

## ‘Non-Fatal Offences Against the Person’.

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## Silence in this Lecture

Please turn off your mobile - Take notes

Raise your hand if you have a question

**PRECIS NOTES WILL BE CHECKED**

**No Food or Drink in this Classroom**

**Please place any litter in the bin.**

**Leave your chair neatly under the desk when leaving.**

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## Non-Fatal Offences Against the Person

Logically this refers to assault, battery, ABH, GBH – in both its forms

We will look at the Law Commissions reform proposals and the response.

In addition we shall consider some defence issues (though some of these will be dealt with later under – General defences).

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## Assault

- This occurs when the accused intentionally or recklessly causes V to apprehend immediate unlawful force or violence (**Ireland [1997]**).

**Battery** Is a separate offence and concerns the actual infliction of the force.

It was generally felt that these are common law offences, but the cases of **DPP v Taylor** and **DPP v Little [1992]** stated that they are statutory offences as per **s47 OAPA 1861**. They are now prosecuted under **s39 Criminal Justice Act 1988**.

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## *Actus reus* of assault

- This occurs when the defendant causes V to apprehend immediate force or violence
- **No force is needed** – V only needs to apprehend personal injury.

In **Ireland [1977]** even silent telephone calls were held to amount to ABH. In **Constanza [1997]** letters were held to amount to an assault.

This differs with an earlier case of **Meade and Belt [1823]** where the judge stated that ‘no words or singing are equivalent to an assault.’

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## Could words prevent an assault?

- In **Tuberville v Savage [1669]** the accused put his hand on his sword and said ‘If it were not assize time I would not take such language from you.’

**How, if at all, could this be amount to an assault?**

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### How immediate must the threat be?

- The *actus reus* requires that the victim must apprehend immediate force or violence.
- Think about **Ireland [1997]** – the caller could be from the USA and 4000 miles away – but V may still fear immediate violence.

**Is that rational? Need it be?**

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### How immediate must the threat be?

In **Smith v Chief Supt of Woking Police Station [1983]** it was stated: ‘When one is in a state of terror, one is very often unable to analyse precisely what one is frightened of as likely to happen next.’

In this case V was in her nightclothes and frightened by D who had trespassed onto private property staring at her through a window.

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### **Smith v Chief Supt of Woking Police Station [1983]**

- D had tried to argue that he could not have committed assault because the windows and doors were all locked (he was just looking).

The Appeal Court held that **it was enough that the woman believed that she was in danger of having immediate force or violence inflicted on her.** Her fear did not have to be rationalised.

See **R v Burstow [1997]** concerning psychiatric harm

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**DPP v Ramos [2000]**

- D was charged with distributing racist letters (threatening a bombing campaign) that were threatening, abusive or insulting with intent to cause a person to believe that immediate force or violence would be used against them (**s4 Public Order Act 1986 – s31 Crime & Disorder Act 1998**)

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**DPP v Ramos [2000]**

- The District Judge decided that since no time had been mentioned for the proposed attack, this lacked the immediacy required by the statute.

The Prosecution appealed on a point of law and it was decided that the important matter was the victim's state of mind.

Provided V believed something nasty could happen at any time, D could be convicted.

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**Assault occasioning ABH**

- Can you define ABH?
- Could it be 'Assault Occasioning ABH' if I cut off your pony tail? (see **DPP v Smith (Michael) [2006]**).
- See also **T v DPP [2003]**.

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### **The Mens Rea of Assault**

- When D intends to cause the victim to apprehend immediate physical violence or does so recklessly.

Read the 'Criminal Law' textbook at page 115. Note the case of **DPP v K [1990]** and the fact that Caldwell Recklessness was applied by the Div Court.

This was overturned by **Spratt [1991]** and **Parmenter [1991]**. Thus, Cunningham Recklessness is now applicable. See also **DPP v Majewski [1976]**

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### **Battery**

- **Collins v Wilcock [1984]** – 'the least touching of another in anger is a battery'.

•In this case it was considered that a battery had been inflicted when a policewoman took hold of the arm of D who she believed to be soliciting in order to detain her but without an intention to arrest.

Appeal Court decided that the PC's action amounted to an unlawful battery and quashed D's conviction of assault.

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### **Donnelly v Jackman [1970]**

- The court took a different view in this case and held that the officer in question did NOT commit a battery when he merely tapped on the other's shoulder to attract his attention.

**Re-produce the 'Key Case's chart on page 106.**

**Also, do the 'Activity' on page 107.**

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## Not all touching is a battery

- Note the comments of Goff L.J. in **Collins v Wilcock [1984]** ...  
‘... nobody can complain of the jostling which is inevitable from his presence in, for example, a supermarket, an underground station or busy street; nor can a person who attends a party complain if his hand is seized in friendship, or even if his back is (within reason) slapped’.

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## Indirect batteries

- In **Martin [1881]** D placed an iron bar across a fire exit in a theatre and shouted ‘Fire’.
- Several people were injured in the panic to leave. D’s conviction for GBH upheld.  
In **Haystead [2000]** D punched a woman in the face causing her baby to fall out of her arms.  
Appeal Court decided that the woman’s action of dropping her baby was a direct and immediate result of D punching her.

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## The *Actus reus* and *mens rea* of battery

- **What is the *actus reus* of battery?**  
The application of unlawful physical force on another.

### What is the *mens rea* of battery?

When D intends to do such an act or is reckless about whether such force will be applied.

**Note also the case of Fagan v Met Police Commissioner [1969]**

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### Activities ...

- In Law Firms undertake the 'Activity' on page 115 – answering all of the questions.
- Working alone, undertake the 'Activity' on page 116.

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### The defence of consent

- Lord Lane stated in **AG's Reference (No 6 of 1980) [1981]** ... *'it is an essential element of an assault that the act is done contrary to the will and without the consent of the victim ...'*.

In **Coney [1882]** held that a prize fight conducted with bare fists was unlawful, despite the agreement of parties.

In **Leach [1969]**, D's were unable to claim that the V had consented to a Crucifixion.

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### Assault and sport

- In sports like boxing, football, rugby and hockey the victim is said to have consented to harm that occurs within the rules of the game, provided that D did not intend to cause serious injury (**Bradshaw [1878]**).

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### Lawful chastisement

- In **Watkins [2002]** it was found that a teacher can use reasonable force to restrain unruly pupils.

**Can parents or teachers use a belt?**

**What is reasonable force?**

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### Horseplay

- In **Jones [1987]** two young schoolboys were injured after being tossed in the air by the defendants. The C of A quashed the conviction for GBH because the boys consent to 'rough and undisciplined play' could provide a defence.

**Note that assault is consequential – i.e. the mens rea for assault gives intent for ABH, GBH.**

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### Harmful sexual activity

- **Clarence [1888]** Failed assault and rape claim - Wife claimed she would not have consented to sex if she knew her husband had VD.

In the Canadian case of **Cuerrier [1998]** D was convicted of assault (rape) after he had unprotected sex with two women knowing he was HIV positive.

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### Read the case of Dica

- R v Dica [2004], EWCA Crim 1103 (see page 122 of Criminal Law).
- Question: Is the case of Dica consistent with that of Clarence?

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### Sado-masochism – the courts approach

- Read the case of **Brown and others [1994]** and compare it to **Wilson [1997]**.
- Consider also the outcome from some ‘vigorous’ sexual activity – **Slingsby [1995]**.

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### Read and Précis the Proposals for Reform (p 117-118)

- Is self defence relevant?
- Research the cases of Brown and Wilson ...

#### **In class discuss ...**

**Using the cases of Brown and Wilson as a basis for your arguments, decide whether the defence of consent should be extended, curtailed or remain as it is.**

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**Break into Law Firms – produce class notes**

- **Law Firm A** – Define the *actus reus* and *mens rea* of ABH – using case law etc
- **Law Firm B** – Define the *actus reus* and *mens rea* of GBH under **s.20 OAPA 1861** using case law etc

**Law Firm C** – Define the same for **s.18 OAPA 1861** explaining how it differs with **s.20** – using case law etc.

**Law Firm D** – Explain any proposals for reform.

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**In Law firms ...**

- Undertake the Activities on page 128 of 'OCR Criminal Law for A2' by Jacqueline Martin.

Plan the examination Questions on page 129.

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