

LAW1CRL

End-of-Year Examination Notes (2016)

TOPICS COVERED

MODULE A: Foundations of Criminal Law

Topic 1: Foundations of Criminal Law

MODULE B: Murder and Self-Defence

Topic 2: Murder – Physical Elements

Topic 3: Murder – Fault Elements

Topic 4: Self-Defence

MODULE C: Non-Fatal Offences Against the Person

Topic 5: Assault and Threats

Topic 6: Stalking and Endangerment

MODULE D: Sexual Offences

Topic 7: Rape and Sexual Assault

MODULE E: Property Offences

Topic 8: Theft

Topic 9: Obtaining Property by Deception and Criminal Damage

MODULE F: Strict Liability

Topic 10: Strict Liability, Absolute Liability and Mistake

INTENTIONAL AND RECKLESS MURDER CHECKLIST

Q1 Did the accused's conduct cause the victim to die?

Sub-questions

Did a human being other than the accused die?

- Was the victim a human being that had been 'fully born in a living state?' (Hutty)
- Did the victim suffer irreversible cessation of blood circulation or of all brain function? (Human Tissue Act 1982)

Did the accused's conduct cause that death?

- What was the total factual sequence of events leading up to the victim's death?
 - What are all the contributory factors that led to the death?
 - Would an ordinary person hold, as a matter of common sense, that the accused's act was a cause of the result? (Royall)
 - Did the accused's conduct contribute significantly to the victim's death; was it a substantial and operating cause of death? (Royal)
 - Was the conduct more than a necessary condition of death?
 - If there were other causally contributing factors, was the accused's conduct a significant factor?
 - If need not matter that the accused's conduct was one of several causes, or was not an immediate cause, of the death.
- Are there any complicating factors that apply in this case that look like they could 'break the chain of causation'?
 - Did something or someone else intervene after the accused's conduct [i.e. poor medical treatment]?
 - If so, what was the accused's conduct still a substantial operating cause of death?
 - Or did the accused's conduct merely provide the setting in which another cause operated?
 - Did the victim's own action causally contribute to their death?
 - If so, were the victim's actions a natural consequence to the accused's conduct?
 - Where the victim's act was a response to a *threat* created by the accused, was the victim's fear of the accused well-founded and was their response to the threat reasonable? (Royall)
 - Did the victim or someone else fail to intervene to prevent death?
 - If so, was the accused's conduct nonetheless still a substantial, operating cause of the death?
 - NB: where the victim refused medical treatment (e.g. leaving hospital against medical advice (Singapore) or refusing a blood transfusion (Blau)), this alone will not break the chain of causation.

Q2 Were the accused's actions that caused the victim's death, conscious, voluntary and deliberate?

Sub-questions:

- Did the accused perform an act?
- Did the accused omit to perform an action they had a legal duty to perform?
- Was the accused conscious at the time?
- Was the conduct a product of the accused's will and deliberate? (Ryan)

Q3 Did the accused intend to kill or cause really serious injury?

Sub-questions

Did the accused intend to kill?

- Is there evidence as to the accused's state of mind?
- Did the accused intend to kill the victim?
- Did the accused intend to kill someone, but not anyone in particular?
- Did the accused intend to kill a particular person other than the victim?
 - If so, was it a mistake or chance that it was in fact the victim who died?
 - In any case, 'transferred malice' applies.

Did the accused intend to cause really serious injury?

- The same questions apply as above, but adapted to cover really serious injury.
- Was the injury the accused intended really serious injury?
 - Was it a bodily injury, including unconsciousness?
 - Does not need to be life-threatening injury.

Q4 Did the accused know that their act would probably cause death or really serious injury?

Sub-questions

Did the accused know that their act would probably cause death?

- Was death likely to happen?
 - As opposed to death being simply possible
 - Probable is not mathematically probable
- Did the accused personally know that death was probable?
- Not enough if simply a reasonable person would have known.

Did the accused know that their act would probably cause really serious injury? (RSI)

- Was RSA likely to happen
- As opposed to RSI being simply possible
- Probable is not mathematically probable
- Did the accused personally know that RSI was probable?
- Not enough if simply a reasonable person would have known.

Q5 Did the accused act without lawful justification or excuse?

- If no (i.e. the accused acted *with* lawful justification or excuse), then accused is not guilty.
- If yes, then the accused is guilty.
- Note 1: The prosecution only has to prove this where a defence is 'open on the evidence' (i.e. where there is some evidence sufficient to raise the issue). If there is no such evidence, Question 5 is not raised.
- Note 2: For our purposes in LAW1CRL, only the defence of self-defence will be a possible defence. That topic will be the subject of a separate problem solving guide.

CHECKLIST SUMMARY

Cause of death	<p>Has the prosecution proved that the accused cause the victim's death?</p> <p><i>Consider – were the accused's actions a substantial or significant cause of the victim's death?</i></p>
Conscious, voluntary and deliberate acts	<p>Has the prosecution proved that the accused's actions that caused the victim's death were conscious, voluntary and deliberate?</p>
State of mind	<p>Has the prosecution proved that at the time the accused did the acts that caused the victim's death, s/he intended to kill or cause really serious injury?</p> <p>Has the prosecution proved that at the time the accused did the acts that caused the victim's death, s/he knew that his/her acts would probably cause death or really serious injury?</p> <p><i>Consider – Did the accused know that death or really serious injury were likely to result from his/her acts?</i></p>
Defences	<p>Has the prosecution proved that the accused acted with no lawful justification or excuse?</p>

THREATENING SERIOUS INJURY CHECKLIST

The elements the prosecution must prove beyond reasonable doubt

1. The accused made a threat to inflict serious injury; and
2. The accused either
 - a. Intended the complainant to fear that the threat would be carried out; or
 - b. Knew that the complainant would probably fear that the threat would be carried out; and
3. The accused acted without lawful justification or excuse

MAKING A THREAT TO INFLECT SERIOUS INJURY

Did the accused make a threat to inflict serious injury?

- Did the accused make a threat to the complainant?

Was is a threat to inflict serious injury upon [the complainant/another person]?

- Consider – a serious injury is an injury which endangers life or is substantial and protracted

Would a reasonable person who was informed about all of the circumstances have feared that the threat would be carried out?

- The complainant does not need to have feared that the threat would be carried out
- The accused does not need to have intended to carry out the threat

ACCUSED'S STATE OF MIND

Did the accused intend the complainant to fear that the threat to inflict serious injury would be carried out?

- The accused does not need to have intended to carry out the threat

Was the accused aware that the complainant would probably fear that the threat to inflict serious injury would be carried out?

- What did the accused think the likely result of his/her actions would be?

LAWFUL JUSTIFICATION OR EXCUSE

Did the accused act without lawful justification or excuse?

STATUTORY SELF-DEFENCE CHECKLIST

The prosecution must prove, beyond reasonable doubt, that when the acts said to constitute the offence were committed, either:

1. The accused did not believe that it was necessary to do what s/he did to defend him/herself; or
2. The accused's conduct was not a reasonable response in the circumstances as s/he perceived them

BELIEF IS NECESSITY

Has the prosecution proven, beyond reasonable doubt, that the accused did not believe that it was necessary to do what s/he did to defend him/herself, at the time s/he committed the relevant acts?

- What were the circumstances as perceived by the accused?

REASONABLE RESPONSE IN THE CIRCUMSTANCES

Has the prosecution proven, beyond reasonable doubt, that the accused's conduct was not a reasonable response in the circumstances as NOA perceived them?

- What were the circumstances as perceived by the accused?

APPLICATION OF FORCE CHECKLIST

The prosecution, must prove beyond reasonable doubt;

1. The accused applied force to the body of the complainant; and
2. The accused intended to apply force to the body of the complainant; and
3. The accused acted without lawful justification or excuse

APPLICATION OF FORCE

Did the accused apply force to the body of the complainant?

INTENTION

Did the accused intend to apply force to the body of the complainant?

LAWFUL JUSTIFICATION OR EXCUSE

Did the accused act without lawful justification or excuse?

NO APPLICATION OF FORCE CHECKLIST

The prosecution, must prove beyond reasonable doubt;

1. The accused acted in the way alleged; and
2. The accused intended to cause the complainant to apprehend the immediate application of force to their body; and
3. The accused's actions caused the complainant to apprehend the immediate application of force; and
4. The accused acted without lawful justification or excuse

APPLICATION OF FORCE

Did the accused act in the way alleged by the prosecution?

INTENTION

Did the accused intend to cause the complainant to apprehend the immediate application of force?

EFFECT ON THE COMPLAINANT

Did the accused's actions cause the complainant to apprehend the immediate application of force?

LAWFUL JUSTIFICATION OR EXCUSE

Did the accused act without lawful justification or excuse?

THREATNING TO KILL CHECKLIST

The prosecution, must prove beyond reasonable doubt;

1. The accused made a threat to kill; and
2. The accused either;
 - a) Intended the complainant to fear that the threat would be carried out
 - b) Knew that the complainant would probably fear that the threat would be carried out;and
3. The accused acted without lawful justification or excuse

CHECKLIST SUMMARY

Making a Threat to Kill	Did the accused make a threat to kill? Did the accused make a threat to the complainant? Was it a threat to kill [the complainant/another person?] Consider – the complainant does not need to have feared that the threat would be carried out; and the accused does not need to have intended to carry out the threat
Accused's state of mind	Did the accused intend the complainant to fear that the threat to kill would be carried out? Consider – the accused does not need to have intended to carry out the threat Was the accused aware that the complainant would probably fear that the threat to kill would be carried out? Consider – what did the accused think the likely result of his/her actions would be?
Lawful Justification of Excuse	Did the accused without lawful justification or excuse?

