

Accessory after the fact

Intro

- An accessory after the fact is someone who assists the principal in the first degree to escape conviction after the offence has been committed. The offence must be a serious indictable offence
- For example, the accused knowing that the principal in the first degree has committed an armed robbery, hides the money so that it will not be found by investigating police- it is an offence of derivative responsibility (the principal's offence must be proved in order to prove the offence of the accessory after the fact)

Physical element:

- Is to assist the principal offender
- Controversial as how much assistance must be provided? To what end?

Fault element:

- The accused must not only assist the offender to avoid justice, they must also have the necessary knowledge that the principal offender has in fact committed an offence

Misprison of felony

- Misprison of felony is a common law offence committed where a person 'knowing that a felony has been committed he fails to disclose within a reasonable time, after having a reasonable opportunity for doing so'
- See R v Stone

Case list

Punishable homicide:

- In shooting cases, act is not confined to pulling the trigger, instead it is a compound act of bringing a loaded, cocked gun to somewhere

R v Taber, R v Styman (2002) book:2.9

- When does the law recognise a duty to act
- Law/court decided the following: status-based duty e.g. parent, some contractual relationships e.g. employer/employee, duty imposed by statute or voluntary assumption of duty
- Causation= A's act/omission must cause death of V
- Case of Royall shows that causation can get complicated

R v Katanzynski [2005] NSWCCA 72 book:9.36, 9.38

- Bear in mind, V dies, A tells story, is there a spin to it?

- V attacked A, A left pub, V followed, A spun around with loaded rifle, telling V to go away, V lunges, A apparently 'flinches' gun fires three times
- A claimed he had no intention of using the gun
- A convicted appealed as trial judge instructed jury wrong
- In shooting cases, act is not confined to pulling the trigger, instead it is a compound act of bringing a loaded, cocked gun to somewhere

R v Ryan (1967) 121 CLR 205 book:2.6

- Ryan took rifle to rob a petrol station, yet only bought it to scare off the teller. While tying up V, V spun around and A jumped, backwards and accidentally pulled the trigger, V dies
- A stated finger movement was involuntary
- How to prove this?
- In shooting cases, act is not confined to pulling the trigger, instead it is a compound act of bringing a loaded, cocked gun to somewhere

R v Murray (2002) 211 CLR 192

- In shooting cases, act is not confined to pulling the trigger, instead it is a compound act of bringing a loaded, cocked gun to somewhere
- A and V drunk
- At A's place, A heard V yell he wanted to fight him. A got a gun out to scare V away. V made a movement and something hit A in the head, making the gun go off, killing V
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Royall v R (1991) 172 CLR 378: book: 2.7, 2.10

- A claimed he didn't kill the deceased, she fell out a window and he forced his way into the bathroom to save her. Yet the blood of V was found above her height, a broken ashtray was found, and her hair in the toilet bowl
- The defence of A was that he did not cause her death- but if he did, it was without reckless indifference to human life, without intent to kill and without intent to inflict G.B.H
- Mc Hugh states 'the issue of causation is not controversial'
- A's acts are causative when: 1) A created V's fear of harm, 2) V felt the need to escape for self-preservation and 3) V's fear is reasonable- her desire to escape is a natural consequence of A's actions

Burns v R (2012) 290 ALR 713: book:2.12

- Involuntary manslaughter- unlawful and dangerous act
- A couple sold methadone to a man, who ingested it in the couple's home and died
- Whether the act of A was a substantial cause of death of the V, may depend upon the capacity of the deceased to make a fully informed and rational decision as a response to the A's act

- So where the A supplies the V with a toxic substance with the V ingests with fatal consequences, the question whether the act of supply is an act causing death may depend on the capacity of the deceased to decline the substance supplied
- Crown alleged that the act of supplying the drug was an unlawful and dangerous act-making A liable for manslaughter of V
- The H.C said that the supply of a drug could not be dangerous but relied upon an allegation that the A or her husband had injected the deceased with the drug
- French CJ stated that 'generally speaking, informed adults of sound mind are treated as autonomous beings able to make their own decisions how they will act'
- Exam: also, adults are autonomous beings, and should be according to French CJ, 'able to make their own decisions on how they will act'
- Supply of prohibited drug: although unlawful, is not a dangerous act for purposes of manslaughter where the recipient of the drug dies

R v Hallett[1969] book:2.13,2.19

- Good case for causation
- Act caused death, rather than omission

R v Moffatt (2000) 112 A Crim R 201 book:2.13

- Egg-skull rule: A must take V as they are
- Drunken fight, V had pre-existing health problems, and was bashed and strangled by A
- NSWCCA: claimed that A cannot avoid liability because of V's poor health or increased susceptibility to death
- Cannot claim death was an accident because of V's vulnerability, weakness etc.
- Test is whether A's act was a substantial cause (not reasonable foreseeability)

R v Hutty (1953) book:2.14, 2.15

- This case attempts to define when life begins and ends

R v Iby [2005] NSW 178 book: 2.17

- Court of criminal appeal considered when a child is 'born alive' for the purposes of manslaughter
- Court had to determine start of life
- According to common law, a child is alive when it is fully delivered
- Heartbeat suffices
- Breathing suffices- even if on a respirator
- Irrelevant if umbilical cord is cut or not

R v Crabbe (1985) 1 56 CLR 464 book:2.19

- In this case, the H.C considered to term 'reckless indifference to human life.'
- After A was thrown out of a bar intoxicated, he drove his truck into it, killing five people
- The trial judge said that a person was guilty of murder with reckless indifference to human life, if they realised this possibility that their actions would cause death, or that death was likely

- In this case Gibbs, Wilson, Brennan, Deane and Dawson claimed: ‘murder is unlawful homicide with malice after thought. Malice afterthought=
 - a) intention to cause death or G.B.D to a person and;
 - b) knowledge that the act may cause harm or G.B.H
- The test is simply whether the accused person knew that his actions were likely to cause either death or G.B.H
- How probable, in A’s mind, does death have to be
- Doesn’t matter if a reasonable person would have known/foreseen that death/GBH would probably result (objective)

R v Solomon [1979] 1 NSWLR 321 book: 2.19, 2.21

- This case considered the term ‘reckless indifference to human life’ - fault element of murder
- H.C identified that, where no statutory provision alters the common law as to the foresight of the probability of death or G.B.H amounting to murder, this is a sufficient fault element to make the accused guilty of murder

Moffa v R (1977) 138 CLR 601 book: 3.12

- Wife said she was leaving, , she threatened to show him nude photos of herself with another man and called him a ‘dark bastard’ Moffa cried and went outside, found a pipe and bashed he to death
- Mere words can amount to a provocation act if of an extreme and exceptional character
- Though words declaring end of relationship cannot constitutive provocation: seen in case R v Kumar

R v Kumar (2002) 5 VR 193 book: 3.16,3.17

- Withholding provocation from the jury
- Trial judge may accept that there is some evidence of a loss of self-control but may hold that, as a matter of law, no jury could find that an ordinary person in the position of the accused would have been provoked to that necessary degree

R v Davis (1998) 100 A Crim R 573 book:3.25

- Voluntary manslaughter- presence of the accused
- Actual element of provocation may not be directed intentionally or specifically against the accused
- In this case, the court of criminal appeal held that Davis could not rely on provocation when he was told that the victim had sexually assaulted his step-daughter and his niece
- The court held that in the absence of the victim, in the presence of Davis, had done anything which could be said to provoke him- the defence was not available