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MURDER

ELEMENTS

- In order to determine whether or not D is liable for murder, it is necessary to establish:
 - That there was an act or omission causing death (actus reus)
 - With intent to kill or cause gbh or reckless indifference to human life (mens rea): s 18 Crimes Act 1900
- Maximum sentence: life imprisonment: s 19A(1) Crimes Act 1900

ACTUS REUS

VOLUNTARINESS

- The act that caused the death must be voluntary, a 'willed action': Ryan (1967)
 - The court looks at the acts as a whole and the probable consequences of those acts: Ryan (1967)

OMISSION

- For the accused to be guilty of homicide by omission:
 - they must have owed a duty of care to the victim;
 - their failure to act must have caused the victim's death; and
 - the omission must have been conscious and voluntary, without any intention of causing death but in circumstances that involved such a great falling short of the standard of care that the reasonable man would have exercised as merits criminal punishment: Stone and Dobinson (1977); Taktak (1988)
- There are at least four situations where a relevant duty of care arises:
 - Where statute imposes a duty;
 - Where one is in a certain status relationship with another (eg parent/child Russell);
 - Where one has assumed a contractual duty of care for another; or
 - Where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid: Taktak (1988)

CAUSATION

'Operating and substantial cause'

- The conduct of the accused must have been a 'substantial and operating' cause of the victim's death: Munro (1981); Hallet (1969); Royall (1991)

Intervening act

- The act of the accused will not be considered to have caused death if another event is so 'overwhelming' as to make the accused's conduct irrelevant: Smith (1959)

Natural consequences

- If the victim, in seeking to escape from the accused, suffers death, the accused will still be held to have caused death where the accused's conduct induced in V a well-founded, reasonable and proportionate apprehension of physical harm such as to make it a natural consequence that they would choose their means of escape: Royall (1991)

Egg-shell skull

- The accused must take their victim as they find them: Blaue (1975) (refusing blood transfusion because of religious beliefs)

MENS REA

HEADS OF MENS REA:

- Intention to kill
- Intention to inflict GBH
- Reckless indifference to human life
- Constructive murder

INTENTION TO KILL

- Subjective test of the accused's intention

INTENTION TO INFLICT GBH

- GHB includes (s4 CA):
 - (a) the destruction of foetus, whether or not the woman suffers any other harm, and
 - (b) any permanent or serious disfiguring of the person, and
 - (c) any grievous bodily disease (causing a person to contract a grievous bodily disease)

RECKLESS INDIFFERENCE TO HUMAN LIFE

- The accused has the relevant mental state for murder where they know that their acts will probably cause death but proceed regardless: Crabbe (1985)
 - Knowledge of a possibility that death will occur is not enough: Crabbe (1985); Royall (1991)

CONSTRUCTIVE MURDER

- Where the acts of the accused have caused death 'in an attempt to commit, or during or immediately after the commission, of a crime punishable by imprisonment for life or 25 years', it is not necessary for the prosecution to prove a fault element to secure a murder charge: s18 Crimes Act 1900

CASES

MENS REA

Crabbe (1985) HCA

Facts

- Road train driver in the NT. Finished deliveries, went to the pubs for some beers. Got drunk and aggressive → kicked out of bar. A few hours later he drove the prime mover with one trailer attached through the wall of the pub, killing 5 and injuring several other people. Showed no remorse and walked out.
- Question in trial as to the intent of Crabbe, or his knowledge and understanding about the consequences of his actions

Held

- A person is guilty of murder if he commits a fatal act knowing that it will probably cause death or grievous bodily harm but (absent an intention to kill or do grievous bodily harm) is not guilty of murder if he knew only that his act might possibly cause death or grievous bodily harm

Royall (1991)

Held

- HCA held that the decision in *Crabbe* on the mens rea for murder at common law should apply equally to the interpretation of reckless indifference to human life in s 18 *Crimes Act 1900*
- Prosecution has to prove that the accused foresaw the probability of death
- Foresight of GBH not sufficient mens rea for murder
- In NSW a defendant who is recklessly indifferent to serious bodily harm and not to death itself will be guilty of manslaughter not murder
 - NSW not in line with other Australian jurisdictions where the same mens rea would be for murder
- Murder- standard non- parole period of 20 years, sometimes raised to 25 (eg victim is a police officer, under 18)
- This period must be set unless the court decides that there are reasons for settling on a different period and records its reasons for doing so. High level of discretion- *Way* (2004).

Boughey (1986) HC

Held

- Doctor convicted of murder in a case where he killed the deceased by applying manual pressure to her neck. Explained that he often did this with the consent of women for sexual arousal.
- Question- did Boughey act with an intention to cause to any person bodily harm which he knew to be *likely to cause death* in the circumstances? (according to s157(1) *Tasmanian Criminal Code*)
- HC- 'Likely' means 'probable' not 'possible'. Line drawn between foresight of probability and likelihood on the one hand, and foresight of possibility on the other.