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# Proving the Offense

Evidentiary burden on crown – must provide evidence on every element of the offense that could convinct beyond reasonable doubt

* Evidence must be relevant, the trier of fact will decide if it is relevantå

Then must convince trier of fact that the evidence proves guilt beyond a reasonable doubt

* Unless there is a reverse onus burden, in which case accused must prove on a balance of probabilities that they didn’t do it

Proving the Offense:

1. has the crown presented evidence that could convict?
	1. It no, A (accused) is discharged
	2. A can make “no evidence” motion if they believe the Crown has failed to raise evidence on an element of the offence
2. Crown must prove all elements beyond reasonable doubt
3. If there is a reverse onus provision the court must consider section 11d
	1. This places an evidentiary burden to adduce evidence disproving the presumption and prove it beyond a reasonable doubt
4. If there is a mandatory statutory presumption court must considert section 11d
	1. This places an evidentiary burden on A to displace a statutory presumption by pointing to evidence that casts reasonable doubt on the presumed fact
5. Permissive Presumptions
	1. Allow, but don’t require presumption. May be disproven by evidence
6. Defences
	1. Accused must give “air of reality” to defence before the jury can consider it

# Presumptions

* Reverse onus provisions require the accused to adduce evidence that they didn’t do it (evidentiary burden) and prove it on a balance of probabilites (legal burden)
* Mandatory statutory presumptions require trier of fact to infer one fact from another, and it is up to accused to raise enough evidence to cast a reasonable doubt on the fact (evidentiary burden)
* Permissive presumptions allow the crown to infer one fact from another

## *R v Lifchus (1997) (Reasonable Doubt definition)*

* *Issues:* How should the jury be instructed on the meaning of “proof beyond a reasonable doubt”?
* *Ratio:* reasonable doubt is doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence
	+ it must be based on evidence
	+ it must be based on the presumption of innocence
	+ reasonable doubt is more that what we consider reasonable in daily life, it is reasonable based on evidence

ALSO it does not require absolute certainty, and the doubt cannot be based on sympathy or frivolous doubt

* + *RD is not based on sympathy or prejudice, nor is it an imaginary or frivolous doubt. It requires more than a balance of probabilities, and is much closer to an absolute certainty*

## *R v JHS (2008)*

* *Issues:* How should jury be instructed on determining guilt of accused?
* *Ratio:* The jury must be instructed not just to assess whether the believe the accused, but whether the crown has proven the accused guilt beyond a reasonable doubt. It is not enough to believe the accused is lying, you have to be convinced based on the evidence presented by the Crown that the accused is guilty
	+ *1. If jury believes A they must acquit, 2. if jury does not believe A but is left with RD as to A’s guilt after hearing A’s testimony they must acquit, 3. if jury does not believe A, and evidence does not raise a RD, but accepted evidence does not prove guilt BRD, it must aquit, 4. If the jury does not know who to believe, they must acquit*

## *R v Starr (2000)*

* *Issues:* Was the right standard of proof instruction given? If the charge gives rise to the reasonable likelihood that the jury misapprehended the standard of proof, then as a general rule the verdict will have to be set aside and a new trial directed.
* *Ratio:* The accused cannot say if you are satisfied of guilt you must convict – you have to say that less than absolute certainty but more than probable guilt that is required

## *R v Oakes (1986)*

* *Facts:* Oakes was found with narcotics, and based on the section 8 presumption he was presumed to be in possession with the intent to traffic. There was a reverse onus on Oakes to prove on a BOP that he was not intending to traffic
* *Issues:* Does this violate section 11, the presumption of innocence? If so is it justified under section 1?
* *Analysis:* Section 11 holds that a person must be proven innocent beyond a reasonable doubt, and it is the crown that should bear this evidentiary burden.
	+ Presumption of innocence has three components:
		- 1. Individual must be proven guilty beyond a reasonable doubt
		- 2. Crown must bear the onus of proof
		- 3. Criminal prosecutions must be carried out in accordance with lawful procedures and principles of fairness
	+ This provision violates the presumption since Oakes has to prove he wasn’t trafficking. Is it violated by section 1?
* Pressing and substantial?
	+ Yes it is pressing and substantial to stop drug trafficking?
* Rational connection?
	+ No, the reverse onus is not rationally connected to the objective of stopping drug trafficking, the law can give rise to convictions of people only guilty of possession and therefore doesn’t actually make sense for the purpose
* *Ratio:* Reverse onus provisions are violations of section 11d. They must be justified by section 1 to be upheld
	+ *Any law that allows conviction depsite reasonable doubt violates 11d*
	+ *Reverse onus provisions: allow the crown to assume a fact from another fact, it is up to the accused to disprove it. So in this case trafficking was presumed from possession, this means he could be convicted of trafficking despite reasonable doubt as to whether he was actually trafficking*

## *R v Whyte (1988)*

* *Facts:* Whyte was convited of being in the care of a motor vehicle while intoxicated. This was based on the evidentiary presumption that anyone found in the drivers seat of a vehicle while impaired by drug or alchohol is presumed to have care of the vehicle for the purpose of setting it in motion, unless they can prove that they did not enter the vehicle for the purpose of setting it in motion
	+ *This is a reverse onus for excuse*
* *Issues:* Is this presumption a violation of the presumption of innocence?
* *Analysis:*
	+ Yes, anytime there is a reverse onus which requires the accused to disprove on a balance of probabilities the existence of a presumed fact, which is an important element of the offence in question, it violates the presumption of innocence in section 11(d) (*Oakes*)
		- This violates one of the key principles of section 11- individual must be proven guilty beyond reasonable doubt
	+ This is only justified when the proof of one fact beyond reasonable doubt would make it unreasonable to not infer to second fact
		- * In this case, that is not the case, it is possible to sit in the front seat and not intend to drive, it *requires the trier of fact to accept something that is essential to conviction despite reasonable doubt, therefore it is an infringement of the right to presumption of innocence in section 11(d)*
	+ Is this justified under s.1?
		- Yes, it is a pressing and substantial objective, there is a rational connection
		- Minimal impairment: the mens rea impairment is minimal, it is minimal viewed in the light that intent is difficult to prove in contexts of intoxication
		- Balance of effects and objective is reasonable
* *Ratio:* Reverse onus burdens violate section 11, but they can be upheld under section 1 under specific circumstances, for example if it would be difficult for the crown to prove the offense without the onus, which would allow the crime to continue and hurt society.

## *R v Downey (1992)*

* *Facts:* Downey was charged under section 212(3) which holds that anyone who lives with a prostitute is assumed to be living off the avails of prostitution (This is a evidentiary burden – it will be inferred unless they can raise reasonable doubt to the presumption)
* *Issues:*  Is this presumption a violation of section 11d?
* *Analysis:* Statutory presumptions will be upheld if the proof of the substituted fact leads inexorably to the proof of the other, if it doesn’t then it obliges the trier of fact to convict in spite of reasonable doubt which is a violation
	+ Is it justified under section 1?
		- Step 1 – the objective is to stop pimping, this is P&S
		- Rational connection is met
		- Minimal impairment – not about whether this is the least intrustive possible means, but could parliament have met the stated objectives using less intrusive means? Is it the least intrusive way to achieve the stated objective
			* This is useful as it allows the crown to prosecute without compelling the prostitute to give evidence, as so many prostitutes are unwilling due to safety fears or trying to protect the pimp
			* Since the accused only needs to raise reasonable doubt to the presumption, not disprove the presumption, it is miminally impairing
* *Ratio:* When the infringment on section 11d is the least impairing way to allow the Crown to achieve the objective it will be upheld.

# Elements of an Offence

Actus Reus is the prohibited act, mens rea is the required mental element of fault

## Actus Reus:

* Conduct: what acts or omissions must the Crown prove for this offence?
	+ This can be many different acts, eg in murder it can be shooting, stabbing, etc
	+ In some it is narrow – in drunk driving the conduct is driving the vehicle
	+ There can also be an ommision- in the case of omission the conduct must be *voluntary*, the accused has to voluntarily NOT do the act
* Circumstances:
	+ Not all have circumstantial element
	+ Sometimes the Crown has to prove particular circumstances
		- Eg in impaired driving, the Crown must prove to accused was actually impaired
		- In sexual assault the requisite circumstance is that the victim was not consenting
* Consequences
	+ Many offences prohibit certain conduct/circumstances regardless of the consequences
	+ Some require proof of consequences (murder requires proof of death)
	+ Whenever consequence is part of the actus reus, causation must also be proven

## Mens Rea:

* Fault element
* May be measured on either a **subjective** or **objective** basis
	+ **Subjective fault:** Accused had the actual intention, knowledge or recklessness to commit an act, in a particular circumstance, or bring about a consequence
		- This assess what the accused intended or knew
	+ **Objective fault:** asks what the ordinary person should have known or would have intended in the circumstances
		- Objective standard is gross negligence - a marked departure from that of the reasonable person in the circumstances
* Some sections explicitly include required intent
	+ Eg theft is taking taking another’s property fraudulently, without belief that you are legally entitled to, with the intent to deprive to owner of the use of the goods
* Where the statute is silent, start with the presumption that true crimes require the Crown to prove a subjective *mens rea* beyond a reaosnable doubt in relation to at least some element of the *actus reus*
* These subjective mental states are:
	+ 1. **Intent**: a person intends to carry out an act when he does so purposely of deliberately (not accidentally)
		- A person intends consequences of the act where he acts for the purpose of bringing about that consequence, or where he is substantially certain that the consequence will result from his act
	+ 2. **Knowledge**:awareness that a particular circumstance exists or does not exists
		- willfull blindness is a substitute for knowledge
	+ 3. **Recklessness**
		- A person is reckless as to a particular act or consequence occuring where she foresees that it may occur, but chooses to proceed in the face of the risk (this is usually sufficient to satisfy the mens rea component)
	+ Objective mens rea:
	+ Criminal negligence- marked departure from the standard expected of a reasonable preson in the circumstances
* These correspond to the *actus reus:*
	+ 1. Conduct must be intentional or reckless
		- this does not always correspond, in the case of sexual assault it just has to show touching occurred, and it was in a sexual circumstance not that the accused intended the touching to be sexual
	+ 2. Circumstance – must have knowledge of circumstances (or be reckless or willfully blind to the circumstances)
	+ 3. Must have intended or be reckless to the consequence
* In certain offences the mens rea element is objective – were they objectively reckless to the crime (manslaughter eg)
* Mens rea will correspond with one or more elements of the actus reus
* Where mens rea is not stated, start from the presumption that it will be subjective

In general you cannot be convicted of a crime for which you were not charged unless it is an included offense –

* This counts where the offense is explicitly included, where the offence included is necessarily commited in the offence charged (eg assault is included in assault causing bodily harm), attempt to commit charge is always included in the charge – if they didn’t succeed the included offence is always the attempt

# Actus Reus

## *Frey v Fedoruk (1950)*

* *Facts:* P was peeping into D’s house, he chased him down and stopped him, he was charged with disturbing the peace. P sued for false imprisonment, said he wasn’t disturbing the peace
* *Issues:* Was he distubing the peace by peeping?
* *Analysis:* No, peeping tom is not an offense
* *Ratio:* You cannot be charged with a crime that is not in the criminal code or an offense to law

## *R v Clark (2005)*

* *Facts:* Clark was charged with exposing himself in an indecent way in a public place, he was masturbating in his living room
* *Issues:* Was the offence he committed actually an offence? There are two offences, A) indecent act in a public place, and B) indecent act anywhere with intention to offend. He was not in a public place and he didn’t have the intention to offend, so the actus reus for both offences was incomplete. TJ charged him with A and found that he converted his living room into a public space, was that a legitimate interpretation of the code?
* *Analysis:* They can’t charge him with B because the TJ made the fact finding and found he didn’t intend to insult anyone. Under A public place means physical access, not visual access. He was not guilty of either offence
* *Ratio:* You cannot merge to crimes to get another crime, in order to be guilty you must complete all elements of the actus reus

## *R v Moquin (2010)*

* *Facts:* Man beat up partner, TJ found her injuries were not bodily harm. She had hair loss, couldn’t use her hand for a week, etc
* *Issues:* Was the judge correct in interpreting bodily harm?
* *Analysis:* bodily harm is “any hurt or injury to a person that interferes with the health or comfort of a person and that is more than merely transient or trifling in nature”
	+ TJ said the harms were trifling, made analysis based on funcitonal impairment analysis which was incorrect
	+ SCC said interference with comfort suffices
* *Ratio:* Bodily harm is met when the comfort of the person has been interfered with, if the discomfort is more than trifling or transient

## *Fagan v Commissioner of Metropolitan Police (1968)*

* *Facts:* Appellant drove onto the foot of the police officer by accident, and then stayed there and refused to move
* *Issues:* Was this assualt? The mens rea was absent until after the initial assault so can he be guilty?
* *Analysis:* yes, it was a continuing actus reus,
* *Ratio:* Mens rea can be superimposed on a continuing act, but it cannot be imposed on a completed act.

## *R v Moore (1978)*

* *Facts:* Bicyclist refused to stop for police officer
* *Ratio:* There is an implied duty to give name when police ask for it and refusing to do so obstructs peace officer

## *R v Thornton (1991)*

* *Facts:* D knowingly donated HIV positive blood to the Red Cross
* *Issues:* He was charged with common nuisance – which is an unlawful act or failing to discharge of his legal duty
* *Analysis:* Donating HIV positive blood is not unlawful, was it a breach of legal duty? Yes, there is a common law duty to refrain from conduct which is reasonably forseeable to cause serious harm to another person
* *Ratio:* common law duty to refrain from conduct which is reasonably forseeable to cause serious harm to another person

## *R v Lucki (1955)*

* *Facts:* D’s car skidded onto the wrong side of the road while he was driving and caused an accident. He was doing it because of the weather and not intentionally
* *Issues:* Was D to blame for this act?
* *Analysis:* It was involuntary, he is not at fault for the act, in order to be considered guilty of commiting the act (the actus reus), you have to have done the act intentionally
* *Ratio:* Voluntariness is necessary for guilt, in general there can be no guilt unless the act was commited voluntarily

## *R v Wolfe (1974)*

* *Facts:* Complainant entered hotel he had been told to not enter, one night he came in anyways, appellant told him not to enter, he didn’t liten, complainant punched appellant while he was on the phone with the police, appelant hit him back with the telephone reciever, he got a serious cut on his head, Appellant found guilty of assault causing bodily harm.
* *Issues:* Was it a reflex action? If so there is no voluntariness and no offence
* *Analysis:* TJ found it was a reflex action and therefore should not have found him guilty
* *Ratio:* Voluntariness is necessary for guilt, in general there can be no guilt unless the act was commited voluntarily, a reflex action does not constitute a voluntary action

# Causation

##  *R v Smith (1959)*

* *Facts: :* D stabbed a man who died, but he was treated badly in hospital, didn’t get good care and in theory the wound he got from the stabbing was one that people can recover from if treated in time
* *Issues:* If other factors made death more likely is D still responsible?
* *Analysis:*
	+ D claims the court must be satisfied the death was the natural consequence and sole consequence of the wound sustained by him and flowed directly from him
	+ Court says that the if wound at the time of death is still an operating cause then the death can still be said to be the result of the wound
		- Only if the second cause is so overwhelming so as to make the first cause merely part of the history can it be said that the death does not flow from the wound
		- To break th chain of causation, something new must be shown to disturb the sequence of events
* *Ratio*
	+ To be found guilty of murder a persons act must have caused the death, it must have flowed from that persons action
	+ Causation chain can be broken by subsequent action but this subsequent action has to make the initial action part of the history, such that is was not a major reason for the death

## *R v Blaue (1975)*

* *Facts:* Blaue attacked a Jehovahs Witness with a knife, she needed a blood transfusion to survive but her religion prohibited it, she died from loss of blood
* *Issues:* Did his attack cause the death or did her refusal to get a blood transfusion break the chain of causation?
* *Analysis:* The defendant says that the decision should be analyzed on a reasonableness standard, if it was unreasonable then the causation is broken; the court disagrees- there are different versions of reasonableness and it is not for the assailant to decide, assailant must take victim as he found her
	+ “The question is what caused the death, and the answer is the stab wound”
* *Ratio:* Causation chain is broken can be broken by poor care or poor decision making but it is not broken by people making decisions based on their beliefs – the assailant must take victim as he/she finds them

## *R v Nette (2001)*

* *Facts:* D robbed victims house and hog tied her, left her there, she died from asphyxiation. Dr said the asphyxiation was caused by her hog-tying, the ligature around her neck, and her old age/lack of muscle tone; D was found guilty of second degree murder
* *Issues:* How should the standard of causation be defined for second degree murder?
	+ D says it should be a “substantial cause” as *Harbottle* defines causation for murder, Crown says it should be “beyond de minimus” as defined in *Smithers*
* *Analysis:*
	+ To be charged with murder the action has to be a substantial cause of death, to be charged with second degree murder it must be more than trivial
	+ In establishing a murder you must ask whether the murder happened first, and then look at whether it is first or second degree
	+ Harbottle doesn’t require a higher causation but a higher participation, when determining first or second degree the murder has already been established to have been caused by the defendant
	+ The test is still *Smithers*, but a better way of defining it is whether it was a significant cause of death- this is more clear than beyond *de minimis*
* *Holding:* D’s actions were a significant cause of the death. The jury was not misinstructed in being told that in homicide causation is defined as a significant cause
* *Ratio:* There is only one standard of causation for homicide, that is *Smithers* – a siginificant cause. Harbottle deals with the level of participation required to consitute first degree murder, but does not increase the standard of causation

## *R v JSR (2008)*

* *Facts:* D participated in a shoot out in the street, a woman was killed, he was charged with murder
* *Issues:* Was the accused willing participation in a gunfight sufficient evidence to satisfy the *Smithers* causation test and justify the trial of accused for homicide?
* *Analysis:*
	+ There has to be causation between the accused’s acts and the death in order for the accused to stand to trial
	+ The questions are:
		- Could the jury find, on the facts, that JSR’s actions were a contributing cause beyond *de minimis*?
			* Yes, participating in a gunfight was a mutual decision that was reckless to the death of the victim, all participants are responsible for the outcome even if it is only one of those participants who actually directly causes the harm
		- Did the other shooter who shot the fatal wound constitute an intervening cause that severed the causal link between the victim and JSR?
			* The causal link can be broken if another persons more direct action effectively overtakes the causal acion
			* This could be taken to break the causal chain, but there is also a reasonable view that says JSR participated in causing the death
* *Holding:* Since a reasonable view could hold that JSR caused the death, the case should go to trial
* *Ratio:* If you participate in a dangerous activity that endangers lives then you are responsible for the death of those people, even if it was not you specifically who did the fatal act

## *R v Moquin (2010)*

* *Facts:* see above
* *Issues:* Did this cause psychological harm?
* *Analysis:* It might not have been the sole cause of psychological harm, but it was a “significant contributing cause” which is the causation standard in *Smithers*
* *Ratio:* The *Smithers* causation test applies to other criminal charges, not just murder (expanded the application of *Smithers*)

# Mens Rea

The nature of fault can take a number of different forms, depending on wording of the offence and the component of *actus reus* it is attached to. It may take one or more of the forms: intention, knowledge, wilfull blindness, or recklessness, depending on the offence

Intent:

## *R v Beaver (1957)*

* *Facts:* Beaver was convicted of selling diacetylmorphine, but he believed it was sugar. The jury was instructed not to consider whether or not he knew he he was selling morphine.
* *Issues:* Is it necessary for the accused to *know and intent* to commit the or is commiting it enough?
* *Ratio:* Mens rea requirement will be assumed unless otherwise stated

Regulatory Offence

## *R v City of Sault Ste. Marie (1978)*

* *Facts:* D charged with polluting a river
* *Issues:* Does this require mens rea?
* *Analysis:* The difference is between public welfare offences and criminal offences, public welfare offenses are tried on absolute liability, criminal offenses require a mental element
	+ True crimes require mental element, absolute liability does not and there are no defenses available. However strict liability does not require mental element but there is the excuse of if you acted as a reasonable person would and took “due diligence” to ensure the event wouldn’t happen
* *Ratio:* The was a regulatory offence and therefore the mental element is not required

Wilfull Action

## *R v Buzzanga and Durocher (1980)*

* *Facts:* D were charged with willfully promoting hatred against an identifiable group (French Canadians), in response to anti- french sentitment, the D’s decided to release a document that basically said Anglophones need to crush French canadian community. This was seen as “willfully promoting hatred” against French Canadians
* *Analysis:* How should wilfully be defined? The crime is:
	+ *“anyone who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group is guilty of…”*
	+ TJ defined it as “intention as opposed to accident” - the issue is whether “willfully” should be attached the the words “promoting hatred” or “communicating statements”
		- It is attached the promoting hatred
	+ Should wilfull mean intentionally or recklessly?
		- It can mean either, in this case it means intentionally
			* What mental state constitutes intention?
				+ Either intending the consequence or seeing the consequence as being substantially likely
				+ In this case they thought the consequence would be to shed light on the ridiculousness of anti-french canadian sentiment, the purpose was to make a political stir, not to promote hatred
* *Holding:* The TJ erred in defining wilfully as communicating instead of promoting hatred, which led to a wrong conviction. Although the D’s wilfully communicated the message they did not intent to promote hatred
* *Ratio:* Intention is not about doing something not by accident, its about what was intended in doing those actions. It is not whether the action was intentional or accidental, but instead whether the result was intended to occur or substantially likely to occur. To have intent you have to have intended to result to occur or the result must have been substantially likely to occur

Subjective Intent/Recklessness

## *R v Theroux (1993)*

* *Facts:* Appellant convited of fraud for falsely representing to investors that deposits taken from them were protected by deposit insurance
* *Issues:* The D commited the fraud, but he did so believe that the fraud would have no impact on the customers – he didn’t intend to consequences of the act, so does this negate the guilty mind element?
* *Analysis:* The actus reus of fraud is commiting the fraudulent act, the damage to the person is not part of the actus reus.
	+ Typically mens rea is about the intent for the consequences (such as in murder the intent is to cause the death of the person)
	+ In this case the intent is still subjective, the person should still have subjective MR when it comes to the consequence - did the accused subjectively appreciated those consequences as at least a possibility?
	+ Subjective mens rea is met if the person intentionally did the act knowing the result was could occur
* *Ratio:* Mens rea does not require you to believe the act is wrong or have the intention to cause the consequences of the act, you just have to intentionally do the prohibited act knowing the consequences can result

Wilfull Blindness

## *R v Briscoe (2010)*

* *Facts:* Briscoe was there when a murder happened, but did not stop it, is he guilty? He was charged with assisted murder
* *Issues:* Did he intend to assist in the crime? Was he willfully blind to the crime?
* *Analysis:* Wilfull blindness is a substitute for knowledge. Mens rea requires the person to have knowledge of the crime and intent to commit it
	+ the court found his actions met the actus reus of assisted murder, but did he intend it? Did he know that is what he was doing?
	+ Wilfull blindness is when the accused “shuts his eyes because he knows opening them would give him knowledge” - wilfull blindness cannot let you escape liability. He was wilfully blind and therefore guilty
* *Ratio:* Wilfull blindness is where the person basically knew but shut his eyes to the confirmation in order to intentionally avoid knowing, and this is a substitute for the knowledge requirement of mens rea

## *R v Lewis (1979)*

* *Facts:* Victims father sent her a bomb in the mail, gave it to D to post. Was D guilty of murder?
* *Issues:* Did D have the requisite mens rea for murder (did he know the box had a bomb in it?)
* *Ratio:* Whether the judge indiciates the jury to consider motive circumstantial – where the murder is circumstantial and motive is relevant they will be instructed to consider it

Transferred Intent

Transferred intent applies where someone intends a specific kind of harm to one person, but accidentally does it to another. It does not apply where the harm is different and it does not apply in inchoate (attempted) crimes, attempted crimes do not have a consequence, it is only the attempt that completes the actus reus, so you cant transfer the intent to another person, as it was the attempt that must be intended

## *R v Gordon (2009)*

* *Facts:* Gordon tried to shoot and kill Thompson, but accidentally shot and injured some of his friends. He was charged with attempted murder for each person injured, through the doctrine of transferred intent
* *Issues:* The jury was told that they had to find him guilty of intent to kill a person with a firearm, and that intent could be transferred if that attempt to kill was effected on the bystander. Does transferred intent apply to attempted murder?
* *Analysis:* Transferred intent takes a mens rea upon one victim and transfers it to the actus reus commited to another victim
	+ This works because in an crime like that the mens rea lacks a victim and the actus reus lacks a mental element
	+ This applies when the actus reus requires some harm to the victim, in attempted murder no physical impact is required on the victim, any action beyond preparation is sufficient actus reus. There is no consequence to transfer onto the other victims
	+ In attempted murder the initial victim is still attempted even though other people were hurt, and also any attempted murder that is unsuccessful could be transferred onto other people
* *Ratio:* Transferred intent does not apply to inchoate crimes, it only applies to crimes that have a consequence as an element of the actus reus

# Mens Rea and Strict Liability

## *R v City of Sault Ste Marie (1978)*

* *Facts:* D illegally polluted
* *Issues:* Public welfare offences (crimes against public) usually absolute liability, is this appropriate in public welfare offences with high punishment?
* *Analysis:* the crown should not have to prove mens rea, but its not really fair that actus reus automatically should lead to guilt.
	+ The approach should be strict liability:
		- offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act prima facie imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of *what a reasonable person would have done in the circumstances.*
		- The defense will be available **if the accused reasonably believed in a mistaken set of facts which, if true would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event.**
			* Public welfare offences will fall into this category
			* Defense: you took level of reasonable care that a reasonable person would have taken in that circumstances
* *Ratio:* A public welfare offence should be strict liability –actus reus is prima facie evidence of guilt, unless the accused can disprove it by due diligence or honest and reasonable mistake of fact. Absolute liability will only apply when there is legislative direction
	+ **Due diligence:**  the accused took all the necessary steps that a reasonable person would have taken to avoid the act
	+ **Honest and reasonable mistake:** the accused reasonably believed in a mistaken set of facts that if true would render the act/omission innocent

## R v Chapin (1979)

* *Facts:* Mrs. Chapin was hunting for ducks near to grain, she claimed she didn’t know the grain was there*:* it is unlawful to hunt for migratory birds within one-quarter mile of a place where bait has been deposited
* *Issues:* should this be a strict liability, absolute liabilty, or mens rea offence?
* *Analysis:*
	+ Mens rea should be for “true crimes”
	+ Not absolute liability
		- *Sault Ste Marie* holds that public welfare offences should be strict liability
		- Should look at *overall regulatory pattern* (degree of punishment), *subject matter of legislation* (regulatory offence?), and *precision of language*
		- The punishment is severe, it is a regulatory offence, the regulations do not seek to impose an absolute obligation upon a hunter who innocently hunts believing reasonably that it is legal
* *Ratio:* To determine if it is a strict liability offence, absolute liability offence, or a true crime (requiring MR), look at the three factors stated above

## *R v Tutton (1989)*

* *Facts:* Child had diabetes, parents were religious but sought medical advice, got insulin treatment. After believing their child had been cured by a miracle they stopped treatment and the child died. They were charged with criminal negligence causing death, the criminal negligence was denying the necessities of life without cause. Charge was manslaughter. The accused raised the defences of honest mistaken believe
* *Issues:* Was there sufficient mens rea to constitute a true crime, since they honestly believed they were **not** denying the necessities of life?
* *Analysis:*
	+ The conduct that displays disregard is the actus reus of the offence, this actus will be considered proof of the blameworthy state of mind - a person with normal faculties of awareness and engaging in a grave departure from the norm can be assumed to be either aware of the risk or willfully blind to it, it is up to the accused to disprove this (evidentiary burden is on the accused to prove innocent mind)
	+ In negligence it is an **objective standard** – negligence implies that there is no positive thought, it is merely a departure from what would be expected of the reasonable person
	+ If the defence is honest belief, **it must be reasonably held.** The surrounding circumstances of that belief can be considered, but not the personal characteristics of the accused
* *Ratio:* In criminal negligence, the standard for willfull is objective: what would a reasonable person have believed was going to be the result of the action. The defence of honest belief is a modified objective standard – what would a reasonable person in the circumstances have believed?
	+ The test is whether it was a “marked and significant departure from the standard which could be expected of a reasonably prudent person in the circumstances”, Mistake defense depends on whether the mistake was reasonably held

## *R v Hundal (1993)*

* *Facts:* Dump truck went through red light and killed victim, roads were wet and his truck was overloaded
* *Issues:* What is the mens rea required to prove the offence of dangerous driving? What is the MR required for penal negligence?
* *Analysis:* it is a modified objective standard. “the mens rea for the offence of dangerous driving should be assessed objectively but in the context of all the events surrounding the incident”. The defence of involuntariness can be raised- eg sudden onset of illness. Still it must be a reasonable person in similar circumstances
* *Ratio:* A person can be convicted if the court is satisfied BRD that on an objective standard the accused was driving in a manner dangerous to the public having regard for the circumstances – the test is whether the accused’s conduct was a marked departure from the standard of care that a reasonable person would observe in A’s situation

# Mens Rea and the Charter

## *Motor Vehicle Reference (1979)*

* *Facts:* Motor vehicle act holds that anyone who drives while prohibited or suspended from driving will serve prison for minimum 7 days, and on repeat offence minimum 14 days. This is absolute liability, the accused does not have the defence of mistake, etc.
* *Issues:* Is the consistent with s. 7 of the Charter?
* *Analysis:* Section 7: a person should not be deprived of liberty unless in accordance with the principles of fundamental justice (PFJ)
	+ Sault ste marie holds that absolute liability coupled with imprisonment violates PFJ because it allows someone to be punished who is morally innocent, it is a PFJ that we do not punish the morally innocent,
	+ **the combination of imprisonment and absolute liability violates the charter and can only be saved by section 1**
* *Ratio:* any law that imprisons someone without proving mental guilt will violate s. 7

## *R v Martineau (1991)*

* *Facts:* They robbed a trailer, they were planning to commit robbery and one shot the guy, the other only meant to commit the robbery. He was charged with murder
* *Issues:* Does it violate the charter to hold someone liable for murder even if they did not forsee death?
* *Analysis:*
	+ *R v Vallaincourt* held that in order to be a murder conviction there must be proof BRD of at least objective forseeability of death
	+ This section allows someone to be found guilty for murder even if they did not intend or subjectively foresee death, this means there is conviction without subjective mens rea
		- It is a principle of fundamental justice that a person not be convicted of murder cannot rest on anything less than subjective foresight of death
		- To do so would be disproportionate to the crime
	+ High stigma crimes should not impose the label of guilt on someone who did not intend to commit the act
* *Ratio:* Murder cannot be a strict or absolute liability case, and it is not objective knowledge, there must be subjective knowledge of the offence beyond reasonable doubt to be found guilty of murder. Special stigma crimes such as murder require subjective foreseeability of the consequence as per vallaincourt/martineau

## *R v DeSousa (1992)*

* *Facts:* D threw bottle that broke on wall and injured someone. Charged with unlawfully causing bodily harm, accused said this violated principles of fundamental justice as it allowed imprisonment without requiring blameworthy state of mind.
* *Issues:* Does this violate the charter?
* *Analysis:* The crime is unlawfully causing bodily harm. Trial judge says unlawful means in contravention of any statute, even absolute liability offences – this could allow for imprisonment combined with absolute liability which violates the charter. However, the mental state is attached the the unlawful act.
	+ The underlying offence must have a constitutionally sufficient element (must require some sort of mens rea), and the consequence offence must be objectively foreseeable
* *Ratio:* in crimes that that have a consequence, it is sufficient that the person intend to do the crime, and the consequence is objectively foreseeable, unless it is a special stigma crime

## *R v Chrieghton (1993)*

* *Ratio:* the mens rea requirement for manslaughter is objective foreseeability of bodily harm. The person has to do an act that could objectively cause death, if it does they are guilty of manslaughter. Symmetry not always required, there doesn’t necessarily have to be MR to match with every element of the AR (i.e. there doesn’t need to be MR for the consequence of death that is part of manslaughter)

# Mistake

## *R v Kundeus (1976)*

* *Facts:* Accused sold LSD to police officer believing it to be mescaline, was found guilty of trafficking LSD
* *Issues:* Is it unconstitutional to find him guilty of trafficking LSD when he thought it was mescaline? Was there sufficient mens rea for sale of LSD?
* *Analysis:* the sale of LSD creates a rebuttable presumption that the individual voluntarily intended to sell LSD. The accused has raised no evidence to the contrary- no evidence of an honestly held belief that would negate mens rea, he is guilty
* *Ratio:* In doing a crime there is a rebuttable presumption that it was intentional, if there is evidence of an honest belief that the crime is not being done (mistake) then the requisite mens rea is not present, not guilty
* *Dissent:*
	+ “I am unable to agree that where mens rea is an element of the offence it can be satisfied by proof of its existence in relation to another offence unless the situation involves an included offence”
	+ Intent to commit one crime does not meet the requirement for mens rea to be proven in the offence of another crime

## *R v Pappajohn (1980)*

* *Facts:* D raped a woman, claimed he believed she was consenting.
* *Issues:* Is the mistake defence relevant?
* *Ratio:* in order for the defence of mistake to be given to the jury, it must have an air of reality
	+ “the test for mistake of fact is that the mistake must be honestly held, but need not be reasonable. The jury should be instructed that reasonableness can only go to credibility of A’s assertion in an honest belief.”
	+ “*Mistake is a defence then, where it prevents an accused from having the mens rea which the law requires for the very crime which he is charged. Mistake of fact is more accurately seen as a negation of guilty intention than as the affirmation of a positive defence. It avails to an accused who acts innocently, pursuant to a flawed perception of facts, and none the less commits the actus reus of the offence”*
	+ “if the claim of mistake does not raise a reasonable doubt as to guilt, and all other elements of the crim have been proved, then the trier of fact will not give effect to the defence. But, if there is any evidence that there was such an honest belief, regardless of whether it is reasonable, the jury must be entrusted with the task of assesssing the credibility of the plea”

## *R v Ewanchuk*

* *Facts:* A made sexual advances towards C, who repeatedly said “no”. Each time, A stopped his advances and then began again. C testified that she was frightened by determined not to let A see her fear, and that she believed A had locked the door of the trailer where the events occurred, A did not testify
* *Issues:* What defence should be available to sexual assault?
* *Analysis:*
	+ **ACTUS REUS:**
	+ AR of sexual assault: touching (objective), of a sexual nature (objective), absence of consent (**subjective,** pertains to the accused subjective internal state of mind towards the touching at the time it occurred)
		- “*the trier of fact is concerned only with the complainant’s perspective. The approach is purely subjective*”
	+ however her credibility in claiming she didn’t consent can be assessed: “it is open to the accused to claim that the complainant’s words and actions, before and during the incident, raise a reasonable doubt against her assertion that she, in her mind, did not want the sexual touching to take place”
	+ the accused’s understanding of this state of mind is not relevant to the AR, this is all decided based on the complainants state of mind. If the accused believed there was consent this is the defence of honest mistake and goes to the **mens rea**
	+ **the question is whether the complainant consented or not, there is NO implied consent. If you believe that she didn’t consent, that is enough**
		- “The finding of fact that the complainant did not want or consent to the sexual touching cannot co-exist with a finding that reasonable doubt exists on the question of consent”
	+ **MENS REA:**
	+ “However, since sexual assault only becomes a crime in the absense of the complainant’s consent, the common law recognizes a defence of mistake of fact which removes culpability for those who noestly but mistakenly believed that they had consent to touch the complainant”
		- in mens rea the consent is a major issue, but in the mind of the accused
		- *the accused must show that he believed that the complanant communicated her consent to engage in the sexual activity in question. A belief by the accused that the complainant, in her own mind, wanted him to touch her but did not express that desire, is not a defence*
			* basically he has to have believed that she COMMUNICATED consent, its not enough for him to believe that she was consenting in her mind (no implied consent, communication is key)
	+ **Consent** **in AR:** complainant in her mind wanted the sexual touching to take place
	+ **Consent in MR:** the complainant had affirmatively communicated by words of conduct her agreement to engage in sexual activity with the accused
		- See p 9-29 for circumstances in which the defence of mistake is not available
* *Ratio:* the circumstance for sexual assault is without consent, and this is subjective to the complainants mind. Whether or not there was consent depends on the victims state of mind, No doctrine of implied consent
	+ “if the trier of fact is satisfied BRD that the complainant did not in fact consent, the *actus reus* of seuxal assault is established and the inquiry must shift to the accused’s state of mind. [TJ can consider whether the consent came from fear, fraud or excersize of authority].”
	+ the only MR question is whether there was honest belief in consent: this could either be that the accused actually did consent or that he honestly but mistakenly believed in consent – the trier of fact can only ask **whether the accused honestly believed that the complainant communicated consent, anything else is not a defence**

Sexual Assault:

* “A conviction for sexual assault requires proof beyond reasonable doubt of two basic elements, that the accused committed the *actus reus* and that he had the necessary *mens rea*. The *actus reus* of assault is unwanted sexual touching. The *mens rea* is the intention to touch, knowing of, or being reckless of or wilfully blind to, a lack of consent, either by words or actions, from the person being touched” - *Ewanchuk*

# Defenses: Intoxication

## *R v Bernard (1988)*

* *Facts:* Bernard was drunk, raped someone.
* *Issues:* Is drunkenness a defence to rape, does it negate the mental element?
* *Analysis:* Rape is a general intent offence – drunkenness is not a defence
	+ Specific intent offences require someone to intend a specific consequence, drunkenness is a defence against specific intent offences
	+ the Leary Rule holds that even if there is no intent to do the act, the intent to get so drunk can be transferred onto the intent to do whatever it is that the drunkenness causes you to do
	+ however in this case he was capable of forming the intent
* *Ratio:* In general intent crimes only minimal intent needs to be proven, and when there is severe drunkenness, intention can be proven either from the commission of the offence or from the decision to get so drunk that the person loses control over themselves

## *R v Daviault (1994)*

* *Facts:* D drank 40oz of brandy, sexually assaulted plaintiff*.* D was chronic alcoholic, he had been drinking before, he didn’t remember the assault. Expert witness testified that the level of alcohol consumed could lead to a blackout – condition when individual loses contact with reality and the brain is temporarily dissociated from normal functioning
* *Issues:* Did accused possess requisite mens rea considering that he was so drunk he was incapable of forming any intent
* *Analysis:*
	+ The Leary Rule violates the s 7 (PFJ) and s 11d (presumption of innocence), it allows someone to be convicted without forming MR
		- MR should not be implied from the actus reus when the issue at hand is voluntariness or consiousness
		- In order for intent for one act to lead to intent for another, the first act has to inexorably lead to the other, otherwise section 11d is violated
		- it does not follow from voluntary intoxication that its consequences are voluntary
			* *Note: this is different from DeSousa, in which the MR was placed on the first act, and this was sufficient*
	+ So the result of eliminating the Leary Rule is that drunkenness can negate the mens rea of a crime if the person is not capable of forming intent
* *Ratio:* drunkenness is a defense if someone is so drunk so as to be in a state of automatism, such that they are incapable of forming even the small intent necessary for general intent offences (overruled with regard to bodily harm)
	+ Only when drunkenness is so severe as to constitute automatism would drunkenness be a defense to crimes of general intent, must be established on BOP

***NOTE:*** *The criminal code has eliminated this defence for offences that cause bodily harm. Look for constitutional issues there.*

# Defenses: Mental Disorder

## *R v Chaulk*

* *Ratio:* Defendant should bear the burden of proving on a BOP that they are insane and therefore not criminally culpable. Proving this defense requires proving that disease of the mind has made you incapable of realizing it is legally wrong, incapable of realizing it is morally wrong, or caused you to believe a morally wrong act is right in this circumstance.
	+ Basically the defence of intoxication can apply if disease of the mind has made the person:
		- 1. Incapable of realising the act is legally wrong
		- 2. Incapable of realising an act is morally wrong, OR
		- 3. Incapable of realising that the act is wrong in the circumstances – if a person believes that an otherwise wrong act is morally right in the circumstances due to disease of the mind (ie they believe they have to kill someone for a higher purpose or something)

## *R v Swain*

* *Ratio:* **procedure for introducing this defence:**
	+ 1. The accused can plead NCR (not criminally responsible) at the outset of the trial, must prove on BOP
	+ 2. Accused may plead not-guilty, and if those arguments are unsuccessful and the crown proves guilty BRD, the accused may change his plea to NCR and a hearing on the matter will be held (use as a defense to proven guilt) – this is done after finding of guilty but before conviction is entered
	+ 3. The crown may enter evidence of mental disorder during the crime, must prove on a BOP
	+ 4. Crown may raise evidence of mental disorder after finding of guilt but before conviction is entered, prove on BOP
* 3 sentencing options for people with mental illness:
	+ 1. If court finds the accused is not a significant threat to the public, he/she is discharged
	+ 2. Discharged subject to conditions
	+ 3. Detained in hospital subject to conditions of the court
		- it is not for the accused to prove he/she is not a serious threat, that is determined by the review board/court

# Defenses: Automatism

* Automatism: state of mental unconsciousness or disassociation without full awareness - acts apparently occurring without ill, purpose, or reasoned intention on his part (*Parks*)
* Disease of the mind: relates to a) scope of exemption from criminal responsibility to be afforded by mental disorder or disturbance b) protection of the public by the control and treatment of persons who have cause serious harms while in a mental disordered or disturbed state (*Parks*)

## *R v Rabbey*

* *Facts:* D really liked this girl, hit over the head with a rock when he found out she was dating someone else. Claimed the shock sent him into a state of non-insane automatism resulting from an emotional blow. He claimed he couldn’t remember any of the events
* *Issues:* should the defense of automatism apply in this case? How should non-insane automatism be applied?
* *Analysis:*
	+ Insane automatism is automatism that stems from something “internal” to the persons emotional or psychological state
	+ Non-insane automatism is automatism that comes from something “external”, like a concussion
	+ Can an emotional blow constitute as an external factor?
		- *“the ordinary stresses of life which are the common lot of mankind do not constitute an external cause constitution an explanation for a malfunctioning of the mind which takes it out of the category of a “disease of the mind””*
			* in this case the encounter with the victim cannot be seen as a external factor, it must be seen as having its source primarily in the respondent’s psychological or emotional make-up
			* therefore the dissociative state did constitute a disease of the mind
* *Ratio:* You cannot claim non-insane automatism as a result from the ordinary disappointments of life. If the ordinary disappointments of life cause the dissociative state, this is “disease of the mind” Possibility open that a severe emotional blow could be a source of non-insane automatism – only if normal person would be affected – (objective test). There is a presumption actions are voluntary unless accused raises evidence to the contrary.
	+ If you get convincted of non-insane automatism you get an absolute aquittal, if it is insane automatism you face the sentencing options from *Swain*, so this is an important distinction

## *R v Parks*

* *Facts:* the night, accused drove to the home of his parents-in-law and attacked them with a knife while they were sleeping. Then drove to police station and turned himself in. He claimed he was sleepwalking, and therefore used defense of automatism. He has a history of sleeping troubles, a stressful life, and a family history of sleepwalking
* *Issues:* Can sleepwalking be called non-insane automatism?
* *Analysis:*Sleepwalking is temporary, not likely to reoccuer, not a product of mental disorder, therefore it is not a product of disease of the mind, it classifies as non-insane automatism
* *Ratio:* Sleepwalking is not a mental disorder

## *R v Stone*

* *Facts:* accused stabbed his wife because she was bothering him. He claimed he put him in a state of automatism
* *Issues:* how can accused proved words caused someone to enter a state of automatism?
* *Analysis:*
	+ First step:
	+ **The primary question should be “did the accused act involuntarily? Was it a result of a disease of the mind or an external cause”**
	+ Involuntary action which does not stem from a disease of the mind can give rise to a claim of non-insane automatism
	+ To determine whether to leave insane or non-insane automatism to the jury the court should consider:
		- the internal cause theory : did the cause of automatism comes from inside or outside? This is not always that clear
		- the continuing danger theory: is the person likely to reoffend? A principle of non-insane automatism is that person is unlikely to be dangerous, if they are likely to be dangerous this should be a consideration
			* the court should look at how likley that trigger is to reoccur
	+ The psychological blow has to be shocking to constitute a non MD automatism, judge can consider the triggering event, accused will have to provide evidence of a “shock”
		- Other evidence can be introduced such as witnesses, personal history, motive – claim of automatism will be reduced if there is a motive, or if the victim itself was the trigger
	+ Other policy factors – the TJ may identify other policy reasons
* *Ratio:* the **test for automatism is whether the person acted involuntarily**. In order to **constitute non-mental disorder automatism the trigger must have been external, the person must be unlikely to reoffend (trigger unlikely to occur again), and there must be no good policy reasons against it.** For a psychological blow to constitute a trigger it must be a severe shock, a merely stressfully situation does not constitute an external factor. To determine whether it was internal or external the court should ask whether a reasonable person in the circumstances may have gone into a state of automatism as a result

# Defenses: Necessity

## *R v Perka, Nelson, Hines and Johnson*

* *Facts:* D’s had a boat full of weed, planning to import it to Alaska; they had boat problems and were forced to dock on Vancouver Island. They were charged with possession with intent to traffic, argued necessity.
* *Issues:* is the defense of necessity applicable?
* *Analysis:* Necessity is an excuse for a criminal act, it should function if there was no other alternative, the situation must be so severe that it was demonstrably impossible to avoid the action
	+ *Hart* says that excuses of voluntariness/necessity are important because people should have a maximum opportunity to choose whether they break the law, they should not be punished because they were forced to break the law by necessity or involuntary act
	+ At the heart of this is the idea that it is wrong to punish someone who had not other reasonable/viable option but to break the law
	+ voluntariness is presumed unless the D places evidence to indicate that the act was not voluntary
* *Ratio:* the defense of necessity should be recognized as an excuse as opposed justification. Negligence or criminal activity does not disentitle the actor to use the excuse of necessity, however actions that indicate the wrongful deed was not truly involuntary do disentitle. The defense only works in the circumstances of imminent risk where the person had no other legal alternative

## *R v Latimer (Necessity Test)*

* *Facts:* D took the life of his daughter who suffered from severe cerebral palsy. He was found guilty of second degree murder
* *Issues:* should the defense of necessity apply here?
* *Ratio:* necessity of defense is narrow, there was no air of reality in that case
	+ Perka outlined 3 things that must be necessary for the defense:
		- 1. Imminent peril or danger
			* It must be on the verge of transpiring
				+ *Modified objective test*
		- 2. No reasonable legal alternative to the course of action he or she undertook
			* No reasonable legal alternative
			* If an alternative to breaking the law exists, the defense fails
				+ *Modified objective test*
		- 3. Proportionality between the harm inflicted and the harm avoided
			* This is not always easy to determine
				+ *Objective test*

# Defenses: Duress

Duress: the person or another person is under threat of death or bodily harm to which a person of reasonable fortitude would be likely to respond, no safe avenue of escape as a reasonable person in the circumstance, harm proportional to the harm threatened

## *Hibbert v The Queen*

* *Facts:* Hibbert charged with attempted murder and aggravated assault, He took Bailey to the victim’s apartment where Bailey shot and killed the victim. Hibbert said he did it because he feared bailey would kill him if he didn’t.
* *Issues:* Is this a good enough reason to excuse Hibbert from his criminal act? Does defense of duress apply; does it negate mens rea, or simply excuse him?
* *Analysis:*
	+ Duress doesn’t negate mens rea, it excuses mens rea
	+ Motive is different from intent: just because you did it to save your life, doesn’t necessarily mean you didn’t want to result
	+ The common law notion of duress is based on the idea that it is an excuse for the act
	+ The requirement for duress is the person reasonably believed they had no safe avenue of escape:
		- Duress can only be invoked if there is no legal way out
		- If the accused can escape with undue danger then the decision becomes a voluntary one, beyond the dictates of necessity
			* The action, although voluntary, must be *normatively involuntary*
	+ This is based on a modified objective test - an objective standard that takes into account the particular circumstances of the accused, including his or her ability to perceive the existence of alternative courses of action
		- * How did the accused perceive the facts? Was the perception reasonable?
				+ The lack of knowledge that an accused could have gathered shouldn’t be an excuse, but they shouldn’t be expected to know of escapes they are not capable of knowing
* *Ratio:* the standard for the defense of duress is whether the accused reasonably believed he/she had no safe alternative to doing the act

## *R v Ruzic*

* *Facts:* D was caught trafficking heroin with a fake passport. She claimed duress, she was threatened, intimidated and assaulted by a man in Belgrade who forced her to do it – he threatened to kill her mother if she didn’t. She said she believed the only way to protect her mother was to do it (cops corrupt, etc.)
* *Issues:* Does the requirement under s17 that the threat be from a person who is present at the time of the offence violate s 7 of the charter?
	+ Does the requirement under s17 that the threat not be to a third party violate s 7?
* *Analysis:* it is a principle of fundamental justice that morally involuntary acts not be punished
	+ The requirement that the threatener be present violates this, as it can still be an immediate threat and still compel someone to act
	+ section 17 may include threats to third parties, as long as they are made to the accused and that would not require them to be at the scene, even though it meets the immediacy requirement
	+ the requirement that the threat be imminent is upheld, but it can be to third parties and the person does not have to be present when the crime is commited
		- statutory defence: requires immediacy but not presence
		- CL defence: requires inescapability
	+ Requirements as per Hibbert: *real threat objectively threatening to a person in that circumstance, no legal alternative, proportionality of harm avoided to harm* *caused*
		- Reasonable person in the circumstances: Consider particular circumstances of the accused and his ability to perceive a reasonable alternative, awareness of his background and personal characteristics.
	+ **immediacy is not a requirement of the CL duress defense, but there must be a close temporal link between the threat of harm and the commission of the offence**
		- The statutory defense uses immediacy instead of safe ave of escape, this focus on instantaneous connection misses the point, which is that the threat must overbear someone’s will (reasonable in the circumstances) to make their acts involuntary
* *Ratio:*
1. In the common law defense the accused must make a reasonable effort to combat the threat, the severity of the criminal conduct must be proportional to the threat, and the accused must have no reasonable alternative of escape.
2. It is a principle of fundamental justice that morally involuntary acts not be punished
3. The immediacy requirement of s17 is unconstitutional, the threatener does not have to be present, but there must be a temporal connection between the act and the threat
4. Duress covers threats to third party
5. CL defense of duress is available to principal offenders because of the constitutional issue

# Participatory Limits: Attempts

## *R v Ancio*

* *Facts:* Ancio went to his ex-wife’s house with a gun, shot into the air, beat up ex-husband. Charged with attempted murder, under s213(d), which state that anyone who causes death by breaking and entering/forcible confinement with a gun is liable for culpable homicide if death is likely to be caused as a result
* *Issues:* D says he shot by accident, was this an attempted murder? Did his attempt to break and enter/forcibly confine constitute an attempt to murder if the murder was a consequence of the offence?
* *Analysis:* Criminal attempt is itself an offence separate and distinct from the crime alleged to be attempted
	+ - Crown must establish mens rea: intent to commit the offence in question
			* And actus reus: some step towards the commission of the offence that goes beyond mere acts of preparation
			* Criminal intention is insufficient to establish criminal attempt – there must also be AR. However MR is the critical piece in attempts
				+ The mischief is in the crime intended, b/c it was not completed, so criminality lies more in the intention not that the act
				+ Because nothing has to been done other than the attempt, the criminal element may lie in the intent itself- the intention to commit the act, even though it wasn’t completed (p 14-5)
				+ Therefore it is the act *intended* that is the crime, not any possible consequence
* *Ratio:* in order to be found guilty of an attempt, a person has to have intended to commit that act which they charged with attempting. It is not enough to intend to commit another act that cause them to be liable for a specific consequence if it does in fact result in a consequence. They have to have intended to commit the act which they are charged with attempting

## *R v Sorrell and Bondett*

* *Facts:* two men went up to chicken place after it closed, Lady inside saw 2 men in balaclavas with gun, but they left because it was closed. She called police, they followed them, the police saw them toss their balaclavas, and found a revolver on one of them. They were charged with attempted robbery, which holds that “To commit robbery the accused must have intended to do that which would in law amount to robbery (MR), and have taken steps beyond mere preparation (AR). MR element is a question of fact, AR is a question of law”
* *Issues:* Did they have the adequate mens rea for an attempt, and did they complete the actus reus of the attempt?
* *Analysis:*
	+ Attempts are difficult to prove, as the act is not completed so it is difficult to determine what the mens rea actually is
	+ Where the acts clearly indicate an attempt, the mens rea can be inferred from that
	+ Where the acts do not clearly indicate an attempt, the mens rea will need to be proven
* *Ratio:* Actus reus may be inferred from intention when the facts are unclear. If there is clear intention this can make it more likely that the actus reus went beyond mere preparation. Where there is no extrinsic evidence of the intent, if the acts are not equivocal, they may be insufficient to find intention. To infer mens rea from actus reus, the actus reus has to definitely, unequivocally constitute an offence

# Participatory Limits: Aiding and Abetting

## *R v Dunlop and Sylvester*

* *Facts:* Appellants were convicted of aiding and abetting a rape. She stated it was the two defendants who raped her, they denied it. TJ told jury if they were convinced they raped her BRD then they must convict. Or charged them with 21(1), aiding and abetting. Jury convicted them on this charge, and 21(2), common intention, which is appealed.
* *Issues:* Is mere presence enough?
* *Analysis:* mere presence at the scene of a crime is not sufficient to ground culpability
	+ something more is needed, encouragement of the principal offender, an act which facilitates the commission of the offence such as keeping watch, etc.
	+ **non-accidental presence is not conclusive of aiding and abetting** – the person must participate in some way, if the person takes no part and does not act in concert with those who commit the act, he will not be liable because he did not endeavor to prevent the act
	+ however if a person was voluntarily and purposely present witnessing the commission of a crime and offered no opposition to it, that might afford evidence that he willfully encouraged and therefore aided and abetted.
		- Mere presence is not conclusive of aiding and abetting, but it can be indicative in certain circumstances
	+ Preston v R: “to find someone guilty of aiding and abetting, it is only necessary to show that he understood what was taking place and by some act on his part encouraged or assisted in the attainment thereof”,
* *Ratio:* mere presence is not enough to find someone guilty of aiding and abetting, even if their presence is intentional. However if there is evidence that their presence is intentional or encourages the act somehow, then it can be found to be aiding and abetting
	+ To be found guilty of aiding and abetting, there must be some sort of participation in the crime, presence can be pariticipation in certain circumstances, but generally passive acquiescence does not constitute a crime

## *R v Thatcher*

* *Facts:* Thatcher was arrested and tried with killing his ex-wife. Crown held he had murdered her or in the alternative he had hired someone else to murder her and therefore aided/abetted the crime
* *Issues* Did the jury all have to find he committed the same act, or merely they all had to agree he was guilty of at least one of the acts*:*
* *Ratio:* if there is evidence before a jury that an accused either committed a crime personally, or aided and abetted another to commit the offence, provided the jury is satisfied BRD of one or the other, it is a matter of indifference” – basically, the jury can convict if the jury members are all satisfied BRD that he was either the principle to the offence, or aided and abetted the offence

## *R v Logan*

* *Facts:* accused convicted as parties to an attempted murder by an accomplice that occurred during the course of several robberies
* *Issues:* they argued to be convicted as party to an attempted murder, s. 7 holds that there must be proof or subjective mens rea
* *Analysis:* SCC agreed, held that where a minimum level of mens rea is required for the commission of the substantive offence by a principal offender, the same minimum is required before someone can be convicted as being an accomplice to the offence
* *Ratio:* the constitutionally minimal level of mens rea for conviction for attempted murder was subjective foresight of death – basically they had to subjectively realize their actions could aid and abet a murder. In order to be found guilty of aiding and abetting a crime, there must be the same level of mens rea that is required for being found guilty of being a principal to a crime.

# CRIMINAL LAW FLOW CHART:

1. **Actus Reus:** Has the accused completed the prohibited act?

* What is the prohibited conduct? – what acts or omissions must the Crown prove for this offence?
* What is the prohibted circumstance?
	+ Not all crimes have circumstances, but in certain offences the act is not enough, there must be a circumstance as well
		- Eg sexual assault, the conduct is sexual acts, the circumstances is without consent.
		- Ask, *is the conduct enough to complete the offence?* If not, there is a circumstance/consequence
* What is the prohibited consequence?
	+ what is the outcome the government is trying to prevent from occuring?

**Actus Reus of the Individual:**

* Was the act done voluntarily?
	+ **Voluntariness**: in general there can be no guilt unless the act was commited voluntarily, if it happened involuntarily the actus reus is not completed (*R v Lucki*)
		- *R v Wolfe:* a reflex action is considered involuntary

**Aiding and Abbetting:**

* Same culpability as being a principal
* This requires some additional action beyond mere presence, shouting encouragement, etc. (*Dunlop*)
	+ in R v Clarkson, *“It must be proved that the accused intended to give encouragement; that he wilfully encouraged.”* (14-40). (*Dunlop)*
* It doesn’t matter if the jury finds you guilty of aiding and abetting or being a principal, and they don’t have to agree, as long they all agree you were involved in some way, you are guilty (*Thatcher*)
	+ 6 v 6 decision on whether or not Thatcher personally killed his wife or had someone else do it.
* The mens rea requirement is to **intentionally** aid and abet with **knowledge** that the crime is happening

**Common Intention:**

* Mens rea is the same as what would be required to be found guilty as principal (*Logan*)

**Attempts:**

* the actus reus is attempting the act, but the criminality lies in the intention, as it is the criminal attempt not the completed actus reus that is the issue
* to be guilty of an attempt, the person must have done something beyond mere preparation
* *Ancio:* to be guilty of an attempt, you have to have attempted to do the act that is charged, it it not enough for it to be a possible result of the attempted act
* *Sorrel:* because it is so complicated to prove an attempt, the mens rea can be inferred if the actus reus is unequivocal. If the mens rea is unequivocal, this will provide more support that the actus reus is an attempt. The division is not so clear, but the more evidence you have of one, the less you have of another

2. **Causation:** If there is a consequence, did the act caused the consequence?

* **R v Moquin: To constitute causation the act must have been a significant cause of the consequence.**
	+ *R v Moquin* held that the *Smithers* causation test applies to other criminal charges, not just murder (expanded the application of *Smithers*)
	+ *R v Nette* defined the *Smithers* standard as whether something is a significant cause
* Key considerations:
	+ *R v Smith:* to have caused the consequence, it must flow from that persons act. Causation chain can be broken by subsequent action but this subsequent action has to make the initial action part of the history, such that is was not a major reason for the required consequence
		- citing Lord Wright in *Lord v. Pacific Steam Navigation Co. Ltd.* where he had said that in order to break the chain of causation “*it must be shown that there is something which I will call ultroneous, something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or extraneous or extrinsic.”*
	+ *R v Blaue:* Causation chain is broken can be broken by poor care or poor decision making but it is not broken by people making decisions based on their beliefs – the assailant must take victim as he/she finds them (Jehovahs witness case🡪victim refused life-saving medical treatment after being stabbed by accused, later died)
	+ *R v JSR:* If you participate in a dangerous activity that endangers lives then you are responsible for the death of those people, even if it was not you specifically who did the fatal act. (speed racing, gun fights)

3. **Mens Rea:**Did the accused possess the requisite mens rea? (note: this would be a good place to establish if crime is specific or general intent offence)

* Is the mens rea requirement **objective** or **subjective?**
* **Subjective**: the accused had the actual intention, knowledge, or recklessness to commit an act, in a particular circumstance, or bring about a consequence
 -Test for Recklessness from *R v Sansregret SCC 1985:*
 - knowledge of a danger or risk coupled with persistence in a course of conduct that creates the risk that the prohibited result will occur.
* **Objective:** an ordinary person would have or should have known that the act would cause the consequence, the standard is whether the accused departed from what a reasonable person would be expected in the circumstances
	+ This does not require the croqn to prove a mens rea BRD. The MR requirement is what a reasonable person should have done, foreseen, or known rather on the actual state of mind of the accused
* Where the statute is silent, start with *the presumption that true crimes require the Crown to prove a subjective mens rea* beyond a reasonable doubt in relation to at least some element of the *actus reus*

**Intent of the Individual:**

* *R v Beaver:* mens rea is required unless otherwise stated, it is not enough to do the act, you have to know that you are doing the act and intend to do it
* ***R v Buzzanga****:* willfully means either intending the consequence or seeing the consequence as being substantially likely to occur. To have intent you have to have intended to result to occur or you have to realize the result was substantially likely to occur
	+ *R v Theroux:*  if you do an act knowing the consequences can result, this is intention
		- *Buzzanga:* “a person who foresees that a consequence is certain or substantially certain to result from an act which he does in order to achieve some other purpose, intends that consequence”
* *R v Briscoe:* if you shut your eyes to the information in order to intentionally avoid knowing, **this is a substitute for knowledge requirement of mens rea**
	+ As Sopinka J put it in *R v Jorgensen* a “finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge.”
* *R v Lewis:* **motive**is different from **intent**. Motive does not negate or prove intent, but the jury can be told to consider it on certain circumstances. **(Note: motive relevant to automatism test).**
* *Fagan v Commissioner of Metropolitan Police:* MR can be superimposed on a continuing act, but it cannot be imposed on a completed act.

Issues to Consider:
* Absolute Liability: Does it imprison the morally innocent?
	+ *Motor Vehicle Reference:* the combination of imprisonment and absolute liability violates the charter, as it allows the morally innocent to be imprisoned which violates the principles of fundamental justice
	+ *R v Martineau:* special stigma crimes require subjective forseeability of the consequence🡪A person cannot be convicted of murder with anything less than subjective foresight of death.
	+ *R v Creighton:* the mens rea requirement for manslaughter is objective forseeability of bodily harm, this is different from murder as it is not a special stigma crime, so it is okay for it to be an **objective** standard
* Required foreseeability of harm:
	+ If it is not a special stigma crime, the consequence has to be an **objectively forseeable result** of an**intentional crime** (*DeSousa, Chreighton*)

**Transferred Intent:**

* Transferred intent applies where someone intends a specific kind of harm to one person, but accidentally does it to another. It does not apply where the harm is different and it does not apply in inchoate (attempted) crimes, attempted crimes do not have a consequence, it is only the attempt that completes the actus reus, so you cant transfer the intent to another person, as it was the attempt that must be intended (*R v Gordon*)

**Objective Intent:**

* What would a reasonable person have expected to happen in the circumstances? If a reasonable person would not have done the act then it is negligence, if a reasonable person would have expected the consequence to occur then that is objective foreseeability of the consequence
	+ *R v Hundal:* Was there a marked departure from what would be expected from a reasonable person in the circumstances. Note that this considers the **circumstances** but not the personal characteristics of the accused
	+ *R v Tutton:* If the defence is mistaken belief it must be reasonably held

**Strict Liability Offence:**

* *Sault Ste Marie:* If it is a public welfare offence, then the crown merely has to prove the actus reus, and the accused can rebut it with evidence of due diligence or honest and reasonable mistake of fact
* It is a fundamental principal of Canadian criminal law that we don’t punish the morally innocent.

**Special Mens Rea Requirements:**

* Public welfare offences/regulatory offences*:* strict liability (*Sault Ste Marie*)
* Criminal Negligence:
	+ objective test: “marked and significant departure from the standard which could be expected of a reasonably prudent person in the circumstances will justify a conviction of criminal negligence”) (*Tutton*)
	+ “negligence precludes though directed action. In other words, its existence precludes the element of positive intent to achieve a given result. This leads to the conclusion that what is sought to be restrained by punishment under s. 202 of the *Code* is conduct, and its results” (*Tutton*, p 7-17)
	+ “in criminal negligence, the act which exhibits the requisite degree of negligence is punished” - mens rea is not necessary (*Tutton* 7-18)
		- honest belief is not a defence, the belief must be reasonably held, this can consider the background of the case
	+ “the test is that of reasonableness, and conduct which reveals a marked departure from the standard which could be expected of a reasonably prudent person in the circumstnaces will justify a conviction of criminal negligence”
		- don’t be confused by the work *reckless*, it does not connote subjective foresight, it is an objective standard. BUT it can consider the circumstances of the *offence,* however NOT the accused
* Dangerous Driving: modified objective standard
	+ A person can be convicted if the court is satisfied BRD that on an objective standard the accused was driving in a manner dangerous to the public having regard for the circumstances including the nature, condition and use of such place and the amount of traffic, etc. the court must be satisfied that there was a marked departure from the standard of care a reasonable person would observe (*Hundall*)
* Murder and special stigma crimes: there must be at least subjective knowledge that murder can occur beyond reasonable doubt to be found guilty of murder (*Martineau*)
	+ First degree murder requires specific intention to cause death, second degree can be culpable homicde
* Manslaughter: objective foresight of bodily harm (*Chreighton*)

If yes, the Crown has proven all the elements of the offence. It is now for the accused to raise **defences**

4. **Defences:** Does the accused have any defences and is there enough evidence to give these defences an *air of reality (unless otherwise stated, see Mental Disorder)?*

* **Mistake**
	+ An action will lead to the presumption that a person meant to do it, it is up to the accused to rebut that presumption
	+ the test for mistake of fact is that the mistake must be honestly held, but need not be reasonable. The jury should be instructed that reasonableness can only go to credibility of A’s assertion in an honest belief (*Pappajohn*)
		- “if an honest lack of knowledge is shown, then the subjective element of the offence is not proved” – *Pappajohn*
	+ in sexual assault, the defence of mistake is only available if the accused believed that the complainant **communicated her consent** to sexual touching, **not** if he merely believed she consented in her mind (*Ewanchuk*)
		- section 273.2 holds that the defence is not available if the person “did not take reasonable steps in the circumstances known to the accused at the time, to ascertain that the complainant was consenting”
* **Intoxication**
	+ Drunkenness is a defence to specific intent crimes (*Bernard*)
	+ Drunkenness is a defence to general intent crimes if the drunkenness is so extreme that a person cannot form even the minimum intent required for general intent offences (*Daviault*)
		- EXCEPT for bodily harm offences as per Section 33.1 of the Criminal Code
	+ ***Was the accused drunk enough to be incapable of forming either specific or general intent?***
		- -“The law recognizes three degrees of intoxication. The first, that of minimal or mild intoxication, does not provide a defence and will not absolve an accused of any criminal liability. This degree of intoxication exists where there is alcohol induced relaxation of both inhibitions and socially acceptable behaviour, but it has not been accepted as a factor or excuse in determining whether the accused possessed the requisite mens rea.” (*Drader* 10-28)
		- -“At the second degree of intoxication, the accused’s ability to foresee the consequences of his or her acts is impaired. It is at this stage that the difference between a crime of general intent and a crime of specific intent becomes relevant, as an accused can be acquitted of an offence of specific intent if, due to intoxication, there is a reasonable doubt that he or she lacked the actual intent to commit the offence. T**his defence is not available for a crime of general intent.”** (*Drader* 10-29)
		- -“The third degree of intoxication, in which the accused must essentially be found to be in state akin to automatism, absolves an accused of all common law criminal liability. Such a defence is rare **and requires expert evidence**.” (*Drader* 10-28)
* **NOTE: Section 33.1 does not apply to specific intent offences, even if it is a crime against the person (ie murder), it is a response to Daviault and general intent offences.**

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* **NOTE:** As per *R v Penno,* you obviously can’t use intoxication as a defence where it is an element of the offence, like drunk driving. As per *R v Lefebvre* involuntary intoxication will offer a complete defence even when intoxication is part of the crime.
* **Mental Disorder**
	+ *R v Chaulk:* Is the accused
		- 1. Incapable of realising the act is legally wrong and capable of realizing it would be condemned by society,
		- 2. Incapable of realising an act is morally wrong, OR
		- 3. Incapable of realising that the act is wrong in the circumstances – if a person believes that an otherwise wrong act is morally right in the circumstances due to disease of the mind (ie they believe they have to kill someone for a higher purpose or something)
			* if so the defense of mental disorder applies
		- **Remember:
		 1. “First the incapacity to make moral judgements must be causally linked to a disease of the mind; if the presence of a serious mental disorder is not established, criminal responsibility cannot be avoided.” (11-17)
		 2. “Secondly, as was pointed out by Dickson J in Schwartz ‘moral wrong is not to be judged by the personal standards of the offender but by his awareness that society regards the act as wrong.’ The accused will not benefit from substituting his own moral code for that of society.” (11-17)**
	+ In mental disorder**, there is a presumption of sanity s. 16 (4),** that means that even if someone is insane they can be convicted if they haven’t raised their defence on a BOP. This was justified based on the court not wanting to put an impossible burden on the Crown
* **Automatism**
	+ Automatism is a defence when the person enters a state of impaired consciousness in which A has no voluntary control over his or her actions. (*Stone*)
	+ The defence can be insane or non-insane automatism🡪**Insane automatism is subsumed by the Section 16 Mental Disorder Defence.**
	+ Questions:
		- 1. Is there a proper foundation for the defence? (did the person act involuntarily) (*Stone*)
			* The law presumes that A acted voluntarily. Burden on A to raise evidence sufficient to permit a properly instructed jury to condlude on BOP that s/he was automatistic—requires expert pyschiatric evidecne and additional evidence such as history of dissociation, corroborating evidence, and absence of motive**.** Defence will only be put to jury if judge concludes that sufficient evidence exists.
		- 2. If foundation established, is the automatism, the result of mental disorder or external cause? (*Stone*)
			* To constitute non-insane automatism is must have been an external cause , starting presumption that it did originate from a mental disorder.
				+ If this is a psychological blow, the “ordinary stresses and disappointments of life which are the common lot of mankind do not constitute an external cause constituting an explanation for a malfunctioning of the mind which takes it out of the category for a “disease of the mind”. (*Rabbey*)
				+ To determine if it was an internal or external cause, the court should ask whether a reasonable person in the circumstances might have gone into a state of automatism as a result (*Stone*)
				+ They can also consider if it is external, is the trigger likely to occur again? If so the person is likely a danger to society (*Stone*), non-insane automatism should not apply (as it leads to acquittal and this puts society at a danger)
		- 3. Jury determines questions of facts depending on which defence is left to jury. If non-insane automatism, question whether A acted involuntarily on a balance of probabilities. If a disease of the mind, jury considers defence according to s. 16 framework—did A suffer from a disease of the mind which rendered him or her incapable of appreciating the nature and quality of the act. (*Stone*)
* **Necessity**
	+ *Elements From Perka*:
	 1. A is in pressing emergency or great peril
	 2. Compliance with the law is demonstrably impossible.
	 3. A’s response is proportionate to the threatened harm.
	+ *Mens Rea From Latimer:* Would a reasonable person in the circumstances sense:
		- 1. Subjective (A’s honest belief) and modified objective (taking A’s situation and characteristics into account, relying on *Hibbert*)
		- 2. Subjective and modified objective
		- 3. Purely objective🡪NO MODIFICATION🡪Although SCC did not conclusively rule on this, it suggested that homicide might never be proportionate.
* **Duress🡪Go to Page 13-53 For Handout Chart on Common Law vs Statutory Defence**
	+ Does the statutory defence of duress (Section 17) apply?
		- If so, mention that the statutory defence applies, however point out that *Ruzic* found part of the statutory defence unconsitutional as it allows normatively involuntary acts to be punished🡪”immediate” and “who is present while offence is committed” contravene Charter and are read out🡪so it is possible that the common law defence will apply
		- If it is one of the listed offences under the statute there is no defence, but still go through common law defence using the constitutional argument
		- If the person is not the principle offender go straight to common law defence (*Ruzic*)
	+ Under the common law defence:
		- *Hibbert:* the standard for the defense of duress is whether the accused reasonably believed he/she had no safe alternative to doing the act
			* The lack of knowledge that an accused could have gathered shouldn’t be an excuse, but they shouldn’t be expected to know of escapes they are not capable of knowing
		- “In order to cover, for example, threats to a third person, the immediacy test is interpreted [AT COMMON LAW] as a requirement of a close connection in time, between the threat and its execution in such a manner that the accused loses the ability to act freely. A threat that would not meet those conditions, because, for example, it is too far removed in time, would cast doubt on the seriousness of the threat and, more particularly, on claims of an absence of a safe avenue of escape . . . . The operative test in the English and Australian cases is whether the threat was effective to overbear the accused’s will at the moment he committed the crime.” (*Ruzic* 13-45)

defences: we dont punish morally innocent, or people who commit crimes involuntarily, as a result of incapacity. But we want to keep society safe

5. **Constitutional Issues**: to consider…

* Reverse onus provisions: does it allow conviction in the presence of reasonable doubt?
	+ *R v Oakes:* If there is a provision that allows the crown to infer one fact from another, that allows for conviction even in the presence of reasonable doubt. This violates the section 11(d) right to be presumed innocent, and can only be justified by section 1
	+ *R v Whyte/ R v Downey:* this can be justified if proving the implied fact is extremely difficult to prove and there is an important social purpose in punishing the offence
* Absolute Liability: Does it imprison the morally innocent?
	+ *Motor Vehicle Reference:* the combination of imprisonment and absolute liability violates the charter, as it allows the morally innocent to be imprisoned which violates the principles of fundamental justice
	+ *R v Martineau:* special stigma crimes require subjective forseeability of the consequence🡪A person cannot be convicted of murder with anything less than subjective foresight of death.
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* Required foreseeability of harm:
	+ If it is not a special stigma crime, the consequence has to be an **objectively forseeable result** of an**intentional crime** (*DeSousa, Chreighton*)
* Defences
	+ Does the accused have to raise the defence on a BOP?
	+ In mental disorder, there is a presumption of sanity, that means that even if someone is insane they can be convicted if they haven’t raised their defence on a BOP. This was justified based on the court not wanting to put an impossible burden on the Crown
	+ *Duress:* does the defence allow someone to be punished despite being morally innocent or acting in a *normatively involuntary* manner?
* If the Crown proves all elements of the offence, and there is no legitimate defence, and no constitutional challenges, the person is guilty!
* If one of the elements of the offence is not proven, or if there is a good defence, or if you can argue that there is a constitutional reason the person should be aquitted, acquit! Or convicted of a lesser included offence🡪ie. Intoxication will lower 1st degree murder to manslaughter.