

To secure a conviction of A, The CROWN/DEFENCE will have to prove BARD/BOP/AoR the following elements of the... [AR/MR/DofP] [1] Already parsed? If NOT [2] Go to Code AR/MR [3] Have I used all the facts? [4] Argument (PROVE EACH ELEMENT OF THE OFFENCE/say where need more info/apply SCC Nette to consequences) "I will argue" "I expect the defence to argue/counter" **Conclusion** - "If the court accepts this argument, based on X being true, Y will happen --> if defence succeeds Z will happen. OR: "On balance, I think I can prove the offence, but only if I can overcome hurdles of X" **Defences** - I could argue X on his behalf, here are the elements, would have to give a [A/R for to each] --> X will be able to give D an AoR because of X (yes/no). Then Crown disprove BARD. But if I'm wrong and accepted X.

[1] ALREADY PARSED? (***REPEALED (MURDER)**: 230 (A-D) (Martineau/Vaillancourt). AND 299 (c) "ought to know") [ASSAULT]: AR: Direct/indirect application of force (contact no matter how slight - def. from caselaw) without consent; MR: they intend to apply force; know you don't consent. [ASSAULT W/WEAPON] Using weapon added to CI. **Weapon** def. S2 - broad. [BODILY HARM] **Moquin AR: CT**: application of force directly or indirectly **CI**: without consent **CO**: Causes bodily harm BH def. in S.2 as "conduct which interferes with health or comfort in a manner that is **more than transient or trifling**". (From case) = smth that interferes w/health or comfort, v. short period of time, injury of a v. minor degree resulting in very minor degree of distress. Does not need to impair functioning. [DANGEROUS DRIVING]: (**Beatty**) AR: operating a motor vehicle in a manner **objectively** dangerous to the public (in regard to the circumstances - nature/condition of place, amt of traffic reasonably expected) MR: modified objective test - was there a marked dep. from the standard of care, in the A's circumstances? Take into account A's state of mind. If explanation offered by accused, TJ has to find that a RP in similar circumstances would have been aware of the risk/danger involved in conduct. Def of honest & RB in a SOF. [FRAUD] **Theroux AR: CT**: A dishonest act **CO**: Causes deprivation or risk of deprivation (can be economic). MR: CT: intent to commit act; **CO**: subjective knowledge or recklessness that prohibited act could have as a consequence the deprivation of another, or put them at risk for that. Honest belief things would work out or = no excuse. [SEXUAL ASSAULT] AR: application of force (touching/contact), of a sexual nature, without consent MR: intention to touch; knowing of, or being reckless or willfully blind to, a lack of consent, either by words or actions, from the person being touched. * Here consent means - the complainant had affirmatively communicated by words or conduct her agreement to engage in sexual activity with the accused (273(1)(2)). The AR of lack of consent is determined in reference to victim's **subjective internal state of mind** when the touching took place. The accused's perception of consent is not relevant unless they raise a D of MoF. **To be legally effective, consent must be freely given.** Even if she consented, or her conduct raises a RD about consent. 265 (3) if subject to force, fear (honestly held but unreasonable) threats, fraud, the exercise of authority or 273(2) consent came from someone else/incapable of consent/abuse of trust/relationship/expresses lack of consent even if after consenting once, consent is ≠ VALID. **Ewanchuk** [THEFT] AR: Take the property of another MR: Fraudulently and without color of right (could argue based on **Theroux** this means A must act dishonestly and/or with knowledge that he is not entitled to the property) with **intent to deprive** the owner of the use of the goods, even temporarily (CoR =honest belief you are legally entitled to use goods in way you did). [UNLAWFULLY CAUSING BODILY HARM] **DeSousa AR: AR** of unlawful act + **CT**: commits an unlawful act **CO**: Causes BH; **MR: MR** of unlawful act + **CO**: objective foresight of bodily harm (=Tutton objective standard taking into account the circumstances they knew ex welder) **Objective foresight of b harm** = the risk of some harm that is more than trivial/transitory in nature. "unlawful" = prov or fed offence, CANT be abs liability offence, has to be some mens rea. A conviction for s. 269 does not impose such a grave stigma or significant penalty that s. 7 requires subjective mens rea. [WILFULLY PROMO. HATRED. AGST ID. GROUP]: AR: (CT) communicating statements, (CI) not in a private conversation, (CO) promoting hatred against an identifiable group. MR: (CT) intentionally communicate, (CI) knowing its not a private conversation, (CO) true intention to promote hatred or knowledge act would promote hatred. [DEATH] [HOMICIDE] AR: CT: A voluntary act (**Wolfe**) **CO**: directly or indirectly, by any means, caused the death of another person. [MURDER]: Murder is culpable homicide. All murder that is not M1 is M2 (below, general requirements) AR: CT: Unlawful act or criminal negligence **CO**: causing death MR:CT: intent to kill or recklessness (cause bh, leads to death) **Note: 229 B**: intent can be transferred. 229 C: when a person for an unlawful object does anything he knows or **ought to know** is likely to cause death, guilty even if didn't intend death. [WHEN MURDER IS MURDER 1]: [Default is M2] 1) Murder was planned and deliberate (s. 231(2)) Crown must prove planning/deliberation BARD OR 2) Death was caused by A while committing offence listed in 231 (5). Crown must prove A's actions/conduct were a **substantial and integral part of V's death (Harbottle)**. [ATTEMPTED MURDER] **Gordon AR**: some act, "beyond mere preparation" towards the goal of killing the victim. MR: actual attempt to kill, not just recklessness. [UNLAWFULLY CAUSING MANSLAUGHTER] **Creighton AR & MR** of unlawful object + **AR CO**: Causing death; MR - **objective** - "reasonable foreseeability of the risk of bodily harm". The objective mens rea requirement is consistent with the differential stigma associated with manslaughter and murder - the fact that someone has died is serious, but MS lacks stigma of intentional killing [UNLAWFUL OBJECT MURDER]: **Vasil; Shand (229 C)** AR: do an act (V - must be objectively dangerous) for an unlawful object (V - serious indictable offence w/ subj MR) MR: An intention to kill - you knew what you were doing was likely to cause death. [CRIMINAL NEGLIGENCE CAUSING DEATH] **Tutton**

BURDEN OF PROOF: Lijhus 1997 SCC: Gives moral charge (not magic incantation). Meaning of RD must be explained to a jury. Need more than proof that accused is "probably guilty" but not proof to an absolute certainty. Charge should avoid "ordinary" (RDZordinary), "moral certainty" ("moral certainty/evidentiary certainty"), do not quality doubt ex w/haunting/substantial. **Charge should include**: RD= doubt based on **reason and common sense**, must be logically based on evidence or lack of evidence. **JHS SCC 2008 (elaborating on W(D)) Credibility**: 1) Believe accused's evidence - acquit. 2) Don't believe accused's E but left in a RD - Acquit. 3) Accused's evidence doesn't raise a RD - but, on basis of evidence you do accept, have RD? Criticized (JHS) 1) There is incl/excl. evidence 2) Confusing - juries can accept some evidence, reject other's. If after hearing all the evidence, not sure who to believe - should acquit. B of doubt to accused. Shows BOP is on Crown. Not a magic incantation. **Starr [2000] 2 S.C.R. 144: TJ would err if doesn't explain that BARD is closer to absolute certainty than BOP.** **SHIFT OF EVIDENTIARY BURDENS**: Presumption of innocence (11d) is infringed whenever is liable to be convicted despite the presence of a RD. **Oakes (1986) SCC**: hash oil statute creates presumption & reverse ones. If sm1 is found w/drugs, presumed to have them for the purpose of trafficking; have to raise evidence to show on BOP not true. Could raise enough evidence to raise RD but not prove on BOP. Provision unconstitutional: sets out test: 1) pressing and substantial objective? 2) means chosen reasonable and demonstrably justified? A) rational connection between method and objective 2) **minimal impairment (not internally rational)**, 3) proportionality Eff & OB **Whyte (1988) SCC**: impaired - can't have 'care and control' - sit in driver's-presumed to have care and control unless establish it WASNT for purpose of setting in motion. Passes Oakes test - 1) yes, 2A) Yes- DS means going to drive 2B) Y compromise-discourage from entering vehicle while intoxicated-way out if wasn't for driving 3) Y big threat to society from drinking and driving. **Difference from Oakes** - he has a defence. **Downey (1992) SCC**: Only an evidentiary burden-some evidence to the contrary -RD. Live in company of prostitutes-on avails of prostitution. Violates because the one does not flow inexorably from the other-could be convicted if not guilty. But: passes Oakes test: difficulties of getting prostitutes to testify against pimps; ease of raising RD / **PRINCIPLE OF LEGALITY: Frey v Fedoruk (1950) SCC. Common law offences except contempt abolished (II g Charter)**. You can't be convicted of an act or omission unless it was criminal at the time you committed it. **STAI INT & THE AR: R v Moquin 2010 ABCA**: Defined bodily harm/problems defining AR/see above BH. **OMISSIONS (also:252(1))** failing to stop at scene of accident) C. law reluctant to criminalize omissions. In gen have to find **stbl duty**. **NOTE**: a duty to act can arise from a provincial statute or from section 217 of the Code. Liability for an omission may arise: **Fagan Eng(1968)** drives -foot pln. -leaves car. In gen, AR+MR should be concurrent in time. Assault needs an act, omission not enough. Legal fiction here t.works - omission really part of **continuing act** during which def. formed the necessary intention to constitute MR and once that was added to the c.a., an assault took place. Dissent: doesn't like continuing act argument. After car stayed on foot what did he do? **Nothing**. Can't convict someone for doing nothing ie an omission. **Moore, SCC, 1978 (uncertain*)** Court may **imply a duty from a corresponding duty in a statute** where (maj) duty to act can be implied from corresponding duty in statute (here: duty of police officer to establish identity of person creates reciprocal CL duty on Moore to identify himself or (diss) Duty to act can only come from established common law duty or express statutory language, **criminal law no place for implied duties** (followed in BCCA 2004). **Thornton, Ont. CA (1991)**: Where a **statute imposes a duty to act (criminalizes omission/imposes duty to act)** he knows he is HIV +; donates blood anyways; not criminal/need common law duty: Court: he owed a **common law duty** to "refrain from conduct which one foresees could cause serious harm to another person". **VOLUNTARINESS** (also - involuntarily consumes alcohol or drugs)

Jiang (2007) BCCA: dangerous driving causing death - falls asleep at wheel - kills 2. Can't be convicted of offence while sleeping/walk be SI is a form of non-insane automatism and while sl you can't form the AR. However, if someone knew or ought to have known there was a real risk they'd fall asleep, did anyway --> conviction. **Parks 1992 SCC**: Acquitted of murder while sleepwalking **Lucki, Sask, 1955**: Driver swerves onto other side of the road while making a turn, hits car. Judge: it was an **involuntary act** caused by the condition of the road. Not guilty. Voluntariness is a minimum requirement for finding A guilty of a crime **Wolfe, Ont CA, 1974**: P punches D who turns and quickly hits P on the head with a telephone receiver. Judge: **reflex action**. Not guilty, lacking necessary intent (AR). **CAUSATION (did conduct lead to consequences "But... for"?) relation between wound and death** **Blau 1975 Eng CA**: intruder stabs/assaults girl. Taken to hospital, JW, refuses life-saving blood transf. **Thin skull rule** - take your victim as you find them - "whole man not just the physical man. **Refusal to consent to medical treatment** does not break causal connection IF wound is operative cause of death. **Smith 1959 Eng CA**: soldier stabbed-dropped-misdiagnosed. A caused V's death if wound was still an **operating and substantial cause** at the time V died. **CAUSATION (Homicide)** **MS: Smithers, 1978, SCC**: fight-kick-bad epiglottis-dies. **Were actions of the accused a contributing cause of death outside/beyond the de minimus range?** **M1: Harbottle, 1993, SCC**: holds legs dies. Just as culpable as party to murder. Don't apply Smithers for **M1**, apply **substantial and integral cause of death**. **M2: Nette, 2001, SC**: rob lady-tie up-leave-asphyxiates. Use Smithers: **restates**: "significant, contributing cause"(SCC). **M2 or MS? JSR 2008**: Shoot-out-NBS(?) and SBS(JSR) Creba hit/bullet, dies. Whose bullet killed? 1) Can use SCC test **even** if NBS killed - **appropriate that all who participate in inherently dangerous conduct should be held to have caused the foreseeable results of their conduct**. 2) If NBS killed Creba, is that an intervening act eliminating JSR's causal responsibility for death? NO: they were engaged in joint activity; **acts by a third party not acting independently but acting in furtherance of a joint activity undertaken by the accused and that third party won't sever the legal causal connection**. **MS: Maybin 2012 Ont CA**: bar fight-2brospunch-bouncer punches-dies. Does bouncer's intervening act break legal chain of causation? Ct: Use SCC test "Reasonable foreseeability test" and "intervening act" test lead to same result. Neither unforeseeable nor independent int. acts, are sufficient to break or establish chain of causation, only contribute to SCC analysis. 1) was the general nature of the intervening act and the accompanying risk of harm reasonably foreseeable? Was the act in direct response to the appellant's actions/ was it an independent act? --> guilty (here guilty - bouncer's action foreseeable and part of a "continuing series of events" **CAUSATION (Outside Homicide Context): Moquin Ont CA 2010**: Did M cause psychological harm? Use Smithers test - SCC - yes he did. **MENS REA (hints: willfully/fraudulently)**

Beaver 1957 SCC: sells police officer sugar of milk - did he know it was drugs? there is a presumption of subjectivity - that there be a mental element. If parliament wants to make the MR objective, they need to do it with **specific language**. Don't want to punish the morally innocent. Does not have to be a **reasonable belief**, just **honest**. **City of Sault Ste. Marie SCC 1978**: In general you need mens rea to hold someone liable for a true crime. True crimes need MR and AR, and the objective standard is not enough. Absolute liability offences convict on proof of AR only. No defence that the accused was without fault. Accused may be morally innocent, but still punished. **Intent and recklessness** **Buzzanga +Durocher, Ont CA 1980**: charged with **willfully** promoting hatred. CT: willful means something **more than reckless**; a true intention to promote hatred/knowledge that hatred would be promoted. Here, some MR had to attach to the consequences. WF=CO. **Theroux, SCC, 1993**: "fraudulently" see FRAUD above. **Willful Blindness: deliberate failure to inquire in face of suspicions/Defence4WB**: D not as suspicious/savvy as RP, no suspicion. Need 2 adduce evidence why not like RP **Blondin 1971 BCCA**: drugs in scuba t-only knew was "something illegal". WB can be equated with knowledge. **R v Briscoe SCC 2010**: golf course-stood&watched assault - earlier in day L said he wanted to kill someone; WB is sufficient to convict for murder. **R. v. Sansregret (SCC 1985)** establishes one cannot willfully blind themselves to facts then claim an honest belief in new facts **Motive (Note: there are a few offences in the CC "For the purpose of X..." which involve motive)**. **Lewis 1979 SCC**: kettle-explosives. Not legal obligation on judge to charge jury for murder. Motive/mas as intent, not required to prove intent, not element of the offence. However, complete lack of motive or strong motive to corroborate circumstantial evidence EXH to accused's identity could be worth bringing to the jury's attention. **Transferred Intent** (codified in 229) Where A shoots B thinking B is C (mistake) or A shoot B but by chance or lack of skill hits C (accident). Harm caused must be harm intended - ex an attempt to use a hammer to crush B's car but hit C in leg = doest work. **Gordon Ontario CA 2000: Attempted murder**: attempts to kill A but shoots B and C instead, wounding but not killing. BC AR of att murder is v. low (see above) MR is very high, need actual intent to kill not just recklessness. Doctrine of transferred intent apply here. **STRICT LIABILITY OFFENCES AND DUE DILIGENCE**

City of Sault Ste. Marie 1978 SCC: SSM convicted-violated statute - dumping polluted water. 2 categories of obj. fault off: AL & SL (Pub. Wel.) SL offences = permit accused to prove defence of due diligence on BOP. 2 Types of DD offence: 1) honest and reasonable belief in a mistaken set of facts, which, if true, would render the act or omission innocent; 2) took all reasonable steps to avoid the particular event. **Chapin 1979 SCC**: duck hunting close to bait-contravenes reg. Example of deciding about whether a statute should be SL/AL/etc. Here, SL. **CRIMES OF OBJECTIVE FAULT**: fault is based on what the RP should have done, foreseen, or known. Incl use of firearm (s.86) and failure to provide necessities of life (s. 215(2)). Court still split from Tutton 3:3 on offences that require proof of "criminal negligence" (2 types: CN causing BH and CN causing death (type of MS)). **R. v. Tutton (1989) SCC**: religious; withheld insulin; child died. Charged w/ CN causing BH and CN causing D. CN = "wanton or reckless disregard for the life/safety of V" interpreted as meaning a **marked and significant departure** from the standard which could be expected of a reasonably prudent person in the circumstances. In applying objective standard, must be an allowance for surrounding circumstances and the accused's perception of those facts to determine whether or not conduct was reasonable (youth, mental development, education). IF Crown proves #1, then **Defence**: honest and **reasonable** mistake of fact. **R v JF (2008) SCC**: failed to stop spouse from bringing about child's death. F to P the necessities of life requires a **marked departure** from standard of care expected of RP. Also, where both F to P the NoL and CN c. D are alleged, 1st ask if F is there, then ask, if F to P the NoL, there was wanton/reckless disregard --> Find CN c. D **DANGEROUS DRIVING** **R. v. Hundal (1993) SCC**: drives overloaded dumptruck on wet streets into intersection on red; **need modified obj. test for MR** (taking into account context ex: accused has epileptic seizure). Sets out test clar. in B. Def. (s. 4). **R. v. Beatty (2008) SCC** Unexpectably truck crosses center line. Clarifies test for a **marked departure from standard of care of a reasonable person**: 1) consider external circumstances (purely objective) 2) consider internal circumstances as far as they answer: (1) modified by what A reasonably understood? (Ex: welder in basement; asks anything flammable there; told no; proceeds w/ welding). Here: momentary lapse of attention; not **marked departure from SOC of RP**; greater stigma; consequences not impt (concerned with manner in which MV was operated). **R. v. Roy (2012) SCC**: icy roads/poor visibility/pulls out/hits other car. Confirms Beattie = accident - not marked departure. [NET: harder to get a conviction for DD] **ABSOLUTE LIABILITY AND S. 7**

Rq/Re S. 94(2) of the Motor Vehicle Act 1986 SCC: Combo of imprisonment + absolute liability (AL) violates the Charter. (67). **POFJ that the morally innocent not be imprisoned**. AR = driving while license suspended, no MR. **Enough that there is poss. of imp. POFJ can be substantive not just procedural**. Cant be saved under s.1 (not here - only administrative efficiency justification). **Raham (2010) Ont. CA: (S. 172 (1) Highway Traffic A)**, Stunt dr. This is a **strict liability** offence because a **defence of due diligence** is available. Therefore doesn't violate s.7 **MURDER, ABSOLUTE LIABILITY AND S. 7(1)(D)** **Vaillancourt SCC: 230 (D)** violates the Charter bc doesn't require proof of foresight of death. (even objective). "Constructive M" - kill someone even w/out MR but doing something else you have MR for. Repealed. **Martineau 1991 SCC: 230 (A)** robbery-friend shoots, V dies-party to M2. **POFJ that the level of moral blameworthiness the crown has to prove must be proportionate to the punishment and stigma that attaches to a conviction**. A-D from 230 are unconstitutional because there is no need for reasonable foreseeability of death. Murder requires **subjective foresight of death**. **More than negligence, more than nothing**. **POST M**: Subjective fault is now required for attempted murder; accessory liability for crimes requiring subjective fault (*Logan*); war crimes and crimes against humanity (*Finta*). **Vasil, SCC 1981: 229 (c)**: Sets furniture on fire-spits spouse - her 2 kids die in adjoining room. Unlawful object must be serious indictable offence w/subjective MR; person had to know death was "likely" more than that there was a risk or possibility of it. Upheld in **Shand**. **DeSousa 1992 SCC**: throws bottle ricochets off wall hits arm **Sig. movement away from M. Def. unlawfully causing BH (see above)**. Stigma not suff. to req. Subj. MR **Creighton 1993 SCC**: Defines unlawful act murder. Long term drug user, gives girl cocaine inj. (she consents); dies. **THE RP**: except where person has no capacity to appreciate the risk, standard doesn't fluctuate. **Not personalized OT; OT "in the circumstances"**.

Wholesale Travel Group Inc v The Queen (1991) SCC: considers offence of false advertising. Do strict liability offences that give offence of due diligence but Crown does not have to prove MR violate the Charter? In a way combine obj. fault w/ reverse ones. CT: reverse onus ok (court split); not special stigma (obj. fault ok). **DEFENCES (1): FACTORY or common law? (2) BOP? (3) Apply to all offences in code? (4) result for accused?** **MISTAKE OF LAW (IN GEN): Available when accused holds a honest belief in a set of circumstances that, if true, would otherwise entitle him to an acquittal. [1] CL - except to the extent we treat it as part of the offence) [2] ev burden on acc to give defence A of R [3] when there is knowledge of a part. set of circ. in the MR on which you could be mistaken [4] innocent mistaken belief = acquitted. If you believe some other set of facts which is not entirely innocent, maybe included of a lesser included offence if that's the way offence is drafted. Hard to think where that's plausible. Can't prove knowledge.** **Kundees 1976, SCC: Test for M of F**: belief must be honestly held (reasonableness not required). **Pappajohn 1980 SCC**: Real estate agent; sexually assaulted. To leave defence of MoF to jury, accused must give A of R to defence, but belief there was consent need only be honestly, not reasonably held, and based on accused's subjective state of mind. **REACTION to Pappajohn**: Intro 265(4) Code - when sex assault & MoF alleged, judge should instruct jury to consider reasonableness of honestly held belief **Ewanchuk 1999 SCC**: touching in van; stoic; afraid. To raise a D of MoF, needs to have believed that she voluntarily **communicated** consent to engage in the sexual activity. Also, if this belief was b 1)A intoxicated 2) A Reck. or WB 3) A did not take "reasonable steps", in circumstances known to A (later interpretations:RS depends on Circ: age/mental ability of accused, level of intoxication), to make sure V is consenting. **SO!** Finally, no can't mean yes, passivity/silence doesn't mean yes, and if V says No A must re-establish consent before continuing. **Finally** If accused is under 16=consent unless the accused took "all reasonable steps to ascertain the age of the complainant" **MISTAKE OF LAW (In gen: ignorance of law is no excuse -s.19 Consent of policy not fairness. But what if you do due diligence?** Narrow exception: common law defence of "officially" induced error of law (rec. by SCC). Type of estoppel: If you try to inform yourself and the state gives you incorrect advice, maybe the state should be estopped from prosecuting you for the same offence. [1] CL offence [2] on accused to prove 6 elements [3] could apply to all offences (*) [4] Full defence - acquittal. **Campbell and Mlynarchuk 1973 Alta CA**: Bottomless dancing; relied on Alta TJ said was ok; Alta CA no TJ doesn't make law; stay. **Lévis (City) SCC 2006**: driving-bureaucratic errors. **Off. induced error exists**. Notice 6 steps: 1) an error of law or of mixed law and fact was made; 2)the person who committed the act considered the legal consequences of his or her actions; 3)the advice obtained came from an appropriate official; 4) was reasonable; 5)was erroneous; and 6)the person relied on it in committing the act. Most impt, thing - advice it was from an appropriate official; sufficiently detailed enough that someone might rely on it. **Note: R v Khanna**: Defence focuses here for woman who didn't report car crash-relied on imm. official who said wasn't necessary-after citizenship ceremony charged w/ concealing. Lower level official. Also **Jorgenson** Obscene films accepted by film review board of province - should entitled you to stay of proceedings - hasn't worked since **INTOXICATION** (note: specific intent: add'l purpose requirement beyond intention to commit act. **MURDER + With an intent to/for the purpose of (+?)**, *MS=G1. **Bernard 1988 SCC**: drunk; sexual assault; was able to walk/talk/play records. Intoxication is not a defence to crimes of GI (upholds **Leary rule**). Wilson (1979), *MS=G1. Defence should be allowed for GI crimes where there is extreme intoxication verging on automatism/insanity. **Davaiah 1993 SCC**: Alcoholic; wheelchair; automatism; SA. Extreme intoxication IS a defence to GI crime. ***REVERSE ONUS**: A must prove on BOP that that intoxicated **Note: Criminal Code s 33.1**: bars use of extreme intoxication defence for crimes involving assault or interference w/bodily integrity incl. **sexual assault**. **Drader 2009**: Charged w/ B&E, intent to commit indictable offence (theft). Drunk. Could move around/run/open+close door. Court: no defence. There are three levels of intoxication: Mild - defence to none. Medium - defence to specific intent (has to be enough to negate intent). Extreme Intoxication - defence to gen intent (and, I assume, specific intent) **Threshold is high - the ones that tend to succeed are when person who committed offence are found passed out in house with stolen goods in pockets**. **Note: Penno**: Voluntary intoxication is not a defence where Crown must prove intoxication of accused BARD as one element of offence - ex: impaired driving contrary to s. 253 of the Code. **However, involuntary intoxication can offer a defence even to an offence containing intoxication as an element

PROVOCATION (1) Statutory defence (235 CC) [2] Air of R to: Two parts: 1) O: Asks, was there a wrongful act or insult that would cause the ordinary person to lose the power of self control? (Objective element comes in w/ordinary person) 2) S: Asks, did accused act on the sudden, before they had time for their passions to cool. Most of the time the issue is at #1 [3] Just for murder. [4] Reduces murder to manslaughter (doesn't negate intent to kill - its an EXCUSE - parole if bc provok.) The difference sentencing murder has minimum mandatory life, parole 10-25 years min. Manslaughter has max life, imprisonment w/ parole at 7 yrs, no minimum penalty. **Hill 1985 SCC: Stabs V in bed after V makes sexual advances. "homosexual panic defence". Sets out 1 and 2 above, says jury has to decide if A was actually provoked (in their subjective mind). Defines ordinary as normal temperament and level of self control, not exceptionally excitable, pugnacious or in a state of drunkenness. Says can include age, sex, race if certain characteristic = goes to core of being then have to take it into account. **Thibert 1966 SCC**: Killed wife's lover; brought shot gun to her work. **Controversial application of the defence** **Tran 2010 SCC**: A goes into apartment; shoots ex-wife and partner. Expands #1 and #2: O [1] There must be a wrongful act/insult --> This WA/I must be sufficient to deprive an ordinary person of the power of self control. *#2 The ordinary person standard should be contextualized, but not individualized --> defeat it's purpose to set standards of human behavior. And violate Charter S: [1] Accused must have acted in response to the provocation [2] on the sudden before there was time for his/her passion to cool. **Gill 2009 Ont CA**: Confrontation; Group of boys; stabs one; dies. Argues SD and P. SD = acquittal, P=downgrade to manslaughter. Here, CA says there is A oR to DoP **Nealy 1985 Ont CA**: "Rolled up charge" ex evidence as to anger, intoxication, fear, but no air of reality as to provocation. Need to charge jury as to cumulative effect. **MENTAL DISORDER AND AUTOMATISM (1) Stat defence (s. 16) [2] BOP of person who raises defence. Elements: (i) Have a mental disorder (defined in s. 2 to mean a "disease of the mind," (ii) which renders him unable to appreciate the nature and quality of the act he committed, OR incapable of knowing that it was wrong. In Schwartz the court picks the "legally" definition. Changes in **Chaulk** to "morally". **Cooper** considered "disease of the mind" and "nature and quality of the act" (any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion) [3] Any offence [4] declared NCRMD **Chaulk [1990] SCC**: Wrong mens morally wrong. OK to reverse BOP on defendant (too hard for Crown to prove). 3 types of automatism: 1) **Mental disorder automatism** 2) **Non-mental disorder automatism** 3) **Extreme intoxication/ intoxicated automatism******

Rabey 1977 Ont CA (affirmed by SCC): rocks; hits girl. Psychological blow triggering automatism = disease of the mind. PB's are not common occurrences in life. This blow would not cause a healthy person to enter a dissociative state. *Possibility that there may be some type of PB that is so extreme that it could lead to automatism. **Parks 1992 SCC**: Sleepwalking - kills parents in lawn. Example of non-mental disorder automatism. **Continuing danger theory**: where there is a continuing danger, its MDA, and where no continuing danger, its NMDA. This is really into the realm of policy. Rejects internal/external cause theory from Raby (you have to decide if the trigger of automatism was A) an internal cause - therefore then its mental disorder automatism B) an external cause - then it's non-mental disorder automatism) **Stane 1999 SCC**: Says IC/EX is useful, CD is useful, but ultimately a range of factors that need to be considered. You definitely need expert evidence. Need to consider all factors that might be relevant. Is there corroborating evidence of a bystander? Is there motive? (lack of motive - could help claim of accused). Says it is ultimately for the Trial Judge to determine whether something falls into MDA or NMDA. The burden of proof is a persuasive burden on the A to establish it on a BOP whether its MD or NMD. The accused will have to introduce expert evidence. **THE RELATIONSHIP BETWEEN MENTAL DISORDER AND INTOXICATION** **Bouchard-Lebrun [2011] SCC**: Takes "Poire Bleu", the malfunctioning of the mind that results exclusively from self-induced intoxication cannot be considered a disease of the mind in the legal sense, as it was not a product of the individual's inherent psychological makeup and that it was more likely caused by an external factor, the drug **SELF-DEFENCE (1) Stat D (34(1)), (34(2)) (35). [2] AoR [3] Apply to any, makes most sense if they have element of assault/threat/violence [4] Complete acquittal. Lavallee (1990) battered woman; shoots BF in back of head. **Malott (1998)** Abused for 20 years - tries to kill abusive husband then his new girlfriend. **Pete! (if your mistake was reasonable, can raise SD). McIntosh 1995 Fight**: M had knife; F picked up dolls as if to throw it; M stabbed him. **Cinus 2002** Thinks their buddies will kill him - kills 1 BS at gas station on "last" heist. **NECESSITY** Sometimes, acting in a way that violates the law is morally involuntary. [1] CL defence [2] Air of Reality (then Crown prove BARD) [3] any defence in CC [4] full acquittal **Perka (1984) SCC** Drug smugglers. If successful, no offence in Canada (going to Alaska). Charged w/importing drugs into Canada. Had AR. Had MR, although original plan was to go elsewhere. To argue necessity, there needs to be 1) Urgent peril 2) No legal way out 3) Proportionality (ex can't avoid small financial peril and cause severe physical injury). Also: If you set the events in motion that put yourself in urgent peril where a RP would foresee what would happen, it's not morally involuntary **Latimer (2001) SCC**: Kills Tracy (cerebral palsy). Ct: no AoR to necessity here. Test from necessity: 1 and 2 from Perka should be measured on modified objective standard. 1) RP consider they were in urgent peril 2) RP consider they had no legal way out 3) Objective. Simple weighing of harm caused and harm avoided. Here: 1) ongoing suffering does not constitute urgent peril, 2) could have carried on 3) questionable if taking a human life can ever be proportional. **Ungar (2002) Ont**: Jewish orthodox ambulance driver. Charged with dangerous driving. Can invoke necessity. There was no reasonable legal alternative (ie would be to let the person die, but that's not reasonable). **Modern defence of necessity finally works! Dudley** Cannibalism - can't take someone else's life to preserve your own (sailors adrift at sea)/ #1 **English Case Conjoined Twins**: 100% sure that smaller would die, larger would probably live. If surgery not performed, certain that both would die in about a year. Court orders surgery 1) SD 1) N 1) no criminal intent, right thing to do/**Waldner**: Beekeeper A Stung by bees- very allergic -had been drinking beer - drove himself to hospital - found in **McMillan Boudrel v. Simpson** and **Key**. No necessity: civil disobedience is typically understood as breaking the law for a greater cost, and accept your punishment. **DURESS**: crime committed in circumstances where you would consider their actions to be morally involuntary. Mf nature is not caused by imminent peril but rather by a threat from another person that compels you to engage in criminal activity. [1] CL and Stat. S.17= very limited list of when you can raise this (bunch of offences excluded) Also - person has to be present when they make the threat, and threat must be of immediate death or bodily harm. If successful, its a complete defence that gives you a acquittal. Need to give it an air of reality threshold. CL defence - doesn't require person to be present or threat to be imminent. Allows some lag. Also, no long list of exclusions like in s.17. **Paquette**: Says s. 17 only applies to principal offenders - person who actually commits offence. "A person who commits an offence". Parties who aid and abet would rely on the common law, looser standard. **R v Ryan SCC 2013**: hires hitman to kill husband. Court says (s. 17): you need: *a threat of death or grievous bodily harm: belief the threat will be carried out (modified objective standard - would a reasonable person in these circumstances have believed it?); *offence that's not in the list of excluded offences (unless they bring a s. 7 challenge saying it violates the Charter); *no legal way out (measured on a modified objective standard); close temporal connection; some proportionality between harm avoided and harm caused (in some ways, list of excluded offences works to help create proportionality - although court says some exclusions might be unconstitutional). *Test is a modified objective one; not party to a criminal enterprise. Ultimately, the common law and stat seem to have merged in Ryan. **Except for**: principal offender cannot commit an offence on the list of excluded offences (but third party could).**

ATTEMPTS: The punishment for an attempt is always lower. Intent is the core of crimes of attempt. 463: Where max is life for completed, attempt = 14 yrs/C 14 years or less. Attempts = 1/2 of the maximum penalty for completed offence. Summary conviction stays summary conviction/Possible for attempts to have different provisions from this as their own offence: for example attempted murder - maximum penalty is life, parole at 7 years (so not automatic life like murder). **How do we know someone has committed an attempt? S. 24 (1)** Did act or commission goes beyond mere preparation = a question of law. Bc question of law, easier to appeal, standard on review is one of correctness. **Crown needs to prove BARD that you had 1)** an intent to commit the offence 2) did something toward carrying it out (beyond mere preparation) 3) may need to address "whether or not it was possible under the circumstances to commit the offence". **Ancio**: The MR of attempted murder requires an **actual intention** to kill and nothing less. **Sorrell and Bondett (1978) (Ont. CA)**: Try to rob chicken shop. If there is no clear evidence of mens rea, then unclear evidence about the acts of the accused may not be sufficient to prove the attempt. If the TJ had found intent, that would have necessitated meeting the threshold for mere preparation, but not vice versa **USA v Dynar (1997) SCC**: Possibility versus impossibility: no distinction between a crime and the legal possibility or impossibility. Only imaginary crimes are not offences and can't be attempted. Ex: steal a free sample of Starbucks coffee. The attempt is a fact; the completed offence is not. **AIDING AND ABETTING S. 21**: Ppl who participate in an offence are just as guilty as the principal offender. Anyone who aids & abets for purpose of helping offender in committing the offence. Must know what the principal intends to do and be complicit. Don't need to intend the result (need not be shared intent) Sentencing takes your degree of participation into account. Except for in case of murder which is life in prison. **Briscoe, 2010 SCC 13**: AR/MR of aiding and abetting: AR: do something for the purpose of aiding someone to commit the offence. MR: knowledge and intent are required; WB sufficient. 1) Have to know what person is intending to do with your assistance (WB ok.) 2) Have to do something with the intention of assisting them to carry out what it they are planning on doing. Don't have to share intention that you also want victim to be killed; maybe you just want financial advantage etc. **Fraser (1984) BCCA**: Party-rob guy-stung watch-party to assist (GI) & with intent to steal (D) Being a party that aids the principal offender means you need specific intent to assist them. Therefore, **D of Intox. is available to party offences of GI. Distinction between G and SI ONLY applies to principal offenders NOT parties to an offence** **Dunlop and Sylvester (1979) SCC**: **More presence isn't enough but sometimes it is. Looking for evidence that you are aiding or abetting via assisting etc.** Need to do something - your presence there would be to encourage/keeping watch/being ready to assist/preventing escape/ **J.S.R. (2008) Ont (CA)**: gang rape; Parties provided support to two people who aren't working together, aren't assisting one another - can't they do that way. **Thatcher, (1998) SCC**: Kills wife - either he did it or hired someone to. Do you need not only unanimous verdict but also unanimity in whether - can't they do that? No - they are entitled to get there by different paths.

PRINCIPLES OF SENTENCING: Denunciation/ Rehabilitation/Deterrence/Specific deterrence (putting someone in jail will ensure they don't want to do it again) - Incapacitation/General deterrence (if put someone in jail, will show ppl: this is what will happen if you engage in criminal activity). Sentencing hearing/TJ/can introduce new evidence. AG face=BARD (718.2) MG face= BOP (180). Sentencing reform 1973 - if sentence less than 2 years; judge HAS to consider if they can serve it in the community ie house arrest. Types: Ncustodial; Discharge(s.730) Probation(s.731) Fine(s.734). Canhave2+butnot 3. **Conditions**: (s742). **R v Sasogaluk 2010 SCC**: see cue card. Proportionality is very important in sentencing **R v Swaney 1992 BCCA**: Facts: drove while drunk; was stopped; fled at high speed (135 km/hr); hit vehicle; killed driver; fled on foot; very intoxicated. Criminal negligence causing death - failing to remain at the scene of an accident. Concurring (Wood) Punishment should be same whether they kill or not - don't want to reward the lucky, just as morally culpable. Victim impact statements - tend to favor accused and articulate - C; dies but would revenge - what about ppl who leave less behind? **ABORIGINAL PEOPLES AND SENTENCING R v Gladue 1999 SCC**: Plaintiff stabbed fiancee; dies. 3 years impt MS, 10 yr wpsn probation. Appeals - rights under 718.2(e) not taken into account. Impute didn't consider she was aboriginal - should have, doesn't matter on or reserve, its if she identifies as aboriginal. Every avenue must be taken to avoid imprisonment. Imprisonment might be a fundamentally incompatible way of sentencing AP. Must also take into account aboriginal viewpoint on sentencing, which often involves community sentencing. However, the more violent the offence, the less the aboriginal status of the offender should matter. Post- G: serious and violent offences won't be affected by person's Aboriginal status. Complaints post: reverse discrim? also - disproportionality gets worse! **R v Ipeelee; R v Ladue 2012 SCC**: LTO; LTSD; both breached (drinking). The main idea is to provide a remedy for your inequitable system through the sentencing process. Gladue can apply to serious crimes. The judge has to take into account car crashes. Accused does not need to prove a causal link between background and offence. **PARITY AND TOTALITY: R v Akapev 2009 SKCA**: *80 convictions; car chase; Jolts; crashes; child killed. Does take into account 718.2(e). Says "worst offence and worst offender" has become almost mythical. Question should be is sentence proportionate to gravity of offence, responsibility of offender, sentence not unduly long or harsh.