

Criminal Law Notes

Assault

- Is defined by common law in *Fagan v Commissioner of Metropolitan Police*

DEFINITION OF ASSAULT (*Fagan v Commissioner of Metropolitan Police*)

James J:

- “An assault is any act which intentionally – or possibly recklessly – causes another person to apprehend immediate and unlawful personal violence”.
- Any act (not an omission) which directly and intentionally or recklessly causes another person to apprehend immediate and non-consensual (for example violent or offensive) contact.
- “Assault is generally synonymous with the term ‘battery’ and is a term used to mean the actual intended use of unlawful force to another person without his consent”.

- Penalty for common assault is defined in **s61 of the Crimes Act:**

Crimes Act 1900 (NSW) s61 – Common assault prosecuted by indictment

‘Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years’

*Note, This section does not provide a definition

- There are FOUR types of assaults → Hierarchy
 - Common Assault (LEAST SERIOUS) → s61 of the Crimes Act**
 - i.e. touching someone or grabbing a handbag or threatening words
 - Assault Occasioning actual bodily harm (AOABH) → s59**
 - Often during bar fights:
 - Pushing/grabbing hair
 - Recklessly causing grievous bodily harm or wounding → s35**
 - Difference between ACTUAL bodily harm and GREVIOUS bodily harm is ‘use of a weapon or some form of serious injury’
 - Wound or inflict GBH with intent to do GBH (VERY SERIOUS) → s33**
 - Wounding (often with a weapon e.g. stilettos, knives, ropes, bow and arrow etc.)

Assault Occasioning Actual Bodily Harm

- In **R v Williams** the court held that in cases of assault occasioning in actual bodily harm, there is no obligation to prove an intention. If the assault (Battery) took place and actual bodily harm was the consequence, the offence was made out without the need to establish any fault element other than the necessary intent, or foresight, for common assault.

- **What is Actual Bodily Harm?**

- 'Bodily Harm' is to be given its ordinary meaning – and includes any hurt or injury calculated to interfere with the health or comfort of the victim, it must be more than merely transient or trifling, but it doesn't have to be permanent (**R v Donovan**)
- A clinically identifiable psychiatric condition is a form of actual bodily harm e.g. anxiety disorder (**ChanFook**)

Crimes Act 1900 (NSW) s 59 – Assault occasioning actual bodily harm

(1) Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to imprisonment for five years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

Grievous bodily harm

- Grievous bodily harm is bodily injury of a really serious kind (**DPP v Smith**)
- The killing of the foetus can amount to the infliction of grievous bodily harm upon the mother (**R v King**)

Crimes Act 1900 s 4 → DEFINITION

"Grievous bodily harm" includes:

- (a) The destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm, and
- (b) Any permanent or serious disfiguring of the person, and
- (c) Any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease).

CRIMES ACT 1900 s 54 - Causing Grievous Bodily Harm → PENTALTIES

Whosoever by any unlawful or negligent act, or omission, causes grievous bodily harm to any person, shall be liable to imprisonment for two years.

TYPES OF GRIEVOUS BODILY HARM:

Sexual Disease:

- In NSW it is considered grievous bodily harm to infect another with a grievous bodily disease (Crimes Act s4) Further, it is an offence to intentionally or recklessly infect another person with a disease (Crimes Act s33 and s35)

Wounding

- Wounding is an injury involving the breaking or cutting of the interior layer of the skin (dermis) and the breaking of the outer layer (epidermis) is not sufficient. **(R v Shephard)**
- A wound may be inflicted by a fist. No instrument or weapon need be used. However this is wounding only in the most technical sense. **(R v Bullock)**

Reckless grievous bodily harm or wounding

CRIMES ACT 1900 s 35 - Reckless grievous bodily harm or wounding

(1) **Reckless grievous bodily harm-in company** A person who, in the company of another person or persons, recklessly causes grievous bodily harm to any person is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

(2) **Reckless grievous bodily harm** A person who recklessly causes grievous bodily harm to any person is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) **Reckless wounding-in company** A person who, in the company of another person or persons, recklessly wounds any person is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(4) **Reckless wounding** A person who recklessly wounds any person is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

Wounding of Grievous Bodily Harm with Intent

CRIMES ACT 1900 s 33 - Wounding or grievous bodily harm with intent

(1) Intent to cause grievous bodily harm

A person who:

- (a) wounds any person, or
- (b) causes grievous bodily harm to any person,

with intent to cause grievous bodily harm to that or any other person is guilty of an offence.
Maximum penalty: Imprisonment for 25 years.

(2) Intent to resist arrest A person who:

- (a) wounds any person, or
- (b) causes grievous bodily harm to any person, with intent to resist or prevent his or her (or another person's) lawful arrest or detention is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

(3) Alternative verdict If on the trial of a person charged with an offence against this section the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 35, the jury may acquit the person of the offence charged and find the person guilty of an offence against section 35. The person is liable to punishment accordingly.