

HOMICIDE 1 - PRELIMINARY ISSUES

Homicide is the killing of a human being by a human being. The different categories of homicide, eg murder, manslaughter and infanticide, all have the following points in common:

1. UNLAWFUL KILLING

The killing must be unlawful. Certain defences, eg self-defence, will make a killing lawful.

2. HUMAN BEING

The killing must be of a living human being. Unborn infants are protected by s58 of the Offences Against the Person Act 1861, s1 of the Infant Life (Preservation) Act 1929 and by the Abortion Act 1967, which relate to child destruction and abortion. An interesting recent case is:

Attorney-General's Reference (No 3 of 1994) [1997] 3 All ER 936.

3. DEATH WITHIN A YEAR AND A DAY

The rule known as the 'year and a day rule' (that is, the rule that, for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person's death if more than a year and a day elapsed before he died) was abolished by s1 of the Law Reform (Year and a Day Rule) Act 1996.

Under s2(1) of the 1996 Act, proceedings to which this section apply may only be instituted by or with the consent of the Attorney-General. Under s2(2), s2 applies to proceedings against a person for a fatal offence if-

- (a) the injury alleged to have caused the death was sustained more than three years before the death occurred, or
- (b) the person has previously been convicted of an offence committed in circumstances alleged to be connected with the death.

Under s3, s1 does not affect the continued application of the year and a day rule to a case where the act or omission which caused the death occurred before the day on which the Act was passed (17 June 1996).

4. CAUSATION

The defendant must be proved to have caused the victim's death (although the defendant's act need not be the sole or the main cause of death). Two matters need to be considered: did the defendant in fact cause the victim's death, and if so, can he be held to have caused it in law? Further problems may arise where, after the defendant has inflicted an injury on the victim, some other act or event intervenes before death; or where the defendant receives negligent medical treatment. The victim may also die attempting to escape from the defendant.

A) Causation in fact

To establish causation in fact, the "But for" Test established in *R v White* [1910] 2 KB 124 must be applied. It must be proved that, but for the defendant's acts, the death of the victim would not have occurred:

R v White [1910] 2 KB 124. The defendant placed poison in a glass containing his mother's drink. She drank the contents of the glass, but died of heart failure before the poison could take effect. The defendant was charged with murder but convicted of attempted murder. With regard to causation in fact, the defendant's act in placing poison in his mother's drink did not in any way cause her death. If one were to ask, "But for the defendant's act would his mother have died?", the answer would obviously have to be yes; she would have died anyway, thus disproving causation in fact.

B) Causation in law

In *R v Smith* [1959] 2 QB 35, it was held that the defendant's act would be regarded as the cause in law if it could be shown that it was the operating and substantial cause of the victim's death (see below).

PROBLEMS WITH CAUSATION

C) Intervening acts or events

Sometimes, after the defendant's act, there is an intervening act or event before the death occurs which contributes to the death. We must therefore consider the legal effect of an intervening act.

The defendant is not responsible for the death where the victim dies as a result of some subsequent act, unconnected with the defendant's act, which would have caused the death on its own even if the defendant had not inflicted the original injury on the victim. However, not every intervening act will relieve the defendant from liability for the subsequent death. There are three different grounds on which the defendant might still be held to have caused the death:

(i) *COMBINATION OF CAUSES*

If the death is caused by a combination of two causes, and the defendant's act remains "an operating and a substantial cause", then the defendant will still be liable.

R v Malcherek (1981) 73 Cr App R 173. The defendant attacked a woman causing injuries that were so severe that the victim had to be placed on a life support machine. Doctors decided to switch off the machine after determining that the victim was "brain dead" and that there was no prospect of recovery. Half an hour later the victim was pronounced dead. The defendant was convicted of murder and appealed on the ground that the doctors had broken the chain of causation between the defendant's attack and the death of the victim by deliberately switching off the life support machine.

The Court of Appeal held, dismissing the appeal, that the operating and substantial cause of death had been the original wounds inflicted by the defendant. The effect of the life support machine was merely to hold the effect of the injuries in suspension; as soon as the machine was switched off the original wounds continued to cause the death of the victim, even if death followed within seconds of the machine's disconnection.

(ii) **NATURAL CONSEQUENCES OF D'S ACT**

The victim may die as the result of some act or event which would not have occurred but for the act done by the defendant and which is a natural consequence of the defendant's act - that is, it was foreseeable as likely to occur in the normal course of events. In such a case, the defendant will still be held to have caused the death.

For example, a man is attacked and left lying in the road. The attacker will be responsible for the death if the man dies from loss of blood, exposure, an infection of the wounds, or if he is run over by a car. However, the defendant would not be liable if the man was struck by lightning, killed by another assailant or killed by a collapsing building during an earthquake.

Human intervention, where it consists in a foreseeable act instinctively done for the purposes of self-preservation, or in the execution of a legal duty, does not break the chain of causation:

R v Pagett (1983) 76 Cr App R 279. The defendant, to resist lawful arrest, held a girl in front of him as a shield and shot at armed policemen. The police instinctively fired back and killed the girl. The Court of Appeal held that the defendant's act had caused the death and that the reasonable actions of a third party by way of self-defence could not be regarded as a *novus actus interveniens* (new act intervening). The defendant had caused the death as the intervening act had been a foreseeable consequence of his action and had not broken the chain of causation. The defendant was liable for manslaughter.

(iii) **CHARACTERISTIC OF THE VICTIM**

If the intervening act is a characteristic of the victim then it does not have to be foreseeable and will not break the chain of causation. The "Thin Skull" Rule, which provides that a defendant must take his victim as he finds him, will apply. That is, if D hits V on the head with the degree of force that would usually cause nothing more than slight bruising, but because V has an unusually thin skull causes V to suffer a fractured skull and brain damage, D cannot rely on evidence of V's physical shortcomings to show the chain of causation has been broken. For example:

R v Hayward (1908) 21 Cox CC 692. A man chased his wife into the street shouting threats and kicked her. She collapsed and died from a thyroid condition which made her peculiarly susceptible to physical exertion and fear. He was convicted of manslaughter.

Similarly, if D attacks V, and V dies because he chooses not to seek medical treatment, the chain of causation will not be broken, both because V was under no duty to seek help, and because D must take his victim as he finds him:

R v Blaue (1975) 61 Cr App R 271. The defendant had stabbed the victim, who was a Jehovah's Witness, 13 times, and she was rushed to hospital where doctors told her that she would die if she did not have a blood transfusion. The victim refused on religious grounds and died from her wounds shortly after. The defendant was convicted of manslaughter (on grounds of diminished responsibility) and appealed on the ground that the victim's refusal of treatment, being unreasonable, had broken the chain of causation. Lawton LJ held that the defendant had to take his victim as he found her, meaning not just her physical condition, but also her religious beliefs. The defendant could not argue that his victim's religious beliefs which inhibited

her from accepting certain kinds of treatment were unreasonable. The question for decision was what caused the death. The answer was the stab wound.

R v Dear [1996] Crim LR 595. The defendant had slashed the victim repeatedly with a Stanley knife following allegations by the defendant's 12 year old daughter that the victim had sexually interfered with her. The victim died two days later. The defendant appealed against his conviction for murder, arguing that the chain of causation had been broken because the victim had committed suicide either by reopening his wounds or because he had failed to take steps to staunch the blood flow after the wounds had reopened themselves. The defendant claimed that the suicide constituted a *novus actus interveniens* (new act intervening) and that the judge's direction to the jury that the defendant caused the death if "firstly ... [the victim] took that action because of the wounds ... secondly ... he would not have done so unless he was wounded" was wrong.

Dismissing the appeal, the Court of Appeal cited *Smith* (1959), *Blaue* (1975), *Malcherek* (1981) and *Cheshire* (1991) and held that the real question was whether the injuries inflicted by the defendant were an operating and significant cause of/contribution to the death. It would not be helpful to juries if the law required them to decide causation in cases such as the present by trying to distinguish between the victim's mere self-neglect (no break in the chain) and the victim's gross self-neglect (break in the chain). Here the victim's death resulted from bleeding from the artery which the defendant had severed. Whether or not the resumption or continuation of that bleeding was deliberately caused by the victim, the jury were entitled to find that the defendant's conduct made an operative and significant contribution to the victim's death.

D) Death caused by medical treatment

Another set of cases where causation problems arise are those concerning negligent medical treatment of the original injury in homicide cases. The courts have decided in what circumstances the medical treatment received by a victim, following an attack by the defendant, will relieve him of liability for homicide if the victim subsequently dies.

R v Jordan (1956) 40 Cr App R 152. The defendant stabbed the victim who was admitted to hospital and died eight days later. In the Court of Appeal, the fresh evidence of two doctors was allowed to the effect that (a) in their opinion death had not been caused by the stab wound, which was mainly healed at the time of the death, but by the medical treatment; (b) the victim had been given an anti-biotic to which he was allergic and large amounts of intravenous liquid; and (c) this treatment, according to the evidence, was "palpably wrong", and the direct and immediate cause of death (pneumonia). The court held that the stab wound was merely the setting within which another cause of death operated, and quashed the conviction. They held that a jury might not have been satisfied that the death was caused by the stab wound had they had all the medical evidence and expert opinion.

Jordan was distinguished by the Court of Appeal in *R v Smith* [1959] 2 QB 35, as a "very particular case depending upon its exact facts".

R v Smith [1959] 2 QB 35. The defendant was involved in a fight with a fellow soldier during which he stabbed the victim twice with a bayonet, resulting in the victim being taken to the medical station where he died about one hour later. On being charged with murder the defendant argued that the chain of causation between the stabbing and the death had been broken by the way in which the victim had been treated, in particular the fact that: (a) the victim had been dropped twice whilst being carried to the medical station; (b)

the medical officer, who was dealing with a series of emergencies, did not realise the serious extent of the wounds; and (c) the treatment he gave him was "thoroughly bad and might well have affected his chances of recovery". The defendant was convicted of murder and appealed unsuccessfully. The court held that the defendant's stabbing was the "operating and substantial cause" of the victim's death. In this case the victim clearly died from loss of blood caused by the stab wounds inflicted by the defendant. Only if the original wound could be said to have merely provided the setting in which another cause of death operated could it be said that the death did not result from the wound.

The modern test is contained in:

R v Cheshire [1991] 3 All ER 670. The defendant shot the victim twice who was taken to hospital and died two months later. At trial, the cause of the victim's death was given as "cardio-respiratory arrest due to gunshot wounds" and the defendant was convicted of murder. The defendant appealed and introduced expert evidence to the effect that (a) the death had been caused by a rare complication resulting from the medical treatment he had received, and that (b) the chain of causation had been broken by the negligent medical treatment (the doctors had failed to realise the seriousness of a respiratory blockage and should have reacted more quickly). The Court of Appeal upheld the murder conviction asserting that "the rare complication ... was a direct consequence of the appellant's acts, which remained a significant cause of his death". Beldam LJ laid down the following test:

Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant.

Therefore, to relieve the defendant of liability, the medical treatment must:

- (a) be independent of the defendant's act, and
- (b) be potent in causing death, thus
- (c) reducing the defendant's act to insignificance.

E) "Escape cases"

A defendant may be guilty of homicide where he causes such fear in the victim, that the victim desperately tries to escape, and is killed in the process of so doing. The factors required for liability are contained in the case of:

DPP v Daley and McGhie (1980) AC 237. The defendants chased the victim and threw stones at him. In attempting to escape he tripped and fell and was subsequently found to be dead. The defendants were charged with murder and convicted of constructive manslaughter. Lord Keith summarised what, in their Lordships' view, the prosecution had to establish in such cases, namely:

- (1) that the victim immediately before he sustained his injuries was in fear of being hurt physically;
 - (2) that his fear was such that it caused him to try to escape;
 - (3) that whilst he was trying to escape, and because he was trying to escape, he met his death;
 - (4) that his fear of being hurt there and then was reasonable and was caused by the conduct of the defendant;
 - (5) that the defendant's conduct which caused the fear was unlawful;
- and

(6) that his conduct was such as any sober and reasonable person would recognise as likely to subject the victim to at least the risk of some harm resulting from it, albeit not serious harm.

CAUSATION

It may be necessary, in some cases, to give a jury further guidance on the issue of causation, particularly where it is possible that the victim's reaction was out of all proportion to the defendant's threat.

R v Roberts (1971) 56 Cr App R 95. In a case involving a charge under s47 OAPA 1861, a girl who was a passenger in the defendant's car injured herself by jumping out of the car while it was moving. Her explanation was that the defendant had made sexual advances to her and was trying to pull her coat off. The defendant was convicted. In the Court of Appeal, Stephenson LJ explained that the correct test for causation in law was to ask whether the result was the reasonably foreseeable consequence of what the defendant was saying or doing. His Lordship stated obiter that the chain of causation would be broken by the victim doing something "daft" or so unexpected that no reasonable man could be expected to foresee it.

This point was addressed by the Court of Appeal in:

R v Williams and Davis [1992] 2 All ER 183. The defendants gave a lift to a hitch-hiker and allegedly tried to rob him. The victim jumped from the moving car (travelling at about 30 mph) and died from head injuries caused by falling into the road. Stuart-Smith LJ stated:

the nature of the threat is of importance in considering both the foreseeability of harm to the victim from the threat and the question of whether the deceased's conduct was proportionate to the threat; that is to say that it was within the ambit of reasonableness and not so daft as to make his own voluntary act one which amounted to a *novus actus interveniens* and consequently broke the chain of causation. It should of course be borne in mind that a victim may in the agony of the moment do the wrong thing.

Consequently, the chain of causation will only be broken if the victim's actions were unreasonable.

R v Corbett [1996] Crim LR 594. The defendant and the victim, a mentally handicapped man of 26 who suffered from time to time with mental illness and had problems with high alcohol consumption, had been drinking all day. At about 9.30pm they had an argument and the defendant began to hit and head-butt the victim. The victim ran away, fell into the gutter and was struck and killed by a passing car. At the defendant's trial for manslaughter, the trial judge directed the jury to consider whether what the victim did was within the range of foreseeability and whether his reaction might be something expected of a person as drunk as he was.

On appeal, the defendant contended that the judge should have directed the jury to consider whether the victim's death was the natural consequence of the defendant's conduct. If any other conclusion was possible then the defendant should have been acquitted. Relying on *Roberts* (1971), the Court of Appeal dismissed the appeal and held that the judge had properly directed the jury on foreseeability.