

TABLE OF CONTENTS

INTRODUCTION	3
GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY	4
ELEMENTS OF AN OFFENCE:	4
DEFENCES	5
STRICT LIABILITY	5
INCHOATE CRIMES	5
PARTICIPATORY LIABILITY ('COMPLICITY')	5
THE DOCTRINE OF TRANSFERRED MALICE	6
BURDEN OF PROOF	6
UNLAWFUL HOMICIDE OFFENCES	3
ACTUS REUS ELEMENTS FOR UNLAWFUL HOMICIDE:	3
INTENTIONAL MURDER:	3
RECKLESS MURDER	4
STATUTORY CONSTRUCTIVE MURDER	4
COMMON LAW CONSTRUCTIVE MURDER ** (Examinable) **	5
VOLUNTARY MANSLAUGHTER	5
INVOLUNTARY MANSLAUGHTER	5
THE MENS REA ELEMENT OF MURDER	15
INTENTION TO KILL	16
INTENTION TO CAUSE GRIEVOUS BODILY HARM	16
RECKLESSNESS AS TO CAUSING DEATH OR GRIEVOUS BODILY HARM	16
INVOLUNTARY MANSLAUGHTER:	18
INVOLUNTARY MANSLAUGHTER BY UNLAWFUL AND DANGEROUS ACT (CONSTRUCTIVE MANSLAUGHTER)	18
INVOLUNTARY MANSLAUGHTER BY CRIMINAL NEGLIGENCE (NEGLIGENT MANSLAUGHTER) (BY ACT)	21
INVOLUNTARY MANSLAUGHTER BY CRIMINAL NEGLIGENCE (BY OMISSION) .	22
ASSAULT	24
ELEMENTS OF CL CONTACT ASSAULT:	25
COMMON ASSAULT	25
MENS REA OF COMMON ASSAULT:	25
STATUTORY (AGGRAVATED) ASSAULTS	27
ELEMENTS OF STATUTORY/AGGRAVATED ASSAULTS	27

MENS REA FOR AGGRAVATED ASSAULTS	28
<i>SEXUAL ASSAULT</i>	33
RAPE	33
ELEMENTS OF RAPE IN CRIMES ACT 1958 (VIC).....	34
INDECENT ASSAULT	37
ELEMENTS OF INDECENT ASSAULT	37
<i>PROPERTY OFFENCES</i>	38
THEFT AND LARCENY	38
ELEMENTS OF THEFT:.....	39
<i>DECEPTION AND FRAUD OFFENCES</i>	49
ACTUS REUS ELEMENTS OF OBTAINING PROPERTY BY DECEPTION:	51
MENS REA ELEMENTS OF OBTAINING PROPERTY BY DECEPTION:	53
<i>BURGLARY, ROBBERY, AND EXTORTION</i>	55
BURGLARY	55
ELEMENTS OF BURGLARY	56
AGGRAVATED BURGLARY	60
ROBBERY	60
ELEMENTS OF ROBBERY	60
<i>THE DOCTRINE OF STRICT LIABILITY</i>	62
STRICT LIABILITY	62
ABSOLUTE LIABILITY	63
<i>THE INCHOATE OFFENCES</i>	64
ATTEMPT	65
INCITEMENT	69
CONSPIRACY	70
<i>PARTICIPATORY LIABILITY</i>	71
PARTICIPATION IN CRIME: THE DOCTRINE OF COMPLICITY	71
<i>THE GENERAL DEFENCES</i>	73
SELF-DEFENCE	73
DURESS	73
NECESSITY	75
<i>MENTAL STATE DEFENCES:</i>	76
INTOXICATION	76
MENTAL IMPAIRMENT (INSANITY)	77
<i>EXAM TIPS AND ANSWERING CRIMINAL LAW QUESTIONS:</i>	78

UNLAWFUL HOMICIDE OFFENCES

HOMICIDE: The volitional/voluntary act or omission that causes the death of another human being sooner than it would have otherwise occurred.

WHO CAN BE A VICTIM OF HOMICIDE?

1. Victim must be a human being
2. Victim must be another human being
 - (a) Suicide is not guilty
 - (b) Assisted suicide is unlawful – s 8B of the *Crimes Act*.

ACTUS REUS ELEMENTS FOR UNLAWFUL HOMICIDE:

1. Identify the relevant **voluntary act** or **omission** giving rise to liability for unlawful homicide
2. Identify **causation**
3. Establish **death** of another ‘human being’

Types of homicide:

1. Murder
2. Manslaughter

INTENTIONAL MURDER:

Where a person without lawful excuse or mitigating circumstances sufficient to reduce the crime to involuntary manslaughter, causes the death of another with the intention to kill or cause grievous bodily harm.

Crimes Act 1958 (Vic) s 3

Section 3 Punishment for murder

- (1) Notwithstanding any rule of law to the contrary, a person convicted of murder is liable to—
 - (a) level 1 imprisonment (life); or
 - (b) imprisonment for such other term as is fixed by the court—
as the court determines.

- (2) The baseline sentence for murder is—
 - (a) 30 years if the court, in determining sentence, is satisfied that the prosecution has proved beyond reasonable doubt that—
 - (i) the person murdered was an emergency worker on duty; and
 - (ii) at the time of carrying out the conduct the accused knew or was reckless as to whether that person was an emergency worker; and
 - (b) in any other case, 25 years.

RECKLESS MURDER

Where a person without lawful excuse or mitigating circumstances sufficient to reduce the crime to involuntary manslaughter, causes the death of another while acting with recklessness as to killing or causing grievous bodily harm.

STATUTORY CONSTRUCTIVE MURDER

Where the accused does not subjectively possess the requisite *mens rea* for murder: rather, it is imputed to the accused. Refers to death caused during an attempt to commit another crime.

Elements of statutory constructive murder:

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).

Crimes Act 1958 (Vic) s 3A

Section 3A Unintentional killing in the course or 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 or 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 (life) or to imprisonment for a term of 10 years or more shall be liable to be convicted of murder as though he had killed that person intentionally.

Note: only look at s 3A if death occurred as a result of a violent crime.

TEMPORAL ELEMENT: 'COURSE OF OR FURTHERANCE'

R v Ryan & Walker [1966]

Held:

There must be a temporal connection and continuity between the offence committed and the killing.

ACT OF VIOLENCE

R v Butcher [1986]

Facts: p. 8

Issue: Is the act of 'holding out a knife towards another person' an act of violence?

Held:

'However, if actual force is not used, then the menace or threat **must either be such as to cause personal intimidation, or be intended to cause intimidation or submission.** In our opinion, **if force is used there can be no debate but that is the actual violence.** If threats are made personally to intimidate or seeking intimidate, this is also in our opinion of violence.

COMMON LAW CONSTRUCTIVE MURDER ** (Examinable) **

Where a person causes the death of another by an act of violence committed during the course of preventing, resisting or escaping from *lawful* custody. (Only exists in Vic and SA)

See *R v Ryan and Walker* [1966]

Mens Rea Continuum for Murder



VOLUNTARY MANSLAUGHTER

Involves the same elements as the crime of murder under categories 1) and 2) but is reduced to manslaughter due to mitigating circumstances.

Mitigating circumstances include:

- The D was provoked into killing (SA and NSW but NOT Vic).
- The D was labouring under a diminished responsibility (NSW).
- The defendant is a survivor of a suicide pact (NSW, SA and Vic) (s 6B of *Crimes Act 1958*)
- The D used excessive force despite his or her genuine belief that such force was reasonably necessary to defend him/herself or another person from justified application or the threat of force (NSW, SA and Vic).
- Or, the D used excessive force despite his or her genuine belief that such force was reasonably necessary to defend his or her property from damage or trespass, or to exercise a power of lawful arrest (SA).

INVOLUNTARY MANSLAUGHTER

Involves causing the death of another without lawful excuse and under circumstances that do not amount to any form of murder or voluntary manslaughter.

The accused acts with lesser *mens rea* than would be required to convict for intentional or reckless murder or, in some cases, no *mens rea* at all.

Two types of involuntary manslaughter:

1. Involuntary manslaughter by criminal negligence

Involves causing the death of another person by an act (or omission) that is done in circumstances involving a high degree of negligence.

2. Involuntary manslaughter by unlawful or dangerous act

Involves performing an act that is both *unlawful* and *dangerous in the relevant senses* and in doing so, causes the death of another person.

FOETUS AND CHILD

A foetus in the mother's womb is not 'in being' and hence, cannot be killed for the purposes of homicide.

R v Hutty [1953]

Issue: When can a foetus be a victim of a homicide?

Rule:

- Only a person "in being" can be a victim of murder
- Under the law, "in being" requires: fully born/living state-
- "A separate and independent existence in the sense that it does not derive its power of living from its mother"

Analysis:

At the time of birth, the child could be qualified as "in being" because it was able to exist independent of its mother.

Conclusion:

At the time of death, the victim can be considered to be "in being" and thus the defendant can be prosecuted for the crime of murder.

DEATH

Has a homicide occurred at all?

Human Tissue Act 1982 (Vic)

Section 41: Definition of death:

For the purpose of the law of Victoria, a person has died when there has occurred-

- (a) Irreversible cessation of circulation of blood in the body of a person; or
- (b) Irreversible cessation of all function of the brain of the person.

This Act legislates when death has occurred in response to the implications of modern medical technology and to protect the medical profession from undue risk of criminal liability.

ACTUS REUS: OVERVIEW

- In unlawful homicide, it requires that **D's voluntary act or omission must have legally caused the death of another human being.**
- This requires the elements of:
 1. Voluntariness
 2. Legal causation

- The prosecution must establish that the accused, by a voluntary act, caused the death of the victim.