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Introduction:

[] could be charged with [], under s [] of the Crimes Act 1900 (NSW). The prosecution bears the legal burden of proof, to establish all the elements of this offence beyond a reasonable doubt (*Woolmington v DPP* [1935]). [] may raise the defence of []. [] bears the evidential burden to raise this defence to the standard of [] (*authority*). The prosecution must then negate this defence beyond a reasonable doubt (*Woolmington v DPP* [1935]).

Conclusion:

The prosecution will not be able to establish all the elements of [], contrary to s[] of the Crimes Act 1900 (NSW), as the element/s of [] cannot be established. [] will be acquitted of this charge.

OR

There is sufficient evidence for the prosecution to establish all the elements of [], contrary to s [] of *the Crimes Act 1900* (NSW). [] will likely be found guilty of [] and will face a maximum of [] years' imprisonment.

Fraud: 10 years imprisonment

Sexual Assault: 14 years imprisonment

Murder: 25 years or life imprisonment

Manslaughter: 25 years

Assault Causing Death: 20 years (not intoxicated); 25 years with minimum sentence of 8 years (intoxicated)

Attempt: penalty of the attempted offence

MURDER (s 18)

The prosecution must establish all elements beyond a reasonable doubt.

ACTUS REUS	MENS REA
1. Voluntariness	1. Intent to kill
2. Act/omission	3. Intent to inflict GBH
4. A human being was killed	2. Reckless indifference to human life
5. Causation	
TEMPORAL COINCIDENCE	

ACTUS REUS

1. Voluntariness

The act must be voluntary (*Ryan v The Queen 1967*). The prosecution is entitled to presume voluntariness, unless there is evidence that the defendant's conduct was not conscious or willed (*R v Falconer 1990*; *Ryan v The Queen 1967*).

2. A human being was killed

A human being is someone who has been wholly born into the world and has breathed, regardless of whether they have had independent circulation or not (*s 20 Crimes Act 1900 NSW*). Thus, a foetus is not considered a human being. Death involves the irreversible cessation of all function in the person's brain OR the irreversible cessation of circulation of blood in the person's body (*s 33 Crimes Act 1900 NSW*). Thus, a person on life support cannot be murdered.

MENS REA

1. Intent to kill

An intent to kill is a subjective test, where the prosecution must prove the defendant's actual state of mind (*R v Schonewille 1998*). An intention to kill must be the only reasonable inference in the circumstances (*R v Schonewille 1998*). It does not matter if the defendant had no particular person in mind, so long as they had an intention to kill (*R v Martin 1881*).

2. Reckless indifference to human life

Where there is a reckless indifference to human life, death must be a probable result of the defendant's act/omission (*R v Grant 2002*). Probability means a substantial or real chance, as distinct from a remote risk or mere possibility (*R v Crabbe 1985*). This does not require that the risk is more probable than not (i.e. over 50%), as the courts have demonstrated a refusal to talk in mathematical terms (*R v Faure 1999*). A subjective awareness or foresight of the consequence is essential, it is not sufficient that an ordinary person would have foreseen the probability of death occurring (*Pemble v The Queen 1971*).

3. Intent to inflict GBH

It is sufficient if the defendant intended to inflict grievous bodily harm, where grievous bodily harm is 'really serious bodily injuries' (*R v Perks 1996*). The injuries do not need to be permanent or life threatening (*Haoui v The Queen 2008*), but must exceed the threshold of serious bodily injury (*Swan v The Queen 2016*). Even where GBH results, it is necessary to show that the accused intend to cause GBH (*Griffiths 1990*). Ultimately this is a fact for the jury to decide (*Swan v The Queen 2016*).

- GBH may be caused without the use of a weapon (*R v Heaton 1899*), but where a weapon is used, an intent to cause GBH is easily inferred (*R v Perks 1996*).
- Cutting of air supply; a violent assault to the throat calculated to render a victim unconscious, amounts to GBH (*R v Rhodes 1984*; *R v Ross*)
- Where no operative treatment required, no permanent injury & only a short period of time in hospital = no GBH (*Swan v The Queen 2016*).

TEMPORAL COINCIDENCE

It is necessary that the actus reus and mens rea coincide (*Fagan v Metropolitan Police Commissioner 1969*; *Thabo Meli v R 1954*). There is no evidence to suggest that the mens rea was not contemporaneous with the act.