



Welcome!

Homicide in German Law – **PART I**

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General Comments

Outline of Today's Presentation

- Today
 - Basic principles of the German criminal law
 - Structure of the German criminal code
 - Most important homicide offences in German law
 - Comparison of the terminology of homicide in Wales and German
 - The Sentencing of homicide in Germany
- Tomorrow
 - Murder and manslaughter



General Comments

The Principle of Legality

- Important decisions require a law made by a German parliament
- Criminal law jurisdiction belongs to the Federation
 - Decisions regarding criminal law is made by the Federal Parliament (Bundes-Tag)
- Especially regarding criminal law, Art. 103 para. 2 of the German Constitution states:
 - “An act may be punished only if it was defined by a law as a criminal offence before the act was committed”



General Comments

The Principle of Legality

- Nulla poena sine lege scripta, stricta et praevia
- No punishment without a written, precise and already existent law
 - Ban on case law
 - Ban on analogy
 - Legal certainty
 - Ban on retroactivity
- Only statutory offences in German law.

General Comments

Sources of Criminal Law

- German Criminal Code (Straf-Gesetz-Buch)
 - Contains the most important criminal provisions
- Supplementary criminal provisions can be found within other law codes (Neben-Straf-Gesetze)



The German Criminal Code Structure

- German Criminal Code
 - General part
 - Special part
- Special part
 - The important individual offences
- General part
 - General rules applicable to all offences



Offences Against Life

Special Part | Chapter 16

- Chapter 16 of the German Criminal Code
 - The most important offences against life
- Homicide in English law (actus reus)
 - Unlawfully killing a reasonable person **who is in being** and under the King's Peace
 - “Who is in being” means a fully born person
- Offences against life
 - All offences which ends a life, even if it's not born



Offences Against Life

Most Important Offences in Chapter 16

- Section 211: Murder
(Mord)
- Section 212: Manslaughter
(Totschlag)
- Section 216: Killing at the request of the victim
(Tötung auf Verlangen)
- Section 222: Negligent manslaughter
(Fahrlässige Tötung)



Offences Against Life

Offences Against Life Outside of Chapter 16

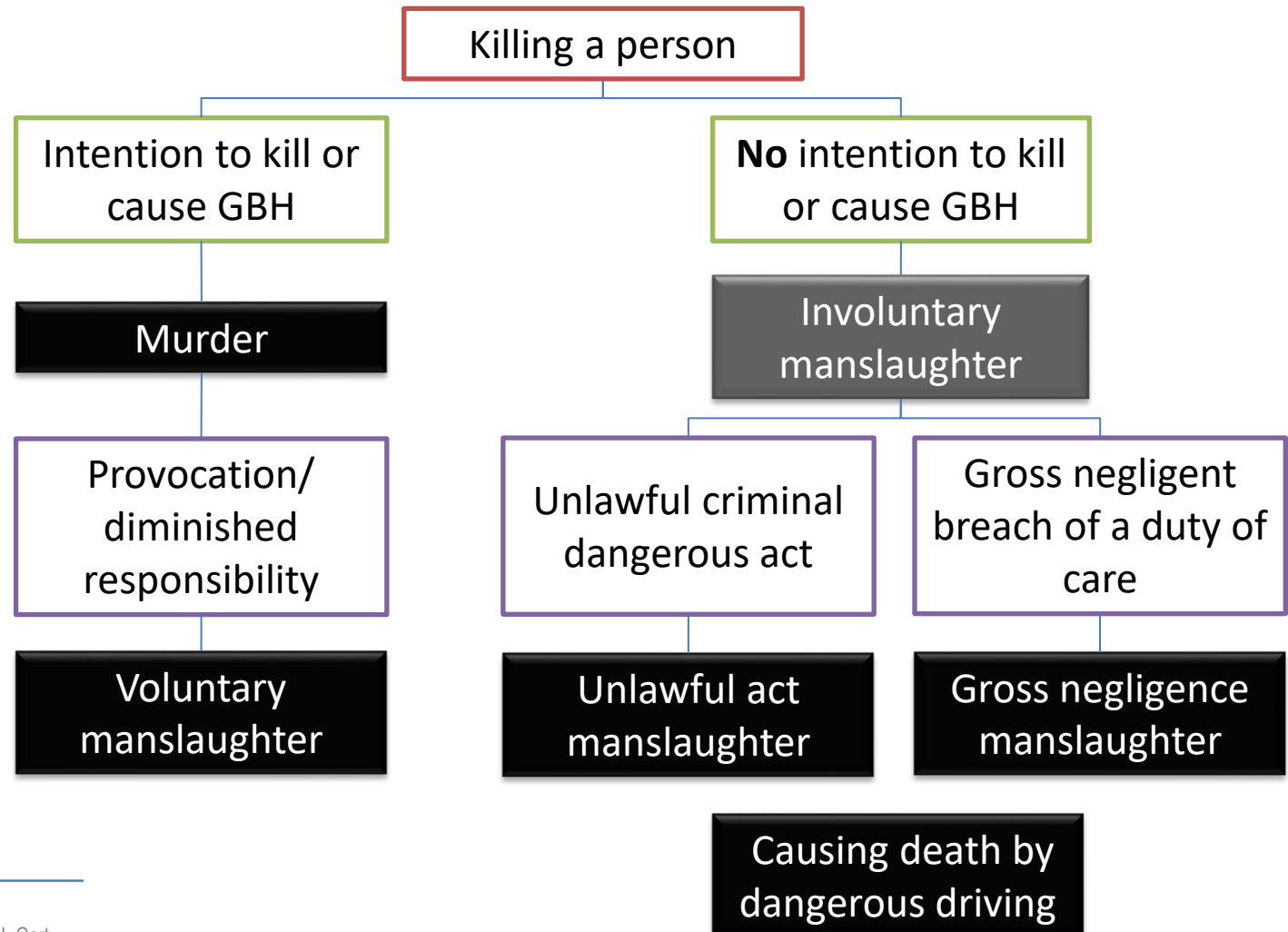
- Offences against life outside of chapter 16
 - Offences resulting in death
 - Committing certain offences with *mens rea*
 - Causing death of victim by negligence
 - The death can be regarded as a typical risk
 - Comparable to **unlawful manslaughter**





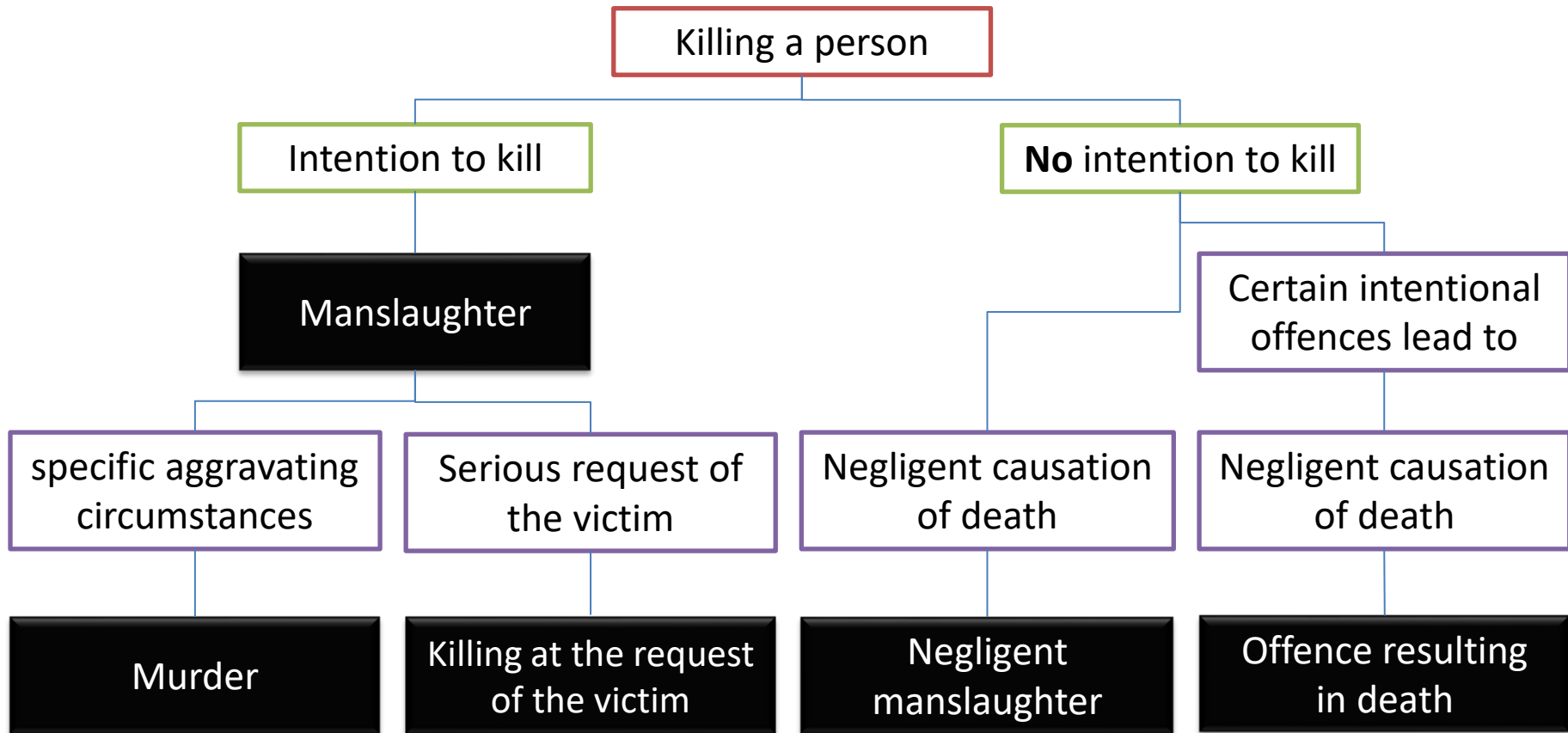
Terminology

Homicide in Wales



Terminology

Offences Against Life in Germany





Terminology Comparison

German Law

Murder

Manslaughter

Killing at the request of the victim

Manslaughter/Murder with
mitigation of punishment

offences resulting in death

Negligent manslaughter

Welsh Law

Murder

Voluntary manslaughter

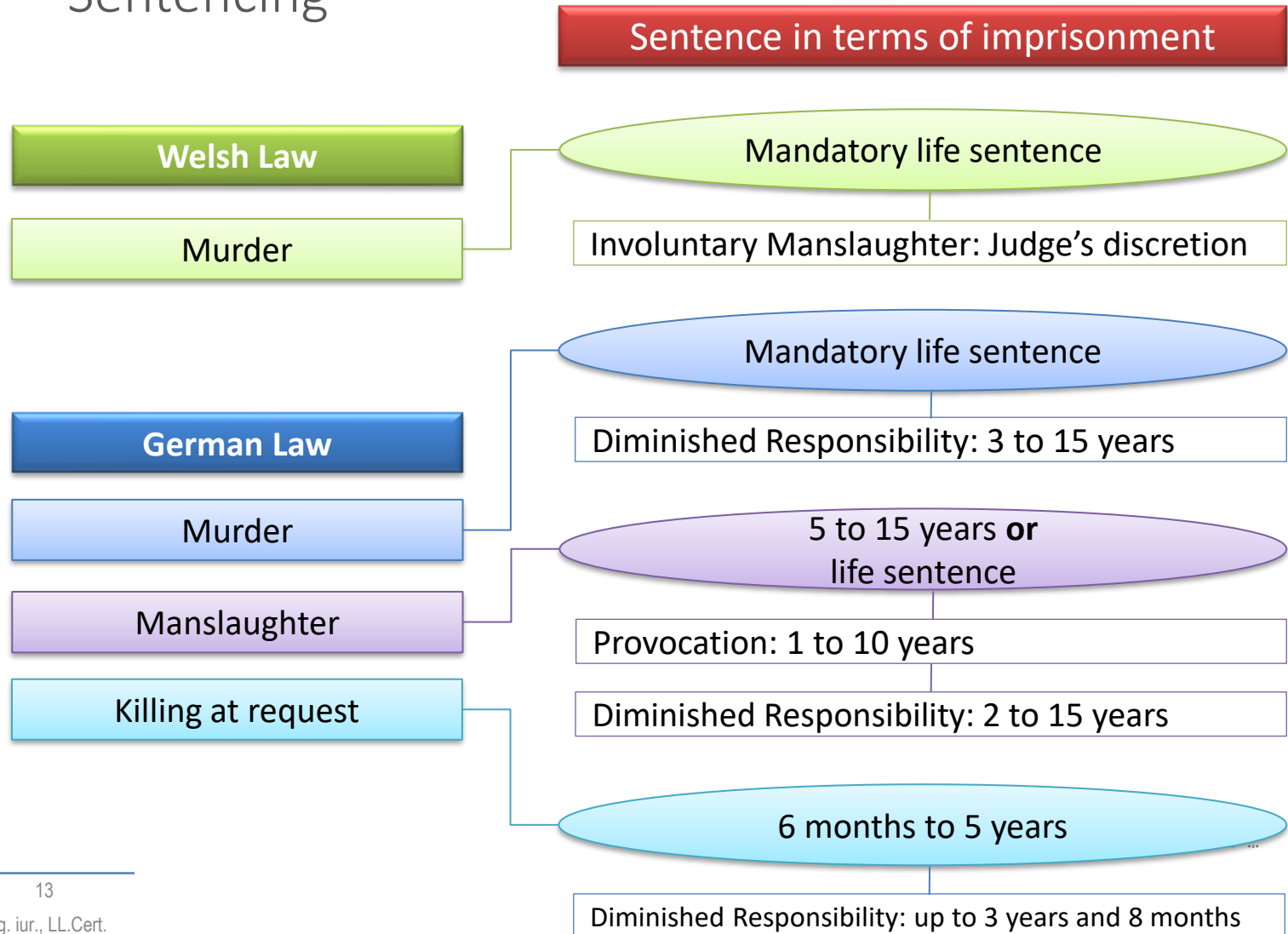
Unlawful act manslaughter

Gross negligence manslaughter



Terminology

Sentencing



Offences Against Life

Sentencing

- Negligent manslaughter in German law
 - Does not require recklessness or gross negligence
 - Minimum penalty
 - Fine which equals five days' income of the offender
 - Imprisonment of one month
 - which usually will be transferred to a fine, as long as the sentence does not exceed six months of imprisonment
 - One day of imprisonment then equals to one day's income of the offender
 - Maximum penalty: five years





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6 February 2014 Last updated at 00:03 GMT

The Nazi murder law that still exists

By Stephen Evans
BBC News, Berlin

The long arm of Nazi law reaches down even to our own times. The Third Reich might have been destroyed but its legislation on murder remains in force. Some of Germany's most eminent lawyers say it perpetuates injustice, and must be scrubbed out.

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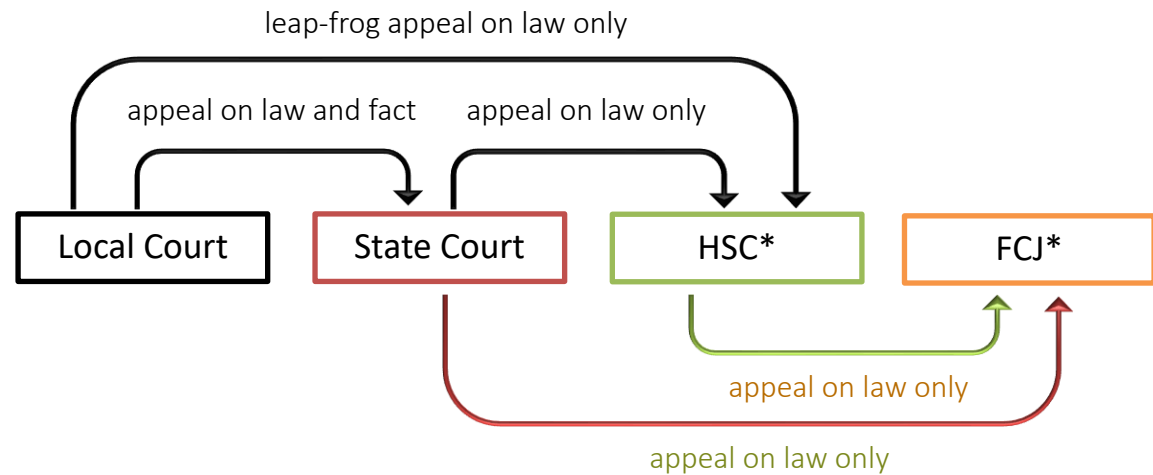


General Comments

Outline of Today's Presentation

- Criminal Court Structure in Germany
- Difference between murder and manslaughter in German law
- The specific aggravating circumstances of murder in German law

Court Structure in Germany

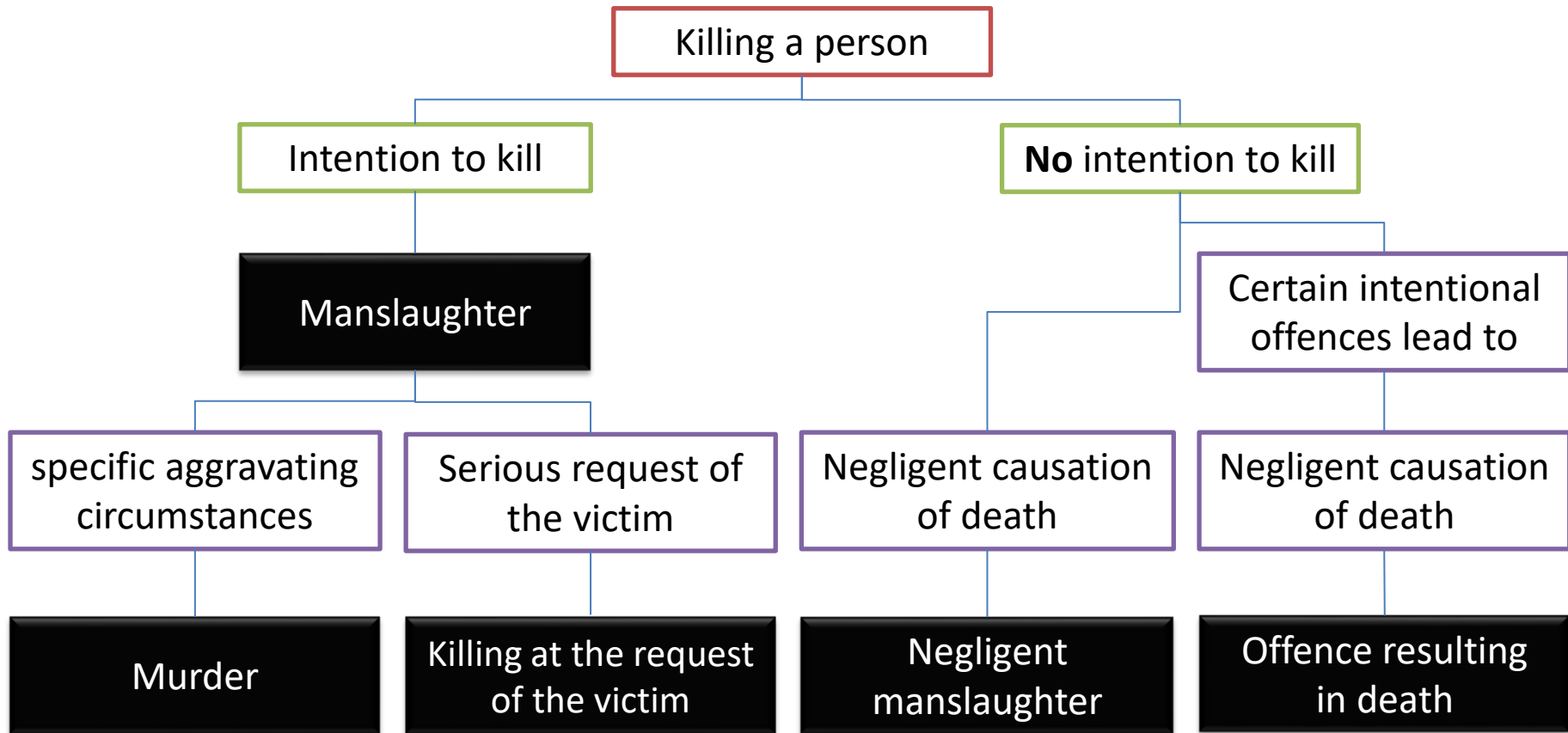


* HSC: Higher State Court; FCJ: Federal Court of Justice



Terminology

Offences Against Life in Germany



Section 212 Criminal Code of Germany Manslaughter

- (1) Whosoever **kills a person** without being a murderer shall be convicted as *manslaughterer* and be liable to imprisonment of not less than five years.
- (2) In especially serious cases the penalty shall be imprisonment for life.



Section 211 Criminal Code of Germany Murder

- (1) A murderer shall be liable to imprisonment for life.
- (2) A murderer is any person who kills a person for pleasure, for sexual gratification, out of greed or otherwise base motives, by stealth or cruelly or by means that pose a danger to the public or in order to facilitate or to cover up another offence.



Comparing Murder and Manslaughter

Manslaughter

Actus Reus

Killing a person

Mens Rea

With intention

Murder

Actus Reus

Killing a person...

...by stealth

...cruelly

...by means that pose a danger to the public

Mens Rea

With intention

...for pleasure or

...for sexual gratification or

...out of greed or

...otherwise base motives

...in order to facilitate or to cover up another offence



Murder

Interpretation of Aggravating Circumstances

- Mandatory life sentence for murder
- Hence, aggravating circumstances has to be interpreted restrictively
- Legal interpretation is a task of the judiciary, especially the Federal Court of Justice
 - No principle of *stare decisis* in German law
 - Even though, lower courts tend to observe the decisions of the Federal Court of Justice
 - Otherwise, the appellate courts might repeal their decisions





Murder

Definitions of Aggravating Circumstances

- Killing a person by stealth
 - If the offender is knowingly using the unsuspectingness **and** defenselessness of the victim to attack it
- Killing a person cruelly
 - The offender causes more physical or mental pain to the victim than it is necessary to kill him
- Killing by means that pose a danger to the public
 - The killing endangers not only the life of the victim or victims, but also life or limb of an unspecific number of other persons.

Murder

Definitions of Aggravating Circumstances

- Killing a person for pleasure
 - The only purpose of the killing is to see another human being dying
- Killing a person for sexual gratification
 - Killing during a rape; killing, because the killing itself sexually stimulates the offender; killing to use the dead body for sexual practices
- Killing out of greed
 - The offender kills in order to increase his fortune



Murder

Definitions of Aggravating Circumstances

- Killing a person in order to facilitate or to cover up another offence
- Killing a person out of otherwise base motives
 - Otherwise base motives are other motives on the lowest level, which are similar to the motives already stated in section 211





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Why is a “Nazi-Law” still in Force

“Nazi-Laws” and Laws enacted during the “Third Reich”

- According to the Allied Control Council Law No. 1 and several directives of the Allied Control Council most of the “laws” of the “Third Reich” were repealed
- However, ordinary statutes enacted during the “Third Reich”, which had no specific nazi-objectives, were not repealed
- Section 211 of the Criminal Code was considered as latter one



Murder before and after 1941

Why Section 211 was changed 1941

- Before 1941 manslaughter was killing with intention, while murder was killing with consideration
- Consideration was more than intention and also more than aforethought
- It required a psychological state of mind, in which the criminal is consciously weighed the motives for and against the crime
- As it was very difficult to prove consideration
- So the definition of murder from the reformed homicide offences from Swiss was adapted in to German law

General statements on German law

Attempt

- According to Section 23 of the Criminal Code, the attempt of a felony is always punishable
- The attempt of a misdemeanour is only punishable if the provision containing the misdemeanour clearly states so



General statements on German law Omission

- In German law most of the offences can be committed by omission
- But only, if the offender had a legal obligation to prevent the result of the offence.
 - Parents, siblings, children
 - Contractual obligation
 - Responsibility for the endangerment of the prospective victim etc.



General statements on German law

Denial of Assistance

- The denial of assistance, however, is an offence of its own: Section 323c Criminal Code
 - “Whosoever does not render assistance during accidents or a common danger or emergency although it is necessary and can be expected of him under the circumstances, particularly if it is possible without substantial danger to himself and without violation of other important duties shall be liable to imprisonment not exceeding one year or a fine.”





How to Examine if an Offence is Punishable Example: Manslaughter

- I. Elements of the criminal provision
 1. Actus Reus
 - Killing a person
 2. Mens Rea
 - Intention
- II. No justifying defences
 - For instance, self-defence
- III. No excusing defences
 - For instance, diminished responsibility,