

Assault and Battery – Common Law

Battery

- Harmful or offensive contact (general intent crime; even negligence that causes the contact)

Aggravated Battery (felony version)

- Battery:
 - With an intent to kill
 - That causes serious harm
 - Committed with a Deadly Weapon

Assault

- (1) An attempt to commit a battery (specific intent)
- (2) Putting someone in reasonable fear of an immediate battery (general intent)

Aggravated Assault: Same basic idea as aggravated battery

Mayhem

- Intentional disfigurement or disabling of a person

Assault and Battery – Modern Example – New York

Assault in the 3rd Degree (misdemeanor)

- Causing an injury through intentional or reckless conduct
OR
- Negligently causing an injury using a weapon or dangerous instrument

Assault in the 2nd Degree (class D felony)

- Intentional serious bodily harm
OR
- Intentional injury caused with a weapon
OR
- Any injury designed to prevent a police officer or medical worker from doing his or her job
OR
- Reckless injury caused with a deadly weapon (e.g. a gun)
OR
- Any injury caused in the course or continuance of committing a dangerous felony
OR
- Intentionally causing any injury to a small child

Assault and Battery – Modern Example – New York (cont.)

Assault in the 1st Degree (class B felony)

- Intentional serious physical harm using a deadly weapon
OR
- Intentional permanent disfigurement
OR
- Injury caused by conduct that evinces a “depraved indifference to human life”
OR
- Serious physical injury caused during a felony

Menacing:

- Intentionally placing another person in reasonable fear of injury
(also divided into degrees)

Rape – Common Law

Elements:

- (1) A man engaging in
- (2) sexual intercourse with
- (3) a woman,
- (4) not his wife,
- (5) without her consent

➤ Consent:

- consent elicited through trickery *is not valid consent*
- trick as to the nature of the act voids consent
- trick as to the propriety of the act does not void consent

- Minors are incapable of consent

- Statutory rape – is a strict liability crime in many jurisdictions

Rape – Modern Example – California

Rape: Sexual intercourse that is:

Accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury

OR

By using a drug to prevent resistance

OR

Done while the victim was unconscious and the defendant did or reasonably should have known about it

OR

Done with someone who is incapable of consent because of mental disability and the defendant did or reasonably should have known about it

OR

Done with a **minor** (different levels for different age variations)

Note: California dispenses with the “not his spouse” requirement, but allows lesser penalties and certain procedural protections in those cases

Kidnapping and False Imprisonment – Common Law

➤ **False Imprisonment** (misdemeanor)

- Unlawful confinement of a person in a closed area

➤ **Kidnapping** (felony)

- Abducting and moving or transporting a person

➤ **Aggravated Kidnapping**

- Kidnapping a person and either injuring that person or holding that person for ransom

Kidnapping and False Imprisonment – Modern Example - Texas

- **Unlawful Restraint** (misdemeanor)
 - Any intentional or knowing *restraint* of another person
(general intent crime)
- **Kidnapping** (felony)
 - Any intentional or knowing *abduction* of another person
(general intent crime)

Kidnapping and False Imprisonment – Modern Example – Texas (cont.)

➤ Aggravated Kidnapping

- Abduction...
- With the intent to hold for ransom
OR
- With intent to use as a shield or hostage
OR
- With intent to facilitate the commission of a felony
OR
- With intent to harm or sexually abuse the victim
OR
- With intent to terrorize the victim or someone else
OR
- With intent to interfere with a government function
- first degree felony or second degree if the victim was safely released
- Affirmative defense that defendant is a relative of the “victim” who is a child