

HOMICIDE	
UNLAWFUL KILLING – START SECTION 300, if unlawfully kill then guilty of either murder or manslaughter S 291 – it is unlawful to kill any person unless such killing is authorised or justified or excused by law Justified or excused: Nolan: separation of twins to save 1 (one case when d = auth) made use of 282 medical necessity Justified: s 271 (self D against unprovoked assault) s 272 (self d against provoked) Excused: insanity S 284 – ‘consent by a person to the causing of the person’s own death does not affect the criminal responsibility of any person by whom such death is caused’ (CANNOT CONSENT)	
1. A PERSON	
The act of unlawfully killing requires victim to be person BABIES S 313(1) =killing unborn child – if foetus theoretically cap of being born alive S 313(2): assault on mother which has eff of killing child (life) - start w this then say it suggests injury to baby must be direct so use 292 S 292: child becomes person cap of being killed when born (whether breathed or not or ind circul or not or navel string) 294: deemed to kill child if child dies bc of something done before or during birth Castles (Q) – death of baby which lived for 2 hrs after bad attempt at abortion (died bc of injuries) (292) Martin (wa) – homo when child died after birth from injuries to the mother prior to birth (292) On this authority: born, survived alive, but died as result of actions performed by x before birth NOTICE: death in both linked by law to injuries before birth Iby (nsw) – car accident hit preg mom, deliver baby then it died. Q: guilty of unlaw killing child which proceeded ‘alive’ from its mother? Crown: any ‘indicia’ of indp life (heart, functioning lungs etc) will suffice as being born alive and cap of being kill even if on med support. Court agreed OLD or SICK <ul style="list-style-type: none"> Any act which shortens a persons life = unlawful killing Issue: ‘legal’ moment of death vs ‘medical’ Legal = when all ‘vital signs’ are extinguished Med = brain stem death (ie before machine off but no brain function) – in all states BUT QLD and WA Airedale (uk): Dr. who switches off is not taking life but declining to artificially preserve it (not nec if take bs def’n) THEN TALK ABOUT FORESEEABILITY	
2a. KILLING (and problems w CAUSATION)	
DEF’N s 293: any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that person ADDITIONAL RULE accelerating death S 296: if sick, accelerating death = killing (covers if someone about to die from bleeding and I shoot him) <ul style="list-style-type: none"> includes euthanasia Krakouer (wa): 2 ppl inflicted fatal injuries, either could have caused d. SO use ‘ substantial contribution ’ test – BOTH L 295: forcing someone into an act which is fatal = killing 297: cause injury that they fail to treat or die bc of medical trmt which is good = killing Blauie (uk): accused liable for person who was Jehovah’s w and refused to get medical trmt that would save life 298: if A assaults B so B needs surgery & dies bc of injuries or surgery then A caused death	
Royall (hc): fell from window. Evidence of struggle and blood. R said she jumped. C said pushed. Court: she jumped either to avoid actual attack or attack thought to occur. Both covered by 295 but added guilty if harm is RF from accused’s conduct Take McHugh 1 view and judge accused in context of subsequent rational behaviour of the victim. IE is it RF Start w/ simple but for NOVUS ACTUS INTERVENIENS Say, y’s act may be NAI which has effect of breaking causation from X’s act to Q. if take view that causation needs to be act that contributes to death on ‘but for’ then liable for NAI. But, if take the CS or SC then not (in R and K) TEST in Qld: apply common sense test to see if accused ‘substantially contributed’ (Krak and Royall) Leivers: beaten then thrown in river. Beating substantial cont Carter (qld): confirms CS and SC: injected girl w heroin at her request. Lam and Ors: ran into river being chased by guys w swords. CS IF NAI fails, On Kr auth both (y & x) could be liable.	
2b. CAUSING DEATH BY OMISSION – not just 4 homicide	
@ CL person cannot be criminally liable for causing death by failing to act unless that person had a duty to act. The breach necessary is a failure to take reasonable care to prevent death or injury. 285: duty to provide necessities <ul style="list-style-type: none"> incl: food, clothing, accom, medical att’n applies by law to parents who have custody <16 yr can be assume if adult take duty of elder and infirm Stone: took resp of sister and let her rot to death Neilsen: includes essential meds. which parents didn’t give bc in denial their daughter needed it McDonald: imprisoned 14 yr old where died of neglect 286: covers anyone in ‘care’ of child < 16, even temporarily <ul style="list-style-type: none"> requires nec & take reasonable precautions to avoid danger to the child’s life, health and safety & to remove child from any such danger (ie fire) may cover principals not acting on bullying leaving child home alone 288: duty to take reasonable care when doing dangerous act Patel: operated on ppl who didn’t need the operations 289: duty of person in charge of dangerous things (to take rc) (airline pilots, roller coaster operators, animal handlers etc) Thomas: let guy drive who had never driven & was drunk R v Clark: fell out of roller coaster didn’t die so GBH through 289 Keane J: in some cases danger may not be obvious and in those just a disregard for danger may be breach of duty for rc Distinguished BBD grandma didn’t ignore danger, gbh (286) 290: if u undertake to do something then duty to do it <ul style="list-style-type: none"> reasonable care is implied by McDonald Watson: undertook ‘dive buddy’ she died, he liable NOTE: if someone raped child then parents neglected person may claim that the parents breach was a novus actus	
MURDER - 302	
302(1) ELEMENTS: (note put 300 first) a) causing death with intent to kill or cause GBH b) causes death by means of an act performed in the execution of an unlawful purpose when the act is one which is likely to endanger life (aka constructive murder) 305: mandatory life imprisonment (min 20 yrs for >2)	
1. INTENTION	
TEST 1: The ‘purpose’ form or ‘direct intention’ <ul style="list-style-type: none"> Did the accused set out to do the act? Did he intend to kill or cause GBH or achieve life 	
<ul style="list-style-type: none"> threatening outcome in the course of unlawful conduct Wilmot: strangled during rape. Intended to strangle; doesn’t matter why bc it was life threatening action performed in furtherance of an unlawful act. Connely J preferred this test TEST 2: The ‘oblique’ form of intention The accused didn’t commit the act for the primary purpose of causing death but must be taken to have realised that this would almost certainly be the consequence Ie: blowing up plane for political reason Wilmot: Campbell J preferred this test TEST 2b: virtual certainty Peters: HCA: something more is req’d: outcome must be ‘virtual certainty’ <ul style="list-style-type: none"> Oblique intention would render the outcome a virtual certainty TEST 3: inferred intention <ul style="list-style-type: none"> The above tests can only be used when accused gives his version of the events Otherwise we need to infer intention Winner: stole a car, deliberately went across 3 lanes of traffic and killed a cyclist Kirby J: address the objective facts, from which an <u>inference of intention may be derived</u> BUT burden of proof still lies with C (cause if shift to P who denies allegations, then b of p wont be met) Turner: 65 stabs wounds, claim combo of diabetes, not taking meds etc but CoA hard to see w 65 wounds that he intended anything else other than death	
a) TO KILL	
302(1)(a): intent on the part of the accused to actually kill their victim or some person other than the one who dies 302(2) - makes it irrelevant whether or not the offender intended to hurt his victim 23(1A) – requires to take victim as we find him – usu murders say he had bad heart would’ve died anyway and Cr reduces to manslaughter. This is to prevent that loophole 23(2) – makes motive irrelevant 23(3) – makes desired outcome irrelevant (ie set fire to house for insurance \$)	
b) TO CAUSE GBH	
302(1)(a): murder to kill someone by means of an act which was intended not to kill but to cause GBH. Ie: throw acid on w intention to disfigure, if kills still murder 23(1A) – requires to take victim as we find him 302(2) – it is immaterial that the actual victim was not the intended victim (covers mistaken identity and where person is simply a bad shot) → TRANSFERRED MALICE	
2. CONSTRUCTIVE MURDER	
302(1)(b) constructive murder when death results from an act committed by the accused in the course of committing some other unlawful act, when the act which he <i>intentionally</i> performs is of such a nature that it is likely to endanger life 302(3) makes it irrelevant that there was no intention to hurt anyone 23(1A) – requires to take victim as we find him – ie bank rob shoot gun and guy w heart problems dies from heart attack 23(2) – makes motive irrelevant Gould: killed woman whose foetus trying to abort Stuart: set fire to nightclub w ppl still in it Georgiou: any act done in the course of attempting to get away after an offence would be an unlawful act HIND and HARWOOD: robbing cafeteria. Asked guy to move and didn’t so shot him. Q: was it intent to kill? Or constructive bc done in furtherance	
of an unlawful purpose which was likely to endanger human lif TEST: 1. prove that action taken by accused was voluntary from which a reasonable person would have foreseen death 2. Then prove that the death from the act performed in the course of some unlawful conduct where the act itself is likely (=more probable than not) to endanger life. Fitzgerald: gun went off by accident in armed robbery IN THESE CASES: defence of accident 23(1)(b) is of no consequence bc the crown, in proving the intent to commit an act which is likely to cause risk to life, would automatically eliminate the option of that act being a mistake 302(1)(c) – intending to do GBH for the purpose of faciitating an unlawful serious offence (but if u intend GBH u have mens rea for murder anyways under 302(1)(a)) 302(1)(d) – causing death by administering a ‘stupefying or overpowering’ thing for the purpose of committing a serious offence (ie chloroform for abduction) 302(1)(e) – causing death by wilfully stopping the breath of someone for the purpose of committing a serious offence (would be covered though by 302(1)(b) bc its an act likely to endanger life)	
MANSLAUGHTER – 303	
Note: put 300 first 303: a person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter SCENARIO: an unlawful act causing death <u>without</u> fault elements of murder (ie intention & constructive) 2 categories: <ol style="list-style-type: none"> causing death in the course of an intended act of violence, but one which fell short any intent to cause death or GBH (intention for AOBH) causing death by criminal negligence → breach of a duty under 2b 	
MANSLAUGHTER BY MEANS OF INTENDED VIOLENCE	
There is no dispute the X intended to inflict some form of violence (unlawful) but never intended to cause death or GBH. Klamo: shook baby to stop crying. Never intended to die DOES ACCIDENT APPLY? TEST 1: the outcome must not have been foreseen (or it would be murder) → subjective test TEST 2: once 1, then prove that the outcome was not foreseeable from an objective standpoint Kaporonowski: Gibbs J, event occurs by accident if it was a consequence which was not intended or foreseen by accused AND would not reasonably have been foreseen by ord person RESTATED in Taiters: street fight. Punched hit head on concrete, died. RULE: accused intended the event should occur or foresaw it as a possible outcome or that an ordinary person in the position of the accused would reasonably have seen the event as a possible outcome BUT 23(1A) – requires to take victim as we find him So, if punch man w bad heart may objectively be unreasonable that he dies, but this would be take as find so yes foreseeable <ul style="list-style-type: none"> if the death was <i>not foreseeable</i> charged with lesser off APPROACH: start and discredit murder bc not intent to kill then do manslaughter mention K and T	
MANSLAUGHTER BY NEGLIGENT ACTS OR OMISSIONS	
<ul style="list-style-type: none"> deals with 2b → not murder bc no intent Note: McDonald was so outrageous it deemed to have intent and was murder, rest manslaughter Dabelstein: inserted a pencil in the victim’s vagina and bled to	

<p>death. Brought under 289 pencil = dangerous thing. NOTE: not dangerous per se but actions with it made it so</p> <p>Keen: boy and girl made heroin together. He died. She charged.</p> <p>Jackson & Hodgetts: meat preserv in coke. Homeless man died.</p> <p>START WITH “The Crown in a criminal negligence case must prove “...such a disregard for the life & safety of others as to amnt to a crime against the state and conduct deserving of ‘punishment’”</p> <p>Bateman</p> <p>Guise: if satisfied with 289 then 23 is irrelevant</p> <p>Lavender: in quarry, chasing kids, ran over. confirmed that offence under 289 involves an ‘objective’ test which itself eliminates the possibility of 23</p> <p>OBJECTIVE TEST: would have realised exposing another to an appreciable risk of serious injury</p>	<p>Bodily harm: any bodily injury which interferes with health or comfort (covers bruise, localised tenderness from pushed in wall)</p> <p>Lergesner: covers black eye & bloodied nose</p> <p>Scatchard: does NOT cover painful headlock bc pain ≠ injury</p> <p>Campbell: if pain is continuous then pain caused by injury and counts</p> <p>Burdon: scarf pulled tight. Red mark ≠ bodily harm</p> <p>Last 3 suggest pain cannot be AOBH</p> <p>Mallard: snuck into club. When getting kicked out M punched bouncer; friend hit w glass. M reduced to common bc injuries masked by more serious</p> <p>DEFENCES: 1) CONSENT: 246(2) : prevents consent from being used as Def to <u>any</u> assault BUT....</p> <p>Lergesner: if A consents to fight (or play sport) with B and gets AOBH injuries then consent is a def and P has to negative it. If injuries go beyond that (GBH or wounding) then consent given initially to AOBH will not protect D from conviction of other THEN</p> <p>2) 23(1)(b) if can prove not only that the possibility of injury not foreseeable but ALSO he did not foresee (Kap and Taiters equally apply here. See pg 1)</p> <p>Roberts: passenger assaulted & jumped out of car and suffered actual bodily harm. Def failed bc foreseeable she’d jump</p>	<p>UNLAWFUL WOUNDING SIMPLICITER - 323</p> <p>DEF’N from CL: ‘a breaking of true skin’ → under layer must also be punctured (so no scratches) from case:</p> <p>Jervis: vampire case, drank blood, slit throats, wounding</p> <p>Same as GBH S- need to intend assault but not consequential injury; accident & self-D avail for assault; no consent</p> <p>AGGRAVATED WOUNDING & GBH - 317</p> <p>317: D commits any one of different assault WITH INTENT:</p> <p>(a) to maim, disfigure or disable, any person; or (maim: interference w persons capacity to fight woodward- incl loss of limb but not loss of ear; disfigure, appearance)</p> <p>(b) to do some grievous bodily harm or transmit a serious disease to any person; or</p> <p>(c) to resist or prevent the lawful arrest or detention of any person; or</p> <p>(d) to resist or prevent a public officer from acting in accordance with lawful authority</p> <p>EITHER -- (conduct:)</p> <p>(e) wound, cause GBH or transmits a serious disease or</p> <p>(f) strike with projectile (could be rock)</p> <p>(g) cause explosion</p> <p>(h) sends or delivers any explosive substance</p> <p>(i) puts any corrosive fluid or any destructive or explosive substance in any place; or</p> <p>(k) throw ‘corrosive fluid’ or explosive on someone</p> <ul style="list-style-type: none">Match intent with conduct: ie throw rock @ cop to not be arrest = c and fMOST COMMOM: GBH with intent to cause GBHP must prove intention but this can be constructive intent (obvious from circumstances) <p>Barmby: use of considerable force can imply intention (here was intention to cause GBH)</p> <p>Reid: man transmitted AIDS to other man (got off of Agg bc jury misdirected on ‘intent’ but got under 320)</p> <p>Q: did he have D of 23(1)(b) – no bc RF consequence (Taiters & Kaporo)</p> <p>DEFENCES: (life sent) no consent Lergesner; no accident once intention shown</p> <p>TORTURE - 320A</p> <p>DEF’N: systematic & deliberate subjection of another person to physical, emotional, psycho or mental suffering over a sustained period of time which involves at least 2 sep occasions & 2 sep actions (life sentence)</p> <ul style="list-style-type: none">Requires intention but usu not issueRequires ‘severe’ pain- use common sense to define <p>Bird & Schipper: 2 girls attacked woman in park & tortured</p> <p>FEMALE FENITAL MUTILATION - 323A</p> <p>Makes no diff if a) victim consented or b) parents did on</p> <ul style="list-style-type: none">Carries max 14 yrs2 forms r authorised: sex change or genuine med need <p>SEXUAL OFFENCES</p> <p>RAPE - 349</p> <p>349(1): anyone who is guilty of rape is guilty of crime (life)</p> <p>349(2): A person rapes another person if—</p> <p>(a) intercourse (w/o consent)</p> <p>(b) penetrates the vulva, vagina or anus with a “thing” or body part other than penis</p> <p>(c) penetrates the mouth with penis</p> <p>NOTE: include transsexuals bc def’n of parts includes surgical</p> <p>347: penetrate not issue if medical purpose</p> <p>TEST 1: consent</p> <p>348: victims “consent” is not “freely and voluntarily” given if it is obtained by force, threat, intimidation, fear, “ex of auth”,</p>	<p>fraud, or imitation of the victim’s sexual partner</p> <p>Michael (wa): posed as cop and “threatened and intimidated” prostitutes to give free and discounted services</p> <p>Williams: choirmaster persuaded student to have sex to improve voice – rape , no consent bc fraud (348(2)(e))</p> <p>BAS: digital rape – Dr. claiming to do it bc therapeutic</p> <p>Cuerrier (CDN): if sex without saying have aids or VD then fraud so no consent, and rape</p> <p>Holman: overturned bc willing in dictionary means cheerfully ready so even if hesitant, tearful etc but she consciously permits it – not rape AND</p> <p>Case Stated by DDP: man can persuade wife to Δ mind with rougher than usu handling</p> <p>THEREFORE: it seems consent doesn’t need to be enthusiastic, tolerance can amnt to consent. As long as not consent is not induced by one of those prescribed forms, not rape</p> <p>TEST 2: giving consent must have “cognitive capacity”</p> <p>SAX: for mistake under 24, Jerrard J: in these cases (where alcohol & drugs) consider whether D mistakenly but honestly & reasonable believed consent</p> <p>Ross: if asleep when sex began then no possible 24 D</p> <p>Consent can be withdrawn</p> <p>Redguard: but no followed by yes cancels out orig no</p> <p>Kaitamaki (uk): rape to cont having sex after realise woman is not consenting</p> <p>DOES MISTAKE APPLY? ALWAYS RUN THROUGH 24 HERE</p> <p>Parsons: failing to say no can give D reasonable belief of honest consent</p> <p>Mrzlak: adult woman, Iq of 52, mental age 6-10. She had cog capacity to agree to sex but ability to do so was lessened by intellectual capacity. Man was also intellectually impaired. She said no but failed to physically resist. He had 24 but</p> <p>reasonableness of the defense is whether the INDIVIDUAL accused would’ve reasonably believed</p> <p>SEXUAL ASSAULT - 352</p> <p>352(1) Any person who— (10 yrs)</p> <p>(a) unlawfully and indecently assaults another (touch, grope)</p> <p>(b) procures another person, without the person’s consent—</p> <p>(i) to commit an act of gross indecency (sexual activity); or</p> <p>(ii) to witness an act of gross indecency by the person or any other person;</p> <p>352(2): increases to 14 yrs if involves oral contact w genitals (ex: kiss my ass could be procuring offence under 352)</p> <p>352(3) Life Sentence if –</p> <p>(a) D is armed with a real or imitation “dangerous or offensive weapon” (other than his penis?) OR</p> <p>(a) D is “in company with” another;</p> <p>(b) V is forced to penetrate D’s vagina, vulva or anus with either a “thing” or a body part other than a penis (finger)</p> <p>(c) V is forced to penetrate their own, or someone else’s (other than D’s) vagina, vulva or anus with either a “thing” (e.g. dildo) or a body part other than a penis (e.g. a finger);</p> <p>Rolfe: since assault is 245 could mean threat. Man charge with sex ass for walking to woman w penis out & asking to have sex</p> <ul style="list-style-type: none">must be > 16 or do not use this sectionmust be non-consensual (but again 24 will ably in honest and reasonable mistake of consent) <p>Sutton: masseuse massaging 16 yr old boy, boy didn’t get up said scared of size. “passive acquiescence” does NOT constitute consent or entitle to H & R believe consenting</p> <ul style="list-style-type: none">must be unlawful (ie not authorized, etc)behavior must be indecent or grossly ind. 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Even if caused death. The culpability of driving determines charge not that someone died.</p>	<p>SERIOUS ASSAULTS (ASSAULT BASED) 340</p> <p>340: Circumstances in which committed is the issue here serious assault to... (7 yrs)</p> <p>340(1)(2AA): assault resist or obstruct and public officer</p> <p>340(1)(g): assault person >60</p> <p>340(1)(h): assault an invalid</p> <p>340(1)(b): assaulting, resisting or even wilfully obstructing police office in execution of their duty</p> <p>DEFENCE: 24: for 1(b) if can show didn’t know police officer but also that it was reasonable to not know (ie undercover)</p> <p>DIABLING OR STUPEFYING</p> <p>Concern here is ulterior motive</p> <p>315: disabling someone by choking, suffocating or strangling in order to commit indictable offense or to escape after committing such offense. (usu in attempted rape & life sent.)</p> <p>316: administering or attempting to admin stupefying drug in order to commit an indictable or to escape after (life)</p> <p>- date rape: Robertson</p> <p>316A: unlawful drink spiking (5 yr)</p> <p>GBH SIMPLICITER - 320</p> <p>320: Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment for 14 yrs (max)</p> <p>DEF’N: in s 1: include any injury which, if left untreated, would be likely (HvH more prob than not) to endanger life or like to cause perm injury to health whether or not med trmt was or could’ve been available</p> <ul style="list-style-type: none">Ex: fractured skull (G), broken nose (AO), serious disfigurement, loss of body part or organ <p>Lobston: ‘bodily harm’ assessed @ time of infliction so that hospital staff is irrelevant and cant be novus actus</p> <ul style="list-style-type: none">D must have intended assault but not consequences (otherwise would be aggravated)23(1A) thin skull appliesregular rules of causation apply to whether or not D intended the assaultDefences: accident (not if RF cons) & self-D, provocationLergesner: person cannot consent to injuries of this severity so consent is not a defence here	<p>fraud, or imitation of the victim’s sexual partner</p> <p>Michael (wa): posed as cop and “threatened and intimidated” prostitutes to give free and discounted services</p> <p>Williams: choirmaster persuaded student to have sex to improve voice – rape , no consent bc fraud (348(2)(e))</p> <p>BAS: digital rape – Dr. claiming to do it bc therapeutic</p> <p>Cuerrier (CDN): if sex without saying have aids or VD then fraud so no consent, and rape</p> <p>Holman: overturned bc willing in dictionary means cheerfully ready so even if hesitant, tearful etc but she consciously permits it – not rape AND</p> <p>Case Stated by DDP: man can persuade wife to Δ mind with rougher than usu handling</p> <p>THEREFORE: it seems consent doesn’t need to be enthusiastic, tolerance can amnt to consent. 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