

NB: The word *here* refers to the preceding case in *blue*.

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Capacity: Is the alleged offender old enough for criminal liability?

Capacity - mental capability required to be culpable for an offence

- **9 years or under:** no capacity whatsoever - s 344 *Children, Youth and Families Act 2005* (Vic)
- **10-13 years old:** rebuttable presumption that the child is not capable of culpability
 - Can be rebutted by prosecution with evidence that the child knew acts were “seriously wrong” - *R v ALH* (2003)
 - Dictum from this case suggests that the mere facts of the offence could be enough to demonstrate this knowledge -- BUT HCA in *RP v The Queen* [2016] obviously wrong acts cannot rebut the presumption on their own
- **14 years and over:** fully capable of criminal liability

Companies/ Corporations:

- Doctrine of **vicarious liability** - was a crime committed by an employee acting within the scope of their employment? - *Morgan v Babcock Ltd*
- Doctrine of **Identification** - *directing the mind and will*: was the accused sufficiently senior in the company that their act and the act of the company cannot be reasonably separated?
 - *Universal Telecasters (Qld) v Guthrie*
- NB: corporations cannot be convicted of offences that require acts by a natural person (eg. sexual assault)
 - Nor can they be convicted of common law offences that are only punishable by imprisonment (eg. murder)

Unlawful Homicide

Actus Reus elements for Murder/ Manslaughter

1. Voluntary act

- Voluntary: willed, conscious and deliberate muscular movement
 - Rebuttable presumption (to be overcome by the accused) that the accused's action was voluntary - *R v Falconer*
 - Intention or lack thereof behind the act doesn't speak to its voluntariness - *Ryan v The Queen*
 - The act which causes the death must have been voluntary, even though the consequence may not have been intended - *R v Butcher*
 - Further, a court does not look to one singular act and determine whether it was voluntary, but rather a whole series of acts relevant to cause of death
 - *Here*: while R didn't intend for the gun to go off, his brandishing weapon and pointing at victim are voluntary acts
 - Examples of Involuntary acts: Accidents, being forced by another, a reflex, acts done in a state lacking conscious volition (no knowledge of actions)
 - Eg. sleep disorders, epileptic fit
- OR omission of action where a duty is owed - *R v Russell*
 - Includes where someone assumes responsibility of a victim such that others refrain from also helping - *R v Taktak*

2. Actual Death of the Victim

- *R v Huttly* - a human must be in a state of "in being" (fully born and living an independent existence) to qualify as a victim of murder
- Death occurs when (s 41 *Human Tissue Act*):
 - Irreversible cessation of brain function, or
 - Irreversible cessation of blood circulation
 - These leaves uncertain the case of someone on life support wholly reliant on medical machinery to remain "alive"

3. Causation

Causation - There are multiple ways to establish a causal link between an accused's act and the outcome of a crime

Factual causation

(*Easy, don't spend too much time analysing this*): The accused's conduct is the "**but for**" **cause of death/harm**

- Difficulty arises when there are two or more concurrent causes, any of which would individually have caused death
- Doctrine of Innocent Agency
- Omissions can only give rise to criminal causation where a duty to act exists - *R v Russell*

Legal causati

(*More substantial, marks to be had here*): accused's actions have i) **contributed significantly** to death, AND ii) there is no **novus actus interveniens**

- i) “Contributed significantly”: tests
 - Common sense test - did the accused's act cause the death? - (*appropriate for simple fact patterns eg. did the accused thrusting the knife into the victim's chest cause them to die?*)
 - Practically the same as the “Reasonably Foreseeable” test and the “Natural Consequences” test - was the victim's death a natural consequence of the accused's actions?
 - **Primary Test: Substantial and operating cause test: *R v Hallet***
 - Accused's actions are a **substantial and operating cause** of the victim's death where events proceed in a ordinary way flowing from the accused's act
 - Without any intervening extraordinary act that severs the chain of causation
 - *Here*: accused knocks out victim on beach, leaves him unconscious as the tide rises and drowns him => rising tide is a natural event that is not sufficient to break the chain of causation between the punch and the victim's death
 - An act of god would have been sufficiently extraordinary to break the chain of causation, but the tide rises consistently every day
 - *R v PL* - don't have to identify the specific act that begins the causal chain resulting in the death of the victim in order to meet the element of legal causation
 - **Eggshell skull rule** - you must take your victim as you find them, their particular frailties or beliefs contributing to death cannot be deemed to break the chain of causation - *R v Blaue*
 - medical treatment of a victim of the accused's act can only break the chain of causation if it is **palpably** wrong - *R v Jordan* (doctor gave treatment that they knew the victim was allergic to, resulting in their death)
 - The second cause has to be so overwhelming that the initial injury caused by the accused becomes merely part of the history leading up to the death - *R v Smith*
 - *Here*: being dropped multiple times by the hospital staff and them not having enough blood for treatment is substantially wrong, but not **palpably** wrong as required in *R v Jordan*
 - Easier to establish “palpably wrong” with respect to affirmative acts (giving wrong medication) vs omissions (lack of care in dropping victim)
 - *R v Evans & Gardiner* - victim's apparent recovery then subsequent death from injury inflicted by accused is not an intervening event unless treatment meets the test in *R v Jordan*
 - *Here*: victim's medical treatment didn't entirely fix shiv wound, doctors failed to diagnose the improper treatment, and despite living for several years, he eventually dies
 - Held stabbing was still substantial and operating cause of death
 - Fright and self preservation by the victim as an intervening act - *Royall v The Queen* - overrules Eggshell Skull rule only for fright and self preservation
 - Fright and self preservation **CAN** break the chain of causation, unless the following additional elements are proved by the prosecution:
 - Accused induced a well-founded apprehension of physical harm in the victim

- It was reasonable for the victim to attempt to escape from the accused
- That the victim chose a reasonable mode of escape
- Looking at the victim's immediate response to the threat of physical harm, can it be said that their reaction is unreasonable / disproportionate => breaks the chain of causation

Mens Rea Elements for Murder

The accused caused the victims death while intending to kill or cause serious injury, or being reckless to that result (common law offence)

The below must be established in addition to elements 1, 2 & 3 of Unlawful Homicide above

Mens Rea - The accused committed those acts while either ... :

Intentional Murder - intending to kill *someone* or cause really serious injury

- **Intent** - subjective test - conscious objective to bring about an unlawful result
 - **Temporal coincidence** - intention (or foresight below) must be held by the accused at the time of the act
 - however, two or more acts can be aggregated for the purpose of establishing temporal coincidence of intention to kill - *Thabo Meji*
 - Must establish an unbroken chain of causation between the initial act with intention and the subsequent acts
 - Here: hitting a man over the head, then bundling him up and throwing him off a cliff to fake an accident are one continuous act
 - temporal coincidence of intention can be established from the act of hitting over the head despite the fact this isn't what resulted in the victim's death
 - Transferred Malice - Need not intend to kill the specific victim, just an intention or recklessness with regards to someone (eg. I intend to stab Bob but miss and stab Francine) - *La Fontaine v R*
 - **Really serious injury** - bodily harm that is more than a slight injury, but not necessarily life-threatening -- open to the jury to determine using an objective standard - *R v Rhoades*

Reckless Murder - knowing the **probable** outcome was death or really serious injury

- *R v Crabbe*: Not just a possible outcome, but a probable one (likely to happen) -- distinguish between what is merely possible and what is probable
 - Do not apply a mathematical formulation of probability, look at the issue holistically - *Bouhey v The Queen*
- Foresight - subjective test - the accused must have *actually* know their actions would probably have caused really serious injury or death,
 - *R v Crabbe*: driving a semi trailer into a bar was known to driver to probably cause death or serious injury
 - Avoid the plain meaning of recklessness in establishing reckless murder, rely only on the definition here - *La Fontaine v R*