

# ASSAULT AND BATTERY

	<b>Assault</b>	<b>Battery</b>
<b>Definition</b>	An act that causes V to apprehend immediate unlawful force intentionally or recklessly	Applying immediate unlawful force intentionally or recklessly.
<b>Found in which statute?</b>	s.39 of the Criminal Justice Act 1988	s.39 of the Criminal Justice Act 1988
<b>Penalty</b>	Up to £5,000 fine Up to 6 months imprisonment } Or both	Up to £5,000 fine Up to 6 months imprisonment } Or both
<b>Actus reus (AR)</b>	<p>Causing V to apprehend immediate unlawful force.</p> <ul style="list-style-type: none"> <li>• ‘Apprehend’ = a belief that you are about to be harmed; awareness that force may be used; not necessarily fear <ul style="list-style-type: none"> <li>➢ <u>DPP v Logdon (1976)</u> <ul style="list-style-type: none"> <li>• D pointed an imitation gun at a woman</li> <li>• She was terrified =&gt; D then told her it wasn't real</li> <li>• An assault has been committed as V had apprehended immediate unlawful personal violence and D was reckless as to whether she would apprehend such violence</li> </ul> </li> </ul> </li> <li>• ‘Immediate’ = does not necessarily mean instantaneous; in the near future <ul style="list-style-type: none"> <li>➢ <u>Smith v Chief Constable of Woking Police Station (1983)</u> <ul style="list-style-type: none"> <li>• D looked through V's bedroom window late at night</li> <li>• V feared D could enter the house =&gt; V was threatened</li> <li>• Sufficient for the AR of assault</li> <li>• ‘immediate’ = in the near future</li> <li>• V foresaw D's actions</li> </ul> </li> </ul> </li> <li>• ‘Force’ = does not necessarily need to be physical; can be spoken (R v Ireland) or written (R v Constanza) <p>! Mr Ireland was a stalker, who had been involved in several offences.</p> <ul style="list-style-type: none"> <li>➢ <u>R v Ireland (1998) – assault through words</u> <ul style="list-style-type: none"> <li>• D was with a girl in a park in an ally</li> <li>• D told V: ‘Come with me or I'll stab you’</li> <li>• Girl was scared and ran away</li> </ul> </li> <li>➢ <u>R v Ireland (1998) – assault through words: phone calls</u> <ul style="list-style-type: none"> <li>• A stalker was making silent calls to 3 women</li> <li>• Called them and only breathed heavily on the phone</li> <li>• S47 of the OAPA 1861 ruled that the psychiatric injury could be considered an assault</li> </ul> </li> </ul> </li> </ul>	<p>Causing V to receive immediate unlawful force/harm.</p> <ul style="list-style-type: none"> <li>• ‘Immediate’ = does not necessarily mean instantaneous; in the near future <ul style="list-style-type: none"> <li>➢ <u>Smith v Chief Constable of Woking Police Station (1983)</u> <ul style="list-style-type: none"> <li>• D looked through V's bedroom window late at night</li> <li>• V feared D could enter the house =&gt; V was threatened</li> <li>• Sufficient for the AR of assault</li> <li>• ‘immediate’ = in the near future</li> <li>• V foresaw D's actions</li> </ul> </li> </ul> </li> <li>• ‘Unlawful’ = without the victim's (V's) consent; however people cannot consent to serious harms. <p>Examples of lawful application of force:</p> <ul style="list-style-type: none"> <li>➢ <u>Collins v Wilcock (1984)</u> <ul style="list-style-type: none"> <li>• A policeman put his hand on a prostitute's shoulder to stop and question her</li> <li>• He tried to prevent her from walking away</li> <li>• Any touching may be a battery and always is if there was a physical restraint</li> </ul> </li> <li>➢ <u>Wilson v Pringle (1986)</u> <ul style="list-style-type: none"> <li>• Two boys in a school corridor pull each other's bags</li> <li>• Not considered hostile (normal boy's actions)</li> <li>• ‘Everyday jostling’ is not unlawful</li> </ul> </li> </ul> </li> <li>• ‘Force’ = does not necessarily need to be physical; can be spoken (R v Ireland) or written (R v Constanza) <p>! Force can be the ‘merest’ (slightest) touch.</p> <ul style="list-style-type: none"> <li>➢ <u>R v Thomas (1985)</u> <ul style="list-style-type: none"> <li>• A schoolgirl + a caretaker</li> <li>• Caretaker touches girl's skirt and rubs it</li> <li>• Battery: ‘the merest’ (the slightest) touch + battery can be applied directly</li> </ul> </li> </ul> </li> </ul> <p><b>Direct application of battery: <u>R v Thomas (1985)</u></b></p>

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	<p>➤ <u>R v Constanza (1997)</u></p> <ul style="list-style-type: none"> <li>• A stalker had been following a woman and writing stuff on her door + sending her threatening letters that he'd kill her</li> <li>• Last 2 letters were very threatening =&gt; V was diagnosed with chronic depression</li> <li>• Written words can be an assault if they cause V to fear immediate violence</li> </ul> <p><b>Words can negate actions. Words can negate what otherwise would have been an action.</b></p> <p>➤ <u>Tuberville v Savage (1669)</u></p> <ul style="list-style-type: none"> <li>• Two men; one placed his hand on his sword and told the other 'If it were not assize-time, I would not take such language from you'</li> <li>• Justices of assize were in town</li> <li>• Words can prevent an act from being an assault (but it depends on the circumstances)</li> </ul>	<p><b>Indirect application of battery:</b></p> <p>➤ <u>DPP v K (1990)</u></p> <ul style="list-style-type: none"> <li>• K is a school child in a science lesson; goes to the toilet and takes sulfuric acid with him; while in the toilet he hears someone coming and hides the acid in the hand dryer</li> <li>• Next time someone uses the dryer =&gt; acid will go on to hands =&gt; indirect battery + K didn't have a specific V =&gt; indirect battery</li> </ul> <p><b>Battery through an omission:</b></p> <p>➤ <u>DPP v Santana Bermudez (2003)</u></p> <ul style="list-style-type: none"> <li>• A police officer stopped to search D</li> <li>• Police officer asked whether they had any sharp objects in their pockets</li> <li>• D declined having any sharp objects (failure to inform the officer)</li> <li>• Officer searches pockets and gets stabbed by a needle</li> </ul> <p><b>Battery through a continuing act:</b></p> <p>➤ <u>Fagan v Metropolitan Police Commissioner (1968)</u></p> <ul style="list-style-type: none"> <li>• Fagan drove over the foot of a police officer; police officer asked Fagan to move the car; Fagan refused</li> <li>• Before refusing to move the car D only had the AR, but consequently developed the MR</li> <li>• D was guilty</li> </ul>
<p><b>Mens rea (MR)</b></p>	<p>To intend to cause V to apprehend immediate unlawful force, or be reckless</p> <p>Case examples:</p> <p>➤ <u>R v Mohan (1975) – intention</u></p> <ul style="list-style-type: none"> <li>• Mohan was accelerating with his car</li> <li>• A police officer told him to stop</li> <li>• The officer stood in front of the Mohan's car</li> <li>• Mohan put his foot on the accelerator = developed MR</li> <li>• Police officer had to jump so as not to get hit</li> </ul> <p>➤ <u>R v Cunningham (1957) – recklessness</u></p> <ul style="list-style-type: none"> <li>• D broke not a house in order to steal money from a gas meter</li> <li>• Gas leaked + didn't smell =&gt; D was unaware of it</li> <li>• D was charged with administering a noxious substance (OAPA 1861)</li> <li>• Est. the principle of subjective recklessness (D takes risk despite foreseeing the consequence)</li> </ul>	<p>D intends to apply unlawful force, or was reckless. D took a risk to apply unlawful force and went ahead anyway.</p> <p>Case examples:</p> <p>➤ <u>R v Mohan (1975) – intention</u></p> <p>➤ <u>R v Cunningham (1957) – recklessness</u></p>

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