

Sentencing

1. Sent to prison-usually for serious crimes e.g. murder robbery- fix term or life imprisonment- can be mandatory or discretionary
2. comm- Offender remains in community but follows rules e.g. unpaid work (community service), curfews, rehabilitation programs-given for less serious crimes or first time offenders
3. Fines Offender must pay a sum of money-common for minor offences e.g. traffic violation

4. Discharges

- Absolute discharge** No punishment given, but conviction stands
- Conditional discharge** No punishment unless offender commits another offence within a set period

FACTORS INFLUENCING SENTENCING

- aggravated factors (harsher sentence)
- use of weapon -previous conviction- vulnerability of victims e.g. child or elder- racial or religious hostility- planning or premeditation
- mitigating factors (can reduce sentence)
- no previous conviction- remorse shown by offender- young age or mental illness-cooperation with police- provocation or duress

Actus reus

1. Positive Voluntary actions Defendant must do something voluntary
- Involuntary actions are NOT Actus reus
- E.g. walking, hitting, stealing- all positive, voluntary actions
2. Omission (failure to act) Failure to act when it is a legal duty to act

Actus reus (cont)

- No legal duty=no liability
- R v stone and dobson (omission through relationship)
- R v gibbons and proctor Duty from relationship, parents starved child to death
- R v. Miller Duty from dangerous situations set mattress on fire
3. Causation Must be proven that defendant caused prohibited consequences
- Factual causation**
- "But for test" But for the defendant's conduct, would the result have occurred?
- R v white Intended to poison mother but she foiled of heart attack instead-not guilty of murder
- Legal causation** Act must be a significant cause of consequence
- defendant act don't have to be cause, just more than minimal
- Chain of causation must remain intact
- Intervening act can break chain of unforeseeable or disproportionate
- R v pagett Girlfriend as human shield as an act of self defence

Aim and purpose of sentencing

1. retribution Punishment as payback or revenge-offender "deserves" to be punished
2. deterrence **general deterrence** to discourage others in society- **individual deterrence** to stop particular offenders from reoffending
3. rehabilitation Help offenders reform and integrate into society
4. protection of the public Keep dangerous offenders away-imprisonment
5. reparation Compensate the victim or society thru fines or community service

Non fatal offences

1.Assault

Actus reus Causing apprehension of immediate unlawful harm

Means Intention or subjective recklessness
rea

R v Silent calls repeatedly can amount to assault if causing
ireland substantial psychological harm

2.Battery

Actus reus Application of unlawful force to another person-even the
slightest unconsented touch

Mens rea Intention or subjective recklessness

Collins v Grabbed woman's hand without any legal justification
wilcock

Actual ABH s.47 OAPA
Bodily
Harm

Actus reus Either assault or battery that causes substantial bodily
harm e.g. bruises, cuts, recognised psychiatric harm

Mens rea Of assault or battery;intension to commit either with
foreseen ABH

R v Miller Defined ABH "any hurt or injury calculated to interfere
with health or comfort)

Grievous GBH s.20 OAPA-malicious wounding or inflicting GBH
Bodily
Harm

Actus reus Unlawfully wounds, inflicts grievous bodily harm.
"Really serious harm"

Mens rea Must be reckless as to causing some harm-not
necessarily s

DPP v GBH defined as VERY SERIOUS PHYSICAL HARM
Smith

R v GBH should take into account age and health of victim,
Bollom baby injuries treated more seriously

R v Injured baby by handling roughly . Did not foresee
Parmenter harm. Court held under s.20d must for see harm even if
not serious

GBH with S.18 OAPA
intent

Non fatal offences (cont)

Actus Unlawful wounds or inflicts grievous bodily harm-serious
reus harm (same as GBH)

Mens Specific intent to cause grievous bodily harm. Or intent to
rea resist. Or prevent lawful apprehension or any persons Much
more serious

Hierarchy of non fatal offences

OFFENCE	MAX SENTENCE
S.18 GBH	Life
s.20 GBH	5 years
s.47 ABH	5years
Battery	6months
Assault	6 months

Mens Rea

Refers to the defendants state of mind at the time of the crime

Shows intent, knowledge, recklessness, or belief about crime

Prosecution must prove Mens Rea along with Actus reus

Types of men's rea

1.intention

Direct intention: defendants main aim to bring specific consequences	Oblique intention :consequences is not main aim but is virtually certain side effect e.g. r v woolin in baby thrown into pram
---	---

2.recklessness	Defendant did action for seeing there was a risk but still went ahead-key test is subjective
----------------	--

R v cunningham	D pulled gas's meter off causing gas's leak and endangered neighbours though normal ppl foresee risk
----------------	--

3. Knowledge and belief	In some cases it's enough to believe or know certain things even if they did not intent full consequences
----------------------------	---

WHY DOES MENS REA MATTER?

Show culpability-generally can't without right mental

Different crimes require different levels of Mens rea

Some offences are strict liability (no means Rea needed) but most
not