

Offence	Common Assault	Assault Occasioning Actual Bodily Harm
Rule	s61 - Crimes Act 1900 (NSW)	s59 - Crimes Act 1900 (NSW)
Actus Rea	<ul style="list-style-type: none"> - <i>Fagan [1969]</i> - Must be an act, not omission - <i>Darby v DPP (2004)</i> - Assault = apprehension of unlawful contact; Battery = actual infliction of force. - <i>Knight (1998)</i> - Apprehension immediate violence, not immediately apprehends violence - <i>Zanker v Vartzokas (1988)</i> - Putting a person into apprehension of impending physical contact (effect on victim's mind) or actual unlawful contact - <i>Pemble (1971)</i> - Victim must be aware of accused's actions to cause apprehension of unlawful contact - <i>Barton v Armstrong [1969]</i> - Words are enough 	<ul style="list-style-type: none"> - <i>Donovan (1934)</i> - Includes any harm or injury calculated to interfere with health/comfort, need not be permanent, no doubt, be more than transient/trifling' - <i>McIntyre (2009)</i> - Bruising/scratching enough - <i>Chan-Fook (1994)</i> - Can include psychiatric injury, though it must be a recognised condition and it requires expert evidence - <i>Williams (1990)</i> - Occurrence of ABH
Mens Rea	<ul style="list-style-type: none"> - <i>MacPherson v Brown (1975)</i> - Intention to effect unlawful contact or create an apprehension - including recklessness where relevant consequences are adverted (actual knowledge required) to if not desired (subjective foresight as to possibility [NOT PROBABILITY] of some physical harm) (basic intent) - <i>Edwards v Police (1998)</i> - Advertent recklessness will suffice - did not desire to cause fear but realises that conduct may & persists. 	<ul style="list-style-type: none"> - <i>Coulter (1987); Williams (1990)</i> - No need for specific intent to cause ABH, sufficient if assault was reckless/intentional (basic intent)
Notes	<ul style="list-style-type: none"> - <i>Police v Greaves (1994)</i> - Conditional threats may constitute assault if it was condition that person could not lawfully impose - <i>DPP v JWH (1994)</i> - Spitting may be assault, dependent on the circumstances (actual contact/apprehension of unlawful contact) - <i>Fagan (1969)</i> - AR & MR must coincide, MR does not need to be present at time but can be superimposed onto the existing act. - Medical examinations & operations are only lawful when it has been consented to by participant/legal guardian, or if emergency conditions make procurement of consent impractical. 	<ul style="list-style-type: none"> - Consent is not a defence when anything beyond actual bodily harm is involved - <i>Brown (1994)</i> - Public interest > Consensual, private, sado-masochistic activities, regardless of whether victims had 'complained'. - <i>Donovan (1934)</i> - Unlawful to beat another person with such degree of violence that ABH is a probable consequence, and when such an act is proved, consent is immaterial.
Defences	<ul style="list-style-type: none"> - <i>Bonara (1994)</i> - Assault with consent is no assault at all - <i>Wilson (1985)</i> - Burden on accused to prove consent - <i>Collins v Wilcock (1984); Marion's Case (1992)</i> - Physical contact which is an inevitable part of everyday life is not assault - <i>Barton v Armstrong (1969)</i> - Psychic assault = Imminent fear 	<ul style="list-style-type: none"> - <i>Wilson (1997)</i> - Consensual activity between husband and wife in privacy of their matrimonial home, is not normally a proper matter for criminal investigation. (husband branded wife's buttocks with hot knife)
Penalties	2 YEARS IMPRISONMENT	5 YEARS IMPRISONMENT

Offence	Larceny
Rule	<p>Common Law - <i>Illich (1987)</i></p> <p>Committed by a person who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof. ⇒ Crime against possession of property</p> <p>(Focus on intent once harm has been established - acts are secondary and merely serve to prove intent)</p>
Actus Rea	<p style="text-align: center;">Property Capable of Being Stolen (i.e. Tangible Personal Property)</p> <ul style="list-style-type: none"> - Generally only applies to chattels (tangible and moveable property) - needs to be a thing ⇒ Excludes land (land cannot be carried away) - largely civil/contractual injury - <i>Billing v Pill (1954)</i> - Exclusions extends to fixtures that are attached to land (eg. houses, mailboxes, trees, crops & things forming part of land: minerals/soil)- <ul style="list-style-type: none"> - <i>Foley (1889)</i> - Doctrine of possessorial liability - owner deemed original possessor of illegally felling wood as it was part of land before being felled. - s139 - Metal, glass, wood etc fixed to house/land + s140 - Stealing trees etc in pleasure grounds - Wild animals not objects of larceny; unless someone had previously assumed possession by capturing/killing them - <i>Case of Swans (1591)</i> <ul style="list-style-type: none"> - Animal fit to be eaten/not of a base nature + <i>Waltham Black Act of 1723</i> - hunting or stealing deer in king's forest (protecting rights of kings to hunt game) - Domesticated farm animals/ pets can be subjects: s126-131 - stealing/interference with farm animals (importance of farm animals in colonial NSW); s132-133 - pets - Must have some physical form & be able to be taken and carried away: eg. gas can be stolen from a pipe - <i>White (1853)</i>, NOT IP /debt, physical \$ yes, not from bank acc - <i>Croton v R (1967)</i> - Transfer of \$ by bank voluntary, Webster never had possession/did bank hold it as her agent - property in \$ passed on withdrawal to Croton solely <ul style="list-style-type: none"> - s134 - Stealing/embezzling/destruction of valuable securities charged as larceny
	<p style="text-align: center;">Property is in the Possession of Another</p> <ul style="list-style-type: none"> - Require thief to have taken and carried away (actual control) + acted with intention to permanently deprive (act with intention to control) - <i>Anic, Stylianou and Suleyman (1993)</i> - Can be in possession notwithstanding possession is itself unlawful or that they have themselves stolen it. <ul style="list-style-type: none"> - Can have possession in illegally held drugs - capable of being subject of property rights (<i>Controlled Substances Act</i>) - <i>R v Waterhouse (1911)</i> - Right of property invested in opium despite the fact that it was prohibited. - <i>Williams v Phillips (1957)</i> - Constructive possession sufficient to show property belongs to another (eg. employer thru employee) → s156 - Larceny by clerks or servants - Courts will generally not consider property abandoned unless there is a clear and deliberate act of abandonment - last person in possession = owner. - <i>Hibbert v McKiernan (1948)</i> - Property on enclosed land considered in constructive possession of landowner, even if landowner unaware.
	<p style="text-align: center;">Property Taken and Carried Away by the Defendant (Asportation)</p> <ul style="list-style-type: none"> - <i>Wallis v Lane (1964)</i> - Must be some physical movement of the property in question, no matter how slight, by the accused - satisfied if each portion of the property is removed from the space which it occupies and the slightest moment is sufficient - <i>Potisk (1973)</i> - Mere intention is insufficient - action is required.
	<p style="text-align: center;">Taking Done Without Consent of Possessor</p> <ul style="list-style-type: none"> - <i>Middleton (1873)</i> - Not required to deny for owner to deny passing of possession against will, rather lack of positive intent to pass possession (lack of positive consent) - <i>Kennison v Daire (1986)</i> - Machine could not give bank's consent, bank consented to withdrawal up to \$200 upon presented of card & PIN only if account was current. - <i>Kolosque v Miyazaki</i> - May occur when someone deals with property in breach of a license. - <i>Minigal v McCammon (1970)</i> - Lost property: finder has implied license to possess property in order to return it.

Defence	Extreme Provocation
Rule	<p>S23 - Crimes Act 1900 (Applicable only for Murder)</p>
Burden of Proof	<ol style="list-style-type: none"> 1. Crown has legal and persuasive burden to prove beyond reasonable doubt, all necessary ingredients of offence of murder 2. Defence has evidentiary burden to prove that s/he was provoked 3. S23(7); Pollock (2010) - Crown has to rebut defence beyond a reasonable doubt → if Crown fails, Murder reduced to Manslaughter
Elements	<ol style="list-style-type: none"> 1. 23(2)(a) - Provocation - Requires reaction by accused to victim's conduct (eg. grossly insulting words/gestures) and must occur within his sight/hearing - Fisher; Quartly <ol style="list-style-type: none"> a. <i>Davis (1998)</i> - Loss of self-control must be induced by conduct of victim and not by someone else - and hearsay provocation (i.e. reported by others) is insufficient b. 23(5) - Self-induced intoxication of the accused cannot be taken into account 2. 23(2)(b) - Conduct of the victim was a 'serious indictable offence' (max penalty of 5 years to life) <ol style="list-style-type: none"> a. Few instances where words alone could qualify → Mere words (eg. confession) cannot - <i>Lees; Moffa; Peisley; Stingel</i> ⇒ Will alter balance btwn imperfection & life <ol style="list-style-type: none"> i. Threats of violence; blackmail - <i>Lees</i> or threatening to destroy/damage property or threats to cry rape sufficiently provocative - <i>Webb</i> ii. Includes words of appropriately violent character - <i>Dutton; Romano</i>, but sense of grievance or revenge or 'just desserts' will not suffice - <i>Van Den Hoek</i> b. Situation where victim tells accused they previous committed a serious indictable offence may give rise to defence only if accused by fact of SIF than the retelling. c. Leads to victim being put on trial - greater scrutiny - trial within a trial - cause significant distress to relatives of victim - confuses role of court as victim hasn't been charged but yet requires both proof of actus reus and mens rea to determine whether a serious indictable offence has been proved d. 23A(3)(a); Green (1977) - Non-violent homosexual advances will not constitute provocation <ol style="list-style-type: none"> i. Kirby, dissent - Permitting it would sit ill with contemporary legal, educative policy designed to remove such violent responses and stigma from society e. <i>Edwards (1973)</i> - Blackmailer should expect hostile and event violent response in retaliation and cannot rely on it as provocation. <ol style="list-style-type: none"> i. But if retaliation is really extreme - it will constitute provocation - ultimately question of degree, up to the jury 3. 23(2)(c) - Subjective gravity of provocation - victim's conduct caused accused to lose self-control <ol style="list-style-type: none"> a. <i>Stingel (1990); Baraghith; Masciantonio; Green; Croft; O'Neill</i> - Assess gravity/degree of provocation D faced - Personal attributes of accused may be considered <ol style="list-style-type: none"> i. eg. age, sex, race, physical features, personal attributes, personal relationships ('BWS') & past history may be relevant → Except self-induced intoxication 4. 23(2)(d) - Objective 'loss of self-control' - victim's conduct could have induced 'ordinary person' to lose self-control to extent of (a) intend to kill or (b) inflict GBH <ol style="list-style-type: none"> a. 23(4); Chhay (1992) - Loss of self-control can develop after lengthy period of abuse w/o necessity of specific triggering incident (prolonged domestic violence) <ol style="list-style-type: none"> i. But feeling/fear must be present at time of killing; jury may consider the significance of any time delay between provocation and the killing ii. Longer the interval, the more difficult it is to argue reasonable person would not have calmed down before it becomes like vengeance b. <i>Osland (1998)</i> - Longer the interval - jury open to find accused's conduct = deliberate desire of revenge for past, potential but unthreatened future conduct. c. <i>Stingel (1990)</i> - Determine how objective ordinary person could have reacted to provocation of that gravity → Assume decent self-control - Leonboyer (1998) <ol style="list-style-type: none"> i. Personal characteristics should not be considered here except considerations of same age & maturity - <i>Bargahith; Masciantonio</i> ii. Intoxication not applicable and not to be taken into account by the ordinary person - <i>Croft; O'Neill</i> d. <i>Anderson (2002)</i> - 'would' have induced = imposes a far more stringent text by which jury was to assess conduct of the deceased e. <i>Turnbull (2016)</i> - NSWCCA held purely objective test (diff from HCA) - ordinary community standards = harder for extreme provocation to succeed as defence
Notes	<ul style="list-style-type: none"> - <i>Parker; Pollock</i> - Where there is some reasonable evidence of provocation, judge is to leave question to jury, even if defence has not given evidence of loss of self-control - <i>Holmes</i> - Whether it should be left to the jury should be decided on a view of the facts most favourable to the accused - S23 - Judge to disallow defence to go to jury is criteria for extreme provocation when criteria under ss (2) and (3) not met
Result	<p style="text-align: center;">MURDER REDUCED TO MANSLAUGHTER</p>