Offences and defences

OPEN	Crimes Act 1900 (NSW): s 4 (definitions); ss 18, 24, 25A (homicide); s 23 (extreme provocation); s 23A (substantial impairment); ss 33, 35, 59, 61 (assault and injury); ss 61HA–61KF (sexual offences); s 117 (larceny); ss 345–351B (accessories); ss 418–422 (self-defence); Pt 11A (intoxication). Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (NSW) Pt 3.
SOURCE	the topic list from the LAWS1016 notes; every section checked against the Acts in force, read 9–10 Nov 2026.

ROUTER · THE QUESTION INVOLVES → PAGE

Whether any offence is made out: the act or omission; whether it was voluntary; fault at the time of the act; an offence with no fault word; "I honestly thought …"; who must prove what	common law	**CRIM · 1 Elements, burden and fault**
A death, and D meant to kill or seriously injure, or knew death was probable; whether D's act caused the death (later medical treatment, the victim's own flight); a series of acts	ss 18, 4	**CRIM · 2 Murder**
A death, but no intent to kill: one punch; drugs supplied; a carer who did nothing; a gross departure from reasonable care	ss 18, 24, 25A	**CRIM · 3 Manslaughter**
A threat, a push or an injury: fear of immediate force; bruising, a fracture, a cut; "they agreed to it"	ss 33, 35, 59, 61	**CRIM · 4 Assault and injury**
Sexual activity without consent: D's belief in consent; a threat, a fraud, intoxication; in company; a touching or a sexual act	ss 61HA–61KF	**CRIM · 5 Sexual offences**
Property taken: borrowed; overpaid; found; "I thought it was mine"	s 117; common law	**CRIM · 6 Larceny**
Two or more people: the lookout; the driver; a planned robbery that ended in a killing; present at a fight; helping afterwards	ss 345–351B; common law	**CRIM · 7 Complicity**
A killing after the deceased's conduct towards D	s 23	**CRIM · 8 Extreme provocation**
D defending self, another or property; force out of proportion	ss 418–422	**CRIM · 9 Self-defence**
D acted under threats, or in an emergency	common law	**CRIM · 10 Necessity and duress**
D's mental health or cognitive impairment: did not know the act was wrong; murder reduced to manslaughter	MHCIFPA Pt 3; s 23A	**CRIM · 11 Mental health impairment**
D did not control the act: a reflex; sleepwalking; a blow to the head; a dissociative state	common law	**CRIM · 12 Automatism**
D was intoxicated	Pt 11A	**CRIM · 13 Intoxication**
Which case to cite	the judgments	**CRIM · 14–15 Cases in the exam**

THE ANSWER, IN ORDER (EVERY PAGE)

1	The offence	"[D] may be charged with [offence] under s [X] of the Crimes Act 1900 (NSW)."
2	The physical elements	Each element, in order, with the fact that proves it.
3	The fault element	"At the time of the act, [D] [intended / foresaw] [result] because [fact]."
4	Defences the facts raise	Who bears which burden (CRIM·1); then each element of the defence.
5	Venture an answer	"[D] is likely to be [convicted of / acquitted of] [offence]."

Elements, burden and fault common law

USE THIS PAGE WHEN	who must prove what; a defence raised; "it is a defence if the accused proves"; an offence silent on intent; "I thought …"; "I didn't know it was illegal".
OPEN	common law; the offence-creating section.
FIRST QUESTION, ALWAYS	who bears which burden, and does this offence need a mental element?

RELATED PAGES · VOLUNTARINESS (CRIM·12) · COINCIDENCE (CRIM·2) · MENTAL HEALTH IMPAIRMENT (CRIM·11) · CONSENT (CRIM·5).

common law
prove the guilt

Who must prove the offence
→ The prosecution proves every element beyond reasonable doubt; only clear statute alters it; the accused cannot be compelled to assist (Lee [32]–[33]).

Lee: the prosecution proves guilt; altered only by clear statute
▸ *compelled evidence used against the accused*

evidential burden
reasonable doubt

The accused raises a defence (self-defence, duress, mistake)
→ Taken at its highest, could the evidence leave a reasonable jury with a reasonable doubt that the defence is negatived? If so, it goes to the jury and the prosecution negatives it beyond reasonable doubt (Braysich [32], [36]).

Braysich: two questions, one for each burden
▸ *the judge refuses to leave the defence*

legal burden
balance of probabilities

A statute puts the burden on the accused
→ The accused bears both burdens: could a reasonable jury find the defence established on the balance of probabilities (Braysich [35]–[37])?

Braysich · Corporations Law s 998(6): the accused proves the defence on the balance
▸ *"it is a defence if the accused proves"*

common law
presumption of mens rea

The offence says nothing about intent or knowledge
→ Presume a mental element; rebutted only by the words, the subject matter ("truly criminal" keeps it) and whether strict liability would assist enforcement (He Kaw Teh, Gibbs CJ).

He Kaw Teh · Customs Act s 233B: knowledge required for importing
▸ *a silent offence with a heavy penalty*

common law
express language or necessary implication

Presumption rebutted: strict or absolute?
→ Strict liability: honest and reasonable mistake stays available unless excluded by express language or necessary implication (CTM [35]).

CTM · Crimes Act s 66C(3): mistake as to age available
▸ *the old excuse repealed, nothing in its place*

common law
regulatory

A minor regulatory offence in mandatory words
→ Absolute where the words are mandatory, the purpose is safety, compliance is avoidable and the character regulatory (Stanojlovic [46], [49]). Victorian: persuasive only.

Stanojlovic · reg 55(1) (Vic): P-plate offence absolute
▸ *a traffic infringement*

common law
honest and reasonable belief

"I thought …" about a fact; or gave it no thought
→ A belief in facts which, if they existed, would make the act innocent excuses (Proudman 540); innocent means no offence, not a lesser one (CTM [8], [27]). It must be a positive belief, not an absence of thought (Ibrahim [56], [58]). Evidential burden on the accused; then disproved beyond reasonable doubt (CTM [35]).

Proudman: belief making the act innocent
▸ *driver believed licensed*
CTM: a lesser offence is not innocent
▸ *14–16, not 10–14*

common law
mistake of law

"I didn't know it was illegal"
→ No excuse: a mistake about whether the conduct is an offence is a mistake of law (Ostrowski [12]; CTM [7]).

Ostrowski v Palmer · Criminal Code (WA) ss 22, 24: ignorance of the regulation, no excuse
▸ *an official gave incomplete rules*

DECIDE

Fault, when the offence is silent

1 Do the words, the subject matter or enforcement rebut the presumption of a mental element (He Kaw Teh, Gibbs CJ)?
NO → the prosecution proves the mental element beyond reasonable doubt

YES ↓

2 Does Parliament exclude honest and reasonable mistake by express language or necessary implication (CTM [35])?
→ **YES** absolute liability: the physical elements are enough (Stanojlovic [45])
NO strict liability → 3

3 Is there evidence of a positive, honest belief in facts that would make the act innocent (CTM [8], [35]; Ibrahim [56])?
→ **NO** convict on proof of the physical elements
YES the prosecution must prove beyond reasonable doubt that the belief was not held or not reasonable

A defence

1 Does a statute put the legal burden on the accused (Braysich [35])?
YES → could a reasonable jury find it established on the balance of probabilities? (Braysich [36])

NO ↓

2 Taken at its highest, could the evidence leave a reasonable doubt that the defence is negatived (Braysich [36])?
→ **YES** it goes to the jury; the prosecution negatives it beyond reasonable doubt
NO it is not left to the jury

SAY

The issue is whether accused can rely on an honest and reasonable mistake that fact. (Proudman 540) An honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse; the accused bears the evidential burden, and the prosecution must then disprove the belief beyond reasonable doubt. (Proudman 540; CTM [8], [35]) Accused held a positive belief that fact, on reasonable grounds, because fact. (Ibrahim [56]) I submit accused must be acquitted unless the prosecution proves beyond reasonable doubt that the belief was not held or was not reasonable. (CTM [8])

If accused gave the matter no thought, or the belief would only make it a lesser offence, the excuse fails. (Ibrahim [58]; CTM [27])

MARKS LOST

1. Braysich cited for the prosecution disproving a defence: the accused bore the burden there.
2. A direction contrasting "any doubt" described as approved: it is generally undesirable, though not wrong in principle (Dookheea [37]).
3. The He Kaw Teh factors attributed to the whole Court: they are Gibbs CJ's.
4. Honest and reasonable mistake treated as something the accused must prove (CTM [35]).
5. A belief that would make it a lesser offence treated as innocent (CTM [27]).
6. No thought treated as a belief (Ibrahim [58]).
7. A mistake of law argued as a mistake of fact (Ostrowski [12]).
8. Heydon J cited in CTM for the excuse being available: he held it was not.
9. Stanojlovic treated as binding in NSW.