

Criminal Law Index of Offences

Unlawful Homicide (Mod 3)

- Murder
- Manslaughter
- Attempted Murder
- Unlawful Purpose Murder

Manslaughter (Mod 4)

- Involuntary manslaughter
- Voluntary manslaughter
- Unlawful Striking Causing death

Non-Fatal Offences (Mod 5)

- Assault
- Common Assault
- Aggravated assault
 - Assault occasioning bodily harm
 - Serious assault
- GBH, aggravations to GBH, GBH with intent
- Wounding, aggravation of wounding with intent

Sexual Offences (Mod 6)

- Rape
- Indecent Sexual Assault

Selected property offences (Mod 7)

- Offences related to stealing
- Robbery
- Burglary
- Receiving tainted property
- Dishonesty
- Deception
- Misappropriation
- Wilful Damage

Self- defence and Self-Help (Mod 8)

- Self-defence
 - Unprovoked, major unprovoked assault
 - Provoked assault

Insanity, Diminished Responsibility Intoxication (Mod 9)

Inchoate and Secondary Liability (Mod 10)

- Attempts
- Participation
 - Principal offenders
 - Secondary Liability

TABLE OF CONTENTS

CRIMINAL LAW INDEX OF OFFENCES	1
MODULE 1: INTRO TO CRIMINAL LAW	8
I. DEFINING CRIME	8
<i>Nature Of Criminal Law</i>	8
<i>Divisions Of Criminal Offences</i>	8
Definition: Indictment:	8
Section 3(2) QCC - 2 Classes:	8
II. AIMS OF CRIMINAL LAW	8
<i>Elements Of An Offence</i>	8
<i>Nature Of Punishment</i>	8
Nature of Sentencing	8
Sentencing Principles	8
Common Law Principles	9
Statutory Principles (QLD)	10
<i>Section 9(1) - Penalty And Sentences Act 1992 (Qld)</i>	10
Principles of Imprisonment	10
Section 9(2)(a)(i)(ii) PSA	11
III. CRIMINAL OFFENCES (IN THIS MODULE)	11
IV. SOURCES OF CRIMINAL LAW	11
<i>Australian: Common Law & Codified Jurisdictions</i>	11
In Queensland	11
QCC Structure	11
V. INTERPRETATION OF THE QCC	11
<i>Methods Of Interpretation</i>	11
Case Summaries:	12
Case Law	12
<i>Hierarchy Of The Courts</i>	13
VI. BURDENS & PROOFS	13
Case Summaries:	13
MODULE 2: CRIMINAL RESPONSIBILITY	14
<i>5 Principles To Establishing Defences And Excuses:</i>	14
I. ESTABLISHING CRIMINAL RESPONSIBILITY:	15
Definition of Offence:	15
<i>Elements Of A Criminal Offence:</i>	15
<i>Checklist – Elements Of Criminal Responsibility</i>	15
Physical	15
Mental (where applicable)	15
Defences/Excuses	16
3 Categories of EDs:	17
<i>Burdens Of Proof</i>	17
<i>Criminal Responsibility Of Children And Young People</i>	17
I. ESTABLISHING DEFENCES & EXCUSES S 23(1)	17
<i>Elements For S 23(1)(A) – First Limb</i>	18
Acts Independent of Will	18
Checklist – Establishing s 23(1)(a)	18
Detailed Elements	18
(1) Act or Omission	18
Types of involuntariness:	18
(2) Independent of Will	18
<i>Elements For S 23(1)(B) – Second Limb</i>	19
Unintentional and Unforeseen Events ('Accident')	19
Checklist – Establishing s 23(1)(b)	19
Detailed Elements	19

III.	OFFENCES RELATING TO DISHONESTY	58
	<i>Checklist: Establishing Offences Relating To Dishonesty</i>	58
	Physical Elements	58
	Mental Elements	58
	Aggravations, s 408C(2)	59
	<i>Checklist: Assessing Criminal Responsibility For Obtaining By Misappropriation/Fraud</i>	59
	Physical Elements	59
	Mental Elements	59
	Alternative Verdicts	59
IV.	WILFUL DAMAGE, s 469	59
	<i>Checklist: Assessing Criminal Responsibility For Wilful Damage:</i>	59
	Physical Elements	59
	Mental Elements	60
	Defences/Excuses	60
	Punishment in Special Cases	60
V.	UNLAWFUL USE OF A MOTOR VEHICLE, s 408A	60
VI.	EXTORTION/BLACKMAIL, s 415	60
MODULE 8: SELF- [HELP / DEFENCE]		60
I.	SELF-DEFENCE, ss 271-278 QCC	61
	FLOWCHART	61
	<i>Self-Defence Against Unprovoked Assaults ('Minor'), s 271(1) QCC</i>	62
	Conduct	62
	Force Used in Self-Defence	62
	Objective Component	62
	<i>Self-Defence Against Unprovoked Assault ('Major'), s 271(2) QCC</i>	63
	Conduct	63
	Force Used in Self-Defence	63
	Subjective Component	63
	Objective Component	63
	<i>Self-Defence Against Provoked Assaults, s 272 QCC</i>	63
	Conduct	63
	Subjective Component	64
	Objective Component	64
	No Exclusion, s 272 QCC	64
	<i>Defence of Another, s 273 QCC</i>	64
	<i>Property Protection</i>	64
	<i>Compulsion, s 31 QCC</i>	64
	Threat	64
	Subjective Component	64
	Objective Component	65
	No Exclusion, s 272 QCC	65
	<i>Emergency, s 25</i>	65
MODULE 9: INSANITY, DIMINISHED RESPONSIBILITY, INTOXICATION		65
I.	INSANITY, s 27 QCC	65
	Presumption of Sanity Under the law	65
	<i>Elements of s 27(1):</i>	65
	<i>Diminished Responsibility, s 304A</i>	66
	<i>Relationship Between Insanity, Act Independent of Will and Intoxication, s 28</i>	66
	Two relevant cases here	66
II.	INTOXICATION, s 28 QCC	66
	Flowchart	67
	<i>Involuntary Intoxication, s 27, 28(1)(2)</i>	67
	The following provides an overview for assessing intoxication:	67
	<i>Voluntary Intoxication, s 28(3)</i>	68
	How intoxication runs in relation to:	68

CASE SUMMARIES:

⚖️ *Johnson v the Queen* [1964] Qd R 1;

Meaning and interpretation of Provocation (Colvin 1.20) → The code does not (usually) refer to pre-existing or current common law.

⚖️ *Brennan v R* (1936) 55 CLR 253;

Colvin [1.19] - "Language of the Code should be interpreted in accordance with its ordinary meaning and without any presumption that the previous common law was intended to be maintained." → "it forms part of the code intended to replace the common law, and its language should be construed according to its natural meaning and without any presumption that it was intended to do no more than restate the existing law. It is not the proper course to begin by finding how the law stood before the Code, and then see if the Code will bear an interpretation which will leave the law unaltered." Dixon and Evatt JJ cited @ Colvin [1.19]

⚖️ *Stuart v R* (1974) 134 CLR 426;

Colvin [1.19] - Quoted *Brennan v R* @ 437 (pre-above): Code interpreted by natural meaning. Resort to CL only when ambiguous or technical meaning like a special meaning provided at CL. "it may be justifiable to turn back to the common law where the Code contains provisions of doubtful import, or uses language which had previously acquired a technical meaning, or on some such special ground ... it should be remembered that the first duty of the interpreter of its provisions is to look at the current text rather than at the old writing which has been erased; if the former is clear, the latter is of no relevance. (at 437)

⚖️ *Bank of England v Vagliano Brothers* [1891] AC 107.

Interpretation does not deviate from the Code (Ordinary & Natural meaning) unless:

- Technical meaning:
 - Colvin [1.20] state that the interpretation of the word 'provocation' by the Queensland Court of Appeal in *R v Johnson* [1964] Qd R 1 is an example of 'technical' interpretation. See also [C&M 15.13].
- Ambiguity of wording
- Gap

⚖️ *Beckwith v R* (1976)

[Gibbs @340] 'The effect of the provisions at the least remains doubtful and that doubt should be resolved in favour of the liberty of the subject.' → Where there is Ambiguity in the Code, interpret in favour of the accused.

⇒ When interpreting the QCC resorting to the common law is appropriate where the language of the QCC is doubtful/ambiguous or has a technical meaning or where gaps in the Code exist.

{See Mod 1 p 6 – grey box – Code Interpretation}

CASE LAW

- The QCC is interpreted, explained, and applied in case law.
- Criminal case decisions, specifically in the SC, are important to understanding offences, defences, and excuses used in criminal law.
- Qld Courts - particularly the SC in its appellate jurisdiction, and the HC (the ultimate appellate court in Qld) - Play an important role in interpretation of the QCC provisions.
- Judicial Decisions are either Binding or Persuasive.
 - Superior court's decisions are binding upon lower courts in the hierarchy (eg. The decisions of the HC when acting as the appellate court for Qld are binding on the lower courts of Qld).
 - Superior courts decisions from other jurisdictions are not binding on the lower courts of other states. (eg. The decisions of the HC acting as the appellate court for another jurisdiction other than in Qld, are not binding upon the lower courts of Qld, and are only binding upon the lower courts in the jurisdiction the decision was made).
 - Decisions of the HC Appellate acting for another jurisdiction are of persuasive value, but only where the laws of that jurisdiction are similar to QLD.
 - This applies to both codified and common law jurisdictions, across states and overseas.

(3) Reasonable Foreseeability Test;

a. Was the death reasonably foreseeable?

(4) Natural Consequences Test;

a. Assess victim's acts and consequences of those acts (eg. attempting to escape jumps from window).

Case Summaries

⚖️ *Royall v R* (1991)

Victim fell to death from 16th floor window (question jumped or fell?) Evidence of prior violent dispute between accused and victim. Rationale decided Indirect Intent, accused significantly contributed to the death. Confirmed in *Sherrington*.

⚖️ *R v Pagett*

Accused, a 31 y/o man, following failed marriage had relationship with 16 y/o girl. Upon ending that relationship, accused took a gun and shot the dad in leg, took mum hostage and forced her to take to girl. Took girl and mum hostage. When police caught up to him he pushed mum from car, took girl hostage in hotel. Using girl as shield he exited the hotel. Accused shot at police. Police shot at the shadowy figure moving toward them unbeknownst to them that the girl was shielding him. They killed the girl. **Held:** The appellant was convicted of possession of a firearm with intent to endanger life, kidnap of the mother and daughter, attempted murder on the father and two police officers and the manslaughter of the girl. He appealed against the manslaughter conviction on the issue of causation. At appeal, Eng Ct of App - Conviction upheld. The firing at the police officers caused them to fire back. In firing back the police officers were acting in self-defence. His using the girl as a shield caused her death. *Novus Actus Interveniens* has to be free, deliberate and informed. A reasonable act performed for the purpose of self-preservation or done in performance of a legal duty, being of course itself an act caused by the accused's own conduct, does not operate as a *novus actus interveniens*.

➤ ***Novus Actus Interveniens***

Intervening acts that break the chain of causation: a new act performed by someone else which relieves the original actor of casual responsibility. Doctrine opts to assign responsibility to the later actor. (*Chapman v Hearse* (1961) – vehicle collision at intersection – Chapman thrown from car. Dr came along, tended to Chapman. Another car struck the Dr.)

- (1) Did accused's act/conduct significantly contribute to victim's death?
- (2) Could the accused be CR under s 313(2) QCC, death of unborn child?
- (3) Was the act inadvertently negligent? May not constitute NAI.
- (4) Was the act voluntary? Must be to constitute NAI.

Novus Actus Interveniens Test. (Causal Chain broken due to an intervening act?)

➤ **Deemed Causation**

If there is an NAI, check for deemed causation, ss 294-298 and case law.

- (1) S 294: Death for acts done before birth.
- (2) S 295: Death caused as result of threats/intimidate of any kind or deceit. (Victim responds to it).
- (3) S 296: Acceleration of death (did act speed up the cause of death).
- (4) S 297: Acts of Victim that contribute (contributing acts of Victim do not interrupt causal link)

⚖️ *R v Blaue* [1975]: refused blood transfusion. Causal chain not broken.

⚖️ *Bingapore* [1975]: left hospital against medical advice. No break in causation.

⚖️ *Royall v R* (1991): victim dies while attempting to escape the accused.

- (5) S 298: 'Reasonably Proper' medical treatment 'applied in good faith'. (does not break the causal chain)

! -- Check for improper medical treatment!