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## Topic 5 – Non-fatal, Non-sexual offences against the person

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*Examine how the criminal law deals with some common harms against the person and cover the elements of several non-fatal, non-sexual offences against the person. Some of these offences such as assault, are common law offences while others – such as causing injury offences – are found in the Crimes Act. We will also briefly examine how tort law responds to personal injury.*

### Overview of criminal law framework

- Mixture of common law and statute

#### 5.1: Common Law (CL) Assault

##### Common Assault (CL)

- 'Common assault' = generic/umbrella term for:
  - Assault in the strict sense (creating an apprehension in the victim that immediate and unlawful violence/force will be applied against them
- Or
- Battery: actual application of unlawful violence/force against the victim
  - S.23 Summary Offences Act + s.320 Crimes Act

##### Definition of assault (CL)

- *Fagan* [1968]: assault is 'intentionally – or possibly recklessly – (causing) another person to apprehend immediate and unlawful personal violence.' – synonymous with the term 'battery'
- *Ireland* [1997]: two forms of assault:
  1. Battery
  2. An act causing the victim to apprehend an imminent application of force

AR of Assault	MR of Assault
<ul style="list-style-type: none"><li>• Non-physical interference = 'apprehension of immediate application of force'</li></ul>	<ul style="list-style-type: none"><li>• Intention to create an apprehension of immediate and unlawful physical contact (<i>Fagan</i> [1968])</li><li><u>Or</u></li><li>• Foresight of the probability of creating an apprehension of immediate and unlawful physical contact (<i>Campbell</i> [1997])</li></ul>

AR of <i>battery</i> (physical contact)	MR of <i>battery</i>
<ul style="list-style-type: none"> <li>Physical interference = actual application of force to V's body</li> </ul>	<ul style="list-style-type: none"> <li>Intention to make unlawful physical contact (<i>Fagan</i> [1968]) Or</li> <li>Foresight of the probability of making unlawful physical contact (<i>Campbell</i> [1997])</li> </ul>

Common Law assault – unlawfulness/avoiding criminality?
<ul style="list-style-type: none"> <li>There are various ways of avoiding criminal liability for prima facie looks like an assault: <ul style="list-style-type: none"> <li>- Self-defence</li> <li>- Correction of children</li> <li>- Consent</li> <li>- Lawful arrest</li> </ul> </li> </ul>

## 5.2: Statutory Offences Against the Person (*Crimes Act 1958*)

### OUTLINE:

- Offences involving the causing of injury (ss. 16,17,18,24 CA)
- Offences involving threats of causing injury (ss.20,21 CA)
- Selected other non-fatal offences against the person:
  - Endangerment (ss. 22-23 CA)
  - Stalking (s.21A CA)
  - (FGM s. 32, 34, 34A)

Offences Causing Injury
<p><u>Crimes Act:</u></p> <ul style="list-style-type: none"> <li>• <u>S.16:</u> without lawful excuse, <i>intentionally causing serious injury</i> to another person (20 years)</li> <li>• <u>S.17:</u> without lawful excuse, <i>recklessly causing serious injury</i> to another person (15 years)</li> <li>• <u>S.18:</u> without lawful excuse, <i>intentionally or recklessly causing injury</i> to another person (10 years for intentional; 5 years for recklessness)</li> <li>• <u>S.24:</u> <i>negligently</i> doing or omitting to do an act causing <i>serious injury</i> to another person (10 years)</li> </ul>

**Focused Criminal Element: Actus Reus (AR)**

Causing

- P must prove that D caused the consequence (e.g. V's injury)

Injury

- Definition – s.15 – '(a) physical injury; or (b) harm to mental health – whether temporary or permanent'

Serious injury

- Definition – s.15 (a) – 'endangers life, or is substantial and protracted'
- S.15 (b) – Destruction of the foetus (except a medical procedure) of a pregnant woman (regardless of whether the woman suffers any harm)

**Focused Criminal Element: Mens Rea (MR)**

- Intention

- S.16: intention to cause serious injury
- S.18: intention to cause injury

- Recklessness

- S.17 – foresight that serious injury will probably occur
- S.18 – foresight that injury will probably occur

- Negligence

- Negligence is an exceptional MR element for offences against the person; requires a breach of duty of care
- S.24 – breach must involve 'such a great falling short of the standard of care which a reasonable person would have exercised, and which involved such a high risk that [serious injury] would follow that the doing of the act merits criminal punishment

**(+ no defence – 'without lawful excuse')**

**Offences Involving Threats**

**Crimes Act:**

- S.20: without lawful excuse, *intentionally or recklessly* making to another person a *threat to kill* that person or another person (10 years)
- S.21: without lawful excuse, *intentionally or recklessly* making to another person a *threat to inflict serious injury* on that person or another person (5 years)

**Focused Criminal Element: Actus Reus**

Make a threat to kill or inflict serious injury

- By words or conduct or both – objective
- No need to address to V or for apprehension

### **Focused Criminal Element: *Mens Rea***

#### **Intention**

- S.20 (a) – intention that the other person would expect the threat to kill would be carried out
- S.21 (a) – intention that the other person would expect that the threat to inflict serious injury would be carried out

#### **Recklessness**

- S.20 (b) – foresight that V would probably fear the threat to inflict serious injury would be carried out

#### **Negligence**

- Negligence is an exceptional MR element for offences against the person; requires a breach of duty of care
- S.24 – breach must involve ‘such a great falling short of the standard of care which a reasonable person would have exercised, and which involved such a high risk that [serious injury] would follow that the doing of the act merits criminal punishment

**(+ no defence – ‘without lawful excuse’)**

### **Selected Other Offences Against the Person (Crimes Act)**

#### **Crimes Act**

- *Endangerment*
  - S.22: reckless endangerment (danger of death) (10 years)
  - S.23: reckless endangerment (danger of serious injury) (5 years)
- s.21A: *Stalking* (5 years)

#### **Endangerment**

- s.22: without lawful excuse, recklessly engaging in conduct that places or may place another person in danger of death
- s.23: without lawful excuse, recklessly engaging in conduct that places or may place another person in danger of serious injury
- AR:
  - Voluntary conduct which placed V in relevant danger
- MR:
  - A reasonable person would have realised placed another in danger (objective)
  - AND
  - Recklessness (D foresaw consequence as a probability)

### Stalking

- AR:
  - Engaging in a prescribed course of conduct
  - Various actions (E.G. following)
- MR:
  - Intention to cause physical or mental harm to victim, or arouse fear
  - Imputed intention (s.21(3)) – knows likely to cause such harm + ‘ought to have understood’

### **‘Without lawful excuse’?**

- There are various ways of avoiding criminal responsibility for what looks, prima facie, like an assault or OAP, e.g.
  - Acting to execute a lawful arrest
  - Acting in self-defence, or out of necessity
  - Acting in correction of children
  - Acting with the victims consent

### **5.3: The ‘defence’ of consent**

#### **The ‘defence’ of consent**

- Freely given consent is taken to remove liability for common or basic assault (unlawfulness)
- Consent may be express or implied
- Consent, however, not usually a defence to an aggravated assault – except when good reason -> specific instances that warranted ‘in the public interest’ (Brown [1994])

#### **Consent: specific instances**

- Personal adornment (e.g. branding and piercing; sado-masochism)
- Surgical intervention – ‘legitimate medical interventions’ – Female genital mutilation? -> NO (ss.32-34A CA)
- Contact sports (e.g. boxing) – *Pollante* [1976] -> Acceptance of inherent risks

### **5.4:**

### Comparing the civil law response

- Assault and battery are both criminal offences under criminal law and causes of action in the law of torts
- Civil law and crim law in this area both respond to the same harm and largely share the same definition

#### The Tort of Battery

- Positive voluntary act causing direct physical interference with the plaintiff (Scott v Shepherd)
- Threshold: beyond what is 'socially acceptable' or normal (Rixon v Star City [2001])

#### Tort of Assault

- Positive voluntary act (~battery)
- Causing plaintiff reasonably to apprehend immediate physical interference (Tuberville v Savage, Rosza v Samuels)

#### Defences to Civil Claims

- Even if a plaintiff has established the necessary elements for a cause of action in tort, the defendant will not be liable if s/he can establish a defence (e.g. Consent, unavoidable accident)

	LAW OF TORTS	CRIMINAL LAW
Wrong	Cause of action: Trespass to the person: assault and battery	Prosecution of offence: <ul style="list-style-type: none"> <li>• Common law assault</li> <li>• Offences against the person (Crimes Act)</li> </ul>
Parties	Plaintiff and Defendant	Prosecutor (the Crown) and Defendant/the Accused
Burden of Proof	Cause of action: Plaintiff Defences: Def.	Elements of offence: Pros/Crown Defences: Raised by Def; negated by Pros.
Standard of Proof	Balance of Probabilities (BoP)	Beyond Reasonable Doubt (BRD)
Proceedings	Civil action – plaintiff-driven	Criminal trial – Police/DPP on behalf of State decide which offences to prosecute
Outcome	Judgment for OR against the Pl.	Conviction OR acquittal

Order	Remedy (damages)	Conviction is followed by sentence
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