

# 70114 CRIMINAL LAW AND PROCEDURE

## EXAM ANSWER SCAFFOLD — NSW JURISDICTION

University of Technology Sydney | IRAC Method | AGLC4 Citations

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### HOW TO USE THIS SCAFFOLD

Every section is written as flowing prose you can copy directly into your exam booklet. Fill in every \_\_\_\_\_ blank with the specific people, facts, and outcome from your question. The structure follows IRAC — Issue → Rule → Application → Conclusion — within each paragraph block. Work from the most serious offence down to back-up offences, then address defences.

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### OPENING — CHARGES, BURDEN & STANDARD OF PROOF

✎ Write this as your very first paragraph for any problem question. Fill in names and list only the offences actually raised on your facts.

\_\_\_\_\_ ('the accused') may face criminal liability arising from the incident involving \_\_\_\_\_ ('the victim') on \_\_\_\_\_. The offences potentially arising are: \_\_\_\_\_. All facts are presumed to take place within New South Wales.

The prosecution bears the legal burden of proving every element of each offence beyond reasonable doubt: *Woolmington v Director of Public Prosecutions* [1935] AC 462. The accused is presumed innocent until proven guilty. Voluntariness of any act is presumed by the prosecution unless evidence to the contrary is raised: *Ryan v R* (1967) 121 CLR 205 (HCA). The accused bears only an evidential burden where a defence is raised; once that evidential burden is discharged, the prosecution must disprove the defence beyond reasonable doubt.

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### PART 1 — AGGRAVATED ASSAULT OFFENCES

✎ Always analyse the most serious applicable offence first, then the back-up offence(s). For aggravated assault questions, move through ss 33 → 35 → 59 as appropriate.

#### **OFFENCE 1 — Wounding/GBH with Intent | s 33 Crimes Act 1900 (NSW) | 25 years**

The issue is whether \_\_\_\_\_ is criminally liable for wounding \_\_\_\_\_ with intent to cause grievous bodily harm, contrary to s 33 of the Crimes Act 1900 (NSW).

#### **Actus Reus**

Section 33 requires proof that the accused wounded or caused grievous bodily harm ('GBH') to another person. A 'wound' requires a break in the continuity of the whole skin, not merely the outer layer: R v Vallance (1961) 108 CLR 56. 'Grievous bodily harm' is defined in s 4 of the Crimes Act 1900 (NSW) as 'really serious harm', including permanent or serious disfigurement, destruction or serious disablement of a part of the body, or a grievous bodily disease.

On the facts, \_\_\_\_\_ . This \_\_\_\_\_ constitute a wound/GBH because \_\_\_\_\_. Therefore, the actus reus of wounding/GBH \_\_\_\_\_ established.

### **Mens Rea**

Section 33 requires a specific intent to cause GBH — recklessness is insufficient: Royall v R (1991) 172 CLR 378 (HCA). Specific intent may be inferred from the surrounding circumstances, including the nature and degree of force used, the weapon employed, and any prior threats: R v Willmot (No 2) [1985] 2 Qd R 413.

Here, \_\_\_\_\_ . This conduct suggests \_\_\_\_\_ because \_\_\_\_\_. Accordingly, the specific intent to cause GBH \_\_\_\_\_ proven beyond reasonable doubt.

**Conclusion (s 33):** The prosecution \_\_\_\_\_ establish all elements of s 33. \_\_\_\_\_ is therefore \_\_\_\_\_ liable for wounding/GBH with intent. [If intent is not made out, proceed to s 35 below.]

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## **OFFENCE 2 — Reckless Wounding / Reckless GBH | s 35 Crimes Act 1900 (NSW) | 7–14 years**

✎ Use this as the back-up to s 33 where specific intent cannot be proven. Apply s 35(1)/(2) for GBH; s 35(3)/(4) for wounding; add 'in company' aggravation if relevant.

The issue is whether, if the prosecution cannot establish specific intent under s 33, \_\_\_\_\_ is nonetheless liable for reckless GBH or reckless wounding under s 35 of the Crimes Act 1900 (NSW).

### **Actus Reus**

The physical element of s 35 is identical to s 33 — the accused must have caused a wound or GBH. As analysed above in relation to s 33, \_\_\_\_\_'s conduct of \_\_\_\_\_ constitute a wound/GBH for the same reasons.

### **Mens Rea**

Section 35 requires recklessness — that is, the accused foresaw the possibility of causing GBH or a wound to another person and proceeded regardless: R v Coleman (1990) 19 NSWLR 467 (NSWCCA); R v Crabbe (1985) 156 CLR 464 (HCA). It is not necessary that the accused foresaw the probability of harm, only its possibility.

On the facts, \_\_\_\_\_ . A reasonable person in \_\_\_\_\_'s position would have foreseen the possibility of causing serious injury because \_\_\_\_\_ . \_\_\_\_\_ aware of this risk at the time because \_\_\_\_\_. Accordingly, recklessness \_\_\_\_\_ established.

**Conclusion (s 35):** The prosecution \_\_\_\_\_ establish recklessness against \_\_\_\_\_ under s 35. \_\_\_\_\_ is therefore \_\_\_\_\_ liable for reckless \_\_\_\_\_ under s 35(\_\_\_\_\_).

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### OFFENCE 3 — Assault Occasioning Actual Bodily Harm | s 59 Crimes Act 1900 (NSW) | 5 years [BACK-UP]

✎ Use s 59 as a back-up where ss 33/35 cannot be made out, or where the injury falls below GBH/wound threshold.

The issue is whether \_\_\_\_\_ is criminally liable for assault occasioning actual bodily harm ('ABH') under s 59 of the Crimes Act 1900 (NSW).

#### Actus Reus

Section 59 requires proof of: (1) an assault; and (2) that the assault occasioned ABH. An assault is any act by which a person intentionally or recklessly causes another to apprehend immediate and unlawful force, or the direct application of unlawful force: *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439; *DPP v JWB and SMB* (1992) 175 CLR 218 (HCA). ABH means any hurt or injury calculated to interfere with the health or comfort of the victim and which is more than merely transient or trifling: *R v Miller* [1954] 2 QB 282.

On the facts, \_\_\_\_\_. As a result, \_\_\_\_\_ suffered \_\_\_\_\_. This constitutes ABH because \_\_\_\_\_. The assault element \_\_\_\_\_ satisfied because \_\_\_\_\_.

#### Mens Rea

The mens rea for s 59 is the mens rea for assault — intention or recklessness as to the unlawful application of force or causing apprehension of such force: *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439. There is no requirement that the accused intended or foresaw the ABH itself.

Here, \_\_\_\_\_. This demonstrates \_\_\_\_\_ because \_\_\_\_\_. The mens rea \_\_\_\_\_ therefore established.

**Conclusion (s 59):** The prosecution \_\_\_\_\_ establish all elements of s 59. \_\_\_\_\_ is therefore \_\_\_\_\_ liable for assault occasioning ABH.

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## PART 2 — PROPERTY OFFENCES

### OFFENCE 1 — Larceny | s 117 Crimes Act 1900 (NSW) | 5 years

✎ Larceny is a common law crime — s 117 provides punishment only. Define and apply all elements from common law.

The issue is whether \_\_\_\_\_ is liable for larceny under s 117 of the Crimes Act 1900 (NSW). Section 117 provides that whosoever commits larceny shall be liable to imprisonment for five years. As larceny is a common law crime, its elements are defined by the common law.

#### Actus Reus

The actus reus of larceny comprises three elements: (1) a taking and carrying away; (2) of property capable of being stolen; (3) belonging to another person; (4) without the consent of the person in possession.

**Taking and carrying away:** The taking and carrying away is the sole physical act required — mere removal, even slight, is sufficient: *He Kaw Teh v R* (1985) 157 CLR 523 (HCA); *R v Lapier* (1784) 1 Leach 320. On the facts, \_\_\_\_\_  
\_\_\_\_\_. This constitutes a taking and carrying away because \_\_\_\_\_.

**Property in possession of another:** The property must be in the possession of another person at the time of the taking, meaning that person had physical control coupled with an intention to possess: *Anic v R* (1994) 76 A Crim R 18. On the facts, \_\_\_\_\_ had possession of the \_\_\_\_\_ because \_\_\_\_\_.

**Without consent:** The taking must be without the consent of the possessor: *R v Ilich* (1987) 162 CLR 110 (HCA). On the facts, \_\_\_\_\_ consent to \_\_\_\_\_ taking the property because \_\_\_\_\_.

#### Mens Rea

**Intent to permanently deprive:** The accused must, at the time of the taking, intend to permanently deprive the possessor of the property: *Holloway v R* (2004) 148 A Crim R 582 (NSWCCA). A genuine intention to return negates larceny: *R v Feely* [1973] QB 530. On the facts, \_\_\_\_\_  
\_\_\_\_\_. This \_\_\_\_\_ an intention to permanently deprive because \_\_\_\_\_.

**Fraudulent taking:** The taking must be fraudulent, meaning the accused knew the property belonged to another and had no genuine claim of right: *R v Weatherstone* [2000] NSWCCA 214. On the facts, \_\_\_\_\_  
\_\_\_\_\_. There \_\_\_\_\_ evidence of a genuine claim of right because \_\_\_\_\_.

**Conclusion (Larceny):** The prosecution \_\_\_\_\_ establish all elements of larceny against \_\_\_\_\_ under s 117. \_\_\_\_\_ is therefore \_\_\_\_\_ criminally liable for larceny.

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