

MURDER

Crimes Act 1900 (NSW) s 18(1)(a) – definition codified in statute

Act or omission causing death with reckless indifference to human life or with intent to kill or inflict grievous bodily harm upon some person or done in an attempt to commit a crime punishable by 25 yrs imprisonment

1. AR: Act or omission
 - a. Omission – **R v SW and BW**
2. AR: Causation
 - a. Operating and substantial cause of death → objective test – **Evans and Gardiner affirming Smith**
 - b. Jury decides what the act causing death is - **Evans and Gardiner**
 - c. Intervening act of third party
 - i. Only if the second cause [medical treatment] is so overwhelming as to make the original wound merely part of history – **Smith**
 - ii. When treatment of the patient is 'palpably wrong,' this breaks the chain of causation - **R v Jordan**
 - iii. jury must consider whether the medical treatment is so independent and so potent in causing death (degree of fault by the doctor is not especially relevant) - **R v Cheshire**
 - d. Intervening act of nature
 - i. Death from the subsequent act or event was the natural consequence of the act of the accused. The subsequent event must be foreseeable → accused caused the death OR death from the act or event was not the natural consequence of the accused's act → accused is not liable – **Hallett**
 - e. Intervening act of the deceased
 - i. Refusing medical treatment
 1. eggshell skull rule – those who use violence on other people must take the victim as they find him – **Blaue**
 2. Absent intimidation, mistake or other vitiating factor, the voluntary and informed act of an adult of sound mind is not treated as having being caused by another (even if his or her ability to reason at the time was impaired). Mistake was not clearly defined by HCA - **Burns**
 - ii. Fight or self preservation
 1. Where the conduct of the accused induces in the victim a well-founded apprehension of physical harm such as to make it a natural consequence (proportionate or reasonable) that the victim would seek to escape and the victim is injured in the course of escaping, the casual connexion is not broken - **Royall**
 2. Whether V had well founded apprehension and acted reasonably or proportionately – **McAuliffe, Rik**
 - iii. Suicide
 1. No break in the chain of causation
3. AR: Death
 - a. **Human Tissue Act 1983 (NSW) s33**

A person has died when there has occurred an irreversible cessation of all function of the person's brain, or irreversible cessation of circulation of blood in the person's body.

Sample

4. MR: Intent to kill
 - a. P must prove that the accused intended death to result from their conduct: **La Fontaine v R, Crabbe**
 - b. Assess all the circumstances including the A's age, actions - **Pemble**
 - c. Transferred intention – where the accused intends to kill a certain person and commits the act but kills another. Is the accused liable for the death of the person killed? **Saunders v Archer**

5. MR: Intent to inflict GBH (discuss assault)
 - a. **S4 Crimes Act**
Destruction of the foetus, permanent or serious disfiguring, grievous bodily disease
 - b. Intention to bring about a particular result - **HKT**
 - i. An intention of a person as to a result concerns that person's actual, subjective, state of mind – **STZAL v Minister for Immigration**
 - ii. What the accused says and does at the time of the relevant events can be used to support an inference that he or she intended to kill/inflict GBH – **Matthews v R**
 - iii. The accused's post offence conduct may be used to prove the requisite intent – **Queen v Baden Clay**
 - iv. It is open to infer on the basis of all facts and circumstances of the case – **Smith v The Queen**

6. MR: Reckless indifference to human life
 - a. A person is guilty of murder if he commits a fatal act knowing that it will PROBABLY cause death or GBH. He is not guilty if he knew only that his act might POSSIBLY cause death or GBH → subjective test - **Crabbe**
 - b. the prosecution had to prove that the accused foresaw the PROBABILITY of DEATH. Foresight of GBH was not sufficient mens rea for murder – **Royall affirming Solomon**

7. Temporal Coincidence
 - a. Act and intent must coincide. Murder cannot be determined unless there is evidence that the act which caused the death had the necessary intent – snapshot view – **Meyers v R**
 - b. Accused's level of culpability cannot be fully determined by a snapshot in time, but rather a sequence of events leading to the point - **Thabo Meli v R**
 - c. Where the unlawful application of force and the eventual act causing death are parts of the same sequence of events, the appreciable interval of time between the two does not exonerate the defendant from liability - **R v Le Brun**
 - d. The court will not be prepared to stretch it to cover situations where death is caused in an attempt to rescue the victim, rather than to conceal the original attack - **R v Le Brun**

EXTREME PROVOCATION

1. Burden and onus of proof – s 23(7)
2. Conduct of V must be serious indictable offence: 23(2)(b) →
 - a. offence punishable by 5 yrs/more or life: s4 CA
 - b. potentially provocative conduct included ‘grossly insulting words and gestures’
 - c. includes stalking or intimidation: Crimes (Domestic and Personal Violence) Act 2007 s 13
 - d. includes assault ABH, blackmail, threatening to destroy/ damage property
3. Conduct must be towards or affecting A: 23(2)(a)
 - a. Common law principle: conduct must have occurred in presence (sight/hearing) of A ie no ‘hearsay’ provocation: Quartly
 - b. But Davis (HCA): ‘strong case for saying Quartly was wrongly decided’. Just has to be towards or affecting the accused s 23(2)(a)
4. Actual loss of self control → subjective test: 23(2)(c)
 - a. Jury can take into account all of A’s personal attributes and the totality of his or her conduct – Stingel v R
 - b. A’s conduct must be caused by provocation and not some other factor such as intoxication – s 23(5)
5. Immediacy of response is not required: 23(4)
 - a. a loss of self-control can develop after a lengthy period of abuse, and without the necessity for a specific triggering event’ but a delay in time may be a relevant factor for the jury to determine whether there was a loss of self-control Chhay, confirmed in Turnbull
6. Ordinary person test → objective test: 23(2)(d)
 - a. conduct of the deceased could have caused an ordinary person to lose self control to the extent of intending to kill or inflict GBH – s 23(2)(d), 2nd reading speech
 - b. uncertainty as to how courts will interpret new s 23(2)(d)
 - c. Old Law: 2 tier mixed subjective & objective test (Stingel 1990; Masciantonio 1995)
 1. Gravity: any relevant characteristic of the accused may be attributed to the ordinary person (Age, sex, race...) → subjective
 2. Extent of loss of control: could provocation have induced an ordinary person in the position of the accused to have lost control to that extent (no personal characteristic can be taken into account apart from age/maturity) → objective
7. What is excluded?
 - a. Non-violent sexual advance: 23(3)(a); removes ‘homosexual advance defence’: Green –
 - b. If A incited conduct as excuse for violence: 23(3)(b); confirms common law: Edwards and Gardner
8. Partial Defence: Reduces Murder to manslaughter