

## Non-Fatal OAP

*Dr. Maris Köpcke Tinturé*

### **1. Common assault (statutory, s39 Criminal Justice Act 1988)**

a) CONDUCT:

- any act, even words or silence (Ireland) or writing (Constanza)
- an omission? (yes, if D was acting unlawfully: Smith; but Fagan suggests no)
- threat may be conditional (Read), but not if words negate the threat (Tuberville)

b) CIRCUMSTANCE: lack of V's consent

c) CONSEQUENCE: caused V to apprehend imminent unlawful force

- imminent: 'within a minute or two' (Ireland); Horder: no time for police to arrive; Constanza: enough if there *may* be force
- force: not only 'violence' but any touching, even kissing...; doesn't have to be by D: can be an animal or another person

d) MR-CONDUCT: deliberate

e) MR-CIRCUMSTANCE: at least reckless that V doesn't consent

f) MR-CONSEQUENCE: intention or recklessness as to V's apprehension of imminent unlawful force (Venna); never mind if D never intended to apply force or wasn't even capable of (Logdon)

### **2. Battery (statutory, s39 Criminal Justice Act 1988)**

a) CONDUCT: touch (even clothes: Thomas) or apply force to V (excluding everyday touchings: Collins v Wilcock [implied consent? necessity?])

- an omission? (Fagan says no; but Santana-Bermudez says yes; and both are CA cases so law is unclear)
- any means whatsoever? 2 positions:
  - Only direct application of force (HoL decisions): Ireland (Lord Hope: no battery through silent calls that cause psychological ABH), Wilson (1984), Savage obiter (car brakes)
  - Also indirect application for force (CoA decisions):
    - so long as something physically touches V: Clarence (booby trap), Martin (theatre exits), Santana-Bermudez, DPP v K (acid in hair dryer), Haystead (baby falls off mum's hands)
    - even when nothing physically touches V but some ABH ensues?
      - Settled case: assault causes ABH (Ireland: V feared imminent unlawful force, and got depressed as a result)
      - Settled case: words/conduct cause V to suffer serious depression (Burstow; inflict ≈ cause in s20)
      - Problem: can this be extended to a case where D's words/conduct cause V to suffer mental illness or a minor heart attack (ABH) other than by making V fear imminent force?

b) CIRCUMSTANCE: lack of V's consent (Brown suggested hostility, but really just seems to have meant lack of V's consent, not necessarily aggressive)

c) MR-CONDUCT: deliberate act

d) MR-CIRCUMSTANCE: at least reckless that V doesn't consent

e) MR-CONSEQUENCE: intention or recklessness as to touching or applying force to V (Venna)

### 3. s47 (ABH)

Common assault (1) or Battery (2) (with all the noted issues about *means*), plus...

- a) CONSEQUENCE: ABH
  - 'occasioning' ≈ causing (Roberts)
  - Donovan: 'more than merely transient and trifling', 'hurt or injury calculated to interfere with health or comfort'
  - bruises, temporary loss of consciousness (T v DPP), pony-tail (Smith: hair = identity)...
  - Psychological injuries only if medically recognised: not mere panic, anxiety, sleeplessness, tearfulness (Ireland, Burstow, Mowatt, Dhaliwal, Chan Fook, Morris)
- b) NO EXTRA MENS REA (Savage and Parmenter)

### 4. s20 (GBH)

- a) CONDUCT: any act or omission
  - means: 'inflict' ≈ cause (Burstow, Dica)
    - Note: *unlike* for s47 (ABH), where it is controversial whether indirect application for force (or indeed injury caused by mere words or conduct...) is included, *here* it is clear that indirect application of force as well as injury caused by mere words or conduct is covered (Burstow, Wilson (1984))
- b) CONSEQUENCE: wound (Eisenhower) or GBH (really serious harm: Smith)
  - special rules: Grundy (totality of injuries), Stratton (objective test, not what the harm means to V – but then, characteristics of V – that it was a baby – are taken into account in Bollom), incl. Serious psychological injury (Burstow)
- c) MR-CONDUCT: deliberate
- d) MR-CONSEQUENCE: intention or recklessness as to whether V *might* suffer *some* harm (Savage and Parmenter) (doesn't have to match the harm actually caused)

### 5. s18 (GBH)

- a) CONDUCT: any act or omission
  - means: broad ('cause')
- b) CONSEQUENCE: wound or GBH (like s20)
- c) MENS REA: *either*
  - intention to cause GBH (normal case), *or*
  - intention to resist police or prevent lawful detention (objective test: Bentley) + recklessness (= 'maliciously') as to whether some harm will be caused? (point left open in Morrison)

**6. s23 (poisoning: effect)**

- a) CONDUCT: administer or cause to be administered or taken by V
  - administer: broad meaning (incl. secretly lace drinks, spraying gas on V: Gillard), but not supply drug at V's request who then takes it (Kennedy)
- b) CIRCUMSTANCE: a poisonous, noxious ('hurtful, unwholesome or objectionable', Marcus) or destructive thing
  - in its nature poisonous/noxious/objectionable (heroin, Cato; sulphuric acid, etc.) – even small quantity
  - not in its nature poisonous/noxious/objectionable – quantity sufficient to be harmful (Marlow, Marcus [sedatives in milk])
- c) CONSEQUENCE: *either*
  - endanger V's life; *or*
  - cause GBH upon V
- d) MR-CONDUCT: recklessness as to the administration of the poisonous/noxious/objectionable thing
- e) MR-CIRCUMSTANCE: *unclear* whether D has to foresee that substance is poisonous/noxious/objectionable

**7. s24 (poisoning: intent)**

- a) CONDUCT: as s23
- b) CIRCUMSTANCE: as s23
- c) NO CONSEQUENCE
- d) MR-CONDUCT: recklessness as to the administration of the poisonous/noxious/objectionable thing
- e) MR-ULTERIOR INTENT: intention to injure, aggrieve, or annoy V (only as a direct result of the poisoning? Hill: sleeping tablets to box, for sex)

Blue elements: non-essential (omit if it in hurry)