

A. BURDEN & STANDARD OF PROOF

WOOLMINGTON: 'GOLDEN THREAD'

Judges Misdirection

- **Judges direction**
- The Crown has to prove that the prisoner shot the victim; & the D has to show that it was simply negligence or an accident.
- **Fault in the direction**
- Denies the D the right to silence – D must speak to prove their innocence.
- Denies D the presumption of innocence – D must prove it was an accident.
- **Correct direction**
- The Onus of proof is on the prosecution to prove the victim died at his hands and that it was not accident

Golden thread established in *Woolmington*

- It the duty of the prosecution to prove the accused's guilt, subject to any statutory exception.
- Presumed innocent until proven guilty.
- Adopted by England & any jurisdiction adopting English common law
 - E.g. Australia, NZ, Canada, USA
- **Criminal Code (WA)**
- Code indirectly, not expressly, adopts *Woolmington*
- **Criminal Code (Cth)**
- s 13.1 Legal burden of proof:
 - 'The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged'.
- s 13.2 Standard of proof:
 - 'A legal burden of proof on the prosecution must be discharged beyond reasonable doubt'.

EVIDENTIAL BURDEN

s 13.3 **definition of evidential burden:** means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Subject to section 13.4, a burden of proof that a law imposes on a defendant is an evidential burden only.

- Some evidence, not very much, that needs to be given before the prosecution has to prove the defence false.
- Once met the prosecution must disprove the defence beyond reasonable doubt.
- **Accused bears the evidential burden:**

- In proving defences such as:
 - Provocation
 - Duress
 - Necessity
 - Mistake
 - Intoxication

LEGAL/ PROBATIVE/ PERSUASIVE/ ULTIMATE BURDEN

- The prosecution must prove the D's guilt to the required standard.
- D does not have to prove that they did not commit the offence. A logical consequence of:
 - the presumption of innocence; &
 - the right to silence

Standard of Proof

- Beyond (a/all) reasonable doubt.
- The threshold to get over. Avoids sending innocents to jail.
- **R v Green:**
 - Reasonable doubt ≠ 'fanciful, nervous or unreasonable misgivings about matters'

Reversed standard of proof

- Burden falls on the accused.
- Standard: on the balance of probabilities.
- **Insanity** –
- Every person assumed to be of sound mind, until the contrary is proved.
- **Some statutory exceptions – regulatory offences**
- E.g. Misuse of Drugs Act 1981 (WA):
 - s 7(3): Possession of a 'prohibited plant' is an offence unless D 'proves that he had possession of the prohibited plant only for the purpose of — (a) delivering it to [an authorised person]'.

B. HOMICIDE

BASIC ELEMENTS: APPLY TO MURDER & MANSLAUGHTER

Charged with (offence)

s 277 'Unlawful homicide': any person who **unlawfully kills** another is guilty of a crime which, according to the circumstances of the case, may be **murder or manslaughter**.

ELEMENTS

- Murder & manslaughter share the elements of:
 1. Unlawfulness &
 2. Killing – where killing requires:
 - a. a person capable of being killed;
 - b. That person is dead; and
 - c. The accused caused the death.

1. Unlawful

s 277 unlawful homicide – above.

s 268 killing a person is unlawful: It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

- **s 268 Unlawful**: means any killing that is not authorised, justified or excused by law.
- Not unlawful killing where the accused has an excuse or defence. E.g.
 - Involuntary act s 23A
 - Accident s 23B
 - Emergency situation s 25
 - Self-defence s 248
 - Insanity s 27

2. Killing

s 270 term used kill: any person who **causes the death of another [person]**, directly or indirectly, by any means whatever, is deemed to have killed that other person.

- **s 270 Killing**: causing the death of the person directly or indirectly by any means whatever.
- Requires proof that:
 - a. The victim is a person capable of being killed; &
 - b. The person is dead; &
 - c. The accused caused the death of that person.

a. Person

- Generally unproblematic – obvious the victim is a person.

Victim already dead unknown to D

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Unborn Child

s 269 when a child becomes a human being: a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

s 290 preventing a child from being born: any person who, when a woman is about to be delivered of child, prevents the child from being born alive by any act or omission of such a nature that, if the child has been born alive and had then dies, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment for life'.

Born alive:

- **s 269 when a child becomes a person**: once they are born alive (fully proceeded from the mother's body).
- Even if:
 - They have not breathed.
 - Don't have an independent circulation.
 - The umbilical cord hasn't been cut.

Born dead:

- **s 290 preventing a child from being born**: if born dead a person may be charged with killing an unborn child if the death is cause while still in the mother.
- Can be convicted of murder/manslaughter if they do something, or omit to do something, which causes the baby to die after it is born alive.

b. Death

s 13C Interpretation Act – when death of a person occurs: a person dies when there occurs –

- (a) irreversible cessation of all function of the person's brain; or
- (b) irreversible cessation of circulation of blood in the person's body'.

- Generally not complex.
- **s 13C: death occurs when**: irreversible cessation of all brain functions or the circulation of blood.

c. Causation

- The D need's to have caused the victims death.

Standard case

s 270 term used kill: any person who **causes the death of another [person]**, directly or indirectly, by any means whatever, is deemed to have killed that other person.

- *Krakouer*: the accused must be the factual & the legal cause of death.

Factual causation (casual connection)

- *Krakouer*:
 - Established using the 'but for' test.
 - Asks whether the death of the victim would have occurred 'but for' the actions of the accused.

- Factual cause = if the victim wouldn't be dead if the accused hadn't done what they did (or omitted to do).

Legal causation (casual responsibility)

- *Krakouer*: Common-sense test usually enough to establish legal causation.
- *Campbell*:
 - The question of causes is not a philosophical or scientific one, but is determined by applying common sense to the facts.

More difficult cases:

- **Operating an Substantial cause test** –
- *Krakouer* (D struck victim who was already mortally wounded):
 - To be the legal cause of death, what the person did (or omitted), need not be the sole cause of death.
 - Enough if the accused makes a significant contribution to the victim's death.
 - Either accelerating death or otherwise.
- **New intervening act** –
- After the accused actions, which would lead to death, events may occur which can break the chain of causation.
- Makes the accused ≠ a significant cause of death.
- Examples of events which can intervene:
 - Behaviour of the victim.
 - Behaviour of other people.
 - Natural events.

Causing death by threats

s 272 threats: a person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.

- **s 272 causing death by threat:** when the accused threatens, intimidates or deceives the victim, and this causes a victim to do something which leads to their death the accused will have caused the death.
- If the accused caused the victims to behave in a way which led to their death – victim's behaviour ≠ intervening act.

Acceleration of death

s 273 acceleration of death: a person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

- **s 273 acceleration:** where the victim has a disease or disorder and the accused hasten the death, they will be held to be the cause of death.
- **Smallest moment: *R v Adams***
- A measurable moment, however slight, of hastening death is sufficient even if death was imminent.
- **Doctor exception: *Airdale NHS Trust v Bland***

- A doctor may, when caring for a patient who is dying, e.g. of cancer, lawfully administer pain-killing drugs, despite the fact that they might shorten life.

Refusal of medical treatment

s 274 when injury or death might have been prevented by proper precautions: when a person causes a bodily injury to another from which death results, it is immaterial that injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

- **s 274 refuses medical:** if an accused causes bodily injury to the victim & they die, the accused will be the cause of death even if it could have been avoided by:
 - Proper precaution on the part of the victim.
 - Proper care & treatment.
- The accused cannot argue that the behaviour of the victim in not seeking treatment broke the chain of causation.
- *R v Blaue* (Jehovah's witness refuses blood transfusion):
 - Must take their victim as they find them.
 - This means the whole person, not just the physical person.
 - Can't say that the victim's religious beliefs are unreasonable.

Negligent Treatment

s 275 injuries causing death in consequence of subsequent treatment: When a person does grievous bodily harm to another and such other person has recourse to surgical or medical treatment (including palliative care), and death results either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment; provided that the treatment was reasonably proper under the circumstances, and was applied in good faith.

- **s 275 negligent treatment:** if an accused does GBH to the victim & the victim then seeks medical treatment, the accused will still have caused death even if the victim dies as a result of the treatment received.
- Provided that the treatment was:
 - Reasonably proper in the circumstances; and
 - Applied in good faith.
- Even if the treatment is unsuccessful it still may be reasonably proper.
- ***R v Cook*:** treatment refers to the management of the patient as a whole.
- ***R v Kinash*:** turning of life support = medical treatment.
- ***R v Smith*** (stabbed, but dropped twice being carried, doctor didn't notice punctured lung):
 - If at the time of death the original wound is still an operating & substantial cause then the death is the result of the wound.