

I. COMMON ASSAULT

Touching type of Assault—s 61: 2 years	
AR	MR
<p>1. Actual infliction of force and physical contact <i>Edwards v Police</i></p> <ul style="list-style-type: none"> - Can be a continuing act, but must not be an omission <i>Fagan</i> - Not matter using medium or not <ul style="list-style-type: none"> o <i>Fagan</i>: stopping the car with the wheel on P's foot. o When an assault involves a battery, it matters not whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender - Spitting—yes <ul style="list-style-type: none"> o <i>DPP v JWH</i> o The offence of battery involves the actual infliction of unlawful force on another, be it ever so small o The cloths a person is wearing are regarded as so intimately connected with the person that to touch the cloths is regarded as touching the person 	<p>1. Intention to apply force and physical contact OR</p> <p>2. Recklessly - <u>In case of reckless assault:</u> <u>realizes that her conduct may do so and persists with it.</u> <i>Edwards v Police</i> - <u>actual knowledge</u> required (where the relevant consequences are adverted to) <i>MacPherson v Brown</i> (subjective)</p>
<p>2. Unlawfulness---without consent-<i>Bonora</i></p> <ul style="list-style-type: none"> - <i>Brown</i>: if it caused ABH, consent is immaterial; - <i>Brown</i>: in medical treatment, consent is good—public interest. 	
<p>3. Coincidence between actus reus and mens rea:</p> <ul style="list-style-type: none"> - General: the AR and MR must coincide. - when involving a 'continuing act' the MR does not need to be present at the time of the commencement but can be superimposed onto an existing and continuing act. <i>Fogan</i> 	
Threatening type of Assault—s 61: 2 years	
AR	MR
<p>1. Conduct raising in the mind of the V, the fear of immediate violence to her</p> <ul style="list-style-type: none"> - using medium or not: <i>Fagan</i> - can be continuing act, but must not be an omission: <i>Fagan</i> - imminent or not <i>Knight</i>—abusive calls threatening the lives of a policeman from a considerable distance. - There needs to be apprehended immediate violence. - Here, they were not <u>threats of immediate violence</u>, but mere threats which may have been executed at any time, if at all. <i>Zanker</i>—van - The threat could operate immediately on the V's mind but in a continuing way so long as the unlawful imprisonment situation continued. (immediate and continuing threats) - The question is <u>how immediate the threatened physical violence must be after the utterance of the threat which creates the fear</u> <p>Statutory offence in NSW (without the requirement of imminence): stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm--CDPVA s13;</p> <ul style="list-style-type: none"> - Conditional Threat <ul style="list-style-type: none"> o The conditional threat may constitute an assault if it was a condition that the offender could not lawfully impose, e.g. your money or your life. <i>Police v Greaves</i> - Reasonableness <i>MacPherson</i> <ul style="list-style-type: none"> o The reasonableness may or may not be necessary---an exceptionally timid person but known to A to be so, then the unreasonableness may not prevent conviction 	<p>1. Intention to produce that expectation [imminent unlawful violence] in the victim's mind OR</p> <p>2. Recklessly - <u>In case of reckless assault:</u> <u>realizes that her conduct may do so and persists with it.</u> <i>Edwards v Police</i> - <u>actual knowledge</u> required (where the relevant consequences are adverted to) <i>MacPherson v Brown</i> (subjective)</p>
<p>2. Unlawfulness---without consent-<i>Bonora</i></p> <ul style="list-style-type: none"> - <i>Brown</i>: if it caused ABH, consent is immaterial; 	
<p>3. Coincidence between actus reus and mens rea:</p> <ul style="list-style-type: none"> - General: the AR and MR must coincide. 	

- when involving a ' continuing act ' the MR does not need to be present at the time of the commencement but can be superimposed onto an existing and continuing act. <i>Fogan</i>	
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II. ABH, WOUNDING, GBH

ABH	<p>1. <i>McIntyre</i>:</p> <ul style="list-style-type: none"> - Such harm need not be permanent but must be more than merely transient and trifling. - Bruises and scratches to a victim are typical examples of ABH <p>2. <i>Ireland and Burstow</i>; <i>Chan-Fook</i> (UK cases)</p> <ul style="list-style-type: none"> - Psychiatric injury: some identifiable clinical condition; recognisable psychiatric illness.
Wounding	<i>Shepherd</i> : Wounds is an injury involving the breaking or cutting of the interior layer of the skin (dermis) and the breaking of the outer layer (epidermis) is not sufficient.
GBH	<p>s 4(1) Grievous bodily harm includes:</p> <ul style="list-style-type: none"> (a) 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, and (b) any permanent or serious disfiguring of the person, and (c) any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease). <p><i>Haoui</i>: GBH does not require the injuries are permanent or that the consequences of the injuries are long lasting, or life threatening. But it needs to be a really serious one.</p> <p>e.g.: complex skull fracture (<i>Remilton</i>); severe multiple fractures to a leg and nerve damage to the face; a closed head injury and facial neurological damage; severe injuries to a knee (<i>Shannon</i>); rib fractures in a child <i>BJR v R</i>; significant facial fractures, right orbital complex fracture <i>Woodland</i>; fractures to cheekbones and nose requiring reconstructive surgery <i>Vann v Plamer</i></p>

III. AGGRAVATED ASSAULT--- make out a Common Assault First

Assault occasioning actual bodily harm	<ol style="list-style-type: none"> 1. Actual bodily harm occasioned—5years—s 59(1) 2. ABH and committed in the company of another person/persons—7years—s 59(2) 	
Negligent Causing GBH	<ol style="list-style-type: none"> 1. By an unlawful or negligence act, or omission + GBH—2years—s 54 2. Gross negligence <i>D [1984]</i> 	
Reckless Wounding or GBH	<ol style="list-style-type: none"> 1. Wounding—7years—s 35(4) 2. Wounding + in company—10y—s 35(3) 3. GBH—10years—s 35(2) 4. GBH+ in company—14years—s35(1) 	<ol style="list-style-type: none"> 1. Reckless as to causing ABH to that or any other person - Foresight of the possibility of some harm but persists to do so. <i>Edwards v Police</i>
Wounding or GBH with INTENT	1. Wounding or GBH—25years—s33(1)	1. With intent to cause GBH to that or any other person.
s 35A—discharging firearm with intent	<ol style="list-style-type: none"> 1. Discharge or attempt to discharge 2. Any firearm—definition in s4(1) <p>Max: 25years</p>	1. With intent to cause GBH
s 46—causing bodily injury by gunpowder	<ol style="list-style-type: none"> 1. GBH caused 2. by the explosion of gunpowder or other substance, or the use of any corrosive fluid, or destructive matter <p>25 years</p>	1. intentionally or recklessly
s 47—using explosive substance or corrosive fluid	With intent to do GBH, whether or not bodily injury is effected—25 years	
s 49—setting traps with intent to cause GBH—5years	<p>s 35A—causing dog to inflict GBH/ABH</p> <ul style="list-style-type: none"> - has control of a dog - does any act that causes the dog to inflict GBH (10years) / ABH (5 years) - reckless to the injury 	<p>s 49A throwing rocks and other objects at vehicles and vessels—max 5 years</p> <ul style="list-style-type: none"> - intentionally throws an objects at or towards a vehicle or vessel that is on any road/railway/navigable waters - there is a person in the vehicle - the conducts risks the safety of any person

	<ul style="list-style-type: none"> ○ Inadvertent--Tolmie; Kitchener¹ Failed to consider whether the victim was consenting, and went ahead with the act of SI, even though the risk of non-consenting would have been obvious to someone with the accused's mental capacity if they had turned their mind to it ● No reasonable grounds² to believe in consent (Objective test) <i>R v Luke Andrew LAZARUS</i>; s 61HA(3)(c) <ul style="list-style-type: none"> ○ Do you honestly believe that she is consenting; ○ If yes, is the belief reasonable? <p>NOTE: s 61HA(3)</p> <p>(d) including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but (so a failure to take any step to ascertain is adverse effect on the accused.</p> <p>(e) not including any self-induced intoxication of the person. (so only the victim's intoxication will be taken into account in AR s 61HA(6)(a))</p>
Aggravated Sexual Assault	<p>61J Aggravated SA--20years</p> <ul style="list-style-type: none"> ● (2) (a) intentionally or recklessly ABH (b) threats to inflict ABH by means of an offensive weapon or instrument <ul style="list-style-type: none"> - it was held that it was not necessary to prove that the accused brought the penknife to the scene intending to use it in an offensive manner. - Suffice if the accused was using it in an offensive manner at the time of the commission <i>RJS</i> (c) in the company of another person(s) <ul style="list-style-type: none"> ● <i>Crozier</i>: mere presence of a person is not sufficient--must also be some encouragement or assistance. ● <i>Button; Griffen</i>: offences committed some 50m away from the group of people--suffice ● Physical presence is an elastic concept--the test is the coercive effect of the group: There must be such proximity as would enable the inference that the coercive effect of the group operated, either to embolden or reassure the offender in committing the crime, or to intimidate the V into submission. (thus, a look-out is not enough) (d) victim is under the age of 16 ys <i>McGrath</i>: the P must prove that the V didn't consent and knowledge of the absence of consent 'irrespective of the victim's age' for a person to be convicted of an offence against s 61J, despite under s61HA (4)(a) consent is automatically vitiated if the person be incapable of consenting due to age (e) victim is under the authority of the offender under the authority--e.g., in the care, or under the supervision or authority of the other person <ul style="list-style-type: none"> ● <i>KSC</i>: these words are ordinary English words which the jury would have had no difficulty in understanding. ● <i>DH</i>: employer/ee included. (f). Victim has a serious physical disability or, (g) a cognitive impairment s61H(1A) a person has a cognitive impairment if the person has: <ul style="list-style-type: none"> (a) an intellectual disability, or (b) a developmental disorder (including an autistic spectrum disorder), or (c) a neurological disorder, or (d) dementia, or (e) a severe mental illness, or (f) a brain injury,

¹ For Essay:

- The argument was run as, incorporation of inadvertence or negligence into mens rea of SA, would be inconsistent with a central tenet of our criminal law, that a person should not be subject to serious criminal sanction for actions which they aren't proved to have intended.
- However, there are sound reasons of policy which support the incorporation:
 - To criminalise conscious advertence to the possibility of non-consent, but to excuse the reckless failure to give a moment's thought to that possibility, is self-evident unacceptable.
 - Every individual has a right to the human dignity

² Policy argument against it:

- Individual responsibility
- The criminal law is designed to punish the vicious, not the stupid or the credulous.
- It is rare for the accused's state of minds to be the major issue (only 6% relied on the belief of consent)
- The law of rape can perform its educational function quite effectively without abandoning the MR.

Argument for it

- The present law does not adequately protect sexual autonomy
- The subjective approach means that 'the more drunk, insensitive, boorish or self-delusional the male, the more likely that an acquittal will ensue'
- A should not be able to avoid culpability, if he has not considered the issue of consent
- 'communicative model' of consent.