

Criminal Law and Procedure

Exam Notes

Course Skeleton

Offences

1. Assault
2. Homicide
3. Drug Offences
4. Property Offences

Defences

1. Self-Defence
2. Duress
3. Sudden or Extraordinary Emergency
4. Mental Impairment
5. Intoxication [not an actual defence]

Sentencing

Offences

Assault

	serious injury + gross violence	serious injury	injury
intentionally	S 15A	S 16	S 18
recklessly	S 15B	S 17	S 18
negligently	X	S 24	X
Common law assault			

The Offences

- Intentionally causing serious injury in circumstances of gross violence (s 15A)
- Intentionally causing serious injury (s 16)
- Intentionally causing injury (s 18)
- Recklessly causing serious injury in circumstances of gross violence (s 15B)
- Recklessly causing serious injury (s 17)
- Recklessly causing injury (s 18)
- Negligently causing serious injury (s 24)
- Common law assault involving application of force
- Common law assault not involving application of force

'Injury'

Crimes Act 1958 (Vic) s 15

- (a) Physical injury; or
- (b) Harm to mental health;
Whether temporary or permanent.

Physical injury includes (s 15):

- Includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function

Harm to mental health includes (s 15):

- Includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm;

'Serious injury' means

Crimes Act 1958 (Vic) s 15

- (a) An injury (including the cumulative effect of more than one injury) that —
 - i. Endangers life; or
 - ii. Is substantial and protracted;
- (b) 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.

Timely medical intervention does not deny or undo the seriousness of the injury

(Sarjeant; Garratt)

- 'It is the character of the injury and specifically, **its capacity to endanger life**, which must be considered'
- '**Substantial and protracted**' does not require assessment of seriousness to be postponed until the consequences of the particular injury for the particular victim can be examined

Key point: serious injury to be assessed at the time it is *sustained*

Take the victim as they are found (Blaue)

An injury need not be permanent to be considered serious (Explanatory Notes)

'Caused'

General principles

- For A to have caused B, A must have '**contributed significantly**' to B (been a '**substantial and operating cause**' of it) (*Royal*; *Withers*)
- The act need not have been the *sole* cause (*Royal*)
- The act need not have been the direct or immediate cause (*Royal*)
- **Royal**: V dies after

'But for'

- It is a 'useful tool', but not alone sufficient to determine causation (*Royal* per *McHugh J*)

Intervening acts

- Relevant question is whether something has broken the chain of causation, such that D's act is 'merely part of the history' (*Smith*)
- A common sense test (*Smith*)

Medical intervention delaying death (Smith; Evans)

- Won't ordinarily break the chain of causation (*Evans*)
- 'Only if the second cause is so overwhelming as to make the original [injury] merely part of the history can it be said that the death does not flow from the [injury]' (*Smith*)
- In murder context: 'only if it can be shown that the act or omission *accelerated* the death' (*Evans and Gardiner*)

Natural events (Hallett)

- Requires 'extraordinary natural forces' (*Hallett*)
- **Hallett**: D and V fought; V left unconscious at water's edge at a tidal beach; tide rose, and V died by drowning. **Found**: D caused the death; the *normal operation* of the tide did not break the causal chain.

Decisions of the victim

- Take the victim as you find them (*Blaue; Swan*)
- **Blaue**: V refused medical treatment after stabbing for religious reasons. Religious decision not to have medical treatment cannot break chain of causation.
- **Swan**: 79yo's decision not to operate after being attacked was based on low quality of life following the attack. **Found**: decision not to operate not an intervening act. Decision not to operate motivated by V's low quality of life, which arose from the attack.

- ***Aidid***: if an unlawful and dangerous act induces in a victim a **well-founded apprehension of physical harm which makes it a natural consequence or reasonable that the victim would seek to escape in a particular way**, and the victim is killed in the course of escaping in that way, the unlawful and dangerous act may be a substantial cause of the death
 - Relevant question is whether it was an unnatural or unreasonable reaction — taking into account the existence of safer options (*Aidid*)

'Offensive weapon', 'firearm', 'imitation firearm'

Offensive weapon (s 15, referring to s 77(1A))

- means any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.
- An apparently innocuous item wielded in a certain way can be an offensive weapon (*Nguyen*)
 - Eg silk stockings example (*Nguyen*, citing *Tarola*)

Firearm (s 15, referring to s 77(1A))

- Has the same meaning as in the *Firearms Act 1996*

Imitation firearm (s 15, referring to s 77(1A))

- means anything which has the appearance of being a firearm, whether capable of being discharged or not;

Intentionally

- Must have intended to inflict (serious) injury (*Westaway*)
- Nature of the accused's acts may provide evidence of his intention (*McKnoult*)
- Accused must have intended to cause a (serious) injury and actually cause a (serious) injury — but need not have intended to cause the precise injury that was suffered (*Royall*)
- Intention and causation must be treated as separate issues (*McKnoult*; *Royall*)
- Capacity to form the relevant intention may have been affected by drugs and alcohol

Recklessly

- **In the context of common law murder**: where a person 'does an act knowing that it is **probable death or grievous bodily harm will result**' (*Crabbe*)
- **'foresight that injury will probably result'** (*Campbell*)
- Mere 'possibility' is not enough (cf *Aubrey*)
- **DPP Reference No 1 [2021]**: the 'probability' standard in *Campbell* is the correct standard to apply in Victoria

Negligently

- See below