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Introduction to English Law

Lecture 4: Criminal Law

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Structure of the Lecture


1. General principles of criminal law
2. Elements of a crime
3. Murder
4. Manslaughter

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Section 1

General principles of criminal law


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General Principles (1)

Nature of the crime

- Offences against the State
- Queen brings the case: *R v. Smith*
- Need a "guilty mind"
- Level of proof: beyond reasonable doubt (c. 90-99% sure)
- Adversarial and not inquisitorial: [Clip from Kavanagh QC](#)
- Aims:
 - Punishment
 - Reduce re-offending
 - Rehabilitation

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General Principles (2)


Custodial and community sentences

Custodial sentence – prison (court must state reasons)

Community sentence:

- A curfew order
- A probation order
- A community service order
- A combination order (probation order + community service)
- A drug treatment order
- An attendance centre order
- A supervision order
- An action plan order

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General Principles (3)

Indictable and summary offences

Summary – can be tried by courts having summary jurisdiction (w/out a jury)

Indictable – before the Crown Court with jury

Reflects seriousness of the crime. Difficult, often depends on facts:


- offences triable only summarily
- offences triable only on indictment
- offences triable either way

Does England have the death penalty?

Abolished for murder in 1965

Abolished for treason and piracy with violence in 1998

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General Principles (4)


- Actus reus
- Mens rea

} These we will discuss

- Strict Liability
- Parties to a crime
- General defences
- Vicarious liability
- Inchoate offences (e.g. attempt)

} These we won't discuss

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Particular Crimes (1)


- Murder and manslaughter

} These we will discuss

- Offences related to homicide
- Non-fatal offences against the person
- Sexual offences
- Road traffic offences
- Theft and related offences
- Offences involving deception
- Blackmail and Forgery
- Burglary and related offences
- Handling and related offences
- Offences of damage to property
- Computer misuse offences
- Criminal libels and related offences
- Offences against public order, etc. etc.

} These we won't discuss

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Particular Crimes (2)

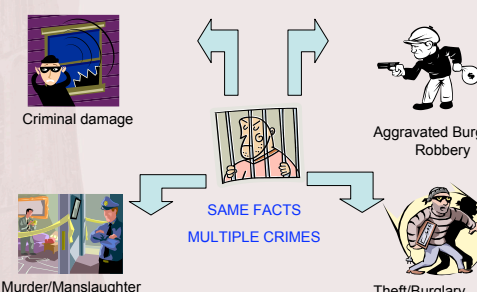
Imagine the following:

Bart is a thief. He has been staking out a house in a residential area for some time. He has chosen Tuesday night to burgle the house. He enters via a window, which he breaks. He then steals a large sum of money and is in the process of disconnecting the video. At that moment, Angela returns home and catches Bart in the act. Bart pulls out a gun and threatens to kill Angela. A struggle ensues and Angela is killed. Bart picks up the video and runs away. Less than 1 hour later he is arrested in the local park.

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Particular Crimes (3)




SAME FACTS
MULTIPLE CRIMES

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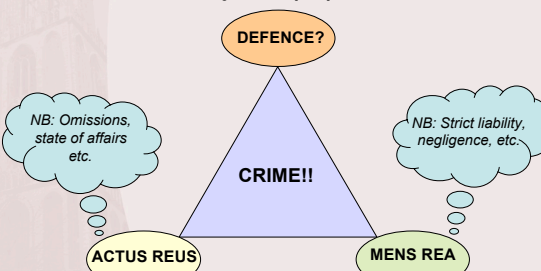
Section 2

Elements of a crime


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Elements of a Crime: Overview

Woolmington v. DPP [1935] AC 462



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Elements of a Crime: *Actus Reus*

Problem areas

1. *State of Affairs*
Larsonneur (1993)
2. *Omissions*
Fagan v. MPC (1969)
Airedale NHS Trust v. Bland (1993)

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Elements of a Crime: *Mens Rea*

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Intention	<i>Moloney</i> [1985] AC 905 <i>Nedrick</i> [1986] 3 All ER 1
Subjective Recklessness	<i>Cunningham</i> [1957] 2 QB 396
Objective Recklessness	<i>Caldwell</i> [1981] 1 All ER 961
Negligence	<i>McCrone v Riding</i> [1938] 1 All ER 157


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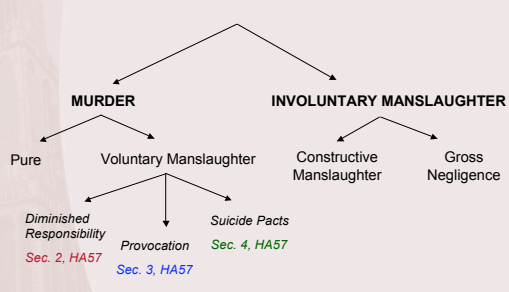
Section 3

Murder

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Particular Crimes: Homicide



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graph TD
    Homicide --> Murder
    Homicide --> IM[INVOLUNTARY MANSLAUGHTER]
    Murder --> Pure
    Murder --> VM[Voluntary Manslaughter]
    IM --> CM[Constructive Manslaughter]
    IM --> GN[Gross Negligence]
    VM --> DR[Diminished Responsibility]
    VM --> P[Provocation]
    VM --> SP[Suicide Pacts]
    DR --- DR_S["Sec. 2, HA57"]
    P --- P_S["Sec. 3, HA57"]
    SP --- SP_S["Sec. 4, HA57"]
    
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Murder (1)

Definition

Murder is when a man of sound of sound memory, and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature *in rerum natura* under the king's peace, with malice aforethought, either expressed by the party or implied by the law

No statutory definition – This is all common law!


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Murder (2)

- 1. Who can commit it?**
Anyone who is responsible for actions:
 - **Age:** Under the criminal age of responsibility (10, in Scotland it's 8!)
 - **Insanity:** M^cNaghten rules
 - **Diminished responsibility:** This is, however, a defence
 - **Real person:** Because cannot suffer penalty – life in prison
- 2. Where can it be committed?**
s.9 Offences against the Persons Act 1861 & s.3 British Nationality Act 1981
Jurisdiction over all British citizens, regardless of where committed

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Murder (3)

3. Who can be the victim?

Any human being, i.e. cannot murder a dog!

Problems:


- At what stage is foetus a human? Not murder until born alive, but
- s.58 Offences against the Person Act 1861
 - prohibits attempts to procure miscarriage from conception to birth
- s.2 Infant Life (Preservation) Act 1929
 - Prohibits killing child capable of being born alive

4. Death within one year and one day

Pre 1996: must have occurred within 1 yr and 1 day
 Now, murder regardless of time, although proof issues

- Law Reform (Year and a Day Rule) Act 1996

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Murder (4)


5. Causing death

Factual Question: D, by his act or omission caused death.
Legal Question: D's act/consequences of it operating at time of death
 What about administration of drugs?

- *Airedale NHS Trust v. Bland* [1993] 1 All ER 821
 The established rule is that a doctor may, when caring for a patient who is, for example, dying of cancer, lawfully administer painkilling drugs, despite the fact that he knows that an incidental effects of that application will be to abbreviate the patient's life.

5 tests: sight, hearing, movement, pain and communication: Brain stem death test

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Murder (5)

6. Mens rea of murder

Technical term: malice aforethought, but


- Neither ill-will or premeditation are required!
- Crucially important since without MA then manslaughter.

DPP v. Smith [1961] AC 290
Objective test: not what the D contemplated, but what the ordinary reasonable man would have contemplated.

Moloney [1985] AC 905

- Intention to kill *any* person, or
- Intention to cause grievous bodily harm to *any* person


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Intention for Murder (1)

<p>Current Law</p> <p>Intent to kill Intent to cause serious bodily harm</p>	<p>Proposed Law</p> <p><u>First degree murder</u> Intent to kill</p> <p><u>Second degree murder</u> Intent to cause serious bodily harm and foreseeing death as result</p>
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Intention for Murder (2)

<p>Current Law</p> <p><i>Advantages</i> Allows borderline cases to still be convicted under murder</p> <p><i>Disadvantages</i> Lack of clarity Mandatory sentence</p>	<p>Proposed Law</p> <p><i>Advantages</i> Clearer distinction between cases, although still allows for seriousness</p> <p><i>Disadvantages</i> Could end up with borderline cases</p>
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Correspondence principle v. Subjectivity principle

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Murder (6)

7. Sentence

Life in prison: Always!
 Death penalty removed in 1965:

- Murder (Abolition of Death Penalty) Act 1965

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