

Criminal Law Notes

Examinable Topics:

1. Homicide
2. Cause harm/serious harm (not assault)
3. Attempts
4. Mental Impairment (not automatism)
5. Self defence

Strategic Issues:

1. Charge selection
2. Alternative verdicts
3. Evidential issues affecting proof
4. Guilty pleas

To weave in authority (case and legislation):

- ____ is authority for the proposition that _____. In these circumstances therefore _____.
- _____ is authority that there is justification for a _____.
- - 'the application of s__ will result in _____'

When using case law, consider:

- Does the case apply? Are the facts sufficiently similar or can it be distinguished?
- What is the ratio of the case? Is it binding precedent or just persuasive?
- Why is the current scenario similar to justify applying the case?

If missing facts, ensure to state that! State what facts would be required for a more robust analysis.

1. **ISSUE SPOT:** Read the factual scenario carefully! Identify the potential offenders/accused that the Prosecution will bring an action against.

- a. *CONSIDER *Duplicity* – defendant can't be charged twice for the same actions that led to the offence.

2. **ASK:** Can the accused actually be tried?

- a. Not if under 10 years of age: s 5 *Young Offenders Act*
- b. If between 10 and 14, presumed *doli incapax* – that the child is incapable of forming criminal intent (*but can be rebutted by the prosecution*).

3. **CHARGE SELECTION:** Identify the most appropriate charge (*or charges*) for each accused. If multiple offences, take the most relevant or appropriate first:

a. *Section 330 CLCA is authority the prosecution can bring more than one charge.*

b. IF RELEVANT: is the offence basic or aggravated?

i. See s 5AA - for dishonesty offences, non-fatal offences against the person and some sexual offences.

- STATE: Prosecution Guideline No 1 is authority that: the prosecution will ordinarily pursue the most serious charge possible on the facts.

4. ELEMENT ANALYSIS: Define and Analyse ALL of the physical and mental elements of each offence! State them and apply them to the facts! For the prosecution to succeed, they must prove these beyond reasonable doubt!

Homicide - CRIME

Ordinary Answer Skeleton:

Was there an unlawful killing on the facts?

- MURDER? (Section 11 and common law)
 1. Did the accused cause the death of the victim?
 - a. Were their actions consciously performed and so connected to the event that they had a *sufficiently substantial causal effect*, which remained until death?: *Hallett and Arulthilakan*
 - i. IF there is an omission: *Taber, Styman and Styman*
 - ii. IF the victim intervenes: *Royall*.
 - iii. IF the victim received bad medical treatment, or the treatment is never administered, see *Jordan and Smith*.
 2. Did the accused either: per *Moloney*
 - a. Intend to cause death/grievous bodily harm OR have knowledge that their actions would certainly cause death/grievous bodily harm.
 - b. Awareness that it was probable their actions could cause death or grievous bodily harm (*recklessness*)
- CONSTRUCTIVE MURDER? (Section 12A) – *See below 1.*
 - *Useful if intention cannot be proven.*
- MANSLAUGHTER? (Section 13 and common law)
 1. Physical element is same as for murder *above*. Will also arise if provocation defence is successful.
 2. Was the defendant:
 - a. Grossly negligent OR
 - b. Did they perform an unlawful and dangerous act?
- ATTEMPTED MANSLAUGHTER? (Section 270AB) – *See below*
- CRIMINAL NEGLIGENCE? (Section 14) – *See below*
 - *Note: if a doctor caused the death of a patient, see below!*

Homicide:

- *Homicide* is the term used to describe the lawful or unlawful killing of a human being
- A volitional act or omission to act that causes the death of a human being sooner than it would have otherwise occurred
 - The acceleration of death

Distinction between Murder and Manslaughter:

- The *mens rea* required; and
- The operation of some defences that reduce murder to manslaughter

Actus Reus Element of Homicide (Physical Element)

To satisfy the *actus reus* of homicide, it must be shown that:

1. A **voluntary act** (or omission to act where the law imposes a duty to act)
 - An omission applies when:
 - There is a special relationship between D and V
 - Parents/Minors, spouses, common carrier/passenger, teachers/pupils
 - Where D voluntarily assumes responsibility of V and undertakes to take care of a helpless person
 - **The act or omission must be voluntary**
 - Conduct must have been willed by D or directed by a conscious decision of D
 - Unconscious if in a state of automatism, involuntary movement or conduct caused by another
 - If there is a series of acts, the courts will look at the series of acts to see if it can be regarded as one transaction that was voluntary – ***R v Butcher***
 - There is a rebuttable presumption that D's acts are voluntary
2. The voluntary act must **cause** the death
 - It is tested objectively whether the conduct that caused the death of V occurred in a continuing manner without an intervening act
 - To determine causation, look at the following:
 - **Factual Causation:**
 - That 'but for' D's conduct, the death would not have occurred
 - The common-sense test – leaves the question of causation to juries by encouraging them to apply the common sense to the facts, and reminding them of the seriousness of their determination
 - The '**Substantial Contribution Test**' from *R v Hallet* (1969) is the prevailing test for causation to assist juries
 - The conduct must be an operating and substantial cause of the death