

ASSAULT

CONSENT

R v Brown [1994] 1 AC 212 (House of Lords)

- This case is an example of public interests and other agendas being imported into judgments. Eg. views towards homosexual activity, where other comparatives such as rough horseplay were acceptable. This is perhaps because horseplay occurs between heterosexual males.
- Public interest – depends on the context, community values, personal interests may change the outcome of the case depending on whose judgment is being relied upon.
- This is an example of how a law can operate to one group of people engaging in one type of activity to another (eg. homosexual sado-masochistic behaviour vs. rough horseplay (setting each other on fire) / branding in the confines of the matrimonial home (*Wilson*)).

AGGRAVATED INTOXICATED ASSAULTS

p. 634 – 637

- Legislative reform in response to intoxication
 - In Feb-14, the NSW government attempted to introduce assaults committed when the offender was “intoxicated in public” (Crimes Amendment (Intoxication) Bill 2014) as part of their 16-point plan to tackle alcohol fuelled violence.
- It sought to introduce 11 new aggravated versions of existing assault offences; 5 aggravated offences w/ increased max penalties by 2 years; 5 mandatory min sentences.
 - **Intoxicated** was defined in **s 8A(2)**:
 - Person’s speech balance, coordination or behaviour is noticeably affected as a result of the consumption of alcohol or narcotic drug.
 - High-range prescribed concentration of alcohol (PCA > 0.15g per 210L of breath or 100ml of blood).
 - **Presently, the legislation has lapsed**: Bill passed the LA on 6/03/14 but LC sought significant amendments which LA refused to pass. The Bill remains a current session bill but with no progression. There is opposition to mandatory min sentencing for such a significant no. (high volume) assault offences.
- Politicisation of law making
 - Example of strong relationship w/ public events and high-profile crimes and new movement towards legislation where politic
 - Interaction b/w criminal law / hard law reform and public / media discussion that influences
 - Politicisation of criminal justice law reform where reform touches on issues that affect a politicians standing or re-election.
 - Doesn’t lead to very considered law making – quick legislating.
- Assault causing death (one-punch)
 - This debate has already led to the aggravated intoxicated offence of assault causing death in s 25A(2) of the *Crimes Act*; and changes to sentencing laws to prevent intoxication mitigating a sentence, *CSPA 1999*, s 21A(5AA)
- Comparative analysis
 - In 2014, QLD introduced “intoxication” as an aggravating circumstance in Ch 35A of the *Criminal Code* (Qld). Which makes being adversely affected by an intoxicating substance” for certain assault offences an **aggravating circumstance** to the offence (eg. GBH, wounding, serious assault – police officer) when offence “committed in a public place” while person intoxicated.
 - Person is deemed intoxicated if specified breath analysis thresholds are met, s 365C(1). For alcohol the threshold high-range PCA (0.15).
 - QLD modelled these reforms on the NSW Bill without mandatory sentences.
- Distinction between public vs. private violence
 - Aggravated offences don’t apply in private settings.
 - Second Reading of the Bill, Premier explained there are potential impacts on domestic and sexual assaults but did not address whether there was justification for enacting legislation which treated private violence less seriously than public violence.
 - Continues the uneven treatment of public and private (domestic) violence

DOMESTIC VIOLENCE

- In 2013, BOCSAR found NSW Police recorded over 40% of all reported assaults were domestic violence. Around 17% of women have experienced physical violence; 25% emotional abuse (ABS 2012). DV specifically affects minorities such as indigenous women and vulnerable women (disabilities).
- J Allen notes there has been a shift in focus in the 20th C towards a view that battered wives are victims in which the State should intervene.

- AVOs
 - CDPVA 2007 objectives include (i) ensure safety and protection of persons who experience DV; (ii) reduce / prevent violence in domestic relationships; (iii) enact provisions consistent international principles to eliminate violence against women and protect rights of the child.
 - Domestic relationship defined as spouses (inc. de facto), intimate personal relationships (whether sexual or not), persons living in the same household or residential facility (present or in the past), persons in a relationship of ongoing, dependent care and relatives (inc. same sex relationships), s 5.
 - Basic elements for an application requires person has reasonable grounds to fear and in fact fears on BOP; but not necessary 'in fact fears' if child, person below average intelligence, previously subject to personal violence, reasonably likely to recur, order necessary to protect PINOP.
- Policing of DV
 - Criticisms include inadequate response as police discretion not to report; inconsistent responses depending on victim's characteristics (minority groups); downgrading charges; police less inclined to take action in DV situations.
 - In 2006, NSW Police Force implemented Code of Practice to ensure consistent, equitable and accountable approach to DV.
 - Lack of confidence in the system means limited ability of CJR to be protective – slow response to calls for assistance; underreporting of breach of ADVO; inadequate investigation.