

CAUSATION

Prosecution bears the persuasive burden of proving the D’s guilt “beyond reasonable doubt” and disproving the defence [Woolmington]

295 Causing death by threats

A person who, by threats/intimidation of any kind/ by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed the other person. [Royall]

- Only applies when someone dies
- More facts may be req’d if there’s an intervening act (e.g. car accident – was the driver driving negligently? Intoxicated?)

298 Injuries causing death in consequence of subsequent treatment

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

296 Acceleration of death

It is immaterial if a person is already dying from a disease or another cause and you make an act or omission that accelerates the death. Still deemed to have killed that person.

- makes voluntary euthanasia a crime

297 – person who causes a bodily injury resulting in death causes the death even if it might have been prevented by proper precaution by victim or by proper care or treatment [Blau]

THREE STEPS – [Royall v The Queen]

1. **Operative Cause** – what killed the person? (medical cause) [R v Hallet]
2. **Causal Connection** – would the death have occurred ‘but for’ or w/o the actions of the accused? (yes or no) [March v Stramare] – can the medical cause of the death be traced back to the actions of the accused? “but for the actions of the accused, would this death have occurred?” if no – causal connection is established.
  - if result would have occurred regardless of what the accused did, there is no causal connection.
3. **Causal Responsibility** – is causal connection sufficiently strong to justify attributing responsibility for death to the accused?
  - **Common sense test (Mason)**
    - o Involved telling the jury that causation is a matter for then to use their common sense plus a reminder of the potential significance of the decision
    - o Ultimately establishing causal responsibility is a question for the jury
  - **Substantial contribution test**
    - o (looks backwards from the death) [Krakouer v WA]
  - **Reasonable foreseeability test (McHugh)**
    - o Looking forward)
    - o Was the death a reasonably foreseeable consequence of the actions of the accused
    - o If death had been w/l the normal range of the expected outcomes of that conduct (means that it is objectively determined)

NOVUS ACTUS INTERVENIENS

- Intervening act that breaks chain of causation. Later actor is responsible but the act must be ‘free, deliberate, and informed’ [R v Thomas]

TC: It is apparent from the facts that [victim] died as a result of [cause]. [Victim] wouldn’t have died ‘but for’ [action/injury/contribution]. [D] is the cause of the victim’s death

\* If causation is a live issue, consider fully (i.e. provisions, elements, etc.). Use substantial contribution test.

Note-Establish this steps then charge Murder or Manslaughter.

CASE SUMMARIES
<p><i>Royal v The Queen</i> – victim attempted to escape from accused and jumped out of window to her death; death by threat/intimidation, [D] caused death as he substantially contributed to death. HELD: there was a causal connection (but for hadn’t he threatened her, she wouldn’t have died)</p> <p><i>Blau</i> – Jehovah’s witness stabbed and died because of refusal of blood transfusion – this didn’t break the chain of causation.</p> <p><i>R v Paggett</i> – causation doesn’t require that the accused acts have to be the sole or main cause of death, but they must have contributed significantly to that result. A boyfriend held his 16 yrs old gf hostage, the police execute by firing a shot. The bullet gets into the 16 yr old girl, and the bf said the police killed her and not him. HELD: it wasn’t free and deliberate informed. There was a break in the chain of causation.</p> <p><i>Levy</i> – incorrect medical treatment provided in an <u>emergency situation</u> where there is no opportunity to make a thorough assessment might not suggest negligent treatment; patient suffering stab wounds, treated w/ drugs, contracted an infection to his liver and died. It contributed to his death. HELD: s298 shows that medical treatments are a novus act of intervenes unless it was done in good faith.</p> <p><i>R v Hallet</i> – [D] fought deceased, left him unconscious at end of beach and victim died from drowning (operative cause); initial injury doesn’t have to be operative cause of death</p> <p><i>Krakouer v WA</i> – victim beaten by [D] and another person; found substantial contribution by blows that caused death; It’s enough to satisfy the requirement of causation if the act of the accused makes significant contribution to death of the victim, whether by accelerating the victim’s death or otherwise, and that it’s for the jury to decide whether or not the connection is sufficient substantial</p> <p><i>R v Thomas</i> – man convicted of manslaughter because allowed unlicensed driver to drive car; passenger contributed to car crash and was intervening act that broke chain of causation.</p>

HOMICIDE
<p><b>293 Definition of killing</b></p> <p>Except as hereinafter set forth, any <u>person who causes the death of another, directly or indirectly</u>, by any means whatever, is deemed to have killed that other person (see TC above for a complete description)</p> <ul style="list-style-type: none"><li>– <b>Death</b>: death occurs when all vital functions shut down (traditional) [Kinash – turning off the life support was not an active killing] vs. brainstem death (modern) [Bland]</li></ul> <p><b>291 Unlawful Killing</b></p> <p>It’s unlawful to kill any person unless such killing is <u>authorised</u> or <u>justified</u> or <u>excused</u> by law.</p> <ul style="list-style-type: none"><li>- Elements:</li></ul> <p><b>Caused</b> - per <i>Royall</i>: operative cause, causal connection, causal responsibility; but then note any novus actus interveniens</p> <p><b>Death</b> – legal definition of dead (cessation of all vital functions)</p> <p><b>Another</b> – is the victim a person per the Criminal Code?</p> <p><b>292 When a child becomes a person</b></p> <p>A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not. [R v Iby] – it was not relevant that the baby had to be on a respirator. Iby was liable for the manslaughter because the injury CAUSED the fetus to die.</p> <p><b>294 Death by acts done at childbirth</b></p> <p>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.</p> <p><b>300 Unlawful Homicide</b></p> <p>Any person who <u>unlawfully kills another</u> is guilty of a crime, which is called <u>murder</u> or <u>manslaughter</u>, according to the circumstances of the case.</p> <p><b>284 Consent to death immaterial</b></p> <p>Cannot consent to your own death- other person may be still criminally liable</p>

CASE SUMMARIES
<p><i>R v Iby</i> – [D] stole car and crashed into a pregnant woman, baby born but died after being hooked up to a respirator; there was a heartbeat, some indicia of life which shows it didn’t have to rely on respirator. Mother survives, but baby had a faint heart beat. It was on respirator. Iby, defendant was charged my manslaughter but the baby was kept alive by the respirator. Is the baby a living being? HELD: YES, there was some indicia of life, the heartbeat, the pulse etc. and the baby was a living being and was alive.</p> <p><i>Bland</i> – follows modern idea of brain stem death; if original assailant is responsible for death, then discontinuation isn’t a new cause of death (doesn’t apply in QLD). The victim was at a football match in UK, the police let everyone in, no crowd control. Bland got onto a stampede. He suffered from brain stem death. If the brain stem gets injured and the person suffers from it, he or she is dead.</p> <p><i>Kinash</i> – disconnection of life support system has been found not to break the causal chain (omitting to preserve life rather than active act of euthanasia). Kinash violently assaults a women, the victim was taken to the hospital and her condition continued to deteriorate. The victim went to cardiac arrest. HELD: Revoking medical treatment does not mean a breaking the chain of causation. It is not a novus intervening act.</p>
MURDER
<p><b>ELEMENTS s302(1)(a) MURDER OF SPECIFIC INTENT</b></p> <p><b>The three elements:</b></p> <ol style="list-style-type: none"><li>1) Any person</li><li>2) With unlawful killing</li><li>3) And had the intention to cause death or GBH</li></ol> <p><b>1. ANY PERSON WHO UNLAWFULLY KILLS (s 293 + s291)</b></p> <p><b>2. INTENTION TO CAUSE DEATH OR GBH TO ANOTHER PERSON</b></p> <ul style="list-style-type: none"><li>- It is immaterial that the offender did not intend to hurt the particular person killed (s302)(2), s(302)(3)- just need to show to intent to kill someone (ex: if you try to kill someone with a gun, but miss and hit someone else, doesn’t matter if you didn’t mean to shoot the other person, the victim is immaterial. You still shot a gun with intent to kill someone)</li><li>a. <u>Purpose Intention</u> [direct intention]<ul style="list-style-type: none"><li>– When a person intends to do something, ordinarily he/she acts in order to bring about occurrence of that thing [Peters v The Queen]- death is intended</li><li>– To have in mind [R v Willmot (No 2)]</li><li>– A confession/testimony helps prove purpose intention (not same as motive/reason/desire/wanting to kill- can intend to kill without desiring death)</li></ul></li><li>b. <u>Knowledge Intention</u> [indirect intention]<ul style="list-style-type: none"><li>– If a person does something that is <u>virtually certain</u> to result in another event occurring and knows that that other event is certain or virtually certain to occur, he/she intends it to occur [Peters v The Queen]. Death must be foreseen as a practical certainty.</li><li>– Ex: strangling someone will inevitably kill them<ul style="list-style-type: none"><li>o Virtual/practical certainty rather than absolute [Goncalves v The Queen]</li></ul></li></ul></li></ul> <p><b>- ASK: 1). How virtually certain was the consequence which resulted from [D]’s voluntary act? and 2). Did [D] foresee that consequence? [R v Woollin]</b></p> <ul style="list-style-type: none"><li>– <b>DEFENCE: s 28(3)</b>: may be too intoxicated to understand death or GBH is virtually certain, therefore no specific intent [OR] intoxication + anger + rage (Cutter)</li><li>– <b>DEFENCE: s 27 Insanity</b>: no intention due to mental disease/infirmary + total deprivation of capacities (what you are doing) [OR] mental impairment (Hawkins)</li></ul> <p><b>How is intention proved?</b></p> <ul style="list-style-type: none"><li>– Intention can be proved by either <u>confessional</u> (direct- police questioning) evidence or circumstantial (indirect – forensic process) evidence [R v Winner]</li><li>– <b>Test</b> for proving intention: persons behaviour- <b>Obj + Subj</b> analysis:<ul style="list-style-type: none"><li>– <b>ASK</b>: What would be in the mind of a reasonable person who did what the accused did? [Turner v R]</li><li>– Is there any reason why the accused’s state of mind would be different?</li></ul></li></ul>

to prove intent, you need to use the subjective test. You could FIRST start by asking an objective questions.

- 1 GBH means—**
- (a) Loss of a distinct part or an organ of the body; or
  - (b) Serious disfigurement; or
  - (c) Any bodily injury if left untreated, would endanger /likely life, or cause/likely permanent injury; whether or not treatment is or could have been available.

**ELEMENTS s(302)(1)(b) [Constructive Murder]** – no intention element

- (b)if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;”
- 
- It is immaterial that the offender did not intend to hurt the particular person killed **(s302)(2), s(302)(3)-** just need to show to intent to kill someone

**1. UNLAWFULLY KILLS (s 293 + s291)**

- 2. ACT DONE IN PROS OF UNLAWFUL PURPOSE [R v Georgiou; Stuart v R]**
- Unlawful purpose must be different from the act resulting in the death [Hughes v R; R v Gould and Barnes]

- 3. ACT LIKELY TO ENDANGER LIFE [R v Gould and Barnes]**
- Test is **objective**
  - Likely = a substantial or a real, not remote, chance regardless of whether it’s less or more than 50% [Boughey; Hind and Harwood]

DEFENCES
[D] may have a partial defence of provocation as per <b>s 304</b> (even for 3 <sup>rd</sup> party, as long as sufficient nexus).- reduce to manslaughter
[D] may have a partial defence of <b>diminished responsibility</b> (reduce to manslaughter) as per <b>s 304A</b> if [D] is suffering from an abnormality of the mind which must substantially impair one or more of the three capacities.
[D] may have a partial defence of killing in an abusive domestic relationship if [D] killed in absence of any immediate threat/danger, w/o loss of control, or loss of cognitive capacity as per <b>s 304B</b> .
[D] may have a <b>defence of self-defence</b> under <b>ss 271(2)/2</b> as long as there were reasonable grounds for using force to cause death or GBH.
[D] may have a <b>defence of insanity</b> as per <b>s 27</b> if at the time [D] was suffering from a state of mental disease or natural mental infirmity and was completely deprived of the three capacities.
[D] may have a <b>defence of lack of will under s 23(1)(a)</b> if [D] demonstrates his conduct/act was unwilling or involuntary (reflex, external stimuli, sane automatism).
[D] may have a defence of intoxication as per <b>s28(1)</b> if unintentionally intoxicated.- DRUGS OR ALCOHOL
[D] may use <b>s28(3)</b> for offences where specific intention is an element, in order to negate the intention bc intoxication prevented cognitive capacity to form the requisite intent (intentional or unintentional intoxication)- DRUGS OR ALCOHOL

CASE SUMMARIES
<b>Willmot (No 2)</b> – denied intent to kill her but suffocated/strangled her, just wanted to rape her; ask whether accused realized what he was doing (death/GBH?) <b>R v Woollin</b> – lost temper, threw 3 month old son on hard surface, died; no intention to cause death, charged w/ manslaughter. Did he have the intention to kill his son? HELD:

He had the intention as he apprehended the danger that he knew that he could have been caused by throwing his 3 month old son could cause GBH.  
**Turner v R** – wife left [D], followed her and found, stabbed her 65 times, died;  
**Subjective test: diabetic, intoxication, off medication, emotional instability**  
**R v Winner** – stole care, drove into cyclist, killed, claimed no intention to kill, accused previously for driving towards people, in control of care = intention. There was no direct intent.  
**R v Georgiou** – attempted to break into pharmacy, leaving, disturbed by neighbour, shot; getaway part of break/enter ∴ unlawful purpose and accused of murder. They were two different offences. He acted for unlawful purpose and his act resulted in death.  
**Stuart v R** – act preliminary was still act done in pros of unlawful purpose, not confined to offence itself  
**Hughes v R** – repeatedly assaulted, 302(1)(b) equivalent applied only when dangerous act not same as unlawful purpose; dangerous act of assaulting her same as unlawful purpose  
**R v Gould and Barnes** – abortion by injecting substances into woman, died; unlawful purpose and dangerous act not same. (i.e. abort baby was purpose and inject w/ substance was act)  
**Boughey (Hind and Harwood)** – took gun to sway robbery, held gun to man, likely to endanger life. Hind shot and killed Harwood. The unlawful purpose was to rob the cafeteria and to endanger life; the accused had a real and substantial chance to endanger life and is likely to endanger life.

ATTEMPTED MURDER (306) (Max: Life)
1. Attempts to unlawfully kill another ( <b>NOT INTEND GBH</b> ) OR <ul style="list-style-type: none"><li>• Attempts: Use CL definition of intention (not s4) - purpose intention to kill. <b>Cutter-</b> impossible to prove intention unless confession is made</li></ul>
2. With intent unlawfully to kill another does any act, or omits to do any act which it is the person’s duty to do so, which is likely to endanger human life
MANSLAUGHTER (Max: Life, 25 years)
<b>303: unlawfully kills ≠ murder = manslaughter</b> <i>s303 - A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter.</i>

VOLUNTARY MANSLAUGHTER
Elements of murder satisfied but defence of <b>PROVOCATION</b> or <b>DIMINISHED RESPONSIBILITY</b> or <b>KILLING IN AN ABUSIVE DOMESTIC RELATIONSHIP</b> applies (partial defences to murder that reduce to manslaughter) : see ss304, 304A, 304B (voluntary manslaughter)
INVOLUNTARY MANSLAUGHTER
Unlawful killing <u>without fault elements</u> of murder.

- 1) MANSLAUGHTER BY INTENTIONAL VIOLENCE**
1. Intentional infliction of force (applying force, assault, w/o intent to kill/GBH)
  2. Causing death (burden on pros to establish this- use causation test above- must have been foreseen or foreseeable as a possible outcome [Taiters])
- **DEFENCE:** [D] may have a defence of **accident** as per **s 23(1)(b)** if accused of intentional manslaughter. It would need to be shown that [D] did not intend or foresee the consequences (subj) or foresee as a possible consequence and such consequences would not reasonably have been foreseen by an ordinary person (obj) [Gibbs J at *Kaporonovski*]. Also s23(1)(a) acts or omission that occurs independently of the person’s will **The egg-shell skull rule would apply** (in calculating foreseeability, ignore defects, weakness or abnormality of person ) “...the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness or abnormality.”**s23(1A)**

- 2) MANSLAUGHTER BY CRIMINAL NEGLIGENCE**
- For criminal liability must establish: 1) duty to act under the Code and 2) breach of that duty 3) it was gross negligence (serious carelessness) (**Obj Test** – What would the reasonable person have foreseen and done?)

**ELEMENTS**

**1. DUTY (ss 285-290)**

- No criminal offence to stand by, a mere passive spectator of a crime, even of murder [Coney] unless duties outlines in s 285-290 are particular to you

**285 Duty to Provide Necessities**

- Person in charge of another b/c of age, sickness, unsoundness of mind, detention, or any other cause
- Duty to provide necessities of life if they cannot themselves
- Person held to cause any consequences resulting from life or health by **omission** of duty
- The ‘necessaries of life’ include medical aid, food, shelter and clothes: [*Macdonald and Macdonald*].
- If duty voluntarily assumed, it must be fulfilled to avoid liability b/c if not, depriving person from someone else coming to aid [*Taktak*].

- 286 Duty of Person who has Care of Child**
- Person in charge of child < 16 yrs
  - Must: provide necessities of life for child
  - Take reasonable precautions to avoid danger to child’s life / health / safety
  - Take reasonable action to remove child from danger
  - Held to have caused consequences that result to life/health of child b/c omission of duty
  - Regardless if child is helpless or not
  - Not limited to biological parents.

- 288 Duty of Persons Doing Dangerous Acts**
- Person undertakes to administer surgical/medical treatment to another or any other lawful act dangerous to human life/health
  - Must have reasonable skill and use reasonable care in doing act
  - Held to have caused consequences that result to life/health b/c of omission of duty [*R v Patel*]
  - Exempts situations due to necessity or emergency

- 289 Duty of Persons in Charge of Dangerous Things**
- Person in charge or control of anything dangerous to life/safety/health of another
  - Must use reasonable care and take reasonable precautions to avoid danger
  - Held to have caused consequences which result to life/health b/c omission of duty
  - **Thing:** anything, whether living or inanimate, whether moving or stationary
  - Applies whenever a thing is dangerous in particular use to which it’s put, regardless of how innocuous it may ordinarily be
  - Have to cause injury to person
  - Note: What was dangerous ? [*Pacino- a dog ; Dabelstein pencil, that pencil was dangerous at the senario*]

- 290 Duty to do Certain Acts**
- Person undertake to do act which may be dangerous to human life or health
  - There is duty to do act
  - Person held to have caused consequences resulting to life/health b/c omission to perform the duty
  - E.g. safe work environment requirement by employer; undertaken to do something through no benefit of their own (i.e. lifesaver)

**2. BREACH OF DUTY**

- 3. GROSS CRIMINAL NEGLIGENCE (NEGLIGENCE OF A SERIOUS KIND) WHAT IS THE EXTEND OF DUTY?**
- **TEST:** What is “reasonable” or what would a “reasonable person” do to prevent harm? Not ordinary person, reasonable has higher standard (ordinary = flawed) [*Callaghan*]  
**It is a duty to do whatever is reasonable to prevent harm occurring**  
**The provisions import the concept of reasonableness eg s286(1)(b) &(c)**
  - Must show such a disregard for life/safety of others as to amount to a crime against the State and deserving of punishment[*Bateman*] (serious/substantial departure)
  - Must be of such a degree as to meet the CL standard of criminal negligence [*Callaghan v The Queen; Jackson and Hodgetts v R*]

- DANGEROUS DRIVING CAUSING DEATH (MVA RELATED DEATHS)**
- 3 possible offences under **s328A**
1. **Murder [R v Winner]** – deliberate killing w/ intention
  2. **Involutary Manslaughter (s 289)-** MV classified as a dangerous thing [*R v Thomas*]
  3. **Dangerous operation of a vehicle causing death (or GBH) (s328A(4) [ R v Wilson ; Balfie]**
    - Covers all criminal conduct in motor vehicle causing death falling short of murder (no intention) - must cause GBH or death
- **operates, or in any way interferes with the operation of, a vehicle dangerously** means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances