

CRIMINAL LAW AND PROCEDURE NOTES

HOMICIDE OFFENCES

1 Unlawful Killing - Criminal Code, s 277

A Unlawful

- Without lawful justification: CC, s 268

B Killing

- Any person who **causes** the **death** of another **person**, directly or indirectly, by any means: CC, s 270
- Death - Irreversible cessation of the function of the brain, or of the flow of blood: *Interpretation Act 1984*, s 13C
- Person - a child after it has exited the body of its mother in a living state: CC s 269
- Causation
 - Factual causation:
 - “But for” test: *Royall v The Queen*
 - Legal causation:
 - “Common sense” test: *Campbell v The Queen*
 - “Substantial and operative” test: *Krakouer v State of Western Australia*
 - *Novus Actus Interveniens* (Intervening Act)
 - Victim trying to escape and accidentally dying breaks the chain unless they had a well-founded fear of harm: CC, s 272; *Royall v The Queen*
 - Pre-existing condition that would have caused death does not break the chain (euthanasia): CC, s 273
 - Lack of care on the part of a victim does not break the chain: CC, s 274; *R v Blaue*
 - Medical malpractice does not break the chain if it was proper and done in good faith: CC, s 275; *R v Cook*
 - Defect or abnormality in the victim does not break the chain: CC, s 23B(3) (eggshell skull principle)
 - Natural event can only break the chain if it was extraordinary: *R v Hallet* (tide drowned victim, no)
 - Behaviour of a third party breaks the chain if it was without the influence of the accused: *R v Pagett*
 - Omissions causing the death
 - Duty of everyone in charge of another to provide the necessities of life: CC, s 262
 - Duty of everyone doing a dangerous act to take reasonable care: CC, s 265
 - Duty of everyone in charge of a dangerous thing to take reasonable care: CC, s 266
 - Person is determined to have caused any consequences of failure to take reasonable care: CC, s 267

2 Murder - Criminal Code, s 279

- Unlawful killing with **intention** to kill (s 279(1)(a)), injure in such a way that is likely to endanger life (s 279(1)(b)), or to perform a **dangerous act** for another **unlawful purpose** (s 279(1)(c))
- Penalty - life imprisonment: CC, s 282(d)

A Intention

- Not defined in Criminal Code
- Direct (accused intends result): *R v Willmot*
- Indirect (result is reasonably foreseeable): *R v Woolin*

B Dangerous Act Murder

- Performing a dangerous act - likely to endanger life, objective test: *Hind v Harwood*; *Stuart v R*
- Further unlawful purpose: *Stuart v R* (setting fire to club)

3 Manslaughter - Criminal Code, s 280

- Any unlawful killing that is not murder is manslaughter
- Intentional manslaughter, unlawful assault causing death: CC, s 281
- Negligent manslaughter - duty, breach, negligence - must show such disregard for human life to amount to a crime: *R v Bateman*
- Penalty - 20 years imprisonment: CC, s 287