

Offences Against the Person:

Murder



By the end of this unit, you will be able to:

- Explain the actus reus and mens rea of murder
- Understand Coke's definition of murder
- Explain how the definition of murder has changed and evolved.

You will also be able to:

- Critically evaluate the current law, and begin to explore the recent reforms
- Evaluate the changes in the light of the Law Commission's earlier report.

Homework

During this unit, you will be set the following. In completing homework, you will be expected to do your own research and supplement your own notes. This is essential to show understanding.

1. How far does the case of Kiranjit Ahluwalia highlight the problems with the old law on murder and voluntary manslaughter. Do you think that these concerns have been adequately addressed by the key changes made to the law? Would the Law Commission have produced a better approach?

End of Unit Assessment

As with AS, you will sit a DRAG test but not until after we have looked at voluntary manslaughter as well. Remember, you will have the choice to answer 10 out of 30 questions, reflecting your understanding and knowledge of the subject.

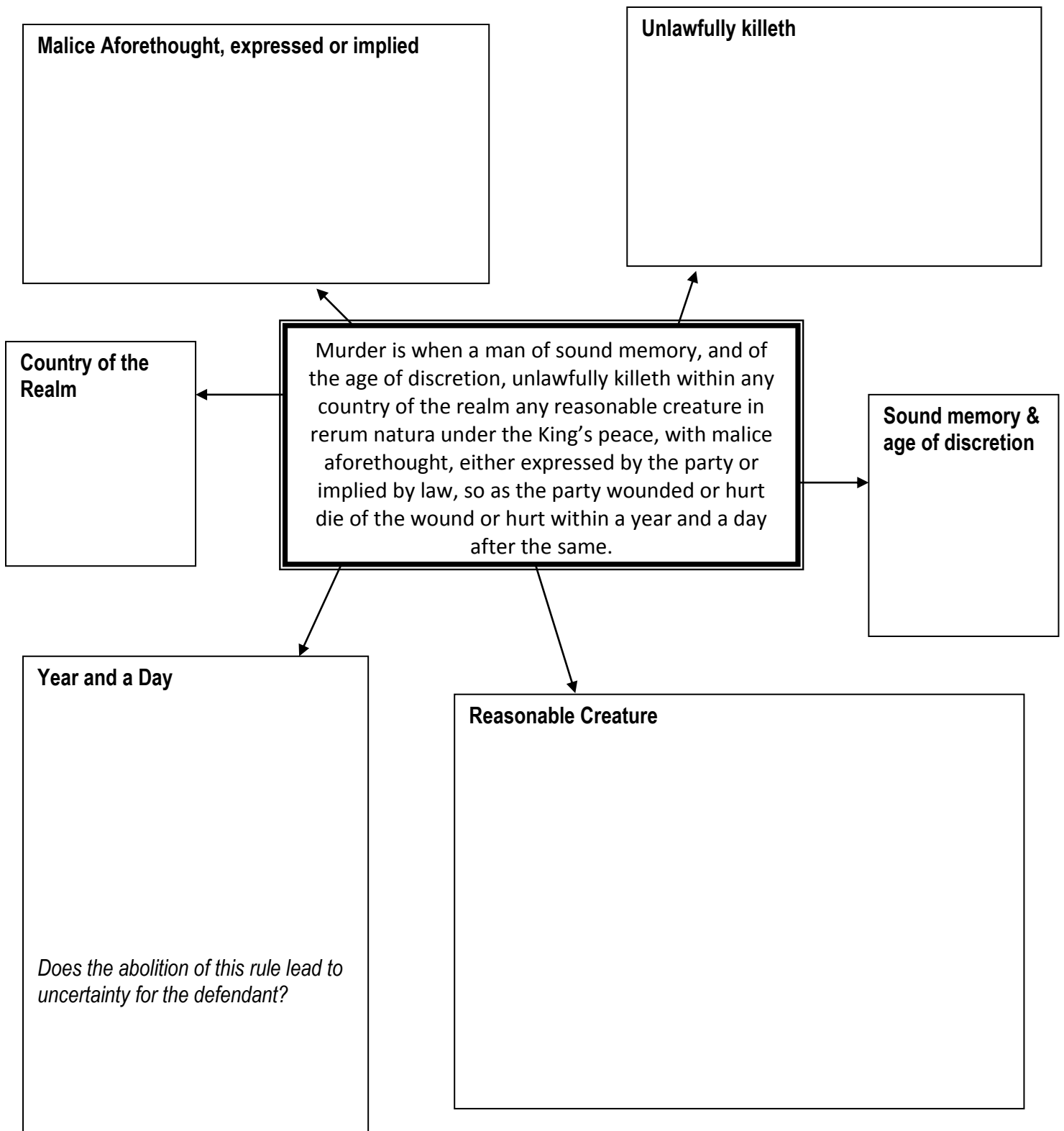
At the end of each unit on manslaughter, we will look at a section B question, but for now you will not complete an essay question on the subject (hmmm... think ahead to mocks!)

Murder

Murder is generally accepted as one of the worst crimes imaginable. It is a **common law** offence, which means that the courts are able to develop the definition and the crime itself through case law using

However, this can also be a problem because it means that the definition is constantly changing and it can be a little tricky to work out the exact meaning of the law. *Remember all that confusion over oblique intention!*

The definition of murder comes from Coke LJ in 1797:



The essentials of murder...

Murder is a _____ crime.

It is a crime of **specific intent**, This means that simply being reckless to the outcome is not sufficient, and so intoxication *may* be a defence to the crime.

There are some partial defences identified in the Coroners and Justice Act 2009. These are referred to as **voluntary manslaughter**.

Question: What is voluntary manslaughter?

In these instances, even though murder can be proved, if the plea is accepted, the charge is reduced to manslaughter.

Sometimes, D may kill but not mean to. This is known as **involuntary manslaughter**, and we have already seen some examples of this before the summer.... Can you think of two cases which illustrate this?

Case	Facts	Type of manslaughter

What happens if D is convicted of murder?

On conviction, the defendant receives a **mandatory** life sentence. There is no judicial discretion allowed. The judge can, however, set the tariff

Student Thinking: What is a 'tariff' and how do they work for the crime of murder?

However, if they are convicted of manslaughter, the judge may have discretion in sentencing and so can impose a lower sentence, though he can hand out life sentence as well.

Actus Reus

So there are three elements of the actus reus of murder:

Unlawful killing

Human being

Queen's peace

(Year and A Day)

Rather than going over all this again, we are going to look at the criticism [AO2].

Student task:

Using your understanding of the current meaning of Actus Reus in murder, explain whether or not you think this definition is suitable for the 21st century. What problems do you think these terms can cause? What changes have the courts had to make?

Aim to use at least two cases in your argument.

Mens Rea



Now, remember that Lord Coke used the phrase “either express malice or implied by law”. Well, you need to be confident about both of them.

Let’s start with the most straight forward

1. Express Malice

Simply put, this means intention (remember all those lovely cases from mens rea before the holidays?) So, this includes **direct** and **oblique** intention.


Student Task: To show your understanding, complete the table below with the correct definitions, cases and tests!

Type of intent	Means?	What evidence?	Case?	Facts?
Direct				
Oblique				

2. Implied Malice

This is really referring to the idea that the mens rea for murder can also be an intention to commit grievous bodily harm. This was confirmed in the following case:

R v Cunningham (1981)

Facts:		Ratio:
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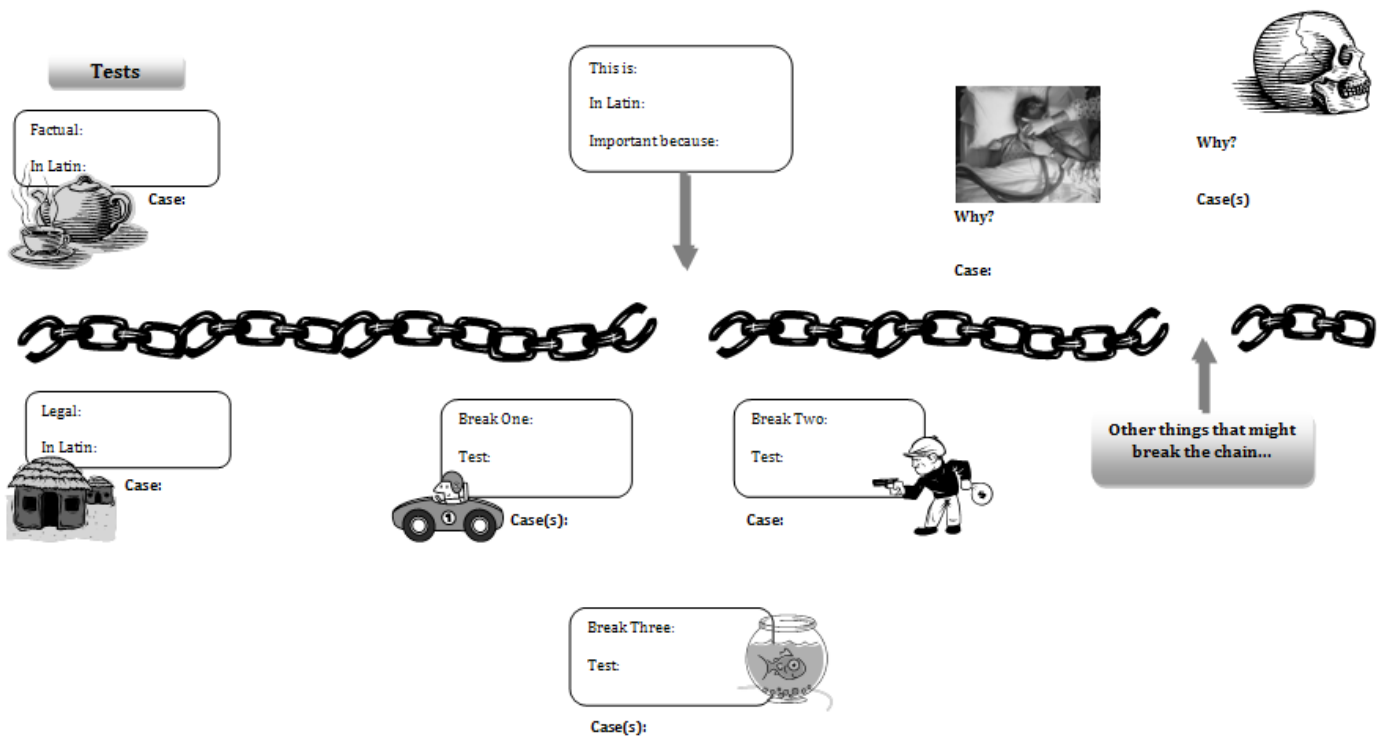
In addition, grievous means no more and no less than “serious harm” according to the Courts [*DPP v Smith (1961)*] Helpful huh?!

Developing AO2: Is this GBH element fair? How far does this approach fit in with other areas of the criminal law e.g. attempts?

Causation

This is just a recap. I've put it here because in a problem question, causation is often an issue if one of the characters dies. Remember it is the last thing which can relieve them of liability for the murder.

Student Task: To show your memory, complete the line below!



Developing AO2: Are the rules of causation now weighted too far against the interests of D?

Using your knowledge of the law, and at least two cases, write a paragraph below illustrating your views.

Applying the Law:

Sam wants to scare Olive, the old lady next door. Despite being warned of the dangers by his friends, Sam decides to put a firework through her letterbox. The firework explodes and starts a fire in Olive's house. Olive manages to escape unhurt but her husband Bert is taken to hospital. While there, his injuries are assessed and are so severe that he is put on a life-support machine. After 3 years, the doctors decide there is no hope of recovery and switch off his life-support.

Discuss Sam's criminal liability.

	A01	A02
O		
C		
D		

REFORM OF THE LAW ON MURDER

In 2006, the Law Commission produced a report on reform in the area of murder and manslaughter. Interestingly, this is not just one of those 'they wrote this and no-one listened' stories. Most of their suggestions on provocation and diminished responsibility have actually become law in Coroners and Justice Act 2009. We'll come back to this in a little more detail later...

Read the enclosed articles and answer the following two questions:

1. What do you think of the Law Commission proposals? Will they solve any of the issues with the current law, or are they a step too far?

2. Why were the loss of control provisions brought into the law on voluntary manslaughter. What issues existed with the old law and do you agree with the changes? Why?

First and second-degree murder charges will snare more killers

Killings will fall into two categories Mandatory life sentence to end

Frances Gibb: Legal Editor

Scores of killers who at present are charged with manslaughter will no longer be able to escape a murder charge under plans outlined yesterday for new categories of first and second-degree murder.

Jealous husbands who kill and plead provocation, or terrorists who plant bombs but give warnings could be convicted of murder, not manslaughter, under the radical shake-up.

Children who kill could be convicted of a new, lower category of crime if it is proved that they are developmentally "immature".

And violent street robbers who take part in an assault where the victim is killed by another member of the gang will be guilty of manslaughter, not robbery as now.

The proposals, from the Government's law reform watchdog, the Law Commission, represent the biggest overhaul of the homicide law for 50 years.

The reforms would bring many more killers into the category of murder which at present is reserved for those who intend to kill or cause serious injury.

But women who kill violent and abusive husbands would be able to plead provocation and be convicted of second-degree murder.

The plans, expected to be taken forward by the Home Office, also signal an end to the mandatory life sentence for all murderers. Instead, the judge in a case of second-degree murder would have discretion to impose a shorter sentence.

Professor Jeremy Horder, the law commissioner who led the project, insisted, however, that the proposals would toughen the law.

"In our review we agreed that the law of murder is in a mess. The law can be unclear, unfair, or too generous to killers."

Juries, he said, also had too few choices between verdicts to reflect how blameworthy the offender really was. If juries brought in a manslaughter verdict, judges were obliged to reflect that in "considerably lower" sentences, he said.

Ending mandatory life for all murderers would change a law dating back to the abolition of the death penalty more than 40 years ago.

Under yesterday's plans, first-degree murder with the automatic mandatory life sentence is retained for those who intend to kill or do serious harm, as now. But killers who intend to cause serious harm, but not to kill, would be convicted of second-degree murder, not manslaughter as now. The new category of second-degree murder would catch terrorists who plant a bomb or poison supermarket food but give a warning, saying they did not intend to kill. At present they would be convicted of manslaughter as there is no intent to kill.

Criminal Law [G153]

In 2004-05, 155 killers were convicted of murder and 142 of manslaughter. Professor Horder said: "This is the big change — upgrading some instances of what are manslaughter and calling them second-degree murder, with the expectation that they will be treated with the appropriate degree of sentencing."

There was a "very big gap" between murder and manslaughter that could not always be met through sentencing, he said.

Victims' families also "rightly object to the excessive breadth of the different kinds of manslaughter, as compared with the single offence of murder", he added.

The Home Office is to begin a consultation process next year on how each category should be punished.

Commander Dave Johnson told *The World at One* programme on BBC Radio 4 that the Association of Chief Police Officers was pleased that some of its concerns had been taken into account but was concerned that criminals may try to reduce murder charges against them from first-degree to second-degree murder by claiming that they were carrying guns "under duress" because of the threat of violence from other gangsters. Rose Dixon, of Support after Murder and Manslaughter, which works with victims' families, told *The World at One*: "I would be a little bit a bit concerned over whether some first-degree murders will be downgraded to second-degree . . . some of my members have said to me: 'Does that mean my loved one is only second-degree dead?'"

The proposals

First-degree murder, where the offender intends to kill

Second-degree murder — where the defendant intends serious harm but actually causes death

Manslaughter — carrying a jail term to be decided by the judge — for where defendant is negligent or intends some harm, but not serious harm, which results in death

Mothers who kill babies while suffering from post-natal depression should not be convicted of murder, commission recommends. Verdict should be infanticide

Mercy-killing: commission calls for review to focus on whether this should be reduced from first to second-degree murder

New defence of duress for both first and second-degree murder if defendant faced threats of death or life-threatening injury

The law in action

City financier **John Monckton** was murdered in a botched burglary attempt last year. One of his attackers, Elliot White, escaped with a manslaughter conviction

Under present law, a defendant saying he just intended to frighten or injure can escape a murder conviction

Under present law, prosecutors must prove an intention to kill or inflict serious harm knowing there is a serious risk it could result in death to secure a murder conviction

Under the commission's proposals, a new category of second degree murder would apply to those who kill even though they only intended some injury

Jon Venables and **Robert Thompson**, the boys who killed **James Bulger** in Liverpool in 1993, might have escaped with a lighter sentence under a new defence of "developmental immaturity" proposed for offenders under the age of 18

If a jury concluded that a murderer under 18 years was mentally abnormal, they could return a verdict of second-degree murder

Although first and second-degree murders carry a life sentence, under the Law Commission's proposals the first is a mandatory life sentence, with a minimum time to be served recommended by the judge; and the second is discretionary, with the possibility of release at a half-way point



8 September 2010 Last updated at 12:26

Murder sentence changes supported by top prosecutor

Keir Starmer advocates a shift to a system along the lines of the one used in US murder trials
Calls for different degrees of murder charges have received the backing of the director of public prosecutions.

Keir Starmer told the BBC he supports calls for the introduction of first-degree and second-degree murder charges in England and Wales, along similar lines to the US system.

Critics of the current mandatory life sentence say it can be hard for juries to ascribe degrees of culpability.

The government says it is considering recommendations.

A change, which would be similar to the approach in the US, could mean that England and Wales would have a system in which first-degree murder with intent to kill carried a life sentence.

Second-degree murder, with intent to cause grievous bodily harm, would carry a discretionary life sentence, as would manslaughter.

Mr Starmer, who expressed his views to BBC Radio 4's Today programme, is the second successive holder of the post to support calls for such changes.

His predecessor, Sir Ken MacDonald, says it would be particularly helpful in cases involving what is known as joint enterprise, often used to deal with gang-related murder.

'Firm and fair'

Next year sees what could be the largest joint enterprise case yet, involving 20 defendants charged with murder.

Sir Ken said: "It is not just a question of people who are not guilty being convicted, there is a risk that people who are guilty will be acquitted of murder.

"My sense is that a lot of juries who instinctively kick against the idea that someone should be convicted of murder with a mandatory life sentence, if they intend less than killing.

"It should be fair, it should be firm and it should be explicable. I don't think that we are presently achieving those qualities in our homicide law."

He continued: "Many of us think that that's an aspect of the law which needs reforming, that we should have degrees of murder, rather in the way they do in the US.

Analysis

Clive Coleman BBC News

The legal doctrine of joint enterprise provides a powerful tool for prosecutors, especially in the area of gang crime.

It isn't new and was used to prosecute doctors attending duels. Perhaps the most famous example is the Derek Bentley case where his accomplice fired the fatal shot killing a police officer, but Bentley's saying "Let him have it" was used as evidence of joint enterprise.

To secure a conviction for murder based upon joint enterprise the prosecution must prove the defendant was part of a joint criminal enterprise, but this can be pretty low level.

For instance, youths deciding to push someone into a gutter and take a picture on a mobile phone. If someone pulls out a knife and kills someone, they can all be prosecuted for murder and given life sentences.

The prosecution has to prove each defendant could have foreseen one of the group would kill or commit grievous bodily harm. Many feel that sets the prosecutorial bar too low.

Any change would need a wholesale reform of law of homicide. It would take a huge political will and a lot of parliamentary time - it's possible but I have my doubts.

"First degree would be killing with the intention to kill, second degree would be killing with intention to do grievous bodily harm.

"I think if you had those sorts of categories, it would be much easier to look at a joint enterprise case and describe particular roles and particular degrees of culpability to individual defendants, rather than sweeping up perhaps large numbers of people who in some cases might have been fairly peripheral to the enterprise," he said.

Former commissioner of the Metropolitan Police, Lord Blair, said a change in the law was "extremely sensible".

He said: "While murder must remain a very specific crime, with a very serious penalty attached to it, there are, and I think everybody can see it, different kinds of murder and different levels of culpability in those murders and I think the Americans have a very sensible idea that there are degrees of murder."

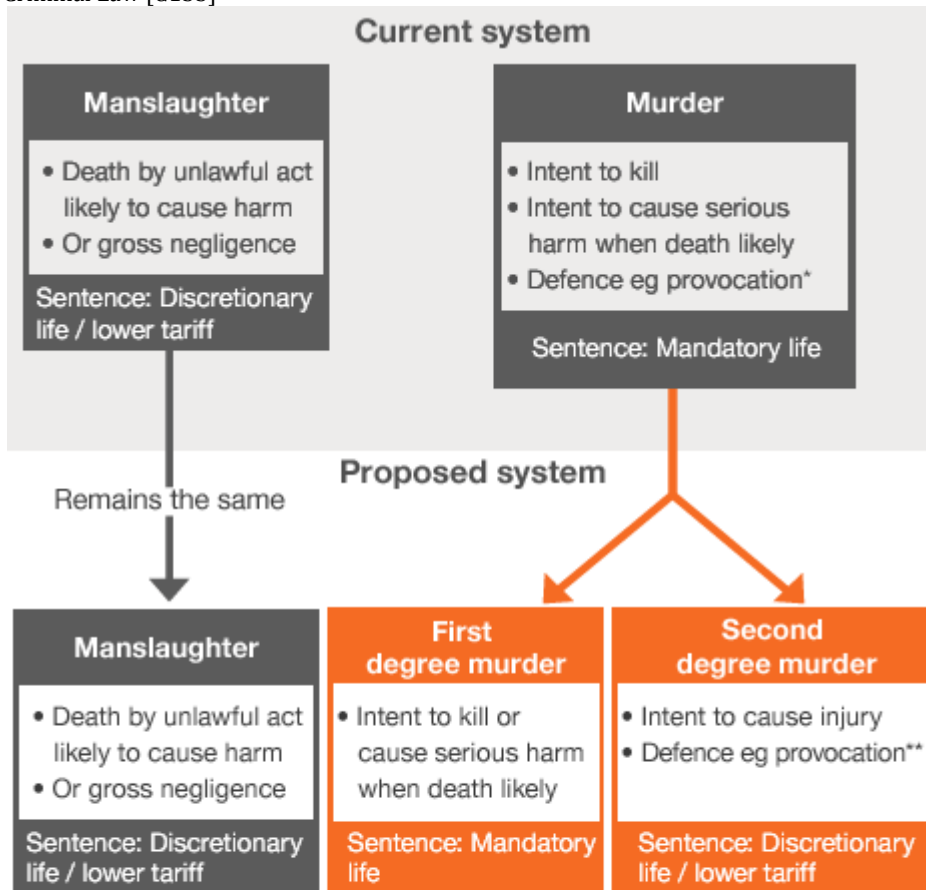
But the former Lord Chancellor, Lord Falconer, said he was not convinced of the need for a change.

"The message that the law is sending out is that we are very willing to see people convicted if they are a part of gang violence - and that violence ends in somebody's death.

"Is it unfair? Well, what you've got to decide is not 'does the system lead to people being wrongly convicted?' I think the real question is "do you want a law as draconian as our law is, which says juries can convict even if you are quite a peripheral member of the gang which killed?"

"And I think broadly the view of reasonable people is that you probably do need a quite draconian law in that respect."

In 2004, the Law Commission, which advises the government on legal reforms, made wide-ranging recommendations for changes to legislation.



*Successful plea to defence likely to result in charge being dropped from murder to manslaughter

**Successful plea to defence likely to result in charge being dropped from first to second degree murder

Source: Law Commission

A year later, it said the homicide law was a "rickety structure set upon shaky foundations", with some of the rules being in place since the 17th century.

In a further review, published in 2006, the commission suggested a three-tier system for homicide cases, depending on their seriousness.

Homicide law in the US

First degree murder: Homicide with a clear premeditation to kill.

Second degree murder: Homicide with mitigating factors such as the criminal's mental state and the manner in which the crime occurred.

Manslaughter: Where an individual caused a death - but did not consciously set out to harm or kill.

These were first-degree murder, carrying a mandatory life sentence; second-degree murder, with a life term at the discretion of the judge plus sentence guidelines; and manslaughter, also with a maximum penalty of life.

However, the Labour government decided not pursue a complete overhaul of the system. Instead, it introduced new rules on provocation and some technical adjustments to the law on diminished responsibility, complicity and infanticide.

A Ministry of Justice spokeswoman said: "The government is aware of the recommendations put forward in the Law Commission's report on murder, which we will consider."

New defence to murder charge comes into force

PA (independent.co.uk)

Monday, 4 October 2010

Men and women facing domestic violence could argue they were forced to kill their tormentor under a new murder law which comes into force today.

Killers can escape a murder conviction by proving they were motivated by "words and conduct" which left them "seriously wronged".

Under the changes, the defence of provocation is replaced with a new defence of "loss of control" caused by "a fear of serious violence" or in response to "words or conduct which caused the defendant to have a justifiable sense of being seriously wronged".

A Ministry of Justice spokesman said: "Changes to the law on murder contained in the Coroners and Justice Act 2009 come into effect today.

"These changes are based on Law Commission recommendations made in their review of homicide law in 2006 and were fully debated by Parliament and passed into law in 2009.

"These changes will strengthen the law and provide for more just and equitable outcomes in individual cases."

The new law also replaces the partial defence of diminished responsibility with a new defence based on "recognised medical conditions".

The Infanticide Act 1938 is amended to make clear that the offence and defence of infanticide are only available in respect of a woman who would otherwise be found guilty of murder or manslaughter.

Men and women who kill after suffering a "slow burn" of domestic violence over a period of time could use one of the partial defences under the new law, which replaces a requirement for them to have acted on the spur of the moment.

The old law made it too easy for men to kill their wives and claim they were provoked by the victim's infidelity, but at the same time restricted the use of partial defences by women with abusive partners.

The proposals for a "slow burn" defence, where a killer takes a life after being subjected to delayed or gradual pressure, would still have a high threshold and apply equally to both men and women.

The "fear of serious violence" defence could apply, for example, when a mother kills a man after catching him trying to rape her daughter, a Ministry of Justice spokeswoman said.

Women's Aid, which works to end domestic violence against women and children, welcomed the changes.

Its chief executive Nicola Harwin said: "The new revised partial defence of provocation should help deliver fairer treatment of domestic violence victims in cases where they have killed a violent and abusive partner, often following years of abuse.

"We also welcome the fact that infidelity will no longer be treated as an acceptable defence for anyone killing a current or former partner."