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3.3 MENS REA – FAULT/MENTAL ELEMENTS

MENS REA: Refers to the mental or fault element(s) of an offence

- Can be objective or subjective
- MR is not required for strict/absolute liability offence

Intention:

- Subjective standard
- D's conscious aim or purpose when engaging in particular conduct
- No need to show that the accused's expected to achieve their result/mode of death

Recklessness:

- Subjective standard
- Accused pursues a course of action and is aware of the risks/consequences, disregarding them
- The accused is to blame because they turned their mind to, and were aware of, the probability of the harmful consequence ([Crabbe](#))

Negligence:

- Objective standard
- A great falling short of the standard of care required of a reasonable person ([Nydham](#))

Strict/Absolute Liability:

- Prosecution must only prove AR

Subjective Test: Mental state of the accused (intention, knowledge, recklessness, dishonesty)

Objective Test: Mental state of a hypothetical 'reasonable person'

3.4 CONCURRENCE/CONTEMPORANEITY

Concurrence/Contemporaneity

- Concurrence = actus reus and mens rea must exist at the same time
- There can be no criminal liability unless P can prove that AR coincides with MR

3.5 PROVING CRIMINAL LIABILITY

The standard and burden of proof

- Presumption of innocence → the prosecution must prove defendant's guilt for there to be criminal liability
- Standard of proof – P must prove its case (each element of the offence) beyond reasonable doubt

5.2 STATUTORY OFFENCES (*CRIMES ACT 1958*)

- Offences involving the causing of injury
 - o (ss. 16, 17, 18, 24)
- Threat offences
 - o (ss. 20, 21)
- Other offences:
- Stalking
 - o (s. 21A)
- Endangerment offences
 - o (ss. 22, 23)

S.15 Serious Injury:

- (a) an injury (including the cumulative effect of more than one injury that—
 - i. endangers life; or
 - ii. is substantial and protracted; or
- (b) the destruction of the foetus, 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

Injury or Serious Injury is a question of fact to be determined by the jury

OFFENCES	AR (BRD)	MR (BRD)	MAX SENT
<u>S.15A Causing SI INTENTIONALLY</u> in circumstances of GROSS VIOLENCE * In a question, if there is no gross violence, state that you can rule out S15A and S15B	1. Act was one of gross violence as per s.15A (2) AND 1. Caused serious injury (s.15) in doing so • Conduct has to be the <i>substantial and operating cause</i> of SI	1. D intended to act as they did in circumstances of gross violence (subjective standard) AND 2. Caused serious injury in doing so	Level 3 imprisonment (20 years maximum)
<u>S.15B Causing SI RECKLESSLY</u> in circumstances of GROSS VIOLENCE	1. Act was one of gross violence as per s.15A (2) AND 2. Caused serious injury (s.15) in doing so (a)(i) Endangers life; OR (ii) Substantial AND protracted (b) Destruction of foetus • Conduct has to be the <i>substantial and operating cause</i> of SI	1. D subjectively foresaw that the conduct would be likely to result in serious injury but went ahead anyway	Level 4 imprisonment (15 years maximum)
<u>S.16 Causing SI Intentionally</u>	Act caused serious injury to V (s.15)- See above defn. • Conduct has to be the <i>substantial and operating cause</i> of SI	1. Intended to act as they did AND 2. Intended to cause serious injury (<i>R v Westaway</i>)	Level 3 imprisonment (20 years maximum)

	An injury may be a “serious injury” because of the cumulative effect of several injuries.	(subjective standard)	
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If A acted in self-defence and there is no FV involved:

“Of course, family violence provisions exist. However, they are not applicable here”

INTOXICATION (S 322T)

Intoxication: Effect on other defences – **S.322T**

(1): Definition of intoxication

(2)-(3): If defence relies on Reasonable Belief (RB) **or** Reasonable Person (RP), in determining if it was reasonable – regard must be had to the standard of a reasonable P who is not intoxicated

(4): NOT Self-induced = compared to a RP intoxicated to the same extent as the person concerned.

SELF - INDUCED = a standard of a RP (intoxication ignored, no excuse to lower standard)

(5): Definition of self-induced: self-induced unless it came about involuntarily, because of fraud, accident, etc.

See Also: *O'Connor (1980) HC*

NECESSITY (EMERGENCY – S 322R)

Not guilty of an offence if D reasonably believes that:

- Circumstances of sudden or extraordinary emergency exist (**s 322R(2)(a)(i)**); and
- Conduct is only reasonable way to deal with emergency (**s 322R(2)(a)(ii)**); and
- This section only applies in the case of murder if the person believes that the emergency involves a risk of death or RSI (**s 322R(3) Limitation for the defence of Murder**)

DURESS – S 322O

A person carries out conduct under duress if— (**s. 322O(2)**)

- a) the person reasonably believes that—
 - i. subject to subsection (3), a threat of harm has been made that will be carried out unless an offence is committed; **s.322O(2)(a)(i)** and
 - ii. carrying out the conduct is the only reasonable way that the threatened harm can be avoided; **s.322O(2)(a)(ii)** and
- b) the conduct is a reasonable response to the threat. **s.322O(2)(b)**

EXCLUSION – NOT DURESS if the threat is made by or on behalf of a person with whom the person is **voluntarily associating** for the purpose of carrying out violent conduct. **S. 322O(3)**

- E.g. if you knowingly join a criminal gang and the gang says you have to do x or y
- You are to blame for joining in the first place. Not Duress.

NB: Family Violence and Duress S.322P - Family violence evidence can be considered

Case Notes

Voluntariness

Ugle v The Queen [2002]

Trigger words	Voluntariness. Fell onto knife?
Facts	Ugle was holding a knife when the wound was sustained. He claimed the deceased was attacking him with a cricket bat and the knife was used in self-defence. He claims to not have realised the deceased had been stabbed and not meant to kill him.
Issue	Was the act voluntary? Did Ugle put the knife into the body of the deceased or did the deceased impale himself on the knife that the appellant was holding?
Decision	Ugle not act voluntarily in entering the knife into the victim - The jury should have been regarding unwilled acts.
Principle	A person cannot be criminally responsible for an act that was not willed, it must be on the product of his conscious mind.

Causation

R v Hallett [1969]

Trigger words	Causation. Tide. Drown.
Facts	D attacked V on a beach rendering him unconscious. V drowned when the tide came in
Issue	Was Hallett the substantial and operating cause of death? Did the sea break the chain of causation?
Decision	Found that Hallett's application of force which rendered V dead and unconscious was a substantial and operating cause of death.
Principle	Chain of causation can only be broken by an intervening act: act of God, act by 3 rd party, act by victim

R v Blaue [1975]

Trigger words	Causation. Blood transfusion (not accepted). Religion.
Facts	Blaue stabbed V many times because was not granted entry into house. Due to religion V did not accept blood transfusion and died.
Issue	Was Blaue the operating and substantial cause of death? Was the chain of causation broken when the victim refused to accept the transfusion?
Decision	Convicted of murder. The death was caused by the loss of blood following the stab wound. The refused blood transfusion was not an independent cause of death and did not break the chain of causation.

Principle	Take your victim as you find them, religious beliefs included. The wound caused by the stab was an operating and substantial cause of death
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