

# SAMPLE

## CATEGORIES OF CRIMINAL OFFENCES

Formats of criminal liability: Criminal offences can be categorised based on the nature of the MR's significance to the offence. The following categories were clarified in He Kaw Teh (1985) 157 CLR 523:

- Standard criminal structure: **AR + MR – D = CL**  
A standard criminal offence has an AR and MR component. The duty is on the P to prove both. An honest and genuine but not necessarily reasonable mistake is a "defence". (DPP v Morgan [1976] AC 182).
- Strict liability: **AR + MR – D(HRMF) = CL**  
Strict liability is the middle ground between standard and absolute liability. Where strict liability operates, MR is presumed to be satisfied and there is no obligation on the prosecution to prove it. The evidentiary burden is on the D to raise evidence of an honest and reasonable mistake of fact ("defence") in order to enliven the issue of MR. If the D satisfies the evidentiary burden, the burden is shifted to P to disprove the existence of the honest and reasonable mistake of fact.
- Absolute liability: **AR – D = CL**  
Absolute liability has no mens rea element and criminal liability arises provided that the actus reus has been satisfied in the absence of a valid defence. This typically involves regulatory offences, offences that strive to maintain a functioning society. In contrast, moral offences are those justified by moral values and culpability.  
Example: speeding.

## HONEST AND REASONABLE MISTAKE OF FACT

To establish the "defence" of honest and reasonable mistake of fact, the accused must have made an honest mistake based on reasonable grounds about an issue of fact that, if true, would have rendered the D's act to be innocent (**He Kaw Teh (1985) 157 CLR 523**).

- Honest mistake: The mistake must have been genuine and the accused must have actually turned their mind to and contemplated the question of fact. Merely making an assumption or ignoring a question of fact does not constitute an honest mistake (subjective consideration).
- Reasonable grounds: the mistake must be based on reasonable grounds (objective consideration).
- Issue of fact: The mistake must be about an issue of fact, something that can be determined by the senses. A mistake of law is insufficient (See also **Strathfield Municipal Council v Elvy (1992) 25 NSWLR 745**).
- Innocent: The act would have, but for the mistake, been criminally innocent, though it may still be liable in other areas of law such as civil law.

The D has an evidentiary burden to prove all of above considerations. Once this burden is satisfied, the burden is shifted to the prosecutor to prove BRD that one or more of the above factors are not satisfied.

## COMMON ASSAULT

Elements of assault are derived from the common law in cases such as **Fagan v Metropolitan Police Commissioner [1969] 1 QB 439 at 444**, **Barton v Armstrong [1969] 2 NSWLR 451** and **Knight (1988) 35 A Crim R 314**:

AR: Application of unlawful force on another person OR the creating of apprehension in another person of immediate unlawful force.

MR: Intention or subjective recklessness in performing the act or creating the apprehension of force.

Penalty: Liable to 2 years imprisonment (**CA s 61**).

Aggravated assaults are subject to higher punishments (see below).

## AGGRAVATED ASSAULT OFFENCES

### Assault occasioning ABH (CA s 59)

AR: AR of assault + causing ABH (**CA s 59(1)**).

MR: MR of assault (intention or subjective recklessness).

Penalty: Liable to 5 years imprisonment (**CA s 59(1)**).

- If committed in the company of another person(s) = 7 years (**CA s 59(2)**).

### Causing GBH (CA s 54)

AR: An act/omission that causes GBH to any person (**CA s 54**).

MR: Intent to perform the unlawful act or negligence (**CA s 54**).

Penalty: Liable to 2 years imprisonment (**CA s 54**).

### Reckless GBH or wounding (CA s 35)

Actus Reus	Mens Rea	Penalty
Causing GBH to any person in the company of another person(s) <b>(CA s 35(1)(a))</b>	Reckless so as to causing ABH <b>(CA s 35(1)(b))</b>	14 years <b>(CA s 35(1))</b>
Causing GBH to any person <b>(CA s 35(2)(a))</b>	Reckless so as to causing ABH <b>(CA s 35(2)(b))</b>	10 years <b>(CA s 35(2))</b>
Wounding of a person in the company of another person(s) <b>(CA s 35(3)(a))</b>	Reckless so as to causing ABH <b>(CA s 35(3)(b))</b>	10 years <b>(CA s 35(3))</b>
Wounding of a person <b>(CA s 35(4)(a))</b>	Reckless so as to causing ABH <b>(CA s 35(4)(b))</b>	7 years <b>(CA s 35(4))</b>

Alternate verdicts: A jury may acquit a D charged under a s 35 offence but find them guilty of an offence under a different subsection of s 35 (**CA s 35(5)**).

### Wounding or GBH with intent (CA s 33)

AR: Wounding or causing GBH on another person (**CA s 33(1)**).

MR: Intent to cause GBH (**CA s 33(1)**); or intent to resist or prevent (their or someone else's) lawful arrest or detention (**CA s 33(2)**).

Penalty: 25 years imprisonment (**CA s 33(1)**)

Alternate verdicts: A jury may acquit a D charged with a section 33 offence but find them guilty of an offence under s 35 (**CA s 33(3)**).

## **AGGRAVATED ASSAULT OFFENCES (continued)**

### Assault against Police Officer (CA s 60)

AR: Assaulting, throwing a missile at, stalking, harassing or intimidating a police officer while in the execution of the officer's duty (**CA s 60(1)**).

MR: MR of assault (intention or subjective recklessness); and knowledge that the victim was a police officer (**CA s 60(1)**).

Penalty: Liable to 5 years imprisonment (**CA s 60(1)**).

- If during a public disorder: 7 years (**CA s 60(1A)**).
- If the assault occasions ABH: 7 years (**CA s 60(2)**).
- If the assault occasions ABH during a public disorder: 9 years (**CA s 60(2A)**).
- If the assault occasions GBH and the D is reckless as to causing ABH: 12 years (**CA s 60(3)**).
- If the assault occasions GBH during a public disorder and the D is reckless as to causing ABH: 14 years (**CA s 60(3A)**).

Other issues:

- Knowledge: Knowledge that the victim is a police officer is deemed to exist where the assault was committed recklessly or indifferently or without regard as to whether the victim was a police officer. The offence is effectively one of strict liability (**Reynhoudt (1962) 107 CLR 381**).
- Execution of duty: Execution of duty includes situations where the officer was off duty but the assault was carried out as a consequence of, or in retaliation for, actions undertaken by the officer in the execution of their duty; or because the officer is a police officer (**CA s 60(4)**).

### Assault with intent to commit a serious indictable offence on certain officers (CA s 58)

- Assaulting any person with intent to commit a serious indictable offence (punishable by 5 or more years **CA s 4(1)**); or assaults, resists or wilfully obstructs any officer while in the execution of their duty or any person in the aid of the officer; or assaults any person with intent to resist or prevent lawful apprehension of any person is liable to 5 years imprisonment (**CA s 58**).
- "Officer" = constable, peace officer, custom-house officer, prison officer or bailiff (**CA s 58**).

### Use or Possession of Weapon (CA s 33B)

AR: The use or attempt to use or threat to use an offensive weapon or instrument (**CA s 33B(1)(a)**); or the threat to injure any person or property (**CA s 33B(1)(b)**).

MR: Intent to commit an indictable offence; or intent to hinder lawful apprehension; or intent to hinder a police officer from investigating an act or circumstance (**CA s 33B(1)**).

Penalty: 12 years imprisonment (**CA s 33B(1)**).



## **AGGRAVATED ASSAULT OFFENCES (continued)**

### Assault at Schools

**CA s 60E(1):** A person who assaults, stalks, harasses or intimidates any school student or member of staff of a school while the student or member of staff is attending a school, although no actual bodily harm is occasioned, is liable to imprisonment for 5 years.

**CA s 60E(2):** A person who assaults a school student or member of staff of a school while the student or member of staff is attending a school and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.

**CA s 60E(3):** A person who by any means wounds or causes GBH to a school student or member of staff of a school while the student or member of staff is attending a school, and is reckless as to causing ABH to that person is liable to imprisonment for 12 years.

**CA s 60E(4):** A person who enters school premises with intent to commit an offence under another provision of this section is liable to imprisonment for 5 years.

## **PUBLIC DISORDER OFFENCES**

### Affray (CA s 93C)

AR: the use of or the threat to use unlawful violence towards another; and the conduct is such that would cause a person of reasonable firmness present at the scene to fear of their safety (**CA s 93C(1)**).

MR: Intention to use or threaten violence; or knowledge that the conduct may be violent or threaten violence (**CA s 93D(2)**).

Penalty: Liable for 10 years imprisonment (**CA s 93C(1)**).

### Riot (CA s 93B)

AR: the use of or the threat to use unlawful violence by 12 or more persons who are present together for a common purpose; and the conduct is such that would cause a person of reasonable firmness present at the scene to fear of their safety (**CA s 93B(1)**).

MR: Intention to use or threaten violence; or knowledge that the conduct may be violent or threaten violence (**CA s 93D(1)**).

Penalty: Each person using unlawful violence for the common purpose is liable for 15 years imprisonment (**CA s 93B(1)**).