

English Law of Assault and Battery: Outline and Case Summaries

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Introduction

Assault and battery are the fundamental non-fatal offences against the person. Assault involves conveying the impression that illegal force will be used imminently. Battery is unwanted touching. To be more exact:

“The law draws a distinction, in terms more easily understood by philologists than by ordinary citizens, between an assault and a battery. An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person; a battery is the actual infliction of unlawful force on another person. Both assault and battery are forms of trespass to the person.” (*Collins v Wilcock* [1984] 1 WLR 1172, Goff LJ at 1177).

Both assault and battery¹ are mentioned in s39 Criminal Justice Act 1988 without being defined.² Rather, they are defined by common law. Assault and battery are also building blocks for other non-fatal offences. It is therefore vital to understand them.

I. Assault

The crime’s *actus reus* was defined in *Fagan v. M.P.C.* [1969] 1 Q.B. 439, at 444:

“An assault is any act which intentionally – or possibly recklessly – causes another person to apprehend immediate and unlawful personal violence.” (Per James J).

For *mens rea*, the issue of whether recklessness is sufficient was settled in *Venna* [1976] Q.B. 421, at 429:

“We see no reason in logic or in law why a person who recklessly applies physical force to the person of another should be outside the criminal law of assault. In many cases the dividing line between intention and recklessness is barely distinguishable.” (Per James LJ)

To be precise, assault is defined as:

AR: D caused V to apprehend imminent and unlawful force. (*Fagan*).

MR: D intended or was reckless in causing V to apprehend imminent unlawful force. (*Venna*, confirmed in *Spratt*).

¹ In their decisions, judges sometimes call assault “common assault” and battery “assault by beating.” Sometimes they use the shorthand term of “assault” to describe battery. Be aware of this terminology as you read cases.

² Section 39 Criminal Justice Act 1988 reads: “(1) Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.”

1) The AR of assault: causing V to apprehend imminent and unlawful force

Causing: by an act, not an omission

****Fagan v. M.P.C. [1969] 1 Q.B. 439**

Facts: A police officer (V) ordered a driver (D) to park his car so that the officer could question him. D stopped the car so that its wheel was on top of V's foot, and turned off the car. V shouted to D to get off of his foot. D shouted back some angry words and initially refused, but less than a minute later, he turned the car back on and moved off of V's foot. It could not be proved that D first hit V's foot deliberately. D appealed his conviction of assault, arguing that his inaction was an omission, and one cannot commit assault by omission according to a longstanding rule.

Held: Appeal dismissed. D's leaving the car on V's foot was technically not an omission, but a "continuing act." A distinction must be drawn between omissions after completed actions versus continuing actions. D's parking on V's foot was part of an act that continued as he sat in his car and used words indicating he would keep it there. Further, D's conduct was not an assault at first because, although the AR existed, D lacked MR for assault (which, at that time, was intention not recklessness). But when D became aware that his car was on V's foot and he refused to move, he developed the MR and his actions became an assault. This case establishes a few points: 1) the "continuing act principle," that MR can be formed during an ongoing AR; 2) One still cannot assault by omission; 3) It states the modern AR for assault.

Quote: "It is not necessary that *mens rea* should be present at the inception of the *actus reus*; it can be superimposed upon an existing act." (Per **James J** at 445).

Apprehend means "expect," even if D cannot follow through

Logdon v. D.P.P. [1976] Crim. L.R. 121

Facts: D threatened a customs officer (V), that he would hold V hostage unless money, that he claimed the customs office owed to his client, was paid. He opened a drawer and showed V a gun and said it was loaded. He telephoned the customs office and threatened to kidnap V. When V was shaking with fear, D handed V the gun and told V it was a replica. D appealed his conviction, claiming he did not have the ability or intention to commit an assault.

Held: Appeal dismissed. The AR of assault does not require the ability to carry out a threat, it only requires that D cause V to apprehend the application of imminent unlawful violence.

This case is a good example of a "pure" assault.³

How immediate / imminent?

- In the past, the apprehension that unlawful force would be used had to be very immediate (*Thomas v NUM*). Threats of future violence are not assault. But the cases of *Constanza* and *Ireland* relaxed this requirement significantly.

³ **Simester and Sullivan**'s textbook called *Logdon* "a 'pure' assault" because D lacked the intent or ability to cause the *violence* he threatened, but he intended and was able to cause V to believe the *threat*. A.P. Simester, J.R. Spencer, F. Stark, G.R. Sullivan, and G.J. Virgo, *Simester and Sullivan's Criminal Law* (6th ed., 2016), 432, n6.

***Thomas v National Union of Mineworkers [1986] Ch. 20** (traditional view)

Facts: (This was a civil case involving the tort of assault, which is a different issue, but it is still relevant to the crime of assault). Coal miners had voted to go on strike, but some workers broke the strike and continued working. The striking workers gathered daily at the gates of the colliery and yelled insults and threats at workers who entered in vehicles. Police were at the gates to keep order. Some of the workers sued the union under the tort of assault.

Held: There can be no assault where the threat is not immediately possible. Because the workers were in vehicles and police were present, no threat could be imminent. This case represents the older, traditional view.

Quote: “Since the working miners are in vehicles and the pickets are held back from the vehicles, I do not understand how even the most violent of threats or gestures could be said to constitute an assault.” (Per **Scott J** at 62).

***Constanza [1997] 2 Cr App R 492** (new view)

Facts: D stalked a woman (V) with whom he desired to have a relationship. He followed her, waited in his car outside her house, and sent her over 800 letters over a period of 4 months. D lived near V, and V knew it. Some of the letters were threatening and terrified V. A doctor found that D’s actions caused V to suffer from clinical depression and anxiety. D appealed his assault conviction on the grounds that, even if certain letters caused V to apprehend unlawful force, the perceived threat from the letters lacked sufficient immediacy.

Held: Appeal dismissed. It was imminent enough if there was “...a fear of violence at some time not excluding the immediate future.” (**Schiemann LJ** at 494). It was important that V knew D lived nearby. This new leading case on immediacy created a very generous view of imminence for assault.

****Ireland [1998] A.C. 147**

Facts: (Two similar appeals, *Ireland* and *Burstow*, were heard together by the House of Lords. Both were silent phone call cases. Here we will only discuss the first case). In *Ireland*, D telephoned three women several times, mostly at night, and remained silent or was breathing heavily. It was established that the 3 Vs suffered medically-recognized psychiatric harm. To put these facts in context, Lord Steyn noted that, at this time, the mid-1990s:

“Harassment of women by repeated silent telephone calls, accompanied on occasions by heavy breathing, is apparently a significant social problem.” (At 152). Of three questions the House considered, one was whether there was an assault in Ireland.

Held: 1) It is possible for a silent phone call to be an assault; it is a question of fact for the jury. 2) V’s apprehension of the “possibility” of immediate force might be enough.

Obiter dicta: Lord Steyn suggested that the time window for imminent violence was “a minute or two” (at 161-2). Anything longer than that could be too far in the future to be imminent for the purposes of the AR of assault. But note that this part of Lord Steyn’s speech is not binding law.

Quote: “[The silent caller] intends by his silence to cause fear and he is so understood. The victim is assailed by uncertainty about his intentions. Fear may dominate her emotions, and it may be the fear that the caller’s arrival at her door may be imminent. She may fear the possibility of immediate personal violence. As a matter of law the caller may be guilty of an

assault: whether he is or not will depend on the circumstance and in particular on the impact of the caller's potentially menacing call or calls on the victim." (Per **Lord Steyn** at 162).⁴

Criticism: This judgment stretches the law of assault, especially regarding imminence, to cover a contemporary social problem. It may have gone too far. In addition to widening the definition of imminence, adding the concept of "possibility" to the AR of assault would make the law more vague and complicated.⁵

The key points: The main takeaways from *Ireland* are 1) that silent telephone calls can constitute an assault and 2) the immediacy requirement has been relaxed, probably to "a minute or two."

Unlawful

- Force is generally unlawful unless there is consent, self-defence, a lawful arrest, or another defence.

Force / violence

****Smith v Chief Superintendent of Woking Police Station* (1983) 76 Cr. App. R. 234**

Facts: D trespassed into the enclosed garden at V's house at about 11pm. V, an "elderly spinster," looked out of her window and saw D staring at her, standing right up against the glass. D kept staring at V for 3-4 seconds until V screamed, and then he left. D appealed his conviction for assault on the grounds that it was not clear precisely what V was afraid of.

Held: Assault does not require V to know (or the court to determine) exactly what she is afraid of, only that it is some kind of imminent and unlawful force. D caused V to apprehend such force, and so the AR was made out.

Quote: "As it seems to me, there is no need for a finding that what she was frightened of, which she probably could not analyse at that moment, was some innominate terror of some potential violence... she did not know what the defendant was going to do next, but that, whatever he might be going to do next, and sufficiently immediately for the purposes of the offence, was something of a violent nature." (Per **Kerr LJ** at 238)

Side note: **Jonathan Herring's** textbook argues that this case shows that an assault can be committed by an omission.⁶ The fact that D did not move once V saw him is an omission, he contends. However, D's staring could also be interpreted as a continuing act, as in *Fagan*.

⁴ Most of the judges agreed with Lord Steyn's reasoning, but Lord Hope said similar things. He wrote (at 166): "He [D] was using his silence as a means of conveying a message to his victims. This was that he knew who and where they were, and that his purpose in making contact with them was as malicious as it was deliberate. In my opinion silent telephone calls of this nature are just as capable as words or gestures, said or made in the presence of the victim, of causing an apprehension of immediate and unlawful violence."

⁵ Lord Steyn's suggestion that the apprehension of a "possibility" of violence is sufficient does not seem to have been confirmed in later cases. But if, following *Ireland*, the new AR of assault is "D caused V to apprehend *the possibility of unlawful and imminent force*," rules about the reasonableness of the "possibility" may need to be established. This would complicate the law even further.

⁶ Jonathan Herring, *Criminal Law: Texts, Cases, and Materials* (7th ed., 2016), 321.

Other minor AR issues

Can one assault by words alone?

- An old case, **Meade and Belt (1823) 1 Lew. 184**, suggested that there existed a rule against assault purely by words lacking any accompanying action. Lord Steyn discussed this supposed rule in **Ireland**:

Lord Steyn at 161-2: “Counsel [for D] argued that as a matter of law an assault can never be committed by words alone and therefore it cannot be committed by silence. The premise depends on the slenderest authority, namely, an observation by Holroyd J. to a jury that ‘no words or singing are equivalent to an assault.’ *Rex v. Meade and Belt* (1823) 1 Lew. 184. The proposition that a gesture may amount to an assault, but that words can never suffice, is unrealistic and indefensible. A thing said is also a thing done. There is no reason why something said should be incapable of causing an apprehension of immediate personal violence, e.g. a man accosting a woman in a dark alley saying, ‘Come with me or I will stab you.’ I would, therefore, reject the proposition that an assault can never be committed by words.”

- **Constanza**, the letter-writing stalker case, also confirms that an assault can be committed by words alone.

Self-negating threats cannot be assaults

Tuberville v Savage (1669) 86 E.R. 684

Facts: The case report has few facts. “The evidence to prove a provocation was, that the plaintiff put his hand upon his sword and said, ‘If it were not assize-time, I would not take such language from you.’ The question was, If that were an assault?” (Note: “assize-time” refers to the day that judges came to town to hear cases).

Held: “The Court agreed that it was not [an assault]; for the declaration of the plaintiff was, that he would not assault him, the Judges being in town...”

Analysis: The traditional interpretation of this case has been that there was no assault because the man who made the threat (D) declared at the same time that he would not carry it out. Thus, it is possible to speak a self-negating threat while doing an intimidating act that would otherwise be an assault.

Conditional threats might be assaults

Blake v Barnard (1840) 173 E.R. 985

Facts: Barnard (D) was captain of a whaling ship anchored off the coast of Chile. Blake (V) was a crew member. D was angry at V for fighting with another crew member and hitting D when he intervened. Sometime the next day, D put a gun to V’s head, cocked it and said that if V was not quiet he would blow his brains out.

Held: The jury found that there was no assault. In summing up, Lord Abinger CB told the jury that if D used “words shewing that it was not his intention to shoot the plaintiff, that would be no assault.” (At 986).

Read v Coker (1853) 138 E.R. 1437

Facts: D asked V, who was either an employee or business partner,⁷ to leave the business premises. When V refused, D gathered some workers around V, and as they were “tucking up their sleeves and aprons,” D threatened to break V’s neck if he did not leave.

Held: The conditional threat was an assault.

Quote: “If anything short of actual striking will in law constitute an assault, the facts here clearly shewed that the defendant was guilty of an assault. There was a threat of violence exhibiting an intention to assault, and a present ability to carry the threat into execution.” (Per **Jervis CJ** at 1441). Furthermore, during oral arguments, Jervis CJ asked: “If a man comes into a room, and lays his cane on the table, and says to another, ‘If you don’t go out, I will knock you on the head,’ would not that be an assault?” (At 1439).

R. (on the application of Kracher) v Leicester Magistrates’ Court [2013] EWHC 4627 (Admin)

Facts: D was driving a van. V was on a motor bike. D believed V was blocking the road. They had a dispute that continued into a car park. At some point, D told V, “If you come round the back I will beat you up.” D applied for judicial review of his conviction for battery on technical grounds. (Namely, D contended that he was incorrectly charged with battery instead of assault; the lower court conceded that they were unsure if D delivered a punch and convicted him of battery because of his verbal threat only).

Held: D’s conviction was quashed on the basis of incorrect charging. He should have been charged with assault.

Obiter dicta: The Divisional Court said that D’s conditional threat would have been enough to convict him of assault. This was said in passing, without elaboration as to the reasoning.

- The authorities are unclear, if not contradictory. There is not yet a clear rule.⁸
- But be careful to keep a distinction between self-negating and conditional threats.

2) The MR of assault: D intended or was reckless as to the AR

Recklessness

Venna [1976] Q.B. 421

Facts: Four youths were shouting, singing, and dancing in the street in early morning hours. D violently resisted arrest by two officers, who were trying to restrain him on the ground. He was kicking wildly and broke one officer’s hand. D appealed his conviction for assault occasioning actual bodily harm, claiming that the trial judge was wrong to direct the jury that recklessness was sufficient MR for assault.

Held: Recklessness is enough. (This case was the first to establish this point). Therefore, the MR for assault is intention or recklessness as to the AR.

⁷ V was running a paper-staining business, could not pay rent, had his equipment seized (“distrained”) by the landlord, and the equipment was then legally purchased by D, who decided to work with V in running the business. But D got tired of the arrangement and wanted to fire V.

⁸ It is submitted that the best rule would be to allow the jury to determine, as a question of fact, whether a conditional threat satisfies the AR or does not (whether it is self-negating or for another reason shows no intent).

****Spratt (1990) 91 Cr. App. R. 362**

Facts: D fired an air rifle out of the window of his council flat, intending to hit a sign on a garbage chute. He did not think anyone was around. D hit a seven-year old girl, who was playing nearby, with two pellets. D appealed his conviction under s47 OAPA 1861 (assault occasioning actual bodily harm).

Held: Appeal allowed. 1) Venna approved; recklessness, is sufficient MR for assault – specifically, Cunningham recklessness (D foresees a risk of harm and takes it anyway). 2) D did not know anyone was nearby or foresee anyone could be hurt by his shooting, therefore he was not reckless, and D lacked MR.

Intention (or recklessness) as to what?

Logdon v. D.P.P. [1976] Crim. L.R. 121

Facts: Stated above. Replica gun kidnapping threat case.

Held: Even if D lacked an intention to cause violence (because he could not with a fake gun), D still intended to cause V to apprehend imminent and unlawful violence. Thus, D was guilty of assault. The intention to cause the apprehension, not the violence, is what is important. (Note: since *Venna* and *Spratt*, recklessness in causing the apprehension is sufficient MR).

No assault if there is neither intention nor recklessness

Lamb [1967] 2 Q.B. 981

Facts: D pointed a revolver at his friend, V, as a joke. V believed they were playing around. The gun had five chambers but was loaded with only two bullets. D did not understand how a revolver worked. The chamber aligned with the barrel of the gun had no bullet. D pulled the trigger, thinking it would not fire, but the chambers rotated to a loaded chamber, and a bullet was fired. D killed V. D appealed his conviction for unlawful act manslaughter.

Held: Appeal allowed. There had to be an unlawful act for there to be a manslaughter. The prosecution claimed there was an assault. However, D never intended an assault – he never expected the gun to fire. Without MR,⁹ there was no assault.

Side note: It was not an issue in the judgment, but there was also no AR of assault. Because V never expected to be shot, he did not apprehend imminent unlawful force.

⁹ At the time *Lamb* was decided, (*Cunningham*) recklessness was not yet accepted as a possible MR for assault. But D lacked recklessness also – he did not even foresee a risk of the gun firing.

II. Battery

AR: D unlawfully touched or applied force to V. (*Fagan* or *Collins v Wilcock*).

MR: D intended or was reckless as to the AR. (*Spratt*).

1) *The AR of battery: unlawful touching, directly or indirectly*

Touching / force

****Collins v Wilcock [1984] 1 WLR 1172**

Facts: A police officer wanted to question a suspected prostitute (D) on the street. D refused and walked away. The officer, also female, took hold of D's arm to stop her. D responded by scratching her. D was convicted of a statutory offence of assaulting an officer. She appealed.

Held: The officer was not lawfully arresting D, and therefore grabbing D's arm to detain her was illegal. Unlawful arrest makes a police officer's touching battery.

Quote: "...a battery is the actual infliction of unlawful force on another person." (**Goff LJ** at 1177).

Obiter dicta: **Goff LJ** went on to argue that everyday touching cannot be battery (e.g., in social settings or bumping into others in public). Everyday touching involves either i) implied consent or ii) necessity.

****Fagan v. M.P.C. [1969] 1 Q.B. 439**

Facts: Stated above. Car on police officer's foot case.

Held: 1) The continuing act doctrine applies to battery, solving the AR/MR concurrence problem. 2) Battery can be committed using an object (the car's tire).

Lynsey [1995] 2 Cr App R 667

Facts: A shoplifter spat into the face of a police officer.

Held: Spitting can amount to battery.

***Day (1845) 1 Cox CC 207**

Held: Touching the clothes a person is wearing can be battery.

Thomas (1985) 81 Cr. App. R. 331

Facts: A caretaker at a school touched the bottom of a girl's skirt and rubbed it.

Held: Such an act would be battery. "...if you touch a person's clothes whilst he is wearing them that is equivalent to touching him." (Per **Ackner LJ** at 334).

The touching / force can be indirect

***Scott v Shepherd (1773) 95 ER 1124**

Facts: At a fair, D lit a firework and threw it into a market house. Two people in succession threw the firework when it came near them. They acted in self-defence. It exploded in V's face and he lost an eye. (This was a civil tort case, but it is relevant to criminal battery).

Held: D committed a battery with the firework. It was as if D applied force directly to V.

***Martin (1881) 8 QBD 54**

Facts: At a theatre, during a performance, D walked out, extinguished gas lamps near the exit, closed the doors, and put an iron bar on the doors to secure them shut. Members of the audience then panicked and rushed to leave. Two people suffered severe injuries. D appealed his conviction.

Held: Appeal dismissed. D's actions indirectly harmed the Vs, but his actions still caused the resulting batteries.

Quote: D "must be taken to have intended the natural consequences of that which he did." (Per Lord Coleridge CJ at 58).

***Mitchell [1983] QB 741**

Facts: A 22-year-old man (D) attempted to cut ahead in a queue at a post office. A 72-year old man (V1) scolded him. D hit V1 in the mouth and he fell backward. When V1 got up, D either hit or pushed him again. This time, V1 fell onto an 89-year old lady (V2), who broke her femur and later died of complications from this. D appealed his conviction for manslaughter of the lady.

Held: D directly caused V2's injury (but whether he caused the manslaughter was for the jury to determine). The lady "was injured as a direct and immediate result of his [D's] act" (Per Staughton J at 748). D hitting V1 who falls on V2 is equivalent to D battering V2.

****Haystead v. Chief Constable of Derbyshire [2000] Crim. L.R. 758**

Facts: A woman broke up with her boyfriend (D). Two days later, D punched the woman, causing her to drop her baby, which she was holding.

Held: D committed battery on the baby. The force in a battery can be applied indirectly.

Can one commit battery by omission?

****DPP v Santana-Bermudez [2003] EWHC Admin. 418**

Facts: A police officer (V) searched (D) at a London Underground station. V asked D to take any syringes out, and he took out one or more. V asked if he had any needles. He said no. V reached into one of D's pockets and a needle stuck into her finger. At trial, the court decided that D's conduct amounted to an omission and therefore could not cause a battery. (This was in line with *Fagan*, whose omission rule also applied to batteries).

Held: It is possible to commit battery by omission, although the court framed its decision in terms of someone like D creating a danger by word or action.

***DPP v K (A Minor) (1990) 91 Cr App R 23**

Facts: A 15-year old schoolboy took sulphuric acid from his chemistry class to the school bathroom. He poured the acid into a machine for drying hands and faces, and he left. Later, another boy entered the bathroom, turned on the dryer, and the acid was sprayed onto his face. He developed a permanent scar. D claimed his actions were an accidental omission – he left the acid in the machine and omitted to warn others it was there.

Held: D committed battery, even though it was indirect. **Parker LJ** at 27 stated that: "...a defendant, who pours a dangerous substance into a machine, just as truly assaults [read: batters]¹⁰ the next user of the machine as if he had himself switched the machine on."

Analysis: **Wilson** has criticized this case, saying that D did not apply force directly or indirectly. This suggests that it is doubtful there was a battery. However, **Simester and Sullivan's** textbook argues that D's very indirect application of force still constitutes a battery.

Unlawful force

- As with assault, force is generally unlawful unless it is consented to or used in self-defence or for a lawful arrest.

***Kenlin v Gardiner [1966] 3 All ER 931**

Facts: Police officers suspected boys of some wrongdoing and grabbed them to stop them from running away. The boys punched the officers. They were convicted of battery.

Held: Appeal allowed. The boys were not being arrested, and therefore they could resist in self-defence, using reasonable force. (This case resembles *Collins v Wilcock* above).

***Donnelly v Jackman [1970] 1 All ER 987, 134 JP 352**

Facts: A police officer tapped D on the shoulder, intending to stop him. D responded by punching the officer. D appealed his conviction for battery.

Held: Appeal dismissed. Some ordinary daily-life type of touching that lacks consent is not battery. The touching here was very minor and did not really harm D at all.

Analysis: This case is in line with the *obiter dicta* in *Collins v Wilcock* that stated that some touching in social or public settings is allowed by implied consent or necessity.

2) The MR of battery: Intention or recklessness

****Spratt (1990) 91 Cr. App. R. 362**

Facts: Stated above. D fired an air rifle when he thought no one was near his target.

Held: In addition to intention, Cunningham recklessness is sufficient MR for battery.

Analysis: This case confirmed the earlier decision of *Venna* (see above), in which **James LJ** stated at 429: "In our view the element of *mens rea* in the offence of battery is satisfied by proof that the defendant intentionally or recklessly applied force to the person of another."

¹⁰ The terms "assault" and "battery" are often conflated in judgments. Often, judges call battery "assault."

III. Consent in assault and battery

- For full discussion, see outline on **Consent and the Non-Fatal Offences**.

***Barnes* [2005] 1 W.L.R. 910**

Facts: During an amateur football match, D and V were on opposing teams. Ten minutes after they exchanged “heated words,” V got the ball and kicked it into the net. Right after this, D hit V from behind with a “late tackle,” causing serious injury to V’s right leg.

Held: Players consent not only to rough play within the rules of the game, but also impliedly consent to ordinary rule-breaking plays. **Lord Woolf CJ** explained (at 913) that “...conduct outside the rules can be expected to occur in the heat of the moment.” In sports, rough play, whether permitted or not, is generally consented to. But if a D goes too far, whether a battery has occurred is a question of fact for the jury and it depends on all the circumstances.

Analysis: This case shows how, as a matter public policy, courts do not want to get too involved in adjudicating sports injuries. If they did, it could discourage sports.

- And a reminder of this important *obiter dicta*:

*****Collins v Wilcock* [1984] 1 WLR 1172**

Obiter dicta: Everyday touching cannot be battery (e.g., in social settings or bumping into others in public). Everyday touching involves either i) implied consent or ii) necessity.

Summary

ASSAULT

s39 Criminal Justice Act 1988 only recognises assault / battery (fine or imprisonment not exceeding 6 months) but doesn't define. CL defines.

AR: D caused V to apprehend imminent unlawful force. (*Fagan*)

MR: D intends or recklessly causes V to apprehend imminent unlawful force. (*Venna confirmed in Spratt*)

Notes: 1) NO APPREHENSION = NO ASSAULT; 2) Reckless = D actually foresaw

***Fagan v MPC:** Defines AR of Assault

Constanza: Threatening letters. Can assault by writing. 1) May cause fear of violence in immediate future. 2) But question for jury - may not be assault if D lives very far.

Ireland: Silent calls, psychological harm. Held: words and silence can be assault if AR and MR met. Ask jury.

Thomas v NUM: Strike-breakers in cars, police near. Not assault. Apprehension of unlawful force must be imminent.

Ireland obiter: Imminent means 1-2 minutes.

Tuberville v Savage: Words can negate assault so V doesn't apprehend

Conditional threat: courts unclear!

Karcher (2013): Latest case, 'If you come round the back I will beat you up' = assault according to *obiter*.

Blake: Conditional threat NOT assault.

Corker: Yes it is.

Spratt: MR = intent or Cunningham recklessness (D foresaw risk and took it anyway).

BATTERY

AR: D unlawfully touched or applied force to V. (*Fagan* or *Collins v Wilcock*)

MR: D intended or was reckless as to unlawful touching/force to V. (*Spratt*)

Fagan: Car tire; 1) can carry out battery w/ object, 2) continuing act = solves concurrence AR/MR problem.

Collins v Wilcock: Grabbing arm for unlawful arrest = battery.

Santa-Bermudez (2003): Police asked if D had sharp object, D said no, searched, she cut by needle. 1) Omission can be battery

Collins v Wilcock: Goff LJ obiter: Everyday touching not battery b/c either 1) implied consent or 2) necessity.

DPP v K (1990): Acid left in hand-dryer. Battery can be done indirectly.

Haystead (2000): Hit woman, she drops baby. Battery can be indirect.

(THEORETICAL: Like Ireland, where technique of assault doesn't matter, D's way of applying force shouldn't matter for battery).

Barnes: Consent negates battery AR ('unlawfully').

Spratt: MR = intent or Cunningham recklessness (D foresaw risk and took it anyway).

Examples of assault and battery

Assault:

Actions that have been held to be assaults

Fagan: accidentally parking a car on another's foot and leaving it there deliberately

Logdon: threatening to kidnap with a replica gun

Smith: menacing staring while trespassing late at night

Constanza: threatening letters by a stalker living nearby

Ireland: silent phone calls

Venna: kicking wildly while being arrested

Actions that have been held not to have been assaults

Thomas v NUM: threats to drivers passing nearby in cars while under police protection

Spratt: Shooting into an area where it was believed no one was around

Battery:

Actions held to be battery

Collins v Wilcock: grabbing someone's arm to restrain her (unlawful arrest)

Fagan: setting car on top of police officer's foot

Lynsey: spitting on someone

Day: touching the clothes a person is wearing

Thomas: Same as **Day**.

Scott v Shepherd: Indirect force. Throwing firework that blows up on another.

Martin: a practical joke causing a stampede at a theatre

Haystead: Hitting V1, who drops V2 baby (similar principle in **Mitchell:** D hit V1 who fell onto V2)

Santa-Bermudez: Omission. Police stabbed finger on needle D did not disclose

DPP v K: putting acid in hand-dryer

Not battery

Donnelly: police officer tapping on shoulder to get attention.

Collins v Wilcock obiter: everyday touching ok

Barnes: sports – rule-breaking rough play normally not battery, but can be. Question for jury.