

LAWS4102

CRIMINAL LAW

Exam Notes

1. Homicide
2. Assaults
3. Offences Endangering Life
4. Offences Against Liberty
5. Sexual Offences
6. Property Offences
7. Attempts, Conspiracies & Parties
8. Defences Negating the Mental Element
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1. Homicide

s. 268 UNLAWFUL KILLING (COMMON CONDUCT ELEMENT)

- *It is unlawful to kill any person unless such killing is authorized or justified or excused by law.*
- Not an offence in and of itself → prove through the framework of murder or manslaughter.
- Killing is only “unlawful” if there is no defence to it/it is not justified by law.
- Killing is defined in **s. 270** as *“causing the death of another, directly or indirectly, by any means whatever”*
 - **(1) Death**
 - Death = irreversible cessation of all function of the person’s brain; or irreversible cessation of circulation of blood in the person’s body (**s.13C** of the Interpretation Act WA - from 01/08/2008)
 - **(2) A person (capable of being killed)**
 - **s.269** when a child becomes a human being when completely proceeded in the living state from body of its mother
 - Breathing or not, circulation or not, naval cord or not.
 - **Castles (QLD)**: deemed a person once born, even when born with no prospect of survival
 - **Martin (WA)**: stabbed pregnant wife (28 weeks pregnant) with no damage to foetus, but caused massive brain damage to child who died 8 months later. Convicted of manslaughter (indirect killing) based on **s.270 & s.271** (*“when a person dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do the act is deemed to have killed the child”*)
 - **s.270** can be sufficient causation for acts done to a child prior to their birth which cause their death once they become a person capable of being killed.
 - If a child does in utero this is not homicide.
 - **(3) Causing (directly or indirectly)** → both factual and legal causation
 - Factual causation
 - “but for” test: would the death have occurred but for the actions of the accused (question for Jury – **Jemielita***)
 - *Husband injected his wife with a thiopentone, and she also took oxycodone herself. The order was unclear and the question was whether “but for” the husband’s actions would the wife have died.
 - Legal causation (causal responsibility)
 - *“is the factual connection sufficient to attribute moral culpability & legal responsibility?”* – **Krakouer* (WA)**
 - *Fight between three people. X hit V on the chin so as to inflict a moral found. After V had fallen to the ground A Krakouer grabbed a post and struck him on the back of the head, fracturing his skull. Question was which assault had caused the death (WASCA found both did)

- Simple cases: commonsense test of causation sufficient.
- **Krakouer**: in more difficult cases the test is whether the accused's action is a substantial/significant cause of death.
- **Nouvus Actus Interveniens** (intervening act → break the chain)
 - Negative test: did this break the chain?
 - Intervention must be “free, deliberate and informed” and “independent of the act of the accused that it should be regarded in law as the cause of the death”- **R v Pagett (UK)**
- **ss.271-275**: A deemed to have caused V's death in certain circ's
 - **s.271**: Act/omissions at childbirth
 - **Martin (No.2)**: deemed to have killed child
 - **s.272**: Threat/intimidation/deceit that causes act/omission by a victim that causes death
 - **Royall (HCA)**: V fell to death out of a window after a violent argument between her and A → court rules that whether he pushed her, she fell in the course of the argument OR she jumped to avoid further violence there was sufficient evidence to find he caused her death.
 - **Martyr (Qld)**: haemophiliac dying from minor stab is murder → take victims as you find them
 - **Krakouer**: “pre-existing injury” is probably not a “disorder or disease”
 - **s.274**: Injury/death might be prevented by proper precaution
 - **Blaue (UK)**: Irrelevant if death could have been avoided by treatment → take victims as you find them
 - **s.275**: Injuries causing death in consequence of subsequent treatment
 - In case of GBH, if treatment was reasonably proper in circumstances and in good faith then immaterial if treatment was immediate cause of death
 - If not, it was an intervening act (see up for NAI)
 - **Levy (WA)**: V admitted with stab wounds, treated with drugs which caused his death. Because treatment was reasonably proper and in good faith the stabbing was the cause of death.
 - **Jordan (UK)**: V admitted with stab wounds but fatally treated with improper drugs for multiple days, despite doctor noticing. Equivalent of **s.275** did not apply.
 - **Cook (Qld)**: V stabbed and died of embolism as doctor's didn't give drugs because high risk of haemorrhage. Omission still covered by **s.275** equivalent because treatment reasonable.
- Causation by failing to act → manslaughter - see *below*
- When unlawful killing has been established, then look to see if it's murder or manslaughter.

s.279 MURDER

- There are three main instances in which a person will be liable for murder:
 1. where the person kills with an intention to kill; or
 2. where the person kills with an intention to do a bodily injury which endangers or is likely to endanger life; or
 3. where the person kills by way of a dangerous act that was done for a further unlawful purpose.

s. 279(1)(A) INTENTIONAL MURDER (UNLAWFULLY KILLS + INTENTION)

- No definition of intent in the Code, but covers two circumstances:
 - where it's the purpose or aim to bring about a result → direct intent
 - where the person knows or foresees that it is virtually certain there will be a result → indirect/oblique intent
- Premeditation ≠ intention, but is evidence to prove it.
- **Schulz (WA)**: intention is a subjective test (state of mind of the accused)
- **Turner (WA)**: forming an intention necessitates the capacity to reason → emotion can interfere with the ability to foresee the outcome of an action – see s.23
- **Willmot (No.2) (WA)**: “*The jury should be told, where there is direct evidence that the accused was aware that the consequence was a probable result of his or her act that they may infer he intended the consequence.*” - Connolly J
 - Intention refers to a person's purpose or aim (not desire or motive) no amount of foresight on the part of the accused will in itself (as a matter of law) amount to intention.
 - In cases where there is substantive evidence to intent, and all the jury can say to themselves is that, on the evidence we have seen, the most we can say is the accused foresaw the death/GBN as an outcome that was likely or even virtually certain, then that is not intention.
 - HOWEVER, if there is no evidence outside of verbal testimony by the accused/other that there was/wasn't intent the jury can infer intent.
 - Infer = taking a reasoning step that concerns assessment of the facts
 - Test: high degree of probability (shift from “virtually certain” in **Woollin**)
 - Confirmed in **Reid (Qld)** and **Gleebow**
 - Intent can be transferred → intend to kill X, end up killing Y == murder
- **Zaburoni v The Queen [2016] HCA 12**: plurality was critical of the tension between the ‘ordinary’ meaning of intent and the idea that intent can be inferred. Cast some doubt on Willmot, but overall upheld it. Issue in the case was whether there was sufficient evidence that the accused foresaw the consequence with a high degree of probability so as to prove intent.
 - Ruled that merely committing an act many times is not enough for intent
- Temporal link between conduct and mental element:
 - **Thabo Meli (UK)***: when A carries out multiple immediate actions that cause V's death they must be looked at as a whole to establish intent.
 - Accused hit V and, thinking he was dead, pushed him off a cliff. V actually died of exposure, not of initial assault. Court established there was intent to cause death by looking at events as a continuing chain

- Affirmed in **Le Brun (UK)**: “the unlawful application of force and the eventual act causing death are part of the same sequence of events, especially where the appellant’s subsequent actions which caused death, after the initial unlawful blow, are designed to conceal his commission of the original unlawful assault.” – Lord Lane J

s. 279(1)(B) MURDER WITH INTENT TO CAUSE BODILY INJURY OF SUCH A NATURE AS TO ENDANGER, OR BE LIKELY TO ENDANGER, LIFE

- No definition of life threatening injury/injury likely to endanger life in the Code.
 - **Wongawol**: the accused must SUBJECTIVELY intend to cause bodily injuries which OBJECTIVELY endanger, or be likely to endanger, life.
 - **Macartney**: likelihood that life is endangered, not likelihood of causing death
 - **Schmidt (WA)**: A pushed V into window which broke and V died. Court found that A’s intention was to push V into the window without it breaking is not capable of sustaining an objective inference that A intended to cause V bodily injury that would endanger life, or be likely to endanger life.
 - **Boughey (HCA); Hind & Harwood**: likely = “real and not remote chance”
 - **Hind & Harwood (Qld)**: “Substantial or real chance of danger to human life, regardless if more or less than 50 percent” – Fryberg J
- Identify what the bodily injury A intended to do was

s. 279(1)(C) DANGEROUS ACT MURDER

- **(1) Unlawful** → see above
- **(2) By Act likely to endanger life**
 - See **Hind & Harwood (Qld)** above for definition of “likely”
 - **Gould & Barnes* (Qld)**: objective test → doesn’t matter what A believed
 - A placed mixture of glycerine, Dettol, and Surf into V’s uterus – intending an abortion, but caused her death. Held that it didn’t matter what A believed – question was was the act objectively dangerous
 - Must clearly identify the act which caused the death - **Macartney (WA)**
- **(3) Act done in the prosecution of an unlawful purpose**
 - **Hughes (HCA)**: must be an unlawful purpose separate from dangerous act
 - **Stuart (HCA)**: A tried to extort money from a nightclub owner by setting fire in the doorway at 2am – no plan to hurt anyone. Ended u killing 15 people = unlawful purpose of extortion → dangerous act of starting a fire
 - **McKenna* (WA)**: ruled that it couldn’t be dangerous act murder → escaping the police cannot be both dangerous activity and unlawful purpose
 - A stole a car and when spotted by police next day drove off at high speed and killed a cyclist. Escape cannot be both purpose and act.
- **(4) No intention required** → s.279(3)

s.279(4) SENTENCING FOR MURDER

- Life imprisonment for adults
- If it would be “clearly unjust” (**s.279(4)(a)**) to give that sentence or “the person is unlikely to be a threat to the community” (**s.279(4)(b)**) then 20yr sentence

s.280 MANSLAUGHTER (UNLAWFULL KILLING + EITHER (2) OR (3) BELOW)

- **(1) Unlawfully kills another** → see above
- **(2) Intent to injure BUT no intention to kill and no dangerous act**
 - Proved BRD that A caused V's death, but intention was to injure not kill
 - **Martyr (Qld)**: A responsible for death from blow to chin due to V's abnormality which would not have seriously injured a normal person → no accident defence, therefore manslaughter.
 - Accused person must take their victim as they find them and therefore responsible for death even if it occurred because of a weakness, defect, or abnormality of the victim – **Steindl (Qld)**

OR

- **(3) Criminal negligence → breach of Chapter 27 duties**
 - Key questions:
 - Was there a breach of duties? AND
 - Was the negligence sufficient to impose criminal responsibilities?
 - **Callaghan**: gross or criminal negligence (not just carelessness)
 - **Patel (HCA)**: standard is of a "reasonably capable surgeon" so question is whether it is SO far below this standard to fulfil the test of Callaghan. Irrelevant whether A should have known of his shortcomings → judge his treatment by the standard of conduct OBJECTIVELY
 - No defences of s.23A or s.23B for breach of these duties.
 - **s.262**: duty to provide necessities of life
 - **Heaton (WA)**: duty arises where a person takes charge of another who is unable to withdraw from such a charge.
 - Seclusion relevant, but not a requirement.
 - **MacDonald (Qld)**: "necessaries for life" are the things the person needs to survive
 - **Heaton**: includes appropriate medical treatment
 - **Young (Qld)**: includes both willed & negligent omissions
 - **Instan**: duty would arise where someone takes elderly/ill relative into their care
 - **Rossiter**: patient had the right to refuse treatment
 - **Malcherek**: withdrawing respirator support when brain dead is not a breach of duty
 - **Blanc (Vic)**: withdrawal of life-sustaining treatment from someone in a non-responsive coma could be a breach but justified under **s.259**.
 - **s.263**: duty as head of family
 - Duty to a person in household under 16/yo
 - **s.265**: duty of persons doing dangerous acts (in connection with surgical or medical treatment)
 - Except in case of emergency.
 - Duty to use reasonable care and skill
 - **s.266** duty of persons in charge of dangerous things

- **Dabelstein:** the “thing” need not be inherently dangerous, merely dangerous in manner of use
- **Haughton (HCA):** bodily fluids classify in GBH cases
- **s.267:** duty to do certain acts
 - If A undertakes to do something (e.g. in an employment situation) and failure to do so could endanger life.
- See **s.304** for breach of duty in cases of bodily harm/danger.

s.281 UNLAWFUL ASSAULT CAUSING DEATH

- (1) Assault → s.222 – see below
- (2) Directly or indirectly
- (3) Causes death
- s.281(2) → Defence of accident NOT applicable
- Punishment → liable to imprisonment for 10 years

DANGEROUS DRIVING CAUSING GBH (S.59) OR BODILY HARM (S.59A)

- Offences under the **Road Traffic Act** – easier to convict than manslaughter
- Must objectively prove A’s driving is “*actually or potentially*” dangerous – **Kaighin**
 - **Robinson (WA):** if stationary, A is not driving
 - **Hart v Rankin:** held that A was driving when being towed (still in control)
- **s.59(1):** *dangerous driving causing death if a moving vehicle is involved in an incident occasioning death and the driver was “under the influence...to such an extent as to be incapable of having proper control of moving vehicle”*
 - **s.59B(5)** a person with a BAC > 0.15 is deemed incapable of proper control
 - BUT it is a defence for A to prove that the death/GBH etc. was not in any way attributable to the fact that A was under the influence, or the manner in which the moving vehicle was being driven → burden of proof on accused

OTHER OFFENCES RELATED TO UNLAWFUL KILLING

- **s.288:** Suicide
 - Any person who (1) procures to kill himself, OR (2) counsels another to kill himself and thereby induces him to do so; OR (3) aids another in killing themselves is liable for imprisonment for life.
- **s.199:** Abortion
 - Must be carried out by a medical practitioner in good faith as per *Health Act*
- **s.290:** Killing Unborn Child
- **s.283:** Attempted Murder → see *attempts*