**Quick Checklist**

**Homicide**

* Actus Reus
	+ Voluntary Act
	+ Causing the Act
		- *Novus Actus Interveniens*
	+ Resulting in Death
* Mens Rea (easy for manslaughter than for murder)
	+ EITHER
		- Intention to Kill
		- Intention to cause Grievous Bodily Harm
		- Recklessness as to death
		- Recklessness as to Grievous Bodily harm

**UDA MS (Unlawful and Dangerous Act Manslaughter)**

* Actus Reus
	+ 1-3 Same as Murder (voluntary act, causing, death)
		- 4. Unlawful Act (lamb, pemable) --? Prosecution must particulate the law (s18 – intentionally or recklessly causing injury)
		- 5. Act must be Dangerous = wilson (a reasonable man performing the punch to the victim must be dangerous i.e. surrounding circumstances)
* MR
	+ =Mr of Unlawful Assault
		- Unlawful Act 🡪 Lamb
		- Common Law Assault 🡪 Relied on upon by the prosecution.
		- 2 Problems with proof 🡪 V was not in fear.
		- 2 Mens Rea🡪 No intention or foresight of fear.

**Homicide – s18(1)(a)**

**Preliminary issues**

**2.1.1 Death**

* Was the victim alive to begin with?
	+ Foetus needs independent existence from mother (*R v Hutty*)
	+ A foetus that dies after delivery because of injuries caused by the accused was legally alive (*R v West*)
* Is the victim legally dead? (*Anthony Bland*)

**Rule:** If artificial feeding is withheld from a victim who is unable to live independently of the artificial device, and if, only by virtue of this abnormal dependency, the victim dies, then the accused will not be guilty of homicide because the victim was neither human nor legally ‘alive’.

* Is the victim ‘an example of a living death’? (may be dead)
* Law of homicide chiefly protects sanctity of the ‘living’, but qualified by principle of self-determination (autonomy, separate and independent existence)
* Act in the best interests of the patient, considering quality of life as determined by doctors
* The most that can be done is to *discontinue* life support
* Law would not condone killing by intervention

**2.1.2 Age**

**Rule:** Children under 10: incapable of committing a crime (*Children and Young Person’s Act 1989* (Vic) s 127)

* Children between 10 and 14: prima facie incapable under *doli capax* rule but rebuttable by the prosecution
	+ Prosecution must show moral knowledge of the wrongfulness of act (*Veneballs & Thompson v Balurer*)

**2.1.3 Sanity**

**Rule:** burden of proof rests upon the defendant to prove insanity *beyond reasonable doubt* (plea of ‘unfit to plea’)

**2.1.4 Jurisdiction**

*Crimes Act* s 9: where the act partially occurs in one jurisdiction, accused can be prosecuted as though the prohibited outcome occurred entirely in that jurisdiction

* Applied in *DPP v Sutcliffe*

**Actus Reus**

**2.2 Voluntariness**

The normal test of causation is whether A’s conduct is an operating and substantial cause of

V’s death. The courts only deviate from this approach in exceptional circumstances – in the

vast majority of cases, satisfying this test will be sufficient.

* The concept of voluntariness refers to willed acts of the accused. If their actions are willed, they are said to be voluntary; if they are unwilled, automatic, instinctive, accidental, then they are said to be involuntary.
* **The act which causes death must be proved by the prosecution to be a voluntary act (*Ryan* per Barwick CJ)**
	+ Assess the sequence of acts leading up to the act causing death (*Ryan* per Windeyer J)
	+ The act must be willed (but consequence need not be intended)
	+ ‘Will’ is just the particular bodily movement
	+ Does not require consciousness (*Murry & Ugle*)
* **Even if final act a reflex action, if the series of acts leading to it are voluntary, final act will be voluntary (*Ryan* per Windeyer J)**
* Alternatively, recharacterise the relevant act as one prior to the reflex (*Ryan* per Barwick CJ

**2.3 Causation**

The normal test of causation is whether A’s conduct is an operating and substantial cause of V’s death. The courts only deviate from this approach in exceptional circumstances – in the vast majority of cases, satisfying this test will be sufficient. the prosecution must prove beyond reasonable doubt that A’s voluntary act was the cause V’s death.

**2.3.1 Introductory considerations**

* Identify the relevant conduct by A
* Is it an act of omission?
* A may seek to deny causal responsibility for the prohibited consequence on the basis that X is not the legal cause V’s death

**2.3.2 Operating and substantial cause**

**Rule:** there must be a factual link between A’s act and V’s death.

* **Is A’s act a factual cause of V’s death? (*Hallett*)**
	+ ‘Operating’: but for A’s act the victim would not have died
	+ Factual causation to be determined by common sense (*Royall*)
	+ Need not be the sole cause of death to be operating
	+ Foresight of the accused completely irrelevant

**Rule:** for liability to attach to A’s act it must be a substantial cause of V’s death.

* **If there are multiple factual causes, is A’s act the ‘substantial’ (ie, legal) cause of death? (*Royall*)**
	+ Consider whether subsequent acts break the chain of causation
* **Is there a subsequent cause ‘so overwhelming’ as to ‘overtake’ A’s conduct as the legal cause of V’s death (*Evans & Gardiner (No 2)*)?**
	+ See [2.3.5]

**2.3.3 Natural consequence**

**Rule:** where V is injured trying to escape from A, A will be liable for V’s injury if it was a natural consequence of A’s conduct (*Royall* per Mason CJ). Arguably similar to the test applied by McHugh and Brennan JJ; here, mental element is implicit.

* **Did A induce in V a ‘well-founded apprehension’ that A was going to inflict physical harm?**
* V’s apprehension of harm must be reasonable
	+ What did A do that could induce apprehension?
	+ *Royall*: verbal and physical abuse prior to imprisonment
	+ A had hit V, possibly with an ashtray
	+ A had been in the bathroom
	+ A had been banging on the door
	+ History of domestic violence in the relationship
* **Was it a ‘natural consequence’ that V would try to escape from A?**
	+ Was it a ‘very likely thing to happen’ (*Beech*; affirmed *Royall* per Mason CJ)?
	+ Was the mode of escape reasonable (ie, was it proportional to A’s act)?
		- If irrational, might sever the chain of causation
		- *Royall*: jumping out window proportional to assault
		- *Fagan*: jumping out of moving car proportional to rape
	+ V cannot be expected to make a ‘sound or sensible’ judgment in the circumstances (*Royal* per McHugh J)
	+ Was this the only mode of escape (windows in *Royall*, since A was approaching from the door)?

**2.3.4 Reasonable foresight of consequence**

**Rule:** where there is an intervening act of V or a third party, A will be liable for the consequences if the event is ‘reasonably foreseeable’ (*Royall* per McHugh and Brennan JJ).

Was the intervening act ‘reasonably foreseeable’ by someone in A’ circumstances?

**2.3.5 Intervening events (novus actus interveniens)**

**Rule:** if a new intervening act supersedes A’s act as the substantial cause of death, A will not be liable for the consequence. Having identified a potentially severing act, consider [2.3.3] (act of victim) and [2.3.4]

**2.3.5.1 Medical treatment**

* Is it ‘palpably bad’ or ‘abnormally wrong’? (*Jordan*; affirmed *Smith*)
	+ If so, it will break the chain (*Jordan*)
	+ Cf *Evans & Gardiner (No 2)*: medical treatment, ‘however inept or unskilful’, is *not* the cause of death (negates *Jordan*, *Smith*)
* Ask whether A’s act is still a substantial cause of the death; if so, then A is the legal cause of death

**2.3.5.2 Natural events**

* Is it an ‘exceptional’ or regular natural event?
	+ Will only break chain when ‘freak act’ of nature
	+ If V’s death is a normal or ‘natural’ consequence of A’s act, the act of nature will not break the chain
	+ *Hallett*: actions of the tides not intervening act

**2.3.5.3 Acts of a third party**

* **Is the intervening act voluntary? (*Padgett*)**
* **If yes, potentially breaks chain (but not sufficient)**
* Ask whether it is the new (substantial) cause of death (*Royall*)
	+ Examples:
	+ *Padgett*: police returning fire an instinctive response and therefore involuntary (does not break chain)
	+ *Wilson*: initiating violent confrontation a substantial cause of death even where another party contributes to the violence

**2.3.5.4 Acts of the victim**

* **Is the intervening act voluntary? (*Padgett*)**
	+ If yes, will break the chain unless one of the following exceptions applies (*Royall*)
* **Fright and self-preservation (was V’s escape a natural consequence of A’s conduct?)**
	+ *Stephenson*: prostitute raped, overdoses on drugs to remove pain caused by A; causally responsible
	+ *Lewis*: V suicided after the A inflicted lethal wound to avoid painful death; causally responsible
* **Does the act relate to the person or body of V?**
	+ A must take the V as he finds her (*Blaue*; *Moffat*)
	+ Includes religious beliefs or other ‘idiosyncrasies’
	+ *Blaue*: refusal to undergo treatment on the basis of religious belief does not break chain because not truly voluntary
		- It would be paradoxical to expect V to stop being herself in order to save herself
* **Did V commit suicide?**
	+ Does not break chain where A’s conduct still an operating and substantial cause of death (*Royall*)
	+ If V is insane and insanity caused by A, A causally responsible (*Latham*)

**Mens Rea**

**2.4.1 Intent**

**Rule:** P should attempt to prove BRD (*Woolmington*) that A acted with *knowledge* that at least the *virtually certain* result of X is the death or GBH of X (*Hancock & Shankland*; *Woollin*).

* **Did A make any admissions or confessions from which an inference of intent can be made?**
* **Did A intend the consequence of X to be death or GBH?**
	+ Precise manner of inflicting injury need not be intended; just consequence (*Woollin*)
* **Did A originally intend to kill someone else?**
	+ If so, the **doctrine of transferred malice** may apply
	+ A will still be liable for death of new V (*Saunders & Archer*)

**2.4.2 Recklessness**

**Rule:** to be guilty of murder, P must at least prove BRD that A had subjective foresight that the probable result of X would be death or GBH but nevertheless ran that risk (*Crabbe*).

* **Did A foresee death/GBH as a probable consequence of X?**
	+ ‘Substantial’, ‘real and not remote chance’ (*R v Boughey*)
	+ ‘More likely than not’ (*R v Windsor*)
	+ Not a matter of mathematical probability (*Faure*)
	+ Relevant factors:
		- Kind of weapon being used by A to bring about death
			* Sawn off or modified for the purpose (*Pemble*)
			* Cocked and loaded (*Pemble*)
			* Finger on trigger (*Pemble*)
			* Pointed at V (*Moloney*)
			* Any intrinsic characteristic that makes it dangerous
		- Circumstances in which A acted
			* People in vicinity (*Crabbe*)
			* Belief as to where block will fall (*Hancock*)
			* Extent of strangulation during sex (*Boughey*)
			* Status of the firing chamber in a game of Russian roulette (*Faure*)
			* Level of light (*Pemble*)
			* Sneaking up on victim (*Pemble*)
* **Can A’s subjective knowledge of probability be inferred from the facts/A’s conduct? (*Parker*)**
	+ Construct two counter-narratives using facts
	+ Ultimately question of fact for the jury, but seems likely/unlikely
	+ that this will be found on the first/second construction of the factual narrative
* **Was A acting in wilful blindness?**
	+ Did A’s ‘failure to make enquiries’ about X preclude foresight of the probability of death/GBH?
	+ If it did, this is not fatal to P’s case – deliberate abstention from enquiry might be evidence of knowledge (*Crabbe*)
	+ Closing mind to risk of X may indicate that he realises there is a risk in respect of its eventuation (*Caldwell*)
	+ Just another evidentiary factor from which the jury may draw an inference of recklessness (*Crabbe*)

**2.4.4 UDA manslaughter**

**Rule:** if P cannot establish BRD that A acted with intent or recklessness, it may be possible to secure conviction on the basis of an UDA causing death (*Wilson*). GHB – bodily injury of a really serious kind – Authority is *Smith* – Must be told to the Jury – FUNDAMENTAL TO DEFINITION

* **MUST PROVE ACTUS REUS OF MURDER (voluntary act, causing, death) THEN 🡪**
* **Was A’s conduct unlawful?**
	+ P must prove BRD that A’s conduct amounts to a criminal act (*Pemble*)
	+ Is it an assault? (cf *Lamb*)
		- *Lamb*: A pointing gun at V, V thought it was a joke, V killed; no assault (no apprehension of imminent violence); no UDA
	+ Is it a summary offence? (*Wilson*)
	+ *Would a reasonable man in D’s position performing the very act which D performed, have realized that he was exposing another (or others) to an appreciable risk of serious injury? (Wilson, modifying Holzer)*
	+ Can the conduct be constructed as unlawful?
		- *Cato*: injection of an illegal drug causes death; UDA
	+ Must be an act, not an omission (*Lowe*)
* **Was A’s conduct dangerous such that a reasonable person in the position of the accused would foresee an appreciable risk of serious injury?**
* P must prove that a reasonable person in A’s position would foresee an ‘appreciable risk of serious injury’ as a result of A’s U act (*Wilson*)
* No idiosyncrasies relevant (no intoxication); ask in respect of ‘all sober and reasonable persons’ (*Newbury*)
* A ‘mere threat of force’ may not be dangerous – assault (*Chai*)
* P will seek to characterise the unlawful act as dangerous
* **Look at circumstances in which A acted – appreciable risk?**
	+ Doesn’t have to cause ‘really’ serious injury (*Wilson*)
	+ Did it ‘expose the deceased to injury’? (*Wilson* per Brennan, Deane and Dawson JJ)
	+ Strong normative component to dangerousness assessment
		- Examples of UDAs:
			* Robbery or burglary
			* Unlawful wounding
			* Unlawful administration of a noxious substance (*Cato*)
			* Discharging firearm in a public place (*Pemble*)
* **Did A intend to do the UDA?**
	+ To establish the MR, P must prove BRD that A intended to do X
	+ A need not know that the act is unlawful or dangerous (*Wilson*)
	+ Just need subjective awareness of circumstances making it dangerous and intent to carry out the act; need not advert to consequences or risks (*Wilson*)

If P is unsuccessful in securing a guilty verdict in respect of UDA manslaughter because the act was not dangerous, it may still be possible to prosecute for negligent manslaughter.

**2.4.5 Negligent manslaughter**

**Rule:** if UDA manslaughter cannot be established, P can argue on the basis of ***Nydam***that in doing X A is criminally negligent.

* **Did A’s conduct breach the standard of care required by law? (legal duty to act)**
	+ Causation of situation of danger 🡪 Miller (both an action and an omission on a same set of facts)
		- Parents of Children 🡪 Russell
	+ A’s conduct falls short of the required standard if a reasonable person would have realised that there was a ‘high risk’ of death/GBH resulting from X (*Nydam*)
	+ ‘Probability’ 🡪 ‘High risk’ 🡪 ‘appreciable risk’
	+ Gross falling short of s50C of a standard of expectation of a reasonable person (i.e. this is what a reasonable person does.)
* **Did A’s conduct involve such a high risk of death/GBH that it merits criminal punishment?**
	+ A’s conduct must constitute ‘such a falling short’ of the standard of care required by law, and involve ‘such a high risk’ that death/GBH would follow X that it merits criminal punishment (*Nydam*)
	+ Was X ‘culpable’, ‘gross’ or ‘wicked’, showing disregard for life and safety? (*Bateman*)
	+ Need more than breach of a civil standard (*Andrews*)
* **Culpable driving:**
	+ *Shields*: degree of negligence same as for manslaughter
	+ Cf *Andrews*: lower threshold required Even if P cannot establish criminal negligence, it is likely that an non-fatal reckless endangerment offence will apply.

**2.4.6 Manslaughter by omission**

**Rule:** P may allege that A’s failure to do X constitutes manslaughter by omission (*Tak Tak*).

* **Was A’s failure to do X the cause of V’s death?**
	+ See [2.3]
* **Was A under a duty to act?**
	+ A will note that he is under no general duty to take positive action (*Shephard*)
	+ P must categorise the failure as one covered by an recognized relationship of care
		- Civil duties: by statute or contract
			* Eg, employment contact (*Lowe*)
		- Status relationship between A and V
			* Eg, parent-child (*Russell*: to save A’s child from drowning)
			* No husband-wife duty (*Russell*)
			* *Smith*: no duty to call doctor when wife ill
* Voluntary assumption of care
	+ - * Making efforts to care (*Stone & Dobinson*; *Tak Tak*)
			* Placing V in a position where others can no longer help her (*Tak Tak*)
			* *Tak Tak*: duty arises after taking overdosed V off street, denying her the chance to be rendered aid by passing strangers; however, no ‘mere negligence’ here insufficient for manslaughter
			* Creating a dangerous situation (*Miller*: starting a fire)
* **Is A’s failure criminally negligent?**
	+ Apply *Nydam* [2.4.5]
	+ ‘Grossly negligent’ failure to obtain medical care (*Stone & Dobinson*)
	+ A’s failure to care for V because too poor to provide food insufficiently ‘wicked’ to be negligent (*Nicholls*)
	+ Relevant factors:
		- Nature of efforts to care (*Tak Tak*: finding a doctor, *Stone & Dobinson*: nothing)
		- V’s chances of being helped by others (*Tak Tak*: reduced)
		- Duration of time in which V in A’s care (*Tak Tak*: too short)
		- A’s awareness of V’s situation (*Tak Tak*: not wholly aware)

**2.4.7 Temporal coincidence**

**Rule:** A’s voluntary act causing V’s death must coincide with his possession of the prohibited mental state.

* Did A possess MR at beginning of course of conduct?
	+ It can be formed during the course of conduct (*Fagan*)
* Did A possess MR at the time he performed the act causing death?
	+ If A possessed MR at the outset of a series of acts, AR can be constructed as a series of connected acts (*Thabo-Meli*)
	+ If, however, MR formed after V dead, will not be murder
* Examples
* *Fagan*: A drives on foot of police officer with no intention to injure, but stayed still when police yelled to get off
* MR formed during course of conduct, so guilty
* *Thabo-Meli*: the As get V drunk, hits him on head with intent to kill him; in fact, only unconscious; As throw ‘body’ off a cliff, at the base of which V dies from exposure
* As’ conduct was a ‘single continuum’ of acts leading to death
* MR possessed at outset, so guilty
* *R v Miller*: A falls asleep while smoking, wakes up to find house on fire, but walks to another room and returns to sleep
* Possessed MR during relevant omissions causing the result, so guilty

**2.5 Self - Defense**

**Rule:** For SD to be left to the jury, A will need to construct a version of the facts that supports an inference that he honestly believed on reasonable grounds that it was necessary to do X to defend himself from Y (*Zecevic*).

Self-defence is a full defense to homicide.

* S9AC and 9AD – apply to murder
* S9AE – apply to manslaughter

Both 9AC and 9AD:

* S9AC - honestly believe that the conduct used was reasonably

**s.9AC *Crimes Act -*** a person is not guilty of murder if he or she believed the conduct to be necessary to defend himself or herself or another person from the infliction of death or really serious injury. The test is wholly subjective. There is no requirement of ‘reasonable grounds’.

* 9AD – says that if there is no reasonable grounds for that belief, then defense homicide 20 years
	+ s4(1) – Defense homicide is built into a charge of murder.

**s.9AD *Crimes Act*** *-* a person who kills another person in circumstances that, but for section 9AC (self-defence) would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.

* *Note: Under s.4(1), if on the trial of a person for murder the jury are not satisfied that he or she is guilty of murder but are satisfied that he or she is guilty of defensive homicide, the jury may acquit the accused of murder and find him or her guilty of defensive homicide and he or she is liable to punishment accordingly.*
* Under s.9AE *Crimes Act,* a person is not guilty of manslaughter if he or she believed the conduct to be necessary

**Under s.9AE** *Crimes Act,* a person is not guilty of manslaughter if he or she believed the conduct to be necessary

(a) to defend himself or herself or another person; or

(b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person

and he or she had reasonable grounds for that belief.

Under s.9AF, ss.9AC and 9AE do not apply if—

(a) the person is responding to lawful conduct; and

(b) at the time of his or her response, the person knows that the conduct is lawful.

|  |  |
| --- | --- |
| **Accused’s Mental State**  | **Verdict**  |
| **Honest belief on reasonable grounds**  | **Acquittal (s(AC)**  |
| **Honest belief, not based on reasonable grounds.**  | **Defensive Homicide (s9AD)**  |
| **No honest belief.**  | **Murder. (No defence, Murder)**  |

**FAMILY VIOLENCE – REFER LATER**

* **Did A honestly believe that it was necessary to do what he did to defend himself? (*Zecevic*)**
* P will attempt to deny A’s belief in necessity by narrating the facts in such a way as to make A’s belief appear fabricated
	+ P may also attempt to show that A held a prior intent to kill
* A may seek to establish his belief as honest by enlarging his perception of the threat
	+ Physical size (V bigger than A; A unable to defend himself; A believed a weapon was necessary; woman/man)
		- Zecevic thought V was proficient in Karate
		- *Colon*: intoxication relevant to A’s perception of the threat posed by Vs attempting to steal plants
* V’s capacity to harm A
	+ - Violent disposition
		- Possession of weapons
		- Zecevic thought V was going to get a shotgun
		- Zecevic’s brothers claimed A had a knife
* A’s intoxication
	+ Drunkenness may make it more believable that A honestly believed that the force used was necessary
	+ [However, belief must still be reasonable]
* Factors influencing A’s perception of the threat posed by V
	+ - * History of physical or mental abuse (battered wives)
			* Mental Disorder
			* *Kurtic*: A had delusions causing him to believe his life was in danger
* Is A mistaken?
	+ Does not matter if A mistakes V’s conduct for a threat, so long as the mistake is honest and reasonable (*Zecevic*)
	+ If A can adduce evidence that the belief was held, P must disprove BRD the presence of the exculpatory belief
* **Was A’s belief based on reasonable grounds?**
	+ Was it objectively reasonable to apprehend death or serious bodily harm? (*Zecevic* per Deane J)
	+ Could A have retreated?
		- No longer any general duty to retreat (*Zecevic*) but may not be reasonable to kill if A could have easily escaped
	+ Was V’s attack unlawful?
		- Need not be but may support reasonableness of A’s belief (*Zecevic* per Wilson, Dawson and Toohey JJ)
	+ Was V’s attack imminent?
		- Imminence not required but makes it more likely that belief in force was reasonable (*Zecevic*)
		- *Taikato*: carrying an illegal precautionary measure (spray) not defensible by SD because there is no
		- imminent attack (Dawson J)
		- *Osland*: evidence of abuse may make a belief in SD reasonable even where no imminent attack (Kirby J)
		- *Secretary*: A killed abusive husband while sleeping, but open to find that A was defending herself from the continuing threat of an assault, so long as the assault was continuing
	+ Hallucination or mistake
		- It is the belief of A which must be reasonable (*Conlon* per Hunt CJ), and *not* that of a reasonable person
		- However, there must be a reasonable possibility that at least some action in fact took place which could have been mistaken as a threat or a danger to A (*Kurtic*)
* Was help available?
	+ - *Colon*: alone and intoxicated being confronted by thieves
		- *Secretary*: remoteness of location
* Was V insane?
	+ - A may use deadly force to prevent life-threatening attacks by an insane V (*Zecevic*)
* Was there a threat of sexual violence?
	+ - Threat of sexual violation (even where there no fear of death or GBH) may sustain a *reasonable* belief in the necessity of inflicting GBH/death (*Zecevic* per Gaudron J)
		- SD against rape may, in appropriate circumstances, justify death (*Lane* per Lush J)
* Did A take excessive measures to defend herself?
	+ - If force is unnecessary or unreasonable it will be murder (*Zecevic*)
* **Did A defend a third party believing V posed a threat to them?**
	+ A will be excused if, ‘at the time of the killing, [they] believed on reasonable grounds that a third party – relative or stranger – was in imminent danger of death or serious bodily injury’ (*Redman* VIC)
	+ Cf *Duffy*: need to be related to third party to act in defence
* **Did A attempt to prevent the commission of an indictable offence or arrest a known offender?**
	+ *Crimes Act* s 462A:
		- A may use force proportionate to the objective of preventing the commission, continuance, or completion
		- of an indictable offence
		- A may use force proportionate to the objective of lawfully arresting an offender or suspected offender of
		- any crime
		- At common law, A is justified if he knew V was committing or about to commit an offence (*Dadson*; however, an *unknown* justification is irrelevant)
* **Did A seek to defend their property from V?**
	+ A can plead SD in relation to property (*McKay*; *Turner*)
	+ Eg, the *Home Invasion (Occupants Protection) Act 1998* (NSW) makes it legitimate to kill or injure in a defence of a residence
	+ The force must still be reasonable; what is reasonable will be less than what is reasonable to defend a person

**Family Violence**

Under s.9AH, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary—

1. to defend himself or herself or another person; or
2. to prevent or terminate unlawful deprivation—

even if—

1. he or she is responding to a harm that is not immediate; or
2. his or her response involves the use of force in excess of the force involved in the harm or threatened harm.
* Is family violence alleged?
	+ “Kill him before he court hurt her” *(Fiona v Phillip)*
	+ *Refer to s9AC and refer to s9AH*
* Reasonable Grounds?
	+ S9AD – is the jury satisfied that there is an honest belief ?
	+ S9AH – Was the belief honest on the basis that the accused had just seen violence and previous violence?
* Defense would contend that if family violence, would still be self defense
	+ - Typically applies to Family Violence Cases and extend the sphere
			* VLRC inserted to right the wrongs of domestic violence
			* Family violence means violence against a family member (including withholding finances)
			* It may include a single act or a number of acts which accumulate to violence
			* INCLUDES children and other members of the family AND doesn’t have to be the victim can also be others.
			* S9AH(3) – Take into account history of relationships in family including violence, psychological effect on the person of the violence etc
			* Other factors:
				+ social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
				+ the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
				+ the psychological effect of violence on people who are or have been in a relationship affected by family violence;
				+ social or economic factors that impact on people who are or have been in a relationship affected by family violence.

“Family Violence” in relation to a person, means violence against that person by a family member (s.9AH(4)).

“Violence” includes physical, sexual and/or psychological abuse (s.9AH(4)).

“Violence” may include a single act, or a series of acts even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial (s.9AH(5)).

* ‘Battered Woman Syndrome’ (‘BWS’) is not a defence.
	+ Evidence of BWS may be admitted for the purpose of assisting the jury to understand the accused’s behaviour (*Osland*).
	+ Some criticisms of BWS are that it:
		- ‘medicalises’ the situation;
		- requires expert evidence;
		- not all women fit the stereotype;
		- focuses on the syndrome rather than whether the accused’s actions were justified;
		- Cf ‘Social Framework Evidence’

**Abortion and Suicide**

**Abortion**

* + S65CA – Criminalizes abortion in following terms.
		- * Defence – Davidsion Case –
				+ Necessary to sustain life or physical or mental health of the mother
				+ The act was not out of proportion of the danger to be averted.
			* Offences include – backyard abortion, unsanitary abortion.
			* New Test – will include womens wishes and informed consent and a medical diagnosis.
	+ s10 of the Crimes Act – Child Destruction
		- s(2) – Fetus in its final formation
	+ s6 – Infanticide
		- Expressly requires circumstances that constitute murder
		- Legislature attempts to presuppose that the person has an issue
		- Post natal depression

**Suicide**

* + Terminal illness – sympathetic cases
	+ Aide or Abets Suicide – Ethuansia – guilty of an indictable offence and 5 years prision
	+ s3(18) – Cupable driving causing death – same as manslaughter
		- Gross Negligence - influence of alcohol or drugs (in case of Drink Driving – Over 0.1)
	+ s3(19) – If driving is dangerous causing death.