

Exam notes

1. *Woolmington v DPP* [1935] AC 462, 481-2

"Throughout the web of the English Criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt".

The golden thread also extends to the idea that should the accused raise a defence, then the prosecution must disprove that defence beyond reasonable doubt.

2. *Gough v Gough* [1891] 2 QB 665

When a definition says 'means', "the definition is a hard and fast definition, and no other meaning can assigned to the expression that is put down in the definition' "

3. *Beckwith v R* (1976) 135 CLR 569

"any real ambiguity persisting after the application of the ordinary rules of construction is to be resolved in favour of the most lenient construction"

PROVING INTENT

1. Intent means to have in mind: *Willmot (No 2)* [1985] Qd R 413

2. A person's acts may provide the most convincing evidence of intention: *R v Winner* (1995) 79 A Crim R 528 (*"By actions we shall know the heart"*)

3. For murder, direct intention is required, not mere foresight: *Willmot (No 2)* [1985] Qd R 413

4. When a person intends something, he or she usually acts to bring about the occurrence of that thing: *Peters* (1998) 192 CLR 493 (*Direct intention*)

5. A person intends a result for legal purposes when it is known or foreseen that an event will be a certain or virtually certain consequence of some action, even though the action may have had some other purpose: *Willmot (No 2)* [1985] Qd R 413 (*Oblique intention*)

6. No need to prove that an ordinary person would have foreseen the exact nature of the injury, just that an ordinary person in the position of the defendant would have reasonably foreseen the serious degree of injury which constitutes grievous bodily harm: *R v Stuart* [2005] QCA 138 'not necessary that the precise number of teeth damaged should have been foreseeable. It just had to be foreseeable that the punch might cause that kind of damage.'

ASSAULT GENERALLY

Definition (s222)	A <u>person</u> who strikes, touches, or moves, or otherwise <u>applies force</u> of any kind to the <u>person of another</u> , either directly or indirectly, <u>without his consent</u> , or with his consent if the consent is obtained by fraud, or who by <u>any bodily act or gesture attempts or threatens</u> to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has <u>actually or apparently a present ability</u> to effect his purpose, is said to assault that other person, and the act is called an assault. -- The term <i>applies force</i> includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.
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Statutory provisions

s222	Definition of assault	s317	OABH
s223	Assault is unlawful	s317A	Assault with intent
s313	Common assault	s318	Serious assaults
s221	Circumstances of aggravation		

Elements and case law

A person	This element is not contentious. It will be met
Applies force	Can be direct or indirect
	Application of force must be intentional or at least reckless: <i>Hall v Fonceca</i> [1983] WAR 309. If accidental (e.g. bumping on busy train), then defence available under s23.
Attempts to apply force	Attempt implies intent: <i>Hall v Fonceca</i> [1983] WAR 309
*Also need to prove bodily act and apparent ability	Must prove intent to assault – usual way of assessing intent.
Threatens to apply force *Also need to prove bodily act and apparent ability	MUST PROVE INTENT TO CREATE APPREHENSION IN VICTIM
	Context of threat is important: <i>Hall v Fonceca</i> [1983] WAR 309
	Apprehension of victim must be reasonable (reasonable person) (objective test): <i>Brady v Schatzel</i> [1911] St R Qd 206
	Intent to carry out threat is irrelevant, intent to cause apprehension in the victim of an assault is enough: <i>Hall v Fonceca</i> [1983] WAR 309
	Words may negate a threatening gesture if inconsistent with it, such as a conditional threat: <i>Tuberville v Savage</i> [1669] EWHC KB J25
Bodily act or gesture* *Req for both threatened and attempted assault	A verbal assault is no assault at all.
	Threat can be by combination of actions and attitude: <i>Hall v Fonceca</i> [1983] WAR 309

Actual or apparent ability* *Req for both threatened and attempted assault	Ability is assessed at time of making threat or when threat to be carried out: Secretary (1996) 86 A Crim R 119
	Apprehension has to be of immediate harmful contact: Zanker v Vartzokas (1988)
	E.g. within punching distance = actual or apparent ability
Person of another	This element is not contentious. It will be met
Without consent	You can consent to a fight: Lergesner v Carroll [1991] 1 Qd R 206; Hall v Fonceca [1983] WAR 309; R v Raabe [1985] 1 Qd R 115;
	Consent to assault and injury is implied when a person participates in a sporting contest or game, as long as the assault and injury occur within the rules of the game and the game itself is lawful: Pallante v Stadiums Pty Ltd (No 1) [1976] VR 331
	Consent may be implied to normal, everyday contact such as 'commonplace, intentional but non-hostile acts: Boughey v R (1986) 161 CLR 10
	Assault can be unlawful even with consent: s223
	It is for the tribunal of fact to decide whether the degree of violence used exceeded that to which consent had been given: Lergesner v Carroll [1991] 1 Qd R 206
	Nothing to suggest consent = no consent

