

MURDER

Definition (pages 7-10)

Murder is a **common law** crime that is not defined in any statute. Until 1965 it carried the death penalty but the current sentence is mandatory life imprisonment. Judges can recommend that an offender serve a minimum sentence which currently stands at 15 years **Criminal Justice Act 2003**.

Lord Chief Justice Coke in the 17th century gave the original definition of murder. Over the centuries judges have modified it.

It is defined at common law as **the unlawful killing of a human being under the Queen's peace with malice aforethought and if death occurs after three years the approval of the Attorney General is required**. (modified by the **Law Reform (Year and a Day Rule) Act 1996**).

Actus Reus

The **actus reus** of murder comprises of the following elements:

- the defendant did the act of killing
- the act was unlawful (i.e. not killing in self defence or other valid defence)
- the act was a significant cause of death (see notes on causation) and
- the death was of a person 'in being' i.e. does not include a foetus

Act of killing

This can be an act or omission

Nedricks

Matthews

R v Gibbins and Proctor – in this case was it an act or omission?

The father of a 7-year-old girl and his mistress kept the girl separate from the father's other children and deliberately starved her to death. The father had a duty to feed her because he was her parent, and the mistress was also responsible as she had undertaken the girl under her care, so it was also her duty to feed the child. The omissions or failure to feed her was the deliberate action of killing or causing serious harm to her. They were guilty of murder

Human Being (reasonable creature in being)

Does this include a foetus? **AG's Ref (No 3 of 1994) 1997** The defendant stabbed his pregnant girlfriend in the face, abdomen and back when she was 22-24 weeks pregnant. 17 days after the incident the woman went into premature labour and gave birth to a live baby. The baby died 121 days later due to the premature birth. The defendant was charged with wounding and GBH on the mother and convicted for which he received a sentence of 4 years. On the death of the baby he was also charged with murder and manslaughter. The trial judge held that he could not be convicted of murder or manslaughter since at the time of the attack the foetus was not in law classed as a human being and thus the mens rea aimed at the mother could not be transferred to the foetus as it would constitute a different offence.

When does death occur?

R v Malcherek and Steel 1981

Two separate appeals were heard together. In Malcherek the defendant had stabbed his wife. In Steel the defendant was accused of sexually assaulting and beating a woman over the head with a stone. In both cases the victims had been taken to

hospital and placed on life support machines. The doctors in the respective cases later switched off the life support machines as both victims were not showing any activity in their brain stem. The defendants sought to argue that the doctors' actions constituted a *novus actus interveniens* which broke the chain of causation. **When is murder lawful? (Queen's peace)**

Re A (children) 2000 Airedale National Health Trust v Bland 1993 Tony Bland was a young supporter of Liverpool F.C. who was caught in the Hillsborough crush which reduced him to a persistent vegetative state. He had been in this state for three years and was being kept alive on life support machines. His brain stem was still functioning, which controlled his heartbeat, breathing and digestion, so technically he was still alive. However, he was not conscious and had no hope of recovery. The hospital with the consent of his parents applied for a declaration that it might lawfully discontinue all life-sustaining treatment and medical support measures designed to keep him alive in that state, including the termination of ventilation, nutrition and hydration by artificial means. **Causation- Scenario**

Briefly set out the 2 key elements.

What is a novus actus interveniens (NAI)? If a NAI is proven what is the outcome for a D?

List the different ways a NAI can occur.

In deciding whether legal causation has been proven the jury will need to consider if there has been an intervening act, which the D will allege has broken the chain of causation.

There must be a direct link from D's conduct to the consequence. A new intervening act, which breaks the chain of causation. This intervening act must be sufficiently independent of the defendant's conduct and sufficiently serious. These are potential factors that a D may raise to evade liability on the basis that they are not the significant cause of the injuries / death of V. However, the courts overall are reluctant to accept these arguments.

Different ways - thin skull rule, D didn't directly cause the death, medical negligence, life support machines, victims own act and unreasonable reactions

Mens Rea *Refer to your notes on Intention

The mens rea for murder is defined as **malice aforethought**- Lord Justice C 17th century definition, which has come to mean **either an intention to kill (express malice) or an intention to cause grievous bodily harm (implied malice)**. Either will be sufficient for murder. Grievous= serious harm, must prove that D wanted to kill them. Must prove the MR of murder in order to convict.

R v Vickers 1957: Vickers broke into the cellar of a local sweet shop; he knew that the old lady who ran the shop was deaf. However, the old lady came into the cellar and saw Vickers. He hit her several times with his fists and kicked her once in the head. She died as a result of her injuries. The CoA upheld Vickers conviction for murder. It pointed out that where a defendant intends to inflict GBH and the victim dies, that has always been sufficient in English law to imply malice aforethought. Intention is a purely subjective test-- what the defendant foresaw and intended. It can be **direct/express or oblique/indirect**. -common law definition

Section 8 criminal justice act 1967- evidential and subjective test for intention Test made for jury

Direct you don't need guidelines

Oblique intention means the judge gives the jury guidelines to help them

See earlier cases of R v Moloney, R v Nedrick and R v Woollin

Meaning of Grievous Bodily Harm

DPP v Smith 1961 R v Saunders 1985 R v Cunningham 1982

N.B Indiscriminate Malice and Transferred Malice – see earlier notes

Indiscriminate malice a class or victim in mind

Only for an essay question not to be referred to for a scenario

Evaluation of murder p.11

The Law Commission 2006 report on murder, Manslaughter and Infanticide noted the many problems on murder. Set out paragraph 1.8 below.

‘the law governing homicide in England and Wales is a rickety structure set upon shaky foundations. Some of its rules have remained unaltered since the seventeenth century, even though it has long been acknowledged that they are in dire need of reform. Other rules are of uncertain content, often because they have been constantly changed to the point that they can no longer be stated with any certainty or clarity’

The LC also made 5 major criticisms of murder (set these out):

1. The law on murder has developed bit by bit in individual cases and is not coherent as a whole
2. A defendant can be convicted of murder even though he or she only intended to cause serious harm
3. There is no defence available if excessive force is used in self defence
4. The defence of duress is not available as a defence to murder
5. The mandatory life sentence and the government’s sentencing guidelines do not allow sufficient differentiation in sentencing to cover the wide variety of levels of blameworthiness in the current law of murder

Make notes on the following p.11-12 and also refer to your notes on intention: a) Meaning of intention, the majority of murders involve the jury deciding if the defendant had direct intent – an intent to kill or commit GBH. If the prosecution cannot prove the D had direct intent then they must prove he had indirect, or oblique, intent. However, in some cases there may be some ‘moral elbow room’ where the law will recognise the existence of a moral dilemma or a good motive.

b) The serious harm rule, the Law Commission pointed out that parliament, when it passed its Homicide Act 1957, never intended a killing to amount to murder unless the defendant realised that their conduct might cause death. It stated that in its view, the present offence of murder is too wide. Under the present law on murder, a defendant is guilty of murder if they had the intention to cause GBH and cause the victims death. In some of these cases the defendant may even not know that death could occur, yet they are just as guilty as someone who deliberately commits murder

c) Mandatory life sentence, offenders aged 10-17, guilty of murder, the judge must order that they be detained at her majesty's pleasure. Offenders over 18, the judge passes a sentence of life imprisonment. Judge decides the minimum time the offender must serve. The judge cannot give a different sentence even if he/she feels that the defendant is not blameworthy. For other offences such as attempted murder, the judge can decide the most appropriate sentence. This makes it possible for judges to give community sentences where circumstances justify it e.g. R v Gotts, Gotts, a sixteen-year-old boy, tried to kill his mother as he claimed that his father had threatened to shoot him unless he did so. Gotts stabbed his mother and caused serious injuries from which she survived. Gotts was charged with attempted murder. The trial judge ruled that the defence of duress was not available to him on a charge of attempted murder and instructed the jury to not consider this matter. Following this, Gotts changed his plea to guilty and appealed the conviction based on the judge's jury direction.

d) Minimum sentences, when sentencing the judge will impose the mandatory life sentence and will fix the minimum number of years the offender must serve before being released on licence. The sentencing problems have been aggravated by the government's guidelines on these minimum sentences as laid down in the criminal justice act 2003. This gives three starting points for adult offenders 1. A whole life term for exceptionally serious cases such as premeditated killings of two or more people, sexual or sadistic child murderers or politically motivated murderers. 2. 30 year minimum for serious cases such as murders of police or prison officers, murders involving firearms, sexual or sadistic murders or killings aggravated by racial or sexual orientation. 3. 15 years minimum for murders not falling within the two higher categories. -- it is stated that minimum sentencing should only apply to first degree murders to create a fairer sentence structure.

Reforms p.13 Make notes on the following

a) Law Commission Consultation Report 'Murder Manslaughter and Infanticide' (2006) proposed that murder should be divided into 2 separate offences. Briefly explain these.

They also recommended that the Woollin guidelines on oblique intent should be codified. This would mean that foresight of a virtually certain consequence would remain as evidence of intention allowing juries to find it and thereby rejecting the legal test. However the government has failed to enact this proposal.

The Law Commission proposed that murder should be reformed by dividing it into two separate offences 1. first degree murder 2. second degree murder. 1st degree murder would cover cases in which the defendant intended to kill. It would also cover situations where the defendant intended to cause serious harm and was aware that his conduct posed a serious risk of death. Cases in which the D intended to do serious injury but was not aware that there was serious risk of death, would be second-degree murder. by dividing murder into separate categories, the mandatory life sentence would only apply to the first-degree murder. second degree murder would carry a maximum life sentence but would allow the judge discretion in sentencing.

b) The government's Consultation Paper 'Murder Manslaughter and Infanticide' (2008) rejected the LC's proposals on murder.

(Do not refer to the proposals on excessive force in self-defence or the Coroners and Justice Act 2009 as these are not relevant for the reforms of murder)

This paper rejected the Law Commission's proposal of completely reforming murder by making it a two-tier offence. The only area where government accepted that reform was needed was the lack of a defence for those who use excessive force in self-defence