

## **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