

Crim Law Exam Revision LLAW 1212

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Offences of Causing Harm and Causing Serious Harm

CHARGE

- Charge/penalty/alternative verdict/burden of proof
- **Rule:**
 - ✓ s 23 (causing serious harm with intent or recklessly)
 - ✓ s 24 (causing harm with intent or recklessly)
 - ✓ s 5AA (aggravating factors)
 - ✓ Identify penalty for offence
 - ✓ s 25 (alternative verdict as per instruction from the judge)
- *R v Sumner; R v Fitzgerald* (aggravated and basic offences are separate offences)

VOLUNTARINESS

- **Rule:**
 - ✓ ***Ryan v R*** - mind is in control of the body, willed action, complex movements, setting of circumstances (set of actions creates voluntariness for all e.g. holding gun, slip, shoot = voluntary.)
 - ✓ *Ryan v R* – involuntary actions; accident, reflex, sleepwalking, impaired consciousness, extreme mental illness/intoxication
 - ✓ ***Murray v R*** supports these principles.
 - ✓ Evidentiary presumption of voluntariness - ***Police v Barber and R v Falconer***.

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CAUSATION_ (considered on its own, don't mention injury here, actual actions that caused the harm)

○ **Rule:**

- ✓ **s 21** (defines 'cause' as the accused's conduct being the 'sole **or** substantial' cause of the harm. It also states that a series of acts within the same incident amount to serious harm even if the consequence of each act in isolation does not amount to serious harm)
- ✓ Should address the specific cause of all injuries sustained i.e. each individual injury.

R v Staker – causing harm by omission – not defined by statute.

- ✓ Chain of Causation:
- ✓ *R v Beech* (1912) 7 Cr App R 97 (jumping from a window)
- ✓ *R v Bloomfield* (1998) 44 NSWLR 734 (falling due to the accused's punch).
- ✓ *Royall v R* – self preservation – 3 tests – *action of accused induces well-founded apprehension of harm to make natural consequence that the victim would seek to escape, foreseeable.*
- ✓ List the actions of conduct that preceded the harm

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LEVEL OF INJURY - HARM OR SERIOUS HARM

○ Rule:

- ✓ **s 21** (defines 'harm' as mental or physical harm)
- ✓ 'mental harm' is severe psychological damage
- ✓ 'physical harm' includes unconsciousness, **pain**, disfigurement or infection with disease (pain at minimum of any harm)
- ✓ 'Serious harm' endangers life, serious AND protracted impairment of physical or mental function OR serious disfigurement
- ✓ **R v Sully** = harm - fractures, soft tissue damage, bruising, grazing
- ✓ **R v Barendregt** = harm with 5 stab wounds as endangerment of life must actually, not might, endanger life
- ✓ Again should address each injury and perhaps apply the rule from the 'cause' definition if there are multiple injuries.
- ✓ Harm is inclusive, serious harm is exclusive to only the 3 categories listed in s21.
 - Statutory interpretation – each word has meaning (**Project Bluesky and Phanos**)
- ✓ 'Protracted' suggests less than permanent but findings for such are discussed in months: **R v Hawes**
- ✓ '[S]erious disfigurement' does not have to be permanent to be 'serious harm': **R v Wilkinson**.
- ✓ Serious disfigurement: **R v Wilkinson; R v Clavell**
- ✓ Aggravated Cause Serious Harm / serious and protracted in company) see: **R v Clancy** – ongoing, unprovoked, malicious attack on victim by Clancy and younger family members. Victim suffered brain injury, fractures, was on ventilator requiring 'extensive rehabilitation for several months'

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FAULT – INTENTIONAL OR RECKLESSNESS

INTENT

RECKLESSNESS

CONTEMPORANEITY/TEMPORAL COINCIDENCE

Conclusion

HOW DECISION TO PROSECUTE IS MADE

LAYING OF A CHARGE

PROCESSES

ACCUSED DECISIONS (PLEA/ELECTION)

PLEA

ELECTION

REASONS TO ELECT SUMMARY PROCESS

REASON TO ELECT INDICATBLE PROCESS

SUMMARY PLEA REDUCTION **s10B CLSA (2)**

INDICTABLE PLEA REDUCTION – **s10C CLSA**

SENTENCING

Preliminary matters

FACTORS

Focus on 4- 5 main ones

s10(2)(a-e)

S10(4) / s10(5)

EXAMPLE SENTENCING REPORT – FILL IN THE BLANKS AS RELEVANT

SENTENCING OUTCOMES (least to most punitive)