

Topic List

Homicide

- Causation
 - o Factual
 - o Legal
- Causation deeming provisions
- Interrupting causation
- Duties ss 271-275
- Murder s 279 (1) (a) Intention to kill
- Murder 279 (1) (b) Intention to cause a bodily injury
- Murder s 279 (1) (c) Death in the prosecution of an unlawful purpose (DAM)
- Manslaughter s280 (1)
- Unlawful assault causing death s 281 (1) (!! -Try use manslaughter first-!!)
- Dangerous driving causing death or GBH (RTA s 59) or bodily harm (RTA s 59A)
- Other deaths

Non-Fatal Offences

- Assault (df s 222)
- Common Assault s 313
- Assault causing bodily harm s 317
- Assault with intent s 317A
- Serious Assault s 318 - assaults on particular persons
- Wounding s 301 (1)
- Grievous Bodily Harm s 297
- Act intended to cause GBH (and other harms) s 294
- Circumstances of aggravation s 221

Parties

- s 7 (b) Every person who ... (elements)
- s 7 (c) Every person who aids another person in committing the offence
- s 7 (d) Any person who counsels or procures
- s 8 (1) Common intention + unlawful purpose + probable consequence...
- S 9
- S 8 (2) - only use this section to apply it to s 8 offence.

Attempt & Conspiracy

- s 283 attempt to unlawfully kill
- s 552 (1) any person who attempts to commit an indictable offence (principal offence)
- 555A any person who attempts to commit a simple offence
- Conspiracy to commit indictable offence s 558 (1) (a)
- Conspiracy to commit a simple offence s 560 (1) (a)

Property offences

- Stealing (df s 371)
- Stealing s 378
- Robbery
- Robbery s 392
- Elements s 392 (a) (b)
- Elements s 392 (c) Armed Robbery
- Robbery with aggravation s 391
- Burglary
- Fraud
- Fraud s 409
- Criminal damage s 444 (1)

Defences

- S 23A Unwilled acts and omissions
- S 23B Accident
- s 27 Insanity
- S 28 Intoxication
- Situational defences
 - o Self-defence s 248
 - o Provocation s 246 (dfn s 245)
 - o Honest claim of right s 22
 - o Mistake of fact s 24

Homicide

Common elements

1. **Unlawfully s 268** not authorised, justified or excused by law. Deal with last in defences.
2. **A person s 269** a child becomes a person when “completely proceeded in a living state from the body of its mother.” Regardless of breathing and no cut umbilical. **Castles** – if child is born alive it makes no difference if it was doomed to die
3. **Kills per s 270** means “causes the death of another, directly or indirectly by any means whatever.”

Death Interpretation Act 1984 s 13C is (i) irreversible cessation of breathing or (ii) irreversible cessation of brain function. **Bland** - If brain stem is functioning not dead even in permanent coma.

-----Causation-----

Factual causation

Jemielita – no death “but for” the accused’s act/omission. (*Dr injected wife with anaesthetic then she took oxy, death result of combination, jury applies ‘common sense’*)

Vera James – causes can be direct or indirect. (*abortion attempt caused septicaemia*)

TB & Couzens – apply commonsense to the facts to determine if conduct was a cause.

Pagett – (UK, persuasive, *gf shield hot by police*) applied ‘but for’ test.

Legal causation

Krakouer (2006) & s 270 – General rule - test is whether the A’s actions made a substantial or significant contribution to the v’s death.

TB (2015) & Couzens (2019) - **moral culpability** satisfied through proof of substantial or significant contribution.

Causation deeming provisions

Death from act done at childbirth s 271 - If a child dies because of act before or during its birth, the person who act is deemed to have killed the child.

Martin – s 271 is not limited to acts closely connected in time with the death. (*Child died 8m-old after assault on mum*).

Causing death by threat s 272 - If by threats or intimidation, or deceit, causes v to do an act/omission **resulting** in death, A is deemed to have killed v.

TB - threats or intimidation must be factual and legal cause of the v’s act/omission – (1) connect threat to v’s act. Then (2) connect act to ‘resulting in death’ (objectively, and reasonable foreseeability for result not ‘essential’).

Yarran – jury may consider whether the v’s act was **reasonable or proportionate** to the threat.

This may interrupt chain of causation, but it is still open to jury to find A’s act caused death even if v’s act was unreasonable or disproportionate. (*v jumped from car after violent burglary and threats of death*)

Royall – HCA NSW, 1991 (pre-Krakouer), Persuasive, *gf was threatened and fell from window, regardless what happened, push, threat and flee*. A’s actions were substantial or significant cause of death.

Acceleration of death s273 – When A hastens death of person with **disorder or disease** arising from another cause.

Krakouer – pre-existing injury is probably not a disorder or disease.

Death from bodily injury that might have been avoided or prevented s 274 – immaterial if injury could be avoided by proper precaution on the part of v or prevented by proper treatment. **Blaue** (UK, persuasive) – People must take their victims as they find them. Refusing treatment does not break the causal chain. (*Jehovah's Witness & blood transfusion*)

Death from, or from treatment of, grievous bodily harm s 275 - GBH then medical treatment, and death from the injury or the treatment, A has killed that other person, even if immediate cause of death was treatment; provided that the treatment was reasonably proper under the circumstances and was applied in good faith.

Levy - Even if treatment unsuccessful, as long as reasonable will not stop causation. (*v stabbed, had syphilis, emergency treatment so Dr didn't know and drugs in treatment caused death*).

Cook - Type of treatment can cause death but if exercised with skill and judgement will not break chain of causation. (*medial decision not to use anti-coagulant drugs to avoid clot due to haemorrhage risk, died of clot*)

Jordan (UK, Persuasive) – Medical treatment which is 'palpably wrong' and 'wholly abnormal' **can** break chain of causation.

Burt – s 275 only applies where **treatment** is the **cause** of death. (*stab victim treated and died anyway, treatment not connected with death for s 275 to apply*)

Interrupting the causal chain

Clarke – **Cardiac arrest** following non-fatal assault didn't sever causal chain and assault was still substantial/significant cause of death. (*52 blunt force injuries to v, none severe enough to break a bone or endanger life*).

Swan (HCA NSW) - Decision to treat assault v palliatively (then death) didn't interrupt the causal chain. (*78yo man beaten in home and suffered life-threatening multi-system injuries, brain damage and broke leg in hospital fall and was treated palliatively*)

Duties

Cannot apply **s 23A** (unwilled act) or **s 23B** (accident) defences.

Steps - per **Heaton**

1. Was A under one of the Chapter 27 Duties?
2. If so did A 'breach' that duty?
3. Was A so negligent that criminal responsibility should be imposed?

General principles

Heaton – an able-bodied stranger is not obliged to rescue a drowning person. CR only applies where person has a duty to act, or to act in a certain way, but failed.

Young (QLD) – A does not need to believe they have the duty, this is objectively assessed. (*mentally ill mother neglected child*).

Duty to provide necessaries of life s 262

Elements:

1. Having charge of another
2. who is 'unable by reason of age, sickness, mental impairment, detention, or any other cause'
3. to provide himself with the **necessaries of life**

Heaton – **charge of another** was by **seclusion** which is a factor but not a requirement for the element.

- Includes a relationship of dependence, where A has undertaken a specific task and therefore in doing so assumed responsibility for the victim and where A has chosen to assume control of a situation involving potentially dangerous outcomes.

- Breach of duty **does not depend on intention**, it occurs by omission to perform the duty. (*Heroin OD, drove v around all day in car no help*)

MacDonald & Macdonald – necessities of life were medical aid, food, and clothing...according to the plain common-sense ideas of ordinary English people. (*parents deprived child*)

Duty if doing dangerous acts (surgical or medical treatment) s 265

Elements

1. Anyone who administers surgical or medical treatment, or any other lawful act dangerous to human life or health
2. To have reasonable skill and use reasonable care

Patel – necessary to have reasonable skill and to use reasonable care. (*grossly negligent and unnecessary surgeries*).

Duty of persons in charge of dangerous things s 266

Elements

1. in his charge or under his control
2. anything living or inanimate, whether moving or stationary'
3. of such a nature that in the absence of care or precaution, the life, safety of health of any person may be endangered

Robinson (1991 WA) - s 266 does not apply only to 'inherently dangerous things' such as guns, knives and cars.

Pacino (1998 WA) – animals can constitute a dangerous thing. (*Dogs escaped and killed v. Note: Defence of honest and reasonable mistake could apply re he didn't know dogs were that dangerous*).

Jackson & Hodgetts (1989 QLD)– meat preservative was a dangerous thing. (*Put preserve in can of coke knew v would consume it*)

Dabelstein (1966 QLD) – pencil was a dangerous thing. Look at objective nature of thing and characteristics and the consequences of it being used carelessly. (*inserted pencil into v's vagina*)

Murder s 279 (1) (a) Intention to kill

Elements

1. Unlawfully (do last re defences)
2. Kills (causation)
3. Intention

-----Intention-----

Willmot (1985 QLD) – purpose “to have in mind.” The notion of desire is not involved in intention.

Zaburoni (HC) – A has that result as their purpose at the time of doing the conduct. Intent is aim or purpose. (*HIV transmission*)

- Foresight that conduct will produce a result as a ‘virtual certainty’ is of evidential significance but A still needs result to be the purpose of the conduct.

Clarke (2022 WA) – when a person acts to bring about the occurrence. Actions are accompanied by a purpose or design. Doesn’t require premeditation. (*Planned attack, 52 blows but death was caused by heart attack*). Motive can be relevant to establishing intent but not required.

Schultz – Proving intention is a subjective test. What did the accused believe/foresee/know at the time.

Thabo Meli (PNG) – Conduct and mental element must coincide. (*Intended to kill v, when they thought he was dead threw him off cliff. He wasn’t dead, died of exposure, didn’t break causation*).

Transferred intent – s 279 (2) If you intend to shoot Tom but miss and kill Bob you still intend to kill Bob.

Murder 279 (1) (b) Intention to cause a bodily injury

Elements

1. Unlawfully
2. Kills (causation)
3. Intention
4. Bodily injury of such a nature as to endanger, or be likely to endanger, the life

Bodily injury likely to endanger life

Wongawol (2011 WA) & Schmidt – apply a subjective and objective test - A must **subjectively intend** to cause bodily injuries which **objectively endanger** life or likely to endanger life.

Whether accused realises the objective component is irrelevant.

Schmidt (2013 WA) – Followed Wongawol rule. (*Pushed v into the window was not intention of a bodily injury of such a nature to endanger life: as opposed to pushing v out of the window*).

Likely

Hind and Hardwood (1995 QLD) - The term “likely” is a **real and not remote chance** of the consequence occurring.

