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Topic 5 – The Law of Assault

Definitions

Assault: Assault is an act which intentionally or possibly recklessly causes a person to apprehend immediate and unlawful personal violence

Apprehension: anxiety or fear that something bad or unpleasant will happen.

Conditional threat: a threat is one that threatens the use of force if the other person fails to comply with the stated condition.

Hypothetical threat: a hypothetical threat is one in which a person makes clear to another that s/he does not intend to use force or the threat thereof against him.

In loco parentis: In loco parentis is a legal doctrine describing a relationship similar to that of a parent to a child

False imprisonment: False imprisonment consists of the unlawful and intentional or reckless restraint of a victim's freedom of movement.

Kidnapping: Kidnapping consist of unlawfully taking and carrying away a person or holding a person in secret against his or her will. Kidnapping is the aggravated form of false imprisonment

Stalking: Stalking is constituted where the accused engaged in conduct that causes apprehension or fear in the victim for his or her personal safety.

The common law crime of assault comprises of two general situations.

1. Where the accused creates an apprehension (awareness) in another person of an unlawful and imminent genre of common assault.
2. Where the accused unlawfully applies force against another person (whether by part of the accused body or through an instrumentality such as a car or a stick) without his or her consent (this is known as the 'force' or 'battery' genre of common assault).

Common law assault does not require injury to be inflicted on the victim

Elements of common law contact assault

1. D applied force to (made actual contact with) V's body
2. The application of force was intentional or reckless
3. There was no lawful justification or excuse

Application of force

The application of force must be direct and is satisfied with the slightest degree of contact or touching

The application of force was intentional or reckless

D must have been aware that application of force would probably result in harm.

Consent

Consent:

Under the current state of law and as a matter of public policy, a person cannot lawfully consent to a level of injury amounting to actual bodily harm or greater - unless the relevant activity is a 'lawful activity'

- To determine the lawfulness of the activity, must consider the social utility of the activity: do the social advantages of the activity outweigh the risk of harm such that it is a 'socially acceptable' activity? (*R v Brown* [1993] 2 WLR 556)

Medical treatment a 'lawful activity' (as to which see *Reeves v The Queen* [2013] HCA 57) as are sporting events

Mens rea of common assault

Intention and recklessness

An intention to commit an assault is sufficient to constitute the mens rea of assault. In order to be prosecuted for assault, the prosecution must prove 'probability' type recklessness.

R v Venna

Facts:

- Appellant claimed he had fallen after a struggle with police officers and accidentally kicked an officer
- Officer's bone was fractured as a result
- Charged with assault

Held:

- The appeal failed as the judges found a person who acts recklessly causing assault should be found to have the mens rea for assault.
- The appeal was not found in favour of the appellant

Actus rea of common assault

Force (or battery) limb

The actus rea for force (or battery) limb is constituted by the slightest degree of contact or touching without consent or other lawful excuse.

There is no requirement that the contact must be hostile.

There is no requirement that the contact cause injury or hurt.

At common law, the application of force must be direct. It must be aimed at the victim or at an object on which the victim is supported.

Threats limb

At common law, the minimum requirement for the actus reus of assault is conduct that creates an apprehension of an unlawful and imminent touching of the victim.

However, at common law words alone can constitute an assault.

Barton v Armstrong 1969

Did the words...

1. Create in the victim an apprehension of an imminent touching and