

W201 The Individual and the State

Study notes on assaults

The following chart will help with problem questions

Offence	Actus Reus	Mens Rea
Murder	Killing	Intent to kill or cause GBH
S18	Wounding or GBH	Intent to do GBH
S20	Wounding or GBH	Intent or recklessness as to some harm
S47	Actual bodily harm	Intent or recklessness as to common assault
Common Assault	Either causing victim to apprehend immediate unlawful violence or (battery) unlawful force	either intent or recklessness as to causing such apprehension or (battery) as to the infliction of unlawful force

Murder

(carries life imprisonment - the judge has no discretion - the sentence is fixed by law)

You will deal with this and manslaughter later.

Section 18

(carries up to life imprisonment)

Actus reus

Wounding or causing GBH

Mens rea

With intent to do GBH (or intent to resist or prevent the lawful apprehension or detainer of any person)

Section 20

(carries up to 5 years)

Actus reus

Wounding or inflicting GBH (GBH = really serious harm **DPP v Smith** 1961 Lords)
Inflicting GBH need not involve an assault or battery eg **R v Burstow** 1997 Lords (silent phone calls resulting in severe psychiatric illness)

Mens rea

Mental element is intent or Cunningham recklessness (subjective) as to some physical harm (**R v Savage R v Parmenter** 1991 Lords).

Section 47

(carries up to 5 years)

Actus reus

1. assault (apprehension of immediate and unlawful violence) or battery (unlawful force)

Words alone can amount to an assault and so can silence eg a silent phone call resulting in fear of immediate personal violence (**R v Ireland** 1997 Lords)

2. occasioning

3. actual bodily harm

Actual bodily harm includes any hurt or injury calculated to interfere with the health or comfort of the victim **R v Miller** 1954 Div Ct (eg cutting off a substantial amount of hair **DPP v Smith** 2006 Div Ct). It can include psychiatric injury (**R v Chan-Fook** 1994 C A, **R v Ireland** 1997 Lords).

Mens rea

Mental element is intent or Cunningham recklessness (**R v Savage R v Parmenter** 1991 Lords) as to causing apprehension of immediate unlawful violence or (battery) unlawful force

Common Assault

(carries up to 6 months)

Actus reus

Causing apprehension of immediate unlawful violence or (battery) unlawful force

A battery can be indirect as well as direct - **Haystead v DPP** 2000 Div Ct (H punches mother who drops baby - this constitutes a battery on the baby!)

Mens rea

Mental element is intent or Cunningham recklessness as to causing apprehension of immediate unlawful violence (**R v Venna** 1975 C A) or (battery) unlawful force

Proposals for Reform

The main criticisms of the 1861 Act are:

- 1) Its age- some of its offences are outdated eg
 - Section 26 not providing servants or apprentices with food
 - Section 35 wanton or furious driving of a carriage.
- 2) Its language is old fashioned eg “maliciously” or “wanton”.
- 3) There have been so many cases the crimes are now more common law than statutory.
- 4) The more rational series of offences ie
 - intentional serious injury
 - reckless serious injury
 - intentional or reckless injury
 - assault

included in the Draft Offences Against the Person Bill 1993 would cope better with modern developments (like the telephone harassment in **Ireland**) than the historical concept of assault - Lord Steyn in **R v Ireland** 1997 Lords.

Comment

- 1) The present structure of the law works well on a daily basis.
- 2) Did the replacement of the Malicious Damage Act 1861 with the Criminal Damage Act 1971 solve or create problems? Eg **R v Caldwell** and the redefining of recklessness. Is the Criminal Damage Act becoming dependant on the common law for its interpretation also?
- 3) The courts have been able to develop the S47 offence flexibly (despite its age) in **R v Ireland** to deal with silent telephone harassment causing psychiatric injury.