

CRIMINAL LAW SHORT NOTES [SAMPLE]

Homicide

Murder

‘Murder is when a man of sound memory, and of the age of discretion (10 yrs), unlawfully killeth within any country of the realm any reasonable creature in rerum natura under the King's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die of the wound
- Sir Edward Coke (1597)

Actus Reus

Human Being

R v Hutty (1953):

Fully born and delivered from the body of its mother

Living by virtue of the functioning of its organs

Death

In Victoria, a person has died when there has occurred:

Irreversible cessation of circulation of blood in the body of a person; OR

Irreversible cessation of all function of the brain of a person (s 41 of the *Human Tissue Act 1982* (Vic))

Voluntariness

Willed; not accidental, reflex or in a state of automatism – Reflex overruled by voluntariness in the sequence of the acts/presentation of gun (*Ryan v R [1967]*) and voluntary presentation of knife (*Ugle*)

Causation

Necessary to establish the willed act in order to establish causation, causation being determined by the common sense of the jury (*Campbell v R*)

- **Four tests of causation –**

Substantial and Operative Test – *Hallett*

- “The act is so connected with the event that it or they are regarded as having a sufficiently substantial causal effect which subsisted up to the happening of the event... without being *sufficiently* interrupted by some other act or event”
- To be applied in every case and when external intervening acts occur (third party; natural events, independent act)
- Substantial is a matter of common sense for the jury
- D’s conduct need not be the only cause of V’s injury (must be substantial and operating) (*Hallett & R v Pagett*)
- Must not have been broken by a *novus actus interveniens* (intervening act) which rendered the defendant’s act insubstantial and not operating (see below)

Reasonable Foreseeability Test – Objective

- The consequences of the act were reasonably foreseeable to a reasonable person
- *Royall* dismissed its appropriateness on grounds that it causes confusion between the objective test and what the accused foresaw

Natural Consequence Test

- Only to be applied when an intervening act is conducted by the victim
- *Royall*: Where the conduct of the accused induces in the victim a well-founded apprehension of physical harm such as to make it a natural consequence that the victim would seek to escape, and the victim is injured in the course of escaping, the injury is caused by the accused’s conduct

***Novus actus interveniens* – Where there is an alleged intervening act**

Acts of Victim

(a) Refusal of Medical Treatment

- *R v Blaue*: The unexpected susceptibility of the victim (i.e. Jehovah's Witness) will not break the causation
- Those who use violence on other people must take their victims as they find them / Egg-shell skull rule

(b) Escaping Violence

- *Royall v The Queen*: Victim will not be considered to have broken a chain of causation if V's action was a natural (or reasonable) consequence of his/her well-founded fear in response to offender's behaviour
- "It is enough that the victim's apprehension is well-founded and reasonable; no requirement that the steps taken are reasonable", however:
- Majority found the escape must be proportionate to the fear induced by A
- Minority found V's actions will necessarily be irrational and unreasonable in the circumstances, and therefore do not need to be reasonable

Acts of Third Party

(a) Medical Treatment

Test in *R v Smith (R v Evans and Gardiner)*:

- i. Original wound is still and operating and substantial cause of death
- ii. Some other cause may be operating (*Smith*: Lack of care after bayonet to the back; *Evans and Gardiner*: Common complication of treatment after accused stabbed prisoner)
- iii. BUT second cause must be 'so overwhelming as to make the original would merely part of the history' if the causal link is to be broken

R v Jordan is an exception case where *palpably wrong medical care* was regarded as NAI; must match or distinguish the facts: the wound was no longer an operating or substantial cause of death (it had fully healed); causation was negated by the very serious error of the hospital in administering anti-biotics which were an allergen for the patient; intravenous introduction of wholly abnormal quantities of liquid).

(b) Independent Act

- *R v Pagett*: D only avoids liability if the act of the third party was "free, deliberate and informed"
- "The Court's generous approach to causation in this case was influenced by the underlying recklessness of the accused, which had the victim in a position of acute danger" – necessary to consider this analysis and compare with the facts in exam answer.

Natural Act/Of God

- Test: must be unexpected and extraordinary in nature to break causation – *R v Hallett*
- Comparison between tide as a natural and predictable occurrence compared with tidal wave as an unexpected and extraordinary occurrence

Mens Rea

Intention – Subjective

- Malice aforethought (Coke) / Purpose, objective, desire to kill
- May be an intention to kill (*R v Crabbe*)
- May be an intention to cause grievous bodily harm (*Pemble v The Queen*; *Meyers v R (1997)*; *R v Rhodes (1984)* – 'really serious injury')
- Needn't be the intended victim – *transferred malice* in *R v Saunders*; where intended and actual victim treated as one to make a notionally intended and actually consummated crime (*Archer and AG-Reference No 3*)
- Death may occur in a *manner* unforeseen or intended (*R v Evans and Gardiner 2 & Campbell v R*)

- Intention is determined by the common sense of the jury (*Hyam v DPP*), and may be inferred from the range of injuries inflicted on the victim (*Meyers v R*)

Recklessness – Subjective

- Where D engages in conduct, an act or omission, in the knowledge that death or grievous bodily harm is a probable result of their conduct: *R v Crabbe*
- Probable: More than a mere possibility (*R v Crabbe*); real and not remote (*Bouhey v The Queen*)
- Professional knowledge of the accused might be relevant to their knowledge or foreseeability

Degree of Recklessness

- In most cases, probable means more than likely to occur
- Judges are not to direct juries in terms of an odds on chance or more than 50 per cent chance (*R v La Fontaine*)
- Foresight of a less than even chance of death or harm may be sufficient; e.g. Russian Roulette in *R v Faure* [1992], as established in *Bouhey v The Queen*.

Constructive Murder/Implied Malice – s 3A CA

- D is liable where they caused V's death in the course or furtherance of a crime, the necessary elements of which include violence, and a minimum sentence of 10 years' imprisonment, OR through resisting arrest – for which the MR and AR must be proven