

Acts Intended to Cause Grievous Bodily Harm and Other Malicious Acts – s 317¹

Section 317 makes criminal any of the variety of acts described in s 317(e)-(k), if done with any of the variety of intents described in s 317(a)-(d). The following suggested directions cover only part of the large number of possible offences.

Read the relevant part of the section to the jury.

The prosecution must prove that the defendant actually had a subjective intent to achieve the described result. [Tell the jury what that result is]. Intention is a purpose or design to bring about the particular result, and that is what the prosecution must prove.²

To maim means to deprive a person of the use of a limb or part of the body, to mutilate or cripple the person.³

To disfigure is to do some external injury which detracts from another’s personal appearance. To disable is to do something which creates a disability, whether temporary or permanent.⁴

A substance which in itself is not a noxious thing may be a noxious thing if administered in sufficient quantity; it is a question of fact and degree in all the circumstances whether the thing is noxious.⁵

Attempted Striking with Intent to Resist Arrest

The following is a suggested direction for attempted striking with intent to resist arrest. It should be modified accordingly if the alleged intent is to prevent lawful arrest or detention, or where the act is actual striking. The direction is formulated on the interpretative premise that in s 317(1)(f):

¹ The offence is a prescribed offence under s 161Q *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.

² This direction accords with the majority decision in *R v Reid* [2007] 1 Qd R 64 at [48]-[49] and [90], [93]-[95]. See also *Zaburoni v The Queen* [2016] HCA 12, (2016) 256 CLR 482, 490 at [14], “Where proof of the intention to produce a particular result is made an element of liability for an offence...the prosecution is required to establish that the accused meant to produce that result by his or her conduct...[K]nowledge or foresight of result, whether possible, probable or certain, is not a substitute in law for proof of a specific intent under the Code.”

³ See *R v Woodward* [1970] QWN 30.

⁴ This definition of “disable” follows the suggestion in *R v James and James* (1980) Cr App R 215; the definition of “disfigure” is taken from the footnotes in *Carter’s Criminal Code*.

⁵ See *R v Marcus* (1981) 73 Cr App R 49; *R v Hennah* (1877) 13 Cox CC 547; *R v Craikip* (1880) 5 QBD 307; *R v Turner* (1910) 3 Cr App R 203.

- the word “unlawfully” applies to qualify both an act of striking and an act of attempted striking;
- the words “capable of achieving the intention” apply to qualify both the nature of the projectile and the nature of anything else used to attempt to strike.)

The defendant is charged with attempted striking with intent to resist arrest. [If charged as an alternative, specify that: That offence is charged in count 2 as an alternative to count 1, the charge of You will only be required to return a verdict on count 2 in the event that you return a verdict of not guilty on count 1.]

It is an offence for anyone, with intention to resist the lawful arrest of any person, to unlawfully attempt in any way to strike any person with any kind of projectile or anything else capable of achieving the intention.

That offence requires proof beyond reasonable doubt of the following four elements:

- 1. The defendant attempted to strike a person with a projectile (or something else); and**
- 2. The attempt to strike was unlawful; and**
- 3. The defendant committed the intended striking with intent to resist the arrest of the defendant (or the arrest of another); and**
4. The projectile (or other thing) was capable, had it struck the person, of achieving the intention to resist arrest.

The prosecution must prove all of these elements beyond a reasonable doubt. If it fails to prove any one of these elements you must find the defendant not guilty of the charge of attempted striking with intent to resist arrest.

In discussing these elements, I will on occasion refer to the defendant’s intention or belief. Those words carry their ordinary meaning, so that a person’s intention is what the person means to occur and a person’s belief is what the person thinks to be so. What a person intends or believes is part of the person’s individual thought processes. A defendant’s intention or belief may be inferred or deduced from the circumstances in which the alleged offence was committed and from the conduct of the defendant before, at the time of, or after the defendant allegedly committed the offence. And, of course,

whatever a defendant has said about the defendant's intention or belief may be looked at for the purpose of deciding what that intention or belief was at the relevant time.

Element 1 requires that the defendant attempted to strike a person with a projectile (or something else). Here the prosecution alleges the defendant attempted to strike [A - describe the person(s)] with a [X - specify the nature of the projectile or other thing with which the defendant is alleged to have struck the person e.g. bullet, rock]. The act by which the defendant is alleged to have made that attempt is the act of [specify the act(s) e.g., pulling the trigger, throwing the rock]. To prove this element, the prosecution must prove beyond reasonable doubt that the defendant committed that act and did so intending that it would cause the [X] to strike [A]. [Address any relevant issues in contention].

Element 2 requires that the attempt to strike was unlawful. The attempted application of any force to any person without their consent, including by striking them, is unlawful unless some legal defence applies to relieve the person from criminal responsibility. In the event you are satisfied that there was an attempted striking, to prove the attempted striking was unlawful the prosecution must prove beyond reasonable doubt that it was done without [A]'s consent and, if a legal defence potentially applies, it must exclude the defence beyond a reasonable doubt. [Address whether consent is in issue and, if it is, address the relevant issues in contention. Address whether any defences have potential application and, if they do, address the defences and any relevant issues in contention].

Element 3 requires that the defendant committed the attempted striking with intention to resist the arrest of the defendant (or the arrest of another). One cannot arrive at an intention to resist an event without first believing the event is going to happen. Proof of a defendant's intention to resist arrest therefore also requires proof that the defendant believed an arrest was going to occur. In the event you are satisfied the defendant attempted to strike [A] in the manner I have discussed, element 3 requires the prosecution to prove beyond reasonable doubt that, at the time of committing the alleged offence, the defendant believed the defendant [or another] was going to be arrested and that the defendant intended, by attempting to strike [A] with [X], to resist the carrying out of that arrest. [Address any relevant issues in contention].

Element 4 requires that the [X] was capable, had it struck [A], of achieving the intention to resist arrest. This element introduces an additional objective element for your consideration, even if you are satisfied the defendant unlawfully attempted to strike [A] with the [X] and that the defendant did so intending to resist arrest. Element 4 requires

you to be satisfied beyond reasonable doubt that [X] was a projectile [or thing] of such a nature that it was actually capable, if used to strike in the manner attempted, of achieving the intention of resisting arrest. [Address any relevant issues in contention].

If the prosecution has proved all four of the elements we have discussed, beyond a reasonable doubt, then your verdict on the charge of attempted striking with intent to resist arrest would be guilty. If it has failed to prove any one or more of those elements beyond a reasonable doubt, your verdict on that charge would be not guilty.