

Homicide - Murder

- “A volitional act (or omission to act) that causes the death of another human being sooner than it would have otherwise occurred”
- Lawful homicides include self defence, defence of others, to prevent serious crimes, effectuate lawful arrests

Murder Offences Categorised

Intentional

- Causing death with the intention to kill or cause grievous bodily harm (GBH) Crimes Act 1958 (Vic) s 3
- Occurs when D does an act causing death, while simultaneously intending to cause death or gbh R v Miller [1951] VLR 346
- Victoria relies on common law for elements, Act only outlines punishment

Reckless

- Causing death while acting with recklessness as to killing or gbh
- D foresees that act will probably cause death or gbh although not intending consequence to occur Crabbe (under *mens rea* section)

Felony-Murder (aka constructive murder)

- Accused does not subjectively possess *mens rea* but it is assigned to them Crimes Act 1958 (Vic) s 3A(2)
 - One exception where a person can be guilty of murder without a desire to kill
- No intention to kill, but something goes wrong
 - eg. aggravated burglary, assaults victim and they have a heart attack and die
- Extension of thin skull rule
- Elements Crimes Act 1958 (Vic) s 3A:
 - i) the accused caused the death of another person (same elements for causation)
 - ii) in the course of furtherance of committing
 - iii) a serious offence normally involving some element of force/violence (death during another violent offence)
- Common law constructive
 - Causing death by act of violence while preventing, resisting or escaping lawful custody

Niche af Doctrine of transferred malice

- 3rd party victim
- Eg. D intends to shoot V1 but misses and kills V2

Niche of Contemporaneity (continuing)

- *Actus reus* missing while *mens rea* is present
- Thabo Meli

Thabo Meli v R [1954] 1 All ER 373

Contemporaneity

Facts

- D struck V with intention to kill
- Wrongly thinking V was dead, D rolled him down a cliff to stage an accident
- V died of exposure

Held

- As they possessed *mens rea* at one point during the “series of acts” this was sufficient to hold liability for the death

Murder

Elements;

- (*actus reus*) 1. Offender must *voluntarily*
- (*actus reus*) 2. Offender must *voluntarily cause*
- (*actus reus*) 3. Must be a *death*
- (*actus reus*) 4. Must be a *death of a person*
- (*mens rea*) 5. Intentionally/recklessly kill/inflict grievous bodily harm (GBH)
 - Person must intentionally/recklessly want to kill or cause gbh
 - Even if the offender does not intend to kill but intends to cause GBH and the victim dies it constitutes murder

3. Death

- Human Tissue Act: death occurs with the irreversible cessation of brain function or blood circulation

4. Death of a person (first because easier to determine)

- For a murder to occur the victim must be a human being
- Only contention is when infants form the status of a human being
 - Eg. attack of a pregnant woman where the mother leaves but fetus dies
- Law determines fetus to obtain status as human when it can live by virtue of its own organs Hutty 1953 (Vic)

1. Voluntary

- Prosecution entitled to presume that accused's actions were voluntary
- Butcher
 - Milk bar
- Ryan
 - In process of robbing a petrol station, accused tied up victim and victim was shot
 - Defense that gun went off accidentally
- In both cases courts determined voluntariness is established as it is a conscious and willed act. The act was holding a knife in the near vicinity of someone or entering with a loaded gun; conduct of victim does not exempt your voluntariness
- Court tendency to focus on actions of accused rather than victim

R v Butcher [1986] VR 43

Voluntariness and Causation

Facts

- Accused robbing milk bar with knife
- Defense that owner charged onto the knife he was holding; voluntary element not satisfied

Held

- Voluntariness of knife being brandished is not in question, rather a matter of whether the knife being held out is what caused the death
- *Holding the knife out, despite being 3-4 feet away, was an "act of violence" which caused the death of the deceased*

Ryan v R (1967) 121 CLR 205

Voluntariness and Causation

Facts

- Accused robbed petrol station with rifle
- Had rifle pointed at attendant's (victim's) back
- Attendant made sudden movement and gun went off "out of reflex"

Held

- Question of "whether upon the material a jury would be entitled to entertain a reasonable doubt as to the voluntary quality of the act"
- "Death was caused by a combination of acts ... cocking of the rifle, the failure to apply the safety catch, the presentation of the rifle ... They were done deliberately and were as much part of the act causing death as was the pressure of the trigger which fired the rifle"
- *"It is the act which must be willed though its consequences may not be intended ... an accused is not guilty of a crime if the deed which would constitute it was not done in exercise of his will to at"*