

Homicide II: Manslaughter

S 18 Murder and Manslaughter defined

(1)

(a) Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted 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, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.

(b) Every other punishable homicide shall be taken to be manslaughter.

Scaffold:

1. *If murder has not been established, start analysing manslaughter*

Note: manslaughter is murder but without with requisite MR. Therefore, the 'death' and 'act' should already have been established, and there is no requirement to repeat them.

The elements of manslaughter are derived from the common law. These elements depend on the type of manslaughter (unlawful and dangerous act, or criminal negligence). The prosecution needs to prove the following elements, beyond reasonable doubt.

[both be discussed/analysed??]

A. Unlawful and dangerous act manslaughter

1. Actus reus: death

There has been the death of V on the facts, or in accordance to s 33 of the Human Tissue Act, thereby satisfying the consequence element of s 18.

s 33 Human Tissue Act

For the purposes of the law of New South Wales, a person has died when there has occurred:

- (a) irreversible cessation of all function of the person's brain, or
- (b) irreversible cessation of circulation of blood in the person's body.

2. Actus reus: unlawful act

*The prosecution must prove that the act causing death was an unlawful act, which is an act in breach of the criminal law: **Lamb**. This means having the requisite actus reus and mens rea for that unlawful act must be established.*

An act performed in self-defence is NOT an unlawful act

Lamb:

- Facts: L jokingly pointed gun at friend, who also thought it was a joke. L pulled the trigger, believing that it would not shoot for some reason (expert witness said this was a common thing to believe by someone unfamiliar with the mechanisms), and killed his friend.
- Held:
 - ⇒ There was no unlawful act (in breach of the criminal law, not simply civil or regulatory): There was no assault (you are required to strike or

- strike fear, as elements of the assault), given that he could not have satisfied the mens rea requirement for assault
- ⇒ Must satisfy technical assault: generally, must satisfy technicalities of unlawful conduct
- ⇒ No intent to cause harm at all – it was a joke (no intent satisfaction of murder)

Note: something without consent will make it unlawful for assault!

4. Actus reus; dangerous act

*An unlawful and dangerous act is one that carries with it an appreciable risk of serious injury: **Wilson**. Even a trip when running away from threatened violence can cause serious injury: **Rik***

*This foreseeability of risk of serious injury is assessed according to the reasonable person: **R v Rik** [objective test]*

- Who is same age as the accused: **DPP v Ty**
- Is in the same position as the accused: **Cornelissen** [2004]
- If they have intellectual disability: **R v Thomas**
- Has an unclouded reasoning power of a healthy and reasonable mind: **Wills** [1983]
- Physical features of situation: **Wills** [1983] Accused's awareness of circumstances surrounding the alleged act: **R v Thomas**
- Jury DOES NOT consider;
 - ☐ Transitory and emotional state of accused
 - ☐ Idiosyncrasies of accused
 - ☐ Effects of any intoxication:
 - S 428F provides that when applying the reasonable person tests, the reasonable person is not the reasonable intoxicated person
- **Wilson** (1992)
 - ☐ During a robbery (?) W hit the deceased on the face, which caused him to fall down and hit his head. W's friend joined and smashed his head on the concrete. As a result, the deceased died from brain damage. Both originally charged under constructive murder (foundational offence of robbery). W was convicted of manslaughter.
 - ☐ Issue: whether dangerous act allowed appreciation of risk of SOME injury, or that of a REALLY SERIOUS injury
 - ☐ *An unlawful and dangerous act is one that carries with it an appreciable risk of serious injury: An appreciable risk means a risk that is real or significant, rather than remote or fanciful. A serious injury means an injury that is more than trivial or negligible [not high standard for both]*
 - ☐ Appeal allowed, manslaughter conviction quashed
- **R v Rik** [Keep dangerousness and causation issues separate!!!!!! Don't conflate them]
 - ☐ Facts as above
 - ☐ Considerations by Hodgson JA:
 - Jury could have considered the *unprovoked* nature of the behaviour, which makes future course more unpredictable and therefore frightening – reasonable apprehension