

Immaturity (29)

Child under 10

- not criminally responsible and cannot be prosecuted

Child under 14

- not criminally responsible unless had capacity to know they ought not to do act or make omission
- prosecution must prove that child knew act was wrong according to ordinary standards of reasonable people (R v M, R v JA, R v Whitty)
- child does not need to bring excuse or defence regarding knowledge of wrongfulness
- some acts are so wrong that child will know from young age (R v ALH) however knowledge of wrong cannot be presumed based on act itself but on express evidence

Defensive Force

Self Defence (248)

Elements

- Harmful act done is self defence is lawful if
- The accused reasonably believes the act is necessary to defend themselves or another from a harmful act (even non-imminent act) and
- If the accused reasonably believes the harmful act is a reasonable response

Onus of Proof

- Accused bears legal and evidentiary burden to raise evidence and prosecution must negative BRD

Steps

- 1. What offence has been committed?**
 - May be justified on grounds of self-defence
- 2. Elements of self-defence**
 - Harmful act
 - Reasonably believes is necessary
 - To defend themselves or another from a harmful act
 - Reasonably believes it is a reasonable response
- 3. Did accused believe harmful act coming their way?**
 - Subjective test
- 4. Was there reasonable grounds for this belief?**
 - Objective test
 - Accused's knowledge/belief about victim's violent past is part of context (Masters)

5. Did they believe that they had to use force to defend themselves/another?

- No duty to retreat but could be taken as evidence
- Battered woman syndrome