

## SNAPSHOT DIAGNOSIS – UNLAWFUL HOMICIDE

Offence	Best Defense Available	Don't Use	Burdens	LIABILITY (commits a - - and is liable for - -)
<b>UNLAWFUL HOMICIDE s300</b>				
<b>GARDEN VARIETY MURDER</b> = <b>E1 =</b> Unlawfully kills ss291, 293 <b>s302(1)(a) =</b> <b>E2 =</b> 1. <b>intention</b> to cause <b>death</b> or <b>GBH</b> to person → 1. Direct intention <b>OR</b> → 2. Knowledge Intention  Intention can be proved by either confessional evidence or by logical inference drawn from circumstantial evidence. The test is subjective	<ul style="list-style-type: none"> <li>➤ <b>s271 - Self Defence</b> (100%)</li> <li>➤ <b>s304 - Provocation</b> (↓ to manslaughter)</li> <li>➤ <b>s304A</b> Diminished responsibility (↓ to manslaughter but with exceptions)</li> <li>➤ <b>Intoxication s28(3)</b> - may be regarded for purpose of ascertaining whether such an intention in fact existed.</li> </ul>	Compulsion	- s302(2) = It is immaterial that the offender did not intend to hurt the particular person who is killed e.g. shooting for one and miss and shoot another	Guilty of a crime <b>Life (s305)</b> unless successful defence
<b>CONSTRUCTIVE MURDER =</b> <b>E1 =</b> Unlawfully kills ss291, 293 <b>s302(1)(b) =</b> <b>E2 =</b> 1. done in the <b>prosecution of an unlawful purpose</b> <b>E3 =</b> 2. <b>act likely to endanger human life</b>	<ul style="list-style-type: none"> <li>➤ Self Defence (100%)</li> <li>➤ Provocation (↓ to manslaughter)</li> <li>➤ Diminished responsibility s304A</li> <li>➤ Intoxication s28(3)</li> </ul>	Compulsion	- s302(2) = It is immaterial that the offender did not intend to hurt the particular person who is killed e.g. shooting for one and miss and shoot another	Guilty of a crime <b>Life (s305)</b> unless successful defence
<b>s303 MANSLAUGHTER =</b> (so as to not to constitute murder is guilty of manslaughter, s310 = life <b>E1 =</b> Unlawfully kills ss291, 293 <b>s303</b> <b>E2 =</b> during the prosecution of an unlawful purpose <b>E3 =</b> by an act likely to endanger life. <b>1. No intent to kill</b> (but <b>✓ pursuing intentional violence act</b> ) <b>2. Criminal negligence</b> (est duty first)		Accident if eggshell skull s23(1A) = once there is a duty of care, accident cannot apply! ( <i>R v Hodgetts and Johnson</i> )		Commits the crime of manslaughter is liable to imprisonment for life, <b>s310</b>

Offence	Best Defense Available	Don't Use	Burdens	LIABILITY (commits a - - and is liable for - -)
<b>UNLAWFUL HOMICIDE s300</b>				
<b>MANSLAUGHTER AND ACCIDENT</b> (accident = <b>ordinary person test - lower than for neg test</b> ) Causes <b>death</b> whilst <b>pursuing intentional violence (action)</b> but <b>does not intend to use lethal force (outcome)</b> <b>s23(1)(b) Intention-motive</b> No criminally responsibly (100% defence):	➤ <b>s23(1)(b) = Accident</b>	➤ <b>s23(1A)</b> Eggshell skull Under s23(1)(b)- not excused from responsibility for death/GBH that results to a victim because of a defect, weakness, or abnormality ( <b>R v Steindl</b> - Not just naturally occurring abnormalities (plastic lens in eye)	- -	Commits the crime of manslaughter is liable to imprisonment for life, <b>s310</b>
<b>MANSLAUGHTER AND CRIMINAL NEGLIGENCE</b> Death is cause through negligence: <b>E1 = → Must establish duty first!</b> ss285-290 + <b>E2 = → Breach</b> to duty + <b>E3 = → Gross negligence</b>	➤ None available!	➤ (Once there is a duty of care, accident cannot apply! <b>R v Hodgetts and Johnson</b> )		Commits the crime of manslaughter is liable to imprisonment for life, <b>s310</b>

## DEFENCES

**Evidentiary** burden (provide evidence to court)= accused for raising a defence

- Burden not discharged= judge w/d defence
- Standard to be met = some evidence, not proof
- Burden discharged = prosecution bear persuasive burden to negative/disprove
- Reverse burden defence, eg, insanity or carnal knowledge (5), accused must also d/c **legal** burden (prove on b.o.p)

**Justification**= reason exists for committing the conduct elements of offence

**Excuses** = does not necessarily negative criminal liability but may be valid defence in some situations

**Presumption** of normal mental capacity (rebuttable but on D, as legal presumption)

### 3 categories:

1. **Personal responsibility for what happened is denied**
  - Lack of will s.23(1)(a) and Accident s.23(1)(b)
  - Mistake of fact s.24
  - Mistake/ignorance of law s.22(1) and Claim of right s.22(2)
2. **Contextual defences**
  - Self defence and defence of others/property
  - Compulsion
3. **'Mental impairment'**
  - Insanity and diminished responsibility
  - One form of intoxication

**LACK OF WILL and ACCIDENT s23** - ASK, was act:

1. Independent of person's will or accused and op did not intend/foresee? s23(1)
2. Voluntary? No- reflex, external force, automatism?
3. Negligent under The Code? ss285-290
4. Eggshell skull rule? s23(1A)—ONLY FOR ACCIDENT under s23(1)(b)

**LACK OF WILL = s23(1)(a) - Complete Defence**

### 23 Intention—motive

**s23(1)** Subject to the express provisions of this Code relating to negligent acts and omissions, a person is **not criminally responsible** for—

(a) an **act** or **omission** that occurs independently of the exercise of the person's will;

**Presumption** of normal mental capacity- incl. to control one's actions (**Bratty v A-G for North Ireland**)

**CL req't** = person's acts must be done with volition/voluntarily (**Falconer**)

Elements	Section	Definition	Case Law
<b>Act= physical actions</b>	<b>s.23(1)(a)</b> = Lack of will	An act not under the mental control of the accused.	Act = refers to a physical actions/physical movement beyond the accused's control ( <b>Kaporonovski v R</b> )
		An act not directed by the conscious mind.	In homicide cases = 'death causing act' e.g. the <b>discharge of gun</b> as in <i>Murray v The Queen</i> OR <b>stabbing</b> as in <i>Ugle v The Queen</i> ∴ <b>What was the death causing or GBH etc causing act?</b>

### 3 ways for unwilling conduct to occur:

1. **Reflex** = Distinguished from spontaneous but willed action, just because reacts quickly does not necessarily mean reflex action = COMPLETE DEFENCE (This needs to be distinguished from spontaneous but willed action (**you might get a painful stimulus and you react/jerk etc a reflex action**)).
2. **External force** = eg. being bumped (*Murray v R*, *Ugle v The Queen*)
3. **Automatism** = > DISSOCIATION (distancing of self)/ Accused's actions were directed by their unconscious mind e.g sleepwalking, concussed person etc  
**Why did it occur? 23(1)(a) vs 27(1) =**
  - Sane= impairment must be caused by ext. factors acting on otherwise 'normal' mind  
Physical blow (**Cooper v McKenna**)      Psych blow (**R v Falconer**) **to cause disassociation!**  
**Hodgson** – tried for insane automatism, but failed as had memory and was from ext factors.
  - **Insane= due to internal working of 'abnormal' mind, via s.27 Insanity**

**ACCIDENT = s23(1)(b)** \*inconsistent with charges of specific intent, manslaughter

### 23 Intention—motive

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is **not criminally responsible** for—

- (b) an event that—
- (i) the person does not intend or foresee as a possible consequence; and
  - (ii) an ordinary person would not reasonably foresee as a possible consequence.

An event (THE OUTCOME - consequences of those action eg the death/GBH etc) that –

**E1** = The accused did not **intend** or foresee as a **possible** consequence (subjective); **AND**

**E2** = An **ordinary person** would not reasonable foresee (objective)- only age to be taken into account, of person of that age in that position

Elements	Section	Definition	Case Law
<b>E1 = An Event</b>	s23(1)(b) = Accident	<b>E1</b> = The <b>outcome/consequences</b> of the accused's action e.g. the death/GBH etc	Act that occurs by accident if it was a consequence which was not in fact intended or foreseen by the accused = <b>Kaporonovski v R</b>  e.g. the <b>discharge of the gun</b> as in <b>Murray v The Queen</b> . OR <b>stabbing</b> as in <b>Ugle v The Queen</b>
<b>E2 =</b>		<b>E2</b> = Not <b>intended</b> or foreseen as possible consequence by the accused; <b>AND</b>	
<b>E3 =</b>		<b>E3</b> = <b>ordinary person</b> would not reasonable foresee	<b>NB.</b> <ul style="list-style-type: none"><li>- Remote and speculative possibilities are excluded (<b>Taiters</b>)</li><li>- Can be a complete defence as long as you satisfy the intention and not RF by ordinary person.</li><li>- If an accused can satisfy the evidentiary burden it will be left to the jury to decide.</li><li>- <b>s23 (1A)- eggshell skull</b>: Cannot raise accident as defence if death/GBH results because of defect, weakness or abnormality Not restricted to naturally occurring abnormalities (<i>R v Steindl</i> – plastic lense in eye)</li></ul>

### Argue with s24 MISTAKE OF FACT

(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

If s24 Mistake is accepted, then the accused would be judged as 'gun was unloaded' and would therefore not be rf that by waving around an unloaded gun someone could be hurt or die.

### s23(1A) Eggshell skull

Under s.23(1)(b)- not excused from responsibility for death or GBH that results to a victim because of a **defect, weakness, or abnormality** (*R v Steindl* - Not just naturally occurring abnormalities (plastic lens in eye))