

3.1 HOMICIDE: Murder

	Conduct	Consequence
<i>AR</i>	<u>Act or omission</u>	<u>Death</u>
<i>MR</i>	<u>Intention</u> (i.e. intention to engage in the conduct)	Three options (for now): 1. With <u>intent to kill</u> 2. With <u>intent to inflict GBH</u> 3. With <u>reckless indifference to human life</u> (foresight of the <u>probability</u> of death)

Definition: Murder is the unlawful act or omission by the accused that causes the death of another person, committed with intent to kill, intent to inflict grievous bodily harm, or with reckless indifference to human life or in constructive murder, punishable by imprisonment for life or for 25 years. (s 18 (1) CA)

Onus is on the **prosecution** which has the legal burden to prove **beyond reasonable doubt** that the **accused** is guilty of murder (**Woolmington v DPP [1935]**)

AR

a. ACT/OMISSION

It is clear that **the accused** conduct was an **act / omission** and per **R v Falconer (1990)** there is a presumption that **the accused's act is voluntary**. (IF NOT VOLUNTARY GO TO DEFENCE OF VOLUNTARINESS FIRST)

1. Single Act

It is clear that the act of _____ caused death. (**Ryan v R (1967); Aruthilakan v R (2003)**)

2. Multiple Acts

From the facts, the act of _____ and _____ contributed to death. (**Ryan v R (1967); Aruthilakan v R (2003)**) While it is a matter for the jury to determine which act constituted death (**Koani v The Queen (2017)**), I believe it is more likely that [act] caused the death of the deceased with the requisite mens rea of [choose - **intent to kill / intent to inflict GBH / reckless indifference to human life**] because _____(was it accompanied by MR?)_____.

3. Omission

The accused must first owe a duty of care to the deceased and exercise deliberate choice to do nothing. (**R v SW and WB (No 1) [2009]**)

- 1) Establish duty of care
- 2) Breach of duty of care by not doing anything

b. CAUSATION

1. Clear causation

From the facts there is a clear **causal link** between the act of [act] and death of the deceased.

2. Unclear causation

From the facts it is unclear where there exists a **causal link** between the act of [act] and death of the deceased because of the **[Intervening act or omission by a third party / Act of nature / Acts of the victim]** which _____. Now it becomes a question of whether there is **novus actus interveniens**, **breaking the chain of causation**, determined by the jury as a matter of fact not law (**R v Evans and Gardiner (No 2) [1976]**).

There is a high bar to break a causal link, which requires the intervening act or omission to be a **substantial and operating cause of death (R v Smith [1959])**. **Pick one of the three novus actus interveniens below.**

1) Intervening act or omission by a third party

The conduct of [third party] (did/did not) make a significant contribution in disturbing the sequence of events to unreasonable or extraneous or extrinsic extent and (is/is not) extraordinary as to capable of being regarded as acts independent of the conduct of the defendant. (**R v Smith [1959]; R v Cheshire [1991]**)

Hence, (failing/satisfying) the requirement of substantial and operating cause of death, causation (does not /does) break.

2) Act of nature/suicide

IF ordinary natural cause (e.g. tide):

- In this case, it is an ordinary natural cause hence is insufficient to break the chain of causation. (**Hallett v R [1969]**)

IF extraordinary natural cause (e.g. earthquake):

- As per **Hallett v R [1969]**, ordinary natural causes will not break the chain of causation however, an extraordinary natural cause or victim's willing act such as suicide may break the chain of causation.

It is for the jury to resolve by applying the **substantial and operating cause test from R v Smith [1959]**. From the facts, it is substantial/not substantial... it is operating cause/not....

Hence, (failing/satisfying) the requirement of substantial and operating cause of death, causation (does not/does) break.

3) Acts of the victim

Generally, a free, informed and voluntary act of the deceased can break the chain of causation

1) Refusing medical treatment/rejecting medical advice

- At the time of death, it is evident that the original wound caused by **the accused** is still the operating and substantial cause hence despite the victim's arguably unreasonable, informed and voluntary refusal to undergo medical treatment does not break the chain of causation (**R v Blaue [1975]**)
 - + **R v Blaue [1975]** → died from refusing a transfusion from wounds sustained from the defendant, and may have survived had she not refused the transfusion
 - + **Royall v R (1991)**: had not made direct contact with the body before she jumped, she simply feared attack and took evasive action
- **The deceased** act merely **worsening** the effect of the original injury does not break the chain of causation (**R v Singapore [1975]**)
- Hence, (failing/satisfying) the requirement of substantial and operating cause of death, causation (does not /does) break.

2) Fright or self-preservation cases.

TEST APPLIED:

1) substantial and operating cause of death - (**Smith [1959]; McAuliffe (1995)**)

2) Was the victim's response a reasonable/proportionate one? (**Royall (1991); Rik [2004]**)

For means of escape question to answer (2) test

Based on the circumstances (**Rik [2004]**), the conduct of the accused induces in the victim a well-founded apprehension of physical harm, such as to make it a reasonable consequence to escape by such path where there are alternatives to be chosen, then the fact that the death occurs in the course of that escape does not break the chain of causation (**Royall (1991); McAuliffe (1995)**),

- i. **If reasonable/proportionate** → While there have been alternative means of escape as _____, with the fear provoked by accused action, the response of the victim is reasonable or proportionate. Hence the chain of causation will remain intact
- ii. **If not** → However, the victim's response was not reasonable or proportionate even having regard to the nature of the conduct of the accused or for which the accused is responsible, and the fear it is likely to have provoked as [reason]. Hence, the chain of causation between act and death is not established.

c. Death

S33 Human Tissue Act 1983 (NSW): a person has **died** when there has occurred:

- (a) irreversible cessation of all function of the person's brain, or
- (b) irreversible cessation of circulation of blood in the person's body

The final AR element is satisfied for murder.

MR

As per Crimes Act 1900 s18 (1), heads of MR for murder requires:

- a. Intent to kill; or
- b. Intent to inflict Grievous Bodily Harm(GBH); or
- c. Reckless indifference to human life.

a. Subjective test: The determination of the mens rea (MR) element is subjective, requiring the actual intent or state of mind of the accused at the time of the conduct (**R v Price [2021]**), assisted by **what the accused says and does at the time of the relevant conduct (Matthews v R [2014])**, **state of the accused** (age, background, education, psych and intoxication) (**Pemble (1971)**) as well as sometimes their **conduct afterwards (The Queen v Baden-Clay (2016))**.

b. PICK ONE BETWEEN INTENT DEATH / INTENT TO GBH / RIHL :

1) Intent:

- A. Intent to cause death (kill)

From the facts, it is evident that there was an intent to cause death as ____.

- B. Intent to inflict GBH

From the facts, it is evident that there was an intent to inflict GBH as ____.

Crimes Act 1900 (**NSW**) s4 defines GBH as permanent **serious** disfiguring of a person (s4(1)(b)), any GBH diseases (s4(1)(c)), or destruction of the fetus (s4(1)(a)).

- 'Serious' need not be permanent or consequences of injury long lasting or life threatening, only that it be really serious (Houl) in its natural and ordinary meaning → **DPP v Smith**.

2) Reckless indifference to human life (RIHL)

As it is evident from the facts that **[the accused]** did not intend to cause death or inflict GBH as their purpose or object (**Zaburoni v R [2016]**), we will consider whether it satisfies reckless indifference to human life.

IF IT FAILS THE SUBJECTIVE TEST, MANSLAUGHTER BY NEGLIGENCE WHICH CONSIDERS THE OBJECTIVE TEST OF A REASONABLE PERSON WOULD BE CONSIDERED.

To establish reckless murder at common law, the Crown must prove that the accused foresaw the **probability** (not mere possibility) (**Crabbe v R (1985)**) of death (not mere GBH) (**Solomon v R [1980]**), regarding such as having intended those consequences to occur.

- + **Why probable not possible? Boughey v the Queen; La Fontaine (1976):** lowering the probability threshold to possibility risks collapsing the distinction between murder and manslaughter

Considerations (only discuss when they are present):

1. Exceptions lie when the **act is lawful**

e.g. a surgeon who competently performs a hazardous but necessary operation is not criminally liable if the patient dies, even if the surgeon foresaw that his death was probable.

- Deciding whether an act is justifiable its social purpose or utility is important
- but lack of social purpose is not itself part of the mental state for murder.

2. Wilful blindness: Professor Glanville Williams said "a person cannot close his mind to a risk unless he first realises that there is a risk: and if he realises that there is a risk, that is the end of the matter". As wilful blindness effectively admits knowledge of probability, satisfying MR element of murder or GBH.

Constructive murder (다른 범죄중에 살인)

Def: S 18 Crimes Act includes constructive murder, where the act or omission of the accused is 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.

- It is punishable even if they did not intend to kill or cause grievous bodily harm or have not foreseen the possibility that his/her act would cause death (IL v The Queen (2017) hence does not need to align with MR principles and the Crown need only prove that the accused performed an act causing death during his or her, or an accomplice's, commission of an offence.
 - + Criticised for overpenalising

Temporal coincidence rule

MR and AR coincide hence satisfies the temporal coincidence rule. (**Meyers v R (1997)**)

MR/AR does not coincide:

1. **MR and AR do not coincide:** however, as **LINK TO FACTS** (look below three cases to help!), (proving/failing to prove) that the specific act causing death was done with the requisite intent (**Meyers v R (1997)**), satisfying the extended temporal coincidence rule. (**Thabo Meli v R [1954]**)
 - + **Thabo Meli v R [1954] (MR→AR)** Battery → Thought he was dead, rolled him off the cliff, however the deceased later died. The fact that D mistakenly thought V was already dead did not negate liability.
 - + **R v Church [1966] (MR→AR)** Assaulted → dump in river → died from drowning. Applied *Thabo Meli v R [1954]*
 - + **Meyers v R (1997) (AR→MR)** Merely pushed V away → D had repeatedly slammed V's head into the ground, inflicting fatal head injuries
2. **Two ACTS? AR (one initial act + one conceal act) - punch and then drop during concealment (where drop caused the death however MR was only in punch)**

From the facts, it is given that there are two acts of _____ which had the MR and _____ which caused the death of the victim.

 - **Conceal facts?:** As the unlawful application of force and the eventual act causing death designed to conceal his commission of the original unlawful assault are parts of the same sequence of events, the fact that there is an interval of time between the two does not serve to exonerate the defendant from liability (**Le Brun [1992]**). Hence it satisfies the extended temporal coincidence rule. (**Thabo Meli v R [1954]**)
 - **Not conceal but rescue?:** However, the court will not be prepared to stretch the unlawful application of force and the eventual act causing death to cover situations where, for example, death is caused in an attempt to rescue the victim, rather than to conceal the original attack. (**Le Brun [1992]**). Hence it does not satisfy the extended temporal coincidence rule. (**Thabo Meli v R [1954]**)
3. **Not intend the precise way to kill?**

Per **Royall (1991)**, it is **irrelevant of method causing death**. Provided one of the MR is present, and the test for causation is satisfied, it does not matter that the accused did not intend the precise way in which the death actually occurs. Hence it satisfies the extended temporal coincidence rule. (**Thabo Meli v R [1954]**)

(e.g. accused is still guilty of murder if he intended to kill the deceased by striking her with an ashtray and the deceased jumped to her death from a window in an attempt to escape.)