

Table of Contents

Common Assault.....	1
Consent to Harm	2
Consent to Medical Treatment.....	2
Aggravated Assault	2
Strangulation	5
Apprehended Violence Orders.....	5
Sexual Assault.....	7
Aggravated Sexual Assault.....	12
Murder	13
Constructive Murder	15
Manslaughter by Unlawful Act.....	15
Manslaughter by Criminal Negligence.....	16
Homicide by Omission	17
Assault Causing Death	17
Supply of Drugs Causing Death	18
Mental Illness Defence	18
Automatism.....	18
Defence of Substantial Impairment.....	19
Intoxication	20
Self-defence	22
Excessive Self-defence	23
Extreme provocation.....	23
Larceny.....	24
Fraud	26
Receiving	28
Goods in Custody	29
Joint Criminal Enterprise.....	30
Extended Joint Criminal Enterprise	30
Accessorial Liability	31
Conspiracy	32

Common Assault

CRIMES ACT 1900 – SECT 61

Common assault prosecuted by indictment

61 COMMON ASSAULT PROSECUTED BY INDICTMENT

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

Elements of assault where there is no actual physical contact (psychic assault):

Actus Reus: Act of raising in the mind of the victim the fear of immediate violence or any unlawful physical contact
Edwards v Police (1988)

Mens Rea: Intention to produce that expectation in the victim's mind OR whilst not desiring to cause such fear, realises that his conduct may do so and persists with it (reckless assault) Edwards v Police (1988)

Elements of assault where there is physical contact (battery):

Actus Reus: Application of force without consent Edwards v Police (1988)

Mens Rea: Intent to apply physical contact OR recklessness where defendant foresaw the risk of application of force and went ahead with his conduct anyway Edwards v Police (1988)

Notes:

1. Must be committed by an act, not an omission Fagan (1969)
2. What appears to be an omission may actually be a continuation of a previous act – mens rea can be superimposed to a **continuing** actus reus from before Fagan (1969)
3. Must be without consent of the victim Banora (1994) (Not for prosecution to negative though Wilson (1985))
4. For a reckless mens rea to be made out, **actual knowledge** is necessary MacPherson v Brown (1975)
5. If assault involves **apprehension of immediate infliction** of unlawful force (psychic assault), must evaluate whether the threat of harm is sufficiently imminent to satisfy actus reus Knight (1988)
6. Does not matter whether battery is inflicted directly by the body or through a weapon or instrument Fagan (1969)
7. A threat made over the phone could be a threat of immediate violence depending on circumstances Knight (1988)
8. Threats on the phone are not mere words Barton v Armstrong (1969)
9. Fear of immediate violence has its ordinary literal import Knight (1988)
10. Threat could be operating continually such that the contact apprehended is imminent Zanker v Vartzokas (1988)
11. For a psychic assault, victim must be aware of the accused's actions Pemble (1979)
12. Conditional threats may be an assault if it was a condition that the person could not lawfully impose Greaves (1964)
13. Interference with clothes can be an assault Day (1845)
14. May be constituted by an actual infliction of unlawful force on another, be it ever so small JWH (1997)
15. Spitting may amount to assault depending on the circumstances JWH (1997)
16. Force is not unlawful if it is an incident of ordinary social intercourse JWH (1997)
17. If a defendant intentionally puts in fear of immediate violence an exceptionally timid person known to him to be so, the unreasonableness of the fear may not prevent conviction (reasonableness of the apprehension may or may not be necessary) MacPherson v Beath (1975)

Consent to Harm

1. Consent is no defence if the injury is of such a nature or is inflicted under such circumstances that its injurious to the public as well as the person injured Coney (1882)
2. It is an unlawful act to beat another person with such a degree of violence that the inflict of bodily harm is a probable consequence, and when such an act is proved, consent is immaterial Donovan (1934)
3. Whether the consent is valid requires consideration of policy and public interest Brown (1994)
4. Whether violence is incidental or violence is inflicted for the indulgence of cruelty is relevant Brown (1994)
5. Consensual, sado-masochistic homosexual activities in which injury occurs is not afforded the defence of consent Brown (1994)
6. Consent to harm cannot be used as a defence for gagging – foreseeable risk of serious injury and no possibility to articulate distress Stein (2007)
7. Where risk of serious injury arises, issue of consent becomes irrelevant Stein (2007)
8. Branding can be likened to tattooing, and defence is afforded Wilson (1997)
9. Consensual acts of horseplay may afford the defence, despite suffering serious burns Aitken (1992)
10. Consensual sexual risk taking resulting in injuries from suffocation and third degree burns renders consent immaterial Emmet (1999)
11. Absence of hostility/hostile intent does not constitute a justification Boughey (1986)

Consent to Medical Treatment

1. Only a mistake as to the nature of the act or the identity of the person doing it vitiates consent Richardson (1998)
2. Consideration of whether a treatment is in a special category which falls outside the scope of a parent to consent; sterilization does fall outside the scope Marion's Case (1992)
3. Important factors for considering whether it falls into this category: invasive, irreversible, major, significant risk of making wrong decision, future or present capacity to consent; overriding criterion is the welfare of the child objectively assessed Marion's Case (1992)

Aggravated Assault

All aggravated assault offences are found in *Crimes Act* Pt 3 Divs 6 – 9A (sections 32 – 60E)

Assault with further specific intent

1. Sections 33 – 33B are offences which amount to assault with intent to do GBH or resist lawful arrest
2. Sections 37(2) (strangulation law below), 38 and 58 contain offences of assault with intent to commit an indictable offence

CRIMES ACT 1900 – SECT 33

Wounding or grievous bodily harm with intent

33 WOUNDING OR GRIEVOUS BODILY HARM WITH INTENT

(1) Intent to cause grievous bodily harm A person who:

(a) wounds any person, or

(b) causes grievous bodily harm to any person,

with intent to cause grievous bodily harm to that or any other person is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

(2) Intent to resist arrest A person who:

(a) wounds any person, or

(b) causes grievous bodily harm to any person,

with intent to resist or prevent his or her (or another person's) lawful arrest or detention is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

(3) Alternative verdict If on the trial of a person charged with an offence against this section the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 35, the jury may acquit the person of the offence charged and find the person guilty of an offence against section 35. The person is liable to punishment accordingly.

Assault causing particular injuries

CRIMES ACT 1900 – SECT 35

Reckless grievous bodily harm or wounding

35 RECKLESS GRIEVOUS BODILY HARM OR WOUNDING

(1) Reckless grievous bodily harm—in company A person who, in the company of another person or persons:

(a) causes grievous bodily harm to any person, and

(b) is reckless as to causing actual bodily harm to that or any other person,
is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

(2) Reckless grievous bodily harm A person who:

(a) causes grievous bodily harm to any person, and

(b) is reckless as to causing actual bodily harm to that or any other person,
is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(3) Reckless wounding—in company A person who, in the company of another person or persons:

(a) wounds any person, and

(b) is reckless as to causing actual bodily harm to that or any other person,
is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(4) Reckless wounding A person who:

(a) wounds any person, and

(b) is reckless as to causing actual bodily harm to that or any other person,
is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(5) Alternative verdict If on the trial of a person charged with an offence against any subsection of this section the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against any other subsection of this section (that carries a lesser maximum penalty), the jury may acquit the person of the offence