Indictable Offences:
-everything under s.469
-everything under s.553, but these must be tried in provincial court with judge alone (most are old)
-have preliminary inquiries in provincial court determining whether there is enough evidence to go to court
-accused has the election of going to provincial court with judge alone, to superior court with judge alone, or to superior court with judge and jury.
-if it’s s.469, it must go to superior court with judge and jury unless both sides agree to judge alone

Hybrid Offences
-prosecuted as either summary conviction or indictment.
-Crown decides based on seriousness of the crime/background and accused’s prior record

Summary Convictions
-take place in provincial court, no jury
-max penalty of 6 months in jail and $5K fine unless it says otherwise in the statute

Evidence
-must be relevant (assists in determining whether a factor is more or less likely)
-must be material (evidence about something that is still in question or at issue in the trial)
-must be admissible (whether it can be considered at law and doesn’t violate a principle of law)
-cannot be prejudicial

Presumption of Innocence and the charge to the jury
Lifchus requirements of the charge
-reasonable doubt shouldn’t be likened to decisions in everyday life
-keep it seprate from moral certainty – case is based on reason and evidence, not empty or concern
-not an ordinary concept
-don’t use synonyms
-say it doesn’t have to be absolute certainty
-shouldn’t be stated as a probability statement
-whole of the charge is assessed, technical flaw is not enough
-Starr: it falls much closer to absolute certainty than to balance of probability

Oakes test (basic fact presumptions):
Pressing and Substantial Objective
Rational Connection (between the means/infringement/presumption and the objective, the presumed and prven fact)
Minimal Impairment
Proportionality (between the infringement and the public good served)
-legal presumptions all violate s.11(d) but can be saved by s.1 depending on the case. Violate the presumption of innocence because they require the accused to present evidence/testify, reversal of onus means disproving guilt, and it means that the accused can be convicted despite a reasonable doubt. (Whyte)
-Downey; parliament not required to choose absolutely least intrusive alternative like Oakes said, test is rather whether they could reasonably have chosen an alternative to achieve objective as effectively.

Actus Reus: conduct, circumstances, consequences, all proven beyond a reasonable doubt

Mens Rea:
-default for true crimes is subjective fault/recklessness, unless otherwise stated
Intent: acted deliberately, wilfully, intentionally or for consequences, either desired to bring them about or was substantiall certain that they would
Knowledge: actual awareness of circumstances
-Recklessness – aware of the possible existence of circumstances or possibility of consequences, but take the risk anyway.
-Motive is irrelevant (Lewis)
-the greater the likelihood of the relevant consequences ensuing from the accused’s act, the easier it is to draw the inference that they intended them (Buzzanga)
-not a reasonable person, but rather determine what the particular individual intended, considering circumstances, evidence, and the accused’s background (Buzzanga)
-not a morality question. An explanantion that it wasn’t going to happen, or that it wasn’t wrong according tot he accused doesn’t vitiate the mens rea. Inquiry has nothing to do with the accused’s system of values (Theroux)
-subjective awareness of consequences can be inferred from the act itself, barring some explanation casing doubt on such inference. This inference does not detract from subjectivity of the test (Theroux)

Volition
-part of the actus reus
-the conduct or omission must be voluntary, otherwise it’s not an action of the accused.
-Luski – road conditions made his actions involuntary
-Wolfe – reflex – whether something is voluntary is individualized and not reasonable person

Omissions
-failing to do something isn’t an actus reus barring the presence of a legal duty (Moore)

Continuing Action (Fagan) Omissions, Actus Reus Mens Rea coincide
-failing to do something cannot be assault.
-actus reus and mens rea must coincide. Assault is only assault the moment mens rea develops
-Continuing act – wasn’t intentional at the beginning, but mens rea developed as the act continued, which made it an offence as the actus reus and mens rea coincided.

Causation (only for consequence crimes, must prove consequence is because of accused’s conduct)
-Smith (intervening causes) – if at time of death, original wound is still an operating and substantial cause, death will be caused by that wound even if other causes are operating. Only if the original wound is merely the setting in which another cause operates, or where second cause is so overwhelming aso to make original wound part of its history does intervening cause sever liability.
-Blaue: take victim as you find her, including religious beliefs. Not up to assailant to determine appropriateness of victim’s behaviour. If you do something and someone decides not to do something that may prevent death, you’re still responsible.

Smithers (standard test for causation): were the actions of the accused a contributing cause of death outside the de minimis range (beyond trivial)?
Majority in Nette tried to change “de minimis” to “significant causal connection” but this isn’t the same

Harbottle: different test for first degree murder: the accused’s action is an essential, substantial, and integral cause of death.
-Harbottle test is solely for first degree murder (Nette), second degree is Smithers.

Factual causation: but-for test, but for the actions of the accused, the consequence wouldn’t have occurred. Legal causation is about responsibility (intervening causes)

Wilful Blindness
-substitutes for knowledge
-deliberately made himself ignorant of facts so as not to have knowledge imputed to him. Substitutes for subjective foresight of death, substitutes for actual knowledge whenever required by mens rea (Briscoe)

Transferred Intent
Gordon: accused intends for one type of harm to befall one victim, but by miscalculation or accident, it befalls another. Transferred Intent does not apply to attempts/inchoate crimes.

Strict liability (created in Sault Ste marie)
-don’t have to proven mens rea
-defence: show that you were not negligent – burden shifts to the accused. Accused shows that he was careful and/or made a mistake that a reasonable person would made, balance of probabilities. Defence of due diligence. (Chapin)
-Proudman: an honest and REASONABLE belief in a state of facts which, if they existed, make act innocent affords an excuse.
-SCC upheld strict liability in Wholesale Travel
-presumption is strict liability for provincial offences
-typically a regulatory scheme and summary conviction (Chapin), public welfare offence.

Criminal Negligence/crimes with an objective standard of fault (manslaughter, dangerous driving)
-s.229
-objective standard – what a person ought to hae known, deviating from a standard of behaviour with conduct that shows wanton disregard for lives and safety of others.
-must be a marked and substantial departure from the standard of the reasonable person, not just any negligence (Hundal)
-punishes people for conduct which causes bad results, even if person is not aware of the risks involved for their conduct (Tutton). .
-Tutton: opposite of thought direct action, punishing conduct and its results, not a state of mind, rather, punishing consequences of mindless action
-must be some consideration of the context of the events in establishing the objective standard, look at context and individual circumstances but NOT personal characteristics (Hundall)
-identifiers for objective standard: licensing requirement, reflexive action, wording of the section that emphasizes activity over thought, and societal problem/deterrence (Hundall)
-where there is imprisonment, or some deprivation of life and liberty, there must be some level of fault required (Motor Vehicle Reference)

Special Stigma Crimes
-regardless of removal of mens rea in constructed murder (murder in commission of another offence in s.230), there MUST still be subjective foresight of death. Subjective foresight of consequence (Martineau)

Underlying Offence Exception to Mens Rea
-Desousa: the act is something inherently dangerous with objective foresight of the consequences. Accused is in an inherently dangerous situation, is violating the law, and bad things happen; not necessary for the Crown to prove the individual had subjective foreseeability/knowledge of those consequences. The blameworthiness is inherent in the unlawful act, the accused’s dangerous position.
-Creighton: unlawful act manslaughter – fault requirement for causing death is objective, if underlying unlawful act resulted in death, person does not need to have subjectively intended or foreseen death. Crown only must prove that reasonable person ought to have foreseen it.
No personal characteristics are taken into account in establishing objective standard. (Creighton)
-if underlying unlawful act is proven on subjective mens rea, the fault requirement for the ensuing consequence is objective.

Defence of Mistake
-defences are only put to the jury where there’s an air of reality to them based on the evidence (Pappajohn)
-in cases where subjective fault is required, an honest belief is a valid defence. It can be stupid and unreasonable, though of course, the more unreasonable it is, the less likely a jury will believe it. (Beaver)
An honest belief can negate subjective mens rea.
-must go to an essential and relevant element of the offence.
-for true crimes, must create reasonable doubt in existence of the proper mens rea.
-for criminal negligence, or crimes with an objective standard, it must be an honest AND reasonable belief (Tutton)

Consent
-actus reus = was there consent, mens rea = was their knowledge of lack of consent.
-while sexual assault is a true crime, code is amended after Pappajohn to say that a mistaken belief as to consent must be reasonable.
-actus reus of proving there is no consent is assessed entirely on the basis of what the complainant thought (Ewanchuk)
-no doctrine of implied consent (Ewanchuk)
-Consent is negated where obtained through fear, application of force, fear of force to another person, fraud, or exercise of authority (Ewanchuk)
-defence of honest belief in consent is still there, but not provided when factors above are present.
-defence of mistaken belief is not available where the words of consent are expressed by someone else on complainant’s behalf, complainant is incapable of consenting, accused induces consent through abusing position of authority, or where complainant expresses through conduct a lack of agreement, or expresses through words or conduct an unwillingness to continue (Ewanchuk)
-belief is not a defence if the belief arose from accused’s self-induced intoxication or recklessness or wilful blindness. Accused must take reasonable steps to ascertain consent (Ewanchuk)

Defence of Intoxication
-intoxication that is not self-induced is an issue of volition.
-just being a little drunk, or getting drunk for the purpose of gathering courage/ability to commit the offence voids the defence.
-have to be drunk enough so cannot form specific intent required
-intoxication can mitigate specific intent offence – raises a reasonable doubt as to whether accused had the capacity to ahve the specific intent required. Must be severe. (Bernard)
-becoming drunk, self-intoxicated, is not sufficient to satisfy culpability for essential element of general intent offences (Daviault overrules Bernard)
-for general intent offences: up to the accused to convince on a balance of probabilities that he had no mens rea due to intoxication, automatism.
-ss.33(1) says that it is not a defence to say, by reason of self-induced intoxication, that you lacked general intent or voluntariness required to commit the offence where the accused departed markedly from the standard of care. S.33(1) is limited to crimes that include element of assault or interference or threat of interence against the person.
-Daviault defence is still available for all other offences – it is Wilson’s view in Bernard that person is so drunk that they’re verging on insanity or automatism so as to negate the minimal mens rea in general intent offences.

Not Guilty by Reason of Mental Disorder
-Crown cannot raise evidence of insanity or defence of mental disorder on its own unless accused puts mental state at issue (Swain)
-no person is criminally responsible for an act committed or omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and the quality of teh act or omission or of knowing that it was wrong (Chaulk)
-First establish that there was a disease of the mind, then establish that person was incapable of appreciating nature or quality of act or omission
-not self-induced or transitory state (Cooper)
-can be actus reus (involuntary) or mens rea (lack necessary knowledge/intent)
-skewed frame of reference, altered perception of right/wrong, intentionality (Chaulk)
-accused must disprove sanity on a balance of probabilities. This violates s.11(d) but is justified under s.1
-makes “wrong” moral: a person can be aware that is against the law, but by reason of disease of mind, is incapable of knowing that it is morally wrong in the circumstances according to moral standards of society. Knowing that something is illegal doesn’t bar this defence (Chaulk)

Automatism
-mental disease is ongoing, this is one-time thing – results in acquittal, unlike NGMD
-mental disease = internal sources (psychological and emotional make-up), automatism = external sources (blow to the head or “psychological blows”) (Rabey)
-psychological blow only works if a normal person would be affected in the same way. (Rabey)
-ordinary stresses and disappointments of life aren’t good enough and lead to disease of mind (Rabey)
-two part test for establishing non-insane automatism (Parks and Stone)
1) Assess whether there is a proper evidentiary foundation for the defence to give the claim an air of reality (must be an assertion of involuntariness – meaning accused will usually have to testify, psychiatric evidence is necessary but insufficient by itself, evidence of shock or trigger, corroborating evidence such as a documented medical history of autotism-like instsances, corroborating evidence by a bystander revealing strange behaviour, the act of violence must be random (should be no motive to heart the individual), if person is both trigger and victim it’s suspicious) – Stone makes it very hard to get this defence
2) Determine whether condition is mental disorder or non-insane automatism
-burden is on accused to prove all automatism on balance of prob

Necessity (Perka)
-recognize that can’t expect strict obedience of the law in emergency situations that compel human instincts of self-preservation or altruism.
-moral involuntariness: no real choice about what to do and choice, b ecause of circumstances, must be to commit the crime.
-choice of avoiding a greater harm or pursuit of greater good.
-must be significant pressure
-expectation of appropriate resistance of teh pressure, no defence where individual didn’t try to figure out something else
-perceived legal alternatives are a bar to this defence
-person being involved in a crime is not a bar
-must be no way out – imminent risk taken to avoid direct imminent peril
-Proportionality – the harm caused must be less than the harm avoided
-the clear and imminent danger that was avoided must be a change, for instance, more pain doesn’t count (Latimer), must be a change in circumstances
-Proportionality must be an objective assessment, not just that you think things would be better. (Latimer)

Duress (statutory)
-principal offenders go to statutory defence of s.17, parties go to common law defence.
-relates to motive, not mens rea (Hibert)
-s.17 requirements: compulsion by threats of immediate death or bodily harm (immediacy stricken down by Ruzic), threatener is present at the offence (stricken by Ruzic), has to be a real, subjective belief that the threatener will carry it out, conspiracy defences cannot rely on this defence, enumerated list of offences can’t use this defence (possibly struck out due to Ruzic, this is unknown)
-s.17: ambiguous about whether defence is open to threats to third party, but strictly read, it cannot
-Ruzic screw a lot of this up – parts of s.17 are unconstitutional as offences that are barred from the defence due to missing those elements (or possibly being one of the listed offences) lead to people being convicted despite (moral) involuntariness.

Common law duress
-moral involuntariness (Hibert), that there’s no real choice in a normative or moral way. Person is subjected to external danger and commits an act to avoid the harm the danger presents. Unlike necessity, source of danger is intentional threats of another person.
-if there is a safe avenue of escape accused could use and not commit crime, expected to do so. Compliance with law must be impossible.
-Subjective component: did the accuse see a safe avenue. Objective component: whether a reasonable person would have seen a safe avenue of escape.
-Actor’s failure to take steps to inform himself of the alternatives, he is considered not involuntary
-Has to be subjective view that there’s no safe avenue, modified by requirement that accused has to taken whatever steps were reasonable to find out if there was anything else he could do.
-take account the personal characteristics of the accused when evaluating this.

Attempts
-punish the blameworthy state of mind, but to a lesser degree than completed offences.
-attempts can be acts or omissions.
-doesn’t matter that it’s impossible to commit the offence
-must be more than mere preparation. Must ahve taken steps so far towards offence that the only next thing that can happen is completion.
-Ancio: required mens rea for attempts is intention, not recklessness (Ancio only says this for attempted murder, but it’s probably the case for all offences).
-for consequences, being substantially certain that something will come about is sufficient for intention
-determination of whether something is mere preparation or not pertains to the actus reus and is a question of law
-whether the mens rea is present for the attempt is a question of fact
-Sorrell & Bondett: attempts can be found where accused’s intent is proven otherwise but acts are equivocal, or if where there is no proof of the accused’s intent, must be unequivocal. The more proof there is of intention, the less you need of the actus reus.

Parties (Aiding/Abetting)
-principal: person who actually did the act/committed the actus reus
-Abetting: encouragement, support, giving assistance to someone while they are committing the offence. (Dunlop)
-Aiding: helping or promoting or facilitating the offence, usually when you aren’t there at the time of the commissoi nof the offence (driving getaway car, being a lookout)
-aider/abetter is same as principle for liability, they are convicted of the same crime without any notation that they were an aider/abetter. Mode of participation is NOT on the charge, all are charged for substantive offence. Left open to the Crown to charge as principal/aider/abetter at trial. Can even give Jury all three options (Thatcher)
-mere presence is not enough to be a party unless your presence implicitly encourages the commission of the offence, like preventing escape or encouraging principals by encouragement alone. (Dunlop, Kony)
-doesn’t matter if your actual actions weren’t helpful
-requires mens rea: actus reus (doing or failing to do something in context of facilitating) and mens rea (done tha thing for purpose of committing crime)
-can be charged as an aider or abetter even if the principal is never found, prosecuted, or convicted. Can even get the full offence where the principal got lesser offence.
-do not have to know that what you’re aiding is a crime, just have to generally know what you are assisting with. Don’t have to know the specifics. Wilful blindness is a substitute. Knowledge is the standard, not recklessness (though there’s no specific case on point).

Common Intention
-s.21(2): where two or more persons form an intention in common to carry out unlawful purpose and agree that it will be a joint effort...if one of them then commits an offence and the other knows or ought to have known that the crime would occur to carry out the common purpose, they’re liable as a party.
-don’t have to be there, just if they knew or ought to have known that a crime was a probable consequence of carrying out the common purpose.
-defence: withdraw from a common purpose and evidence that you told the principal this
-Logan: for special stigma crimes, accused that are brought into crime by common intention provision are held to the same standard as the principal: eg, for murder, the objective standard is read out for the party – both the planner and the principal must have subjective foresight of death.