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**The Validity Measurement of Murder using Model Penal
Code of Statutory Codes and Common Law Jurisdiction
based on Heidegger's Theory of Truth**

Zharama Llarena



The Validity Measurement of Murder using Model Penal Code of Statutory Codes and Common Law Jurisdiction based on Heidegger's Theory of Truth

Zharama Llarena^{1*}

Doctor of Jurisprudence student

School of Law and Justice, University of Southern Queensland, Australia

*Corresponding Author's Email: zharllarena21@yahoo.com.ph

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Abstract

Purpose: Heidegger's philosophy of truth is a critical revelation concerning criminalization. The idea of truth has been a long series of debates among scholastic artworks since the idea of man's interactions cannot be extrapolated to knowledge-seeking existence. Hence, evidence law, pertaining to types of killings, such as degrees of murder, with depraved heart killings of another, based on statutory codes and murder from common law jurisdiction, have elements for evaluation of its severity of criminal offense subject to punishment based on Model Penal Code. Although centuries have passed, erudite articulation of these issues led to development of questions, like 'what are the elements of murder crucial for unlawful perpetration?', 'what are the arguments concerning exact copy of legal instruments?' or 'what must be the facts needed to make it essential for validity of measurement concerning crime perpetration of murder?', for tools of becoming.

Methodology: This article asserts that when the concept of truth, known as *Aletheia* (disclosure), is applied to criminal law, there must be three repercussions for this truth characterization. First, *Aletheia* is not restricted to propositions resulting to discovery of its various forms depicting Being-in-the-World. Second, the idea of truth does not only involve a substance for language and thought, but also exposure of factual materials. Lastly, *Aletheia* simultaneously reveals, and hides planned occasions constantly discussing

that the truth is always a becoming process, a series of returning existence.

Findings: Every discussion of truth in murder, under criminal law, has the tendency to create another intricate philosophical issue. The three exceptional principles of truth, namely, correspondence, coherence, and pragmatic theories, are deemed to be inadequate in resolving the questions on proof of facts as mentioned due to issue of existence.

Recommendation: The theory of Heidegger suggests that we must rely on ancient Greek concept of 'unconcealment.' Upon this validation, this paper applies critical assessment to reveal the concept of truth, seeking justice based on proof of facts involving crime perpetration of murder constituting Heidegger's opinions and judicial decisions. Heidegger's truth is designed to Dasein (existence) as for being. The philosopher believes in the existence of truth due to exposure of its existence, hence, the Australian Legal System serves as the common ground in formulating laws based on legal theories as legislative framework pre-emptive to constitutional law towards application of its legal practice and regulatory policies to be in harmony set for amendments of constitutional gaps in terms of applying the critical assessment of Heidegger to other comparative laws based on political agendas for monetary success.

Keywords: *Murder, Correspondence, Coherence, Pragmatism, Existentialism*

1.0 INTRODUCTION

1.1 Criminal Law Characterization

Responsibility refers to accountability or answerability. It is utilized in the criminal law in a criminal responsibility sense and thus, pertains to answerability to the criminal law. No person should be accountable to the criminal law for results not legally liable to him. The current problem does not emerge unless there is an association with the outcomes characterized by the one charged within the imputability rules. Meanwhile, results properly liable to a particular individual may be very detrimental and yet not under such occurrences as to demand him to respond criminally for what he has performed. Whether they do or do not demand him so to respond presents the responsibility problem.

Crime is always uttered to demand both intent and act. As so utilized the word “intent” has quite various definition than “intention.” An effort to prevent this variant utilization of the word has resulted to this advice: For crime guilt there should be the joint or union facilitation of intent and act, or criminal negligence. This is not an enhancement. It denotes the utilization of intent in the austere sense of intention, and with this restriction the mere criminal negligence addition is insufficient to provide full coverage to the mental element engaged in crime. However, either expression form, highlights the mental element existence. Setting aside for the moment (1) the so-called civil offenses which are outside the true crime periphery, (2) the change possibility by statute, and (3) interpretation difficulties in particular occurrences, blameworthiness is found vital to criminal guilt.

The phrase criminal intent usually has been utilized to describe this blameworthiness demand. At other occasions, general criminal intent has been used to highlight that the mental element is so assigned not restricted to actual intention. Thus, it is important to conclude a very poignant boundary between actual intent and the several mind states included within the quite loose label of general criminal intent. The term criminal intent is clustered to several mind states.

The blameworthiness demand usually has been couched in law Latin: “*Actus non facit reum, nisi mens sit rea.*” And it has been general to choose two words from this sentence and exchange “*mens rea*” for “guilty mind” or “mind at fault.” Thus, *mens rea* is crucial to criminal guilt.

Explained in other words, each crime is comprised of two constituent parts, namely, the physical part and (2) the mental part. These may be defined quite sufficiently as the physical crime part and the crime mental part. However, shorter labels are required, for discussion uses. The terms “guilty deed” and “guilty mind” are not broadly adequate since the former may be perceived to be satisfactory for punishment, whereas the union of both parts is needed for crime conviction. Thus, it may be excellent to exchange Latin words which have the same definition. These words are *actus reus* and *mens rea*.

The general mens rea. The mental crime element is sometimes recognized as a mind state general to all violations, and adequate for a few, even though a supplemental mental element may be needed for others. Explained as a formula: “Mind-state-X is general to all crimes and is adequate for conviction except the specific violation needs some supplemental mental element such as mind-state-Y and mind-state-Z.

Such a formula may possess some worth if heed is granted to restrict its employment rather narrowly. An individual may be so premature that nothing can occur in his mind which will perceive the juridical demand of *mens rea*; thus, it may be uttered that for *mens rea* the individual's mind should not be too premature. Again, for *mens rea* the mental faculties should not be too vastly distracted by mental disease; and under various occurrences a sane mind should not be too vastly diverted by a misinterpretation of the associated facts or compelled by particular compulsion types. In the absence of specificity, it is adequate to emphasize the demand of excluding each mental pattern which comprises any determinant adequate in law to declare one who has performed the specific act in problem. If each such determinant is excluded and there is at the moment, an intent to perform the act which comprises the *actus reus* of a particular violation, the outcome may be uttered to be the "general *mens rea*." However, it is vital to incorporate that for particular crimes it has substitution probability for some mental determinant for the actual intent to perform the *actus reus*.

In brevity, while *mens rea* has particular determinants which remain fixed, these have to do with the common outlines of the mental pattern rather than with the short details. For *mens rea*: (1) on the negative side there should not be any determinant found which is adequate for declaration; (2) on the positive side there should be an intent found to perform the act which comprises the *actus reus* of the violation charged. This is the so-called "general *mens rea*" or "general criminal intent" which is general to all true crime. It is absolutely necessary, and is adequate for guilt of some violations even though some supplemental mental element is needed for others.

The *actus reus* should be the same in two crimes as in manslaughter and murder. However, for the major part, it varies from crime to crime. In burglary, the *actus reus* is the breaking into the dwelling abode at night of another; in murder it is homicide; in battery, it is the unlawful force employment to another individual. The other constituent element also varies from crime to crime. In common law burglary, the *mens rea* is the intent to commit a felony or subsequent to that, theft; in murder, it is malice aforethought; in battery, no more is required than the so-called "general criminal intent" which in a specific scenario may be criminal negligence. Thus, in recognizing whether or not the actual *mens rea* has been established in a specific scenario, it is vital to direct focus, not only to the mind state with which the defendant performed, but also to the specific violation with which a person is charged.

Narrations can be observed to the extent that "negligence is a state of mind" or on the other side that it is not a mind state. The variation is hugely in the utilization of terms. Hence, if negligence is uttered to be a mind state it is granted to have juridical outcomes it should be manifested. If it is uttered not to be a mind state, this is to highlight that the mind state, which is the cause, should be ascertained from the actual negligence, which is its effect. The implication is to utilize the word "negligence" synonymous to "negligent conduct." This means something performed with a mind state engaging this blameworthiness type.

Intentional harm belongs into quite various classification; and an act may be performed with such a wanton and willful disregard of a socially-harmful outcome known to be likely to result, that the mind attitude will be more blameworthy than is conveyed by the word "negligence." Thus, attention should be guided to harm risks generated by a mind state varied from either of these. Since some risk element is engaged in several types of important conduct, socially-acceptable conduct cannot be restricted to deeds which engage no risk at all. To ascertain risks not socially acceptable from those considered as justly incident to our life mode, the former are regarded as

unreasonable. Even an unreasonable risk, may have been generated in the absence of social fault, if the one who generated the risk was ignorant or have reason to understand the existence of such risk under the occurrences.

Thus, a distinction is created between that are distinguishable and those that are not. Hence, conduct may be uttered to belong below the social acceptability boundary if it engages a distinguishable and unreasonable social harm risk. Using this preface, the subsequent description may be offered: Negligence is any conduct, unless the conduct is intentionally harmful or recklessly disregarding of people's interest, which belongs below the standard established by law for the people's protection against unreasonable harm risk.

The social importance underlying the compensation demand to the individual harmed is not duplicate with that which creates the punishment basis. Hence, conceivably, the norm employed in the criminal law of negligence might be absolutely varied from that utilized in civil cases. This is not in duplicate with the response since the "measuring stick" here is the reasonable conduct of an individual under like occurrences. But whereas the civil law demands conformity to this norm, a very corroborative deviation is normally vital to criminal guilt in accordance to the common law. To explain this greater level of extent of deviational behavior, it has been general to alter the word "negligence" with some such epithet as "culpable", "criminal", "wicked" or "gross." Demandless to utter this is a domain not directed to duplicate measurement. What is equivalent to a practical entity is a caution to the jury not to crime convict, whether other culpability elements are lacking, unless where the conduct doing the harm shows a rather extreme negligence case. The pattern in some states is to consider as criminal a negligent conduct norm termed as criminal negligence and to also punish more grave under recklessness norm.

Under some of the statutes, guilt may be grounded by negligence proof in the absence of exhibiting that the conduct fell beyond social acceptability limitation as to merit the label "criminal" negligence. And some jurisdictions have taken a simple negligence criminal liability norm where the harm risk is substantial or there is a special public safety entity engaged. Meanwhile, several violations demand something more than negligence of any level of extent in order to ground the *mens rea*.

In spite the loose words "general criminal intent" and "criminal intent" courts have not deviated the fact sign that the word "intent" in its austere sense has the same definition as "intention." Thus, the word "intent" is observed to be reiterating the word "purpose" or "design." The effort to designate its synonym has not been free from complexity. As stated by Markby, "Intention is the mind attitude in which the performer of an act adverts to a result of the performance and wants it to comply. But the performer of a deed may advert to an outcome and not want it: and thus, not intend it." At the other end, Austin utters that an outcome is desired if it is evaluated as a possible result, whether it is intended or not. Salmond demands the desire element but provides this word a somewhat compelled construction. He utters that a man wants not only the end but also the way to the goal, and thus, desires, even though he may deeply remorse the importance for, the ways.

So far as actual intention is focused, more is demanded than a prediction that the result is similarly to generate from the deed. Meanwhile, it is not vital that the outcome should be intended in the common sense of the word, even though this element may become essential. If a person performs for the intention of doing a particular outcome he designs that end whether it is probably to occur or not. Meanwhile, he designs an outcome which he knows is bound to outcome from his deed

whether he intends it, regrets it or is quite similar as to it. And to shun philosophical imponderables as to what is or not bound to occur, it is customary to utter of outcomes “substantially particular to be generated.” Narrated in formula terms: Intended outcomes are those which (a) depict the very intent for which a deed is performed, or (b) are known to be substantially particular to outcome.

Utilization of the phrases “general criminal intent” and “criminal intent”, in the general sense of blameworthiness, has created some confusion when actual intention was the concept to be explained. In instances, the phrase “specific intent” has been applied for this design. In this sense “particular intent” points out actual intention as ascertained from “general criminal intent” which has the inclusion of whole blameworthiness domain. However, actual intention can be explained in the absence of the utilization of this phrase and there is a more essential definition for which “particular intent” must be reserved.

Some crimes demand a particular intention supplemental to an intended performance. In an instance, the physical crime element of larceny is the trespassory stealing and transporting away of the personal goods of another. But this must be performed purposely, deliberately, with full knowledge of all the facts and complete understanding of the performance mistake in the lack of comprising larceny. If the willful misutilization of another’s property is performed with the purpose of returning it, the mind state required for larceny is the absence. Such an offender is responsive in a civil suit, and may be convicted of some special statutory violation, such as facilitating a motor vehicle in the absence of the owner’s consent. However, for conviction of common law larceny, he should not only purposely take the other’s property by trespass, and convey it away; he should also have a supplemental purpose in mind, the desire to steal. Moreover, burglary cannot be described as “intentionally breaking and entering the dwelling house of another in the nighttime,” since this may be performed in the absence of perpetrating this felony. For common law burglary there is needed, not only the purposeful breaking and entering of the dwelling abode of another in the nighttime, but also a supplemental purpose, which is to perpetrate a felony. The supplemental demand is a particular intent. It is a supplemental intent particularly demanded for conviction of a specific violation.

In previous years, there has been inadequate expression with the term “particular intent.” The Model Penal Code does not apply the term and utilizes a hierarchy of descriptions, such as purposely, knowingly, recklessly and negligently as the norms for the mental crime element.

However, the term particular intent still has narrative purpose and some jurisdictions that have employed the Model Penal Code still approve the basis to particular intent.

The words “specific intent” has been utilized, at points, to pertain to any special mind state needed for the *mens rea* of a specific violation. The basic principle is this: Some crimes need only the common *mens rea*; others need a particular intent. However, this supplements to the confusion connecting to the utilization of the word “intent”. This utilization is too general to be neglected. However, it is well to highlight that several violations need some specific mind state other than a particular intent.

If conviction of a particular violation needs that an act be performed “fraudulently,” this denotes it should be performed with a defraud intent. This is a particular intent in the limited sense of the words, but other determinants are engaged if the *mens rea* demand is “knowledge”, “malice” or “willfulness.”

(A) Malice

Several statements are to be observed to the result that malice, as it is utilized in the law, does not mean any emotion of grudge, anger, hatred or ill-will, but demands only an intent to perform harm in the absence of legal excuse or justification. The last clause demands some alteration in the homicide cases where the term has chosen on a definition distinct to murder. An intent to kill may be in such sudden passion heat engendered by sufficient provocation as to fall beyond the “malice” label. Meanwhile, an act may be performed with such wanton and willful disregard of an extreme and apparent risk of causing death that it will be uttered to be performed with malice aforethought even if there was no actual intent to kill. To utter that the law will “imply” an intent to kill in such scenario, or that such a wanton and willful disregard of an apparent hazard is the same or equal to an intent to kill, is to indulge in “doubletalk.” It is quite appropriate to take such a killing within the category murder. However, the preferable definition is a straightforward possibility recognition of malice aforethought in the absence of an actual intent to kill. This may be exhibited by the case of one who intentionally blows up a building, lacking justification, mitigation or excuse, hoping the location to be void but having no means of knowing whether this is the evidence or not. The offender is convicted of murder if there were two people in the building who were killed during the explosion. To utter he “intended” to kill is to misinterpret the word, but to speak of his mind state as “malicious” is absolutely unobjectionable.

If the word as it is utilized in the phrase “malice aforethought” provides a logical clue to its definition in other than homicide scenarios, it would likely be perceived as: “Malice” defines an intent to do the very harm performed, or harm of alike nature, or a wanton and willful disregard of an apparent possibility of causing such harm, with an implied justification negation, mitigation or excuse. The Model Penal Code does not use the term malice since its artful nature is observed in common law and in earlier American statutory law.

(B) Knowledge (Scienter)

The knowledge association to convictability is a variable determinant within a broad range. At one extreme is observed the offense type for which knowledge of some specific entity is needed for conviction by the very description of the crime itself; as, saying a forged tool with forgery knowledge, deposit receipt by a banker knowing that his bank is insolvent, or conveyance of a vehicle in interstate commerce, knowing it to have been taken away. At the other extreme is observed the type in relation with which the knowledge element or lack of it is so immaterial that conviction may lead, however, to the defendant performed under such an error that, had the evidences been as he logically supposed them to be, his conduct would have been honored in each regard. Such violations are recognized under “strict liability.”

Between these two extremes are observed violations, for conviction of which the knowledge entity cannot be neglected even though the descriptions themselves have no particular demand thereof. This is due to knowledge or lack of it may be among the ascertaining determinants of some other mind attitude, which is needed, such as intent, malice, willfulness or criminal negligence.

From the prosecution demand, knowledge may be a positive determinant or the knowledge want may be a negative determinant. In some prosecutions, the state should prove defendant’s knowledge of some specific entity to make out even a *prima facie* guilt case. Such knowledge may be proven, like any other evidences, by occurrence fact. It may be grounded from all the evidences and case occurrences, even though denied by the defendant. But the problem is on the State. In

other prosecutions, the knowledge want may be peculiarly a defense entity. Modern statutes in several jurisdictions have particular statutes describing knowledge or knowingly, which are usually grounded on the Model Penal Code Section 2.03(2).

(C) Willfulness

The adverb “willfully” has such extreme meaning variations that it provides no clue to the *mens rea* need to which it pertains if it is recognized alone. It should be analyzed with its context and in the reason of the specific violation or statute. With basis to its definition, the United States Supreme Court has had this to utter: “The word usually implies an action which is knowing, or intentional, or voluntary, as recognized from accidental. But when utilized in a criminal statute, it commonly describes an action performed [1] with a bad intent; [2] in the absence of justifiable excuse; [or 3] perversely, stubbornly, obstinately. The word is also applicable [4] to feature a matter performed in the absence of a basis for believing it is legal, or [5] conduct noted by careless disregard whether or not one has the right so to perform.

(D) Tort Law

It has been vital to consider that some violations are not true crimes in the common law opprobrious conduct sense. The violation can be controlled and under *mala prohibita*. To distinguish the difference, there has been an inclination to utter of such offenses as “public welfare violations,” “public torts,” “administrative misdemeanors,” or “civil offenses.” Because they are not true crimes the conventional *mens rea* crime demand does not connect. They are implemented on the “strict liability” ground except in the specific statute or ordinance supplements some restriction. In previous years, there has been an increment in the utilization of this violation type.

Strict liability is most usually applied in the food area and drug regulation, traffic control, limitations on navigation and pollution, animal cruelty, control of liquor and alcohol, and hazardous chemicals and explosives. It is usually uttered that one who is perpetrating an illegal deed has common *mens rea*—or a common criminal intent. Care should be perceived not to conclude too much from such a statement. In the first place, the words “unlawful act,” as utilized in this association, has a very limited definition. The mind state of who is perpetrating such an illegal act may be replaced for criminal negligence in grounding the *mens rea* required for conviction of particular crimes. This is true of manslaughter and of battery but it is not true of violations which demand a particular intent or other special mental element.

The idea of tort, which serves as an important design in that domain but has no appropriate location in criminal law, because it inclines more to ambiguity than to distinctness of thought, is the so-called “transfer doctrine of the knowledge to the unintended act.” This is usually stated in some such form as this: Whenever a person denoting one wrong does another undefined, he is punishable except some particular intent is needed. The reason sometimes given is that “the thing performed, having originated from a corrupt mind, is to be perceived the same whether the corruption was of one specific from or another.”

Such a concept leads from an imperfect case law scrutiny. Common law burglary is the breaking and entering of the dwelling abode of another in the nighttime with intent to commit a petty larceny, felony or assault. Meaning, the intent to commit some other is the very mind state which comprises the *mens rea* for burglary. For particular violations, the intent to commit some other violation is not crucial to the *mens rea* but may be sufficient for this design. Murder is a great example. Particular crimes such as rape, arson, burglary and robbery have been observed to engage

such an unreasonable human risk element that he who is committing or trying one of them is held to have a mind state which belongs within the label “malice aforethought.” Thus, if homicide is caused thereby, it is murder, even though, without the purpose of killing may be. This is because to the homicide law and not to any transferred intent doctrine.

Even though sometimes vague, motive and purpose have different meanings, motive has been uttered to be “that something in the mind, or that mind condition, which incites to the performance,” or the “moving power which forces to action,” “induces performance,” or “provides birth to an intent.” The difference between motive and intent may be highlighted by exhibition. Some authors have enhanced the idea that when a performance is perpetrated with more than one object in sight, only the most immediate purpose is called “intent” and any “ulterior knowledge is called the performance motive.” An emotional persuasion, except counteracted by other persuasions, “directs the mind to desire” a specific result. This desire in turn may, or may not, prompt a purpose to result about that end. If the mental activity continues until such a purpose is enhanced, the desire is combined with the knowledge and may in a sense be an element thereof. All the same, it is crucial to ascertain between the fundamental urge itself and the purpose which led in the mind of a specific individual, but which might not have been created in the mind of another person. It is usually said that “motive is not an important crime element.” Sometimes, the statement is even more definite in form: “Motive is never a crucial crime element.” Such common conclusions cannot be accepted in the absence of some reservation, but with complete guarantee, one can utter: “Motive proof is never crucial to corroborate a guilt conclusion, otherwise, adequately established.” To this we must supplement further qualification, that some statutes by express terms need evidence of some specific motive prior conviction may be had. One instance is the Mann Act, which forbids interstate conveyance of women for the prostitution purpose.

The motive with which an *actus reus* was perpetrated is frequently associated. The absence or presence of a motive on the defendant part which might incline to the perpetration of such an act may always be recognized by the jury on the question of whether the Defendant did perpetrate it. But whenever it is distinctly grounded that he perpetrated it, with whatever mind state is essential for the *mens rea* of the specific violation, all the essentials of criminal conviction are present, even if no probable motive for the action can be exhibited. The *mens rea* and the *actus reus* should agree to comprise a crime. The trespass doctrine *ab initio* does not employ in criminal jurisprudence. The continuing trespass doctrine is altogether varied. *Trespass de bonis asportatis* is considered to continue, so far as the larceny law is emphasized, as long as the trespasser keeps property possession so acquired. But this presumes an original trespass. It does not create a trespass by what was considered not a trespass when performed by any relation theory. And the familiar maxim “*omnis rati habitio retrahitur, et mandato priori equiparatur*”, does not employ to criminal cases. Agreement, it should be highlighted, is something other than mere incidental. The two crime elements should be brought together in the sense that the *actus reus* should be characterized to the *mens rea*. It should be noted that some courts define some violations as ongoing and continuing in nature such as criminal or conspiracy enterprise.¹

¹ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

2.0 METHODOLOGY

A. Criminalization

1. Crime Defined

- A performance or omission forbidden by law for public protection;
- An offense resulting to state prosecution in its own jurisdiction;
- Can be punished by fine, imprisonment, or other limitations upon freedom, or some combination of these.²

2. Sources of Criminal Law

a. English Common Law

- Chief reference of modern criminal law;
- Descriptions of basic crimes and defenses undergone development through English court decisions subsequent to common law adaptation in early America.

b. Statutory Codes

- Issues on criminal law are now vastly ruled by the statute;
- Several jurisdictions have comprehensive criminal codes describing general mechanisms of specific crimes, liability, and defenses;
- Even jurisdictions, in the absence of comprehensive codes, commonly describe criminal violations by statute.³

c. Model Penal Code

- A proposed penal code in development and approval of American Law Institute;
- Does not itself comprise “law,” since ALI has no permission for law promulgation;
- Has served as reference for almost all post-1962 criminal statutory revisions, and its provisions are frequently followed in the given criminal statutes of the state.

A. Classification of Crimes

B.1 Felonies and Misdemeanors

- Crimes were branched into misdemeanors and felonies, where treason was classified separately.
- The distinction has been retained in modern statutes.

a. Common Law Distinction

- Felonies are those violations punitive by total forfeiture of goods, land, or both;
- Felonies include murder, manslaughter, rape, sodomy, mayhem, robbery, arson, burglary, and larceny;

² Model Penal Code § 1.04(1)

³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p.3.

- Misdemeanors were those violations not categorized as felonies.⁴

b. Statutory Distinctions

- Felonies are those violations for which a defendant may be punished to *death or imprisonment for a certain period*⁵ – violation punitive by incarceration for more than one year is felony] or by *state prison* imprisonment rather than a local jail.⁶

3. Malum in Se and Malum Prohibitum

a. Malum in Se

- Are *inherently* bad, dangerous, or immoral in themselves;
- Common law felonies are all malum in se due to inherently immoral acts.

b. Malum Prohibitum

- Other deeds are considered criminal since their prohibition is vital for general welfare regulation.

B. Burden of Proof and Related Proof

1. Prosecution due to Obligations

- The prosecution should prove all crime elements beyond a reasonable doubt.⁷

2. Constitutional Considerations

a. Due Process Requirement—Proof Beyond a Reasonable Doubt

- Vital for reduction of harm that an innocent individual will be found guilty with principle incorporation of due legal process;⁸
- Required in federal constitution.⁹

b. Right to Trial by Jury

- Closely associated to a criminal defendant's 6th Amendment right to jury trial;¹⁰
- Required to prove to the jury satisfaction all crime elements beyond a reasonable doubt.¹¹

3. Exception to Element of Crime in “Matter of Law”

- Offends the right of the defendant to jury trial and to due process.¹²

⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 4.

⁵ Model Penal Code § 1.04(2)

⁶ Cal. Penal Code § 17

⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 5.

⁹ *In re Winship*, 397 U.S. 358 (1970)

¹⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹¹ *Sullivan v. Louisiana*, 508 U.S. 275 (1993)

¹² *United States v. Gaudin*, 515 U.S. 506 (1995)

4. Federal Constitutional Right to Jury Determination of Facts

- Provide a defendant a right to have the jury ascertain facts that augment the maximum and minimum sentence which can result to imposition upon conviction.¹³

a. Distinguish: Prior Conviction Increasing Possible Sentence

- The right for a jury ascertainment does not employ before conviction depended upon by the prosecution to augment the sentence employable upon conviction.¹⁴

b. Distinguish: Facts Affecting Judicial Discretion in Sentencing

- A defendant has no right of having a jury discern facts that are taken into consideration by a judge performing evaluation on the sentence length within the statutorily-defined minimum and maximum.¹⁵

5. Defensive Matters—Required Obligations on Defendant

- If the matter associates to a defense, federal constitutional demands are regarded to be more flexible.

a. Burden of Going Forward with Evidence

- May be positioned on the defendant;¹⁶
- The defendant should provide evidence corroborating the defense prior to the jury for defensive matter instruction.¹⁷

b. Burden of Proof or Persuasion

- Due process allows burden position to prove the defendant's defense, even if that weight an ultimate high one;¹⁸
- In prosecution of murder, the weight of evidence on self-defense can be situated on the defendant;¹⁹
- Weight of evidence beyond a reasonable doubt for insanity can be placed on the defendant.²⁰

6. Presumptions and Inferences Modifying Burden of Proof

a. Presumptions—Shifting of Burden of Proof

- Considered as having the practical effect of prosecution relief for weight of evidence and hence, offending due process.²¹

¹³ Apprendi v. New Jersey, 530 U.S. 466 (2000)

¹⁴ Almendarez-Torres v. United States, 523 U.S. 224 (1998)

¹⁵ United States v. O'Brien, 560 U.S. 218 (2010)

¹⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁷ Simopoulos v. Virginia, 462 U.S. 506 (1983)

¹⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁹ Martin v. Ohio, 480 U.S. 228 (1987)

²⁰ Leland v. Oregon, 343 U.S. 790 (1952)

²¹ Sandstrom v. Montana, 442 U.S. 510 (1979)

b. Permissive Inferences—Ultimate Fact based on Proven Fact

- Is utilized if a jury is told that it may conclude one proof from another;²²
- Does not offend due process if the ultimate proof or the evidence to be concluded more possibly than not connects from the proving fact of the prosecution.²³

7. Homicide Prosecutions—Allocating Burdens Regarding Provocation or Its Equivalent

a. Burden of Proof on Provocation if Malice is “Presumed”

- Due process is rejected in a prosecution of murder if the jury is informed that the malice aforethought needed for murder is “presumed” from the killing of a person by the defendant, and that the defendant should prove that he perpetrated the crime out of heat of passion on quick provocation so as to diminish the crime for murder to voluntary manslaughter.²⁴

b. Burden of Proof on “Extreme Emotional Disturbance” Under Modern Statutory Scheme

- Due process is not offended by positioning the defendant the weight of proving by evidence preponderance that the person killed under an extreme emotional disturbance influence for which there was reasonable excuse or explanation, which would diminish the killing from murder to manslaughter.²⁵

(1) Rationale

- Since murder demands a *mens rea* proof, supplemental evidences of heat of passion or extreme emotional disturbance provocation ascertain murder from manslaughter are recognized to be “defensive facts” on which the weight of evidence can justly be positioned on the defendant.²⁶

B. Homicide

B.1 Classification and Definition

1. Definition

- Killing of another person by another individual.

2. Common Law Classifications

- Categorized as justifiable, excusable, or criminal;
- **Justifiable** homicides are not punishable by law in command or authority;
- **Excusable** homicides are considered killing at fault and remains criminal but the punishment is diminished since conditions do not support full punishment infliction for criminal homicide;²⁷

²² Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

²³ County Court of Ulster County v. Allen, 442 U.S. 140 (1979)

²⁴ Mullaney v. Wilbur, 421 U.S. 684 (1975)

²⁵ Patterson v. New York, 432 U.S. 197 (1977)

²⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 170.

²⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

- Any killing that cannot be considered to be justifiable or excusable is *criminal* homicide—either manslaughter or murder.²⁸

3. Classification under Modern Law

- Excusable homicides are no longer punitive, and so the justifiable-excusable distinction has no significance;
- Usually supplemented to homicide law, the supplemental violation of *negligent homicide*;
- Concerning murder, a common pattern is perceived as murder division into two degrees, such as first degree and second degree;
- Nowadays, several states have ascertained murder from separate violation of “capital murder,” in which there is an imposition of death penalty.²⁹

B.2 Murder

1. Murder Defined

- In common law and under several current statutes, murder is the unlawful killing of another person with *malice aforethought*.

2. “Malice Aforethought”

- Described as “the intent to kill, implied or actual, under conditions which do not comprise justification or excuse or treat the violation to manslaughter”;
- The design to kill is “actual” where the defendant aware in his desire to cause death;
- The purpose to kill is “implied” where the defendant designed to cause great bodily harm or where the natural tendency of his behavior was to kill or inflict great bodily injure;³⁰
- No hatred or ill will of the victim is required to be manifested.³¹

a. Functional Definition

- Is best recognized as an art term surrounding numerous various mental conditions;
- Lacks proof of sufficient provocation;³²
- Malice aforethought occurs if, at the event of killing time, the defendant welcomed *any one* of the following mind states.³³

(1) Intent to Kill

- The killing is with malice aforethought, and hence, murder, if the defendant has the purpose or intent to cause the death of the victim.

²⁸ Clark & Marshall, 469–477

²⁹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

³⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 172.

³¹ *People v. Morrin*, 187 N.W.2d 434 (Mich. 1971)

³² Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

³³ Royal Commission on Capital Punishment, 1949–1953, Report (1953)

(a) **“Deadly Weapon” Doctrine**

- Intentionally, using a deadly weapon on another person, and thereby, kills him, is **“presumed” to have designed the killing;**³⁴
- The trier of fact may conclude from such deadly weapon usage that the offender did in fact have the purpose or intent to kill.³⁵

(2) **Intent to Inflict Great Bodily Injury**

- Not aware of the desire to cause the death of the victim, but did in fact has the intent to inflict grave bodily harm resulting to the death of the victim.³⁶

(3) **Intent to Commit a Felony**

- Under the felony murder rule, the person had the intent to perpetrate a crime under felony with malice aforethought that caused the death of the victim.³⁷

(4) **Intent to Resist Lawful Arrest**

- Killing by older authorities resulting from the resistance of a lawful arrest is considered murder even if it does not belong within one of the other classifications,³⁸ and not recognized in modern view as a separate type of murder.³⁹

(5) **Awareness of a High Risk of Death— “Depraved Mind” or “Malignant Heart” Murder**

- Acting under particular exceptional conditions of an **unusually high risk resulting to a conduct that will cause death or grave bodily harm;**
- Overwhelming risk is ignored demonstrating an “malignant and abandoned heart” or a “depraved mind”;⁴⁰
- Statutory “depraved indifference” murder, needing recklessly causing a serious death risk to another conditions “indicating a depraved indifference to human life” and thereby, as proof, causing the death of the victim.⁴¹

(a) **Awareness of Risk**

- Requires a **subjective risk realization**—based from the theory that anything that is poor or weak is too far eliminated from intent-to-kill murder justifying the mitigation of the two similar occasions.⁴²

(b) **Creation of Risk to Many**

- Not adequate that the defendant generated a high death risk only to the victim.⁴³

³⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

³⁵ Bantum v. State, 85 A.2d 741 (Del. 1952)

³⁶ People v. Geiger, 159 N.W.2d 383 (Mich. 1968)

³⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

³⁸ Donehy v. Commonwealth, 186 S.W. 161 (Ky. 1916)

³⁹ State v. Weisengoff, 101 S.E. 450 (W. Va. 1919)

⁴⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁴¹ Commonwealth v. Malone, 47 A.2d 445 (Pa. 1946); N.Y. Penal Law § 125.25

⁴² Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁴³ Ex parte McCormack, 431 So. 2d 1340 (Ala. 1983)

(c) Distinguish—Reckless and Negligent Killings

- In “depraved mind” murder cases, higher or more than mere negligence, or even recklessness in modern statutory schemes, is required;
- For involuntary manslaughter, the awareness of the death risk due to the conduct of the defendant should be quite greater than the required criminal negligence;⁴⁴
- In modern terms, actual risk awareness is most likely required in which depraved mind murder is more similar to reckless killings as differentiated from negligent killings.⁴⁵

b. Previous California Requirement—Awareness of Obligation to Obey Laws

- Requires an awareness to perform an obligation within the common body of laws controlling the people.⁴⁶

(1) Comment

- An attempt for redefining murder in order to create proof of reduced capacity for a significant method of treating crime seriousness perpetrated by an impaired individual;
- In reason of mental illness, mental retardation, or intoxication, there can be inability to understand the duty, which murder conviction could not be done, although a manslaughter conviction would be allowed.⁴⁷

(2) Note—Legislative Abolition of California Requirement

- In 1981, the California statute describing malice has been amended particularly for the provision that an obligation awareness to perform within common body of laws controlling the people is *not needed*.⁴⁸

c. Proof of Malice Aforethought

- The trier of fact may conclude, but not necessary, from the killing fact that the defendant had one of mind states essential for murder;⁴⁹
- If the “presumption” interpretation is placed as weight to prove malice lack on the defendant, there is innocence presumption inconsistency which is also unconstitutional.⁵⁰

3. Degrees of Murder

- There are no degrees of murder in common law;
- Statutes usually divide murder into first and second degree.

a. First Degree Murder

- No common law equivalent;

⁴⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁴⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 174.

⁴⁶ *People v. Conley*, 411 P.2d 911 (Cal. 1966)

⁴⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁴⁸ Cal. Penal Code § 188

⁴⁹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁵⁰ *State v. Cuevas*, 488 P.2d 322 (Hawaii 1971)

- Entirely a type of statute.⁵¹

Statutes usually categorize the following homicides as first degree murder:

(1) Premeditated Killings

- The intent to kill is designed *with some reasoning, deliberation, reflection, or weighing*, rather than basically on a quick impulse;
- The process by which the purpose to kill is designed or the defendant finally decides to perform the purpose to kill;⁵²
- Courts disagree on the proof requiring to exhibit common agreement on the abstract premeditation definition.⁵³

(a) Proof of Opportunity

- Premeditated murder is found by the jury when the proof being exhibited had adequate time *for the provision of a chance to premeditate*.⁵⁴

1) No Appreciable Time Needed

- Courts reason that the design formulation to kill by premeditation and the final decision of the defendant to perform this purpose can happen as instantaneously as successive thoughts.⁵⁵

2) Proof of Opportunity to Premeditate Not Sufficient

- Evidences must exhibit time to allow reflection but “actual reflection evidence is not necessary”;⁵⁶
- Courts held the requirement for direct reflection evidence, since purely objective premeditation standard is to be unconstitutional.⁵⁷

(b) Proof of Actual Due Consideration

- Few courts require direct evidence that the defendant *did in fact provide the issue whether to kill reasonably calm consideration*;
- Evidence of preexisting motive combined with evidence that the killing was perpetrated in such a way to imply a preconceived plan;⁵⁸
- Proof consisting of planning activity before crime or some reasonable replacement.⁵⁹

⁵¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 175.

⁵² Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁵³ State v. Snowden, 313 P.2d 706 (Idaho 1957)

⁵⁴ State v. Watson, 449 S.E.2d 694 (N.C. 1994); Commonwealth v. Carroll, 194 A.2d 911 (Pa. 1963)

⁵⁵ State v. Snowden, *supra*

⁵⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁵⁷ State v. Thompson, 65 P.3d 420 (Ariz. 2003)

⁵⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁵⁹ People v. Anderson, 447 P.2d 942 (Cal. 1968)

(c) **Previous California Requirement—“Mature and Meaningful Reflection”**

- The defendant have the capability in a mature and meaningful reflection upon severity of the killing;⁶⁰
- Under the rule of “diminished capacity”, youth evidence, retardation, or mental illness should exhibit the lack of premeditation precluding first degree murder conviction;⁶¹
- With emphasis on 1981, the California homicide statutes were amended in the provision that it is not required to prove a defendant on the severity of the killing for first degree murder conviction of the defendant.⁶²

(2) **Killing during Enumerated Felonies**

- Felonies, including arson, rape, robbery, burglary, kidnapping, mayhem, and sexual child, are usually considered as first degree murder;⁶³
- Other crime felonies with killings are not considered as first degree murder.⁶⁴

(3) **Killing by Poison, Bomb, Lying in Wait**

- Are usually particularly created first degree murder;⁶⁵
- Other than these types of killings may be considered as highly probative of premeditation.⁶⁶

(4) **Killing by Torture**

- Considered to be first degree murder;⁶⁷
- Needs proof of intent to cause suffering and pain for revenge purposes, humiliation, or some motive in alike, and a causal association between the torture and the victim’s death.⁶⁸

b. **Second Degree Murder**

- All killings perpetrated *with malice aforethought* that are *not particularly classified as first degree murder* are considered to be second degree murder.⁶⁹

4. **Capital Murder**

- Needs evidence of at least one of numerous *enumerated aggravated determinants* or “*special circumstances*”;

⁶⁰ People v. Wolff, 394 P.2d 959 (Cal. 1964)

⁶¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁶² Cal. Penal Code § 189

⁶³ Cal. Penal Code § 189

⁶⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁶⁵ Cal. Penal Code § 189

⁶⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 176.

⁶⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁶⁸ State v. Brock, 416 P.2d 601 (Ariz. 1966)

⁶⁹ People v. Phillips, 414 P.2d 353 (Cal. 1966)

- A person may be sentenced to death *only if* there is separate violation conviction of capital murder.

B.3 Felony Murder

1. Felony Murder Rule

- A killing combined *with the intent to perpetrate a felony*;
- No purpose to kill or other mental condition concerning the death occurrence is needed;
- Form of limited strict liability;
- Based on a specific prosecution called the “*predicate felony*”.⁷⁰

a. Rationale

- Two justifications have been developed in corroboration of the felony murder rule;
- The rule is perceived to *deter felonies* by supplementing to the conviction threat and punishment for the felony the supplemental conviction threat and punishment for murder if death is inflicted;
- The rule is perceived to *discourage the violence usage in the event of perpetration of felonies* by threat imposition of supplemental punishment if the felon inflicts death.⁷¹

b. All Co-Felons Liable for Felony Murder

- If one of those felons inflicted death through accident, the *other felons* as well as the one actually inflicting the death may be convicted of felony murder.⁷²

c. Applies When Co-Felon Is Killed by Another Co-Felon

- Felony murder liability may occur although the killed individual is *one of the participants in the predicate felony*;
- The court might perceive that the killing was not perpetrated during the felony commission since they may be uneasy with liability in these cases that looking for some exception for the application of rules.

2. Limitations on Felony Murder

- Reflection of misgiving concerning the wisdom of the rule may have developed numerous restrictions that can be at least employed in the absence of limitation or qualification.⁷³

a. “Foreseeable” Death of Another is Vital

- Some courts need that the death of another have been a *predictable felony outcome* as an application state for the felony murder rule;
- Courts have been quite willing to find the needed foreseeable death risk on the facts of specific cases.

⁷⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 177.

⁷¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁷² *People v. Friedman*, 98 N.E. 471 (N.Y. 1912); and see *supra*, p. 155

⁷³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

b. “Dangerous” Felony is Required

- Several states restrict the felony murder rule to underlying felonies of a particular nature;⁷⁴
- Requires that the predicate felony should be a “*dangerous*” one.⁷⁵

Two different methods for ascertaining whether a felony is considered dangerous:

(1) “Inherently” Dangerous

- Assessed in the abstract rather than on the evidences of specific case.⁷⁶

(2) Dangerous as Committed

- Can be perpetrated and applied to felony murder rule *only if the felony as perpetrated* on the case facts involving significant human life risk.⁷⁷

c. The Felony-Murder “Merger” Rule

- Most courts employ only when the *predicate felony is somewhat killing independent*.⁷⁸

(1) Rationale

- Permission of crimes, such as battery or assault, to be utilized as predicate felonies for felony murder would result to felony murder expansion to encompass far more conditions than legislature design.⁷⁹

(2) Problem—Determining Whether Felonies are “Independent”

- Some courts employ a flexible test and inquire whether allowing the felony to be utilized as a predicate felony would also result to felony murder expansion in order frustrate the legislature’s design for provision of a meaningfully restricted felony murder rule;
- Others employ a more concentrated and felony stating of its independence and does not merge only if the involvement of the felony has an intentional collateral to and physical attack independent on the victim.⁸⁰

d. One of the Felons Must “Directly” Cause Death—Intervening Actors

- Death was inflicted directly by an “intervening actor,” such as a victim or a pursuing police officer in resistance.

Two methods can be ascertained whether the felons had incurred liability for felony murder:

⁷⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 178.

⁷⁵ *People v. Washington*, 402 P.2d 130 (Cal. 1965)

⁷⁶ *People v. Phillips*, 414 P.2d 353 (Cal. 1966)

⁷⁷ *State v. Stewart*, 663 A.2d 912 (R.I. 1995)

⁷⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

⁷⁹ *People v. Hansen*, *supra*

⁸⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 179.

(1) Agency Analysis—No Felony Murder Liability

- Several courts defend that felony murder employs only when the death is inflicted by the defendant or someone performing as agent of the defendant;⁸¹
- Since felony’s victim and meddling police officers are not considered agents of the felons, death directly inflicted by them cannot be recognized as accountability to felony murder.⁸²

(a) Policy Analysis—Would Liability Serve Purposes of Rule?

- Some courts have rejected the basis that the deterrent designs of the felony murder rule cannot be catered by application of the killing that is not actually inflicted by one of the felons;
- Liability imposition for felony murder is not within the direct regulation of the felons, absence of killings during felonies and perpetration of felonies is discouraged;⁸³
- Other courts have decided that liability imposition for felony murder in such of these killings would supplement to the incentive for the law provision of discouraging individuals from perpetrating dangerous felonies.⁸⁴

(2) Alternative “Proximate Cause” Approach—Felony Murder Liability Can Exist

- Some courts perceive felony murder liability when a non-felon inflicts the death, arguing that these occurrences present are all essential, illustrating that the victim acts as a proximate felon’s perpetration outcome of the felony;⁸⁵
- Arguing that the change of legislation in felony murder statute denied earlier precedents with no liability.⁸⁶

(a) Distinguish—Co-Felon is Killed

- Liability for felony murder would not be considered when the dead person was recognized as *one of the felons* as the killing was perpetrated by resisting victim or by the police;⁸⁷
- Statute for felony murder denied the “majority rule” and conducted liability imposition where the robbery victim in resistance killed one of robbers;⁸⁸
- Occurrences should be ascertained where the death is inflicted by another felon’s acts.⁸⁹

(3) Distinguish—Murder Liability on Other Grounds

- If not applicable to certain conditions, the killings may still be considered murder with felony perpetration, for involvement of activities engaging such a *high risk to human*

⁸¹ Dix, G. (2015). *Dix’s Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁸² State v. Canola, 374 A.2d 20 (N.J. 1977)

⁸³ Dix, G. (2015). *Dix’s Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁸⁴ People v. Pugh, 634 N.E.2d 34 (111. 1994)

⁸⁵ Dix, G. (2015). *Dix’s Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁸⁶ Commonwealth v. Almeida, 68 A.2d 595 (Pa. 1949), *overruled by* Commonwealth ex rel. Smith v. Myers, *supra*; People v. Hernandez, 624 N.E.2d 661 (N.Y. 1993)

⁸⁷ Dix, G. (2015). *Dix’s Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁸⁸ State v. Oimen, 516 N.W.2d 399 (Wis. 1994)

⁸⁹ Dix, G. (2015). *Dix’s Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

life that establishment of malice aforethought works under the rule of “high risk awareness.”⁹⁰

e. **Death Must Be Caused in Perpetration of Felony**

- The killing should be inflicted *in the perpetration* (or perpetration in attempt) of the predicate felony;
- Does not need that the death should happen prior the technical completion of the felony, only that performances prior to felony completion as exhibited to have inflicted death;⁹¹
- Although the death needs to be inflicted in felony furtherance, exhibition that only the performance inflicting death was felony element.⁹²

(1) **Duration of Felony**

- Some courts affirm that employment of the felony murder rule ceases suddenly after felony abandonment or completion, while some hold the rule to killings application;
- The position of the killing is inflicted in the event of felony perpetration *or in immediate flight* from the crime;
- “Sudden flight” stops when the offenders have attained a “temporary safety” position;⁹³
- Deaths inflicted subsequent to attaining the safety position are not considered to be felony murder.⁹⁴

3. **Future of Felony Murder**

- Imposition of essential reasoning in strict liability for violation of grave crime from fundamental principles of criminal liability;
- No retention in several legislatures, only liability for felony murder expansion, sometimes in reply to judicial restrictions.⁹⁵

a. **English Abolition**

- In 1957, felony murder rule was abolished in England.⁹⁶

b. **Model Penal Code Position**

- MPC does not separate felony murder from the murder category;⁹⁷
- Highlights an “extreme indifference to the human life value” presumption as adequate for murder if the killing was perpetrated from escaping from major felony, such as forcible, arson, robbery, etc.⁹⁸

⁹⁰ Taylor v. Superior Court, 477 P.2 121 (Cal. 1970)

⁹¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁹² State v. Leech, 790 P.2d 160 (Wash. 1990)

⁹³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁹⁴ People v. Lopez, 16 Cal. App. 3d 346 (1971)

⁹⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁹⁶ Eng. Homicide Act, 1957, 5 & 6 Eliz. 2, c. 11, § 1

⁹⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

⁹⁸ Model Penal Code § 210.2(1)(b)

c. Constitutional Considerations

- Few courts have explained their regards on the liability imposition in the absence of blameworthiness assurance;⁹⁹
- As expressed, such strict liability may run with conflict of due process;¹⁰⁰
- The prohibition of the Eight Amendment by the Supreme Court in opposition to unusual and cruel punishment does not forbid liability for felony murder with sole purpose needed by the predicate felony, even though there can be imposition prior *death penalty*, the design to kill or reckless indifference must be exhibited.¹⁰¹

d. Judicial Abandonment in the United States

- Numerous courts have entirely or in part deserted the rule of felony murder;
- The evidence that killing happened in the felony course is basically one of the considerations to be noted for ascertaining whether the defendant performed with actual malice aforethought.¹⁰²

B.4 Voluntary Manslaughter

1. Voluntary Manslaughter Defined

- Killing perpetrated *in reply to particular provocation* has conventionally been concerned in the absence of malice aforethought and thus, voluntary manslaughter;
- Even though the defendant may have performed with one of the mind states essential for malice aforethought, but the presence of provocation *has reduced* the killing from murder to manslaughter.

2. Roles of the Court and Jury

- Eager to declare the claim of the defendant for sufficient provocation inadequate “as a matter of law”;
- Necessary to assess whether specific types of proffered provocation are adequate under objective norm.

3. Elements of Provocation Reducing Murder to Manslaughter

- In common law, a killing is diminished from murder to manslaughter in a sole condition that evidences would exhibit all of the cited four elements. Moreover, modern statutes have also retained all or most of these needs.
 - i. There must have been *provocation* of the kind that would inflict a *reasonable individual to lose control* and perform rashly in the absence of reflection;
 - ii. The defendant must have *in fact been provoked*, and the provocation must have inflicted the defendant to kill the victim;

⁹⁹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁰⁰ State v. Ortega, 817 P.2d 1196 (N.M. 1991)

¹⁰¹ Hopkins v. Reeves, 524 U.S. 88 (1998)

¹⁰² Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

- iii. The *interval* between the provocation and the killing must *not have been long enough* for the passions of a reasonable individual to subside; and
- iv. The defendant should *not have actually cooled* off during the interval between the provocation and the killing.

a. Reasonable Provocation

- Evaluated by an *objective standard*;¹⁰³
- Provocation should render common persons of mediocre disposition liable to perform rashly, in lack of deliberation, and from passion rather than judgment.¹⁰⁴

(1) Characteristics of the “Reasonable Person”

- Must be considered as having particular features that may have made the person uncommonly susceptible to provocation;
- Giving the reasonable individual the defendant’s attributes ruins the objective standard nature.¹⁰⁵

(a) Purely Objective Standard

- Some courts regard that the reasonable individual must not be considered as having *any* of the defendant’s particular attributes, since this would result to deprivation of its objective standard nature.

(b) Compromise Standard

- Some courts apply compromise position that allows consideration of some of the defendant’s personal features;¹⁰⁶
- The reasonable individual is not recognized as having any unusual diminished capacity for self-control, since this would lead to excessive deprivation of its objective standard nature.¹⁰⁷

(c) Model Penal Code Position

- MPC has the provision that disturbance reasonableness that diminishes a killing to manslaughter is to be ascertained from an individual’s perception in the defendant’s position *under the conditions as the defendant perceived them to be*;¹⁰⁸
- Permits the court to take into responsibility some of the defendant’s particular features.¹⁰⁹

(2) Particular Situations

- The law has inclined to classify conditions presented in several cases.¹¹⁰

¹⁰³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 182.

¹⁰⁴ Maher v. People, *supra*.

¹⁰⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 183.

¹⁰⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁰⁷ State v. Ott, 686 P.2d 1001 (Or. 1984)

¹⁰⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁰⁹ Model Penal Code § 210.3(1)(b)

¹¹⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

(a) Words Alone

- The conventional view is that mere words or plain texts are *not sufficient provocation*.¹¹¹

1) Minority View

- Few courts have denied any such rigid rule, specifically if the words are recognized as *informational*, when there is a transfer of fact information that would comprise reasonable provocation if noticed, rather than basically abusive or insulting.¹¹²

(b) Battery

- Does not comprise sufficient provocation since it would lead to provocation of a reasonable individual to a killing passion;¹¹³
- Although *painful and violent* blow can be adequate provocation.¹¹⁴

1) Distinguish—Defendant Provoked Blow

- Homicide will *not be diminished* to voluntary manslaughter if the defendant was *at fault* in inciting the blow.¹¹⁵

(c) Assault

- Cases are evaluated whether failed attempt to perpetrate a battery can comprise sufficient provocation.¹¹⁶

(d) Illegal Arrest

- Courts have assessed whether the victim's illegal arrest of the defendant can comprise sufficient provocation.¹¹⁷

(e) Adultery

- Disclosure of one's spouse in the perpetrating adultery performance is *clearly adequate* for a jury to ascertain as provocation;¹¹⁸
- Some courts determine adequate provocation where the defendant is informed of the spouse's adultery¹¹⁹ or even basically perceives a known individual to have an affair with the spouse.¹²⁰

(f) Mutual Quarrel or Combat

- If there is *voluntarily involvement* of two individuals in a brawl where one is killed, the homicide is only manslaughter;¹²¹

¹¹¹ Lang v. State, 250 A.2d 276 (Md. 1969)

¹¹² State v. Flory, 276 P. 458 (Wyo. 1929)

¹¹³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹¹⁴ People v. Harris, 134 N.E.2d 315 (Ill. 1956)

¹¹⁵ State v. Ferguson, 20 S.C.L. (2 Hill) 619 (S.C. 1835)

¹¹⁶ Stevenson v. United States, 162 U.S. 313 (1896)

¹¹⁷ Bad Elk v. United States, 177 U.S. 529 (1900)

¹¹⁸ State v. Thornton, 730 S.W.2d 309 (Tenn. 1987)

¹¹⁹ Haley v. State, 85 So. 129 (Miss. 1920)

¹²⁰ People v. Bridgehouse, 47 Cal. 2d 406 (1956)

¹²¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

- The killing may not be diminished to manslaughter if *at the beginning* of the affray the defendant held an unjust benefit.¹²²

(3) Mistake Concerning Provocation

- A killing must be reduced to manslaughter as long as the defendant *reasonably believed* that a condition comprising sufficient provocation occurred.¹²³

(4) Provocation by Someone Other than Victim

- There can be conditions in which the provocation source was done by someone *other than the individual killed*.¹²⁴

This can be divided into two classifications:

(a) Defendant Intends to Kill Provoking Party

- Either by accident or there was a mistake on the intent of provocation, the killing is still only voluntary manslaughter.¹²⁵

(b) Defendant Intends to Kill Non-provoking Party

- If the purpose to kill someone with knowledge that the killed individual was not the provoking party, the killing is *not diminished* to manslaughter and the perpetrated homicide is murder.¹²⁶

(5) Injury to Persons Other than Defendant

- Precedents imply that the rule for provoking conduct should not be employed if the provocation subject were a mere friend or distant relative of the defendant, but modern courts, disinclined to keep offered provocation insufficient as a matter of law, might allow cases to go to the jury.¹²⁷

b. Actual Provocation

- A killing will not be diminished to manslaughter except the defendant was *actually provoked*,
- Absolute *subjective* requirement;¹²⁸
- It should be exhibited that the provocation would inflict a reasonable individual to lose control *and* that *the defendant in fact* became so angry that his conduct was subjected by passion rather than reason.¹²⁹

¹²² Whitehead v. State, 262 A.2d 316 (Md. 1970)

¹²³ State v. Yanz, 50 A. 37 (Conn. 1901)

¹²⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹²⁵ State v. Griego, 294 P.2d 282 (N.M. 1956)

¹²⁶ White v. State, 72 S.W. 173 (Tex. 1902)

¹²⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing, p. 186.

¹²⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹²⁹ State v. Robinson, 185 S.W.2d 636 (Mo. 1945)

c. Absence of Reasonable Cooling Period

- The law of voluntary manslaughter puts a significant highlight on the time between the provocation and the killing.

(1) Majority Rule—Objective Standard Applied

- General rule states that homicide is not manslaughter if between the provocation and the killing time elapsed is not adequate to make *passions of a reasonable individual* to subside, hence, an *objective* test;¹³⁰
- Irrelevant when in spite of the passage time the defendant did not in fact subside.¹³¹

(2) Minority View—Subjective Standard Applied

- It is immaterial that the reasonable individual passions would have subsided in the event of time lapsed, as long as the defendant himself was still furious at the killing time.¹³²

(3) Events Preceding a Final Culmination

- Some courts permit earlier event considerations as developmental part that culminates in a situation that provokes the defendant into killing in the absence of delay.¹³³

(4) “Reinflaming” Occurrences

- “Reinflaming” of passions had happened subsequent to passing of sufficient subsiding period.¹³⁴

d. No Actual Cooling off

- It should be illustrated that the defendant’s passion did *not in fact* cool off, the homicide is murder.¹³⁵

4. Model Penal Code Position—“Extreme Emotional Disturbance”

- Under MPC, a killing is considered manslaughter if it was perpetrated “under the *extreme mental or emotional disturbance* influence for which there is *reasonable excuse or explanation.*”¹³⁶

a. Consideration from Accused’s Perspective

- The jury must ascertain whether the excuse or explanation for the disturbance would be reasonable starting from the defendant’s perception, given his own subjective attributes.¹³⁷

¹³⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹³¹ Sheppard v. State, 10 So. 2d 822 (Ala. 1942)

¹³² State v. Hazlett, 113 N.W. 374 (N.D. 1907)

¹³³ Commonwealth v. Voytko, 503 A.2d 20 (Pa. 1986)

¹³⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹³⁵ In re Fraley, 109 P. 295 (Okla. 1910)

¹³⁶ Model Penal Code § 210.3(1)(b)

¹³⁷ State v. Raguseo, *supra*—Berdon, J., dissenting

b. But Note—Anger, Embarrassment Not Enough

- Some courts need that the defendant must exhibit suffering of an identifiable disturbance leading to self-control loss;¹³⁸
- Mere exhibition that the defendant was made furious or humiliated by the victim’s “provoking” conduct will *not* be adequate.¹³⁹

5. “Imperfect” Defense Situations as Voluntary Manslaughter

- Some courts have made a supplemental voluntary manslaughter category comprising of the term, imperfect defense cases, where in the generated proof tends to form defense establishment and falls short in doing so, most often due to unreasonable conduct.¹⁴⁰

B.5 Involuntary Manslaughter

1. Involuntary Manslaughter Defined

- An *unintended* killing that resulted to *criminal negligence* or it is inflicted in the event of perpetration of an *unlawful performance* that is not considered a felony or that for some other reason is inadequate to induce the felony murder rule.¹⁴¹

2. Killing by Criminal Negligence

- An unintentional killing inflicted by any act perpetration, even a lawful one, in a *criminally negligent means* is considered involuntary manslaughter.¹⁴²

a. More than “Civil” Negligence Required

- The courts concur that there should be more than essential to civil liability establishment for damages;¹⁴³
- Should have been one in which there both *unreasonable* was *and high death risk* of another.¹⁴⁴

b. Distinction from Awareness of Risk

- Using precedents from conventional homicide, courts usually did not create the distinction between “negligence” and “recklessness” as observed in modern statutes;
- It is sometimes vague whether “criminal negligence” needed for involuntary manslaughter necessitates an awareness of risk death;
- If actual awareness is needed, the mental state turns to be a modern terminology that would consider recklessness rather than negligence.

¹³⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹³⁹ *People v. Walker*, 64 N.Y.2d 741 (1984)

¹⁴⁰ *Sanchez v. People*, 470 P.2d 857 (Colo. 1970)

¹⁴¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁴² *Commonwealth v. Welansky*, 55 N.E.2d 902 (Mass. 1944)

¹⁴³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁴⁴ *Commonwealth v. Aurick*, 19 A.2d 920 (Pa. 1941); *Commonwealth v. Welansky*, *supra*—facts should exhibit “reckless or wanton” conduct, which should go even outside gross negligence

3. Killing by Commission of an Unlawful Act—“Misdemeanor Manslaughter”

- An unintentional killing inflicted in the perpetration event of an unlawful “predicate” performance is involuntary manslaughter.¹⁴⁵

a. Nature of Unlawful Act

- Misdemeanor would be adequate for manslaughter;
- Felony that would not corroborate felony murder is sufficient for involuntary manslaughter;¹⁴⁶
- Some performances may be decided “unlawful” for manslaughter intents even though not considered to be criminal under the law, that modern courts unlikely to comply with this approach.¹⁴⁷

b. Limitations upon Doctrine

- Misdemeanor manslaughter, like felony murder, has occasionally been denied by judicial opinion due to strict liability imposition for a relatively grave violation;
- Courts have commonly considered misdemeanor manslaughter as suspect as felony murder due to involuntary manslaughter is a much less grave crime than murder;¹⁴⁸
- Even though court did not consider felony murder, misdemeanor manslaughter, in reference to assault as predicate violation, is not directed to same objections.¹⁴⁹

There are several restrictions on misdemeanor manslaughter that have been developed:

(1) “Malum in Se” as Predicate Offense

- Some courts perceived that the predicate performance should be not only unlawful but also *malum in se* rather than basically malum prohibitum.¹⁵⁰

(2) Negligence in Addition to Unlawful Act Required

- Some courts require the supplemental need that the defendant have performed with criminal negligence, especially where the predicate violation is only malum prohibitum.¹⁵¹

(3) Unlawful Aspect of Activity Must Cause Death

- Few courts impose an exhibition that the *unlawful aspect* of the activity of the defendant inflicted the victim’s death, in a scenario that the conduct course may not be sufficient comprising the unlawful performance that inflicted death.¹⁵²

¹⁴⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁴⁶ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 189.

¹⁴⁷ Commonwealth v. Mink, 123 Mass. 422 (1877)

¹⁴⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁴⁹ People v. Datema, 533 N.W.2d 272 (Mich. 1995)

¹⁵⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁵¹ People v. Pavlic, 199 N.W. 373 (Mich. 1924)

¹⁵² People v. Penny, 44 Cal. 2d 861 (1965)

B.6 Modern Statutory Distinctions

1. Model Penal Code Scheme

- Modern statutes, or at least part of comprehensive revision of entire criminal code of the state, incline for homicide violation redefinitions by grading them in reference to the various mind states as described by MPC.¹⁵³

a. Murder

- Killing is perpetrated (i) purposely, (ii) knowingly, or (iii) recklessly under conditions exhibiting extreme indifference to the human life value.¹⁵⁴

b. Manslaughter

- MPC did not consider the distinction between the two conventional manslaughter types, and instead, formulates a single manslaughter violation;¹⁵⁵
- Under this principle, manslaughter is (i) a killing perpetrated recklessly, or (ii) a killing that would, in a different way, be murder but is perpetrated under the extreme mental or emotional disturbance influence for which there is reasonable excuse or explanation.¹⁵⁶

c. Negligent Homicide

- MPC formulates new homicide violation of “negligent homicide” comprising of killings perpetrated negligently.¹⁵⁷

2. Homicide Caused During Operation of a Motor Vehicle

- Modern criminal codes have a separate violation for death inflicted in the negligent motor vehicle operation or by motor vehicle conduction in an unlawful means;¹⁵⁸
- Some states consider this violation as a “new” manslaughter type, but the imposed penalties are usually less grave than those designated to the more conventional manslaughter types.¹⁵⁹

B.7 General Problems Relating to Homicide Liability

1. Introduction

- There are numerous collateral issues that general to all homicide crimes.

2. Causation

- Should be proved to have inflicted the victim’s death;¹⁶⁰
- Causation problems usually emerge in homicide scenarios.¹⁶¹

¹⁵³ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁵⁴ Model Penal Code § 210.2(1)

¹⁵⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁵⁶ Model Penal Code § 210.3(1)

¹⁵⁷ Model Penal Code § 210.4(1)

¹⁵⁸ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁵⁹ Cal. Penal Code §§ 192(3), 193

¹⁶⁰ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing, p. 191.

¹⁶¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

3. Killing of Fetus

- A killing is not considered a criminal homicide except that if the victim is a *living human being*.¹⁶²

a. General Rule—Fetus Not Living Human Being

- The conventional common law rule is that a fetus is not considered a living human being except it has been “*born alive*.”¹⁶³

b. Minority View—Fetus Protected by Homicide Laws

- Court held that homicide law allows prosecution on the grounds that the defendant inflicted the fetus’ death that would, in a different way, have been alive.¹⁶⁴

c. Statutory Changes Extending Homicide Protection to Fetus

- Some states have done amendments on homicide statutes for the inclusion of the fetus within the human being definition;¹⁶⁵
- Describing murder as the unlawful human being *or fetus* killing with malice aforethought.¹⁶⁶

4. Definition of Death

- May raise concerns in respect to death definition;
- Vital to ascertain at what point life ceases for intents of homicide law.¹⁶⁷

a. General Rule—Death Is Cessation of Heartbeat and Respiration

- The conventional rule is that death happens when there is cessation of victim’s heartbeat and respiratory functions.¹⁶⁸

b. Alternative Standard—“Brain Death”

- A more suitable criterion that would describe death as brain functioning cessation;
- Under this norm, death happens when an electroencephalograph (“EEG”) reads flat for a provided time period, although the heart and breathing of the victim remain active;¹⁶⁹
- The “brain dead” norm for describing the death of homicide victim has been acknowledged by some courts.¹⁷⁰

¹⁶² Keeler v. Superior Court, 2 Cal. 3d 619 (1970)

¹⁶³ People v. Ehlert, 654 N.E.2d 705 (Ill. 1995)

¹⁶⁴ Hughes v. State, 868 P.2d 730 (Okla. 1994)

¹⁶⁵ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁶⁶ Cal. Penal Code § 187

¹⁶⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁶⁸ Thomas v. Anderson, 96 Cal. App. 2d 371 (1950)

¹⁶⁹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition*. West Academic Publishing.

¹⁷⁰ State v. Fierro, 603 P.2d 74 (Ariz. 1979); People v. Eulo, 63 N.Y.2d 341 (1984)

5. Occurrence of Death

- Conventionally, the death of the victim happen within a *year and a day* from the time the lethal blow was provided or death infliction was employed;
- The restriction is independent of the common causation needs;¹⁷¹
- There can be no homicide prosecution if the death occurred subsequent to year-and-a-day time period.¹⁷²

a. Rationale

- Causation must be so complexed that is of great peril for unlawful prosecutions and convictions.¹⁷³

b. Rule Modified or Abandoned

- New developments in crime detection and medicine diminished the complexities of proving the infliction of a homicide victim's death in spite of the time passage;¹⁷⁴
- Some courts and legislature have not consequently considered the conventional time limit need;¹⁷⁵
- California did rule retention first, but then decided time limit extension to three years and one day, only to give afterwards that if death happens outside that three year and one day need, there is a rebuttable assumption that the killing was not considered criminal.¹⁷⁶

6. Aiding or Causing Suicide

- Particular cases are inflicted when the victim has asked to be killed or has actually perpetrated in killing his own life.¹⁷⁷

a. Common Law Position—Offense Is Murder

- Suicide is considered murder at common law, and thus, on who helps another, whether passively or actively, in killing his own life is a party to that violation.¹⁷⁸

b. Modern Position—Separate Offense

- Under several modern statutory principles, suicide itself is not considered a violation;
- An aider cannot be convicted of such a crime as a party;¹⁷⁹
- Some statues formulate separate aiding suicide crime.¹⁸⁰

¹⁷¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁷² Louisville Evansville & St. Louis Railroad v. Clarke, 152 U.S. 230 (1894)

¹⁷³ State v. Gabehart, 836 P.2d 102 (N.M. 1992)

¹⁷⁴ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁷⁵ See State v. Gabehart,*supra*; People v. Carrillo, 646 N.E.2d 582 (Ill. 1995)

¹⁷⁶ See Cal. Penal Code § 194

¹⁷⁷ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁷⁸ Burnett v. People, 68 N.E. 505 (Ill. 1903)

¹⁷⁹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁸⁰ Cal. Penal Code § 401

(1) Distinguish—Actively Killing Another

- Some courts restrict helping suicide statutes to individuals who passively give another with the ways for the other individual to kill his own life;¹⁸¹
- Under this principle, a person who actively kills another, even at the other individual's particular request, is convicted of murder rather than merely of helping suicide.¹⁸²

3.0 DISCUSSION

Murder, in reference to common law description, comprises of illegal killing of a person with malice without careful consideration, implied or defined. Malice is a legal terminology which describes a specific ill will, but in each case where there is atrocity of disposition, flint-heartedness, cruelty, recklessness of outcomes, or a thinking in disregard of social obligation. In this State, the legislature has branched the common law murder crime into two levels of extent. The statute describes murder of the first level of extent, and then offers that all other murder types shall be regarded as murder of the second level of extent.¹⁸³ Thus, murder of the second level of extent is a common law murder, but the killing is not related by distinct attributes of murder of the first level of extent. The crime comprises every element which participates into murder of the first level of extent with the exception of the desire to kill. Pre-contemplation is crucial as in other murder cases. It is obvious, hence, that malice is a required part of the murder crime of the second level of extent, and it was with this as perceived that stated that it is seldom that the evidences in a motor vehicle accident will support a murder charge. The malice element is frequently lacking. There must be a risk consciousness or risk probability to human life attributed to the car operator prior he can be charged for murder. Malice may be deduced from the reckless and violent conduct of one who kills another from atrocious negligence of the outcomes of his actions.

If defendant was found guilty of any crime, it was that involuntary manslaughter, which comprises in the killing of another in the absence of malice and without the intention of doing some illegal act not reciprocal to a felony nor naturally inclined to cause death or severe bodily damage, or in negligence, doing some legal act in itself, or by the negligent omission to do a legal obligation.¹⁸⁴

Defendant may still be in attempt to indict involuntary manslaughter charge, notwithstanding that the district lawyer participated a nolle prosequi on the accusation. A nolle prosequi is a voluntary cease by the prosecution lawyer of current proceedings on a specific bill. At common law, it may be at any time lead to retraction, and was not a restriction to a coming prosecution of another charge, but it may be so far withdraw as to allow a proceeding revival on the original bill. In whatever place the rule may be, such performance in this jurisdiction is not a barrier to a following accusation for the same charge, or may be so far cease as to allow a proceeding revival on the original bill.

Reckless homicide is manifested by extreme human life indifference that must be ascertained from knowing or purposeful murder. Under whatever distinction, the universal malice doctrine, depraved heart murder, or reckless homicide in manifestation of extreme human life indifference

¹⁸¹ Dix, G. (2015). *Dix's Gilbert Law Summary on Criminal Law. 19th Edition.* West Academic Publishing.

¹⁸² *People v. Mattock*, 336 P.2d 505 (Cal. 1959)

¹⁸³ (Act of March 31, 1860, P.L. 332, section 74)

¹⁸⁴ *Dripps, D., Boyce, R., & Perkins, R. (2016). Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition.* Foundation Press.

is designed to cover those cases where an individual has no knowing intent to injure or kill any specific person. The extreme indifference element to human life, by description, does not define itself to victim's life, but generally, to human life.

The following kinds of conduct have been grasped, under the situations, for involvement of the extremely high level of extent of unreasonable homicidal risk which will do for murder of depraved-heart, such as firing a bullet into an occupied room. Other kinds of extremely dangerous conduct may be perceived, like throwing stones from the tall building roof onto the busy road beneath, piloting a speedboat via a cluster of swimmers and attacking an airplane suddenly to endanger the motorist decapitation. In any particular case, if death actually leads to a person in peril and happens in a predictable means, the conduct of the defendant makes him to be an eligible candidate for a murder conviction.¹⁸⁵

The court decided that one who fires with intention into an automobile which he knows is filled and who kills someone therein is in guilt of murder.¹⁸⁶

In affirmation of a murder conviction where the defendant had thrown a pistol fire into an occupied room by many people, the Alabama Supreme Court narrated:

Each committed homicide by any great risk of action to the lives of others, and proving a depraved mind in disregard of human life, even though in the absence of any perceived intent to deprive any specific person of life, is murder in the first level of extent.¹⁸⁷

In a sample case, appellant is under inquisitions of the proof adequacy of the State leading to manifestation of extreme human life indifference, in general, a charge element is accused which must be discovered to occur in order to maintain a conviction for reckless murder.¹⁸⁸

Section 13A-6-2(a)(2)¹⁸⁹ needs the prosecution to find evidences for conduct manifestation of an extreme human life indifference, and not to a specific individual only. Its gravamen is the act of reckless engagement in conduct which spawns a serious or extremely great peril of death under situations in manifestation of extreme human life indifference. What weighs extreme indifference relies on the situations of every case, but some outrageous, shocking, or special heinousness must be exhibited. An individual acting recklessly when he is conscious and aware of disregarding a unreasonable and substantial peril. The peril must be of such extent and nature disregarding what comprises a gross divergence from the conduct norm that a rational individual would notice the occurrence. To bring the conduct of appellant within the murder statute, the State is sought for his act establishment that was imminently perilous and documented a very high or serious death risk to others and that it was in commitment under situations which provided and manifested evidences of extreme human life indifference. The conduct must be in general manifestation of extreme human life indifference. The crime violated here varies from intentional murder in that it leads not from a particular, aware intent to cause the death of any specific individual, but from a disregard or risk indifference attending the conduct of the appellant.

¹⁸⁵ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press, p. 176.

¹⁸⁶ *Hill v. Commonwealth*, 239 Ky. 646, 40 S.W.2d 261 (1931)

¹⁸⁷ *Washington v. State*, 60 Ala. 10, 15, 31 Am. Rep. 28 (1877)

¹⁸⁸ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

¹⁸⁹ Ala. Code 1975, § 13A-6-2

Murder, in the exception of the provision in section 18–604(1)(b)¹⁹⁰ of this code, criminal homicide comprises murder when:

- a) It is in a knowingly or purposely commitment; or
- b) It is reckless commitment under situations exhibiting extreme human life indifference in relation to its value. Such indifference and recklessness are assumed if the actor is committed to be an accomplice in the commission of, or an attempt to engage, or flight subsequent to commitment or attempt to rape, robbery, or deviation of sexual intercourse threat or force, arson, burglary, felonious escape or kidnapping.

Murder is considered as a felony of the first level of extent, but an individual convicted of murder may sentenced to death, as cited in the section provision 18–607 of this code.¹⁹¹

- 1) The fundamental issue before us is whether there was adequate proof documented in the case to corroborate the theory of the defendant that the killing was engaged in the heat of passion under such situations as to necessitate the required instruction on voluntary manslaughter:¹⁹²
- 2) Voluntary manslaughter is the intentional killing in the fervor of passion as an outcome of grave provocation. As a concession to human frailty, a killing, which would otherwise comprise murder, is treated to voluntary manslaughter.
- 3) Fervor of passion denotes any ardent or intense emotional excitement of the type prompting aggressive and violent action, such as anger, rage, hatred, furious resentment, terror, or fright. Such emotional state of mind must be of such a level of extent as would cause a common man to perform on impulse in the absence of reflection.
- 4) In order to lessen a homicide from murder to voluntary manslaughter, there must be provocation, and such provocation must be considered by the law as sufficient. A provocation is sufficient if it is in deprivation calculation of a reasonable man of self-control and to cause him to perform out of passion rather than reason. In order for a defendant to be granted to a lessened charge since he performed in the fervor of passion, his emotional state of mind must occur at the acting time and it must have emerged from situations comprising adequate provocation.
- 5) The sufficiency test of the provocation is objective, not an opinion. The provocation, whether it be sudden argument or some other form of provocation, must be adequate to cause a common man to lose control of his act and his reason. In application of the objective norm for measurement of the provocation adequacy, the norm precludes recognition of the inherent peculiarities of the individual defendant. The fact that his intellect is low and his passion is easily aroused will be disregarded in this connection.
- 6) Mere gestures or words, however degrading, do not comprise sufficient provocation, but degrading words when associated with other conduct, such as assault, may be recognized. It was grasped that the trial court instructed the jury in a proper way that silence, however

¹⁹⁰ 18 USC Ch. 51: HOMICIDE

¹⁹¹ 18 US Code § 1111

¹⁹² Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

degrading and abusive, will justify an assault or adequate provocation to lessen to manslaughter what otherwise would be murder.

- 7) A battery or assault leading to a justifiable perception that the defendant is in imminent peril of losing his life or suffering extreme bodily damage may be of adequate provocation to lessen the killing to voluntary manslaughter.¹⁹³

If two people committed in mutual quarrel, the hits given by every sufficient provocation to the other; hence, if one kills the other, the homicide may be lessened to voluntary manslaughter.¹⁹⁴

- **Murder in Common Law**

As a general principle in common law, every criminal offence needs a particular mental element such as negligence, malice aforethought, and recklessness. There are appearances utilized to ascertain the mental element involving fraudulently, knowingly, dishonestly, willfully, maliciously, and unlawfully.¹⁹⁵

Based on ss (1)(a) to (e) s 302 of Criminal Code 1899 (Qld), murder is defined as an unlawful killing, with apparent purpose or design of correspondence, of another person, exhibiting malice aforethought, which is described as an intentional degree of the mind, a particular type of mens rea. Moreover, without malice aforethought as its intentional degree of mens rea, to kill another person as actus reus element, the offender may not be charged appropriately with murder.¹⁹⁶

Proof of propensity or similarity is a particular character form of inclination, commonly pertaining to unlawful material of facts for becoming. This principle is also known as “restricted type of incidental evidence,” which can also be observed as a sub-class of inclination fact: see *Pfennig v The Queen* (1995) 182 CLR 461, at 482–483 and 464-465, Mason CJ, Deane and Dawson JJ. This law report emphasizes the satisfaction of evidence as becoming it can apply and match to the correspondence of violations in a way that other crucial coherence for crime conviction are lacking for support of the charge of accusation. Hence, this mechanism is commonly applied in a general sense in the absence of exact accuracy.¹⁹⁷ Hence, under this principle, the Makin formula interpretation integrates duplication of the identified proof of existence, with disclosure of other facts for uncertain second crucial element for completion of accuracy in terms of question of becoming.¹⁹⁸

Moreover, the Makin formulation for its development in common law is described as proof visualization of identical facts exhibiting its correspondence, elemental coherence, or strong becoming for restraining biases resulting to integration of underlying principles for the first element to illustrate a strong degree of improbable statistical theory of accident adequate for valid

¹⁹³ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press, p. 218-219.

¹⁹⁴ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

¹⁹⁵ LexisNexis, Halsbury's Laws of Australia (online at 30 September 2020) 130 Mens Rea, '2 Elements of Crime' [130-75].

¹⁹⁶ Criminal Code 1899 (Qld), 203-204.

¹⁹⁷ see *Makin v Attorney-General (NSW)* [1894] AC 57

¹⁹⁸ Andrew Hemming and Robyn Layton, *Evidence Law in QLD, SA and WA* (Thomson Reuters, 2017) 406-8.

acceptance, only with the presence of other prejudicial degree of evidence in its second principle. see *DPP v Boardman* [1975] AC 421.¹⁹⁹

Gibbs CJ interpreted his decision at 533-534 of *Sutton v The Queen* (1984) 152 CLR 528:

It is still vital to keep materials or facts in a constant becoming of planned happenings with high degree of probability or uncertainty, even though the proof may be relevant for admission as there must always be strong emphasis on double security in comparison with similar proof of fact. Hence, the facts of high coincidence, although it may be legally accepted is deemed for exclusion if the effect of its biases is significantly more superior leading to uncertainty and inaccuracy in weight of its legal value.²⁰⁰

Brennan J, at 547-548 of *Sutton* case explained his decision that the similar proof of fact is observed as an exception to admission rule:

Prior to the trial judge's exercise of his freedom for accepting similar proof of fact, vital principles must be sufficient that the merely statistical proof of evidence apparently surpasses its high probative effect. It is the prejudicial coherence of fact in relation with irrelevant biases that it may result to ascertain exclusion.²⁰¹

Deane J had a similar decision using statutory interpretation at 559-560 with Brennan J:

The similar proof of fact is merely unacceptable for general rule application. It is for the investigation of the prosecution to review any such fact that can be considered as an exception to the fundamental rule. However, if the prosecution failed to validate events of a specific case, along with its whole context of fact, the similar proof of fact apparently has coincidence of coherence, on issue of existence, which is separated from any biased effects as proof of sole tendency, and will exhibit rejection concerning with the exclusion rule.²⁰²

Lord Diplock discussed his decision in *Hyam v DPP* [1975] AC 55, 86, that there must be a becoming element of intent for a particular criminal responsibility as stated:

“In English law, the becoming specification must be exhibited for a particular mind state as to generate an observed evil result in expressing distinction behind the object of the action. The required mens rea for satisfaction of a particular criminal violation must be suitable with the declared intent of state of mind as imposed by legislation or statutory interpretation of common law.²⁰³

At 405 in *Van Den Bemd* case, an admissible observation stated that:

“The becoming is an apparent evaluation of foreseeability for the visualization of correspondence as coherent element.²⁰⁴

In reference to *R v Knutsen* and *R v Tralka* [1965] Qd R 225, the Court stated:

¹⁹⁹ see *DPP v Boardman* [1975] AC 421

²⁰⁰ *Sutton v The Queen* (1984) 152 CLR 528, 533-534

²⁰¹ *Sutton v The Queen* (1984) 152 CLR 528, 547-548

²⁰² *Sutton v The Queen* (1984) 152 CLR 528, 559-560

²⁰³ *R v Reid* [2006] QCA 202 1, 4.

²⁰⁴ Andrew Hemming and Robyn Layton, *Evidence Law in QLD, SA and WA* (Thomson Reuters, 2017) 406-8.

“The planned occasion declares distinctly that the issues are coherent for becoming satisfaction of an individual’s death was certain to be likely as a result of the delivered punches of the accused that death could not have been foreseen if not for the absence of those punches.”²⁰⁵

According from its general design, elimination pertains to application of real evidence in connection to language content and material of facts. The real evidence concept visualizes a fact generally been described as physical objects. Real evidence can be divided into 2 types based on actual or direct portion of the scenario resulting to litigation or present for illustrative designs, such charts, maps and models, which may be utilized for the intent of correspondence to ontology of other evidence. Based on s 52 of the uniform evidence legislation, coherence pertains to a broader consequence of correspondence to be cited other than the means declared by the witnesses in connection to the illustration of conceptual intent. An essential point to emphasize is that the “original document” rule cannot influence real evidence, thus, its classes exhibit duplication and replicas of the main scenario.²⁰⁶

One type of factual evidence is a photograph depiction of road accident events, crime incidents, and damages to a victim, which is of great support for visualization of declared evidence. At 299 of *Alexander v The Queen* (1981) 145 CLR 395, Stephen J stated some particular issues in photographs:²⁰⁷

Photographic illustrations vary in characters out of several ways of exhibiting it in a two dimensional state and stationary condition, as taken pictures, although how clear it presents, may just be a form of conceptual design.²⁰⁸

Maps, charts, and models are demonstrative or illustrative types of real evidence for the valid design in finding pragmatic support to other evidence which cannot be considered as commonplace of direct intent.²⁰⁹

Under s 320 of the Code and case law of *R v Reid* [2006] QCA 202, a severe body injury is considered a crime comprising an action without any purpose or intent on the part of the perpetrator.²¹⁰ From a recent judicial opinion on *Stevens v The Queen* (2005) 80 ALJR 91, the committed grave body damage under s 320 failed to establish coherence of intent or purpose in relation to the crime issue. The criminal offense of doing grave body harm under Code s 320 meet satisfactorily the Code terms under s 23(2) stating that:

“(2) In lack of intent to inflict a specific outcome as must be denoted clearly to be acknowledge as crime element, comprising either in part or in whole of the becoming, the result is irrelevant due to absence of inflicted element.”²¹¹

In addition to that, under s 317(b) of *Reid* case, the purpose is stated distinctly to inflict a particular result for it to be considered as crime element of visualizing the malice with known intent. Although s 320 expresses the lack of such statements, the criminal violation under s 320 is hence, involves solely of crime commission, without design element to be observed in *Kapronovski v*

²⁰⁵ *R v Taiters*; ex parte Attorney-General [1996] QCA 333, 336.

²⁰⁶ Andrew Hemming and Robyn Layton, *Evidence Law in QLD, SA and WA* (Thomson Reuters, 2017) 406-8.

²⁰⁷ *Alexander v The Queen* (1981) 145 CLR 395, 299

²⁰⁸ *Alexander v The Queen* (1981) 145 CLR 395, 299

²⁰⁹ Andrew Hemming and Robyn Layton, *Evidence Law in QLD, SA and WA* (Thomson Reuters, 2017) 607-9.

²¹⁰ see *Kapronovski v The Queen* (1973) 133 CLR 209

²¹¹ *Stevens v The Queen* (2005) 80 ALJR 91

The Queen (1973) 133 CLR 209.²¹²

Furthermore, based on s 23(3) of the Code, the jury discusses that:

“(3) In the absence any other distinct fact, the obscure intent of a person is not allowed pertaining to establishment of a relevant coherence for criminal liability.”²¹³

- **IMPUTABILITY**

- 1. The Necessity of an Act**

Compassing and imagining are synonymous terms, in which the word compass signifies the design or purpose of the will or mind, and not, like common speech, the conveying of such concept to effect. But, as this imagining or compassing is a mind act, it is impossible to fall under any judicial opinion, unless it is exhibited by some open or apparent act.²¹⁴ There is no doubt, as well, but that taking any measures to provide such treasonable reasons for effect, like to consult and assemble on the ways to kill the king, is an adequate apparent act of high treason. The act required to be known as criminal must be that necessary for the actus reus of the violation.²¹⁵

- 2. What Constitutes an Act**

In Article 2 of Model Penal Code stating General Principles of Liability, Section 2.01 entails voluntary act requirement, with grounds of omission for liability, and liability possession as an act. A person will not be convicted of an offense unless his liability is grounded on conduct which has an inclusion of a voluntary act or the omission to do an act which he is able to perform physically. The following are not voluntary acts within the definitive scope of this Section:

- a. Convulsion or reflex
- b. Bodily movement during sleep or unconsciousness
- c. Conduct during resulting or hypnosis from hypnotic indication
- d. Bodily movement that otherwise is not a determination or effort product of the actor, either habitual or conscious²¹⁶

Possession is a performance, within the definitive scope of this Section, if the possessor received or procured the thing with knowledge possessed or was aware of his regulation, thereof, for an adequate period to have been able to end his possession.²¹⁷

- 3. Attempt and Kindred Problems**

Attempt, in general, according to Article 5 of Model Penal Code stating Inchoate Crimes, is a crime commission if, performing with the culpability type otherwise necessary for perpetration of the crime, the person is:

²¹² R v Reid [2006] QCA 202 1, 7.

²¹³ R v Reid [2006] QCA 202 1, 9.

²¹⁴ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²¹⁵ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press, p. 504.

²¹⁶ Art. 1 M.P.C. § 2.01

²¹⁷ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

- a. Conduct engagement with purpose which would comprise the crime if the attendant occurrences were as he knows or perceives them to be; or
- b. When causing a specific outcome is a crime element, acts or omits to do anything with the intent of causing or with the belief that it will lead to such outcome in the absence of further conduct on his part; or
- c. Acts or omits to do anything in purpose which, under the occurrences as he perceives them to be, is a perpetration or omission engaging a substantial step in a conduct course planning for culmination in his crime perpetration.²¹⁸

Conduct which may be kept substantial step under Subsection (1)(c)²¹⁹ states that conduct shall not be kept to comprise a substantial step under Subsection (1)(c) of this Section unless it is intense corroboration of the actor's criminal intent. Without lacking the adequacy of other conduct, the following, if intense corroboration of the actor's criminal intent, shall not be held inadequate as a law entity:

- (a) Waiting, searching for or following the meditated crime victim;
- (b) Searching for enticement the meditated crime victim to go to the place meditated for its perpetration;
- (c) Reconnoitering the place meditated for the crime perpetration;
- (d) Unlawful structure, enclosure or vehicle entry, in which it is meditated that the crime will be perpetrated;
- (e) Possession of materials to be applied in the crime perpetration, which are specially contrived for such unlawful purpose or which can serve no lawful intent of the actor under occurrences;
- (f) Collection, possession or fabrication of materials to be applied in the crime perpetration, at or proximal to the place meditated for its perpetration, where such collection, possession or fabrication serves no lawful intent of the actor under occurrences;
- (g) Solicitation of an innocent agent for engagement in conduct comprising crime element.²²⁰

Within the definitive scope of this Article, criminal purpose renunciation is involuntary if it is motivated, in whole or in part, by occurrences, not apparent or present at the actor's course inception of conduct, which augment the apprehension or detection probability or which make more complex the criminal intent accomplishment. Renunciation is incomplete if it is motivated by a decision to defer the criminal conduct until a more beneficial time or to convey the criminal effort to another but comparative victim or objective.²²¹

An individual is convicted of solicitation to perpetrate a crime, if with the facilitating or promoting purpose its perpetration he dictates, requests or encourages another individual to commit in

²¹⁸ Art. 5 M.P.C.

²¹⁹ Subsection (1)(c) M.P.C.

²²⁰ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²²¹ Art. 5 M.P.C.

particular conduct which would comprise such crime or an attempt to perpetrate such crime or which would form an establishment of complicity in its perpetration or attempted perpetration.²²²

It is immaterial under Subsection (1) of this Section that the actor is unsuccessful to communicate with the individual he solicits to perpetrate a crime if his conduct was formulated to effect such communication.²²³

It is a defense in affirmation that the actor, subsequent to the solicitation of another individual to perpetrate a crime, convincing him not to do so or otherwise impeded the crime perpetration, under occurrences exhibiting a complete and voluntary renunciation of his criminal intent.²²⁴

Except in the provision in Subsection (2) of this Section, it is immaterial to the individual liability in solicitation or conspiracy with another to perpetrate a crime that:

- a. He or the individual whom he conspires or solicits does not occupy a specific position or have a specific attribute which is a crime element, if he perceives that one of them does; or
- b. The individual whom he conspires or solicits is unaccountable or has an immunity to conviction or prosecution for the crime perpetration.²²⁵

It is a defense to conspiracy or solicitation charge to perpetrate a crime that if the criminal object were attained, the actor would not be convicted of a crime under the law describing the offense or as an accomplice under Section 2.06(5) or 2.06(6)(a) or (b).²²⁶

Except as otherwise provided in this Section 5.05, attempt, solicitation and conspiracy are crimes of the same grade and level of extent as the most grave offense which is solicited or attempted or is a conspiracy object. An attempt, solicitation or conspiracy to perpetrate a capital crime or a felony of the first level of extent is also considered a second level of extent felony.²²⁷

If a specific conduct charged to comprise a criminal attempt, conspiracy or solicitation is so innately impossible to generate or culminate in the crime perpetration that neither such conduct nor the actor exhibits a public risk warranting the grading of such a violation under this Section, the Court shall employ its power under Section 6.12 to execute judgment and impose sentence for a lower grade crime or degree or, in extreme scenarios, may dismiss the prosecution.²²⁸

An individual may not be convicted of more than one violation described by this Article for conduct formulated to perpetrate or to culminate in the same crime perpetration.²²⁹

²²² Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²²³ Subsection (1)(c) M.P.C.

²²⁴ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²²⁵ Subsection (2) M.P.C.

²²⁶ M.P.C. § 2.06(5), 2.06(6)(a) or (b)

²²⁷ M.P.C. § 5.05

²²⁸ M.P.C. § 6.12

²²⁹ Art. 5 M.P.C.

4. Negative Acts

In accordance to Section 2.01 of Model Penal Code, voluntary act requirement, with grounds for omission of liability, and possession as an act, liability for offense perpetration may not be grounded on an omission without action accompaniment unless:

- a. The omission is expressly made adequate by the law describing the offense; or
- b. A duty to do the omitted performance is otherwise imposed by law.²³⁰

5. Parties to Crime

According to Section 2.06 of Model Penal Code stating Liability for Conduct of Another and Complicity, an individual is convicted of a violation if it is perpetrated by his own conduct or by the conduct of another individual for which he is legally responsible, or both. An individual is legally responsible for the conduct of another individual when:

- a. Acting with the culpability type that is adequate for the perpetration of the offense, he causes an irresponsible or innocent individual for engagement of such conduct; or
- b. He is made responsible for the conduct of such other individual by the Code or by the law describing the offense; or
- c. He is an accomplice of such other individual in the perpetration of the offense.²³¹

A person is legally responsible for the conduct of another individual when:

- a. With the facilitating or promoting purpose the perpetration of the offense, he
 - i. Solicits such other individual to commit it; or
 - ii. Helps or agrees or attempts to help such other individual in committing or planning it; or
 - iii. Having a legal duty to impede the perpetration of the offense, unsuccessful to make appropriate effort so to do; or
- b. His conduct is clearly declared by law to establish his complicity²³²

When causing a specific outcome is an offense element, an accomplice in the conduct causing such outcome is an accomplice in the perpetration of that violation, if he does with the culpability type, if any, in regard to that outcome that is adequate for the perpetration of the violation.²³³

An individual who is legally incapable of perpetrating a specific violation himself may be convicted thereof if it is perpetrated by the conduct of another individual for which he is legally responsible, unless such liability is not consistent with the provision intent establishing his incapacity.²³⁴

²³⁰ M.P.C. § 2.01

²³¹ M.P.C. § 2.06

²³² Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²³³ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press, p. 561-562.

²³⁴ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

Unless otherwise given the provision of the Code or by the law describing the violation, an individual is not recognized as an accomplice in a violation perpetrated by another individual if:

- a. He is the offense victim; or
- b. The offense is so described that his conduct is unavoidably incident to its perpetration; or
- c. He cancels his complicity before the perpetration of the offense and
- d. Entirely deprives it of effectiveness in the perpetration of the offense and
- e. Provides timely warning to the law implementation authorities or otherwise makes appropriate effort to impede the perpetration of the violation.²³⁵

An accomplice may be guilty on perpetration proof of the offense and of his complicity therein, though the individual claimed to have perpetrated the offense has not been convicted or prosecuted or has been guilty of a varying violation or level of extent of offense or has an immunity to conviction or prosecution or has been acquitted.

- a. An individual perpetrates a violation if, with intent to prevent the apprehension, prosecution, conviction or punishment of another person for crime, he:
 - b. Conceals or harbors the other; or
 - c. Helps or provides in the provision of a transportation, weapon, disguise or other ways of preventing apprehension or causing escape; or
 - d. Destroys or hides crime evidence, or tampers with an informant, witness, document or other origin of information, regardless of its acceptance in evidence; or
 - e. Warns the other of preventing apprehension or discovery, in the exception that this paragraph does not employ to a warning provided in the association with an effort to cause another into accomplice with law; or
- f. Volunteers' false information to a law implementation officer.

The violation is a felony of the third level of extent if the conduct which the actor understands has been charged or is liable to be charged against the individual assisted would comprise a felony of the first or second level of extent. Otherwise, it is a misdemeanor.²³⁶

An individual perpetrates a violation if he helps in purpose another to accomplish an unlawful crime object, as by protecting or converting the proceeds into bargaining funds. The violation is a felony of the third level of extent if the principal violation was a felony of the first or second level of extent. Otherwise, it is a misdemeanor.

An individual perpetrates a misdemeanor if he agrees to accept any monetary benefit in refrain recognition from reporting to law implementation authorities the perpetration or suspected perpetration of any offense or information associating to an offense. It is in affirmation to defend prosecution under this Section that the monetary benefit did not surpass an amount which the actor perceived to be due as indemnification or restitution for damage caused by the violation.²³⁷

²³⁵ M.P.C. § 2.06

²³⁶ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²³⁷ M.P.C. § 5

6. Conspiracy

In tradition, a conspiracy is an agreement or joint unlawful intent but the purpose could be illegal even if it would not be punitive if committed by one alone. The classic exhibition of a punitive conspiracy to do a non-criminal performance is the joint defraud of another in the absence of false token utilization. Such a fraud is punitive today, even if committed by one alone, but prior the English statute on false pretenses it was punitive for two or more to join to commit such a fraud. More recently, joining of three persons whereby they lent scanty sums of money to penniless people and charged them sumptuous interest rates was held to be punitive by conspiracy even though usury was not a crime.

The common law rule that the intent of an agreement may be adequately illegal to make the joint conspiracy, even if what is assented upon is not itself punitive as a crime, has been left by most of the new codes. Under them a conspiracy is a joint crime perpetration. For majority of the part, damages deemed adequately illegal to make the joint conspiracy, have since been made punitive as crimes, if they were not so at common law, and the original rule is no longer required.²³⁸

In accordance to Section 5.03 of Model Penal Code stating Criminal Conspiracy, an individual is convicted of conspiracy with another individual or people to perpetrate a crime if with the facilitating or promoting intent its perpetration, he:

- a. Agrees with such other individual or people that they one or more of them will participate in conduct which comprises such crime or an attempt or solicitation to perpetrate such crime; or
- b. Agrees to help such other individual or people in the planning or perpetration of such crime or of an attempt or solicitation to perpetrate such crime.²³⁹

If an individual is convicted of conspiracy, as described by Subsection (1) of this Section, understands that a person with whom he conspires to perpetrate a crime has conspired with another individual or people to perpetrate the same crime, he is convicted of conspiracy with such other individual or people, whether or not he understands their identity, to perpetrate such crime.²⁴⁰

If an individual conspires to perpetrate a number of crimes, he is convicted of only one conspiracy so long as such several crimes are the object of the same agreement or continuous conspiratorial association.

No individual may be guilty of conspiracy to perpetrate a crime, other than a felony of the first or second level of extent, unless an apparent performance in pursuit of such conspiracy is proved and alleged to have been done by him or by an individual with whom he conspired.

It is in defense with affirmation that the actor, subsequent to conspiracy of perpetrating a crime, prevented the conspiracy success, under scenarios exhibiting a voluntary and complete criminal intent renunciation.

²³⁸ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²³⁹ M.P.C. § 5.03

²⁴⁰ Subsection (1) M.P.C.

A conspiracy is a continuing conduct course which ends when the crime or crimes which are its object are perpetrated or the agreement that they may be perpetrated is left by the defendant and by those with whom he conspired, with abandonment is assumed if none of the defendant and anyone with whom he conspired does any apparent performance in pursuit of the conspiracy during the employable limitation period and if a person abandons the agreement, the conspiracy is ended as to him only if and when he suggests those with whom he conspired of his forsaken or he updates the law implementation authorities of the of the conspiracy existence and of his participation therein.²⁴¹

Except as otherwise provided in this Section 5.05, attempt, solicitation and conspiracy are crimes of the same grade and level of extent as the most grave offense which is solicited or attempted or is a conspiracy object. An attempt, solicitation or conspiracy to perpetrate a capital crime or a felony of the first level of extent is also considered a second level of extent felony.²⁴²

If a specific conduct charged to comprise a criminal attempt, conspiracy or solicitation is so innately impossible to generate or culminate in the crime perpetration that neither such conduct nor the actor exhibits a public risk warranting the grading of such a violation under this Section, the Court shall employ its power under Section 6.12 to execute judgment and impose sentence for a lower grade crime or degree or, in extreme scenarios, may dismiss the prosecution.²⁴³

An individual may not be convicted of more than one violation described by this Article for conduct formulated to perpetrate or to culminate in the same crime perpetration.²⁴⁴

7. Agency

Under Section 2.06 of Model Penal Code stating Liability for Another Conduct and Complicity, a person is convicted of an offense if it is perpetrated by his own conduct or by the conduct of another individual for which he is legally responsible, or both.²⁴⁵

8. Causation

As the evidence law has much exclusion that is evidential, the causation law has much exclusion that is consequential. The demarcation line between causes which will be considered as “proximate” and those ignored as “remote” and as really a versatile line. There are no scenarios where it can be truthfully said that legal cause occurs where cause in fact does not though it may occur by relaxation reason of proof that liability will be required in scenarios where cause in fact is not by the common proof rules given to occur.

A fundamental requisite to either civil or criminal liability is that the performance of the defendant be the injury cause in fact. This necessity is depicted in the similar *causa sine qua non* rule, commonly called the ‘but for’ rule. This test commonly is satisfactory when employed in negative form, and it is a fundamental mechanism that a defendant is not liable unless the injury would not have generated but for his wrongful performance. But as a test in affirmation, the ‘but for’ rule has

²⁴¹ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²⁴² M.P.C. § 5.05

²⁴³ M.P.C. § 6.12

²⁴⁴ Art. 5 M.P.C.

²⁴⁵ M.P.C. § 2.06

the provision of no infallible norm and does not comprise a fair liability test in the lack of further eligibilities.

There are three tests of proximity, namely, intention, probability and the independent cause non-intervention. Any intended outcome of a performance is proximate. It would be plainly unreasonable that an individual should be permitted to perform with a purpose to generate a certain outcome, and then when that very outcome in fact complies his performance, to quit liability for it on the plea that it was not in proximity. Probability is a name for someone's perception as to whether an outcome will generate. The individual whose perception is granted as logical and discernable man in the occurrence of the actor. The third test is the non-intervention of an independent cause between the original cause and outcome in question. Hence, it will be convenient to call it an isolation cause.²⁴⁶

Under Section 2.03 of Model Penal Code, conduct is the outcome cause when:

- a. It is an antecedent but for which the outcome in question would not have happened; and
- b. The association between the conduct and outcome suffices any supplemental causal necessities required by the Code or by the law describing the violation.²⁴⁷

When knowingly or purposely causing a specific outcome is an offense element, the element is not established if the actual outcome is not within the intent or the meditation of the actor unless:

- a. The actual outcome varies from the meditated or formulated, as the scenario may be, only in the way that the varying person or property is affected or injury or that the injury or damage formulated or meditated would have been more grave or more extensive that that caused; or
- b. The actual outcome engages the same injury type or damage as that formulated or meditated and is not too accidental or remote in its scenario to have a just bearing on the actor's liability or on the offense gravity.

When negligently or recklessly causing a specific outcome is an offense element, the element is not established if the actual outcome is not within the harm of which the actor is aware or, in negligence scenario, of which should be aware unless:

- a. The actual outcome varies from the probable outcome only in the way that a varying person or property is affected or injured or that the probable damage or injury would have been more grave or more extensive than that caused; or
- b. The actual outcome engaging the same injury type or damage as the probable outcome and is not too accidental or remote in its scenario to have a just bearing on the actor's liability or on the offense gravity.

²⁴⁶ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²⁴⁷ M.P.C. § 2.03

When causing a specific outcome is a material offense element for which absolute liability is required by law, the element is not established unless the actual outcome is a probable outcome of the actor's conduct.²⁴⁸

9. Heidegger's Theory of Truth

Heidegger's philosophy of truth is suitable for qualitative research as criminal acts are designs of the mind state to perform unlawful acts based on exposure of evidences. First, the purpose of qualitative research methodology resembles to the taken consideration of Heidegger in revealing the essence of poetry, in a way that the aim of the poem is not to do an exact copy from an original piece of work, rather, open a novel horizon, or disclose a new world, hence, to bring about a novel way of becoming.²⁴⁹

The becoming of truth in an artwork can also be turned into repercussions resulting to criminal acts, such as murder, with various types and degrees, since every masterpiece will not always turn out the way it is, and unwelcome or unwanted outcomes based on formed intent may lead to unlawful killings of a person to someone based on decipherment of some intricate facts similar to an artwork.

There are three repercussions to be observed in complying *Aletheia* (disclosure) for the philosophical questions involved in evidence law. The first is that material facts are not limited to assumptions of mental activities, such as beliefs, relationships, and opinions, rather, it explores the scenario through various modes of Being-in-the-world and types of mens rea. Hence, proof of facts does not comprise of language content and judgement, but also the visualization of its statement of facts. Along with Inwood (2010) conclusion, the philosophy of truth emphasizes *Aletheia* as constant revelation and documentation of malice aforethought occasions. Truth and presumptions are inseparable since disclosure needs the vital elements of mens rea and actus reus. Assumptions may be based on mistaken concealment, falsehood, or disguise. However, the application of Dasein is the visualization of existence in human correspondence. Heidegger is a philosopher of existentialism that uses fundamental ontology to place a person at the center to study their interaction as correspondence dealing with relationships. Then, the focus revolves around the happenings of all man's work that penetrates the central of coherence based on Being-in-the-world. In fact, it is through man's being and coherence that the disclosure of becoming will turn into existence of facts. On the Heidegger's theory of truth, man's correspondence is the central relationship for revelation of truth. Hence, its principle argues that the being is based on ontology and that its constant nature of coherence simultaneously exposes the truth. Hence, the application of Heidegger's principle of truth conceptualizes *Aletheia* as a simultaneous revelation and obscurity of proof of facts under pragmatic theory. The qualification synthesis of this critical proposition leads to the process of becoming based on series of existence (correspondence, coherence, and pragmatism) resulting to unconcealment of truth to justify criminal acts of killings using the virtue of Dasein for rightful condemnation exhibiting '*Daseincentric*' disclosure. Therefore, Heidegger's philosophy of truth is suitable and useful for validation of qualitative

²⁴⁸ Dripps, D., Boyce, R., & Perkins, R. (2016). *Dripps, Boyce, and Perkins's Criminal Law and Procedure, Cases and Materials, 13th Edition*. Foundation Press.

²⁴⁹ Huttunen, R., & Kakkori, L. (2020). Heidegger's Theory of Truth and its Importance for the Quality of Qualitative Research. *Journal of Philosophy of Education*, 54(3).

measurement of murder and its distinction to other criminal acts of killings since this methodology does not contend for photocopy-style of images to reach the objective of evidence law.²⁵⁰

4.0 CONCLUSION

Criminal law is a legal process to ascertain and justify every person's acts, whether lawful or unlawful for the charge of killing another person, and subject them for necessary punishment based on model penal codes and constitutional rights. Criminal law is interpreted differently as discussed in U.S. statutory codes and Common Law jurisdiction pertaining to murder definition and types, and its presentation of evidences for punishment are scrutinized using a different trial court legal evaluation system. Hence, in common law, degrees of murder, as well as depraved heart murder, may just be criminalized into murder, if not manslaughter or homicide. Although the well-defined elements crucial to distinguish degrees of murder and its other types are clearly stated in U.S. Criminal Code, legal research methodology serves as a comparative means to measure qualitatively the aspects of murder. Hence, theories of truth serve as great tools in validating the measurement used for murder incarceration.

5.0 RECOMMENDATION

The Heidegger's philosophy on truth through questioning of facts for development of becoming based on *Aletheia* (disclosure) can serve as a theoretical framework to support the appropriateness of criminal law in common law jurisdiction using statutory code and model penal code, since this research methodology promotes the virtue of *Dasein* of not doing the exact copy interpretation of a particular legal system since every criminal act, like murder, is done in a way similar to an artwork of poetry designed with meaning of becoming deciphered using series of existence, hence, the repercussions of truth play a vital role in corroborating the evidences based on correspondence, coherence, and pragmatism. Therefore, the return to existence is the essence of *Dasein* in such a way that recalling of Being-in-the-World, the language content matching with material of facts, and simultaneous disclosure of hidden evidences, to constantly reveal the framework of repercussions would lead to becoming, equivalent to criminalization, as justified measurement for qualitative study of criminal acts, like murder and its various types, based on statutory interpretation, codes, and legal principle. Thus, the House of Parliamentary System serves as the place for formulation of common law in establishing legal theories resulting to statutory interpretation of the Australian Court System, though check and balance system, as legislative framework pre-emptive to constitutional law, towards application of its legal practice and regulatory policies in business activities and proper behavior of its citizens to be in harmony and adjusted for modification of laws leading to repeal, for the purpose of addressing constitutional gaps, hence, applying the critical assessment of Heidegger to other comparative laws based on political agendas for economic success.

²⁵⁰ Ignatius, I., Umotong, I., & Dennis, O. (2022). Heidegger's Notion of Truth as *Aletheia*: a critical exposition. *International Journal of Humanities and Innovation*, 5(2).

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