

CRIMINAL LAW EXAM NOTES

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TOPIC ONE: COURSE OVERVIEW

SOURCES OF CRIMINAL LAW

- Crimes in Victoria exist:
 - At common law
 - Statutorily
 - *Crimes Act 1958 (Vic)*

REQUIREMENTS FOR CRIMINAL LIABILITY

- (1) A person must have legal capacity to commit a criminal offence
- (2) That person must have committed the conduct elements of the offence, that is, the actus reus
- (3) The fault element, that is the mens rea, must have been present at the time of the actus reus
- (4) The absence of any defences of excuse or justification which would negate liability

CAPACITY

- **Children**
 - Children under the age of 10 are incapable of committing a crime in Australia
 - *Children, Youth & Families Act 2005 (Vic)* **S344**
 - Children between the ages of 10-13 are given a rebuttable presumption on criminal liability
 - ***R v M (1977); R v Whitly (1993); C v DPP [1996]; R v ALH (2003)***
- **Corporations**
 - A corporate is a legal entity and might be liable to the same extent as a natural person
 - There are two main ways to establish corporate criminal responsibility
 - (1) Vicarious liability
 - Where the individual who committed the acts that constitute the crime an employee acting within the scope of employment
 - ***Morgan v Babcock Ltd (1929)***
 - (2) Doctrine of Identification
 - Where the individual who committed the acts that constitute the crime are in a sufficiently senior and responsible position that those acts are in reality the acts of the corporation itself
 - ***HL Bolton Ltd v TJ Graham & Sons Ltd [1957]; Universal Telecasters (Q Id) Ltd v Guthrie (1978), Tesco Supermarkets Ltd v Natrass [1972]***
- It is not clear whether a corporation can be convicted of certain crimes that inherently require an act by a natural person
 - e.g. Sexual assault, perjury
 - The law of corporate manslaughter is still in development

- Also, a corporation cannot be convicted at common law of a crime that is only punishable by imprisonment, EG. Murder

ACTUS REUS

- **Actus reus** = guilty act
- Typically consists of:
 - A voluntary act OR
 - An omission to act where the law imposes a duty to act
- For some offences, the *actus reus* element is constituted by the act or omission
- For other offences, the *actus reus* element is only satisfied where the act or omission brings about certain results or consequences
- The act must be voluntary; a willed muscular movement, a conscious decision to move part of the body (or in the case of an omission, a conscious decision to refrain from acting)
- No offence is committed where the act is involuntary
 - EG. Accidental, duress, reflex, done in a state of automatism
- Generally, an omission cannot constitute the *actus reus* of a crime
 - UNLESS there is a legal duty to act
 - *R v Taktak* (1988)
 - A contractual duty to act
 - A statutory duty to act
 - An assumption of responsibility
 - A special relationship

MENS REA

- **Mens rea** = guilty mind
- The mental state prohibited by the law which encompasses various mental states
- Forms include:
 - Intention: where D's actual subjective intention of bringing about the prohibited result
 - Knowledge: where D knows that particular circumstances exist or that a particular consequence will come about
 - Belief: where D believes that certain facts are true
 - Recklessness: where D is aware of the risk of the result that is likely to occur and elects to proceed
 - Recklessness is an aggravated version of negligence; ordinary negligence will not normally suffice
- Crimes of strict and absolute liability do not require proof of *mens rea* or fault

TEMPORAL COINCIDENCE

- The *mens rea* and the criminal act or omission that brings about the other non-mens rea elements of the offence must exist at the same point in time
- Courts take a flexible approach and are willing to construe a series of acts as one individual transaction or one continuing act
 - *Thabo Meli v the Queen* [1954], *Fagan v Metropolitan Commissioner of Police* [1968]

DEFENCES TO CRIME

- Primary defences
 - The prosecution did not meet their burden of proof
- Partial defences
 - Self-defence
 - Duress
 - Necessity
 - Insanity

BURDEN OF PROOF

- The Crown bears the legal and evidential onus of establishing each element of the offence
- For most secondary defences, the accused bears the evidential onus of establishing each element of the offence, however the Crown retains the legal onus

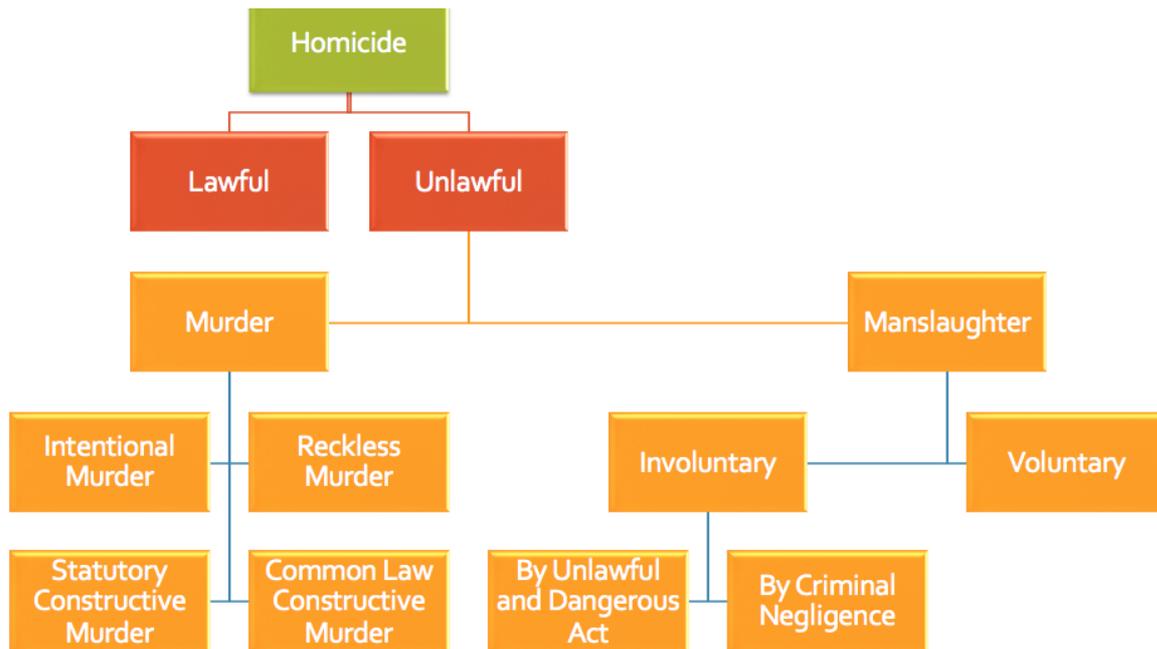
TRANSFERRED MALICE

- When the accused acts with the requisite mens rea to commit an offence against a particular person or property and instead succeeds in causing the same type of harm to another person or property, the law treats the accused in the same manner as if they had carried out the crime as intended
 - Does not apply if V is not a person in being (a foetus)
- The doctrine only applies if the accused ultimately achieves the same offence that they intended
 - Where the *actus reus* of the intended offence is identical to that of the resulting offence
- The doctrine is also applicable where the intended offence is one that requires that an accused act recklessly to bring about some forbidden result

TOPIC TWO: HOMICIDE AND ACTUS REUS

HOMICIDE

- **Homicide** is the term used to describe the lawful or unlawful killing of a human being
- A volitional act or omission to act that causes the death of a human being sooner than it would have otherwise occurred
 - The acceleration of death
- All categories of unlawful homicide share an identical *actus reus* component



- Distinction between murder and manslaughter depends upon one or both of two legal factors:
 - the *mens rea* required; and
 - the operation of some defences that reduce murder to manslaughter.

ACTUS REUS ELEMENTS OF HOMICIDE

- All categories of unlawful homicide share the same AR component
- To substantiate the *actus reus* of homicide, it must be shown that:

(1) VOLUNTARY ACT/OMISSION TO ACT

- A voluntary act (or omission to act where the law imposes a duty to act) has occurred
 - **An omission** applies when:
 - There is a special relationship between D and V – *R v Shephard*, *R v Russell*
 - Parents/minors, spouses, common carriers/passengers, teachers/pupils etc.

- Where D voluntarily assumes responsibility of V and undertakes to take care of a helpless person – ***R v Stone v Dobinson, R v Taktak***
 - This duty arises if D assumes responsibility to help a person and puts V in a position to seclude him so as to prevent others from helping

offence

- The act or omission must be voluntary
 - Conduct must have been willed by D or directed by a conscious decision of D
 - Unconscious if in a state of automatism, involuntary movement or conduct caused by another
 - But see ***R v Ryan***; holding the gun, loading the gun, pointing the gun are enough to substantiate voluntariness even if the trigger is a reflex
 - If there is a series of acts, the courts will look at the series of acts to see if it can be regarded as one transaction that was voluntary – ***R v Butcher***
 - There is a rebuttable presumption that D's acts are voluntary

(2) CAUSING THE DEATH

- The voluntary act must have caused the death of another
 - A causal connection must be established between D's voluntary act or omission and the non-*mens rea* elements of the offence
 - It is tested objectively whether the conduct that caused the death of V occurred in a continuing manner without an intervening event
 - When establishing causation, two types are looked at:

1. Factual causation

- That "but for" D's conduct, the death would not have occurred
 - EXCEPT where two or more causes concur and either one would have brought about the death
 - Doctrine of innocent agency – where adults get children to commit crimes for them
 - Omissions where there is a duty to act – ***R v Russell***
- The Common Sense test – leaves the question of causation to juries by encouraging them to apply their common sense to the facts, and reminding them of the seriousness of their determination

2. Legal causation

- The absence of a superseding event
- Requires that:
 - a. D's conduct is the operating and substantial cause of V's death; and
 - b. The immediate cause of death is not an intervening act or event that breaks the chain of causation
 - An extraordinary event may break the chain of causation – ***R v Hallett***
 - It is not required to establish the precise cause of death where D commits a series of acts – ***R v PL***
 - c. Egg shell skull rule: take your victim as you find them physiologically, psychologically, physically and religiously – ***R v Blaue***

- d. Rule of intended consequence: where the result was intended by D, D's conduct will be deemed the legal cause of death regardless of any superseding events
 - Applies where D is aware of V's psychological frailty where V causes their own death as a result
- Medical treatment cases
 - If medical treatment is so abnormal as to be described as "palpably wrong" it will break the chain of causation - *R v Jordan* (allergic to medication)
 - Only if it can be said that the original wounding is merely the setting in which another case operates, can it be said that the death is a result of the wounds; the second cause has to be so overwhelming as to make the original wound merely be part of history - *R v Smith* (access to poor medical treatment)
 - Failure to administer medical treatment does not break the chain of causation where it is not palpably wrong - *R v Evans and Gardiner*
- Fright and Self-preservation Cases
 - *Royall v the Queen*
 - The causal chain is not broken where P can prove that:
 1. D induced in V a well-founded apprehension of physical harm
 2. It was reasonable for V to wish to escape
 3. V selected a reasonable mode of escape
 - Look at V's response being taken immediately and with a sense of emergency
 - If V's reaction is unreasonable or disproportionate, the causal chain may be broken
 - Overrules *Blaue* in self-preservation cases only

(3) OF A PERSON

- V must be a human being
- Cause of death must be caused by a human being other than V
- Only a person "in being" can be a victim of homicide that is, "a separate and independent existence in the sense that it does not derive its power of living from its mother"
 - ***R v Hutty***
- Guidance on when a death occurs is found in **S41 Human Tissue Act**
 - Irreversible cessation of brain function; or
 - Irreversible cessation of blood circulation
- Medical advancements can make this unclear

Mens Rea Continuum for Murder



TYPES OF MURDER

INTENTIONAL MURDER

- Mens rea = intention to cause death or grievous bodily harm
- Refers to a person's conscious objective or purpose
- Can be inferred through actions or words
- An individual will commit a criminal act with intent when it is that person's conscious objective or purpose is to engage in the act which the law forbids or to bring about an unlawful result
- Accused must act with a conscious purpose to bring about such a result OR act with the knowledge that such a result was substantially certain to result of his or her voluntary act or omission
- Where D causes the death of another with intention to kill or cause grievous bodily harm

RECKLESSNESS MURDER

- Mens rea = recklessness
- Where D causes the death of another while acting with recklessness as to causing death or grievous bodily harm
- Under the common law it is murder for D to kill V by engaging in conduct that s/he foresees will probably cause the death or grievous bodily harm of V, even if D does not intend that result
 - The test is subjective; look at D's knowledge
 - It does not need to be prove that D was aware that his or her conduct was wrong – *R v Morrison*
- Previously, to satisfy the *mens rea* of reckless murder, it was required that D has:

- Foresight of the probability or possibility that their actions will result in grievous bodily harm or death; and
- A willingness to run the risk of those consequences; and
- There is a subjective standard for state of mind
 - ***R v Pemble***
- HOWEVER, no longer can the accused be held accountable for reckless murder if they thought it was merely possible that their conduct could have caused grievous bodily harm or death; they (subjective) must have thought it probable – ***R v Crabbe*** (refined the ***Pemble*** decision)
 - Probable is not a mathematical term and the jury should not attempt to translate the knowledge of D into terms of mathematical probability – ***Boughey v the Queen***
 - “Probable” means likely to happen and can be contrasted with something that is ‘merely possible’ – ***R v Crabbe, Boughey v the Queen***
 - Risk must be substantial – a real and not remote chance, irrelevant whether more or less than 50% - ***Boughey v the Queen***

GRIEVOUS BODILY HARM

- Grievous bodily harm:
 - Really serious injury – ***R v Miller, R v Perks, R v Schaeffer, R v Barrett***
 - May be caused without the use of a weapon – ***R v Heaton***
 - May be caused by cutting off V’s air supply by placing a pillow over their face to stop them from screaming – ***R v Rhodes; R v Ross***
 - Matter for the jury to determine – ***R v Rhodes; Noel John Meyers v The Queen***

STATUTORY CONSTRUCTIVE MURDER

S3A Crimes Act 1958

Unintentional killing in the course of furtherance of a crime of violence

(1) A person who unintentionally causes the death of another person by an act of violence done in the course of furtherance of a crime the necessary elements of which include violence for which a person upon first conviction may, under or by virtue of any enactment, be sentenced to level 1 imprisonment or to imprisonment for a term of 10 years or more shall be liable to be convicted for murder as though he had killed that person intentionally

(2) The rule of law known as the felony-murder rule is hereby abrogated

- The elements drawn from the legislation:
 - (1) Death is unintentional
 - (2) Conduct of D must cause the death of another human being
 - (3) Death must occur in the course of or furtherance of an offence where a person may be subjected to imprisonment for 10 years or more
 - (4) Death is caused by an act of violence and involves an offence which has necessary elements including violence
 - (Such as armed robbery)
 - ***R v Butcher***
 - In act which causes death must be intentional and must be an act of violence
 - An act of violence is an act of a violent kind, for there is no legal definition of violence as such inside or outside which any particular act or threats may be said to fall

- Violence is understood to embrace actual force used to overcome or nullify resistance

COMMON LAW CONSTRUCTIVE MURDER

- At common law, it is murder for a D to cause the death of V by violently resisting, preventing, or escaping from a lawful arrest
 - ***R v Walker***
 - The relevant time extends beyond the crime is technically completed

TEMPORAL COINCIDENCE

- ***Thabo Meli, Le Brun's Case***
 - The *actus reus* and *mens rea* have to exist together
 - Any type of overlap will suffice; so long as there was intent at some point in the course of the series of actions causing death
 - Courts will look at the series of acts as forming part of the same transaction in certain circumstances to overcome temporal coincidence issues
- If there is a series of acts or sequence of events which are so connected so that they can be regarded as one indivisible continuous transaction causing death, then provided that the MR element is formed during that series/sequence of events and before it ends, then temporal coincidence will be established