

## JURD7122 CRIMINAL LAW

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**Common Assault**

Criminal law responds to violent behaviour with context as a determinant.

- Public setting, assault often = drunken violence between men.
- Private setting, assault often = domestic violence of men towards domestic partners;
  - 2 step process
    - 1 = Apprehended Domestic Violence Orders (ADVOs),
    - 2 = Criminal prosecution only if failed to comply with ADVO.
    - Generally 2 step process seeks to prevent violence with civil ADVOs.

Underreporting of violence crime is much higher than underreporting of property crime. Violence crimes have a familial or relational nature – people who are known to each other. Male violence against women and adult violence against children reflect importance of gender and age difference in violence behaviour.

Also existing are violence against social and group differences such as racial violence, violence against gays, official/institutional violence perpetrated by state agent such as police/prison officers.

**R Hogg and D Brown, Rethinking Law and Order (1998) page 585**

Interpersonal violence entails relationship between offender and victim.

Social interaction provides opportunities and contexts for violence events to occur.

Two broad types of violent interactions;

1. Confrontational violence – Between males, young and of marginal socioeconomic status where social interaction escalates into physical conflicts.
2. The other type of most common violent interaction occurs between family members and other intimates.

**Confrontational violence among men,**

- Excessive alcohol use is an important culture and situational ingredient in these patterns of violence.
- Death is uncommon and usually unintended outcome.
- Whereas other serious non-fatal injuries are often intentional and common.
- Majority of non-fatal injuries not reported, when reported, police regard as not worthy of any actions unless they are perceived as a breach of the peace or result in serious injury.
- Police statistic, victim surveys and hospital-based injury support this kind of violence most commonly confirms to pattern found in male-to-male confrontational homicides in social settings with alcohol playing an important part.
- Such assaults are less likely reported than stranger assaults.
- If reported, police likely to treat both parties as being at fault and not record the incident as a crime and victims were routinely advised to pursue civil remedies.
- Licensed premises tend not to call the police as they and the police regard it as ‘in-house matters’ and police deferred to the ‘authority’ of the staff even though violence on the part of bouncers constitute a major part of the problem.
- Underreporting is especially true for incidents between preadolescent adults.
- According to NISPP (National Injury Surveillance and Prevention Project) 30% of intentional injuries involving children 14yrs or younger occurred in or around schools.
- Three national surveys carried out in Australia (1975, 1983, 1993) confirm the prevalence of violence between young males with reported instances of assault at more than four times the rate of females.

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- **Malice aforethought** is simply an expression used to describe all of those states of mind that constitute sufficient mens rea for murder.
- In NSW with the exception of constructive murder, some degree of awareness by the accused of certain consequences which could result from his actions is required before he will be categorised as a murderer.

### For involuntary manslaughter;

- Defendant is not guilty simply because they cause death (liability is not absolute).
- Mens reas for manslaughter is **objective** based on the reasonable person test rather than subjective; the two versions of this objective standard are:
  - **Manslaughter by criminal negligence**
  - **Manslaughter by an unlawful and dangerous act.**

These two involuntary manslaughter standard **sets the lowest threshold** of which below this falls into the realm of non-criminal homicide (etc. accidental homicide).

Mens rea in murder, like manslaughter has a degree of culpability of the accused (**degree of awareness**) as to what the consequences of his actions might be,

- It suggest that those who intend to kill are necessarily the most culpable which **Aiton 1993** had shown is not the case;
  - Degree of awareness as to the consequences of action is only but one dimension.
  - **There are other factors which can be taken into account** in determining the level of culpability even though the current criminal law might be satisfied with the intention to kill;
    - The killing could be etc. a “mercy-killing” pf a terminally ill relative, in self-defence or under extreme provocation.
      - Some of these factors are taken into account in sentencing those convicted of murder, while others can be advanced as defences, although these are not defences in the fullest sense as the **probative burden of proof rest with the prosecution.**
      - The law has chosen to deal with these factors separately from mens rea issues.

### Constructive murder

- Originally, any killing during the commission of an unlawful act was considered murder, no matter how unexpected or unintentional it was.
- By the 18th century, the death had to be caused during the commission of another felony to be considered constructive murder.
  - Criminal offences were once divided between 'felonies', which were serious offences, and 'misdemeanours', which were less serious offences. This distinction has been eroded in Australia.
- The doctrine was often criticised. Eventually, the scope was narrowed further to include only felonies which were ‘dangerous to life and likely in itself to cause death’. **R v Brown and Brian 1949**

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- **20** Child murder—when child deemed born alive
- **21** Child murder by mother—verdict of contributing to death etc
- **24** Manslaughter—punishment

### Manslaughter

**25A** Assault causing death (One punch legislation)

**25B** Assault causing death when intoxicated—mandatory minimum sentence

### Crimes (Sentencing Procedure) Act 1999

- **54A** What is the standard non-parole period?
- **54D** Exclusions from Division (**Table: Standard non-parole periods**)
- **61** Mandatory life sentences for certain offences