

List of All Offences

4 types of Homicide:

1. Unlawful Homicide: Murder (found guilty under S3 CA)
2. Reckless Murder
3. Statutory Constructive Murder s3A (Limited to robbery or armed robbery)
4. Common law Constructive Murder (felony murder rule)

If not able to prove BRD above, pursue IM

- 1) Manslaughter by Unlawful and Dangerous Act (Constructive Manslaughter):
- 2) CNM (liable under S5 CA)
Including a motor vehicle:
 - s. 318m Culpable driving causing death
 - s.319M Dangerous driving causing death or serious injury

Defences:

1. 322K Self-Defence
 - **S 322M** Family Violence and Self-Defence
 - **322J** Evidence of family violence
2. S 322O Duress
 - **S 322P** Family violence and duress
3. S 322R Sudden or Extraordinary emergency
4. S322T Intoxication (What standard to use for a defence if accused is intoxicated)
5. Automatism

Assaults:

1. Common Law Assault/Contact Assault - Application of Force (touching). Enforceable by *Summary Offences Act 1996*
2. Assault – Common Law Apprehension assault
3. S 31 Assaults (emergency workers)

Statute Assault:

4. S 16 Causing Serious Injury Intentionally (and if proven...)
 5. S15A Causing serious injury intentionally in circumstances of gross violence
6. S17 Causing Serious Injury Recklessly (and if proven...)
 7. S15B: causing serious injury recklessly in circumstances of gross violence
8. S18 Causing Injury Intentionally or Recklessly

Reckless endangerment assault

9. S 22 Conduct endangering life
10. S 23 Conduct endangering persons
11. S 24 Negligently causing serious injury

Offences involving a threat

10. S.20 Threats to Kill
11. S.21 Threats to inflict Serious Injury
12. S 21A Stalking

Legend:

MR = Mens Rea

AR = Actus Reus

CA= *Crimes Act 1958 (Vic)*

Unlawful And Dangerous Act Manslaughter = ('**UADAM**')

Criminal Negligence Manslaughter = ('**CNM**')

GBH= Grievous bodily harm

MIA= *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 Vic.*

IM = Involuntary Manslaughter

Sexual Assault:

- 1) S 38 Rape
- 2) S 39 Compelled Rape
- 3) S 40 Sexual Assault (Touching)
- 4) S 41 Sexual Assault By Compelling Sexual Touching (Causing Another too Touch)
- 5) S 43 Threat to commit a sexual offence
- 6) S 45 Procuring sexual act by fraud

List of All Offences & Elements

5 types of Homicide:

1. Unlawful Homicide: Murder

- **Element 1:** Causation
- **Element 2:** Voluntariness
- **Element 3:** Intention to kill OR cause GBH
- **Element 4:** Accused did not have a lawful justification or excuse
 - Element 4A Temporal coincidence

2. Reckless Murder:

- **Element 1:** An act or omission by accused that causes the death of a human being;
- **Element 2:** The act or omission was **voluntary**;
- **Element 3:** Recklessness: (*R v Pemble*)
 - *R V Pemble case outline:*
- **Element 4:** Accused did not have a lawful justification or excuse

3. Statutory Constructive Murder s3A (Limited to robbery or armed robbery)

- **Element 1:** Causation...Refer to intentional murder Element 1
- **Element 2:** Unintentionally killing in the course of or in furtherance
- **Element 3:** Serious Offence
- **Element 4:** Violence

4. Common law Constructive Murder (felony murder rule):

- **Violently resisting or preventing OR escaping from a lawful arrest – (*R v Ryan and Walker*)**

1) Manslaughter by Unlawful and Dangerous Act (Constructive Manslaughter):

- **Element 1:** Causation (See intentional murder)
- **Element 2:** Voluntariness (See intentional murder)
- **Element 3:** The Act was “unlawful”:
- **Element 4** The fourth element the prosecution must prove is that the relevant

2) CNM Summary:

Elements for IM by Act AND Omission:

- **Element 1: Owed a DOC**
- **Element 2 Breach of DOC and a gross departure from the SOC**
- **Element 3 Voluntariness (See Element 2 of Murder)**
- **Element 4: A gross departure from the standard of care (Recklessly)**
- **Element 5: Causation See Element 1 of Intentional Murder**

Motorists: s. 318 Crimes Act 1958 (Vic) (MOTOR VEHICLES VERSION OF MANSLAUGHTER)

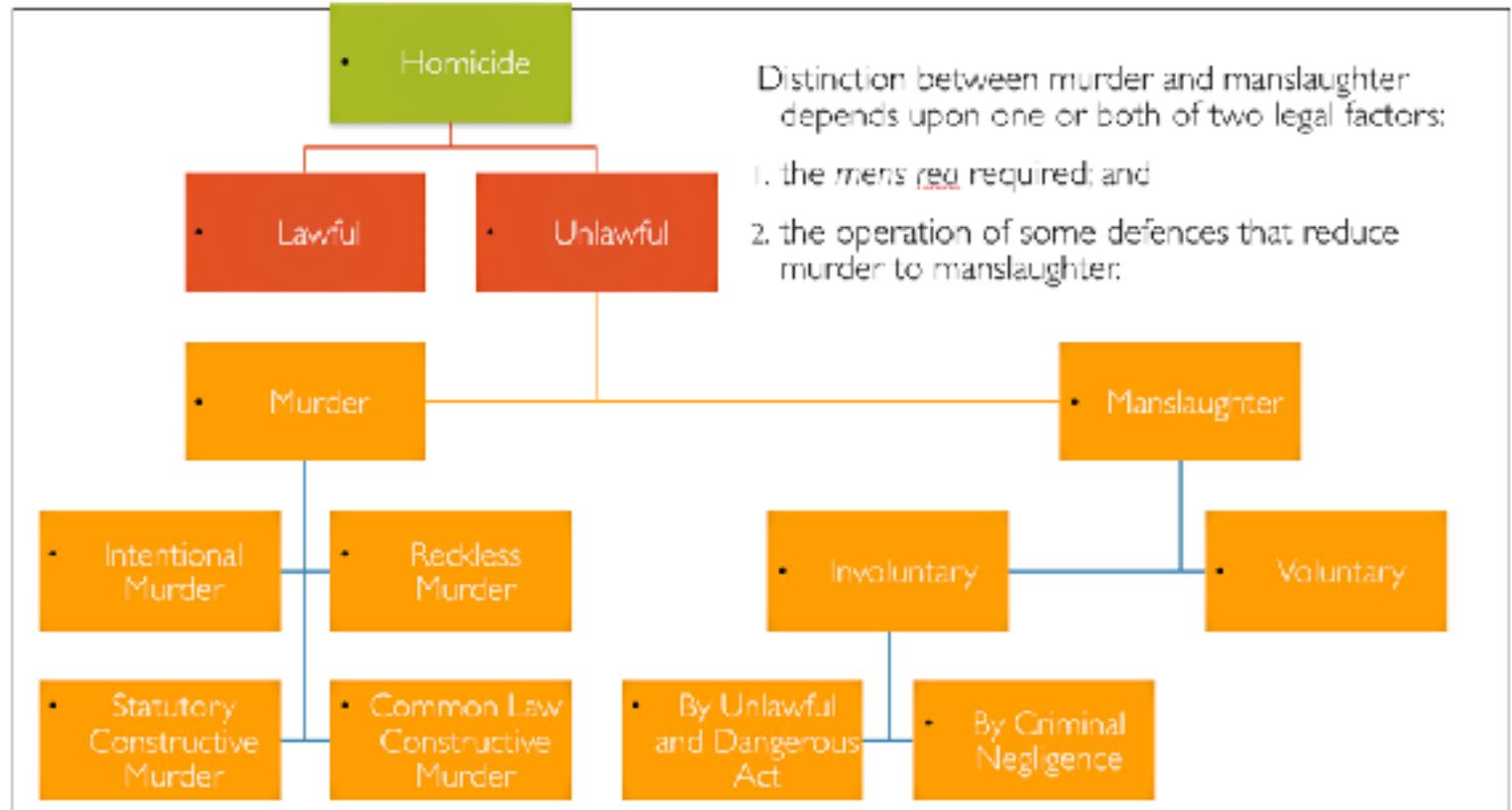
- **Element 1:** Driving
- **Element 2:** Motor Vehicle
- **Element 3:** Causation (See Element 1 of Intentional Murder)
- **Element 4A:** Recklessness [see S 318M(2)(a)] OR
- **Element 4B:** Negligence [see S 318M(2)(b)]
- **Element 5:** Voluntariness:

Motorists: s. 319M Dangerous driving causing **death** or **serious** injury

- **Element 1:** 'Dangerous to the Public'
- **Element 2:** Causation (*See Element 1 of Intentional Murder*)
- **Element 3:** Serious Breach of the Management or Control of the Vehicle
- **Element 4:** Voluntariness (See Element 5 of 318M)

- **Element 1:** (See above Element 1)
- **Element 2:** Causation (*See Element 1 of Intentional Murder and above*)
- **Element 3:**(See above Element 3)
- **Element 4:** Voluntariness (See Element 5 of 318M)
- **Element 5:** Serious Injury

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Sample Homicide

5 types of Homicide:

1. Intentional or reckless murder
2. Statutory constructive murder (s 3A)
3. Common law constructive murder
4. Manslaughter by unlawful and dangerous act (UADAM)
5. Criminal negligence manslaughter (CNM)

Unlawful Homicide: Murder

Definition:

Homicide is broadly defined as a **volitional/voluntary** act (or omission to act) that causes the death of another human being sooner than it would have otherwise occurred.

Lawful homicide = self defence or suicide

Elements:

Identify the relevant ACT or OMISSION giving rise to liability to unlawful homicide

Determine whether the identified conduct/acts of the accused...

1. Actus Reus: ...**caused** the victim's death; AND
2. Actus Reus: ... acts were **conscious, voluntary and deliberate** (*R v Schaeffer*); AND
3. Mens Rea: The accused either:
 - A. Intended to cause death or GBH; or
 - B. Knew that their acts would **probably** cause death or GBH (reckless murder) ; and
4. The accused acted **without lawful justification or excuse**. (See defences)

Element 1: Causation

1. *The first element that the prosecution must prove is that the accused committed acts which **caused the victim's death**. There are three aspects to this element:*
 - i) ***The accused must have committed the relevant acts;***
 - ii) ***Those acts must have caused someone to die; and***
 - iii) ***The victim must have been a human being.***

(i) The accused must have committed the relevant acts; *Ryan v R (1967)*.

(ii) Causation (Require both Legal and Factual)

Legal (Causal Connection): The relationship between conduct and result of that conduct.

- D's act(s) or omission(s) must be a 'but-for' cause of V's death
- If the victim would not be dead but for the act or omission of the accused, then he or she is a factual cause of death: *Royall v R*
- There must be an absence of an event (second cause) that the law regards as superseding (R v Hallett; R v Royall)
- The second cause must be so 'overwhelming' as to make the original wound merely part of the history – ***R v Smith—stabbed but medical treatment was bad, R v Evans & Gardiner***

Breaking causation (exceptions):

1. Acts of God eg lightning bolts, tidal waves, the tide coming in and going out (***R v Hallett***)
2. Human acts or omissions (victim fleeing ***Royal v The Queen***)...If relevant see **tests later mentioned in murder**
 - The reaction of the victim ONLY severs the causal chain if the reaction is objectively unreasonable or disproportionate to the threat posed by the defendant.
3. Acts of animals/third parties eg Medical Negligence (***R v Jordan, R v Evans & Gardiner (no 2)***)

Assault Summary:

CL assault used in the charge of manslaughter under IM for Unlawful and Dangerous Act

1. Common Law Contact Assault
2. Common Law Apprehension Assault
3. Statutory assault
 - a. S.16: Causing serious injury intentionally
 - b. S.17: Causing serious injury recklessly
 - c. S.18: Causing injury intentionally or recklessly
 - d. S.24: Negligently causing serious injury
4. **Reckless** endangerment assault
 - e. S.22: Conduct endangering life
 - f. S.23: Conduct endangering persons
5. Offences involving a threat
 - g. S.20 Threats to Kill
 - h. S.21 Threats to inflict Serious Injury
 - i. S 21A Stalking

Note acronyms used in the slides:

CA = Crimes Act 1958 (Vic)

CL = Common Law

AR = Actus Reus

MR = Mens Rea

Δ = the accused, defendant, doer

V = Victim

GBH = Grievous bodily harm

Common Law	STATUTORY LAW – CRIMES ACT 1958
Common Law Contact Assault Common Law Apprehension Assault	S16 – Causing serious injury intentionally S17 – causing serious injury recklessly S18 – causing injury intentionally or recklessly S.20 – Threats to Kill S.21 – Threats to inflict Serious Injury S 21A – Stalking S22/23 – conduct endangering life/ persons S24 – negligently causing serious injury

We have both **common law assault** in Victoria and **statutory assault** provisions under the Crimes Act.

S 16 Causing Serious Injury Intentionally:

- Level 3 imprisonment (20 years maximum)

S 16: 'A person who, without lawful excuse (4), intentionally (3) causes (2) serious injury (1) to another person is guilty of an indictable offence.'

Elements:

- V suffered a "serious injury"
- That the accused's voluntary act/omission **caused** serious injury to another person (V)
- That the serious injury was caused intentionally; and
- That the injury was caused without lawful excuse

Element 1: Injury must be a serious injury

S15 defines serious injury means:

- An injury (including the cumulative effect of more than one injury) that –
 - endangers life; OR
 - is **substantial** and **protracted**; OR
- The destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm.

- Physical injury and harm to mental health are both defined inclusively (*Crimes Act 1958* s15)

Physical injury: includes unconsciousness, disfigurement, substantial pain, infection with a disease and impairment of bodily function.

Harm to mental health: includes psychological harm, but does not include emotions such as distress, grief, fear or anger unless such emotions result in psychological harm

- Serious injury** may be regarded as **equating with GBH** at common law and meaning bodily harm of a really serious kind: see *Hedigan J in Director of Public Prosecutions v Williams [1993] VR*

Element 2: Voluntariness

Starting sentence: The second element that the prosecution must prove is that the relevant act was committed consciously, voluntarily and is a 'willed' act (or omission) of the conscious mind per (*Ugle v R*) and deliberately ((*Ryan v R*) (1967)) UNLESS the accused can raise evidence to the contrary (*Falconer*).

Automatism exception to Voluntary Act:

1. A person who is not conscious or aware of what he or she is doing acts as an automaton (*Ryan v R*).

Element 3: Causation

'Causing' a **broad** term, covering injury that was only indirectly caused by Δ, and that did not result from the application of force *R v Nicholson [1916] VR 130*

Firstly, the accused must have caused the injury.

1. Legal causal connection:

- D's act(s) or omission(s) must be a 'but-for' cause of V's death
- The absence of an event that the law regards as superseding in the relevant sense.

2. Operating and substantial cause test – *R v Hallett [1969]*

- Eggshell Skull Rule – *R v Blaue* – Take your victim as you find him/her.

• 'Inflicting' (a **narrower** term) used in some other jurisdictions

- Initially narrowly construed to apply only where there is a **direct** and **immediate** application of force to the victim (*R v Clarence*)

But now expanded to include:

1. causing psychiatric illness: *R v Ireland; R v Burstow [1998] AC 147*
2. transmission of a disease through sexual intercourse: *Aubrey v The Queen [2017] HCA 18*

The injury does not need to have been caused by the accused personally assaulting the complainant. This element will be satisfied even if s/he caused the injury indirectly (*R v Salisbury [1976] VR 452*).

Element 4: Intention

- The injury must have been **intended** (*Westaway v R*) AND
- The prosecution must establish an **intention** to cause **serious injury**, not merely an intention to do an act which in fact causes serious injury (*Westaway v R*)
- Note: If the injury goes beyond the injury foreseen = irrelevant. Foresaw injury (specifics not important)

Where the physical act of the accused is a direct assault which any ordinary person would have realised was likely to cause some physical harm to the victim, **an intention to cause injury** (if not serious injury) **can be inferred** and it is necessary for the accused to lead some evidence that he did not realise that the act might cause some physical injury (*R v Mowatt*)

Element 5: Lawful excuse or justification (See Defences)

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