

CRIM Final Exam Scaffolds

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Murder

_____ is guilty of murder if the Crown proves BRD that _____, without lawful justification, committed an act or omission causing the death of _____, with intent to cause death or grievous bodily harm, or with reckless indifference to human life: [Crimes Act s 18\(1\)\(a\)](#). Punishment of life imprisonment or for 25 years.

1. **Voluntary** - "The prosecution is entitled to presume that —'s conduct [insert act/omission] was voluntary conscious and willed; *R v Falconer, Ryan*"
 - **OR** The facts raise issues in relation to voluntariness. The defence bears the evidentiary burden of a 'reasonable possibility' when giving rise to any defences that may negate the voluntariness of the accused.
2. **Act/omission**
 - a. IF ACT - "— is the act causing death"
 - a. Series of acts
 - b. If multiple - There are are capable of being regarded as the one causing death: [insert acts]. The jury would be responsible for deciding which of the acts is the relevant one: *Ryan (Barwick CJ); Royall v R*
 - c. IF OMISSION - "In order for —'s omission to found liability for murder s/he must have owed a duty of care to the deceased: *R v BW & SW*"
 - i. *A mother of the deceased child was charged with murder for breaching her duty of care to provide adequate nourishment & medical attention to her child who died from chronic malnutrition. Case of **reckless indifference to human life**: she realised the probability of Ebony dying & deliberately omitted from acting on it. *R v BW & SW**
3. **Causing death**
 - a. If causation is straightforward → On the facts, the jury would have no difficulty in concluding beyond reasonable doubt that [insert the accused's act/omissions] was a "substantial cause" of death; *Smith; Hallett; Bingapore*.
 - b. If causation is not straightforward → It is contentious on the facts whether [conduct] caused the death or whether [--] was a *novus actus interveniens* breaking the chain of causation.
 - c. Death occurs when there is an **irreversible cessation of brain functions or blood circulation** ([Human Tissue Act, s 33](#)).

The generally accepted test for causation is whether the accused's act was a "**substantial or operating** cause of death"; *Royall (Deane and Dawson JJ); Swan v R [2018] NSWCCA 260 ay [90]*.

- GENERAL RULE: Only if it can be said that the original act is merely the setting in which another cause operates can it be said that the death does not result from the accused's act: *Smith; Hallett; Bingapore*
 - Causation is only broken if second cause is 'so overwhelming' as to make original wound 'merely part of history'; *Smith*

Specific situations

a. Victim Self-preservation:

- As established in **Royall by Mason J** where the evasive action taken by the victim is a natural consequence of the well founded apprehension of physical harm induced in them by the accused, the injury/death is deemed to be caused by the accused.
- **WHEN REASONABLE** - In this case, [accused did this -] which caused the well founded apprehension of harm. Considering the physical features of the situations as well as [accused]'s actions [victim] was likely in a state of panic and fear which would have affected her/his ability to recognise a better way of escape (**McAuliffe**). As such the response was reasonable and causation can likely be established BRD (**RIK v R**).
 - Insert relevant facts to analysis
- **WHEN UNREASONABLE** - In this instance, [accused did this -], which may have triggered some apprehension of harm. However, considering the physical features of the situation [such as ..] and [accused]'s actions [insert example], [victim]'s reaction appears excessive and unreasonable (McAuliffe). Therefore, the response may be considered unreasonable, making it difficult to establish causation BRD.

b. Victim refusing medical treatment/advice:

- Although – [unreasonably] **refused medical treatment**, this is not a supervening event (**R v Holland (1841 UK)**), as a person who uses violence on another is required to “take victim as he found them” (**egg-shell skull principle**) including their characteristics and beliefs as a whole person, not just their physical condition (**R v Blaue (1875 UK)**)
 - Facts: V refuses treatment of life-saving blood transfusion after four stab wounds inflicted by D because she is a Jehovah’s Witness. Physical cause of death held to be bleeding from penetration of lung by stab wound, not any decision made by deceased → **egg-shell skull**
- **Leaving hospital against advice will [not] break the chain of causation** as there was [no] new medical cause, rather a mere loss of possible opportunity of avoiding death from a still operating and substantial cause → **R v Singapore (1975 SA)**
 - Facts: D & V had a fight, inflicting serious head wounds on V. Taken to hospital & against medical went home → died 6 hours later
- **Negligent medical treatment:** While in **Smith [1959]** failing to give a life saving blood transfusion to save V from stab wounds was held to be so severe to break the causal chain, **Cheshire (1991)** states that the negligent medical treatment must be **so independent and in itself so potent** in causing death that it precludes D from murder.

c. Act of Nature:

- [describe event] will not amount to novus actus interveniens as it is the operation of ‘ordinary natural causes’ where [act] is still the substantial cause of death. **Hallett v R**