

Process

1. Read Question, then read CC Section
- *look for reverse onus issues (move to Oakes)
2. Say what AR Crown must prove BARD
 3. Read FP, can you prove AR?
- *Remember Causation (*Nette*) at this point
4. Evaluate defence argument if required
 5. MR? Intention, Knowledge? Need to intend consequences?
 6. Evaluate? Suggest possibilities for uncertainty in MR
- *if statute is silent on MR, presume subjective (*Beaver*), or argue it be objective (*Tutton/Creighton*)
 - *Pub. Wel. Off. = Strict Liability
 - *look at sect/scheme to determine sub or ob MR

Reverse Onus

- Oakes* = Legal burden on presumed fact = unconstitutional s11(d)
 - *Test: 1) Pressing/Substantial Objective
 - 2) Rational Connectivity
 - 3) Minimal Impairment
 - 4) Proportionality between effect + objectives
- Downey* = Evidentiary Burden = OK
 - Whyte* = Legal burden on ancillary fact = OK

Volition

- Wolfe (OCA)* = Reflexes are involuntary
- Lucki* (Sask Pol) = Skidding (involuntary) = no AR

Omissions

- Find Statutory or CL Duty to act
- Fagan v Commissioner of Metropolitan Police Force*
- *British Court of Appeal
- *Superimpose MR onto AR, CL hesitant to criminalize omissions
- Moore* = Find duty to answer police officer if he is verifying identity for crime
- Thornton* = Broad CL duties undesirable

Offences Not in the Code

- Frey v Fedoruk* - cannot be charged with an offence that is not in the criminal code
- *can be found guilty of an offence no longer in code if you committed that offence when it was in the code

MR

- Beaver* = Crime requires subjective MR unless spec.
- *know. of possession requires know. charac. of subs.
- Buzzanga + Durocher (OCA)* = willful is more than reckless, resolved to bring about the consequence
- *important where it is placed in offence
- Theroux* = 1) MR does not require proof that acc. knew actions were wrong, just subjective contemplation of the consequences being possible
- 2) Crown must not prove exactly what in acc. mind
- Briscoe* = willful blindness imputes knowledge to an acc. whose suspicion is aroused to the point where he sees need for further inquiries and deliberately chooses not to ask (different from recklessness)
- *still requires subjective standard
- Lewis* = motive is not part of MR, part of argument
- Gordon (OSC)* = Transferred intent takes MR of an offence to one victim, transfers to AR of same offence committed upon another victim
- *AR requires consequence=undesirable to apply to attempted murder b/c of conceptual problems

Constitutionality of Absolute Liability

- Reference RE S. 94(2) of the MVA* = cannot have absolute liability offence + jail time (s. 7 violation)
- Martineu* = PFJ: prop. between moral blameworthiness and seriousness of the offence
- *Murder requires subjective foresight of death (s.7)
- Shand (OCA)* = re-affirms that subjective foresight of death is constitutional min for murder (Martineau)
- Desousa* = Objective MR is ok for everything but stigma offences (murder) (exception to *Beaver*)
- *MR must not attach to each AR in less serious off.
- Creighton* = Manslaughter requires objective foresight of bodily harm, not death
- *only personal consideration is where acc can appreciate nature/quality of acts

Strict Liability

- Sault St Marie* = Creates Strict Liability Offences
- *Test for SL v AL: 1) Scheme of Act 2) Nature of Act (Criminal v Public Welfare) 3) Punishment 4) Wording of provision 5) due diligence defence av?
- Raham (OCA)* = Application of *Sault* = finds DD defence in seemingly tenuous circumstances
- Chapin* = Act not being abs. proh. = SL

Criminal Negligence

- Tutton/JF* = 1) Show that DOC exists (fail. to prov.)
- 2) Measure whether departure was marked or marked and substantial to decide whether crim. neg.
- *objective standard but to allow factual scenario should be taken into account Reasonable + Honest belief/mistake

Dangerous Driving

- Hundal* = Modified Objective test imports ability to use honest belief or unforeseeable incident
- *must be reasonable, takes into account situation
- Beatty/ Roy* = highlights separation of AR and MR
- *just because someone fills AR, does not automatically mean they fill MR
- *must be marked departure from behaviour of RP based on all evidence
- *cannot infer marked departure from fact that driving was objectively dangerous

Jury Charging

- Lifchus* = BARD must be explained to jury
- *should not be qualified by everyday language
- Starr* = must put BARD between standard of absolute certainty and BOP
- JHS* = 1) If you believe acc. you must acquit
- *problem: too simple, can believe some not all
- 2) If you do not believe acc., left in RD, must acquit
- *high protection to acc., if acc casts doubt/confusion in jury then must be acquitted
- 3) Even if left in no doubt by acc, must ask self whether you are convinced Bard of acc. guilt
- *should add 4) if after all consideration of evidence, you cannot decide who to believe, must acquit

Murder to Excellence

- s. 229(a): AR=unlawful/ crim neg act that causes death; MR=Intent to kill or recklessness; (c): AR= UA that is indictable off and obj dangerous; MR: subj foresight of death (recklessness) *Shand*
- UA Manslaughter s. 222(5): AR=UA that causes death; MR=Obj foresight of bodily harm, UA must have subj MR (*Creighton*)
- UA Bodily Harm s. 269: AR = Committing an UA that causes bodily harm to another BARD; MR = 1) MR of other offence 2) obj. for. BH (*Desousa*)

Causation

-*Smithers*- Applies to all offences with causation except murder 1

-*Harbottle* - Murder 1 causation test

-*Smith (BrCA)* = only if intervening act makes original merely part of history will causation be broken

-*Blaue (BrCA)* = thin skull applies to religion

-*Nette* = 1) Apply new *Smithers* fact test

(significant/contributing)

2) Apply *Harbottle* (substantial/integral) to pick 1/2D

-*JSR (OCA)* = Mutual activities lead to joint liability

-*Maybin* = Was intervening act directly linked to acc. act, so that acc. is morally resp.?

*says that even if the accused's act did not cause death, if sig. cont. can be found liable

Mistake of Fact/Law

-Belief in a set of circumstances that would otherwise entitle him to acquittal

*can only be used if knowledge of circs is part of MR

-1)CL Defence 2)AoR 3)Off w/Know req.

4)Complete unless belief is -inn=incl. off

-*Kundeus*- Maj:Knew he was selling drug=MR

*then up to acc. to adduce evidence of MoB

Min:MoB raises RD about MR=crown didnt prove

-*Pappajohn*- AoR of MoB for consent cases requires evidence of consent+honest belief in this consent

-*Ewanchuk*- Steps for Sex Assault: 1)Did complainant want touching (AR) 2)If not TJ asses cred. 3)If RD about test., TJ consider whether consent was motivated by fear 4)Acc MoB consent

5)TJ asses AoR 6)TJ must be convinced that acc hon believed communicated consent

*Passivity/ambiguity/belief no=yes dn't=consent

*if expresses no, must be expressed change of mind

-*Campbell+Mlynarchuk (PCA)*= Mistake in law only available for spec. intent,don't rely on TC

*can be used as a reduction of charge

-*Levis v Tetreault*- 6pt test for MoL OIE 1)Error of law or mixed fact 2)Acc cons. legal cons. of act

3)advice came from app. off. 4)Ad. was reas.

5)Ad. was. erroneous 6)Relied on advice to act

-*Khanna (OPC)*- Example of use of OIE

Random Other Cases

-*Theroux-AR* for Fraud: 1) Dishonest Action established by porrf of deceit, falsehood, or other fraudulent means

*other fraudulent means determined by RP

2)Deprivation - does not have to be detrimental MR:1) intentionally committed a dishonest act, or knew the act was dishonest

2)knew that the accused would or could produce a risk of deprivation

*this can often be proved by knowledge of the falsehood

*thus, honest belief that he would not deprive people does not matter, simple risk of deprivation in implicit in buying of insurance

-*Shand*- 229(c)- ought to know was read out and likely read to mean something more than awareness to comply with constitutional Min

-*Hundal*- 1) Drivers are licensed, indicating that they have knowledge of the rules of driving, as well as the standards of care which must be maintained by all drivers, further drivers are undertaking this risk and are physically able to drive

2)Nature of driving is that it is an automatic activity, so mind state is difficult to ascertain, difficult to highlight a conscious activity

3) Wording of s. 249 seems to suggest an objective standard

4)It is necessary to have objective standard to stem the number of tragic automobile deaths

*if you see "in regard to all the circumstance" = objective liability offence

-*Moquin (MBCA)* =Appeal judge finds that the trial judge misconstrued the "use of" as meaning that the plaintiff had to show impairment of comfort and health

*further, misconstrued the fact that if there was no interference with use, then there was no harm

Necessity

Perka-1)Urgent Peril 2)No legal way out 3)Prop.

*prop measures harm inflicted v harm escaped

*acc raises ev, crown cn't presume voluntariness

Latimer- First 2 aspects mod obj, 3=obj

Ungar (OPC)-ex. succ necessity defence

Intoxication

1) CL lim. by stat. 2)BOP 3)All off. 4)Complete

-*Leary*-Can't use Sel. Ind. intox. for general intent

-*Daviault-Maj*: Intx. Aut. can be used for gen intent Min:Int. to get wasted= intent to commit gen. int. of.

*POFJ dsn't req. symtry b/w AR/MR, just proportion

-*Drader (APC)*- 2 defensible states 1)Ability to foresee cons. of acts+spec intent 2)Aut. Intox =

spec or gen intent, non violent (33.1)

-*Penno*- Vol. Intox cant be def when pt of off

-*Lefebvre*- invol intox can

Provocation

1)CL 2)AOR 3)Murder 4)Reduces Murk to Mans

-*Hill*-RP take into account char. rel. to prov.

-*Thibert*-AoR rq. ev of subj (sud. prov)+obj elements

-*Gill (OCA)*-Prov= ptl ex. not just. so ct can take int account multiple factors (rolled up charge)

Tran-4pt test: 1)wrongful act or insult that would have caused an ordinary person to be deprived of self-control 2)Sddn/Enxpected 3)Acc act in anger

4)before recovering normal control

Nealy (OCA)- Rolled up charge=prov et al can be factored into consideration of whether there is MR

Mental Disorder

-2 Components: 1)Acc has mental disorder that;

2)Renders him unable to appreciate nature and quality of the act he committed or is incapable of knowing that it was wrong

*1)embraces any illness on human mind (-intox)

*2)can apprct physical nature, just not effects

-*Swain*- Sentencing: 1)Acc not threat =discharge

2)Can be discharged subj to cond. of review board

3)Custody in hospital (danger to soc.)

-*Chaulk*-Presump of San violates s.7 but saved b/c of difficulty in proving acc mental state

*Wrong = morally wrong (legally wrong too expans)

-*Rabey (OCA)*-1)Internal Cause = Disorder

2) External Cause=NI Aut. unless thing would not make RP act that way in which case Disorder

-*Parks*- 2 main concerns=prot of soc +lklyhood rec.

*Slpwlking in mid of Rab = look at extrinsic factors

-*Stone*-Test:1)Rebut pres of volunt w/evidence 2)TJ determines whether ins/NI aut.

*start from insane work toward NI

Bouchard-Lebrun- 33.1 applies to intox causing men.

*abnorm= use stone pt 2 (would RP react sim/recurr)

Self-Defence

Lavallée-Acc. needs to subj apprehend bh (reasonable +prob)

*female's should be taken into acc., perc will be diff
-Traditionally women could not preempt attacks with force b/c could not measure prop force gvn unknw thr
*ct decides to accept evidence from expts that wmn can acc. predict violence, anticipate lvl of threat
-Predict+inability to fight back +lack of reas alternatives motivates court to allow wmn preempt forc
Mallot- Btrd woman synd not defence unto itself
*prsnlized tests relevant in many circs
*new stereotype would endanger biasing test agnst those who dn't fit batt women mould
*dfnc must operate in prsnlzd context of women and not in cntxt of battered women

Patel-As long as belief is rsnble, dn't have to be corr
Cinous-Ct is willing to say gangster didn't have any other way out, but nt same for btrd women

*inconsistency/morl judgement by court

-New SD Provisions: 34(1) Person not guilty of an offence if (a) they believe on reasonable grounds that force is being used against them or another person (or threat of force is being made against them/another)
b)the offence is committed for the purpose of defending or protecting themselves or other person +;
c)act committed is reasonable in circumstances

(2) In determining whether act is reasonable in circs, the ct shall consider the releveant circumstances of the person including Nature of force, extent to which use of force was imminent and whether there were other means available to respond to potential use of fc
(3)Sbsct 1 does not apply if the force used or threatened by another is for the purpose of doing something that they are required or authorized to do, unless the offender believes on rsnbl grounds that the other person is acting unlawfully

Attempts

-*Ancio*- Lajoie sd reklssness suff MR to con of attmur

*Ct says MR = spec intent to kill (not illogical)
-*Sorrell+Bondette*- 1)Intend to do thing spec in indictment (fact test, MR) 2)Took steps more than mere prep. (legal, AR)
*2 issues are related, +mere prep prob=intent
-*US v Dynar*-Maj:as long as you try,even if imp.=att
*factual/legal imposs distinc doesn't exist as this would elim mistaken belief
*only distinct is doing more than imaginary crime
-Diss: Dsnt believe intent to do an act, coupled with some activity thought to be crim, is suff to find acc guilty when that which they att is not an off

Party

-*Briscoe*- Ar: Doing or omitting to do something that assists or encourages perp to commit the off
*MR:intentionally gave assistance for purp of aiding principle off to commit crime (know+int)
*Acc dsnt have to desire end, just has to intend to help princ commit crime
*dsnt have to know how it will hppn (willfull blind)
-*Fraser (BCCA)*- Aiding and abetting req spec int.
*thus, intox is available (also rd "for purpose of into 21(C)
-*Dunlop/Sylvester*- Need to be more then just at the scene to be aider (if presence at scene is voluntary and purposefully to witness crime and offer no opp. when reas.exp. then can smtimes be guilty)
-*JSR (OCA)*- req. comm. int. to carry out unlwfl pp
-*Thatcher*-if principle is unknw, acc can still be found glty as long as there is ev to infer acc was pty
-If ev that pts to acc committing crim personally or A/A, if jury is satisfied BARD that acc did one or the other, dsn't matter which one (Mrdr)
*if RD about inn. acquit
-*Logan*-Min lvl of Mr for offence=Min MR for pty

Duress

-2 types: S= limited, CL=Broad

-*Pacquette* - stat applied to principle off. only
-*Hibbert*- CL-1)Threat of death/harm 2)No Res. Alt
3)Proportionality
-*Ruzic*- Stat-1)Imminent+present threat of death.harm
2)No legal rsnbl alt. 3)Proportionality
*s.17 violates s.7, read out 1 and sub close temp.conn.
Ryan-Diff btw SelfD (meeting force with force) and Dur(succumbing to threat)
-2princ for maint. dist. 1)SC should be more useable then duress 2)Ct mst be crfl about exp D b/c not cod
-threat only has to be to acc (can involve 3rd pty)
-Ct reads elements of CL into stat: reqs threat, belief it will be carried out, not on list of excl off, no safe avenue of escape, close temp prox, proportionality
*prop on mod obj, diff from necessity

Sentencing

-7 Options: 1) Imprisonment 2)Fine 3)Probation
4)Conditional sentence 5)Conditional or absolute sentence 6)Firearms prohibition 7)DNA/Sex Offndr
-*Nasogaluak*- Proportionality in sentencing requires that a sentence not exceed what is just and appropriate given the moral blameworthiness of the offender and the gravity of the offence
-*Sweeney (BCCA)*- Sentencing should balance concerns of victim + society
*5 goals:1) General Deterrence 2)Spec Deterrence
3)Isolation 4)Rehabilitation 5)Denunciation
-*Gladue*- Judges must take into account circumstances of aboriginal offenders because of unique history
*history,problems, background issues, sentencing opt.
-Must be part of the evidentiary record (TJ or CA)
*applies to all s 35 persons, court also suggests that more violent nature = less abo consideration
-*Ipeelee*- Answers criticism of Gladue that sentencing is wrong way to deal with the problem, race based discount
*unwarranted because it does not provide offenders automatically with discount, just attempts to take into account history/community effects on abos
*not necessary for abo to establish connection between aboriginalness and offence
*Gladue test should not distinguish btwn srs/nt srs off
-*Akapew (SCA)*-L(M) give maximums when situation + circumstances provide basis (not worstcase/worst off)

Extras

-*Lifchus*- BARD = common sense/reason connected to fact/evidence

-Definitions section: 1) s2. common definitions

2) s 469= indictable offences 3) s553 = exclusive prov court

Moquin- BODILY Harm = any hurt/injury to person that interferes with health/comfort more than transient or trifling

-Unless, presume, establish, proof of evidence to the contrary = reverse onus

-Established = Legal Persuasive burden

-Having regard to the circumstances = objective

MR hint

-Blondin- BCCA- Certain threshold suspicion of illegal act = duty to inquire judged by circumstances

-Sansregret- mistake of honest belief in consent cannot arise because of accused's "self-induced intoxication" or "recklessness/willful blindness" in sexual assault

-Bernard - example of how general intent offences cannot raise the defence of intoxication

-Daviault- Sopinka dissent = absurd that the drunker the better

-S 463 = sentencing for attempts