

HOMICIDE

ELEMENT	PRINCIPLE	CASE DESCRIPTION	CASE NAME
MURDER			
Intent and reckless indifference	Foresight of probability of death	Intoxicated truck driver was physically kicked out of a crowded bar for behaviour causing nuisance and annoyance. He returned to the bar and drove his prime mover and trailer through the wall and into the bar; resulted in five persons died and many were injured. Intention or foresight that act would probably cause death; possibility of death is not enough	<i>Crabbe</i>
Reckless indifference to human life	Foresight of probability of death	Accused intended to kill or inflict GBH on deceased by striking her with an ashtray. As a result of well-founded apprehension of physical harm, she jumped to her death from a window in attempt to escape. Method of causing death is irrelevant	<i>Royall</i>
Reckless indifference to human life	Probability	Doct convicted of murder killed the deceased by applying manual pressure to her neck, claimed it was a technique of sexual arousal. Likely to cause death - means ' probable ' not ' possible .' Substantial or real chance - a good chance that it will happen; not somthing that may well happen.	<i>Boughey</i>
Reckless indifference to human life	Probability	Deceased died on fourth shot in game of Russian Roulette in which they agreed to fire two shots each at each other from a six-shot revolver in which there was one bullet. The cylinder spun each time the trigger was pulled. Probable - means a substantial, real and not remote chance, whether or not it is more than 50% .	<i>Faure</i>
Reckless indifference to human life	Probability	Milperra massagcre when two rival bikie groups fought with each other. Likely to happen - event is going to happen, will happen , although only as a matter of probability, not certainty; not 'could happen'	<i>Annakin</i>
Reckless indifference to human life	Probability	After drinking heavily all day, L had a quarrel with his brother. L took a loaded rifle into the room where the brother was; the deceased rose from his chair and advanced towards L. L took a step backwards and the rifle was discharged killing the deceased. L said "i'm going to put a bloody hole in you." In his statement to police, L said his intent was to shoot near his brother and scare him; his brother stumbled into the shot. No malice - RHIL	<i>La Fontaine</i>
CONSTRUCTIVE MURDER			
Constructive murder	Voluntariness	Ryan entered a service station intending to commit a robbery. He pointed a loaded rifle at the attendant and demanded money. The safety catch was off and when the money was handed over he tied the attendant up. The gun was discharged when he swung around but he maintained it was an accident. Voluntary use of an offensive weapon which wounds the victim of the robbery satisfies s 98 without any need to prove intent to wound	<i>Ryan</i>
Constructive murder	Causation	Accused entered flat where a 92 yo man was with intention of taking money; inflicted injuries comprising bruising and lacerations on the eyes and chest; bruising to the brain; broken ribs and fractured sternum. Combined effect led to pneumonia which led to his death. Causation - act must be the substantial and operating cause of death . It must result from something that is part of or caused by the base offence.	<i>Munro</i>
Constructive murder	Mens of original offence	Constructive malice build on offence of breaking and entering a dwelling-house and while therein inflicting GBH. Does not require proof of intent to cause GBH	<i>Bowden</i>

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Constructive murder	Coincidence	Attacker had not produced knife until <i>after</i> he snatched amphetamines off the table in front of the deceased. He then stabbed the deceased when the lunged at. If show of force did not take place until after theft, this would not have constituted armed robbery and the act causing death would not have been carried out in an attempt to committ the offence of armed robbery	<i>Foster</i>
Constructive murder	Coincidence	Accused made his getaway after carrying out a robbery in a store but was pursued by one of the victims. There was a struggle in which the victim was shot dead. Whether the shooting was "immediately after" the base offence was a question of fact for the jury and open to find the shooting and armed robbery were so cloely linked in point of time, place and circumstance that the shooting took place "immediately after" the armed robbery.	<i>Hudd</i>
PROTECTING THE FOETUS			
Protecting the foetus	Child murder, s 20	If child is born alive but dies because of earlier injuries while in the womb; is criminal homicide and causing death by dangerous driving - criminal homicide	<i>F</i>
Protecting the foetus	Child murder, s 20	Therapeutic abortions are not unlawful . Pregnant woman entitled to decide wehther or not to undergo medical treatment, and the foetus's need for treatment does nto prevail over this	<i>St George's Healthcare v S</i>
Protecting the foetus	Criminal attempts	Certain acts that have been performed by certain people with intent to procure a miscarriage - are offences of ulterior intent. Eg. intentional or reckless infliction of GBH on child during or after delivery, s 42 Crimes Act; wilful contribution to the death of her child wehther during or after delivery, as an alternative verdict on a charge of murder, s 21	<i>Crimes Act</i>
Protecting the foetus	Children not born alive	Where foetus does not survive an attack, this constitutes GBH to the pregnant mother even where not oher harm is caused to her	<i>King</i>
Child murder	Children born alive	Child born uninjured but dies prematurely because of defnedant's actions and premature birth is substantial caust of its subsequent death - criminal homicide	<i>Whelan</i>
Manslaughter	Children born alive	For manslaughter - any sign of life after delivery was sufficient to satisfy the common law born alive rule, including evidence of a heartbeat . Not necessary to show capacity to breath without assistance	<i>Iby</i>
MANSLAUGHTER BY UNLAWFUL ACT			
Unlawful act	Appreciable risk of really serious injury	W hit the deceased on the face, causing him to fall to the ground and hit his head. W's companion smashed his head on the concrete. Deceased died from brain damage. Most likely cause of death was the fall from W's punch. Objective test: a reasonable person in the accused's position, performing the very act which the accused performed, would have realised that that he was exposing another to an appreciable risk of really serious injury .	<i>Wilson</i>
Unlawful act	Reasonable person	Characteristics of a reasonable person - Excludes idiosyncrasies of the accused or his emotional or mental state. - Excludes anything personl which may affect his reasoning and judgment of whether an act is dangerous or not; - Includes knowledge of the physical features of the situation; physical features of the action; vulnerability of victim eg. firer of a gun knew he suffered from a poor balance	<i>Wills</i>
Unlawful act	Reasonable person	Reasonable person " in the accused's position " - including the accused's perception that deceased was not staggering when the accused inflicted the fatal blow.	<i>Cornelissen</i>
Unlawful act	Reasonable person	Same age as the accused	<i>Dpp v Ty</i>
Unlawful act	Unlawful	L jokingly pointing a revolver at friend, two bullets in chambers but netierh was opposite the barrel. L did not realise the cylinder rotated when the trigger was pulled Natural mistake (no MR for assault), therefore, no unlawful cause .	<i>Lamb</i>
Unlawful act	Unlawful	Self-defence not unlawful	<i>Cornelissen</i>

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Unlawful act	Unlawful	Production of a knife solely as a threat could be regarded as reasonable defence of his friend, who was substantially helpless on the ground and whom D reasonably believed was threatened with death or serious bodily harm - not an unlawful act under ' defence of rescue '	<i>Downs</i>
Unlawful act	Unlawful	Accused aided and abetted the deceased, 16 yo learner driver, to drive the accused's car dangerously while she was under the influence of alcohol.	<i>Cramp</i>
Unlawful act	Excluded unlawful acts	Driving in a manner dangerous to the public - not manslaughter by unlawful act; instead use manslaughter by criminal negligence	<i>Andrews v DPP</i>
Unlawful act	Excluded unlawful acts	Breach of statutory or regulatory prohibition (eg traffic regulations) does not make an unlawful act. Only where motor vehicle used as a weapon.	<i>Pulman</i>
Unlawful act	Excluded unlawful acts	Cruelty to a child by willfully neglect to cause unnecessary suffering or injury to health. Omission to do something that results in injury to health which results in death not manslaughter by unlawful act; but criminal negligence	<i>Lowe</i>
Unlawful act	Drugs offences	Drug offences - defendant supplied methadone to deceased who died from overdose. Mere supply was not an act that a reasonable person would have believed would expose the deceased to an appreciable risk of really serious injury. Cause of death was consumption of the methadone which was voluntary and informed act of the deceased. No causation	<i>Burns</i>
Unlawful act	Drugs offences	Deceased and accused injected mixture of heroin and water into each other over the night. C committed the offence of administering so as to endanger life, which is the basis for the unlawful act manslaughter Contrast - <i>Kennedy</i> - D not guilty of administration offence where prepared syringe and handed it to deceased who injected it himself as a result of voluntary and informed decision.	<i>Cato</i>
Unlawful act	Drugs offences	Wilhelm charged w/ manslaughter of Dianne Brimble on board a cruise ship. He consumed the drug himself and poured some for the deceased and encouraged her to take it. Defendant caused her to take a noxious substance that inflicted GBH. Accused stood in position of authority or control over deceased so that he overbore her will.	<i>Wilhelm</i>
Unlawful act	Drugs offences	Defendant suffered chronic depression for which he took two drugs in combination which he managed to obtain from different doctors; combination could induce a 'high' and he knew could be potentially fatal. He supplied them to the deceased. A person is ' fully informed ' if their supplier passed on what they knew about the properties and prospective dangers of taking a drug even though minimal and inadequate.	<i>Riley</i>
Unlawful act	Drugs offences	Cao gave a <i>clean</i> needle syringe to someone he met in the street. They used it to inject heroin and subsequently died. Complicity in self-administration was manslaughter by unlawful act.	<i>Quoc Cao</i>
MANSLAUGHTER BY CRIMINAL NEGLIGENCE			
Intention	Such a great falling short of the standard of care and a high risk of death	N's friendship with a woman deteriorated and he became very depressed at the thought she would return to England. On a third occasion, he entered a hairdressing salon where she was a customer and threw a bucket of petrol over her saying "you will pay for this"; he lit a cigarette lighter and lent forward; his hand caught alight and an explosion occurred killing the deceased. Defendant claimed he threatened to kill himself wanting to make her feel sorry for him. MR - a) Intention to do the act b) Unlawful act must be such that a reasonable person in the accused position would have appreciated a high risk of death or serious injury. b) Intentional act involved such a great falling short of the standard of care which a reasonable man would have exercised.	<i>Nydam</i>

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Intention	Reasonable person	<p>Accused employed as operator of a heavy vehicle at a sand mine which travelled only 4mph. Accused chased a 13yo boy and three friends away by driving the vehicle towards them; they ran into an area covered with thick vegetation. He ran over the deceased causing injuries that resulted in death.</p> <p>MR</p> <ul style="list-style-type: none"> - Circumstances where a reasonable person would have appreciated a high risk of death or serious bodily injury - Degree of negligence: 'wickedly negligent' - conduct fell so far short of the standard of care that a reasonable person would have exercised. Such a high degree that it merits punishment. - A reasonable person, in the position of the accused, possesses the same age, experience, knowledge of the circumstances at the time; person of normal fortitude and strength of mind. A reasonable person would not have done what Lavender did (objective test) - NB: not required to prove malice aforethought. 	<i>Lavender</i>
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Intention	Degree of negligence	<p>Accused was MD of a company engaged to construct a yacht. Yacht building was not their main business, the contract was oral and there were no provisions related to quality control or welding standards. The yacht's keel failed at sea and four crew members died due to poor construction. There was evidence the MD gave instructions that the keel was not to be cut; but it was cut contrary to good practice.</p> <p>Industry practice, proper supervision and quality control - No evidence that level of supervision was inadequate such that MD breached his duty to the standard that warrant criminal punishment.</p>	<i>Cittadini</i>
Intention	Reasonable person in the position of the accused	<p>A surgeon was charged with manslaughter on the basis that his judgment that surgery which resulted in deaths of patients was necessary was criminally negligent.</p> <p>A reasonably competent surgeon has the special knowledge of the accused - eg. facts known about patient's condition, correct diagnosis, whether less invasive procedures available, risks of surgery. Excludes accused awareness of his own skill limitations (eg. failure to learn lessons and obtain insights).</p>	<i>Patel</i>
Intention	Reasonable person in the position of the accused	<p>Father who was a homeopath breached his parental duty of care by failing to obtain appropriate medical treatment for his daughter.</p> <p>A reasonable person in the father's position, does not take into account the ethnic cultural background, ie education and training in homeopathy in India</p>	<i>Sam</i>