

Mock Trial Competition Case Materials

Round 2 - 2023

State of WA v Sinclair

As at 3 April 2023

Case materials prepared by Sarah Bright and Aoning Li

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Department of **Justice**

Student Access Partner

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UPD ACTIVE

State of Western Australia v Sinclair

Introduction

Mr Lucas Sinclair has been charged with unlawful assault occasioning bodily harm pursuant to Section 317 of the Criminal Code (WA). Specifically, Mr Sinclair is accused of assaulting Mr Mike Wheeler during a game of Quidditch at Bardip Reserve Maylands in the State of Western Australia on 20 March 2023. The charge will be heard by a Magistrate sitting alone.

Summary of the law

To be successful, the Prosecution must prove beyond a reasonable doubt that:

1. The accused struck, touched or applied force to another (the complainant);
2. The accused did so intentionally;
3. The accused did so without the complainant's consent (express or implied); and
4. There was no lawful justification or excuse for the application of force.

To be successful, the defence must cast sufficient doubt on the evidence for the Prosecution to demonstrate that the Prosecution has not proved each of the above elements beyond a reasonable doubt.

Case Materials

The Prosecution and Defence teams each receive the same copy of the Case Materials which are comprised of:

1. Legal Notes
2. Prosecution Notice;
3. Statement of Mr Mike WHEELER, witness for the prosecution, dated 22 March 2023 (male);
4. Statement of Ms Max MAYFIELD, witness for the prosecution, dated 24 March January 2023 (female);
5. Statement of Mr Lucas SINCLAIR, the accused, dated 27 March 2023 (male);
6. Statement of Mr Jim HOPPER, witness for the defence, dated 30 March 2023 (male)

Please note:

- *the above outline is also the order of appearance of each witness.*
- *the gender of each witness is fixed in order to avoid difficulties in references to "he/she" etc. Students playing the part of a witness are to adopt the role of male or female as indicated above.*

Legal Notes

Please note that for the purpose of the Competition the “law” is as contained in this section of the Case Materials and the [Manual](#) and is the only matter of law to be relied on.

The “law” as stated below has been modified and adapted to facilitate the Competition meeting its educational objectives. It is expected and required that students do not go beyond the legal notes in these case materials when presenting their legal arguments in the mock trial.

Assumptions in the Case

For the purpose of the competition, students and judges should assume that:

1. In an earlier pre-trial hearing, the witness Mr Jim HOPPER has been accepted as an expert witness by the court, in the area of the sport of Quidditch.
2. The injury to the complainant meets the legal definition of “bodily harm” as defined in section 1 of the Criminal Code and that this is an issue that has been conceded by both sides prior to the trial (i.e. it is NOT an issue that must be proved at trial).
3. The primary issue at trial is whether the complainant consented to the use of force against them.

Additional instructions

The prosecution must introduce and tender the photo taken by Ms Max Mayfield at an appropriate time in the evidence. The Defence must consent to the admissibility of the photo.

The defence must introduce and tender the Perth University Quidditch Rules at an appropriate time in the evidence. The prosecution must consent to the admissibility of the rules, including it’s use towards providing the truth of the document’s contents.

Extracts from Criminal Code WA

222. Term used: assault

A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his [or her] consent ... is said to assault that other person, and the act is called an assault.

s.223 Assault is unlawful

An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

317. Assault causing bodily harm

- (1) Any person who unlawfully assaults another and thereby does that other person bodily harm is guilty of a crime...and is liable....(a) to imprisonment for 5 years.

Extracts from Relevant Cases

As per Shepherdson J in *Lergesner v Carroll* [1991] 1 Qd R 2016 at para 212

“I favour the view that in the case of ‘assault occasioning bodily harm’ where consent to the assault is an issue and there is evidence capable of amounting to such consent, the tribunal of fact ... must decide whether the degree of violence to the person assaulted exceeded that to which consent was given.

The intentional infliction of actual bodily harm will not come within a player’s implied consent.”

As per King CJ in *Giumelli v Johnston* (1991) Aust Torts Report 81-085

“Those who participate in a football match are taken to consent to the infliction on them of such physical force as is permitted by the rules of the game.

A player’s consent to the application of force to [them] during the game extends not only to the application of force within the rules of the game but also to certain commonly encountered infringements of the rules.

However, such consent does not include physical violence applied in contravention of the rules of the game by an opposing player who intends to cause bodily harm.”

Legal Commentary

Note: Extracts from the following article are intended to assist students understand the law as per the above in the context of sporting games. It is intended to guide preparation of the case and is not material students should seek to rely on during the trial.

Extracts from “Violence in sport: criminal assault or just part of the game?”

Written by James Janke downloaded from

<https://www.hamiltonjanke.com.au/assault-in-sport/> on 13 March 2023

[...]

However, breaking a rule of a sporting code does not necessarily mean someone will be guilty of criminal assault – a certain level of rule breaking is expected in every sport.

[...]

Players are usually considered to have consented to a risk of harm that is caused within the rules of the game, and also to that which is outside the rules, but still of a degree reasonably within the culture of the sport.

Ultimately the level of violence that is accepted in a sporting context depends on what is reasonably expected as part of the game. This will depend on factors including:

- The part of the game in which the violence occurs and whether the contact is ‘on the ball’ (i.e. contact with another player while in contest for the ball is likely and expected while ‘off the ball’ incidents (e.g. hitting another player while the ball is at the other end of the field) are less likely to be expected.
- The level and character of the contact (e.g. a player might expect to be pushed in a contest for the ball during a game of soccer but they don’t expect this to include a punch in the face)
- Whether the violence is spontaneous or, if it is premediated, (i.e. if the contact with the other player appears to be premediated it is more likely that a criminal charge will follow, because it can demonstrate an intent to harm. Whether the player was provoked may also be relevant.)

Western Australia Criminal Procedure Act 2004 Magistrate's Court at PERTH No: 1222 of 2023		PROSECUTION NOTICE		
Details of alleged offence	Accused	Lucas SINCLAIR		
	Date or Period	20 March 2023		
	Place	Maylands		
	Description	Assault occasioning bodily harm		
	Written Law	Section 317 of the Criminal Code		
Notice to the Accused	<p>You are charged with the offence described above, or the offences described in any attachment to this notice.</p> <p>The charge(s) will be dealt with by the above Court.</p>			
Accused's Details	Date of Birth	01/01/2003	Male/Female	M
Prosecutor	Address	16 Peninsula Road, Maylands		
Person issuing this notice	Full Name	Zariffe Nadunga		
	Official Title	Senior Constable		
	Work Address	Police Station, Maylands Peninsula		
	Work Telephone	(08) 9265 3546		
	Signature	<i>Z. H. Nadunga</i>		
	Witness	Mary McCullough		
	Witness's Signature	<i>MMcCullough</i>		
Date	This prosecution notice is signed on 25 March 2023			

Statement of Mike Wheeler, the complainant, dated 22 March 2023

1. My name is Mike Wheeler. I am 20 years old. I'm studying full-time for a Bachelor of Arts majoring in English Literature, at Perth University.
2. I know the accused Lucas Sinclair because we dated each other for about 6 months or so in the second half of last year. When we broke up around Christmas time, it was on fairly civil terms, but we both did not really want to have anything to do with each other.
3. I got together with my current girlfriend, Max Mayfield, in February this year. I admit that I told her around that time that Lucas had cheated on me, and that was the reason why I broke up with Lucas. But that wasn't actually true. I don't know why I said it. I didn't think Max would spread it around campus, but I found out later that she did.
4. I play Quidditch in the Perth University casual sports league, which is a real-life sport loosely based on the fictional game in the Harry Potter universe. I often describe it as a nerdier version of lacrosse but with the players having sticks between their legs at all times instead of being able to use the lacrosse sticks.
5. I play on the "Vikings" team while Lucas plays for the "Pirates". On 20 March the two teams were scheduled to play each other at the Bardip Reserve in Maylands.
6. I arrived early at the reserve at 12:00pm in my car and saw that Lucas was also there early standing next to his car. He's never early for games, so I'm pretty sure he was waiting for me.
7. As I got out of my car, Lucas immediately came up to me and said words to the effect of "I can't believe you're going around telling people I cheated on you!"
8. I just walked away from him after locking my car and replied with "I didn't do anything of the sort, so I don't know what you're talking about". I just really didn't want to talk to him at that point.
9. The game started at 1pm. Around 15 minutes into the game, the Snitch Runner was released into the field. The score was 80 to 40, and we were winning. I was surprised to see Lucas run onto the field at the same time as me as the other side's seeker.
10. For the next 2 minutes or so, Lucas was very aggressively hounding me as I was trying to chase the Snitch Runner around the field. Lucas wasn't even going for the snitch at all – he was just shoving me and spent the whole time blocking me from getting it.
11. I then remember hearing the umpire's whistle from the other side of the field, that signalled a stop to play. I turned around and saw that there had been some sort of penalty granted at the other end. I started walking back towards the centre of the field (to where the Seekers re-start play from after a stoppage).

12. I took maybe 3 or 4 steps in that direction before I felt something hit me extremely hard on the back of my legs which knocked me over. As I fell over, I saw Lucas standing over me holding his broomstick with both his hands.
13. He must have hit me with it because he was holding it in front of him and not between his legs like he was supposed to.
14. It all happened very fast. I grabbed my broomstick and tried to get up off the ground to defend myself, but my legs didn't seem to work properly and I couldn't get myself up.
15. Lucas pretended as though it was all just some sort of accident but it obviously wasn't. I had to get stretchered off the field. It wasn't an accident because there was a good 4 or 5 seconds between the whistle being blown and his broomstick connecting with my legs.
16. I tried to tell everyone that Lucas had done it intentionally, but it seems that no one saw exactly what happened, apart from my girlfriend Max. I went straight to the local hospital where I was told by the attending doctor that I had a severe Grade 3 PCL ligament Injury and will need surgery to repair the torn ligament.
17. The next day, I was on crutches and I came down with Max to the oval car park, so she could drive my car back to my apartment. When we went to open my car doors, we found that the inside of the handles had been covered with Vegemite – the colour, texture and smell was unmistakable.
18. At that point, I had had enough, and decided to report Lucas to the police.

Statement of Max Mayfield, witness for the Prosecution, dated 24 March 2023

1. My name is Max Mayfield. I am a second-year student at Perth University. I am studying a Bachelor of Sports Science.
2. I was at the Quidditch game on 20 March. I am a Chaser for the “Druids” team but on this occasion I was at the match to take photos for the university sports newsletter, and to support my boyfriend, Mike Wheeler, who was playing that day.
3. I arrived at the oval around 12:45pm, and remember seeing Lucas Sinclair crouching next to Mike’s car doors in the carpark. I thought that was a little odd, but I was in a hurry and didn’t take much notice of it at the time.
4. I don’t know Lucas very well, but I knew from Mike that he and Lucas had briefly dated but broke up after Lucas cheated on Mike sometime last year. Apart from that I had played against Lucas in Quidditch before, as he plays as a Beater for the Pirates. I may have mentioned the cheating thing to a few friends of mine in the Quidditch community.
5. When the game started at 1pm, I was running along the sidelines with my DSLR camera taking lots of photos. I can provide an example photo as evidence if required. I soon had enough photos but I needed some of the Seekers and the Golden Snitch, so I started taking photos again when those 3 people were released onto the field at around 1:20pm.
6. I was surprised to see Lucas as the Pirates Seeker. I was immediately worried that Lucas had somehow arranged to be Seeker so he could get at Mike. My fears were reinforced because Lucas immediately started playing more like a Beater than a Seeker and was just shoving Mike around rather than chasing and trying to catch the Snitch.
7. After a minute or two of watching Lucas do this, I realised I had been distracted from taking the photos I needed so I quickly started taking as many photos as I could of the action between Mike, Lucas and the Snitch. I was worried that the Snitch might be caught at any moment, which would end the Quidditch match immediately.
8. I only got to take around 3 or 4 photos though, before I noticed that Mike and the Snitch Runner suddenly stopped running and started walking back to the middle of the field. I then turned to look at the umpire on the other side of the field and realised she must have blown her whistle to stop play.
9. At that moment through the camera screen, I watched Lucas run up behind Mike, stopping and grabbing his broomstick out from between his legs. He then used it to hit the back of Mike’s legs with a big sweeping backswing. There was a good 4 or 5 seconds between the whistle being blown and the broomstick connecting with Mike’s legs.
10. My DSLR camera has a small screen on the back of it that shows me exactly what it’s pointed at. I saw it all very clearly but I was so shocked I forgot to take a photo of the assault, which would have been useful.

11. I immediately ran over there, along with several other people who helped give first aid to Mike. I said to Lucas something along the lines of “what did you do that for?”, to which he replied with “I’m so sorry, but it was totally an accident”. He kept repeating that again and again to everyone there, obviously to try and pretend it wasn’t intentional.
12. After I spoke to a few people there, I realised that no one else appeared to have seen the moments leading up to Mike getting hit by Lucas. Everyone at the game was treating it like just an unfortunate accident.
13. The next time I saw Mike was the next day, when I picked him up at the hospital. I asked him whether he was going to press charges against Lucas for putting him in hospital, but Mike said he wanted to give Lucas the “benefit of the doubt” at that stage.
14. Mike changed his mind later that day though, when we went to collect his car. Mike was on crutches and wore a moon-boot on his left leg. When we went to open his car doors, I found my hand covered in Vegemite after touching the door handle. Putting two and two together, I told Mike that it must have been Lucas, and explained that I saw him next to the car before the game.
15. Mike was suddenly furious and agreed that he would press charges against Lucas.

Statement of Lucas Sinclair, the Accused, dated 27 March 2023

1. My name is Lucas Sinclair. I am 20 years old and studying engineering at Perth University.
2. I know Mike Wheeler because we were in a relationship previously. We were friends and then dated for a few months before we mutually decided to break up at the end of last year.
3. While things were amicable between us post break-up, on the morning of 20 March, I found out from my team members that Mike had been telling everyone that I cheated on him – which was completely untrue. I admit that I was furious when I heard that Mike was spreading that lie around, especially among the Quidditch community.
4. Coincidentally, it was that same day that my Quidditch team was scheduled to play against Mike's team. I am a reserve player for the Pirates team as I am fairly new to the sport and still learning the ropes. I normally play rugby but decided to play Quidditch instead this year as it fits in better with my studies.
5. We both arrived for the game at the same time and unfortunately made eye contact in the car park at the oval. I decided it was best for me to give him a chance to apologise and went up to him and asked him why he had been spreading the cheating lies about me.
6. He just walked off and denied it, with made me 'see red'. After he walked off, I decided I was going to get my revenge by playing a prank on him – I put Vegemite on the inside of his car door handles for when he got back to his car after the game. I know it was childish and petty, but it was harmless and made me feel a little better to get him back in that small way.
7. The game started around 1pm. I was just the reserve and so was watching the game from the sidelines for the first 15 minutes or so. Unfortunately we were losing the game and it was 40 points to 80 points when it was time for the Seekers and the Golden Snitch to enter the field of play.
8. I suggested to my coach that I should be fielded as the Seeker, since I could then focus on extending out the playing time by blocking the other team from catching the Snitch. The coach agreed and I took the field at the same time as Mike and immediately started blocking him from catching the Snitch.
9. I was quite successful for quite a while I think, but as a new Seeker I did find it hard to do my role while still keeping the broomstick between my legs. I lost balance and nearly fell over a few times.
10. That was pretty much what happened when I ended up accidentally running into Mike and hitting the back of his legs with my broomstick. How it happened was that I saw both Mike and the Snitch Runner change direction at the same time and head towards the middle of the field. I was a bit further away, so I knew I had to dash over and dive between the two of them so that Mike couldn't win the game there and then by catching the Golden Snitch.

11. I didn't hear any whistle from the umpire or anything else to signal a stop in play. As I was about to make the dive, my broomstick came loose and I had to grab it with both hands to stop it from falling to the ground. Unfortunately, doing this meant I lost balance and ended up falling into the back of Mike's legs, while I was still holding my broomstick.
12. I remember hitting the ground and also the back of Mike's legs with my broomstick – completely unintentionally of course. I immediately realised he had been hurt quite badly when he fell. I felt so bad and went out of my way to say sorry.
13. I saw Mike get taken away in an ambulance which I thought was a bit overkill. People get hurt playing sport all the time and usually just ice, strap it up and get on with it. That is certainly my experience having played rugby for many years.
14. The game continued after Mike was taken away, with a substitute seeker. We actually ended up winning the game afterwards, thanks to my strategy in drawing out game time through my blocking abilities.
15. A few days later I was asked by police to attend the Maylands Police Station to answer some questions about what happened at the game. It was only at that interview that I found out the extent of Mike's injuries.

Statement of Jim Hopper, witness for the Defence, dated 30 March 2023

1. My name is Jim Hopper. I am 29 years old and studying my PhD in developmental psychology at Perth University. I am the founder and manager of the Perth University Quidditch League.
2. I was the one who campaigned for Quidditch to be played as part of the University's official sporting program and was also the one who drafted the rules for the modified version of the game we play. The rules are mainly the same as those used by Cornell College in America but adapted for use in Australia. I've been involved in the sport for more than 10 years ever since I learnt how to play on exchange in America when I was an undergrad.
3. A copy of the rules is available on the league's website, and I have provided a copy of the rules to the police. Because of the university's concerns, I had to modify the rules we use in order to make it a 'low contact' version, whereas the usual rules are more of a full contact sport.
4. I must admit I prefer the full contact version, but the league had to make it low contact so that we were eligible for sporting grant money from the university. I actually do get a part-time salary from the university to run the Quidditch League, which is much needed income for me since I otherwise only receive scholarship money to live off.
5. On 20 March 2023 I was present at Bardip Reserve in Maylands to observe one of the games. Rival teams were playing and those matches tend to be quite exciting to watch. I had also asked Max Mayfield to meet me there so she could take photos for the university sports newsletter.
6. I was in the process of writing an article for the newsletter about Quidditch and hoping to get more students to sign up. I find that Quidditch can be a hard sport to explain to someone without showing them either photos or a short video clip of what it looks like.
7. The game that started at 1pm was a bit slow paced one but got a lot more interesting at the 20 minute mark when the Seekers and the Snitch Runner entered play.
8. I was impressed by the Pirates team who deployed a Seeker with the strategy of physically blocking the other Seeker from getting the Snitch. I think the Pirates Seeker was pushing the boundaries of the 'low contact' rules a little, and think he was lucky not to be penalised for committing a few fouls.
9. Unfortunately, there was a bit of an accidental injury that took place between the Seekers during the game. I saw exactly what happened because I was watching the Seekers like a hawk from the moment they were released. I also had a clear view over the top of the other spectators from a vantage point on top of the bleacher style seating stand.
10. What happened at the 22 minute, 35 second mark was that I heard the umpire blow the whistle to stop play, as a Vikings chaser had dropped their broomstick during a shot attempt.

11. The Pirates Seeker must not have heard the whistle because he kept running towards the Snitch Runner for a few more paces before tripping over his broomstick and falling into the back of the Vikings Seeker.
12. I knew the exact time because I was the timekeeper for the match and was recording any stoppages and fouls with a notepad and stopwatch.
13. I was a bit surprised when I saw that the Viking Seeker didn't get up off the ground, and that suddenly all these people were rushing over to give him first aid.
14. In Quidditch sport terms, I didn't think it looked like a very hard hit at all. By my reckoning, all it needed was a bit of ice and some sit down time. However, I think an ambulance ended up arriving and having to take the injured Seeker away on a stretcher.
15. By that time I was speaking to the umpire and the coaches and encouraged them to continue to play out the rest of the match. It would have been a bad look for the League if we didn't at least finish the match after an incident like that.
16. After the match started up again, the Pirates managed to catch up in points and went on to eventually win the game.
17. The University has since put a pause on all Quidditch League matches pending the outcome of these criminal proceedings involving the Pirates Seeker, who I now know to be Mr Lucas Sinclair.
18. It has been an unfortunate situation all round.

PERTH UNIVERSITY QUIDDITCH RULES



1. The game of Quidditch is played by 2 teams consisting of 7 players each as well as 1 neutral player (who plays the role of the Snitch Runner).
2. The object of the game of Quidditch is to score more points than your opponents by the end of the game by placing the Quaffle into the opponent's baskets (worth 10 points) and/or by capturing the Golden Snitch which is worth 30 points.
3. Each player must be mounted on a "broomstick" (of their own making) throughout the game. Each team is made up of 7 players. 1 Seeker, 1 Keeper, 2 Beaters and 3 Chasers.
4. The Chasers are there to try and keep possession of the Quaffle and to score a goal by throwing it through one of the opponent's 3 hoops. They can pass the Quaffle between each other but only one is allowed to enter into the scoring zone at any one time.
5. The Beaters role is to disrupt the other teams attempts to score goals by throwing Bludgers at the other side. The players in this position are usually the strongest and most physical within the team.
6. The Keeper is a defensive player and is tasked with defending the team's hoops.
7. The Seeker is the team member whose job is to capture the all-important Golden Snitch.
8. There is also 1 neutral player – the Snitch Runner who has attached to them the Golden Snitch. Their job is to run the length of the pitch and avoid being caught by each team's Seeker as capturing the Golden Snitch entitles the team who caught it to 30 points and brings the game immediately to an end. The Seekers and the Snitch are released onto the field sometime between 20 and 30 minutes after the start of a match.
9. Quidditch is a low contact game and players should not be contacting each other apart from incidental jostling, similar to what might be expected in soccer. Any intentional physical contact will be considered a foul.
10. Throughout the game, the sole duty of each team's Seeker is to capture the Golden Snitch which ends the game.

11. The winner of the game is the team who has the most points at the time the Golden Snitch is caught. This may, or may not be, the team who caught the Golden Snitch.

Equipment and Layout

12. The following equipment is needed to play Quidditch:
 - a) Broomsticks – all players must stay mounted on a “broomstick” at all times throughout the game. The broomsticks can be made out of a variety of materials including wood or PVC piping etc. The broom must be held between the player’s legs at all times.
 - b) Hoops – 3 hoops are situated at each end of the pitch, all at different heights (2m, 1.4m and 1m). They are placed approximately two broomsticks apart with the tallest on the left.
 - c) Quaffle – this is the ball in the game that only Chasers and Keepers can utilise. In this version of the game, it is a volleyball that has been slightly deflated. Chasers must try to throw the Quaffle through their hoops in order to score points.
 - d) Bludgers – In this version of the game, these are slightly deflated kids sized soccer balls which can only be used by the Beaters. There are 3 Bludgers on the pitch at any one time and Beaters throw them at the other side to ‘knock them out’ which means the opposition player has to stop what they are doing, dismount and run back to their own hoops and touch them before resuming play.
 - e) Golden Snitch – This is a tennis ball placed in a long yellow sock which is then attached (via velcro) to the neutral player - the ‘Snitch Runner’.
13. The ‘pitch’ to be used in this version of the game is the same as is used for adults playing Australian Rules Football games (i.e. oval).

Photo taken by Max Mayfield 20 March 2023, 1:04pm



Credits for Case Materials: The authors wish to acknowledge that the Quidditch rules used in these Case Materials were adapted from those published by Cornell College, USA and University of Sydney. The photo used in the Case Materials was taken by University of Sydney Quidditch Club downloaded at <https://www.usydquidditch.com/how-do-you-play-quidditch> on 3 April 2023 (all rights reserved).