

HOMICIDE

1. **INTENTIONAL MURDER** – is 1) a voluntary 2) act or omission 3) that causes 4) the death of a human being 5) while intending to kill or to cause really serious injury 6) without lawful justification or excuse. (*R v Morrison*)
 - a. **Intentional** – is acting with the conscious purpose or desire to bring about death or really serious injury (*R v Willmot*) that such a result was substantially certain to follow from the act (*R v Hoskin*).
 - b. **Temporal coincidence** - requires actus reus and mens rea to coincide in time (*Meyers v R*).
 - i. ***In a series of acts*** – to carry out a plan, temporal coincidence is established if the relevant mens rea is formed at any time during that series of acts. (*Thabo Meli*)
 - ii. ***In a continuing act*** – temporal coincidence is established if the relevant mens rea is formed at any time during the continuing act even though mens rea was absent in the beginning (*Fagan v MPC*).
 - c. **Transferred malice** - It is the death or really serious injury of another human being, not necessarily the victim himself or herself that must be in the mind of the accused when the victim is killed (*R v Saunders*).
 - d. **Meaning of GBH** – Grievous bodily harm (GBH) means really serious injury (*R v Schaeffer*). Meaning is a matter for the jury to determine and unwise to elaborate further (*R v Rhodes*).
 - e. **Death of a human being**
 - i. ***Death*** – occurs when there is irreversible cessation of circulation of blood in the body of the person; or of all function of the brain of the person. (*s 41 Human Tissue Act 1982*)
 - ii. ***Human being*** – is a person who is fully born in a living state and thus legally in-being. Fully born means the person is fully extruded from the mother and can survive independently, even with the umbilical cord attached. (*R v Hutty*)
2. **RECKLESS MURDER** – is 1) a voluntary 2) act or omission 3) causing 4) the death of a human being 5) knowing that death or really serious injury would probably result 6) without lawful justification or excuse. (*R v Crabbe*)
 - a. **Recklessness** – is committing an act while knowing that it was probably (not possibly) that death or really serious injury would result (*R v Crabbe*). Foresight of harm is required if the act is committed recklessly (*R v Pemble*). Probable means substantial and real not remote whether it is more or less than 50% (*Bouhey v R*).
3. **STATUTORY CONSTRUCTIVE MURDER** – occurs where 1) the accused unintentionally causes the death of another human being; and 2) the death occurs in the course of or furtherance of an offence with a term of imprisonment of 10 years or more; and 3) death is caused by an act of violence and involves an offence which has the necessary elements including violence (*s 3A CA*). Both robbery (*s 75 CA*) and armed robbery (*s 75A CA*) fall within this offence.
4. **COMMON LAW CONSTRUCTIVE MURDER** – occurs where 1) a person causes the death of another 2) by violently resisting, preventing, or escaping from a lawful arrest. (*R v Ryan and Walker*)

5. **VOLUNTARY MANSLAUGHTER** – is murder mitigated by factors such as provocation or suicide pact (*s 6B(1)*).
6. **INVOLUNTARY MANSLAUGHTER BY UNLAWFUL AND DANGEROUS ACT (IMUDA)**
- a. **1st Element: Unlawful act** – must be breach criminal law, not civil law (*R v Pemble*). However, mere technical breaches of *malum prohibitum* is not unlawful unless it is also objectively dangerous (*R v Pullman*). An unlawful omission is insufficient for the purpose of IMUDA (*R v Lowe*). An intention to inflict minor injury is not a sufficient cause for IMUDA (*R v Whittaker*). It is irrelevant whether the accused knew the act was unlawful or not (*DPP v Newbury*).
 - b. **2nd Element: Dangerous act** – arises if a reasonable person in the accused's position would have realised the accused's conduct carries an appreciable risk of serious injury to another (*Wilson v R*). Appreciable risk of serious injury refers to the level of inadvertence by the accused (*R v Gould*).
 - i. **Reasonable person** – is imbued with the qualities of age, experience and knowledge of the accused and would have normal fortitude and strength of mind (*R v Edwards*). While excluding mental impairment (*R v Edward*), idiosyncrasies and emotional state of the accused (*R v Ball*), and severe intoxication (*R v Wills*).
 - ii. **Single punch** – or strike is taken to be a dangerous act. (*s 4A CA*)
 - c. **3rd Element: Act voluntarily caused the death of another** – It does not matter the act was intended for the victim (*R v Mitchell*).
 - i. **Foetus case** – A child who died from a wound inflicted as a foetus may give rise to IMUDA simply by proving a violent attack, irrespective of the attacker's knowledge of the pregnancy. (*AG Reference No 3 of 1994*). Intent to harm is spent if the attack was directed at the mother, thus transferred malice cannot be extended or is not applicable.
 - d. **4th Element: Done without lawful justification or excuse**
7. **INVOLUNTARY MANSLAUGHTER BY CRIMINAL NEGLIGENCE (IMCN)**
- a. **Negligent act** – IMCN arise if the act causing the victim's death 1) was done by the accused voluntarily; 2) without any intention of causing death or grievous bodily harm (gbh); 3) involved such a great falling short of the standard of care that a reasonable person would have exercised; 4) involved such a high risk that death or gbh would follow; and 5) that the doing of the act merits criminal punishment. (*Nydam v R*)
 - b. **Negligent omission** – Failure to act gives rise to IMCN if 1) the accused's omission caused the victim's death; 2) the accused was under a legal duty to act; 3) which involved such a high risk that death of gbh would follow; and 4) the omission to act merits criminal punishment. (*Nydam v R*)