

# Criminal Law

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# Homicide

## Basic Elements

- Homicide encompasses a variety of offences such as
  - S279: Murder
  - S280: Manslaughter
  - S281: Assault causing death
  - Dangerous driving causing death: RTA s59
  - S283: Attempted murder
  - S288: Assisted suicide
  - S291: Killing an unborn child
  - Abortion: s199 and Heath Act s334
    - The top 4 are homicide, the bottom 4 are not homicide for various reasons.
  - No more wilful murder (old s278) or infanticide. But if the offence occurred pre-2008 then it can still go to trial under this charge.
- Killing: the common element
  - **S268: unlawful to kill any person, unless authorised/justified/excused by law**
    - **This is the Segway to the excuses and defences**
  - **S270: killing means causing the death of another, directly or indirectly, by any means whatsoever**
  - **Start here before you consider the defences**
- Who is a person?
  - S269: a child becomes a human being capable of being killed when
    - It has completely proceeded in a living state from the body of the mother
      - Whether it has breathed or not
      - Whether the umbilical cord has been severed
    - Castles: an attempted abortion on a child led to the child being born prematurely. It came out alive. Manslaughter conviction. So the fact that it came out alive meant that it was a person capable of being killed
  - Martin 1996. What if the violent act is aimed not at the child but at the woman?
    - Pregnant woman stabbed by wife.
    - Bleeding caused brain damage to child which caused it to die 6 months after birth
    - S270: any means whatsoever.
    - S271: when a child dies as a consequence act or omission done before birth that causes the death the person has caused the death.
- When does death occur
  - Prior to 2008 there is a case called Bland 1993 UKHL.
    - It is a persuasive UK case.
    - 17 year old boy gets brain damage and gets put in a Persistent Vegetative State
    - What causes death if there is removal of treatment? It didn't matter. It was said to be in his best interests to end the treatment.
  - It is now defined in the Interpretation Act s13C
    - Either

- Cessation of breathing
- Cessation of brain function. This is death of the brain stem. If a person is in a permanent coma they are not brain dead. They can be killed.
- Cessation here means an irreversible cessation

## Causation

- The action must have factually cause the death.
  - Jemielita 1995
    - The wife took a drug that was lethal
    - He gave his wife an anaesthetic as well, which was not lethal except with other drugs.
    - He argued that he could not be found to have caused the death
    - Not guilty
    - It is a question of fact, based on the admissible evidence
- Was it direct or indirect?
  - R v Vera James
    - Had an abortion
    - Died 12 days later from pneumonia brought on by the abortion
    - The abortion was the indirect cause
- The act must be a legal cause. In all the circumstances should the accused be responsible for the death. This can be tricky if things happened after the accused actions.
  - Krakouer 2006 WASCA.
    - K was in a fight with victim. Another man, C, struck a mortal wound on the victim. K went and got a post and fractured the victim's skull.
    - K claimed that he wasn't the cause of the death as he was going to die anyway.
    - "If the act of the accused makes a significant contribution to the death of the victim, whether by accelerating the death or otherwise, the jury must decide whether the connection is substantial enough."
    - C was independently convicted of murdering the victim as well.
      - It makes no difference that an inevitable death was hastened
- Novus actus interveniens: is there a subsequent act that breaks the chain of events.
  - Pagett (1983, Eng). Guy held pregnant girlfriend in front of him to protect from police bullets. She died after he fired on police and they returned fire without seeing her. He was guilty of her murder.
  - So even if it was the act of a third party that caused the death you can still be responsible
- Royall: substantial and significant cause of death
  - Woman fell out of building and 3 options
    - Jumped to flee
    - Fell out fleeing violence
    - Was pushed
  - Any way he caused the death. Even if she jumped out because she had a "well founded fear of life threatening violence."