

TOPIC 6: Homicide

CL MURDER

Introduction

D will be liable for common law murder if the prosecution can prove BRD that D engaged in voluntary conduct that intentionally or recklessly caused the death of V.

Actus Reus

AR: Death of a Human

S 41 Human Tissue Act 1982 (Vic)

Return to:

- [UDA Manslaughter](#)
- [Negligent manslaughter](#)

YES: On the facts, V was a human and is legally considered dead under **s 41 of the Human Tissue Act**, due to the irreversible cessation of (a) circulation of blood in V's body and/or (b) all brain function.

NO FETUS: A child must be fully and completely born and must have a separate and independent existence from the mother to be a legal person. On the facts, given V was a fetus who had not been born in a living state (**R v Hutty**) they can not be considered a legal person. Accordingly, the element of death of a human cannot be satisfied.

NO CORPSE: For V to be considered a legal person, they must have been born in a living state (**R v Hutty**). Given, V is a corpse and thus already deceased, the element of death of a human cannot be satisfied.

Detailed definition of a legal person:

V must be a legal person, defined as having been born in a living state (**R v Hutty**).

- **Fetus/Child:** Fetus in utero is not taken to be a person in being (Common Law) -> a child must be fully and completely born and must have a separate and independent existence from the mother to be a legal person
- **Corpse:** is also not a person in being

AR: Voluntariness

Return to:

- [UDA manslaughter](#)

D's act [*insert act*] was voluntary, in that it was willed by D (Ugle).

- **If facts analogous:** Refer to **Ugle and/or Ryan v R**
- **Intoxication:** D may argue that s/he was so intoxicated that his/her will was divorced 'from the movements of his body' (**O'Connor**). However, prosecution will argue the threshold of intoxication needed to prove involuntariness is extremely high and rarely found.
- **Automatism:** A PVA can not be made out if the D was in a state of automatism, as this would be an involuntary act (**R v Falconer**).

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| | <ul style="list-style-type: none"> - NOTE: Omissions are typically relating to negligent manslaughter |
| <p>AR: Causation (and NAIs)</p> <p>Return to:</p> <ul style="list-style-type: none"> - UDA - Manslaughter - Negligent Manslaughter | <p>Factual Causation:</p> <ul style="list-style-type: none"> • But for D’s act of <i>[insert act if necessary]</i>, V would not have died (Royall). <p>Legal Causation: This test may be satisfied irrespective of whether the accused’s conduct was the sole, main, direct or immediate cause of the death.</p> <ul style="list-style-type: none"> • NO NAI: As D’s conduct of <i>[insert conduct]</i> led to V’s death, it is clear that D’s conduct was a substantial and operating cause of V’s death. As there was no NAI, causation is made out. EXPLAIN CONTENTIOUS NAI • General: D would argue their conduct was not a substantial and operating cause of V’s death, but rather <i>[insert NAI]</i>. However, analogising <i>[insert case authority]</i>, <i>[insert reason]</i>. Ultimately, the chain of causation was not broken. • General NAI application: Defence may argue an NAI occurred between D’s conduct and V’s death. YES NAI: It can be argued that though D <i>[insert conduct]</i> indeed contributed to V’s death, the intervening act of <i>[insert]</i> overwhelmed D’s conduct as the substantial and operating cause of V’s death and broke the chain of causation. Therefore, causation cannot be made out. OR NO NAI: Prosecution would argue that <i>[insert analogous case or general case authority]</i> and therefore D’s act is a substantial and operating cause of V’s death. Thus causation can be made out. • Hallett Application: Prosecution may argue that D’s conduct was a substantial and operating cause of V’s death. The defence would argue <i>[event]</i> constituted an NAI, being an extraordinary and unforeseeable <i>[natural]</i> event. OR Prosecution would argue that <i>[event]</i> occurred in the ordinary course of events and was therefore not an NAI. On balance, the court is/is not likely to find the chain of causation broken. • Royall Application: Defence may argue that V’s death was not a reasonably foreseeable consequence of D’s actions <i>[as it was irrational or unreasonable or V didn’t have reason to fear]</i>. However, prosecution would argue that given D’s conduct of <i>[Insert conduct]</i>, D had induced in V a well-founded apprehension of physical harm that the act of self-preservation was a natural consequence, whether the response was irrational or unreasonable is irrelevant (Royall). Therefore, the court will likely find D’s conduct is a substantial and operating cause of V’s death. <p>NAI:</p> |

Causation will be broken if intervening act is so independent of the acts of the accused that it should be regarded as the cause of V's death to the complete exclusion of the accused's act

- **Natural Events (Hallett):**
 - Was it an independent act of God? Extraordinary and unforeseeable event? Or did the even occur in the 'ordinary course of events'
- **Voluntary Acts of third party (Pagett):**
 - Was the act of the third party 'free, deliberate and informed'?
 - A third party's act does not break the chain of causation if its a reasonable, involuntary response (e.g. self defence)
 - In pagett, the police's act did not break the chain of causation because they weren't acting freely or independently, but out of self-preservation. D remained substantially responsible.
- **Third party: Medical acts**
 - **(Evans and Gardiner):** Did the medical negligence accelerate the death to such a degree it prevented the act of D which would have caused the death from doing so? Did it overwhelm D's act? -> prosecution argument
 - **R v Smith:** The medical officer (who was simultaneously treating other serious stabbings) misjudged the seriousness of the victim's condition and delayed its treatment. This was not a NAI despite a 75% chance the victim would have recovered had there been a prompt blood transfusion.
 - **R v Malcherek; R v Steel:** the decision to turn off life support is not an intervening act if it's a bona fide and conscientious decision by a medical practitioner using generally accepted methods.
 - **Jordan:** medical care was 'palbably wrong' and overwhelmed the accused's act as the substantial and operating cause of V's death.
- **Victims traits: Refusal of medical treatment**

The accused must take the victim as they find them. This includes their physical and mental traits.

 - **(Blaue):** V refused blood transfusion due to religious beliefs
 - **(swan):** Did the accused's conduct have a 'persistent, long-term and catastrophic' effect on the V's quality of life and this quality of life led to the decision not to accept treatment?
- **Acts of self preservation (Royall):**
 - Did the conduct of the accused induce in the victim a well-founded and reasonable apprehension of physical harm such as to make the act of self-preservation a natural or reasonable response to the perceived threat? This test is applied by reference to the proportionality of the victim's

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| | <p>conduct to the threatened violence, but with an understanding that a person may act impulsively and rashly in response to a threat (and victim's are not expected to act perfectly logically). Significant weight is given to whether the victim was trapped in an enclosed space and had access to a safer alternative route.</p> |
| Mens Rea | |
| MR: Intention to kill/cause GBH | <p>To establish intention, P must prove BRD that D subjectively intended to bring about the death of V or to cause grievous bodily harm (GBH), otherwise known as really serious injury to V (Crabbe).</p> <p>YES: As D [<i>insert conduct</i>], it is clear that D intended to [<i>kill/cause GBH</i>] to V. Thus, intention is made out.</p> <ul style="list-style-type: none"> • IF a BUT: However, if intention is not made out then Prosecution would then move on to proving recklessness. <p>IF NO: However, considering that D [<i>insert conduct</i>], it is unlikely D intended to cause the death or GBH to V. Therefore, intention is not likely to be made out. Prosecution would then move on to proving recklessness.</p> |
| MR: Reckless as to death/GBH | <p>Prosecution would argue that D foresaw the probability that [<i>insert conduct</i>] would result in death or GBH (Crabbe), but proceeded regardless. In this case, probable means substantial or likely to happen.</p> <p>YES: prosecution may argue that D's foresaw that [<i>insert act</i>] carried an appreciable risk of death or BGH and proceeded regardless. On the facts, D [<i>insert conduct</i>]. Thus, it is likely recklessness can be made out.</p> <p>In the alternative, constructive murder will be considered.</p> |
| MR: Transferred Malice | <p>D may argue that as they intended to kill [<i>insert target</i>] but V was killed instead, intention cannot be made out. However, according to the doctrine of transferred malice the requisite intent is transferred from the intended V to the actual V. Given D had the intention to cause death or GBH to someone, intention can still be made out.</p> |
| Lawful Excuse | Raise here |
| Conclusion | On balance, the court is likely to find D is liable for murder. |

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| | <p>OR</p> <p>On balance, given [<i>unmade element of the offence</i>], the court is unlikely to find D liable for murder.</p> |
| <p>NOTE: Concurrence/ contemporaneity</p> | <p>When an AR is ongoing, the prosecution merely need to prove that the defendant had the requisite MR at some point during that process (Thabo Meli v R).</p> <p>On the facts, even though [<i>insert relevant fact</i>], the prosecution would argue that [<i>insert act</i>] was a continuing act and therefore when the MR was formed [<i>insert time</i>], the AR and MR did in fact coincide (Thabo Meli v R) and contemporaneity is satisfied.</p> |
| <p>HOMICIDE: Constructive (statutory) Murder</p> | |
| <p>Introduction</p> | <p>D may be liable for constructive murder under s 3A if the prosecution can prove BRD that D unintentionally caused the death of V by an act of violence done in the course of furtherance of a crime. If proven, upon first conviction, D shall be liable to be convicted of murder as though D had killed V intentionally.</p> |
| <p>AR: Act of Violence done in the course of furtherance of a crime</p> <p>S 3A</p> | <p>By an act of violence:</p> <ul style="list-style-type: none"> • Violence includes physical force, threats and menaces intended to induce fear, terror or intimidate to nullify resistance • The act of violence must have caused the death! • Violence is not restricted to physical violence and it can also include any threat of intimidation (Butcher). <p>Done in the course or furtherance of a crime:</p> <ul style="list-style-type: none"> • Armed robbery, aggravated burglary and rape (see R v Galas) • NOTE: The offence only requires that the act is in the 'furtherance' ('advancing'/'putting forward') of a crime of violence (R v Galas, R v Butcher), and so the crime of violence need not actually be completed. <p>In the facts, D caused the death of V with their conduct while in the course or furtherance of [<i>insert violent crime here</i>] (s 3A of CA), the crime of [<i>insert violent crime here</i>] can be considered a violent one as a reasonable person would realise that the crime is likely to involve violence. (This is bolstered in [<i>insert supporting case here</i>] where [<i>insert crime here</i>] is stated to be a violent crime.) [<i>insert MR and AR elements proved of the initial crime here</i>]. Thus, the death being caused in the course or furtherance of a crime of violence is made out.</p> |

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| | <p>OR maybe the crime cannot be proven BRD so this is not satisfied</p> |
| <p>MR: Unintentionally</p> | <p>To make out constructive murder, there is no requirement for intention or recklessness for the death of V to be caused. Instead, if P can prove BRD that D intentionally or recklessly engaged in the course or furtherance of a violent crime, then the MR for constructive murder will be satisfied.</p> <p>On the facts, it has been proven above that D [<i>intentionally/recklessly</i>] engaged in the course or furtherance of the violent crime of [<i>insert violent crime here</i>]. Thus, imputed intention can be made out.</p> <p>OR</p> <p>On the facts, it has not been proven that D engaged intentionally or recklessly in the course or furtherance of the violent crime of [<i>insert here</i>], as seen above. Thus, imputed intention cannot be made out.</p> <p>R v Ryan and Walker:</p> <ul style="list-style-type: none"> ● Ryan's act of shooting was violent ● It occurred during a prison escape which is the crime being furthered ● A reasonable person in Ryan's position would have foreseen death as a probable consequence of shooting during an escape, so it is irrelevant if Ryan's act was intentional or reckless. <p>NOTE: if voluntariness in question, see cases under T6 -> voluntariness is not really a requirement</p> |
| <p>Defences</p> | <p>See above</p> |
| <p>Conclusion</p> | <p>Thus, D will be liable for constructive murder under s 3A. OR Thus, given [<i>insert unmade element</i>], D will not be liable for constructive murder under s 3A.</p> <p>MENTION DEFENCE HERE</p> |