

OFFENCES

Onus is on the Crown to prove the main facts on issue

4	Assault	Direct/Indirect or Threatened/Attempted	
		Occasioning bodily harm	
		Serious Assault	
5		Assault with intent to rape	
4	Endanger Life or Health	GBH	
		Torture	
		Unlawful Wounding	
		Disabling to commit indictable offence	
		Stupefying to commit indictable offence	
		Unlawful drink spiking	
		Intent to cause GBH & other malicious acts	
		Negligently causing bodily harm	
	Other	Domestic violence	
		Unlawful Stalking	
		Observing and recording	
		Distributing recordings	
5 6	Unlawful Killing	Murder - intentional	
		Murder - dangerous act	
		Manslaughter	
		Attempted Murder	
		Manslaughter	
		Unlawful striking causing death	
7	Sex	Rape	
		Attempted rape	
		Assault with intent to rape	
		Sexual Assault (Assaults or procures another person)	
		Other sexual offences (Incest, Bestiality, Sodomy, Under 16, Internet)	
11	Property	Arson	
		Burglary or Entering with Intent	
		Robbery	

12	Dishonesty	Forgery and Uttering	
		Fraud	
		Personation	
		Receiving Tainted Property	
		Stealing	
13	Drugs	Unlawful use/possession of motor vehicle, aircraft or vessel	
		Supplying (alternative at bottom)	
		Trafficking (alternative at bottom)	
		Producing (alternative at bottom)	
		Receiving (alternative at bottom)	
		Permitting use of a place	
		Receiving/possessing property obtained from trafficking	
		Possessing things in connection with crime/purpose etc	

EXCUSES

Accused raises: prosecution must negative/disprove beyond reasonable doubt. Cant - gets benefit

8	Compulsion	
	Extraordinary Emergency	
	Provocation - Assault	
	Provocation - Murder (reduces murder to manslaughter)	
	Killing for preservation in abusive relationship	
	Self Defence	
9	Accident	
	Act Independent of Will	
10	Mistake of Fact	
	Mistake of Law	

DEFENCES

Accused has to prove on balance of probabilities

9	Diminished Responsibility	
	Insanity	
	Intoxication	

WEEK 3

COMPLICITY

WHO ARE THE PARTIES?

When an offence is committed, each of the following is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with committing it		s 7(1)
a)	Person who executed the offence	
b)	Enabler	
c)	Aider	
d)	Counsellor or procurer	

PERSON EXECUTING OFFENCE

YES	Can be a series of acts which constitutes the offence	s 7(1)(a)
e.g.	One breaks, the other enters, can both be charged with breaking and entering	Wyles

ENABLER

YES	Does not need to be present at the scene (keeping lookout, driving getaway car, disabling an alarm)	Johnson
NB	Must be for the common unlawful purpose (didn't know the other had a gun, not guilty of manslaughter)	Borg

AIDER

NO	Mere presence is not sufficient - must be a non accidental presence with active steps by words or actions, intentional or wilful encouragement	Clarkson
NB	Voluntary and wilful presence at the scene can still be encouraging even if you strongly disagree with what is happening	Beck

COUNSELLOR OR PROCURER

NB	Need evidence of what accused actually advised or procured	s 7(4)
YES	If person counselled/procured not guilty, other can be if would have committed the offence themselves	s 7(3)
YES	Irrelevant offence committed was counselled so long as it was probable consequence	s 9

WEEK 4

ASSAULT OFFENCES

Common Assault	s 335	Misdemeanour	3 years
Assaults occasioning bodily harm	s 339	Crime	7 Years
Serious assaults	s 340	Crime	7 Years
NB	Assault is an ELEMENT of s 339 and 340.		
	Common Assault is an alternative verdict of s 339 and 340: s 575		

COMMON ASSAULT

Any person who unlawfully assaults another is guilty of a misdemeanour			s 335(1)
Penalty	3 yrs if no greater punishment provided		
A person is said to have assaulted someone where:			s 245(1)
Limb 1	Actually Applies Force	A person who strikes, touches or moves or otherwise applies force of any kind to the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud; or	
Limb 2	Threatens /Attempts to Apply Force	Who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose	
NB	An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.		s 246

(Apply either Limb 1 or Limb 2 dependant on the circumstances)

LIMB 1 - ACTUALLY APPLIES FORCE

ELEMENTS	
1	A person
2	Application of force
3	Directly or indirectly
4	Without consent

s 245(1)

****ONCE THIS OFFENCE IS SATISFIED - SKIP TO 'SERIOUS/OCCASIONING BODILY HARM****

1. PERSON

2. APPLICATION OF FORCE

Applies Force	Includes 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	s 245(2)
	Strikes, touches or moves	s 245(1)
Determined	Objectively	Davies
NB	No requirement of intention as it does not mention it in the provision	s 23(2); Majewski
NB	Victim doesn't need to be aware of force being applied (e.g. asleep)	Boughey
e.g. Assault?		
YES	Man accidentally drives car onto policeman's foot - guilty (no proof intended to, was by accident, or he deliberately held car on it)	Fagan v Metro Police Comm.
YES	Where more force used than necessary to repel an assault	R v Godbaz
YES	Kicking feet recklessly	Venna

3. DIRECTLY OR INDIRECTLY

YES	Direct application (e.g. hitting another person)	DPP v K
YES	Indirect application (e.g. pouring acid in hand dryer, person uses after)	
YES	YES Using dog as a weapon	Croft v Blair

4. WITHOUT CONSENT

Test	Question of fact - prosecution must negative consent	Donovan
	Assault is unlawful unless authorised, justified or excused by law	s 246(1)
NB	May be unlawful even with the consent of the other person	s 246(2)
Was there consent? (a NO satisfies element)		
	Implied/tacit consent to some degree of non-violent contact	(Cite below 3)
YES	YES Kissing in some circumstances	Kimmorley
	YES Actions occurring in course of everyday life/social intercourse (e.g. patting on shoulder or pushing in crowded bus)	Horan; Boughey
NO	Victim was asleep/unconscious - even if it were for their benefit	Boughey; Murray
YES	If you agree to a fist fight, consent to what follows from it	Raabe;
	NO Level of force exceeds what was consented (outside realms, e.g. bar fight not presumed to use a pole)	Lersenger v Carroll
	Participating in contact sport - implied consent to content within rules of game	(Cite below 3)
YES	NO Punching in rugby	Billinghurst
	NO Spear tackling in rugby	Re Lenfield
	NO Elbow someone in AFL	McNamara
NO	Consent obtained by fraud, or law doesn't permit person to consent (e.g. age)	Donovan
?	Anticipating force may suggest consent in some circumstances	Brady v Schatzel
NO	Consent immaterial if injurious to public (this is common law though - dont use)	Brown; Coney

LIMB 2 - THREATENED/ATTEMPTED APPLICATION OF FORCE

ELEMENTS		
1	A person	
2	Attempts/threatens to apply force	
3	By bodily act or gesture	s 245(1)
4	With actual or apparent person ability to effect purpose	
5	Without consent	

1. PERSON

2. ATTEMPTS/THREATENS TO APPLY FORCE

Attempt	When intending to commit offence begins to put intention into execution by mens adapted to its fulfilment, and manifests the person's intention to such an extent as not to commit the offence	s 4(1)
Immaterial	Whether does all that is necessary for completing offence	s 4(2)
	Whether complete fulfilment is prevented by circumstances independent of their will	s 4(2)
	By reason of circumstances not known to offender it is impossible to complete offence	s 4(3)
Threaten	Intention is required	s 4; Hall v Fonceca
BUT	Don't need an intention to carry out the threat	
NB	Same facts may constitute both one offence and an attempt to commit another	s 4(4)
Intention	Intention is a 'purpose or design' where the accused's intentions are designed to bring about a result - NEED MORE GO TO MURDER	Reid; Wilmot; Maloney

3. BODILY ACT OR GESTURE

	Mere words are insufficient	Fogden v Wade; Knight
NO	Over the phone cannot satisfy	
YES	Combination of words plus bodily act (said was stick up, pretended had gun)	Dale
YES	YES Walking up close behind girl and making sexual suggestion	Fogden v Wade
YES	Conditional threats are sufficient - if clear threat will be carried out and is not merely an empty threat (holds knife and says "if you drive ill cut you")	Rozsa v Samuels; Police v Greaves
NB	Series of closely timed blows may be treated as one continuing assault	Gardner v Capcorn

4. ACTUAL/APPEARANT PRESENT ABILITY TO EFFECT PURPOSE

Actual	Real knife capable of doing some damage or real loaded gun. Victim's knowledge is not relevant here	Police v Greaves
Apparent	Apparent, present ability to apply force	Everingham
	YES Toy gun	
	YES Unloaded gun	Brady v Schatzel
	YES Pretended had a gun (was ruler)	Dale
Present	Does not need to be completely immediate - e.g. said would kill after sleep, was still an apparent present ability even though was asleep (one continuous assault)	Secretary; Barton
NO	Where victim makes it clear they cannot carry out the assault	Tuberville v Savage
Rules - MUST APPLY		
YES	Victim must be aware of the threat/attempt	Dale; Pemble
NO	Victim doesn't have to be in fear	Brady v Schatzel
YES	Can be considered subjectively - e.g. if it was a joke. Interpreted through the eyes of a reasonable bystander	Cotter; Lees v Visser

5. WITHOUT CONSENT

SAME AS THE FIRST LIMB

****ONCE THIS OFFENCE IS SATISFIED - SKIP TO 'SERIOUS/OCCASIONING BODILY HARM****

ASSAULT OCCASIONING HARM

Any person unlawfully assaults another and does other person harm is guilty of a crime		s 339(1)
Penalty	7 years imprisonment (aggravated - see below)	
ELEMENTS		
1	A person (already established)	s 339(1)
2	Assaults another (already established	
3	Does other person bodily harm	

3. DOES OTHER PERSON BODILY HARM

Bodily harm	A bodily injury which interferes with health or comfort		s 1
NB	Must be an identifiable injury (e.g. black eye, bloody nose)		Lersenger v Carroll
	NO	Mere sensation of pain is not sufficient	Scatchard
	YES	Continuing pain emanating from an injury is 'bodily harm'	R v Campbell
	NO	Causes hysterical and nervous condition (psychiatric injury)	R v Miller
YES	Consent is possible. Question of fact what degree of violence was consented to.		Lersenger v Carroll
	YES	Consent includes where consent is tacit or implied	R v Ferguson
	NO	Consent obtained by fraud is invalid	R v Veltheim
YES	Girl jumped from moving car after threats and suffered harm - test - whether could have been a reasonable foreseeable result of what he was doing		R v Roberts
	NB	Causation satisfied where accused's conduct creates in victim's mind a well-founded and reasonable apprehension of danger as a result of which the victim takes steps to escape	Royall

AGGRAVATED

If does bodily harm, and - is/pretends to be armed with any dangerous/offensive weapon/instrument; or - in company with one or more other persons Liable to 10 years imprisonment			s 339(3)
In Company (for aggravated offence)	<ul style="list-style-type: none">- Victim must be confronted by the combined force or strength of two or more persons.- Sufficient accused and 1+ other person is physically present for the common purpose and of physically participating if required		R v Walker; R v Cooper; R v Brougham
	Physically Present	Where such proximity between co-defendants to enable inference that coercive effect of the group operated, either to embolden on reassure the offender in committing the crime, or to intimidate the victim into submission	R v Button