

TOPIC 7: HOMICIDE (MURDER & MANSLAUGHTER)

MURDER

D will be liable for murder if P can prove BRD that D's conduct was a voluntary act that intentionally or recklessly caused the death of a human being. The AR and MR must occur contemporaneously (*Fagan; Thabo Meli*).

AR 'Conduct elements'

1. Voluntary act

The act which causes death must be a 'willed act of the conscious mind' (*Ugle*). The criminal law contains the evidentiary presumption that conduct is voluntary unless D can raise evidence to the contrary (*Falconer*). P will argue that the D's mind was in control of his body when [facts]. It is highly implausible that a person capable of complex conduct such [facts] is not acting voluntarily. Therefore, it will be difficult for D to displace the presumption in *Falconer*.

→ Weapon/instrument: Even though [act through instrument], P will argue that VA can only 'run through' an instrument D operates (*Fagan*).

→ Intoxication: D will argue that D was so intoxicated that his will was divorced 'from the movements of his body' and he had [...] (*O'Connor*). P will rebut this arguing that D do not exceed the high threshold of the *O'Connor* test.

→ Automation: However, D will argue that P acted in automation, as per *Ryan v R*. An act is involuntary if acted in a dissociative state or impaired consciousness (*a spasm, reflex, sleep walking, extreme intoxication*). If D committed the [relevant act] in a state of 'sane automatism' he must be acquitted (*Falconer*). However, a key issue is the lack of exercise of will, rather than the lack of consciousness or knowledge (*Ryan*).

OTB it is likely/unlikely that P has sufficient evidence to establish voluntariness BRD.

2. Death of a human being

'Death' is defined in s. 41 of the Human Tissues Act 1982 (HTA). OTF, it is clear that the death of a human being occurred because (heart stopped beating/brain stopped function) as per s.41(a)/s.41(b) HTA. Furthermore, V was 'in being' and therefore he was a human being (*Hutty*). Hence, this element is clearly made out BRD.

3. Causation

Causation is a question of fact for the jury. The central test is the operating and substantial cause test (*Hallett* affirmed in *Royall*). P will argue that [act of the D] was a 'substantial and operating' cause of V's injuries which subsisted up until the [result of the crime] occurred without being sufficiently interrupted by some other act or event (*Hallett*). However, D will argue that [intervening act] was an external NAI in the form of an (act of God/victim/third party/thin skull).

→ Act of god (Hallett)

D will refer to the obiter of *Hallett* and argue that [result] was an 'an abnormal and unforeseeable consequence' that it should be considered an act of God that breaks causation.

P will then argue that because [act of nature] was the ordinary operation of natural causes, then it could not be said to break the chain of causation (*Hallett*). It does not matter if D though/ought to have put V in a position of safety.

→ Act of V (Blaue)

D will argue that V's act is 'so unexpected that no RP could be expected to foresee it' and causation is broken (*Royall*). P will rebut this with both the natural consequence and reasonable foreseeability tests (*Royall*). P will argue that where D's conduct creates 'a well-founded apprehension of physical harm' it is 'a natural consequence' that [] 'would seek to escape' (*Royall*). Furthermore, V's irrational 's irrational

