

A. Non-Fatal, Non-Sexual Offences

Simple Assault – s 222, s 223, s 313

s 313 creates the offence, there are two forms of assault:

1. 'Actual force' assault

- An **unlawful** direct or indirect **application of force** to a person **without consent** (+ **intent**)

Elements:

(a) Unlawful

- **s 223**
 - An assault is unlawful unless it is authorised or justified or excused by law
- There can be assault even if the person has consented to the application of force

(b) Application of force

- **s222**
 - Strikes, touches, or moves, or otherwise applies force
- 'Applies force' includes applying heat, light, electrical force, gas, odour, or any other substance or thing if applied in such a degree as to cause injury or personal discomfort
 - No need to prove injury of any kind (i.e. personal discomfort is enough)
- No need for the victim to apprehend force – touching is sufficient
 - **Murray (Canada)**
 - Person can be unconscious and assaulted (during surgery)

(c) Without consent

- No definition in the Code
- May be implied (usually by conduct) rather than express (by words or specific gestures)
- **Lergsener (QLD)**
 - Can consent to BH but not GBH or wounding – depends on the facts –
- **Raabe (QLD)**
 - Consent to a fight does not equal to consent force

Implied consent:

- Everyday acceptable social contract (e.g. casual contact on public transport)
- **Ferguson (QLD)**
 - Teacher non-sexually touching young girls has implied consent

Sporting context:

- **Pallante**
 - Basic principle: implied consent to contact within rules of the game
- **McNamara**
 - Act done outside the ordinary course of football not accounted for
- **Re Lenfield**
 - Tackles that are dangerous, outside of the rules, deliberate or recklessly executed may amount to unlawful assault

(d) Intention

- **Hall (WA)**
 - Intention to apply force or to create apprehension of force an implied element of all assaults
- **Boughey (HCA)**
 - Hostility or hostile intent is not an element
 - Tried to introduce partner to deviant sexual acts, accidentally killed her

2. 'Attempted or threatened force' assault

- An **unlawful threat or attempt to apply force** to a person, indicated by a bodily act or gesture, **without consent**, where the accused has the **actual or apparent present ability** to carry out the threat or attempt (+ **intent**)

Elements:

(a) **Unlawful** – as above

(b) Threat or attempt to apply force

- **s 222**
 - Must be a **bodily act or gesture** indicating the accused is threatening or attempting to force of any kind to a person (e.g. raised fist accompanied with words)
- **Tuberville (UK)**
 - Words alone cannot amount to a threat to apply force, may negate what looks like assault

(c) Actual or apparent present ability

- There must be some degree of immediacy for the threat to amount to an assault
- **Brady (QLD)**
 - Apparent present ability is enough (i.e. person liable for assault pointing unloaded gun)
 - Fear is immaterial but need to prove the victim apprehended force was to be applied
- **Secretary (WA)**
 - Threat doesn't have to be of immediate violence

(d) **Without consent** – as above

(e) **Intention**

- **Brady (QLD)**
 - Rifle was not loaded, accused argued she had no intention to apply force
 - Argument rejected – had the intention to cause the victim to apprehend the application of force

Assault occasioning bodily harm – s 317

- **s317(1)** - Any person who **unlawfully assaults** another and thereby does that other person **bodily harm** is guilty of a crime

Elements:

(a) **Unlawful common assault** – as above

(b) **Bodily harm**

- Defined in **s1** – “bodily injury that interferes with health or comfort”
- **Scatchard (QLD)**
 - Pain alone does not amount to a bodily injury – i.e. headlock “that it hurt”
- **Leregesner (QLD)**
 - Black-eye or blood nose is enough
- **s1(4)(a)**
 - Doing BH includes causing a person to have a disease which interferes with health or comfort – i.e. mental harm is included

Intention?

- No intention required
- If intent to cause bodily harm (or resist arrest) – look to more serious offence – **s317A**

Serious Assault – s318

- Defined not be the degree of harm caused but by reference to the *status of the victim*

Elements:

- Unlawful common assault
- Victim is a particular person
 - Classes of people include police officers, public officers, transport drivers, emergency service workers, people aiding public officers etc.

Grievous Bodily Harm – s 297

s297(1) - Any person who **unlawfully does grievous bodily harm** to another is guilty of a crime and is liable to imprisonment for 10 years

Elements:

- (a) **Unlawfully** – the act causing injury was “prohibited by law” or “not excused” – *Houghton*
- (b) **Does GBH**

What is the definition of GBH?

- **s 1**
 - “Any bodily injury which endangers or is likely to endanger life, or which causes or is likely to cause permanent injury to health”
- **s 1(4)(c)**
 - Causing a person to have a serious disease is included as ‘doing GBH’
- **Tranby (QLD)**
 - Cosmetic disabilities with no consequence on the functioning of the body (i.e. loss of part of earlobe) are not permanent injury to health
- **Lobston (QLD)**
 - Assess likeliness to endanger life at the time inflicted, NOT in light of medical treatment or availability of treatment

What does ‘doing’ mean?

- **Knutsen (QLD)**
 - ‘Doing’ is causation requirement
 - *Krakouer (WA)* clarified this as a “substantial or significant contribution to harm” test
- Failing to prevent the victim suffering GBH
 - Is there a breach of s262-s267 duty?
- **R v Clark**
 - s266 duty in charge of a dangerous thing, failed to take steps to avert harm, caused GBH

Wounding / poisoning – s 301

s301 - Any person who **(1) unlawfully wounds another**; or **(2) unlawfully**, and **with intent to injure or annoy** any person, **causes any poison or other noxious thing to be administered** to or taken by any person is guilty of a crime

What does 'wounding' mean?

- No definition in the Code
- **Devine (TAS)**
 - Injury which breaks the skin and penetrates below the epidermis
 - Laceration and free bleeding is enough, but a mere scratch is not
- This covers “cutting injuries”
- Note: intent is not an element

Wounding or GBH with intent – s 294

(a) The accused's conduct must fall into one of the categories set out, including **unlawfully wounding** or **doing GBH** or doing any act that is likely to result in a person having a **serious disease**.

(b) The accused must have any one of the following **intentions**:

- to maim, disfigure or disable; or
- to do GBH; or
- to resist or prevent the lawful arrest or detention of any person

Elements:

(a) Unlawfully wounding or doing GBH

(b) One of the above specific intentions

- **Woodward (Qld)**
 - “Maim” is doing something to stop someone fighting (i.e. depriving of an arm but not nose)

Circumstances of aggravation – s221

- s 221(1)(a) – offender is in a family or domestic relationship with the victim
- s 221(1)(b) – child was present
- s 221(1)(c) – conduct of the offender is a breach of the **Restraining Orders Act 1997**
- s 221(1)(d) – victim is 60+

B. Property Offences

Stealing – s378

- Any person who **steals anything capable of being stolen** is guilty of a crime

Elements:

(a) Steals → there are two kinds of stealing – **s 371**

- ‘Taking’ stealing
 - Fraudulently
 - Takes
 - Anything capable of being stolen (automatically satisfies the **second element**)
- ‘Conversion’ stealing
 - Fraudulently
 - Converts
 - Any property (still need to satisfy the **second element**)

Fraudulently:

- **s 317(2)**
 - A taking or conversion is done fraudulently if it is done with a specific intent
 - **(2)(a)** – intent to permanently deprive the owner of the thing/property
 - **Bailey (Qld)**
 - Joyriding not included, only temporarily deprives owner of car, see **317A**
 - **(2)(b)** – intent to permanently deprive someone of a special interest in property
 - “Special property” includes any charge or lien
 - **Vines (WA)**
 - You don’t have to be the owner, possession or control can be sufficient
 - **(2)(c)** – intent to use the thing/property as a pledge or security
 - **(2)(d)** – intent to part with it on a condition as to its return
 - **(2)(e)** – intent to deal with it such that it cannot be returned in the original condition
 - **(2)(f)** – special case for money -> intent to use it even if there’s an intention to repay it
 - **Kingdon (WA)**
 - A right to money (i.e. credit interest at a bank) still constitutes money therefore even if there’s an intention to return it – it’s still stealing