



THE DIFFERENCE BETWEEN MURDER AND MANSLAUGHTER AS DEFINED BY US LAW

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Introduction

For a while now, criminal law has been something that I am very interested in. I decided that I wanted to write my Travail Personnel on it this year because I wanted to explore it more, to see if it really is something that interests me. However, criminal law is a very big topic, and one that I would never be able to cover, so I had to find a more precise area.

Somewhere I stumbled across the term “accidental manslaughter”, and this confused me a bit, because according to most media, and certainly in the books I’ve read and films I’ve seen, manslaughter, by definition, is accidental. So, if accidental manslaughter exists, then surely that must mean that there are cases of deliberate manslaughter? But then what would differentiate it from murder? I forgot about it for a while, until I heard my grandfather (an ex-detective) and my cousin (a law student) talking about it while on holiday, and I realised that it was a really interesting subject and I wanted to find out more about it.

Part One – Murder

What defines murder?

According to the Merriam-Webster dictionary, murder is “the crime of unlawfully killing a person, especially with malice aforethought”. However, Wikipedia states that it is the killing of another human *without justification or valid excuse*. This definition does raise some questions. If this is true, what is seen as a valid excuse? Can you justify murder by saying that the victim deserved it? Or does “justification” mean in self-defense?

The NOLO legal encyclopedia states that murder is an intentional killing that is either unlawful (not legally justified) or with “malice aforethought”. This term is also used in the Merriam-Webster dictionary, and in the Wikipedia article, and is explained by NOLO as simply the intent to kill someone without legal justification or excuse. In most states, malice aforethought also exists if the person responsible intended to inflict serious injury and the victim died as a result, or if they behaved extremely recklessly and the victim dies as a result of those actions.

In America today, murder is defined by Statute¹ and not common law².

Capital Murder

Capital murder is defined as murder that can be punished with the death penalty (or the highest punishment possible in that state), such as first-degree murder with aggravating factors³, or the killing of a child.

First- and Second-Degree Murder

This is a classification that only exists in the United States. If a killing is classed as a murder, there is still the question as to whether it’s classed as first or second degree. According to US law, a murder is first degree if it is more dangerous than others, or if it is more morally blameworthy. Different states do have different rules, but general guidelines are:

¹ For a definition of Statute, see page 18.

² For a definition of Common Law, see page 17.

³ For more on aggravating factors, see page 8.

Deliberate and premeditated:

A premeditated murder is a murder where the act is considered before committing. There is, however, no time limit. Premeditation can just be seeing something lying nearby and deciding to use it as a weapon. If a murder is deliberate, the defendant has thought about the act and its consequences (not including punishment) and made the decision to follow through with it. An attack that has been provoked or committed in the heat of passion is not classed as deliberate, but that doesn't mean that a murder committed with emotions such as anger cannot be deliberate.

This example of a deliberate and premeditated murder is from the legal encyclopedia NOLO:

“A defendant convicted of first-degree murder for strangling a victim with a lamp cord premeditated the murder. The evidence showed that the defendant [4] repositioned the cord around the victim's neck numerous times, each time giving him the opportunity to reflect on his actions. The defendant had also had time to consider his actions during a struggle with the victim prior to the strangulation, further proving premeditation. (*Berube v. State*, 5 So.3d 734 (Fla. 2nd DCA 2009).) “

In short, this is an example where the killer had time to reconsider his actions, showing determination, actively struggled with the victim, showing intent, and saw a possible weapon and used it, showing premeditation. Therefore, the defendant was convicted with first-degree murder.

Felony murder:

A felony murder, as it's often called, is where the murder is committed in conjunction with a felony if the death was a foreseeable result of the initial felony. A common given example is that if the defendant set fire to a building, which is arson – a felony, and a firefighter dies trying to put it out, the defendant can be charged with first-degree murder, on account of the fact that the firefighter's death was a predictable outcome and the defendant still went through with the felony. On the contrary, if the defendant and their accomplice rob a house and the accomplice is shot by the police, the defendant isn't necessarily guilty of first-degree murder because he didn't directly cause the victim's death, whereas the arsonist did (his fire killed the victim). In this case, the police officer who shot the accomplice might be guilty of either murder, or justifiable homicide⁵, depending on the situation, the threats presented, and the judge. With felony murders, an accomplice can be found guilty even if they didn't personally kill anyone, on the grounds that they were involved in the original felony when the killing occurred.

The weapon is an explosive device, like a bomb or grenade:

In some states, such as California, the statute that defines first-degree murder states that any deaths caused by explosive devices is first-degree murder. (“All murder which is perpetrated by

⁴ For a definition of the term “defendant”, see page 17.

⁵ For a definition of justifiable homicide, see “The Difference Between Murder and Homicide” on page 10

means of a destructive device or explosive ... or by any other kind of willful, deliberate, and premeditated killing ... is murder of the first degree.” (Cal. Penal Code § 189 (2018).))⁶

Second-degree murder also has certain guidelines. These include:

Intentional but not premeditated killings:

While these killings are not planned, the killer did, in that moment, intend to kill the victim. If the killer were to, for example, kill their boss in an argument, they would most likely be charged with second-degree murder. This is because although the killer didn't come in to work with the intention of killing their boss, or enter the argument with the intention of doing so either, in that moment in time the killer had both made the decision to kill and actively attempted to. However, if the court decides that the killer acted in the heat of passion, they can be charged with voluntary manslaughter instead.

Intent to cause only serious bodily harm:

If the killer were to attack their victim with the intent to seriously hurt them, then they can still be charged with murder if the victim dies. This is if, like with felony murders, the death of the victim was a foreseeable outcome of the injuries inflicted. Let's say the killer were to have an argument with their boss, like in the example above, and they use a lamp to hit the boss on the head with all their strength. Although the killer only intended to cause serious bodily harm, they knew that death could be a result of the injuries inflicted.

Extreme indifference to human life:

In these cases, the killer behaves in a reckless way that has no regard for the victim's life or safety, which then results in their death. To use the same example again, if a crowd were to gather to watch the argument between the killer and their boss, and the killer were to pick up a gun and shoot into the crowd to scare them off, then they would be guilty of second-degree murder if anyone in the crowd were to die. They might not have meant to kill anyone, but they also didn't think about the fact that a member of the crowd could die and would probably be charged with second-degree murder.

Some states also class felony murders as second degree rather than first.

Third-degree murder

Third-degree murder is another category that only exists in the United States. In fact, it is only defined in three states as of 2017, these being Florida, Minnesota and Pennsylvania. It used to be defined in Wisconsin and New Mexico, which once had five degrees of murder.

⁶ For a definition of the § symbol, see page 18.

Again, the definitions of third-degree murder vary from state to state, but here are the guidelines from Minnesota, as an example.

Deaths that occur from an extreme indifference to human life are classed as third-degree murder instead of second in Minnesota.

Any deaths resulting from the selling, giving away, otherwise distributing or administering controlled substances (with no intent to kill) are also classed as third-degree murder according to Minnesota Statute § 609.195 (Murder In The Third Degree)

Murder Penalties

If someone has committed a murder, or has at least been found guilty of doing so in a court of law, then they are charged with some form of punishment, but what kinds of charges are there?

Penalties for First-degree murder

Throughout the United States, murder sentences vary. In Florida, for example, if the defendant is found guilty of first-degree murder, then they are either given the death penalty or life in prison with no possibility of parole⁷. In other states, like California, a two-tiered sentencing structure is used. The first tier is a range of years in prison, up to life, and the second is a life sentence in prison with no possibility of parole (or the death penalty, in states that allow it). The tier of sentence given often depends on whether or not the prosecution⁸ can provide any aggravating factors.

What are aggravating factors?

Aggravating factors are specific factors given by state law which include aspects of the crime, the defendant and the victim(s), and mean that the defendant charged of first-degree murder is subjected to the state's highest sentence (life in prison with no possibility of parole, or the death penalty). These vary from state to state, but FindLaw provides a list of common aggravating factors⁹:

- The defendant has already been convicted of one or more murders,
- The killing occurred during a violent crime, such as arson, rape, or robbery,
- The victim was a law enforcement officer carrying out his or her duties,
- The victim was a judge, prosecutor, juror or witness killed to prevent them from performing their duties,
- The killing was heinous or involved torture,
- The defendant waited for and ambushed the victim,
- The killing involved bombs or explosives,
- The defendant is an active gang member and the victim was killed as part of gang activity.

⁷ For a definition of the term "Parole", see page 17.

⁸ For a definition of the term "prosecution", see page 18.

⁹ FindLaw also provides a list of links to each state's legal webpage where specifics on its charges and definitions can be found. See the end of the bibliography on page 21 for the link.

The death penalty:

Most states have the option of the death penalty for those convicted of their highest murder charge. Texas, for example, gives the death penalty to all defendants convicted of Capital Murder, and other states give the death penalty to some defendants charged with aggravated first-degree murder.

Life in prison without the possibility of parole:

This is given as a charge for first-degree murder in all states where the death penalty is allowed, and if the prosecution either does not seek to give the death penalty or fails to convince the court that a death penalty is needed in states where it exists.

Lesser sentences:

First-degree murder without any aggravating factors often merits a lesser sentence. These vary from state to state but include a life sentence with the eventual possibility of parole, 25 years to life (in California), or 20 to 25 years (in New York).

Penalties for Second-degree murder

Like with first-degree murder, there are multiple factors that contribute to the sentence given for second-degree murder. Firstly, the language of the law that sets the penalty is taken into account, as well as if any of a range of aggravating and mitigating factors are present.

Letter of the law:

In the federal statute (18 U.S.C. §§ 1111), the punishment for second-degree murder is listed as “imprison[ment] for any term of years or for life”¹⁰ which is very vague. Because of this, federal judges must refer to the Federal Sentencing Guidelines to determine an appropriate punishment.

Aggravating and mitigating factors:

In this case, aggravating factors are aspects of the crime or the defendant’s criminal history that allow an increase in the severity of the imposed sentence. In second-degree murder cases, these include whether the defendant was heinous, cruel, brutal or degrading towards the victim, what the defendant’s criminal history is, whether a firearm was used, and whether or not the crime is a hate crime.

Mitigating factors are the opposite. These are factors like whether the defendant has accepted responsibility for the crime, any mental or physical illnesses, their civic contributions and what their childhood was like. If any mitigating factors are present, the defendant may be given a lesser sentence, so a shorter or easier one.

¹⁰ The full quote from 18 U.S.C. §§ 1111 is “Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life”.

Is there a difference between murder and homicide?

Homicide is the umbrella term that both murder and manslaughter fall under; and isn't necessarily a crime. Justifiable homicide is called a "no fault" homicide, meaning that the death wasn't intentional in any way. For example, an accidental shooting, a killing in self-defense, or any death that results from necessary actions of a law enforcement officer are all justifiable deaths, but a crime of passion¹¹ is not. In short, all murders are homicides, but not all homicides are murders

¹¹ More on crimes of passion on page 11, under "Voluntary Manslaughter"

Part Two: Manslaughter

What Defines Manslaughter?

Murder is the act of killing someone with malice aforethought¹², and consequently, manslaughter is the act of killing someone without it. This means that the act was not committed with the intent to kill or seriously harm, or with an extreme or reckless disregard for human life, and is therefore seen as less morally blameworthy, or not as “bad” as murder. This is why anyone found guilty of manslaughter, while there are punishments, tend to be given a lesser sentence than those convicted with murder.

Different Categories

Like murder, manslaughter is divided into different categories, namely voluntary and involuntary (or accidental) manslaughter.

Voluntary Manslaughter

A manslaughter is classed as a voluntary manslaughter, otherwise called a crime of passion, when the killer is strongly provoked and then kills before they have time to think their actions through. Voluntary manslaughter does have certain conditions. For example, the provocation must have been enough to provoke a rational person, and for a crime to have been committed in the heat of passion, the killer has to have had no time to calm down from their highly emotional state before the crime occurs. Even though the killer intends to kill at that moment in time, they can be charged with manslaughter rather than murder if the crime was committed in the heat of passion, as the emotional context is classed as a mitigating factor¹³ that makes them less blameworthy.

A common example of a crime of passion is this: a woman comes home to find that her wife is cheating on her and kills the paramour in a blind rage. Although she intended to kill, she was angry and (reasonably) provoked so she is likely to be charged with voluntary manslaughter.

Involuntary Manslaughter

Involuntary manslaughter is often the charge for unintentional homicide by reckless conduct, like hitting and killing a pedestrian while drunk driving, or criminal negligence¹⁴. Sometimes an

¹² Malice aforethought is explained on page 4, under “What Defines Murder?”

¹³ For more on mitigating factors and what they are, see “Aggravating and mitigating factors” on page 9.

¹⁴ For a definition of criminal negligence, see page 17

unintentional killing during the commission of a crime that is not a felony¹⁵(a misdemeanor¹⁶ or infraction¹⁷), like simple assault.

Involuntary manslaughter is where the line between murder and manslaughter is most blurred, as felony murders are classed as first degree, and deaths that are the result of extreme indifference to human life are classed as murder of the second degree.

¹⁵ If the crime is a felony, then it is no longer involuntary manslaughter but a felony murder, which is a murder of the first degree. See page 5 for more.

¹⁶ For a definition of the term misdemeanor, see page 17.

¹⁷ For a definition of the term infraction, see page 17.

Manslaughter Penalties

Just like with murder, being found guilty of manslaughter is accompanied by a punishment, but the penalties for manslaughter are a lot less severe than those for murder. The punishment is lighter, because the absence of malice aforethought¹⁸ is one of the defining factors of manslaughter, meaning that although it is a serious crime, it isn't as bad as murder. So, what are these penalties?

Penalties for Voluntary Manslaughter

The penalties for voluntary manslaughter, like with the penalties for murder, are sometimes specified in the actual law that forbids it, but often these laws just list a range of potential penalties, and leave the exact sentence up to the judge.

For example, the federal law against voluntary manslaughter states that the penalty should be a fine, a prison sentence of up to ten years, or both. In the California Penal Code, these guidelines are more specific, stating that anyone found guilty on manslaughter should receive a sentence of between three and eleven years.

The judge is still relatively free to decide on a sentence that they see fit, and this is where any present aggravating or mitigating factors¹⁹ come into play, to decide whether the sentence should be more or less severe.

Penalties for Involuntary Manslaughter

The penalties for involuntary manslaughter don't really differ from those for voluntary manslaughter or even murder, other than that they are significantly less severe. The federal guidelines for involuntary manslaughter are ten to sixteen months in prison, or more if the crime was committed due to reckless behaviour. State laws vary on the subject of involuntary manslaughter, but most of them give guidelines on the matter, and leave judges to decide on a specific sentence. Like with voluntary manslaughter, this is where any present aggravating or mitigating factors²⁰ come into play.

¹⁸ Malice aforethought is explained on page 4, under "What Defines Murder"

¹⁹ See 16

²⁰ See 16

Part Three: Murder vs. Manslaughter: Example Cases

Even when all the facts of a case are present and known, it can be difficult to say whether the defendant should be charged with murder or manslaughter. In general, judges follow the guidelines listed in this paper, but sometimes the lines are blurred. To better illustrate the difference between the two charges, here are a few infamous examples of murder or manslaughter cases.

Case One: Michael Jackson's Death

The facts: Conrad Murray was Michael Jackson's private, round-the-clock doctor when the King of Pop died in 2009. Prosecutors accused Murray of administering a powerful sedative (propofol) to his patient without customary safeguards. The propofol caused Jackson's death. (extract from a Nolo.com article "How is Murder vs. Manslaughter Defined? Does Intent Matter?" by Micah Schwartzbach, Attorney.)

The verdict: Murray was convicted of involuntary manslaughter, for "grossly negligent medical treatment", which means that he, as a doctor, didn't take as much care in his treatment as he should've, which resulted in Jackson's death.

Some people wanted a second-degree murder charge, arguing that Murray disregarded a known risk to Jackson's life, but the prosecution decided against it, possibly as they didn't think that Murray was morally blameworthy enough.

Case Two: Jacqueline Millan

The facts: On May the 4th, 2012, Jacqueline Millan accused her boyfriend Tom Franks of cheating, which resulted in a heated argument. Franks said that a struggle ensued, and he heard a gunshot before releasing Millan and going back into the house. A neighbour testified and said that he had heard Millan arguing with Franks and could see Millan near the driveway. He also heard three gunshots, and claimed to have seen a tall, skinny man running toward Millan shortly before. Jacqueline Millan was shot in the head, she died in hospital three days later. (Information from a modbee.com article "Jury: Man guilty of voluntary for shooting girlfriend" by Rosalio Ahumada. The Modesto Bee is a local news website for Modesto, California.)

The verdict: A Jury found Tom Franks guilty of voluntary manslaughter. Although Franks supposedly intended to kill in the moment, the fact that it was during a heated argument meant that it was classed as a crime of passion.

Franks faced up to 37 years in prison, which was an extended sentence because he used a gun, committed the crime while on bail, and had a previous conviction for two counts of robbery, which are all aggravating factors.

Case Three: Aaron Hernandez

The facts: former NFL player Aaron Hernandez was accused of shooting his fiancée's sister's boyfriend, Odin Lloyd, in June 2013. There was a lot of evidence that showed that Hernandez was with Lloyd when he died, and the police found the key to a car that Hernandez had rented in Lloyd's pocket. The apparent motive is unknown, but Hernandez appeared angry with Lloyd at a nightclub two days before. Security footage from Hernandez's mansion also showed him holding what appeared to be a gun less than 10 minutes after Lloyd was killed. (Information from an msnbc.com article "Ex-NFL player Aaron Hernandez convicted of first-degree murder" by Associated Press)

The verdict: Hernandez was found guilty of first-degree murder and given a lifetime prison sentence with no possibility of parole. He had taken the gun with him to meet Lloyd, so the murder was premeditated, he intended to kill Lloyd in the moment, and even though they argued at the nightclub, it was two nights before Lloyd's death, so he had enough time to cool off, and the crime could no longer be classed as a crime of passion. Although there was no apparent motive, there was still more than enough physical evidence to convict Hernandez of the crime.

Case Four: Alice Uden

The facts: Alice Uden, a 75-year-old woman, testifies that she shot her first husband in the back of the head, which she claimed was in protection of their two-year-old daughter, whom he was about to attack, and dumped the body at Remount Ranch, where it was found around 40 years later. Prosecutors claimed that Uden shot her husband while he slept and played audio and video recordings of her interviews with police to show that her story had changed. (Information from an nbcnews.com article "Wyoming Woman Alice Uden, 75, Convicted Of 2nd-Degree Murder" by Associated Press)

The verdict: Uden faced up to 20 years in prison on a second-degree murder charge, as the Jury believed Uden's story of having shot her husband to protect her daughter, but she did purposefully and maliciously kill him.

Conclusion

At the beginning of this year, I was considering criminal law as a career path, so this TraPe was a good chance to explore the field a bit and find out more about what criminal law is. Although I have since figured out that this isn't something that I would like to pursue, this TraPe was still incredibly interesting to write, and I'm glad that I did.

I had originally planned to cover UK law as well, but about halfway through covering second-degree murder I realised that it would have been very difficult. It isn't always easy to find trustworthy legal sources that give useful information, rather than trying to find you a lawyer (which I didn't need), especially when progressing into less mainstream territory, like third-degree murder. It was hard enough to find sources for United States law, and United Kingdom law is certainly a more niche category, so I decided to try and go into as much detail as I could for US law rather than have a vague description of the two.

Another difficulty that I faced during the writing of my TraPe, other than the relatively few trustworthy sources available, is that sometimes no matter how simplified for public consumption the articles are, they can be difficult to understand. I often had to read an article through multiple times before starting to understand, and I'm a native English speaker with a decent amount of general knowledge of the law. Legal language can be hard to understand, which is why I decided to include a glossary at the end of my TraPe, with definitions of terms that I used.

However, I have definitely understood the difference between murder and manslaughter. I watch a lot of murder mystery tv shows and films with my family, and a surprising number of apparent murderers are actually only guilty of manslaughter. My father is never pleased when I point this out and has taken to calling me "the murder bore".

I am pleased with the result of my TraPe, I feel as though I've understood what these different charges are and explained them clearly. I've also been a lot more organised this year, I wasn't in a frantic rush to finish before the deadline like I have been in the past, which is certainly an improvement in my ability to work on something over a long period of time rather than putting it off indefinitely.

A Glossary of Various Legal Terms

C

Common law is the basis of U.S federal law in all states, except Louisiana, that was first developed in English courts of law.

Most crimes involve intentional conduct. This means that assault is only assault if the defendant means to apply force. However, criminal negligence occurs when a reasonable person in the defendant's position would have been aware of a relative risk. Criminal negligence is applicable in this context when said risk leads to a death.

D

The defendant is the party against whom a criminal or legal action is being brought, the party being defended in court.

F

Originally in English law, punishment for a felony was the seizing of the guilty party's property, however in the U.S today, a felony is a crime where the punishment is imprisonment for at least a year or the death penalty (where applicable). Although each state has its own definition, most are in line with the federal one. Louisiana defines it as a crime where the punishment is the death penalty or imprisonment at hard labour

H

Homicide (an umbrella term) is the killing of any human being by another human being.²¹

I

An infraction is a minor offence, such as theft or trespassing.

L

Legislative is defined as having the power to create laws.

M

The federal definition of a misdemeanor is a crime for which the maximum sentence is a year in prison.

P

Parole is the temporary or permanent release of a prisoner before their sentence is finished, on the promise of good behaviour.

²¹ See "The Difference Between Murder and Homicide" on page 7 for more.

Prosecution is the institution and conducting of legal proceedings against someone in respect of a criminal charge

S

A statute or a statutory law is a law enacted by the legislative branch of the government.

Symbols

§ is used to refer to a specific section of legal code.

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