

Criminal Law - LAWS4102

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A. Homicide

Common elements for all homicide offences

1. Unlawful

- **S268** – states any killing that is not justified, authorized, or excused by law is unlawful

2. Killing

- **S270** – defines causing the death of another person directly or indirectly by any means whatever

3. Person capable of being killed

- **S269** – child becomes a person when it “completely proceeded in a living state from the body of the mother” i.e. born alive
- Child is still a person capable of being killed even if:
 - They have not breathed
 - Does not have independent circulation
 - Umbilical cord has not been cut

4. Death

- When does death occur? ==> **13C Interpretation Act 1984 (WA)**
 - Irreversible cessation of all brain function
 - Irreversible cessation of blood circulation
- Brain death = death of brain stem- **Bland (UK)**
 - Permeant coma != brain death

5. Causation

- To be liable for the killing of another, there needs to be a causal link between the accused's actions and the victims death
- **S270** - ‘caused directly or indirectly’
- Need to establish BOTH factual AND legal causation

5a) Factual Causation - ‘Casual connection’

- **Jemilita** → ‘but for’ TEST → would the victims death not have occurred BUT FOR the accused's actions?
 - Question of fact based on admissible evidence
 - ‘(Dr gave wife drugs in combination who died)’
 - The death would not have occurred BUT FOR the accused/s act/omission
- **TB**
 - Jury should adopt a common sense approach
- **Vera James** → **direct or indirect causation?**
 - Facts: Indirect causation. Rigid implement used for abortion and victim died from resulting illness. Abortion = held to be indirect cause. Victim wouldn't have died BUT FOR abortion

5b) Legal Causation 'Responsibility/moral connection'

- **Krakouer** → significant contribution TEST
 - Does the accused's actions make substantial or significant contribution to victims death?
 - (A kicked V in head whilst already on ground)
 - Need BRD significant or substantial contribution to death (even if acceleration of death)
- **Couzens** → question moral culpability
- **Royall** → even if other factors contribute to the harm suffered (i.e. slight medical mistreatment), accused can still be responsible if they contributed significant/substantial proportion of that harm

5i) Chain of Causation

- Arises when another event occurs between accused's action and death of V.
- Did the event break the chain of causation?
 - **Pagett (UK)** – Accused used GF as a shield in the dark. Fired at police, who returned fire, hitting and killing her. A reasonable act performed for the purpose of self-defense/done in purpose of legal duty (police duty) is not sufficient to constitute an intervening act.
 - **Consider where the intervention was voluntary (free, deliberate, informed).**
 - **Intervening act needs to be independent of the accused's act.**
- Code expressly says what will NOT break the chain – see **deeming provisions** below
- When there is no specific provision – apply general common law rules of causation

5ii) Limits of Causation

- **Couzens** (confirmed **Krakoueur** and **TB**)
 - Legal causation is a matter of moral culpability; satisfied via proof that accused's actions are significant or substantial cause of death
- **Swan (HCA)**
 - Elderly man died from family denying operation of broken leg, instead went to palliative care--> held that accused was liable due to indirect causation;
- **Clarke (WASC)**
 - Accused's actions need not be the immediate cause of death; cardiac arrest preceded by 52 blunt force assaults (significant contribution test).

Deeming Provisions

- The following state a person is 'deemed' to have caused the death of another in specified circumstances
- If satisfied, these trump the general causation of **s270**

- **S271 – Death by acts done at childbirth**

- When a child dies in consequence of an act done or omitted by any person **before or during its birth**, the person is deemed to have killed the child
- **Martin**
 - Man stabbed pregnant wife. Placenta sustained damage = blood loss and brain damage. Child was born, but died 8 months later due to brain damage.
 - Held: stabbing caused baby's death.

- **S272 – Causing death by threats**

- A person who by threats or intimidation of any kind...causes another person to do an act or omission which results in the death of that person, is deemed to have killed them
- **Royall**
 - Couple got into argument. A made threat of violence to victim. Victim jumped off balcony and died.
 - Held: do not need to establish victim's behavior was foreseeable.
- Threats/intimidation **need to be factual and legal cause** of victim's death still
 - Factual causation = use **Jemelita** BUT FOR test
 - Legal causation = use **Krakoueur** substantial test
 - Then, did victims act/omission result in their death?
- **Yarran**
 - Address whether victims act was an overreaction to threats/intimidation.

- **S273 – Acceleration of death**

- Any person who does any act/omission which hastens the death of another, or is laboring under some disease or disorder, is deemed to have killed that person. E.g. hemophiliac who dies from a minor stab wound
- Example: If A administers drugs to speed up death of dying V, A can't argue that they did not cause V's death as they were going to die anyway
- "Take the **victim as you found them**" principle – **Martyr (QLD)**
- Pre-existing injury likely not a 'disease or disorder' – **Krakoueur**

- **S274 – Injury/death may be prevented by proper precaution**

- Injury or death might have been prevented by proper precaution
- When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death might have been prevented by proper care or treatment
- Example: A cannot argue that V not seeking treatment breaks chain of causation
- **Blaue (UK)**
 - V stabbed and lost lots of blood. Refused transfusion due to religious reasons and they died.
 - Held: Refusing treatment did not break chain of causation. Still responsible.
- Leaving a hospital against advice of medical staff does NOT break causation chain - **Bingapore**

- **S275 – Injuries causing death in consequence of subsequent treatment**

- When a person causes GBH to another, and the other person has surgical or medical treatment and death results either from the injury or treatment, the person is deemed to have killed that person; **provided that the treatment was reasonably proper and applied in good faith.**
- Example: If A does GBH to V and V seeks medical treatment, A will have caused the death of V as a result of treatment received; provided treatment was reasonably proper and applied in good faith.

- **Levy (WA)**

- Victim stabbed and went to hospital
- Treated with drugs that caused liver to break down due to suffering from syphilis
- Died of liver problems after stabbing in hospital
- Held: no reason that doctors would have known victim had syphilis – as long as treatment is reasonably given in the circumstances; treatment $\neq$ cause of death

- **Jordan (UK)**

- Victim stabbed and went to hospital
- Treated with medication that was already noted he was allergic to and given in “wholly abnormal quantities”
- **Held:** Treatment was not reasonably proper; chain of causation broken --> accused not liable

- **Cook (QLD)** --> What amounts to treatment?

- Victim stabbed and went to hospital. Later died of pulmonary embolism.
- PE could have been avoided by anti-coagulant drugs, but they were not administered due to risk of hemorrhage which was more likely.
- **Held:** non-administration of drugs still constitutes treatment; treatment was reasonably proper

Murder - s279

- A murder offence created in **s279** with 3 different sub-categories
 - **S279 (1) (a) intentional murder** – kills with intention to kill
 - **S279 (1) (b) intentional murder** – kills with an intention to do bodily harm which likely endangers life
 - **S279 (1) (c) unintentional murder** – kills by way of a dangerous act done for a further unlawful purpose

(a) Intentional Murder – Intent to Kill

Elements

1. Unlawful

2. Killing

- a. **Causes directly or indirectly** (as above)
- b. **Death** (as above)
- c. **Person capable of being killed** (as above)

3. With an intention to kill

3) With intention to kill

- Intention not defined in CC. Must use CL.
- Proving intention is a **subjective** inquiry - **Schultz**

- **Schultz**

- What was a person's actual **state of mind** at the time?

- We cannot see inside accused's head, so...

- **Clarke**

- The intention of an accused must be proved by **inference from circumstantial evidence**.

- **Wilmot (2)**

- Intention means purpose or aim; does NOT mean motive
- Connolly J - intention = having purpose or design, not the same as desire.

- **Zaburoni - IMPORTANT**

- Purpose is NOT equated with motive
- Knowledge or foresight of result, whether possible, probable or certainty, is NOT a substitute for proof of specific intent under the Code.
 - Inferring intention on basis of foreseen consequences is not appropriate
 - Even if the outcome is certain, it must still be shown that the accused meant to produce the result.

Note: the process of proving intention $\neq$ the MEANING of intention.

- Other considerations
 - Carrying out the accused's aim will certainly result in the death of another

- **Re A**
 - Conjoined twins, separating them, then the weaker one will die for the stronger one to live otherwise both die; doctors knew this, parents didn't want it to happen on religious grounds.
 - **Held:** the doctors' aim was necessary and did not constitute murder.
 - “evil caused was not disproportionate to evil avoided”
- Emotion and intention
 - **Turner**
 - Emotion is usually not a relevant factor for intention --> it is not a state of mind
 - However, in EXTREME cases anger may impede ability to foresee consequences
- Transferred intent = accused intends to kill X, but kills Y
 - **Turner**
 - Still murder under **s279(1)(a/b)** “some other person”.
 - **S279(2)** - immaterial that A does not intend to hurt/kill other person
- Conduct and intent conceding
 - **Thabo Meli**
 - A struck the victim on head. Thought him to dead and threw him over a cliff. Medical evidence showed that victim had died of exposure.
 - Held: guilty of murder as it is one continuing assault. Subsequent event (effect of exposure) did not sever the chain of causation by initial attack.

(b) Intentional Murder – Intention to cause BH of such nature that endangers or likely to endanger life

Elements

1. **Unlawful (as above)**
2. **Killing (as above)**
 - a. **Causes directly or indirectly** (as above)
 - b. **Death** (as above)
 - c. **Person capable of being killed** (as above)
3. **Intent to cause injury of such a nature as to endanger or likely to endanger the life of person killed**

3) Intent to cause injury of such a nature as to endanger or likely to endanger the life of person killed

- **Wongawol**
 - S279(1)(b) is partly subjective, partly objective
 - Accused must **subjectively** intend to cause bodily injury
 - While **objectively** endangering life or would be likely to endanger life
- Refer to **Schultz, Clarke, Willmot, and Zaburoni** (above) for ‘intention’
- **Schmidt**
 - Accused charged with murder after pushing victim out of window.

- Prosecution was unsuccessful as it needed to establish that the accused INTENDED to push the victim with such force we went THROUGH the window.
- Only then could the injury (objectively) be of such nature as to endanger life.
- Accused claimed that he only intended to push victim into the window, not through it.

- **Harwood**

- Likely = “real and probable” change of result occurring

(c) Murder - by way of dangerous act done for a further unlawful purpose

Elements

1. **Unlawful** (as above)

2. **Killing**

- a. **Causes directly or indirectly** (as above)
- b. **Death** (as above)
- c. **Person capable of being killed** (as above)

3. **The act causing the death was:**

- a. **Done in prosecution of an unlawful purpose**; and
- b. **Of such a nature as to likely to endanger life**

- **3a) Act done in prosecution of an unlawful purpose**

- **Hughes**

- There must be an unlawful purpose **separate** from the dangerous act

- **Stuart**

- Accused set fire to a night club for extortion & several people died
 - Dangerous act endangering life = lighting a fire in live nightclub
 - Unlawful purpose = extortion

- **King**

- Accused engaged in high speed chase for 40min+. Driving on wrong side of road + running red lights
- Accused struck and killed bystander. Convicted of murder
- Dangerous act endangering life = driving on wrong side of the road at speed
- Unlawful purpose = avoiding police apprehension
- VERY FINE line between the two sub-elements.

- **3b) Act of such nature as to likely endanger life**

- **Gould and Barnes**

- Do NOT need to prove intention to harm victim or that accused knew harm was likely
- It is an objective test whether the act is likely to endanger life

- **Stuart**

- Confirmed that is an objective enquiry

- Question of whether an ordinary reasonable person in the accused shoes would have recognized the real chance that the act would endanger life.
- Of no consequence that the accused did not think the act would endanger life.

- **MacCartney**

- Must identify the specific act/acts

- **Hind v Harwood**

- 'Likely' = real and not remote' chance of the result occurring

Manslaughter – s280

- Offence created in **s280**
 - Arises in two main forms
1. **Elements for murder can be established but there is a partial excuse/defense which reduces the charge**
– i.e s248(3) excessive self defensive
 2. Unlawful killing where the elements of murder are absent; two types
 - a. **Intentional act manslaughter**
 - b. **Negligent act manslaughter**

(A) Intentional act manslaughter

- Accused in proved BRD to have caused the death, but prosecution CANNOT prove:
 - Intent to kill
 - Intent to cause injury of such a nature as to likely endanger life
 - The act causing death was a dangerous one done for an unlawful purpose
- If there is no relevant defenses available (i.e. **s23B**) --> manslaughter can apply under **s280**.

(B) Negligent act manslaughter

- Requires two stage enquiry:
 - Did A owe a **'duty'** to V?
 - Did A breach this **'duty'**?
 - If so, was A so **negligent** that criminal responsibility should be imposed?
 - Apply **s262 – s267** duty provisions (below) which provide the basis for causal link
 - Accused cannot use **s23A (unwilled act)** or **s23B (accident)** defenses
- **Young**
 - The basis of fault is objectively assessed. Not about whether the accused is aware of the result of the failing duty.
 - **Heaton**
 - If a duty applies, breach of this duty will establish a casual accused's omission and harm caused.
 - **Test for negligence**
 - **Callaghan (HCA)**
 - Duty as required by the CC must be breached with criminal or gross negligence
 - Does not mean person was simply careless
 - Must have substantially fallen below standard of behavior expected of a reasonable person

Burglary – s401

- Two general burglary offences – **s401** and **s401(2)**
- Compound offence of **trespassing + committing (or intending to commit) an offence**

Elements:

- **Enters or is in**
- **The place of another person**
- **Without consent**
- **Either one of:**
 - **With intent to commit an offence in the place –s401(1)** offence
 - **Commits an offence – s401(2)** offence

S401(1) Elements

(a) Enters or is in

- Defined in **s400(2)**
 - (a) as soon as any part of their body or;
 - (b) Anything in the persons possession or under their control is in that place

(b) Place of another person

- Defined in **s400(1)**
 - building, structure, conveyance, or part of a building, structure, tent, or conveyance
 - (b) Includes a place that at the time is uninhabited or empty

- **Walker**

- “Part” suggests they can have permission to be in part of place, but not another

(c) Without consent

- Consent can be express, implied and revoked

- **O’Neil**

- If you have two purposes to enter a place, but you only have consent to enter for one of those purposes, your consent is extinguished if you act upon the second purpose for which you have no consent for

- **Barker**

- A person who enters a place for a purpose that is alien to the terms of the license given to them to enters as a trespasser and had no authority

(d) Intent to commit an offence

- **Johnson**

- Must specify the offence alleged the accused intended to commit

- **Potter**

- To establish intention, the prosecution may rely on the intent formed fleetingly before committing the actual offence

S401(2) Elements

- (a) **Enters or is in** – as above – **s400(2)**
- (b) **Place of another person** – as above – **s400(1)**
- (c) **Without consent** – as above

(d) Commits an offence

- **Baradi**

- A person would only commit an additional offence if there an independent act to constitute a separate offence (i.e. not fully contained in the first offence)

- **King**

- **Prosecution needs to identify which offence is alleged and PROVE the respective elements**
- If the accused raises a successful defense to the subsidiary offence, they have not committed an offence in the dwelling/premise - therefore no burglary.

Circumstances of aggravation regarding burglary– s400(1)

(a) Circumstances in which immediately before, during or after the offence, the offender:

- I. **is or pretends to be armed** with a dangerous or offensive weapon
- II. **is or pretends** to be in possession of an **explosive substance**
- III. **is in company** with another person
- IV. **does BH** to any person
- V. **threatens to kill or injure** any person
- VI. **detains** any person – see **s332(1)**

- (b) **Or;** Circumstances in which **immediately before the offence** the **offender knew or ought to have known** that there was **another person (other than a co-offender) in the place**

Fraud – s409

- Offence created in **s409(1)** - Any person who, with an **intent to defraud**, **by deceit or any fraudulent means**:
 - (a) **obtains property** from any person; or
 - (b) **Induces** any person to **deliver property** to another person; or
 - (c) **Gains benefit**, pecuniary or otherwise, for any person; or
 - (d) **Causes a detriment**, pecuniary or otherwise, for any person; or
 - (e) Induces any person to do any act that the person is lawfully entitled to abstain from doing; or
 - (f) Induces person to abstain from doing any act that person is lawfully entitled to do is guilty of a crime

Elements

(a) **Intent to defraud (Mental element)**

- No code definition
- **Bolitho**
 - Intent to defraud has same meaning as it does in common law
 - “Intent to defraud, is limited by reference to the victims economic interest”
 - Suffer direct economic loss
 - Suffer economic ‘detriment’ by being deprived of property/services that have economic value;
(Brown) --> *depriving of property with economic value*
 - Be at risk of suffering economic loss or detriment
 - Be deprived of an opportunity to make economic gain; or
 - Be deprived of opportunity to prevent economic loss/detriment
 - **ONE EXCEPTION** to economic interest:
 - Inducing a person to breach their **public duty**
- **Re London and Globe Finance**
 - To defraud is to deprive by deceit
 - Deceit is to induce someone to act to their injury, by which the person practicing the deceit knows to be false
 - Therefore, to defraud is by deceit to induce a course of action
- **Scott**
 - There is an intention to defraud even if there's no deceit - Sufficient for the accused to have intended to use dishonest means to carry out their actions.
- **Peters (HCA)**
 - Confirms two types of deceit
 - 1) intention to deceive or dishonest means
 - 2) **overarching intention and knowledge to deprave somebody of something** --> adopted by **Matthews (WA)**
- **Moodie** (breach of public duty)
 - Falsifying invoices to public government employer for reimbursement
 - **False invoices was inducing employer to breach a public duty**

(b) By deceit or any fraudulent means (conduct element)

- Causes one or more of the outcomes listed in **s409(1)(a)-(f)**
 - Induces/obtains* delivery of property
 - Gains benefit/causes detriment**
 - Induces another person to abstain from/do anything they are lawfully entitled to do/abstain from

- **Hunter**

- Objective element distinct from the subjective element of 'intent to defraud'
- ***The person deceived does not need to be the subject of the intention to defraud.***

- **Re London and Globe Finance**

- Defines deceit (as above)

- **What is obtaining property?***

- Definition in **s1** – possession
- In relationship to land - 'occupies or acquires the capacity to occupy'

- The accused's deceit or fraudulent means **MUST HAVE CAUSED** one of the listed outcomes **(a)-(f)**

- **Clemensha****

- There must be a causal relationship between the deceit of the accused and the detriment of the victim

s24 defense

- **S24** = A person who does or omits to do an act under an honest and reasonable but mistaken belief

- **Matthews**

- Since **s24** requires the accused's state of mind to be reasonable, and so introducing a consideration of innocence under **s409** is unnecessary.