

## **MANSLAUGHTER**

\*In motor vehicle cases, UDA should only be relied on where vehicle is used as a weapon. If this is not the case, then look to gross negligence manslaughter (*Pullman*).

### **Manslaughter by Unlawful and Dangerous Act (UDA) – s 18(1)(b)**

A is guilty of manslaughter by unlawful and dangerous act if the Crown proves BRD that the act causing death was unlawful and a reasonable person in the position of the accused would have realised the act would expose another person to an appreciable risk of serious injury: s 18(1)(a)(b)

#### **1. UNLAWFUL ACT:** Prosecution must prove AR and MR of the unlawful act.

- a. Unlawful act must be a criminal wrong - E.g. if Prosecution fails to make out mens rea for assault, unlawful act element not satisfied and accused not guilty – *Lamb*
- b. Unlawful act need not be directed at victim (*Mitchell*) but must be a ‘direct act’ where harm is immediate and inevitable (*Dalby*)

#### **2. DANGEROUS ACT**

- a. Reasonable Person Test: Whether a reasonable person in A’s position would have realised they were exposing V to a real appreciable risk of serious injury – *Wilson*
  - i. Objective test: Prosecution not required to prove A knew act was dangerous
  - ii. Location and surroundings (hazards) should be looked at in determining whether conduct objectively dangerous – *RIK*
  - iii. ‘reasonable person’ includes physical features of situation (what was heard/seen) and the accused’s actions – *Wills*; includes facts known to the accused and accused’s perception of the facts, but not the accused’s opinion – *Lavender*

#### **3. CAUSATION**

- a. GENERALLY (if no novus actus): The test is whether the act/omission of the accused was an operating & substantial cause of death – *Evans; Hallett; Blaue*
  - i. Novus Actus by victim/third party/act of nature? Refer to the authorities governing murder above.
- b. DRUG SUPPLY: An adult’s voluntary and informed act negates causal connection (Mere supply of methadone was not an act that a reasonable person would have believed would have exposed the deceased to an appreciable risk of serious injury. Cause of death was consumption of methadone, which was a voluntary and informed decision of the deceased) – *Burns*

- i. Could circumvent **Burns** with s 25C offence regarding supply of drugs causing death which carries a max penalty of 20 years. Refer to (1)(a) specifically where purpose is financial or material gain.

### Manslaughter by Criminal Negligence – s 18(1)(b)

A is guilty of manslaughter by gross negligence if the Crown proves BRD that A's act or omission causing death constituted a breach of a duty owed to the deceased that fell so short of the standard of care required of the reasonable person and involved such a high risk that death or really serious bodily harm would follow as a result that A's act/omission merits criminal punishment – s 18(1)(b)

## 1. DUTY OF CARE

- a. **ACT**: General common law duty not to cause harm to another person – **Nydam**
- b. **OMISSION**: reluctant to impose an obligation to do a positive act except:
  - i. Dependent familial relationship (e.g. parent/child) – **Russell**
    - 1. Parents owe duty to child (**R v SW & BW**) but not the other way around (**Peake**)
  - ii. Creation of dangerous situation (**Miller**) = must take reasonable steps to save victim's life (**Evans**)
  - iii. Voluntary assumption of duty of care for a helpless person who cannot care for themselves – **Stone and Dobinson**; seclusion so others cannot render aid – **Taktak** (ambiguity in **Burns** as to whether seclusion itself is enough)
  - iv. If D under legal duty to provide V with necessities and fails to do so, resulting in death – s 43A, s 44 Crimes Act
  - v. Doctor/patient – **Burns**
  - vi. Imposed by statute or contract – **Burns**

## 2. CAUSATION

- a. Operating and substantial cause – D's actions were an operating and substantial cause of the injuries – **Zanker**
- b. Was there a novus actus? (If yes: refer to causation cases in murder topic)

## 3. 'GROSS' BREACH OF DUTY OF CARE – A mere breach of duty insufficient.

- a. "It is likely that (A's act) will be found to amount to criminal negligence meriting criminal punishment because the doing of the act"
  - i. Involved a great falling short of the standard of care which a reasonable person would have exercised in the circumstances – **Nydam**; and
  - ii. Involved such a high risk that death or really serious bodily harm would follow as a result of the act or omission – **Nydam**; **Lavender**
  - iii. Act/omission must have been 'wickedly negligent' – **Lavender**

- b. What knowledge is imputed to the reasonable person?
  - i. Reasonable person has same attributes of the accused (age, special knowledge, skills) in same circumstances having regard to ordinary firmness of character and strength of mind of a reasonable person – *Lavender*
    - 1. Disregard: personal beliefs, views or attitudes of the accused – *Sam*

### Assault Causing Death (One Punch Legislation) – s 25A

Person guilty of an offence under this section if they assault another person by intentionally hitting them with any part of their body/any object and the assault causes death (max penalty higher if intoxicated).

(1) A person is guilty of assault causing death 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

Maximum penalty: 20 years imprisonment