

HOMICIDE 2 - MURDER

DEFINITION

The classic definition of murder is that of Sir Edward Coke (*Institutes of the Laws of England*, 1797):

“Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any country 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 law, so as the party wounded, or hurt, etc. die of the wound or hurt, etc. within a year and a day after the same.”

For the purposes of convenience, we can say that murder is the unlawful killing of a human being under the Queen's peace with malice aforethought. However, death no longer need occur within a year and a day.

ACTUS REUS

1. UNLAWFUL KILLING

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

The act (or omission) of the defendant must have been the legal cause of the death of the victim. Causation must be established.

2. HUMAN BEING

The killing must be of a living human being.

3. QUEEN'S PEACE

Under the Queen's peace means that the killing of an enemy in the course of war will not be murder.

4. DEATH WITHIN A YEAR AND A DAY

The year and a day rule was abolished by the Law Reform (Year and a Day Rule) Act 1996.

MENS REA

1. MALICE AFORETHOUGHT

The *mens rea* for murder is malice aforethought. The House of Lords in *R v Moloney* [1985] AC 905 held that nothing less than intention to kill or cause grievous bodily harm (g.b.h.) would constitute malice aforethought: merely foreseeing the victim's death as probable was insufficient.

(a) Intention to kill

Murder is a crime of specific intent. Intention in this context includes direct or oblique intent. Direct intent covers the situation where the defendant desired the death. Oblique intent covers the situation where the death is foreseen by the defendant as virtually certain, although not desired for its own sake. The most recent authority on intention is:

R v Woollin (1998) The Times, July 23.

(b) Intention to cause G.B.H.

In *R v Vickers* [1957] 2 QB 664, the Court of Appeal held that a defendant could be convicted of murder if it was established that he had intended to kill, or had intended grievous bodily harm. The latter was accepted as sufficient *mens rea* for murder because if a defendant was willing to inflict g.b.h., how was he to know that the victim might not die? An intention to cause g.b.h. at least evidenced a willingness to accept a substantial risk that the victim might die.

In *R v Cunningham* [1981] 2 All ER 863, the defendant repeatedly struck the victim around the head with a chair resulting in his death. The prosecution contended that while there was no intention to kill, there had been an intent to do really s.b.h. The defendant's plea of manslaughter was rejected and he was convicted of murder. The House of Lords stated that an intention to cause "really serious injury" was sufficient to amount to the *mens rea* for murder.

THE SENTENCE FOR MURDER

The punishment for murder, a mandatory sentence of life imprisonment, is fixed by the Murder (Abolition of Death Penalty) Act 1965. On sentencing a murderer the judge may recommend to the Home Secretary the minimum period which should elapse before the prisoner is released on licence.