

Common Law Assault – Assault In The Strict Sense

Definition:

Creating an apprehension in the victim that immediate and unlawful violence will be applied against them

→ technical or psychological assault

Actus Reus:

Causing the victim to apprehend immediate and unlawful personal violence

Apprehension of immediate unlawful force = non-physical interference

→ some sort of threatening conduct must be done

What sort of act/conduct?

→ Silence? see Ireland [1997]

Victim's reaction to defendant's conduct?

→ see Ryan v Kuhl [1979]

Immediacy of the threat?

→ see Zanker v Vartzokas [1988]

Hypothetical/conditional threats?

→ see Tuberville v Savage [1669]

→ see Rozsa v Samuels [1969]

Mens Rea:

Intention to create an apprehension of immediate and unlawful physical contact

→ see Fagan [1968]

OR

Foresight of the probability of creating an apprehension of immediate and unlawful physical contact

→ see Campbell [1997]

Common Law Assault – Battery

Definition:

Actual application of unlawful force against the victim

Actus Reus:

Unlawful application of force to the body of the victim

How must force be applied?

→ Directly

→ By the defendant's body, or an object controlled by the defendant – see Fagan [1968]

Mens Rea:

Intention to make unlawful physical contact

→ see Fagan [1968]

OR

Foresight of the probability of making unlawful physical contact

→ see Campbell [1997]

Offences Causing Injury (Under The Crimes Act)

Definition:

s.16 – Causing serious injury intentionally

→ A person who, without lawful excuse, intentionally causes serious injury to another person

s.17 – Causing serious injury recklessly

→ A person who, without lawful excuse, recklessly causes serious injury to another person

s.18 – Causing injury intentionally or recklessly

→ A person who, without lawful excuse, intentionally or recklessly causes injury to another person

s.24 – Negligently causing serious injury

→ A person who by negligently doing or omitting to do an act causes serious injury to another person

Actus Reus:

Causing:

- Prosecution must prove that defendant caused the consequence (eg. the victim's injury)

Injury: new definition: s.15

- '(a) physical injury; or (b) harm to mental health – whether temporary or permanent'
 - 'physical injury' includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function
 - 'harm to mental health' includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm

Serious injury: new definition: s.15

- (a) an injury (including the cumulative effect of more than one injury) that –
 - i) endangers life; or
 - ii) is substantial and protracted; or
- (b) 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

Mens Rea:

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 a 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’

Requires two things:

- 1) Duty of care
- 2) Breach of the duty of care through criminal negligence