

# Criminal Law - Summary Notes & Scaffolds 2025

## Topics

- 1) Assault (1) Common Assault
- 2) Assault (2) Consent, Aggravated
- 3) Sexual Assault (1) AR
- 4) Sexual Assault (2) MR
- 5) DV
  
- 6) Homicide (1) Murder I, Causation
- 7) Homicide (2) Murder II, Manslaughter
- 8) Homicide (3) Homicide by Omission, Causing Death
  
- 9) Defences (1) Mental Health & Automatism
- 10) Defences (2) Substantial Impairment, Intoxication
- 11) Defences (3) Self-Defence
- 12) Defences (4) Extreme Provocation
  
- 13) Homicide (4) Context & Patterns
- 14) Dishonest Acquisition (1) Dishonestly & Fraud
- 15) Dishonest Acquisition (2) Larceny
- 16) Group Crime (1) Complicity I
- 17) Group Crime (2) Complicity II, Conspiracy

**Sexual assault, coercive control or DV NOT assessable in Problem Qn – only Essay**  
s61AA of the Crimes Act (lawful punishment) for the topic of assault is **not** examinable content

## Policy Essay Plans

- Sexual Assault & Consent Laws
- DV, Extreme Provocation
- Murder confusion
- EJCE

**Class 1 - Common Assault**

**Common Assault - Physical Conduct**

**STEP 1 – s61**

**Under s61 of the Crimes Act 1900 (NSW), a person who assaults someone, although not occasioning actual bodily harm, shall be liable to imprisonment for two years, whereby this must be proved beyond a reasonable doubt.**

**Step 2 – Actus Reus**

**Voluntary Act (not omission)**

To prove actus reus (AR), P must establish that the accused (XYZ) initiated **unlawful physical** contact **without** XYZ's consent  
 The act must inflict unlawful force (**Fagan [1969]**) and can involve any amount of force 'be it ever so small' (**DPP v JWH**)

**NOTE:** Myth Busters: common assault – NO requirement for caused harm

**Fagan [1969]**

**HELD**

- "To **constitute** the offence of an assault, **some intentional act** must be **performed**: a mere omission to act cannot amount to an assault"
- Failure to do something **good** (omission) **doesn't** make it **assault** (act)
- Need positive Act – what is the **application of force** here? – what did he do
  - Fagan – he has **only** failed to **get the vehicle off** the PO's foot – it is an omission, **not an act**

**DPP v JWH**

**Any amount** of force e.g. spitting = possible assault

**Without Consent**

**Can consent**

- **Sport**: Players are **deemed to consent** to force 'of a kind which could reasonably be expected to happen during the game' **but** 'there are cases which cross the line' (**Billinghurst [1978]**)
- **mere 'horseplay'** e.g. setting selves on **fire** (**Aitkin**)
- **Private, consensual** act with 'no aggressive intent' between **husband & wife** e.g. **branding** with **hot knife** (**Wilson [1997]**)

**Cannot consent**

violence inflicted for the **indulgence of cruelty** or violence is **against public interest** or **ABH is intended and inflicted**

- **Fight** (consensual, private or public) = cannot consent (**AG Reference [1981]**)
- **Cannot consent to serious risk of harm** - victim was **tied up & left gagged** around head & mouth (**Stein [2007]**)
- **S&M** (**Brown**)
- **For medical treatments, only** mistake of nature of act or identity of person invalidates consent (**Richardson [1998]**)

**Step 3 – Mens Reus**

P must **prove either** that D: **intended to** effect unlawful contact **OR** **was reckless as to whether** his/her actions **would cause unlawful** contact + **subjective test**

The accused **realised** that the **complainant might** (possibility) be **subjected to unlawful force** as a result of what the accused was about to do, **yet took the risk anyway** (**Blackwell v R [2011]**)

Inadvertence of the risk is **NOT** sufficient (*MacPherson v Brown (1975)*) – student protest (*meaning?*)

Hostility is **NOT** an essential ingredient (*Boughey (1986)*)

#### Awareness + Cloths + Spitting

ALWAYS do awareness

Assault **cannot** occur **unless** or until the victim is **AWARE** of the accused's actions (*Pemble (1971)*)

The **clothes** that a person is **wearing** is so **intimately connected** with the person that **touching** the clothes is **regarded** as **touching** the person (*R v Day (1845)*) (*R v Thomas (1985)*) - (*Clem - ASK which one to use?*)

**Spitting** is regarded as **infliction of unlawful force (AR)** (*DPP v JWH*) **OR** as an **apprehension of immediate force** if it does **not** touch the victim (*R v Smith (1866)*)

#### Coincidence of AR & MR

**If** it is a **continuing act**, and **MR** develops at **ANY** point in time, it is sufficient (*Fagan [1969]*)

<b>Common Assault - Apprehension</b>	
<b>STEP 1 – s61</b>	
Under s61 of the <i>Crimes Act 1900 (NSW)</i> , a person who assaults someone, although <b>not</b> occasioning <b>actual bodily harm</b> , shall be liable to <b>imprisonment</b> for <b>two years</b> , whereby this must be proved beyond a <b>reasonable doubt</b> (XYZ ask Clem!)	
<b>Step 2 – Actus Reus</b>	
To prove actus reus (AR), the act must <b>cause</b> another person to <b>fear</b> the <b>apprehension of immediate and unlawful contact</b> ( <i>Knight</i> )	
<b>Imminent Force</b>	
	<p><b>Possible assault:</b> threats that create a <b>continuing</b> fear (<i>Zanker v Vartzokas</i>)</p> <p><b>However,</b> threats of a <b>general</b> nature about <b>possible future</b> violence do <b>NOT</b> constitute assault (<i>Knight (1988)</i>)</p> <p><b>But,</b> threats over the <b>phone</b> if <b>specific</b> enough &amp; creates a <b>continuing fear</b> can <b>constitute assault</b> (<i>Barton v Armstrong [1969]</i>)</p>
<b>Without Consent</b>	
For apprehension, simply use <b>facts</b>	
<b>Can consent</b>	
<ul style="list-style-type: none"> <li>○ <b>Sport:</b> Players are <b>deemed to consent</b> to force 'of a kind which could reasonably be expected to happen during the game' <b>but</b> 'there are cases which cross the line' (<i>Billinghurst [1978]</i>)</li> </ul>	
<b>Cannot consent</b>	
violence inflicted for the <b>indulgence of cruelty</b> or violence is <b>against public interest</b> or <b>ABH is intended and inflicted</b>	
<ul style="list-style-type: none"> <li>○ <b>Fight</b> (consensual, private or public) = cannot consent (<i>AG Reference [1981]</i>)</li> <li>○ <b>S&amp;M</b> (<i>Brown</i>)</li> <li>○ <b>For medical treatments, only</b> mistake of nature of act or identity of person invalidates consent (<i>Richardson (1998)</i>)</li> </ul>	
<b>Step 3 – Mens Reus</b>	
P must <b>prove</b> that D: <b>intended or</b> was <b>reckless</b> as to whether his/her actions would create an apprehension of imminent unlawful contact + <b>subjective test</b>	
	<p>The accused <b>realised</b> that the <b>complainant might</b> (possibility) <b>fear</b> that he or she would be <b>subjected</b> to <b>immediate and unlawful force</b>, yet took the <b>risk anyway</b> (<i>Blackwell v R [2011]</i>)</p> <p><b>Inadvertence of the risk</b> is <b>NOT</b> sufficient (<i>MacPherson v Brown (1975)</i>) – student protest (<i>meaning?</i>)</p> <p>Hostility is <b>NOT</b> an essential ingredient (<i>Boughey (1986)</i>)</p>

### Awareness + Silent Calls + Spitting

ALWAYS do awareness, others depend on facts:

Assault **cannot** occur **unless** or until the victim is **aware** of the accused's actions (*Pemble (1971)*)

If a **silent caller intends** by his or her silence to **cause fear** & the victim is **assailed** by **uncertainty & fear**, then a **silent phone call may constitute assault**: (*Ireland and Burstow [1997]*)

**Spitting** is regarded as **infliction of unlawful force (AR)** (*DPP v JWH*) **OR** as an **apprehension of immediate force** if it does **not** touch the victim (*R v Smith (1866)*)

### Coincidence of AR & MR

**If** it is a **continuing act**, and **MR** develops at **ANY** point in time, it is sufficient (*Fagan [1969]*)

**Class 2 - Aggravated Assault** (start with common assault)

**IRAQ x2**

- 1) Prove **common assault** **FIRST**, THEN
- 2) Prove aggravating assault

**Violent Offences**

<b>Assault</b> – pick <b>ONE</b> based on facts, pick <b>HIGHEST</b> it could possibly be!		
<b>Offence</b>	<b>MR</b>	<b>Max Penalty</b>
<b>s61 Common Assault</b>	Intents to touch, or Intent to cause apprehension	2 years
<b>S59 Assault occasioning ABH</b>	Intents to touch, or Intent to cause apprehension	5 years
<b>s54 Cause GBH</b>	Unlawful or negligent act/omission	2 years
<b>S35(4) Reckless Wounding</b>	Realises ABH possible	7 years
<b>S35(2) Reckless GBH</b>	Realises ABG possible	10 years
<b>S33(1) Intentional GBH or Wounding</b>	Intends GBH	25 years