

Actus reus and causation of murder

- Father had to look after his 7-year-old daughter
- Locked her in a basement, didn't feed her
- Girl died => father had failed to carry out his duty of parenting => was liable for her death

R v Gibbins and Proctor (1918)

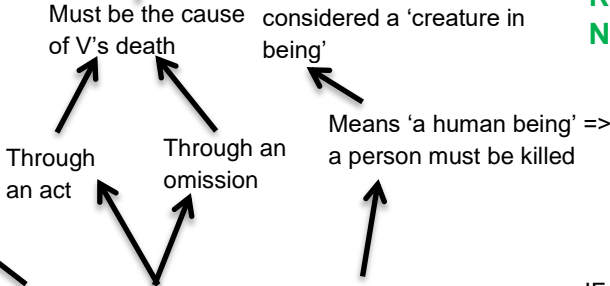
A child has to have an 'existence independent of the mother' to for it to be considered a 'creature in being'

Attorney General's Reference No. 3 1997

- D stabbed his girlfriend, who was 24 weeks pregnant; fewer than 3 weeks' later, the girlfriend gave birth severely prematurely due to the stabbing
- Baby died 121 days after its birth
- A child cannot be killed until it has lived outside of its mother

- 'Year and a day rule' – outdated; meant that when V doesn't die more than a year after the attack, the attacker could not be charged with his/her murder
- Law Reform (Year and a day rule) Act 1996 – no time limit on when the death may occur after an unlawful act
- BUT when death occurs more than 3 years after an attack, A-G's consent is needed for prosecution

Killing is in self-defence or defence of another or in the prevention of crime and D used reasonable force in the circumstances



No new intervening act breaking the chain of events + D must be the operative and substantial cause of V's death

Factual causation

Legal causation

'But for' test R v Pagett (1983) and R v White (1910)

R v White (1910)

- D was V's son; D wanted inheritance from his mother (V)
- D put cyanide in V's tea
- V suffered a heart attack before the drank tea and died; death was inevitable
- But for D putting cyanide in V's tea, she would have died anyway => not guilty of murder because chain of events is broken

The chain of events in R v Jordan was broken by a third intervening act (actions of a third party)

For example: flood, earthquake, tsunami, heart attack

D must be the 'operative and substantial' cause of V's death

R v Williams (1992)

- A hitch-hiker jumped from D's car and died from head injuries caused by his head hitting the ground
- D attempted to rob V (steal his wallet)
- Car was travelling at 30 mph
- V's act had to be reasonably foreseeable and had to be proportionate to the threat
- Did V's actions break the chain of events?

De minimus rule

The original injury that happened as a result of the defendant's actions/conduct was more than a minimal cause of the victim's death

R v Roberts (1972)

- Girl jumped from a car (driving between 20-40 mph) in order to escape from D's sexual advancements
- D was held liable for her injuries
- ABH under s47 of Offences Against the Person Act 1861
- V's actions were reasonable + foreseeable

R v Cato (1976)

- D purchased some heroin and took it to his home which he shared with V and two others
- They each prepared their own solution and then paired off to inject each other
- V prepared his own solution and the appellant injected him
- This was repeated during the night => V was found dead
- Manslaughter and administering a noxious thing under s.23 OAPA 1861

Court of Appeal held that the substantial cause if it effectively accelerated "... the moment of the victim's death"



Defined by Lord Coke in the 17th century

'The unlawful killing of a reasonable creature in being under the Queen's Peace with malice aforethought, either express or implied.'

The killing of an enemy in the course of war is not murder

R v Clegg (1995)

- A British Army officer was in Belfast
- He shot a teenager with his last of the 4 bullets he had fired whilst the teenager had been driving a stolen car
- Court held that D had used force without a lawful purpose
- Conviction was later overturned

'Thin-skull' rule

D must take V as he/she finds them

R v Blaue (1975)

- D stabs a young woman, who is a Jehovah Witness => she needs blood transfusion
- Religion prohibits her blood transfusion => she dies (being a Jehovah Witness made it more fatal)
- D's guilty because he has to take V as he found her (had to respect religion)

R v Malcherek (1981)

- D had stabbed his wife
- V was taken to hospital and placed on a life support machine
- V was not showing any activity in their brain stem => doctors later switched off the life support machines
- D argued that that the doctors' actions constituted a novus actus interveniens which broke the chain of causation
- At the time of switching off the machine, V was already dead => doctors were not the cause of death

IF V is still alive/'brain-dead'/kept alive by life-support machines, doctors are allowed to switch off life-support machines without being criminally liable considered

Mens rea of murder

R v Mohan (1975)

- A police officer ordered D to stop his car
- D pressed the accelerator
- D nearly hit the police officer (the police officer had to move away)
- D had the direct intention when putting his foot on the accelerator

R v Hancock and Shankland (1985)

- Ds were striking miners, who were on protest
- Then went on a bridge and pushed a concrete block onto a taxi to prevent it from reaching the mine
- The driver died

Direct intention: D desires the consequence

Indirect intention: D doesn't desire the consequence, but should have foreseen that it is likely to happen

The two types of malice can be established either by direct intent or by indirect intent.

R v Matthew and Alleyne (2003)

- Ds pushed V from a bridge over a river
- V fell 25 feet into the river and drowned
- Ds knew he could not swim
- Trial judge said that foreseeing virtual certainty of consequences was intention
- Ds appealed saying that the judge had gone beyond what was permitted
- CA upheld the convictions
- Court thought that if the jury was sure that the Ds had appreciated the virtual certainty of V's death when they threw him into the river => it was 'impossible' to see how the jury could not have drawn the inference that the Ds intended V's death

R v Woollin (1999)

- Woollin threw his 3-month-old baby towards a pram, but the baby hit a wall and fractured its skull and died
- Woollin must have foreseen the likelihood of his child hitting the wall, thus was held guilty

R v Nedrick (1986)

- D poured paraffin in a letter box and set it on fire
- D didn't directly intend to kill anybody, but his actions were foreseeable
- Direct intent was to scare his female neighbour

'The unlawful killing of a reasonable creature in being under the Queen's Peace with **malice aforethought, either express or implied.**'

MURDER

An intention to kill; to willfully and with premeditation intend to cause harm to another.

Express malice

Implied malice

Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart

R v Vickers (1957)

- D broke into the cellar of a local sweet shop
- D was aware that the old lady who ran the shop was deaf
- Old lady came in the cellar + saw D
- D hit her several times with his fists and kicked her once in the head => V died
- Court of Appeal upheld D's conviction for murder
- CA pointed out that where D intends to inflict grievous bodily harm and V dies => always sufficient in English law to imply malice aforethought

DPP v Smith (1961)

- Smith was ordered by a police constable to stop his car which contained stolen goods; D accelerated instead
- The police constable jumped onto the car, but fell off and was killed by another oncoming car after D violently swerved the car
- Smith was convicted of murder and appealed to the Court of Criminal Appeal

"... the greater the probability of a (natural) consequence the more likely it is that the consequence was foreseen and that if that consequence was foreseen the greater the probability is that that consequence was also intended."

Case is also known as the Soham murders

R v Huntley (2001)

- D was interested in underage girls
- D murdered (possibly asphyxiation) two 10-year old girls before disposing of their bodies in an irrigation ditch close to RAF Lakenheath, Suffolk
- D's girlfriend was sentenced to 3 ½ years for providing him with a fake alibi
- D was sentenced to at least 40 years in prison