

CH 5 Q2

Manslaughter by unlawful and dangerous act has four elements; each must be proven beyond reasonable doubt:

1. That the accused committed act that caused death of another; - that it was relevant to the death

- For F:
 - Causation:
 - Friedrich: contributed significantly and have been a substantial and operating cause – as he had pulled the revolver that killed Immanuel – *Royall v R* (1991) 172 CLR 378
 - ‘But for’ test
- For D:
 - Can’t meet causation – thus would not be manslaughter by unlawful and dangerous
 -

2. That the relevant act were committed consciously, voluntarily and deliberately;

- Friedrich was conscious and had pulled the trigger, although assumed revolver was not loaded, had voluntarily pulled the trigger perhaps to show Immanuel that he was wrong.
 - Intent here is not referring to *mens rea* but that there was voluntariness of Friedrich in his act of killing Immanuel
 - Although there was no intent on Friedrich part to kill or cause Immanuel grievous bodily harm, intention is not an element to prove accused acted voluntarily – *R v Haywood* [1971] VR 755

3. That the relevant act was ‘unlawful’; and

- It was unlawful as Friedrich had killed someone – thus a breach of criminal law – *Wilson v R* (1992) 174 CLR 313

4. That the relevant act were ‘dangerous’.

- Define ‘dangerous’, and ‘reasonable person’
- ‘Wilson’ test
- Objective test – this situation was such that a reasonable person in the position of the accused, pulling the trigger, would have realised that he was exposing deceased (v), Immanuel, to an appreciable risk of serious injury
 - ‘Reasonable person’ – same age, specialised knowledge and experience of accused – *R v Edwards* [2008] SASC 303
 - Here, Friedrich, if he was a reasonable person, should know that he shouldn’t have pulled the trigger or that he should have checked whether the revolver was loaded or not
- If scenario: F shot wall near I and ricocheted and hit I

- This is dangerous because F had exposed I to an appreciable risk of serious injury
- Loaded gun – NOT ‘ability’
 - Here, not appreciable risk – because it is highly unlikely that when shooting a wall it would ricochet towards I
 - In *Wilson*, even though not likely not intended, can still be an appreciable risk that the gun may ricochet
 - However, it is highly unlikely thus a reasonable man, with same age, knowledge, experience as F, would realise the bullet would ricochet
 - If there is intention, if F knew and realised, it would be murder NOT MANSLAUGHTER

For Friedrich it is not reckless murder as for reckless murder: accused (Friedrich) must know that it was probable that death or really serious injury would result from his/her acts – here Friedrich seems to assume that the revolver is not loaded thus do not KNOW that death was probable

- It is manslaughter: as requires reasonable person to have realised that he (Friedrich) was exposing Immanuel to appreciable risk of injury – *R v TY* (2006) 12 VR 557

Criminal negligence has four elements to be proven beyond reasonable doubt:

1. Accused owed victim a duty of care; - *Nydam v R* [1977] VR 430

- Dean may have the moral duty to act or to take care to avoid committing harmful actions to everyone that goes to his house but no legal duty to act in particular manner – *R v Rao* [1999] ACTSC 132
 - Duty of care – to store revolver, or not have it loaded
- Duty of act – OMISSION – person did nothing
- Dean may be there, omitted to act – omission doesn’t make him liable because he is morally expected to act not legal duty
- For Friedrich – he had a general duty to take ordinary precautions to avoid harming others – *R v Doherty* (1887) 16 Cox CC 306 – such as not playing with the gun or checking whether revolver was loaded

2. Accused breached duty by criminal negligence; - *Nydam v R*

- 2 mini elements: - *R v Lavender* (2005) 222 CLR 67
 - Did the accused conduct fall so short of conduct of duty of care a reasonable person would have exercised – if D left gun in an open exposed place
 - Conduct held High risk of death or really serious injury
 - It deserve criminal punishment
- More info to know where the revolvers were kept to understand in order to know whether conduct fall so far short.....

Dean did not legally caused death because F act was the supervening act and had broken chain of causation

3. Act, which breached duty of care, was committed consciously and voluntarily;

4. Accused's breach of duty caused victim's death

CH 6 Q2

Common Law Assault

- Battery – application of force
- Threat – non application of force

Assault is indictable common law offence in Victoria – *R v Patton*

Jim:

Involving application of Force – 3 elements:

Notes: fired near the foot – could have the chance of hitting the foot thus can be application of force

1. Accused applied force to complainant's body;

- Force may be applied directly or through the medium of a weapon or instrument controlled by the accused – *Fagan v Commissioner of Metropolitan Police* [1969] 1 QB 439
 - Here, Jim has used his shotgun which had caused Jules to flee
- Unsatisfied – no direct contact – only shot at Jules feet therefore this isn't application of force

2. Application of force was intentional or reckless; and

- *Fagan v Commissioner of Metropolitan Police* [1969] 1 QB 439

3. Application of force was without lawful justification or excuse

- Justifications and excuses that are lawful includes:
 - Consent – *Neal v R* [2011] VSCA 172
 - Ordinary social activities – *Collins v Wilcock* [1984] 1 WLR 1172
 - Here – this is not any type of social activity, Jim is purely firing his shot gun to scare Jules away
 - Arrest – *R v Turnery* [1962] VR 30
 - No mention that Jim is part of any police force or in a position to arrest Jules
 - Lawful correction of children – *R v Terry* [1955] VLR 114
 - No children involved – or no mention of children
 - Self-defence
 - Reasonable force to defend oneself from unlawful violence is acceptable as long as they believe on reasonable grounds that what they are doing is necessary
 - Ejecting a trespasser

- Householder, in this case would be Jim, is entitled to use reasonable force to eject a trespasser
 - Jules may be named as a trespasser as he approaches the front door of Jim even though Jim had told him to not step closer, in other words, to leave