust- How the Law Works (Access Date: 21/01/21)**

<https://www.tht.org.uk/hiv-and-sexual-health/living-well-hiv/legal-issues/how-law-works>

- **Offences Against the Person Act 1861, Section 20 (Access Date: 31/01/21)**

<https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20#:~:text=N.I.->

[,Whosoever%20shall%20unlawfully%20and%20maliciously%20wound%20or%20inflict%20any%20grievous,term%20not%20exceeding%207%20years.%5D](https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20#:~:text=N.I.-,Whosoever%20shall%20unlawfully%20and%20maliciously%20wound%20or%20inflict%20any%20grievous,term%20not%20exceeding%207%20years.%5D)

- **Offences Against the Person Act 1861, Section 18 (Access Date: 31/01/21)**

<https://www.legislation.gov.uk/ukpga/Vict/24->

[25/100/section/18/enacted#:~:text=18Whosoever%20shall%20unlawfully%20and,aforsaid%2C%20to%20maim%2C%20disfigure%2C](https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/18/enacted#:~:text=18Whosoever%20shall%20unlawfully%20and,aforsaid%2C%20to%20maim%2C%20disfigure%2C)

