

# Exam Notes

- **S7 CC** – Offender may be prosecuted under the Code or other statute. Not both.
- **Actus Reus** ['guilty acts'] = physical acts or omissions constituting an offence.
- **Mens Rea** ['guilty mind'] = the mental elements/state of mind necessary to constitute an offence.
- **S22 CC** – Ignorance of the law is not an excuse (unless knowledge is an element).

## PARTIES TO OFFENCES

**S7 (1)** Following may be charged with committing an offence:

- Executor** of offence = does act
- Enabler** = not physically present at time of offence
- Aider** = physically present and does something to help commission
- Counsellor/procurer**

**R v Beck:** (raped 12 year old) aider cannot = an act which unwittingly provides assistance.

- **voluntary and deliberate presence** during commission of offence **without opposition** or real dissent can = wilful encouragement or aiding.

**S8** – one or more people can = principle offenders. OBJECTIVE TEST BRD.

## DOUBLE JEOPARDY

**S16 CC:**

- **Cannot be twice punished** for the same act/omission
- can be convicted for two offences arising out of the same punishment but cannot be punished for both **(except homicide offences)**.

**S17 CC**

- **defence of autrefois convict** = accused previously tried and convicted for that offence
- **defence of autrefois acquit** = accused previously tried and acquitted

## ONUS

– Crown has evidential burden to prove BRD **Thomas**. **Unless** statute places burden on accused = DE FACTO BURDEN (**s26 CC** presumption of sanity until the contrary is proven).

## CAPACITY

- **S29** Immature age
  - (1) under 10 – not criminally responsible (=CR)
  - (2) under 14 – not CR unless it is proven that they had capacity to know the act/omission was wrong.
- **S27 (1)** mental disease/natural infirmity deprived accused of capacity not CR
- **S23 (1)(a)** Independence of will – not CR

## STATE OF MIND

- **R v Reid:** intention = purpose or design - actions are designed to bring about the result

**NON-FATAL OFFENCES – WHERE ASSAULT IS AN ELEMENT CH 30 CC**

## COMMON ASSAULT (245 – definition, 335 – makes an offence)

- (1) **Unlawfully** : no lawful justification/excuse/authorisation
- (2) **assaults** = **misdemeanor** = **3 years**. Assault could be limb 1 or two:

### Assault: limb 1 = battery at common law **ACTUAL FORCE**

#### 1. Application of force

- **S245 (2)** – force = anything that if applied to a degree to cause injury or discomfort. Therefore, heat, light, electrical force, gas and odour are also included.
- **McIver** – Intention is not an element.

#### 2. Directly or indirectly

**Croft v Blair** indirect = dog

#### 3. Without consent (QOA as no definition in code)

- Everyday contact (non-violent)= implied consent **Kimmerley v Atherton**
- **Lergesner v Carroll** – (police fighting in a pub) level of force that can be consented to is force that does not exceed what was impliedly agreed upon. E.g. consent to fist fight, but not glassing.
- **McNamara v Duncan** – anything beyond the force that cannot be reasonably accepted in the sport = assault

### Assault: limb 2 = assault at common law **THREAT**

#### 1. Attempts/threatens to apply force

- Intention is required. **S4 ; Hall v Fonceca**. Must intend to threaten, not intent to carry out threat.

#### 2. By bodily act or gesture

- Words without bodily gesture is insufficient **Fogden v Wade**
- Word + bodily act = threat **Dale**
- Bodily act = must be related to threatened act **Agius** (accused goes into shop, gives note saying 'give me X and no one gets hurt' – not a gesture)
- Threats may be conditional if threat is not empty – so it can be carried out (do this or I'll hit you)= **Samuels**

#### 3. With actual or apparent present ability to effect purpose

- Actual = Victim's knowledge not relevant but must have capacity to carry out the threat
- Apparent = knowledge is relevant. Must appear that they have the capacity on reasonable grounds (can't be a joke) **Everingham**
- Victim must be **aware** of the threat **Dale** but need not be **afraid** **Brady v Schatzel**
- **Present ability** = determine time of threat and when they said the threat would be carried out. Present ability determined when threat was going to be carried out. **Secretary (woman shot abusive husband)**

#### 4. Without consent – SAME AS LIMB ONE.

## ASSAULTS OCCASIONING BODILY HARM (339)

(1) **Unlawfully**: no lawful justification/excuse/authorisation

(2) **assaults – limb 1**

1. Application of force
2. Indirect / direct
3. Without consent

- Can consent to AOBH – QOA as to degree of violence agreed to **Carroll** – what parties agreed to vs what happened

**(3) resulting in bodily harm to another = crime = 7 years.**

- Bodily harm = interferes with health or comfort **s1 CC**
- Must be identifiable bodily injury (BI) **Carroll**
- Mere sensation of pain does not = bodily injury **Scratchard**, continuing injury = BI **Campbell**

Common assault is an alternative verdict **575**

**SERIOUS ASSAULTS (340) – aggravating circumstances**

Including, the assault of:

- a police officer: **s 340(1)(b)** – **14 years** if they bite/spit/cause bodily harm/is or pretends to be armed
- a person ≥ 60 years: **s 340(1)(g)**
- a person who relies on a guide, hearing or assistance dog, wheelchair etc: **s 340(1)(h)**

**Crime = 7 years.**

**NON-FATAL OFFENCES – NO ASSAULT ELEMENT CH 29 CC**

**Provocation does not apply Kaporonovski. Victim cannot consent to these offences.**

**GRIEVOUS BODILY HARM (320)**

**(1) Unlawfully:** no lawful justification/excuse/authorisation

**(2) does**

- **Intention** to cause particular harm not an element
- Direct action or omission can apply **Clark** – therefore can ‘do’ GBH by direct act OR failure to perform duty in **S285-290**

**(3) GBH = crime = 14 years.**

- **S1 GBH:**
  - (a) the loss of a distinct part of an organ of the body; or
  - (b) serious disfigurement; or
  - (c) Any BI that, if left untreated, would endanger/likely endanger life, or cause/likely cause permanent injury regardless of possible treatment available.
- medical treatment not relevant – look at the time the injury occurred and what treatment was **needed**, rather than what treatment was given **Lobston; Tranby** (cosmetic surgery for ear bitten off)
- GBH does not need to be permanent
- GBH includes disease **Clarence; Reid**,
- **Likely = Crossman:** substantial/real chance as distinct from a mere ‘possibility’