

MURDER			
<b>Elements of murder:</b>			
A <b>voluntary act</b> that <b>caused death</b> , either <b>intentionally</b> or <b>recklessly</b> .			
<b>Contemporaneous elements:</b>			
<i>In order for a homicide offence to be murder, the actus reus (AR) and mens rea (MR) elements must occur <b>contemporaneously</b> (Fagan). This must be found <b>BRD</b> by a jury.</i>			
ACTUS REUS		MENS REA	
<i>A voluntary act</i> <ul style="list-style-type: none"> <li>The act must be willed at the hands of the accused (<i>Ugle</i>)</li> <li>Must be deemed ‘medically fit’ to have made a conscious decision as to the action</li> </ul>		<i>Intention to:</i>	
		<i>R v Westaway</i>	
		Kill	Cause GBH
		The accused had the <b>subjective intention</b> to kill the victim and did so voluntarily.	The accused had a <b>subjective intention</b> to cause GBH to the victim, but it resulted death.
<i>Causing death</i> <ul style="list-style-type: none"> <li>The D’s actions were the <b>sole cause</b> of death, OR the <b>substantial and operating</b> cause of death (<i>Royall</i>)</li> <li>Breaks in the causation chain:               <ol style="list-style-type: none"> <li>ACT OF GOD (<i>Hallet</i>)</li> <li>OWN VICTIM (<i>Blaue</i>)</li> <li>3<sup>RD</sup> PARTY (<i>E&amp;G; Jordan; Pagett</i>)</li> </ol> </li> <li>Causation is a fact for the jury</li> </ul>		<i>Recklessness as to:</i>	
		<i>R v Crabbe</i>	
		Kill	Cause GBH
		The accused was <b>reckless</b> in their actions and had <b>reasonable foresight</b> of death.	The accused was <b>reckless</b> in their action and had <b>reasonable foresight</b> of GBH, which resulted in death.
If these elements are not satisfied, test <b>manslaughter</b> .			
DEFENCE			
<ul style="list-style-type: none"> <li>The accused has the evidential onus of raising and proving self-defence (<b>322I</b>)</li> </ul>			
<b>Self-defence (CA):</b>			
<b>322K(2) – (a)</b> belief in necessity; and <b>(b)</b> reasonable response to the circumstances before them <ul style="list-style-type: none"> <li>Can be defence for oneself OR another; prevention or termination of unlawful deprivation of liberty; protection of property.</li> <li>Only applicable to murder if the person believes it is necessary to defend themselves or another from death or GBH (<b>322K(3)</b>).</li> </ul>			
<b>322L</b> – self-defence does not apply to lawful conduct			
<b>Self-defence in the context of family violence (CA + JDA):</b>			
CRIMES ACT		JURY DIRECTIONS ACT	
<b>322M(1)</b> – a person can perceive circumstances as reasonable even if the <b>(a)</b> harm is not immediate, and <b>(b)</b> the force is in excess of that being used or threatened		<b>58: Request for direction</b> – the defence may request that the judge directs the jury in accordance with s59 +60 on family violence.	

<p><b>322M(2)</b> – evidence may be relevant in determining whether – <b>(a)</b> self-defence was carried out in necessity, and; <b>(b)</b> the conduct was a reasonable response. → <b>322J</b></p>	<p><b>59: direction on family violence</b> – self-defence or duress is likely to be an issue in family violence and evidence may be required (in line with <b>322J</b>).</p> <p><b>60: additional matters for direction</b> – family violence is:</p> <ul style="list-style-type: none"> <li>(i) No limited to physical abuse</li> <li>(ii) May involve threats</li> <li>(iii) May consist of a single act</li> <li>(iv) May consist of a pattern in behaviour</li> </ul> <p>Evidence shows that:</p> <ul style="list-style-type: none"> <li>(i) People react differently</li> <li>(ii) It is not uncommon for victims to not leave their situation</li> <li>(iii) Family violence is influenced by sociocultural and economic factors.</li> </ul>
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MANSLAUGHTER	
<b>Elements of manslaughter:</b>	
Manslaughter by an <b>unlawful and dangerous act</b> OR Manslaughter by a <b>negligent act or omission</b>	
<b>Contemporaneous elements:</b>	
<i>In order for a homicide offence to be manslaughter, the actus reus (AR) and mens rea (MR) elements do not need to occur contemporaneously (Fagan). This must be found BRD by a jury.</i>	
ACTUS REUS	MENS REA
<i>Unlawful</i> <ul style="list-style-type: none"> <li>The accused must have intended to do an <b>unlawful act (Pemble)</b></li> </ul> <i>...are there any lawful defences?</i> <ul style="list-style-type: none"> <li>Self-defence → 322K CA</li> <li><b>Lamb</b>: the boys were <u>playing a game</u> which is not classified as unlawful</li> </ul>	<i>Intention to the unlawful act:</i> The accused had the <b>subjective intention</b> to do the unlawful act ( <b>R v Westaway</b> ).
<i>Dangerous</i> <ul style="list-style-type: none"> <li>The unlawful act must also be dangerous (<b>Wilson</b>); is there an appreciable risk of harm or death?</li> </ul>	<i>Recklessness as to the unlawful act:</i> The accused was <b>reckless</b> in their actions and had <b>reasonable foresight</b> as to appreciable harm or death ( <b>R v Crabbe</b> ).
If these elements are not satisfied, test <b>manslaughter by negligent act or omission</b> .	
<b>Test elements of manslaughter:</b>	
<i>Duty of Care + great falling short of standard + high risk = negligence</i>	
ACTUS REUS	MENS REA
<i>Act</i> Apply the <b>Nydam</b> test: A's act or omission falls <b>so far short of standard</b> a <b>reasonable person</b> would exercise in the same position, where there is a <b>high risk</b> or <b>appreciable</b>	<i>Intention to the unlawful act:</i> The accused had the <b>subjective intention</b> to do the unlawful act ( <b>R v Westaway</b> ).
<i>Omission</i> Circumstances in which there is a duty to act: ⇒ Legal ( <b>Jordan</b> → medical negligence) ⇒ Assumption of responsibility ( <b>Instan; S&amp;D; Taktak</b> )	<i>Recklessness as to the unlawful act:</i> The accused was <b>reckless</b> in their actions and had <b>reasonable foresight</b> as to appreciable harm or death ( <b>R v Crabbe</b> ).
DEFENCE	
<ul style="list-style-type: none"> <li>The accused has the evidential onus of raising and proving self-defence (<b>322I</b>)</li> </ul>	
<b>Self-defence (CA):</b>	

<p><b>322K(2) – (a) belief in necessity; and</b>  <b>(b) reasonable response to the circumstances before them</b></p> <ul style="list-style-type: none"> <li>• Can be defence for oneself OR another; prevention or termination of unlawful deprivation of liberty; protection of property.</li> <li>• Only applicable to murder if the person believes it is necessary to defend themselves or another from death or GBH (<b>322K(3)</b>).</li> </ul> <p><b>322L – self-defence does not apply to lawful conduct</b></p>	
<p><b>Self-defence in the context of family violence (CA + JDA):</b></p>	
<p style="text-align: center;"><b><u>CRIMES ACT</u></b></p> <p><b>322M(1)</b> – a person can perceive circumstances as reasonable even if the <b>(a)</b> harm is not immediate, and <b>(b)</b> the force is in excess of that being used or threatened</p> <p><b>322M(2)</b> – evidence may be relevant in determining whether – <b>(a)</b> self-defence was carried out in necessity, and; <b>(b)</b> the conduct was a reasonable response. → <b>322J</b></p>	<p style="text-align: center;"><b><u>JURY DIRECTIONS ACT</u></b></p> <p><b>58: Request for direction</b> – the defence may request that the judge directs the jury in accordance with s59 +60 on family violence.</p> <p><b>59: direction on family violence</b> – self-defence or duress is likely to be an issue in family violence and evidence may be required (in line with <b>322J</b>).</p> <p><b>60: additional matters for direction</b> – family violence is:</p> <ul style="list-style-type: none"> <li>(v) No limited to physical abuse</li> <li>(vi) May involve threats</li> <li>(vii) May consist of a single act</li> <li>(viii) May consist of a pattern in behaviour</li> </ul> <p>Evidence shows that:</p> <ul style="list-style-type: none"> <li>(iv) People react differently</li> <li>(v) It is not uncommon for victims to not leave their situation</li> <li>(vi) Family violence is influenced by sociocultural and economic factors.</li> </ul>