

Unlawful Wounding s 323

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*).¹

2. That the wounding was unlawful.

A wounding is unlawful unless it is authorised or justified or excused by law.²

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.³

¹ Per McPherson ACJ in *R v Jervis* [1993] 1 Qd R 643 at 645.

² An assault is not an element of the offence of wounding, provocation is not available: *Kapronovski v The Queen* (1973) 133 CLR 209.

³ 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.