**Criminal Law Checklist/Mini CAN**

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| **Issues** | **Possible indicators** |
| Reverse Onus (check if it is unconstitutional – either through precedence or Oakes test) | without reasonable excuse, |
| Possible statutory duties | 215 – Duty to provide necessities  216 – Duty of person undertaking acts dangerous to life  217 – Duty of persons undertaking acts  219 – Criminal negligence  220 – Criminal negligence causing death |
| Objective fault  (Mens rea - Criminal negligence – SOC for reasonable person in similar circumstances) | Reasonable person, legal duty, standard of care, reasonable precautions, careless conduct, ought to have, should have, negligence,  Main types of objective fault offences (**ADH**):   * Dangerous, regulated conduct (eg. Dangerous driving) * Careless conduct requiring reasonable precautions * Predicate offences * Criminal negligence * Duty based offences |
| Was there an unreasonable delay? | 18 month or 30 month ceiling – check **Jordan** |

**Actus Reus**

1. Was there physical voluntariness?
   1. Physical voluntariness in the actus reus looks at is whether actor had control over movements of their body **(Ruzic)**
   2. Was she physically forced to commit the crime (can’t go to UK but brought there by plane – **Larsonneur**)
   3. There can be no actus reus unless it is the result of a willing mind at liberty to make a definite choice or decision, whether the accused knew it was prohibited by law (dentist, drug, driving - **King**)
2. Is it an omission offence?
   1. There must have been a legal duty
      1. Check s. 215 and beyond for statutory duties
      2. If you think that there should have been a duty, you can try to argue a common law duty
   2. If no legal duty, no omission offence
3. Does it look like a status offence? Is there no actus reus?
   1. May breach s.7 Charter right
      1. May raise concerns of arbitrariness, overbreadth, and vagueness
   2. Could constitute discrimination under s.15 of Charter
4. Is it a causation based offence?
   1. Based on **Nette**, the accused’s conduct must be a significant contributing cause of the prohibited consequences to establish causation. This involves an inquiry into factual causation and legal causation.
      1. Factual causation – but for test – what factually caused death?
      2. Legal causation is concerned with whether the accused should be responsible in law for the prohibited consequence that occurred (eg. Death) - **Smithers**
      3. Look at reasonable foreseeability + independent actor to determine significant contributing cause (**Maybin**)
   2. If there is a predicate offence under s.231(5)
      1. **Harbottle** test – essential, substantial and integral cause – usually requires a physical active role
   3. Check if there were any intervening acts
      1. **Menezes** – abandonment of criminal enterprise – requires timely communication or notice to abandon common pursuit – look at nature of offence + accused’s participation
      2. **Maybin** – intervening act that is reasonably foreseeable will usually not break chain of causation as to relieve legal responsibility

**Mens Rea**

**General rule:** if a person does an act likely to produce certain consequences, it is reasonable to assume that the accused foresaw the probable consequences of his act and if he, nevertheless, acted so as to produce those consequences, that he intended them (**Buzzanga**)

1. Is it a regulatory offence?
   1. Presume strict liability offence, unless evidence states otherwise (**Sault Ste. Marie**)
   2. There must be clear proof of legislative intent to say that it is an absolute liablity offence – will usually require CC to specifically say it is an absolute liability offence (**Levis v Tetreault**)
2. Is there a possibility of imprisonment?
   1. Cannot combine absolute liability offence with possibility of imprisonment – unconstitutional under s.7 of Charter (**Re s.94(2) of MVA**)
   2. Negligence is minimum level of fault which will accord with s.7 of Charter whenever conviction gives rise to imprisonment (**Wholesale Travel**)
3. Is it a criminal offence where no specific language for mental fault is explicitly stated?
   1. Presume mens rea is subjective knowledge (**ADH, Buzzanga**)
      1. Then you look at (**ADH**)
         1. Purpose and breadth of the offence
         2. Text of the offence
         3. Scheme of CC

**Intention (Lewis –** exercise of a free will to use particular means to produce a particular result)

1. Was there a motive – that which precedes and induces the exercise of will (**Lewis**)?
   1. If yes, that is important for Crown’s case in proving intent; if no, it is good evidence in favour of accused
   2. However, motive does not equal intention!!!
2. Does the offence talk about purpose?
   1. Purpose = intent; it does not mean motive/desire (**Hibbert**)
3. Does the offence talk about wilfullness?
   1. Primary meaning is “intentionally” (but somewhat depends on context) (**Buzzanga**)
      1. If conscious purpose was to commit offence OR
      2. Accused foresaw that offence was certain to result from impugned act

“Intention” is the highest level of mental fault, such that the accused means to engage in the prohibited conduct (***Hibbert; Buzzanga***). Since this is the highest level of subjective mental fault, there is no potential issue with respect to section 7 of the *Charter* (***Finta***).

We could rely on the lack of a common sense inference (***Buzzanga & Durocher)***

**Knowledge** (accused is aware of the nature of their conduct or that it is practically certain their conduct will cause the prohibited consequences)

**Recklessness** (Consciousness of risk and proceeding despite this fact (**Sansregret**))

**Deliberate Ignorance** (aware of the need for some inquiry, but declining to make it because they wish to not know the truth (**Sansregret**))

1. Was there wilful blindness? Something that indicates that accused was aware of a need to inquire?
   1. Wilful blindness imputes knowledge to an accused (**Briscoe**)