

Sentencing

1. Custodial sentencing	Sent to prison-usually for serious crimes e.g. murder robbery- fix term or life imprisonment- can be mandatory or discretionary
2. community sentence	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)	Failure to take care of child
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

Mens rea Intention or subjective recklessness

R v Ireland Silent calls repeatedly can amount to assault if causing 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 Wilcock Grabbed woman's hand without any legal justification

Actual 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; intention to commit either with foreseen ABH

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

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

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 Smith GBH defined as VERY SERIOUS PHYSICAL HARM

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

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

GBH with intent S.18 OAPA

Non fatal offences (cont)

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

Mens rea Specific intent to cause grievous bodily harm. Or intent to 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	5 years
Battery	6 months
Assault	6 months

Mens Rea

Refers to the defendant's 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 mens rea

1. intention

Direct intention: defendant's 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
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2. recklessness	Defendant did action for seeing there was a risk but still went ahead-key test is subjective
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R v Cunningham	D pulled gas's meter off causing gas's leak and endangered neighbours though normal ppl foresee risk
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3. Knowledge and belief	In some cases it's enough to believe or know certain things even if they did not intend full consequences
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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 mens rea needed) but most not