

Assault

→Common Assault s61, Imprisonment of up to 2 years

An assault in the restricted sense of a *threat* to bring about non-consensual contact. Contact does not have to be violent, can be through words alone and can be done without touching the victim

Physical Element

A voluntary act of the accused that has the effect of putting a person in fear.

- R v Mostyn - Victim still believed she was in immediate danger or would be subject to further violence (pg 197)
- R v Phillips – can be committed without touching the victim (pg 211)
- Knight v R – Assault by words spoken over the phone – did not show immediate threat therefore conviction of assault was challenged (pg 198)
- Zanker v Vartzokas – woman was put in fear of relatively immediate imminent violence which continued as the vehicle kept moving towards the threatening destination. That was sufficient enough for assault (pg 199)

Fault Element

A desire to create that fear, through there can be an assault even if the victim does not in fact fear violence. Performed intentionally or (possibly recklessly s4A)

- Brady v Schatzel – There can be assault even though the victim is not put in fear, but no assault if victim is unaware of the accused acts (pg 211)
- MacPherson v Brown - Lecturer surrounded by students. Recklessness, but fear was not ongoing therefore assault not present (pg 202)

To be reckless, must be advertent

Advertent: Knowing the consequences but still goes on.

Inadvertent: Reasonable person would have thought the actions were reckless.

Stalking, Intimidation, and Domestic Violence, s13 Crimes (domestic and personal violence) Act 2007. Imprisonment for 5 years or 50 penalty units, or both.

Stalking or intimidation with intent to cause fear of physical or mental harm

- A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.
- For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.

- (3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.
- (4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.
- (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

Apprehended Violence Orders (pg 203 – 205)

- Restricts a person's behaviour and protects a person from future or threatened violence
- Apprehended Domestic Violence Orders - s 16 *Crimes (Domestic and Personal Violence) Act 2007*
- Apprehended Personal Violence orders – s 19 *Crimes (Domestic and Personal Violence) Act 2007*
- Punishment for contravening an apprehended violence order – s14

Battery

The actual, intentional or reckless, bringing about of violent, offensive, or otherwise non – consensual contact with another person (pg 206)

Assault occasioning actual bodily harm - s59, imprisonment up to 5 yrs. If in the company of other persons, up to 7 yrs.

Physical Element

Voluntary act, which directly and immediately results in the contact

- Collins v Wilcock - Police officer grabbed the victim's arm after refusing to answer questions. Physical contact in the circumstances went beyond generally acceptable standards of conduct. (pg207 – 208)
- R v DMC , pg 208

Fault Element

A battery is clearly established if the defendant intended to apply physical force to the victim without lawful authority or consent. Can someone be guilty for recklessness?

- R v Williams – Appellant bit victim's ear, was this deliberate or reckless?

Aggravated Assaults - Assault with aggravating factors e.g. because of the damage done or because of the status of the person assaulted