

**Week ONE**

BURDENS & STANDARD OF PROOF

**1. “Legal” or Persuasive Burden**

- the burden of proving an issue which is part of one’s overall case
- Ordinarily on the prosecution: **Woolmington v DPP**
- Some instances of ‘reverse onuses’: e.g. Defences of Insanity (s.27), Diminished Responsibility ss215(5) UCK, s222(4) incest.

Standard of Proof for Legal Burden

- For prosecution: (a very high threshold)
  - ‘beyond reasonable doubt’: **Woolmington**
- For accused: (if the legal burden is reversed)
  - ‘on the balance of probabilities’: **Carr-Briant**

**2. “Evidential” Burden**

- The burden of adducing sufficient evidence on a single issue to warrant the jury/magistrate being allowed to consider it
- *Some examples of reverse evidential burdens: lack of will, accident, mistake of fact, claim of right, self defence, provocation, insanity.*

Standard of Proof for Evidential Burden

- No fixed quantum for the either party. Requires ‘sufficient’ or ‘prima facie’ evidence only.

**Week TWO – Assault and Injury Based Offences**

- “Assault based” offences concentrate on lack of consent
  - **Common Assault** : s335
  - **AOBH** : s339
  - **Serious Assaults** : s340
  - **Sexual assaults** : s352
- “Injury based” offences focus on extent of injury
  - **Neg. causing bodily harm** : s328
  - **Unlawfully wounding** : s323
  - **Unlawfully causing GBH** : s320
  - **Torture** : s320A
  - **GBH with intent to do GBH** : s317

**s.245(1) – definition of assault**

**LIMB 1 - *The actual application of force***

- (a) the striking, touching, moving of, or application of force of any kind to the person of another;
- (b) either directly or indirectly;
- (c) without the other person's consent or with consent, if the consent is obtained by fraud;

**(b) ‘Direct or Indirect’**

- **Croft v Blair** (an indirect application of force - accused encouraged his dogs to assault someone)
- **Fagan v Metropolitan Commissioner of Police** (authority for direct assaults)

**(c) ‘Without Consent’**

- **Consent can be express, implied or tacit**
- **Kimmerley v Atherton** (girl argued she didn’t consent to a boy kissing her – she did nothing inconsistent with consenting so existed implied/tacit consent)
- **Not assault if necessary for common intercourse of life:**
- **Horan and Ferguson** - teacher touched kids on the buttocks to guide them, gave them a pat on the back etc – held there existed implied consent for some touching since the kids consented to attend the school
- **Boughy v R** (1986) - commonplace actions such as bumping someone, tapping someone on the shoulder to get their attention etc, should be expected in the social intercourse of day to day life - not assault

**Note – Can raise s.24 in regards to consent**

- **s24(1) Honest, reasonable but mistaken belief of consent may be a defence**
- **Lergesner v Carroll**
  - L assaulted C inside - C said ‘do you want to take this outside’, to which L replied no lets settle this now – L waited and then said ‘well’ – court held L’s words and actions were consent to application of force by C – even if not, court also said L could have raised defence of mistake of fact

**LIMB 2 - *an attempt or threat to apply force***

- (a) any bodily act or gesture;
- (b) attempting or threatening to apply force of any kind to the person of another;
- (c) without the other person's consent;
- (d) in circumstances where the person making the attempt or threat has, actually or apparently, a present ability to effect that purpose.

**(a) ‘any bodily act or gesture’**

- Words alone not enough - however the words or threat may be what gives a bodily movement the character of a threatening act or gesture - **Hall v Fonceca**

**(b) ‘Attempt or threat to apply force’**

- Covers both attempts and threats to apply force (an attempt would be throwing a punch and missing and a threat would be raising your fist and threatening to strike)

**(c) Without consent**

- **Consent can be express, implied or tacit - Horan and Ferguson**

**(d) ‘an actual or apparent present ability’**

- **s.245 links the attempt or threat to apply force with the actual or apparent present ability**
- Actual present ability would be if someone threatened another with a loaded gun
- Apparent present ability would be someone threatening another with a gun that isn’t loaded, but it appears they have the apparent ability to apply force

**Brady v Schatzel** [1911] St R Qd 206

- Female used an unloaded gun to threaten someone, but she pretended to load the gun
- Court held that she had the apparent present ability to effect a purpose

**‘present ability’ does not mean an apprehension of immediate personal violence.**

- **Secretary** (man threatened to kill wife on several occasions – one night he threatened to kill her, he beat her up and then went to sleep – the woman then shot the