

Further, this act is clearly a significant and substantial cause of death (Reynolds; Royall) which does not break the chain of causation (Hallett).

[THEN CHOOSE ONE OF THREE TO PROVE THE SUBSEQUENT MENS REA]

- The actus reus consequence of death is attached to the subjective mens rea element of intent to kill (section 18(1)(a) Crimes Act 1900 (NSW)). Given _____ was acting otherwise rationally, it can be inferred that _____ intended to bring about the inevitable consequence of death (Price). The [inert some evidence] further suggests _____'s intent to kill.
- The actus reus consequence of death is attached to the subjective mens rea element of intent to cause GBH (section 18(1)(a) Crimes Act 1900 (NSW)).
- The actus reus consequence of death is attached to the subjective mens rea element of reckless indifference to human life (section 18(1)(a) Crimes Act 1900 (NSW)). Since _____, _____ would have been aware of the probability of death from his/her actions (Royall; Crabbe).

III CONCLUSION

Assault Scaffold

_____ may be liable for:

- Wounding With Intent/GBH with intent under s 33 Crimes Act 1900
- Reckless GBH/ reckless wounding under s 35 Crimes Act 1900 (NSW)
- Assault occasioning actual bodily harm (ABH) under s 59 Crimes Act 1900 (NSW)
- Common assault under s 61 Crimes Act 1900 (NSW).

If not (s33/35/59) it is at least (s35/59/61). The prosecution must prove all elements beyond reasonable doubt (Woolmington). _____ may attempt to rely on the defence of intoxication/ necessity/ automatism/ self-defence.

Aggravated Assault – Wounding or Grievous Bodily Harm with Intent

I INTRODUCTION

_____ could be charged with intentional wounding/grievous bodily harm contrary to s 428B of the Crimes Act. The prosecution must prove beyond a reasonable doubt all elements of the

offence: *Woolmington v DPP* (1935). The prosecution must prove that _____ sustained injuries which amount to wounding or GBH caused by the actions of _____ whereby he intended to cause GBH (*He Kaw Teh v The Queen* 1985). The defence bears the evidentiary burden of raising the reasonable possibility of _____ (*Jayasena v R* [1970]).

II BATTERY

A *Actus Reus*

The prosecution must prove that _____ sustained injuries which amount to wounding or grievous bodily harm and that these injuries were caused by _____'s actions.

1 *Voluntariness*

The prosecution is entitled to presume that _____'s act of _____ was voluntary unless there is evidence to the contrary (*Falconer*). There is nothing on the facts to suggest that this conduct was anything other than 'conscious and willed' (*Ryan*). Thus, the prosecution can rely on this presumption.

or

The prosecution cannot presume voluntariness because there is evidence to the contrary due to _____'s intoxication/automatism. The issue of voluntariness will be discussed below under defences.

2 *Assault*

- See (Psychic) assault (act causing apprehension of imminent unlawful contact) below
- See Battery (unlawful contact) below

3 *Victim sustained an injury that amounts to –*

(i) *Wounding s 33(1)(a)*

Wounding can be defined as breaking of the skin (Lardner; Shepherd; Newman) or penetration of the internal layer of the skin (McCullough).

- 'the breaking or cutting of the interior layer of the skin (dermis)'; the breaking of the external layer of the skin is not enough (*Smith* (1837)).
- 'If the skin is broken, and there was a bleeding, that is a wound' (*Vallance, Windeyer J*)
- So, includes anything from split lip to stab wound (*Shepherd*)
- Wounding' means 'the breaking or cutting of the interior layer of the skin (dermis)'
 - the breaking of the external layer of the skin is not enough (*R v Smith*).
- Windeyer J, quoting Lord Lyndhurst in *Moriarty* (1834), observed that 'if the skin is broken... and there was a bleeding, that is a wound' (*Vallance*)

- An injury that breaks through the whole skin, both inner and outer: *Vallance v R* (1961); *Shepherd* [2003]
 - Minor cut to serious deep knife wound
- Wounds may be inflicted by a fist and a split lip is sufficient. No weapon or instrument need be used: *R v Shephard* [2003]
- Wounding requires an incision or puncture in the skin: *Shephard*

(ii) *GBH s 33(1)(b)*

The prosecution may argue that _____ sustained injuries of _____, which amount to wounding or GBH. GBH is really serious bodily harm: *R v Perks* 1986. GBH is defined in section 4 of the Crimes Act 1900 (NSW). The facts _____.

- This “serious” type of harm (Swan) need not be permanent, long-lasting or life-threatening (Haoui)
 - Where an injury develops over time, the relevant harm will, subject to any issue as to causation, be the ultimate harm suffered (Reyne).
- Common law meaning in context of homicide: ‘really serious bodily harm’ (*Pemble*; *Perks*)
- s 4 provides a partial, inclusive definition:
 - a) destruction of foetus
 - b) ‘any permanent or serious disfiguring of the person’
 - c) ‘any grievous bodily disease’ including ‘causing a person to contract a grievous bodily disease’
- Includes unconsciousness/strangulation to the point of unconsciousness (*Rhodes*)
- GBH means ‘really serious bodily harm’ (*Pemble*) (*Perks*)
 - Section 4 provides an inclusive definition of what can constitute
 - Garling J in (*Swan v R* [71])
- Jury to determine eg. Fracture to skull or strangulation to point of unconsciousness
- GBH s 4(1) ‘any permanent or serious disfiguring of the person...any grievous bodily disease’ → inclusive definition → CL continues to apply
- *Haoui* [2008] held GBH does not require permanent, or that consequences are long lasting or life threatening but does require that injury is a really serious one.
- *R v Jione* [2007]
 - Offence resulted in V being in a vegetative state after being punched and stomped to the head, well above mid-range seriousness by reason of injury inflicted