

# CRIMINAL LAWS: FINAL EXAM NOTES

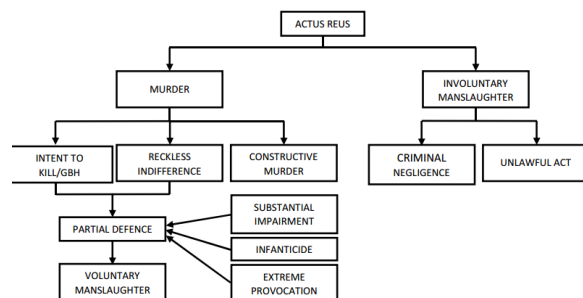
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## Homicide

Actus Reus: Causation- act or omission has caused death

1. Relevant act identified.
2. Was the act voluntary: act must be willed: *Ryan*
  - Actions in reflex not willed, 'reflex action' etc can be mere excuses in dangerous situations: *Ryan*
3. Did it breach a duty? Not all moral obligations lead to a duty to act: *Instan*
  - Four situations of duty: statute, status relationship, contractual, and voluntary assumption: *Jones v USA*
    - E.g. status; children not wife (*Russell*), siblings (*Stone v Dobson*), unborn children (*Sood No 3*)
    - E.g. voluntary assumption; attempting to care for (*S v D*), other party largely helpless (*Beardsley*) and secluded to prevent others from rendering aid (*Taktak*)
4. Causation: most accepted is substantial and operating cause test: *Smith*
  - Common-sense not philosophical or scientific question: *Royall*
  - Includes situations where D brought about a further/new danger: *Hallett*.
  - Also extends to any acts done 'involuntarily', or in self-defence, in response to D's actions: *Pagett*.
  - Human Tissue Act NSW s 33; see policy for tests.
  - NVA? See medical treatment
    - e.g. *Smith*: doctors dropped victim twice, wound not properly assessed which led to decreasing of recovery chance by 75%. However, even 25%, substantial cause of death from D.
5. Where act does not cause death, attempted murder can be charged, requiring proof of an actual intent to kill: *Knight*.
6. Eggshell-skull rule applies: *Blau*.



## Murder

Mens Rea:

- Intent to kill or inflict GBH. Precise method intended by accused does not have to be the final method that resulted in death: *Royall*
- Reckless indifference to human life: defendant foresaw the probability (as opposed to possibility) of his/her actions resulting in death (as opposed to GBH) and yet continue anyway: see *Crabbe*
- Constructive murder (no MR requirement if homicide committed during the commission, by either party, of a crime attracting 25years+ imprisonment)
- Cannot consent to your own murder or serious assault upon yourself: *R v Brown* (1994) 1 AC 212.

## Sentencing

- Maximum sentence is life imprisonment, if courts has satisfied that offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through imposition of LI (*Crimes (Sentencing Procedure) Act 1999, s 54A(2)*).
- Standard non-parole period of 20 years, raised to 25 in some instances.
- DPP charge is murder, jury decides if manslaughter or not
  - Maximum sentence for Manslaughter is 25 years- *no standard non-parole period*.

## Medical Treatment

- Person has died when: irreversible cessation of all function of the person brain occurs; or irreversible cessation of circulation of blood occurs: *Human Tissues Act 1983 s 33*
- In order to break chain of causation, reckless medical treatment is required. Negligence or incompetence is not enough: *Cheshire*, neither does malpractice: *Smith*.
- If a competent adult patient makes a clear direction which the particular situation, the doctor must obey it: *Hunter and New England Health Service v A* (unless unlawful)
- General rule: if D 'hastens' death of deceased they are responsible for causing it (*Dyson*), unless patient is terminally ill, medical staff are entitled to relieve patient's pain even if this shortens their life span (*Adams*).
- A doctor who insists on carrying out life sustaining medical treatment, against the wishes of a patient, will be guilty of battery UNLESS a court acting in Parens Patriae jurisdiction: *Royal Alexandria Hospital*.
- NSWSC has a *parens patriae* jurisdiction to do what is 'in their best interests' (*Northridge v Central Sydney Area Health Service* (2000) 50 NSWLR 549)
  - Discontinuation of life support is held to be an omission, and will not be unlawful unless it constitutes a breach of duty to the patient. If there is no hope of recovery, then the medical care is no longer in the patient's best interests. (*Airedale NHS Trust v Bland* [1993] 2 WLR 316)
  - End-of-life care and decision making in NSW: advocates a 'consensus-building approach' involving both doctors and family (*parens patriae* jurisdiction is last resort).