

Homicide

1. Basic definition

Sec 277 ('Unlawful homicide is murder or manslaughter')

'Any person who unlawfully kills another is guilty of a crime which, according to the circumstances of the case, may be murder or manslaughter'.

2. **Homicide: external elements**

- i. 'Unlawfully'
Sec 268: no justification, authorisation, excuse
- ii. 'Kills'
See causation, below
- iii. 'Another [person]'
Foetus in utero
 - born dead: sec 290
 - born alive, dies afterwards: sec 269 / *Martin v The Queen*Death: Interpretation Act 1984 (WA), sec 13C

3. **Causation** (= question of fact)

Section 270: ('Term used – kill')

'Any person who **causes** the death of another, directly or indirectly, by any means whatever, is deemed to have **killed** that other person'.

- i. Standard case: *Campbell*
- ii. Multiple causes / difficult cases: *R v Smith / Krakouer v WA*
 - Egg shell skull: sec 23B(3)
 - Refusal of medical treatment: sec 274 / *R v Blaue / R v Bingham*
 - Negligent medical treatment: sec 275 / *R Smith*
- iii. Hastening death: sec 273 / *R v Adams / R v Dyson*

4. **Liability for omissions**

- i. Duty to provide necessities of life: sec 262 / *R v Stone and Dobinson*
- ii. Duty of persons doing dangerous acts: sec 265
- iii. Duty of a person in charge of dangerous things: sec 266 / *R v Clark*

5. **Murder: fault element**

- i. Intent to kill another person: sec 279(1)(a)
- ii. Intent to inflict a life-threatening injury: sec 279(1)(b)
- iii. Dangerous act done to further an unlawful purpose: sec 279(1)(c)
R v Desmond
R v Gould and Barnes

6. **General points about intention**

- i. Subjective test
- ii. Pre-meditation unnecessary
- iii. Transferred intention: *R v Saunders & Archer*
- iv. Intention = desire **or** foresight of death as virtually certain: *R v Woollin/ R v Willmot*
- v. Intention ≠ motive

7. **Manslaughter: fault element**

- i. Gross negligence manslaughter
- ii. Crown must prove:
 - D had a duty to prevent harm: CC (WA), secs 262 -267
 - There was a breach of duty: see 4, above