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HOMICIDE

MURDER — s 18(1)(a) Crimes Act 1900 (NSW)

Definition:

Unlawful killing of another person with **intent to kill**, **intent to cause grievous bodily harm (GBH)**, or **reckless indifference to human life**.

ELEMENTS

Actus Reus (AR) — Act or Omission Causing Death

To prove AR, Crown must show:

1. **Act or omission** by the accused caused death.
2. **Causation** — the act/omission must be a *substantial and operating cause* of death.
3. **Death** as defined by *Human Tissue Act 1983 (NSW) s 33*: irreversible cessation of brain or blood circulation.

Omissions:

An omission can only ground liability if the accused owed a **duty of care (DoC)**:

- Statutory, contractual or relational duty (e.g. parent/child) — *Stone v Dobinson*
- Voluntary assumption of care + control — *Burns v R*

Causation principles:

- Jury decides causation (*R v Evans & Gardiner*).
- Chain breaks only if new act is so overwhelming that the original act becomes insignificant — *R v Smith*; *R v Cheshire*.
- Ordinary natural causes don't break the chain (*R v Hallett*).
- Victim's refusal of medical treatment doesn't break chain — *R v Blaue* ("take your victim as you find them").
- Victim's unreasonable self-preservation act can break chain — *Royall*.

Mens Rea (MR)

The accused must have:

1. **Intention to kill or cause GBH**; or
2. **Reckless indifference to human life** (foresight of *probable* death — *Crabbe*).

Intent cases:

- Purpose ≠ motive (*Zaburoni*).
- Post-offence conduct can show intent (*Baden-Clay*).
- Foresight of risk ≠ intent but may be evidence of it (*STZAL*).

Reckless indifference:

- Must foresee the *probability* (not just possibility) of death (*Crabbe*).
- Not enough to foresee GBH.

Temporal Coincidence

Act and intent must coincide (*Meyers*).

If part of one transaction, coincidence can be stretched (*Thabo Meli; Le Brun*).

Constructive (Felony) Murder

If death occurs **during or immediately after** a serious crime (life/25 years max), D may be guilty of murder *even without intent to kill*.

DEFENCES

Murder can be reduced or defeated by:

- **Partial defences:** extreme provocation (s 23), substantial impairment (s 23A).
- **Full defences:** self-defence, necessity, duress, automatism, mental illness.

MANSLAUGHTER — s 18(1)(b)

Manslaughter applies where killing is **unlawful** but **lacks murder MR**.

Types

(A) Unlawful and Dangerous Act Manslaughter (UDAM)

Crown must prove:

1. Accused committed an **unlawful act** (must be criminal, not civil — *Lamb*).
2. That act **caused death**.

3. A **reasonable person** would recognise it as carrying an *appreciable risk of serious injury* — *Wilson*.

Supply of drugs:

If victim voluntarily and knowingly consumes — chain broken (*Burns*).

Fright/self-preservation:

If victim's reaction reasonable → chain intact (*Royall*).

If unreasonable → broken (*Burns*).

(B) Gross Negligence Manslaughter (GNM)

Crown must prove:

1. **Duty of care** owed to victim — *Stone v Dobinson; Taktak*.
2. **Gross breach** of that duty — conduct fell so far below reasonable standard that it deserves criminal punishment (*Nydam; Lavender*).
3. **Causation** — breach caused death.

Omissions:

Can found liability only if legal duty existed (e.g. assumed care and secluded victim — *Taktak*).

Grossness test: "Wicked negligence" showing disregard for life (*Taktak*).

EXAM-READY SCAFFOLD

Step 1 — Identify the Offence

- Start with **murder**, then consider **manslaughter** if MR not proven.

Step 2 — Murder

Actus Reus:

- Did the accused's act/omission cause death?
- Any duty of care?
- Breaks in causation (medical treatment, victim acts, natural causes)?

Mens Rea:

- Intention to kill/cause GBH?
- Reckless indifference (foresight of probable death)?

- Apply facts + case authority.

Coincidence:

- Did act + intent coincide? (Apply *Thabo Meli* if continuous).

Constructive murder:

- Did death occur during a serious indictable offence?

If murder not proven → proceed to manslaughter.

Step 3 — Manslaughter

Unlawful & Dangerous Act:

- Was there an unlawful act causing death?
- Would a reasonable person see appreciable risk of serious injury?

Gross Negligence:

- Was there a duty of care?
- Was it grossly breached?
- Did breach cause death?

Step 4 — Consider Defences

- Self-defence, necessity, duress, automatism, mental health impairment, provocation, substantial impairment.

Step 5 — Conclusion

- State which homicide offence (if any) is made out and why.