

Homicide

Murder	
<i>Crimes Act 1900 s 18(1)(a)</i>	<p>Murder shall be taken to have been committed where the act of the accused, or thing by him or her 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 grievous bodily harm 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.</p>
AR	<p><i>act (or, in some circumstances, omission) causing death.</i></p> <p>A. Causation</p> <ul style="list-style-type: none"> - no limit on time between D's act and death caused <p>a. "substantial and operating cause" test</p> <ul style="list-style-type: none"> - determines whether D's acts were legal cause of V's death or whether V/ third party conduct e.g. doctor, or natural event broke the chain of causation initiated by D (novus actus interveniens) <p><u>Smith [1959] 2 QB 35</u></p> <p>Held: if original wound still an operating and substantial cause, death was result of the wound, albeit some other cause of death present. If original wound is merely setting in which another cause operates, death not result of wound.</p> <p><u>Swan [2020] HCA 11</u></p> <p>Issue: whether appellant's attack on V substantially caused the death of the victim where decision not to engage in life saving treatment several months after bc of low quality of life (caused by the assault)</p> <p>Held: decision was taken to treat palliatively rather than surgically based substantially or significantly upon persistent, long-term, and catastrophic effects of the assault.</p> <p>b. "natural consequence" test</p> <ul style="list-style-type: none"> - D intended death to be the outcome (natural consequence) of actions <p><u>Royall (1991) 172 CLR 378</u></p> <p>Facts: P argued V reasonably apprehended that, if she remained in the bathroom, D would subject her to life threatening violence and she defenestrated to escape.</p> <p>Held: Act done in interest of self-preservation which results in death, in face of violence/threats, doesn't negative causal connexion. Key element in causation chain is that D's conduct creates in V's mind a well-founded and reasonable apprehension of danger causing V to take steps to escape leading to death.</p> <p>c. "Substantial or significant cause" test</p> <ul style="list-style-type: none"> - The wound isn't trivial - Multiple causal factors
MR	<p>A. Attempted Murder</p> <ul style="list-style-type: none"> - must be actual intent to kill (<u>Knight (1992) 175 CLR 495</u>) <p>B. Actual Murder</p>

	<ul style="list-style-type: none"> - intention to kill, cause GBH or be recklessly indifferent to human life - Only intends a consequence when that's D's purpose (Zaburoni) <p>a. Reckless Indifference to Human Life</p> <p><i>There was no intention to kill; however, there may have been reckless indifference to human life by [act]. Recklessness requires making a distinction between D's awareness of the probability of death or GBH occurring from actions versus mere awareness of a possibility (Crabbe). D must have had knowledge [act] will probably cause death, meaning a substantial or real chance (Bouhey).</i></p> <p>Crabbe (1985) 156 CLR 464</p> <p>Facts: drove vehicle into the bar killing 5 ppl</p> <p>Held: distinction between D's awareness of probability of death/GBH occurring from actions versus mere awareness of a possibility. D must have knowledge acts will <i>probably</i> cause death/GBH. Not D's indifference to consequences but his knowledge that those consequences will probably occur. Not enough to know it's possible but not likely. Foresight of death not GBH</p> <p>Annakin (1988) 37 A Crim R 131</p> <p>Held: "likely to happen" means going to happen, will happen as a matter of probability. "May well result" → possibility only</p>
Sentence	<p>S 19A(1) Liable to imprisonment for life only if offence is extreme (Crimes (Sentencing Procedure) Act s 61(1)) may have lesser sentence imposed (Crimes (Sentencing Procedure) Act s 21(1))</p>
Manslaughter	
AR	<ul style="list-style-type: none"> - <i>act (or, in some circumstances, an omission) causing death.</i> <p>A. Voluntary</p> <p>Lane [2013] NSWCCA 317</p> <p>Held:</p> <ul style="list-style-type: none"> - 2 manslaughter categories: voluntary (killing which would otherwise amount to murder is reduced via statute-provided circumstance eg provocation or excessive self defence) and involuntary (D doesn't possess murder MR but still sufficiently culpable) - For voluntary manslaughter, Crown must prove all elements of murder; then D must prove capacity to understand events, or to control themselves, was substantially impaired an underlying condition as to warrant liability for murder being reduced to manslaughter (s 23A) <p>B. Involuntary</p> <p>1. Unlawful and Dangerous Act</p> <p><i>[Act] was an unlawful act done voluntarily (Ryan). Dangerousness requires assessing whether the reasonable person in D's position would have appreciated that the unlawful act exposed V to an appreciable risk of serious injury (Wilson). This is an objective test of the reasonable person (Wills), so D's idiosyncrasies aren't considered. The reasonable person would have appreciated [act] would expose someone to an appreciable risk of serious injury, satisfying this test. Thus, D is liable to imprisonment for up to 25 years (s 24).</i></p>

a. Dangerousness

Wilson (1992) 174 CLR 313

Held: would the reasonable person in the position of D have appreciated that the unlawful act exposed the V to an appreciable risk of serious injury?

Wills

Held: objective test of the reasonable person ('unclouded reasoning power of a healthy and reasonable person'); however, some subjective factors can be attributed to the reasonable person:

- Physical features of the situation and action of D involved
- Idiosyncratic or ephemeral mental state of D (including intoxication) NOT considered
- Must be in the D's position (Cornelissen)
- Age (Ty)

2. Criminal Negligence

D may be liable for manslaughter by criminal negligence. This applies where there is a legally recognised duty of care and not a mere moral obligation (Taktak). [ID relevant category]. With DOC established, P must prove D's intentional act causing death fell so short of the standard of care that a reasonable person would have exercised, in circumstances where the reasonable person would have appreciated a high risk that death or grievous bodily harm would result if that standard of care was not observed (Nydam). Thus, the inquiry isn't into D's state of mind, but into what perception and care would be expected from a reasonable person in his position. The reasonable person is clothed with D's characteristics and knowledge of the circumstances, but must have the "ordinary fortitude and strength of mind of a reasonable person" (Lavendar).

The [act] was done by D consciously and voluntarily (Nydam). Furthermore, knowing... the reasonable person would/not have appreciated the high risk of choking causing death had the standard of care not been met. Finally, [act] was wickedly negligent to merit criminal punishment (Lavendar).

A. Act

1. AR

Nydam

Facts: D threw petrol and set V on fire. Claimed it was a threat to kill himself. Did he intend to kill her or was it an accident?

2. MR

Lavender

Facts: D ran over boy to chase him off

B. Omission

- 2 types of duties: whether there is a duty to act (for homicide by omission) and the question of a failure to meet a reasonable person's standard of care (for criminal negligence)

Taktak

Facts: was there a legally recognised duty to V to seek medical aid?

Held: must be legal duty not moral obligation. If a person who sustains to another the legal relation of protector wilfully and negligently fails to take reasonable and proper efforts to rescue him without jeopardising his own life, or the lives of others, he is guilty of manslaughter by reason of his omission of duty. Categories:

1. domestic/ status relationship

	<ol style="list-style-type: none"> 2. public duty ie imposed by statute (e.g. WHS) 3. voluntarily assumed care “and so secluded helpless V as to prevent others from rendering aid.” 4. Assumed by contract
Sentence	Crimes Act s 24: Liable to 25 years imprisonment.
Constructive Murder	
<i>Crimes Act 1900 s 18(1)(a)</i>	<p>Act or omission causing death was “done in an attempt to commit, or during or immediately after committing crime punishable by imprisonment for life or for 25 years Munro (1981) 4 A Crim R 67</p> <p>Facts: D robbed and struck 92yo man, who died 2 days later due to effects of wounding.</p> <p>Held: P does NOT have to prove D realised death or any other consequence was even a possible result of their actions, or that a reasonable person would have appreciated any such risk</p> <p>Ryan (1967) 121 CLR 205</p> <p>Facts: D committed armed robbery during which gun was discharged killing V. Base offence: Crimes Act s 98 “Robbery with Arms and Wounding.” Base offence does not provide for MR to assault, D can only dispute AR by, for example, arguing actions were involuntary in order to be acquitted</p> <p>Held: P does NOT have to prove D realised death or any other consequence was even a possible result of their actions, or that a reasonable person would have appreciated any such risk.</p> <ol style="list-style-type: none"> (1) wounding/GBH involved in shooting whenever death follows bullet entering V (2) If D fired shot, matters not that it was unintentional - D who commits robbery under arms does so at the peril of committing murder
AR	<ul style="list-style-type: none"> - act causing death occurs during serious criminal enterprise (“base offence”). - Provided base offence AR is performed with required MR, liability in relation to the resulting death is absolute → even an accidental death is murder - D guilty of constructive murder even if didn’t perform act causing death where this act, done by accomplice, can be attributed to D
MR	<ul style="list-style-type: none"> - act causing death will constitute murder even where there is no intent to kill, cause harm, or any awareness of the risk of death or grievous bodily harm - where V does act which self-kills (accidentally or intentionally) in committing base offence in cooperation with D, D not guilty (IL [2017] HCA 27)