

Assault: ABH And Common Assault

Step 1: Starting Point

- s 61: No definition of assault in the legislation.
- Dealt with as Table 2 Offence in LC.

Step 2a: Is it an Assault with No Physical Contact (s 61 Offence)

- Actus Reus: (Edwards v Police):
 - if no physical contact: act of raising in the mind of the victim, the **fear of immediate violence to him or her** (fear of unlawful physical contact)

Cases:

- Knight (threats made by telephone): Threats must be **immediate**, not extending to future.
- Zanker: Fear of physical harm does not have to be immediate as long as **there is a present and continuing fear**.
- Police v Greaves: Conditional threat = assault.
- DPP v JWH: Spitting = assault.
- McPherson v Beath: Question of whether fear has to be reasonable is still open.
 - Mens Rea (Edwards v Police):
 - **intention to produce that expectation in the victim's mind.**
 - **reckless assault** where the defendant whilst **not desiring to cause such fear, realises** that his or her conduct **may do so, and persists with it - subjective foresight of possibility test (MacPherson v Brown)**

Step 2b: CIRCUMSTANCE Is it an Assault with ABH (s 59 if ABH results)

- s 59(1): Where assault causes or occasions some actual injury/harm defined by common law as **'must be more than transient or trifling' (R v Donovan)**
 - Actus Reus:
 - **application of force without consent;**
 - Mens Rea:
 - **intention** to apply physical contact;
 - **reckless** by foreseeing the risk of application by continued anyway.

Cases

- Chan Fook (leasee accused of stealing ring locked in room): **capable of being psychiatric injury**, but does not include mere emotions (fear or distress, panic or clinical condition)
- Lardner: Nervous shock constituted a recognised psychiatric illness for ABH.
- McIntyre: **bruises and scratches** are typical examples capable of amounting to ABH (Cameron).
- R v Overall: ABH v GBH; depend on degree of harm.
- R v Li: Being psychologically injured in a very serious way constitutes ABH.

Step 2c: CIRCUMSTANCE Is this an assault of wounding or causing GBH by recklessness (s 35 offence)

GBH

- s 35(1): Recklessly causes GBH in company;
- s 35(2): Recklessly causes GBH;

Cases on GBH:

- Starting definition: s 4 Crimes Act
- Smith: GBH meant that the words convey in their ordinary and natural meaning; no less than very serious.
- Haoui: Does not require that injuries are permanent or that the consequence are long lasting, or life threatening, but just serious.
- s 4 and King: Death of foetus = GBH.
- Zoe's Law: Proposal to give legal personhood at 20 weeks.
- s 4: grievous bodily disease = GBH.
 - Public Health Act s 52: fails to take reasonable precautions against spreading illness.
- s 79(1) PHA: must inform partner of risk of STD and consent.
- s 79(2) PHA: being owner or occupier of premises for position = offence.
- s 79(3) PHA: Must take reasonable precautions against spread of STD.
- Departure from position in Clarence (husband gives wife gonorrhea).

Cases on Recklessness of GBH:

- Departure from Coleman test: foresight of possibility of some harm but proceeded.
- Departure from Blackwell: realised that the harm may be seen inflicted upon victim from his or her actions.
- **Test:** Accused foresaw the possibility of GBH rather than some simple injury (Crimes Amendment (Reckless Infliction of Harm) Act).

Wounding

- s 35(3) Recklessly causes wounding in company;
- s 35(4): Recklessly causes wounding.

Cases on Wounding:

- Wounding defined as breaking the continuity of the skin. The dermis, not epidermis (Shepherd).
- No instrument or weapon need be used (R v Bullock).

Recklessness of ABH:

- Reckless wounding if the person wounds a person and is reckless as to causing ABH (s 35(4)).

Step 2d: CIRCUMSTANCE Was the assault during a public disorder

- s 59A: Offence to assault person during a large-scale public disorder.

Step 2e: CIRCUMSTANCE Did the accused use a weapon?

- s 33A(1): Offence to discharge or attempt to discharge weapon (defined in s 4) with intent to cause GBH.
- s 35A: Using a dog to cause injury or being reckless (s 35A(2)) amounts to assault.

Step 2f: CIRCUMSTANCE Is this an assault of wounding or causing GBH with intent (s 33 Offence)

- Prosecution must establish that the accused:
 - s 33(1)(a): wounded; OR
 - s 33(1)(b): caused GBH; AND
 - s 33(1): had the intent to do so.

Step 3: Coincidence Between Actus Reus and Mens Rea

- Principle: AR and MR must coincide.
- Fagan: For continuing act, MR does not need to be formed at the beginning of the AR.

Step 4: Act Not Omission

- Fagan (Parked his car on police officer's foot): **There must be an act, and this cannot be an omission.**

Step 5: Be in the Absence of Consent

- Bonora: Absence of consent a necessary element, may mean lawful justification.

Consent to Harm:

- Brown (Individuals belonged to a group of sadomasochistic sex, no complainants):
 - **In lawful situations** (such as sports, surgery etc), **consent to assault is acceptable.**
 - **However, consent is immaterial in unlawful situations or situations which degree of harm is severe (Donovan).**
 - **Consent to ABH extends as far as public policy and public interest allows.**
 - Exceptions are surgery, tattooing, body piercing, horseplay, lawful correction.
- Stien (Bondage session between accused who deceased): must consider the **level and seriousness of harm**; there **can be no consent to this level of risk of harm.**
- Wilson (A husband branded with a hot knife his initials on his wife's buttocks (with her consent): Brown should be confined to factual scenario. **Consensual activity between husband and wife, in the privacy of the matrimonial home is okay.**

Consent to Harm (Cont)

- Aitken (servicemen set themselves on fire): **Horseplay is acceptable.**
- Emmet: (placing head in plastic bag and then pouring lighter fluid on breasts and lighting it): conviction for assault.
- Richardson (Dentist with revoked license): **Obtaining medical consent by fraud vitiates it.**
- Marion case: (Family ordered circumcision of child who was mentally ill): amounted to female genital mutilation. **Not common conduct that occurs in everyday life.**
- W v DL: **Corporal punishment of children acceptable** if moderate and reasonable in relation to child, and carried out with reasonable means as to instrument.
- s 61AA Crimes Act: **Hitting children allowed** if reasonable with regards to age, health and maturity of child; not applied to head or neck of any child, and not caused by harm that lasts for more than short period.
- s 35(2A) Education Act: No punishment of children at school.
- Billingham: Players consent to force reasonably expected during the game.
- Stanley: any act not done in the legitimate pursuit of the game is unlawful.