

How to answer a Murder question:

A full fault offence contained in s 11 *CLCA*, which carries a minimum non-parole period of 20 years: s 32 (5) (ab) of the *Criminal Law (Sentencing) Act 1988* (SA).

STEP 1: Physical elements

- 1) Causing the death of a human being: s 2 of the *Death Definition Act 1983* (SA).

Causation:

- a. Substantial contribution test- prosecution must prove that the defendant's conduct 'substantially contributed' to V's death. The conduct does not need to be the sole or even the primary cause of the death: *R v Hallett*; and
- b. Alternative view that legal causation requires proof that death or injury was a reasonably foreseeable consequence of the defendant's conduct. Gained some support in *Royall* from the minority, which held that it should be included in the directions to the jury.

BUT: *R v Smith* is the leading authority for the proposition that where a wound inflicted by a defendant might not have caused death if appropriate medical treatment were administered, the liability of the defendant will not be avoided just because incompetent medical treatment was received and death resulted.

R v Jordan is an example of where medical treatment was found to break the chain of causation (re-administration of an intolerable antibiotic caused death).

STEP 2: Fault elements

- 1) Fully subjective and satisfied by one of: intention to cause GVT; recklessness as to causing death; or intention to cause death.

- 2) INTENTION

Prosecution must establish A had that result as his/her purpose or object at the time of engaging in the conduct (*Zaburoni v The Queen*).

- 3) RECKLESSNESS

'A person who, without lawful justification or excuse, does an act knowing that it is probable that death or grievous bodily harm will result, is guilty of murder if death in fact results. It is not enough that he does the act knowing that it is possible but not likely that death or grievous bodily harm might result' (*R v Crabbe*).

OTHER HOMICIDE OFFENCES

CAUSING DEATH BY AN INTENTIONAL ACT OF VIOLENCE (s 12A *CLCA*):

A person who commits an intentional act of violence while acting in the course or furtherance of a major indictable offence (robbery/arson) punishable by imprisonment for ten years or more, and thus causes the death of another, is guilty of murder.