

Involuntary Manslaughter: Unlawful and Dangerous Act Manslaughter & Gross Negligence Manslaughter

Crimes Act 1900 ss18(1)(b): Every other punishable homicide shall be taken to be manslaughter.

- Punishment: 25 years imprisonment (s24) (not mandatory, but discretionary, widest of all offences e.g. many instances of release)

Manslaughter is defined only by COMMON LAW

1. Voluntary manslaughter is when D has the necessary MR for murder but D's liability is reduced due to the presence of recognised mitigating factors i.e. partial defences becomes a partial excuse (e.g. A admits they did commit the killing but was provoked; A used excessive force during self-defence causing death)
2. Involuntary manslaughter is when there is no MR for murder:

| <u>Crime</u> | <u>Type of RISK</u> | <u>Quantum of RISK</u> | <u>Identity of risk assessor</u> | <u>Assessment of risk</u> |
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| Unlawful and Dangerous Act | Serious injury | Appreciable | Reasonable person | Objective |
| Criminal Negligence | Death or serious bodily harm (GBH) | High risk | Reasonable person | Objective |

Unlawful and Dangerous Act Manslaughter

- *Wilson* (1992): W hit deceased on the face, causing him to fall to the ground and to hit his head. W's companion then went through his pockets and "smashed" his head on the concrete. Deceased died from brain damage and the Crown suggested that the most likely cause of death was the fall from W's punch.

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| ACTUS REUS | <p>1) An unlawful and dangerous act (not an omission) causing the death.</p> <ul style="list-style-type: none"> a. UNLAWFUL ACT (<u>any breach of criminal law must be first proven</u>) (<u>Cornelissen [2004]</u>). – e.g act of indecency, assault <ul style="list-style-type: none"> - If Requirement of unlawfulness was not met, then the act was no more than a civil wrong (R v Franklin) b. DANGEROUSNESS <ul style="list-style-type: none"> o Objective test for dangerousness: Whether the act was such that a ‘reasonable person would realise that it was exposing others to an appreciable risk of serious injury’ o Unlawful act requires dangerousness in that it be “likely to injure” (R v Larkin) |
| MENS REA | <p>1) Act must be <u>intentional</u> and <u>reasonable person</u> in the accused’s position would realise the act carried an <u>appreciable risk of serious injury</u> (Wilson) → Crown must prove MENS REA for UNLAWFUL ACT (Lowe)</p> <p>A reasonable person is defined as one who:</p> <ul style="list-style-type: none"> • Knows the physical features of situation (location) (<u>Wills [1983]</u>) i.e. the reasonable person would have taken into account the surrounding circumstances e.g. the place was dark, sharp edges etc.. • Knows the physical features/actions of accused (e.g how punch is given) (<u>Wills</u>) • they do NOT include any idiosyncrasies of D or his mental or emotional state or his intoxication “as his judgement of danger must be the judgement of a <i>healthy and reasonable</i> man/mind.”: “anything personal to the accused which may affect his reasoning and judgement cannot be included as that would be to bring into the equation a judgement by a man whose reason and judgement are in a morbid and clouded condition.” (<u>Wills</u>) • Is placed in the same position as the accused (<u>Cornelissen</u>) • Same age as the accused (<u>DPP v Ty</u>) • But do not include the idiosyncrasies of the accused or the transitory emotional or mental state which are peculiar to the individual (<u>Wills</u>) |
| EXCLUDED UNLAWFUL ACTS | <ul style="list-style-type: none"> - EVEN WHERE A CRIMINAL OFFENCE IS COMMITTED, it will not necessarily form the basis of unlawful act manslaughter - Self-defence is not an unlawful act (<u>Cornelissen</u>) - Defence of rescue is not an unlawful act (<u>Downs</u>) - Supply of drugs to a fully informed adult cannot be may be unlawful but is not in itself a dangerous act (<u>Burns v The Queen</u>) <ul style="list-style-type: none"> ➔ Any danger lies in ingesting what is supplied (and that was voluntary & informed) ➔ No cogent evidence that D had in fact injected V with methadone ➔ Decision to take drug was a voluntary and informed decision by a sane adult (as per Royalle); not vitiated by mistake or duress i.e. an independent act breaking causal chain - If injection of drugs is voluntary and informed act by the deceased, no manslaughter: <i>Kennedy (No 2)</i> |

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| | <ul style="list-style-type: none"> - Cannot be a regulatory infraction (e.g. traffic offences) ⑦ 'only when vehicle used as a weapon' (<u>Pullman</u>) - Cramp - In conflict with Pullman – upheld a conviction of manslaughter by unlawful act – a 16yo learner driver drove dangerously and while intoxicated - Production of knife as reasonable DEFENCE of friend – defence of rescue ⑦ not unlawful (<u>Downes</u>) - Civil wrongs not included (<u>R v Larkin</u>) - Where the accused does not have MR for the unlawful act (<u>Lamb</u>)- Pointed gun at friend, pulled trigger without realising cylinder rotated. |
| PENALTY | 25 years imprisonment (<i>s24 Crimes Act</i>) |

One punch legislation

Crimes & Other Legislation Amendment (Assault and Intoxication) Act created new homicide offences:

25A Assault causing death

- . (1) A person is guilty of an offence under this subsection if:
 - (a) the person assaults another person by intentionally hitting the other person with any part of the person's body or with an object held by the person, and
 - (b) the assault is not authorised or excused by law, and
 - (c) the assault causes the death of the other person.
- . Maximum penalty: Imprisonment for 20 years.
- . (2) A person who is of or above the age of 18 years is guilty of an offence under this subsection if the person commits an offence under subsection (1) **when the person is intoxicated.**
Maximum penalty: **Imprisonment for 25 years.**
- . (5) It is a defence in proceedings for an offence under subsection (2):
 - (a) if the intoxication of the accused was not self-induced (within the meaning of Part 11A), or
 - (b) if the accused had a significant cognitive impairment at the time the offence was alleged to have been committed (not being a temporary self-induced impairment).
- (6) In proceedings for an offence under subsection (2):
 - (a) evidence may be given of the presence and concentration of any alcohol, drug or other substance in the accused's breath, blood or urine at the time of the alleged offence as determined by an analysis carried out in accordance with Division 4 of Part 10 of the Law Enforcement (Powers and Responsibilities) Act 2002, and
 - (b) the accused is conclusively presumed to be intoxicated by alcohol if the prosecution proves in accordance with an analysis carried out in accordance with that Division that there was present in the accused's breath or blood a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.
- D is liable even if D does not intend/foresee death of V, and even if the death was not reasonably foreseeable
- Alternative verdict: Jury can find offence under s25A if NOT satisfied MNS but satisfied ingredients of 25A

Sentence of Loveridge: Inadequate sentence appealed by Crown → Then sentenced to MNS + new offence introduced: Assault causing death (lesser offence compared to MNS)

- J Quilter - The logical location of the offence contained in s 25A is below that of murder and manslaughter - because its fault elements are neither subjective (as in murder) nor objective (as in manslaughter). Furthermore, it is an alternative verdict to murder and manslaughter, reinforcing the offence as being 'third tier'.
- it has been argued that one-punch laws are unnecessary in NSW as they are regularly found guilty of MNS by an unlawful act even under the more demanding mens rea requirements specified in *Wilson* (Quilter).
 - If MNS can be successfully charged in vicious one-punch scenarios, Quilter's analysis suggests that it would make sense for prosecutors to continue to take this approach. However, if the accused pleads not guilty, juries have the option of bringing in an alternative verdict of assault causing death on both MNS and murder charges (s25A(7))
- Where the accused is intoxicated at the time of the assault causing death, those who are at least 18yo can be convicted of an aggravated offence (s25A(2))
- A one-punch fatality is a less serious crime than MNS, but is more serious than assault: Thus, assault causing death (s25A(1)) has a max penalty of 20 years, being less than the max of 25 yrs for MNS. Furthermore, this offence is a statutory alternative verdict to murder and MNS
- The agg offence in s25A(2), although remaining to be the statutory alternative verdict to murder and MNS, suggesting that it is lower in the seriousness hierarchy than both offences (s25A(7)). On the other hand, the offence has the same max penalty as MNS but with a mandatory min sentence of 8 years (s25B(1)), which makes the offence potentially *more* serious than MNS.

Gross Negligence Manslaughter

Rule:

- a great falling short of the standard of care required of a reasonable man in the circumstances and a high degree or risk of likelihood of the occurrence of death or GBH (**Nydam**)
- 'wickedly negligent' = a great falling short that it should follow with criminal punishment (**Lavender**)

Nydam [1977]

- The D's relation with the victim was deteriorating. He threw petrol over her and lit a cigarette lighter. An explosion occurred and the victim died instantly

Lavender [2005]

- The D drove a sand-loader at a sand mine. The area was covered by thick vegetation - visibility was low
- Some boys who should not have been there were playing in the area
- To teach them a lesson, D chased after them in the sand-loader. He lost sight of the boys but kept driving and ended up driving over and killing one of them

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| ACTUS REUS | <p>The actus reus is an act or omission causing the death: Prove BRD Accused committed to do an act or omitted to do an act</p> <ul style="list-style-type: none"> - Actions caused the death of the victim (i.e. causation exists): It is essential that the act/omission constituting the breach of duty is the act/omission that causes death. (<i>Lane v R</i> (2013) [61], <i>R v Moore</i> [143]) |
| <u>MENS REA</u> | <p>The prosecution must prove that (PURELY OBJECTIVE TEST)</p> <ul style="list-style-type: none"> • There was a duty of care and gross breach of that duty • Accused fell so short of that standard of care (<u>Nydam</u>) a RP would have exercised in the circumstances (Breach DoC owed to deceased) (the act or omission was negligent that it breached DoC) • Accused must be shown to have acted consciously and voluntarily in gross breach of a duty of care that he/she was creating such a HIGH RISK of that death or GBH would follow as a RESULT of the ACT/omission & nevertheless chose to run the risk (<u>Nydam, Lavender</u>) • Criminal punishment is warranted (<u>Lavender</u>) (Wickedly negligent) <ul style="list-style-type: none"> - Warranted: Describes high degree of negligence required) (<u>Sood</u>) • unnecessary for P to prove "malice" as a constituent of manslaughter by criminal negligence. HCA held that in ref to s18(2)(a), "malicious" only referred to provisions of 18 which dealt with murder (s18(1)(a). |
| PENALTY | 25 years imprisonment |

Tests for causation

Royall (1991)

- Facts: R was charged with the murder of H who had fallen from the bathroom window of the flat. R admitted to assaulting H and on one version of the events that H had locked herself in the bathroom. R forcing himself in and H subsequently jumped out of the window, there was evident that a struggle had taken in the bathroom. Prosecution's case i) pushed or forced her out the window; ii) she fell retreating from R's attack or iii) she had a well-founded and reasonable apprehension that if she remained in the bathroom, and had to escape
- Three tests for Causation established in this case (only need to prove 1). Where there are multiple causes of death, refer to this as well...

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| 1) Operating & Substantial Cause Test – Dean and Dawson JJ <u>Royall</u> | <p>1) Test for causation is whether the act/omission was a substantial and operating cause at the time of death (<u>Royall</u>)</p> <p>2) Where there is more than one potential cause of death, the original injuries inflicted must be a) continuing, operating and substantial causes of victim's death (<u>Smith, Evans v Gardiner</u>) AND b) common sense of jury (<u>Royall</u>)</p> <p>3) Extends to situations where D brought the victim to a further event e.g. exposing him to a new danger, causing them to take certain actions. (<u>Royall</u>)</p> <p>4) This also EXTENDS to any acts done INVOLUNTARILY or in self-defence, in RESPONSE to defendant's ACTION e.g. accidentally shooting human shield... hitting an innocent bystander..<u>Pagett (1983)</u></p> |
| 2) Natural Consequence Test – CJ Mason <u>Royall</u> | <ul style="list-style-type: none"> • Where the conduct of the accused induces in the victim a well-founded & reasonable apprehension of physical harm or danger, making it a NATURAL CONSEQUENCE that the victim would seek to escape • AND the victim is injured in the course of escaping, the injury is deemed to be CAUSED by the accused's conduct <p>The response of the deceased is taken into account <u>Rik [2004]</u> (see below for facts of this case)</p> <p>c. The fear of physical harm needs to be well-founded; Objective test</p> <p>d. The response to the fear does NOT have to be reasonable – the most RATIONAL response does NOT need to be chosen e.g fire escape, but jump out window instead</p> |
| 3) Reasonable foreseeability test – Brennan and McHugh JJ <u>Royall</u> | <ul style="list-style-type: none"> • Was it reasonably foreseeable on the part of the accused that the victim might take such a fatal step in response to the threat? • Juries should not be directed on this test – too confusing 🚫 Relevant in MR only |

1. **Substantial** - Means more than something very trivial, more than something that the law considers de minimis
2. **Operative** - An 'operative' cause does not have to be the 'sole or main' cause of the specified consequence