

LAWS5004 - Summary

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MURDER

18 Murder and manslaughter defined

(1) (a) Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or 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.

(b) Every other punishable homicide shall be taken to be manslaughter.

ACTUS REUS

1. Act or omission causing death

- Law will only attach liability on omission to intervene in exceptional circumstances where special duty is recognised
- Example: *R v BW & SW*
 - Autistic child died of severe malnourishment due to extreme neglect by her mother
 - Duty of positive intervention because of the parent-child relationship
 - Ruled: intent or reckless indifference open to the jury
 - Mother fully realised probability of her daughter dying, but omitted to do anything about it (reckless indifference)

2. Act or omission **causing** death

- Must be causal link between actions of the accused & the result of death
- *R v Campbell* – causation a question of fact to be determined by jury through application of common sense
- **General test:** accused will be liable if their conduct was a **substantial and operating** cause of the person's death – *R v Smith*
- Particular conduct may be a **novus actus interveniens**

THIRD PARTY CONDUCT:

General principle for **negligent medical treatment**: unlikely that medical treatment made necessary by conduct of accused will lead to avoidance of liability even if performed in negligent manner.

- Foundational case – *R v Smith*
 - Smith stabbed the victim who died after negligent medical treatment
 - Doctors failed to diagnose lung puncture – Smith likely to survive if treatment had been diligent

- Question: whether doctors' negligence was novus actus interveniens
- Ruled: conviction appropriate as stab wound was still the **substantial and operating** cause of the victim's death
- *R v Evans & Gardiner (No 2)*
 - Victim stabbed by two other prisoners
 - Operation appeared to be successful & victim made recovery
 - 11 months later – victim died of complications
 - Medical negligence – prison doctors failed to identify fibrous tissue forming at site of operation (a common & easily treatable complication)
 - Question: whether chain of causation broken
 - Ruled: accused still causally responsible
 - Reasoned: bowel blockage the natural epilogue to the wound inflicted, medical negligence not sufficient to overwhelm original wounding, chain of causation not broken by lapse in time alone
- Contrast against *R v Jordan*
 - Victim died after negligent medical treatment of stabbing
 - Different circumstances – more significant lapse of time & more serious medical negligence
 - Victim's stab wound had almost healed when he was twice given antibiotic to which he was allergic – treatment was **palpably wrong**
 - Ruled: negligence was novus actus interveniens
- English case *Padgett* – other third party intervention
 - Accused shot at police officer while using victim (his girlfriend) as a human shield
 - Police returned fire & victim killed
 - Question: whether victim's death too causally remote to be imputed to original aggressor (the accused)
 - Ruled: accused guilty of murder
 - Reasoned: act of self-preservation by police involuntary & therefore did not break chain of causation

OPERATION OF NATURAL PROCESSES/ACT OF GOD

Hallett v R

- Attack between two men on side of a lake
- Victim died by drowning/asphyxiation after being left unconscious on lake bed
- Question: whether rising tide (causing drown) was novus actus interveniens
- Ruled: accused guilty of murder
- Reasoned: rising tide an ordinary operation of natural forces
- Suggested only extraordinary operation of natural forces would break chain of causation
- Extraordinary operation contemplated in the nature of earthquake or tidal wave

CONDUCT OF THE VICTIM

Royall v R – act of self-preservation

- Victim died after jumping from bathroom window of 6th floor flat – jumped in apprehension of attack/to escape current attack
- Accused claimed she had committed suicide

- Question: whether chain of causation broken by victim's attempt to escape
- Ruled: where victim killed by attempt to escape well-founded apprehension of violence at hands of accused & escape method **reasonable and proportionate** to threat occurring, accused's actions will still be substantial & operating cause of victim's death
- Reasoned: attempt at self-preservation the natural consequence of accused's actions
- Where method of escape highly irrational – death a consequence of victim's own actions
- Reasonable to be judged in context of victim's situation – consider options available, victim's fear for their safety & reaction on the spur of the moment

RIK v R – act of self-preservation

- D threatened V on rail platform, V jumped onto train tracks to escape & killed by train
- D charged with unlawful & dangerous act manslaughter
- Question: whether actions of V were reasonable & proportionate to threat occurring
- Ruled: verdict causation made out available on the facts
- Reasoned: 'reasonableness' to be determined by reference to options available to V & nature of D's conduct
- Crossing the tracks option most likely to allow V to avoid D
- D's conduct entirely unprovoked – suggestion of unpredictable behaviour
- 'Reasonable' to be judged by reference to capacity of person in fear for their own safety

R v Blaue – refusal of medical treatment

- Victim stabbed & taken to hospital
- Could be saved by blood transfusion, however refused to accept due to religious convictions (Jehovah's Witness)
- Ruled: refusal of treatment did not break the chain of causation
- Reasoned: accused must take victim as they find them – extension of eggshell skull rule

R v Singapore – unreasonable refusal of medical treatment

- Doctors suspected internal bleeding, however victim left hospital 'wantonly' then died
- Victim acted in irrational manner – was intoxicated & had suffered head wound
- Ruled: chain of causation not broken notwithstanding victim's actions to his own detriment

Burns v R – self-administration of lethal drug dosage supplied by accused

- Voluntary & informed decision by V to self-administer lethal drug dosage which break chain of causation
- Liability of individual who supplied the drug exculpated
- Autonomous 3rd party conduct not compelled by D to be regarded as responsibility of the person choosing to engage in the conduct

3. Act or omission causing **death**

- S20 of CA specifies when a child taken to be born alive – "if it has breathed, and has been wholly born into the world whether it has had an independent circulation or not."
- S33 of *Human Tissue Act* stipulates when death occurs for legal purposes
 - Irreversible cessation of functioning of the brain (a)

- Irreversible cessation of the circulation of blood in the person's body (b)

MENS REA

- Three alternate mental states under s18(1)(a): intention to kill, intention to inflict GBH, reckless indifference to human life
- Mental state may be determined by inference from surrounding circumstances – *Pemble*
- Close examination of accused's words & actions may provide basis for inference – *Matthews v R*
- Post-offence conduct may sometimes be used to prove requisite mental state – *The Queen v Baden-Clay*

1. Intention

- Intention (not motive) only relevant to establishing mens rea
- Conscious intention to kill victim
- Conscious intention to inflict GBH
 - Non-exhaustive definition of GBH in s4 of CA: killing of foetus, serious/permanent disfigurement, infliction of grievous bodily disease
 - General test: 'really serious' harm – *Smith v R*
- Doctrine of **transferred intent**: intention required "on some person" (s18(1)) – not necessarily the person who ended up as the victim

2. Reckless Indifference to human life

- Recklessness = subjective awareness/foresight of consequences, yet continuing with action regardless
- Example in *R v Crabbe*:
 - Accused drove truck through bar wall while drunk & killed 5 people
 - Question: whether direction of trial judge that foresight of *possibility* death would result was error of law
 - Ruled: must be subjective foresight of **probability** death will result
 - Probable is an expected outcome – equivalent to intention to bring about that outcome
- Reckless indifference in NSW – *Solomon v R*
 - Only foresight of **probability of death** (not GBH) will lead to conviction
 - Interpretation of phrase "reckless indifference to human life" – refers to loss of human life only

Temporal Coincidence

- Accused must be possessed of mens rea at the time of the actus reus – *Meyers v R*
- Principle given degree of elasticity – *Thabo Meli v R*
 - Accuse attempted to kill victim by striking him over the head
 - Believing victim dead (however was actually unconscious), accused pushed victim off cliff, causing his death

- Difficulty of temporal coincidence – accused no longer possessed of intention to kill at time of pushing victim off the cliff
- Ruled: conduct formed an ‘indivisible transaction’ & requisite mental state at some point within that transaction sufficient
- Pushing victim off the cliff was part of the common plan, therefore mental state extended to cover it
- Reasoning from *Thabo Meli* (UK) adopted in *R v Church* (UK)
 - Accused attacked victim after she refused to have sex with him
 - Convinced she was dead, accused threw victim in a river where she died from drowning
 - Ruled: jury entitled to regard accused’s conduct as series of acts culminating in victim’s death – intent at any point within series sufficient
- Approach of HCA in *Meyers v R*
 - Altercation between accused & girlfriend who died from head injuries later in hospital
 - Accused suggested head injury occurred after the altercation (when mens rea no longer present) – jury rejected evidence
 - Therefore: discussion of temporal coincidence was obiter
 - Court stated: “act and intent must coincide”
 - HCA suggested conviction may have been avoided if jury accepted accused’s version of facts – act of pushing victim after altercation was sufficiently divorced from earlier intent
 - Judgment criticised for favouring ‘snapshot’ view of coincidence
 - Suggests unresolved tension between UK & Aus approaches, however HCA did not conclusively resolve

CONSTRUCTIVE MURDER

- S18(1) – homicide in the course of/immediately after commission/attempting to commit a crime punishable by 25 + years imprisonment
- No subjective fault element for murder – fault element is that of base offence
- Offences which will activate constructive murder – armed robbery, sexual intercourse with a child under 10, manufacture & supply of certain prohibited drugs

MANSLAUGHTER

Voluntary: MR for murder present, but partial defence allows for manslaughter verdict – infanticide (s22A), extreme provocation (s23), excessive self-defence (s421)

Involuntary – MR for murder not present, but accused responsible for manslaughter under common law rules

- S24 of CA – manslaughter punishable by maximum of 25 years imprisonment
- S24 – if judge satisfied that nominal punishment sufficient, may discharge jury with result that acquittal will be recorded
- Where accused charged with murder – jury entitled to return verdict of guilty of manslaughter

UNLAWFUL AND DANGEROUS ACT MANSLAUGHTER

1. Accused committed an **unlawful act**