

# LAWS5004: CRIMINAL LAW

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# HOMICIDE

## Murder - s 18(1)(a)

<b>Summary</b>
<ul style="list-style-type: none"><li>- <i>Crimes Act s 18(1)(a)</i><ul style="list-style-type: none"><li>- Murder shall be taken to have been committed where the act of the accused, or thing by him or he 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 GBH 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</li></ul></li><li>- A crime that is socially, historically and culturally determined (rather than being random)</li><li>- Comprises of a variety of offenders and victims in different social settings</li><li>- In NSW it is largely interpersonal in nature rather than instrumental or ideological</li><li>- Majority of interpersonal killings involve inmates</li><li>- Homicide patterns reflect cultural norms</li><li>- Is a spontaneous rather than premeditated crime</li><li>- Offenders exhibit a wide range of moral culpability<ul style="list-style-type: none"><li>a. All three actus elements required</li><li>b. Only need one of the three mens rea elements</li></ul></li></ul>
<b>Onus</b>
<ul style="list-style-type: none"><li>- Is on the prosecution, which has legal burden to prove beyond reasonable doubt that the accused is guilty of the murder (<i>Woolmington</i>)</li></ul>
<b>Maximum Penalty</b>
<ul style="list-style-type: none"><li>- 25 Years</li></ul>
<b>Actus Reus</b>
<ol style="list-style-type: none"><li>1. <b>Act or Omission</b><ol style="list-style-type: none"><li>a. Identify the exact act causing death → <i>Arulthilakan v R</i></li><li>b. Where there are two or more potential acts, it is for the jury to decide which to use → <i>Royall; Ryan</i></li><li>c. All acts are presumed to be 'voluntary and willed' → <i>Bratty 1963</i></li><li>d. <b>Omission</b> → the accused must first owe a duty of care to the deceased and exercise deliberate choice to do nothing → <i>R v SW and BW</i></li></ol></li><li>2. <b>Causation</b><ol style="list-style-type: none"><li>a. There must be a causal link between the act and death of the victim. Generally, causation will be obvious but if not, it becomes a question of where there was a <i>novus actus interveniens</i> breaking the chain of causation<ol style="list-style-type: none"><li>i. Causation aggravates the seriousness of the offence → for example, where the accused intends to cause GBH the maximum penalty is raised from 25 years to life</li><li>ii. It is less likely to place reliance on a no causation argument where it is possible available</li></ol></li></ol></li></ol>

where the prosecution proceeds on the basis of constructive murder because it is easier for the prosecution to prove a more limited mens rea requirement in this context

iii. Courts have attempted to find tests

1. **Substantial Cause Test, *Smith [1959]*** → if at the time of the death the original wound is still an operating cause of death, then death can properly be said to be the result of the only. Only if it can be said the original wounding is merely the setting in which another cause operates can it be said death does not result from the wound.

b. **Three categories:**

i. **Act of 3rd Party** → generally an issue of medical negligence

1. Where there is a controversial question of causation relating to medical negligence, it is one for the jury to decide → *Evans and Gardiner; Jordan*
2. **TEST** → if at the time of death, the original wound is still substantial and operating cause, then the death can properly be said to be the result of the wound albeit that some other cause of death is operating → *R v Smith*
3. As a practical matter, juries are unlikely to return a decision favourable to the accused - will always find that medical negligence has not broken the chain of causation between the act and death → *Cheshire*
  - a. Whether the conduct of the doctors is negligent or reckless, there will be an issue of causation that must be resolved by the jury

ii. **Acts of Nature**

1. The ordinary operation of acts of nature (eg. tide) will not break the chain of causation → *Hallett*
2. An extraordinary natural cause such as an earthquake or tidal wave might break the chain of causation, but it is for the jury to resolve by applying the substantial and operating cause test from *Smith*

iii. **Acts of the Victim**

1. Generally a free, informed and voluntary act of the victim can break the chain of causation → *Burns*
2. **Refusing Medical treatment/rejecting medical advice**
  - a. The rejection of medical treatment will not break the chain of causation → *Blaue; Singapore*
  - b. Must take your victim as you find them → *Blaue*
  - c. It is still the initial injury which is substantial cause of death and the act of the victim was not to stop the end from coming → *Singapore*
3. **Fright or self-preservation cases**
  - a. **TEST** → was the response of the victim a reasonable or proportionate one? → *Royall per Deane and Dawson JJ, Toohey and Gaudron JJ; Burns*
    - i. If YES → the chain of causation between the violence of the accused and the death of the victim will remain intact
    - ii. If NO → then causation is not established
  - b. The means of escape doesn't need to be reasonable/irrelevant → *Royall*

3. **Death**

- a. The accused's act has caused the death of the victim in accordance with s 33 of the *Human Tissue Act 1983* when there is irreversible cessation of all function of the person's brain or circulation of the blood around the body

## Mens Rea

### 1. Subjective Test

- a. Actual intention (mens rea) of the accused can be inferred from what they do at the time of the relevant conduct (*Stokes & Difford*) as well as their conduct afterwards (*The Queen v Baden-Clay*)
  - i. Age, background education, emotional state and state of sobriety are things that can be considered → *Pemble 1971*
  - ii. At the time of the relevant events, words of the accused can also be considered, as well as what you do → *Matthews v R*
  - iii. Wilful blindness is not enough to establish mens rea for murder - it is evidence that bears on the real question of mens rea that you foresaw
- b. Exam
  - i. If the facts show clear intent to kill, (ie, stab in heart, pushed off a cliff, shooting), then only discuss intent to kill and/or commit GBH. If facts are more like *Khan* where there is no direct killing act then only need to discuss reckless indifference murder because it is clear there is no intent to kill/commit GBH

### 2. Elements

- a. **Intent to Cause Death (kill)**
  - i. Anyone → *Saunders & Archer 1575*
- b. **Intent to Inflict GBH**
  - i. S 4 definition of GBH → permanent or serious disfiguring of person S 4(1)(b), any GBH diseases S 4(1)(c), or destruction of foetus's s 4(1)(a)
  - ii. 'Serious' → need not be permanent or consequences of injury long lasting or life threatening, only that it be really serious (*Houli*) - natural and ordinary meaning → *DPP v Smith*
- c. **Reckless Indifferent to Human Life**
  - i. **TEST** → to establish reckless murder at common law, the Crown must prove that the accused foresaw the probability of death or GBH → *Crabbe*
  - ii. **NSW Position** → foresight of the probability of death, GBH is not enough → *Royall; Solomon*

## Intent and Reckless Indifference

- Heads of mens rea for murder under s 18(1)(a) include both intent to kill and intent to inflict GBH
  - In NSW, where the accused foresees *death* as certain, they will have the mens rea for murder on the basis that they are recklessly indifferent to human life within the meaning of the section
- HCA draws distinction between awareness of the *probability of death* or GBH resulting from their actions and mere awareness of the *possibility*
- **Intention**
  - Carry their ordinary meaning

- Intent may be inferred or concluded from the circumstances or from the conduct
- **Reckless Indifference**
  - If at the time they committed the act, they foresaw or realised the act would probably cause death, but continued to commit the act, then they will be guilty
  - It must be foreseen as a probable consequence
  - In *Royall* HCA held that the decision in *Crabbe* on mens rea for murder at common law should apply equally to the interpretation of reckless indifference to human life under s 18(1)(a)

### Relevance of Foreseeability

- Clearly relevant to the questions of mens rea, but the judgments of Brennan and McHugh JJ in *Royall* raise issue of relevance to causation
  - **Argued** the chain of causation will not be broken if the deceased's reaction was 'reasonably foreseeable'
  - Majority take the position framing it in those terms was not helpful, insisting it should be reasonable or proportionate
- In *McAuliffe and McAuliffe* NSWCCA drew attention to differing views in *Royall* of when it is appropriate to raise foreseeability when considering causation
  - Commented that on the facts before it there was no question of an overreaction on the part of the deceased such as might call for the introduction of notions of foreseeability

### Breaking the Chain of Causation → Acts of the Deceased

- Question of whether the decision of the deceased to intervene/not intervene breaks the chain
  - In *Burns* → supplying of drug did not equate to causation because decisions to take it was the deceased's own decision, and had they refrained the hamr would not have followed
  - In *Blaue* → died from refusing a transfusion from wounds sustained from the defendant, and may have survived had she not refused the transfusion
  - *Royall* → had not made direct contact with the body before she jumped, she simply feared attack and took evasive action.
- Raises questions of whether the deceased's behaviour is 'reasonable' 'proportional' in order to address argument of whether they overreacted
- Implication is that if someone 'overreacted' this would break the chain of causation, though should be compared with vigorous injection of reasonableness requirement in relation to religious beliefs in *Blaue*

### Suicide

- *Hallett* → if he had gone into the water and drowned himself following the attack, the chain of causation would have been broken here
- *Justin's* → in this euthansia case, the doctor would have been liable if the patient did not have the mental capacity to decide, but if they did, the chain was broken
- *Wallace* → was incapable of suicide himself, and was voluntarily euthanised. He committed suicide as a result of the acid thrown on him. Held the jury could decide if it were the fault of the accused, but they must decide if at the time of the attack, it was foreseeable he would commit suicide from injuries.

### Means of Escape

- Raised in *Royall* → whether mode of escape must be a natural consequence of the apprehension for their safety in a context where there are alternatives to be chosen
- *Rik* → various escape held to be available, and court emphasised whether the response was reasonable or proportionate in the circumstances, were for the determination of a jury

### Medical Treatment

- *Malcherek and Steel* [1981] 2 All ER 422
  - There may be occasions, although rare, when the original injury has ceased to operate as a cause at all, but in the ordinary case if the treatment is given bona fide by competent and careful medical practitioners, then evidence will not be admissible to show the treatment would not have been administered in the same way by other practitioners
  - In other words **the fact that the victim has died, despite or because of the medical treatment for the initial injury given by careful and skillful medical practitioners, will not exonerate the original assailant from responsibility for the death**
  - Where a medical practitioner adopting methods which are generally accepted comes bona fide and conscientiously to the conclusion the patient is for practical purposes dead, and that such vital functions as exist are being maintained solely by mechanical means, and therefore discontinues treatment, that does not prevent the person who inflicted the initial injury from being responsible for the victim's death
    - The discontinuance of treatment does not break the chain of causation
- Apply the *Human Tissue Act 1983 s 33*
- *Jordan* → 'palpably wrong' medical treatment could break the chain of causation

### Temporal Coincidence

- Applies generally to all offences
- Mens rea and actus reus must coincide → *Meyers*
  - No conviction unless the jury can reasonably find that the act of the accused was done with necessary intent
- **Exceptions**
  - No need for coincidence where a series of acts have been done pursuant to a plan to kill someone → *Thabo Meli*
  - Where unlawful application of force and the event causing death are part of the same sequence, it doesn't exonerate the accused where the act causing death was done to conceal the commission of the unlawful assault → *Le Brun*
    - Where the second act is an act of rescue, then the coincidence rule might prevent the accused from being convicted

## Murder - Actus Reus Cases

### *R v SW and BW (No. 1)* [2009]

#### Facts

- **Omission causing death**
- Parents were charged over child's death from chronic malnutrition

<b>Held</b>	<ul style="list-style-type: none"> <li>- Mother found guilty of murder (father for manslaughter) for breaching their duty of care as parents to provide adequate nourishment for their child and their duty to provide medical attention to their child</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Before an omission can be found homicide liability, the accused must have owed a duty of care to the deceased.</li> </ul>

### *Taber (2002)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Omission causing death</b></li> <li>- Charged with murder after robbing victim and leaving her bound and gagged, resulting in death by dehydration</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Characterised the actus reus as a continuing act: <ul style="list-style-type: none"> <li>- Continuous act commencing when she was attacked and ending when she died</li> <li>- As an act commencing when she was attacked and ending when she was abandoned and an omission commencing then ending when she died</li> </ul> </li> <li>- However, cause of death is categorised it seems accurately to be described as a single transaction</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- A person who deliberately puts another in danger, comes under a duty to remove that danger</li> <li>- Failure to do so may constitute an omission causing death and if at any time during the period of omission that accused has the relevant state of mind (regardless of what it was at the commencement of the omission period) the accused is liable for murder</li> </ul>

### *Royall v R (1991)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- This case created issues for the substantial cause test because there was no 'original wound'</li> <li>- <b>Act or omission: the importance of identifying the precise act or omission</b></li> <li>- <b>Novus actus is an act of the victim - fright or self-preservation case</b></li> <li>- Victim fell from the bathroom window of the 6th floor flat in which she and the applicant had lived for the past four months <ul style="list-style-type: none"> <li>- In the days immediately preceding her death they had fought and she had gone to a friend's place</li> <li>- On returning they had a violent argument and the appellant punched her in the face, shook her and pulled her hair</li> <li>- There was evidence of forcible entry into the bathroom which was extremely confined and of a struggle there</li> <li>- The appellant argued given the victim's history of drug use and epilepsy he had become concerned for her and tried to break into the bathroom, only to see her suicide by jumping out the window <ul style="list-style-type: none"> <li>- However, there was evidence there had been a struggle in the bathroom, with blood splashes, gouge marks in the wall etc.</li> </ul> </li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>- Evidence was said to support an interference that the deceased may have involuntarily jumped backwards to avoid a swinging arm</li> <li>- <b>Crown Case:</b> appellant murdered the victim in one of three ways <ol style="list-style-type: none"> <li>1. The appellant pushed or forced her out of the window</li> <li>2. In retreating from or avoiding an attack from the appellant, she fell from the window</li> <li>3. Immediately before her fall from the window, the victim had a well-founded and reasonable apprehension that, if she remained in the bathroom, she would be subjected to life-threatening violence from the applicant and, in order to escape from the violence, she jumped from the window</li> </ol> </li> </ul>
<p><b>Held</b></p>	<ul style="list-style-type: none"> <li>- In relation to the third possibility, the HCA different on the appropriate test to apply</li> <li>- <b>Mason CJ</b> <ul style="list-style-type: none"> <li>- 'A well founded apprehension of physical fear such as to make it a natural consequence (or reasonable) that the victim would seek to escape and the victim is injured in the course of escaping, the injury is caused by the accused's conduct' <ul style="list-style-type: none"> <li>- Favours a <u>natural consequence</u> test which essentially focuses on the conduct of the victim</li> </ul> </li> <li>- Of the three ways in which the Crown case was left to the jury on the issue of causation, only the third calls for comment. The allegation she had a well founded and reasonable apprehension that if she remained in the bathroom that she would be subjected to further violence as would endanger her life, and if jumping out the window made those circumstances better than staying inside, and was killed in the fall, the causal link between the acts of the accused and the death are established</li> </ul> </li> <li>- <b>Brennan J</b> <ul style="list-style-type: none"> <li>- 'The reasonableness (or proportionality) of the victim's attempt at self-preservation and the accused's foresight, or the reasonable foreseeability of the possibility that a final fatal step might be taken by the victim in response to the accused's conduct' <ul style="list-style-type: none"> <li>- <u>First Stage:</u> whether the victim's taking of the step is a <i>novus actus interveniens</i> breaking the chain of causation</li> <li>- <u>Second Stage:</u> whether at the time when the accused engaged in the unlawful conduct which induced in the victim fear that caused him or her to take the final fatal step, the taking of such a step was not in fact foreseen by the accused and would not reasonably have been foreseen by an ordinary person.</li> <li>- Favours a test where there has to be a <i>novus actus interveniens</i> and the victim's action was not reasonably foreseeable (and not foreseen)</li> </ul> </li> </ul> </li> <li>- <b>Deane and Dawson JJ</b> <ul style="list-style-type: none"> <li>- 'A direction that the victim's fear or apprehension must be well-founded or well-grounded or reasonable in all the circumstances will adequately raise the issue, as will a direction that the act or escape or self-preservation must be the natural consequence of the accused's behaviour' <ul style="list-style-type: none"> <li>- Suggests that the idea of reasonable foreseeability should be generally avoided and that the Court should focus on a well founded fear that gives rise to an act that is a natural consequence</li> <li>- Appears to be the same as Mason CJ's test</li> </ul> </li> </ul> </li> </ul>

- **Toohey and Gaudron JJ**
  - 'If the victim's reaction to the act of the accused said to have caused the death was quite disproportionate to the act or was unreasonable, the chain of causation was broken'
  - Also appears to suggest that the idea of reasonable foreseeability should be generally avoided, but focus on the proportionality of the victim's reaction, and do not appear to address the 'natural consequences' concept
- **McHugh J**
  - Conducts a thorough analysis of the various tests posed for causation and reasons why reasonable foreseeability is the most appropriate
    - The test of reasonable foresight is to be preferred to the natural consequence test and the operation cause and ... substantial test. The balance of authority favours the reasonable foresight test over the natural consequences test. Moreover, the word natural is ambiguous
      - Favours reasonable foreseeability

<b>Principle</b>	<ul style="list-style-type: none"> <li>- <b>Causation</b> <ul style="list-style-type: none"> <li>- For an accused's conduct to have 'caused' a result, it must have 'contributed significantly' to that result, or been a 'substantial and operating cause' of it</li> <li>- The act must be one that an ordinary person would hold, as a matter of common sense, to be a cause of the result. The mere fact that the accused's conduct contributed causally to a result, or was a necessary cause of the result, is not sufficient</li> <li>- The accused may be liable for 'causing' a result even if his or her conduct was it the direct or immediate cause of that result</li> <li>- The accused does not need to be the sole cause of the result, a person can be criminally liable for something that has multiple causes, even if he or she is not responsible for all of those causes</li> <li>- The accused can 'cause' a result by act or omission</li> </ul> </li> <li>- <b>Acts of the Victim</b> <ul style="list-style-type: none"> <li>- The accused's conduct will still be considered to be a legal cause of the result if the victim's acts were a 'natural consequence' of that conduct</li> <li>- Where the victims are injured or killed while responding to a threat created by the accused, their actions will only be a 'natural consequence' of the accused's conduct if their fear of was well-founded and their response to the threat was reasonable</li> </ul> </li> </ul>
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*Ryan v R (1967) 121 CLR 205*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- He read a novel in which a hero robbed a service station by using a gun and tying up the attendant - the fictional robber then invested the money in the Irish Sweepstakes and won a fortune</li> <li>- He used the winnings to repay the service owner and help his parents</li> <li>- No prior convictions. He possessed the gun that was in the crime since he was 14, and had always used it responsibly</li> </ul>
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	<ul style="list-style-type: none"> <li>- But after shortening the gun and carving his heros name into it, he recruited a friend and they rode together on a motorbike to a service station</li> <li>- There was only one man there when they arrived</li> <li>- White, the friend, waited outside while Ryan went in with his gun</li> <li>- He demanded money, and the assistant opened a draw to give into demands</li> <li>- Ryan then ordered the terrified assistant to turn and place his hands behind his back</li> <li>- The assistant complied, yet Ryan still walked towards him pointing the gun</li> <li>- The gun accidentally went off and fatally shot the assistant</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Argued that as he didn't mean to pull the trigger and it was pure reflex, he should only be found guilty of manslaughter</li> <li>- To be found guilty of murder, the act must be voluntary and there must be the necessary state of mind</li> <li>- The HCA said that his conduct did amount to murder</li> <li>- The common law principle is a person is not guilty of a crime requiring mens rea if it was done without the exercise of free will <ul style="list-style-type: none"> <li>- Whilst this didn't fit into regular categories of involuntariness as someone acting under duress, or someone suffering a seizure</li> </ul> </li> <li>- <b>Justice Windeyer</b> → death was caused not merely by the pulling of the trigger, but the many acts of the accused → loading the rifle, cocking it, presenting it, pulling the trigger <ul style="list-style-type: none"> <li>- This was just the last in a long chain of voluntary acts that made conduct lethal</li> </ul> </li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Whilst a final act may be involuntary, if there has been a long chain of voluntary acts leading to the conduct, a person may be found guilty of murder</li> </ul>

**R v Smith [1959] 2 QB 35**

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: intervening act of 3rd Party</b></li> <li>- Defendant was a soldier who stabbed one of his comrades during a fight in an army barracks</li> <li>- Victim was taken to receive medical treatment but whilst being carried to hospital was dropped twice</li> <li>- Once at the hospital, he received negligent medical treatment, medics failed to diagnose a puncture in his lung</li> <li>- Victim died of his injuries and defendant was charged with murder and convicted at first instance</li> <li>- Defendant appealed on the basis that the victim would have survived but for the negligence of those treating him</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- A stab wound was an operating cause of the victims death; it did not matter that it was not the sole cause</li> <li>- In order to break the chain of causation, an event must be unwarrantable, a new cause which disturbs the sequence of events and can be described as either unreasonable or extraneous or extrinsic</li> <li>- Chain of causation was not broken on the facts of this case</li> </ul>

<b>Principle</b>	<ul style="list-style-type: none"> <li>- <b>Lord Parker CJ:</b> if at the time of death, the original wound is still an <i>operating cause and substantial cause</i>, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operation</li> <li>- If an initial cause remains a significant cause when the prohibited outcome occurs, it is said to be the cause of the outcome even if there are other causes acting towards the outcome, unless the subsequent causes are 'overwhelmingly' to blame</li> </ul>
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**R v Jordan (1956) 40 Cr App 4 152**

<b>Facts</b>	<ul style="list-style-type: none"> <li>- The appellant stabbed the victim, Beaumont, in the abdomen</li> <li>- He died eight days later as the stab wound had penetrated his intestine in two places but, <u>by the time of death, both injuries had mainly healed</u></li> <li>- In the meantime, the medical staff administered an antibiotic, Terramycin, with a view to preventing infection</li> <li>- But his intolerance to the drug was discovered after initial doses, at which time the administration was stopped, however, another doctor ordered resumption the next day</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Evidence of two doctors called on by the appellant was to the effect that the treatment of the victim was '<b>palpably wrong</b>' as was the intravenous introduction of whole abnormal quantities of liquid, which led to the pulmonary oedema which was the cause of death</li> <li>- <b>Hallett J</b> → it is sufficient to point out here this was not normal treatment. <ul style="list-style-type: none"> <li>- Not only one feature, but two separate and independent features of the treatment, in the opinion of the doctors, was palpably wrong and these produced the symptoms discovered at the post-mortem examination which were the distinct and immediate cause of death.</li> </ul> </li> <li>- Held that Jordan's act did not cause the death</li> <li>- Notably → later other doctors found it was not bad treatment</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Was held 'palpably wrong' treatment by medical practitioners could break the chain of causation</li> <li>- *****However, cases since this (Evans and Gardiner) have said this case turns on its own facts and doesn't change the common law causation test</li> </ul>

**R v Evans and Gardiner v R (No 2) [1976] VR 523**

<b>Facts</b>	<ul style="list-style-type: none"> <li>- Two defendants and victim prisoners at Pentridge</li> <li>- D1 stabbed V in stomach and D2 aided and abetted the commission of this crime</li> <li>- A bowel resection operation saved the life of V and they resumed a normal life</li> <li>- 11 months after, they developed pain and vomiting, they died the following week</li> <li>- Autopsy showed a stricture at site of operation - this was not an uncommon complication</li> <li>- None of the doctors who examined V prior to the death diagnosed this</li> <li>- It could have been treated, the jury had to decide if they should have done so</li> <li>- D1 and D2 found guilty of manslaughter by way of diminished responsibility</li> </ul>
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<p><b>Held</b></p>	<ul style="list-style-type: none"> <li>- Found the blockage was due to the stabbing</li> <li>- Followed <i>R v Smith</i>, distinguished <i>R v Jordan</i> <ul style="list-style-type: none"> <li>- 'A positive act of commission or an act of omission will serve to <b>break the chain of causation only if it can be shown that the act or omission accelerated the death, so that it can be said to have caused the death and thus to have prevented the felonious act which would have caused the death from actually taking place.</b> However, we have seen no criminal case in which an omission to give or undergo treatment has been held to break the chain of causation between the felonious act and the death.</li> </ul> </li> <li>- It is not the role of the jury to evaluate competing causes of death so long as the acts of D were 'a substantial and operating cause' of the death</li> </ul>
<p><b>Principle</b></p>	<ul style="list-style-type: none"> <li>- <b>Difficulties in proving causation may arise if another act or event intervenes between the commission of the accused's conduct and the criminal result. In such situations, the accused remains liable if his or her conduct is still a substantial operating cause of the result when it occurs. This is because his or her acts or omissions can still properly be said to be the cause of the act, even if another cause is operating.</b></li> <li>- However, the accused will not be liable if their conduct is merely the setting in which another cause operates. In such circumstances, the result cannot properly be said to have been caused by the accused's conduct.</li> <li>- Courts have declined to articulate a special test for these cases, the question for determination is whether or not the accused's original act or omission remains a substantial, operating cause of the result</li> </ul>

*R v Cheshire* [1991]

<p><b>Facts</b></p>	<ul style="list-style-type: none"> <li>- <b>Causation: intervening act of a 3rd party</b></li> <li>- Cheshire shot a man during the course of an argument</li> <li>- Victim was taken to hospital to have surgery and shortly after developed respiratory issues</li> <li>- Doctors inserted a tracheostomy tube which remained in place for four weeks and initially improved the victims condition</li> <li>- Several days later the victim complained of respiratory issues and condition soon worsened and he died shortly afterwards</li> <li>- Cheshire was subsequently charged with murder and convicted, decision was appealed</li> </ul>
<p><b>Issue</b></p>	<ul style="list-style-type: none"> <li>- Key issue was whether the accused's acts of shooting the victim caused the death or whether the chain of causation was broken by the negligent medical treatment that the victim had received following being injured by the shooting</li> </ul>
<p><b>Held</b></p>	<ul style="list-style-type: none"> <li>- Judge directed the jury to decide whether Cheshires acts should have made a significant contribution to the victim's death</li> <li>- Importantly the judge directed the jury that the acts need not be the role or even main cause of death</li> </ul>

<b>Principle</b>	<ul style="list-style-type: none"> <li>- Appeal dismissed.</li> <li>- Jury was not required to evaluate the competing causes of death and therefore the judge was right to direct them as he did in the first instance</li> </ul>
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*Hallett v R [1969]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: intervening act is an act of nature</b></li> <li>- Whilst driving with Whiting, Hallett's car got stuck in the sand</li> <li>- Apparently whilst drunk, Hallett and Whiting got into a fight <ul style="list-style-type: none"> <li>- Hallett alleged Whiting had threatened him with a knife</li> </ul> </li> <li>- Hallett beat Whiting unconscious and left him on the shore with his feet in a few inches of water - unsure if the tide was coming in or going out. He then fell asleep</li> <li>- Hallett claimed that when he walked back to where Whiting was, Whiting was dead faced down in the water four or five feet from the water line</li> <li>- Whiting was found to have drowned while unconscious <ul style="list-style-type: none"> <li>- Notable that Hallett said he went into a state and cut off W's genitals then buried the body - only explanation he could provide is that W would have done the same</li> </ul> </li> <li>- Hallett was convicted. Appealed on the basis of causation.</li> </ul>
<b>Issue</b>	<ul style="list-style-type: none"> <li>- Did Hallett cause Whiting's death or did the action of the tide intervene?</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- The violence was still an operating cause and substantial cause of death</li> <li>- <b>Test on Causation: Question to Ask</b> <ul style="list-style-type: none"> <li>- Whether an act or series of acts... consciously performed by the accused is or are <b>so connected with the event that it or they must be regarded as having sufficiently substantial causal effect</b> which subsisted up to the happening of the event, without being spent or without being in the eyes of the law sufficiently interrupted by some other act or event</li> </ul> </li> <li>- <b>Reasoning</b> <ul style="list-style-type: none"> <li>- If the victim drowned and the defendant's violent attacks had a causal effect up until the moment of drowning, it didn't matter whether: <ul style="list-style-type: none"> <li>- The tide came in and drowned Whiting</li> <li>- Whiting rolled into the sea and drowned</li> <li>- Whiting semi-consciously staggered into the water and drowned</li> </ul> </li> <li>- <b>Only if he consciously entered the water and drowned would that break the chain of causation</b></li> <li>- In the exposure cases, the <b>ordinary operation of natural causes</b> has never been regarded as preventing death from being caused by the accused - therefore, the sea did not intervene</li> <li>- Examples: <ul style="list-style-type: none"> <li>- Infant left in field and killed by kite</li> <li>- Infant left in pig sty and eaten by pigs</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- Sometimes the <b>operation of extraordinary natural forces</b> (as opposed to ordinary natural forces) can break the chain of causation. Example: <ul style="list-style-type: none"> <li>- If Whiting was placed in a safe place but an earthquake causing tidal wave engulfed him, it may have been said the tidal wave had caused his death</li> </ul> </li> <li>- But the ordinary operation of tides does not fall within this</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Chain of causation can only be broken by a new intervening act <ul style="list-style-type: none"> <li>- Where the person's death or suffering is caused by a voluntary human act which is unrelated to the defendant's actions</li> <li>- Where an extraordinary coincidental event occurs which causes the person's death or suffering</li> </ul> </li> <li>- <b>Need extraordinary natural forces</b> to break the chain of causation → 'act of god'</li> <li>- If at the time of death the original wound is still an <b>operating and substantial cause</b> then there is a <b>causal connection</b> even if some other cause is also in operation</li> </ul>

### *R v Blaue* [1975]

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: refusing medical treatment/rejecting medical advice</b></li> <li>- After refusing sexual intercourse, the victim was attacked by the defendant with a knife, inflicting four serious wounds</li> <li>- At hospital, an operation and blood transfusions were needed</li> <li>- Being a Jehovah's witness, she refused and acknowledged in writing she refused the transfusion in any circumstances (she was told she would die without it)</li> <li>- The next day she died</li> <li>- Blaue was convicted of manslaughter, et al and appealed</li> </ul>
<b>Issue</b>	<ul style="list-style-type: none"> <li>- Did the victim's refusal to accept medical treatment amount to a <i>novus actus interveniens</i> so as to break the chain of causation between the defendant's act and her death?</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- No, it did not</li> <li>- The assailant cannot say that the victim's religious beliefs which inhibited her from accepting certain kinds of treatment were unreasonable</li> <li>- Question for decision is what caused her death - answer is the stab wound</li> <li>- The fact that the victim refused to stop this end coming about did not break the causal connection between the act and the death</li> <li>- Victim refused to intervene to prevent her death from the attack - died from loss of blood directly stemming from the wounds inflicted by the accused</li> <li>- The refusal was not an unreasonable reaction which would constitute an intervening event</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- It has long been the policy of the law that those who use violence on other people must take their victims as they find them → eggshell skull</li> </ul>

### *R v Singapore* [1975]

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: refusing medical treatment/rejecting medical advice</b></li> <li>- During a brawl involving the defendant, the victim received injuries to the head for which he was treated at hospital</li> <li>- Against medical advice given, he insisted upon leaving the hospital after treatment</li> <li>- About 6 hours later he was brought back to hospital in need of urgent attention</li> <li>- He died the next day from brain damage caused by his injuries</li> <li>- Defendant made an unwork statement that at the time of the attack he was too drunk to know what had happened</li> <li>- The other two accused were acquitted, but the defendant was convicted of murder</li> <li>- He appealed against conviction on the grounds (<i>inter alia</i>) that the victim's departure from the hospital had broken the chain of causation and that his death might have been avoided had he remained in hospital</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Chain of causation was not broken</li> <li>- Appeal dismissed</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Court approved <i>Smith</i> and <i>Hallett</i></li> <li>- Act of the appellant causing injuries from which the victim dies does not cease to be a causative act because the victim thereafter acts to his detriment or because some third party is negligent.</li> </ul>

### *Burns v R (2012)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: refusing medical treatment/rejecting medical advice</b> <ul style="list-style-type: none"> <li>- Actually a manslaughter case</li> </ul> </li> <li>- Burns and her husband supplied the victim (voluntary participant) with methadone at their apartment in Belmore</li> <li>- He died as a result of ingesting the methadone in combination with another prescription drug already in his system. Denied an ambulance when Mr Burns asked if he wanted one.</li> <li>- Burns was charged with manslaughter and supply charges</li> <li>- She was found guilty of manslaughter and of supplying methadone</li> <li>- She appealed</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- The deceased's act in taking the methadone broke the chain of causation</li> <li>- The deceased was a sane adult and it is not suggested his decision to take the methadone was vitiated by mistake or duress</li> <li>- His ability to reason as to the taking of the methadone is likely to have been affected by the drugs that he had already taken but this is not to deny that his act was voluntary and informed</li> <li>- It was informed because he knew he was taking methadone</li> <li>- He chose to take methadone not knowing what effect that drug would have in combination with the drugs he had already taken</li> <li>- A foolish decision to take a prohibited drug not knowing its likely effects is nonetheless the drug takers voluntary and informed decision</li> </ul>

	<ul style="list-style-type: none"> <li>- Death would not have flowed from this if the accused had not taken the drug</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- HCA statement that 'voluntary and informed act of an adult negatives causal connection'</li> </ul>

### *McAuliffe v R (1995)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Causation: fright or self-preservation</b></li> <li>- Three youths went to a park to bash someone</li> <li>- At the part two of them attacked a man who was standing near the top of a high cliff</li> <li>- They kicked him and beat him with a stick</li> <li>- Then the other youth side kicked the man in the chest which caused him to fall into a puddle in the rocks 3-5m from the edge of the cliff.</li> <li>- The youths then left</li> <li>- The next day the man's body was found in the sea at the bottom of the cliff</li> <li>- The youths were charged and convicted of murder</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Held the boys were guilty</li> <li>- Makes it clear precisely what the majority in <i>Royall</i> agreed upon</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- The causal chain remains intact if the accused's conduct was still a substantial or significant cause at the time of death</li> <li>- Focus on reasonable foreseeability is undesirable, continues to favour substantial and operating cause test</li> </ul>

## Murder - Mens Rea Cases

### *Zaburoni v R (2016)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>'Intent to kill', 'intent to inflict GBH'</b></li> <li>- A man was convicted of having intentionally transmitted HIV to a woman in the course of a sexual relationship with her in a period of 21 months</li> <li>- Had engaged in frequent unprotected intercourse during their relationship, and the man knew he was HIV positive before the relationship began</li> <li>- However, he told the woman he was not HIV positive and she was diagnosed as HIV positive a year after the relationship ended</li> <li>- While man knew that HIV was sexually transmitted disease, there was no evidence at trial that the man was aware of the statistical likelihood of transmission of HIV as a result of unprotected intercourse</li> <li>- On appeal against conviction, the Crown conceded that liability requires proof of intent</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- The evidence at trial had not been sufficient to support the conviction</li> <li>- Crown must prove BRD that the defendant had as his or her object the result at the time that he or she performed the relevant conduct</li> <li>- Motive may be a fact from which intentional can be inferred but they are different</li> </ul>

	<ul style="list-style-type: none"> <li>- Therefore awareness or foreseeability can give rise to an inference of intent, but intent must still be proved</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Foresight of risk of harm is distinct in law from the intention to produce that harm</li> </ul>

### *Matthews v R [2014]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>'Intent to kill', 'intent to inflict GBH'</b></li> <li>- The defendant got in a fight with the victim which culminated in the defendant punching the victim heavily in the face or head</li> <li>- Victim fell back and probably hit head on the iron railing of a pedestrian fence before falling to the ground</li> <li>- Unknown to anyone, including the victim, he had an aneurysm in his brain which burst upon one of the impacts, probably as a result of the punch</li> <li>- This caused an immediate and severe brain haemorrhage</li> <li>- He was taken to hospital where he died shortly afterwards</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- There was no evidence that the applicant ever admitted to having the necessary intent after the event</li> <li>- In his evidence he denied ever having such intention</li> <li>- Accordingly the Crown could only establish the applicant's intention by the evidence of what he did and said at the time of the confrontation</li> <li>- For example it would have been easier in that case to find that the accused intended to inflict GBH on the deceased if he had in fact: <ul style="list-style-type: none"> <li>- Punched him from behind</li> <li>- Said 'I'll kill you' at any stage during the fatal confrontation; and</li> <li>- Kicked him in the head repeatedly wearing footwear other than thongs</li> </ul> </li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- CCA observed that what the accused says and does at the time of the relevant events can be used to support and inference that he or she intended to kill/commit GBH</li> </ul>

### *The Queen v Baden-Clay (2016)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>'Intent to kill', 'intent to inflict GBH'</b></li> <li>- In 2012, Allison Baden-Clay disappeared from her home in Brisbane</li> <li>- The next day her husband reported her missing and the search began</li> <li>- 10 days later her body was found on the bank of a creek</li> <li>- Husband was charged with her murder</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Accused's post-offence conduct can sometimes be used to prove that he/she had the requisite intent</li> </ul>

### *Stzal v Minister for Immigration (2017)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>'Intent to kill', 'intent to inflict GBH'</b></li> <li>- Appeals from the RRT which found that if the appellants were returned to Sri Lanka, and if they were arrested and charged under the laws of that country, they would likely be held in remand for a short period, which may be one day, several days, or possibly two weeks</li> </ul>
<b>Issue</b>	<ul style="list-style-type: none"> <li>- Whether, in sending the appellants to prison, Sri Lankan officials could be said to intend to inflict severe pain or suffering or to intend to cause extreme humiliation</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Tribunal concluded that the element of intention was not satisfied</li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Foreseeability can allow an inference as to intent, but it is not a substitute for intent. It is only significant as evidence that the intention exists.</li> </ul>

### *Crabbe v R (1985)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Reckless indifference to human life</b></li> <li>- A guy in NT got really drunk at a bar and was physically ejected</li> <li>- In the early hours of the morning following the incident he returned at the controls of a prime mover and drove it into the wall of the bar resulting in five deaths and many injuries</li> <li>- He did nothing to assist the victim and left the scene, and was apprehended the next day</li> <li>- He was tried in the NT, and after summing up the jury was recalled to give a short redirection which read <ul style="list-style-type: none"> <li>- It is this, I said to you, you will recall, that you had to be satisfied beyond reasonable doubt on the question of recklessness, that he knew that there would be people in the bar</li> <li>- If he thought there might have been, but chose to blind himself not giving himself the opportunity to find out if people were inside, but decided to anyway, then he cannot hide behind lack of actual knowledge</li> </ul> </li> <li>- Appeal was based on the trial judge's directed as to what was required for reckless indifference to human life or wilful blindness</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Majority of the full court held that the jury was <b>misdirected</b> <ul style="list-style-type: none"> <li>- It was erroneous to refer to the foresight of a possibility, rather than a probability, that people might be in the bar and the death or GBH might result from actions of the respondent</li> <li>- Second redirection failed to mention any element of deliberation → suggests a person should be treated of having knowledge of the facts if he neglects to take reasonable or even available steps to find out the truth</li> </ul> </li> <li>- A person is guilty of murder if he commits a fatal act knowing that it will probably cause death or GBH but (absent an intention to kill or do GBH) is not guilty of murder if he knew only that his act might possibly cause death or GBH is not only supported by the preponderance of authority but is sound in principle <ul style="list-style-type: none"> <li>- Conduct of a person who does an act, knowing death or GBH is a probable consequence, can naturally be regarded for the purposes of criminal law as just</li> </ul> </li> </ul>

	<p>as blameworthy of one who does an act intended to kill or GBH - these states of mind are highly comparable</p> <ul style="list-style-type: none"> <li>- To be guilty of murder, the defendant can be reckless in that they did the act knowing it was probable (meaning a substantial or real chance) that death or GBH would occur as a result of their actions</li> <li>- <b>“Wilful Blindness”</b> <ul style="list-style-type: none"> <li>- When a person deliberately refrains from making inquiries because he prefers not to have the result, then he wilfully shuts his eyes for fear that he may learn the truth, he may for some purposes be treated as having the knowledge which he deliberately abstained from acquiring</li> </ul> </li> <li>- <b>It is not necessary to prove that the accused was <i>indifferent</i> to the death of the deceased. Even if they hope that death will <u>not</u> result from their actions, they will be guilty of murder if they foresee the death is <u>probable</u></b></li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Requirement is <b>probability</b> not possibility <ul style="list-style-type: none"> <li>- Foresee possibility: foresee might happen</li> <li>- Foresee probability: don't just foresee it might happen but also foresee it is likely</li> </ul> </li> <li>- <b>A person who, without lawful justification or excuse, does an act knowing that it is <i>probable</i> that death or GBH will result, is guilty of murder if death does in fact result</b> <ul style="list-style-type: none"> <li>- It is not enough that he does the act knowing that it is possible but not likely that death or GBH might result</li> </ul> </li> <li>- Specifically refrained from deciding whether the accused who foresees the probability that his or her act will produce the relevant consequences intends that consequence to occur</li> </ul>

### *Solomon v R [1980]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- Probability of GBH, not just death → approved in <i>Royall</i></li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- The position in NSW (based on s 18 <i>Crimes Act</i>) is that knowledge of the probability of GBH is not enough</li> <li>- It must be knowledge of the probability of death</li> <li>- This departure from common law, which only requires knowledge of the probability of GBH occurring, per <i>Crabbe</i></li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- It must be death and not GBH that is foreseen as a probable consequence of conduct</li> <li>- Foreseeing GBH would lead to 'subjective manslaughter'</li> </ul>

### *R v Khan [2016]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Recent example of reckless indifference</b></li> <li>- The lessee of a convenience store was charged with setting fire to and causing an explosion at the store so that he could end his lease</li> <li>- There were residences above the shop and three residents died in the fire</li> </ul>
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<b>Held</b>	<ul style="list-style-type: none"> <li>- Crown alleged murder, the mens rea being reckless indifference to human life</li> <li>- Jury found reckless indifference in relation to some victims but not others <ul style="list-style-type: none"> <li>- This is because the accused foresaw the probability of death even though he did not intend to kill</li> </ul> </li> </ul>
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*Campbell v R [2014]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Clear cut case on intentional murder</b></li> <li>- Accused pushed wife off a cliff and she died</li> </ul>
<b>Held</b>	<ul style="list-style-type: none"> <li>- Trial judge when directing jury, including probability of foresight of death as a mens rea the jury should consider</li> <li>- Appeal court was critical of this direction as it was a clear case of intention and the jury should have only considered intent to kill/commit GBH</li> </ul>

*Meyers v R (1997)*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- <b>Sets out general rule for temporal coincidence</b></li> <li>- Couple had been drinking, neighbours heard sounds of violence</li> <li>- When police got to the house they find she is lying on her back not responding to stimuli, clumps of hair around the apartment</li> <li>- She died the next day</li> <li>- Act causing death was a head wound, but he claimed that he didn't intend to cause death he just pushed her. He had assaulted her, but the assault hadn't caused the <i>wound</i></li> </ul>
<b>Principle</b>	<ul style="list-style-type: none"> <li>- Where there is a mens rea for an offence, there is a general principle that the actus reus and the mens rea must <u>coincide</u>. That is, be in the same place at the same time</li> </ul>

*Thabo Meli v R [1954]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- The defendants, in execution of a preconceived plot to kill the victim, took him to a hut where he was struck over the head with an instrument, and then, believing him to be dead, they took him out and rolled him over a low cliff and dressed the scene to make it look like an accident</li> <li>- The medical evidence established that the injuries received in the hut were not sufficient to cause the death which was in fact due to exposure when he was left at the foot of the cliff</li> <li>- The defendant's appealed against their conviction of murder, alleging, inter alia, that while the first act -the blows in the hut - was accompanied by mens rea, it was not the cause of death, but that the second act, while it was the cause of death, was not accompanied by mens rea, and contended that in those circumstances they were not guilty of crime, except perhaps culpable homicide</li> </ul>
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<b>Held</b>	- <i>'It appears to their lordships impossible to divide up what was really one transaction in this way. There is not doubt that the accused set out to do all these acts in order to achieve their plan and as parts of their plan; and it is much too refined a ground of judgment to say that, because they were under a misapprehensions at one stage and though that their guilty purpose had been achieved before in fact it was achieved, therefore they are to escape the penalties of the law.'</i>
<b>Principle</b>	- UK case which goes against the temporal coincidence rule

### *R v Church [1966]*

<b>Facts</b>	<ul style="list-style-type: none"> <li>- The defendant had gone to his van with a woman for sexual purposes</li> <li>- She had mocked his impotence and he attacked her, knocking her out</li> <li>- The defendant panicked, and wrongly thought he had killed her, so threw her unconscious in a river where she drowned</li> <li>- The corpse bore marks of grave injuries</li> <li>- These were likely to have caused unconsciousness and eventually death, but they were inflicted a half-hour or hour before the death supervened and did not in fact cause it</li> <li>- According to the medical evidence her injuries were inflicted not long before the victim, but she was alive when that was done, she continued to breathe for an appreciable amount of time afterwards, and the eventual cause of death was drowning.</li> </ul>
<b>Held</b>	- The defendant's appeal against the conviction for manslaughter was dismissed

## Constructive Murder

<b>Summary</b>
<ul style="list-style-type: none"> <li>- Broadens the crime of murder and also known as the 'felony murder rule'</li> <li>- The required 'malice' is supplied by the accused's possession of the mens rea for the foundational offence</li> <li>- Accordingly, to secure a conviction for murder on the basis of constructive murder rule, the Crown need only prove the accused performed an act causing death during their commission of an offence punishable by 25 years imprisonment</li> </ul>
<b>Actus Reus</b>
<ol style="list-style-type: none"> <li>1. <b>Act or Omission</b> <ol style="list-style-type: none"> <li>a. Identify the exact act causing death</li> </ol> </li> <li>2. <b>Causing Death</b> <ol style="list-style-type: none"> <li>a. Operating and substantial cause of death</li> </ol> </li> <li>3. <b>During or Immediately After the Commission of a Crime Punishable for Life, for 25 years or more</b> <ol style="list-style-type: none"> <li>a. Immediately after/before: case to case and a question for the jury → <i>Hudd</i></li> </ol> </li> </ol>
<b>Base Offences</b>

- S 32 → impeding endeavours to escape shipwreck (25 y)
- S 47 → using explosive substance or corrosive fluid (25 y)
- S 61JA → aggravated sexual assault in company (life)
- S 98 → robbery with arms (weapons) and wounding (25 y)
- S 96 → robbery with wounding (25 y)
- S 33(2) → wounding with intent to resist arrest (25 y)
- S 33A(2) → discharging a firearm with intent to resist arrest (25 y)
- S 97 (2) → armed robbery with dangerous weapon (25 y)

### Mens Rea

#### 1. Mens Rea for base offence

- a. Not required to show mens rea for murder
- b. Accidental killing can be convicted → defendant must negate voluntariness not to be convicted  
→ *Ryan*

## Homicide in Australia: 2008-09 to 2009-10 National Homicide Monitoring Program Report

### Homicide Incidents

- 2008-09 and 2009-10 → 510 homicides recorded across Australia
  - Similar numbers across two years
  - 611 offenders identified, only 17 offences at the time had no identified offender
  - Number of victims and offenders is greater than number of incidents because multiple victims
- Homicide rate is at a historical low, with overall decrease in 16% since 1990
  - NSW had the most homicides, but NT had the highest homicide rate

### Homicide Classification

- **Domestic Homicide** → incident involving death of a family member or other person from domestic relationship
  - 36% of homicides
  - Of these 66% sub-classified as intimate partner homicides, 22% filicides, 11% parricides, 2% siblicides
- **Acquaintance Homicide** → incident involving a victim and offender who were known to each other but not related to each other, nor living in a domestic relationship
  - 37% of homicides
- **Stranger Homicide** → all other incidents where the victim and offender were not known to each other, or known for less than 24 hours
  - 13% of homicides

### Temporal Characteristics

- More than half of homicides occurred in evening hours between 6pm and 6am
- Greater number between 6pm and midnight

- Most homicides occur on Saturdays and Sundays, with Tuesdays having the fewest homicides
- Three in five homicides occurred in a residential location, with majority in the victim's own home or someone else's home. Street or open areas were also notable.

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**Cause of Death**

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- More deaths from stab wounds than from any other single cause
- Beatings accounted for one in four victims, followed by gunshot wounds

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**Motive**

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- Most frequently recorded was an unspecified domestic argument
- Other argument was the next most recorded, followed by alcohol related arguments, incidents related to drugs, money and revenge
- Least common were racial and sexual vilification
- One in ten homicides did not have an apparent or identifiable motive