

Unlawful Wounding

S 323 [Criminal Code](#)

Commentary

A 'wound' means that true skin must be broken and penetrated, not merely the cuticle or outer skin: per McPherson ACJ in *R v Jervis* [\[1993\] 1 Qd R 643](#) at 645.

An 'assault' is not an element of the offence of wounding, provocation is not available: *Kapronovski v The Queen* [\(1973\) 133 CLR 209](#).

It is a circumstance of aggravation if the offence is committed in a public place while the person was adversely affected by an intoxicating substance: s 108B [Penalties and Sentences Act 1992](#). See s 365C [Criminal Code](#) for circumstances in which a person is taken to be adversely affected by an intoxicating substance.

Suggested Direction

The prosecution must prove:

1. **That the defendant wounded the complainant.**

In order to constitute a wound, the true skin must be broken and penetrated, not merely the cuticle or outer skin. [Refer to evidence including medical evidence].

2. **That the wounding was unlawful.**

A wounding is unlawful unless it is authorised or justified or excused by law.

3. **Circumstance of aggravation.**

It is a circumstance of aggravation if the offence is committed in a public place while the person was adversely affected by an intoxicating substance.