

Criminal Laws Summary

1. Legal personhood - age/mental illness
2. AR - actual act/omission
 - a. Consequence, Causation, Voluntariness, Circumstances
3. MR
 - a. Subjective – Recklessness, Knowing, Intent, Belief
 - b. Objective – Negligence, Reasonableness
 - i. Absolute liability - no MR
 - ii. Strict liability - honest/reasonable mistake of fact
4. Coincidence of AR/MR
5. Negative defences
6. Burden on the prosecution - beyond a reasonable doubt

Assault

AR	MR
1) Act (POSITIVE) <ol style="list-style-type: none"> a) Act of touching with unlawful force: <u>Fagan v Commissioner</u> <ol style="list-style-type: none"> i) <u>DPP v JWH</u>: Any amount of force 'be it ever so small' (spitting) → UNLAWFUL b) Threat of imminent force → which causes another person to apprehend immediate and unlawful violence <ol style="list-style-type: none"> i) <u>Knight</u>: threat is strong enough to take it seriously and cause fear – i.e. general nature = insufficient ii) <u>Zanker v Vartzokas</u>: fear did not have to be immediate, but within the parameters of the incident → continuing fear 	1) Intent to affect unlawful touching (or to create apprehension of imminent contact) <ol style="list-style-type: none"> a) Intention to touch b) <u>Edwards v Police</u>: defendant's intention to produce that expectation (imminent unlawful violence) in the victim's mind 2) OR Recklessness → <u>Macpherson v Brown</u> : <ol style="list-style-type: none"> a) <u>Blackwell v R</u>: The accused realised that the complainant might (possibility) fear that he or she would be subjected to immediate and unlawful force, yet took the risk anyway b) NOT including inadvertent recklessness • Assault cannot occur unless or until the victim is aware of the accused's actions: <u>Pemble</u>
2) Without consent – circumstance <ol style="list-style-type: none"> a) <u>Wilson</u> – assault with consent = no assault at all b) Is consent to assault good consent? → ABH 	
3) Coincidence of AR and MR <ol style="list-style-type: none"> a) Except: where there is a continuing act (threat) 	
4) Voluntariness	

Consent to harm

- Consider level of harm → ABH and above – good consent is usually not available
- EXCEPT where there is **public interest**
 - Construction of what the acts are, what they do, what they mean, depending on the judges' experiences, values, morals including prejudices

- **Wilson** → relevant where husband branded wife (No aggressive intent)
- **Aitken** → relevant – consensual horseplay
- **Donovan** → Consent IRRELEVANT – where infliction of ABH is a probable consequence
- **Richardson** → consent relevant – only a mistake as to the nature of the act or the identity of the person doing it vitiates consent

Brown

- Where the assault/infliction is **injurious to the public as well as to the person injured**, consent is no defence to the person who inflicted the injury
- Unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence

Consent to medical treatment

- 'informed consent' → patients consent to medical treatment – given freely after an explanation of the basic nature/risks
- **Marion's Case** → sterilisation of a minor – falls outside the scope of powers, rights, duties of guardian
 - Consent = NOT GOOD

Acceptable violence

- Corporal punishment of children – **W & DL**
 - Schools → **Children (Education and Care Services National Law Application) Act 2010** → s 166
 - Parents → s 61AA **Crimes Act** → codified, confined criminal proceedings to force applied to the head/neck/any part of the body if the harm lasts for more than a short period
- Violence in Sport → Contact sports
 - Sports governing bodies → trusted to contain physically invasive conduct to an acceptable level
 - **Re Jewell** → Reasonableness test, player cannot expect opposing players will strictly adhere to the rules
 - **Stanley** → Player does not consent to any act which is not done in the legitimate pursuit of game's object
- Surgery, Lawful correction, Horseplay

Aggravated Assault

- **Aggravating factors**
 - The harm caused
 - Where the person intends to cause a level of harm
 - Method used
 - Status of the victim
 - The setting - e.g. schools

Types of aggravated assault

- Assault with specific intent
 - S 27, 29 - assault with intent to commit murder
 - S 33-33B - intent to do grievous bodily harm
 - S 37(2), 38, 58 - intent to commit an indictable offence
- Assault causing particular injuries

Type of Assault – STATUTORY PROVISION	Definitions/ Common law
Common Assault Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.	S 61

<p>Actual bodily harm (s 59) 59 Assault occasioning actual bodily harm (1) Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to imprisonment for five years. (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 7 years.</p>	<p>‘Bodily harm has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor. Such hurt or injury need not be permanent but must be more than merely transient or trifling’: <u>Donovan</u> [1934]</p> <ul style="list-style-type: none"> Includes psychiatric injury: <u>Lardner</u> But does not include mere emotions such as fear or distress or panic: <u>Chan-Fook</u>; must be recognised psychiatric illnesses: <u>Ireland and Burstow</u>.
<p>Grievous Bodily Harm (s 33) → also wounding (1) Intent to cause grievous bodily harm A person who: (a) wounds any person, or (b) causes grievous bodily harm to any person, with intent to cause grievous bodily harm to that or any other person is guilty of an offence. Maximum penalty: Imprisonment for 25 years. (2) Intent to resist arrest A person who: (a) wounds any person, or (b) causes grievous bodily harm to any person, with intent to resist or prevent his or her (or another person's) lawful arrest or detention is guilty of an offence.</p> <p>(s 54) 54 Causing grievous bodily harm Whosoever by any unlawful or negligent act, or omission, causes grievous bodily harm to any person, shall be liable to imprisonment for two years.</p>	<p><u>Crimes Act</u> 1900 (NSW), s 4 4 Definitions “Grievous bodily harm” includes:</p> <ol style="list-style-type: none"> 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, and Any permanent or serious disfiguring of the person, Any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease). <ol style="list-style-type: none"> E.g. assaults where the attacker used a syringe filled with AIDS-infected blood <p>Common law:</p> <ul style="list-style-type: none"> ‘Really serious injury’: <u>Smith</u> Does not require that the injuries be permanent or that the consequences of the injury are long-lasting or life threatening: <u>Haoui</u>
<p>Wounding (s 35(4)) (4) Reckless wounding A person who: (a) wounds any person, and (b) is reckless as to causing actual bodily harm to that or any other person, is guilty of an offence.</p>	<p>An injury which breaks the continuity of the skin: <u>R v Newman</u>.</p> <ul style="list-style-type: none"> Involves the breaking or cutting of the interior layer of the skin (dermis) but the breaking of the outer layer (epidermis) is not sufficient: <u>Shepherd</u>. A wound may be inflicted by a fist and no instrument or weapon need be used: <u>R v Bullock</u> <u>Shepherd</u>

Offensive Weapons

- S 4 Definitions: Dangerous weapon = firearm, prohibited weapon, spear gun
 - Offensive Dangerous weapon: dangerous weapon, anything made/adopted for offensive purposes
- S 33A Discharging firearm etc. with intent: (25 yrs)
 - (1) Intent to cause grievous bodily harm - discharges firearm (or loaded arm)/attempts
 - (2) Intent to resist arrest
- s 33B Use or possession of weapon to resist arrest → with intent to prevent or hinder the lawful apprehension or detention – prevent or hinder a police officer from investigating (15 years)
- Section 35A: Causing dog to inflict GBH (10 years) or ABH (5 years).
- Section 39: Using poison (or other intoxicating substance, destructive or noxious thing) etc to endanger life or inflict GBH (10 years).
- Section 41: using poison to injure to cause distress or pain (5 years).
- Section 49A: throwing rocks and other objects at vehicles (5 years)

Homicide

S 18 Murder and manslaughter defined

- 1)
 - (a) Murder shall be taken to have been committed where the **act** of the accused, or thing by him or her **omitted** to be done, **causing the death** charged, was done or omitted with **reckless indifference to human life**, or with **intent to kill or inflict grievous bodily harm** upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.
 - (b) Every other punishable homicide shall be taken to be manslaughter.
- 2)
 - (a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.
 - (b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only.

Penalty: murder = life, manslaughter = 25 years

Murder

AR	MR
<ul style="list-style-type: none"> • Act/omission - may be the accomplice <ul style="list-style-type: none"> ○ Omission → Only where there is a duty to act ○ Russell: father has duty to take reasonable steps to take care of his children <ul style="list-style-type: none"> ▪ But no such duty to his wife ○ Taktak: must be a LEGALLY RECOGNISED DUTY <ul style="list-style-type: none"> ▪ NOT mere moral obligation ▪ Statute imposed ▪ Certain status relationship ▪ Voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid (Stone and Dobinson) • Death (consequence) <ul style="list-style-type: none"> ○ Brain death or stopping of blood circulation • Causation → Act must CAUSE death <ul style="list-style-type: none"> ○ Royall: The accused need not intend the precise way in which the death occurs → 3 tests 	<ul style="list-style-type: none"> • Intent to kill • Intent to cause grievous bodily harm → s 4 (see above table) • Reckless indifference to human life <ul style="list-style-type: none"> ○ Crabbe: <ul style="list-style-type: none"> ▪ Knowledge of the probability that his acts will cause death ▪ Knowledge of POSSIBILITY is not enough ▪ Willful blindness = person can only deliberately refrain from making inquiries by acknowledge a risk already exists ○ Royall: foresight of GBH = not enough ○ Annakin: Probable = likely to happen <ul style="list-style-type: none"> ▪ Boughey – whether he knew to be likely to cause death in the circumstances
<ul style="list-style-type: none"> • Voluntariness (presumes = doesn't prima facie need to be proved by the prosecution) - proven on the evidentiary burden - D brings enough evidence to satisfy the judge as gatekeeper that the issue is one that has merit - defence of automatism 	<ul style="list-style-type: none"> • Constructive murder - MR from another base offence <ul style="list-style-type: none"> ○ Only useable if there is a base offence • Attempt