

## Table of Contents

### HOMICIDE

<b>Murder</b> .....	5
I. Does the accused's conduct satisfy the Actus Reus elements of murder under s18(1)(a) of the <i>Crimes Act</i> ? .....	5
A. Did the end of a human life occur? .....	5
B. Did the accused commit an act/omission? .....	5
C. Was the accused's conduct voluntary? .....	6
D. Did the accused's conduct cause the victim's death? .....	8
II. Did the accused fulfil the Mens Rea elements of murder under s18(1)(a) of the Crimes Act? .....	10
A. Did the accused have intent to kill? .....	10
B. Did the accused have intent to commit Grievous Bodily Harm? .....	11
C. Did the accused act with reckless indifference to human life? .....	11
D. Was the accused intoxicated? .....	11
E. Can the accused be held criminally liable for constructive murder? .....	11
III. Was there concurrence of the physical and fault elements of murder? .....	18
A. Can fault be imposed on a continuing act? .....	18
B. Can fault be imposed over a series of acts? .....	19
C. Can fault be imposed on acts which are nearly contemporaneous? .....	19
<b>Manslaughter</b> .....	20
I. Is the accused liable for voluntary or involuntary manslaughter? .....	20
A. Voluntary Manslaughter .....	20
B. Involuntary Manslaughter .....	20
II. .....	20
II. Is the accused liable for Unlawful and Dangerous Act Manslaughter? .....	21
A. Does the accused's conduct satisfy the Actus Reus and Mens Rea elements of the foundational offence? .....	21
B. Does the accused's conduct satisfy the Actus Reus elements of UDA Manslaughter? .....	27
C. Does the accused's conduct satisfy the Mens Rea elements of UDA Manslaughter? .....	29
D. Was there concurrence of the physical and fault elements of UDA Manslaughter? .....	31
III. Is the accused criminally liable for Criminally Negligent Manslaughter? .....	32
A. Does the accused's conduct satisfy the Actus Reus elements of CN Manslaughter? .....	32
B. Does the accused's conduct satisfy the Mens Rea elements of CN Manslaughter? .....	38
C. Was there concurrence of the physical and fault elements of CN Manslaughter? .....	39

### ASSAULT

<b>Common Assault</b> .....	41
General Rule .....	41
Intoxication: .....	41
I. Assault by threat of force .....	42
A. Did the accused's conduct satisfy the Actus Reus elements of assault by threat of force? .....	42
II. Assault by use of force .....	44
<b>Aggravated Assault</b> .....	48
I. Assaults accompanied by an intention of a particular kind .....	48

## SEXUAL ASSAULT

<b>Sexual offences:</b>	<b>53</b>
<b>Sexual Assault:</b>	<b>53</b>
<b>ACTUS REUS:</b>	<b>53</b>
(i) First AR element: <i>Sexual Intercourse</i>	53
(ii) Second AR element: ' <i>without consent</i> '	54
<b>MENS REA:</b>	<b>56</b>
(i) Knowledge	56
(ii) Recklessness	56
(iii) No Reasonable Grounds – S61HA (3) (c)	57
<b>AGGRAVATED SEXUAL ASSAULT</b>	<b>57</b>
Circumstances of aggravation	57
<b>Aggravated Sexual Assault in Company</b>	<b>58</b>
General Rule - S61JA(1)	58
Meaning of ABH:	58
Offensive weapon:	59
Meaning of in company:	59

## DEFENCES

<b>Provocation</b>	<b>60</b>
I. Was the provocative conduct towards or affecting the accused?	61
Towards or affecting the accused	61
II. Was the provocation induced by conduct of the deceased which was a serious indictable offence?	61
III. Did the victim's conduct cause the accused to lose self-control?	62
IV. Would the victim's conduct have caused an ordinary person to lose self-control to the extent of intending to kill/inflict GBH?	64
Conduct would have caused an Ordinary Person to Lost Self-Control to the extent of intending to kill or GBH	64
<b>Self Defence</b>	<b>66</b>
Procedural Rules	66
Burden and Standard of Proof	66
General Rule	66
Exceptions to the Rule	66
a. Limb 1: was the conduct necessary?	67
General Rule – s418 (2)	67
Intoxication	68
Nature of victim's conduct	68
What constitutes 'necessary'?	68
b. Limb 2: was the response reasonable (objective), given how the circumstances were perceived (subjective)	68
Application of 2 <sup>nd</sup> limb-consider	69
General Rule – s418 (2)	69
(first half of second limb, subjective perceptions) What is taken into account?	69
Limitations: Mistake, Delusion, and Intoxication	69

(second half of second limb, objective) Nexus between threat and response.....	69
<b>Excessive Self Defence .....</b>	<b>70</b>
General Rule – s421: Self-Defence – Excessive force that inflicts death .....	70
Analysis .....	70
<b>Defence of Insanity .....</b>	<b>71</b>
2i) Capacity to understand nature and quality of conduct .....	71
2ii) Capacity to know conduct was wrong .....	71
General Rule – .....	71
Disease of the mind .....	71
<b>Diminished responsibility/substantial impairment of mind .....</b>	<b>73</b>
Burden of proof .....	73
General Rule – .....	73
Intoxication- S23 (3).....	73
I. Did the accused have an abnormality of mind? .....	73
Abnormality of mind.....	73
II. Did this abnormality substantially impair the accused's mental capacity to: .....	74
III. So substantially as to warrant a reduction from murder to manslaughter? .....	74

## COMPLICITY

<b>Accessorial Liability .....</b>	<b>75</b>
<b>Joint Principle Liability.....</b>	<b>78</b>
<b>Extended Common Purpose (based on common purpose).....</b>	<b>79</b>

## PROPERTY OFFENCES

<b>Theft .....</b>	<b>81</b>
<b>Element of theft .....</b>	<b>81</b>
I. Can the accused be held criminally liable for the theft of the victim's item?.....	81
A. Pairing One: Appropriating Property & Dishonesty/Intention to permanently deprive.....	81
1. Physical Element One: Appropriating Property .....	81
2. Physical Element 2: 'Property' .....	83
3. Fault Element 1: Dishonesty .....	84
4. Fault element 2: intention of physically depriving.....	85
B. Pairing Two: Belonging to someone else & reckless as to property belonging to someone else 86	
1. Physical Element 1: Belonging to Someone Else.....	86
Fault Element 1: Recklessness as to the property belonging to someone else .....	89

# Homicide

## Murder

I. Does the accused's conduct satisfy the Actus Reus elements of murder under s18(1)(a) of the *Crimes Act*?

A. Did the end of a human life occur?

### Beginning of life

**Common Law** Position: Homicide can only be committed on a person who is 'in being' – *R v Hutty*

- 'Legally a person is not in being until he or she is fully born in a living state' – Barry J in *R v Hutty*

**Statute** Position: **Only for murder**

- 'Born **alive** if it has **breathed**, and... **wholly born** into the world whether it has an independent circulation or not.' – **s20 Crimes Act 1900**
- I.e. if charged under manslaughter, use Common Law position

Unborn child is not a legal human being – *Attorney General v T*

### End of life

A person has died where there has occurred – **Human Tissue Act 1983 (NSW) S 33**

- An irreversible cessation of all function of the person's brain; or
- Irreversible cessation of circulation of blood in the person's body

For **death of foetus**: (**s 4 Crimes Act 1900**): **Grievous bodily harm** includes:

- The destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm

B. Did the accused commit an act/omission?

Re Omissions - No general duty to prevent a crime – *R v Instan*

- **However - Duty to act** may arise as a result of a family relationship – *R v Russell 1933* – or undertaking to care for another unable to self care – *R v Instan*
- Can be criminally liable for failure to take measure within one's power to counteract **self-created danger** – *R v Miller*
- Where a duty to provide for in CL or statute, omission to act can amount to criminal conduct – *R v Miller*
- Once the accused becomes aware of the danger he has created, a duty arises to take reasonable steps to counteract the danger – *R v Miller*

C. Was the accused's conduct voluntary?

### General Rules

- The physical element must be acted voluntarily: 'pursuant to the accused's will, exerted with conscious control over the muscular contractions' – *Ryan v The Queen*
- Volition is presumed in the absence of contrary evidence (evidential burden on the defence, which then shifts to the prosecution BRD) – *R v Falconer, Ryan, Bratty v AG for Northern Ireland*
- Whether the act was voluntary is a matter to be left to the jury – *Murray v The Queen*

### Involuntary acts

(i) Accident - *Falconer*