

Criminal Table Offences Summaries

Assault (common assault)- s 61 Crimes Act

Definition: An act by which a person intentionally or recklessly causes another person to apprehend the immediate infliction of unlawful force (DPP v Darby).

<p>AR1) Infliction of unlawful force- battery (conduct)</p> <ul style="list-style-type: none"> - The conduct must be voluntary (Ryan) <p>‘some connection between the conscious mind and the bodily movement’</p> <p>Voluntariness is present even if one particular act was not on purpose- other acts subject of ‘conscious consideration’ (Ryan).</p> <ul style="list-style-type: none"> - It must be an act not omission, it can be a continuing act (Fagan). <p>OR</p>	<ol style="list-style-type: none"> 1) Force- can be even the slightest application of force- the “merest touch” will suffice (Collins). 2) The force must occur without express or implied consent (Fagan, Brown). <ul style="list-style-type: none"> - Consent to medical procedures is automatically removed when a person is under a mistaken identity (Richardson). - Sporting participants deemed to consent to a level of force commensurate with the rules of the sport (Billingshurst). This is the force that can be ‘reasonably expected’ and ‘legitimate pursuit of the objects of the game (Stanley). (see defences). - People are deemed to impliedly consent to everyday force (e.g. rubbing shoulders on public transport).
<p>AR1) A person must apprehend the “immediate infliction of unlawful force” (conduct) (subjective perception of what victim thinks will happen)</p> <ul style="list-style-type: none"> - Apprehension of immediate unlawful physical contact 	<ul style="list-style-type: none"> - Threats- Threatening phone calls can suffice (Knight) as well as silent calls (Ireland). Conditional threats also fulfil the requirement (Rozsca v Samuels). - The victim must actually apprehend the violence (Lamb). E.g. In Gambriell v Caparelli someone struck a victim from behind=no assault. - Threats can create this fear and therefore fulfil the AR requirement (MacPherson). - The criteria for “immediate” is objective- it needs to be reasonable (Knight). (E.g. Close by etc). - Injuries sustained during unlawful imprisonment (from man in car

	saying he would 'fix her up') fulfils the AR of assault (Zanker).
MR) Intention Advertent Recklessness	<p>I: Having an intention to effect unlawful contact or to create an apprehension of imminent unlawful contact (subjective). R: Foresight as to whether the accused subjectively foresaw the possibility of the relevant consequence occurring and persists regardless (Blackwell). Even if D says they didn't mean to but if they foresaw possibility it is still enough.</p> <ul style="list-style-type: none"> - D foresaw possibility that it would give the victim grounds to apprehend the immediate infliction of unlawful force (MacPherson). - s 4 Crimes Act 1900 (NSW) says recklessness can be proved by intention or knowledge.

3) Look at **aggravating circumstances** (see below tables for components)!

Defences: Chastisement of children- Parents are entitled to use 'reasonable' and 'moderate' force (Crimes Act s 61AA). A defence of lawful correction is available (increased prospects of success if administered by a parent/guardian etc). Force applied to the head or neck of a child is never acceptable and neither is injury for more than a short period of time (A v UK 1998).

Sports (also in table above)- Consideration of type of sport, level played at (i.e. competition at state level vs 'mucking around'), nature of the act, degree of force used, extent of the risk of injury and the defendant's state of mind (R v Barnes).

Assault occasioning actual bodily harm (ABH)- s 59

AR1) An assault has occurred (see above table)- conduct	
AR2) ABH is caused by or arising from the assault (consequence- causation needed).	<ul style="list-style-type: none"> - "hurt or injury calculated to interfere with the health of comfort of the victim" (Donovan). - A simply striking of the face is sufficient for ABH (Taylor v Granville). - Cannot be mere emotions, but can be psychiatric injury (Chan-Fook). - Injuries caused by a victim escaping from unlawful imprisonment can amount to assault occasioning ABH (Zanker).

	- No consent defence available (Brown).
Causation (mention and apply all tests- note court favours the substantial or significant cause test).	1) Substantial or significant cause test- D's conduct must be a substantial or significant cause of the ABH, though not necessarily the sole cause. (Smith). 2) Natural Consequences (Royall) 3) Reasonable foreseeability (Royall)
MR- Same as above	- Sufficient if the MR for assault is proved and the AR is fulfilled (Williams, Coulter).

Assault occasioning grievous bodily harm (GBH)- s 33 or s35

AR1) The assault	
AR2) Occasioning GBH	"permanent or serious disfiguring of the person" (s 4 Crimes Act). "really serious" injury (Smith).
MR- Need intent to cause GBH as well as assault MR requirements.	- Intent can be coincidental with the assault- (i.e. the way assault done mostly shows intent to do GBH as well- they overlap) (Cox). - Consideration may be given to weapons in possession at time (R v Wheeler).

NOTE: s 35 has wounding of causing GBH recklessly. D must realise that wound or GBH might be inflicted as a consequence of their conduct- only CL defs (Coleman).

Wounding- s33 or s35

Definition of 'wounding':	- An injury breaking the continuity of the skin (Newman). - A split lip is enough for a technical wounding (Bullock).
MR:	- Intent to cause GBH/wounding (s 33). - Advertent recklessness (s 35).