

LAWS4102: CRIMINAL LAW

key

Start of offence

Section in code

Element

case

or (case) or case

Unlawful Homicide (s277)

- Accused may be liable for a victim's death if it is found that he unlawfully killed him.
- **Section 277** an unlawful killing is either murder (**s270**) or manslaughter (**s280**). To establish either of these offences necessary to prove:
 1. **Unlawful**
 2. **Kill**
 3. **Another person**

ELEMENT 1: UNLAWFULLY

- **Section 268**: killing 'unlawful' unless **authorised, justified or excused** by law

ELEMENT 2: KILLS

- Killing is defined in **s270**:
 - A. **Person (generally no issues)**
 - B. **Death**
 - C. **Cause directly or indirectly by any means**
 - D. **Other person (generally no issues)**

SUBELEMENT A: PERSON

Death from act done at childbirth (s271)

- When a child 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 such act is deemed to have killed the child.

Martin: M stabbed wife during argument 28 weeks pregnant @ time, loss of blood → loss of blood from placenta, thus foetus, child born 2 months later died aged 8 months, child born alive but stabbing occurred when baby in utero. Section 270 – kill if you cause person's death directly or indirectly – indirect placental obstruction, s271 – not limited to acts closely connected in time with the death,

SUBELEMENT B: DEATH

- Defined in **s13C Interpretation Act 1984** means (i) irreversible cessation of breathing (ii) irreversible cessation of brain function.
 - Person in coma/persistent vegetative state? → person in permanent coma are not brain dead.
 - However, withdrawal of artificial nutrition and hydration from a person in PVS can be lawful → no duty to administer ANH: *Airdale NHS v Bland*, *Gardner*

Bland: Facts: B on OVS, Issue: doctor 'cause' death by stopping ANH, Held: Omission to act would be culpable if duty of care – doctors are neither entitled to continue medical care → not guilty if discontinue care:

Gardner: any form of ANH is a medical procedure; law does not impose strict obligation to administer ANH to people.

SUBELEMENT C: CAUSATION

- I. **Krakouer Test: Factual and Legal Causation**
- II. **Causation: Duty to Act (s262-267)**
- III. **Chain of Causation: Deeming Provisions (s272-275)**

I - Krakouer Test: Factual and Legal Causation

- Must be established that accused caused death of victim
- Two steps to establish causation:
 1. **factual causation**: the action would not have occurred but for the accused act/omission

R v Vera James: A inserted rigid implements into a girls womb to procure an abortion, she dies 12 days later from broncho-pneumonia, the unlawful procurement of the abortion here is an indirect cause but still the cause of death

Jamilita: suicide pact between husband and wife. Wife took oxycodone and husband injected her with anaesthetic. Wife died, anaesthetic not lethal by itself but in combination with other drugs yes. Husband convicted because not factual but legal cause of death (substantiative and significant contribution to death)

2. Was the accused the **legal cause** of the victim's death: Was the accused's action/omission a sufficiently substantial or significant cause of the victim's death?

Pagett: P used his pregnant girlfriend as a shield to prevent his arrest by police, police shot girlfriend and she died. Bullets killed her but P was liable because he was a substantiative and significant cause of her death. Didn't break chain of causation

Jamilita: suicide pact between husband and wife. Wife took oxycodone and husband injected her with anaesthetic. Wife died, anaesthetic not lethal by itself but in combination with other drugs yes. Husband convicted because not factual but legal cause of death (substantiative and significant contribution to death)

Krakouer: K and victim got into a fight, during the fight C hit the deceased at the base of the chin to inflict a mortal wound, after victim had fallen to ground, K struck the victim on the back of the head fracturing skull. What the accused did doesn't need to be the sole cause of death for the accused to be held responsible only substantiative and significant cause

Royall: victim was threatened by the accused and jumped out the window. Held that it was a natural and reasonable response by the victim and found that if victim had stayed she would have been subjected to further violence. The accused actions were a substantial and significant cause of death, didn't break the chain of causation.

Couzens: appellant convicted of murder of victim via strangulation. Unable to prove that appellant did the act however, appellant was convicted finding that legal causation is a matter of 'moral culpability' satisfied through proof of significant and substantial cause of death

Swan: a 78 year old man was assaulted and suffered life threatening injuries leaving him with permanent brain damage, the hospital staff decided not to conduct surgery on him as it could accelerate his death. The accused was still found guilty of his death as the assault contributed to his poor quality of life and therefore, it was a substantial and significant cause of death.

Clarke: The appellants stabbed the victim 52 times but the victim ultimately died of a fatal cardiac arrhythmia caused by the stress of the experience. The court held that the stabbing was a substantial and significant contribution to the stressing environment and therefore, lead to the victims death and the appellants were charged.

II – Causation: Duty to Act (s262-267)

- Difficult to establish factual/legal causation link when accused failed to act.
 - Duty sections – establish causal link between accused's omission and victim's death provided the accused has a duty to victim → person who has duty must do whatever they reasonably to prevent the harm or they have breached their duty.
 - When is a duty breached?
 - Negligence: At least criminal negligence required (*Callaghan*)
 - Intentional: Duty may be intentionally breached (*MacDonald*)

Duty to provide necessities of life (s262)

- **S262** – provides that it is the duty of every person who **has charge of another** person (who is unable to withdraw himself from such charge and who is unable to provide himself with the necessities of life) to **provide that person with the necessities of life**.
- Meaning of ‘necessities of life’
 - Objective test – ‘plain common- sense ideas of ordinary people’ (*MacDonald*)
 - Whether accused did not intend to breach ‘necessities of life’ is not relevant (*MacDonald*).
 - Medical aid is included (*MacDonald*).
- “Having charge of another”

Heaton: Victim voluntarily consumed heroin but her partner didn’t take her to a hospital when she started showing signs of overdosing and removed her from a position of other people being able to provide help therefore, taking charge of her. A person ‘has charge of another’ if he has **knowledge** of other person not being able to provide themselves with the necessities of life (ie drug taking/alcohol) and then **assume control** of the situation – a person can **assume control** by secluding other person so as to prevent others from rendering aid to that person. → Heaton deliberately took victim to car and rejected offers from others to help the victim.

Brighwater Care Group v Rossiter: R lived at BCG facility require ANH, requested to die, BCG uncertain of duty to provide ‘necessaries of life’. A person “has charge of another” if he assumes charge of another person who **“lacks the capacity to direct or control their own destiny** and therefore dependent upon the person ‘having charge’ of them. → Rossiter had full mental capacity, ability to give directions about future care therefore able to withdraw himself.

MacDonald: 14 yo daughter, brought to live with dad and stepmother, victim was healthy when arrived, few months, victim broken ribs and sores on body – no medical aid provided and died of exhaustion.

- Facts that increase strength of argument that accused had ‘charge’ of victim
 - Accused related to victim and had knowledge of...
 - Accused was a nurse and had medical expertise.

Duty of head of family (s263)

- Care of a child under the age of 16 in person’s household (WA) has duty to provide that child with the necessities of life.
- Failure to do so deemed to have caused whatever results to the life or health of the child due to not receiving those necessities (whether child helpless or not)

Young: Appellant convicted of manslaughter because she didn’t supply food and medical attention to her 4 month old child. Death of child caused by under nourishment. Objective test for whether there is a duty.

Duty of persons doing dangerous acts (s265)

- **S265** provides that it is the duty of every person who is doing anything that may be **dangerous to human life** including surgical or medical treatment **reasonable skill and use reasonable care**.
- Applies to “gross negligence” relating to (1) surgical procedures (2) judgments about patient’s conditions (3) judgements about the risk to patients of surgical procedures. (*Patel*).

Duty of persons in charge of dangerous things (s266)

- Duty of every person in **charge/control of a dangerous thing** to use **reasonable care and take reasonable precautions** to avoid danger.
- Objects which are not inherently dangerous may become dangerous given context of use (*Dabelstein* pencil in vagina causing haemorrhage)

Jackson and Hodgetts: appellants convicted of manslaughter after putting meat preservative in victims coke can. Meat preservative was deemed a dangerous thing

Pacino: appellant convicted of manslaughter as his 4 dogs attacked a person and killed them after escaping through a gap in the fence. Dogs were deemed to constitute a dangerous thing.

Dabelstein: inserted a pencil into the victims vagina. Dangerous thing isn't just the thing itself but also the practical consequences of it being used or managed carelessly.

III CHAIN OF CAUSATION: DEEMING PROVISIONS (s272-275)

- **Sections 272-275** are provisions which deem the accused to have caused the victim's death in certain circumstances where there has been an event subsequent to accused's action.

Causing death by threats (s272)

- A person who, by threats or intimidation of any kind... causes another person to do an act or make an omission which results in death of that other person – deemed to have killed him.
- In this section – 'causes' relates to the connection between alleged threats or intimidation of the accused and **act/omission of the victim not the death of the victim**.
- Unlike **s270**, moral culpability of accused arises from statute of 'threats and intimidation'.
 - Threats/intimidation – must be a factual ('matter of objective fact') and legal cause of the victim's acts/omissions – legal causation – **substantial/significant contribution test**.
 - Reasonably foreseeability of victim's act or victim's death is not 'essential aspect' of the concept 'results' in s272 **TB**.

TB: Mr Litchfield died after falling from a fence and hitting his head on a bitthermen surface. The case was whether TB and his 4 friends could be a substantial and significant cause of the victims death through threats and intimidation.

Royall: the victim was threatened by the accused and jumped out the window – Held it was "natural" and "reasonable" that the victim tried to escape and that the only mode of escape was out of the window, thus victim's death caused by the accused's conduct. → well-founded and reasonable apprehension that if she remained she would be subjected to further violence, so jumped to escape → Held: accused's actions substantial or significant cause of death. In break in chain of causation.

Acceleration of Death (s273)

- When person acts or omits which hastens death of another person, who is labouring under some disorder or disease arising from another cause, is deemed to have killed that person.
 - Reflect principle that 'you take victim as found'.
 - Pre-existing injury is probably not a 'disorder or disease' – Krakouer.

When injury or death might be prevented by proper precaution (s274)

- When person causes bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on part of person injured, or that his death might have been prevented by proper care or treatment → person who causes the bodily injury responsible for death of person.
- In **Blaue** – victim stabbed and refused blood – Held: accused caused victim's death (persuasive) → people must take their victims as their find them.

Blaue: Victim had religious beliefs which stopped them from getting certain kinds of treatment. The court held that the stab wound caused the victims death and it did not break the chain of causation for the victim to refuse medical treatment.

Injuries causing death in consequence of subsequent treatment (s275)

- When person does GBH to another such other person has recourse to surgical or medical treatment, death results either from injury or treatment, deemed to have killed that person – although immediate cause of death was surgical or medical treatment – provided treatment was **reasonably proper** under the circumstances and applied in good faith.

Levy (precedent) – medical treatment, ‘reasonably proper’ but still dead victim = **continued chain of causation** stab wounds, treated with drugs which caused liver to break down – suffering from syphilis, died from liver related problems – conviction for murder upheld – no reason why doctors who administered drugs should have known victim suffering from infection – as long as it is reasonable treatment not regarded as cause of death.

Jordan (persuasive) – medical treatment = **not reasonably proper** = **broken chain of causation** victim stabbed in abdomen with a knife by the appellant – treated in hospital died several days later – victim treated with antibiotic to which he was intolerant, this was noted, given the same drug – victim given “wholly abnormal quantities” of liquids intravenously → died from waterlogged lungs. Held – appeal allowed chain of causation was broken by medical treatment ‘palpably wrong’ and ‘wholly abnormal’

Cook (precedent) – non-administration of treatment if deliberate/considered is still ‘reasonably proper’ and thus does not break chain of causation. Appellant stabbed victim in back, died of pulmonary embolism – could have been prevented by anti-coagulant drugs – not administered by doctors on balance risk of haemorrhage which could have resulted in paraplegia more likely. Non-administration of drugs constituted ‘treatment’ no evidence that treatment was not proper in circumstances – no break in chain of causation.

Burt: victim suffered 2 separate injuries as a result of knife wounds, he died of blood loss in the hospital. The hospital performed a procedure which increased blood loss but it was done with reasonable care and skill and was proper in the circumstances therefore, it did not break the chain of causation from the appellant.

ELEMENT 3: ANOTHER PERSON

- S269** person capable of being killed when it has completely proceeded in a living state from the body of its mother

CONCLUDE: Accused caused the death of the victim. Next, determine if this is murder or manslaughter

Murder (s279)

- Accused could be liable for murder (s279)
 - Kill
 - With an intention
 - To kill [s279(1)(a)] OR
 - To do a bodily injury that endangers or would be likely to endanger life [s279(1)(b)]

OR

- “Dangerous Act Murder” [s279(1)(c)]
 - specific act
 - likely to cause death; and
 - done for unlawful purpose.

INTENTIONAL MURDER (s279(1)(a) and s279(1)(b))

ELEMENT 1: KILLS

- SEE ABOVE^^^^^^

ELEMENT 2: AN INTENTION TO KILL/DO BODILY INJURY THAT ENDANGERS OR WOULD BE LIKELY TO ENGANDER LIFE OF THE PERSON KILLED

- How to prove intention? – draw inferences from what A did (nature and number of injuries), What A said at time or later (police interviews), evidence of what witnesses said A did or said, forensic evidence.

Schultz (WA) – S killed victim, evidence of borderline mentally-defective intelligence, HELD: intention is subjective, subjectivity is affected by **mental capacity** therefore evidence of borderline mentally-defective intelligence which have been admitted on basis of its **effect on his thinking processes in relation to INTENT**

- Intent is a **subjective** inquiry (**Schultz**)– what did the accused actually believe/foresee/know at the time.
 - Evidence of the mental capacity of the accused is relevant as it affects the thinking process by which the accused forms intent (**Schultz**)

Clarke – when person intends to do something – the person acts in order to bring about the occurrence of that thing – person’s actions is accompanied by a **purpose or design**.

Meaning of intent

- Wilmott** ordinary meaning of ‘intent’ is to **have in mind**. **Zaburoni** states proof of intention to produce a particular result requires the prosecution to establish that the accused ‘meant to produce that result by his or her conduct’.

Motive/Desire and Intent

- Wilmott** held **intent is not same as motive or desire**, **Zaburoni** suggested that a relationship between intent and motive/desire exists, holding that motive ‘describes reason that prompts formation of accused’s intention’.

Intent and Foresight

- Zaburoni** held foresight of consequences will not be enough to satisfy proof of intention. Overrules **Willmott** (held – intent may be inferred if jury believed beyond reasonable doubt that accused foresaw consequence of his act being (1) death or (2) GBH as a probable one)

Willmot: W convicted of murder of sister in law by strangling and suffocating her. Original intention was to go to her house and have sex with her but he 'panicked' and killed her when she said no. Found the accused wanting to have sex was desire not intention, intention was to kill

Zaburoni – frequent unprotected sex with person, didn't close HIV status "I didn't want to ruin her life"
Held: not enough to infer intention, evidence of his selfishness to promote own enjoyment.
Reid [2006] – accused said HIV status made him feel like a loaded gun, taunted complainant after she contracted HIV.

- Intention and emotion: relationship between emotions such as anger and intention.
 - Emotions such as extreme anger may prevent intent from being formed because emotion may inhibit the 'capacity to reason and understand what the consequences of the action may be' (**Turner**).

Turner – appellant charged with wilful murder of wife. Died of 65 knife wounds, victim had left accused shortly before attack, accused told she was seeing another man, he believed this to be true. Appeal allowed as there was an interaction between emotion and ability to reason.

- Transferred Intent
 - What if I try to kill or cause life-threatening injury to X end up killing V? – still murder: wording of s279(1)(a)-(b) relates to V 'some other person' – immaterial that A did not intend to hurt the person killed. → A intends to kill Bob but hit Tom, A intends to kill Tom.
- Contemporaneity of conduct and intent
 - If accused believes victim to be dead (but victim not) and then accused does something to that victim that actually kills them – accused held to have intent. Point in time in which accused attacks victim with the intent to kill/cause GBH to time where victim actually dies is a 'continuing assault' (**Jackson**).

Jackson (1896) – A decided to kill V by administering drugs, put in car boot while unconscious, decapitated her, cause of death was clearly decapitation Held: A guilty if conduct and mental elements 'coincide' as part of series of connected acts.
Thabo Meli [1954] – appellants convicted of murder, struck victim over head, believed him to be dead – threw him off a cliff – he was only unconscious immediate cause of death was exposure – held: "continuing assault" when death occurred intention is present, subsequent event did not sever chain of causation begun by initial attack.

INTENT TO DO BODILY INJURY THAT ENDANGERS OR WOULD BE LIKELY TO ENDANGER LIFE s279(1)(b)

- Test for s279(1)(b) both subjective and objective according to **Schmidt and Wongawol**.
- **Wongawol** – section 279(1)(b) is partly subjective, partly objective.
 - First – accused must **subjectively intend** to cause bodily injury
 - Second – bodily injury must **objectively endanger** or would be likely to endanger life
 - "Likely" means a substantial or real and not remote chance (**Hind and Harwood**)

Schmidt – Accused charged with murder – alleged he pushed victim out of window OF OBH, V fell through window and died, A charged with murder. Held – following **Wongawol** both endangerment to life and likelihood of endangerment to life to be objectively assessed. Needed to be established that accused intended to push victim **with such force that he went through the window** – only then could the injury (objectively be of such a nature as to endanger life).

Apply:

- Is there anything on the evidence to suggest not the accused's purpose to kill the victim? Therefore not liable under s279(1)(a).
- It was however, accused's purpose to do victim bodily injury as the accused [did act]
- This injury has a 'real and not remote' chance of endangering the victim's life, as it [affected some important function]
- Therefore, the accused may be liable for murder under s279(1)(b)

DANGEROUS ACT MURDER – s279(1)(c)

- Where death is caused by means of an act done in the prosecution of an unlawful purpose, which act is such of a nature as to be likely to endanger human life.
- elements
 - An act done
 - Which act is of such a nature as to be likely to endanger life
 - In the prosecution of
 - An unlawful purpose

ELEMENT 1: DEATH CAUSED BY MEANS OF A SPECIFIC ACT (an act done)

- That specific dangerous act must be identifiable (*McCartney*)
 - Don't need to prove that they intended harm
 - Objective test

McCartney (WACCA) – Lack of evidence to suggest how victim killed – circumstantial evidence only. Held: specific act must be identified in order for court to conclude act was 'likely to endanger life'.

Apply:

- The dangerous act that the accused did was [act]

ELEMENT 2: ACT IS LIKELY TO ENDANGER LIFE

- Whether act 'likely to endanger life' is an **objective** test which the lens of a reasonable person (*Gould v Barnes*). Therefore, irrelevant what the accused intended.
- "Likely" means substantial or real and not remote chance (*Hind v Harwood*)

Gould v Barnes – Dangerous act poured chemicals into victim's uterus, unlawful purpose – abortion, accused argued that they did NOT foresee/intend that the act would endanger life. Held that it does not matter what victim intended/foresaw – **Objectively** would the act likely endangered life.

Apply: There was a 'real and not remote chance' that the accused's act of [act] would endanger victim's life because...

ELEMENT 3+4: IN PROSECUTION OF AN UNLAWFUL PURPOSE

- There must be a **causal link** between dangerous act and unlawful purpose. The dangerous act must be done specifically for purpose of achieving the unlawful purpose.

- The dangerous act must be **different** from the unlawful purpose to constitute dangerous act murder (*Hughes*).
 - In *Hughes*, dangerous act was assault. Unlawful purpose was murder. S279(1)(c) not applicable because assault constituted part of the unlawful purpose.

Stuart – A set fire to nightclub whilst people inside to extort money from owner. Held that Arson *likely to endanger life* because attack took place at evening/night when nightclub would have people in it.

- In **Stuart**, dangerous act was setting fire to a night club whilst people inside, unlawful purpose was extortion (in obiter unlawful purpose could have been arson) s279(1)(c) applicable.

In **McKenna**, dangerous act was evading police (causing car crash) unlawful purpose was evading police s279(1)(c) not applicable

In **State of WA v King** act likely to endanger life was that she was driving on the wrong side of the road at speed, unlawful purpose was that she was deliberately driving on wrong side to evade police prevent apprehension – share common element wrong side of road, convicted of murder.

Apply:

- The accused's unlawful purpose was to [purpose]. This is separate from his dangerous act.
- There is a causal link between unlawful purpose and dangerous act as accused did [act] in order to [purpose]

Conclude – Therefore, accused liable for DAM under s279(1)(c)