

**LAWS 1022 – CRIMINAL LAWS – FINAL EXAM TEMPLATE**

<b>COMMON ASSAULT</b>	
<p><b>S61 of the Crimes Act 1900</b> Whosoever assaults any person, <u>although not occasioning actual bodily harm</u>, shall be liable to imprisonment for two years.</p>	<p>(DEFENDANT) may be charged for common assault pursuant to s61 of the Crimes Act.</p>
<b>Actus Reus</b>	
<p><b><u>PSYCHIC ASSAULT</u></b></p> <p>As the act lacked the application of force (psychic assault), the prosecution per <b><i>Edwards v Police</i></b> must prove that</p> <ol style="list-style-type: none"> <li>1. The act was without consent</li> <li>2. The act raised fear of immediate violence in the mind of the defendant</li> </ol> <p>The relevant facts in establishing the both AR elements appears to be _____ -</p> <p>(CASE) can be applied, as _____. Additionally, ____ (APPLY ANOTHER CASE IF NECESSARY)</p> <ul style="list-style-type: none"> <li>- ELEMENT 1 <ul style="list-style-type: none"> <li>o <i>Fagan v Commissioner of Metropolitan Police</i> – Assault must be an act, not a failure to act</li> <li>o <i>Bonora</i> – an assault with consent is no assault at all</li> <li>o <i>Gabriel</i> – Mere words aren’t enough to constitute an assault unless accompanied by gestures or other circumstances (context e.g. DV)</li> </ul> </li> <li>- ELEMENT 2 <ul style="list-style-type: none"> <li>o <i>Zanker v Vartzokas</i> – Feared physical harm doesn’t have to be immediate as long as there is a present and continuing fear</li> <li>o <i>Police v Greaves</i> – Conditional threats may constitute assault if it was a condition that the person couldn’t lawfully impose</li> </ul> </li> </ul> <p>Applying these to the facts _____.</p> <p>Therefore, the action will/will not constitute the AR of a Common Assault.</p>	<p><b><u>PHYSICAL VIOLENCE (BATTERY)</u></b></p> <p>As the assault involved physical violence (battery), per <b><i>Darby</i></b> the prosecution must prove that:</p> <ol style="list-style-type: none"> <li>1. (DEFENDANT) inflicted unlawful force without consent; and</li> <li>2. (DEFENDANT’S) act caused (VICTIM) to fear immediate violence</li> </ol> <p>The relevant facts in establishing the both AR elements appears to be _____ -</p> <p>(CASE) can be applied, as _____. Additionally, ____ (APPLY ANOTHER CASE IF NECESSARY)</p> <ul style="list-style-type: none"> <li>- ELEMENT 1 <ul style="list-style-type: none"> <li>o <i>Fagan v Commissioner of Metropolitan Police</i> – Assault must be an act, not a failure to act</li> <li>o <i>Bonora</i> – an assault with consent is no assault at all</li> <li>o <i>Gabriel</i> – Mere words aren’t enough to constitute an assault unless accompanied by gestures or other circumstances</li> <li>o <i>DPP v JWH</i> Spitting can constitute an assault as long as actus reus is still satisfied</li> <li>o <i>Marion</i> – Physical contact that is inevitable to everyday life does not constitute assault</li> </ul> </li> <li>- ELEMENT 2 <ul style="list-style-type: none"> <li>o <i>Zanker v Vartzokas</i> – Feared physical harm doesn’t have to be immediate as long as there is a present and continuing fear</li> </ul> </li> </ul>

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		Applying these to the facts _____. Therefore, the action will/will not constitute the AR of a Common Assault.
<b>Mens Rea</b>		
<b><u>PHYSIC ASSAULT</u></b>		<b><u>PHYSICAL VIOLENCE (BATTERY)</u></b>
Furthermore, the prosecution must prove that the defendant intended to produce apprehension in the victim’s mind ( <b><i>Edwards v Police</i></b> ). However, if the defendant didn’t desire to cause such a fear, the prosecution must prove that (DEFENDANT) had foresight of the <u>possibility</u> of the apprehension of imminent unlawful contact. This is a subjective test where the P must consider what the D actually considered ( <b><i>MacPherson v Brown</i></b> ) .  On the facts, it is likely/unlikely that this will be proven because, _____		Furthermore, the prosecution must prove that (DEFENDANT) intended to inflict unlawful force OR to produce apprehension within the mind of (VICTIM). However, recklessness isn’t sufficient per <b><i>Edwards v Police</i></b>  On the facts, it is likely/unlikely that this will be proven because, _____
Therefore, as both the AR and MR are established, (DEFENDANT) is likely to be convicted of a common assault		
Therefore, as the AR / MR is not established, a common assault conviction will not hold.		

<b>ASSAULT OCCASSIONING ACTUAL BODILY HARM</b>	
<p><b>S59 of the Crimes Act</b>                  (1) Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to imprisonment <u>for five years</u>.                  (2)                  (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for <u>7 years</u>.</p>	(DEFENDANT) may be charged for assault occasioning actual bodily harm pursuant to s59 of the Crimes Act based on the facts _____
<b>Actus Reus</b>	
In order for D to be charged under this section, it first must be established whether their act would satisfy the actus reus of a common assault. Additionally, the MR for this offence is one of absolute liability, hence is a common assault is established, conviction rests on the type of harm actioned upon (VICTIM)	
<b>GO TO COMMON ASSAULT SCAFFOLD</b>	

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Type of Harm
<p>As D's act constitutes an assault, it now must be determined whether the injuries caused to V are tantamount to being considered actual bodily harm for the purposes of s59.</p> <p>The definition for Actual bodily harm was set out in <u>Donovan</u> where it was held to be such hurt of injury that need not be permanent but must be more than merely transient and trifling.</p> <p>Therefore, the harm caused by D is likely/unlikely to be considered ABH per this definition as the (hurt/injury) interfered with the health or comfort of V. Hence, we must establish whether the actions of _____ rest under this definition.</p> <p>Applying:</p> <ul style="list-style-type: none"><li>- <u>R v Cameron</u> – Bruises and scratches to a victim are typical examples of injuries that are capable of amounting to actual bodily harm</li><li>- <u>Chan-Fook</u> – Actual bodily harm is capable of including psychiatric injury but it “doesn't include mere emotions such as fear or distress nor does it include states of minds that are not themselves evidenced of some identifiable clinical condition”</li><li>- <u>Li v R</u> – If a victim has been injured psychologically in a very serious way, going beyond mere transient emotions, feelings and states of mind, that would likely amount to actual bodily harm</li></ul> <p>Therefore, it appears that the harm does/does not constitute ABH and hence a likely/unlikely conviction</p>

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HOMICIDE	
<p>In order for a charge of homicide to be laid, it must initially be determined whether D’s act/omission (what is it?) caused the death of V. There are numerous tests of causation that the common law has developed.</p> <p><u>Causation</u></p> <p>Firstly, the question of causation can be determined by applying Common Sense to the facts (<i>Campbell; Royall</i>).</p> <ul style="list-style-type: none"> <li>- On the facts, a consideration of common sense would herald the conclusion that _____.</li> <li>- This finding of causation should be affirmed through the application of another test. (Choose 1 of the following) <ul style="list-style-type: none"> <li>o <b>Operating and Substantial Causes (Hallett) affirmed by Brennan, Deane and Dawson in Royall</b>– At the time of death, the original wound (what is it?) was still an operating and substantial cause of V’s death. Therefore, this test is satisfied, and causation is established. <ul style="list-style-type: none"> <li>▪ <i>IF CONTENTIOUS</i>: Only if the second cause (what is it?) is so overwhelming as to make the original wound merely part of the history can it be said that the death doesn’t flow from the wound. On the facts, _____ therefore this test can/cannot be satisfied and causation is/isn’t established... and the prosecution cannot pursue their charge of _____</li> </ul> </li> <li>o <b>Natural Consequence (Royall)</b> – Was the voluntary act of the deceased a natural consequence of the previous act of the defendant?</li> </ul> </li> </ul> <p>IF OMISSION</p> <ul style="list-style-type: none"> <li>- The prosecution must prove a legal duty to act beyond a reasonable doubt. Applying ____ (select relevant duty), ____ owes a common law duty of care to _____ ... <ul style="list-style-type: none"> <li>o <i>R v Taber</i>, to remove danger, since ____ caused the danger</li> <li>o <i>R v Taktak</i>, where ____ was secluded as to prevent others from rendering aid</li> <li>o <i>R v Russell</i>, as a father has a legal duty to children as they are dependent and vulnerable – duty exists by special relationship</li> <li>o <i>Stone and Dobinson</i>, where voluntary care had been assumed</li> <li>o <i>Burns</i>, there is no duty to administer assistance</li> <li>o <i>Sood</i>, where there is a retrospective duty to ensure the child was not born alive in a condition incompatible with survival</li> <li>o <i>Wacker</i>, due to the helplessness and seclusion created</li> </ul> </li> <li>- Therefore, the accused owed a duty to act and failed to do so.</li> </ul>	
Murder	
<p><b>S 18 Murder and Manslaughter Defined</b></p> <p>(1)</p> <p>(a) Murder shall be taken to have been committed where the <b>act of the accused</b>, or thing</p>	<p>As causation has already been established, the prosecution may seek for a murder conviction under s18 of the Crimes Act; proving beyond reasonable doubt that:</p> <ul style="list-style-type: none"> <li>- The existence of a deliberate and voluntary act/omission</li> <li>- (DEFENDANT)’s mens rea is that of an intent to kill, an intent to cause GBH or reckless indifference</li> </ul>

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<p>by him or her <b>omitted to be done</b>, causing the death charged, was done or omitted with <b>reckless indifference to human life, or with intent to kill or inflict grievous bodily harm</b> upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.</p> <p>(2) (b) Every other punishable homicide shall be taken to be manslaughter.</p> <p>(a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.</p> <p>(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only.</p>	<p><u>Actus Reus</u> ACT</p> <ul style="list-style-type: none"> <li>- The voluntary act/omission has already been established as _____</li> </ul> <p>OMMISSION</p> <ul style="list-style-type: none"> <li>- The accused owed a duty to act, and voluntarily failed/<b>did not</b> fail to do so (<i>Taktak</i>) as _____</li> <li>- Such omission was conscious and voluntary, without any intention of causing death, but in circumstances which involved such a great falling short of the SOC which a RP would have exercised, and involved such a high risk of death, that it merited criminal punishment (Taktak)</li> <li>- Applying this to the facts, _____</li> </ul> <p><u>Mens Rea</u> The prosecution must now establish whether (DEFENDANT) had an intention to cause GBH or was recklessly indifferent.</p> <p>GBH</p> <ul style="list-style-type: none"> <li>- On the facts it can be determined that (DEFENDANT) did/didn't intend to kill/cause grievous bodily harm as _____</li> <li>- Further:             <ul style="list-style-type: none"> <li>o A person's intention may be inferred or concluded from the circumstances in which the death occurred and from the conduct of the accused before, at the time of, or after he/she did the specific act that caused the death. (<i>R v Robinson</i>)</li> <li>o The precise method ___ that (DEFENDANT) intended to kill/inflict GBH on (VICTIM) doesn't have to be the method that actually resulted in the death of (VICTIM) (<i>Royall</i>)</li> </ul> </li> <li>- Therefore, it appears that a MR can/cannot be established in relation to an intent to cause GBH and thus a murder conviction is likely/unlikely</li> </ul> <p>Reckless Indifference</p> <ul style="list-style-type: none"> <li>- Reckless indifference to human life is doing the act with the foresight of the <u>probability</u> of death arising from the act (<i>Crabbe</i>)</li> <li>- Further, the accused will have the requisite intent if he intends to kill another even though he believes that he will probably not be successful: <i>La Fontaine</i> (1976)</li> <li>- However, It is insufficient to foresee the probability of GBH (this will be manslaughter) (<i>Solomon</i>)</li> <li>- Applying this to the facts, _____</li> </ul>
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	<ul style="list-style-type: none"> <li>- Additional Cases if Needed             <ul style="list-style-type: none"> <li>o Act                 <ul style="list-style-type: none"> <li>▪ Substantial, real and remote chance is tantamount to a probability (<i>Faure</i>)</li> <li>▪ May happen but willing to concede that it may not happen = probability (<i>La Fontaine</i>)</li> <li>▪ It is insufficient to acknowledge merely the possibility of death (<i>Solomon</i>)</li> </ul> </li> <li>o Omission                 <ul style="list-style-type: none"> <li>▪ If you 'deliberately' put someone in danger you have a legal duty to remove them from danger – (<i>Taber</i>)</li> <li>▪ If you have the realisation of the probability of harm, there is reckless indifference to human life (<i>BW &amp; SW</i>)</li> </ul> </li> </ul> </li> <li>- Therefore, it appears that a MR can/cannot be established in relation to (DEFENDANTS) reckless indifference and thus a murder conviction is likely/unlikely</li> </ul>
<p>Constructive Murder</p>	
<p>Examples of what the base offence for constructive murder can be:</p> <ul style="list-style-type: none"> <li>- S61JA – aggravated sexual assault in company</li> <li>- S33(2) – wounding with intent to resist arrest</li> <li>- S33A(2) – discharging a firearm with intent to resist arrest</li> <li>- S97(2) – armed robbery with a dangerous weapon</li> <li>- S112(3) – breaking and entering a building armed with a dangerous weapon</li> </ul>	<p>Under s18(1)(a) murder can be committed where the act of the accused which caused the death of the deceased was done in an attempt to commit, or during or immediately after the commission by the accused (or an accomplice) of a really serious offence; defined as a crime punishable by imprisonment of life or 25 years</p> <ul style="list-style-type: none"> <li>- The crown must establish beyond reasonable doubt that D did commit the serious crime</li> <li>- The mens rea for this crime is absolute liability. Therefore, as long as death occurred as a result of a serious base offence, D will be guilty of constructive murder</li> </ul> <p>Applying this to the facts, _____</p>

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<i>Defence</i>	<i>Operation</i>	<i>Evidentiary Burden</i>	<i>Legal Burden</i>
Mental illness	Offender may be found not guilty; results in indefinite detention awaiting consideration by the Mental Health Tribunal – <b>full defence of not guilty with special verdict</b>	Either side may raise	Defendant Balance of probabilities
Automatism	Full defence of not guilty	Defendant Evidentiary Burden “Passing the judge” standard	Prosecution has the burden of proving voluntariness BRD
Substantial impairment	Only available as a defence to the charge of murder Reduces murder to manslaughter	Defendant “Passing the judge” standard	Defendant must prove on the balance of probabilities
Infanticide	Only available to a woman who has killed her biological child less than a year after birth <b>BOTH AN OFFENCE AND DEFENCE</b>	Offence = prosecution Defence = unclear	Offence = prosecution Defence = unclear
Intoxication	Reduces culpability for crimes of specific intent	Defendant Evidentiary Burden Note: Judge may direct jury if there is substantial evidence even if D is not relying on intoxication	Prosecution Beyond reasonable doubt
Self-defence	Full defence Available for all crimes – excessive force defence only reduces M to m	Defendant “Passing the judge” standard	Prosecution Beyond reasonable doubt that it was not an act of self defence
Extreme provocation	Partial defence Reduces M to m	Defendant “Passing the judge” standard	Prosecution Beyond reasonable doubt that the act was not a response to extreme provocation – <b>must negative EP BRD</b>

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### MENTAL ILLNESS

Both prosecution and defence can raise the issue of mental illness at trial. Although, the defendant must prove mental illness on the balance of probabilities, and if successful, this **acts as a full defence of not guilty with special verdict**

Mental illness is not defined by the *Mental Health (Forensic Provisions) Act 1990* (NSW), but is determined according to the *M'Naghten* rules.

Firstly, it must be proven that the **defendant was labouring under a defect of reason when he or she committed the AR, whereby** the accused could not reason about the matter with a moderate degree of sense and composure (*Porter*)

Applying this to the facts, \_\_\_\_\_

Next, the defendant must prove that the defect of reason was due to a 'disease of the mind'

- ***Bratty v Attorney General for Northern Ireland*** states that a disease of the mind encompasses the major mental diseases and psychoses, such as schizophrenia.
- ***Quick*** holds that a mental disorder arising from an external cause is not a disease of the mind.
- As per ***Radford***, the reaction of an unsound mind to its own delusions may be suggestive of a disease of the mind.
- As per ***Da-Pra***, medical evidence is not essential to prove a disease of the mind, but it is frequently adducted.
- ***Woodbridge*** reinforces that insanity requires a legal, not a medical definition.

Applying this to the facts

Lastly, *M'Naghten* further requires that because of the defect of reason, \_\_\_ (defendant) must prove that he/she either did not know the nature or quality of the act, or if he/she did, that he/she did not know it was wrong.

- ***Porter*** holds that the defendant must not know that his/her act was wrong at a moral, not a legal standard.
- ***Cheatham*** requires that the disease of the mind must cause an incapacity to understand the nature and quality of the act, rather than just difficulty in appreciation.

Applying \_\_\_\_, the defendant did not know \_\_\_\_\_

Therefore, it appears that the defence of mental illness holds/ will not hold as \_\_\_\_\_.

\*\*\* if holds – therefore, the conviction for murder will be negated on the basis of mental illness and (DEFENDANT) will be acquitted.

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AUTOMATISM

As per *Falconer*, a psychological blow may lead to involuntary conduct, which would not otherwise amount to a disease of the mind requisite for the mental illness defence. The defendant holds this evidential burden and the prosecution must disprove it BRD. This is a full defence.

The defendant may raise evidence to negative voluntariness.

- The factual scenario is similar to \_\_\_ (case), where \_\_\_ (defendant) was suffering from ...

<i>Case</i>	<i>Cause</i>	<i>Reasoning</i>
<i>O'Connor</i>	Extreme states of intoxication caused by alcohol	Mental element is necessary, thus it is not evident if something has interfered with it
<i>Haywood</i>	Drugs (drug psychosis)	No distinction to be drawn between alcohol and drugs
<i>Wogandt</i>	Concussion	Concussion is independent of one's will
<i>Quick</i>	Hypoglaemia	Malfunctioning of the mind occurred externally as it was a result of the insulin
<i>Hill v Baxter</i>	Sudden illness	Act not to be regarded as involuntary simply because it is unintentional or its consequences are unforeseen
<i>Falconer</i>	Disassociation caused by a severe psychological blow	Psychological blow may cause involuntary conduct
<i>Jiminez</i>	Sleepwalking (authorities differ)	
<i>Donyadideh</i>	Post-traumatic stress disorder	Automatism as a result of PTSD is a valid defence

As per \_\_\_(case), \_\_\_ does not permit the defendant to access automatism, and mental illness instead must be considered as insane automatism

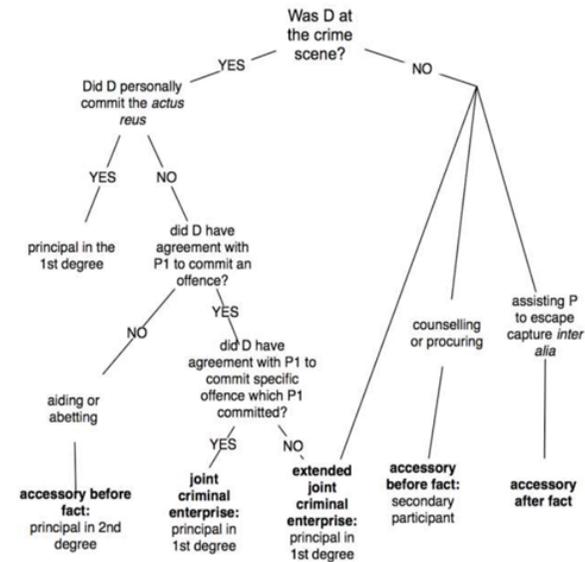
<i>Case</i>	<i>Cause</i>	<i>Reasoning</i>
<i>Hennessy</i>	Hyperglycaemia	Medical evidence suggested that hyperglycaemia could lead to mental impairment; no external factor to permit a defence of automatism, therefore only insanity was available
<i>Burgess</i>	Sleepwalking	Authorities differ Transitory; internal factor and prone to recur
<i>Sullivan</i>	Epilepsy	Defence of insanity was available but not automatism; done by the courts with reluctance

Therefore, it appears that the defence of automatism will/will not hold.

SUBSTANTIAL IMPAIRMENT OF THE MIND	
<p><b>S 23A – Substantial impairment by abnormality of mind</b></p> <p>(1) A person who would otherwise be guilty of murder is not to be convicted of murder if:</p> <p style="padding-left: 40px;">(a) at the time of the acts or omissions causing the death concerned, the person’s capacity to understand events, or to judge whether the person’s actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and</p> <p style="padding-left: 40px;">(b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.</p> <p>(4) The onus is on the person accused to prove that he or she is not liable to be convicted of murder by virtue of this section.</p> <p>(8) In this section:  <b>underlying condition</b> means a pre-existing mental or physiological condition, other than a condition of a transitory kind.</p>	<p>___ may raise evidence of substantial impairment under S 23A of the <i>Crimes Act 1900</i>. If successful, ___’s charge of murder will be reduced to manslaughter. The evidential burden is on (DEFENDANT) on a “passing the judge standard” and per s23A(4) The onus is on (DEFENDANT) to prove that he or she is not liable to be convicted of murder on the balance of probabilities.</p> <p>The first limb under s 23(1)(a) requires proof of (DEFENDANT’s) abnormality of the mind arising from an underlying condition</p> <ul style="list-style-type: none"> <li>- S 23A(8) provides that the condition must be pre-existing, not transitory.</li> <li>- <i>Byrne</i> holds that abnormality of mind is so different to that of the ordinary person that the reasonable man would term it abnormal, and both cognitive and volitional impairments may be considered under abnormality of mind.</li> <li>- ___’s underlying condition of ___ creates an abnormality of mind which suffices the <i>Byrne</i> test, since...</li> <li>- The reasonable man is likely to term ___’s underlying condition of ___ as abnormal, as required by <i>Byrne</i>. Upon the facts ...</li> </ul> <p>Further, the prosecution now must prove that the the <i>impairment was so substantial</i> as to warrant liability for murder being reduced to manslaughter; in which this value judgement applying community standards in conjunction with medical evidence.</p> <ul style="list-style-type: none"> <li>- While expert evidence has been provided, <i>Potts</i> holds that since the finding is a moral rather than medical judgment, the evidence does not have to be accepted by the jury.</li> <li>- Self-Induced Intoxication (USE IF APPLICABLE TO CIRCUMSTANCE)</li> <li>- As per <i>Goodridge</i>, the exacerbating effects of ___’s intoxication must be excluded from consideration. The question is whether the impairment was substantial despite intoxication</li> </ul> <p>Therefore, it appears likely/unlikely that (DEFENDANT) will be able to reduce the potential murder charge into manslaughter on the basis of substantial impairment</p>

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Extending Criminal Liability - Complicity	
<p>1. Joint Criminal Enterprise</p> <p>2. Extended Joint Criminal Enterprise</p> <p>3. Accessorial Joint Criminal enterprise</p>	<p><b>Note: Establish if charge is applicable to person first</b></p> <p>Complicity – Assist or encourage is the crime                      Conspiracy – Exposes individualised due to shared intention</p> <ul style="list-style-type: none"> <li>• 2 ways to participate in crime:                             <ul style="list-style-type: none"> <li>○ as <u>perpetrator</u> (a.r. + m.r.) (P.O).</li> <li>○ as <u>accomplice</u> to principal offender.</li> </ul> </li> <li>• 2 types of <u>accomplices</u> <ul style="list-style-type: none"> <li>○ present at scene--aid and abet</li> <li>○ absent at scene--counsel and procure</li> </ul> </li> <li>• If P.O. commits a <u>serious offence</u>;                             <ul style="list-style-type: none"> <li>○ P.O. = Principal in 1st degree</li> <li>○ Present accomplice = principal in 2nd degree. Aids or assists</li> <li>○ Absent accomplice = accessory before and after the fact</li> </ul> </li> </ul> <p><b>Tangye:</b></p> <ul style="list-style-type: none"> <li>- Crown must establish both the existence of joint criminal enterprise and participation</li> <li>- The understanding or arrangement between will need not to be expressed, its existence may be inferred from all circumstances</li> <li>- A person participates in that joint criminal enterprise by committing the agreed crime itself or simply being present when it is committed (Emphasised)</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- <b>Markby v The Queen</b> <ul style="list-style-type: none"> <li>○ Supports the conclusion that it is the wrongful acts of the perpetrator which are attributed to the person acting in concert and present at the scene</li> </ul> </li> <li>- <b>Matusевич</b> <ul style="list-style-type: none"> <li>○ Acknowledges that the doctrine of innocent agency does not explain all the situations where a person acting in concert is liable as a principle in the first degree, even though the actual perpetrator cannot be held criminally responsible</li> <li>○ <b>Given clear approval to the use of the principle of acting in concert to convict secondary parties when the principle is not personal liable</b></li> </ul> </li> </ul>



**Note:** If P1 is innocent by reason of lack of *mens rea* or some other fact, then the prosecution may apply the doctrine of **innocent agency** to D.  
**Note also:** this graph shows alternative arguments and the point of which they are alternatives, e.g. look at relationship between accessory before fact (aiding and abetting) and joint criminal enterprise: point of alternative is agreement

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JOINT CRIMINAL ENTERPRISE	
Liability is extended to a person who agreed on committing the offence, was present at the scene, but did not physically carry out the actus Reus. The Crown has the burden of proving BRD That _____	
Actus Reus	
Agreement	As the agreement does not have to be reduced to 'writing or any formality' <i>Kanaan</i> . (DEFENDANT) could be found to have reach an agreement the party who carried out the actus Reus, (OFFENDER) <ul style="list-style-type: none"> <li>• <i>Tangye</i> – Does not have to be explicit, unspoken and informal understanding is sufficient</li> <li>• <i>Taufahema</i>- there has to be a 'mutuality of assistant' as opposed to common intention (<b>For groups</b>)</li> <li>• <i>Chishimba</i> – Mere presence in a room together does not imply there was an agreement,                             <ul style="list-style-type: none"> <li>○ <i>Needed some kind of assistance/encouragements</i></li> <li>○ <b>However, in dissent it was noted that a failure to intervene is more than just presence</b></li> </ul> </li> </ul>
All are Present	IT must then be proved, BRD, that the accused was present at the time of the offence. Though the law is unclear on this area, <ul style="list-style-type: none"> <li>• <i>Osland</i> – established that the liability of a participant in a joint criminal enterprise gives rise to a primary liability- not derivative                             <ul style="list-style-type: none"> <li>○ Thus, there is a presence requirement</li> </ul> </li> <li>• <i>Franklin</i> – Presence doesn't need to be continuous, there may be there part of the time and that would be sufficient (not continuous)</li> </ul> <i>Suteski</i> – One may be charged as a primary offender through JCE if there was an agreement to commit the crime adn the accused was present at the agreement stage
Withdrawal	<i>Tiete I</i> <ul style="list-style-type: none"> <li>• <i>Need to completely withdraw</i></li> <li>• <i>Must be timely</i></li> <li>• <i>Participant must make his/her withdrawal known to the others</i></li> <li>• <i>Must do what he/she reasonably can to deter the others from continuing with the crime</i></li> </ul> - If the crime has begun, a counter and mud undo the effect of previous encouragement and participation, otherwise withdrawal will not be timely <b>Burden is on the Crown to negative a withdrawal BRD</b>
	If the above elements can be proven beyond all reasonable doubt, the accused will be treated as though he committed the actus reus himself, meaning he is a principal to the first degree and thus attributed primary responsibility (Osland).  The accused may still raise defences (e.g. self-defence, insanity defence, provocation, etc).

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LARCENY	
<p><b>S 117 of the Crimes Act</b>                      Whosoever commits larceny, or any indictable offence by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to imprisonment for five years.</p>	<p>(DEFENDANT) may be charged with larceny under S 117 of the <i>Crimes Act 1900</i>. Larceny is not defined by the legislation. <i>Ilich</i> provides the common law elements for the actus reus and mens rea.</p> <p><b>Actus reus</b></p> <ol style="list-style-type: none"> <li>1. property capable of being stolen (tangible); and</li> <li>2. property is in the possession of another; and</li> <li>3. property is taken and carried away (asportation); and</li> <li>4. taking is done without consent of the possessor</li> </ol> <p><b>Mens rea</b></p> <ol style="list-style-type: none"> <li>1. taken with intention to permanently deprive; and</li> <li>2. taken fraudulently (i.e., dishonestly)</li> <li>3. without any claim of right to the property</li> </ol>
Actus Reus	
<p><i>Ilich</i> outlines four actus reus elements. Each must be proven by the prosecution beyond a reasonable doubt to sustain a larceny conviction.</p> <ol style="list-style-type: none"> <li>1. It must first be proven that the ____ (property stolen) was capable of being stolen by ____ (defendant). The common law restricts larceny to tangible, moving property. The property is capable of being stolen as, _____ (USE A CASE BELOW)                             <ul style="list-style-type: none"> <li>- Land cannot be taken away, even though it is tangible</li> <li>- <i>Billing v Pill</i> – things attached to the land cannot be stolen, e.g. houses, trees</li> <li>- <i>Case of Swans</i> – in their natural state as <i>ferae nature</i>, animals are not anyone’s possession and cannot be taken</li> <li>- <i>Crimes Act</i> prohibits the stealing of various animals – SS 126 – 131 – domestic farm animals , S 132 – dogs , S 502 – cattle , S 505 – animals ordinarily kept in confinement , S 512 – fish in waters on private property</li> <li>- <i>White</i> - gas can be stolen from a pipe</li> <li>- <i>Kidd and Walsh</i> - copyright of a song does not suffice as property being stolen</li> <li>- <i>Croton</i> - money cannot be stolen from a joint account if withdrawn, since there was no initial possession of the notes by the other party</li> </ul> <p>Applying this to the facts, _____ OR</p> </li> <li>2. It must also be proven that ____ (property) was in the possession of another.                              The facts provide that _____                             <ul style="list-style-type: none"> <li>- <i>Anic, Stylianou and Suleyman</i> - a thief holds possession of what he has stolen; even though the property was illegally in possession, it suffices for a claim of larceny</li> <li>- <i>Hibbert v McKiernan</i> - property found on enclosed land is in possession of the landowner, even if they are unaware of the existence of the property</li> </ul> </li> </ol>	

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3. Additionally, property must be taken and carried away. *Wallis v Lane* holds that merely moving the property with intent to steal suffices as asportation. The defendant moved/did not move, \_\_\_\_\_

4. The final element requires that the property was taken without the consent of the possessor.

Applying this element, \_\_\_\_\_ (APPLY A CASE BELOW)

- *Middleton* - the possessor must be unwilling
- *Kennison v Daire* - allowing something is not the same as consenting to it
- *Kolosque v Miyazaki* - license granted by an owner to remove goods is broken if there is any action inconsistent with that license