

## OFFENCES

Offence	Alternative
Death	Murder s 18(1)(a) > UDA manslaughter / CN manslaughter > assault causing death
Assault	Wounding with intent GBH s 33(1) > reckless GBH s 35(2) > reckless wounding s 35(4) / assault occasioning ABH s 59 > common assault s 61 / GBH by negligent act or omission s 54 > stalking or intimidation s 13
Sexual offences	Aggravated SA in company s 61JA > aggravated SA s 61J > sexual assault s 61I > aggravated sexual act s 61KF
Complicity	JCE > accessory liability > EJCE

### Alternative verdicts provisions

If a jury is not satisfied of a charge for an offence of intent to cause grievous bodily harm (s 33(1)), they may find the person guilty of a s 35 offence ie reckless grievous bodily harm in company, reckless grievous bodily harm, reckless wounding (s 33(3)).

For aggravated sexual touching (s 61KD), aggravated sexual acts (s 61KF) and aggravated sexual assault (s 61J), if the jury is not satisfied of the aggravated offence, but is satisfied of the base offence, the jury may find the accused guilty of the base offence with punishment accordingly (s 80AB(1)).

## DEFENCES

Murder	Assault	Sexual offences	Larceny
<b>Partial defences:</b> Extreme provocation s 23  Excessive self defence s 421  Substantial impairment because of mental impairment or cognitive impairment s 23A <b>(D bears legal burden)</b>  Automatism  <b>Complete defences:</b> Self defence  Necessity  Duress  MHICI  Automatism	Self defence  Necessity  Duress  MHICI  Automatism	Self defence  Necessity  Duress  MHICI	'Defences' where the Crown is unable to prove an element of the offence

Presumption	Rebutted by	Cases
Strict liability offence	<p>There is a presumption that <i>mens rea</i> is an essential ingredient of every offence. This can be displaced by analysis of:</p> <ul style="list-style-type: none"> <li>(i) The words of the statute (statutory construction)</li> <li>(ii) The subject matter with which the statute deals (greater harm → greater penalty → less likely to be strict liability: He Kaw Teh)</li> <li>(iii) Would it assist in the enforcement of the regulations/law?</li> </ul>	He Kaw Teh
Honest and Reasonable Mistake of Fact	<p>As a general rule an honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse for doing what would otherwise be an offence (Proudman v Day per Dixon J at 540)</p> <ul style="list-style-type: none"> <li>(i) Strict liability offence (He Kaw Teh)</li> <li>(ii) The mistaken belief must be reasonable (CTM v R at 453)</li> <li>(iii) The belief, if true, renders the conduct innocent (CTM v R at 453)</li> </ul> <p>Due diligence is never available as an extension of the reasonable mistake of fact excuse (Australian Iron &amp; Steel Pty Ltd v Environmental Protection Authority (No 2))</p> <p><b>Onus:</b> If the evidential burden is satisfied by the defendant (CTM v R at 479), then ultimately it is for the prosecution to prove beyond reasonable doubt that the accused did not honestly believe, on reasonable grounds the relevant facts (CTM v R at 456, 479) – i.e., must prove knowledge of the circumstances.</p>	<p><i>Thomas v R</i> – bigamy</p> <p><i>SRA v Hunter District Water Board</i> - underground pipe failure</p> <p><i>CTM v R</i> – sexual assault of child</p> <p><i>Bell v Tasmania</i> – supplied drugs and sexually assaulted 15-year-old</p> <p><i>Hawthorn (Department of Health) v Morcam</i> – adulterated food</p> <p><i>R v Tolson</i> – Husband went missing</p>
Absolute liability offence	<p>Factors to be considered in determining whether there is clear legislative intent to displace the mens rea element and create an offence of strict liability (Narouz v R at [42]-[60]).</p> <ul style="list-style-type: none"> <li>(i) The words of the statute itself</li> <li>(ii) Subject matter with which the statute deals</li> <li>(iii) Whether absolute liability will assist overcoming 'the mischief at which the statute is aimed.'</li> <li>(iv) Gravity of the offence, indicated by the penalties</li> </ul>	<p><i>Allen v United Carpet Mills Pty Ltd</i> – water pollution</p> <p><i>Kearon v Grant</i> – speeding</p> <p><i>Azadzoi v County Court of Victoria</i> – indecent exposure</p> <p><i>Narouz v R</i> – drug driving</p>

Offence	Elements	Cases
Murder	<p>Section 18:</p> <ul style="list-style-type: none"> <li>(i) Death of the victim (Human Tissue Act, s 33)</li> <li>(ii) Death caused by the act or omission of the accused</li> <li>(iii) The accused acted or omitted to act with the relevant state of mind – that is: <ul style="list-style-type: none"> <li>a. Intention to kill</li> <li>b. Intention to do grievous bodily harm</li> <li>c. Reckless indifference to human life</li> </ul> </li> </ul>	<p>Omission causing death: R v SW and BW (No 1)</p> <p>If multiple acts/omissions → jury to decide: <i>Koani; Ryan; Royall; Artlthulakan</i></p> <p>Intervening conduct:</p> <ul style="list-style-type: none"> <li>· third party: <i>Smith; Evans and Gardiner; Chesire</i></li> <li>· act of nature: <i>Hallett</i></li> <li>· refusing medical treatment: <i>Blaue; Singapore</i></li> <li>· fright/self-preservation: <i>Royall; McAuliffe</i></li> </ul> <p>Intention: <i>Zabouroni; Matthews; Baden Clay; Jogee</i></p> <p>Reckless indifference: <i>Solomon; Crabbe</i></p> <p>Temporal coincide: <i>Thabo Meli; Church; Meyers</i></p> <p>Constructive murder: <i>IL</i></p>
Manslaughter by Unlawful and Dangerous Act	<ul style="list-style-type: none"> <li>(i) The Act was unlawful</li> <li>(ii) Death caused by act</li> <li>(iii) Act causing death carried an appreciable risk of serious injury to others and a reasonable person in the position of accused would have realised such risk</li> <li>(iv) Accused person intended to commit the act causing death</li> </ul>	<p>Unlawful: <i>Lamb; Pullman</i></p> <p>Causation:</p> <ul style="list-style-type: none"> <li>· Drug supply: <i>Burns</i></li> <li>· Fright/self-preservation: <i>RIK; Aidid</i></li> </ul> <p>Dangerousness: <i>Wilson; RIK; Wills</i></p>
Assault Causing Death	<p>Section 25A:</p> <ul style="list-style-type: none"> <li>(i) Assault another person by intentionally hitting them</li> <li>(ii) Absence of lawful excuse</li> <li>(iii) Death caused by act</li> </ul>	<p>If over 18 + intoxicated → minimum mandatory sentence of 8 yrs: s 25A(2); s 25A(B)(1)</p> <p>Supply of drugs: s 25C</p>