Criminal B Scaffold

PART B DEFENCES

<Refer to Part A for Offences>

Contents

QUICK SCAN

LOOK FOR	DEFENCE	TICK
EXCUSES		
Focus on a lack of capacity and acknowledge that the defendant committed a crime but argue they should not be held fully responsible due to specific impairments.		
Automatism: acted without control due to a medical or psychological condition, which can result in a not guilty verdict if intent is absent, **Acting unconsciously or involuntarily** (e.g. sleepwalking, seizure, reflex, shock) • "Didn't know what I was doing" • No awareness or control ➤ **Involuntary act caused by *external factor*** (not disease of mind). Must be total loss of control, not partial (Falconer). External causes: concussion, blow to head, insulin (Quick). Internal causes (epilepsy, psychosis) → **insanity**, not automatism.	**Automatism** ❌ Not guilty (complete acquittal).	
Mental Health Impairment: The defendant's mental condition may have affected their understanding of their actions. Psychosis, delusion, hallucination, severe depression, schizophrenia, bipolar. "Voices told me," "saving them from evil," etc. ➤ *s 28(1) MHCIFPA (NSW)*: Not criminally responsible if, due to **mental health impairment**, D: 1 Did not know nature and quality of act, OR 2 Did not know act was wrong (could not reason with sense & composure). • Must arise from *disturbance of thought, mood, volition or perception* (s 4). • **Excludes temporary intoxication or drug effects.**	**Mental impairment** ✅ *Special verdict*: "Act proven but not criminally responsible." → Possible treatment, supervision, or release (s 30–33).	
Cognitive Impairment: Significant cognitive impairment can affect a person's ability to reason. **Intellectual disability, dementia, brain injury, autism, developmental delay.** Difficulty reasoning, learning, judging, or remembering.	**Cognitive impairment** ✅ *Special verdict*: "Act proven but not criminally responsible." → Detention/treatment/release (s 33).	

➤ *s 5 MHCIFPA (NSW)*: Ongoing impairment in comprehension, reason, judgment, learning or memory. Must come from *damage or dysfunction* of the brain or mind. Causes inability to understand act or its wrongness (s 28).		

LOOK FOR	DEFENCE	TICK
FULL DEFENCE		
Emphasise that the actions were reasonable under the circumstances. Justifications involve admitting to the crime but claiming it was warranted under the circumstances.		
• Any offence/ charge – EXCLUDING trespassing or protecting property • **Reasonable force / excessive force** • Threat to person • Necessary force to defend themselves or someone else	**Self defence** ❌ Not guilty (complete acquittal).	
• **Not for murder** • Not threat property taken • **Victim threatened to overpower Defendant** • D fear • No escape for D <results full acquittal of charge>	**Duress** ❌ Not guilty (complete acquittal).	
• Any crime • **Imminent peril / immediate danger** • Had to take action to defend themselves • Believed reasonable response to situation	**Necessity** ❌ Not guilty (complete acquittal).	
PARTIAL DEFENCE		
Emphasise that the actions were reasonable under the circumstances. Justifications involve admitting to the crime but claiming it was warranted under the circumstances.		
• Only if Murder/death of Victim • **Unreasonable force / excessive force** • Threat to person • Necessary force to defend themselves or someone else	**Excessive** self defence (excessive force causing death) <results in lesser charge of manslaughter>	
• **V provoked D (physical not just words)** • V engaged in serious indictable offence (assault robbery / larceny) • D lost control • D intent to kill or assault V • Death of V	Extreme provocation <results in lesser charge of manslaughter>	

• **Influenced by drugs / alcohol (<u>not self-induced</u>)** • Must be proof of intoxication • No intent	Intoxication <results in lesser charge>	

IF MENTAL OR COGNITIVE IMPAIRMENT – Must first determine capacity to plead / fitness to stand trial

Capacity to Plead (Fit for trial)

<INSERT INTRODUCTION (front page)>

DEFENDANT has the onus of proof to provide an evidential burden (reasonable possibility), then if proven the P must negate BRD (*Sub-s 7)*.

Fitness to Stand Trial

Issue:

Is D fit to stand trial based on their **mental condition?**

Law:

A person is unfit to stand trial if they cannot understand the nature of the charges or communicate with the court, as outlined in *Eastman* and *Presser* and s36. The key requirements for fitness include the ability to **understand the charge**, make an **appropriate plea**, **follow the proceedings**, understand the **evidence** against them, **instruct their lawyer**, and make **decisions** regarding their defence.

Application:

To determine D's fitness, several factors are considered: whether D understands the charges of <insert charge>, can make an informed plea and follow proceedings, comprehends the evidence and its implications, and can provide meaningful instructions to their lawyer.

In this case, D <fully understands / does not fully understand> the charges, <has / does not have> the ability to make an informed plea and follow proceedings, <does / does not> understand the evidence, and <can / cannot> instruct their lawyer effectively.

Conclusion:

If D cannot meet these criteria, they may be deemed unfit to stand trial.

In this case, <select>

YES FIT	D is fit to stand trial
UNFIT	D is not fit to stand trial. In that case, a special hearing may occur to evaluate their situation further, potentially leading to diversion into mental health services instead of a traditional trial.

Excuses

If...	Then...
Loss of control from *external cause* (shock, insulin, blow)	**Automatism**
Loss of reasoning from *mental disorder* (psychosis, delusion)	**Mental Health Impairment**
Permanent loss of comprehension from *intellectual or brain condition*	**Cognitive Impairment**

IF MENTAL OR COGNITIVE IMPAIRMENT – Must first determine capacity to plead / fitness to stand trial – GO TO **CAPACITY TO PLEAD**

Mental Health Impairment

🔍 **RED FLAGS**

Acting irrationally, delusionally, or under hallucinations

Statements such as “voices told me to…” or “I was saving them”

Diagnosed schizophrenia, bipolar disorder, or psychotic depression

Long-term psychiatric illness, delusional or manic behaviour

Internal cause (psychosis, depression) — not drugs or alcohol

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LAW

The defendant must show a reasonable possibility of mental impairment, after which the prosecution must disprove it beyond reasonable doubt. Under s 4 MHCIFPA, impairment exists if a significant disturbance substantially affects understanding, judgment, or control, and is not temporary or due to intoxication. Under s 28, they are not criminally responsible if they did not know the nature, quality, or wrongfulness of their act.

APPLY TO FACTS

In this case, the accused suffered from **[insert condition, e.g., schizophrenia with auditory hallucinations]**.

<IF RELEVANT FACT> **Expert psychiatric evidence** confirms a **mental health impairment** under s 4.

At the time of the offence, the accused believed **[insert delusional belief—e.g., "the victim was a demon"]**, showing lack of awareness of the act's nature (Porter).

Alternatively, the accused's mental state prevented them from reasoning with a "sense of composure" about moral wrongness (s 28(1)(b)).

✅ Therefore, the defence under **s 28 MHCIFPA** (or *M'Naghten*) may be satisfied.

The proper verdict would be **"act proven but not criminally responsible."**

<COUNTERARGUMENTS RAISED BY PROSECUTION>

<select any relevant>

The Prosecution may argue:

The impairment was caused by **external factors** (e.g., drugs) *(Quick & Paddison)*

The accused **knew the act was wrong** — evidence of concealment/fleeing *(Porter)*

Disorder did not reach required level of reasoning defect *(Cheatham)*

Condition was **emotional stress**, not disease of the mind *(Sodeman)*

CONCLUSION

<select>

✅ **If defence established:**	Special verdict — *Act proven but not criminally responsible* (**s 30 MHCIFPA**) → possible detention, treatment, or release (**s 33**). **D could further claim** they are not criminally responsible due to disease of the mind *(M'Naghten; Porter)*
❌ **If defence fails:**	Proceed to conviction, or if murder → consider **s 23A substantial impairment**.

Cognitive Impairment

🔍 **RED FLAGS**

Intellectual disability, dementia, brain injury, developmental delay

Poor comprehension or memory

Unable to understand consequences of actions
History of cognitive or neurological impairment
Evidence of reasoning deficits or comprehension difficulties

LEGAL TEST (Cognitive Impairment – s 5 MHCIFPA)

Under s 28, a defendant with a cognitive impairment (e.g., intellectual disability, dementia, brain injury, autism) must raise an evidential burden, then the prosecution must disprove BRD; if the impairment **prevented understanding the act's nature or wrongness,** they are not criminally responsible.

APPLY TO FACTS

In this case, the accused had a documented cognitive impairment (e.g., moderate intellectual disability/traumatic brain injury).

<WRITE THIS IF RELEVANT > Psychological reports show limited ability to comprehend consequences or moral implications of actions.

As a result, the accused **did not appreciate the nature and quality of the act** (e.g., could not foresee death/harm) or **could not distinguish right from wrong in a reasoned way** (s 28(1)(b)).

✅ Therefore, the defence under s 28 and s 5 MHCIFPA applies, supporting a special verdict of *"act proven but not criminally responsible."*

PROSECUTION COUNTERARGUMENTS

The Prosecution could argue <select any relevant>

Impairment **not severe or permanent** *(Cheatham)*
Accused **showed understanding of wrongfulness** (e.g., **hiding evidence**)
Temporary impairment or caused by **drugs/alcohol like in** *Quick & Paddison* where a Nurse injected insulin but did not eat; suffered hypoglycaemic episode (external cause); attacked patient involuntarily.
Emotional or impulsive behaviour only like in *Sodeman* where D strangled young girl; claimed temporary emotional shock from domestic stress. Medical evidence found no mental disease.

CONCLUSION

<select>

✅ **If established:**	Special verdict — *Act proven but not criminally responsible* (s 30 MHCIFPA) → possible orders under s 33. **They could claim a disease of the mind (internal cause)** *(Porter ; Kemp ;Burgess)*
❌ **If not established:**	Proceed to conviction or, if murder, consider s 23A substantial impairment.

Intoxication

<INSERT INTRODUCTION (front page)>

Issue

Can D successfully use intoxication as a defence?

Law

Under s 428A, intoxication is being under the influence of alcohol or drugs.

The defendant bears the evidentiary burden to show intoxication, while the prosecution must prove beyond reasonable doubt that the defence does not apply.

For specific intent offences, such as **murder and robbery,** intoxication is admissible even if self-induced, **unless** D **formed intent** before intoxication or used it to strengthen resolve.

For **general intent offences**, intoxication is admissible only if not self-induced.

Application

In this case,

<table>
<tr><td>Nature of Intoxication:</td><td>Determine if D's intoxication was self-induced (e.g., voluntarily consuming alcohol or drugs) or not (e.g., involuntary intoxication).

If D was intoxicated due to consuming substances voluntarily, this may affect the admissibility of the defence for specific intent crimes.

<select>

<table>
<tr><td>Self-induced:</td><td><select>
<table>
<tr><td>If D voluntarily consumed alcohol or drugs and committed murder or robbery after forming intent, the intoxication defence is not available. This applies here.</td></tr>
<tr><td>If D voluntarily consumed alcohol or drugs and the offence is not murder or robbery, the defence may still be admissible. This applies here.</td></tr>
</table>
</td></tr>
<tr><td>Not self-induced:</td><td>If intoxication was involuntary, the defence may be admissible for both specific and general intent offences. This applies here.</td></tr>
</table>
</td></tr>
<tr><td>Specific Intent Assessment:</td><td>If the crime charged is one that requires specific intent, assess whether D had a pre-existing resolution to commit the act before becoming intoxicated.

As D had planned the act prior to drinking, the defence may not be</td></tr>
</table>

	allowed, even if they were intoxicated.
Evidence of Intoxication:	The evidence proves that D was indeed intoxicated at the time of the conduct. <This can include witness testimonies, medical reports, or toxicology results.>
Consideration of Reasonable Person Standard:	A reasonable person in D's situation would have acted differently if not intoxicated, given that a reasonable person cannot be considered intoxicated (per Section 428F).

Conclusion

In this case, D

Can establish intoxication	As D can establish that their intoxication was not self-induced and provide evidence of their state at the time of the offence, they may be able to negate the specific intent required for the charge, leading to a potential reduction in liability. There is a strong case to support this defence.
Cannot establish	As the intoxication was self-induced and D had resolved to commit the act beforehand, the intoxication defence is likely to be ineffective, and P can likely prove the intent necessary for conviction.