



# Activity Pack for AS / A Level OCR Law

Criminal Law: Non-Fatal Offences  
against the Person

3<sup>rd</sup> Edition

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# Teacher's Introduction

Non-fatal Offences against the Person forms a central topic for OCR AS Criminal Law H018 and OCR A Level (Year 1) Criminal Law H418 and requires candidates to study and be able to critically evaluate the offences of assault, battery, actual bodily harm, wounding and grievous bodily harm. Candidates are also required to be able to evaluate these offences and recent proposals for reform of this area of criminal law. Notice that a study of associated defences such as consent is not required at AS. This resource provides the knowledge, analysis and evaluation needed for this topic, linked by relevant activities that will engage and stimulate students, as well as developing all the assessment objectives and encouraging a synoptic approach by allowing candidates to refer to other areas of the specification where relevant. The activities have clear learning outcomes, cover all learning styles and are to be used in class or at home. Above all, in line with Ofsted criteria that require greater student engagement in learning, the activities allow for a high degree of participation and are designed to develop both knowledge and critical understanding.

The emphasis here has been on providing hard-pressed teachers with a set of activities that offers a flexible and varied approach in lessons. Of the 43 activities in this pack, 34 have been designed to be used as starters or classroom activities, and five as plenary activities. In addition to these, there are four research tasks, which require access to the Internet and to other sources of information.

Practising board-specific exam questions is vital for students' progress, but such questions and mark schemes have not been included in this resource because they are readily available from exam boards and in other ZigZag Education Law resources.

The handouts can be used as a standalone revision aid without using the activities; the activities can be completed without consulting the handouts if a school prefers to use its own text resources. Where an activity requires a handout, this is mentioned in the activity itself; if you wish to know which handouts to use to support other activities, a grid has been provided on the next page.

*January 2023*

## Notes on the Activities

Type	Handouts Needed	Type	Handouts Needed
Activity 1	1	Activity 14	4
Activity 2	1	Activity 15	4
Activity 3	1	Activity 16	4
Activity 4	1	Activity 17	1, 4
Activity 5	2	Activity 18	2, 4–5, 9
Activity 6	1, 2	Activity 19	1–4
Activity 7	2	Activity 20	1, 5
Activity 8	2	Activity 21	5
Activity 9	3	Activity 22	5
Activity 10	3	Activity 23	5
Activity 11	1, 3	Activity 24	5
Activity 12	1–4	Activity 25	2–3, 5
Activity 13	1, 4	Activity 26	5

An activity can be used at the beginning of a lesson as a starter to reinforce material or to introduce new work.

However, each activity may be used at any point in a lesson or for extended study in a teacher-led section of a lesson, or be followed by it. Activities may be used to bring a variety of approach.

The plenaries provide an opportunity for students to review what has been learned and criticism. They can be used:

- to consolidate the understanding of the topic through whole class discussion
- as extended individual or paired assignments
- as group tasks and presentations

The research tasks require students to use legal resources to analyse legal problems.

Please note that for Plenary 3 you may wish to use each element separately as starters at the end of lessons.

### Note on Abbreviations:

- OAPA 1861 is the Offences against the Person Act 1861.
- s.39 CJA 1988 is section 39 of the Criminal Justice Act 1988.
- Actual bodily harm has been abbreviated to ABH in the text.
- Director of Public Prosecutions has been abbreviated to DPP in the text.
- Grievous bodily harm has been abbreviated to GBH in the text.
- D is defendant.
- V is victim.

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# 1. Introduction

## What are the Non-fatal Offences against the Person?

- These are offences directed against people which do not result in death.
- A range of offences is available depending upon the degree of harm caused *mens rea* of the defendant (D).
- This area of law is a mixture of statute and case/common law.
- A rough hierarchy has been established depending on the seriousness of V's
- Assault and battery are the least serious offences. They are separate offences.
- They are common law offences which have been criticised because the legal definitions of 'assault' differ.
- People in everyday language take an assault to mean that D committed a battery. The legal definition, which is that D caused V to apprehend force.
- 'Battery' means to actually apply the force.
- The more serious offences are covered by **OAPA 1861**.
- The numbering of the sections in **OAPA 1861** seems illogical but it can be explained by a consolidating Act.
- Many legal experts argue that the 1861 Act is very dated, confusing, vague and in need of a substantial reform.
- The Law Commission recommended reform in its report of 2015.

The offence	Type of offence	Source of the offence
Assault	Summary Six months maximum prison sentence or a fine of £5,000 or both	A common law offence. A charge is brought in the Criminal Justice Act 1988, s.39
Battery	Summary Six months maximum prison sentence or a fine of £5,000 or both	A common law offence. A charge is brought in the Criminal Justice Act 1988, s.39
Assault occasioning actual bodily harm (ABH)	Either way Maximum five years prison sentence	OAPA 1861, s.40
Malicious wounding / inflicting grievous bodily harm (GBH)	Either way Maximum five years prison sentence	OAPA 1861, s.20
Wounding or causing grievous bodily harm with intent	Indictable Life imprisonment is maximum sentence	OAPA 1861, s.1

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## 2. Assault – Charged under s.39 Criminal

### What is assault?

**Definition:** Any act which intentionally or recklessly causes another person to apprehend unlawful personal violence.

#### Actus reus

- The *actus reus* for assault is 'causing the apprehension of immediate, unlawful personal violence'.
- The key words are: act, apprehend, immediate, unlawful, personal violence.
- **Act:** requires some act or words. An omission is not sufficient.
- **Apprehend:** it is necessary that V apprehends violence, i.e. is aware of it. It does not matter if the victim does not have to fear it.
- Any approach which is unnoticed is not an assault because there is no apprehension of unlawful violence.
- The House of Lords in **Constanza 1997** stated that words alone may amount to an assault.
- Also, in **Ireland 1997**, silent telephone calls could constitute an assault depending on the circumstances.
- This ruling has been criticised because 'immediate' and 'violence' are both required. In silent calls violence is not expected and certainly not immediately.
- This extension of the definition of assault could be argued to be against the requirement of immediacy.
- **Immediate:** Threat must be of immediate violence. A threat to attack next week from a passing train cannot amount to an assault.
- The courts have taken a generous view of 'immediately' as in **Constanza 1997** held that a threat cannot exclude the immediate future.
- So immediate means imminent but not instantaneous.
- If any threat of force is lawful, there is no assault.
- Assault must be a positive act, not an omission, as shown in the case of **R v Mislati 2017**.

#### Mens rea

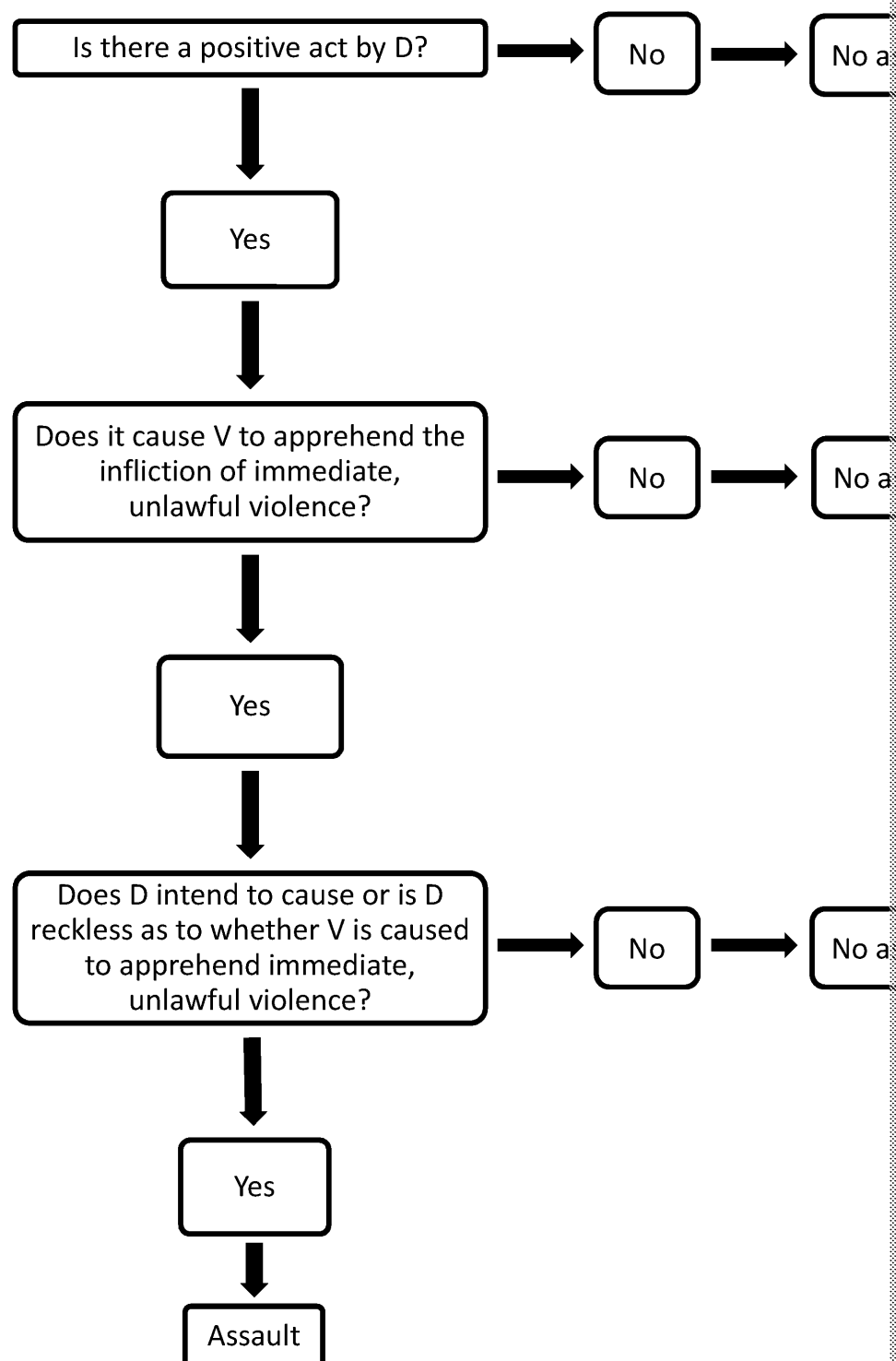
- Assault and battery are offences of basic intent.
- So, either intention or Cunningham recklessness will do.
- Cunningham recklessness means that the defendant must foresee the risk that the victim will apprehend immediate, unlawful violence and go on to take that risk. It is also known as subjective recklessness.
- If D is intoxicated when he commits the *actus reus* for assault or battery, s/he is considered to be doing the illegal act recklessly (**DPP v Majewski 1976**).
- This ruling was made on public policy grounds and can be criticised.
- The point in time at which the alcohol is taken is likely to be a separate time from when the assault or battery is committed.
- D may be reckless when s/he takes the alcohol but this does not necessarily mean s/he commits the assault.

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## Common assault flow chart

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PROTECTED**Assault and battery are common law offences**

- It is sometimes believed that assault and battery are statutory offences because of Section 39 of the Criminal Justice Act 1988 as follows:  
*Common assault and battery shall be summary offences and a person guilty of either shall be liable on conviction to imprisonment for a term not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.*
- This is not the case. Although both offences are clearly recognised by this Act, section 39 does **not** define either offence.
- It does not establish the *actus reus* nor the *mens rea* required for each offence, which are established through case judgements in common law.



### 3. Battery – Charged under s.39 Criminal

#### What is a battery?

**Definition:** Any act by which the defendant intentionally or recklessly applies unlawful

#### Actus reus

- Application of unlawful force upon another person.
- The force does **not** have to be violent or part of an attack.
- Grabbing hold of someone is sufficient, as shown in **Collins v Wilcock 1984**.
- Touching someone's clothing can amount to battery, as shown in **Thomas 1985**.
- **Wilson v Pringle 1987** shows that 'the ordinary jostlings of everyday life' are not battery.
- Touching someone to get their attention is not battery but restraining someone.
- Brushing against someone in a crowded lift is not battery because there is no intention.
- Deliberately driving over someone's foot is a battery (**Fagan v Metropolitan Police 1999**).
- It is not necessary to suffer any injury such as a bruise or cut to satisfy battery.
- The application of force can be **indirect** as in **DPP v K 1990**.
- So spitting on a victim is a battery, as shown in **R v Mislati 2017**.

#### Mens rea

- It is a basic intent crime.
- Intentionally or recklessly (**Cunningham**) inflicting the unlawful violence.
- You can have a battery without an assault, e.g. where D approaches V from behind and V has not heard D approaching.
- If D is under a duty to act then s/he may commit battery through an omission (**Attorney General v Auld 2003**) but this situation is very unusual.
- For battery the force must be unlawful.
- If there is consent, or force is used in self-defence or to prevent a crime, then the force is lawful.
- Force used to correct a child can be lawful in England. (Wales passed legislation which prohibits the smacking of children.) If the force is excessive then it is a criminal offence. This may conflict with Article 3 of the European Convention on Human Rights.
- **R v Venna** helped to define recklessness; after fracturing a police officer's hand, the defendant was found guilty of battery. His appeal was allowed on the basis that being reckless was a sufficient mental element to form the necessary intent.



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## 4. Assault Occasioning Actual Bodily Harm

### s.47 OAPA 1861

#### What is assault occasioning actual bodily harm?

**Definition:** An assault or battery which causes actual bodily harm, with the intention to cause such harm, or to subject the victim to unlawful force, or to be subjectively reckless as to whether such harm would be caused, or that unlawful force would be applied, or that the victim would be subjected to unlawful force.

If a person is charged under s.20 with wounding s/he may instead be convicted of assault occasioning actual bodily harm.

It is not possible, however, for a person charged under s.47 to be convicted of common assault.

#### Actus reus

- OAPA 1861 provides no definition of assault occasioning actual bodily harm through case law.
- The *actus reus* is an assault or battery that causes actual bodily harm.
- The prosecution must establish the existence of an assault or a battery.
- Actual bodily harm according to **Miller 1954** means any hurt or injury calculated to interfere with the comfort of the victim. This can include loss of consciousness (**T v DPP 2003**).
- Any 'harm' does not have to be serious. It can be a bruise or scratch.
- Cutting a victim's hair can amount to ABH according to **DPP v Smith 2006**, but the amount of hair. The court held that physical pain was not necessary.
- The 'harm' can include psychiatric injury but it must be a **recognised clinical condition**.
- Strong emotions like rage or fear will not suffice.
- The actual bodily harm must be caused by the assault or battery.
- The actual bodily harm may be indirectly applied (**DPP v K 1990**).

#### Mens rea

- *Mens rea* is not explained in the Act and has been developed by case law.
- It is a basic intent crime.
- Intention or recklessness (**Cunningham**) refers to the assault or battery only **not to the harm caused**.
- It is not necessary to prove that D intended or was reckless about causing ABH.
- This was stated to be the law in **Savage** and in **Parmenter 1991**.
- Some activities, as in **Brown 1993** and **R v BM (Doctor Evil) 2018**, are considered unacceptable as a matter of public policy, rather than following legal principle.

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## 5. Maliciously Wounding / Inflicting GBH

### s.20 OAPA 1861

#### What is s.20 OAPA?

**Definition:** *Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm either with or without any weapon or instrument, shall be guilty of an offence.*

- The offence is commonly known as ‘malicious wounding’.
- The maximum sentence for s.20 is surprisingly the same as for s.47, i.e. five years.
- This is because the OAPA 1861 was a consolidating Act not a reforming Act, therefore needed.

#### Actus reus

- The *actus reus* has two aspects to it: to wound *or* to inflict GBH.

#### Wounding

- The definition of a wound was set out in **JJC (a minor) v Eisenhower 1983**.
- In that case, Lord Justice Robert Goff said only a break in the continuity of the skin was required for a wounding charge.
- In other words, a wound requires the piercing of all five layers of skin.
- Bleeding does not mean a wound has occurred as all five layers of skin may have been pierced without bleeding. This was held in **JJC (a minor) v Eisenhower 1983**.
- An exception to the rule on what constitutes a wound is a cut of the eyebrow. A cut eyebrow would be a s.47 offence.
- A nosebleed is not a wound.
- A wound does not have to result in harm; for instance, an ear-piercing counts as a wound.

#### Inflicting GBH

- GBH means ‘really serious harm’ (**DPP v Smith 1961**).
- In **Bollom 2004** it was held that the severity of the injuries should be assessed at the time of the offence.
- Serious psychiatric problems could amount to GBH (**Ireland; Burstow 1997**).
- In **Dica 2004** infecting someone with HIV was seen as GBH.

#### Problems with the interpretation of ‘inflicting GBH’

- Until recently there were conflicting views as to the meaning of ‘inflict’ in s.20.
- One interpretation was narrow. To inflict harm, an assault or battery was required.
- The other, wider interpretation allowed any infliction of harm without an assault or battery.
- In **Wilson 1984** the House of Lords indicated a preference for the wider interpretation.
- The Law Lords in **Burstow 1997** decided that s.20 GBH can be inflicted without an assault or battery.
- **Burstow 1997** indicated that it is only necessary to show that D’s actions resulted in GBH.
- This wider interpretation helped gain convictions when the problem of stalking arose. There was no specific legislation to deal with it. The meaning of the OAPA 1861 has had to be interpreted.
- This problem has now been eased with the Protection from Harassment Act 2001.
- ‘Inflict’ in s.20 is now interpreted in the same way as ‘cause’ in s.18.

#### Mens rea

- It is a basic intent crime.
- ‘Maliciously’ means with intention or Cunningham recklessness to cause some harm.
- D must at least foresee that *some harm* may result (**Parmenter 1991**).
- It is not necessary to prove that D foresaw really serious harm or even the exact harm which occurred.

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## 6. Wounding or Causing GBH with s.18 OAPA 1861

There are **two** different ways of committing this offence:

1. Unlawfully and maliciously causing **GBH** with intent to cause GBH.
2. Unlawfully and maliciously causing **GBH** with intent to resist or prevent the lawful apprehension or detainer of any person.

(A wound in itself is sufficient for this offence only if it causes really serious harm.)



### **Actus reus**

- *Actus reus* takes two distinct forms.
- It can **either** be to wound **or** to cause GBH.

### **Mens rea**

- This is a **specific intent** crime.
- **Either** an intention to cause GBH is required. An intention to simply wound is not enough.
- **Or** an intention to resist or prevent lawful arrest is needed **and** at least recklessness as to causing GBH (**Morrison 1989**).
- 'Intention' has the same meaning as for murder.
- The prosecution must prove that it was D's intention to cause GBH or resist arrest as a *virtually certain* consequence of his actions (**Nedrick 1986**). If this is shown, the jury must find D guilty (**Woollin 1998**).

### **'Inflicting' and 'causing' GBH**

- The general consensus originally was that 'cause' had a wider interpretation than 'inflict'.
- In **Burstow 1997** it was decided that there was no real difference between 'causing' and 'inflicting'.

### **Alternative verdicts**

- If charged with s.18 a jury may find D guilty of s.20 even if D had not been charged with s.20.

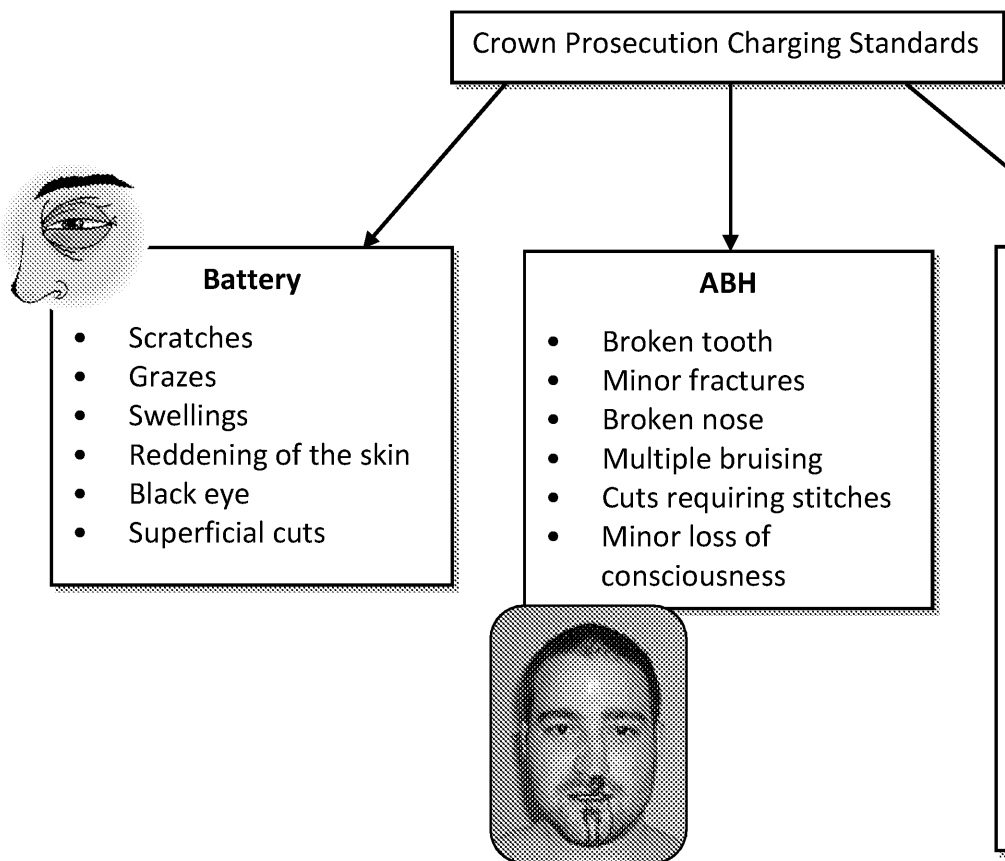
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## 7. Crown Prosecution Charging Standards

- This document helps prosecutors decide on the appropriate level at which to approach.
- Uncertainty regarding charging led to the creation of the Charging Standard to be updated.
- The examples given in the diagram that follows will help you to work out the offence against the person.
- It may be very useful for answering questions 6 or 7 on H018, which are focused on charging.
- Notice that aggravating elements can make an assault more serious.
- The use of weapons or the vulnerability of the victim may make an s.47 charge battery even though the nature of the injury might suggest battery.



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## 8. Reforming Non-fatal Offences again

### What is wrong with this area of law?

- The **Law Commission** has been concerned with this area for some time. It has identified the following problems:
  - The **OAPA 1861** was only a consolidating and not a reforming Act. So the law remained the same.
  - The language of the Act is too complicated and old-fashioned.
  - The structure of non-fatal offences is across two Acts and is therefore too complex.
  - It was designed for the mid-nineteenth century, and courts today are having to interpret it in a very different modern society.
- The **OAPA 1861** as a consolidation Act:
  - The Victorians who drafted this statute simply wished to tidy up the law by bring together all the relevant laws within one Act.
  - So this act includes other areas such as poisoning. This is why the sections we associate with non-fatal offences against the person are so illogical: s.47, s.20 and s.18.
  - No attempt was made to reform or rationalise the law so the language used is not uniform and definitions of key terms are not included.
  - This has meant the courts themselves have had a difficult time developing the law.
- Complicated language:
  - 'Assault' is a word used inconsistently throughout **OAPA 1861**.
  - 'Maliciously' and 'wounding' are used in the Act but never defined.
- The structure of non-fatal offences is too complicated:
  - It is spread over two Acts with overlaps between **s.39 CJA 1988** and **s.47 OAPA 1861** yet the maximum sentence available for battery is only six months, whereas for assault it is ten years.
  - s.20 is GBH and s.47 is the less serious ABH but both have maximum sentence of ten years.
  - There is no logical hierarchy of offences and much overlapping. There is no clear basis for the offences based around the degree of seriousness of the offences.
- The **OAPA 1861** is outdated:
  - Psychiatric illness was much less of a concern to Victorian legislators than today.
  - The Victorians did not have telephones or computers in 1861 so were not concerned with silent telephone calls or cyberstalking which can result in psychiatric harm today.
  - They did not focus on the deliberate infection of victims with Aids or sexually transmitted diseases that have amounted to GBH today (**Dica 2004**).
  - Many of these issues have had to be sorted out through case law. In **Irwin v. The Lord's Committee** the House of Lords decided that 'inflict' did not require an assault or battery and that it could now be a physical attack (**Smith 2003**).
  - The courts now recognise that 'bodily harm' can be mental as well as physical.
- But inconsistencies remain in the **OAPA 1861**:
  - Section 47 has the same *mens rea* as assault and battery. It appears unnecessary to require the defendant to intend or even realise that there is a risk of actual bodily harm.
  - It seems odd that a person who causes a minor cut can be charged with a more serious offence simply because the word 'wound' is referred to in s.20. But s.20 requires a more serious injury which would not include anything so minor. This is an inconsistency.
  - It is inconsistent that a defendant who intends or foresees the risk of a more serious s.18 offence, if serious injury occurs when s/he intends to resist arrest, is liable under the same offence as someone who *intended* really serious injury.

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## Reform proposals

- The Law Commission produced reform proposals in 1993.
- The proposals do away with old-fashioned words like 'maliciously' and 'grievously'.
- All current offences would be scrapped and four new offences will take their place.
- 'Injury' replaces 'harm' and can be physical or mental injury. These are now defined in the 1997 Act.
- 'Mental' injury includes any impairment of a person's mental health.
- The word 'serious' is not defined but left up to the courts to decide.
- 'Wounding' is deliberately omitted because it has caused so many problems and is now downgraded to intentional or reckless injury.
- Wounds must be 'serious injury' to be in the higher categories.
- The present confusion with *mens rea* and 'foreseeing some harm' would end. It would be enough that D foresaw 'serious injury' or 'injury'.
- Those who intentionally transmit a disease such as HIV/Aids could be caught by the new 'Injury'. D would not be allowed to use consent if V had not been fully informed.

Present offence	Proposed offence
s.18 unlawfully and maliciously wounding or causing GBH with intent	Intentionally causing serious injury
s.20 unlawfully & maliciously wounding or inflicting GBH	Recklessly causing serious injury
s.47 assault occasioning ABH	Intentionally or recklessly causing injury
Battery: Intentionally or recklessly applying unlawful force to another person	Assault which can be committed in two ways: <ul style="list-style-type: none"> <li>• Intentionally or recklessly applying force to another</li> <li>• Intentionally or recklessly causing another to apprehend that any force or impact is imminent</li> </ul>
Assault: intentionally or recklessly causing another person to apprehend immediate, unlawful violence	

The chart above refers only to the Law Commission report and proposals made in 1993. The maximum penalty suggested for intentionally or recklessly causing injury was three years. These proposals followed in 1998, when the maximum penalty proposed was five years. There was a clear consensus and inconsistency of approach in this area of law.

## Criticisms

- The distinction between 'injury' and 'serious injury' is unclear.
- Only one offence deals with injury but two deal with serious injury.
- So perhaps, for consistency, the offence replacing s.47 should be subdivided into intention and the other on recklessness.
- These reform proposals and later examples have never been implemented. They are too onerous and time-consuming, but modernisation and improvement of this area of law is needed.



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## 9. Key Cases on Non-fatal Offences against the Person

### Case Study

#### *Logdon v DPP 1976*

##### **Apprehension of personal violence**

D showed V a gun in a drawer and told V that it was loaded. It was, in fact, a fake, but this was not clear from its appearance. V was frightened. This amounted to an assault.

### Case Study

#### *Lewis 1974*

##### **s.20 GBH**

D's wife had locked herself in a flat when D was threatening her from outside. She ran out of the window and broke her legs. The threats amounted to an assault. D was convicted of s.20 GBH.

### Case Study

#### *C (a minor) v Eisenhower 1983*

##### **Definition of wounding**

D shot V with an air gun. The pellet hit V near the eye, resulting in a bruise below the front of his eye. D was found not guilty of wounding. A wound is a break of the whole or part of the skin which shows the blood vessels in this case was not a wound.

### Case Study

#### *Ireland; Burstow 1997*

##### **Joint appeals**

##### **Burstow: Serious psychiatric harm can amount to s.20 GBH**

For eight months, Burstow subjected a former girlfriend to both silent and abusive phone calls, hate mail and stalking. He was convicted of GBH under s.20 OAPA. He appealed on the grounds there had been no physical assault. The Law Lords confirmed that there was no need for a battery and that Burstow met the requirements of s.20. The consequence of the victim suffering grievous bodily harm. In this case, the conviction was upheld.

##### **Ireland: Silent telephone calls can amount to an assault**

D had made a number of silent telephone calls to V. The Law Lords decided that they caused an apprehension of immediate, unlawful force and D intended this or was reckless as to whether it occurred. The conviction for s.47 was upheld.

### Case Study

#### *Mowatt 1967*

##### **Mens rea for s.20 GBH**

D hit V in the face a number of times and left him unconscious. D was found guilty of s.20 GBH. There was a problem regarding the word 'maliciously'. The Court of Appeal upheld the conviction. D is simply required to have foreseen the risk of some physical harm. It is not necessary to prove that D intended or was reckless about actually causing, GBH or wounding.

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**Case Study****Wilson 1984****s.20 and s.47 OAPA 1861**

D, while driving, nearly ran down V. D got out of his car and punched V in the face. D was charged with s.20 OAPA 1861 but found guilty of ABH.

The Law Lords unanimously agreed that when charged with s.20 it is open to the jury to return a verdict of not guilty as charged but guilty of s.47 ABH.

**Case Study****Collins v Wilcock 1984****Unlawful touching such as pushing or prodding could amount to battery. So could a serious attack.**

A police officer took hold of a woman's arm to restrain her. The police officer was charged with battery. His actions were unlawful and amounted to a battery.

**Case Study****DPP v K 1990****A battery could be committed by an indirect act**

A schoolboy took acid into the toilets to experiment with it. He heard footsteps and hid. A hand dryer was used. Another pupil used the hand dryer and was sprayed with acid. D was charged with battery. It was held that an indirect act could amount to either an assault or a battery.

**Case Study****DPP v Santa-Bermudez 2003****Battery can be committed by an omission**

D injured a police officer by allowing her to search him knowing he had hypodermic needles in his pockets, which stabbed her. He had told her that he had no sharp objects in his pockets. This omission satisfied the *actus reus* for ABH.

**Case Study****Constanza 1997****Written words can amount to an assault; 'immediate' can be interpreted as 'imminent'**

D wrote hundreds of letters to V, frequently phoned her and stalked her. She suffered a fear of immediate violence.

D was found guilty of ABH.

**Case Study****R v BM (Dr Evil) 2018**

The defendant, BM, was registered for tattooing and body piercing. He also provided body modification services, such as tongue splitting, ear removal and removal of a male nipple, but he had no medical qualifications to do this. He was convicted of multiple counts of ABH, even though his customers had all consented to the modifications. This is considered to be a public policy decision.

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### Case Study

#### ***R v Brown 1994***

The defendants were convicted of ss.47 & 20, ABH and GBH without intent. They had sadomasochism on each other and had also inflicted non-permanent physical injuries. This was not considered as a defence as Ds could not consent to more than a battery. The court was in the public interest that such injuries should be allowed to be inflicted without good reason. This did not apply in this case.

### Case Study

#### ***Pegram v DPP 2019***

A police officer took hold of D's arm with just enough force to get his attention. The officer told Pegram that he was about to commit an offence. D hit the officer and was convicted. He appealed the conviction, claiming self-defence, but his appeal was dismissed. The court held that any person is entitled to make moderate contact with another person in order to get their attention.

### Case Study

#### ***R v Venna 1976***

Venna kicked a police officer who was trying to pick him up, fracturing the policeman's hand. He was convicted of occasioning actual bodily harm. His appeal was dismissed on the grounds that recklessness was a sufficient mental element to form the necessary intent of a criminal assault.

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# Activities



## Activity 1

### Are the statements accurate?

Use the information on the table on **Handout 1** to decide whether each statement is accurate. Provide evidence to back up your decision in the space provided.

**Statement A:** Of the five non-fatal offences, the least serious ones do not come under OAPA 1861.

The statement is accurate ☐

inaccurate ☐

**Evidence:**

**Statement B:** The hierarchy of non-fatal offences is very clear.

The statement is accurate ☐

inaccurate ☐

**Evidence:**

**Statement C:** The five non-fatal offences are statutory.

The statement is accurate ☐

inaccurate ☐

**Evidence:**

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## Activity 2

The courts where non-fatal offences against the person would be heard

Refer to **Handout 1** but additionally check or research the definitions of summary offences. Add your answer below. Then, complete the grid to show in which court

Term	Definition
Summary	
Either way	
Indictable	

Non-fatal offences against the person	Magistrates' Court
Assault	
Battery	
ABH	
Section 20 offences	
Section 18 offences	

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### Activity 3

#### Common law and statute law

**Handout 1** refers to common law offences and to the OAPA 1861, a statute. Find the differences between common law and statute law, and add your answers below. Then, complete the table to show how the non-fatal offences against the person have developed through common or statute law.

The differences between common law and statute law	
Common law	Statute law

How the following offences have developed	
Assault and battery	
ABH and s.20 and s.18 offences	

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## Activity 4

**Non-fatal offences against the person:** Complete the chart for non-fatal offences against the person, filling in the six missing sections.

What are the non-fatal offences against the person?

The offence	Type of offence and length of sentence	Source of the offence
Assault	Summary Six months maximum prison sentence or a fine of £5,000 or both	(1)
(2)	Summary Six months maximum prison sentence or a fine of £5,000 or both	A common-law offence. A charge is brought under the Criminal Justice Act 1988.
Assault occasioning actual bodily harm (ABH)	(3)	OAPA 1861, s.47
(4)	Either way Five years maximum prison sentence	(5)
Wounding or causing grievous bodily harm with intent	(6)	OAPA 1861, s.18

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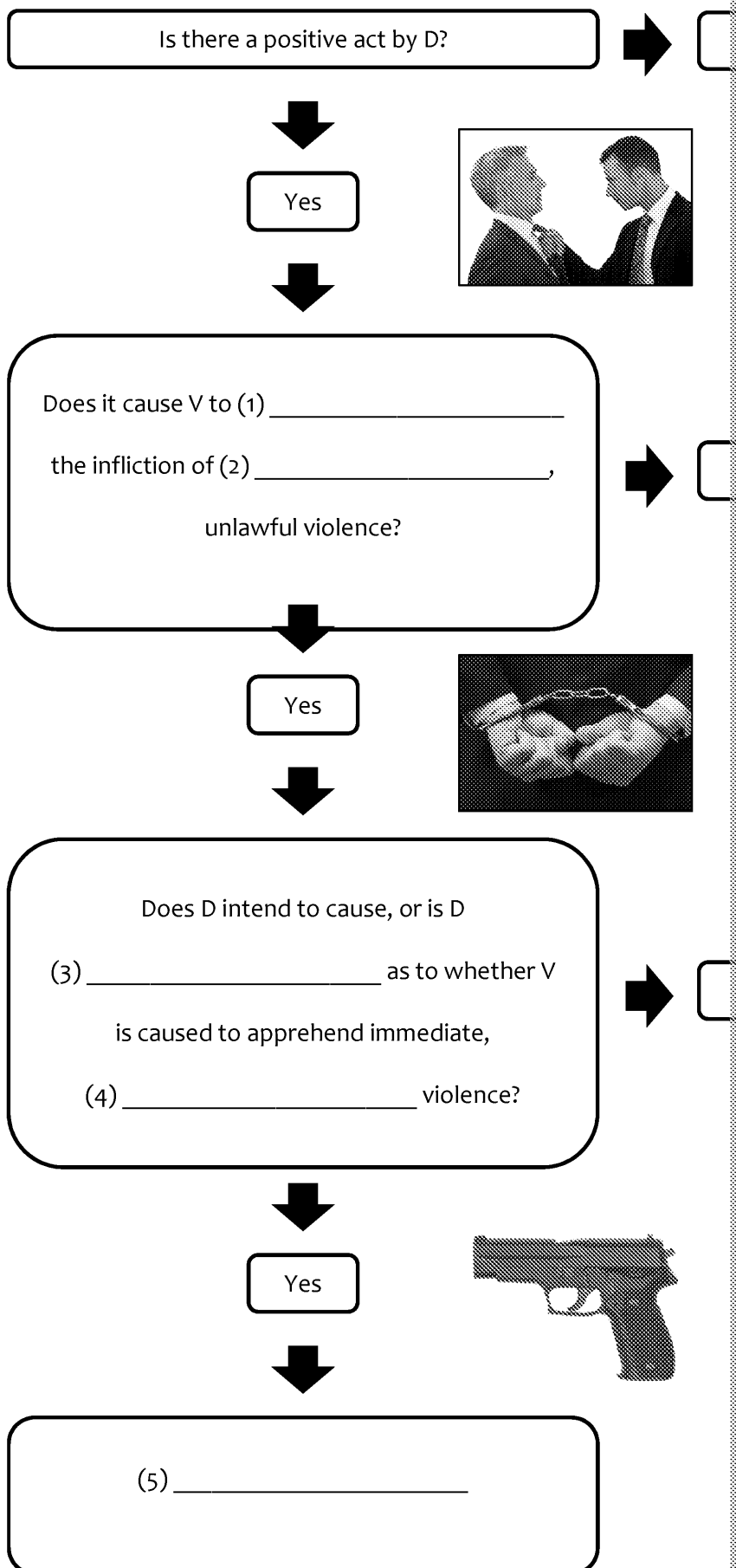
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## Activity 5

**Assault flow chart:** Complete the flow chart for assault below by finding the correct answer. Do so without using any handout, but if you have any difficulties refer to the handout.



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## Activity 6

### Assault: True or false?

Answer **true (T)** or **false (F)** to the following statements concerning assault.

1	Words alone are sufficient for an assault.
2	Silent telephone calls can amount to an assault.
3	'Apprehend' in assault means 'fear'.
4	Assault is a crime of specific intent.
5	Assault is a common law offence.
6	D shouts threats at V from a passing train. This could be an assault.
7	D jumps out from behind a fence after V has passed and hits V. This co
8	D threatens to beat up V next week. This could be an assault.
9	Recklessness is sufficient for the <i>mens rea</i> of assault.
10	An assault is charged under the Criminal Justice Act 1988.



## Activity 7

### Herbert's assignment on assault

Herbert has been asked to write a short paragraph about assault. He has produced the paragraph below but has made **five** errors. Without using any notes or resources, identify the five errors by underlining them. Correct the errors.

An assault is defined as an act which at least intentionally causes another person to fear immediate and unlawful personal violence. Assault is a positive act and so cannot be committed by omission. Assault requires intent so either intention or Caldwell recklessness are required.

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## Activity 8

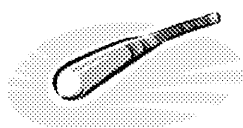
### Do we have an assault?

Working individually or in pairs, decide and then briefly explain why each of the following scenarios may or may not amount to an assault.



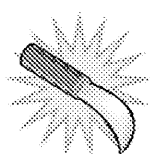
#### Scenario A

Elaine telephones Jess from Canada and threatens to return from holiday in two weeks.



#### Scenario B

James silently advances with a metal bar, which he intends to use to assault Elliot. Elliot, however, is unaware of this because he is looking away.



#### Scenario C

Rajiv, a policeman, tells Simon to drop the knife he is holding. Simon refuses to do so and Rajiv warns Simon that he will use force if he fails to comply.



#### Scenario D

Miss Jones has been reading Snow White to her primary class. One day, she enters class dressed as the Wicked Queen. The children are frightened and burst into tears.

Scenario	Assault yes or no	Explanation
A		
B		
C		
D		

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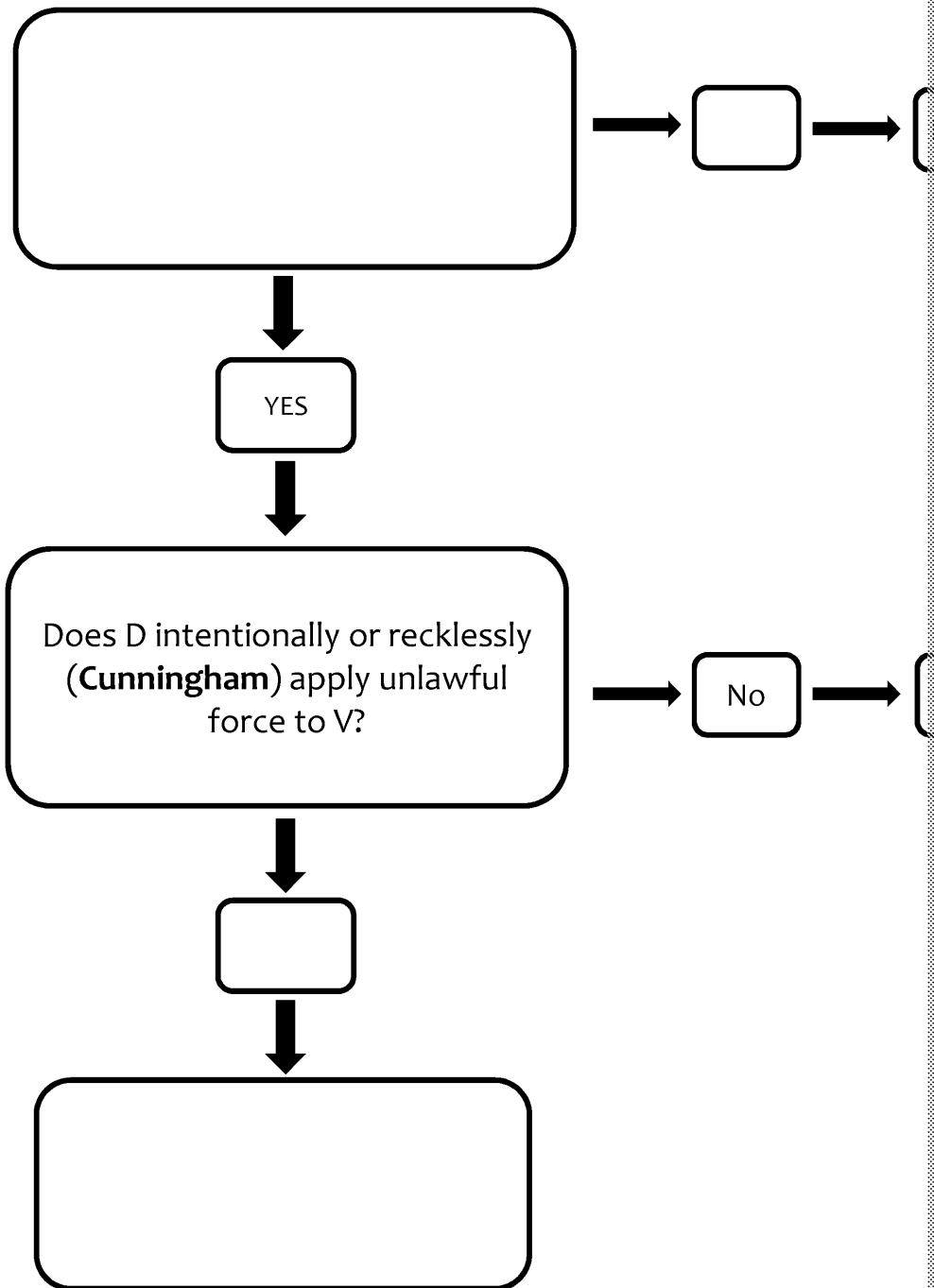




## Activity 9

### Battery flow chart

Review the information on **Handout 3**, and then complete the following flow chart



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## Activity 10

### Questions on battery

Review the information on **Handout 3**, and then briefly answer the questions to

1. What is the key difference in the *actus reus* between assault and battery?

.....

2. Could tickling someone amount to a battery?

.....

.....

3. Why is brushing against someone on a bus unlikely to be battery?

.....

.....

4. **DPP v K 1990** indicated that the application of force may be indirect. What does this mean?

.....

5. How do you know that battery is a basic intent offence?

.....

.....

6. Explain why it is possible to have a battery without an assault.

.....

.....

7. Is it possible to commit battery through an omission?

.....

.....

.....

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## Activity 11

### Offences of assault and battery

Individual, pair or group work. Solve the anagrams.

	Clue	Anagram (number of words in brackets)
1	Category of crime	Ancients Bit (2)
2	Application of force may be this	Cider Tin (1)
3	Collins v _____	Cowlick (1)
4	Brushing against someone may be this	Polemics Tinned (2)
5	Form of recklessness needed for battery	Gunman Inch (1)
6	Case about silent telephone calls	Adliner (1)
7	Act associated with charging for battery	Airmail Succinct Jet (3)
8	Maximum prison sentence for battery	Hosts Minx (2)
9	Battery case of 2003 involving an omission	Braze Amends Aunt (2)
10	A defence to battery	Nenscot (1)

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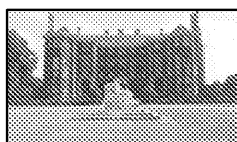
## Activity 12

### Identifying non-fatal offences against the person

Refer to **Handouts 2 and 3**. Then read the following four short scenarios. In the table below, indicate which of the four scenarios:

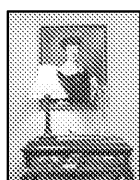
1. would **not** be an example of a non-fatal offence against the person
2. would probably amount to both assault and battery
3. would may well be a s.18 GBH offence
4. would probably amount to a summary offence only

You may well have more than one answer to some of the questions.



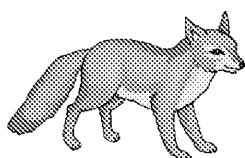
#### Scenario A

Jake and Jenny are disturbed while stealing antique vases from a security guard. In order to escape, they threaten the guard with a knife and throw him to the floor. He suffers minor injury.



#### Scenario B

Jake later spots a parked van full of antiques. He notices the owner is asleep in a chair. He sneaks up to the owner and hits him on the head with a stone. The owner is killed instantly. Jake takes the van and drives away with the antiques.



#### Scenario C

Jenny finds a dead fox. She picks it up and tosses it into the air. It narrowly misses a motorist, who jumps out of the car and threatens her. She laughs at him as she drives away.



#### Scenario D

Navid gets into an argument with a group of boys. They throw him to the ground and he falls over. One of the boys kicks Navid in the head, knocking him unconscious for a brief amount of time.

1	
2	
3	
4	

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## Activity 13

### What is ABH?

- Read the definition of ABH on **Handout 4**.
- Decide whether each of the statements that follow are true or false and put your answer in the space provided.
- If you decide a statement is false, explain what the correct answer should be.

1	ABH is a common law offence.
2	ABH is a trial either way offence.
3	ABH has a maximum sentence of life imprisonment.
4	The harm caused for ABH cannot be psychological harm.
5	ABH can be found under s.47 of the Offences Against the Person Act 1861.
6	ABH is a basic intent crime.
7	For ABH, D must commit either assault or battery.
8	For ABH, D must satisfy the same <i>mens rea</i> of both assault and battery.
9	The recklessness necessary for ABH is Caldwell recklessness
10	D must intend or be reckless about causing ABH.

Question	Explanation

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## Activity 14

### Pairing exercise

Read **Handout 4** before attempting this activity. Match each of the cases in the left-hand column with the legal principle in the right-hand column by adding the letters to the grid below.

1. **DPP v K 1991**

2. **Savage, Parmenter 1991**

3. **DPP v Smith 2006**

4. **T v DPP 2003**

5. **Miller 1954**

6. **Chan Fook 1994**

A. **House of Lords**

B. **Lower courts**

C. **Defence in court**

D. **Assault on a police officer**

E. **Assault on a civilian**

F. **It is a defence to a charge of assault if the defendant is a police officer**

1.	3.	5.
2.	4.	6.

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## Activity 15

### The hurt or injury in ABH

**Miller 1954** provided a test for ABH. A victim must suffer any hurt or injury calculated to affect health or comfort. Look at the following situations and decide whether or not they amount to ABH. Explain your answer in the space provided. This activity is based on the Miller 1954 test.

Situation	ABH Y/N	Explanation
1. V is terrified when D points a gun at him.		
2. V is bitten when D sets his dog on V.		
3. D hits V on the head with an apple. V is unconscious for 30 seconds.		
4. D takes hold of one of V's hairs and pulls it out.		
5. D bombards V with malicious texts and V begins to suffer from clinical depression.		

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## Activity 16

### Actus reus and mens rea of s.47 ABH

- The objective here is to ensure that you can accurately apply the element. You need to consult **Handout 4**.
- Decide whether the *actus reus* and *mens rea* for ABH are satisfied and explain why.
- Include any relevant cases.
- Reach a conclusion.

#### Scenario

Tom and his girlfriend Penny have a blazing row. Tom grabs scissors and cuts Penny's hair. He has been charged with an offence under s.47 Offences Against the Person Act 1861. Is Tom likely to be found guilty of ABH?

#### Is Tom likely to be found guilty of ABH?

.....

.....

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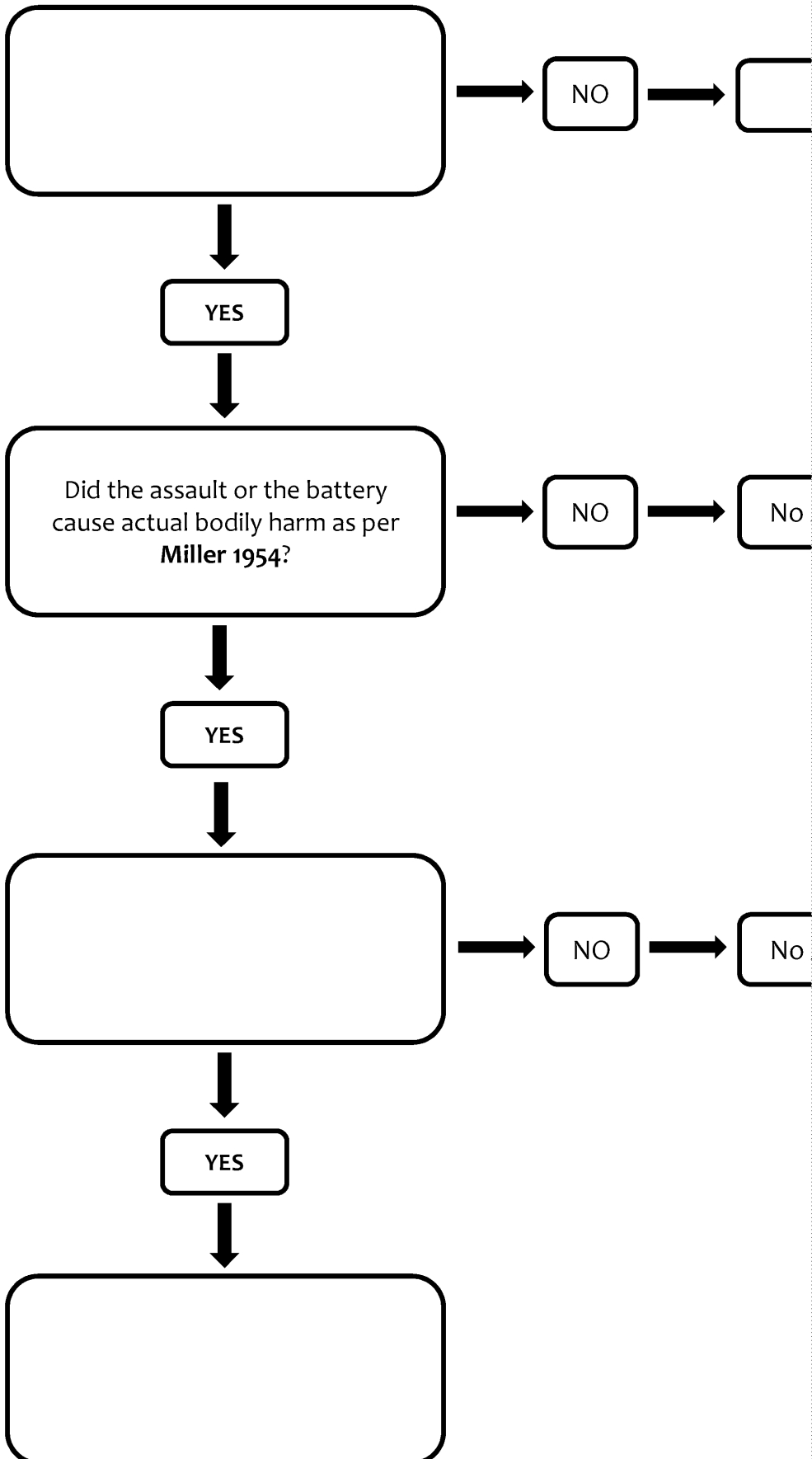




## Activity 17

### ABH flow chart

Review the information on **Handout 4**, and then complete the following flow chart



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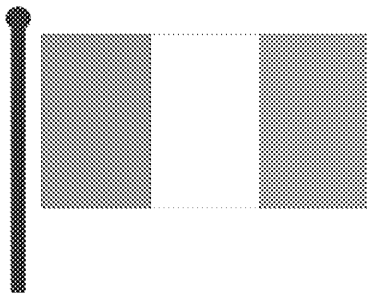


# Activity 18

## Non-fatal offences against the person – spot the cases

- Consult the following **handouts: 2, 4, 5, 9.**
- Look at the six Pictionary clues that follow.
- Spot the relevant case for each.
- Indicate in the spaces provided the key legal principle associated with each.

1



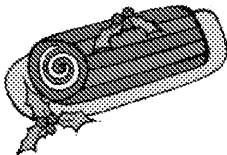
2

3



4

5



DON

6



	Case	Legal principle
1		
2		
3		
4		
5		
6		

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## Activity 19

### Spot the anagrams

Link each of the following legal principles to a relevant case or Act. If you need **Handouts 1–4**.

	Clue	Anagram (number of words in brackets)
1	Case of 1997 indicated that words alone could amount to an assault	Nnaaoctz (1)
2	This 1976 case showed that if D is intoxicated when s/he commits the <i>actus reus</i> for assault or battery, D additionally satisfies the <i>mens rea</i>	Jaws Mike (1)
3	Case that indicated that harm for ABH could be a clinically recognised psychiatric injury	Hack Of On (2)
4	Case associated with subjective recklessness as <i>mens rea</i>	Gunman Inch (1)
5	This case suggested a battery could result from an omission	Banana Demur Zest (2)
6	Case suggesting that cutting a substantial amount of V's hair could amount to ABH	Timsh (1)
7	Statute of 1861	Caffeines Tangos Poachers Tent (5)
8	Intending to throw a glass of beer over V could satisfy the <i>mens rea</i> for s.47 OAPA	Gave As (1)

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## Activity 20

### OAPA 1861 s.20

Fill the blanks below. Try to do so without using the handouts, but refer to **Handout 4** if you need to.

S.20 OAPA 1861 is an \_\_\_\_\_ offence with a maximum term of \_\_\_\_\_ years. It requires that D either \_\_\_\_\_ or \_\_\_\_\_.

'Wounding' means that the \_\_\_\_\_ of the skin is broken. Purely internal bleeding is not a wound according to **JJC (a minor) v A** \_\_\_\_\_.

D must act with intention or \_\_\_\_\_ and the test for the latter is \_\_\_\_\_.

\_\_\_\_\_ that D foresees that his/her acts cause some harm to the victim.

\_\_\_\_\_ foreseen wounding or \_\_\_\_\_.



## Activity 21

### The *actus reus* of s.20 – wounding

Carefully read the definition of s.20 on **Handout 5**. Answer the following questions.

Questions	
1. In what ways can the <i>actus reus</i> of s.20 be satisfied?	
2. Why is it important that the prosecution identify the correct aspect of the <i>actus reus</i> for s.20?	
3. What does 'wounding' require?	
4. Why cannot bruising amount to a wound?	
5. How serious for s.20 does a wound need to be?	
6. Would a knife stabbing be a 'wound'?	
7. Would sticking a drawing pin into V be a 'wound'?	
8. What problem is illustrated by the answer to the last two questions?	
9. What offence do you think is possibly more appropriate for the least serious 'wounds'?	
10. Does this overlapping create a difficulty?	

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## Activity 22

### The *actus reus* of s.20 – ‘inflicting GBH’

Carefully read the definition of s.20 on **Handout 5**. Match the wording in column A with the wording in column B by drawing lines.

1. According to **DPP v Smith 1961** GBH is

2. There is an inconsistency between ‘wounding’ and ‘causing GBH’ because

3. The OAPA 1861 fails to define

4. The courts have interpreted ‘inflicting GBH’ in different ways which is a problem because

5. The key difference between the narrow and wider interpretations of ‘inflicting GBH’ is that the narrow interpretation, unlike the wider interpretation,

6. The wider view is preferred because

7. To be able to use the wider view, the courts have had to accept that ‘inflicting GBH’ in s.20 and ‘causing GBH’ in s.18

8. The OAPA 1861 seems to cause so many problems because it is

a. a common law concept

b. it is inconsistent with the silence of the statute

c. it causes uncertainty

d. either/or

e. means

f. the greater the force the more likely it is to cause serious harm

g. requires proof of intent

h. really means

1.	3.	5.
2.	4.	6.

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### Daphne's assignment on the *mens rea* of s.20 OAPA 1861

- The one word in the definition for s.20 which provides us with intention. It is clearly defined in the Offences against the Person Act 1861. Consequently, a suitable definition has emerged through statute. R v Welland (1995) 1 Cr App R 313. R v Burstow (1997) 1 Cr App R 297 indicated that the words 'intention' and 'recklessness' were to be interpreted as 'intention or recklessness as to causing wounding or GBH'.

[illegible]

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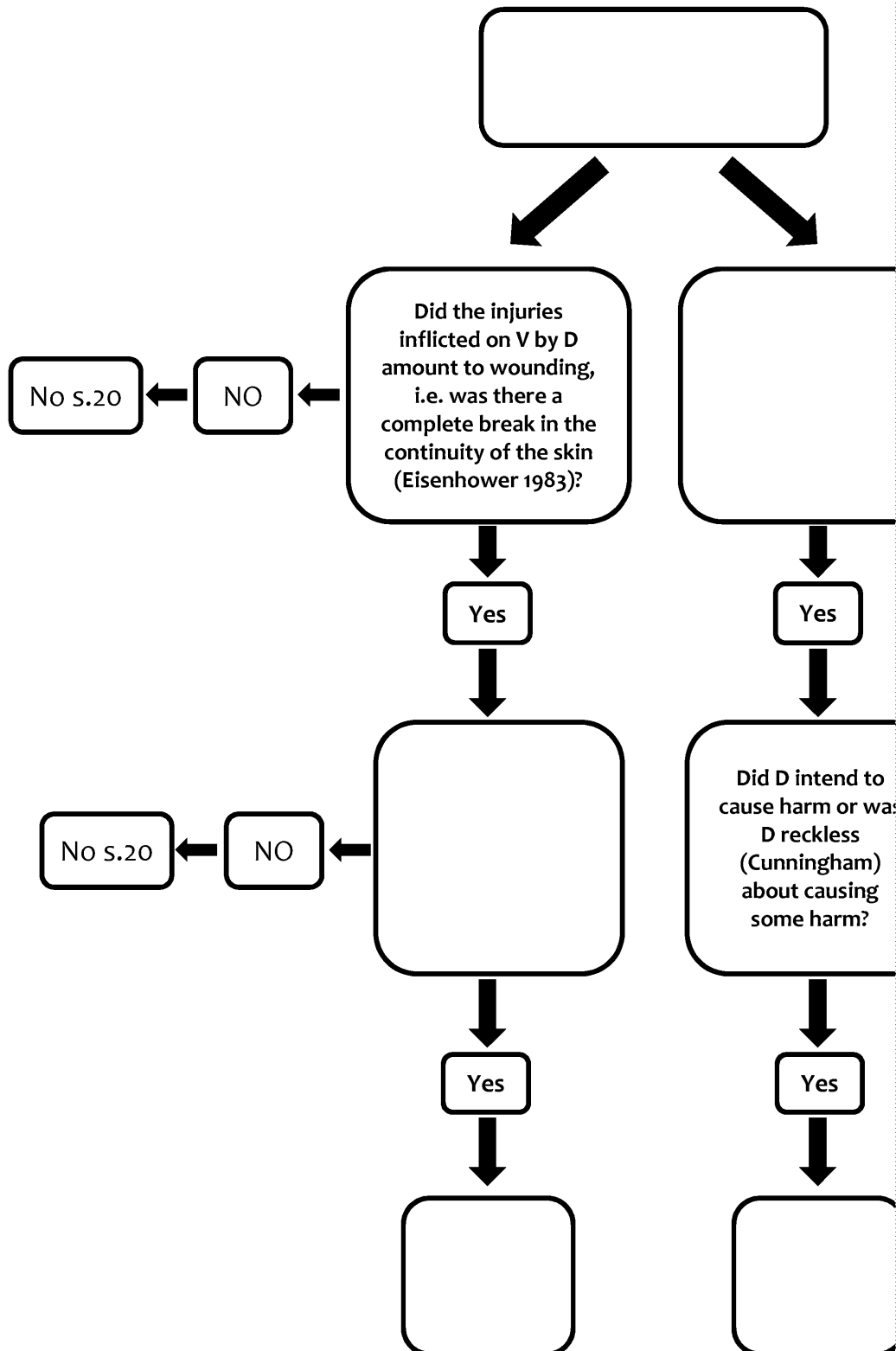




## Activity 24

### s.20 Flow chart

Complete the following flow chart by adding the missing text. Refer to **Hando**



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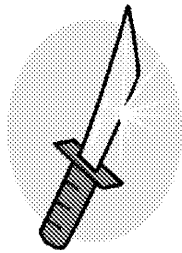




## Activity 25

### Spot the non-fatal offences against the person

Carefully read the following scenario and identify three non-fatal offences against the person, providing your legal reasoning and refer to any relevant cases.



Sophie is walking home when Lorenzo runs towards her. Sophie screams. Lorenzo grabs her coat and Pierre, a passerby, but is stabbed by Lorenzo in the arm, loses a great deal of blood and is taken to hospital.

Non-fatal offence	Evidence from scenario	Legal reasoning

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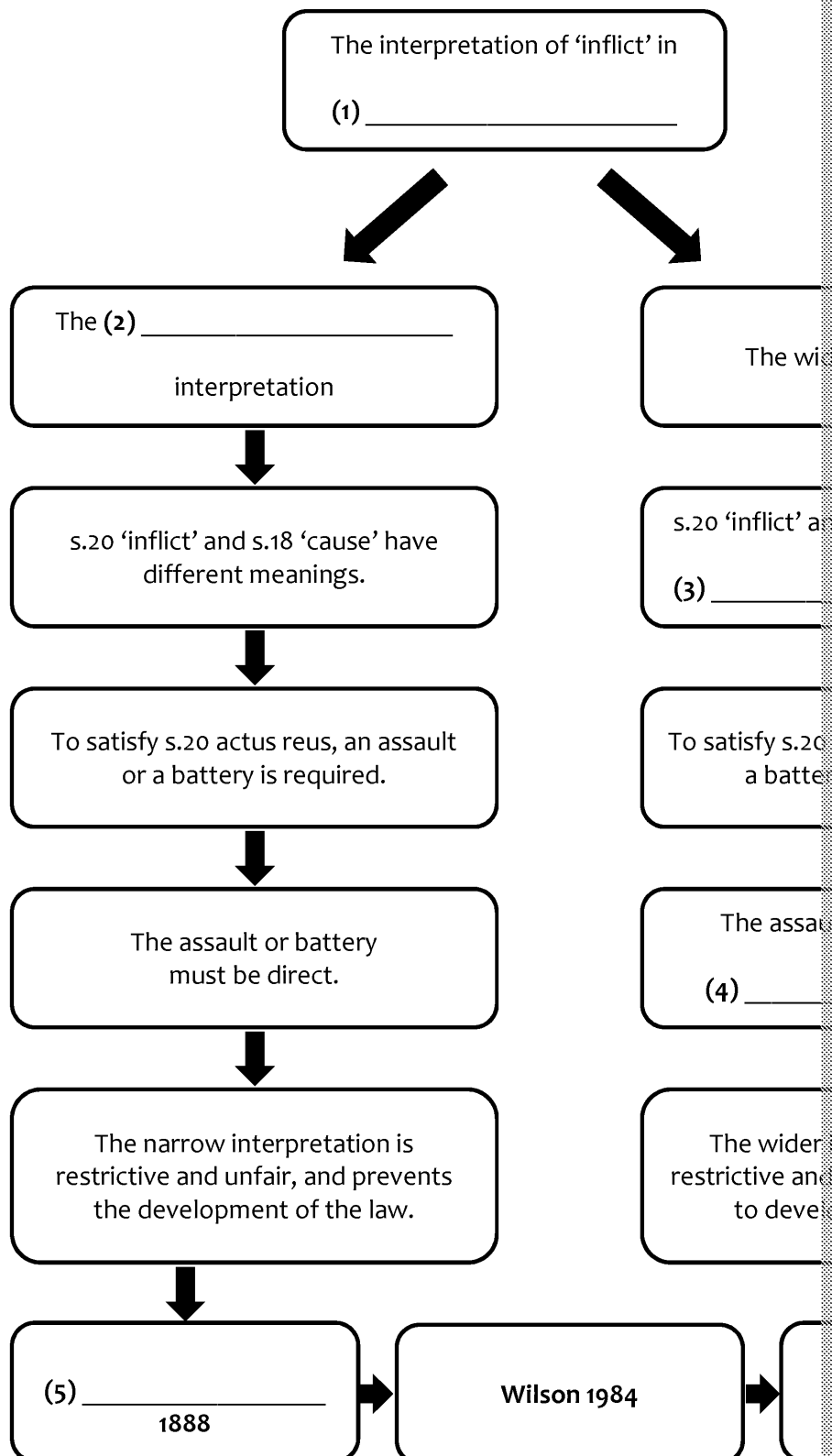




## Activity 26

### Interpreting s.20 'inflict' OAPA 1861

Courts have chosen to interpret 'inflict' in two different ways. After the flow chart below which illustrates this by finding the five missing



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## Activity 27

### s.18 OAPA 1861

Carefully read the legal definition below for s.18. There are four separate ways four in the table below, separating the *actus reus* and the *mens rea*. Finally, and

Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause grievous bodily harm to any person... with intent... to do some... grievous bodily harm to any person, or to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of an offence.

	s.18 <i>actus reus</i>	s.18 <i>mens rea</i>
1		
2		
3		
4		

	Question	
1	Why does the word 'unlawfully' appear?	
2	What words in the above definition are not clear to you?	
3	What does your answer to Question 2 tell you about this particular statute?	
4	Look at the <i>mens rea</i> for s.18 – what is the one element required throughout?	
5	So is s.18 a crime of specific or basic intent?	
6	Does recklessness appear at all?	
7	Can intention be satisfied obliquely or indirectly as per murder?	

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## Activity 28

### The elements of the key non-fatal offences against the person

Carefully reread the legal definitions for assault, battery, s.47, s.20 and s.18 on page 40.  
Use the legal definitions to complete the table below:

Section and Act	<i>Mens Rea</i>	
<b>s.18 OAPA 1861</b>		
<b>s.20 OAPA 1861</b>		
<b>s.47 OAPA 1861</b>		
<b>s.39 CJA 1988 Battery</b>		
<b>s.39 CJA 1988 Assault</b>		

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## Activity 29

### Non-fatal offences and the Crown Prosecution Charging Standards

Review **Handout 7**. What is the most likely non-fatal offence D would be charged with in each situation? Fill in the table.

Situation	Non
1. Suffered minor bruising	
2. Expected to be slapped	
3. Lost a tooth	
4. Suffered minor psychiatric injury	
5. Received a broken pelvis from D's attack	
6. Was spat at	
7. Temporarily lost consciousness when squeezed by D	
8. Feared an attack when D looked through her window	
9. Received a graze from D	
10. Suffered serious clinical depression	
11. Suffered a minor loss of consciousness	

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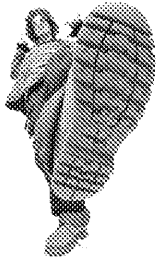




### Activity 30

#### Spot the non-fatal offences against the person

Carefully read the following scenario and identify two non-fatal offences against the person, providing your legal reasoning, and refer to any relevant cases.



David is walking down the street when Ian approaches him from behind, chipping one of David's teeth. He then kicks David, causing serious internal injuries.

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Non-fatal offence	Evidence from scenario	Legal reasoning



## Activity 31

**Pairing exercise.** You need to study **Handouts 4, 5 and**, particularly, **5** and **6** to complete this activity.

Match the legal principles in the first column with the cases in the second column.

1. 'Immediate' is interpreted as 'imminent'.

2. Loss of consciousness can amount to ABH.

3. Silent telephone calls can amount to an assault.

4. 'Harm' may include psychiatric injury if the condition is clinically recognised.

5. Cutting hair can amount to ABH.

6. Holding someone's arm or pushing is sufficient for battery.

7. The application of force can be indirect.

8. A battery can be the result of an omission.

9. GBH means 'really serious harm'.

10. There is no real difference between 'causing GBH' in s.18 and 'inflicting GBH' in s.20.

A. **Ireland**

B. **Collyer**

C. **Conway**

D. **DP**  
**200**

E. **DPI**

F. **DPI**

G. **Burns**

H. **DPI**

I. **Chan**

J. **T v**

1.

2.

3.

4.

5.

6.

7.

8.

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## Activity 32

### Problems associated with non-fatal offences against the person

- Look at the following problems associated with non-fatal offences against the person in **Handout 8**.
- Give a piece of evidence to illustrate each problem.

	Problem	Evidence
1	OAPA 1861 is a consolidation Act.	
2	The language of the OAPA 1861 is old-fashioned.	
3	The provisions of the OAPA 1861 are often too complicated.	
4	The OAPA 1861 often fails to provide legal definitions.	
5	The non-fatal offences against the person do not form a hierarchical ladder.	

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## Activity 33

### C words

- Look at the clues below.
  - Write the word that each clue refers to.
  - Each word begins with the letter C.
1. The OAPA 1861 was such an Act  
C .....
  2. Case stating 'words alone may amount to an assault'  
C .....
  3. Form of recklessness used in this area of criminal law  
C .....
  4. s.39 \_\_\_\_\_ Justice Act 1988  
C .....
  5. Case suggesting 'harm' could include clinically recognised psychiatric illness  
C .....
  6. \_\_\_\_\_ v Wilcock  
C .....
  7. Crown Prosecution \_\_\_\_\_ Standards  
C .....
  8. The Law \_\_\_\_\_ has suggested a need to reform non-fatal offences against the person but there has been no implementation so far  
C .....

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## Activity 34

### Essay marking

This essay can be used in two separate ways:

1. **Identifying AO1 and AO3 points**

Read through the essay below and use two different-coloured highlighters to identify AO1 and which parts are AO3. This can be very helpful to those who are struggling with identifying AO1 and AO3 points.

2. **Peer marking**

Mark the essay below as if you were the examiner. Use the OCR mark scheme to identify relevant levels. What level would you award this essay, and why?

Assessment objectives and mark schemes can be accessed from the OCR website.

#### Is the law in regard to non-fatal offences satisfactory or in need of reform? Discuss.

Unequivocally, it is made evident that the OAPA of 1861 is in need of serious reform. The Act passed is extremely dated and poorly written due to it being a consolidation Act. Since the document 'Violence: Reforming the OAPA' in 1998 have occurred. However, the Act has caused many defendants and difficulties in differentiating ABH in s.47 and GBH in s.18. A major issue with the Act is when it was brought into being in 1861, the biological and psychiatric harm was not taken into account. This was largely due to a lack of forensic technology but also society taking little concern and interest in the damaging of the mental health of a person. Psychiatric harm. Section 47 of the OAPA 1861 defined ABH as when a person assaults another, causing actual bodily harm. Clearly nothing stated in consideration of the mental aspect had been taken into account until the case of 'Miller', where a husband's actions left his wife in hysteria. This helped define the Act and adapt it, as just causing actual harm. ABH is anything which interferes with the health or comfort of the victim. In the example 'Ireland', it meant a man was found guilty of ABH as it caused severe stress and anxiety. Without this addition he would be able to constantly call the police in law, perhaps arguing the Act is very much satisfactory in practice today, despite the judiciary. Arguably, the Act needs reformation for better sentencing as s.47 (ABH) and the Criminal Justice Act 1988 (common assault) have the exact same maximum sentence of 5 years. Both crimes may receive the same maximum sentencing due to both physical and mental element, which is the intention to deliberately physically harm another. However, the effect is generally much more damaging for the victim of ABH, and therefore the sentence for ABH should be extended to a maximum sentence of 10 years.

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Another section of the Act which causes issues with sentencing is GBH. It is defined as a battery resulting in serious physical injury being inflicted on the victim of another. Inconsistency with the Act and arguing it is in need of reform was in the 'Brown and others' case, as their sexual acts led them to be found guilty of GBH without consent, but as 'deliberate' harm occurred it meant the judge not only called it GBH but the men guilty of both ABH and GBH. In the case of 'Wilson' the husband was found guilty of ABH on the fact that he branded the body of his wife with a hot knife, making her seek medical attention. Judicial results are absurd and misleading as both cases should be given equal sentencing by all parties and therefore harm was 'deliberate' also in the case of 'Wilson'. The Act should be reformed to give clear points about issues with consent and appropriate sentencing in different circumstances. This should not be left to juries as it was in the case of 'Locke'. In the 'violence reformation' document for OAPA, much better wording has been provided with clear examples of what should be considered ABH and what physical harm is required. S.18 became better defined as intentional serious injury and made clear s.20 was for recklessness as opposed to malicious, which has an ambiguous meaning in modern society. The Act should remain as it is worded now to maintain the supremacy of Parliament, or that let the courts determine results of specific cases. An interesting case which backs up the current law is 'R v Savage'. She was originally convicted of GBH under s.20. However, the court of appeal quashed the conviction on the term 'malicious' and this led to the court of appeal interfering. They substituted the conviction to ABH because there needed to be sufficient evidence that the defendant intended serious harm would result. This confusion of the outdated legislation is further exemplified in the case of 'Bollum', where the term 'maliciously' was also confused. After the case of 'Bollum', courts have ruled that the sex and age of a victim must be considered. Therefore, bruises on a baby can amount to ABH. This suggests that as the OAPA can be edited judicially it therefore means the need for reformation.

To conclude, it is evident that the OAPA is in clear need of further reformation. The current law occurs which are unjust, as with the determination of what physical damage is required for an offence. Use of archaic language in the poorly structured consolidation Act makes it difficult to read with clarity not only for juries but for victims and lawyers. New legislation is in development to ensure defendants receive the correct sentencing. It is not modernised to the standards of the 21st century.

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# Plenaries

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## Plenary 1

Choose and explain which non-fatal offence against the person is most appropriate.

- Read the scenario below.
- In pairs, decide which non-fatal offence against the person would be the most appropriate.
- Share your decision with the rest of the group.
- Discuss whether the elements of the offence chosen are satisfied or not.
- What defence might the defence try to use to avoid conviction?

Andrew and Helen are married. Andrew wants to brand his initials on Helen to prove his love for her. Helen reluctantly allows him to do so. She is left in need of a doctor for treatment. Her doctor reports the incident to the police.



## Plenary 2

Choose and explain which non-fatal offence against the person is most appropriate.

- Read the scenario below.
- In pairs, decide which non-fatal offence against the person would be the most appropriate.
- Share your decision with the rest of the group.
- Discuss whether the elements of the offence chosen are satisfied or not.

Terry is angry with the slow driver, Dieter, ahead of him. He confronts Dieter and butts Dieter. Dieter receives a fractured skull and has to spend three weeks in hospital.



## Plenary 3

Problems with the law of non-fatal offences against the person

This area of law has been criticised for the following reasons:

1. Confusing language
  2. Structural weaknesses
  3. No effective hierarchy of offences
  4. Mismatch of *actus reus* and *mens rea*
  5. Outdated law no longer fit for purpose
- Your teacher will split you into groups and assign one of the topics above.
  - Group members discuss the criticism.
  - Then make a short presentation to the class that analyses the criticism and explains why the criticism is fair or not.



## Plenary 4

Reform of non-fatal offences against the person

- Read **Handout 8**.
- With a partner list the main changes that the Law Commission proposed in its report.
- Share your lists with the rest of the class.
- In what ways might the reform proposals be an improvement?
- In what ways can the reform proposals be criticised?

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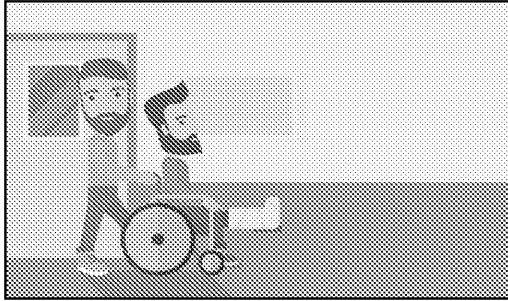




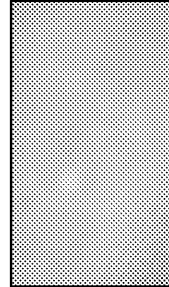
## Plenary 5

**Wounding:** Look at the diagrams of the injuries below.

Then, in pairs, answer the questions on the next page. Afterwards, share your answers in discussion.



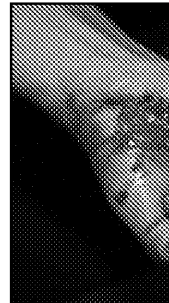
a) Broken leg



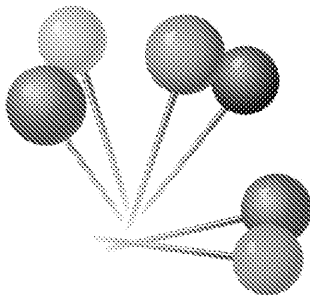
b) Bruise



c) Scratch



d) Serious damage to



e) Stabbed with a drawing pin



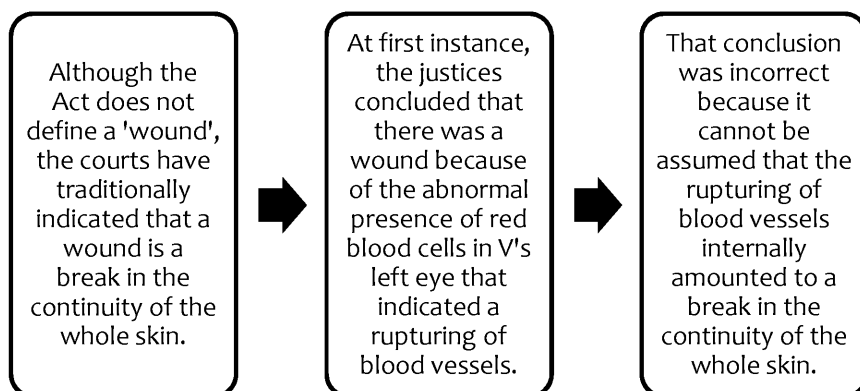
f) Stabbed with a dagger

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## Summary of the judgment of Robert Goff LJ in *JJC (a minor) v Eisenhower* (Queen's Bench Division)



1. What is a wound according to Goff LJ?

.....

2. Decide and explain whether the injuries shown in the images above amount

Image	Yes/No	Explanation
a)		
b)		
c)		
d)		
e)		
f)		

3. Discuss how *C (a minor) v Eisenhower 1983* illustrates that the development be difficult.

.....

.....

.....

.....

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# Research Tasks



## Research Task 1

### Significance of cases

Research the cases of **Wood 1830**, **Martin 1881** and **Golding 2014** so that you are able to answer the following questions:

1. Provide brief details of each case.
2. What is the legal significance for each of these cases?



## Research Task 2

### Crown Prosecution Charging Standards

Look up the following website: [zzed.uk/11958-cps](https://www.zzed.uk/11958-cps)

This document provides a very useful summary of the key elements of each of the offences covered by the CPS. It also provides a summary of the key elements of the person.

Answer the following questions:

1. Why do you think it has been necessary for the CPS to produce the Charging Standards?
2. When trying to choose the most appropriate offence, what factors need to be considered?



## Research Task 3

### Problems with Offences Against the Person Act 1861

Look up the following website: [zzed.uk/11958-proposals](https://www.zzed.uk/11958-proposals)

This document provides reform proposals for non-fatal offences against the person. It was implemented largely because they were part of a draft criminal code, the introduction of which was hugely time-consuming. Such codifications also do not meet with universal approval. It is traditionally not part of English law, so successive governments and parliaments have been reluctant to take on such a task. This does not mean, however, that the need for reform is not urgent.

Please start by casting your eyes over the document generally, and then read carefully sections 7.10 and 7.11.

Answer the following questions:

1. Which body produced the document?
2. When was it published?
3. Why haven't the proposals been implemented?
4. Looking at the sections on **Handout 8**, make a bullet-point list of the key criticisms of the current law.

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## Research Task 4

### Battery cases

You need to research the cases that follow to establish the key legal principles as

Then, match the cases to the legal principles below by matching the numbers and

1. **Haystead v Chief Constable of Derbyshire 2000**

2. **Wilson v Pringle 1987**

3. **Venna 1976**

4. **Cole v Turner 1704**

5. **Thomas 1985**

A. A battery

B. The un  
be ind

C. Unlaw

D. *Mens*  
intent  
as to i

E. Touch  
as tou

1.

2.

3.

4.

5.

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# Answers

## Activities

### Activity 1

#### Statement A: Inaccurate

- The least serious offences in terms of maximum sentence are assault and battery.
- They are only summary offences, whereas the rest are the more serious triable either way.
- Neither of the two are found within the OAPA 1861.
- They are common law offences charged under s.39 CJA 1988.

#### Statement B: Accurate

- The least serious offences are common law offences and the maximum sentences for these are 5 years.
- There are two GBH offences.
- ABH is considered less serious than s.20 GBH, however the maximum sentences are the same.
- There is no logical increase in sentences over the five offences.

#### Statement C: Inaccurate

- Assault and battery are actually common law offences.
- Only the charging comes under a statute (the Criminal Justice Act 1988, s.39).

### Activity 2

**Summary:** Case heard in the Magistrates' Court – maximum sentence of six months imprisonment.

**Either way:** Case heard in either the Magistrates' Court or the Crown Court – maximum sentence of 5 years imprisonment.

**Indictable:** Case is heard in the Crown Court – life imprisonment is the maximum sentence.

Non-fatal offences against the person	Magistrates' Court
Assault	+
Battery	+
ABH	+
Section 20 offences	
Section 18 offences	

### Activity 3

The differences between common law and statute law	
Common law	Statute law
<ul style="list-style-type: none"> <li>• Courts develop the law through judicial precedent / case law.</li> <li>• Precedent is subservient to statute law.</li> <li>• Rather rigid despite some limited flexibility, such as the Practice Statement or distinguishing.</li> <li>• It has precision and is a detailed source of law.</li> <li>• Common law changes very slowly.</li> <li>• It is rather unwieldy and complex.</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament develops the law.</li> <li>• Statute law is supreme over common law.</li> <li>• It can be thorough and detailed, but is often complicated and difficult to understand.</li> <li>• There is a need for statutory interpretation.</li> <li>• Statutes can be passed and amended more easily than common law.</li> <li>• They are often very long-winded.</li> <li>• It is subject to public opinion.</li> </ul>

How the following offences have developed	
Assault and battery	Common law
ABH and s.20 and s.18 offences	Primarily statute law

### Activity 4:

1. A common-law offence, but a charge is brought under the Criminal Justice Act 1988.
2. Battery
3. Either way, maximum five years prison sentence
4. Malicious wounding / inflicting GBH
5. OAPA 1861, s.20
6. Indictable, maximum sentence of life imprisonment

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## Activity 5

1. apprehend, 2. immediate, 3. reckless, 4. unlawful, 5. assault

## Activity 6

1	Words alone are sufficient for an assault.
2	Silent telephone calls can amount to an assault.
3	'Apprehend' in assault means 'fear'.
4	Assault is a crime of specific intent.
5	Assault is a common law offence.
6	D shouts threats at V from a passing train. This could be an assault.
7	D jumps out from behind a fence after V has passed and hits V. This could be an assault.
8	D threatens to beat up V next week. This could be an assault.
9	Recklessness is sufficient for the <i>mens rea</i> of assault.
10	An assault is charged under the Criminal Justice Act 1988.

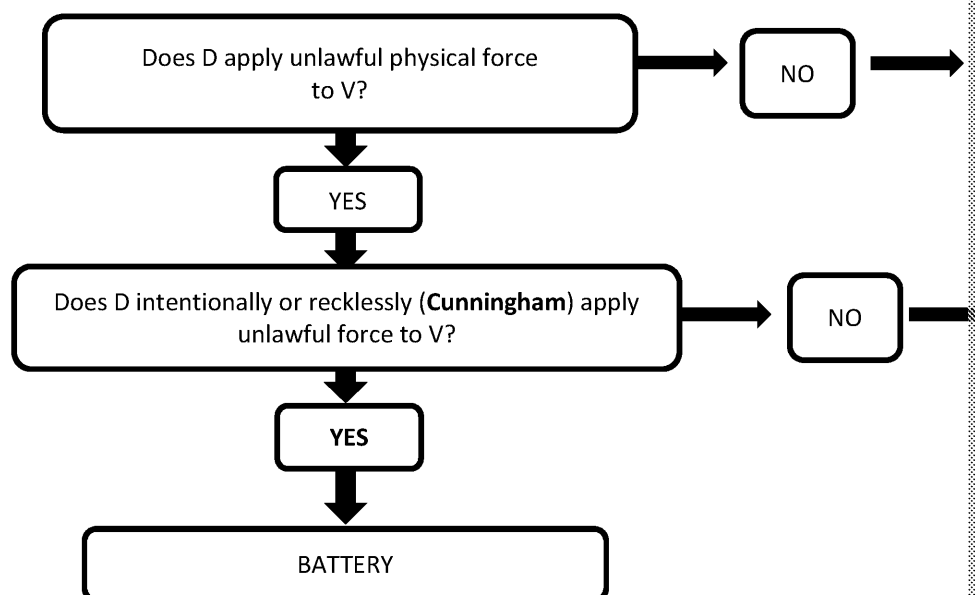
## Activity 7

An assault is defined as an act which at least recklessly causes another person to apprehend personal violence. Assault requires a positive act and so cannot be committed by omission so either intention or Cunningham recklessness is required to satisfy the *mens rea*.

## Activity 8

Scenario	Assault yes or no	Explanation
A	No	Any potential assault could not be immediate because it was not intended.
B	No	Elliot is blind. He does not apprehend any potential threat of violence.
C	No	The threat of personal violence is probably lawful.
D	Yes	The wife has not been physically injured. This is assault because of the intention and unlawful violence even though none was intended. The husband has been reckless in either wearing the mask or getting drunk.

## Activity 9



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### Activity 10

1. Battery requires the application of force on V either directly or indirectly. There is no requirement for the force to be applied to the body.
2. Yes – any application of force need not be serious. V does not, for instance, have to be aware of the force.
3. Brushing against someone in a bus is unlikely to be battery because of implied consent.
4. D does not actually have to touch V for a battery. Spitting at V would be an indirect application of force.
5. Battery is a basic intent offence because intention is not required, recklessness will suffice.
6. It is possible to have a battery without an assault if V was unaware of D's approach.
7. It is possible to commit battery through omission as **DPP v Santana-Bermudez 2003**.

### Activity 11

	Clue	Anagram
1	Category of crime	Ancients Bit (2)
2	Application of force may be this	Cider Tin (1)
3	<b>Collins v</b> _____	Cowlick (1)
4	Brushing against someone may be this	Polemics Tinned (2)
5	Form of recklessness needed for battery	Gunman inch (1)
6	Case about silent telephone calls	Adliner (1)
7	Act associated with charging for battery	Airmail Succinct Jet (3)
8	Maximum prison sentence for battery	Hosts Minx (2)
9	Battery case of 2003 involving an omission	Braze Amends Aunt (2)
10	A defence to battery	Nenscot (1)

### Activity 12

1. B + C, 2. A, 3. D, 4. A

### Activity 13

1	ABH is a common law offence.
2	ABH is a triable either way offence.
3	ABH has a maximum sentence of life imprisonment.
4	The harm caused for ABH cannot be psychological harm.
5	ABH can be found under s.47 of the Offences Against the Person Act 1861.
6	ABH is a basic intent crime.
7	For ABH, D must commit either assault or battery.
8	For ABH, D must satisfy the same <i>mens rea</i> of both assault and battery.
9	The recklessness necessary for ABH is Caldwell recklessness.
10	D must intend or be reckless about causing ABH.

Question	Explanation
1	ABH is statutory.
3	ABH has a maximum sentence of five years.
4	The harm can be psychological.
9	It is subjective or Cunningham recklessness.
10	The intention or recklessness refers to an assault or battery only and not to the causing of ABH.

### Activity 14

1. E, 2. F, 3. D, 4. B, 5. C, 6. A

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### Activity 15

Situation	ABH Y/N	
1. V is terrified when D points a gun at him.	N	Strong emotion
2. V is bitten when D sets his dog on V.	Y	The injury would be sufficient. It doesn't matter if the injury is minor.
3. D hit V on the head with an apple. V is unconscious for 30 seconds.	Y	Loss of consciousness for 30 seconds according to T v A [1992]
4. D takes hold of one of V's hairs and pulls it out.	N	Under <b>DPP v Smith</b> [1961] the hair must be 'substantial'.
5. D bombards V with malicious texts and V begins to suffer from clinical depression.	Y	Harm can be psychological. recognised clinical depression is sufficient.

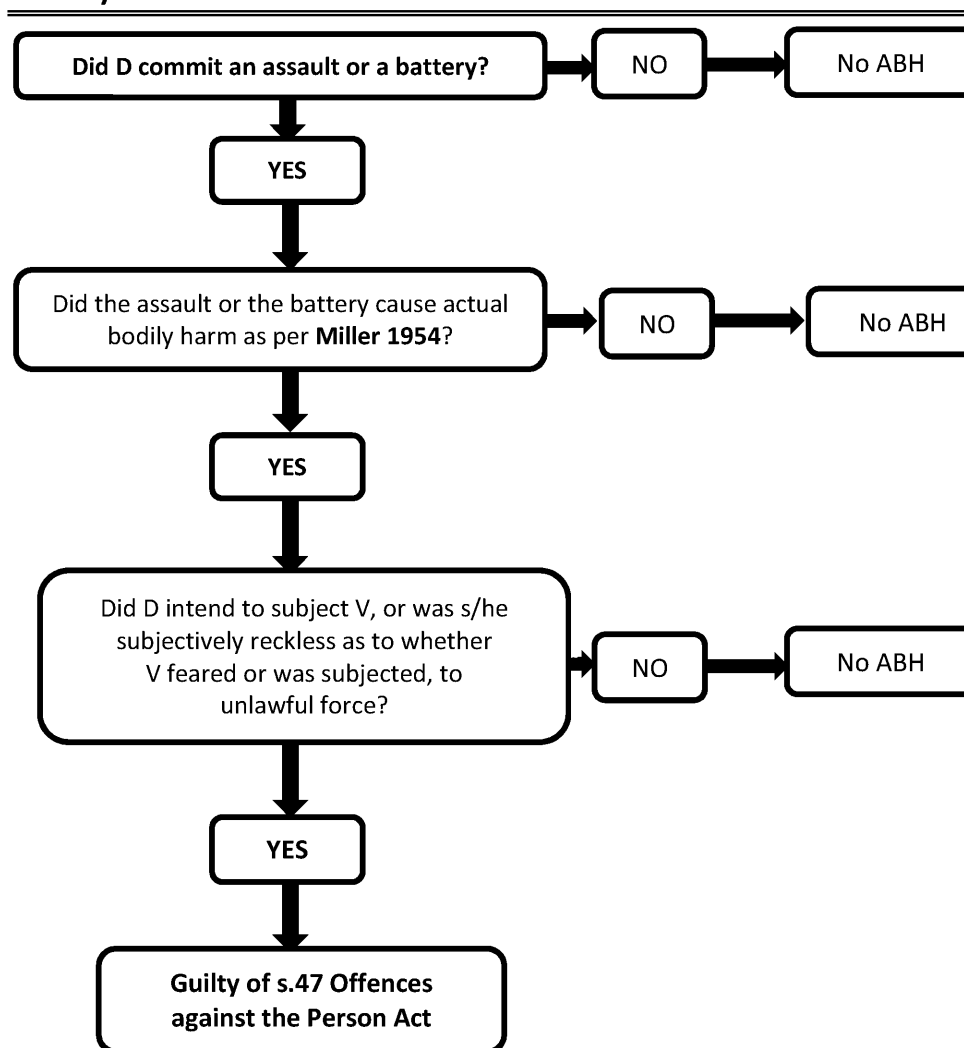
### Activity 16

Scenario
Tom and his girlfriend Penny have a blazing row. Tom grabs scissors and cuts a mass of Penny's hair. He has been charged with an offence under s.47 Offences Against the Person Act 1861. Is he guilty of ABH?
Is Tom likely to be found guilty of ABH?
Tom committed a battery by cutting substantial amounts of Penny's hair as in <b>DPP v Smith</b> [1961] to Penny and he clearly intended to do so.
The battery caused ABH because, under <b>Miller 1954</b> , Penny suffered hurt that interfered with her comfort.
So the <i>actus reus</i> for s.47 is satisfied.
Tom intended to subject Penny to unlawful force when he deliberately cut her hair.
So the <i>mens rea</i> for s.47 is satisfied.
Tom is guilty of ABH.

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## Activity 17



## Activity 18

	Case	Legal principle
1	Ireland	Silent telephone calls could amount to assault
2	Miller	Explained how to assess whether hurt
3	T v DPP	Unconsciousness could amount to ABH
4	Eisenhower	Defines a wound
5	Logdon v DPP	If D frightens V this could amount to a battery
6	Wood v DPP	Holding an arm could amount to a battery

## Activity 19

1. Constanza	4. Cunningham	7. Offences of common assault
2. Majewski	5. Santa-Bermudez	8. Savage
3. Chan Fook	6. Smith	

## Activity 20

s.20 OAPA 1861 is an either way offence with a maximum term of imprisonment for five years or inflicts GBH. 'Wounding' means that the continuity of the skin is broken. Purely according to **JJC (a minor) v Eisenhower**. The word 'maliciously' means having intention or recklessness. The latter is subjective or Cunningham. It is sufficient mens rea that D foresees that his/her act may cause harm. D does not need to have foreseen wounding or GBH.

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## Activity 21

Questions	
1. In what ways can the <i>actus reus</i> of s.20 be satisfied?	By wounding or by inflicting GBH
2. Why is it important that the prosecution identify the correct aspect of the <i>actus reus</i> for s.20?	An incorrect charge of s.20 is an <b>Eisenhower</b> , where the wrong is an inappropriate choice of words
3. What does 'wounding' require?	A complete break in the continuity of the skin
4. Why cannot bruising amount to a wound?	There is not a complete break in the skin i.e. the skin has not been broken
5. How serious for s.20 does a wound need to be?	It need not be serious
6. Would a knife stabbing be a 'wound'?	Yes
7. Would sticking a drawing pin into V be a 'wound'?	Yes
8. What problem is illustrated by the answer to the last two questions?	'Wounding' covers a wide range of injuries, from extremely serious to trivial
9. What offence do you think is possibly more appropriate for the least serious 'wounds'?	ABH
10. Does this overlapping create a difficulty?	Yes, it causes confusion as to whether s.20 or s.20 is more appropriate

## Activity 22

Column A	
1. According to <b>DPP v Smith 1961</b> GBH is...	h. really serious harm.
2. There is an inconsistency between 'wounding' and 'causing GBH' because...	f. the harm required for wounding is less than for causing GBH.
3. The OAPA 1861 fails to define...	d. either wounding or causing GBH.
4. The courts have interpreted 'inflicting GBH' in different ways which is a problem because...	c. it causes inconsistency in the law.
5. The key difference between the narrow and wider interpretations of 'inflicting GBH' is that the narrow interpretation, unlike the wider interpretation,...	g. requires an assault on the victim.
6. The wider view is preferred because...	b. it allows the courts to deal with cases like a silent telephone call or a minor injury under OAPA 1861.
7. To be able to use the wider view, the courts have had to accept that 'inflicting GBH' in s.20 and 'causing GBH' in s.18...	e. mean exactly the same thing.
8. The OAPA 1861 seems to cause so many problems because it is...	a. a consolidation Act which does not deal with the problem of consistency.

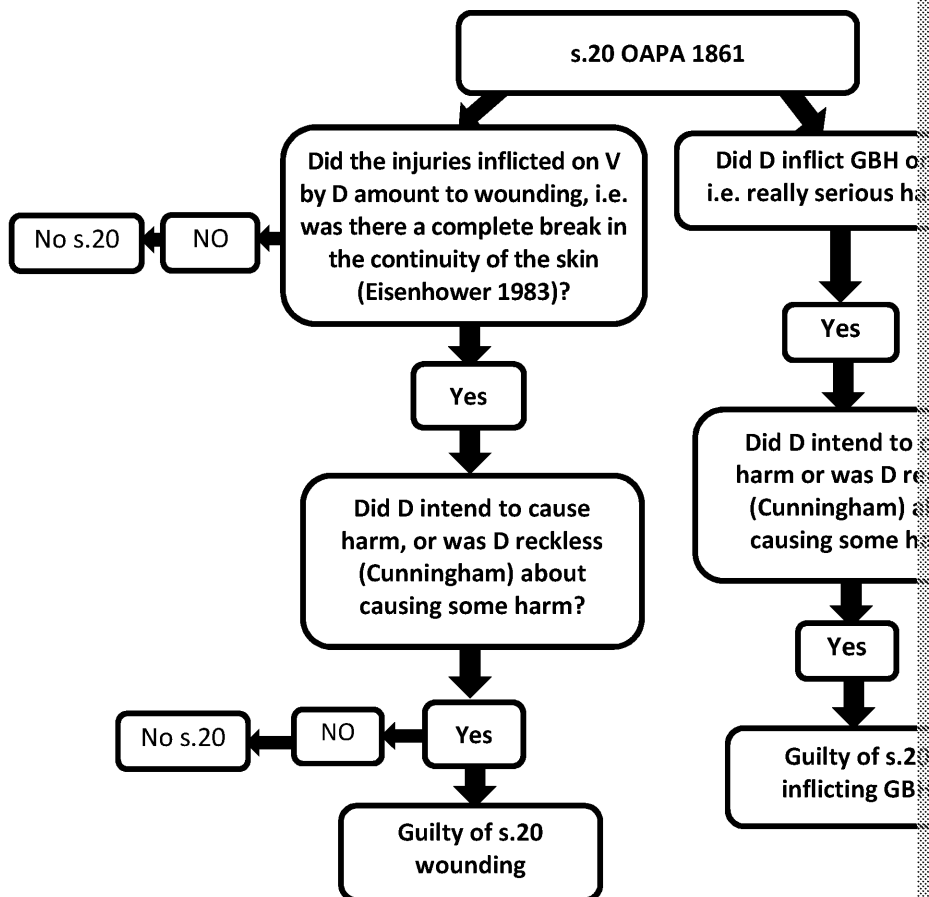
## Activity 23

The one word in the definition for s.20 which provides us with the *mens rea* is maliciously. This is defined in the Criminal Damage Act 1961. Consequently, a suitable definition has emerged through case law. The courts have indicated that the words 'intention' and 'recklessly' refer to foreseeing some harm.

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## Activity 24



## Activity 25

Non-fatal offence	Evidence from scenario	Legal reasoning
Assault	Waving of the knife	Sophie is put in fear of immediate personal violence by Lorenzo's actions for assault. Lorenzo probably has intention to cause immediate, unlawful, personal harm or is reckless in his action – this is the <i>mens rea</i> for assault.
Battery	Grabbing Sophie's coat	Lorenzo applies unlawful force to Sophie for battery – the force can be direct or indirect (grabbing ( <b>Collins v Wilcock</b> )). He would satisfy the <i>mens rea</i> for battery by being reckless about, applying the unlawful force.
s.20	Pierre is stabbed	Pierre's injuries amount to wounding as there is a break in the continuity of the skin. Lorenzo was at least reckless (Cunningham) about causing some harm – he foresees this is likely.

## Activity 26

- s.20, GBH
- narrow
- indirect
- Clarence
- 

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## Activity 27

	s.18 <i>actus reus</i>	
1	Unlawfully causing GBH	with intent to cause G
2	Unlawfully wounding	with intent to cause G
3	Unlawfully causing GBH	with intent to resist or
4	Unlawfully wounding	with intent to resist or

	Question	
1	Why does the word 'unlawfully' appear?	There may be a defence
2	What words in the above definition are not clear to you?	Students are likely to have a misunderstanding of apprehension, detained
3	What does your answer to Question 2 tell you about this particular statute?	The wording is very old and may need to be revised.
4	Look at the <i>mens rea</i> for s.18 – what is the one element required throughout?	Intent
5	So is s.18 a crime of specific or basic intent?	Specific intent – intention to cause a particular element of the <i>mens rea</i>
6	Does recklessness appear at all?	Not in the statute itself. It is not indicated that for the purpose of committing s.18, for wounding or resist or prevent lawful arrest, <i>mens rea</i> is needed. The intention to cause an injury.
7	Can intention be satisfied obliquely or indirectly as per murder?	Yes – based on the idea of intention in <b>Nedrick 1986</b> , for wounding (Woollin 1998).

## Activity 28

Section and Act	<i>Mens Rea</i>	
s.18 OAPA 1861	Intends GBH / wounding which is really serious harm	Wounds or causes serious harm
	Intends to resist arrest and intends or is reckless about causing some harm	Wounds or causes harm
s.20 OAPA 1861	Intends or is reckless about inflicting some harm	Inflicts GBH or causes a wound
s.47 OAPA 1861	Intends or is reckless about assaulting or battering	Actual bodily harm
s.39 CJA 1988 Battery	Intends or is reckless about inflicting unlawful, personal violence	The infliction of unlawful, personal violence
s.39 CJA 1988 Assault	Intends or is reckless about causing the apprehension of immediate, unlawful, personal violence	Causing the apprehension of immediate, unlawful, personal violence

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## Activity 29

Situation	Non-fatal offence
1. Suffered minor bruising	Battery
2. Expected to be slapped	Assault
3. Lost a tooth	ABH
4. Suffered minor psychiatric injury	ABH
5. Received a broken pelvis from D's attack	s.20/s.18
6. Was spat at	Battery
7. Temporarily lost consciousness when squeezed by D	ABH
8. Feared an attack when D looked through her window	Assault
9. Received a graze from D	Battery
10. Suffered serious clinical depression	s.20/s.18
11. Minor loss of consciousness	ABH

## Activity 30

Non-fatal offence	Evidence from scenario	Legal reasoning and relevant cases
s.47 OAPA 1861	Punching which causes chipping of a tooth	Crown Prosecution Charging Standards suggest that a punch against David – a punch and also an assault (Constanza) and unlawful, personal violence committing an assault or a battery is necessary for ABH. The assault or the battery causes actual bodily harm. The definition in Miller 1954. So the <i>actus reus</i> is satisfied. Ian intended or was subjectively reckless as to causing harm to David. David was subjected to unlawful force. The <i>mens rea</i> is satisfied.
s.18 OAPA 1861	Ian kicks David in the stomach causing serious internal injury	Likely to be s.18 as the injuries sustained are more than minor and not to wounding. GBH means 'really serious harm'. So Ian causes GBH. Ian appears to act intentionally but there may be doubt as to whether he actually intended really serious harm. The jury may infer that Ian foresaw the serious internal injury as a consequence of his actions (Nedrick 1986). The <i>mens rea</i> may be inferred (Woollin 1998) and the <i>actus reus</i> is satisfied.

## Activity 31

1. C, 2. J, 3. A, 4. I, 5. E, 6. B, 7. F, 8. D, 9. H, 10. G

## Activity 32

	Problem	Evidence
1	OAPA 1861 is a consolidation Act.	Lots of different offences have simple structure. No attempt has been made to rationalise the structure. So, the maximum sentence for s.20, s.47 has the same <i>mens rea</i> as s.18.
2	The language of the OAPA 1861 is old-fashioned.	Malicious, grievous bodily harm, apply words used inconsistently.
3	The provisions of the OAPA 1861 are often too complicated.	Confusing mixture of statutes and common law (Professor J C Smith).
4	The OAPA 1861 often fails to provide legal definitions	Many of the terms in Q2 are not defined and determined through case law, e.g. 'intention'.
5	The non-fatal offences against the person do not form a hierarchical ladder	There is a focus on the type of injury and the seriousness of it. There is no ladder of offences. Battery and assault both have maximum sentences of 10 years.

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**Activity 33**

1. Consolidation
2. **Constanza**
3. **Cunningham**
4. Criminal
5. **Chan Fook**
6. **Collins**
7. Charging
8. Commission

**Activity 34**

I believe that this essay would be a high level 3.

KEY: AO1 / AO3

**Is the law in regard to non-fatal offences satisfactory or in need of reform? I**

Unequivocally, it is made evident that the OAPA of 1861 is in need of serious passed is extremely dated and poorly written due to it being a consolidation. A document 'Violence: Reforming the OAPA' in 1998 have occurred. However, the defendants and difficulties in differentiating ABH in s.47 and GBH in s.18. A Act is when it was brought into being in 1861, the biological and psychiatric harm not taken into account. This was largely due to a lack of forensic technology in society taking little concern and interest in the damaging of the mental health psychiatric harm. Section 47 of the OAPA 1861 defined ABH as when a person assaults another, causing actual bodily harm. Clearly nothing stated in consideration aspect had been taken into account until the case of 'Miller', where a husband's actions left his wife in hysteria. This helped define the Act and adapt it, as just ABH is anything which interferes with the health or comfort of the victim. In example 'Ireland', it meant a man was found guilty of ABH as it caused severe stress and anxiety. Without this addition he would be able to constantly call the in law, perhaps arguing the Act is very much satisfactory in practice today, as judiciary. Arguably, the Act needs reformation for better sentencing as s.47 of the Justice Act 1988 (common assault) have the exact same maximum sentence or defined in s.39 of the CJA as a battery which causes physical harm or makes. Both crimes may receive the same maximum sentencing due to both physical and element, which is the intention to deliberately physically harm another. However, effect is generally much more damaging for the victim of ABH, and therefore that the sentence for ABH should be extended to a maximum sentence of seven

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Another section of the Act which causes issues with sentencing is GBH. In s.20 defined as a battery resulting in serious physical injury being inflicted on the victim of another. Inconsistency with the Act and arguing it is in need of reform would be the 'Brown and others' case, as their sexual acts led them to be found guilty of GBH without consent, but as 'deliberate' harm occurred it meant the judge not only called it so but found the men guilty of both ABH and GBH. In the case of 'Wilson' the husband was found guilty on the fact that he branded the body of his wife with a hot knife, making her seek medical treatment. Judicial results are absurd and misleading as both cases should be given equal sentencing by all parties and therefore harm was 'deliberate' also in case of 'Wilson'. Perhaps the Act should be reformed to give clear points about issues with consent and appropriate sentencing in different circumstances. This should not be left to juries as it was in the case of Locke. The 'violence reformation' document for OAPA, much better wording has been provided with clear examples of what should be considered ABH and what physical harm is required. Section 18 became better defined as intentional serious injury and made clear s.20 was recklessness as opposed to malicious, which has an ambiguous meaning in modern society. The Act should remain as it is worded now to maintain the supremacy of Parliament, or that judges should not determine results of specific cases. An interesting case which backs up the current law is 'R V Savage'. She was originally convicted of GBH under s.20. However, the judge found that the term 'malicious' and this led to the court of appeal interfering. They substituted the conviction to ABH because there needed to be sufficient evidence that the defendant intended that serious harm would result. This confusion of the outdated legislation is further exemplified in the case of 'Bollum' where the term 'maliciously' was also confused. After the case of 'Bollum', courts have decided that the sex and age of a victim must be considered. Therefore bruises on a baby can amount to ABH. This suggests that as the OAPA can be edited judicially it therefore means the need for reformation.

To conclude, it is evident that the OAPA is in clear need of further reformation to ensure that sentences occur which are unjust, as with the determination of what physical damage is required for a particular offence. Use of archaic language in the poorly structured consolidation Act makes it a lack of clarity not only for juries but for victims and lawyers. New legislation is in development to ensure that defendants receive the correct sentencing. It is not modernised to the standards of the 21st century.

## Plenaries

### Plenary 1

- Likely to be ABH s.47 OAPA 1861.
- Apply ABH – use CPS Charging Standards and relevant cases – apply **Miller** – identify the *mens rea* for battery.
- Consent may be considered as a defence in court. A conclusion is reached.

## Plenary 2

- Crown Prosecution Charging Standards suggest GBH would be appropriate when V is in hospital for 6 weeks in hospital.
- Define GBH under s.20 and s.18.
- GBH is really serious harm (**Smith 1961**).
- Wounding is inapplicable here.
- *Mens rea* for s.20 and s.18 are provided.
- Reason that s.18 is applicable only if Terry had the intent to cause GBH – s.20 may be applicable if there is no intention.
- Conclude that Terry is likely, therefore, to be convicted of either s.20 or s.18.

## Plenary 3

Refer to **Handout 8**.

## Plenary 4

Refer to **Handout 8**.

## Plenary 5

1. A break in the continuity of the whole skin.
- 2.

Picture	Yes/No	Explanation
a)	N	A broken bone is not a break in the continuity of the whole skin.
b)	N	A bruise is internal bleeding but not a break in the continuity of the whole skin.
c)	N	A scratch breaks only the surface of the skin.
d)	Y	This looks like a break in the continuity of the whole skin.
e)	N	This would cause a break at the surface of the skin only.
f)	Y	This would be likely to result in a break in the continuity of the whole skin.

3. There is no statutory definition for 'wound', so it has had to be developed by the courts. The definition is not clear. In this case, the lower court misunderstood the definition of a 'wound' and an appeal was necessary. Frequent appeals are time-consuming and expensive but necessary. The prosecution needs to be certain that an offence does involve a 'wound' under s.18. 'GBH' may be more appropriate.

## Research Tasks

### Research Task 1

#### Wood 1830

- V's collar bone was broken and D was charged with wounding.
- It was held that there was no wound. There must be a break in the continuity of the skin. A break in the continuity of blood vessels does not amount to a wound.

#### Martin 1881

- D placed a metal bar across the doorway of a darkened room and shouted 'fire'. Panicked by the sound of several people. Martin was convicted under s.20.
- It was not necessary to prove that there had been an assault or a battery. The panic was sufficient for suffering GBH. This was sufficient evidence to satisfy s.20.

#### Golding 2014

- The appellant, David Golding, was diagnosed with genital herpes. This virus takes two years to develop. It is widespread, with up to 70% of people carrying facial herpes. Herpes can be passed on for years. The appellant entered into a sexual relationship with V, but did not tell her she was infected. The appellant was diagnosed with genital herpes. The appellant pleaded guilty to inflicting s.20 GBH and was sentenced to 18 months in custody. The appellant appealed against conviction and sentence. Both appeals, however, were dismissed.
- Infecting V with a sexually transmitted disease can amount to a conviction for GBH. The court found that the fatal offences against the person within the sphere of sexually transmitted diseases policy considerations. Society needs to be protected from such threats.
- GBH means 'really serious harm', but the harm need not be dangerous or permanent. The court found that symptoms could recur and there was no effective cure. These factors were sufficient for a conviction as per **DPP v Smith 1961**.
- GBH is not defined in the OAPA 1861 – definitions have been developed by the courts. The court found that this has enabled the courts to stretch the meaning of GBH under OAPA 1861 to deal with cases like this.

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## Research Task 2

1. **Why do you think it has been necessary for the CPS to produce the Charging Standard?**  
There is so much uncertainty about which offence to charge D with because OAPA 1989. If the charge is chosen D may well be acquitted in some cases.
2. **When trying to choose the most appropriate offence, what factors need to be taken into account?**
  - The *actus reus*:
    - Whether or not unlawful force has been apprehended or applied.
    - Whether there has been any resulting harm or a wound.
    - Whether any harm classifies as actual or grievous bodily harm.
  - The *mens rea*:
    - Whether the level of *mens rea* counts as intent or recklessness.
    - What that intent or recklessness is regarding.
  - The likely sentence:
    - If the likely sentence is expected to be less than six months in custody, then D may be charged with more than battery, even if a clear s.47 OAPA offence has occurred. The sentence is identical, but there is no need to prove actual bodily harm has occurred. This gives the option to have the case heard in a Crown Court, where there would be a higher chance of a conviction.
    - If the likely sentence is expected to be less than five years in custody, it may be charged under s.47 OAPA rather than s.20 OAPA as the maximum sentence is the same, but it is easier to prove.

## Research Task 3

1. Which body produced the document? Law Commission
2. When was it published? 1992/3
3. Why haven't the proposals been implemented? Traditionally codification is not a popular option as it would have been an onerous responsibility for Government and Parliament.
4. Looking at the sections on **Handout 8**, make a bullet point list of the key criticisms of the proposals.
  - The different offences are not logical or graded hierarchically.
  - They are often not defined effectively and the task for doing this has been left to the courts by statutory interpretation.
  - The terminology is difficult to understand and is old-fashioned.
  - Lord Ackner in **Savage 1991** described the 1861 Act as 'piecemeal legislation' which was put together from a wide variety of sources with no attempt... to introduce consistency.
  - The legislation was a consolidation and not a reforming Act.
  - The language, old fashioned concepts, the overlapping nature of the offences makes it difficult for the courts because of lack of clarity. The result has been inconsistency and confusion, which leads to thousands of cases annually.
  - It has been left up to the Court of Appeal to sort things out but its judgements are often inconsistent and even contradictory.
  - Jurors and even judges get confused.
  - So much statutory interpretation has been needed that the offences involved in many cases are determined by case law rather than statute and thus by judges and not by Parliament.

## Research Task 4

1. B, 2. A, 3. D, 4. C, 5. E

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