

LAWS1022: CRIMINAL LAWS NOTES

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CRIMINAL LAW FRAMEWORK

1. LEGAL PERSONHOOD - AGE/MENTAL ILLNESS

2. AR - ACTUAL ACT/OMISSION

- A. CONSEQUENCE
- B. CAUSATION
- C. VOLUNTARINESS
- D. CIRCUMSTANCES

3. MR

A. SUBJECTIVE

- I. RECKLESSNESS
- II. KNOWING
- III. INTENT
- IV. BELIEF

B. OBJECTIVE

- I. NEGLIGENCE
- II. REASONABLENESS

C. ABSOLUTE LIABILITY - NO MR

D. STRICT LIABILITY - HONEST/REASONABLE MISTAKE OF FACT

4. COINCIDENCE OF AR/MR

5. NEGATIVE DEFENCES

A. E.G. AUTOMATISM

6. BURDEN ON THE PROSECUTION - BEYOND A REASONABLE DOUBT

ASSAULT

COMMON ASSAULT = s 61

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

AR	MR
<ul style="list-style-type: none">• Act of touching (unlawful force) or threat of imminent force (causes another person to apprehend immediate and unlawful violence)<ul style="list-style-type: none">○ Not an omission• Without consent – circumstance• Coincidence of AR and MR• Voluntariness	<ul style="list-style-type: none">• Intent to affect unlawful touching (or to create apprehension of imminent contact)• OR Recklessness → note s 35<ul style="list-style-type: none">○ NOT including inadvertent recklessness

ACTS NOT OMISSION

Unlawful contact – does not necessarily have to cause serious harm, by strong force

FAGAN V COMMISSIONER OF METROPOLITAN POLICE

- Drove the car over the police officers foot
- Appellant argued that by failing to remove the wheel from the foot this was an omission rather than an act - failure to do what he was asked
- BUT court held:
 - There is **no difference in principle between the action of stepping on to a person's toe and maintaining that position and the act of driving a car on to a person's foot and sitting in the car whilst the position is maintained**

WITHOUT CONSENT

- Absence of consent = element of assault
- "An assault with consent is no assault at all" - **Wilson** (Case)
- Where harm is caused, different rules apply
- Element of unlawfulness
 - Intentional application of force to another person of another which is unlawful
 - For it to be an unlawful act of the accused there must be no lawful jurisdiction for it

Is consent to assault good consent?

- Level of harm → Actual bodily harm
- Is it in the public interest to allow the behaviour
 - E.g. surgery, sport etc.

APPREHENSION OF IMMEDIATE THREAT OF VIOLENCE

- Assault involves an act causing the victim to apprehend the immediate infliction of unlawful force
 - Issue: whether the threat of harm is sufficiently imminent to satisfy the actus reus requirement
- Psychic assault (DPP v JWH) is '**constituted by an act which intentionally or recklessly causes another to apprehend immediate and unlawful violence**'

KNIGHT

- Appellant convicted of assault and making false statements giving rise to apprehension for a person's safety
- Threatening and abusive telephone calls to a police officer, magistrate and a judge
- Issue: whether threats were sufficient to constitute assault
- Fagan
 - An assault is an act which intentionally - or possibly recklessly - causes another person to apprehend immediate and unlawful personal violence

- Consider: immediacy of the threat
 - **Whether the threat is strong enough to take it seriously and cause fear in a person's mind**
 - **Immediate and continuing fear**

ZANKER V VARTZOKAS

- Defendant accelerated the van and offered her money for sexual favours
- She demanded that he stop to allow her to get out but he refused
- He said "I am going to take you to my mate's house. He will really fix you up"
 - She jumped out of the moving car and suffered some bodily injuries
- **Fear had to be a present fear of physical harm in due course within the parameters of the incident of unlawful imprisonment**
 - The **feared physical harm did not have to be immediate**
- Young woman **reasonably believed the defendant's intention and power to inflict violence**

CONDITIONAL THREATS

- May constitute an assault if it was a condition that the person could not lawfully impose

SPITTING - DPP V JWH

- Def spat saliva in the direction of a constable and also hit another by accident
- Assault = act which intentionally or recklessly causes another to apprehend immediate and unlawful violence
- Unlawful force - 'be it ever so small'
 - Except that which is an incident of ordinary social intercourse
- Spitting - still an offence - still an application of force

COINCIDENCE OF AR AND MR

- Usually – AR and MR must occur simultaneously
- Exception: continuing act
 - Mens rea does not need to be present at the time of the commencement of the actus reus but can in effect be superimposed onto an existing and continuing act
- Fagan v Commissioner of metropolitan police
 - Whether in this case the act of the appellant can be said to be complete and spent at the moment of time when the car wheel came to rest on the foot or whether his act is to be regarded as a continuing act operating until the wheel was removed
 - Continuing act - there is a continuing threat to inflict unlawful force

 INTENT TO AFFECT UNLAWFUL TOUCHING/CREATE APPREHENSION

- **Intention** to affect an unlawful contact
 - *Edwards v Police*
 - Defendant's **intention to produce that expectation (imminent unlawful violence) 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**
 - Prosecution must prove foresight of the **possibility** of imminent contact - not probability

 RECKLESSNESS

 MACPHERSON V BROWN - RECKLESSNESS

- Facts
 - Student was convicted of having assaulted a lecturer at Flinders University
 - During a protest in front of a university building where the plaintiff was part of a group of officials re-occupying the building
 - The group caused him fear for his personal safety but there was not actual physical contact
 - After 10-15 minutes he was allowed to pass
- 'reckless' should be confined to action where the relevant consequences are averted to even if not desired
- To hold D guilty if he were merely reckless whether P might not be alarmed by his gesture
 - May allow a civil action, but should not be a crime
- **Actual knowledge** - not just objective - is necessary

 CONSENT TO HARM

1. Consider level of harm → ABH and above – good consent is usually not available
 2. EXCEPT where there is public interest
 - i. **Construction of what the acts are, what they do, what they mean, depending on the judges' experiences, values, morals including prejudices**
- **Brown** → consent irrelevant where assault involves cruelty which is injurious to the public
 - **Wilson** → relevant where husband branded wife (No aggressive intent)
 - **Aitken** → relevant – consensual horseplay
 - **Donovan** → Consent IRRELEVANT – where infliction of ABH is a probable consequence
 - **Richardson** → consent relevant – only a mistake as to the nature of the act or the identity of the person doing it vitiates consent

BROWN (1994)

- 5 appellants - unlawful and malicious wounding, assault occasioning actual bodily harm
- Belonged to a group of men who engaged in consensual homosexual, sado-masochistic activities
 - No victim complained
- Issue: whether consent is a sufficient defence

Lord Templemen

- Where the assault/infliction is injurious to the public as well as to the person injured, consent is no defence to the person who inflicted the injury
- Not in the **public interest** that people should try to cause, or should cause each other actual bodily harm for no good reason
 - Immaterial whether act is in private or public
 - Assault if actual bodily harm is intended and caused
- **Unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence**
 - When act is proved, consent is immaterial
- Society is entitled to protect itself against the cult of violence - pleasure from pain = evil

Lord Mustill (dissent)

- **Contact sports**
 - Bodily contact = deliberate and essential
 - By taking part, one assumes the risk of unintended effects
 - Except where there is more serious injury inflicted deliberately
- **Surgery** - actual/deemed consent is necessary
 - Proper medical treatment = category of its own
- **Lawful correction**
 - Correction of children - for the purpose of discipline and not for gratification of passion or rage
- **Horseplay** - deliberate physical contact - unable to explain in terms of consent
- **Prostitution**
 - No automatic innocence
- **Fighting**
 - Consent is generally a defence to the charge of assault - but there may be cases where the public interest demanded otherwise

Courts decide where the **line between private acts of consensual assault lies and clearly malicious and deliberate bodily harm of a more serious nature**

CONSENT TO MEDICAL TREATMENT

- 'informed consent'
 - Patients consent freely given after an explanation of the basic nature and risks of the procedure
 - But usually confined to civil suits
- Marion's case – sterilisation