GILSHENAN & LUTON
LEGAL PRACTICE



Grievous bodily harm – provocation and self defence

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A common criminal charge resulting from a physical altercation is 'grievous bodily harm' (often referred to as GBH). Many grievous body harm charges arise out of a fight scenario (often involving alcohol) – there is a verbal exchange, then a scuffle, before someone punches or kicks the other, causing serious injury. If you are the person who delivers the 'final hit', can you defend the charge?

The law does not expect citizens to be passive when their safety is threatened by someone else. Sometimes an attacker may come off second best but it does not necessarily follow that the one who wins the fight has committed the crime.

What is grievous bodily harm?

Legally, the term 'grievous bodily harm' means an injury that causes:

- the loss of a distinct part or an organ of the body; or
- serious disfigurement; or
- any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health.

Options for the defence of self-defence

The most common defence to grievous bodily harm charges is that of self-defence.

The law relating to self-defence in the context of grievous bodily harm is split into two categories:

1. Self defence to an unprovoked assault; and
2. Self defence to a provoked assault.

What is a provoked assault?

A provoked assault involves an insult or act of such a nature to be likely to deprive an ordinary person of the power of self-control, and induce them to assault the person who insulted them.

It is an objective test. The question is whether it would deprive an ordinary person of the power of self-control, not the specific person involved in the assault. Further, the assault must also be done soon after the insult or act – before passions have had time to cool.

Self-defence to a provoked assault

Section 272 of the *Criminal Code* provides for restrictive rights of self-defence for a person who started a fight or provoked the other party.

If the assault was provoked, the questions for the jury to decide are:

1. Whether the response from the victim to the insult, was so violent as to cause the defendant reasonable apprehension of death or grievous bodily harm?
2. Whether the defendant believed, on reasonable grounds, that it was necessary, in order to preserve themselves from death or grievous bodily harm, to use force in self-defence?
3. Whether the force in fact used was such as was reasonably necessary for their preservation from death or grievous bodily harm.

Self-defence to an unprovoked assault

The defence of self-defence to an unprovoked assault, where your actions were likely to cause grievous bodily harm or death, is found in section 271(2) of the *Criminal Code.*

It's generally accepted that if the conduct was a punch or kick to the face, this falls under the category of 'likely to cause grievous bodily harm or death' due to the well-publicised 'one punch can kill' campaigns.

There are essentially four elements to that defence:

1. There was an unlawful assault on the person who defended themself (an assault includes threats);
2. There was a lack of provocation from the person who defended themself;
3. The nature of the assault must have been such as to cause reasonable fear of death or grievous bodily harm; and

4. The person who defended themselves must have believed on reasonable grounds that they could not otherwise preserve themself or another person from death or grievous bodily harm.

There is no requirement that the force was necessary, but rather whether the defendant's actual state of belief, based on reasonable grounds, was that they could not preserve themselves other than by doing what they did.

Once the defence is raised, it is a matter for the prosecution to disprove the defence beyond reasonable doubt.

Grievous bodily harm penalty

Grievous bodily harm is a serious offence, with a maximum penalty of 14 years in prison.

Get help from a criminal lawyer

If you've been charged with grievous bodily harm or police want to speak with you about an incident, it's important to obtain legal advice from a lawyer experienced in criminal law. The earlier the better – as sometimes evidence like CCTV needs to be secured before recordings are erased.

Gilshenan &Luton have significant experience in all areas of criminal defence including any offences of violence.

Contacting Gilshenan &Luton

07 3361 0222 (24/7)

gnl@gnl.com.au

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