## Thinking point 8.1

Has D committed the AR of assault in the following cases?

1. D waits until V has passed him and then jumps on V from behind a bush.

* Note that the terminology of assault can be confusing! ‘Assault’ encompasses technical assault *and* battery.
* V did not apprehend harm: no technical assault
* D did touch V: battery

1. D angrily shakes her fist at V, but V thinks it is funny.

* D seems to have the MR of assault, but the AR requires V to apprehend use of force

1. D shakes her fist at V who is standing on the other side of a four-laned road.

* If it is obvious threat cannot be immediately carried out, there is no assault.

1. D thrusts a weapon towards V who is sitting inside a locked car.

* Is there apprehension of *imminent* harm?
* Cases such as *Logdon* suggest that there is.

1. D is on a train and leans out of the window as it is leaving the station to shake his fist at V who he sees standing on the platform.

* No threat of imminent harm.

## Thinking point 8.2

D is a former acquaintance of V now living 50 miles away. He sends her frequent emails, letters and flowers which V finds annoying and to which she does not respond. After several months, the emails become threatening, and D says that he will burn down her house. D then begins to make late night silent telephone calls to her. V becomes distraught. Has D committed the AR of assault?

* Consider *Ireland/Burstow* on the following points:
* Can silence amount to assault?
* What does ‘immediate’ mean?

## Thinking point 8.3

Has D committed the AR of battery in the following situations?

1. D digs a pit outside V’s front door. V falls into it when emerging from his house one night.

2. D sets her dog on V in order to attack V.

3. D throws a firework into a crowd of people who barge into each other to escape.

* Situations 1-3 all involve the use of indirect force. This can be a battery.

4. D slaps V hard on the back in greeting them at a party.

* Is there implied consent to an everyday activity here?

5. A store security guard suspects V of shoplifting and in order to detain her for questioning he grabs hold of her sleeve.

* *Colins v Wilcock*: unlawful application of force, unless it was to effect an arrest.

## Thinking point 8.4

On a street, D pushes V out of the way, causing V to bump into a lamppost and hurt herself. Does D have the MR for battery on V if;

1. D disliked V and wanted to cause harm?
   * Yes: direct intention
2. D knew she pushed V harder than was reasonable?

* Yes: subjective recklessness

1. D was in a hurry and did not even think about the possibility of harm?

* No: no awareness of risk.

## Thinking point 8.5

In a neighbour dispute, D threatens to set his dog on V. V is scared of the dog. He jumps over a fence and falls, breaking his wrist. Has D committed ABH under s47?

You will first need to consider whether:

■ the harm amounts to ABH

■ D committed the AR/MR elements of an assault

■ there is a causal link to the harm.

* Issue: did D have AR and MR of ABH?
* Rule:
  + S47: assault occasioning actual bodily harm
  + AR: Assault = technical assault/battery
  + Occasioning = causing
  + ABH: *Miller*
  + MR = intention/recklessness as to assault (no MR required for ABH)
* Application:
  + D caused V to apprehend immediate unlawful force (assault).
  + Occasioning: V’s escape attempt does not break chain of causation (*Roberts*, see chapter 2)
  + ABH: broken wrist is ABH
  + D had intention to assault V.
* Conclusion: D has committed ABH.

## Thinking point 8.6

A police officer, V, attempts to arrest D for breach of the peace and grabs D roughly by the arm. D is wearing a large metal studded armband. Has D committed an offence under s20 in any of the following situations (ignore the offences of assaulting or obstructing a police officer in the execution of duty)?

You will need to consider whether:

■ The harm amounts to wounding or GBH;

■ D has committed the AR of s20 (infliction);

■ D has MR (intention or recklessness).

a. D pulls away from V but in so doing his armband causes a 2-centimetre cut to V’s face.

* Issue: has D inflicted GBH/wounding intentionally or recklessly?
* Rule:
  + AR: D must inflict the harm
  + Harm must amount to GBH/wounding. Cut through full thickness of skin is a wound (*McLoughlin*)
  + MR: did D intend to wound? If not, did D foresee risk of some harm – not necessarily a wound/GBH (*Mowatt*)?
* Application and conclusion: you may consider that AR is straightforward, but did D have MR?

b. D runs off leading V round the corner where D sticks out his leg, hoping V will fall over it and into a shallow hole left unprotected by workmen. V falls in and breaks her arm.

* + Issue: has D inflicted GBH/wounding intentionally or recklessly?
  + Rule:
    - As for previous scenario. In addition:
    - Infliction need not be through assault/direct application of force (*Burstow/Ireland*)
    - Broken arm is really serious injury (*Smith*)
  + Application and conclusion: D has AR and seems to have MR (intention to inflict some harm).

## Thinking point 8.7

Is D guilty of s20 or s18 GBH in the following situations?

1. D pushes a broken bottle into V’s face causing serious wounding. It was his intention to cause really serious harm.
2. D forcefully throws beer at V aware of the risk that the glass might slip out of her hand at the same time. She causes wounds to V’s face.

* Using IRAC, apply s18 and s20.
* In both cases, the AR of s18/s20 is present. Do they have the MR for either offence?

## Thinking point 8.8

1. If D intentionally injures V’s genitals, in which of the following would D have committed an offence against the person: Female genital mutilation? Gender reassignment surgery? A street-fight? Whilst committing a youthful prank? In a television entertainment programme?

* Consider the relevant offence and then consider whether D has a defence.
* All could be ABH/GBH.
* Consent is a defence if the activity is in the public interest: this includes surgery, sport and rough horseplay. This would apply to the gender reassignment surgery (now more usually called gender confirmation surgery); would it apply to any of the others? Would the prank be ‘rough horseplay’ even though it is not between young men?
* Female Genital Mutilation Act 2003: female genital mutilation is an offence so would not be in the public interest.

1. D, a man, canes V by consent, causing minor bruises and cuts. D’s motive was sexual. Has D committed a criminal offence in any of the following situations: V is a woman prostitute? V is an 18-year-old man? V is D’s long-term gay partner? V is a long-term heterosexual partner?

* The position is now governed by s71 Domestic Abuse Act 2021.
* Has the 2021 Act changed the legal position? Consider the majority and minority judgments in *Brown* and their subsequent application in *Emmett* and *Wilson*.

1. In a game of rugby, player D head-butts player V as they are standing at the back of a scrum. V suffers a broken nose.

This question invites you to consider and apply Barnes.

* This is clearly outside the rules. Applying *Barnes*, does it therefore amount to a criminal offence?

## Thinking point 8.9

In which of the following situations will D have committed s20 GBH?

D has an STI and conceals it from V to whom he transmits the infection through:

a. unprotected consensual sexual intercourse;

b. oral sex; or

c. kissing.

You need to consider the AR/MR elements of any relevant offence followed by any relevant defence.

Example: Offence—s20. What are the AR/MR elements and which authorities are relevant? Look at Burstow/Ireland and Dica.

Defence:

■ Can you consent to STI transmission?

■ Will apparent consent be negatived by fraud?

■ Look at Tabassum, Dica and Konzani.

* Issue: s20 GBH
* Rule:
* AR: infliction of GBH – does not require direct infliction/assault (*Burstow/Ireland*, *Dica*). But does *Dica* apply to sexual activity other than sexual intercourse?
* STI can amount to GBH – see *Dica*, *Maranguanda* and *Golding*.
* MR: intention/recklessness
* Defence: consent is defence to reckless but not intentional transmission (*Dica*). Consent must be informed: consent to sexual activity does not suffice if risk was not concealed from V (*Konzani*).
* Application and conclusion: D is likely to be guilty of s20 GBH in (a) but (b) and (c) are more uncertain.

## Thinking point 8.10

Suppose that an assault is accompanied by the following insults, some of which are racially stereotypic. Consider whether they are racially aggravated under s28(1)(a) or (b) Crime and Disorder Act 1998.

1. A Scot is called ‘a skirt-wearing sheep-shagger’. (This was held to amount to racial hostility in an unreported case cited by E. Burney in ‘Using the Law on Racially Aggravated Offences’ [2003] Crim LR at 33.)

* Yes

1. An Asian doctor is called ‘an immigrant doctor’.

* Yes: held to be racially hostile to a racial group unders28 (1) (a) in *AG’s Ref (No 4 of 2004)* [2005] EWCA 889

1. A Turkish chef of a takeaway shop is called a ‘bloody foreigner’.

* Yes: held to demonstrate racial hostility under s28 (1)(a) in DPP v M [2004]EWHC 1453.