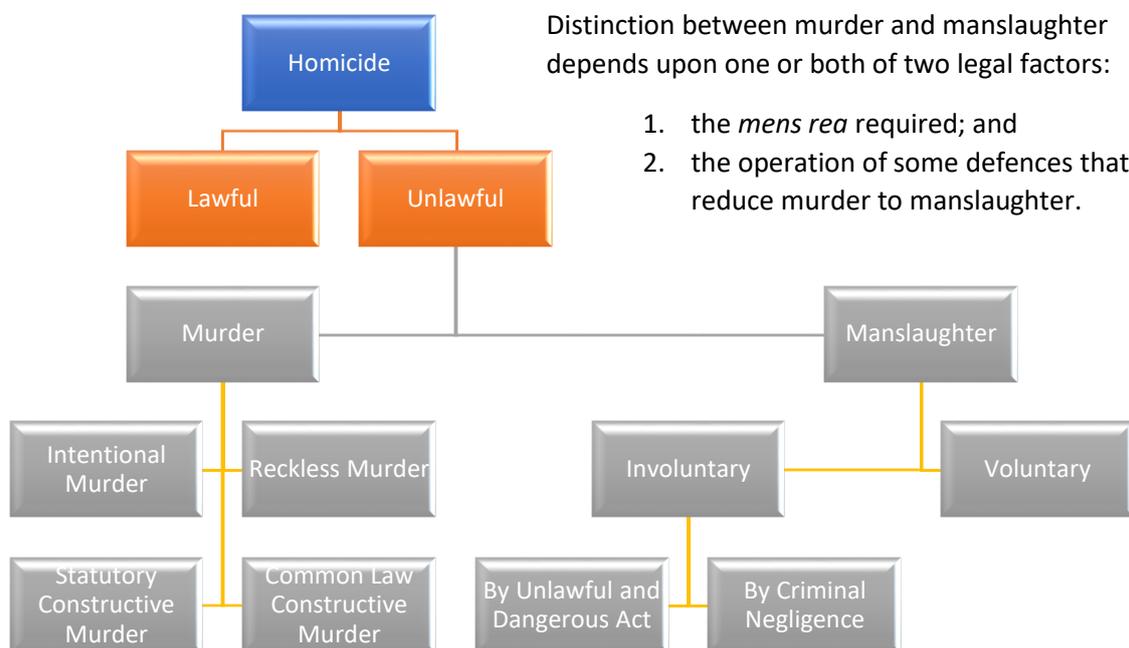


Topic 2: Homicide and Actus reus

Introduction:

- **Homicide** – term used to describe the lawful or unlawful killing of a human being.
 - It is further described as a volitional/voluntary act (or omission to act) that causes the death of another human being sooner than it would have otherwise occurred.
 - All categories of unlawful homicide (murder and manslaughter) share an identical AR component



Defining Unlawful Homicide: Actus Reus

- All categories of unlawful homicide share the SAME AR component
- To substantiate AR – must show there is:
 1. A voluntary act (or omission to act where the law imposes a duty to act); and
 2. A causal nexus between that act/omission and the non *mens rea* elements of the offence; and
 3. The death of a person

Identify the relevant act or omission:

Omissions

- An omission can also form part of the actus reus of an offence only where a person is under a legal duty to act.
- **It Applies:**
- Where there is a special relationship between D and V (See, *R v Shepherd*; *R v Russell*)
 - Parents/minors; spouses; common carriers/passengers; Innkeepers/guests; primary and secondary school teachers/pupils.

- Duty arises
- Where D voluntarily assumes responsibility of V and undertakes to take care of a helpless person (See, *R v Stone v Dobinson*; *R v Taktak*).
 - Duty arises if D assumes responsibility to help a person and puts V in a position to seclude him so as to prevent others from helping

Who can be a victim of homicide?

- V must be a human being
- Must be caused by another human being

Issues:

- Does a foetus qualify? (*R v Hutty [1953]*)
- When does death actually occur?
 - Guidance in making determination under s41 of the Human Tissue Act (1982) Vic: “irreversible cessation of brain function or irreversible cessation of blood circulation”

E.g. Foetus and Child (*R v Hutty [1953]*)

- **Issue:** When can a foetus be a victim of a homicide?
- **Rule:** Only a person “in being” can be a victim of murder
 - Under the law, “in being” requires: fully born/living state–
 - “A separate and independent existence in the sense that it does not derive its power of living from its mother.”
- **Analysis:** At the time of birth, the child could be qualified as “in being” because it was able to exist independent of its mother.
- **Conclusion:** At the time of death the victim can be considered to be “in being” and thus the defendant can be prosecuted for the crime of murder

When is a person legally dead?

- When does “death” actually occur?
- Guidance in making determination under s41 of the *Human Tissue Act (1982)* Vic
 - Irreversible cessation of brain function; or
 - Irreversible cessation of blood circulation
- Note: medical advancements can make this unclear

AR elements for unlawful homicide

1. Identify the relevant ACT or OMISSION giving rise to liability to unlawful homicide
2. Identified Conduct must satisfy 2 doctrines:
 - (a) Voluntariness
 - (b) Causation
3. Establish ‘DEATH’ of another ‘human being’

2(a) The act or omission must be voluntary

- Conduct must have been willed by D or directed by a conscious decision of D.
- Not conscious if D in a state of automatism, involuntary movement, conduct caused by another.

- If there is series of acts, the courts will look at that series of acts to see if it is regarded as one transaction that was voluntary. (*R v Butcher*)

2(b) There must be causation

- This means that the prosecution must establish that D's voluntary act or omission caused the death of another.
- Need causal connection between D's voluntary act/omission and non-MR (i.e. AR) elements of offence
- Objective test to determine whether the conduct that caused the death of V occurred in a continuing manner without an intervening event.

Establishing Causation: 2 Elements

Factual Causation

- The "But for" Test
 - D's conduct is the "but for" cause of death (see pp 51-53)
 - Asking what are the facts that contributed to the death of V?
- Exception –
 - Where two or more causes concur and either one would have brought about the death.
 - Doctrine of Innocence Agency (Adults get children to commit crimes, not a barrier)
 - Omissions – must be a duty to act (*R v Russell [1933]*)
- The Common Sense Test
 - Leaves the question of causation to juries, by encouraging them to apply their common sense to the facts, and reminding them of the seriousness of their determination
 - See *R v Campbell [1981]*, *Ryall v The Queen [1991]*

Legal Causation

- "The absence of an event that the law regards as superseding in the relevant sense" (p.52)
- Requires:
 1. D's conduct must be an operating and substantial cause of V's death (Operating and Substantial Cause test);
- AND
 2. Immediate cause of death is not an intervening act or event to break chain of causation (Novus actus interveniens). See 2nd, 3rd and 4th causal tests in text and medical negligence cases.

Legal Causation:

- Operating and Substantial Cause test
- *R v Hallet [19 q 69] SASR 141*

Legal Causation:

- Operating and Substantial Cause test
- *R v PL (2009) 261 ALR 365; [2009] NSWCCA 256*

Operating and Substantial Cause Test

- Rule: D's conduct must be an operating and substantial cause of V's death

- Notes from the case law:
 - An extraordinary event (i.e., “Acts of God”) may break chain of causation (**R v Hallet**)
 - Precise cause of death – not required to establish this fact where V commits a series of acts (**R v PL**)
 - Eggshell Skull Rule – Take your V as you find them- applies to V’s physiological, psychological frailty and religious beliefs and will not break the causal chain. (**R v Blaue**)

Legal Causation: Intervening acts or events

Medical Treatment Cases (pp. 58-67):

- ISSUE: Can medical treatment that is another “but for” cause of death constitute a superseding cause that severs the causal chain– absolving the D of any criminal liability for consequences that occur subsequent to the treatment?
 1. **R v Jordan (1956)** – (If medical treatment is palpably wrong can be supervening event breaking the chain of causation)
 2. **R v Smith (1959)** – (If at the time of death the original would is still an operating cause and substantial cause – then death is attributed to it)
 3. **R v Evans & Gardiner (1976)** – (Reinforces Smith)

Fright and Self Preservation

- Do situations where V is killed in an attempt to flee or avoid being violently attacked by D sever the causal connection between the violence and/or threats of violence and death?
- Leading case: **Royall v The Queen (1991) 172 CLR 378; [1991] HCA 27**

Fright and Self Preservation

Elements prosecution must prove (pg. 85):

- That D induced in V a well-founded apprehension of physical harm;
- That it was reasonable for V to wish to escape; and
- That V selected a reasonable mode of escape
 - Look at V’s response being taken immediately and with a sense of emergency
 - If V’s reaction unreasonable/disproportionate-causal chain broken
- Decision of **Royall** overrules Eggshell skull rule in **Blaue** in Fright and Self Preservation cases only
- Note the Rule of Intended Consequences-
 - where D’s conduct causes a result that was intended by D, then D’s conduct will be deemed to be the legal cause of death regardless of any event that would have been regarded as an intervening one.
 - Chain of causation is NOT broken here.
 - (i.e. applies where D is aware of V’s psychological frailty. If D, by his conduct, intends that V reacts in a particular way which then results in V’s causing of his own death, then V’s reaction will not break chain of causation even if V’s reaction is unreasonable/disproportionate).