

CRIMINAL LAW – SUMMARY NOTES (TOPICS 6A-12A)

6A – COMMON ASSAULT

Elements of offence

- Section 61 of Crimes Act – only stipulates punishment
- Common law – provides definitions and elements of common assault

Common assault (two types):

1. Battery assault
 - Actual application of force
2. Psychic assault
 - No actual contact
 - Fear of imminent unlawful contact

Common Assault (Battery)	
<i>Actus Reus</i>	<i>Mens Rea</i>
1. Voluntary application of unlawful contact	1. Intentionally apply unlawful contact; or
2. Without consent of victim	2. Recklessly apply unlawful contact
3. A's act <i>caused</i> the unlawful contact	
AR & MR coinciding	

Common Assault (Psychic Assault)	
<i>Actus Reus</i>	<i>Mens Rea</i>
1. Voluntary threatened application of unlawful contact	1. Intentionally creating apprehension of imminent unlawful contact; or
2. V apprehends/fears unlawful contact	2. Recklessly creating apprehension of imminent unlawful contact.
3. Unlawful contact is 'imminent'; and	
4. A's conduct <i>caused</i> the victim to fear imminent unlawful contact	
AR & MR coinciding	

1. Physical/Battery Assault

Actus reus

- Positive, voluntary act, D effects unlawful contact
 - Positive act (omission won't suffice) – *Fagan (1969)*
 - Very light application of force will suffice – *DPP v JWH* (spitting)
- Victim does not consent
 - Only unlawful if consent or other legal right to use force – *Bonora (1994)*

Mens rea

- D intentionally or recklessly effects unlawful contact
 - Intention to bring about decision – *Brennan J in HKT*
 - Unintentional battery can later become intentional when accused chooses to maintain physical force to the person – *Fagan (1969)*
 - Reckless – recognising risk of possible application of force & proceeding away