

**A LEGAL STUDY OF MURDER AND CULPABLE HOMICIDE IN
MALAYSIA: AN ANALYSIS ON THE PROOF OF CULPABILITY OF
STATE OF MIND, WITH REFERENCE TO THE UNITED STATES OF
AMERICA AND CANADA.**

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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ABSTRACT

A LEGAL STUDY OF MURDER AND CULPABLE HOMICIDE IN MALAYSIA: AN ANALYSIS ON THE PROOF OF CULPABILITY OF STATE OF MIND, WITH REFERENCE TO THE UNITED STATES OF AMERICA AND CANADA.

This research paper is centered on studying murder and culpable homicide in Malaysia, with special focus on the proof of culpability of state of mind. Apart from special analysis on Malaysian position, this paper will take a brief look too, at the position held by the United States of America and Canada. This paper will look into Model Penal Code and New York Penal Law for the law of the United States of America while for Canada, the Canada Criminal Code.

The goal is to study and convey the differences between the ingredients contained here in Penal Code and what is laid in their law, with special focus on the proof of culpability of murder and culpable homicide. Basically, this paper will take a look at that element of mental states and knowledge on the Malaysian Penal Code, and then compared with what has been laid there in the United States of America and Canada's law. This has been done by studying and examining the prescribed state's law such as Model Penal Code, New York Penal Law and Canada's Criminal Code. Besides that, there are some cases from United States as well as Canada, as a legal proof from the court. Through this comparative study, this paper aim to show what is best from each law and in the end, if the law here is insufficient, this paper is hoped to be a landmark research which will provide a basis for us, Malaysian to copy what is good from them.

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CHAPTER ONE: INTRODUCTION

1.1 BACK GROUND OF THE RESEARCH

In Malaysia, the law governing offences of murder and culpable homicide, not amounting to murder is the Penal Code (hereinafter referred as PC).¹ The elements of the offences are an act or omission, which caused a death of a human being, with intention and/or knowledge to cause death. The state of mind of the person that caused the death determines whether the said act falls under culpable homicide or murder. Furthermore, the punishment for culpable homicide under Section 304 of the PC may extend to twenty years of imprisonment, whereas the punishment for murder under Section 302 of the PC is a death penalty.²

The reported cases of murder and culpable homicide, not amounting to murder have raised attention and concern on the degree and extent of proving the culpability of mind.³ One of the cases regarding this issue is the case of *Tham Kai Yau v Public Prosecutor*.⁴ In this case, the appellants had been convicted of murder. The evidence in the case showed that the appellants attacked the deceased and did intend to cause bodily harm to the deceased. However, the different level of culpability between murder and culpable homicide, not amounting to murder was not put clearly to the jury in such a way that the jury might use the wrong criterion in reaching the finding of guilt. Another example is the case of *Chung Kum Moey v Public Prosecutor*.⁵ In this case, it was held that it is not possible to determine with precision the meaning of the word 'likely' in both section 299 and the limbs section 300. However, the distinction between the uses of that word in both provisions indicates a higher degree of certainty

¹ Section 299 and 300 of Malaysia Penal Code

² Section 302 of Malaysia Penal Code

³ Lee Cong Fook, Che Audah Hassan. *Offences Against Persons and Property*. LexisNexis, 2009 at page 6.

⁴ [1977] 1 MLJ 174

⁵ [1967] 1 MLJ 205