

# SAMPLE COPY

## Murder

### ELEMENTS OF MURDER s 18(1)

[life imprisonment]

AR	MR
Existence of death	Intention to kill
AND	OR
Voluntary act or omission (conduct) causing death (consequence)	Intention to inflict GBH
AND	OR
Causal link (causation) between D's voluntary act and V's death	Reckless indifference to human life (awareness of the probability of death)

### ACTUS REUS

#### AR: DEATH

- ⇒ Death occurs when there is (a) irreversible cessation of all brain functions, or (2) irreversible cessation of blood circulation: *Human Tissue Act 1983 (NSW) s 33*

#### AR: OMISSION (INACTION)

- ⇒ Omission can constitute sufficient AR to establish MDR: *s 18(1)*
- ⇒ D must have owed a legal duty to act to prevent death: *Taktak, Stone & Dobinson*
- ⇒ P does not need to prove that D performed an act causing death, but an omission (failure to fulfil legal duty where owed) causing death can establish MDR; *R v SW and BW (No 1)*
- ⇒ Any person who deliberately puts another in danger comes under a legal duty to remove that danger: *Taktak, Taber*

**CAUSATION**

- ⇒ P must prove BRD sufficient link between the act or omission of D and the death of V
- ⇒ Controversial causation question is for the jury to resolve: *Evans & Gardiner*
- ⇒ Where there may be more than one factor contributing to the death, the question is for the jury to determine whether P has established BRD that D's act was the act causing death: *Evans & Gardiner*
- ⇒ D's act need not be the sole operating cause, but the jury need only be satisfied that D's act made a significant contribution to the death to preserve the causal chain: *McAuliffe, Cheshire*
- ⇒ The causal chain may be broken by a novus actus intervenies (intervening act) –
  - (a) **by act of V**
    - Independent act
      - Causal chain will be broken if V does something that is so free and voluntary as to be considered an independent act causing death
    - Refusing medical treatment
      - No matter how unreasonable, refusing medical treatment will not break the causal chain, cannot argue V could have avoided death by taking greater care of self: *Holland*
      - Eggshell Skill Rule: a person who uses violence on another is required to take V as D finds them, including their characteristic and beliefs as a whole person, not just physical condition: *Blaue*
      - Departure from hospital is a mere loss of possible opportunity of avoiding death from a still O&S cause is no break in the causal chain: *Bingapore*
    - Fright, self-preservation, escape, suicide
      - Natural Consequence Test *Royall*: causal chain is unbroke if
        - (1) V had well-founded apprehension of physical harm
        - (2) V's escape was reasonable and proportionate
        - (3) V's voluntary act was a natural consequence of D's act
      - Common Sense Test: common sense can be used based on facts *Royall, McAuliffe*
      - Even if there are multiple avenues for escape, a poor and irrational choice forced to be made at the spur of the moment may still be reasonable: *Royall, RIK*
      - If V committed suicide, then it must be examined to what extent the act of V in taking own life overwhelms the primary cause of the act of D: *Smith (1959)*
  - (b) **by act of 3<sup>rd</sup> party**
    - Medical negligence
      - If the second cause arising from medical negligence is so overwhelming as to make the original merely part of the history, the act of D is not the cause of death: *Smith (1959)*
      - If the medical treatment was palpably wrong that death was caused by exceptional medical negligence rather than D's act, it is capable of absolving D of criminal liability for the subsequent injury or death: *Jordan*
      - If negligent treatment was so independent of D's act and so potent in causing death that the contribution of D's act is regarded as insignificant: *Cheshire*
    - Independent act
      - Free and deliberate intervention of 3<sup>rd</sup> party may break causal chain, unless it is a reasonable act performed by 3<sup>rd</sup> party e.g. self-defence: *Pagett, Lindt Café Siege*
  - (c) **by act of nature**
    - Extraordinary operation of natural forces may be capable of breaking causal chain (e.g. earthquake, tsunami) as oppose to ordinary forces (e.g. storm, tide): *Hallett*
- ⇒ Jury can also consider causation based on common sense: *Royall, McAuliffe*
  - Should consider the circumstances: *RIK*
  - Should consider D's actions + V's fear: *McAuliffe*
- ⇒ Lapse of time itself does not break the causal chain: *Evans & Gardiner*

**MENS REA****MR: INTENT TO KILL OR INFLICT GBH**

- ⇒ Definition of GBH:
  - Natural and ordinary meaning: *Smith (1961)*
  - Not merely serious, but really serious injury: *Rhodes*
  - Does not have to be permanent or life threatening: *Haoui*
  - Includes (a) destruction of foetus of pregnant woman (b) permanent or serious disfiguring (c) grievous bodily disease: s 4
  - When court determines whether it was open to the jury to decide where a particular injury qualifies as GBH, the following facts can be considered: *Swan*
    - (a) Where there is need for surgery
    - (b) Whether there was permanent injury
    - (c) How long V stayed in hospital
    - (d) Whether there was a need for treatment after V left hospital
    - (e) If there was a fracture, how serious the fracture was
- ⇒ Jury can infer intention by:
  - Looking at all circumstances of D including actions, age, background, emotions, personality, disposition, etc: *Pemble*
  - Looking at words or actions of D at the time of event, including before and after: *Matthews*
- ⇒ Does not matter who is killed so long somebody is killed (AR) with the intent to kill (MR): s 18(1)(a)
  - A intends to kill B but kills C instead
  - Same applies to other offences

**MR: RECKLESS INDIFFERENCE**

- ⇒ DEFINITION: doing of an act with the foresight of the probability of death
- ⇒ TEST: whether D had the knowledge that his actions would probably cause death
- ⇒ A person who foresees the probability of causing death is of the same moral culpability as a person who intends to cause death: *Crabbe*
- ⇒ If P can only prove that D foresaw the probability of GBH (as opposed to death), offence will be subjective MNS rather than MDR: *Solomon*
- ⇒ Require an awareness of probability not possibility of the consequence: *Crabbe*
  - PROBABILITY – likely to happen, substantial or real chance not remote chance: *Faure*
  - POSSIBILITY – may or may not happen, unsure how likely
- ⇒ Not enough that D knows that the doing of the act will possibility cause the consequence, but that it will probably (most likely) cause the consequence

**TEMPORAL COINCIDENT RULE**

- ⇒ Prohibited act (AR) and the guilty mind (MR) must coincide at the same time
  - D is not guilty of the offence if he/she lacked the necessary criminal intent when performing the act, and vice versa
- ⇒ Rule may be stretched where an AR is of one continuing act and required that the necessary MR was established at some stage during the transaction of the offence: *Thabo Meli*
- ⇒ A series of acts can be held to be part of the same transaction and is irrelevant that there is an appreciable interval between the AR and the MR: *Le Brun*
- ⇒ In a series of acts case where some acts were intended and others not, the act causing death must be done with the necessary intent to establish criminal liability: *Meyers*
- ⇒ Whether the series of acts were part of one transaction is a question of fact for the jury to decide