

## TABLE OF CONTENTS

<b>Problem question answer format example</b>	1
<b>Actus Reus (AR) &amp; Mens Rea (MR) answer format example - murder</b>	2
<b>Homicide</b>	3
<b>Murder (specific intent)</b>	3
<b>I. AR elements</b>	3
A. Did the end of a human life occur?	3
B. Did the accused commit an act/omission?	3
C. Was the accused's conduct voluntary?	3
1. Was the accused's conduct an accident?	3
2. Was the accused's conduct a reflex action?	3
3. Did the accused have impaired consciousness?	3
D. Did the accused's conduct cause the victim's death?	4
1. Substantial cause	4
2. Reasonable foreseeability	4
3. Natural consequence	4
<b>II. MR elements</b>	5
A. Did the accused have intent to kill?	5
B. Did the accused have intent to commit GBH?	5
C. Did the accused act with reckless indifference to human life?	5
D. Can the accused be held criminally liable for constructive murder?	5
E. Defences - was the accused in a state of non-self-induced intoxication?	5
<b>III. Concurrence</b>	6
<b>Manslaughter (basic intent)</b>	6
<b>I. Is the accused liable for voluntary or involuntary manslaughter?</b>	6
A. Voluntary Manslaughter	6
B. Involuntary Manslaughter	6
<b>II. Is the accused liable for Unlawful and Dangerous Act Manslaughter?</b>	6
A. AR elements	6
B. MR elements	6
C. Concurrence	7
<b>III. Is the accused criminally liable for criminally negligent manslaughter?</b>	7
A. AR elements	7
B. MR elements	8
1. Did the accused owe a duty of care to the victim?	8

2. Did the accused grossly fall short of the standard of care, involving a high risk of death?	8
3. Intoxication defence?	8
C. Concurrence	8
<b>Assault</b>	9
<b>Lawful Assault</b>	9
<b>Common Assault</b>	9
I. Assault by threat of force	9
A. AR elements	9
1. Did the accused commit an act?	9
2. Imminence/immediacy?	9
3. Victim's apprehension/awareness	10
B. MR elements	10
1. Was there an intention to cause V to apprehend violence?	10
2. Was there recklessness in the conduct of the accused?	10
II. Assault by use of force	10
A. AR elements	10
1. Did the accused use unlawful force on V?	10
2. Did V consent to the application of force?	10
B. MR elements	11
1. Was there an intention to use force on V's body or clothing?	11
2. Was there recklessness in the conduct of the accused?	11
<b>Aggravated Assault</b>	11
I. Assaults accompanied by an intention of a particular kind	11
II. Assaults committed on a particular class of people	11
III. Assault resulting in harm of a particular kind	12
<i>Actual bodily harm</i>	12
<i>Grievous bodily harm or wounding, with intent</i>	12
<b>Sexual Assault</b>	13
A. AR elements	13
1. Did sexual intercourse take place?	13
2. Did the complainant consent?	13
B. MR elements	14
1. Did the accused know that the victim did not consent?	14
<b>Aggravated Sexual Assault</b>	15
<b>Defences</b>	16
<b>Provocation</b>	16

I. Was the deceased's provocative conduct towards or affecting the accused?	16
II. Was the deceased's conduct a serious indictable offence?	16
III. Did the victim's conduct cause the accused to lose self-control?	16
IV: Would the deceased's conduct have caused an ordinary person to lose self-control to the extent of intending to kill/inflict GBH?	17
<b>Self Defence</b>	17
I. Was the conduct necessary to defend self, other, property or land?	18
II. Was the response reasonable (objective), given how the circumstances were perceived	18
<b>Excessive Self Defence</b>	18
<b>Defence of Insanity [NSW]/mental impairment</b>	19
<b>Diminished responsibility/substantial impairment of mind</b>	19
<b>Complicity</b>	20
<b>Accessorial Liability</b>	20
A. AR elements	20
I. Did the principal offender commit/attempt the primary offence?	20
II. Did the accused promote/assist the commission of a crime?	20
III. Did the accused withdraw?	20
B. MR elements	21
I. Did the accused act with intention to assist/encourage the commission of a crime?	21
II. Did the accused have actual knowledge of the essential matters/facts making up the offence?	21
<b>Joint Principal Liability/Joint Criminal Enterprise</b>	21
A. AR elements	21
B. MR elements	22
<b>Extended Common Purpose</b>	22
<b>Property</b>	23
<b>Theft</b>	23
<b>Appropriation</b>	24
<b>Property</b>	24
<b>Dishonesty</b>	25
<b>Intention to permanently deprive</b>	26
<b>Belonging to someone else</b>	27
<b>Recklessness as to whether it belongs to someone else</b>	28

## Problem Q answer format example

**Overarching issue:** Is D liable for ---- of V?

**Jurisdict:** NSW, as the events took place/had effect there. NB: 'terminatory theory' (*Ward v The Queen*)

**Burden/standard of proof:** prosecution – legal burden – all elements of offence – BRD. Defence (if raised) – evidential burden – all elements – BoP. Pros – disprove one element – BRD. (*Woolmington*)

**Relevant law:** *Crimes Act 1900 (NSW)*, or CL cases.

NB: specific intent = to cause results of act (murder, acts w/ intent to murder, wounding/GBH w/ intent, sexual assault, threatening to or destroying/damaging property). Basic intent = to do act.

NB: conduct crime (e.g. theft) = conduct itself is offence. Result crime (e.g. murder) = specific result needs to occur.

(For elements, compare conduct to standard) NB: voluntariness (AR) – to move arm. Intention (MR) – to hit person.

**AR elements (physical/external/objective):**

- Act/conduct/circumstance/result
- Omission
- Voluntariness → intoxication (if self-induced, can't be used. If not self-induced, not criminally responsible. S428G), or impaired consciousness
- Causation (if it's a result crime)

**MR elements (mental/fault/internal/subjective):**

- No apparent fault element? Presumption that MR is necessary ingredient to every statutory offence (HKT), rebuttable by stat interpretation
- If MR presumption rebutted, offence is either strict or absolute liability.
  - Both req proof of AR only
  - Strict allows defence of honest & reasonable mistake of fact
  - Absolute doesn't.
  - Mix of fact & law treated as fact (*Proudman v Dayman*).
- Intention, or
- Knowledge, or
- Recklessness, or
- Negligence
- → Intoxication defence for any of these (For specific intent crimes: if self-induced, can't be considered. If not self-induced, can be. S428D).

**Temporal coincidence/concurrence**

- Act/conduct/circumstances + MR

**Conclusion**

Prosecution can prove BRD that D acted voluntarily to tie and gag V, causing dehydration and ultimately her death. Prove BRD that had reckless indifference to human life during this. D is therefore liable for the murder of V.

## AR & MR answer format example - MURDER

### AR elements:

- Voluntary act/omission
  - Conduct: D tied/gagged V, failed to release – both act/omission, or continuing act (*Thabo*) starting from tying up & ending at death
  - Presumption: apparently conscious conduct is presumed voluntary (*Ryan*)
  - Voluntary: material facts support presumption bc there were no exceptions present
- Death of human being
  - s33 *Human Tissue Act* – death occurs when there is a cessation of all function of brain, blood etc (see p. 3)
  - Define human being
  - V was a human who died
- Causation
  - Doesn't need to be sole cause of death, just needs to persist until pt of death
  - Cause of death: dehydration
  - Substantial cause of death: tying & gagging.
  - Substantial cause persisted until death
  - Intervening act (event that breaks chain of causation) – must be positive act, can't be omission (case?)
    - Failure of emergency to pass info on: not bc omission
    - Failure of tradesman to find V: not bc omission

### MR elements: (presumption that MR is necessary ingredient to every statutory offence (*HKT*), rebuttable by stat int)

- Intent to kill (n) OR
  - Intention: decision to bring about conseq: *HKT*
- Intent to inflict GBH (n? OR
  - Definition of GBH (*Crimes Act s4, DPP v Carr*)
  - *HKT*
- Reckless indifference to human life (y) OR
  - (*Royale, Crabbe*)
  - Probability: real and not remote chance (not mathematical) (*Faure* – Russian roulette). Not possibility (a lower standard)
  - Desmond subjectively averted to conseqs: called people to rescue her, so knew if she wasn't rescued, she would probably die
  - In contact with de facto who would be expected to mention it given they had previously talked about V
  - Simple means of checking in
  - Yes D had MR if reckless indifference
- Constructive murder (n)

## Homicide (result crime)

### Murder (specific intent)

#### I. Does the accused's conduct satisfy the AR elements of murder under s18(1)(a) of the Crimes Act?

##### A. Did the end of a human life occur?

###### Beginning/end of life

- **Common law:** Homicide can only be committed on a person who is 'in being', which is not until they are fully born in a living state – *R v Hutty*. **Use for manslaughter.**
- **Statute (only for murder):** 'Born **alive** if it has **breathed**, and... **wholly born** into the world whether it has an independent circulation or not.' – s20
- Unborn child is not a legal human being – *Attorney General v T*
- A person has died where there has occurred an irreversible cessation of all function of the person's brain; or of blood in their body – *Human Tissue Act 1983* (NSW) S 33
- Death of foetus is GBH, regardless of whether woman harmed, unless during medical procedure (s4(1)(a))

##### B. Did the accused commit an act/omission?

- Re omissions - no general duty to prevent a crime – *R v Instan*
  - **However duty to act** may arise due to a family relationship (*R v Russell*), or undertaking to care for another unable to self-care (*R v Instan*)
  - Can be liable for failure to take measures w/in power to counteract **self-created danger** – *R v Miller*
- Where a duty to provide for in CL or statute, omission to act can amount to criminal conduct – *R v Miller*
- Once accused becomes aware of danger he has created, duty arises to take reasonable steps to counteract the danger – *R v Miller*

##### C. Was the accused's conduct voluntary?

- The physical element must be acted voluntarily: 'pursuant to the accused's will, exerted with conscious control over the muscular contractions' – *Ryan v The Queen*
- Apparently conscious conduct is presumed voluntary – *Ryan*
- Volition is presumed in the absence of contrary evidence (evidential burden on the defence, which then shifts to the prosecution BRD) – *R v Falconer*
- Whether the act was voluntary is a matter to be left to the jury – *Murray v The Queen*

#### 1. Was the accused's conduct an accident?

- Acts caused without intention, recklessness or criminal negligence are deemed accidental – *R v Falconer*
- No intention and thus, no requisite MR – i.e. no accident defence for strict/absolute liability offences

#### 2. Was the accused's conduct a reflex action?

- An *unwilled reflex or spasm* is not voluntary and will not constitute an AR – *Ryan*
- A *willed act* is one exerted with conscious control over the muscular contraction. – *Ryan*
- Acts based on an external cause rather than intention are deemed reflexive – *Ryan*

#### 3. Did the accused have impaired consciousness?

##### a) Was the accused asleep or unconscious?

'[an] act committed while unconscious is necessarily involuntary' – *Jimenez*

##### b) Was the accused acting as a sane or insane automaton?

Some degree of control over body movements or some awareness/cognitive function does not preclude automatism from being found – *R v Radford*