

# NON- FATAL NON-SEXUAL OFFENCES AGAINST THE PERSON

## The CRIMINAL Law Response

Common Law Assault (as per Case law)	Offences Against the person (under the Crimes Act )
<ul style="list-style-type: none"> <li>Assault – Any act causing the <b>apprehension</b> of immediate and unlawful personal violence...</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>Battery (now synonymous with the term 'assault') – Any actual use of unlawful <b>force</b>...</li> </ul> <p style="text-align: center;">...<b>without consent</b></p> <p>→intentionally (R v <u>Westaway</u>) or →recklessly (R v <u>Campbell</u>)</p>	<ul style="list-style-type: none"> <li>s.15A&amp;15B Causing Serious Injury <b>intentionally</b> or <b>recklessly</b> in circs of gross violence</li> <li>s.16 Causing Serious Injury <b>intentionally</b></li> <li>s.17 Causing Serious Injury <b>recklessly</b></li> <li>s.18 Causing Injury <b>intentionally or recklessly</b></li> <li>s.20 Threat to <u>kill</u></li> <li>s.21 Threat to cause serious injury</li> <li>s.21A Stalking</li> <li>s.22 Conduct endangering life</li> <li>s.23 Conduct endangering serious injury</li> <li>s.24 Causing serious injury <b>negligently</b></li> </ul> <p style="text-align: center;">...<b>without lawful excuse</b> ** Eg. → Consent → Self</p> <p><u>Defence</u></p>

## COMMON LAW ASSAULT

### ELEMENTS

#### Actus Reus:

- D's act
- causes V to apprehend
- immediate and
- unlawful
- personal violence

#### OR

- D actually uses
- unlawful force on V
- without his/her consent

#### Mens Rea:

- intentionally
- OR recklessly

**Must be contemporaneous (Fagan)**

<i>Fagan v Metropolitan Police Commissioner</i>		
FACTS	Fagan accidentally rolled his car on to a policeman's foot, and would not get off when asked.	
HELD	<p>The <b>AR</b> element and <b>MR</b> element of an offence must occur at the <u>same time</u>. Where the AR is a 'continuing act' (like maintaining the wheel on the police officer's foot), the MR may be 'superimposed' at any stage so long as the act can be characterised as a 'continuing episode'.</p> <ul style="list-style-type: none"> <li>→ Force can be applied directly or through an 'instrument'.</li> <li>→ Fagan's <b>voluntary (continuing) act</b> was to use his car as a weapon to <b>apply actual force</b> to the police officer's foot <b>without consent</b> when he <b>intentionally</b> decided not to get off.</li> </ul>	

## DEFINITION OF ASSAULT

(*Fagan v Metropolitan Police Commissioner*) Per James J (Lord Parker CJ agreeing):

“An assault is any **act** which **intentionally** – or possibly **recklessly** – causes another person to **apprehend** immediate and **unlawful** personal violence. Although ‘assault’ is an independent crime and is to be treated as such, for practical purposes today ‘assault’ is generally synonymous with the term ‘battery’ and is a term used to mean the actual intended use of unlawful force to another person without his consent. ...”

- **Assault** – ‘intentionally or recklessly causing another to apprehend immediate and unlawful personal violence.’
- **Battery** (now part of ‘assault’): ‘the actual intended use of unlawful force to another person without his [or her] consent.’

CAN BE:

1. any act which intentionally or recklessly...causes another person to apprehend immediate and unlawful personal violence...(just apprehension, no touching)  
→ “Some intentional act must have been performed: a mere omission to act cannot amount to an assault.” *Fagan*

OR

2. the actual intended [or reckless] use of unlawful force to another person without his consent’ (old battery/physical interference)(including diagnosed psychiatric illness)  
→ *R v Ireland* (Psychiatric illness can be an injury. This is an assault because Ds positive actions in making the phone-calls **caused** V to apprehend the possibility of imminent violence.)

## ACTUS REUS

### A. Non-physical interference (threat)

#### i) Positive acts/words

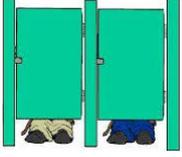
- *Fagan* – assault requires **a positive act** (omission insufficient). See above
- *R v Ireland* - Ireland’s case expands the definition from Fagan’s case. It confirms **non-physical interferences** (like the repeated calls) may be considered **actions**. **Causing apprehension** (even without physical contact), was an **assault**.

R v Ireland [1997]	
FACTS	D made repeated silent phones calls to three women, mostly at night. As a result, they suffered psychiatric illness.
ISSUE	Could ‘ <b>mere words</b> ’ or <b>silence</b> constitute an assault?
HELD	<p>‘Yes, depending on the facts’ ... Fear is the ‘gist’, and if Ds positive actions in making the menacing phone-calls <b>caused V to apprehend the possibility of imminent violence</b>, this is an assault.</p> <ul style="list-style-type: none"> <li>- ‘injury’ can include diagnosable psychiatric harm (battery)</li> <li>- Phone calls amounted to assault – causing fear/apprehension of imminent harm</li> </ul>



**ii) Apprehension of violence (Threat of Immediate Violence)**

- An **act** performed by D, which causes the victim to **apprehend** the **imminent** application of force/violence

<b>Ryan v Kuhl [1979]</b>		
FACTS	D thrust a knife through a hole in a partition between toilet cubicles. V was not afraid of the knife because the door was locked.	
ISSUE	Can D be charged with assault if V did not <b>fear</b> his safety?	
HELD	Fear was not established, therefore there can be no charge of assault under the common law	

<b>R v Pemble (1971)</b>		
FACTS	V was unaware that D was threatening her (trial for unlawful and dangerous act Manslaughter)	
ISSUE	Does V need to “ <b>fear</b> ” harm or merely “ <b>apprehend</b> ” it?	
HELD	<ul style="list-style-type: none"> <li>- V was unaware that D pointing a gun at her back.</li> <li>- Therefore, no apprehension.</li> <li>- Prosecution must prove she was ‘in fear’.</li> <li>- But cf <b>Ryan v Kuhl [1979] VR 315</b></li> </ul>	

<b>Zanker v Vartzokas (1988)</b>		
FACTS	D offered V money for sexual favours; she refused. In a car to V passenger, “I will take you to a mate’s house who will really fix you up.”	
ISSUE	Does this = ‘threat of <b>immediate violence</b> ,’ or only ‘future’ violence?	
HELD	V at ‘continuing peril,’ therefore element of ‘threat of immediate violence’ is established. There was no <i>novus actus interveniens</i> to break the causal link between the threat and expected infliction of harm.	

**iii. Conditional threats**

Look at the condition and the threat. If they are both unlawful, the act is still an assault. It is not assault if the threat is lawful (eg. self-defence).

<b>Rozsa v Samuels [1969]</b>		
FACTS	Taxi driver who jumped into line before V, so V threatened to punch him. R responded by saying “I’ll cut you to bits if you try it.”	
ISSUE	Can the person <b>lawfully impose</b> the condition?	
HELD	<ul style="list-style-type: none"> <li>- If it exceeds, legitimate self defence, the ‘negating words’ exception does not apply</li> <li>- In this instance, the ‘threat’ was deemed disproportionate, therefore guilty of assault</li> </ul>	

<b>Tuberville v Savage (1669)</b>		
FACTS	D put his hand on his sword, “If it were not assize time, I would not take such language from you.”	
ISSUE	If a threat does not cause <b>immediate apprehension</b> , is it still assault?	
HELD	No common Law assault, as the condition negated the threat.	

## B. Physical Interference

- i) Positive and voluntary act (see elements of a crime)
  - *Fagan*
- ii) Unlawful application of force
  - *Fagan*: Application of unlawful force includes physical contact via an 'instrument' (eg. the car was the instrument used by D to apply force to Vs foot)
- iii) Causation (see elements of a crime)
  - *Hallet*: Substantial and operating cause

## MENS REA

### A. Intentionally

- Subjective test
- D must have **intended** to contact OR to create in the mind of the victim an apprehension of immediate and unlawful physical contact.
  - *Fagan*
  - *Westaway*: Must intent the act and intend to inflict harm

<i>R v Westaway</i>		
FACTS	Baby left with step father	
HELD	In order for there to be a conviction for intentionally causing serious injury under s.16 of the <i>Crimes Act</i> , it is necessary for a jury to be satisfied BRD that D had an intention to cause <i>serious</i> injury (rather than an intention to cause mere injury or just <i>an intention to do the act</i> which in fact resulted in serious injury).	

## OR

### B. Recklessly

- D must have foreseen the **probability** of contact OR the creation in the mind of the victim of apprehension of immediate and unlawful physical contact. (*R v Campbell*)

<i>R v Campbell [1997]</i>		
FACTS	D became involved in an argument with three other men. D's gun was discharged, seriously injuring one of the three.	
HELD	<b>The test for recklessness is</b> 'possession of foresight that injury probably will result...' "probable or likely" <b>** (SUBJECTIVE) TEST OF RECKLESSNESS **</b>	

## CONDUCT ENDANGERING LIFE

<i>R v Abdul-Rasool (2008)</i>		
FACTS	In an altercation in her deputy-principal's office, A poured petrol over herself, which splashed on the deputy-principle and an interpreter. P submitted that she may have lit the petrol by striking a lighter or matches she was carrying and set fire to herself.	
HELD	A was found not guilty, because she only had the <u>future</u> intent to light the school on fire, but this was an unperformed act. An evil mind set must translate into some voluntary bodily action to attract criminal sanction.	