

## Non-fatal, non-sexual offences against the Person

- The DPP may prosecute via Statute, or via Common Law

### Common Law Assault (as defined in **Fagan**)

#### *Non-Physical Interference (Making a Threat)*

- D may be liable for CL Assault if he is found BRD to have performed an act, which caused P to reasonably apprehend imminent physical interference, and D did this either intentionally (**Westaway**) or recklessly (**R v Campbell**)
- Words can amount to a threat, as D's 'repeated phone calls of a menacing nature' did in **R v Ireland**

AR	MR	PENALTY
1. Voluntary Act 2. Causation 3. Apprehension 4. (of) Imminent/Personal Violence <b>Fagan</b> : "apprehend immediate and unlawful personal violence"	5. Intention- to do the act OR 6. Recklessness- degree of foresight, probable result	S 23 of the <i>Summary Offences Act 1996</i> (Vic): "Any person who unlawfully assaults or beats another person shall be guilty of an offence Penalty: 15 units or imprisonment for 3 months" OR Indictable Crime: The principles used to prove the elements of this crime are defined by Common Law (Fagan, R v Patton), but the legislation in s320 <i>Crimes Act 1958</i> outlines the 'maximum term of imprisonment for certain common law offences' including Assault- up to 5 years imprisonment.
	7. Contemporaneity	

### AR

#### 3. Hypothetical/Conditional Threats

- if the condition cannot be fulfilled, can V claim apprehension (**Tuberville v Savage** → held no assault)
- Unlawful conditions will not negate a threat (**Rosza v Samuels**)
- If the threat is in self-defence, but it is excessive to the original threat, it is classified as assault (**Rosza v Samuels**)

#### **Apprehension of Violence**

- **Ryan v Kuhl**: there can be no assault without apprehension (pocket knife through door)
- **Pemble**: the victim must be fearful for the act to be qualified as assault, this did not classify as assault as the victim did not know there was a gun pointed to her back
- **Brady v Schatzel** (Qld Case-empty rifle with intention to scare): irrelevant whether the act could be achieved, or whether the victim was frightened or courageous. Chubb J "it is not material that the person assaulted should be put in fear"

#### 4. Imminent

- This is determined by the V's perception, not the facts or D's contention
- **Zanker v Vartzokas**: the threat must be 'relatively immediate imminent violence', the threat continues after the relevant words have been spoken, as the threat was "present and continuing"
- **Barton v Armstrong**: the immediacy of the harm was questionable, as the threat was made over the phone
- **Fagan**: D was in a "position of dominance" and therefore, the likelihood of the threat being carried out was "not too remote"

Offences against the person (Crimes Act 1958) pg 41-53

**Intro:** Prosecution and defence+ names

What is the burden of proof

Injury #1

AR

MR

Contemporaneity

Defences/Without Lawful Justification or excuse → refer to defences

Conclude whether it is likely the prosecution will achieve this beyond reasonable doubt

### Definitions

#### 1. s.15 Injury:

"injury" means physical injury; or harm to mental health

"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

#### 2. s. 15 Serious Injury:

An injury (including the cumulative effect of more than one injury) that endangers life; or is substantial and protracted; or 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

#### 3. Gross Violence

#### 4. Stalking

**Voluntariness:** as per cases **Ugle**, **Ryan**, and **Falconer**, there is a presumption that's acts are committed freely

Offence	AR	MR	Maximum Sentence	Defence	Case Law
<b>s. 15A Intentionally causing serious injury in situations of gross violence</b>	1. Voluntary Act 2. Causation 3. Injury (substantial and protracted) 4. Gross Violence	D intended to act as he did, in a circumstance of gross violence, and cause serious injury by doing so	Level 3 imprisonment (20 years max)	No Lawful Excuse	
<b>s. 15B Recklessly causing serious injury in circumstances of gross violence</b>	1. Voluntary Act 2. Causation 3. Injury (substantial and protracted) 4. Gross Violence	D subjectively foresaw that the conduct would be likely to result in a serious injury but went ahead anyway, intending to act in a circumstance of gross violence	Level 4 imprisonment (15 years max)		<b>R v Campbell</b>
<b>s. 16 Causing serious injury intentionally</b>	1. Voluntary Act 2. Causation 3. Serious Injury	D intended to act as he did, and intended to cause serious injury	Level 3 imprisonment (20 years max)		<b>R v Westaway</b> - the D must intend to inflict a SI, not do an act that results in SI

