

Assault-based offences	Injury-based Offences
Common Assault: s 335 AOBH: s 339 Serious Assaults: s 340 Sexual Assaults: s 352	Negligently causing BH: s 328 Wounding: s 323 Unlawfully Causing GBH: s 320 Torture: s 320A Offences with Specific Intent: s315- 317

Assault

245 : LIMB 1- Assault w/ application of force

- CANT CHARGE UNDER S245

ELEMENTS

1. 'APPLIES FORCE' OF ANY KIND: def. = **s245 (2)** applying heat, light, electrical force, gas, odour, or any other substance of thing whatever if applied in such a degree to cause injury or discomfort. *McIver*
 2. DIRECTLY OR INDIRECTLY through a 3rd party, agent, device, instrument; e.g. encouraging a dog to attack *Croft v Blair*
 3. W/O CONSENT or w/o consent obtained by fraud
 - Implied consent to some degree *Boughey;Ferguson*
 - Level of force consented to *Lergsener v Carrol*
 - Consent in Sport *McMara v Duncan*
- *Look at what was agreed -> then look at what actually happened/arisen from the event*
- DEFENCE: s 24(1):** honest+ reasonable belief+ mistaken belief of consent *Lergsener v Carrol*
- No requirement of intention
- s246 (1):**An assault is **Unlawful** and constitutes an offence unless it's authorised or justified or excused by law
- For Example**
- Authorised** – a policeman in execution oh his duty
- Justified** – would be self defense
- Excused** – would be the defense of accident

S245: LIMB 2 – without application of force

ELEMENTS

1. ATTEMPTS/THREATENS TO APPLY FORCE
 - s4** Intent is required *Hall v Foneca*
2. BODILY ACT OR GESTURE
 - Words alone not enough BUT words/threats may be what gives a bodily movement character of a threatening act or gesture *Hall v Foneca* e.g. words + clenched fists, or moving hand w/o words = threatening action for assault *Dale*
 - Couldn't be assault by threat w/o victim being aware threat was made

-Threatening w note is not assault *R v Aguis*
 -Conditional threat –would be met to stop act from happening
Roza v Samuels

3. ACTUAL OR APPARENT PRESENT ABILITY TO EFFECT PURPOSE *Brady v Schatzel*

-Victim's knowledge NOT relevant here
ACTUAL: real gun (loaded) capable of going damage
APPARENT: present ability (toy gun) *Everingham*
Victims State of Mind; victim must be aware of the threat; victim doesn't need to be in fear *Bradey v Schatzel*
Present: Doesn't always mean apprehension of immediate personal violence
 -W/ future violence, it is relevant that there is an actual/apparent ability to carry out that threat at the future time *Secretary* e.g. 'I will kill you in the morning' was an assault to justify SD, D was under belief accused had ability to carry act out
 -Intention is implied bc attempted and threats to assault presuppose an intention(cant threaten by accident) *Hall v Foneca* – certain state of mind -> achieve result

4. W/O CONSENT

'Same as Limb 1'
DEFENCE: s 24(1): honest+ reasonable belief+ mistaken belief of consent *Lergsener v Carrol*
s246 (1):An assault is **Unlawful** and constitutes an offence unless it's authorised or justified or excused by law

COMMON ASSAULT

S335: Any person who unlawfully assaults another is guilty of a **COMMON ASSAULT**, and is liable to 3yrs in prison

- **No** bodily injury + **No** aggravating features (e.g: scratching, spitting, slapping)
- Satisfy def. of assault (usually Limb 2) + def. of unlawful assault (246)

ASSAULT OCCASSIONING BODILY HARM

S339: Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of **ASSAULT OCCASSIONING BODILY HARM**. Max; 7 years

- **Aggravating features;** armed, pretending to be armed, or was in company – 10yrs imprisonment
- **S1:Bodily Harm:** any bodily injury which interferes with health or comfort *Lergsener v Carrol*

- No temporary sensation of pain like a headlock. Broken ribs is sufficient. Need an indentifiable, vsiable infliction of pain and discomfort *Campbell*
- Consent to AOBH is possible – question of fact – what degree of violence was consented to *Lergsener v Carrol*

SERIOUS ASSAULT

S340: Serious Assault: assaults another w/ intent to commit a crime: assault, resist or willfully obstruct a police officer acting in the execution of the officer's duty; assault on a person aged 60+ etc. is guilty of a crime, and is liable to imprisonment for 7yrs.

OFFENCES ENDANGERING LIFE/HEALTH

Chapter 29 CC – Offences defined by seriousness of consequences

-Assault is NOT an element of the offence
 NOTE: Victim CANNOT consent to these offences
S 268/9-provocation defense does **NOT** apply
Kaporonovski

GREVIOUS BODIL Y HARM (GBH)

S320 (1):Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 years.

ELEMENTS

1. UNLAWFULLY
2. DOES
3. GBH

S1 Def. GBH means-

- A) the loss of distinct part of an organ of the body; or
- B) serious disfigurement; or
- C) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

Whether or not treatment is or could have been available. *Lobston*

- "Disease" as "bodily injury" for s 320 GBH *Clarence*
- Intent to cause particular harm is not an element
- But, causation must be proved
- Can "do" GBH by direct act OR by failure to perform a duty: **ss 285-290** *Clark*

UNLAWFUL WOUNDING

S323- 7 years imprisonment

ELEMENTS:

1. WOUNDS ANOTHER
2. UNLAWFULLY

- Wound requires breaking of the true skin Bleeding

Devine; Eisenhower; Jervis

TOURTURE

S320A – 14yrs. Definitions in **s 320A(2)**:

ELEMENTS:

1. INFLICT SEVERE PAIN OR SUFFERING ON ANOTHER PERSON
2. INTENTIONALLY
3. BY AN ACT OR SERIES OF ACTS ON ONE OCCASION OR MORE THAN ONE OCCASION

“pain or suffering” includes:

- physical, mental, psychological or emotional pain or suffering; whether temporary or permanent: **s 320A(2)**

Geddes; Griffin; Ping

OFFENCES WITH SPECIFIC INTENT

S315-317

317: Acts intended to cause GBH and other malicious acts; requires-

- 1) one of the relevant intents *Zaburoni*
- 2) one of the relevant actions:

“Maim” = deprive a person of a use of some member, to mutilate or cripple: *Woodward*

s 317(f): “striking” (baseball bat) *R v Brannigan and Green*

s 317(b) - “transmit a serious disease” – def. **s 1. Reid**

NEGLIGENCE CAUSING BODILY HARM

S 328 – 2 years

ELEMENTS

1. DOES AN ACT OR OMITTED TO ACT WHERE A DUTY TO ACT
2. CAUSED BODILY HARM – S 1 DEFINITION
3. UNLAWFULLY

s 285-290: Duties

DOMESTIC VIOLENCE

UNLAWFUL STRIKING

HOMICIDE

S291 Unlawful Killing

It is unlawful to kill any person unless such killing is authorised or justified or excused by law

ELEMENTS

1. PERSON
2. KILLS
3. UNLESS AUTHORISED, JUSTIFIED OR EXCUSED

293 Definition of Killing

Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

- **Death**: Death may also be presumed on the basis of circumstantial evidence. Brain-dead *Kinash*

s300 Unlawful Homicide

Any person who unlawfully kills another is guilty of a crime, which is called murder or manslaughter, according to the circumstances of the case.

1. A PERSON

S292 When a child becomes a human being

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

s313 Killing an unborn child

- Makes it a crime to kill an unborn child, including via an assault on a pregnant woman.

s282 - provides some defence to this crime involving operations to save the mother's life.

- But to constitute homicide death must occur after birth, though the acts or omissions causing death may occur before birth: *Castles; Martin*

s284 Consent to death immaterial

Cannot consent to your own death – other person may still be criminally liable

KILLING - CAUSATION

KILLS

s.293 Definition of Killing - any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

TEST FOR CAUSATION

1. The ‘but for’ test *R v Smith; R v Jordan; R v Hallet*

Royall v The Queen (1990) 172 CLR 378

*Confirmed in *Sherrington*

The common sense/natural consequences test: Just tell jury to use common sense. Was it a cause as a matter of fact and should it be enough for us to hold the accused responsible? *Smith*

The reasonable foreseeability test: Has some appeal but we have specific provisions in the Code about the criminal responsibility of people doing dangerous things (Ch 27 – Duties relating to preservation of human life **s285-90** and Ch 29 – Offences endangering life or health **s315-334**). And we have an accident defence to cover this (**s.23**)

The substantial contribution test: The wrongful act or omission must be an **[operating] cause and a substantial cause** - need not be the sole or even main cause. Followed in many other cases. This test was adopted in Qld – *R v Sherrington*

NOVUS ACTUS INTERVENIENS

- Intervening act that breaks chain of causation. Later actor is responsible but the act must be ‘free, independent act’ *Padgett*

Irrational Behavior by Victim

The wrongful act must induce a well founded apprehension (of physical harm from the accused) in the victim

As a result of that apprehension a natural consequence will be that the victim seeks to escape
In escaping they die - the fatal injury caused by the act of escaping

Reaction must not have been unreasonable or disproportionate having regard to the wrongful act (i.e. a reaction not foreseeable by an ordinary person).

If the reaction was foreseen or intended by the accused then the test is satisfied and the chain is not broken - **note**: an unreasonable reaction which was nevertheless foreseeable or intended by the accused doesn't break the chain.

TC: It is apparent from the facts that [victim] died as a result of [cause]. [Victim] wouldn't have died 'but for' [action/injury/contribution]. [D] is the cause of the victim's death * If causation is a live issue, consider fully (i.e. provisions, elements, etc.). Use substantial contribution test.

Prosecution bears the persuasive burden of proving the D's guilt "**beyond reasonable doubt**" and disproving the defense

295 Causing death by threats A person who, by threats/intimidation/deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed the other person. [*Royall*] - Only applies when someone dies - More facts may be req'd if there's an intervening act (e.g. car accident - was the driver driving negligently? Intoxicated?)

298 Injuries causing death in consequence of subsequent treatment When a person does GBH to another, and such other person has recourse to surgical or medical treatment, and death results either from the injury or the treatment, the person is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment, provided that the treatment was reasonably proper under the circumstances, and was applied in good faith. [*Cook*]

296 Acceleration of death It is immaterial if a person is already dying from a disease or another cause and you

make an act or omission that accelerates the death. Still deemed to have killed that person,

Eggshell Skull Rule - *Blaue*

CASE SUMMARIES

Royal v The Queen - victim attempted to escape from accused and jumped out of window to her death; death by threat/intimidation, [D] caused death as he substantially contributed to death *Blaue* - Jehovah's witness stabbed and died because of refusal of blood transfusion - this didn't break the chain of causation

R v Paggett - causation doesn't require that the accused acts have to be the sole or main cause of death, but they must have contributed significantly to that result *Levy* - incorrect medical treatment provided in an emergency situation where there is no opportunity to make a thorough assessment might not suggest negligent treatment; patient suffering stab wounds, treated w/ drugs, contracted an infection and died

R v Hallett - [D] fought deceased, left him unconscious at end of beach and victim died from drowning (operative cause); initial injury doesn't have to be operative cause of death

Krakouer v WA - victim beaten by [D] and another person; found substantial contribution by blows that caused death; It's enough to satisfy the requirement of causation if the act of the accused makes significant contribution to death of the victim, whether by accelerating the victim's death or otherwise, and that it's for the jury to decide whether or not the connection is sufficient substantial

R v Thomas - man convicted of manslaughter because allowed unlicensed driver to drive car; passenger contributed to car crash and was intervening act that broke chain of causation

MURDER

ELEMENTS s302(1)(a) INTENTIONAL MURDER

1.ANY PERSON WHO UNLAWFULLY KILLS (S293 + S291)

Requires intention to cause death, or GBH

s.1 def. any injury: endangering life or likely to cause permanent injury to health includes permanent disfigurement loss of part of body or organ of body.
- So if there is causation and an intention to inflict one of these injuries in the definition of GBH to some person (and someone actually dies as a result of that intention) - there is a murder under the Code.)

2. INTENTION TO CAUSE DEATH OR GBH TO ANOTHER PERSON *Reid; Zaburoni*

Form of intention satisfy 302(1)(a)

1. **Purpose intention:** Where the intention is the whole reason for the accused's actions. *Willmot (No.2)*.
 - This kind of intention is the only kind that will ground a charge on intentional murder under the Code
2. **Knowledge Intention- Indirect Intention**
 - If a person does something that is **vertically certain** to result in another event occurring and knows that that other event is certain or vertically certain to occur, he/she intends it to occur *R v Crabbe*
 - Little short of overwhelming *Maloney*

ASK: How vertically certain was the consequence which resulted from D's voluntary act? 2) Did D foresee that consequence? *Woolin*

DEFENCE: s28(3) PROVOCATION + SELF DEFENCE

ELEMENTS s302(1)(b) DANGEROUS ACTS KILLING

An unlawful killing will be murder if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life

s302(3) It is immaterial that the offender did not intend to hurt the particular person who was killed
- Unintentional killing will nevertheless be murder

1.UNLAWFULLY KILLS (S293 + S291)

2. DANGEROUS ACT - likely to endanger human life
Determined objectively - *Gould and Barnes*