

Criminal Law Finals Notes

Assault

Darby (2004) per Giles J: 'An assault is an act by which a person intentionally or perhaps recklessly causes another person to apprehend the immediate infliction of unlawful force upon them'.

Actus Reus

- Threat must cause imminent and immediate harm; *Knight*: general threats of future conduct DON'T suffice.
- If threats are capable of creating an immediate and continuing fear, they will constitute an assault: *Zanker v Vartzokas*

Mens Rea

- Intent, OR
- Recklessness to create an apprehension of immediate harm: *MacPherson v Brown*: D. may be guilty of assault even if no contact is made with/force is applied to another person.

Battery (application of force without consent/lawful excuse)

Definition: a term used to mean the actual intended use of unlawful force to another person without their consent. OR, involves the actual infliction of unlawful force on another, be it ever so small. Force is not unlawful if it falls within what may be regarded as an incident of normal social conduct.

s58 – Assault with intent to commit a serious indictable offence on certain officers

s59 – Assault occasioning ABH

s60 – Assault and other actions against police officers

s61 – Common assault prosecuted by indictment

Actus Reus

- Must be a positive act, cannot be an omission: *Fagan*
- No need for strong force or injury – ONLY unlawful contact: *Wilson*
- Touching clothes counts as touching person: *DPP v JWH*
- Spitting counts as sufficient application of force: *DPP v JWH*

Mens Rea

- **Intent** or **reckless** to apply force: *MacPherson v Brown*

s59 – Assault Occasioning ABH

Actus Reus

1. Assault
2. Occasions ABH

Donovan: ABH should be interpreted as the **ordinary meaning** of the words.

Chan-Fook: ABH includes identifiable clinical psychiatric injury

Lardner: "Nervous shock" held to be merely emotions

Ireland and Burstow: ABH includes recognizable psychiatric illness, such as severe depressive illness and anxiety disorders.

Mens Rea

1. Same as for assault

Only have to prove mens rea for assault – *Zanker v Vartzokas*

s35 – Reckless GBH

s4 GBH includes:

- a) Destruction of fetus
- b) Permanent or serious disfiguring of person
- c) Any grievous bodily disease

DPP v Smith: Grievous means no less than very serious

Haoui: does not require injuries to be permanent

King: Death of fetus amounts to GBH for mother

Actus Reus

1. Act
2. Causing GBH

Mens Rea

1. Act is intentional
2. Causing GBH – absolute
3. Reckless as to causing ABH to that or any other person.

s4A Crimes Act – if an element of an offence is recklessness, that element may also be established by proof of intention or knowledge.

s33 – (1) Wounding, GBH with Intent

Actus Reus: (1) Act, (2A) causes wound, or (2B) causes GBH

Mens Rea: (1) Intentional act, (2) intent to cause GBH

s33 (2) Wounding, GBH with Intent to Resist Arrest

Actus Reus: (1) Act (2A) causes wound or (2B) causes GBH

Mens Rea: (1) Intentional act, (2) for wound or GBH – not stated, (3) intent to resist or prevent their (or another's) lawful arrest.

s33 (3) Reckless Wounding in Company

Actus Reus: (1) Act, (2) wounds caused by act, (3) in company

Mens Rea: (1) Intentional act, (2) wound – absolute, (3) reckless as to causing ABH to that or another person, (4) in company.

s54 – Negligent, Unlawful GBH

Actus Reus: (1) Act, (2) causes GBH to any person

Mens Rea: (1A) Unlawful act, or (1B) Negligent act

s58 - Aggravated Assault

Actus Reus: same as assault

Mens Rea: MR for assault; (2) Intent to commit a serious indictable offence

Assault on officers (s58)...

Actus Reus: (1A) Assault, (1B) resists, (1C) obstructs, (2) any officer while in execution of their duty

Mens Rea: (1A) intent OR recklessness, (1B) MR for resist, (1C) MR for obstructs, (2) Strict liability

s7 Intimidation, s8 Stalking

Actus Reus: (1A) Stalking, (1B) intimidates

Mens Rea: (1A) intent to cause other person fear physical or mental harm to self or to person with whom has a domestic relationship, (1B) knows that conduct is likely to cause fear.

Intimidation includes: (a) conduct amounting to harassment/molestation, (b) approach that causes person to fear for safety, (c) conduct causing reasonable apprehension of injury.

Stalking: (1) stalking includes following or watching or frequenting of persons residence, business, work, or any place that person frequents for social/leisure.