

# LAWS1022: Criminal Laws

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## INTRODUCTION

The Prosecution's role

- Beyond reasonable doubt
  - Legal Personhood (doli incapax/mental illness/companies)
1. Actus Reus
  2. Mens Rea
    - Subjective MR (thought): intent, recklessness, knowledge
    - Objective MR (ought to have thought): negligence (reasonable person test)
  - **Absolute liability**: no mens rea required to be proven
  - **Strict liability**: no prima facie mens rea required, can be rebutted by honest and reasonable mistake
  - **Basic intent** offences are offences which require an intention to merely perform an act (e.g. assault).
  - **Specific intent** offences are offences which require an intention to bring about a particular consequence (e.g. grievous bodily harm, murder).
  3. Coincidence of AR/MR
  4. Negate any defences operating

## ASSAULT

**Traditional/threat** assault – an act or words causing the apprehension of imminent unlawful contact (i.e. a threat).

### Actus Reus

1. Threat (act) of imminent future force (*Knight*) – factual inquiry as to imminence (*Zanker v Vartzokas*)

### Mens Rea (*MacPherson v Brown*)

1. Intent to create an apprehension of harm, OR;
2. Recklessness as to the **probability** of the apprehension of harm

**Battery/touching** assault – the application of force without consent or lawful excuse.

### Actus Reus

1. An act of touch (can be continuing) (*Fagan v Metropolitan Police Commissioner*) → through intermediaries, bodily fluids, etc. (outside usual social interactions)
2. Without consent (unlawful) (*Wilson, DPP v JWH*)

### Mens Rea (*MacPherson v Brown*)

1. Intent to touch/ apply force, OR;
2. Recklessness as to the **probability** of the application of force/touching

**Common assault**: 2 years max. jail term

**Both battery and traditional assault are now more commonly (and correctly) referred to as simply 'assault'.**

**Edwards v Police (1998) 71 SASR 493:** assault where no physical contact

1. The AR of an assault where there is no actual physical contact is an act of the defendant raising in the mind of the victim, the fear of immediate violence to him or her, that is to say, the fear of any unlawful physical contact
2. The MR of such an assault is the defendant's intention to produce that expectation in the victim's mind
3. There is an alternative possibility of a 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 regardless
  - An assault by way of application of force must be committed by an act not an omission
  - Must be without consent
  - For assaults involving the apprehension of immediate violence, there is an additional requirement that the victim must **actually be** put in fear of imminent unlawful force (must be aware of the assault)

**MacPherson v Beath (1975) 12 SASR 174**

- "reasonableness may or may not be necessary... if the defendant intentionally puts the fear of immediate violence on an exceptionally timid person known to him to be so then the unreasonableness of the fear may not prevent conviction" (at 177) → separate reasonableness assessment redundant

**Fagan v Commissioner of Metropolitan Police [1969] 1 QB 439**

FACTS

- (Appellant convicted by magistrate of assaulting a police constable in the execution of his duty – ordered to pull over, ran over officer's foot. Matter proceeded on appeal, sole issue being whether the facts proved by prosecution amounted to the crime of assault)

HELD

1. The Divisional Court agreed that assault cannot be committed by an omission. However, in this case, the crime was not an omission to move the car; rather, it constituted a continual act of battery.
  2. The offence was not complete until the moment Fagan realised that he had driven onto the foot of the officer and, in deciding not to cease this continuous act, formed an intent amounting to the mens rea for common assault.
  3. Since both mens rea and actus reus were present, an assault had been committed, and Fagan's conviction was upheld.
- 4. CONTINUING ACT**
- Consent: not a factor that the crown must negative, generally no obligation to call evidence to do so (*Wilson [1985] 2 Qd R 420 at 421*)
  - Where harm is caused, different rules apply; sometimes this requirement (absence of consent) is referred to as an element of unlawfulness which may nevertheless be satisfied by an absence of consent