

CHAPTER 7

LEGAL AND SOCIAL DIMENSIONS OF PERSONAL CRIME: HOMICIDE

CHAPTER OUTLINE

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LECTURE OUTLINE

I. Introduction

Discuss Dalili case.

II. Criminal Homicide

Homicide is the killing of a human being by another human being. Not all homicide is criminal. Some may be justified, such as in self-defense, while others may be excused because the degree of culpability does not rise to the level required for a criminal offense. At common law, there were two types of criminal homicide, murder and manslaughter.

A. Corpus Delicti

In a criminal homicide, this consists of the death of a human being caused by a criminal act. Although the discovery of a murder victim's body is not required for a successful prosecution, the corpus delicti, or proof beyond a reasonable doubt that a murder occurred, is required.

B. Taking a Life

Discuss how life is defined in the law and the issue of viability. For a criminal homicide to occur at common law the victim had to be born alive. Modern statutes may choose to define life to include a fetus, and some classify illegal abortions as a criminal homicide.

C. Defining Death

At common law, death occurred when the heartbeat and respirations ceased. Today, many courts use the brain death standard, which is said to occur when there is an absence of physiological or electrical brain activity that can be registered. Note that brain death may occur even though respirations and a pulse may continue.

Many jurisdictions have adopted the Uniform Determination of Death Act, which provides that the individual has either 1) irreversible cessation of circulatory and respiratory functions, or 2) irreversible cessation of all function of the brain, including the brain stem.

D. Time of Death

A criminal homicide must be the proximate result of the criminal act, and cannot be so remote that it is not the natural and probable consequence of the criminal act. Other time

limits that may be established by statute, and how some states have abolished a time limit altogether as long as a causal connection can be established between the criminal act and resulting death.

Discuss how sometimes death occurs after the fatal injury, and in some cases, homicide prosecution under common law require that the death of the victim within a year and a day from the time that the ultimately fatal act took place. This term is referred to as the year-and-a-day rule. The rule is based on the belief that proof of causation becomes more difficult with the passage of time, which can result in potentially unjustified prosecutions and convictions.

E. Proximate Cause

A criminal homicide must be the direct and proximate result of the criminal act, whether that is an overt act, act of omission or criminal negligence. Proximate cause is said to occur when the result of the act is reasonably foreseeable at the time the act is committed, even though the precise harm does not need to have been anticipated.

Explore with students examples of criminal acts with intervening causes, such as medical negligence, which may not cut off the chain of causation, and supervening causes, such as outside forces that cause the death and would break the chain of causation to hold the actor liable for criminal homicide. (Note: This would not preclude prosecution on other lesser offenses if the elements were present.)

III. Murder

A. Malice Aforethought

A historical term which denotes the evil intention of killing or injuring someone. However, hatred or ill will is not required. It has also been used with the term premeditation, and under present law it encompasses several states of mind (e.g., purpose and intent). Malice may be express or implied, such as when it may be inferred from the facts and circumstances of the case that the killing was done with malice aforethought. The premeditation does not need to be of a precise time or duration.

B. Capital Murder

Those murders for which the death penalty is permitted to be imposed under state law guidelines. This highest form of murder is called aggravated murder and murder in the first degree in some jurisdictions. It may include premeditated murder, but also may include other statutory variations that define aggravating factors which would enhance the killing to a level sufficient to impose a sentence of death.

C. Felony Murder

At common law, if in the commission of a dangerous felony a death occurred, even if not specifically intended, a defendant could be charged with felony murder. The rationale behind this was that there are some crimes that are so inherently dangerous that carry a threat of substantial harm (e.g., rape, arson, robbery and burglary) that the perpetrator of that offense would be accountable if there was a deadly result from committing those crimes. The rule has been abolished in England, but has many variations in most American jurisdictions. (Remind students of the MRS. BAKER acronym for those common law felony offenses.)

IV. Manslaughter

The unlawful killing of another without malice. Under modern statutes, the crime has taken on many variations to the elements of the offense.

A. Voluntary Manslaughter

This is the unlawful killing of another in response to provocation by the victim. Recognizing that the killing may still be intentional, it recognizes that if there was sufficient provocation brought on by the victim that would induce a reasonable person into acting with sudden passion or a fit of rage, then that killing should not be treated as a murder. Give examples, including traditional finding your spouse engaged in sexual intercourse with another person. There cannot be a sufficient time for cooling off; the killing must be the product of rage. Many jurisdictions hold that this crime is in the nature of an affirmative defense, meaning the accused must put on evidence that the act was done under such serious provocation.

B. Involuntary Manslaughter

An unlawful killing that is caused by the commission of an unlawful act that is not a dangerous felony (which would make the killing felony murder), or which occurred as a result of culpable recklessness or negligence. Note the difference from voluntary manslaughter in that here there is not intent to kill.

Provide examples of how these unlawful killings differ by providing an example with the same result, and the only thing that changes is the actor's state of mind.

V. Negligent Homicide

This unlawful killing is not defined in all jurisdictions, but occurs when a death results from a negligent act, such as mishandling a firearm. Culpable negligence is shown when the actor failed to exercise a reasonable standard of care.

A. Vehicular Homicide

The killing of another occurs as a result of reckless operation of a vehicle, such as drag racing or driving under the influence, where the conduct falls into the category that the offender acted with heedless indifference to the consequences of his act, even if the precise result was not intended.

Remind students that these offenses may be called different names with varying elements, depending upon their jurisdiction and how the legislature has chosen to define the elements of those offenses.

VI. Suicide

At common law, anyone who assisted in a suicide was a party to murder. Many modern statutes may define the elements of an assisted suicide, which do not rise to the level a murder when the actor takes a passive role.

RESEARCH PAPER TOPICS

1. How many different ways can a criminal homicide be committed in your jurisdiction? What are the distinguishing elements, factors or characteristics between the different offenses?

STUDENT ACTIVITIES

1. Assign students to identify a popular movie in which a criminal homicide was committed. What were the facts that supported the elements of the charged offense? What facts could have been developed in the movie plot that would have supported a lesser charge?

CASE STUDIES

1. What makes a murder case famous or notorious? Is it the number of victims? How the crime(s) were perpetrated? Who is the victim? Choose one of these to research and report upon the facts of the case that made it a crime of murder:

- [Velma Margie Barfield](#)
- [David Berkowitz - The Son of Sam](#)
- [Ian Brady - The Moors Murders](#)
- [Ted Bundy - Ladykiller](#)
- [Colin Ferguson - The Long Island Railroad Massacre](#)
- [Karla Homolka and Paul Bernardo](#)
- [Charles Manson and the Tate-LaBianca Murders](#)
- [Murder and Mayhem in the Osage Hills](#)

- [Charles Chi-tat Ng](#)
- [Dennis Rader - The BTK Strangler](#)
- Michael Skakel and the Martha Moxley Murder
- [The Black Dahlia Murder Case](#)
- [The Jessica Lunsford Case](#)
- [The Jeffrey MacDonald Murder Case](#)
- [The 'Mississippi Burning' Case](#)
- [The Scott Peterson Case](#)
- [The Trial of James Ford Seale](#)
- [The Trial of Andrea Yates](#)
- [The Zodiac Killer](#)

REFERENCES AND RESOURCES

1. Notorious murder cases throughout history at:

www.trutv.com/library/crime/notorious_murders/

2. Anatomy of a Murder (1959), starring Jimmy Stewart and directed by Otto Preminger.