

Elements for CLA with application of force:

Assault involving the application of force has these elements:

- The accused applied force to the complainant's body (voluntarily)+(causation);
- The application of force was intentional or reckless; and
- Contemporaneity: AR + MR must be present at at least one point in time
- The application of force was without lawful justification or excuse.

i. The accused applied force to V's body;

- **Voluntariness:** Must prove that D applied direct force to V's body (**Fagan**) and did so with a positive voluntary act (*Ugle v The Queen*)
- This can either be through direct bodily contact or through D controlling an instrument that applies force to V (**Fagan**)

Apply to da factss

- **Causation:** The central test for causation is the operating and substantial cause test (*Hallett*) affirmed by the HCA (High Court) as the general test in (*Royall*) and (*Mkoka v R*).
- Then go on to apply da facts of the case to dis!!!

Extra:

- The force need not be violent, it can be as slight as a mere touch (*Collins v Wilcock*)

ii. The application of force was intentional or reckless

iii. Relates to the accused's state of mind. It must be proven, beyond reasonable doubt, that at the time the D committed the acts that he either intended to commit or recklessly committed these acts – contemporaneously. (**Fagan**)

- **Intention:** subjective test which states that D had an appreciable aim and purpose to commit the act.
- **Recklessness:** For the application of force to have been "reckless", the accused must have realised that his or her conduct would *probably* result in force being applied to V's body (**R v Crabb**) (**R v Campbell**)

Extra:

- The accused's capacity to form the relevant intention may have been affected by drugs and alcohol (*O'Connor*)

Contemporaneity:

- AR + MR must be present at the same point in time in order for D to be liable. However, *Fagan* has added to this finding that as long as AR and MR are present at only one point in time then D is liable.
- Facts broooo!

iv. The application of force was without lawful justification or excuse.

Elements for CLA withOUT application of force:

- The accused voluntarily committed an act that caused V to apprehend the application of force to his or her body
- This application was immediate
- The accused intended his or her actions to cause such apprehension, or was reckless as to that outcome; and
 - Contemporaneity: AR + MR must be present at at least one point in time
- The accused had no lawful justification or excuse for causing the complainant to apprehend the application of immediate force.

The accused caused V to apprehend violence

1. **Voluntary:** First and foremost, D must voluntarily cause V to apprehend violence. The legal principle of voluntariness is enshrined within (*Ugle v The Queen*)

Relate to facts broooo

Just stick this shit all under the voluntary heading ☺

2. Similarly, the prosecution must prove that the accused committed an act that caused V to apprehend the immediate application of force to his or her body (fear not required) (*Ryan v Kuhl*)
3. For this element to be satisfied, V must know about the accused's actions (*Pemble v The Queen*) and that they must be imminent (occur shortly, not in the distant future) (*Zanker v Vartzokas*).

Facts broooo!!! Do this very methodically. One point for each ☺

Causation: The central test for causation is the operating and substantial cause test (*Hallett*) affirmed by the HCA (High Court) as the general test in (*Royall*) and (*Mkoka v R*).

- Then go on to apply da facts of the case to dis!!!

V must have feared the "immediate" application of force

It has been held that in such cases, the requirement for "immediacy" will be satisfied if:

- i. The accused's actions caused the complainant to apprehend relatively immediate and imminent violence (that is: occur shortly not in the distant future); and
- ii. The accused remained in a position of dominance, and in a position to carry out the feared violence at some time not too remote, thus keeping the apprehension ever present in the complainant's mind (*Zanker v Vartzokas*)

Extra ones/special circumstances: ONLY IF NEEDED DDD BRO!

- The contact apprehended by V does not need to be grave. Apprehension of any application of force is sufficient (*Macpherson v Brown*)
- The complainant **does not need to apprehend a specific act**. This element will be met where V does not know what the accused is going to do next, but believes that whatever it is, it is likely to be physically violent (*R v Ireland*).

The apprehension may have been caused by words or gestures

- Words or silence (ANY ACTION) as long as they cause the complainant to apprehend the immediate application of force, can be considered assault (*R v Ireland*)

The fear was created intentionally or recklessly

Intention: the prosecution only needs to prove that the accused intended to create in the complainant's mind an apprehension that force would be applied. They do not need to prove that he or she intended to actually apply force (*ACN 087 528 774 v Chetcuti [2008] VCSA*)

Recklessness: the prosecution must prove that the accused realised that his or her conduct would *probably* cause the complainant to apprehend the immediate application of force (*R v Crabbe*) and (*R v Campbell*)

Extra:

- The accused's capacity to form the relevant intention may have been affected by drugs and alcohol (*O'Connor*)

Contemporaneity:

- AR + MR must be present at the same point in time in order for D to be liable. However, *Fagan* has added to this finding that as long as AR and MR are present at only one point in time then D is liable.
- Facts broooo!

Lawful Justification or Excuse

- The prosecution must prove that the accused had no lawful justification or excuse for causing the complainant to apprehend the application of immediate force.

- The prosecution must disprove, beyond reasonable doubt, any justifications or excuses that are open on the evidence (*Zecevic v DPP*)

S 18 Causing injury intentionally OR recklessly:

- the complainant suffered an injury.
- the accused voluntarily caused the complainant's injury.
- the accused intended/recklessly to injure the complainant.
- Contemporaneity: AR + MR must be present at at least one point in time
- the accused acted without lawful justification or excuse.

Injury

The first element that the prosecution must prove is that the complainant suffered an injury.

S 15 says that injury means a physical injury or harm to mental health, whether temporary or permanent.

Physical injury includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function. It also includes all the things that you would, as a matter of ordinary experience, call an injury.

Harm to mental health includes psychological harm, but not emotional reactions such as distress, grief, fear or anger which do not result in psychological harm.

To prove this element, the prosecution must show that V suffered an **injury**, rather than some superficial or trivial harm.

Voluntariness

In order for the actus reus to be substantiated, a positive voluntary act (PVA) must be committed. That is, a willed act by D. (*Ugle v The Queen*)

Causation

The **second element** that must be proven is that the accused caused the complainant's injury. The central test for causation is the operating and substantial cause test (*Hallett*) affirmed by the HCA (High Court) as the general test in (*Royall*) and (*Mkoka v R*).

Then go on to apply da facts of the case to dis!!!

Intention/Recklessness

Intended: subjective test which states that D had an appreciable aim and purpose to commit the injury, not just the act (*R v Westaway*)

Recklessness: D requires possession of foresight that injury will probably or likely occur, not merely is probable. (*Crabbe*)

Extra:

- The accused's capacity to form the relevant intention may have been affected by drugs and alcohol (*O'Connor*)

Contemporaneity:

- AR + MR must be present at the same point in time in order for D to be liable. However, *Fagan* has added to this finding that as long as AR and MR are present at only one point in time then D is liable.
- Facts broooo!

Defences: Without Lawful Justification or Excuse

The **fourth** element that the prosecution must prove is that the accused acted without lawful justification or excuse **Defences??**

The prosecution must disprove, beyond reasonable doubt, any justifications or excuses that are open on the evidence (*Zecevic v DPP*)