Foundations of Criminal Law

- Wilful Homicide
- Bodily Harm
- Sexual Offences

Categories of Homicide

Wilful Homicide

Killing with the deliberate intention to cause death or put life in manifest jeopardy.

Homicide Praeter Intentionem

Intention merely to cause bodily harm, but death ensues as a result

Involuntary Homicide

Causing death without any intention, but through negligence, imprudence or non observance of regulations

Article 211(2) – The Definition

"A person shall be guilty of wilful homicide if, maliciously, with intent to kill another person or to put the life of such other person in manifest jeopardy, causes the death of such other person"

Criminal Code – Chapter 9 of the Laws of Malta

Essential Elements of Wilful Homicide

(A) Human Life Taken

The crime must be committed upon a person in being. Inflicting wounds on a corpse constitutes an impossible attempt.

(B) Act of Man

The death must be caused by an act of man destroying life, whether through commission (action) or omission (failure to act).

(C) Maliciousness

The killing must be unlawful. Justifiable homicide (e.g., self-defense) lacks this element of malice.

(D) Specific Intent

The core differentiator: Intent to kill (Animus Necandi) or put life in manifest jeopardy.

Proving the Fact of Death

- Circumstantial Evidence:

  Death can be proved even if the body is never found

- Standard of Proof

  Evidence must be so convincing and compelling that 'no rational hypothesis other than murder" exists

- Impossible Attempt

  Violence against a person already dead is not homicide, regardless of intent

Homicide by Omission

The Principle: One is guilty by omission when duty-bound to perform an act they failed to do.

The Republic of Malta vs Decelis et (2008)

The accused failed to seek medical help for an overdosed victim (Rachel Bowdler) for over 12 hours to avoid police trouble. This persistent omission, when they had exclusive control over the victim, constituted willful homicide.

Malice & Specific Intent

- **Maliciously (doloso):**
  - Describes the generic criminal intent – something against the law.
- **Specific Intent:**
  - This distinguishes homicide from other killings. It requires the *Animus Necandi*
- ***Animus Necandi***
  - The intention to kill. This is distinct from *Animus Nocendi* (intention to harm).
- **Manifest Jeopardy**
  - Intent does not need to be solely to kill; putting a life in 'manifest jeopardy' is sufficient.

Forms of Animus Necandi

- **Positive Direct Intent**

  The explicit desire and design to cause the death of the victim.

"I want to kill X"

- **Positive Indirect Intent**

  Foreseeing that an act puts life in manifest jeopardy and proceeding regardless of the consequences.

"I don't necessarily want X to die, but I know this act likely will kill them and I do it anyway"

Transferred Malice

Universal Malice

Intention to kill without selecting a specific victim (e.g. a terrorist attack). The intent exists generally against anyone present.

Error in Personae

If A intends to kill B, but kills C by mistake, it is still Wiflull Homicide.

The *mens rea* transfers to the actual victim.

Bodily Harm
Article 214 of the Criminal Code

"Whosoever, without intent to kill or to put the life of another in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm"

Bodily Harm – The Nature of Intent

Animus Nocendi

The generic intent to cause harm. To constitute the crime, the injury must be intentional, but it does not require an intent to produce the specific degree of harm that actually ensues.

Dolus Indeterminatus

'*Dolus Indeterminatus determinatur ab exitu*'. If the intent is to injure, the offender answers for the harm acutally caused, even if the result (e.g. serious injury) was not specifically desired but was foreseeable.

Bodily Harm

- Il-Pulizija vs Zahra (2002)

A bus driver hit an officer while reversing. Court ruled that without the *animus nocendi* (intent to harm), even if the act was negligent or a ‘joke’, one cannot be guilty of wilful bodily harm.

Attempted Bodily Harm

- Is it possible?
  - While some jurists argue that responsibility is assessed only by the effect produced, Maltese Courts have accepted the charge of attempted bodily harm.
- Il-Pulizija vs Mariano Camilleri (2002)
  - The Court held that if the means used (e.g. an iron bar) and the target (e.g. the head) manifest a specific intent to cause grievous harm, the offender can be guilty of attempted grievous harm, even if only slight injury resulted.

Classification of Bodily Harm
Grievous Bodily Harm – Art. 216

- 216. (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from one year to seven years –
- if it can give rise to danger of –
- loss of life; or
- any permanent debility of the health or permanent functional debility of any organ of the body; or
- any permanent defect in any part of the physical structure of the body; or
- any permanent mental infirmity;
- if it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured;
- if it is caused by any wound which penetrates into one of the cavities of the body, without producing any of the effects mentioned in article 218;
- if it causes any mental or physical infirmity lasting fora period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;
- if, being committed on a woman with child, it hastens delivery.

Classification of Bodily Harm
Grievous Bodily Harm – Art. 218

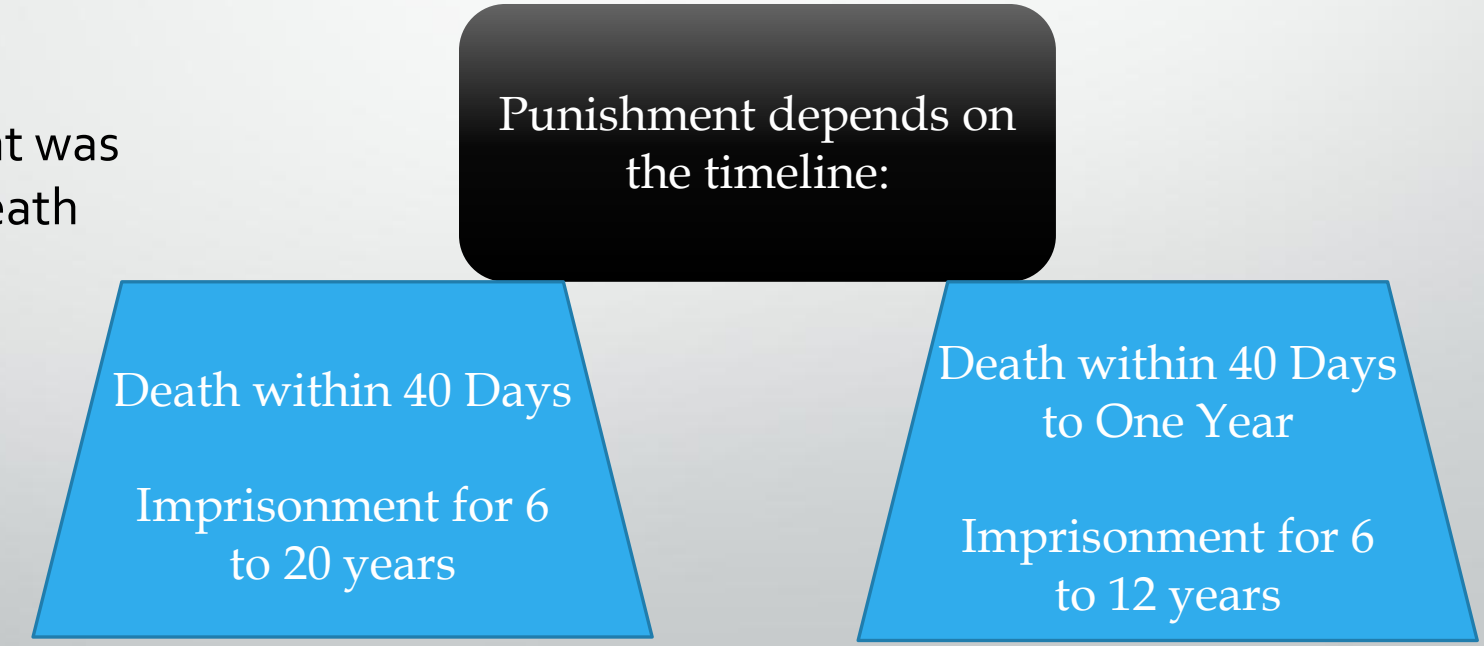
- 218.(1) A grievous bodily harm is punishable with imprisonment for a term from five to ten years –
- if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;
- if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;
- if, being committed on a woman with child, it causes miscarriage.

Classification of Bodily Harm
Slight Bodily Harm – Art. 221

- 221.(1) A bodily harm which does not produce any of the effects referred to in the preceding articles of this Sub-title, shall be deemed to be slight, and shall be punishable with imprisonment for a term not exceeding two years, or with a fine (multa).

Bodily Harm from which Death Ensues Article 220

- *Homicide Praeter Intentionem*
  - When the intent was to harm, but death follows.



Aggravating Circumstances

- Protected Persons (Art. 222 & 222A)
  - Relatives
  - On the person of any witness or referee giving evidence in a suit or on the person of a child under nine years of age.
  - On the person of a public officer or a person lawfully charged with public duty
  - Persons who have attained the age of sixty
  - Persons suffering from physical or mental infirmity in consequence of which they are unable to defend themselves.
  - Racially or religiously motivated
  - Gender identity

Defilement of Minors

- **Article 203 (1):**
- **"Whosoever, by lewd acts, defiles a person who has not completed the age of sixteen years,** shall, on conviction, be liable to imprisonment for a term from four to eight years"

Defilement of Minors

The Active Subject

- Whosoever

- **The Passive Subject**
- Below 18 years of age
- Male or female

Defilement of Minors – The Lewd Acts

- **Definition:**
  - any act which is apt to indulge the sexual instinct and to excite the libidinous desires of the agent

The lewd acts constituting this crime **may be committed:**

- - either **on the person** of the minor, **or**
- - **in the presence** of the minor.

Defilement of Minors – The Lewd Act

- Length of time of the lewd act
- Nature of the lewd act
- Is one lewd act sufficient to have an offence?
- May the illustration of pornographic material to a minor constitute this offence?
- What about obscene language uttered by the active subject?
- May lewd acts consist in a carnal connection?
- What other acts may be considered to be lewd acts?

Defilement of minors

- The implications of the terms defiles
- Immediacy
- *Corrupta non corrumpitur*

Defilement of Minors – Aggravating circumstances

- (a) if the offence is committed on a person who has not completed the age of 12 years, or with violence (physical or psycological);
- (b) if the offence is committed on a person who has not completed the age of sixteen by means of threats or deceit;
- (c) if the offence is committed by an ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person
- charged, even though temporarily, with the care, education, instruction, control or custody of the minor.
- (d) when the offender abuses of a recognised position of trust, authority, influence or during his duties as a professional in the possession of an official qualification and, or warrant to practice as counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker and, or youth worker over the person who has not completed the age of sixteen years and one of the circumstances referred to below occurs:
- (i) the offender wilfully or recklessly endangered the life of the person who has not completed the age of sixteen years;
- (ii) the offence involves violence or grievous bodily harm to such person;
- (iii) the offence is committed with the involvement of a criminal organisation within the meaning of 83A(1)

Rape

- 198.(1) Whosoever shall engage in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person, shall, on conviction, be liable to imprisonment for a term from six (6) to twelve (12) years:

The Issue of Consent

- **Consent is an active, freely-given, informed agreement.**
  It is never implied by silence.
  It is never retroactively justified by past acquaintance.
  It is never overridden by desire, assumption, or entitlement.

Consent

- Art 198(3)
- The acts referred to in sub-articles (1) and (1A) shall be deemed to be non-consensual unless consent was given voluntarily, as the result of the person's free will, assessed in the context of the surrounding circumstances and state of that person at the time, taking into account that person's emtional and psychological state, amongst other considerations.