Introduction:

For *, the prosecution will have to prove the elements of each offence beyond reasonable doubt (<u>Woolmington</u>) and can assume the acts are voluntary (<u>Falconer</u>).

Offences:

- Property Offences (are mutually exclusive – in the alternative):
  - Larceny
  - Fraud
- Assault (are mutually exclusive – in the alternative):
  - Common assault
  - Assault occasioning actual bodily harm
    - *Bruises, scratches, diagnosed psychiatric condition*
  - Grievous Bodily Harm with intent
    - *Fractured arm, glassing of face, gaping wound to face and throat, severe facial and cranial injuries, destruction of foetus, permanent or serious disfigurement, grievous bodily disease*
  - Reckless grievous bodily harm
  - Sexual assault

Additional party:

- Attempt
- Complicity:
  - Joint Criminal Enterprise
    - *Two people agree to commit a crime and at least one carries out the necessary act elements*
  - Extended Joint Criminal Enterprise
    - *One participant commits an additional crime, over and above the primary objective of the agreed plan*
  - Accessorial Liability:
    - Principle in first degree
      - *Accused is the master mind of the crime*
    - Principle in the second degree:
      - *Accused aided, abetted or assisted someone at the scene of the crime*
    - Principle in the third degree:
      - *Accessory before(supplying weapon, encouraging crime) or after the fact (providing hideout)*

Defences:

If the accused wishes to raise an offence, they have the evidentiary burden on the balance of probabilities. The onus then shifts to the prosecution to negate it beyond reasonable doubt

- Mental health
- Automatism
- Intoxication
- Self-defence
- necessity
- duress

If there is no defence – say "there does not seem to be any defences available to *"

Larceny

- * may be charged with Larceny under s 117 <u>Crimes Act 1900 (NSW)</u> for *
- The elements to prove larceny are set out in the case of <u>Illich</u>

➔ **Actus Reus**
- To prove the actus reus of the crime, the prosecution must first prove there was a <mark>taking and carrying away</mark>
    - Cannot be a bank fund:
        - <u>Croton</u> – fiancée removed all money from joint bank account
        - The taking of money as a bank fund is not larceny because paper money or coins was not taken out of possession of the owner of the bank credit because they never had possession of the money
- Second, the item in question must be <mark>property</mark>
    - S4 <u>Crimes Act</u>
        - Wide definition of property
    - Common law says the property has to be tangible
        - cannot be a chose in action (<u>Kidd and Walsh</u>)
- Third, the property must <mark>belong to another</mark>
    - Possession is a combination of two elements:
        1. Some degree of physical control of the property
        2. An intention to maintain that physical control
    - Possession by employee:
        - Possession that is held by an employee within the terms of their employment is considered to be constructively held in the possession of the employer (<u>Williams v Phillips</u>)
        - Larceny by clerk or servant is covered by s156 <u>Crimes Act</u>
    - Abandoned property is not capable of being stolen
        - Abandonment requires a clear, deliberate act of abandonment where an owner is indifferent to any asportation of the goods by any other person (SA <u>Supreme Court in Donoghue v Coombe</u>)
        - Otherwise, the owner is the last person who was in possession of it
        - If property is found on a person's land, they are constructively in the possession of it, even if they are unaware (<u>Hibbert v McKiernan</u> – man stealing golf balls from course)
    - It is possible to steal property that is un the unlawful possession of another
        - <u>Anic, Stylianou and Suleyman</u> – broke into house believing it contained cannabis
    - Are liable if receive stolen goods in which a reasonable person would have known it was stolen
        - S94AA Crimes Act
        - Can discharge this if make genuine enquiries
- Fourth, it has to be <mark>without consent</mark>
    - If the owner or person in possession consent to the removal of the property there is no larceny because there has been no trespassory taking
    - Machine cannot give consent (<u>Kennison v Daire</u>)
    - Facilitation does not amount to consent (<u>Martin v Puttick</u>- porkchop case)