

# LAWS1022 Exam Notes

Assault			Homicide			Defences	Dishonest Acquisition		Complicity			Conspiracy	
Common (s61)	Aggravated	ACD (s25A)	Murder (s18(1)(a))	Manslaughter (s18(1)(b))		<u>Full</u> - Self-Defence - Mental Illness - Intoxication - Automatism	Larceny (s 117)	Fraud (s 192 E)	JCE	EJCE	A&A P&C	Existence of agreement	
Touch	ABH (s59)		Intent to kill/ inflict GBH	Voluntary			<u>Partial</u> - Extreme Provocation - Substantial Impairment - Excessive self-defence	Receiving stolen property (ss 187 - 189)				Obtain property	Scope of agreement
	GBH (s35)		RIHL	Involuntary				Goods in custody (s 527C)				Obtain financial advantage	Intention
Threat (Psychic)	Wounding (s35)		Constructive	MUDA	GCN			Cause financial disadvantage					
	Specific Intent (ss27, 29, 33)												

Q1. Problem question: provide legal advice in relation to a factual scenario.

(40 marks)

Q2. Essay question: demonstrate knowledge of criminal law topics covered in the course and consider law reform matters

(20 marks)

# Assault

## 1. Common Assault (by touch or by threat) CA s 61

### Actus Reus

#### a) Act

- Application of force (by touch) *Edwards v Police* (1998)
- Actions causing the victim to apprehend immediate infliction of force (Psychic)
  - *Pemble v R* (1971) assault cannot occur unless or until the victim is aware of the accused actions; Don't have to prove subjective fear (objective test)
  - Stalking and Intimidation - *Crimes (Domestic and Personal Violence) Act 2007* s 13; Intent/knowing of likelihood to cause fear, no actual fear needed
  - *Police v Greaves* [1964] - Conditional threats: may constitute an assault if the condition cannot be lawfully imposed (e.g. 'your money or your life?')
- An omission is not an assault (*Fagan* [1969])

#### b) Consent

- *Bonora* (1994) an assault with consent is no assault at all, can't consent to aggravated forms of harm

#### c) Coincidence

- MR does not need to be present at the time of commencement of AR (*Fagan*) but can in effect be superimposed onto an existing and continuing act

### Mens Rea - *MacPherson v Brown* (1975)

#### a) Intention - to effect an unlawful contact; or to create an apprehension of imminent unlawful contact in the mind of the other person

#### b) Adverted recklessness (subjective): foresight of the possibility of the consequence, yet nevertheless proceed with ones' actions

## 2. Aggravated Assault

### a) Assault occasioning ABH CA s 59

#### - ABH

- Actual harm - Such hurt or injury need not be permanent but must be more than merely transient and trifling (*Donovan* [1934])
- Psychiatric harm - ABH is capable of including (recognised) psychiatric injury (*Chan-Fook* [1994])

#### - MR

- must have had intention to occasion ABH (*Coulter*) or
- been reckless in doing so (*R v Williams*)

### b) Reckless assault causing GBH CA s 35

- GBH: "really serious injury" (*Smith*) defined in s 4, caused permanent or serious disfiguring of the person; or grievous bodily disease

- Recklessness: the accused realised that victim would be subjected to bodily harm, however slight, nonetheless, he/she took the risk

### c) Reckless assault causing wounding CA s 35

- Wounding: breaks the continuity of the skin (*Shepherd*)
- Recklessness

### d) Assault with further specific intent (more morally culpable)

- ... to murder (ss 27, 29)
- ... to do GBH (s 33(1))
- ... to wound (s 33(1))
- ... to resist arrest (s 33(2))
- ... to commit an indictable offence

### e) Assault Causing Death (s 25A)

#### i. Assault

#### ii. Hitting

#### iii. was NOT authorised or excused by law

#### iv. Causing death – the victim suffered death as a "result of the injuries received directly from the assault or from hitting the ground or an object as a consequence of the assault"

#### v. MR (*HKT*)

- since the prosecution does not need to prove that the death was "reasonably foreseeable" (s 25A(4)), this may suggest that liability is absolute

## 3. Consent to Harm

- *Brown* [1994] Consent is not a defence to an assault in the circumstances of sadomasochistic encounters; society is bound to protect itself from a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised

- Exceptions: boxing, contact sports, surgery, lawful correction, religious mortification, rough horseplay, prostitution

- *Richardson* (1998) a mistake as to nature of act/identity of the person doing it vitiates (destroys) consent (dentist continued to treat patient after being suspended)

## 4. Sexual Assault

- AR: carnal knowledge of a woman against her will (non-consent)

- MR: intent to complete AR and knowledge of non-consent/ HRM as to consent applied

# Homicide

## 1. Murder (s18(1)(a))

### Actus Reus

- Act/Omission - status relationship, e.g. parent and child (*Russell*); contractual duty to act; voluntarily assumed the care (*Taktak*)
- Death (consequence of the accused act/omission)
- Causation - *Royall* (1991) (question for the jury)
  - Operating and substantial cause test: where the wound inflicted by D is an operating and substantial cause, the death is properly characterised as a result of the wound, despite some other cause is operating (*Smith; Royall*)
  - Natural consequence test: [apply when an intervening act is conducted by V] where the action of V resulting in their death was the natural consequence of D's conduct, then D can be said to have caused the death
  - Reasonable foreseeability test: where the actions of V were the reasonably foreseeable consequence of D's conduct, then D caused the death: *Hallet*

### Mens Rea

- Intent to kill/ inflict GBH
- Reckless indifference to human life (RIHL)
  - *Crabbe* (1985) knowledge by the accused that his acts will probably cause death or GBH. Knowledge of a possibility is not enough
  - *Boughey* (1986) doctor applied force to the deceased neck during sex with consent; should've turned his mind to the probability

## 2. Constructive Murder

- Act/omission (base offence)
- done in an attempt to commit, or during or immediately after the commission, by the accused of a crime punishable by imprisonment for 25 years+

<b>Wounding</b> with intent to cause grievous bodily harm	s 33
Using an <b>explosive device or corrosive fluid</b> with intent to cause grievous bodily harm	s 47
<b>Breaking and entering</b> a dwelling-house and assaulting with intent to cause murder	s 110
<b>Aggravated sexual assault</b> in company	s 61JA
<b>Wounding</b> with intent to resist arrest	s 33(2)
<b>Discharging a firearm</b> with intent to resist arrest	s 33A(2)
<b>Armed robbery</b> with a dangerous weapon	s 97(2)
Committing a <b>serious indictable offence</b> after breaking and entering a building armed with a dangerous weapon	s 112(3)

- Consequence (death) – attempting, committing or immediately after (*Hudd*)
    - *Ryan* [1967] a series of voluntary acts (of armed robbery) before the arguably involuntary killing
  - Causation (as mentioned)
  - MR (of the base offence)
- ## 3. Manslaughter (s18(1)(b))
- Voluntary: murder downgraded to manslaughter by partial defences
  - Manslaughter by Unlawful and Dangerous Act (MUDA)
    - a) Unlawful – voluntary act that was unlawful
    - b) Dangerous – a reasonable person would have realized that he/she was exposing another person to an appreciable risk of serious injury (*Wilson*)
    - c) Causing death (as mentioned)
    - d) MR (intention and knowledge) - the accused must have intended to do the unlawful and dangerous act, with full knowledge what he/she was doing
  - Manslaughter by (Gross) Criminal Negligence (GCN)
    - a) Act done consciously and voluntarily
    - b) Duty owed
    - c) Breach of duty caused death
    - d) Subjective: *Nydam* [1977] Requires an intent to do that act in circumstances where the doing of it involves a great falling short of the standard of care required of a reasonable man in the circumstances
    - e) Objective: And a high degree of risk or likelihood of the occurrence of death or serious bodily harm if that standard of care was not observed
    - f) Wicked negligence: the negligence must be of such a high degree that it merits criminal punishment (*Lavender*)