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I. Assault

Common Assault

Section 61:

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

Overview: Crown to prove the following elements BRD (*Edwards v Police*)

No Physical contact

1. Actus Reas: an Act raising in the mind of the victim, the fear of immediate violence towards him or her, that is, the fear of any unlawful contact.
2. Mens Rea: Intention to produce that expectation in the victims mind.
3. Recklessness: Realises that the conduct is bringing about that state and persists, they foresaw the possibility.

Physical contact

1. Actus Reas: Application of force without consent.
2. Mens Rea: Intent to apply physical force.
3. Recklessness: Foresaw the risk of the application of force and went ahead anyway.

Actus Reas:

- Must be an act, can't be omission (*Fagan*).
- No requirement to negative consent (*Wilson*).
- Threats generally not enough (*Knight*), unless capable of creating fear of imminent violence (*Barton v Armstrong*).
- Can be a continuing fear while imprisoned, that is, relatively imminent violence (*Zanker v Vartzogos*).
- Fear can be unreasonable if the D knew of P's weakness (*McPherson*).
- Conditional threat can constitute assault if unlawful to impose (*Police v Greaves*).
- Spitting is battery (*DPP v JWH*).

Mens Rea:

- Recklessness: Foresight of possibility of physical contact or creating imminent fear (*Edward v Police*).
- Recklessness test is **SUBJECTIVE**, requires **actual knowledge**, **NOT** ought to have foreseen but **DID** foresee (*McPherson v Brown*).
- Actus Reas + Mens Rea must coincide (*Fagan*).
- IF act is continuing then Mens Rea does not need to be present when act began – can develop while act is continuing (*Fagan*).
- Can consent to minor assaults (*Brown*).

Assaults that Cause Injury

Assault Occasioning Actual Bodily Harm – Section 59:

- (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.

- Commit Assault or Battery (see above) + Victim suffers Actual Bodily Harm. But Less than GBH or Wounding (see below).
- **In the company of** – See below in aggravated sexual assault [page 6].

Actual Bodily Harm:

- “Bodily harm has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the victim. Such hurt need not be permanent, **but must be more than merely transient or trifling**” (*R v Donovan*).
- Can be psychiatric injury if it is very serious, however, must be more than merely transient emotions, feelings, and states of mind (*Chan-fook*), (*McIntyre*).

Assaults Causing Serious Injury

Causing Grievous Bodily Harm - Section 54: (Negligent)

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

Reckless Grievous Bodily Harm or Wounding – Section 35:

Defendant to **foresee possibility** that a **wound** or **actual bodily harm** might be inflicted as a consequence.

(1) **Reckless grievous bodily harm-in company** A person who, in the company of another person or persons:

- (a) causes grievous bodily harm to any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

Is guilty of an offence. *Maximum penalty*: Imprisonment for 14 years.

(2) **Reckless grievous bodily harm** A person who:

- (a) causes grievous bodily harm to any person, and
- (b) is reckless as to causing actual bodily harm to that or any other 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:

- (a) wounds any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

Is guilty of an offence. *Maximum penalty*: Imprisonment for 10 years.

(4) **Reckless wounding** A person who:

- (a) wounds any person, and
- (b) is reckless as to causing actual bodily harm to that or any other person,

Is guilty of an offence. *Maximum penalty*: Imprisonment for 7 years.

(5) **Alternative verdict**

If on the trial of a person charged with an offence against any subsection of this section the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against any other subsection of this section (that carries a lesser maximum penalty), the jury may acquit the person of the offence charged and find the person guilty of an offence against that other subsection. The person is liable to punishment accordingly.

Wounding or Grievous Bodily Harm with Intent – Section 33:

(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.

Wounding:

- The infliction of an injury which breaks the continuity of the skin (*Shepherd*).
- Skin broken internally is still technically a wounding (*R v Smith*).
- Consequences of wounding are not relevant, wounding is wounding (*Hatch*).

Grievous Bodily Harm:

- Section 4(1) Crimes Act - GBH 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).
- Bodily Harm (*Donovan*), Grievous: no more and no less than **“Really Serious”** (*DPP v Smith*).
- Does not need to be permanent or long lasting (*Haoui*).
- Facial fracture that required surgery was enough [lower end] (*Haoui*).
- Death of foetus only GBH to mother (*King*).
- GBH by infection with disease – section 4(1) (see above).
- Also ss 52, 79(1), (2) *Public Health Act 2010* (NSW).