Murder

X may be guilty of murdering Y pursuant to s 18(1)(a) of the Crimes Act 1900 (NSW). The Crown bears the onus of proving BRD that X's act of […] caused his death, and that X acted with an intent to kill or inflict grievous bodily harm or a reckless indifference to human life (Woolmington v DPP).

- Punishable by imprisonment for life or for 25 years: s 18(1)(a).

1. **Actus Reus**

   Crown must prove D's voluntary act or omission which caused the death (s 18(1)(a)).

   a. **Act or omission**; e.g. "stabs someone fatally"

      i. *Where 2 or more acts/omissions are capable of being regarded as the act causing death, the **jury** is responsible for determining which of those acts was the relevant one* (Barwick CJ at [18], p 282 in *Ryan v R*).

F	While pointing gun at attendant during robbery, R accidentally pulled trigger by reflex an killed him → convicted of murder.
H	Acts: (1) presentation of gun towards deceased's back (2) discharge of gun (which directly caused death) – query which act caused death. Owens J: jury can find that the relevant act was neither pulling the trigger or showing the gun; the series of acts taken in their totality made up the entire act.

      ii. Act must be voluntary.

         1. S 18(2)(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only.

      iii. *Where the accused owes a DOC to the victim,* murder by omission *may occur where the accused fully realises the probability of the victim dying and deliberately omitted to act in response (R v BW & SW). **Relevant MR for murder by omission is usually reckless indifference to human life**. In BW & SW, the Court held that a mother's profound neglect for her child, who died from starvation and chronic malfunction, constituted an omission causing death.*

         1. The accused must have owed a **duty of care** to the deceased (*R v Taktak*; *R v BW & SW (No 1)*).
            a. Parent to child (*Burns*);
            b. Doctor to patient (*Burns*);
            c. Adult children do not owe a DOC to their patients by virtue of shared domesticity or the familial relationship (*R v Peak*);
            d. Drug supplier does not owe a DOC to take reasonable steps to preserve the life of their customers (*Burns*) → deceased's imperilment is caused by their own act in ingesting drugs.
         2. Exercises a deliberate choice to do nothing / put another in danger (*R v Taber* at [22]).

F	Child of BW and SW died of chronic malnutrition – mother found guilty of murder (and father of manslaughter) for breaching DOC as parents to provide adequate nourishment and medical attention to their child.
H	Evidential burden overcome – enough evidence for Jury to determine mental element BRD. • Missed and cancelled appoints + extend of malnourishment was sufficient for reasonable person with DOC to realise something's wrong prior to death.

   b. **Causation**; and

   The Crown must prove BRD that the accused's act caused the victim's death. A likely issue is whether [event] broke the chain of causation between the act and the death. This is a question of fact for juries to decide (R v Cheshire) In general, the causal link between the accused's violent act and the victim's death remains intact if, at the time of death, the original wound was still an operating and substantial cause of the death (R v Evans and Gardiner (No. 2) derived from *Smith* (1959)).

F	Accused stabbed deceased in stomach in prison – successful bowel resection operation performed. But P got ill and died in 8 days because of a stricture in bowel (common after bowel surgery).
Q	On appeal, did medical negligence break the chain of causation?
H	No. Blockage of bowel caused death – not failure to diagnose condition (however inept or unskilful). Jury applies this based on value judgment i.e. discretion and common sense, not fixed steps → rarely find causation chain to be broken.

i. Requirements:
    1. The act or omission is an **operating and substantial cause of death** (*R v Smith* affirmed in *R v Evans and Gardiner (No 2)*) but does not need to be the sole cause (*Hallett v R*).
        a. 'If at the time of death, the wound is *still* an operating and substantial cause' → chain of causation not broken; death can be said to be caused by wound even if there is some other cause also operating (*Royall v R*).
            i. Not every act that is necessary for death to occur is sufficient for the imposition of legal responsibility (*Swan v R* at [24], affirming *Royall*; *Chesire v R; Robb v R at* [56]).
        b. Causation only broken where second cause is overwhelming to make the first cause part of the history (Lord Parker CJ at 42-3 in *R v Smith)*
        - In *Smith,* the victim was stabbed + dropped twice while otw to hospital so treatment delayed + negligent medical treatment (failure to diagnose long puncture) → chain of causation not broken: stab wound was still an operating cause, even though not the sole cause → **high threshold** required to break causation.
    2. Was the voluntary act of the deceased a **natural consequence** of the previous act(s) of the accused? The deceased's response must be reasonable and proportionate for the causal chain to remain intact (*Royall v R*).
    3. There is **no *novus actus interveniens*** breaking the chain of causation (*Hallett v R*).

ii. *Novus actus interveniens* which break the chain of causation (*R v Evans and Gardiner (No 2)*):
    1. **Medical negligence**.
    Evans and Gardiner approved Smith's test in the context of medical negligence. In general, medical treatment must be extraordinarily bad so as to break the causal chain (R v Cheshire).
        a. Failure to diagnose complication: in *Evans,* the Court held that it remained open for the jury to find that the doctor's failure to diagnose a complication arising from treatment of the injury inflicted by the accused did not break the chain of causation.
        b. Accidentally blocked tracheotomy tube: even though negligence in treatment of the victim was the immediate cause of death in *R v Cheshire*, the jury should not regard it as excluding the responsibility of the accused UNLESS the treatment was so independent of his acts and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant (p. 849, 852) → strong test.
            i. Medical negligence is 'too frequent in human experience' to be considered abnormal in the sense of extraordinary (p. 850).
        c. Soldier stabbed: D may argue that the original wound was merely the setting in which extraordinarily bad medical treatment operated to break the chain of causation. Consider whether the surgery was independent of the original injury.

    Since the doctor's treatment of X's injury was unlikely to be classified as 'extraordinarily bad', it will likely remain open for the jury to find that X's original act was still the 'operating and substantial' cause of death.
        d. Example of extraordinarily bad treatment: in *Jordan v R*, doctors administered a drug to which the victim had a known intolerance and administered too much liquid intravenously, leading to the victim's death by pneumonia. The Court held it was open to the jury to find that this negligence broke the chain of causation.
            i. *Jordan* can likely be analogised to the numerous incidents of medical negligence, which likely had a cumulative detriment on the victim's prognosis.
        e. Negligence of medical staff e.g. paramedics, nurses does not break the chain of causation unless the act in question was palpably wrong (*R v Smith*).

    2. **Acts of nature.**
    The Defence may argue that the act of nature operated to break the chain of causation between the act and the death. The ordinary operation of natural forces will NOT break the causal chain, but an extraordinary act of God (e.g. earthquake) may be (Hallett v R).

F	Deceased died from drowning in water after being beaten unconscious by H.
Q	Did H cause the death, or did the action of the tide intervene?
H	Tide did not break causal chain because it was an ordinary operation of natural force. • Only if victim had consciously entered the water and drowned would that break the chain of causation. • If extraordinary operation of natural causes, left to the jury to apply substantial and operating cause test. • Here, leaving the deceased a few inches in water for him to later have drowned is not enough to satisfy this threshold.

a. To break chain of causation, event must be 'unwarrantable, a new cause which disturbs sequence of events [and] can be described as either unreasonable or extraneous or extrinsic.' (p. 43 in *Smith*).

3. **Refusing medical treatment or rejecting medical advice** – uncontroversial and does not need to be submitted to the jury.
The Defence may argue that the victim's supervening choice to refuse medical treatment operated to break the chain of causation. In Blaue, the eggshell skull rule states that any person who uses violence against another is required to 'take the victim as they find them' (Blaue).
   a. Refusal of medical treatment: Y's refusal to undergo treatment on moral/religious/seemingly unreasonable grounds can be analogised to the refusal of blood transfusion by a Jehovah's Witness in *Blaue,* which the Court held did not negate the causal link because there is no standard by which the judge the reasonableness of a person's medical decision.
   b. Discharged themselves against medical advice: Y's voluntary departure from the hospital contrary to medical advice is analogous to the victim in *Bingapore*, where the Court held that the accused's conduct does not cease to be a causative act merely because the victim acted to their own detriment. The victim's departure caused a loss of possible opportunity of avoiding death (i.e. undergoing operation/receiving treatment), from a still operating cause (i.e. violence inflicted by appellant).
4. 'The **voluntary and informed act of an adult** negatives causal connection' at [86] in *Burns*.

F	Burns and husband supplied victim with methadone – he died.
Q	The act of consuming drugs by the victim was a voluntary and informed act of an adult which broke the casual chain. • 'To supply drugs to another may be an unlawful act but it is not in itself a dangerous act. Any danger lies in ingesting what is supplied.' [76] • 'Absent limitation, mistake or other vitiating factor, what an adult of sound mind does is not in law treated as having been caused by another.'

5. **Act of fright or self-preservation**
In general, an act of self-preservation by the victim does not negative the causal connection where the act was reasonable and proportionate to the violence or threats posed by the accused (Royall v R). The jury may objectively apply the natural consequence test per Mason CJ in Royall, which provides that the accused's conduct will remain the cause of death if it 'induces in the victim a well-founded apprehension of physical harm such as to make it a nature consequence (or reasonable) that the victim would seek to escape and the victim is injured in the course of escaping'.
   a. Overreaction: per Deane and Dawson JJ in *Royall,* the Defence may argue that the victim overacted to the accused's threatening acts/words and thereby broke the causal chain.
   b. Victim's response must be reasonable and proportionate (Toohey and Gaudron JJ at [21]).

F	Victim fell from bathroom window to escape from life threatening violence. Evidence of D's forcible entry into confined bathroom.
H	Mason J: not required to determine the reasonability of response, just whether it was reasonable to try to escape. Favours **'natural consequences' test** → held reasonable.