

Riot and Unlawful Assembly¹ s 61 and s 62 (Offences prior to 1 December 2008)

The prosecution must prove that the defendant:

1. With at least two others assembled, that is, gathered together.
2. With the intention of carrying out some common purpose (*here refer to the evidence led by the prosecution on this issue*) at that time.
3. With at least two others assembled in such a manner or being gathered together, conducted themselves in such a way as to cause people in the vicinity to fear on reasonable grounds that he and at least two others so gathered would tumultuously disturb the peace, and so became an unlawful assembly.

It is immaterial that the original assembling was lawful if they conduct themselves with a common purpose in the manner described.

A tumult occurs where people usually, but not always, to the accompaniment of noise, engage in agitated movement or are excited or emotionally aroused.²

A disturbance of the peace occurs where [direction should be adapted in accordance with the definition given by the English Court of Appeal in *Howell* [\[1982\] 1 QB 416](#) at 427]³.

4. That that unlawful assembly began to act in so tumultuous a manner as to disturb the peace and so became a riotous assembly.

¹ Section 62 *Criminal Code* (definition in s 61) and s 92(1) *Corrective Services Act* 1988. Where the accused is a prisoner, and the charge is under s 92(1) of the *Corrective Services Act* 1988, regard should be had to the definition of “unlawful assembly” in s 92(b)(a).

² Per Derrington J (with whom Ambrose and Dowsett J.J. agreed) in *R v Thomas* [\[1993\] 1 Qd R 323](#) at 325 approving *J.W. Dwyer Ltd v Metropolitan Police District Receiver* [\[1967\] 2 QB 970](#) at 979-980.

³ The Court of Appeal said (by reference to the powers of police office to arrest for a breach of the peace): “... there is a breach of the peace whenever harm is actually done or is likely to be done to a person or, in his presence, to his property, or a person is in fear of being so harmed ...”