

Criminal Law - Problem Questions

Jo and Rob are footballers. One day, outside the football club, they were involved in a fierce argument. Jo said to Rob, "You are a real bastard". Rob raised his fist at Jo and said, "Come any closer and I'll punch you." Would your answer be different if Rob had said, "If we weren't outside the club house I would punch you on the nose"?

Introduction

Rob could be charged with common assault.

Common law offence s61 Crimes Act (NSW) 1900 → liable for 2 yrs imprisonment

Common assault can be divided into two categories: battery assault and psychic assault. In this instance, the assault is psychic; therefore the elements of psychic assault need to be considered.

Deal with the 2 scenarios separately:

1. "Come any closer and I'll punch you"
2. "If we weren't outside the club house I would punch you on the nose"

Scenario 1: "Come any closer and I'll punch you"

Actus Reus (Psychic Assault)

D acts so as to induce fear in V that V is about to be physically harmed by D or by another who is to act under D's orders.

- Positive Act
 - Omissions can't be regarded as a positive act: *Fagan* [1969]
 - The courts have a broad definition of what constitutes a positive act and the use of words has been held to constitute a positive act: *Barton v Armstrong* [1969], *Tout* (1987) and *Knight* (1988)

Rob said, "Come any closer and I'll punch you". This would constitute a positive act as this threat can be said to be sufficient to ground fear of imminent violence in Jo's mind (*Barton v Armstrong*)

- State of mind of the victim
 - V must actually have been put in fear of imminent unlawful contact: *Barton v Armstrong* [1969] and *MacPherson v Brown* (1975)
 - V must be aware of the threat of imminent unlawful contact: *Ryan v Kuhl* [1979]

Sample Law Questions And Answers

Bernard Grofman



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