

## CLASS 4A – MURDER

Textbook: 753-760 (on mens rea)

### 9.5 Murder: Intent & Reckless Indifference

Crabble (1985) 156 CLR 464 at 465-72 (HC)

High Court: Gibbs CJ, Wilson, Brennan, Deane, and Dawson JJ -> Joint Judgement:

- Appeal from the Crown
- Facts of the Case
  - Respondent during the evening had consumed a substantial amount of alcohol, and visited Inland Motel where he drank in a crowded bar.
  - His behaviour caused a nuisance and was kicked out.
  - The following day, he drove his prime mover (with one trailer) through the war and into the bar; as a result, **five people died and many were injured**
  - The respondent **did nothing to assist the injured but left the motel**
  - Chief Justice of the Northern Territory directed the Jury “.. that you have to be satisfied beyond reasonable doubt, **on the question of recklessness, that he knew that there would be people in the bar**”
    - It is also a matter of law,... If he thought there might have been (people), but chose to blind himself, chose not to avail himself of any opportunity of finding out.
  - Chief Justice also directed the jury on the definition of **Murder**:  
“... [there is] an **intention to kill**, or an **intention to do really serious bodily injury**; or if when he kills someone, his **state of mind** is such that he **knows** what hes about to do is **likely to kill someone, but nevertheless goes ahead and does that act with reckless indifference to the consequences**; or.... when he does an act, he **foresees the possibility** that what he does **might cause death, or really serious bodily injury, nevertheless takes no reasonable available step to ascertain whether or not it will.**”
- Full court held that the jury was misdirected by these passages
  - assuming the doctrine of ‘wilful blindness’ -> It was erroneous to refer to **foresight of a possibility**, rather than of a **probability**, that people might be in the bar and that death or grievous bodily harm might result from the actions of the respondent.
  - Files to mention any element of **deliberation** – it suggests that a person should be treated as having knowledge of facts if he neglects to take reasonable steps (or perhaps any available steps) to find out the truth, even though he does not deliberately refrain from taking such steps because he prefers to remain in ignorance.

*Malice Aforethought – Not in the Criminal Code at that time*

- A person is guilty of murder if he commits a fatal act **knowing** that it **will probably** cause death or grievous bodily harm –**The word ‘probable’ means likely to happen** but (absent an intention to kill or do grievous bodily harm)

is not guilty of murder if he **knew only** that his act **might possibly** cause death or grievous bodily harm is not only supported by a preponderance of authority but is sound in principle

- The former is *not* a case of murder even if death ensues, unless death or grievous bodily harm is intended (or, perhaps- and it is unnecessary to consider this proposition – unless

## CLASS 5A INVOLUNTARY MANSLAUGHTER

### I. UNLAWFUL AND DANFGEROUS ACT-pg 766

#### Manslaughter by unlawful act

*Wilson (1992) 174 CLR*

- Head smashing case with a companion.
- Died of brain damage
- Manslaughter by an **unlawful act and dangerous act**
  1. The killing of a man in the course of committing a crime is manslaughter. The crime must be an act in serious breach of the criminal law.
  2. 'really serious injury' - *Holzer*
- **Unlawful and dangerous act**
  1. Convicted of manslaughter by reason of an unlawful and dangerous act causing death.
- **Battery Manslaughter-UK concept**
  1. A subjective test of intention and a low degree of harm
  2. The actus reus is the unlawful and dangerous act which causes the death
  3. The mens rea required related to the unlawful and dangerous act; that act must be willed and not accidental
- Conclusion
  1. Two categories of manslaughter
    - Manslaughter by an unlawful and dangerous act carrying with it an appreciable risk of serious injury
      - An appreciable risk of serious injury is required
    - Manslaughter by criminal negligence
      - It is unnecessary to prove that the accused's act was unlawful.
      - The test is 'a high risk that death or grievous bodily harm would follow'
- **Major test outlined in Wilson:**
  1. Unlawful act, and
  2. Must create an appreciable risk of serious injury, and
  3. The act must cause death of the victim

#### 2. Appreciable risk ->Characteristics of a reasonable person

- Whether a reasonable man would appreciate danger include the physical features of the situation and of the action of the accused man involved.
- If the circumstances in which the accused man's or reasonable man's appreciation of danger are to be assessed are to be regarded as including the ephemeral emotional and mental conditions of the accused man, the test begins to take on a **subjective appearance**

## 2. Serious injury -> grievous bodily harm

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### CLASS 6A – PROPERTY OFFENCES: LARCENY

964-986, 990-991

*“Chose in action”- Intangible*

*“Chose in possession” – Tangible*

#### 11.3 Larceny

- Common law offence in NSW
- **Crimes Act** only stipulate the maximum penalty
  - **117** Punishment for larceny
    - Penal servitude for five years
- **Confiscation of Proceeds of Crime Act 1989** allow for the imposition of forfeiture and pecuniary penalty orders

**Ilich (1987) 162 CLR 110** \*WA case\*\*They use a Code Provision\*

- Wilson and Dawson JJ summarised the elements of larceny:
  - “Larceny is committed by person who, **without the consent of the owner, fraudulently and without a claim of right** made in good faith, **takes and carries away** anything capable of being stolen **with intent**, at the time of such taking, **permanently to deprive the owner** thereof... larceny at common law requires a trespass.” [123]
- **Actus Reus**
  - There is **property capable of being stolen** (ie. Tangible)
    - Real property (Land) [can't be larceny] **∨ Personal property** (Not land)
    - **Tangible ∨ Intangible**
  - That property is in the **possession of a person other than the defendant** (referred to as **belonging to another**)
  - The property is **taken and carried away by the defendant** (referred to as **asportation**)
  - The taking is done **without the consent of the possessor** (sometimes referred to loosely as the “owner”)
- **Mens Rea**

- The property is taken **with an intention to permanently deprive**
- The property is taken **without any claim of right to the property**
- The property is taken **fraudulently** (ie. Dishonestly)

### Things capable of being stolen

- In general terms, **larceny is restricted to chattels**; that is, **tangible, moveable property**.

#### Fixtures

the Crimes Act contains a series of provisions extending larceny to the removal of things attached to land. Primarily they are s 139 (Stealing etc metal, glass, wood etc fixed to house or land) and s 140 (Stealing etc trees etc in pleasure-grounds etc)

#### The need for property to be a thing- intangible property and money