

## Ch. 8 Homicide – See Mens Rea for Term Definitions

### I. What is Death/Homicide

A. Eulo: You can't get away with murder by arguing that it was the discontinuation of the victim's life support that was the actual cause

1. Note: Where a victim's death is prematurely pronounced due to a doctor's negligence, the subsequent medical procedures may be a cause of death, but that negligence would not be a superseding cause relieving a defendant of liability. However, if premature pronouncements of death were due to gross negligence or intentional wrongdoing of doctors, the intervening medical procedure would be such a superseding cause of death. The propriety of medical procedures is thus integral to the question of causation.

### II. Intentional Murder – Intentional (Purposefully or Knowingly)

A. The killing of a human being by another human being with Malice aforethought (which includes intent to cause gross bodily harm) (MPC: Purposefully or Knowingly)

1. Knoller: Malice is implied when a killing is proximately caused by an act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life.

B. Premeditated 1st Degree Murder

1. Forest: First-degree murder is the intentional and unlawful killing of a human being with malice and with premeditation and deliberation. This allowed for a 1st Degree murder Conviction for Δ's killing his terminally ill father.
2. Guthrie & Midgett: requires evidence that Δ considered and weighed his decision (please tell the class that they will not be tested on degrees of murder)

### III. Unintentional Murder – Recklessness + (Extreme Disregard for the Value of Human Life)

A. \*\*People v. Moore: Does driving 7 in a 35 zone, driving on the wrong side of the road, and driving through red lights amount to Recklessness+ (Unintentional Murder) or is it mere Recklessness (Involuntary Manslaughter).

### IV. Voluntary Manslaughter – Mitigated Murder; (1) Extreme Emotional Disturbance + Intent to kill or cause gross bodily harm; OR (2) Imperfect Self Defense

A. The killing of a human being by another human being WITHOUT Malice aforethought (MPC: recklessly)

B. Reasonable reason or excuse for the passion – Objective & Subjective Components, NEED BOTH: Under the circumstances that the actor believed them to be - Casassa

1. Objective: A normal person in Δ's position would be distressed
2. was, in fact, distressed.

a. Assumes general social and religious beliefs – believing that an abortion doc is a killer does not mitigate

b. Steps into the PHYSICAL shoes of Δ; so blindness=yes, PTSD- no.

c. Words alone:

i. MAY mitigate to manslaughter Under MPC

ii. May not mitigate to manslaughter Under CL – Giouard

3. Minors: Modified Objective/Subjective Standard: whether the provocation was sufficient to have made a reasonable person of the same age and sex as the defendant, under the same circumstances, act as the defendant acted. - Camplin

### V. Involuntary Manslaughter – Recklessness: Consciously disregards a substantial & unjustifiable risk; includes MUST HAVE BEEN ACTUALLY AWARE for the purposes of prosecution.

– Gross deviation from Ordinary, law-abiding person standard.

A. Unjustifiable: Surgeons will take SUBSTANTIAL risks, but they are justifiable – no crime

B. Substantial: Merely getting into a fistfight is not enough to raise to the level of reckless conduct

1. Grounds for not finding recklessness

a. The bar usually sees ton of brawls

b. The way they were fighting didn't create a conscience disregard

2. Special circumstances with child neglect: Williams: Where the failure of a person to act while under the duty to do so (not getting medical aid for 17-month-old daughter) is the proximate cause of the death of another, that person may be convicted of involuntary

manslaughter, even though his conduct was no more than ordinary negligence.

- C. **\*\*People v. Moore**: Does driving 7 in a 35 zone, driving on the wrong side of the road, and driving through red lights amount to Recklessness+ (Unintentional Murder) or is it mere Recklessness (Involuntary Manslaughter).

## VI. Felony Murder

A. **MPC Felony Murder: Raises a REBUTTABLE presumption of Recklessness +**

B. **Common Law Felony Murder – Conclusive presumption of Mens Rea for Murder - Fuller**

1. Non-rebuttable presumption where enumerated felonies are committed

2. **Three Limitations:**

- a. An “**inherently dangerous**” underlying felony is required (not specific to the situation) – an imminent danger to the victim.
  - i. Felony Murder crimes: They all involve someone taking control of other persons or creating a situation that would quickly get out of hand and be dangerous to twenlife. – crime must be dangerous in general, if it is not but was carried out in a specifically dangerous way, the it’s not felony murder, it’s Recklessness or Recklessness +.
  - ii. **Biggies**: Rape, armed bank robbery, kidnapping, burglary
  - iii. **Also Included**: shooting at an uninhabited dwelling; poisoning w/ intent to injure; arson; grossly negligent discharge of firearm; cooking meth; kidnapping; reckless/malicious possession of a destructive device.
  - iv. **Not** child endangerment/abuse; false imprisonment; **practicing medicine w/o a license**; grand theft; conspiracy, **ALL possession crimes**; extortion;
    - (1) **Howard**: Driving with willful or wanton disregard for the safety of persons or property, while fleeing from a pursuing police officer, is not an inherently dangerous felony for purposes of the felony-murder rule.
- b. **Merger Doctrine**: “**An independent felonious purpose.**” Must exist for the felony on which the doctrine hangs.
  - i. Therefore: Assault (w/ or w/o weapon), battery, child abuse, manslaughter, etc. do not qualify – **See Smith**
- c. **Agency OR Proximate Cause Doctrines** (JD’s must choose one or the other)
  - i. Agency Doctrine (Majority Rule – Better Rule) – EXCLUDES acts by police and third parties - “the death must be caused by acts in furtherance of the felonious purpose.”
    - (1) **Sophopone** - When a killing results from lawful acts of a law enforcement officer attempting to apprehend a felon, a co-felon is not responsible for the death under the felony-murder doctrine.
  - ii. Proximate Cause Doctrine (Minority Rule – worse Rule)– INCLUDES acts by police and third parties – Any death that results can be the basis of felony murder – Worse Rule

## VII. Death penalty Cases:

A. **Gregg**: DP does not violate 8th Amend.

B. **McClesky**: Capital punishment is constitutional even though statistics indicate a risk that racial considerations may enter into capital sentencing determinations.

C. **Payne**: Victim impact evidence may constitutionally be offered during the sentencing phase of a capital murder trial.

D. **Tison**: The death penalty may be imposed upon a felony-murder defendant whose acts constituted reckless disregard for life.