

CRIMINAL LAWS – LAWS1022

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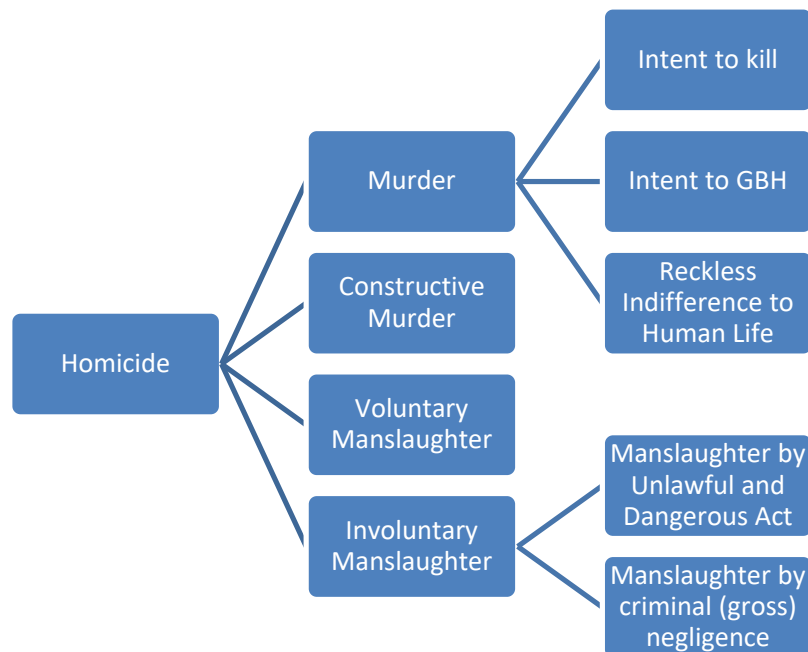
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WEEK 1B – MURDER



1 INTRODUCTION

1.1.1.1 Causation

Death must be caused by accused – If they fail to cause death, they must be acquitted of both murder and manslaughter. Note both AR requirements of murder and MS are identical, with exception of constructive MS and murder

1.1.1.2 Murder and Involuntary Manslaughter

Previously, murder required proof of malice afterthought

- Involuntary MS – the position is that the accused's appreciation of the situation is NOT particularly relevant
- Defendants are NOT guilty simply because they cause death, liability is not absolute
- Everything turns on what the jury would impute to a reasonable person if placed in the accused's position – what consequences would the reasonable person would have expected to happen?
- It is an OBJECTIVE test – external to the accused thought's processes → if accused is convicted, it is because they have failed to reach the standard of perception which the jury would have expected a reasonable person to attain

Two versions of the objective standard = **MS by Criminal negligence and MS by unlawful and dangerous act**

1.1.1.3 Voluntary Manslaughter

Some defences e.g self defence produce not guilty verdict (acquittal), some are partial as they reduce offence from murder to MS

1.1.1.4 Constructive Crime

It is murder in NSW, if act or omission causing death was done in an attempt to commit or during or immediately after commission by accused or some accomplice with him of a crime punishable by imprisonment for life or 25 years (Crimes Act 18(1)(a))

1.1.1.5 Suicide

- s 31A Crimes Act -- no longer a criminal offence for a person to attempt to commit suicide
- s 31B Crimes Act -- survivor of **suicide pact** will not be guilty of murder or manslaughter but may be guilty of an offence under s 31C (aiding or abetting suicide) → suicide pact = common agreement where the object is death of all of them

1.1.1.6 Protecting the Foetus

Death in utero does NOT amount to murder or manslaughter because a foetus is NOT treated as a human being

- However, still constitutes GBH to a pregnant woman (s4 Crimes Act)
- if sole objective was to destroy foetus, but end up killing woman, guilty of murder

1.1.1.7 Children born alive but dies because of earlier violence

S 20 Crimes Act- for the purposes of murder, life commences when the child has breathed, and has been wholly born into the world, whether it has an independent circulation or not

- Manslaughter falls under common law. In Iby (2005) – upheld that any sign of life after delivery is sufficient to satisfy the common law born alive rule, including evidence of a heartbeat. → It is not necessary to show the capacity to breathe without assistance
 - o Accused conviction of **manslaughter** was upheld when dangerous driving led to accident in which pregnant woman was injured → Baby was delivered in poor condition and died shortly afterwards.

1.1.1.8 Prosecution Process

When murder is charged, always alternative verdict of manslaughter available to the jury

- One possible approach would simply to charge murder, and leave Q of whether accused is guilty of this, or the lesser offence of manslaughter to the TJ and jury
- However, those charged with murder more likely to plead not guilty, seeking conviction of lesser charge → ensuing trial = probably inefficient use of court's time

1.1.1.9 SENTENCING FOR MURDER

- Crimes Act s 19A - (1) life sentence for Murder
- Crimes act s 19B –(1) Life sentence for murder of police officer if the murder was (a) committed while police officer was executing his/her duty or (b) as a consequence of or in retaliation for actions undertaken by that or any other police officer in the execution of his/her duty...
- **Life sentence is available at discretion of judge for extreme culpability that community interests can only be met through that sentence**

- Judges have the discretion to reduce life sentence (they may impose a specified term whenever a person is liable for life sentence → Crimes (Sentencing Procedure) Act s21)
- Mandatory life sentence for certain offences → s61-life imprisonment of Crimes (Sentencing Procedure) Act
 - Level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of the life sentence
- Mandatory life sentence for murder of police in court of executing duty, elements are:
 - Knew/ought to know it was police
 - Includes killing of off-duty police if in retaliation to something that happened during police duty
 - Mens Rea: Intent or involved in crime with risk of serious harm

1.1.1.10 Non Parole Periods

Period during which an offender must be detained and cannot be released.

- **MURDER: Standard non-parole period of 20 years. 25 years if special occupation victim or a child.**
Crimes (Sentencing Procedure) Act s54A(2) - See Table of Div 1A
- There is no standard non-parole period for manslaughter because the range of culpability is so broad.