

Common Law Assault (Common assault)

Strict Assault

Creating an apprehension in the victim that immediate and unlawful violence/force will be applied against them

Actus Reus

- Apprehension of immediate application of force
- Must be positive voluntary act
- Cannot be done through omission
- Highly subjective – would that specific person in the specific time have felt apprehension in regards to the ‘threat’ from the specific person
- Can be words/gestures
 - o **Ireland**
- Victim’s reaction to the Defendants conduct is important
- What the victim perceives the outcome of the threatening conduct is likely to be
- Even if apprehension isn’t reasonable, as long as the victim had the apprehension it is enough.

Apprehension

- What the victim perceives the outcome of the threatening conduct is likely to be
- Shouldn’t be about fear, it is about what they perceive (apprehend) of the threat
 - o E.g. someone comes at skilled fighter with knife, may not apprehend because of their own skill, no assault.
 - o **Ryan v Khul**
 - o However, in contrast to this **Brady v Schatzel** – doesn’t matter how brave/timid your victim is
 - Although well established that virtues of the victim are an objective feature of the offence
- Victim must be aware of the threat/danger
 - o **State v Berry**

Immediacy

- Generally, depends on circumstances
- Large emphasis on whether the victim could escape
 - o Whether they could have had a novus actus interveniens to break the causal link between the threat and expected infliction of harm

- Whether the accused maintains a position of control and dominance over the victim may keep the threat of violence and the apprehension alive in the complainant's mind

- **Zanker v Vartzokas**

Conditional threats

- When threats are made on the condition of some other event
- Threats only come into effect, and can therefore only create an apprehension, when the condition is fulfilled
 - **Tuberville v Savage**
- Only conditions that can be lawfully imposed apply.
 - If you make an unlawful condition, the actus reus can be made out.
 - **Rozsa v Samuels**

Causation

- Injury sustained while fleeing:
 - **R v Halliday**
 - If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in doing so injures himself, the person who creates such a state of mind is responsible for the injuries which result

Mens rea of Strict Assault

Intention

- Intention to create an apprehension of immediate and unlawful physical contact
 - **Fagan**

Recklessly

- Foresight of the probability of creating an apprehension of immediate and unlawful physical contact
 - **Campbell**
 - Something that is likely to happen as opposed to something that may happen
 - Probable not possible

Battery

Actus reus of battery

Unlawful application of force to V's Body

How the force must be applied

- Doesn't have to be inflicted by the body of the offender, just by a medium controlled by the offender
 - o **Fagan**
- Directly, the force has to be aimed at V
- As long as you make physical contact, it is made out

Doesn't have to result in injury

- No injury required to attain actus reus
- No hostility required either
 - o They don't have to want to harm you

The kind of force necessary

- Must have regard to all the circumstances of the given case, whether the touching was within the limits of what is socially accepted or at least socially tolerable

Mens Rea of Battery

Intention

- Intention to make unlawful physical contact
 - o **Fagan**

Recklessness

- Foresight of the probability of making unlawful physical contact
 - o **Campbell**

<u>Title</u>	<u>Issue/Significance</u>	<u>Facts</u>	<u>Decision</u>
R v Ireland	CL Strict Assault, can silence, words, gestures be threatening	Victim was getting called repeatedly and defendant breathed down the end of the line and verbally threatened	Words/gestures can be threatening
Ryan v Khul	CL Strict Assault, apprehension	Toilet door, stabbed through it Didn't apprehend cause of cubicle protection	Apprehension must be felt
Brady v Schatzel (Qld)	CL Strict Assault, apprehension contradiction	Woman aimed unloaded rifle at man pretending it was loaded	Contradiction, to above, doesn't matter if your victim is brave/timid

State v Berry	CL strict assault, apprehension	Gun pointed at victim's back	Cannot be assault if not aware of threat
Zanker v Vartzokas	CL strict assault, immediacy	Victim was in car with perpetrator, threatened her with things that would happen when they got out of the car. Victim jumps out of car, injures herself	Where accused maintains position of dominance, the threat retains its immediacy, apprehension is kept alive
Tuberville v Savage	CL Strict assault, conditional threats	Would strike you down if kings justice were not in town.	Conditional threats only become threatening when condition is fulfilled
Rozsa v Samuels	CL Strict Assault, Conditional threats	Threaten to punch driver if doesn't move car, second driver threatens to cut him to bits if he does punch	Conditions only prevent threat when the condition is lawful.
R v Halliday	CL Strict assault, Injury sustained while fleeing	Tries to jump out of window to escape violent husband, hurts herself	If threat creates immediate sense of danger and they try to escape person who creates threat is liable for injuries
Fagan	CL strict assault, Intention	Kept car on foot of policeman even after police asked him to remove it	Intention
Campbell	CL Strict assault Recklessness	Accused was arguing with girl, three men tried to intervene, one was shot by gun of accused	Recklessness must be probable not possible

Fagan	CL Battery, types of force	Used car to injure policeman	Battery can be committed by anything under control of accused
Fagan	CL Battery, intention	As above	As above
Campbell	CL Battery Recklessness	As above	As above

Civil law Torts of Assault/Battery

Tort of Assault

To be liable for civil assault, the plaintiff must prove on the BOP that the respondent:

- ***Performed a PVA***
- ***Which caused the plaintiff reasonable apprehension***
- ***Of imminent physical interference***

- Apprehension must be felt
- Apprehension does not equal fear
- The subjective apprehension must be reasonable
- A lack of apprehension, even if objectively unreasonable for them not to have is no assault
 - **Ryan v Khul**
- Silence/gestures can be threatening
 - Heavy breathing on phone call
 - **McHale v Watson**
 - Pointing a loaded gun
- Immediacy is based upon the plaintiffs perception
 - **Zanker v Vartzokas**
 - **Barton v Armstrong**
- Conditional threats
 - A Threat which only becomes truly threatening upon the fulfilment or satisfaction of a specified condition
- Fault is assumed, it is for the respondent to throw off this assumption
 - See below

Tort of Battery

To be liable for civil battery, the plaintiff must prove on the BOP that the respondent

- *Performed a PVA*
- *Which caused direct physical interference with the plaintiff*
- *Without the plaintiff's consent*

- Actual harm is not necessary
- Objects can be used
 - **Fagan**
- Mental fault is assumed and it is for the respondent to disprove
 - If the respondent can prove they did not act either
 - Intentionally
 - **Fagan**
 - Negligently
 - **McHale v Watson**
 - They will not be liable
 - Exception: Driving cases
 - **Venning v Chin**
 - **Williams v Milotin**
- Consent?
 - Implied consent
 - Consent to one thing but not another
 - Social norms can work as a pseudo defence
 - **McNamara v Duncan**
 - Necessity can work as a pseudo defence

<u>Title</u>	<u>Issue/Significance</u>	<u>Facts</u>	<u>Decision</u>
Ryan v Khul	Tort of Assault, Apprehension must be felt	In toilets, stuck knife through cubicle wall. Victim wasn't afraid because of cubicle separating them	If victim has no apprehension, there is no assault.
R v Ireland (crim)	Tort of Assault, can silence be threatening	Victim was getting called repeatedly and defendant simply breathed down the end of the line.	Silence can be threatening
Zanker v Vartzokas	Tort of assault, immediacy	Victim was in car with perpetrator, threatened her with things that would happen when they got out of the car. Victim jumps out of car, injures herself	Where accused maintains position of dominance, the threat retains its immediacy, apprehension is kept alive
Barton v Armstrong	Tort of assault, immediacy	Threatened over the phone	Because of constant phone calls, the apprehension of violence is kept alive
Fagan (Crim)	Tort of Battery, can be objects	Accused drove car over policeman's	Objects under control of accused can be used to batter

		foot and kept it there	
Fagan (Crim)	Tort of Battery, intention		
McHale v Watson	Tort of Battery, Negligence		
Venning v Chin	Tort of Battery, exceptions to mental fault	Injured after being struck by car driven by plaintiff	Plaintiff must prove mental fault of defendant in driving cases
McNamara v Duncan	Tort of Battery, social norms	AFL player was tackled without the ball ended up fracturing his skull	When contact is outside the rules of the game it is battery