

- ❖ Tick off each element for every offence, even if it is not an issue
- ❖ Work through each offender/offence separately, don't forget defences.
- ❖ If I am going to discount something, say why
- ❖ Don't go into a discussion for what each party will argue if it is not an issue
- ❖ Spot issues for each element. Argue both sides, exhaust all elements.
- ❖ Dot point if running out of time
- ❖ Don't presume- go on the facts given
- ❖ COUNTER ARGUMENT → go along on what you consider main contention points, draw on relevant facts, but don't do it if its super clear, such as with penetration
- ❖ Explain WHY something is the case
- ❖ JDA
- ❖ **Inside each 'issue', remember to use IRAC-HD** answers have detailed 'application'
- ❖ BE DIALECTICAL, but don't take the time on what D would say if it takes me a while to come up with it
- ❖ REMEMBER, WHEN MOVING FROM MURDER TO MANSLAUGHTER, SAY SOMETHING LIKE A) UNLIKELY MURDER ESTABLISHED, D MAY BE LIABLE MS/ MURDER MAY BE MADE OUT, BUT IN THE CASE THAT I AM WRONG
- ❖ IT LOOKS LIKE HD MARKS COME IN THE DEFENCES. MAKE SURE YOU HAVE TIME TO GET THERE, AND DON'T HARP ON THINGS NOT RELEVANT
- ❖ Succinct explanation of the law (elements of each offence, relevant statutory provision/case law) and then, using the facts I have been given, explain what is made out

Shorthand

P= prosecution

D= Defence

BRD= beyond reasonable doubt

BOP= Balance of Probabilities

BoP= Burden of Proof

SoC= Standard of Care

G/NG= Guilty/Not guilty

K = contract

→ leads to/therefore/causes

PVA= positive voluntary act

OTF= on the facts

OTOH= on the other hand

Cf= Counter Argument

Neg. = negligence

ELEMENTS OF A CRIME

AR + MR – Any defences = Guilty beyond reasonable doubt

Actus Reus

VOLUNTARY ACT (rather than an omission)

- P will argue the act was a 'willed action' (Ugle), directed by the conscious mind.
- Presumption that act is willed, controlled by D (Falconer) (involuntary= not guilty) *"An inference that the act is willed must be drawn- not as a matter of law but as a matter of fact- unless it be shown that the actor of a sound mind has been deprived of capacity to control his actions by some extraordinary event OR unless the actor, of unsound mind, has lost capacity to control actions (Falconer)"*
 - o AR requires proof BRD that acts were continuous and voluntary
- D can raise plausible evidence they were acting in state of automatism (Ryan). Then, P must dispel this BRD

Conduct crimes- AR is the prohibited conduct itself. Result Crimes- AR of the offence requires proof that the conduct caused prohibited result or consequence/ result/outcome punished

CAUSATION

Causal link between act and result

- 1) Substantial and operating cause test (Hallett & apply first- best test)
 - a. External NAI is potentially present
 - b. D's conduct had a substantial causal effect which subsisted up to injury, without being spent or without being sufficiently interrupted by some other event
- 2) Natural Consequences Test (Royall) (use if there is escape)
 - a. Where the conduct of the accused, inducing the V into a well-founded apprehension of physical harm... makes it a natural consequence that the V would seek to escape, and injuries V sustained in the course of escaping is caused by the accused conduct (Mason CJ)
 - b. Any other means of escape?
 - c. Is it a natural consequence that in doing x we get y, and y 'naturally' 'follows' or 'flows on' from X
- 3) Reasonable Foreseeability (Royall) (use if there is escape)
 - a. Consequences of accused's conduct were reasonably foreseeable to a reasonable person
 - b. D's act and then the ultimate end consequence, not the flukey stuff in the middle
 - c. Objective test.... However, this test has been criticised in Royall

Intervening Acts- NAI

- 1) Act of God
 - o Hallett – Tidal wave would be a freak event, rather than the natural tide
- 2) Act of Third party
 - o Intervention of a third party (Pagett)
 - Only NAI if the act is voluntary: "free, deliberate and informed"
 - o Medical treatment
 - Won't normally break the chain of causation unless it was so overwhelming or palpably bad that the original wound is merely part of the history (Evans & Gardiner). Acts of the accused were 'an' O+SC

- 'Palpably wrong' treatment (Jordan)
- 3) Act of the Victim
 - Blaue and Egg-Shell Skull Rule
 - Victim refusing treatment, pre-existing condition
 - Royall and escape of the victim
 - Did V's action a natural (or reasonable) consequence of his/her well-founded fear in response to offender's behaviour?
 - Brennan: Self-preservation must be reasonable
 - Deane and Dawson- self-preservation doesn't break chain if apprehension of harm is well-founded or reasonable in all circumstances and escape or self-preservation was the natural consequence
 - Mason and McHugh said self-preservation need not be reasonable. McHugh clarified that people don't think rationally with the threat of violence
 - Are there any other means of escape?
 - NC and RF test

Automatism

- Defendant isn't liable if the act was not willed or if accused was in state of automatism. Acts where D's will doesn't govern will of D's body
- P must establish VA, defence displace this.
- Involuntary acts include spasm, reflex, sleep walking
- Total absence of control and direction
- Act where D doesn't govern the will of their body (Ryan)

Omission

D is usually only liable for committing a positive act... there is however liability for a limited number of omission situations

Offences Against the Person - Overview

Common Law Assault (as per Case law)	Offences Against the person (under the <i>Crimes Act 1958</i>)
<p>As defined in <i>Fagan's</i> case:</p> <ul style="list-style-type: none"> Assault – Any act causing the apprehension of immediate and unlawful personal violence... <p>OR</p> <ul style="list-style-type: none"> Battery (now synonymous with the term 'assault') – Any actual use of unlawful force... <p>→ intentionally (<i>R v Westaway</i>) or</p> <p>→ recklessly (<i>R v Campbell</i>)</p>	<ul style="list-style-type: none"> s.15A&15B Causing Serious Injury intentionally or recklessly in circs of gross violence s.16 Causing Serious Injury intentionally s.17 Causing Serious Injury recklessly s.18 Causing Injury intentionally or recklessly s.20 Threat to kill s.21 Threat to cause serious injury s.21A Stalking s.22 Conduct endangering life s.23 Conduct endangering serious injury s.24 Causing serious injury negligently
...without consent	<p>...without lawful excuse</p> <p>Defences egs. Consent; Self Defence s322K; or Emergency s322R</p>

Common Law Assault

- 2 types: Non-Physical interference and physical interference (akin to battery)
- Assault- is the threat of physical contact. Battery is ACTUAL- but **DO NOT SAY BATTERY IN THIS PART OF THE EXAM.**
- Remember absolute innocence is assumed
- Defined in Fagan:
 - o Any act which **intentionally or recklessly**... causes another person to apprehend immediate and unlawful personal violence (apprehension, no touching); OR
 - o The actual **intended (or reckless)** use of unlawful force to another person without his consent

Offence	AR Elements	MR Elements/ Defence	Sentence
Common law assault (non-physical)	<ol style="list-style-type: none"> The accused committed a voluntary act (AR). The voluntary act caused the complainant to reasonably apprehend the immediate application of force to his or her body (<i>there MUST be apprehension of immediate application of force – fear could prove apprehension, but it is <u>apprehension</u> (i.e. a feeling/belief that you are about to hit) that is required</i>) (AR); Special elements: <ul style="list-style-type: none"> - Apprehension (Spec) - Imminent (Spec) 	<ol style="list-style-type: none"> The accused intended his or her actions to cause such apprehension, or was reckless as to that outcome (MR); and The accused had no lawful justification or excuse for causing the complainant to apprehend the application of immediate force. (Defence). 	<p>If considered indictable, carries a max of 5 years' imprisonment per s.320 crimes Act</p> <p>CL assault can be tried summarily... s.23 Summary Offences Act, liable to 3 months' imprisonment</p>
Common law assault (battery) (physical)	<ol style="list-style-type: none"> The accused committed a voluntary act (AR) The voluntary act caused force to be applied the complainant's body (AR); "Special Element= Unlawful contact/physical interference 	<p>The application of force was intentional or reckless (MR); and</p> <p>The application of force was without lawful justification or excuse (Defence).</p>	As above

- Watch for 'conditional threats', immediacy of harm and whether it appears OTF P was truly apprehensive