

Murder at Common Law

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Homicide - any killing of one human by another human

Murder - killing of a human being by another human being
w/malice aforethought

- Human being - btwn birth & death
- Death - no longer breathing, no heart function
 - Must occur w/in 1 year and 1 day from D's conduct

- Actus Reus
 - Voluntary Act
 - Ex. Shooting gun at V, stabbing V w/knife, running over V w/car, etc.
 - Omission - must have legal duty to act
 - Ex. Parent to minor child, spouses, Puts another at risk for serious harm, imposed by statute, etc.
 - Good Samaritan laws in some states
 - Social Harm
 - Death of a human being
- Causation - actual cause + proximate cause
 - Actual Cause - "But-for" test
 - *Result would not have occurred but for the actor's conduct*
 - Identify person(s) or natural forces necessary for result
 - Ask: "But for D's conduct, would the result have occurred when it did?"
 - If yes, D is NOT the actual cause of the harm.
 - If no, D is the cause in fact of the harm.
 - Concurrent Acts
 - "substantial factor" test
 - If each was sufficient to bring about the prescribed harm = actual cause
 - Acceleration

- Proximate Cause - "Legal Cause"
 - Intervening Act
 - Foreseeability
 - ◆ *Objectively* such that a "reasonable person would have perceived the result"
 - ◆ *Subjectively* such that this particular D actually perceived the result

1st Degree Murder - Specific Intent to kill + willful, deliberate, and premeditated killing

- Mens Rea
 - Purposefully or knowingly kill **AND**
 - Willfully, deliberately premeditated killing
 - Purposeful? **OR**
 - *Deliberate* - measure and evaluate major facets of a choice or problem
 - *Premeditated* - think about beforehand

2nd Degree Murder - Specific Intent to kill, Specific Intent to cause GBH, Inferred (strong likelihood that conduct would cause death)

- Mens Rea
 - Purposeful or knowing
 - **Depraved Heart** (Extreme Recklessness)
 - D has actual, **subjective knowledge of circumstances that objectively would cause the reasonably prudent person to realize that likelihood of death**
 - Base, anti-social motive
 - Wanton disregard for human life
 - High degree of probability
 - Natural consequences of the act dangerous to human life
 - D knows of risk and disregard it
 - **Felony Murder**
 - Guilty if death results from conduct during commission or attempted commission of felony
 - W/o regard to mental culpability of death itself

- Felony must be inherently dangerous or committed w/conscious disregard of risk by D
- Deaths natural and probable consequence of felony
- Felony **independent of homicides**
- "*Abstract approach*" (Abstract)
 - Do the elements of felony demonstrate peril to human life w/o regard to facts of particular case
- "*On-the-facts approach*" (Specific)
 - Under **facts** and **circumstances** of the case, was there a foreseeable danger to human life?

Voluntary Manslaughter - intentional, unlawful killing that *would be* 2nd degree murder **EXCEPT** for the presence of one of the following:

- (a) **heat of passion** upon reasonable provocation by V
 - Extreme assault or battery
 - Mutual combat
 - Serious injury of a close relative
 - Sudden discovery of a spouse's adultery
- (b) induced by sudden combat
- (c) in the course of using excessive force in self-defense

Involuntary Manslaughter - unlawful killing that is accidental

- Wanton or reckless conduct
 - Creates high degree of likelihood that GBH will result to another **OR**
- Battery
 - D knew or should have know endangered human life
- Criminally negligent homicide
 - Should D realize substantial and unjustifiable risk?
 - Would a reasonable person have realized the risk?
 - Under facts **know to D**, would reasonable person infer the risk?