

LAW1114: CRIMINAL LAW

EXAM NOTES

CONTENTS

TOPIC	COMMON	OTHER
1 ELEMENTS OF A CRIME	<p>AR (p3)</p> <ul style="list-style-type: none"> - Positive, voluntary act (PVA) - Causation - Omission <p>MR (p4)</p> <ul style="list-style-type: none"> - Intention - Recklessness - Negligence 	<p>Contemporaneity (p4)</p> <ul style="list-style-type: none"> - Contemporaneity - Continuing act
2 NON-FATAL, NON-SEXUAL OFFENCES AGAINST THE PERSON	<p>Assault (p5)</p> <p>Causing serious injury in circumstances of gross violence</p> <ul style="list-style-type: none"> - Intentionally (ICSIGV) (p5) - Recklessly (RCSIGV) (p6) <p>Causing serious injury</p> <ul style="list-style-type: none"> - Intentionally (p6) - Recklessly (p7) - Negligently (p7) <p>Causing injury (p8)</p> <ul style="list-style-type: none"> - Intentionally - Recklessly <p>Common law assault (CLA) (p9)</p>	<p>Threats (p10)</p> <ul style="list-style-type: none"> - To kill - To inflict serious injury <p>Endangerment (p11)</p> <ul style="list-style-type: none"> - Life - Persons <p>Stalking (p12)</p> <p>Torts (p13)</p> <ul style="list-style-type: none"> - Tort v criminal law - Assault - Battery
3 SEXUAL OFFENCES	<p>Definitions (p14-16)</p> <p>Rape (p17)</p> <ul style="list-style-type: none"> - Rape - By compelling sexual penetration <p>Sexual assault</p> <ul style="list-style-type: none"> - Sexual assault (p18) - By compelling sexual touching (p18) - Assault with intent to commit a sexual offence (p19) 	<p>Threat to commit a sexual offence (p20)</p> <p>Other sexual offences (p20-21)</p> <ul style="list-style-type: none"> - Procuring sexual penetration by threats or fraud - Sexual servitude - Against persons with cognitive impairment by providers of medical or therapeutic services or workers - Against children
4 HOMICIDE OFFENCES	<p>Common law</p> <p>Murder</p> <ul style="list-style-type: none"> - Murder (p22) - Constructive murder (p23) <p>Manslaughter</p> <ul style="list-style-type: none"> - Voluntary (p24) - Involuntary <ul style="list-style-type: none"> - Unlawful and dangerous act (UDA) (p25) - Negligent (p26) 	<p>Statutory</p> <p>Driving (p27)</p> <ul style="list-style-type: none"> - Culpable driving causing death - Dangerous driving causing death <p>Suicide pact (p28)</p> <p>Infanticide (p28)</p> <p>Arson causing death (p28)</p>
5 DEFENCES	<p>Complete</p> <ul style="list-style-type: none"> - Duress (p29) - Self-defence (p30) - Necessity (p30) 	<p>Incomplete</p> <ul style="list-style-type: none"> - Family violence (p31-32) - Intoxication (p33) - Consent (p33) - Other (p33)

GENERAL

KEY

ELEMENTS

AR = actus reus (physical element)

MR = mens rea (fault element)

Defence

PARTIES

P = prosecution

D = defence / defendant

V = victim

A = accused

REFERENCES

Crimes Act 1958 (Vic), unless specifies otherwise

JDA = Jury Directions Act 2015 (Vic)

(...) = case

GOLDEN THREAD: PRESUMPTION OF INNOCENCE

Woolmington v DPP [1935]

- D innocent until proven guilty

STANDARD OF PROOF: BEYOND REASONABLE DOUBT (BRD)

BRD DEFINITION (s64(1) JDA)

(b) Not enough for P to persuade jury that A **probably guilty** or **very likely to be guilty**

(e) Reasonable doubt – NOT imaginary or fanciful doubt or an unrealistic possibility

LEGAL + EVIDENTIAL BURDEN OF PROOF

PROSECUTION	DEFENCE
1. AR 2. MR 3. Disprove any defence raised	1. Raise defence

1 ELEMENTS OF CRIME

AR ELEMENTS

ELEMENT	TEST
Positive, voluntary act (PVA)	<p>Positive, voluntary (Ugle)</p> <ul style="list-style-type: none"> - <i>willed</i> - Conscious mind - No signs of automatism <p>Involuntary (Falconer)</p> <ul style="list-style-type: none"> - If sound mind: <i>deprived of capacity to control actions by extraordinary event</i> - if unsound mind: <i>lost capacity to control actions</i> <p>Involuntary acts eg.s</p> <ul style="list-style-type: none"> - Spasm - Reflex action - Sleepwalking - Gross intoxication - Falling asleep at wheel
Causation	<ol style="list-style-type: none"> 1. Substantial and operating cause (Hallett) <ul style="list-style-type: none"> - D's act – a substantial and operating cause of death 2. Natural consequence (Royall) <ul style="list-style-type: none"> - D's actions made it natural consequence that V seek escape 3. Reasonably foreseeable consequence (Royall) <ul style="list-style-type: none"> - V's death – foreseen or reasonably foreseeable consequence of D's actions <p>Intervening act / <i>novus actus interveniens</i> (NAI) (Royall)</p> <ul style="list-style-type: none"> - Breaks chain of Causation <ol style="list-style-type: none"> 1. Act of God (Hallett) <ul style="list-style-type: none"> - Freak event - NOT natural occurrence 2. Act of V <ul style="list-style-type: none"> - Suicide - Escape from A (Royall) - Failure to take medical advice (Blaue) <ul style="list-style-type: none"> - Egg-shell skull rule: D takes V as found him / her 3. Act of 3rd party <ul style="list-style-type: none"> - must be free, deliberate and informed (Pagett) - Police intervention (Pagett) - Poor medical treatment (Jordan) <ul style="list-style-type: none"> - "palpably bad" - Pushed / forced D (Evans and Gardiner)
Omission	<p>Omission</p> <ul style="list-style-type: none"> - Failure to act - Law imposes duty to act

1 ELEMENTS OF CRIME

MR ELEMENTS

ELEMENT	TEST
Intention (subjective)	Intention (Westaway) <ul style="list-style-type: none">- If result crime: A intends result- If conduct crime: A decides to perform conduct- NOTE: not motive
Recklessness (subjective and objective)	Recklessness <ul style="list-style-type: none">- D foresees injury will probably result (Campbell)- Awareness of foresight of substantial, unjustifiable risk (Crabbe)- 'possession of foresight injury probably will result' (Campbell)- Probability: "real and not remote" chance, regardless of less or more than 50% chance of occurring (Boughey)
Negligence (objective)	Negligence (Nydham) <ul style="list-style-type: none">- Act / omission- Such great falling short of standard of care- Reasonable person would have exercised- Involves high risk of death or really serious injury- Merits criminal punishment- NOT require subjective appreciation by A that conduct unsafe (R v Lavender)

CONTEMPORANEITY

ELEMENT	TEST
Contemporaneity / concurrence	- AR and MR exist simultaneously (Thabo Meli)
Continuing act	- A develop MR during AR = contemporaneity (Fagan v Metropolitan Police Commissioner)