**Framework**

**Will the accused be convicted of the offence?**

Interpretation: purposive first, then strict if ambiguity exists (*Pare*)

1. **Is the law constitutionally valid?**
   1. **Separation of Powers**
      1. Federal powers: s 91 CA 1867
         1. Criminal law including procedure but not administration of courts of criminal jurisdiction (s. 91(27))
         2. Penitentiaries (s. 91(28)) 🡪 those imprisoned for 2 years or over (under 2 years are in provincial reformatory prisons)
      2. Provincial powers: s 92 CA 1867
         1. Administration of justice in the province s. 92(14)
         2. Reformatory prisons s. 92(6)
         3. Punishment by fine, penalty, or imprisonment to enforce valid provincial laws (s. 92(15))
         4. Property and civil rights (s 92(13))
      3. Two types of challenges to invalidate law:
         1. is the law the federal government is creating within the criminal law powers (and not entrenching on the provincial property and civil rights powers)?
         2. is the provincial law actually a crime, which thus impedes on the federal government power?
      4. Required to look at the pith and substance of the law to determine this (*Margarine*)
      5. Criminal law requires a criminal public purpose (injurious to the public, target some evil or effect (social, political, economic interests)) (*Margarine*)
      6. Criminal law can relate to “public safety” (*Firearms*)
      7. Parliament may create criminal law to uphold public purposes unrelated to protecting others from the risk of harm such as upholding morality, paternalistic laws, and protecting other social norms (*Malmo-Levine*)
      8. Criminal law prohibiting communication of certain political/ideological views viewed as dangerous is within the federal government’s power (*Switzman*) (note: pre-Charter)
      9. If the law is passed with a criminal public purpose (e.g. regulating or prohibiting a socially undesirable concept rather than regulation from a healthcare standpoint), it will be viewed as *ultra vires* of provincial legislative jurisdiction (*Morgentaler*)
   2. **Codification of the Criminal Law**
      1. s 9 *Code*: no person shall be convicted of an offence at common law except for contempt of court
         1. Contempt of court at common law is constitutional (*United Nurses of Alberta*)
      2. s 8(3) *Code*: common law defences are still valid
      3. Courts reluctant to create offences retroactively because it imposes uncertainty in the law (*Frey*)
      4. While criminal offences must be codified, certain legal concepts may be added or removed by the Courts (*Jobidon*) (e.g. consent not recognized in relation to street fights)
   3. **Charter**
      1. s 7 framework:
         1. Does the claimant fall within the reference to “everyone” in s 7?
         2. Has the right to life, liberty or security of the person been violated?
         3. If so, was the violation contrary to the principles of fundamental justice?
      2. s 7 is qualitative, not quantitative (*Bedford*) (societal concerns addressed at s 1 (*BC Motor Vehicle*))
      3. There needs to be a sufficient causal connection between the impugned law and the harm to the accused (*Bedford*)
         1. This is satisfied when the government’s conduct elevates the harm to the accused imposed by third parties (*Bedford*)
      4. Test for new principles of fundamental justice: (*Malmo-Levine*)
         1. legal principle
         2. Significant societal consensus that it is “vital or fundamental to our societal notion of justice”
         3. Capable of being identified and applied with precision
      5. Existing PFJ: arbitrariness, overbreadth, gross disproportionality, vagueness (*Bedford*)
         1. Overbroad laws may violate s 7 as they are against the PFJ (*Heywood*; *Budreo*)
            1. geographical scope, temporal scope, and scope of population captured can be used to determine if the law was too broad (*Heywood*)
      6. Harm principle is not a PFJ (*Malmo-Levine*)
         1. Parliament may create criminal law to uphold public purposes unrelated to protecting others from the risk of harm such as upholding morality, paternalistic laws, and protecting other social norms (*Malmo-Levine*)
         2. But it still plays a strong role (*Labaye*)
      7. Court may read down or interpret a law to make it constitutional (*Canadian Foundation for Children*)
      8. Certainty is not required within the law; all that is required is that the law sufficiently delineates an area of risk (*Canadian Foundation for Children*)
      9. s 1 framework
         1. *Oakes* test:
            1. pressing and substantial objective
            2. proportionality

rational connection

minimal impairment

Overall balance

* + - 1. The onus is on the party attempting to limit the rights, on a balance of probabilities
      2. Internal rationality between proven and presumed facts no longer required (*Laba*)
  1. **Burden of Proof**
     1. Presumption of innocence is a fundamental element of criminal law; in light of the consequences, state must prove guilt beyond a reasonable doubt (*Woolmington*)
     2. Presumption of innocence protected constitutionally: s 11(d)
     3. Court may interpret a defence as an element of an offence and thus subject to the presumption of innocence (s 11(d)); thus Crown has the onus (*Keegstra*)
     4. beyond a reasonable doubt is a standard higher than a balance of probabilities but lower than absolute certainty (though it is much closer to absolute certainty than BOP) (*Starr*)
     5. Page 324: what “reasonable doubt” should and should not contain (*Lifchus*)
  2. **Statutory Interpretation**
     1. Purposive interpretation should be used first, and if any ambiguity remains then they should use a strict interpretation (*Pare*)
     2. words should be read in their entire context and with the intention of Parliament in mind (*Bell*)
     3. Concept of a “single transaction” should be used with reference to “while committing” (*Pare*)

1. **Actus reus**
   1. Break up the elements of the crime
   2. **Voluntariness**
      1. Accused must have some other course of action (*Kilbride*)
      2. Must be willpower to do an act (*King*)
      3. “A defence that the act is involuntary entitles the accused to a complete and unqualified acquittal” (*Ruzic*), otherwise it would infringe s 7 *Charter* (*Daviault*)
      4. Deals with physical involuntariness; “moral” involuntariness is not a factor at this stage of the analysis and is rather dealt with in defences such as the defence of duress (*Ruzic*)
   3. **Act or omission**
      1. Legal duties can arise from federal and provincial statutes, and the common law (*Thornton* 🡪 potentially, SCC did not contest or show disapproval of this; not precedent though)
   4. **Circumstances**
   5. **Causation of prohibited consequences**
      1. Did the prohibited consequences occur?
      2. Did the accuse cause the prohibited consequences?
         1. Factual causation
         2. is there any logical connection between the conduct of the accused and the consequence? (but-for test) (*Winning*)
         3. Legal causation
            1. Concerned with whether there is a sufficient link between the accused’s actions and the consequences to hold the accused responsible for his/her actions (*Smithers*)
            2. If the crime is first-degree murder in the context of a domination offence (s 231(5)), the act must be a substantial contributing cause (*Harbottle*)

This is most likely applicable to all first-degree murder charges based on the logic used in *Harbottle*

* + - * 1. Otherwise, is the act at least a contributing cause outside of the *de minimus* range? (*Smithers*)

Preferable to use the term “significant contributing cause” to describe this causation standard (*Nette*)

* + - * 1. Thin skull principle (accused generally takes his victim as he finds them) (*Smithers*)
        2. Intervening causes (part of legal causation)

Self-preservation in response to the accused will not sever the chain of causation (*Pagett*)

Act done in performance of a legal duty will not sever the chain of causation (*Pagett*)

Inducing a person to engage a gunfight who kills another in the course of their shooting could constitute causation (*JSR*)

Causation can be established despite the victim’s decision not to receive medical treatment (*Blaue*, s 224 *Code*)

224 Where a person, by an act or omission, does any thing that results in the death of a human being, he causes the death of that human being notwithstanding that death from that cause might have been prevented by resorting to proper means.

Causation established if accused’s causes bodily harm that is of itself of a dangerous nature and where death results, despite that the immediate cause of death is improper medical treatment applied in good faith (s 225 *Code*)

Causation established if accused’s actions causes bodily injury that result in death, despite that the bodily injury caused only accelerates the death from a disease or disorder (s 226 *Code*)

Principles of (1) reasonable foreseeability of the intervening cause and (2) whether intervening act is an independent act are merely analytical tools in determining whether the accused’s actions are morally blameworthy (if it is a significant contributing cause or not) (*Maybin*)

Reasonable foreseeability of the intervening cause (more appropriate when intervening acts are natural events)

Do not need to foresee the specific conduct, but rather some general danger that may ensue as a result of the accused’s actions

Whether the intervening act is an independent act of the accused’s actions (more appropriate when intervening acts are those of a person exercising their free will)

Are the intervening acts in response to the accused?

Was the accused merely setting thee scene and allowing for other circumstances to coincidentally intervene, or did the accused trigger/provoke the action of the intervening party?

Can look at the time, place, and nature of the intervening acts to determine whether the actions were independent/foreseeable

1. **Mens rea**
   1. Tie in the multiple actus reus elements with the associated mens rea requirement
   2. **Regulatory offence or true crime?**
      1. Provincial act? Regulatory. (*Sault Ste Marie*)
      2. Criminal code? Criminal.
      3. Offence concerned with public welfare? (*Beaver*: narcotics offence not, *Pierce Fisheries*: undersized lobsters are)
         1. Regulatory: An otherwise lawful act that is restricted for the public good (*Beaver*¸ *Pierce Fisheries*)
         2. Criminal acts are inherently wrongful and are prohibited altogether because of that (*Beaver*¸ *Pierce Fisheries*)
   3. **Regulatory offences**
      1. Presumed to be strict liability unless there is clear legislative indication to the contrary (*Sault Ste Marie*)
      2. Strict liability: Crown must prove actus reus beyond a reasonable doubt, then the onus shifts onto the accused to prove due diligence on a balance of probabilities
      3. Absolute liability: Crown must prove actus reus beyond a reasonable doubt to convict
         1. Cannot have imprisonment as a potential punishment (even indirectly, e.g. through the failure to pay a fine), otherwise it will violate s 7 *Charter* (*Re BC Motor Vehicle*)
      4. Generally, offences relating to pollution fall in the category of strict liability offences (*Sault Ste Marie*)
      5. Generally, offences with “cause” and “permit” without any knowledge implied fall in the category of strict liability offences
   4. **True Crimes**
      1. Statutory presumption where no form of mens rea is provided is subjective fault (intent or recklessness) (*Buzzanga*)
      2. Court will go to great lengths to read in a mens rea requirement for true criminal offences (*Beaver*)
      3. Subjective fault
         1. Objective evidence may inform whether the accused had subjective fault (*Buzzanga*)
            1. But it must still be established that the accused had the subjective fault element
         2. *Mistake of fact*
            1. Defence: an honest belief in the existence of circumstances, which, if true, would render the act or omission innocent (*Beaver*)

The accused raises it (defence in this sense) but successful raising it negates mens rea (unlike other defences) (*Papajohn*)

* + - * 1. Reasonableness of belief not part of the analysis where subjective fault is required (*Papajohn*)

But relevant where it is a regulatory offence because negligence standard is objective (*Papajohn*)

* + - 1. **Intent** (purposely (usually (*Hibbert*)), wilfully (sometimes, context dependent (*Buzzanga*)))
         1. Motive is legally irrelevant to criminal responsibility (*Hibbert*, *Lewis*, *Barbour*), motive not to be confused with intent (*Hibbert*, *Lewis*, *Imrich*)

Be critical of mistake *Steane* made

* + - * 1. Intent established if: (*Buzzanga*)

Prohibited outcome was their conscious purpose, or

They foresaw that the prohibited outcome was certain or morally certain to result from their action, but proceeded to act as a means of achieving their purpose

* + - * 1. “purpose” means intent for s 21(1)(b) in the sense that the accused meant to do it (not their motive/desire) (*Briscoe*)
        2. Accused is still able to raise the defence of duress (*Hibbert*)
      1. **Knowledge**
         1. Elements of fraud (*Theroux*)

*Actus reus*

Dishonest act: The prohibited act (act of falsehood, deceit, or some other fraudulent means), and

Deprivation caused by the prohibited act, which may consist of actual loss or the placing of the victim’s pecuniary interests at risk

*Mens rea*

Subjective knowledge of the prohibited act, and

Subjective knowledge that the prohibited act could have as a consequence the deprivation of another (deprivation is defined as at least placing of the victim’s pecuniary interests at risk)

* + - * 1. They do not actually need to subjectively know that an act is dishonest; dishonesty is determined on an objective standard
        2. Accused’s intention/conscious purpose is not relevant
        3. Subjective knowledge of some fact (*Theroux*)
      1. **Wilful blindness**
         1. substitute for knowledge where knowledge is a component of the mens rea (*Briscoe*)
         2. Doctrine of wilful blindness imputes knowledge to an accused where suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries (“deliberate ignorance”; accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge) (*Briscoe*)
      2. **Recklessness**
         1. accused is aware that there is a danger that his conduct could bring about the result prohibited by the criminal law, and nevertheless persists, despite the risk (*Sansregret*)
         2. cannot consent to street fights (*Jobidon*)
    1. Objective fault
       1. **Penal negligence**
          1. Two contexts where objective fault applies:

Where it is the complete fault element of the offence (e.g. dangerous driving)

Where there is a predicate offence and objective fault only relates to a part of the offence (e.g. unlawful act manslaughter)

* + - * 1. Marked departure from the standard of care expected of a reasonable person in similar circumstances (*Creighton*; *Hundal*)

Helpful to look at the marked departure in two separate questions: (*Roy*)

(1) in light of all relevant circumstances, a reasonable person would have foreseen the risk and taken steps to avoid it if possible, and

(2) whether the accused’s failure to foresee the risk and take steps to avoid it was a marked departure from the standard of care expected of a reasonable person in the accused’s circumstances

* + - * 1. Other crimes with an even higher standard of objective fault (e.g. criminal negligence 🡪 marked and substantial departure)
        2. Uniform standard of reasonable person in the circumstances of the accused is used, with a sole exception of traits resulting in an incapacity to appreciate the nature of the risk which the activity in question entails (*Creighton*)

However, voluntary intoxication or drug use does not negate liability if they are unable to foresee the nature of the risk due to the voluntary consumption of drugs (*Creighton*)

Circumstances do not include personal traits (*Creighton*)

Personal traits should be considered in sentencing (*Creighton*)

In determining this, court should consider the actual state of mind of the accused; helpful on inculpatory or exculpatory standard (*Beatty*)

Where individuals lack sufficient knowledge, experience, or physical ability, they may still be punished for their decision to attempt the activity without having accounted for their deficiencies (particularly in licensed activities, where some particular level of knowledge is required to engage in the activity) (*Creighton*)

* + - * 1. a momentary lapse, without more, does not constitute a marked departure from the standard of reasonable care (at least in context of dangerous driving) (*Beatty*), similarly simple misjudgment due to poor conditions (*Roy*)
  1. **Constitutional considerations** (subjective fault for some crimes)
     1. Fault element of negligence and reverse onus violates s 11(d) but justified under s 1 (*Ellis-Don*)
     2. s 7 right to security of a person may be violated if government action triggers exceptional state-induced psychological stress *(Transport Robert*)
        1. But, s 7 does not protect against the regular stress/anxiety that a reasonable person would suffer from government regulation of an industry (stigma that results is not as large as in criminal offences) (*Transport Robert*)
        2. Substantial fine does not trigger this exceptional level of stress (*Transport Robert*)
     3. Subjective fault required for murder (subjective foresight of death) (*Martineau*), attempted murder (*Logan*), and crimes against humanity and war crimes (*Finta*) due to the stigma associated with the offence and special nature of the unavoidable penalties
     4. There must be an element of personal fault in regard to a culpable aspect of actus reus, but not necessarily in regard to reach and every element of actus reus (*DeSouza*)
        1. No principle of fundamental justice prevents Parliament from treating crimes with certain consequences more serious than crimes which lack those consequences (*DeSouza*)
        2. Statutory presumption that all offences require subject fault does not get entrenched to the Constitution (*DeSouza*)
     5. No person can be imprisoned without mens rea and the seriousness of the offence must not be disproportionate to the degree of moral fault (PFJ) (*Creighton*)

1. **Participation (aiding/abetting)** (skip this if irrelevant)
   1. s 21(1) *Code*: Every one is a party to an offence who
      1. actually commits it;
      2. does or omits to do anything for the purpose of aiding any person to commit it; or
      3. abets any person in committing it
   2. More than one person can commit a single offence (e.g. two or more strike blows on a victim with the requisite mens rea and the beating causes the victim’s death (*McMaster*))
   3. All modes of party liability under s 21(1) are all equally culpable under the law (*Thatcher*)
      1. As a result, the jury does not need to decide unanimously which form of participation the accused engaged in to convict them of the offence (*Thatcher*)
   4. Elements of aiding/abetting: (*Briscoe*)
      1. *Actus reus*
         1. Doing or omitting to do something that assists (aiding) or encourages (abetting) the perpetrator to commit the offence (*Greyeyes*, *Briscoe*)
            1. Aid = assist or help the actor, abet = encouraging, instigating, promoting or procuring the crime to be committed
         2. Don’t forget to go through the four stages of actus reus though
      2. *Mens rea*
         1. For the purposes of aiding or abetting (intention (*Hibbert*))
            1. *Pickton*: main focus of s 21(1)(b) and (c) is on the intention with which the aid or encouragement has been provided
         2. With knowledge of the perpetrator’s intention to commit the crime (knowledge)
            1. Recall that wilful blindness is a substitute for knowledge (*Briscoe*)
   5. More than a “mere presence” at the scene of the crime is required to ground liability (*Dunlop*)
      1. Something more is needed; encouragement of the principal offender; an act which facilitates the commission of the offence (such as keeping watch on or enticing the victim away), or an act which tends to prevent or hinder interference with accomplishment of the criminal act, such as preventing the intended victim from escaping or being ready to assist the prime culprit
      2. Presence, if accompanied by other factors, such as prior knowledge of the principal offender’s intention to commit the offence or attendance for the purpose of encouragement
      3. Person is not guilty merely because he is present at the scene of a crime and does nothing to prevent it
   6. Exception for aiding a buyer in the purchase of narcotics (*Greyeyes*)
      1. Guilty of trafficking only if there is more than “incidental assistance” to the sale/transfers that they will be seen they are aiding trafficking, otherwise aiding possession (*Greyeyes*)
2. **Do the actus reus and mens rea coincide?**
   1. A series of acts may be part of the same transaction (*Cooper*)
      1. They do not need to be completely concurrent (*Cooper*)
      2. *Williams* example of actus reus and mens rea not coinciding
   2. Was there a continuation of the act? (*Fagan*)
      1. At the time the necessary mens rea was formed
   3. Second approach (not Canadian law): Unintentional act followed by an intentional omission to rectify that act can be regarded in toto as an intentional act; creates a duty to rectify the situation (*Miller*)
3. **Other consideration:** Certain legal concepts may be added or removed by the court (*Jobidon*)

Offences

**Assault** – s 265(1)(a)

1. *Actus reus:*
   1. Act: direct or indirect application of force to that person
   2. Circumstance: lack of consent
2. *Mens rea:*
   1. *Intentional* application of force to that person (*Smithers*)
      1. Where you intend to apply force to a group of people, any person that is hit would likely suffice
      2. Also, some jurisdictions have transferred intent but Ontario is unclear
   2. *Recklessness* or *knowledge* as to whether consent existed (*Sansregret*)
      1. Cannot consent to street fights (*Jobidon*)

**Unlawful act manslaughter** (any unlawful act) (*Creighton*) – s 222(5)(a)

1. *Actus reus*:
   1. Act: unlawful act
   2. Causation of consequence
      1. (1) consequence: death
      2. (2) causation
2. *Mens rea*:
   1. Mens rea for predicate offence (must be *at least a marked departure* from the standard of care expected of a reasonable person in similar circumstances) – note in case of regulatory offence as unlawful act
   2. *Objective* foresight of non-trivial *bodily harm* (*Creighton*)

Also: manslaughter by criminal negligence also possible – s 222(5)(b)

**Manslaughter by unlawful act of assault** (example)

1. *Actus reus*:
   1. Voluntariness
   2. Act: direct or indirect application of force to that person
   3. Circumstance: lack of consent
      1. Cannot consent to street fights (*Jobidon*)
   4. Causation of consequence:
      1. (1) consequence: death
      2. (2) causation
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**Dangerous driving** (*Beatty*) – s 249

1. *actus reus*:
   1. sourced from the text of the provision (not a marked departure):
   2. s 249(1): operating a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place
   3. Note: if dangerous driving causing bodily harm or death, also need causation of consequence
2. *mens rea*:
   1. conduct amounts to a marked departure from standard of care of a reasonable person (draws on from *Creighton* and *adds the caveat below*)
      1. In determining this, court should consider the actual state of mind of the accused
         1. Might be relevant on an inculpatory standard (had some state of mind that makes clear that is a marked departure) or exculpatory standard (evidence showing that a reasonable person in the context might not have seen then risk)
      2. **NOTE**: see *Roy* for separate questions in addressing this, but consider the things above in the analysis

**Fraud** – s 380 (*Theroux*)

1. *Actus reus*
   1. Act:
      1. Dishonest act: The prohibited act (act of falsehood, deceit, or some other fraudulent means), and
   2. Causation of consequence:
      1. Deprivation caused by the prohibited act, which may consist of actual loss or the placing of the victim’s pecuniary interests at risk
2. *Mens rea*
   1. Subjective knowledge of the prohibited act, and
   2. Subjective knowledge that the prohibited act could have as a consequence the deprivation of another (deprivation is defined as at least placing of the victim’s pecuniary interests at risk)

**Domination offences** (“while committing”) (*Pare* 🡪 concept of a “single transaction”)

231(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

(a) section 76 (hijacking an aircraft);

(b) section 271 (sexual assault);

(c) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(d) section 273 (aggravated sexual assault);

(e) section 279 (kidnapping and forcible confinement); or

(f) section 279.1 (hostage taking).

**RECALL THAT LEGAL DUTIES (or unlawful act) NEED TO BE PART OF THIS ANALYSIS**

**Criminal negligence** – s 219 (ex: *Browne*)

* 219 (1) Every one is criminally negligent who
  + (a) in doing anything, or
  + (b) in omitting to do anything that it is his duty to do,
* shows wanton or reckless disregard for the lives or safety of other persons.
* (2) For the purposes of this section, duty means a duty imposed by law.

**Common nuisance** – s 180 (ex: *Thornton*)

* 180 (1) Every one who commits a common nuisance and thereby (a) endangers the lives, safety or health of the public, or (b) causes physical injury to any person is guilty of an offence.
* (2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby(a) endangers the lives, safety, health, property or comfort of the public; or (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

Common nuisance elements broken down

1. *Actus reus*
   1. Act
      1. Commits a common nuisance 🡪 everyone who does an unlawful act or fails to discharge a legal duty and thereby
         1. endangers the lives, safety, health, property or comfort of the public, or
         2. obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada
   2. Causation of consequences
      1. endangers the lives, safety or health of the public, or
      2. causes physical injury to any person is guilty of an offence
2. *Mens rea*
   1. Predicate offence (unlawful act/failure to discharge legal duty)

**Legal Duties in Criminal Code**

Note: legal duties can potentially be sourced from provincial statutes and the common law (*Thornton*). Not precedent though, but indication that this might be the case.

* Failure to provide necessaries of life
  + 215 (1) Every one is under a legal duty
    - (a) as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;
    - (b) to provide necessaries of life to their spouse or common-law partner; and
    - (c) to provide necessaries of life to a person under his charge if that person
      * (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
      * (ii) is unable to provide himself with necessaries of life.
* Undertaking surgical/medical treatment
  + 216 Every one who undertakes to administer surgical or medical treatment to another person or to do any other lawful act that may endanger the life of another person is, except in cases of necessity, under a legal duty to have and to use reasonable knowledge, skill and care in so doing.
* Undertaking to do an act if an omission may be dangerous to life **\*\*** (*Brown*)
  + 217 Every one who undertakes to do an act is under a legal duty to do it if an omission to do the act is or may be dangerous to life.
* Undertakes/has authority to direct someone who does work
  + 217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

**\*\*** Undertaking (s 217) must be something more than a mere promise (*Brown*) (should not consider their relationship (friends) because it’s different than that of parents and spouses; “I’ll take you to the hospital is not enough”)

OTHER PROVISIONS

**Arson Provisions**

**Arson damage to property** (*Miller*) – s 434

s 434: Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

* actus reus:
  + act: starting a fire or explosion (*Miller*)
  + circumstance: property not wholly owned
  + consequence: causes damage to property by fire or explosion
    - causation required
* mens rea: intentionally (wilfully in *Miller*) or *recklessly*

**Arson threat to health or property of another** – s 434.1

S 434.1: Every person who intentionally or recklessly causes damage by fire or explosion to property that is owned, in whole or in part, by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years, where the fire or explosion seriously threatens the health, safety or property of another person.

* actus reus:
  + act: starting a fire or explosion (*Miller*)
  + circumstance: property owned in whole or in part
  + consequence: seriously threatens the health, safety, or property of another person
    - causation required
* mens rea: intentionally or *recklessly*

**Arson – disregard for human life** – s 433

s 433: Every person who intentionally or recklessly causes damage by fire or explosion to property, whether or not that person owns the property, is guilty of an indictable offence and liable to imprisonment for life where

* (a) the person knows that or is reckless with respect to whether the property is inhabited or occupied; or
* (b) the fire or explosion causes bodily harm to another person.
* actus reus:
  + act: starting a fire or explosion (*Miller*)
  + consequence: causes damage to property, where
    - (a) the person the person knows that or is reckless with respect to whether the property is inhabited or occupied, OR
    - (b) the fire or explosion causes bodily harm to another person
    - causation required
* mens rea:
  + (1) intentionally or *recklessly* causes damage by fire or explosion to property
  + (2) if (a): knowledge or recklessness as to whether the property is inhabited/occupied

**Arson for fraud** – s 433

s 435: (1) Every person who, with intent to defraud any other person, causes damage by fire or explosion to property, whether or not that person owns, in whole or in part, the property, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years. (2) Where a person is charged with an offence under subsection (1), the fact that the person was the holder of or was named as a beneficiary under a policy of fire insurance relating to the property in respect of which the offence is alleged to have been committed is a fact from which intent to defraud may be inferred by the court.

* actus reus:
  + act: starting a fire or explosion (*Miller*)
  + consequence: causes damage to property by fire or explosion
    - causation required
* mens rea: intent to defraud a person

**Arson by negligence** – s 436

s 436(1) Every person who owns, in whole or in part, or controls property is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years where, as a result of a marked departure from the standard of care that a reasonably prudent person would use to prevent or control the spread of fires or to prevent explosions, that person is a cause of a fire or explosion in that property that causes bodily harm to another person or damage to property.

(2) Where a person is charged with an offence under subsection (1), the fact that the person has failed to comply with any law respecting the prevention or control of fires or explosions in the property is a fact from which a marked departure from the standard of care referred to in that subsection may be inferred by the court.

* actus reus:
  + act/omission: is a cause of a fire/explosion (*Miller*)
  + circumstance: property owned in whole or in part, or person controls property
  + consequence: causes a fire or explosion in that property that causes bodily harm to another person or damage to property
    - need causation
* mens rea: marked departure from the standard of care that a reasonably prudent person would use to prevent or control the spread of fires or to prevent explosions

**Murder** – s 229

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

Note: “ought to know” not constitutional (*Martineau*).

**Other offences** (probably not relevant):

**Common bawdy house** (*Labaye*) (s 210)

**Prostitution laws** (*Bedford*) (s 286.1)

**Impaired driving** – s 253

**Murder** – s 229(a)(i) 🡪 intent , 229(c) 🡪 knowledge

OTHER (almost certainly NOT relevant)

**Theft** – s 322

322 (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.