- "In every case where intent is in question the question is what did the accused – the man before the court – intend." Windeyer J in *Parker v The Queen* (1963) 11 CLR 610.

3.7 Intention to Kill

"Intent, in one form, connotes a decision to bring about a situation so far as it is possible to do so – to *bring about an act of a particular kind or a particular result*… Thus, when A strikes B (the act) having decided to or desiring or wishing to strike him, it can be said that he intends to strike B.

Intent, in another form, connotes knowledge… When A strikes B, his action can be divided into A's movement of his fist and B's presence in the path of A's movement. Although A's movement may be voluntary, he is not said to strike B intentionally unless he knows that B (or someone else) is in the path of his moving fist."

He Kaw Teh v The Queen (1985) 60 ALR 449, 481 per Brennan J.

- It is what the *accused intended,* **not** what a *reasonable person in the accused's position* would have intended.
- The accused's intention can be inferred from their action, but the prosecution must establish this inference.

3.8 Intention to do serious injury

"Serious injury" was formerly known as "grievous bodily harm": harm of a really serious kind (*R v Smith* [1961] AC 290).

Per **s 15** of the Act, "*serious injury*" means –

(a) an injury (including the cumulative effect of more than one injury) that –
  (i) endangers life; or
  (ii) is substantial and protracted; or

(b) the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the women suffers any other harm.

- Causing death when intending to do serious injury is sufficient to form *mens rea.*

3.9 Recklessness

When does recklessness qualify as *mens rea?* "… A person who, without lawful justification or excuse, does an act knowing that it is probable that death or grievous bodily harm will result, is guilty of murder if death in fact results. It is not enough that he does the act knowing it is possible but not likely that death or grievous bodily harm might result." – *R v Crabbe* (1985) 58 ALR 417, 421/

- In *Crabbe*, the accused got into a bar brawl at a motel and was thrown out. He returned several hours later and drove his prime mover into the bar, killing five patrons and injuring many others. He was indifferent as to whether anyone would die, and did not take any steps to discern whether the bar was still occupied.

The focus on recklessness must be *whether the accused should have foreseen the possibility of death or serious injury*, not whether a reasonable person would have foreseen anything. *R v TY* [2006] VSCA 113.

3.10 Recklessness: probable v possible

Probable means a *substantial or real chance* (*Boughey*), and a chance which is *real and not remote* (*Faure*)

- In *Boughey v The Queen* (1986) 161 CLR 10, the accused, a doctor, was charged with the death of his wife. He claimed she had died accidentally while they were engaging in autoerotic asphyxiation. The court held that it was still murder, as he had been reckless to the substantial and real chance that she could suffocate.
- In *R v Faure* [1999] 2 VR 537, the accused and the victim were heavily intoxicated and playing Russian Roulette. The victim did not win. The jury initially found that the requisite intent was not established, and the OPP successfully appealed.

3.11 When is 'recklessness' to be used?

Reckless murder is not a lesser category of offence: see *Aiton v The Queen* (1993) 68 A Crim R 578 (baby Daniel Valerio) and *R v Lowe* [1997] 2 VR 465 (Cheryl Beasely), both graphic child murder cases.

The courts say that recklessness should only be used when the facts of the case make it a practical reality – e.g. when the accused is doing one thing and realises that something else is likely to happen.