

Think box 10.1

Has D committed the AR of assault in the following cases?

1. D waits until V has passed him and then jumps on V from behind a bush?
2. D angrily shakes his fist at V but V thinks it is funny?
3. D sees V standing on the other side of a busy street with four lanes of traffic. D shakes his fist at V?
4. D thrusts a weapon towards V who is sitting inside a locked car?
5. D is on a train and leans out of the window as it is leaving the station to shake his fist at V who he sees standing on the platform?

Answer guidance

1. Has V apprehended harm? Technically not although force has been applied and so he has been subject to a battery – below. The term assault also includes battery. There is technical distinction between assault and battery: assault consists in causing V to apprehend fear of violence whereas battery consists of the application of force. However, if a battery accompanies an assault, the technical distinction would probably not be regarded as significant.
2. D may intend an assault but since V apprehends no harm, this will not be a technical assault.
3. If it is obvious that the threat cannot be immediately carried out, then there is no assault. Presumably therefore there would be no assault here.
4. The issue here is apprehension of imminent rather than immediate harm but the cases above – Logdon etc- would seem to include these circumstances. Thus the AR of assault would probably have been committed. MR would also need to be proved – see below.
5. Although a threat is implied here, it is clear that it cannot be either immediately or imminently carried out and thus there is no assault.

Think box 10.10

Suppose that an assault is accompanied by the following insults, some of which are racially stereotypic. Consider whether they are racially aggravated under s28 (1) (a) or (b) Crime & Disorder Act 1998.

1. A Scot is called “a skirt-wearing sheep-shagger”
2. An Asian doctor is called “an immigrant doctor”
3. A Turkish chef of a takeaway shop is called a “bloody foreigner”

Answer guidance

1. This was held to amount to racial hostility in an unreported case cited by E. Burney in ‘Using the Law on Racially Aggravated Offences’ [2003] Crim LR at 33.
2. This insult was held to be racially hostile to a racial group under s28 (1) (a) in AG’s Ref (No 4 of 2004) [2005] EWCA 889.
3. This insult was held to demonstrate racial hostility under s28 (1)(a) in DPP v M [2004] EWHC 1453.