

## COMMON ASSAULT

*Equivalent HKSAR Cap 212 s.40*

**Definition of Assault:** Any conduct by D intentionally or recklessly causes V to apprehend, immediate and unlawful personal violence. (*Fagan v Metropolitan Police Commissioner [1968] 3 All ER 442*), (*R v Ireland [1998] AC 147*)

- Summary offence; s.39 Criminal Justice Act 1988
- Focus on intention E.g. V EXPECT to suffer from sort of injuries is sufficient for an assault.
- No actual touching
- Suffer from absolutely no injuries
- D does not need to intend carrying out the threat could also be convicted of assault, as long as V apprehend (*Logdon v DPP [1976] Crim LR 121*) – {D shows his gun in drawer and declare to hold V as hostage. V believed that was real gun despite it was fake; convicted assault}

### Actus Reus for Assault (R v Ireland)

- o Apprehend
- o Immediate
- o Unlawful
- o Personal Violence

#### AR1 - Apprehend = Understand / Perceive of any touch or PV

- o Apprehend the infliction of unlawful force on V
- o Wordings can constitute assault (*R v Ireland [1998] AC 147*) – “a thing said is also a thing done” - silent phone calls were held to be assault
- o Wordings from writing, fax, email, tweet, text, etc. is also possible to constitute assault (*R v Constanza [1997] Crim LR 576*)
- o Words can be cancelling out from apprehend by negating the effect of his actions (*Tuberville v Savage (1669) 1 Mod Rep 3*); no offence
- o Required AR is apprehended but not fear; expecting to suffer from personal violence is sufficient
- o If V suffered no apprehension or expect nothing; D will be acquitted (*R v Lamb [1967] 2 QB 981*)

#### AR2 - Immediacy

- o Must show V apprehended an immediate PV
- o V may fear the possibility of apprehending of immediate PV, not instant but some point not excluding immediate future (*R v Ireland*)
- o Within 1 – 2 minutes is sufficient to constitute an assault (*R v Ireland*)
- o Assault will occur if V apprehend PV will come to her within 1-2 mins; Revealed in (*R v Constanza*)
  - It could be said letters caused V immediate apprehension of violence at some time in the future, but when V read them, she apprehends.
- o Threat to be violent in the distant future is not an assault

**E.g. “I will beat you up next week’ is not an assault.**

- o Does not mean instantaneous (*Smith v Chief Superintendent of Working Police Station (1983) 76 Cr App R 234*)

- Consider whether D intends to cause V to believe that D can and will carry threat out immediately and whether V does so believe.

### AR3 - Unlawful

- Cannot rely on one of the general defences e.g. consent, duress, self-defence

### AR4 - Personal Violence

- V must think there will be some kind of physical contact.
- Slightest touch is sufficient for violence (*Collins v Wilcock* [1984] 3 All ER374)

### Mens Rea for assault - Intention or Recklessness

- ❖ Assault can be committed intentionally or recklessly causing V to apprehend immediate unlawful personal violence (*R v Venna* [1976] QB 421)
- ❖ **Direct intention (*R v Moloney*)**; subjective test {D's view}: Aim or purpose for D to V apprehend from immediate unlawful PV – if YES → MR established.
- ❖ **If NO → Recklessness**
- ❖ **Recklessness (*R v R & G*)**:
  - **Subjective {D's view}**: From D's view did he actually foresee the risk of causing V to apprehend of immediate unlawful personal violence.
  - **Objective {reasonable person's view}**: From a reasonable person's view, with the circumstance known to D, is it unreasonable to cause V suffering from apprehend, immediate and unlawful personal violence.

### No need to re-explain each element again in MR

### Approaching Problem Question for Assault

- Define parties, offence
- Examine whether there is apprehension
- Examine whether the apprehension is immediate to V
- Examine whether V apprehended that immediate PV is unlawful

N.B: We are explaining the AR - unlawful here but not proving anything yet.  
E.g. We can say the rule is whether apprehension is unlawful, however, D could possibly argue V implied her consent and D could rely on. Consent is likely to apply and will be discussed later.

- Examine whether V apprehended that immediate PV by D might involve any physical touching
- MR Definition
- Direct intention; aim or purpose
- OR
- Recklessness
  - Subjective: D foresee the risk of apprehending V with immediate and unlawful PV
  - Objective: RP – unreasonable for D to apprehend V with immediate and unlawful PV
- Consent / Defence
- Conclusion

AR: Possession of an item

MR: intend to use it or permit other to use it to destroy or damage property belonging to another **PLUS** have knowledge that is likely to endanger life of another

### Defences in s.5(2):

- Can **NOT** applied in s.3(b) stated by s.5(1): - cannot apply when endanger life

### Other defences 5(5):

Other general defences **can** be used under s.3(a), e.g. self-defence, intoxication, duress etc

## Ch.13 Theft

*s.1(1) Theft Act 1968 Equivalent HKSAR Theft Ordinance Cap 210 s.2*

Basic Definition of Theft s.1(1):

A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and thief and steal shall be construed accordingly.

s.7: liable for imprisonment not exceeding 7 years

Cap 210 s.2

如任何人誠實地挪佔屬於另一人的財產，意圖永久地剝奪該另一人的財產，即屬犯盜竊罪，而竊賊 ( thief ) 及偷竊 ( steal ) 亦須據此解釋。

- AR + MR must all satisfied otherwise no theft
- All elements must be satisfied at the **same** time
- s.1(1) defines offence, always use s.1(1) to start in exam
- s.2-6 provisions guidance to s.1
- Statute define first in exam

### **AR1: Appropriates**

- Taking something for own use without permission
- S.1(1) Theft Act identifies “appropriates” as a requirement
- See s.3 Appropriates

s.3(1) Theft Act

Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

Cap 210 s.4(1)

任何人行使擁有人的權利，即相當於作出挪佔行為，此包括他並非藉偷竊而(不論是或不知情地)獲得財產，但其後卻就該財產行使權利，以擁有人身分保有或處理該財產。

- S.3(1) assumption rights of an owner
- Assume one right of the owner suffice, no need to assume all rights of the owner
- *R v Morris [1983] 3 WLR 697*: switching price labels, D was stopped before paying. D alleged that appropriation was not taken place as he hasn't pay. Court held, one right of the owner is to put the relevant price on the items
- Consent **cannot** negate appropriation *R v Gomez [1993] AC 422*
- Possible to steal a gift *R v Hinks [2000] UKHL 53*