

MLP114 CRIMINAL LAW NOTES

Victorian criminal law

Trimester 1 2026

These notes are a personal summary of the main offences, principles and cases covered in MLP114. They are designed for revision and problem questions rather than as a substitute for legislation or cases.

Week 1 — Foundations of Criminal Liability

Sources of criminal law

Victoria is a common law jurisdiction. This means criminal liability can come from:

- legislation; and
- common law.

The main Victorian criminal statute used in this subject is the *Crimes Act 1958 (Vic)*.

For problem questions, always identify whether the offence is statutory or common law before working through its elements.

Basic structure of criminal liability

Most offences require:

Actus reus (AR)

The physical/external elements of the offence.

This may include:

- an act;
- an omission;
- a circumstance; or
- a consequence.

Mens rea (MR)

The required mental/fault element.

Common forms include:

- intention;

- knowledge;
- belief; and
- recklessness.

Not every offence requires mens rea. Strict and absolute liability offences are dealt with separately.

Temporal coincidence

The AR and MR generally need to exist at the same legally relevant time.

It is not enough for the accused to develop the required intention after the relevant conduct has already occurred.

Voluntariness

Criminal conduct will generally need to be voluntary.

A voluntary act is a consciously willed act.

Possible voluntariness issues include:

- automatism;
- sleep;
- reflex movements;
- seizures; and
- extreme states affecting conscious control.

Case: *Ryan v The Queen* (1967) 121 CLR 205.

General problem-question order

When looking at criminal liability, work through:

1. jurisdiction;
2. capacity;
3. AR;
4. MR;
5. coincidence;
6. causation, if relevant;

7. participation/inchoate liability, if relevant;
8. defences.

Week 2 — Murder and Unlawful Homicide

Homicide

Homicide is the killing of one human being by another.

Not every homicide is unlawful. The main unlawful homicide offences studied are:

- murder;
- manslaughter;
- constructive murder;
- culpable driving causing death; and
- dangerous driving causing death.

AR of homicide

The basic AR is:

1. voluntary act or legally relevant omission;
2. death of another human being;
3. causation.

These requirements are common to murder and manslaughter.

Causation

The accused's conduct must legally cause the death.

Start with the factual question:

Would the death have occurred in the same way without the accused's conduct?

This is useful but not always decisive. Legal causation ultimately involves a common-sense assessment of whether the accused's conduct was sufficiently connected to the death.

Case: *Royall v The Queen* (1991) 172 CLR 378.

Intervening acts

A later event may potentially break the chain of causation, but courts are reluctant to find this where the accused's conduct remains a significant cause.

Possible intervening events:

- medical treatment;
- conduct of a third party;
- victim conduct;
- natural events.

Thin skull principle

The accused generally takes the victim as they find them.

A victim's unusual physical condition, religious belief or refusal of treatment does not automatically break causation.

Case: *R v Blaue* [1975] 3 All ER 446.

Murder

Intentional murder

The prosecution must establish:

1. voluntary act/omission;
2. death;
3. causation;
4. intention to kill or intention to cause really serious injury.

Intent is subjective.

The fact that death occurred does not by itself prove intention.

Reckless murder

Reckless murder requires foresight that **death was a probable consequence** of the accused's conduct.

Mere foresight of a possibility is not enough.

Case: *R v Crabbe* (1985) 156 CLR 464.

Constructive murder

See *Crimes Act 1958 (Vic)* s 3A.

Constructive murder is a separate pathway to murder liability. It should not be confused with ordinary intentional or reckless murder.

In an exam, work directly from the statutory requirements.

Week 3 — Involuntary Manslaughter

If murder cannot be established, consider involuntary manslaughter.

There are two main forms:

1. unlawful and dangerous act manslaughter; and
2. manslaughter by criminal negligence.

Unlawful and dangerous act manslaughter (IMUDA)

Elements:

1. voluntary act;
2. death;
3. causation;
4. unlawful act;
5. dangerous act.

Unlawfulness

The act must itself constitute a criminal offence carrying the necessary fault.

Case: *Pemble v The Queen* (1971) 124 CLR 107.

Possible underlying offences include assault, robbery or another criminal offence depending on the facts.

Dangerousness

The test is objective.

Ask whether a reasonable person in the position of the accused would have recognised an appreciable risk of serious injury.

Case: *Wilson v The Queen* (1992) 174 CLR 313.

The accused does not personally need to have foreseen the risk.

Single punch/strike

Section 4A of the *Crimes Act 1958 (Vic)* deals with particular single punches or strikes to the head or neck.

Do not simply write that “every punch is automatically dangerous”. Check the statutory requirements.

Manslaughter by criminal negligence (IMCN)

Case: *Nydam v The Queen* [1977] VR 430.

The prosecution must show conduct that:

- greatly fell short of the standard expected of a reasonable person; and
- involved a high risk of death or really serious injury.

This is much more serious than ordinary negligence.

Where liability is based on an act

Consider:

1. voluntary act;
2. death;
3. causation;
4. duty of care;
5. breach;
6. great falling short of reasonable care;
7. high risk of death or really serious injury.

Where liability is based on an omission

First establish a legal duty to act.

There is no general criminal duty to rescue another person.

Case: *Burns v The Queen* (2012) 246 CLR 334.

Recognised duty situations may include:

- parent and child — *R v Russell* [1933] VLR 59;

- voluntary assumption of care — *R v Taktak* (1988) 14 NSWLR 226;
- creation of a dangerous situation;
- some employment relationships.

The duty must be identified before discussing breach.

Driving offences

Also consider:

s 318 — culpable driving causing death

Higher level of culpability.

s 319 — dangerous driving causing death

Lower threshold than culpable driving.

Use the statutory wording rather than treating these as common law offences.

Week 4 — Assault

Assault in Victoria may arise under common law or statute.

Common law contact assault

Generally requires:

1. voluntary act;
2. unlawful physical contact with another person;
3. intention or recklessness as to that contact;
4. no lawful justification or excuse.

Actual injury is not required.

Very minor physical contact may be sufficient where it falls outside normal social interaction.

If an injury has been caused, also consider a statutory assault offence.

Common law apprehension assault

No physical contact is required.

The prosecution must establish:

1. voluntary conduct or words;
2. victim apprehends imminent unlawful physical contact;
3. accused's conduct causes that apprehension;
4. intention or recklessness;
5. no lawful justification or excuse.

The focus is on the victim anticipating imminent force.

Conditional threats may still amount to assault depending on the circumstances.

Case: *Rozsa v Samuels* [1968] SASR 205.

Statutory injury offences

s 16

Intentionally causing serious injury.

s 17

Recklessly causing serious injury.

s 18

Intentionally or recklessly causing injury.

s 24

Negligently causing serious injury.

A problem question involving physical violence should therefore ask two separate questions:

- how serious was the harm?
- what was the accused's state of mind?

Recklessness

The notes emphasise that recklessness requires awareness of probability rather than mere possibility in the relevant Victorian context.

Case: *Director of Public Prosecutions Reference No 1 of 2019* [2021] HCA 26.

Statutory interpretation

When interpreting a criminal provision:

1. start with the statutory text;
2. read the provision in context;
3. consider statutory purpose;
4. use relevant authority interpreting the section.

Cases:

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355.

Weiss v The Queen (2005) 224 CLR 300.

Week 5 — Sexual Offences

The main offences are:

- rape — s 38;
- rape by compelling sexual penetration — s 39;
- sexual assault — s 40;
- sexual assault by compelling sexual touching — s 41.

The main issues in most problems are consent and reasonable belief in consent. The course materials separately identify penetration and touching, and the statutory consent framework.

Rape — s 38

Main elements:

1. sexual penetration;
2. penetration is intentional;
3. complainant does not consent;
4. accused does not reasonably believe the complainant consents.

Sexual penetration is defined in s 35A.

Sexual assault — s 40

Main elements:

1. touching another person;
2. touching is intentional;
3. touching is sexual;
4. complainant does not consent;
5. accused does not reasonably believe the complainant consents.

Sexual touching is dealt with in s 35B.

Consent

Section 36 defines consent as free and voluntary agreement.

Do not treat:

- silence;
- failure to resist; or
- previous sexual activity

as automatic consent.

Section 36AA identifies circumstances in which a person does not consent.

Examples relevant to problem questions may include:

- sleep or unconsciousness;
- severe intoxication;
- coercion or fear;
- mistaken identity;
- specified deception;
- condom-related conduct.

The reforms use an affirmative-consent approach. The accused's own conduct in finding out whether the other person consented is therefore important. The materials also identify the 2023 reforms and the distinction between penetration under s 35A and sexual touching under s 35B.

Reasonable belief in consent

Keep this separate from actual consent.

Question 1: Did the accused actually believe there was consent?

Question 2: Was that belief reasonable?

Look at:

- what the complainant said or did;
- the surrounding circumstances;
- intoxication;
- whether the accused took steps to ascertain consent.

A complainant may not have consented even where the accused argues they believed otherwise. Both issues require separate analysis.

Week 6 — Theft and Deception

Theft

See *Crimes Act 1958 (Vic)* ss 72–74.

The basic elements are:

AR

- property;
- belonging to another;
- appropriation.

MR

- dishonesty;
- intention permanently to deprive.

Property

Defined broadly in s 71.

Money and tangible objects are obvious examples.

Belonging to another

Property may belong to another where that person has possession, control or a proprietary interest.

Appropriation

Appropriation concerns assuming the rights of an owner.

The relevant question is not simply “did D physically pick it up?” The issue is whether D assumed one or more rights belonging to the owner.

Intention permanently to deprive

This is subjective.

Look at what D intended to do with the property.

Dishonesty

Work from the statutory framework rather than applying ordinary moral judgment alone.

Pay particular attention to:

- belief in a legal right;
- belief in consent;
- circumstances concerning whether the owner can be found.

Case: *R v Salvo* [1980] VR 401.

Obtaining property by deception — s 81

Identify:

1. property obtained;
2. deception;
3. required fault in relation to the deception;
4. causal connection between deception and obtaining property;
5. dishonesty and any further required fault.

Always identify exactly what the alleged deception was.

Obtaining financial advantage by deception — s 82

Used where the accused gains an economic advantage rather than necessarily obtaining “property”.

Typical structure:

1. financial advantage;

2. obtained by accused;
3. deception;
4. required fault;
5. dishonesty.

Case: *DPP v Ray* [1974] AC 370 — useful for continuing representations.

Week 7 — Robbery, Burglary, Strict Liability and Mistake

Robbery — s 75

Start with theft.

Then establish the additional force/fear element.

Main issues:

1. theft;
2. force or threat/fear of force;
3. force connected to the theft;
4. timing;
5. required intention/purpose.

A common mistake is jumping straight to robbery without proving theft first.

Armed robbery — s 75A

Robbery plus the relevant weapon/firearm/explosive circumstance.

Identify the object and explain why it fits the statutory category.

Burglary — s 76

Main elements:

1. entry;
2. building or part of a building;
3. entry as a trespasser;
4. required intention when entering.

The intention generally concerns stealing or committing the relevant offence inside.

Trespass

A person can potentially become a trespasser by entering somewhere without authority or by exceeding the scope of authority.

Case: *R v Walkington* [1979] 2 All ER 716.

Aggravated burglary — s 77

First establish burglary.

Then establish the relevant aggravating factor.

Possible aggravating circumstances include weapon-related circumstances or the presence of another person, depending on the statutory limb relied upon.

Strict liability

Strict liability means the prosecution does not have to establish the ordinary fault requirement for the relevant element.

An honest and reasonable mistake of fact may still be relevant.

Cases:

He Kaw Teh v The Queen (1985) 157 CLR 523.

Proudman v Dayman (1941) 67 CLR 536.

Absolute liability

No fault element for the relevant element.

Mistake of fact does not provide the same defence available in strict-liability situations.

Mistake

Distinguish:

Mistake of fact

Can affect liability depending on the offence.

Mistake of law

Generally not a defence.

Case: *Ostrowski v Palmer* (2004) 218 CLR 493.

The Week 7 source material itself separates robbery/burglary from strict and absolute liability and mistake, and identifies ss 75–77 as the main property provisions.

Week 8 — Inchoate Offences

Inchoate offences impose liability even though the intended principal offence may not have been completed.

The three main offences studied are attempt, conspiracy and incitement.

Attempt — ss 321M–321N

The accused must go beyond mere preparation.

The conduct must be sufficiently connected to actual commission of the intended offence.

MR requires intention to commit the offence.

Recklessness alone will generally not satisfy an attempt requiring intention.

Impossibility

Factual impossibility does not necessarily prevent attempt liability.

Example: D intends to steal from a bag but the bag happens to be empty.

Case: *Britten v Alpogut* [1987] VR 929.

Abandonment

Stopping voluntarily does not erase an attempt if the legal threshold for attempt has already been crossed.

Case: *R v Page* [1933] VLR 351.

Conspiracy — s 321

Requires an actual agreement between at least two people.

Main issues:

1. agreement to pursue a course involving a specific offence;
2. intention to enter the agreement;
3. intention that the offence be committed;
4. required intention/belief concerning relevant circumstances.

People independently deciding to commit the same offence is not enough.

Cases:

R v Moran & Mokbel [1999] 2 VR 87.

Gerakiteys v The Queen (1984) 153 CLR 317.

Incitement — s 321G

Incitement involves encouraging, requesting or otherwise seeking to persuade another person to commit an offence.

The accused must intend that the offence be committed.

The person being incited does not need actually to commit or attempt the offence.

Week 9 — Complicity

The most important starting point:

Establish the principal offence first.

The uploaded material expressly treats ss 323–324 as liability for involvement before or during commission, with ss 325–326 dealing with relevant post-offence conduct.

ss 323–324

A person may be involved in an offence through:

- intentional assistance;
- encouragement;
- direction;
- agreement/arrangement/understanding.

Assistance / encouragement / direction

The accused must intentionally assist, encourage or direct the relevant offence.

Mere presence is not automatically enough.

Physical presence is also not always necessary.

Case: *R v Al Qassim* [2009] VSCA 192.

Agreement

Liability may also arise where the accused enters an agreement, arrangement or understanding to commit the offence.

The parties do not need to agree on every detail.

Case: *Gillard v The Queen* (2003) 219 CLR 1.

Different offence ultimately committed

Sections 323(1)(b) and (d) deal with situations where the offence actually committed differs from the offence assisted or agreed upon.

The accused's awareness that the charged offence was probable becomes important.

Withdrawal

Effective withdrawal should be considered separately.

Usually look for:

- withdrawal before completion;
- clear communication to the other participants;
- reasonable steps to neutralise earlier assistance where necessary.

Cases:

White v Ridley (1978) 140 CLR 342.

R v Tietie (1988) 34 A Crim R 438.

After the offence

s 325

Accessory after the fact.

s 326

Concealing certain information concerning a serious indictable offence.

Do not use complicity under ss 323–324 where the accused's only involvement occurs after completion of the principal offence.

Week 10 — Defences

The source notes deal with self-defence, duress, sudden or extraordinary emergency, mental impairment and intoxication, and emphasise that intoxication is not a standalone defence.

Self-defence — ss 322K–322M

Ask:

1. Did D believe the conduct was necessary in self-defence?
2. Was D's response reasonable in the circumstances as D perceived them?

The first question is subjective.

The second introduces a reasonableness assessment.

Case: *Zecevic v DPP (Vic)* (1987) 162 CLR 645.

Family violence

Section 322M is relevant where family violence is alleged.

Long-term abuse can affect how the accused perceived the threat and whether defensive conduct was reasonable.

A threat does not necessarily need to look like a conventional immediate attack for family-violence evidence to be relevant. The uploaded legislation summary specifically links family-violence circumstances to ss 322K–322M.

Duress — s 322O

Use duress where another person threatens D and D commits an offence because of the threat.

Consider:

- nature of the threat;
- D's belief concerning the threat;
- whether there was a reasonable alternative;
- whether D's response was reasonable.

Case: *DPP (Vic) v Parker* (2016) 258 A Crim R 527.

Sudden or extraordinary emergency — s 322R

Different from duress.

Duress = pressure from another person.

Emergency = pressure from the circumstances themselves.

Ask:

1. Did D reasonably believe an emergency existed?
2. Was the conduct the only reasonable way of dealing with it?

Automatism

Automatism concerns involuntary conduct.

Examples may include:

- sleepwalking;
- seizure;
- some dissociative states.

The key question is whether D's conduct involved conscious volition.

Case: *R v Falconer* (1990) 171 CLR 30.

Mental impairment

See *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*.

Broad questions:

- did D understand the nature and quality of the conduct?
- did D understand that the conduct was wrong in the relevant legal sense?

Cases:

M'Naghten's Case (1843) 10 Cl & Fin 200.

R v Porter (1933) 55 CLR 182.

Mental impairment has its own statutory procedure and should not simply be treated as an ordinary defence.

Intoxication

Intoxication is **not a standalone defence**.

It may instead be relevant to:

- voluntariness;

- whether the prosecution can establish MR; or
- particular statutory reasonableness questions, subject to the limits in s 322T.

Case: *R v O'Connor* (1980) 146 CLR 64.

Problem Question Structure

For each accused, I would use this order:

D — Offence

State the likely offence and source.

AR

Work through every external element.

Do not spend half the answer proving something obvious. Put most detail into disputed elements.

MR

Identify the exact required mental state.

Apply facts showing what D intended, believed, knew or foresaw.

Causation / participation

Only where relevant.

Defence

Raise the defence after dealing with the offence itself.

Conclusion

Use realistic wording:

“D is likely to be liable for...”

“It is arguable that...”

“The prosecution may have difficulty proving...”

“A court would likely find...”

Avoid saying “D is definitely guilty” where the issue depends on contested facts.

Fast exam triggers

Death → murder / manslaughter / driving offences

Failure to act → legal duty + omission

Injury → statutory assault

Threat without touching → apprehension assault

Sexual penetration → rape

Sexual touching → sexual assault

Property taken → theft

Force + stealing → robbery

Weapon + robbery → armed robbery

Trespass into building → burglary

Crime stopped before completion → attempt

Agreement between offenders → conspiracy / complicity

Encouraging a crime → incitement / complicity

Multiple offenders → identify principal offence first

Threat forcing D to offend → duress

D protecting themselves → self-defence

Emergency circumstances → sudden or extraordinary emergency

Sleep/seizure/unconscious action → voluntariness / automatism

Alcohol or drugs → intoxication + AR/MR issues

That final offence-first/AR/MR/causation/participation/defences structure is also the same organising method used in your own master summary.

MLP114 CRIMINAL LAW NOTES

Victorian Criminal Law — T1 2026

Personal study notes covering the main offences, principles, cases and problem-question structure for MLP114.

These notes are intended as a revision aid. Legislation can change, so statutory provisions should always be checked against the version applying to the relevant period.

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1. FOUNDATIONS OF CRIMINAL LIABILITY

Sources of criminal law

Victoria is a common law jurisdiction.

This means criminal liability can come from:

- legislation; and
- common law.

The main statute used throughout the unit is the *Crimes Act 1958 (Vic)*.

Always work out whether the relevant offence is statutory or common law before stating the elements.

Burden and standard of proof

The prosecution generally bears the burden of proving each element of the offence.

Standard:

beyond reasonable doubt

Defences may involve separate evidential and legal burdens depending on the particular defence.

Actus reus

AR = external/physical elements.

Can include:

- conduct;
- circumstances;
- consequences;
- an omission where the law recognises a duty to act.

Example:

For homicide, AR usually requires:

- voluntary conduct or relevant omission;
- death;
- causation.

Mens rea

MR = fault/mental element.

Possible forms:

- intention;
- knowledge;
- belief;
- recklessness.

Negligence is different because it generally applies an objective standard rather than asking what D actually foresaw.

Temporal coincidence

AR and MR generally need to coincide.

Exam:

Do not establish the physical act at one time and then rely on a mental state formed only afterwards.

Voluntariness

Conduct must generally be voluntary.

Basic question:

Was D's bodily movement consciously willed?

Possible problems:

- automatism;
- seizure;
- reflex;
- sleep;
- extreme intoxication;
- other loss of conscious control.

Case:

Ryan v The Queen (1967) 121 CLR 205.

Omissions

There is no general rule that everyone must rescue another person.

Liability for failure to act usually depends on a recognised legal duty.

Possible duties include:

- parent → child;
- voluntary assumption of care;
- duties arising after D creates a danger;
- certain employment/contractual relationships;
- other recognised relationships.

Exam:

Always identify the source of the duty before analysing breach.

Capacity

Capacity should be checked where the facts raise:

- children;
- corporations;
- mental impairment.

Do not waste time discussing capacity in every problem if all accused are ordinary adults and nothing raises the issue.

2. MURDER AND UNLAWFUL HOMICIDE

Starting point for homicide

Use this order:

1. voluntary act or legally relevant omission;
2. death;
3. causation;
4. MR for murder;
5. constructive murder if relevant;
6. manslaughter if murder cannot be established;

7. driving offences if death was caused by driving.

Death of another human being

The prosecution must prove death of a legally recognised human being.

In ordinary exam problems this will usually be straightforward.

Do not spend half a page on this unless the facts actually create an issue.

Causation

D's conduct must legally cause V's death.

Factual causation

Starting question:

But for D's conduct, would V have died when and how they did?

This can be useful but is not always enough on its own.

Legal causation

The court ultimately asks whether D's conduct was sufficiently significant to attribute the death to D.

Case:

Royall v The Queen (1991) 172 CLR 378.

Intervening acts

A later event may potentially break the causal chain.

Possible issues:

- medical treatment;
- third-party intervention;
- victim conduct;
- natural events.

The fact that something else contributes to death does not automatically release D from responsibility.

Thin skull principle

D takes V as D finds them.

V's unusual vulnerability normally does not excuse D.

Case:

R v Blaue [1975] 3 All ER 446.

In *Blaue*, V's personal decision relating to medical treatment did not automatically break causation.

Exam:

If V behaves unusually after D injures them, analyse causation rather than simply writing "novus actus".

Intentional murder

Common law.

AR:

- voluntary act/omission;
- death;
- causation.

MR:

- intention to kill; OR
- intention to cause really serious injury.

Intention

Subjective.

Ask what D actually meant to bring about.

Intention can be inferred from:

- weapon used;
- part of body targeted;
- number/severity of blows;
- statements before or after conduct;
- surrounding circumstances.

Motive is evidence but is not the same as intention.

Reckless murder

AR is the same as murder generally.

The central issue is D's subjective foresight of the relevant fatal risk.

Your summary materials use:

foresight of probability of death

as the key reckless-murder formulation.

Case:

R v Crabbe (1985) 156 CLR 464.

Exam:

Do not write "D should have known".

That sounds like negligence.

Recklessness asks what D actually foresaw.

Constructive murder

See *Crimes Act 1958 (Vic)* s 3A.

Constructive murder provides a separate route to murder liability where death occurs in the circumstances specified by the section.

Exam:

Use the actual statutory elements.

Do not say:

"D committed another crime and someone died, therefore constructive murder."

The qualifying statutory requirements still have to be established.

3. INVOLUNTARY MANSLAUGHTER

Two main forms:

1. unlawful and dangerous act manslaughter (IMUDA);
2. manslaughter by criminal negligence (IMCN).

They are separate pathways.

Sometimes facts could potentially support both.

For an exam answer, choose the stronger one unless the question requires discussion of both.

IMUDA

Elements

1. voluntary act;
2. death;
3. causation;
4. unlawful act;
5. dangerous act.

An omission alone is not the normal basis for IMUDA.

Unlawful act

D's act must itself amount to a criminal offence.

The underlying offence must be proved.

Example:

If the prosecution relies on assault as the unlawful act, establish the elements of assault before moving on.

Case:

Pemble v The Queen (1971) 124 CLR 107.

Exam mistake:

“Punching V was unlawful.”

Not enough.

Explain why the punch satisfies the relevant offence.

Dangerousness

Objective test.

Ask whether a reasonable person in D's position would recognise an appreciable risk of serious injury.

Case:

Wilson v The Queen (1992) 174 CLR 313.

Important:

D does **not** personally have to appreciate the danger for this element.

That is why this test differs from subjective recklessness.

Single punch/strike

See *Crimes Act 1958 (Vic) s 4A*.

Where the statutory requirements apply, a single punch or strike can be treated as dangerous for IMUDA.

Exam:

Check the exact conditions in s 4A rather than writing that every single punch automatically satisfies the section.

IMCN

Leading Victorian authority:

Nydam v The Queen [1977] VR 430.

IMCN requires much more than ordinary carelessness.

Main structure

1. act or legally relevant omission;
2. death;
3. causation;
4. duty;

5. breach;
6. great falling short of the reasonable standard;
7. high risk of death or really serious injury.

Duty

For an act, there is generally a duty not to cause harm through criminally negligent conduct.

For an omission, identify a recognised duty to act.

Examples:

Parent-child

R v Russell [1933] VLR 59.

Voluntary assumption of care

R v Taktak (1988) 14 NSWLR 226.

No general duty to rescue

Burns v The Queen (2012) 246 CLR 334.

Breach

Ask:

- what exactly did the duty require?
- what did D actually do or fail to do?
- how far did this fall below what was reasonably required?

Criminal negligence threshold

The breach must amount to a **great falling short**.

Ordinary civil negligence is not enough.

The circumstances must also involve a **high risk of death or really serious injury**.

Exam:

Do not write:

“D was negligent, therefore manslaughter.”

Move through:

duty → breach → great falling short → high risk → causation.

Driving offences

s 318 — culpable driving causing death

Higher culpability offence.

The source materials identify pathways involving serious fault such as recklessness/gross negligence and statutory intoxication circumstances.

Use the exact section in an exam.

s 319 — dangerous driving causing death

Lower threshold than culpable driving.

Focus on whether the driving was dangerous in the relevant circumstances.

4. ASSAULT

Assault can arise through common law and statute.

First ask:

Was there injury?

If no injury → common law assault may be enough.

If injury/serious injury → consider the statutory offences.

Common law contact assault

Basic structure:

1. voluntary act;
2. unlawful physical contact with another;
3. intention or recklessness;
4. no lawful justification or excuse.

No injury is required.

Even relatively minor touching can potentially amount to assault where it goes beyond ordinary acceptable physical interaction.

Consent

Consent can make otherwise unlawful physical contact lawful.

Examples of ordinary implied consent:

- bumping into others in normal crowded environments;
- ordinary social contact.

But consent has limits.

Common law apprehension assault

No contact required.

Basic structure:

1. voluntary conduct/words;
2. V apprehends imminent unlawful force;
3. D causes that apprehension;
4. D intends or is reckless as to causing it;
5. no lawful justification or excuse.

Key distinction:

V does not necessarily need to be terrified.

The issue is anticipation/apprehension of imminent unlawful contact.

Conditional threats

A conditional threat can still amount to assault depending on context.

Case:

Rozsa v Samuels [1968] SASR 205.

Exam:

Analyse:

- what D said/did;
- whether V expected immediate force;
- whether the threat was conditional or remote;
- D's mental state.

Statutory assault/injury offences

s 16

Intentionally causing serious injury.

Need:

- serious injury;
- causation;
- intention.

s 17

Recklessly causing serious injury.

Need:

- serious injury;
- causation;
- relevant recklessness.

s 18

Intentionally or recklessly causing injury.

Lower harm threshold than serious injury.

s 24

Negligently causing serious injury.

Fault is negligence rather than intention/recklessness.

ss 22–23

Endangerment offences.

Relevant where D's conduct places life/persons in danger even if the ultimate injury offence is not established.

Recklessness

Relevant authority:

Director of Public Prosecutions Reference No 1 of 2019 [2021] HCA 26.

Your course materials emphasise awareness of **probability**, not merely possibility, for the relevant Victorian recklessness standard.

Statutory interpretation

When an offence is statutory:

1. start with the actual words;
2. check definitions;
3. read the provision in legislative context;
4. consider purpose;
5. use cases interpreting the provision.

Cases:

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355.

Weiss v The Queen (2005) 224 CLR 300.

Exam:

Do not substitute a textbook summary for the statutory text.

5. SEXUAL OFFENCES

Main offences:

- rape — s 38;
- rape by compelling sexual penetration — s 39;
- sexual assault — s 40;

- sexual assault by compelling sexual touching — s 41.

The main factual disputes will often concern:

- consent; and
- reasonable belief in consent.

Rape — s 38

Basic structure:

1. sexual penetration;
2. intentional penetration;
3. B does not consent;
4. A does not reasonably believe B consents.

Sexual penetration is defined in s 35A.

Exam:

Do not jump immediately to consent.

First establish penetration and intention.

Rape by compelling sexual penetration — s 39

Different from ordinary rape because the offence concerns compelling another person to participate in sexual penetration.

Exam:

Identify who actually performed the penetration and whether D directly penetrated B or caused/compelled the relevant act.

Sexual assault — s 40

Basic structure:

1. touching;
2. touching is intentional;

3. touching is sexual;
4. B does not consent;
5. A does not reasonably believe B consents.

Sexual touching is dealt with in s 35B.

Sexual assault by compelling sexual touching — s 41

Again, distinguish:

- D directly touching B; from
- D compelling another person to participate in touching.

Consent

Section 36 defines consent as free and voluntary agreement.

The current consent provisions also make clear that lack of resistance and previous consent do not, by themselves, amount to consent to the present act.

s 36AA

Section 36AA lists circumstances in which a person does not consent.

The list is non-exhaustive.

Possible exam issues include:

- no words/conduct indicating consent;
- force or fear;
- coercion;
- sleep/unconsciousness;
- intoxication to the point of incapacity;
- mistaken identity;
- certain deceptive circumstances;
- condom use/removal issues.

Past behaviour

Previous sexual activity does not automatically establish present consent.

Exam:

Avoid arguments such as:

“They were dating so B consented.”

“They had sex before.”

“B did not fight back.”

None of those, standing alone, determines consent.

Reasonable belief in consent

This is separate from actual consent.

Work through it separately.

Question 1

Did A actually believe B was consenting?

Question 2

If so, was that belief reasonable?

Relevant facts:

- what B said;
- what B did;
- whether B was conscious;
- intoxication;
- whether A did anything to ascertain consent;
- surrounding circumstances.

Section 47 of the *Jury Directions Act 2015 (Vic)* also addresses directions on reasonable belief, including circumstances identified in s 36AA. [AustLII](#)

Exam sentence:

“Although B did not consent, A may argue that they believed B was consenting. The separate question is whether that belief was reasonable in the circumstances.”

That keeps the two elements separate.

6. THEFT AND DECEPTION

Three main offences:

- theft;
- obtaining property by deception;
- obtaining financial advantage by deception.

The Week 6 materials treat these as related statutory property offences.

Theft — s 74

Core elements come from the theft provisions in ss 71–74.

1. Property

Identify the property.

Examples:

- money;
- objects;
- other property within the statutory definition.

2. Belonging to another

Look for:

- ownership;
- possession;
- control;
- proprietary interest.

A person does not necessarily need absolute legal title for property to “belong” to them for theft purposes.

3. Appropriation

Appropriation involves D assuming rights belonging to an owner.

Exam:

Explain what right D assumed.

Example:

Taking an item away to use or dispose of it.

4. Dishonesty

Apply the statutory framework.

Possible issues include D's belief concerning:

- legal entitlement;
- consent;
- whether the owner can be located.

Case:

R v Salvo [1980] VR 401.

5. Intention permanently to deprive

Subjective.

Ask:

What did D plan to do with the property?

Returning something later can be relevant but does not automatically answer the issue.

Obtaining property by deception — s 81

Break it down:

1. property;
2. obtained by D;
3. deception;
4. deception caused the obtaining;

5. required fault regarding the deception;
6. dishonesty/other required fault.

Most important application issue:

What exactly was the deception?

Do not write:

“D lied.”

Identify the representation.

Example:

“D represented that the cheque was valid.”

Obtaining financial advantage by deception — s 82

Use where D receives an economic/financial benefit rather than necessarily acquiring identifiable property.

Examples:

- avoiding a debt;
- receiving a service without paying;
- obtaining credit or another monetary advantage.

Basic structure:

1. financial advantage;
2. D obtains it;
3. by deception;
4. required fault;
5. dishonesty.

Case:

DPP v Ray [1974] AC 370.

Useful where conduct creates or continues a false impression.

7. ROBBERY, BURGLARY, STRICT LIABILITY AND MISTAKE

The Week 7 materials expressly cover robbery, armed robbery, burglary, aggravated burglary, strict/absolute liability and mistake.

Robbery — s 75

Robbery builds on theft.

So:

prove theft first.

Then analyse force/fear.

General sequence:

1. theft;
2. force or threat/fear of force;
3. timing of force;
4. connection between force and stealing;
5. relevant purpose/fault.

Common exam mistake:

Starting with:

“D used force, therefore robbery.”

No.

There must be theft.

Armed robbery — s 75A

Start with robbery.

Then add the statutory weapon/firearm/explosive circumstance.

Exam:

Identify the object.

Then apply the statutory category.

Do not simply call every dangerous-looking object a weapon without analysis.

Burglary — s 76

Basic structure:

1. D enters a building or part of a building;
2. as a trespasser;
3. with the relevant intention at the time of entry.

Entry

Usually straightforward.

Building/part of building

A separate restricted area inside a building can matter.

Case:

R v Walkington [1979] 2 All ER 716.

Trespass

Ask whether D had authority to enter that particular place.

A person can be lawfully present in one part of premises but potentially trespass by entering a restricted part.

Intention at entry

Timing matters.

The required intention must exist at the legally relevant point.

Aggravated burglary — s 77

First establish burglary.

Then identify the statutory aggravating circumstance.

Exam:

Do not use the phrase “aggravated burglary” just because the facts look more serious.

Apply the relevant statutory limb.

Strict liability

Some offences remove the requirement for the prosecution to prove fault for a particular element.

Main authority:

He Kaw Teh v The Queen (1985) 157 CLR 523.

Strong starting presumption:

Parliament ordinarily intends criminal liability to include fault unless displaced.

Honest and reasonable mistake of fact

Potentially relevant to strict liability.

Case:

Proudman v Dayman (1941) 67 CLR 536.

Ask:

- was it a mistake of fact?
- was it honestly held?
- was it reasonable?
- is the doctrine available for the particular offence?

Absolute liability

Stricter than strict liability.

There is no relevant fault requirement and mistake of fact does not operate in the same way.

Exam:

Do not use “strict liability” and “absolute liability” interchangeably.

Mistake of law

Generally not a defence.

Case:

Ostrowski v Palmer (2004) 218 CLR 493.

Simple distinction:

Mistake of fact: may affect liability.

Mistake of law: generally does not.

8. INCHOATE OFFENCES

Main offences:

- attempt — ss 321M–321N;
- conspiracy — s 321;
- incitement — s 321G.

“Inchoate” = liability arises before the intended substantive offence is completed.

Attempt

AR

Conduct must go beyond mere preparation.

The statutory approach requires conduct sufficiently connected with the commission of the offence.

Exam:

There is a line between:

planning/preparing

and

actually embarking on commission.

MR

D must intend the relevant offence.

Where the completed offence can be committed recklessly, that does not necessarily mean recklessness is enough for attempt.

Cases:

Knight v The Queen (1992) 175 CLR 495.

Factual impossibility

Can still amount to attempt.

Case:

Britten v Alpogut [1987] VR 929.

Example:

D intends to steal drugs from a bag.

Unknown to D, the bag is empty.

The factual impossibility does not necessarily prevent attempt.

Legal impossibility

Different situation.

If what D intends to do is not actually a criminal offence, D cannot generally “attempt” an imaginary crime.

Voluntary abandonment

Stopping does not automatically remove liability once the attempt has already been completed.

Case:

R v Page [1933] VLR 351.

Conspiracy — s 321

Requires an actual agreement.

Elements include:

1. agreement between D and at least one other person;
2. agreement concerns commission of a particular offence;
3. intention to enter the agreement;
4. intention that the offence be committed;
5. required fault relating to circumstances.

Cases:

R v Moran & Mokbel [1999] 2 VR 87.

Gerakiteys v The Queen (1984) 153 CLR 317.

Agreement

Does not need to be:

- written;
- formal;
- detailed.

Can be inferred from conduct.

But there must actually be an agreement.

Two people separately wanting the same offence to happen is not automatically conspiracy.

MR

Intention is important.

Recklessness alone is insufficient where conspiracy requires an intention that the principal offence be committed.

Incitement — s 321G

Incitement broadly involves encouraging, requesting or seeking to persuade another person to commit an offence.

MR:

D intends the offence to be committed.

Important:

The person incited does not need to:

- agree;
- attempt the offence;
- actually commit it.

The crime is D's inciting conduct itself.

9. COMPLICITY

Week 9 focuses on ss 323–326 and distinguishes involvement before/during the offence from conduct after the offence.

First rule

Always identify and establish the principal offence first.

Do not begin:

“X is an accomplice.”

First ask:

What crime was committed?

Who committed it?

Principal offender

A principal offender directly commits the offence.

There can be more than one principal offender.

If D is clearly a principal offender, do not waste time trying to establish complicity instead.

ss 323–324

These provisions deal with involvement in commission of an offence.

Possible bases include:

s 323(1)(a)

D intentionally:

- assists;
- encourages; or
- directs

commission of the offence.

Need to examine:

- what assistance/encouragement occurred;
- whether it was intentional;
- what D knew/believed about the essential facts.

Case:

Giorgianni v The Queen (1985) 156 CLR 473.

Physical presence

Not necessarily required.

A person may assist through:

- supplying equipment;
- providing money;
- planning;
- arranging transport;
- information.

Mere presence is also not automatically enough.

Case:

R v Al Qassim [2009] VSCA 192.

Agreement liability — s 323(1)(c)

D may be involved where D enters an agreement, arrangement or understanding to commit the offence.

Do not confuse this with conspiracy automatically.

Although both involve agreement, they operate differently.

For complicity the principal offence has actually been committed.

For conspiracy, liability can arise even if the offence is never completed.

Different offence committed

Sections 323(1)(b) and (d) deal with divergence between:

- offence D assisted/agreed to; and
- offence actually committed.

Probability becomes important.

Exam:

If D agreed to offence A but another participant commits offence B, do not automatically attribute B to D.

Apply the statutory probability requirement.

Withdrawal

See s 324(2) and common law principles.

Effective withdrawal generally requires:

1. timely withdrawal;
2. communication to other participants;
3. reasonable steps to undo/neutralise earlier assistance where required.

Cases:

White v Ridley (1978) 140 CLR 342.

R v Tietie (1988) 34 A Crim R 438.

Exam:

Simply walking away may not be enough where D already supplied significant assistance.

s 324A

A person involved can be convicted even if another person is not separately prosecuted or convicted.

s 324B

Can address uncertainty about whether D was:

- the principal offender; or
- a person involved.

Conduct after completion

Do not use ordinary complicity where all D does occurs after the offence has finished.

Consider:

s 325

Accessory after the fact.

Broad issue:

Did D knowingly act to help prevent the principal offender being apprehended, prosecuted, convicted or punished?

s 326

Concealment-related liability.

Use the exact provision if raised by the facts.

10. DEFENCES

First distinction:

Some matters prevent the prosecution proving an element.

Others operate as affirmative defences even though the offence elements are otherwise made out. Your Week 10 materials expressly separate those categories.

Self-defence

See ss 322K–322M.

Main questions:

1. Did D believe the conduct was necessary in self-defence?
2. Was D's conduct a reasonable response in the circumstances as D perceived them?

First limb

Subjective.

What did D genuinely believe?

A mistaken belief can still potentially satisfy the subjective question.

Second limb

Reasonableness.

The circumstances are considered as D perceived them, but the response still has to satisfy the legal reasonableness requirement.

Case:

Zecevic v DPP (Vic) (1987) 162 CLR 645.

Exam:

Do not merge the two questions.

Write them separately.

Family violence

Where relevant, family-violence evidence can affect assessment of:

- D's perception of danger;
- necessity;
- reasonable response.

Duress

See s 322O.

Use where D commits an offence because another person threatens D or another person.

Broad questions:

- was there a qualifying threat?
- what did D believe about that threat?
- was committing the offence the only reasonable way to avoid the threatened harm?
- was D's conduct a reasonable response?

Case appearing in the Week 10 materials:

DPP (Vic) v Parker (2016) 258 A Crim R 527.

Key distinction:

self-defence = resisting threat

duress = submitting to threat by committing an offence

Sudden or extraordinary emergency

See s 322R.

Use where the pressure comes from circumstances rather than a person coercing D.

Broad questions:

- did D reasonably believe an emergency existed?
- was the response legally justified under the statutory test?

Key distinction:

duress = human threat

emergency = circumstantial danger

Examples might include natural disasters or other urgent situations leaving no reasonable lawful alternative.

Automatism

Automatism concerns voluntariness.

Question:

Was D acting without conscious volition?

Case:

R v Falconer (1990) 171 CLR 30.

Possible examples:

- sleep;
- seizure;
- involuntary physical movement;
- qualifying dissociative state.

Automatism v mental impairment

Do not confuse them.

Automatism focuses on:

voluntary control

Mental impairment focuses on:

legally relevant reasoning/understanding

Mental impairment

Historically associated with the M'Naghten rules.

Cases:

M'Naghten's Case (1843) 10 Cl & Fin 200.

R v Porter (1933) 55 CLR 182.

Main idea:

A mental condition must affect D's capacity in a legally significant way.

Do not write:

“D has a mental illness, therefore mental impairment.”

The question is the legal effect of the condition.

Intoxication

Intoxication is **not a standalone defence**.

Evidence of intoxication may be relevant to whether the prosecution proves:

- voluntariness; and/or
- MR.

Your Week 10 materials expressly make this distinction.

Case:

R v O'Connor (1980) 146 CLR 64.

Statutory restrictions may apply to how self-induced intoxication is considered for particular defences/reasonableness questions.

See s 322T where relevant.

Exam:

Do not finish with:

“Therefore D can rely on intoxication.”

Better:

“D's intoxication may create reasonable doubt as to whether the prosecution can establish [specific MR/voluntariness element].”

11. CASE TABLE

This is the version I would put near the back of the notes.

Case	Main point	Use it for
<i>Ryan v The Queen</i> (1967) 121 CLR 205	Conduct generally must be voluntary	Voluntariness
<i>R v Falconer</i> (1990) 171 CLR 30	Automatism / voluntariness; distinction from mental impairment	Automatism

<i>Royall v The Queen</i> (1991) 172 CLR 378	Legal causation is assessed using common-sense principles	Homicide causation
<i>R v Blaue</i> [1975] 3 All ER 446	Take victim as found; victim conduct does not automatically sever causation	Thin skull
<i>R v Crabbe</i> (1985) 156 CLR 464	Reckless murder and foresight of probability	Murder
<i>Pemble v The Queen</i> (1971) 124 CLR 107	Relevant to manslaughter/unlawful act analysis	IMUDA
<i>Wilson v The Queen</i> (1992) 174 CLR 313	Appreciable risk of serious injury	IMUDA dangerousness
<i>Nydam v The Queen</i> [1977] VR 430	Great falling short + high risk	IMCN
<i>R v Russell</i> [1933] VLR 59	Duty in parent-child context	Omission
<i>R v Taktak</i> (1988) 14 NSWLR 226	Voluntary assumption of care	Omission
<i>Burns v The Queen</i> (2012) 246 CLR 334	No general duty to rescue	Omission
<i>DPP Reference No 1 of 2019</i> [2021] HCA 26	Victorian recklessness threshold	Assault/injury
<i>Rozsa v Samuels</i> [1968] SASR 205	Conditional threats	Apprehension assault
<i>R v Salvo</i> [1980] VR 401	Dishonesty/claim-of-right issues	Theft
<i>DPP v Ray</i> [1974] AC 370	Continuing deceptive representation	Deception
<i>R v Walkington</i> [1979] 2 All ER 716	Entry into part of building/restricted area	Burglary
<i>He Kaw Teh v The Queen</i> (1985) 157 CLR 523	Presumption of fault; strict liability	Strict liability

<i>Proudman v Dayman</i> (1941) 67 CLR 536	Honest and reasonable mistake of fact	Strict liability
<i>Ostrowski v Palmer</i> (2004) 218 CLR 493	Mistake of law generally no defence	Mistake
<i>Knight v The Queen</i> (1992) 175 CLR 495	Intention requirements for attempt	Attempt
<i>Britten v Alpogut</i> [1987] VR 929	Factual impossibility	Attempt
<i>R v Page</i> [1933] VLR 351	Abandonment after attempt threshold	Attempt
<i>R v Moran & Mokbel</i> [1999] 2 VR 87	Genuine agreement required	Conspiracy
<i>Gerakiteys v The Queen</i> (1984) 153 CLR 317	Agreement can be inferred	Conspiracy
<i>Giorgianni v The Queen</i> (1985) 156 CLR 473	Intentional assistance + knowledge of essential facts	Complicity
<i>R v Al Qassim</i> [2009] VSCA 192	Presence alone not sufficient	Complicity
<i>White v Ridley</i> (1978) 140 CLR 342	Withdrawal must be communicated	Withdrawal
<i>R v Tietie</i> (1988) 34 A Crim R 438	Neutralising previous assistance	Withdrawal
<i>Zecevic v DPP (Vic)</i> (1987) 162 CLR 645	Self-defence framework	Self-defence
<i>DPP (Vic) v Parker</i> (2016) 258 A Crim R 527	Duress	Duress
<i>R v O'Connor</i> (1980) 146 CLR 64	Intoxication may affect AR/MR	Intoxication
<i>R v Porter</i> (1933) 55 CLR 182	Mental impairment principles	Mental impairment

<i>M'Naghten's Case</i> (1843) 10 Cl & Fin 200	Traditional mental impairment test	Mental impairment
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12. LEGISLATION CHECKLIST

Homicide

Crimes Act 1958 (Vic)

- s 3A — constructive murder
- s 4A — specified single punch/strike and manslaughter
- s 318 — culpable driving causing death
- s 319 — dangerous driving causing death

Assault

- s 16 — intentionally causing serious injury
- s 17 — recklessly causing serious injury
- s 18 — intentionally/recklessly causing injury
- s 21A — stalking
- s 22 — conduct endangering life
- s 23 — conduct endangering persons
- s 24 — negligently causing serious injury
- s 31 — statutory assault provision where relevant

Sexual offences

- s 35A — sexual penetration
- s 35B — sexual touching
- s 36 — consent
- s 36AA — circumstances where there is no consent
- ss 38–41 — principal sexual offences

Property

- ss 71–74 — theft framework
- s 81 — obtaining property by deception
- s 82 — obtaining financial advantage by deception
- s 75 — robbery
- s 75A — armed robbery
- s 76 — burglary
- s 77 — aggravated burglary

Inchoate offences

- s 321 — conspiracy
- s 321G — incitement
- ss 321M–321N — attempt

Complicity

- s 323 — involvement in offence
- s 324 — involved person taken to have committed offence
- s 324A — principal need not be separately convicted
- s 324B — uncertainty about role
- s 325 — accessory after the fact
- s 326 — concealment-related offence

Defences

- ss 322K–322M — self-defence / family violence provisions
- s 322O — duress
- s 322R — sudden or extraordinary emergency
- s 322T — intoxication provisions relevant to defence assessments

13. EXAM ISSUE-SPOTTING CHECKLIST

When you read the facts, look for these triggers.

Someone dies

- murder
- constructive murder
- IMUDA
- IMCN
- driving offences

Victim is injured

- s 16 / s 17 / s 18 / s 24
- common law assault

Threat but no contact

- apprehension assault

Sexual penetration

- rape / compelled rape
- consent
- reasonable belief

Sexual touching

- sexual assault / compelled sexual assault

Property taken

- theft

Property + force/threat

- robbery

Weapon + robbery

- armed robbery

Entry into building without authority

- burglary

Weapon/person present + burglary

- aggravated burglary

Offence not completed

- attempt

Two people agree to commit offence

- conspiracy

D encourages someone to offend

- incitement

Several people involved in completed offence

- principal liability
- complicity

D helps only after offence

- ss 325–326

D changes mind

→ withdrawal

D protects themselves/someone else

→ self-defence

D commits offence because someone threatens them

→ duress

D acts because of external crisis

→ emergency

D appears unconscious / asleep / acting automatically

→ voluntariness

→ automatism

→ possibly mental impairment

D is intoxicated

→ ask whether AR/MR is affected

→ do not call intoxication a defence by itself

14. COMMON MISTAKES

Homicide

Mistake: jumping straight to murder.

Better:

AR → causation → MR → alternative homicide offences.

Mistake: writing “but for test satisfied = causation established”.

Better:

Use but-for as a starting point, then consider legal causation and intervening acts.

Mistake: confusing recklessness with negligence.

Recklessness = subjective foresight.

Negligence = objective departure from required standard.

IMUDA

Mistake: not identifying the underlying offence.

You need the unlawful act first.

Mistake: saying D personally had to foresee serious injury.

Dangerousness is objective.

IMCN

Mistake: saying ordinary negligence is enough.

It is not.

Need:

great falling short + high risk of death/really serious injury.

Assault

Mistake: treating every physical contact as criminal.

Consider lawful justification, consent and ordinary social interaction.

Mistake: requiring actual fear for apprehension assault.

The relevant idea is apprehension of imminent unlawful force.

Sexual offences

Mistake: treating lack of consent and lack of reasonable belief as the same thing.

Analyse separately.

Mistake: assuming previous sexual activity proves consent.

It does not.

Mistake: focusing only on B's conduct.

Also ask what A did to ascertain consent.

Theft

Mistake: saying “D stole it because it wasn't theirs”.

Work through:

property → belonging to another → appropriation → dishonesty → intention permanently to deprive.

Robbery

Mistake: analysing force without establishing theft.

Always establish theft first.

Burglary

Mistake: forgetting intention must exist at the relevant time of entry.

Timing matters.

Attempt

Mistake: treating preparation as attempt.

Identify what conduct moved D beyond preparation.

Mistake: using recklessness where attempt requires intention.

Conspiracy

Mistake: assuming similar intentions = agreement.

There must be an actual agreement.

Complicity

Mistake: discussing complicity before proving the principal offence.

Principal offence first.

Mistake: saying presence alone = liability.

Presence may be evidence, but it is not automatically enough.

Mistake: assuming walking away = withdrawal.

Consider communication and neutralising earlier assistance.

Defences

Mistake: starting the whole answer with a defence.

Establish offence first.

Mistake: confusing self-defence and duress.

Self-defence = resist threat.

Duress = offend because of threat.

Mistake: confusing duress and emergency.

Duress = human threat.

Emergency = circumstances.

Mistake: saying intoxication “excuses” D.

Instead identify which AR/MR element it may affect.

15. PROBLEM-QUESTION STRUCTURE

This is the part I would actually use in the exam.

Start with the accused

Example heading:

Liability of D

Then deal with each incident separately.

Offence

State:

“D may be liable for [offence] contrary to [common law / section].”

Then give the elements.

Do not write a giant paragraph explaining the history of the offence.

AR

Work through each external element.

Example:

Causation

D's conduct must legally cause V's death.

Apply the specific facts immediately.

MR

State the exact fault element.

Then ask what D actually intended/knew/foresaw.

Avoid unsupported conclusions such as:

“D was obviously reckless.”

Explain why.

Competing argument

For any genuinely arguable element, give both sides.

Example:

“The prosecution would argue that D's use of the knife indicates an intention to cause really serious injury. D may respond that the strike was directed away from a vital area and was intended only to frighten V.”

Then assess which argument is stronger.

Participation

If multiple offenders:

1. principal offender?
2. assistance/encouragement?
3. agreement?
4. different offence committed?
5. withdrawal?

Defences

Only after offence liability has been established or assumed.

Example:

“Although the elements of assault are likely established, D may rely on self-defence under s 322K.”

Then apply the defence separately.

Conclusion

Keep it short.

Good:

“D is likely to be liable for theft because each element appears capable of proof.”

“Liability for reckless murder is less certain because the prosecution may struggle to establish that D actually foresaw death as probable.”

“Self-defence is arguable, although the proportionality of D's response is the main difficulty.”

Avoid:

“D is 100% guilty.”

16. ABBREVIATIONS

AR — actus reus

MR — mens rea

D — accused/defendant

V — victim

CL — common law

CA — *Crimes Act 1958 (Vic)*

IMUDA — involuntary manslaughter by unlawful and dangerous act

IMCN — involuntary manslaughter by criminal negligence

PO — principal offence

BRD — beyond reasonable doubt

HCA — High Court of Australia

VSCA — Victorian Court of Appeal