

LAWS106 – Criminal Law – Exam Notes

Non-Fatal Offences

Assault – Common Law
Intentionally Causing Serious Injury
Recklessly Causing Serious Injury
Intentionally or Recklessly Causing Serious Injuries
Negligently Causing Serious Injury
Endangerment Offences
Threats to Kill/Inflict Serious Injury

Family Violence
Stalking

Sex Offences

Rape
Sexual Assault
Sexual Penetration of a Child
More Offences – See Crimes Act.

Property Offences

Larceny?
Theft
Burglary
Aggravated Burglary
Robbery
 Theft + Assault
Armed Robbery
Handling Stolen Goods
Obtaining by Deception
Obtaining Financial Advantage by Deception

Defences

Self Defence

- self-defence
- defence of others
- defence of property
- force in preventing a crime or making an arrest

Duress
Intoxication
Sudden emergency

Mental Impairment

Inchoate Offences

Conspiracy
Attempt
Incitement

Non-Fatal Offences

Assault

Fagan v Metropolitan Police [1969] 1 QB 439

Any act which *intentionally* -or possibly *recklessly*- causes another person to apprehend *immediate and unlawful personal violence* ... and the *actual intended use* of unlawful force to another person without his consent

COMMON LAW ASSAULT

Unlawfulness

Boughey v The Queen (1986) 60 ALJR 422:

‘Any conduct which lies within the limits of what would generally be accepted in the community as normal incidents of social interaction or community life cannot amount to assault’

Codified in s 20 of the South Australian Criminal Law Consolidation Act of 1935

Actus Reus

Overt act: *R v Ireland; R v Burstow* [1997] 4 All ER 225

Omission: *Fagan v Metropolitan Police* [1969] 1 QB 439

1. words alone? *Barton v Armstrong* [1969] SASR 205

Causing apprehension of immediate violence: *Ryan v Kuhl* [1979] VR 315; *Knight v The Queen* (1988) 35 A Crim R 315

Imminent violence: *Zanker v Vartzokas* (1988) 43 Crim R 11; or

Touching: *Boughey v The Queen* (1986) 161 CLR 10

But not necessarily harm or injury: *Collins v Wilcock* [1984] All ER 374

Pointing a gun at the back of someone’s head?

State v Barry (1912) 45 Mont 598; *R v Pemble* (1971) 124 CLR 107.

What if the victim sees the gun, but does not fear it?:

Brady v Schatzel [1911] St R Qd 206.

What about pointing an unloaded gun at someone?

R v St George (1840) 9 Car & P 483, *R v Everingham* (1949) 66 WN (NSW) 122

Holding a knife over a sleeping person?

Pemble v The Queen (1971) 124 CLR 107, *R v Lamb* [1967] 2 QB 981

Telephoning someone, being silent & hanging up?

R v Ireland; R v Burstow [1997] 4 All ER 225

Threatening someone over the phone?

R v Knight (1988) 35 A Crim R 314, *Barton v Armstrong* [1969] NSW 451

Force can be applied to the victim’s *body or clothing*. There is a low threshold: the force can be very slight.

Battery involves the intentional or reckless application of force to the body of the victim, e.g. clothing being rubbed, kissing without consent: *Collins v Wilcock* [1984] 1 WLR 1172. - now sexual assault

Assault involves intentionally or recklessly putting the victim under an apprehension of direct and immediate violence: *Fagan, Lynsey*.

IMMEDIACY OF BODILY HARM - THREATS

The prosecution must prove a *temporal connection* between the perception of the threats and the victim’s apprehension: *Barton v Armstrong* (1969).

Hypothetical threats? *Tuberville v Savage* (1669) 1 Mod 3

Conditional threats? *Rosza v Samuel* [1969] SASR 205

'Ill cut you to bits if you try it'

Must be lawful

Conditional threat is more likely, doesn't prevent elements.

Mens Rea?

Recklessness and foresight:

There are two standards for when recklessness will be sufficient to form mens rea.

1. The accused foresaw the **possibility** that force might be inflicted: *Mac Pherson v Brown* (1975) 12 SASR 184; *R v Coleman* (1990) 19 NSWLR 467, *Stokes v Difford* (1990) 51A Crim R 25

2. The alternative is that the accused must have foreseen that force would **probably** be inflicted - *R v Campbell* [1997] 2 VR 585, most recently followed in *Paton v The Queen* [2011] VSCA 72, [46].

There is no consensus: you must be able to apply *both*

Victim's Mental state

M'Namara - Subjective - what the victim apprehended.

What if the victim was not scared? (even though an ordinary person in their circumstances would have been?)

See *Brady v Schatzel* [1911] St R Qd 206 – V testified that when the accused pointed a gun at him he was not scared because he didn't think that she would fire it. – Classed as assault because the victims liability would vary

Sections 15-18 of the Crimes Act

Injury & serious injury: *R v Ferrari* [2002] VSCA 186

Causation: *Hallett*

Intention: *Westaway*

Recklessness- *Campbell*

Without lawful excuse: e.g. *Zecevic*

Section 24: serious injury only.

Act/omission *Tak Tak*

Negligence (gross)- *Shields*

Things to Consider:

1. Type of Harm.

- Injury as opposed to serious injury.
- Administering substances.
- Threats to kill or inflict serious injury.
- Engaging in reckless conduct.

2. Fault element. Compare ss 16-17 max sentences.

3. Intention of a certain type: e.g. attempted murder, commission of another offence, resist arrest.

4. Victim. Police officers, emergency workers.

Defining Injury - s15

'Injury': unconsciousness, pain, hysteria and any substantial impairment of bodily function. Includes mental health injuries.