

Criminal Law Exam 2023

1. Spotting the **relevant issues**; and
2. Selecting the **appropriate charge** and demonstrating an **awareness of alternate verdicts and defenses**; and
3. **Identifying any aggravating features or circumstances**; and
4. Consideration of the evidence (or lack thereof); and
5. Assessment on **likelihood of conviction**; and ○ How **compelling** is the evidence and/or the witnesses?
6. What is the **best defense**? (if any); and
7. **Advise** the client – the option of a **plea bargain** where appropriate.



2. CHARGE SELECTION AND ALTERNATE VERDICTS

STEP 1: What is the most appropriate charge

- Prosecutorial authorities have an obligation to charge with the most serious offence **that is available to them on the facts**. If there is a case where someone has died, but it appears to have been an accident or only partially due to the fault of the accused, then obviously a charge of manslaughter under S13 may be more appropriate – there may also be an issue about causation.
- Don't over exaggerate the charge – many students do this. Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the Court with an appropriate basis for sentence.

STEP 2: What alternative verdicts are available? (if any)

- The Murder/Manslaughter alternative is a classic example – sometimes, if the evidence is not compelling enough to establish a charge of murder, then Manslaughter may be a viable alternative verdict. **HOWEVER – do not charge an accused on the facts with Murder (in the hopes that if Murder is not made out, then Manslaughter will be easily made out) – if the facts suggest Manslaughter is a more appropriate initial charge, then SELECT that first, and EXPLAIN why you did not chose Murder briefly.**



3. AGGRAVATING FEATURES/CIRCUMSTANCES

- Section 5AA of the *Criminal Law Consolidation Act 1935* (SA) outlines some 8+ examples of aggravating features. I will not list them all here, but I will just provide some common examples and the reference for the applicable provision:
 - Section 5AA(1)(a) – offender committed the offence in the course of deliberately and systematically inflicting severe pain on the victim; or
 - Section 5AA(1)(b) – the offender used, or threatened to use, an offensive weapon to commit, or when committing, the offence; or
 - Section 5AA(1)(d)(iii) – the offender committed the offence in retribution against the victim for taking legal proceedings or for the victim's conduct (as party, witness or in any other capacity) in legal proceedings; or
 - Section 5AA(1)(e)(iii) – the offender committed the offence knowing that the victim of the offence was, at the time of the offence, under the age of 12 years; or
 - Section 5AA(1)(f) – the offender committed the offence knowing that the victim of the offence was, at the time of the offence, over the age of 60 years; or
 - Section 5AA(1)(g) – the offender committed the offence knowing that the victim of the offence was a person with whom the offender was, or was formerly, in a relationship.
- Read the facts and analyze whether any of the factors in Section 5AA of the *CLCA* arise. Kellie won't be too harsh, she will usually pick easy/obvious ones (victim was under 14, over 60, or a weapon was used etc.)



4. CONSIDER THE EVIDENCE

- You need to consider how probative the evidence is, how compelling it is and whether it meets the standard of proving the offence alleged BRD. For example, if the charge is murder but there is no murder weapon and only an unreliable witness, then it might be wise for Defence to proceed to trial as the charge may not be proven – it would be wise for defence to consider an alternative charge in the circumstances. Is there a direct witness testimony? Or is the evidence circumstantial?



5. LIKELYHOOD OF CONVICTION

- The likelihood of conviction will depend on what was discussed previously in Point 4. If the witnesses are compelling and the evidence is compelling – then the likelihood of conviction is high. Proceeding to trial would be unwise for defence, unless there is a viable defence they can claim.



6. BEST OR MOST VIABLE DEFENCE

- In every exam, the defence of self-defense is almost always raised as per Section 15 of the CLCA. Remember that self-defense is a two limb hybrid test (one subjective limb and one objective limb) – the defendant must have genuinely believed that the conduct to which the charge relates was necessary and reasonable for a defensive purpose (subjective), and the conduct was, in the circumstances as the defendant genuinely believed them to be, reasonably proportionate to the threat that the defendant genuinely believed to exist (objective – reasonable person test).
- In most cases, it will come down to a question of whether the conduct was *actually* reasonable and proportionate (the objective limb) – otherwise self-defense won't be made out (unless the charge was murder, then it will operate as a partial defence, reducing the charge to manslaughter).



7. ADVISE THE CLIENT

- Believe it or not, students actually forget to do this. After weighing up and considering the above questions you need to advise the client on **what they actually need to do moving forward**. If the evidence is compelling, and there is no viable defence, then entering into a plea agreement for a lesser charge may be the best option to avoid a trial and give a sentencing discount to the accused.
- However, if the evidence is not compelling and there is a viable defence, then going to trial may be the best option so that the Court can determine the case.