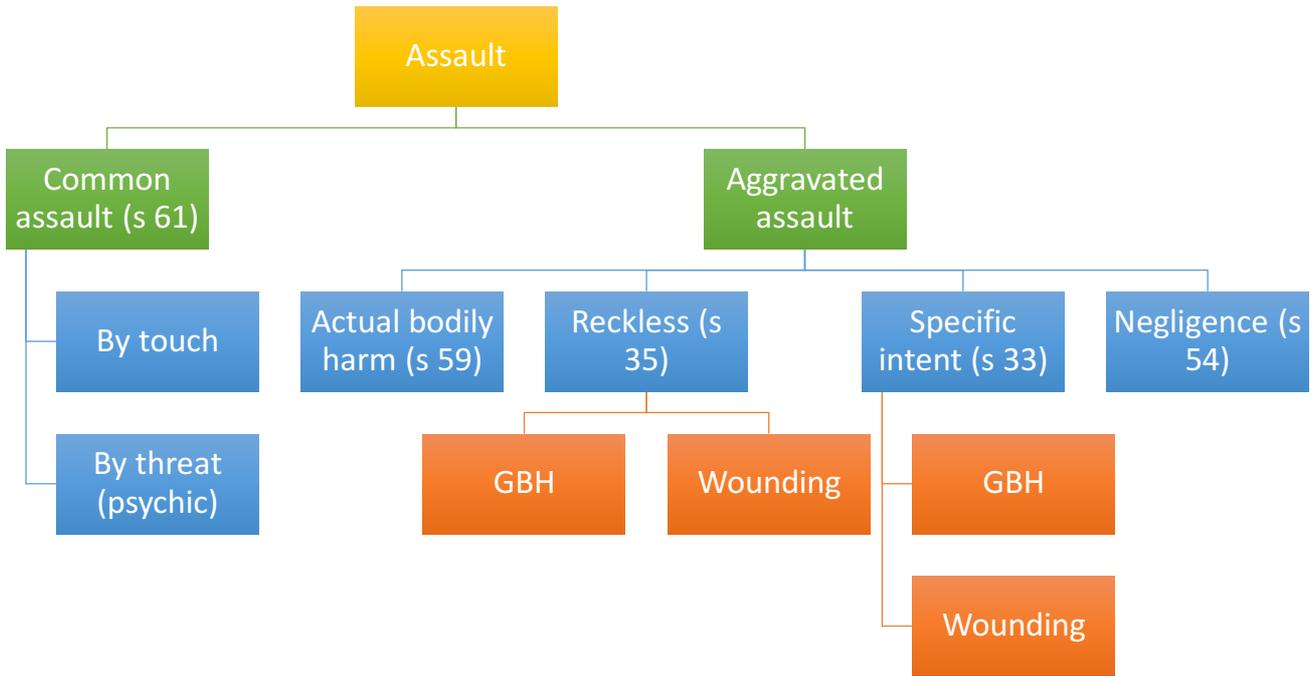


ASSAULT

Flow chart summary of ASSAULT offences



GENERAL CATEGORIES OF ASSAULT:

Common assault (s 61)	[ACCUSED] may be charged with common assault (s 61) by _____ <ul style="list-style-type: none"> • ... touch. • ... threat (psychic assault).
Actual bodily harm	[ACCUSED] may be charged with assault occasioning actual bodily harm (s 59)
Grievous bodily harm	[ACCUSED] may be charged with reckless assault causing grievous bodily harm (s 35) .
Wounding	[ACCUSED] may be charged with reckless assault causing wounding (s 35) .

COMMON ASSAULT BY TOUCH (s 61)

AR

(1) Act

[ACCUSED] _____ (describe act), which was an act of physical contact inflicting unlawful force (**Fagan**).

- ... Even though [ACCUSED] only inflicted a **small amount of force**, this still constitutes an act of force sufficient to constitute assault (**DPP v JWH**). The force did NOT fall within lawful force permitted by ordinary social intercourse.
- ... [ACCUSED] failed to act because _____ (apply facts). **An omission to act is not an assault.**

Fagan	<ul style="list-style-type: none"> Failure to remove the wheel as soon as he was asked could not be an assault However, the mounting of the foot was an act which continued until the moment of time at which the wheel was removed No difference between stepping on a person's toe and the action of driving a car on to a person's foot
DPP v JWH	<p>... Spitting on, or any touching of, the clothes of a person constitutes an assault</p> <ul style="list-style-type: none"> Spitting is a form of common assault (infliction of unlawful force) when it touches the clothes being worn by that person Spitting is a form of psychic assault (apprehension of immediate force) when it doesn't touch the victim (R v Smith)

MR

[ACCUSED] must have had **intention** to effect an unlawful conduct or **been reckless** in doing so (**Edwards v Police**). This will _____ (**likely** / unlikely) be satisfied because _____ (apply below if **ELEMENT is proved**):

Intention

- ... [ACCUSED] **intended** to produce unlawful violence. He/she had _____ (**knowledge / belief**) that _____ (describe act – ie. punching someone with a closed fist) would inflict unlawful violence on [VICTIM], as evidenced when he/she _____ (what they said or did). This is sufficient to infer intent.

OVERALL CONCLUSION

Tentatively, [ACCUSED] will be convicted for common assault by **touch (s 61)**. He/she is liable to imprisonment for 2 years. Any defences will be discussed at the end of this paper.

AGGRAVATED ASSAULT

ASSAULT OCCASIONING ACTUAL BODILY HARM (s 59)

There were likely aggravating factors in this case. Hence, [ACCUSED] may *also* be charged with aggravated assault occasioning actual bodily harm (s 59). The common assault base elements (discussed above) must be proved, along with actual bodily harm:

(1) ABH

Actual bodily harm is NOT defined in the Act. Under the CL, ABH includes any hurt or injury calculated to interfere with health or comfort (Donovan).

Actual harm suffered

- [ACCUSED] _____ (apply facts). This was not a “really serious injury”, and thus, no GBH (Smith). Similarly, there was no breaking of the skin and therefore, no wounding (R v Lardner). Nevertheless, even though the injury was not permanent, it was more than merely transient or trifling because it interfered with the health/comfort of [VICTIM] (Donovan).

Psychiatric harm suffered

ABH also extends to psychiatric injury (Chan-Fook, applied in Lardner).

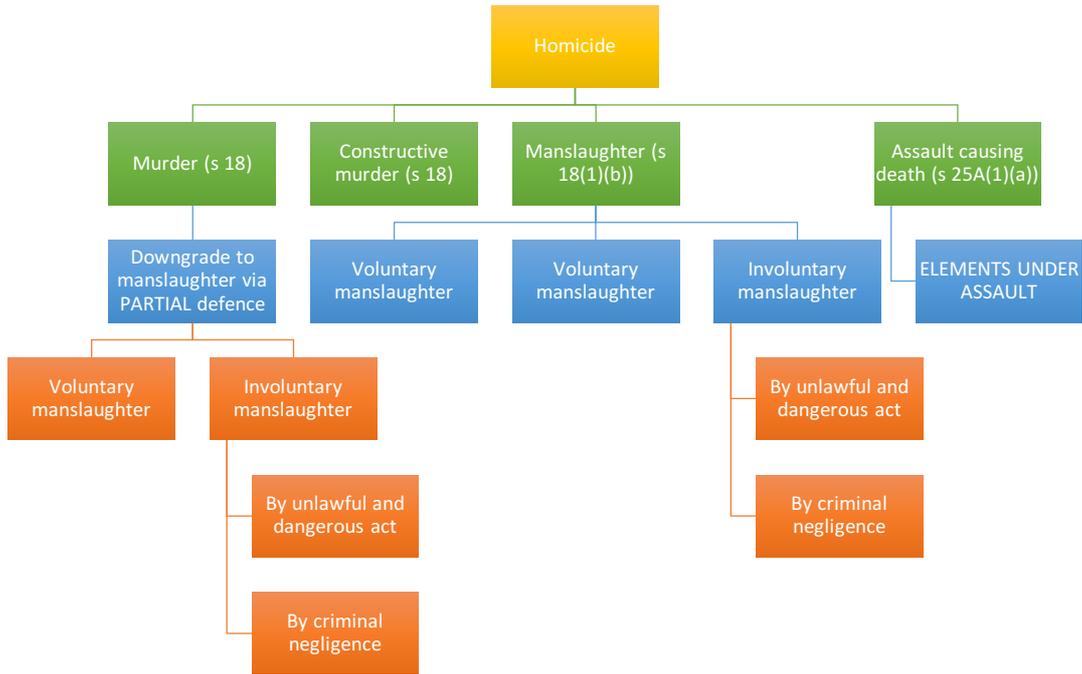
RECKLESS ASSAULT INVOLVING GREIVIOUS BODILY HARM (s 35)

Complex skull fracture	R v Remilton; R v Williams
Severe multiple fractures to a leg and nerve damage to the right side of the face; a closed head injury and facial neurological damage, as well as severe injuries to a knee	R v Shannon
Fractures to the “middle third” of the face with a complicated laceration of the right ear, requiring steel plates and screws, causing ongoing headaches and continuing treatment to the eyes which were sunken as a result of the injury	R v Sumeo
Rib fractures in a child	BJR v R
Fractures to cheekbones and nose,	Vann v Palmer

<APPLY CONSENT IF RELEVANT>

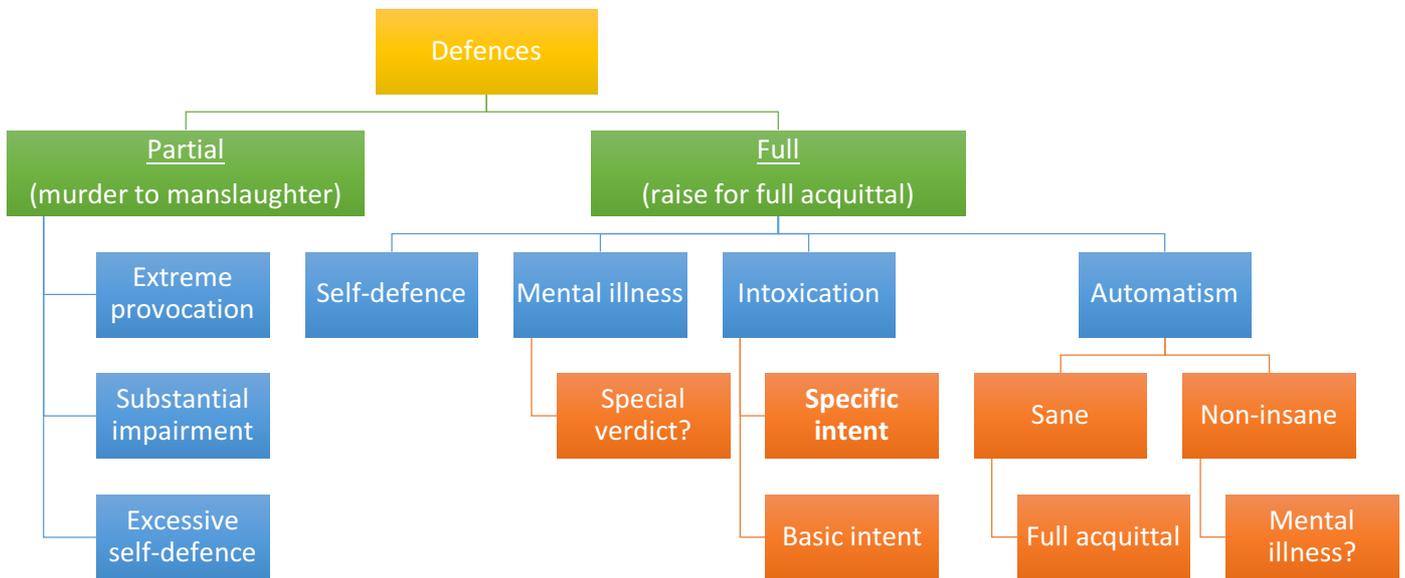
HOMICIDE

Flow chart summary of HOMICIDE offences



DEFENCES

Flow chart summary of DEFENCES



MENTAL ILLNESS → full defence

[ACCUSED] may raise the defence of **mental illness**. He/she bears both an evidentiary and legal burden to prove the defence on the balance of probabilities (**Ayoub**). The following elements must be established (**M'Naghten's Case**).

Defect of reason

At the time of the committing of the act, [ACCUSED] suffered from a **defect of reason** because he/she _____ (apply facts). This meant that he/she could not reason about the matter with a moderate degree of sense and composure (**Porter**).

M'Naghten	<ul style="list-style-type: none"> [ACCUSED] believed he was being persecuted and therefore had to kill someone else
------------------	---

Disease of the mind

[ACCUSED] was suffering from a **major mental disease** ('psychoses'), that being _____ (ie. schizophrenia, epilepsy), which demonstrates that he/she **was** suffering from a disease of the mind. This disease originated internally (cf. external stimuli).

- ... Arguably, [ACCUSED] was a 'gross psychopath' who understood the wrongfulness of the act, but lacked emotional feeling or conscience (**Willgoss**). This should **not** constitute a disease of the mind.
- ... [ACCUSED] was merely _____ (**excited; passionate; stupid; lacking control; impulsive**). He/she was **NOT** suffering from a disease of the mind.

Bratty	<ul style="list-style-type: none"> Accused strangled victim – claimed that he had a "terrible feeling" and "a sort of blackness" came over him [originated internally] Any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind Unclear whether depression/anxiety would qualify
---------------	---

** However, on the facts, further evidence may be required to understand the condition that [ACCUSED] was suffering from. Analogous to **Rodriguez**, medical evidence and opinion has a particular important role to play.

AUTOMATISM → full defence → [**unwilled action → unable to control the body**]

[ACCUSED] may raise the defence of **automatism**, which negatives voluntariness.

(1) Automatic and unwilled

[ACCUSED] was acting in an automatic and unwilled way.

- ... Analogous to _____ [**AUTHORITY below**], he/she was _____ [**apply CAUSE**], which was found to constitute a case of automatism.

CAUSE	AUTHORITY
Extreme state of intoxication caused by alcohol	O'Connor; Martin
Extreme state of intoxication caused by drugs	Haywood
Concussion	Wogandt
Sleepwalking	Jiminez
Hypoglycaemia	Quick
Sudden illness	Hill v Baxter
Stroke or heart attack	
Attacked by a swarm of bees	

SAM NOTES – CRIMINAL LAW 2

Dissociation caused by a severe psychological blow	<u>Falconer</u>
Post-traumatic stress disorder	<u>Donyadideh</u>
Other “external factors” (cf. disease of the mind)	

Disease of the mind

Applying this test, it would appear that [ACCUSED’s] behaviour should be characterised as _____ (insane / sane) automatism because it _____.

TEST	INSANE AUTOMATISM (mental illness)	SANE AUTOMATISM
<u>Bratty</u>	<ul style="list-style-type: none"> • ... resulted in violence • ... was prone to recur <p>[NOTE: this test expands <u>M’Naghten rules</u> greatly. Previously required to prove:</p> <ol style="list-style-type: none"> defect of reason disease of mind did not understand <p>Using this test, anything that manifests itself in violence and is prone to recur is a disease of the mind [<i>qualified that it must have arisen from an involuntary (unwilled) act</i>]</p>	<ul style="list-style-type: none"> • ... did NOT result in violence • ... was NOT prone to recur

INTOXICATION → full defence

[SELF-INDUCED INTOXICATION – ONLY APPLIES TO ACTS OF SPECIFIC INTENT]

[ACCUSED] may raise the *full defence* of **intoxication**. Whilst there is no meaningful definition of “intoxication”, here [ACCUSED] was likely intoxicated because _____ (apply facts – ie. he/she had drunk a lot of alcohol).

	Category of application		Specific / Basic intent		Reasonable person test (s 428F)	Considered for manslaughter	Where there exists intent to do the offence prior to self-intoxication
	AR	MR	Specific intent (s 428C)	Basic intent (s 428B)			
Self-induced	x	✓ (but not for all offences)	✓ Murder	x Manslaughter (s 428E)	x	x	x (specific / basic) (where it would apply to a specific intent, but it doesn't)
Non-self induced	✓	✓	✓	✓	x	✓	x (except for basic intent offences, non-self induced, would this section apply???)

Here, [ACCUSED] committed the offence of _____ (apply facts), which _____ (is / is not) an offence of specific intent (s 428B).

Specific intent:

- **Murder**
- **Larceny**
- Acts done with intent to:
 - Murder
 - Endanger life
 - **Cause GBH**
 - Injure
 - Have sexual intercourse
 - Resist apprehension or detention
 - Commit a serious indictable offence
 - Procure miscarriage
 - Marry or carnally know
 - **Steal**
 - **Rob**
 - Defraud
 - Cause gain or loss
 - Obtain a financial disadvantage
 - Destroy or damage property

DISHONEST ACQUISITION

LARCENY

[ACCUSED] may be charged with larceny (§ 117).

AR

(1) Property capable of being stolen

On the facts, _____ (property) was stolen by [ACCUSED].

- ... This is a form of **tangible and touchable** property that can be “**taken and carried away**” (White). It is thus capable of being stolen under the law.

Categories

<p>Animals</p>	<p>At CL, wild animals CANNOT be an object of larceny in their natural state, and therefore CANNOT be “taken”.</p> <ul style="list-style-type: none"> However, here, the animal had been in possession of [VICTIM]. It was NOT wild and can thus be capable of being stolen. <p>However, statute has extended larceny to cover the stealing of certain animals. Under _____ (section), _____ (property) is deemed larcenable.</p>	<p>ANIMALS DEEMED LARCENABLE</p> <ul style="list-style-type: none"> Cattle (ss 126-131) Dogs (ss 132 and 503) Taking money to restore dogs (s 133) Skin of stolen animals (ss 502 and 504) Animals kept in confinement (ss 505 and 506) Fish in waters on private property (s 512)
<p>Intangible property (chose in action)</p>	<p>However, _____ (property) is a form of intangible property (chose in action) because it is a right, not a thing.</p> <p>Cf. Tangible property → CAN be stolen as long as it can be “taken and carried away”, even if the physical nature of the property is slight</p>	<p>EXAMPLES OF INTANGIBLE PROPERTY</p> <ul style="list-style-type: none"> Intellectual property Debt owed by the bank to the rightful owner of the account (Croton) (cf. physical paper money or coins)

Aggravated larceny

Alternatively, [ACCUSED] may be charged with:

- ... **robbery** (§ 94) because violence or force was used or threatened against [VICTIM] (cf. property).
- ... **stealing from the person** (§ 94) because property was taken away from [VICTIM], although no force or violence was directed towards [VICTIM] [although it is fine if force is directed towards property].
- ... **assaulting with intent to rob** (§ 117) because there was an attempted robbery, resulting in [VICTIM] being assaulted by violence or force used or threatened.
 - Further **aggravated factors** to look out for:

SAM NOTES – CRIMINAL LAW 2

▪ False imprisonment, violence, ABH, use of a weapon

Offence	Elements	Max. penalty
Robbery (§ 94) * Prove <u>base element</u> + <u>additional element</u>	Additional elements: - violence used/threatened towards person (cf. property) - induce victim to part with property SITUATION → snatching a bag <ul style="list-style-type: none"> Violently tugging a bag and shoving [VICTIM] → here, force is directed towards person (ie. violently shoving [VICTIM]) → force directed to the person – NOT PROPERTY 	14 years
Stealing from the person (§ 94) * Prove <u>base element</u> + <u>additional element</u>	Additional elements: - property taken from the person SITUATION → snatching a bag <ul style="list-style-type: none"> Violently tugging a bag → here, force directed towards property (ie. violent snatch of bag) → NO force inflicted on person 	14 years
Assault with intent to rob (§ 94)	Additional elements: - Incomplete larceny (attempted robbery) - assault	14 years

EXTENDING CRIMINAL LIABILITY

- This section is all about looking for situations involving **MULTIPLE INDIVIDUALS!!!!**

KEY DEFINITIONS:

Principal in the <i>first</i> degree	Person who commits the crime (R v Bingley)
Principal in the <i>second</i> degree	Person who is merely present at the scene, encouraging by doing something but NOT physically participating (R v Higgins)
Principal in the <i>third</i> degree	Person who aided the commission of a crime but NOT present at the scene (R v Coney)

JOINT CRIMINAL ENTERPRISE (JCE)

[NOT DOING THE OFFENCE BUT BEING PART OF IT]

The issue is whether [PARTICIPANT(s)] will be liable along with [PRIMARY OFFENDER] for the offence of _____ (describe offence) under the rules of JCE (**Osland**).

CONSPIRACY

[more than intention → there is an agreement to commit; doesn't have to eventuate]

NOTE: conspiracy has been committed as soon as the agreement comes into existence

CONSPIRACY MUST BE PROVED FOR EACH PERSON IN THE GROUP

- ... [PARTICIPANT] may be charged with the CL offence of conspiracy.
- ... Along with JCE, the prosecution may also charge [PARTICIPANT] with conspiracy (**Savvas**).

AR

(3) Scope of agreement

The nature and scope of the agreement must be defined (**LR and RK**). Here, there was an agreement between _____ (**name the parties**) to _____ (ie. **do what** – deal with money from the proceeds of crime). This agreement necessarily infers that there was _____ (**one big conspiracy / several small conspiracies**).

- ... The issue on these facts is whether [PARTICIPANT] conspired to commit that act, or was simply conspiring to procure its commission by others. _____ (apply facts).

Griffiths	Individual adding a false deduction to an income tax return → CANNOT be convicted of a general conspiracy with all of accountant's clients to do the same thing
Meyrick	Nightclub owners paid police NOT to enforce licencing laws → here, there WAS a conspiracy → they all intended to participate in a general plan to prevent enforcement of the liquor laws

SAM NOTES – CRIMINAL LAW 2

Chrastny	Wife convicted of conspiring to supply cocaine with a large group → she claimed that she had NOT conspired with the group (but only with her husband) → nevertheless, she was liable for conspiring with the big group [one single conspiracy] <ul style="list-style-type: none">• A conspiracy may exist between persons, even if you have neither seen nor corresponded with each other
Saffron	Defrauding Commonwealth of income tax by taking cash from the receipts of 5 businesses <ul style="list-style-type: none">• There was enough similarities or links between the alleged separate conspiracies to sustain an indictment of a single conspiracy

MR

(1) Intention

There must have been **intention** to **enter into the agreement** and an **intention** to **commit the unlawful act** (LK and RK; Ansari).

- First, [PARTICIPANT] had _____ (knowledge / belief) that he/she was entering into an agreement at that date.
- Second, he/she also had _____ (knowledge / belief) of the substance of the agreement and the necessary facts to commit the unlawful act. This will likely be sufficient to infer intention to commit the unlawful act.
 - ... Whilst [ONE PARTICIPANT] may claim that he/she did NOT have intention to commit _____ (ie. the individual act), this will be insufficient for him/her to avoid liability. It is the overall intention of the conspirator which establishes whether there is an agreement (Kalajich and Orrock).

OVERALL CONCLUSION

Tentatively, [PARTICIPANT] may be charged with conspiracy to committing the offence of _____ (describe the unlawful act agreed upon). [Since liability is primary, it is irrelevant that [PRIMARY OFFENDER] has been acquitted]. Since conspiracy is a CL offence, the max. penalty is not prescribed.

Criminal Law Theory Notes

[NOTE THAT ALL POLICY ISSUES HAVE BEEN SUMMARISED IN THE FINAL DOCUMENT – SAMPLES SHOWN BELOW]

DEFENCE: MENTAL ILLNESS

- There is a complex r/s between **cognitive and mental health impairment and offending**
- It is NOT the intellectual disability itself which brings a person into contact with the criminal justice system – rather, it is a variety of factors related to a number of deficits in life due to the **lifestyle and environment**
- Those who suffer mental illness are a **diverse group**:
 - Their impairments differ greatly
 - For instance, mild disorders differ significantly compared to severe psychoses or schizophrenia
 - Intellectual disabilities → present a range of severities
 - Additional factors such as **age, cultural background, family situation and other life experiences** of the person can **affect the way that an impairment manifests** and the best approach to managing the impairment
- How does the criminal justice system deal with mental illness?
 - Appear before court
 - Mental health review tribunal can become involved
 - The guardianship tribunal involved in some cases
- KEY STATISTIC:
 - **In 2006, the overall prevalence of psychiatric disorder was 80% for prisoners compared to 31% for the general population**
- **DPP v Khoury**
 - Basten JA provides an overview of the manner in which mental impairment issue may arise for consideration → there are **THREE stages** in which issues of mental capacity affect criminal proceedings:
 - 1) whether a person is fit to stand trial
 - 2) whether an accused should be found NOT guilty by reason of mental illness
 - 3) mental illness may be a significant factor in sentencing, reduce moral culpability, etc

Substantial impairment

- Used to be known as diminished responsibility but in 1997, this was repealed and formulated as the **defence of substantial impairment**
- However, even before reformulation, this defence has long been the subject of scrutiny by law reform bodies

SAM NOTES – CRIMINAL LAW 2

- **Reformulations** occurred after the controversial case of **Chayna** in 1993
 - Accused, who had an impeccable character and a gentle manner, had a very tense r/s with her sister-in-law. She was also a devout Catholic.
 - She launched a “frenzied attack” against her sister in-law, first killing her and then killing both her daughters on two separate occasions
 - She told the police that they were “better off with God”
 - TWO DEFENCES raised at trial → insanity and diminished responsibility
 - However, the conclusions made by the **psychiatric experts** differed greatly:
 - Two concluded that the accused was NOT responsible by virtue of being mentally ill (under M’Naghten)
 - Two concluded that the accused was NOT insane but that diminished responsibility (substantial impairment) was available
 - Two concluded that either/both of these defences were available
 - One concluded that she was fully criminally responsible (although disturbed)
 - The NSWCCA allowed an appeal from first instance, and substituted murder for manslaughter
 - Gleeson CJ, in particular, highlighted that the **resulting confusion of medical experts has the potential to operate to the disadvantage of the accused** (particularly, when raised in front of a jury)

Arguments to abolish the defence	Counter-arguments raised by the commission
The defence is unnecessary, given that there is NO longer a mandatory life sentence for murder in NSW (ie. therefore, no need to reduce from murder to manslaughter)	However, the commission highlights that this argument completely ignores: <ul style="list-style-type: none"> a) concern that a community is less likely to accept a reduced sentence for murder, rather than manslaughter b) the jury has vital importance in deciding whether an offender’s culpability is substantially reduced

Statistical information relating to substantial impairment:

- 63% cases b/t 1998 and 2011 where the partial defence of SI was raised was successful
- 1997 reforms → achieved the aim of **narrowing** the scope of the defence
 - Notion of community standards → resulted in a **stricter test** and **fewer offenders** are raising the defence + fewer succeeding

DEFENCE: Provocation: [pg.886]

- 1970s and 1980s → court began to address some of the problems with the defence of provocation
 - Traditionally, common law provocation was limited by the fact that **fatal force** must have been used **immediately after provoking conduct**
 - This was seen to be **gendered** and unfair
 - Hence, one of the main drivers of judicial and legislative reform has concerned the **availability of the provocation defence** for women who kill their abusive husbands
 - Furthermore, there was increasing recognition of other facts which could lead to provocation but which were NOT recognised by the courts:
 - Social pressures
 - Material conditions of dependency
 - Differing patterns of response to threats and violence
- A number of cases also highlighted the inadequacies of CL provocation:
- **Case of R**
 - Husband had a long history of violence towards his wife and children including that he had violently raped one of his younger daughters
 - A few nights later, the wife got an axe and killed the husband with several blows
 - Although the jury were not directed on the issue of provocation at trial, on appeal, King CJ noted that in those circumstances, **an ordinary person**, in consequence of the deceased's words and actions, **might lose self control** to the extent of what the appellant did, **despite the force NOT occurring immediately after the provoking conduct**.
 - Furthermore, it was open to the jury to find that an ordinary mother, **endowed with the natural instincts of love and protection** of her daughters, would lose self control which would lead to the killing.
 - The chief justice referred to:
 - **Sustained cruelty over** the years
 - Progressive **build up in tension** and horror that the wife had to put up with
 - **Hence, even though there was some interval of time between the provocative conduct and the killing, passion and emotion were mounting, not declining – which allowed the defence of provocation to be raised**
 - Hence, the second jury at the second trial returned a verdict of not guilty