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Manslaughter – Assault causing death

1. Section: s25A(1)(a)
2. Penalty: 20 years
3. AR & MR [NOTE P80]

<p>△ D hits V with any part of his body or an object held by him ↳ (Only amounted to ‘hitting’ (from slaps to king-hits). Not push.)</p> <p>△ Assault not authorized or excused by law</p> <p>△ Assault causes death</p>	<p>△ D must intentionally hit V with part of his body or object held by him ↳ ‘it is not necessary to prove that the death was reasonably foreseeable’ (s25A(4))</p>
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MNS – Gross negligence manslaughter (GNM) by act

1. Section: s18(1)(b)
2. Penalty: 25 years
3. AR & MR [note P84]

<p>△ A owed a duty of care to V</p> <p>△ A’s Gross breach of that duty (objective test) (breached by omission and act)</p> <p>△ A’s act caused V’s death</p> <p>△ A’s breach of duty was of such magnitude that it amounts to criminal negligence (i.e. merits punishment for the offence of manslaughter)</p>	<p>△ No subjective MR</p> <p>△ Objective MR: Act causing must be done consciously and voluntarily, without any intention of causing death or GBH but in circumstances involving a great falling short of the standard of care which a reasonable person would have exercised and involved such a high risk that death or GBH would follow the doing of the act merited criminal punishment (Nydam)</p>
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4. AR – DOC

- a. Dependent familial relationship (parent/child): **Russell** (1993) and s43A *Crimes Act*
- b. Creation of dangerous situation: **Miller** (1983)
- c. Voluntary assumption of DOC for a person who cannot care for themselves: **Stone and Dobinson**;
Taktak

- d. No DOC owed by suppliers of prohibited drugs and recipient, particularly because there is no element of control: **Burns** (2012)
- e. Examples of statutory duties:
 - i. *S44 Crimes Act*:
 - If D under legal duty to provide V with necessities, and without reasonable excuse fails to so provide (intentionally/recklessly), and if failure causes danger of death or causes serious injury (or likelihood) to X

5. AR – Breach

- a. Did the accused fail to act as a reasonable person would have done in that situation? (**Nydam** and **Lavender**)

6. AR – Caused death

- a. It is essential that the act or omission that amounts to a breach of duty is the act or omission that causes the V's death: **Justins**, [97].

7. AR – merits punishment for the offence of manslaughter

- a. A mere breach of duty is insufficient to amount to criminal negligence manslaughter:
 - i. A's conduct must constitute 'such a falling short' of the standard of care which a reasonable person would've exercised in the circumstances AND involved 'such a high risk' that death/GBH would follow, that it merits criminal punishment (**Nydam**; **Lavendar**)

8. Test in **Nydam**: Objective mens rea

- a. ① Whether the reasonable person who have **appreciated a probability** of death or grievous bodily harm, and
- b. ② Whether the conduct of the accused fell well below that of the **reasonable person**.
- c. ③ Whether the conduct of the accused was '**wickedly negligent**' - that is, falling so short of that of the reasonable person, to such a degree that actually merited criminal punishment.
- d. 'wickedly negligent' = negligent to such a high degree that it actually warranted being punished.

9. Reasonable person [note P85]:

- a. **Lavender**: the reasonable person possesses the same personal attributes as the defendant - the same age, having the same experience and knowledge, & the circumstances in which found him/herself
- b. **Sam and Sam**: the 'reasonable person' in the father's position possessed the father's knowledge and practice in practice of homeopathy and medicine in India and Australia and his education, training, practice and teaching of homeopathy in NSW.

ii. 2nd, whether an ordinary person in 1st when confronted by provocation of that gravity, could have lost self-control to the extent of forming an intention to kill, or inflict GBH upon, the deceased.

- E.g. though the deceased's words are abusive and tend to undermine accused's 'manhood', the deceased's conduct seems to be no more provocative than that with which Stingel was confronted in **Stingel** case. (only applicable if the facts are similar to **Stingel** case)

10. No application of **Stingel** test

- a. E.g. [But, it is possible that, because of the removal of the words 'in the position of the accused' from s23(2), the **Stingel** test no longer applies (see the Minister's Second Reading Speech). It might be that, now, the jury would simply have regard to what the deceased said to the accused and ask whether that conduct could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict GBH on the deceased.
- b. It is very doubtful whether that test would be satisfied either
- c. The provocation here was very trivial]

11. conclusion

Self-defence

1. Establish an offence
2. Section: s418(2) [note P280]
3. Application:
 - a. Defence to all offences
 - b. Result: D would be acquitted
4. State: the accused raises the defence on an evidential burden. The prosecution must disprove BRD the possibility of self-defence
5. (1) is it reasonably possible that the accused's conduct was necessary to defence himself?
 - a. **Katarzynski**: can take into account all of the accused subjective characteristics
 - b. Belief need only be genuine/ honest. Does not need to be reasonable.
6. (2) is it reasonably possible that this was a reasonable response in the circumstances as the accused perceived them to be?
 - a. What were the circumstances the accused perceived?

- i. **Katarzynski**: Can take into account the accused/s self-induced intoxication in determining what the circumstances were as he perceived them:
 - ii. E.g. the accused thought that the victim was coming towards him with a knife which in fact, the victim was running away.
 - iii. However, Howie J held that intoxication is irrelevant. The test should be entirely objective.
- b. Is that a reasonable response to what the accused perceived? (a man with knife running towards him)
 - i. Self-intoxication is irrelevant here.
 - ii. YES.
 - iii. ***if it is a NO → the self-defence test is not satisfied → EXCESSIVE SELF-DEFENCE (see below)
- 7. Was the accused response to the circumstances as he perceived them a proportional one?
 - a. Was his response – i.e. firing a gun twice at the deceased – in the circumstances as he perceives them – i.e. with the deceased running at him with a knife – a proportional one?
 - i. Self-intoxication is irrelevant here.
 - ii. Can take into account his age, state of health, and gender, in determining the proportionality question.
 - b. Conclusion: it might or might not have been a proportional response to the circumstances as the accused perceived them. This is a question for the jury.
 - c. Whether there are other available responses? [note P297]
 - i. **Silva v R**: the accused response in the circumstances was reasonable as she had no other option available to her other than to stab the diseased.
- 8. conclusion

EXCESSIVE self-defence

1. Establish Murder offence
2. Establish self-defence. Apply the excessive self-defence if the second limb of the test failed.
3. Section: s421 [note P292]
4. Application:
 - a. Only to Murder offence
 - b. Result: partial defence – murder will be reduced to manslaughter