

Assault

Law

Macdonald, *Criminal Law*, 5th edition, pages 115 to 119.

1 “An assault is an attack on the person of another” ([Smart v HM Advocate 1975 JC 30](#), 32 (opinion of the court)). Evil intention is essential for proof of assault. “What that means is that assault cannot be committed accidentally or recklessly or negligently” ([Lord Advocate’s Reference \(No 2 of 1992\) 1993 JC 43](#), at 48 per Lord Justice Clerk Ross). It follows that there is no requirement that the accused intended to cause injury, fear of injury, harm or fear of harm; [Kirkup v HM Advocate \[2025\] HCJAC 9, 2025 JC 135](#); [Stewart v Nisbet \[2012\] HCJAC 167, 2013 SCCR 264](#).

[Kirkup v HM Advocate \[2025\] HCJAC 9, 2025 JC 135](#) also addresses the issue of consent to assault in a sexual context. See law sections for [rape at common law](#) and the [Sexual Offences \(Scotland\) 2009 Act](#).

2 If there is evidence of an attack by the accused on the person of another, it is no defence to plead that the accused was acting in fun ([Lord Advocate’s Reference, \(No 2 of 1992\)](#), at 48 per Lord Justice Clerk Ross). Consent is not generally a defence to assault (*Smart*). It is never a defence to any attack which has the potential to cause serious injury; (*Kirkup*). It is not essential for the prosecution to prove that the attack caused physical injury to the victim. Physical conduct of the accused which causes the victim to be afraid for his safety may be sufficient to constitute the crime of assault. Whether or not it does so depends on a consideration of all the surrounding facts ([Mackenzie v HM Advocate 1983 SLT 220](#), at 223 per Lord Justice Clerk Wheatley; [Atkinson v HM Advocate 1987 SCCR 534](#)).

3 “Under an indictment or complaint which charges an offence involving personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that the assault or other injurious act was committed with intent to commit such offence” ([Criminal Procedure \(Scotland\) Act 1995](#), Schedule 3, paragraph 10(3)).

4 A jury is entitled to convict of assault to the danger of life even where there is evidence that the complainer’s life was not put at risk, and is entitled to consider what the appropriate inference should be drawn from the acts of the assailant ([Kerr \(Stephen\) v HM Advocate 1986 SCCR 91](#)).

5 In 1975, the court said this:

"[I]n sporting activities governed by rules, then, even although some form of violence may be involved within the rules, there is no assault because the intention is to engage in the sporting activity and not evilly to do harm to the opponent." (*Smart*, at 33 per Lord Justice Clerk Wheatley. See also [R v Barnes \[2005\] EWCA Crim 3246, \[2005\] 1 WLR 910](#)).

This cannot be considered a correct statement of the law now that it has been clarified that "evil intent" means only "deliberate." Whilst the principle must remain sound, lack of evil intent cannot be the rationale. It may simply be a matter of policy that a violent act within the rules of recognised sporting activities is not criminal, and the law does not deem it an attack.

See also chapter on [CAUSATION](#).

See also chapter on [CULPABLE AND RECKLESS CONDUCT](#).

See also chapter on [ROBBERY](#).

See also chapter on [INDECENT ASSAULT](#).

Possible form of direction on assault

Assault

“Charge [x] is a charge of assault.

An assault is an attack on another person carried out with evil intent, which simply means that the attack must have been deliberate. Accidental or careless contacts are not assaults. Whether the accused acted deliberately can only be inferred from what has been proved to have been said and/or done.”

[One or more of the following directions should be given as appropriate:]

- Weapons may or may not be involved.
- Injury may or may not result.
- Menaces or threats which cause fear or alarm in the other person are assaults.
- Spitting on, or at, someone is an assault.
- The word “repeatedly” in the charge just means “more than once”.

Corroboration

“Both the commission of the crime and that the accused committed it must be proved by corroborated evidence, meaning evidence from more than one source. The other elements of the charge are descriptive only, to give the accused fair notice of how the crime is said to have been committed. They do not need to be corroborated.”

[Judges may choose to identify the available sources of corroboration.]

Where injury is libelled

“An assault can be made more serious if it causes injury. In this case it is said that the conduct in the charge caused:

- injury
- severe injury
- permanent disfigurement
- permanent impairment
- danger to the complainer’s life

If you are satisfied that the accused assaulted the complainer, you must then consider whether the assault caused [specify the aggravation(s)].

Examples of **injury** are:

- minor lacerations
- scratches
- bruises
- small cuts

Examples of **severe injury** are:

- multiple lacerations
- deep wounds
- ones causing much loss of blood
- broken bones

If you are satisfied there has been some degree of permanent **impairment / disfigurement**, that is enough.

Danger to life may involve no actual injury. To throw a person from a moving vehicle would be an assault to the danger of life, even if the person escaped injury. The Crown does not need to show the person's life was actually put at risk. The potential is enough.

Whether an assault resulted in [injury / severe injury / permanent disfigurement / permanent impairment / danger of life] is a question of fact for you to decide. The Crown does not need to prove that the accused intended that result.

The fact that an assault resulted in [injury / severe injury / permanent disfigurement / permanent impairment / danger of life] does not need corroboration. So evidence from one source, if it satisfies you of that, is sufficient."

[*Where appropriate*: "In this case there is evidence indicating that [the complainer was forced/fell against etc.] and that the injuries specified in the charge were caused as a result. If you are satisfied that the accused was responsible for the act which caused the complainer [to fall/come against etc.] then the accused is also responsible for the resultant injury" ([Dennie v HM Advocate \[2019\] HCJAC 67, 2019 SCCR 16](#), at paragraph 7).

Where the charge involves a background of domestic abuse

- A [background of domestic abuse direction](#) may be appropriate.

- Where the charge libels an aggravation under section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 a direction under section 1 must be given.

Summary

“For the Crown to prove this charge, you must be satisfied:

1. that the accused attacked the complainer in the way described in the charge
2. that the attack was deliberate

[Where relevant:]

3. that attack resulted in:
 - injury
 - severe injury
 - permanent disfigurement
 - permanent impairment
 - danger to the complainer’s life”.

Possible form of direction on assault and robbery

[See also: possible form of direction on robbery (where robbery is libelled without assault)]

“Charge [x] is a charge of assault and robbery. In law, assault and robbery are separate crimes and I will explain each of them to you in turn.”

Assault

“An assault is an attack on another person carried out with evil intent, which simply means that the attack must have been deliberate. Accidental or careless contacts are not assaults.

Whether the accused acted deliberately can be inferred from what has been proved to have been said and/or done.

[One or more of the following directions should be given where appropriate:]

- Weapons may or may not be involved.
- Injury may or may not result.
- Menaces or threats which cause fear or alarm in the other person are assaults.

- The word "repeatedly" in the charge just means "more than once".

Where injury or another aggravation is libelled

"An assault can be made more serious if it causes [injury / severe injury / permanent disfigurement / permanent impairment / danger of life]. In this case it is said that the conduct in the charge caused:

[select as appropriate:]

- injury
- severe injury
- permanent disfigurement
- permanent impairment
- danger to the complainer's life

If you are satisfied that the accused assaulted the complainer, you must then consider whether the assault caused [*Specify the aggravation(s)*].

Examples of injury are:

- minor lacerations
- scratches
- bruises
- small cuts

Examples of severe injury are:

- multiple lacerations
- deep wounds
- ones causing much loss of blood
- broken bones

If you are satisfied there has been some degree of permanent impairment / disfigurement, that is enough.

Danger to life may involve no actual injury. To throw a person from a moving vehicle would be an assault to the danger of life, even if the person escaped injury. The Crown does not need to show that the person's life was actually put at risk. The potential is enough.

Whether an assault resulted in [injury / severe injury / permanent disfigurement / permanent impairment / danger of life] is a question of fact for you to decide. The Crown does not need to prove that the accused intended that result.

The fact that an assault resulted in [injury / severe injury / permanent disfigurement / permanent impairment / danger of life] does not need corroboration. So, evidence from one source, if it satisfies you of that, is sufficient."

[Where appropriate: "In this case there is evidence indicating that [the complainer was forced/fell against etc.] and that the injuries specified in the charge were caused as a result. If you are satisfied that the accused was responsible for the act which caused the complainer [to fall/come against etc.] then the accused is also responsible for the resultant injury" (*Dennie v HM Advocate* [2019] HCJAC 67, 2019 SCCR 16, at paragraph 7).

Robbery

"Robbery is the crime of stealing another person's property by violence or intimidation. It is the intentional and violent taking of another person's property, without their consent, and for the purpose of depriving them of the property.

The violence or intimidation is the means by which the property is taken and so must come before, or happen at the same time as, the taking of the property. There need not be *physical* violence. A threat of violence, or intimidation causing reasonable fear of immediate harm is enough.

For robbery, the violence or intimidation need not amount to the crime of assault but, in this case, it is said that it did. It is said that the assault specified in the charge was the violence by which the complainer's property was taken. That is why the charge is one of assault *and* robbery."

[The following directions may be given as appropriate; the list is non-exhaustive:

- "The property stolen can be on the other person, like a wallet in a pocket, or can be goods under that person's control, like stock in a shop or money in a till.
- Robbery is committed where:
 - the accused uses violence or intimidation to take the property from the other person, physically.
 - the other person drops the property as a result of violence or intimidation, and the accused picks it up.

- as a result of violence or intimidation, the other person hands over the property, or stands by while the accused takes the property.]”

Intention

“The accused must have acted intentionally. Intentionally means deliberately. Whether the accused acted deliberately can be inferred from what has been proved to have been said and/or done. And the accused must have acted for the purpose of depriving the other person of the property.”

Corroboration

“Both the commission of the crime and that the accused committed it must be proved by corroborated evidence, meaning evidence from more than one source. The other elements of the charge are descriptive only, to give the accused fair notice of how the crime is said to have been committed. They do not need to be corroborated.”

[Judges may choose to identify the available sources of corroboration.]

Summary

“For the Crown to prove this charge, you must be satisfied:

1. That the accused attacked the complainer in the way described in the charge;
2. That the attack was deliberate;
3. *[Where relevant:]* That the attack resulted in *[state the aggravation libelled]*;
4. That the attack was carried out with the intention of taking property in the complainer's possession in order to deprive the complainer of it;
5. That the accused took the property in the complainer's possession.”

Alternative verdicts

[Note: Judges should consider whether further directions require to be given on the alternative verdicts available to the jury.]

Conviction for assault alone

“If you are not satisfied that the accused is guilty of robbery, you should still consider whether you are satisfied that the accused is guilty of assault. If you are satisfied that the accused is guilty of assault, as I have defined it, but you are not satisfied that the

accused is guilty of robbery, you would convict of assault but under deletion of the reference to robbery.”

Conviction for robbery alone

“If you are not satisfied that the accused is guilty of assault, you should still consider whether you are satisfied that the accused is guilty of robbery. As I have explained, using any degree of violence [or using intimidation] to take the property makes the crime robbery even if that violence [or intimidation] does not amount to an assault on the other person as is specified in the charge. If you are not satisfied that the accused is guilty of assault, as I have defined it, but you are, nonetheless, satisfied that the accused used some violence or intimidation to take the property, then you would convict of robbery but under deletion of the reference to assault.”

Conviction for theft as an alternative

“[The defence suggest / it would be open to you to conclude] that this is a case of theft rather than robbery. If you [accept/find] that the accused committed theft, but not assault and robbery, then you would acquit the accused of assault and robbery and find the accused guilty of theft. In that situation, theft is an alternative verdict which is available to you even though it is not mentioned explicitly in the charge.

Theft is the dishonest taking of another person’s property without their consent, and with the intention of depriving them of their property. Unlike robbery, theft can be committed without the use of violence or intimidation.

If you are satisfied that the property was taken, and that it was taken by violence amounting to assault as I have defined it, then you would convict the accused of assault and robbery. If you are not satisfied that the property was taken by means of assault, as specified in the charge, but you are, nonetheless, satisfied that the property was taken without the complainer’s consent and with the intention of depriving the complainer of it, then you would convict of theft.”

Possible form of direction on assault with intent to rob

“Charge [x] is a charge of assault with intent to rob. In law, assault and robbery are separate crimes and I will explain each of them to you in turn. The accused is not charged with actual robbery here, but it is alleged that the accused assaulted the complainer with the intention of robbing [him/her/them].”

Assault

[Give the direction on assault from the direction on ASSAULT AND ROBBERY above.]

Robbery

“Robbery is the crime of stealing another person’s property by violence or intimidation. It is the intentional and violent taking of another person’s property without their consent, and with the intention of depriving them of the property.”

[The foregoing direction on robbery may be sufficient where only “intent to rob” is libelled but if the circumstances demand a fuller explanation of robbery, the direction on ASSAULT AND ROBBERY should be adapted.]

With intent to rob

“If the other person was assaulted with the intention of taking property in their possession, that is the crime of assault with intent to rob.

Having an intention to rob the other person, if proved, makes an assault more serious. That is known as an aggravation.

Whether the accused intended to rob the complainer can be inferred from what has been proved to have been said and/or done.

Evidence from a single source is sufficient to prove that the offence is aggravated in this way. There is no need for corroboration.

So, if you are satisfied that the accused assaulted the complainer, you must then consider whether the accused did so with the intention of robbing [him/her/them]. If you were satisfied that the accused did act with that intention, then you would convict of the charge as it stands. If you were not satisfied that the accused intended to rob the complainer, but you were nonetheless satisfied that the accused assaulted the complainer, then you would convict the accused of assault and delete the reference to intention to rob.”

Summary

“For the Crown to prove this charge, you must be satisfied:

1. That the accused attacked the complainer in the way described in the charge;
2. That the attack was deliberate;
3. *[Where relevant:]* That the attack resulted in *[state the aggravation libelled]*;
and
4. That the attack was carried out with the intention of taking property in the complainer’s possession in order to deprive the complainer of it.”

Possible form of direction assault and attempted robbery

“Charge [x] is a charge of assault and attempted robbery. In law, assault and robbery are separate crimes and I will explain each of them to you in turn. The accused is not charged with actual robbery here, but it is alleged that the accused assaulted the complainer and attempted to rob [him/her/them].”

Assault

[Give the direction on assault from the direction on ASSAULT AND ROBBERY above.]

Robbery

“Robbery is the crime of stealing another person’s property by violence or intimidation. It is the intentional and violent taking of another person’s property without their consent, and with the intention of depriving them of the property.

The violence or intimidation is the means by which the property is taken and so must come before, or happen at the same time as, the taking of the property. There need not be *physical* violence. A threat of violence, or intimidation causing reasonable fear of immediate harm is enough.

For robbery, the violence or intimidation need not amount to the crime of assault but, in this case, it is said that it did. It is said that the assault specified in the charge was the violence by which the accused attempted to take the complainer’s property. That is why the charge is one of assault *and* attempted robbery.”

[The following directions may be given as appropriate; the list is non-exhaustive:

- “The property stolen can be on the other person, like a wallet in a pocket, or can be goods under that person’s control, like stock in a shop or money in a till.
- Robbery is committed where:
 - the accused uses violence or intimidation to take the property from the other person, physically.
 - the other person drops the property as a result of violence or intimidation and the accused picks it up.
 - as a result of violence or intimidation, the other person hands over the property, or stands by while the accused takes the property.]”

Attempted robbery

"The crime of assault and attempted robbery is committed if the accused assaulted the other person and was engaged in the process of attempting to rob them of property, but did not actually complete the robbery by getting hold of the property or taking it away.

An attempted robbery is committed if the accused made a positive move towards committing robbery but had not yet completed it. In other words, the accused had got beyond preparation for the robbery to the stage of having begun to commit it: the accused was engaged in some action directed towards the intended result. That may be by laying hands on property in the possession of the complainer or it may be by making a demand that the property be handed over, accompanied by violence or intimidation.

Intention can be inferred from what has been proved to have been said and/or done."

Summary

"For the Crown to prove this charge, you must be satisfied:

1. That the accused attacked the complainer in the way described in the charge;
2. That the accused did so deliberately;
3. That the accused intended to seize property in the complainer's possession in order to deprive the complainer of it; and
4. That the accused was in the act of seizing the property, or had made a positive move towards doing so, and had begun to commit robbery."

Alternative verdict of theft

"In this case the defence have argued that this was a case of theft by snatching, or theft by surprise rather than robbery.

Theft is the dishonest taking of another person's property without the owner's consent. The difference between theft and robbery lies in the use of violence or threats. Sometimes it can be hard to draw a line between these two offences, it depends on the circumstances. But remember this, the violence or threats used in robbery can fall short of the violence used in assault. Any degree of violence or threats used to effect the taking of the property makes the crime robbery, not theft.

Whether your verdict is theft or robbery will depend on the view you take of the violence involved. If you thought the violence which occurred was very minor and

not used to overcome the other person's wishes, you could convict the accused only of theft. But if you thought it was because of violence or threats that the goods were taken, you could convict the accused of robbery."

Historic Abuse Assault / Reasonable chastisement

"An assault is an attack on another person carried out with evil intent, which simply means that the attack was deliberate. Accidental or careless contacts are not assaults. Weapons may or may not be involved. Injury may or may not result. So, menaces or threats producing fear or alarm in the other person are assault.

Whether a person has acted deliberately can only be inferred or deduced from what has been proved to have been said and/or done."

(If appropriate) "The word "repeatedly" in the charge just means "more than once"."

(where injury to any extent is libelled see [ASSAULT](#))

"The offences the accused is facing are alleged to have been committed a number of years ago. The accused's position regarding these allegations is that if they did occur, they were carried out as a result of requiring to discipline the complainer(s). Now, in the context of disciplining a child in the past actions which otherwise would amount to an assault were not assaults in law if what was done amounted to reasonable chastisement, or were what is sometimes described as justifiable assaults. That is quite different now – there is no such defence to such acts of violence which take place on or after 7 November 2020 ([Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) section 1) but that does not affect what happened in the past, when it was not a crime of assault if a parent or carer's actions amounted to reasonable chastisement."

Cases pre 27 October 2003

"Parents, guardians, and other persons in charge of children were at that time entitled to use force for the purpose of disciplining them, but that force had to be moderate and not inspired by vindictiveness.

If you find that what was done amounted to reasonable chastisement in that sense or you have a reasonable doubt as to that then your verdict would be one of acquittal. Now in considering this issue of reasonable chastisement you have to exercise care. What might not have amounted to reasonable chastisement in recent times (and would now simply be illegal) might well have constituted reasonable chastisement in the past. The approach to discipline in schools is different today. Now there would be no question of subjecting a child to corporal punishment in the context of discipline.

[where appropriate:] However, at the time of the alleged offences corporal punishment was allowed in that context.”

Cases between 27 October 2003 and 6 November 2020

[see [Criminal Justice \(Scotland\) Act 2003, section 51](#)]

“Parents, guardians, and other persons in charge of children were at that time entitled to use force for the purpose of disciplining them. When you are considering whether that force amounted to reasonable chastisement you must consider

- a. the nature of what was done, the reason for it and the circumstances in which it took place;
- b. its duration and frequency;
- c. any effect (whether physical or mental) which it has been shown to have had on the child;
- d. the child’s age; and
- e. the child’s personal characteristics (including, the child’s sex and state of health) at the time the thing was done.

There is no defence of reasonable chastisement or justifiable assault if what was done included or consisted of:

- a. a blow to the head;
- b. shaking; or
- c. the use of an implement.

Accordingly in considering this issue, firstly consider whether you are satisfied that the accused deliberately acted in the manner alleged, and if it constituted an attack. If the intent was only to punish then there is no assault unless the Crown have proved beyond reasonable doubt that it went beyond what was reasonable chastisement in the sense that I have described.

Now if there was a deliberate attack and some physical act was carried out which was merely gratuitous and was not designed to punish anything, then that would be an assault and could not be justified as reasonable chastisement. However, if the physical act was administered as a punishment, you have to consider whether the Crown have proved it went beyond what was reasonable and as I have already said you judge that not by reference to today’s standards but rather by reference to the standards at the time the offences were allegedly carried out.

Teachers nowadays [at the relevant time] have no right to inflict corporal punishment on children but can use moderate and reasonable force to control a child, particularly where that is necessary for the purposes of maintaining general discipline in the classroom ([Barile v Griffiths \[2009\] HCJAC 88, 2010 SLT 164](#)). It is a matter for you whether you consider that the accused's actions involved moderate and reasonable force or went beyond that."

Assault with intent to rape

See chapter on the [Sexual Offences \(Scotland\) Act 2009](#) - contains reference to assault with intent to rape an [adult \(section 1\)](#) or [young child \(section 18\)](#)