

Topic 1: Voluntariness

General Principle – 1

- There is a presumption of voluntariness - 1

What Constitutes as Involuntary - 1

- Criminal act was accidental – 1
- Criminal act was caused by a reflex action – 1
 - *Ryan v The Queen*
- Conduct was performed in a state of impaired consciousness (**SEE AUTOMATISM**) - 1

Topic 2: Causation (Result Crimes)

General Principle - 1

- For Result Crimes prosecution must prove conduct caused results – 1

Tests for Causation - 1

- Substantial and Operating Cause Test (Objective) – 1
- IF THERE IS A NOVUS ACTUS INTERVENIENS - 1
 - Natural Consequence Test (Objective) - 1
 - Reasonable Foreseeability Test (Objective) – 1

Substantial and Operating Cause Test - 1

- Was the act a substantial and operating cause for the death? – 1
 - *Royall v The Queen* (Girlfriend falls from bathroom window) - 2
- Does not need to be sole cause of death - 1
- If defendant causes situation causing victims death - 2
 - *R v Hallett* (Unconscious drowning on beach) - 2
- Chain of causation might not be broken even if third party causes fatal injury – 2
 - *R v Pagett* (Defendant using victim as human shield) – 3

Reasonable Foreseeability Test - 3

- Whether consequences of the accused's conduct were reasonably foreseeable – 3
 - *Royall v The Queen* (Girlfriend falls from bathroom window) - 2
- Objective Test – what a reasonable person would have foreseen - 1

Natural Consequence Test - 3

- Whether the voluntary act of the deceased was a natural consequence – 3
 - *Royall v The Queen* (Girlfriend falls from bathroom window) – 2
 - *R v Hallett* (Unconscious drowning on beach) - 2

Novus Actus Interveniens - 3

- Chain of causation is broken if novus actus interveniens – 3

- Act must be of an unexpected or extraordinary measure – 3
 - *R v Hallett* (Unconscious drowning on beach) – 2
- Two kinds of novus actus interveniens – 3
 - *Royall v The Queen* (Girlfriend falls from bathroom window) – 2
 - *R v Singapore* (Left hospital against advice) – 4
 - *R v Holland* (Didn't amputate finger) – 4
- Eggshell rule: you take them as you find them – 4
 - *R v Blaue* (Jehovah's Witness) – 4
 - *R v Smith* (Bayonet stabbing) – 5
 - *Evans v Gardiner* (Prisoner stabbing) - 5

Topic 3: Murder

General Principle – 6

- Unlawful killing of a human being with that specific intent (*S 18 Crimes Act*) – 6

Concurrence of Physical and Fault Elements - 6

- Fault element must coincide with physical element – 6
- Fault element may be a series of acts or a continuing act – 6
 - *Thabo Meli v The Queen* (Rolled off cliff) – 6
 - *Fagan v Metropolitan Commissioner of Police* (Tire on foot) – 7
- Fault element does not have to be present at the inception of physical element – 7
 - *Fagan v Metropolitan Commissioner of Police* (Tire on foot) – 7
 - *R v Miller* (Fire sleeping) – 11
- Concurrence not restricted to only crimes containing fault elements - 7
 - *Jiminez v The Queen* (Sleep driving) - 7

What is a human being? – 8

- Child alive if wholly born (*S 20 Crimes Act*) – 8
- Foetus considered part of mother and destruction is GBH (*S 4 Crimes Act*) - 8
- Death when cessation of brain function or blood circulation (*Human Tissue Act*) - 8

Actus Reus – 8

- SEE CAUSATION – 1

Mens Rea – 8

- Three main categories of mens rea – 8
- Intention to kill (*S 18(1)(a) Crimes Act*) - 8
- Intention to Inflict GBH (*S 4(1) Crimes Act*) - 8
 - *DPP v Smith*
- Reckless Indifference to human life – 8
 - *R v Crabbe*
 - *Bouhey v The Queen*
 - *Pemble v The Queen* (Shotgun behind) – 9

Topic 4: Manslaughter

General Principle – 9

- Unlawful killing may constitute manslaughter (*S 18(1)(b) Crimes Act*) – 9
- Two categories of manslaughter – 9

Unlawful and Dangerous Act Manslaughter – 9

- Unlawful and dangerous act causing death – 9
- Act must be criminally unlawful – 9
 - *Pemble v The Queen* (Shotgun behind) – 9
 - *R v Lamb* (Russian roulette revolver) – 9
- Act must be dangerous – 10
 - *Wilson v The Queen* (Hit victim fell hit head) – 10

Negligent Manslaughter – 10

- Gross negligence may amount to manslaughter - 10
- Prosecution must be under a duty of care – 10
 - *R v Russell*
 - *R v Stone and Dobinson* (One physical and one mental impaired failed to care)
 - *Taktak* (Caring prostitute)
 - *R v Miller* (Fire sleeping) – 11
- Standard of care objective based on reasonable person - 11
- Degree of negligence must be great falling short – 10
 - *Nydam v The Queen* (Spurned lover self-immolation)

Topic 5: Assault

Common Assault – 12

- Elements of Assault (*S 18(1)(b) Crimes Act*) – 9
 - *Fagan v Metropolitan Commissioner of Police* (Tire on foot) – 12

Threat of Force – 12

- Act putting person in fear of immediate and unlawful violence – 12
- Omission to act cannot constitute Assault - 13
 - *Fagan v Metropolitan Commissioner of Police* (Tire on foot) – 12
- TEST is whether victim themselves apprehended – 13
 - *Wilson v Kuhl; Ryan v Kuhl* (Knife through cubicle) – 13
- Threatening words made over telephone may amount to assault – 13
 - *Barton v Armstong*
- Making series of silent calls causing apprehension is assault – 13
 - *R v Ireland*
 - *R v Burstow*
- Lack of victim's knowledge or perception of threat is not assault – 13
 - *Pemble v The Queen* (Shotgun behind) – 9
- Apprehension of physical violence can exist even if accused can't carry out – 13
 - *R v Everingham* (Toy gun pointed at taxi driver) – 13
- May be not assault where victim believes in facts removing apprehension – 14
 - *R v Lamb* (Russian roulette revolver) – 14
- Generalised threats of future conduct will not suffice – 14
 - *R v Knight* (Threatening calls to judge) - 14
- Circumstances creating immediate and continuing fear constitute assault – 14
 - *Zanker v Vartzokas* (He will really fix you up) – 14
- Conditional threat that is unlawful constitutes an assault – 15
 - *Rosza v Samuels* (Taxi I will cut you to bits if you try it) – 15

Use of Force – 15

- Intentionally or recklessly applies force to body or clothing of another – 15
- Force can be as slight as a mere touch – 15
 - *Collins v Wilcock*
- Application of force must be aimed at the victim or object supporting victim – 15
 - *Commissioner of Police v Wilson*
- Lawful uses of force - 15

Consent – 16

- Consent to common assault renders act lawful – 16
 - *R v Donovan*
- Prosecution must prove that victim didn't consent – 16
 - *R v Clarence*
 - *Woolmington v DPP*
- Consent may be express or implied - 16
 - *Collins v Wilcock* – 16

- Act that is part of ordinary social activity is not an assault – 16
 - *Bouhey v The Queen*
- Consent must be freely given – 16
- Consent may be a “defence” to ABH assault – 16
 - *Lergesner v Carroll*
- Consent for ABH found in three areas:
 - *R v Wilson* (Husband tattoos wife’s butt) - 17
 - *Marions Case*
 - *Re T Adult: Refusal of Treatment*
 - *R v Aitken* (RAF immolation) - 17
 - *R v Carr* (Rugby high swing tackle) - 17

Common Assault: Mens Rea – 17

- Committed intentionally or recklessly – 17
- Recklessness as to possibility – 17
 - *Coleman*
 - *R v Savage*
 - *DPP v Parmenter*

Aggravated Assault: Actus Reus – 18

- Three classes of statutory “aggravated assaults” - 18
- Assault occasioning ABH (*s 59 Crimes Act*) – 18
- ABH does not need to be permanent but more than mere transient or trifling – 18
 - *R v Donovan*
 - *R v Brown*
 - *Lardner*
- ABH includes psychiatric injury but not mere emotions – 18
 - *R v Chan-Fook*
 - *Lardner*
- GBH (SEE MURDER)

Aggravated Assault: Mens Rea – 18

- ABH same fault element as common assault - 18
- Intention or recklessness refers to conduct rather than result – 18
- GBH wounding or GBH with intent (*s 33 Crimes Act*) – 18
- Reckless GBH or wounding (*s 33 Crimes Act*) – 18
- Test for recklessly causing serious injury is PROBABILITY - 18
 - *R v Campbell*

Topic 6: Self-Defence

General Principle – 19

- Self-defence laid out in statute (*S 418 Crimes Act Cth*) – 19

Defence of Others – 19

- Force may be used to defend others from harm in same way as defending self – 19
- EXCEPTION: Protection of property or trespass to property (*S 420 Crimes Act Cth*) - 19

Necessity of Defence – 19

- Accused must reasonably believe that self-defence was necessary – 19
 - *Zecevic v DPP* (Killed neighbour security gates open) – 19
 - *R v Conlon*
- Pre-Emptive Strikes are allowed – 20
 - *R v McKay* (Poultry farmer shot assumed thief) - 20
- Self-Defence can still apply in regards to lawful conduct (*S 422 Crimes Act Cth*) - 20

Reasonableness of Defence – 20

- Response of accused must be reasonable to perceived circumstances – 20
 - *R v Katarzynski*
- Excessive Self-Defence (*S 421 Crimes Act Cth*) – 21

Topic 7: Insanity/Mental Impairment Defence

General Principle – 21

- ELEMENTS of Insanity on balance of probabilities – 21
 - *M'Naghten Rules* (Killed politician) - 21

Disease of the Mind – 21

- Disease of the mind must be underlying pathological infirmity of the mind – 21
 - *M'Naghten Rules* (Killed politician) – 21
- Duration is irrelevant - 22
 - *R v Rabey* - 22
 - *R v Radford* (PTSD ex-soldier killed woman believed to be lover) – 22
- Three tests to define disease of the mind – 22
- Continuing Danger Test – 22
 - *R v Kemp*
 - *R v Carter*
- Internal/External Test - 22
 - *R v Rabey* – 22
- Sound/Unsound Mind Test – 23
 - *R v Radford* (PTSD ex-soldier killed woman believed to be lover) – 22
 - *R v Falconer* (Abused wife blanked and killed husband) - 25
- Evidence of mental impairment may be raised to show no requisite intention – 23
 - *Hawkins v The Queen* (16 suicidal son shot father) – 23

Nature and Quality of the Conduct (RARELY USED) – 23

- Accused did not know nature and quality of conduct – 23
 - *M’Naghten Rules* (Killed politician) – 21
- Refers to physical character of the act and capacity to understand - 23
 - *Willgoss v The Queen* – 24
 - *R v Porter* (Estranged suicidal husband poisoned son) – 24

Wrongness – 24

- Accused did not know conduct was wrong – 4
 - *R v Porter* (Estranged suicidal husband poisoned son) – 24
- Does not require moral appreciation - 24
 - *Willgoss v The Queen* – 24

Burden of Proof – 24

- Either party can raise defence and bears burden of rebutting presumption – 24
 - *R v Falconer* (Abused wife blanked and killed husband) - 25

Topic 7: Automatism

General Principle – 25

- Denial that actus reus was committed voluntarily – 25
- Presumption against automatism and burden of proof – 25
- Person with sound mind entering dissociative state following external blow auto – 25
 - *R v Falconer* (Abused wife blanked and killed husband) - 25
- Possible causes of automatism – 25
- Evidence of some degree of awareness or control doesn’t preclude automatism – 26
 - *R v Radford* (PTSD ex-soldier killed woman believed to be lover) – 22
 - *Ryan v The Queen* – 26
- Evidence of mental impairment can show no requisite intention – 26
 - *Hawkins v The Queen* (16 suicidal son shot father) – 23

Topic 8: Intoxication

General Principle – 27

- Not a defence but can negate certain elements – 27

Burden of Proof – 27

- D will bear evidentiary burden – 27

Self-Induced v Involuntary Intoxication – 27

- S 428A Crimes Act – 27

Intoxication and Voluntariness – 27

- Self-Induced intoxication not available for involuntariness (*s 428G(1)*) – 27
- Non-self-induced intoxication is available (*s 428G(2) Crimes Act*) - 27

Intoxication and Mens Rea– 27

- Self-Intoxication may be pleaded for specific intent (*s 428C(1) Crimes Act*) – 28

- Cannot be taken into account for Dutch courage (*s 428C(2) Crimes Act*) – 28
- List of offences of specific intent (*s 428B Crimes Act*) – 28
- Self-Intoxication may not be taken into account for basic intent (*s 428D(a)*) – 28
- Non-self-induced intoxication is available for basic intent (*s 428D(b)*) – 28
- If self-induced murder can only be reduced to manslaughter(*s 428E Crimes Act*) - 28
- If not self-induced then acquittal (*s 428E Crimes Act*) - 28

Topic 9: Partial Defences

General Principle – 29

- Three partial defences that can reduce murder to manslaughter – 29
- Partial offences do not negate fault element of murder - 29

Topic 10: Provocation (Partial Defence)

General Principle – 29

- Provocation will succeed if tests are satisfied – 29
- EXCEPTIONS: Conduct does not constitute provocation - 29

Conduct Towards or Affecting the Accused (*s 23(2) (a)*) – 30

- Provocation must take place in sight and hearing of accused – 30
 - *R v Fisher*
 - *R v Arden* (Husband told by wife that she was raped, killed alleged rapist) – 30
 - *The Queen v R*
- Provocation may be aimed at a close person – 30
 - *R v Terry* – 30
- Defence of Provocation does not apply where self-induced (*s 23(3)(b)*)– 30
 - *R v Allwood*

Conduct was a Serious Indictable Offence (*s 23(2) (b)*) – 30

- Must be serious indictable offence (*s 4 Crimes Act NSW*) – 30

Accused's Loss of Self-Control (*s 23(2) (c)*) – 31

- Required loss of control is loss of self-control not all control – 30
 - *Chhay v R* - 31
 - *Peisley* – 31
- Loss of self-control may result from anger, fear or panic – 31
 - *Van Den Hoek v The Queen* – 31
- The ferocity of the attacks itself can indicate loss of self-control - 31
 - *The Queen v R*
 - *Green v The Queen*
- Deceased non-immediate conduct may constitute extreme provocation (*s 23(4)*) - 31
- Evidence of self-induced intoxication cannot be taken into account (*s 23(5)*) – 31

Could Have Caused the Ordinary Person (*s 23(2) (d)*) – 32

- Standard is ordinary person at age of accused with lowest self-control – 32
 - *Stingel v The Queen* – 30

Topic 11: Complicity

General Principle – 33

- Three circumstances of complicity - 33

Topic 12: Accessorial Liability

General Principle – 33

Actus Reus – 33

- ELEMENTS – 33
 - *Giorgianni v The Queen* (Semi-trailer) - 36
- Mere presence at scene of crime will not be sufficient -34
 - *R v Coney* (Spectator illegal fight) – 34
 - *R v Phan* – 35
 - *R v Clarkson* (Woman raped in barracks) – 34
 - *Wilcox v Jeffery* (Illegal saxophone performance) – 35
- Presence is elastic, being close to help is sufficient – 35
 - *McCarthy & Ryan*
- OMISSION: Accessory must possess for omission to help or duty of care – 35
 - *R v Russell*
 - *Giorgianni v The Queen* (Semi-trailer) - 36

Actus Reus – 36

- Intention based on ACTUAL KNOWLEDGE of essential matters – 36
 - *Giorgianni v The Queen* (Semi-trailer) – 36
- Accessory only needs to know general type of crime – 37
 - *R v Bainbridge* (Supplied equipment for bank robbery) – 37

Withdrawal by an Accessory – 37

- Liability not crystallised until crime committed – 37
- Positive & timely act giving unequivocal communication of complete withdrawal – 37
 - *R v Whitehouse* – 37
 - *R v Rook* (Accused agreed to kill wife but did not turn up) – 37
 - *Ngawaka v The Queen* – 38
- Reasonable steps depend on degree and type of assistance and time proximity – 38
 - *R v Whitehouse* – 37
 - *R v Grundy* (Supplied info for robbery but tried to stop offender) – 38
 - *Becerra* (Broke into house but told men to leave when victim came) – 38
- Prosecution must prove BRD that accused did not withdraw – 38
 - *White v Ridley* - 38

Topic 13: Joint Criminal Enterprise

General Principle – 39

- Agreed on committing offence and were present – 39
 - *R v Lowery (No 2)* - 39
 - *Osland v The Queen* (Wife and son killed husband) – 39
- Prosecution must prove AGREEMENT and PARTICIPATION - 40
 - *R v Tangye* – 41
- Agreement does not have to be explicit - 40
- Presence does not need to be continuous – 40
 - *Franklin*
- Presence at the scene of the crime is not required – 40
 - *Dickson v R*
 - *Huynh, Duong and Sem*
- ELEMENTS OF WITHDRAWAL
 - *Tietie*
- MENS REA satisfied by participants having mens rea for offence – 40
 - *McEwan, Robb and Dambitis* – 40

Extended Joint Criminal Enterprise – 41

- Held liable for all foreseeable crimes resulting from JCE – 41
 - *Miller v R*
 - *McAuliffe* (Men decide to bash and rob) – 42

Topic 14: Property Offences

General Principle – 43

- Codified with Criminal Code – 43
- Gaps/ambiguity in code may be filled with common law – 43
 - *Barlow 1997*
- ELEMENTS OF THEFT (*s 308 Criminal Code*) – 43
- ELEMENTS OF MINOR THEFT (*s 321 Criminal Code*) – 43

(1) Dishonesty (Fault Element) – 43

- Meaning (*s 300 Criminal Code*) – 43
- Dishonesty is matter for trier (*s 302 Criminal Code*) – 43
- Exceptions to dishonesty (*s 303 Criminal Code*) – 44
- Claim of Right Issues (*s 38 (1) Criminal Code*) – 44

(2) Appropriation (Physical Element) – 44

- Assumption of rights of owner without consent (*s 304 Criminal Code*) – 44
 - *Stein v Henshall* (Accused used stolen car) – 45
 - *R v Morris* (Switching labels at shop) – 45
- DELAYED APPROPRIATION (*s 304 (2) Criminal Code*) – 46

(3) Property (Physical Element) – 46

- DEFINITION of Property (*Dictionary Legislation Act*) – 46
- Thing (Chose) in action - 46
- Property Includes (*Dictionary of Criminal Code*) – 46
- Money Transfers (*s 330 Criminal Code*) – 46

(4) Belonging to Another (Physical Element) – 47

- DEFINITION (*s 301 (1) Criminal Code*) – 47
- Common Law Presumptions – 47
 - *Illich*
- Recklessness to circumstance that property belongs to someone else (*s 20*) – 47
- Property belonging to more than one (*s 305 (1) Criminal Code*) – 47
- Trust (*s 305 (2) Criminal Code*) – 48
- Corporation (*s 305 (1) Criminal Code*) – 48
- Receives Property Under Legal Obligation to B, property belongs to B (*s 305(4)*) – 48
 - *Hall* (Travel agent pockets money) – 48
 - *Meech* (Debtor proposes strange repayment method) – 49
 - *Wakeman* (Received cheque) - 49

Mistake: Property Subset – 49

- Fundamental Mistake and Legal Obligation (*s 305 (5) Criminal Code*) – 49
- Definition of legal obligation in common law – 50
 - *Attorney-General's Reference (No 1 of 1983)* (Police officer salary) – 50
- Definition of fundamental mistake (*s 305(6) Criminal Code*) – 50

(5) Intention to Permanently Deprive (Fault Element) – 51

- Has intention to permanently deprive (*s 306 (1) Criminal Code*) – 51
 - *Lloyd* (Smuggling films out of theatre) – 51
- Borrowing for too long may be intention to permanently deprive (*s 306 (2)*) – 51
- Intention is in relation to result (*s 18 (2)*)
- Examples of A treating B's property as A's own despite rights (*s 306(3)*) – 51
- Taking property and replacing with non-identical property is appropriation – 52
 - *R v Cockburn* (Took 50 pound from till) – 52
- Conditional Intent – 52
 - *R v Easom* (Handbag didn't steal anything) – 52
 - *Sharp v McCormick* (Took part and only return if not worth it) – 52
- Presence not required to establish physical element – 52
 - *R v Wong* (Heroin ship) - 52