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| **The *Actus Reus* of murder** |
| ***Actus reus*** | * The defendant did the act or omitted to do a legally recognised duty. (an act or omission)
* The act was deliberate.
* The act was unlawful. (As opposed to killing in self defence).
* The act was a significant cause of death.
* The death was of a person in being.
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| **Actus reus, same for murder and manslaughter** | The *actus reus* for both murder and manslaughter is the same.  The difference between the two crimes is found in the *mens rea*. |
| **Who may be killed?** | * Any reasonable creature, this is taken to mean the 'human' being there is no such thing as a monstrous birth [*Re A (Children)* (2000)](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Re A (Children) (2000) CA)
* It is not essential that a child draw breath prior to an act which caused its death.
* If a child were caused to be born prematurely and as a consequence the child died then that would be murder.
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| **A foetus** | Is not a human being for the purposes of the law of homicide. A child is not considered in law to be in being until the whole body of the child is extruded from the womb and has an existence independent of the mother. Whether the child has an independent existence turns upon whether it has an independent circulation, and has breathed or had a capacity for independent breathing. A child may have an independent existence, however, even though it has not drawn breath and even though the umbilical cord is not severed.A person continues in being until his being is extinguished by death. |
| **Queen’s Peace** | All persons are "under the Queen's peace" except foreign enemies killed in war. |
| **"Kills", what is death?** | * Disconnection of a life support machine causes death unless death has already occurred because the brain is dead *[Malcherek and Steel](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Malcherek_%26_Steel%2C_R_v_%5B1981%5D_CA)*[(1981)](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Malcherek_%26_Steel%2C_R_v_%5B1981%5D_CA)
* However,[*Airedale NHS Trust v Bland* (1993)](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm#Airedale_HA_v_Bland_[1993]_HL) has allowed the previous brain death decision to be questioned. In many respects Bland was 'alive' in that he was in a state of Persistent Vegetative State ([PVS](http://sixthformlaw.info/03_dictionary/dict_p.htm#PVS)). Any right to die for someone in this live brainstem state must be sanctioned by the courts.
* a person causes the death of another where by any act or omission he accelerates the death of that other
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| **Prosecution must establish that D's act was both a factual and a legal cause of the result.** |
| **Factual causation**  | D’s act must be more than a *de minimis* cause (trifling, trivial connection with the result). Death is inevitable to all of us and murder is an acceleration of V's death, it is immaterial if the victim is already suffering from a fatal disease. The 'but for' test used in [*White*[1910]](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm#White,_R_v_[1910]_CA) is not very sophisticated and may not predict the result where more than one cause is involved in the death. |
| **Causation in law** | D’s act does not have to be***the sole or even the main cause,*** providedit is a substantial and operating cause of death or was a significant contribution to the death ([*Smith*](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm#Smith,_R_v_[1959]_CMAC); *[Pagett](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Pagett%2C%20R%20v%20%281983%29%20CA)*).  Substantial means that is not trifling or trivial.  It does not require proof that D’s act was largely to blame.  The act or omission must be one of the causes for example in[*R v Dalloway*(1847)](http://sixthformlaw.info/02_cases/mod3a/cases_36_invol_gross_neg.htm#Dalloway, R v (1847) Erle J) the driver of a cart was not guilty of manslaughter where his negligent driving did not contribute to death of child who ran into the path of vehicle. and one that is more than minimal. It is therefore possible to have two or more independent operative causes of death, and any person whose conduct constitutes a cause may be convicted of an offence in respect of the death.The defendant's act must be more than a minimal cause of the death. It was said by Robert Goff LJ in*[Pagett](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Pagett%2C%20R%20v%20%281983%29%20CA)*[[1983]](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Pagett%2C%20R%20v%20%281983%29%20CA)that***"the accused's act need not be the sole cause, or even the main cause, of the victim's death, it being enough that his act contributed significantly to that result."*** Other causes which contribute to the death may be the actions of others, (eg the acts of the police in *[Pagett](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Pagett%2C%20R%20v%20%281983%29%20CA)*), or of the victim himself [*Williams*[1992]](http://sixthformlaw.info/02_cases/mod3a/cases_38_invol_uada.htm#Williams & Davis, R v [1992] CA)(but see [*Roberts* (1971)](http://sixthformlaw.info/02_cases/mod3a/cases_53_assaults_non_contact.htm#Roberts, R v (1971) CA)).  These other causes do not of themselves relieve D of liability where D's act was a *substantial and operating cause*.  The civil law notion of *novus actus* also arises here; the chain of causation may be broken where the intervention was “free, deliberate and informed.”  In English *civil law* that you must take your victim as you find him, this principle applies in criminal law: for example.  This principle, known as the egg-shell skull rule, is not confined to the victim's physical condition *[Blaue](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Blaue%2C_R_v_%5B1975%5D_CA)*[[1975]](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm%22%20%5Cl%20%22Blaue%2C_R_v_%5B1975%5D_CA).  It is not of universal application, however, as seen in [*Roberts*(1971)](http://sixthformlaw.info/02_cases/mod3a/cases_51_assaults_actus.htm#Roberts, R v (1971) CA)**.** An act which constitute a *novus actus interveniens*breaking the chain of causation between D's act and the resulting death relieves D of liability).Rarely will the courts admit the new act to be improper or negligent medical treatment. |