LAW03: CRIMINAL LAW (OFFENCES AGAINST THE PERSON)

NON-FATAL OFFENCES AGAINST THE PERSON
There are 5 offences in this topic:

- Common assault: **Assault**;
- Common assault: **Battery**;
- **s. 47** Offences against the Person Act 1861: **Actual Bodily Harm**;
- **s. 20** OAPA 1861: **Grievous Bodily Harm** and **Wounding**;
- **s. 18** OAPA 1861: **GBH** and **Wounding** with intent.
COMMON ASSAULT: ASSAULT

Definition:

"an act that causes the V to apprehend the immediate application of an unlawful force."
ACTUS REUS

There must be ...

1. An act;

2. Something in the act which causes the V to apprehend the infliction of immediate unlawful force.
An assault requires some act or words.

An omission is not sufficient to constitute an assault.

Words are sufficient and can be verbal or written.

Constanza (1997) stated that letters can be an assault.

Ireland (1997) stated that silent phone calls could also satisfy an assault.
APPREHEND IMMEDIATE UNLAWFUL FORCE

The act or words must cause the V to apprehend that immediate force is going to be used against them.

There is no assault if it is obvious that the D cannot use force.

Lamb (1967) stated that pointing an unloaded gun at someone who knows it is unloaded cannot constitute an assault. The other person will not apprehend immediate force.
The word "immediate" does **not** mean instantly ...

... it means **imminently** or soon.
The D broke into a garden and looked through V's bedroom window at approximately 11pm. V was scared and thought the D was going to enter her room.

The D could not attack V at that immediate moment but the V thought an attack was imminent. Fear of what the D might do next was sufficiently "immediate" for the purposes of the offence.
Ireland (1997)

The D made several silent phone calls to 3 women. As a result the 3 women suffered psychiatric illness.

The HL stated that silent phone calls could be an assault. The V of a silent phone call might fear that the caller was about to arrive at their house. The V could then fear the possibility of imminent personal violence.
This case shows that words indicating that there will be no violence may prevent an act from being an assault. The words spoken will negate the act.

The D placed one hand on his sword and said "if it were not assize time, I would not take such language from you."

This was not an assault. The words negated the effect of the action. He told the V he wasn't going to do anything.
The force feared must be unlawful.

The definition is simply the opposite of lawful force.

Force will be lawful if the V gives genuine consent to the force. It may also be lawful if it is used in self-defence or for the prevention of a crime.
MENS REA

The mens rea for assault is:

1. The *intention* to do an act that causes the V to apprehend the immediate application of an unlawful force.

2. *Recklessness* as to whether the act will cause the V to apprehend the immediate application of an unlawful force.
COMMON ASSAULT: BATTERY

Definition:

"the application of an unlawful force."
ACTUS REUS

This is the application of an unlawful force to another person.

"Force" can include the slightest touch.
Collins v Wilcock (1984)

In this case the court decided that touching a person to get their attention was acceptable as long as no greater degree of physical contact was used than was necessary but physical restraint was not permitted.
Wood (Fraser) v DPP (2008)

The police received a report that a man called Fraser had thrown an ashtray at another person in a pub. Three policemen went to the pub and saw a man fitting Fraser's description leave (it was actually a man called Wood).
One took hold of Wood's arm to prevent him from leaving and asked if he was Fraser. Wood denied that he was Fraser and struggled in order to try and break free. Another officer then took hold of Wood and Wood was charged with assaulting 2 police officers whilst they were acting in the execution of their duty.
The first police officer stated that he took hold of Wood to detain him but not to arrest him. The police officers had therefore committed a battery on Wood and he was entitled to struggle.
This case stated that touching the V's clothing (whilst they're wearing them) can be sufficient to form a battery.

The D touched the hem of a woman's skirt and rubbed it. The CA stated obiter ...

"there could be no dispute that if you touch a person's clothes while he is wearing them that is equivalent to touching them."
A battery can be committed through a continuing act.

**Fagan v Metropolitan Police Comissioner (1968)**

The D parked his car with one wheel on a policeman's foot. D was unaware he had done this until the police officer asked him to move the car. The D refused to do this for approx. 30 seconds.

The act of the car being left on the police officer's foot became a battery the moment the intention was formed.
IF ... INDIRECT ACT

Battery can be satisfied through an indirect act such as a booby trap.

The D causes force to be applied to the V without personally touching them.
The D (a 15yr old schoolboy) took sulphuric acid from his science lesson to try its reaction on some toilet paper. Whilst in the toilet he heard footsteps, panicked and hid the acid in a hot-air hand drier. D then returned to class, intending to remove the acid later. But before he could remove it another pupil used the drier and was sprayed with acid.

This was an indirect act that had caused a battery.
Haystead v Chief Constable of Derbyshire (2000)

The D causes a small child to fall to the floor because he punched the woman who was holding the child.

This is battery through an indirect act.
Criminal liability for a battery can arise from an omission if the D has a duty to act.

This can arise through all the usual exceptions.

DPP v K (1990)

D failed to remove the acid from the drier. He had created a dangerous situation which may lead to force being applied to the V.
The force must be **unlawful**.

The definition is simply the opposite of lawful force.

Force will be lawful if the V gives **genuine consent** to the force. It may also be lawful if it is used in **self-defence** or for the **prevention of a crime**.
MENS REA

The mens rea for battery is:

1. The *intention* to inflict unlawful force; or

2. Recklessness as to whether unlawful force will be inflicted.
S. 47 OAPA 1861

Definition:

"whosoever shall be convicted of any assault occasioning actual bodily harm shall be liable ... to imprisonment for five years."

It contains no definition of assault or ABH.
ACTUS REUS

Firstly, there must have been an assault or battery that has caused the ABH.

So, the actus reus of an assault or battery must have taken place first.

These are defined in exactly the same way as previously discussed.
ACTUAL BODILY HARM

The case of **Chan Fook (1994)** stated that the words *actual bodily harm* are just ordinary words.

"Harm" means injury, hurt or damage.

"Actual" means there must be more than merely trivial hurt or injury.

The harm must **not** be so trivial as to be effectively without significance.
R (T) v DPP (2003)

This case stated that a loss of consciousness (even for a split second) was ABH.

DPP v Smith (Michael) (2006)

Cutting off someone's ponytail was held to be ABH.
PSYCHIATRIC INJURY

Chan Fook (1994)

The CA stated psychiatric injury can be ABH but does not include "mere emotions such as fear, distress or panic" nor does it include "states of mind that are not themselves evidence of some identifiable clinical condition".

Burstow (1997)

The HL confirmed that "bodily harm" in ss. 18, 20 and 47 also include psychiatric injury.
MENS REA

The courts have held that the mens rea for the appropriate common assault originally committed is sufficient as the mens rea for a s. 47 offence.

There is no need for the D to intend or be reckless as to whether ABH is caused.
D, who was driving a car, made advances towards his female passenger (V) and tried to take her coat off. V feared D was going to commit a more serious assault and jumped from the car, injuring herself.

D was found guilty of s. 47 even though he did not intend ABH. D only had the mens rea for a common assault.
This was confirmed by the HL in the combined appeals of **Savage (1991)** and **Parmenter (1991)**.

**Savage (1991)**

D threw beer over another woman (V) in a pub. The glass slipped from D's Hand and V's hand was cut by the glass. D only intended to throw the beer over V **but** this was enough to satisfy the mens rea of s. 47.
"whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without a weapon or instrument, shall be guilty of an offence and shall be liable ... to imprisonment for not more than five years."
To be found guilty it must be proved the D ...

1. Wounded; or

2. Inflicted GBH.

And that he did this ...

3. Intending some injury to be caused; or

4. Being reckless as to whether bodily harm was inflicted.
A "wound" means a cut or break of the whole skin. A cut of internal skin, such as in the mouth, will be sufficient.

But internal bleeding, where there is no cut of the skin, is not a wound.
V was hit in the eye by a shotgun pellet. This caused severe bleeding under the surface of the eye. There was no cut so there was no wound.
The cut must be to the whole skin. So, a scratch isn't a wound.

A broken bone is also not a wound unless the skin is broken.

**Wood (1830)**

V's collar bone was broken but as his skin remained intact this was not a wound.
GREVIOUS BODILY HARM

DPP v Smith (1961)

GBH means "really serious harm".

The harm does not need to be life-threatening.

Saunders (1985)

This case stated that "serious harm" is enough.
Bollom (2004)

The severity of injuries should be assessed according to the V's age and health.

A 17 month old child had bruising to her abdomen, both arms and left leg. The D was convicted of causing GBH. The CA quashed his conviction and substituted an offence of s. 47.

But the CA stated bruising could be GBH. Bruising for example would be more severe on a very young child.
Burstow (1997)

Serious psychiatric injury can be GBH.

Dica (2004)

This case was the first conviction for GBH when the D infected Vs with HIV.
INFLICTING GBH

Burstow (1997)

"Inflict" does not require a technical assault or battery to take place.

It only needs to be proven that the D's actions have led to the consequence of V suffering GBH.
MENS REA OF S. 20

The word used in s. 20 for mens rea is "maliciously".

Cunningham (1957) states that "maliciously" means either ...

1. Intention; or

2. Recklessness.
Parmenter (1991)

The HL confirmed the meaning of "maliciously" as the one from Cunningham.

Also this case stated that the D only need to intend or be reckless to cause SOME harm in order to have the appropriate mens rea.
S. 18 OAPA 1861

Definition: (see handbook (19))

"whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any GBH to any person, with intent to do some GBH to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of ... an offence."
ACTUS REUS

The meanings of **wound** and **GBH** are exactly the same as they were in s. 20.
MENS REA

The D must have ...

1. INTENDED to do some GBH; or

2. Intended to resist or prevent the lawful apprehension or detainer of any person (resisted arrest).
INTENT TO DO SOME GBH

s. 18 is a specific intent crime and can only be satisfied through INTENTION. Recklessness is not enough.

This only causes issues where there is oblique intent.
Moloney (1985) and Matthews and Alleyne (2003)

Foresight of consequences is only evidence of oblique intent.

Nedrick (1986) and Woollin (1998)

Oblique intent cannot be found unless the consequence was a VIRTUAL CERTAINTY of the D's act and the D realises this.
RESISTING OR PREVENTING ARREST

If the D is trying to resist or prevent an arrest then the level of intention required to commit a s. 18 offence is lower.

The prosecution must prove the D intended to resist or prevent arrest but only needs to intend or be reckless to cause some harm or injury.

This was decided in ...
Morrison (1989)

A police officer seized the D and told him she was arresting him. D dived through a window dragging the police officer with him. The police officer's face was badly cut.

D was guilty as he intended to resist arrest and was at least reckless as to whether he would cause some harm.