When we think of the word ‘law’ and the concept of someone breaking the law, chances are that we will think first of criminal law and someone committing a crime. The types of actions that come to mind are murder, rape and robbery. This is not surprising since these are constantly reported by the media and dramatised in television programs and films. After reading the chapter and undertaking the activities you should be able to demonstrate the following key knowledge:

- principles of criminal liability, including elements of a crime, the presumption of innocence, the burden and standard of proof, age of criminal responsibility and participants of a crime
- crimes against the person and related defences
- crimes against property and related defences
- trends in crime, sentencing and recidivism.
### Key terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>abortion</td>
<td>A deliberately caused miscarriage</td>
</tr>
<tr>
<td>accessory</td>
<td>A person who is not present at the time of the crime but assists (either before or after)</td>
</tr>
<tr>
<td>accident</td>
<td>An unexpected result of an act that was done with no intention of wrongdoing</td>
</tr>
<tr>
<td>actus reus</td>
<td>A wrongful act; the physical act constituting a crime</td>
</tr>
<tr>
<td>assault</td>
<td>Any action that places another individual in fear of violence</td>
</tr>
<tr>
<td>automatism</td>
<td>Where the actions were involuntary and beyond the control of the defendant</td>
</tr>
<tr>
<td>culpable driving</td>
<td>To cause the death of another while driving a car in a manner considered to be reckless or negligent</td>
</tr>
<tr>
<td>doli incapax</td>
<td>Lacking the capacity to be guilty of an offence; for example, children</td>
</tr>
<tr>
<td>homicide</td>
<td>The killing of a human being</td>
</tr>
<tr>
<td>indictable offences</td>
<td>Serious criminal offences</td>
</tr>
<tr>
<td>infanticide</td>
<td>Where a woman, due to the effects of childbirth, kills her own child under the age of 24 months</td>
</tr>
<tr>
<td>manslaughter</td>
<td>An unlawful homicide that is not considered to be murder because there was no intention to kill or there were other special circumstances</td>
</tr>
<tr>
<td>mens rea</td>
<td>The state of mind required to commit a wrongful act</td>
</tr>
<tr>
<td>mental impairment</td>
<td>A defence where the person is not mentally able to recognise either the nature and quality of the act or that the conduct was wrong</td>
</tr>
<tr>
<td>murder</td>
<td>The unlawful killing of any reasonable creature in being with malice aforethought either expressed or implied</td>
</tr>
<tr>
<td>necessity</td>
<td>The state of affairs where an action is necessary to avoid death or injury to a person</td>
</tr>
<tr>
<td>perjury</td>
<td>An offence committed by a person who has taken an oath in court who then deliberately gives a statement that is false</td>
</tr>
<tr>
<td>presumption of innocence</td>
<td>Every person is considered to be innocent until proven guilty</td>
</tr>
<tr>
<td>principal</td>
<td>A person who participates in the commission of a crime</td>
</tr>
<tr>
<td>rape</td>
<td>Sexual assault</td>
</tr>
<tr>
<td>self-defence</td>
<td>The use of force to protect oneself or another</td>
</tr>
<tr>
<td>strict liability</td>
<td>Offences in which no wrongful intent needs to be established</td>
</tr>
<tr>
<td>summary offences</td>
<td>Minor criminal offences</td>
</tr>
<tr>
<td>theft</td>
<td>Dishonestly taking the goods of another person with the intention of depriving them of the use of those goods</td>
</tr>
</tbody>
</table>
The need for criminal law

One of the key reasons for having laws is to enable us to live together by:
- recognising the rights of ourselves and others
- placing responsibilities on individuals to ensure that their actions don’t hurt others
- providing ways to resolve disputes when they do happen.

The criminal law has established a code of conduct and guides our behaviour. It is primarily concerned with the regulation of conduct in society. For instance, criminal law prohibits specific acts, such as murder, theft and rape.

What is a crime?

It is difficult to provide an exact definition of what constitutes a crime. In general terms we can define crime as:

An act or omission associated with injurious, threatening or immoral conduct considered detrimental to the individual(s) affected or to the interests of a given society (at that particular time) and which incurs some punishment of the guilty offender by the state.

To understand what this means, we need to look at some common features that distinguish criminal conduct from non-criminal conduct.

Features of crime

Harmfulness

Society considers certain types of conduct to be harmful or damaging, and so classes them as criminal behaviour. There are three ways in which an action may be seen as harmful: physical injury (for example, murder or rape); economic loss (for example, theft or computer crime); and harm against society itself (for example, pollution or perjury).
Immorality
Morality (and, therefore, immorality) is generally based on what society, at any particular time, believes is right or wrong. In some instances this is easy to see. A common value held in all societies is the value we place on preserving human life. The criminal law reflects this value by making murder, assault and rape criminal offences. By making these actions criminal offences, the law is protecting the values of the community (as well as protecting individuals from physical harm).

However, the values that the community attaches to some actions are not always clear. For instance, there is a diversity of community views on issues such as abortion and prostitution. Community views are divided in relation to these issues and, from time to time, there is debate about whether these actions should be considered criminal offences. What we regard as crime seems to depend on what the majority of people in a given society, at a given time, think is immoral. As society changes, so does the view of what should be seen as criminal.

Punishment
The concept of punishment is readily identified with crime. Society has determined, through its legal system, that those found guilty of crimes should be punished. Punishments for criminal offences include monetary fines, imprisonment and the loss of the right to drive.

The influence of changing values
The issue of smoking is an example of how the changing values of society influence laws. There is growing concern in the community about the dangers of smoking. While smoking itself is not a crime, many restrictive laws and rules about where a person can smoke and how smoking can be promoted reflect these concerns. Rules have been passed to limit the places where people can smoke. It is now an offence to smoke in a vehicle that is carrying children aged under 18 years. Smoking is also now banned in government offices, private workplaces, restaurants and hotels, shopping centres and public transport stations and shelters. The advertising of tobacco products in magazines, in newspapers and on television is also banned. Cigarettes must not be sold in vans, tents or other temporary retail outlets, such as an ice-cream van or food tent. The sponsorship of major sporting events by tobacco companies is being limited. In addition there has been banning of the sale of tobacco at special events, such as the Royal Melbourne Show, the Grand Prix and the Big Day Out.
Purpose and function of criminal law

Criminal law reflects society’s views about conduct that the community regards as unacceptable. It performs a balancing act: to protect the interests of society by bringing offenders to justice, while protecting the rights (or civil liberties) of members of society to act freely. The issue of civil liberties needs to be kept in mind constantly.

Criminal law is also concerned with punishing people who have been found guilty of crimes. It aims, through punishment, to:
- impose society’s retribution (revenge)
- prevent people from committing crimes
- deter offenders from re-offending
- rehabilitate offenders
- remove offenders from society by detaining them in a humane fashion.

Sources of criminal law

In Victoria, the sources of criminal law come from two areas, statute law (either state or Commonwealth legislation) and common law.

The Victorian *Crimes Act 1958* lists the most serious criminal offences, known as **indictable offences**, and sets maximum penalties for these offences. Other statutes specify less serious criminal offences, which are known as **summary offences**. For example, the *Summary Offences Act 1966* (Vic) sets out a range of less serious offences. Criminal law is also outlined in specialised Victorian legislation. For example, the *Road Safety Act 1986* (Vic) sets out traffic offences. Municipal councils also have the power to pass local laws.

Criminal laws are also created by the Commonwealth Parliament; for example, those relating to some drug offences, electoral procedures, taxation and currency.

Issues not specified by the legislation have been developed through common law—laws made by judges. For example, the Crimes Act specifies murder as a crime and the penalties to be handed out to guilty offenders, but it does not provide a definition of murder. The definition of murder is found in the decision made by judges in past cases. These decisions form the common law.

Principles of criminal liability

**Elements of a crime**

Generally, a person will only be punished for a crime if the person understood when they committed the act that it was wrong. This accepted notion is expressed in the judge-made legal principle of *actus non reum facit nisi mens sit rea*. This literally means ‘an act alone
In most cases, to be guilty of a crime a person must have actus reus and mens rea.

Strict liability offences require only actus reus.

You are innocent until proven guilty.

The prosecution must prove that you are guilty beyond reasonable doubt.

A child under 10 cannot be charged with a crime.

The Children’s Court is covered in more detail on page 170.

does not make you guilty, unless you have a guilty mind’. For a person accused of a crime to be found guilty, there must be:

- **actus reus** (a wrongful act)
- **mens rea** (a guilty mind).

Generally, if only one of these elements is present at the time of the alleged offence, a crime cannot be established.

For example, to be guilty of murder, the accused person must be shown to have caused the death (**actus reus**—a wrongful act) and also to have intended to cause that death or to have understood that that act was dangerous (**mens rea**—a guilty mind).

This situation does not apply in all cases. Parliament has established strict liability in some criminal offences. **Strict liability** means that by committing the act you are guilty of the offence. It is not necessary to prove that the person intended to commit the offence. Strict liability applies to offences relating to traffic offences and the sale of tobacco products and alcohol to minors.

### Presumption of innocence

According to the law, any person accused of committing a crime is presumed innocent until proven guilty. This principle is called the **presumption of innocence**.

### Burden of proof

It is the duty of the prosecution to prove that the accused is guilty of the crime. This is the burden of proof.

### Standard of proof

The prosecution must prove the accused guilty ‘beyond reasonable doubt’. If a magistrate or jury is not convinced ‘beyond reasonable doubt’ of the accused’s guilt, the accused should be given the benefit of the doubt, and found not guilty.

### Age

In Victoria, only people aged 10 years and over are considered by law to be criminally liable, so a child under 10 cannot be charged with a crime. It is also assumed that young people aged between 10 and 14 do not possess sufficient understanding to know when they are doing something that it is wrong. This is known as the principle of **doli incapax**.

However, if the prosecution can provide evidence that the young person knew the difference between right and wrong, a prosecution for a criminal offence can proceed.

### Children as criminals

In Victoria in 1996, a 14-year-old boy was convicted of the stabbing murder of taxi driver Peter Coe and was jailed for 13 years. The boy was 13 at the time of the attack. His accomplice, another child, pleaded guilty to manslaughter. The identity of the young people was not revealed.

In 2004 a Victorian boy was found guilty of arson. He was 10 years old when he caused a fire resulting in $1 million damage to a primary school. A Children’s Court magistrate determined that the boy, aged 12 at the time the case came to court, knew his actions were wrong. The court found that the boy’s actions in starting the fire were deliberate and that he knew that there could be serious consequences. The boy was given a six-month good behaviour bond.
Participating in a crime
Participants in a crime can be classified as either a principal offender or an accessory.

Principal offender
The person who actually commits a crime is called the principal offender. A person can participate in a crime even if they do not physically take part in the crime. Any person who aids, abets, counsels or organises another person to commit a serious criminal offence (known as an indictable offence) is also treated as a principal offender. For example, a person who acts as a lookout in a bank robbery can still be considered a principal offender.

Accessory
A person who knowingly impedes the apprehension, prosecution, conviction or punishment of a principal offender is called an accessory. To be an accessory to a crime is an offence when the crime is punishable by five or more years in prison. For example, a person who knowingly hides bank robbers from the police would be called an accessory.

In 2010 a 13-year-old boy who preyed on the elderly was sentenced to serve six months in a youth residential centre. A court heard the boy terrorised the residents of retirement villages, breaking into their homes as they slept to steal cash, mobile phones and ATM cards. He broke into the unit of an elderly woman, stole her purse and keys and drove her car to an ATM where he used her bank card to withdraw $1000. The boy’s oldest alleged victims were an 88-year-old woman and a 90-year-old man, both residents of a retirement village. As the elderly couple slept, he broke into their home and stole a wallet and purse from their lounge room, getting away with $400 in cash.

These cases raise a number of disturbing issues about criminal behaviour and young people, including questions about lowering the age of criminal liability.
Second, crimes can be classified according to the legal procedure used to bring them to court:

- indictable offences—serious offences requiring the accused to be tried before a judge and a jury in a higher court (for example, murder, rape, treason, theft and robbery)
- indictable offences heard summarily—those serious offences that can be heard by the Magistrates’ Court as if they were summary offences (for example, thefts less than $40,000 and some robberies and assaults)
- summary offences—less serious offences requiring the accused to be tried before a magistrate sitting without a jury (for example, being drunk and disorderly, driving with a blood-alcohol level at or over .05, and traffic offences).

Types of crimes

Many different types of conduct may be considered to be criminal. These actions can be classified in two ways. First, crimes can be classified according to the nature of the offence. Offences can be against:

- the person (for example, murder and assault)
- property (for example, theft and arson)
- the state (for example, treason and riot)
- morality (for example, carnal knowledge and prostitution)
- the legal system (for example, perjury)
- regulations, ordinances and local laws (for example, not wearing seat belts and breaching local council laws).

These legal procedures will be discussed in more detail in a later chapter.
Crime statistics

In 2008–09, Victoria recorded a total of 380,249 offences. However, since 2000 there has been a decrease of 25.5 per cent in recorded crime. The clearance rate for this period was 45.8 per cent; that is, just less than half the total number of crimes were solved. This is the highest figure recorded since 1993. Victoria Police processed a total of 169,181 alleged offenders in 2008–09. Of these offenders, 132,289 (78 per cent) were adult and 35,924 (22 per cent) were juvenile. Males were more likely to be overall victims of crime (55 per cent).

3.1 Summary of offences recorded, 2008–09

<table>
<thead>
<tr>
<th>Crime</th>
<th>No. of offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime against the person</td>
<td></td>
</tr>
<tr>
<td>Homicide</td>
<td>181</td>
</tr>
<tr>
<td>Rape</td>
<td>1,543</td>
</tr>
<tr>
<td>Sex (non-rape)</td>
<td>4,908</td>
</tr>
<tr>
<td>Robbery</td>
<td>3,332</td>
</tr>
<tr>
<td>Assault</td>
<td>33,668</td>
</tr>
<tr>
<td>Abduction/Kidnap</td>
<td>339</td>
</tr>
<tr>
<td>Sub-total</td>
<td>43,971</td>
</tr>
<tr>
<td>Crime against property</td>
<td></td>
</tr>
<tr>
<td>Arson</td>
<td>3,462</td>
</tr>
<tr>
<td>Property damage</td>
<td>54,122</td>
</tr>
<tr>
<td>Burglary (aggravated)</td>
<td>1,909</td>
</tr>
<tr>
<td>Crime</td>
<td>No. of offences</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Burglary (residential)</td>
<td>28 030</td>
</tr>
<tr>
<td>Burglary (other)</td>
<td>17 206</td>
</tr>
<tr>
<td>Deception</td>
<td>22 224</td>
</tr>
<tr>
<td>Handling stolen goods</td>
<td>7 070</td>
</tr>
<tr>
<td>Theft from motor vehicle</td>
<td>47 366</td>
</tr>
<tr>
<td>Theft (shopstealing)</td>
<td>19 455</td>
</tr>
<tr>
<td>Theft of motor vehicle</td>
<td>15 962</td>
</tr>
<tr>
<td>Theft of bicycle</td>
<td>4 532</td>
</tr>
<tr>
<td>Theft (other)</td>
<td>56 856</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>278 194</strong></td>
</tr>
<tr>
<td><strong>Drug offences</strong></td>
<td></td>
</tr>
<tr>
<td>Drug (cultivating, manufacturing, trafficking)</td>
<td>4 404</td>
</tr>
<tr>
<td>Drug (possession, use)</td>
<td>10 472</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>14 876</strong></td>
</tr>
<tr>
<td><strong>Other crime</strong></td>
<td></td>
</tr>
<tr>
<td>Going equipped to steal</td>
<td>531</td>
</tr>
<tr>
<td>Justice procedures</td>
<td>18 669</td>
</tr>
<tr>
<td>Regulated public order</td>
<td>1 913</td>
</tr>
<tr>
<td>Weapons/explosives</td>
<td>7 142</td>
</tr>
<tr>
<td>Harassment</td>
<td>2 771</td>
</tr>
<tr>
<td>Behaviour in public</td>
<td>6 399</td>
</tr>
<tr>
<td>Other</td>
<td>5 783</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>43 208</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>380 249</strong></td>
</tr>
</tbody>
</table>

Where crime occurred

![Pie chart showing percentages of crime occurrence]

Crime against the person, 2008–09

![Pie chart showing percentages of crimes against the person]

- Assault 77%
- Sex (non/rape) 11%
- Rape 4%
- Robbery 7%
- Homicide >1%
- Abduction/kidnap >1%
**Crime against the person**

In 2008–09, there were 43 971 offences of crime against the person. Offences of robbery, assault and sex (non-rape) accounted for over 95 per cent of offences in this category with 181 Victorians murdered. The main offences within homicide were murder (100) and culpable driving (47). The overall clearance rate for this category was 76.5 per cent.

There has been a 9.1 per cent increase in robberies recorded where a knife was involved. Robberies occurring at street/lane/footpath locations made up 51.0 per cent of all robberies and the victim in this category was generally male (89.6 per cent).

Cash monies remained the most recorded property type stolen during robberies followed by personal electronic devices, such as mobile phones and iPods.

Assault offences at residential premises made up 39.2 per cent of all assaults. During 2008–09, a total 1601 assault offences occurred at licensed premises. Victims of assault offences in the same period were mainly male (58.1 per cent).

**Crime against property, 2008–09**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property damage</td>
<td>19%</td>
</tr>
<tr>
<td>Burglary</td>
<td>17%</td>
</tr>
<tr>
<td>Theft from motor vehicle</td>
<td>17%</td>
</tr>
<tr>
<td>Theft of motor vehicle</td>
<td>8%</td>
</tr>
<tr>
<td>Deception</td>
<td>8%</td>
</tr>
<tr>
<td>Theft (shopsteal)</td>
<td>7%</td>
</tr>
<tr>
<td>Handle stolen goods</td>
<td>2%</td>
</tr>
<tr>
<td>Arson</td>
<td>1%</td>
</tr>
<tr>
<td>Theft (other)</td>
<td>20%</td>
</tr>
<tr>
<td>Cash</td>
<td>17%</td>
</tr>
<tr>
<td>Property damage</td>
<td>17%</td>
</tr>
<tr>
<td>Burglary</td>
<td>17%</td>
</tr>
<tr>
<td>Handle stolen goods</td>
<td>2%</td>
</tr>
<tr>
<td>Arson</td>
<td>1%</td>
</tr>
<tr>
<td>Theft (shopsteal)</td>
<td>7%</td>
</tr>
<tr>
<td>Theft of motor vehicle</td>
<td>8%</td>
</tr>
<tr>
<td>Deception</td>
<td>8%</td>
</tr>
</tbody>
</table>

**Crime against property**

In 2008–09, there were 278 194 offences against property. Over the past five years arson offences recorded at residential locations has increased by 20.4 per cent. During 2008–09 there was a 17.7 per cent increase in the number of graffiti offences recorded. Graffiti constituted 14 per cent of all property damage offences, or 7568 out of 54 122 offences in this category.

Operation Vehicle Watch was introduced in March 2002 and the number of thefts of motor vehicle offences has more than halved since 2001 (57.6 per cent). However, the most stolen property from a vehicle, in order, were number plates, cash, GPS receivers, wallets and laptops.

The number of shopstealing offences recorded during 2009 was 19 455, with a clearance rate of 82 per cent. In 2008 the police introduced Penalty Infringement Notices and Offenders Warnings for the crime of shop theft less than $600. Overall, 3089 Penalty Notices and Offender Warnings were issued.

Victoria Police introduced the Safe Streets Project in 2007 to provide a safe environment for all persons and decrease the incidence of alcohol-related violence and antisocial behaviour. Behaviour in public offences at street/lane/footpath locations has increased by 129.7 per cent since 2008. As a measure of public drunkenness, Victoria Police detained 21 552 persons for being drunk. This was an increase of 23.4 per cent since 2008.

*Source: adapted from Victoria Police, ‘Crime Statistics 2008–09’*
Crimes against the person

The most common offences of crimes against the person are homicide, assault, sexual offences and abduction.

Homicide

The word *homicide* comes from two Latin words: *homo* meaning ‘man’ and *cide* meaning ‘kill’. Put simply, homicide means the killing of a person by another person.

### 3.2 Homicides recorded by offence, 2007–08 to 2008–09

<table>
<thead>
<tr>
<th>Type of offence</th>
<th>No. of offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident—fail to assist—death</td>
<td>3</td>
</tr>
<tr>
<td>Accident—fail to stop—death</td>
<td>3</td>
</tr>
<tr>
<td>Murder</td>
<td>100</td>
</tr>
<tr>
<td>Accessory after the fact to murder</td>
<td>3</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>8</td>
</tr>
<tr>
<td>Infanticide</td>
<td>1</td>
</tr>
<tr>
<td>Culpable driving</td>
<td>47</td>
</tr>
<tr>
<td>Driving in dangerous manner causing death</td>
<td>14</td>
</tr>
<tr>
<td>Driving at dangerous speed causing death</td>
<td>1</td>
</tr>
<tr>
<td>Child destruction</td>
<td>1</td>
</tr>
<tr>
<td>Abortion</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total homicides</strong></td>
<td><strong>181</strong></td>
</tr>
</tbody>
</table>

Homicides recorded and cleared, 2004–05 to 2008–09

Lawful homicides

In some situations the law recognises that the taking of another person’s life is lawful. Lawful homicides include the advancement of justice and death caused by accident or misadventure.

There are three categories of homicides committed in the advancement of justice.

- The law allows killing that is actually required under the law. Until 1975, offences such as murder and treason could be punished in Victoria by a judgment of death by hanging. In this situation the hangman could not be charged with murder because the execution was required by law. Today, no state or territory in Australia imposes a death sentence.

- The law allows the use of reasonable force to enforce the law. Therefore, cases where a person has been killed while resisting arrest or escaping lawful custody may be lawful homicides. In these cases, an inquiry into the death would be held to determine whether the circumstances were lawful.

- The law allows killing that is committed in self-defence. This applies only in exceptional cases where the death is the result of an action that is ‘no more than reasonably necessary to defend yourself’ [R v. McNamara, 1963].

In cases of death caused by accident or misadventure, the homicide may be lawful if the death occurs unexpectedly in the course of a lawful action. For instance, if a boxer dies during a lawful boxing match, provided the death occurs in circumstances where no-one could foresee that death would result, no crime is committed. In these cases, an inquiry into the death would be held to determine whether the circumstances were lawful.

Unlawful homicide

Criminal law sets out possible situations in which homicide is unlawful: murder, manslaughter, defensive homicide, infanticide and culpable driving or dangerous driving causing death.

Murder

Murder is considered to be the most serious crime in our community. The offence of murder applies when a person intentionally or recklessly kills another. The Crimes Act 1958 (Vic) states that the punishment for murder is life (25 years) or as fixed by the court; however, it does not provide the definition of the term ‘murder’. This was developed in an old judge-made ruling. It states that when:

… a person of sound memory and discretion unlawfully kills any reasonable creature in being and under the Queen’s peace, with malice aforethought either express or implied, the death following within a year and a day then he or she has committed murder [R v. Doherty, 1887].
Chapter 3  Criminal law  69

A brief examination of the different parts or terms of this ruling will help to clarify the law relating to murder.

- **Person.** Only people can commit murder.
- **Sound memory.** Only people who are sane at the time of the act can be found guilty of murder.
- **Discretion.** In Victoria, only people aged 10 years and over are considered by law to be of the age of discretion.
- **Unlawfully.** This word distinguishes murder from lawful homicide.
- **Any reasonable creature.** Any person born, irrespective of disabilities.
- **In being.** The person killed must be a human being (the laws of homicide do not define an unborn child as ‘in being’—the rights of unborn children are protected in other parts of the law).
- **Under the Queen’s peace.** This term is applied to mean within the legal jurisdiction of the country or state in which the killing took place.
- **Malice aforethought.** This refers to the intention to murder. It must be shown that the act of killing was undertaken
  - with intent to kill the victim (a voluntary and premeditated action), or
  - with intent to inflict serious bodily harm but a death results (for example, kicking someone in the head causing the death of the person even though the intent was merely to injure), or
  - with reckless indifference as to whether the act will kill or do serious physical harm (here intent is implied because of the reckless indifference to the possible consequences of the act), or
  - as a result of a chain of events after committing—or attempting to commit—a serious criminal offence (for example, killing a person while robbing a bank even though there was no intention to kill).
- **Express or implied.** As seen in the previous examples, the intention of a person can be either deliberate or implied from action (implied malice includes situations where a killer intends to kill A but kills B instead).
- **The death.** This must follow a direct causal chain of events from the action.
- **A year and a day.** This time period was established by the courts well before the advances of medical science.
Manslaughter may apply where the action results in a death but there is no intent to kill.

Manslaughter

Manslaughter applies when there is no intent to kill but the offence still results in death. The maximum sentence for manslaughter is 20 years imprisonment.

The degree of 'malice' by an offender determines whether an unlawful homicide is classified as murder or manslaughter. The unlawful killing of another person without malice aforethought is manslaughter.

This offence is committed where the death is caused by an unlawful and dangerous act or by omission, or where the death is caused by 'criminal negligence'. Manslaughter applies in situations where the accused:
- performs an unlawful act that was so dangerous that a reasonable person would have foreseen the likelihood of a serious injury or death; for example, throwing large stones at passing trains so that one stone smashes a carriage window, striking a passenger and causing death
- intentionally causes bodily harm without intending to cause serious injury or death
- acts in a manner that is considered to be criminal negligence. Criminal negligence is when the accused failed to maintain the standard of care a reasonable person would have used in the same situation. Criminal negligence includes a situation in which a criminal act is undertaken so recklessly that the consequences are not considered
- fails to act in situations where the law has imposed a duty (or responsibility) to act. For example, a parent neglecting a small child so much that it dies of malnutrition.

Under Section 6B(2) of the Crimes Act it is an offence to incite another person to commit suicide. It is also an offence to cause another person serious injury, either intentionally or recklessly, without a lawful reason. Serious injury includes unconsciousness, hysteria, pain and any substantial impairment to bodily functions. It is an indictable offence to administer a substance to another person that interferes substantially with their bodily functions without that person's consent.

Apply your understanding

Read the article below, then answer the questions that follow.

Mother buries her crimes

A 45-YEAR-OLD woman was convicted of manslaughter and sentenced to 12 years in prison after killing six of her newborn babies and burying them in the garden of her home. She had told police officers she wanted to stay close to her family and that she had a good relationship with her three children aged 2, 5 and 7.

The prosecution appealed the outcome of the case stating that 12 years was an insufficient penalty for the nature of the crime. Although the appeals court found the 12-year sentence was at the lower end of the scale, it also stated that the lower court had not considered the possibility of diminished capacity. As a result the appeals court ruled that the woman must serve the maximum 12 years in prison and dismissed the appeal.

1. Apply the definition of murder to the facts in this case.
2. One issue raised in this case was a question of diminished capacity. That is, was the person sane at the time of committing the murders? The question then is, from what you have read, did this person know what they were doing?
3. Do you think the penalty for this case was appropriate? Justify your view.
4. After you have read the following section on manslaughter, consider whether the above case is one of murder or whether it should be considered a case of manslaughter. Justify your view.

Note: This is an author-written article
Apply your understanding  Unlawful homicide

The application of legal definitions is not always straightforward. Consider the following case, which came before the English Court of Appeal in 1996. Is this an unlawful homicide? If so, what offence do you think the man has committed?

A man stabbed his girlfriend, who was 22–24 weeks pregnant with his child, during a drunken argument. Two weeks later she went into premature labour and a baby girl was born.

The baby sustained injuries when the knife perforated the mother’s uterus, and required several operations. The baby died 121 days after she was born. Her death was not the result of the knife wounds, but due to her lungs not being properly developed.

Homicide profiles

The reasons people commit homicide are varied and complex. While it is not possible to describe in detail the reasons behind acts of homicide, recent studies do provide some insights.

These studies examine the alleged motives of offenders and how these differ according to the gender of the victim and whether there have been any changes over time.

A snapshot of homicide in Victoria

In most cases the offender is likely to be male and the homicide is most likely to occur in the home of either the offender or the victim. A study released by the Sentencing Advisory Council in 2007 reveals that in Victoria men are overwhelmingly both the offenders and victims of homicide.

Males account for:
- 54 per cent of all murder victims
- 89 per cent of all murder offenders
- 71 per cent of all manslaughter victims
- 85 per cent of all manslaughter offenders.


3.3 Profile of homicide offenders and victims

<table>
<thead>
<tr>
<th>The accused</th>
<th>The victim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most likely to be male</td>
<td>Most likely to be male</td>
</tr>
<tr>
<td>Approximately 35–49 years old</td>
<td>Approximately 39 years old (average age)</td>
</tr>
<tr>
<td>Unemployed</td>
<td>Employed or seeking employment</td>
</tr>
<tr>
<td>Likely to have at least one conviction for a</td>
<td>Most likely to have no prior convictions</td>
</tr>
<tr>
<td>prior offence (property, drug-related offences or assault)</td>
<td></td>
</tr>
</tbody>
</table>
The most common weapon used in homicides is a knife or sharp instrument. Males are also more likely to be victims of homicide than females. In most instances both the offender and the deceased will be Caucasian. They are most likely to have been born in Australia, New Zealand or the Pacific Islands. In most cases they were affected by alcohol at the time of the offence.

Females are most likely to be killed as a result of a domestic argument. Males will usually be killed as a result of an alcohol-related argument.

**Victim's relationship to male offender**
- Acquaintance – 37.9%
- Stranger – 17%
- Current partner – 13.1%
- Family – 12.4%
- Friend – 8.5%
- Ex-partner – 7.2%
- Other – 3.9%

**Victim's relationship to female offender**
- Acquaintance – 39%
- Friend – 28%
- Current partner – 10%
- Family – 10%
- Ex-partner – 10%
- Other – 3%

Studies indicate that in most cases there is a relationship between the victim and the offender.
- Eight out of 10 homicides occurred between people who were known to one another.
- Women were more likely to be killed by an intimate partner, whereas males were more likely to be killed by a friend or acquaintance.
- Seventeen per cent of homicides occurred between strangers.
- Where the victim is a child, it is most likely to be a male child.
- Where a child has been killed by a family member, the offender is most likely to be female.

**A snapshot of sentencing and murder**

The Sentencing Advisory Council 2009 produced a snapshot describing the sentencing outcomes for the offence of murder. During this time 141 people were sentenced for murder over a five year period in the Supreme Court of Victoria between 2003–04 and 2007–08.
- Over the five years depicted, the majority of those sentenced were men (95.7% or 135 of the 141 people).
- A higher percentage of men received a period of imprisonment (92.6% compared to 66.7% of women). Conversely, a higher percentage of women received a custodial supervision order (33.3% compared to 6.7% of men).
- The majority of the people sentenced for murder received a period of imprisonment (91% or 129 of 141 people).
- The average age of people sentenced for murder was thirty-seven years and five months.
- The median length of imprisonment imposed was nineteen years
- The median length of the non-parole period was fifteen years
- The most common sentence of imprisonment was twenty years with a fifteen year non-parole period

A snapshot of the circumstances related to homicide

The Victorian Law Reform Commission’s ‘Defences to homicide: options paper’ described the conditions relating to homicide. Using a typology or classification system developed by Professor Polk, homicides are categorised as:

- sexual intimacy (such as killing a partner)—31.5 per cent
- conflict resolution (planned to use violence to resolve a dispute)—16.8 per cent
- spontaneous encounters (such as a pub brawl)—11.9 per cent
- as part of another crime (such as armed robbery)—9.8 per cent
- mental impairment or illness—7.0 per cent
- motive unknown—7.0 per cent
- child killings—4.2 per cent
- other family members—5.5 per cent
- sexual offence (such as killing the victim of a rape)—2.8 per cent
- homophobic (such as unwanted homosexual advance)—0.7 per cent
- other killings (including accidents)—2.8 per cent.

Victims of murder

Apply your understanding  Homicide profiles

Using the information in the case file, either prepare a ‘Homicide profile’ poster or a report discussing the following.

1. Who is most likely to be the offender in a homicide case?
2. Who is most likely to be the victim in a homicide case?
3. Identify the possible influences or motives for homicide. What factors (personal, economic or social) do you think might contribute to the motives?
4. If you were a law-maker, what strategies would you put in place to reduce the incidence of homicide?
Defensive homicide
An offender may be charged with defensive homicide or claim defensive homicide as a defence to a charge of murder. An offender may be charged with defensive homicide if they committed an act causing death and intended to kill or cause serious injury (or recklessly did) and so believed that they were acting to defend themselves, or another, from the inflicting of death or serious injury, but their actions or beliefs were not reasonable. The maximum penalty for defensive homicide is 20 years imprisonment. The article below illustrates how the accused (Evans) may have believed that he was acting to defend himself, or another (his girlfriend), from death or serious injury.

Man who fatally stabbed housemate jailed

A MAN who fatally stabbed his housemate after a fight over missing shirts has been jailed for 10 years.

James Evans, 25, stabbed James Thomas Paton with a knife at the boarding house in which they both lived …

Paton, 37, had become involved in an argument with Evans, who had accused Paton and his girlfriend of ransacking his room and taking stolen Lucky 13 brand shirts.

The Victorian Supreme Court heard that a scuffle broke out between the pair before Evans produced a knife, and blood was seen dribbling from Paton’s stomach area down his leg.

Evans later changed his clothing and used his soiled clothes to mop up blood from the scene.

Ambulance officers were unable to revive Paton and he died at the scene.

Justice Betty King said Evans’ offending was considered ‘mid-range’ and she took into account his prior history of criminal and weapons offences.

But she accepted there was ‘some degree’ of remorse demonstrated by Evans’ plea of guilty to one count of defensive homicide.

Evans will become eligible for parole after five years’ imprisonment.

Source: The Age, 16 December 2009

Infanticide
Infanticide applies where a woman kills her own child (in circumstances that would be murder) by reason of mental disturbance resulting from the effects of giving birth or a disorder consequent on her giving birth, and the child is under the age of 24 months. The offence of infanticide is punishable by a maximum of five years imprisonment.

Child homicide
According to Section 5A of the Crimes Act, child homicide applies to a person who kills a child who is under the age of six years in circumstances that would be considered manslaughter. The offence of child homicide is punishable by a maximum of 20 years imprisonment.

Apply your understanding

Child homicide

The Cody Hutchings case (see opposite) prompted the Victorian Government to create a new law specifically for child homicide. In the past, those accused of child homicide were tried under homicide. Read the article on the following page then answer the questions.

1 What is the offence of manslaughter?
2 Suggest reasons why the case would be considered a case of manslaughter.
3 In sentencing McMaster, Justice Harper stated: ‘All life must be protected. Because of their vulnerability, young lives demand special measures to ensure their safety. The death of a child as the result of an assault by a mature adult in the context of a sustained period of abuse is an affront to any civilised community’. Do you agree with the sentence? Justify your view.
4 How do you think this change in the law reflects the values of the community?
The case of Cody Hutchings

STUART McMaster, 30, was found guilty of the manslaughter of his partner’s five-year-old son after a Supreme Court jury could not agree on a verdict of murder.

The jury told Supreme Court judge Justice David Harper that after considering the evidence presented to them they were unable to agree on a verdict. McMaster, who pleaded not guilty to the murder of Cody Hutchings pleaded guilty to manslaughter.

The court heard that Cody, who suffered from a rare neuro-developmental disorder known as Williams syndrome, had been repeatedly beaten by McMaster in the home they shared with Cody’s brother and mother in Hoppers Crossing. The brutal assaults had likely begun in December 2005 and lasted until Cody’s death on 25 March 2006.

An autopsy found that Cody’s body had more than 160 bruises, two skull fractures and injuries to his internal organs, including a torn liver. On the day he died Cody had been struck at least 25 times.

The boy’s death was found to be caused by the force of a blunt object the size of an adult foot being thrust into his abdomen.

McMaster, who acknowledged he was a drug addict, admitted striking and strapping the boy on a daily basis. He had modified a leather strap for the purpose of beating the child.

McMaster was also found guilty of deliberately causing injury to the child’s mother, Belinda, 26.

McMaster was sentenced to a maximum of 13 years in prison with a minimum of 10 years. The maximum penalty for manslaughter is 20 years.

Note: This is an author-written article

Culpable driving

Culpable driving means causing death through the driving of a motorcar. A driver who, through lack of proper control of their car, causes the death of another person in a car accident, can be charged with culpable driving. Culpable driving includes:

- driving recklessly—that is, consciously and unjustifiably disregarding the risk of death or injury that may result from one’s driving
- driving negligently—failing to observe the standard of care that can be expected of a reasonable person. Driving while fatigued to such an extent that there is a risk of falling asleep may constitute culpable driving causing death
- driving under the influence of alcohol or drugs to such an extent as to be incapable of having proper control of a car.

The maximum penalty for culpable driving causing death is 20 years imprisonment.

Dangerous driving causing death or serious injury

A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of, or serious injury to, another person, is guilty of an indictable offence. The maximum penalty for dangerous driving causing death or serious injury is 10 years imprisonment.
Apply your understanding  Culpable driving

In each of the following situations the driver has been found guilty of culpable driving.

1 Explain how the definition of culpable driving applies in each case.
2 How does culpable driving differ from manslaughter?
3 Do you think that culpable driving should be different from manslaughter? Justify your view.

Case A
A TV quiz winner killed one person and seriously injured two when she drove the car she won into the back of a parked car. Her breathalyser reading was .091 and she had been without sleep for 24 hours before the accident. She was sentenced to two-and-a-half years imprisonment, with a two years suspended sentence.

Case B
An exhausted truck driver was found guilty of culpable driving when his truck smashed into the back of a small cattle truck, killing the driver. He had been driving for up to 14 hours a day for 18 days. He was sentenced to three years imprisonment with a non-parole period of two years.

Case C
An 18-year-old apprentice killed his best mate when the car he was driving hit a power pole. The driver was over the legal alcohol limit and driving a car that he was not familiar with. He was sentenced to three years imprisonment, which he was able to serve in a minimum security prison while continuing an apprenticeship.

Case D
An unlicensed driver, who killed a motorcyclist while under the influence of drugs and driving on the wrong side of a Victorian freeway, pleaded guilty to eight charges, including culpable driving causing death, theft of a car and aggravated burglary. He had consumed heroin, ecstasy and 10 tablets each of codeine and an anti-anxiety drug.
Assault

Assault is the unlawful interference with the body of another person through the intentional application of force or the threat of force. For example, to threaten to hit a person is an indirect application of force. To actually hit a person is a direct application of force. The application of force includes the use of force against the body of another person as well as the use of force against the clothing or equipment of another person. The application of force includes the use of heat, light, electric current or chemical substances.

The offence of assault includes:
- intentionally causing serious injury
- recklessly causing serious injury
- threatening to kill or cause serious injury
- engaging in conduct endangering life or person
- negligently causing injury
- setting traps to cause death or serious injury
- using force or threatening to use force to resist lawful arrest
- administering certain substances
- intentionally causing a person to be infected with a serious disease.

The law considers the degree of harm inflicted, the identity of the person assaulted, and the nature of the assault in determining the extent of punishment to be imposed on the guilty person. The harm caused may include bodily injury, pain, damage, deprivation of liberty or insult.
Apply your understanding

Case analysis

Assault

How could the definition of assault apply to the following cases? Justify your views.

Snowball assault

AN Australian student pleaded not guilty to a charge of assault after hitting a co-worker with a snowball. The University of Sydney student, working in a ski resort in Colorado, claimed that he was joking around.

The prosecution claimed the student had maliciously thrown the snowball filled with ice at the victim and her boyfriend as they waited for a bus.

Note: This is an author-written article

Youths set man on fire for fun

FIVE youths looking for ‘fun’ doused a schizophrenic man and his house in petrol and set it alight, leaving him permanently disfigured…

The youths arrived at the Rosebud house of Irving Richard Plotkin … claiming to be police. When [he] answered the door petrol was thrown over him and inside the house…

Mr Plotkin suffered fourth-degree burns to almost 50 per cent of his body including his scalp, back, neck and shoulders. One of his eye lids had to be removed and he will likely lose his lips, the court was told.

The five—James Dingle, 19, Richard James Findlay, Adam Taylor, Tyson Jessen and Allan Walters, 20 all—have pleaded guilty to arson and reckless conduct endangering life …

Source: Herald Sun, 19 February 2009

Author note: All five men were sentenced to 5 years imprisonment with a minimum of 3½ years, except for Dingle who must serve at least 2½ years.

Case analysis

Assault

In each of the following situations, decide whether an assault has taken place.

Case A

Ms M, knowing her colleague had an allergic reaction to perfume, sprayed her with perfume. The colleague’s tongue became swollen and she had trouble breathing. Ms M was charged with recklessly causing injury.

Case B

A man who was drunk fell from a balcony and was unconscious. He became physically and verbally abusive to ambulance officers as they tried to assist him as he regained consciousness. The ambulance officers were forced to flee, leaving their equipment, fearing for their personal safety.
**Case C**
A woman driver sneezed in a police officer’s face when she was pulled over for a routine vehicle check. The woman told police: ‘I must warn you that you are placing yourself in danger of an assault. I have a medical condition’. The police officer claims the sneeze was deliberate. He described the impact of the sneeze as spraying his face with saliva. The woman later falsely told the police officers that she was HIV positive and that she had syphilis and hepatitis.

**Case D**
Mr X had been drinking heavily and decided to ‘crash’ a friend’s party. At the party he became loud and violent towards other guests. His friend intervened and tried to calm him down. Mr X threw a few punches at his friend, who responding by pushing Mr X and knocking him to the ground.

**Knife-related crime**
Knives are becoming the weapon of choice, police statistics show. Knife-related robberies and aggravated burglaries increased from 100 to 824 in 2008–09. The use of knives also grew in other related crimes, such as rape, abduction and kidnapping.

Police say that young people are more likely to possess knives and that it has become a culture to carry a weapon—and the weapon of choice is a knife. The most common weapon used is the household knife, as most people have access to these items.

The number of gun offences has almost stayed unchanged according to police statistics. In contrast, the use of a knife in robberies has risen 9.2 per cent from the previous year. Police hold an amnesty every October so that people can submit dangerous weapons. They are amazed at the dozens of elaborate knives and weapons that are handed in. These weapons range from samurai swords to flick knives.

In November 2009, Parliament passed the Summary Offences and Control of Weapons Acts Amendment Act. The aim of this law was to provide police with greater power to search for dangerous weapons in a designated area. The area around Melbourne’s Footscray train station was the first display of these new laws. In a three-hour period, police searched 182 people with a metal detector wand and, if required, with a frisk and body search. All up, police found 12 weapons carried by seven people. In a recent Herald Sun report, in just one weekend there were 11 knife-related crimes. Such incidents have led to a doubling of penalties for possession of weapons.
### 3.4 Definitions of weapons

<table>
<thead>
<tr>
<th>Weapon</th>
<th>Description</th>
<th>Examples</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibited weapon</td>
<td>These articles can only be possessed with an exemption from the Governor or Chief Commissioner of Police</td>
<td>Butterfly knives, Flick knives, Daggers, Crossbows</td>
<td>Maximum of two years imprisonment</td>
</tr>
<tr>
<td>Controlled weapons</td>
<td>These articles can be purchased over the counter without proof of identification</td>
<td>Fishing knives, Hunting knives, Kitchen knives, Pocket knives, Batons, Spear guns</td>
<td>Maximum of one year imprisonment, Self-defence is not a lawful excuse</td>
</tr>
<tr>
<td>Dangerous articles</td>
<td>Any article that is carried with the intention of being used as a weapon or modified to be used as a weapon</td>
<td>Scissors, Stakes, Nail files</td>
<td>Maximum of six months imprisonment, Self-defence is not a lawful excuse</td>
</tr>
</tbody>
</table>

Source: Herald Sun, 23 February 2010

### 3.5 Types of crime where knives used, 2008–09

<table>
<thead>
<tr>
<th>Type of crime</th>
<th>No. of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assaults</td>
<td>1087</td>
</tr>
<tr>
<td>Robbery</td>
<td>752</td>
</tr>
<tr>
<td>Aggravated burglary</td>
<td>72</td>
</tr>
<tr>
<td>Rape</td>
<td>37</td>
</tr>
<tr>
<td>Abductions and kidnappings</td>
<td>30</td>
</tr>
<tr>
<td>Homicide</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2002</strong></td>
</tr>
</tbody>
</table>

Source: Herald Sun, 10 January 2010

Knives confiscated by Victoria Police
Apply your understanding

Knife-related crime

Using the information in the case file, complete the following activities.

1. Does it surprise you that knives are the weapon of choice?
2. How many knife-related crimes occurred in 2008–09? Find out if this is more or less than recent figures released by the Victoria Police Crime Statistics Unit.
3. Distinguish between the different types of weapons. Do these definitions seem adequate?
4. Why do you think young people carry knives?
5. What is meant by the term amnesty? Why do police have an amnesty every October?
6. Create a pie graph of the types of weapon used in assaults.
7. According to police statistics almost 40 per cent of assaults occur in the family home. Why is it that knives are often used in these cases?
Incest and sexual offences against young people are discussed in chapter 12.

Sexual intercourse without consent is rape.

For more information on rape in marriage see page 468.

**Sexual offences**

Five general categories of sexual offences are created by the Crimes Act. These are:
- rape
- indecent assault
- incest
- sexual offences against young people
- offences against people with a cognitive impairment.

**Rape**

Rape is the introduction, without consent, of a penis into the vagina, anus or mouth, or the introduction (again without consent) of an object, or another part of the body into the anus or vagina of another person. It also includes the failure to remove a penis, body part or object on becoming aware that the other person is not consenting, or might not be consenting to it being there. Given this broad definition it is possible for a female to be guilty of rape as well as a male, and that rape does not have to be performed on the opposite sex. The maximum sentence for rape is 25 years.

**Rape in marriage**

In 1985, a judge in Victoria upheld a seventeenth-century legal principle that a husband cannot be held guilty of raping his wife if they are living together. In this case the woman had suffered serious physical abuse from her husband and was packing to leave when he attacked her. The husband pleaded guilty to assault but not guilty to rape. There was such community outrage after this case that the Victorian Government acted immediately to change the law. The Crimes Act was amended to say that the existence of a marriage does not automatically mean that a person consents to any form of sexual penetration. Now there is no legal distinction made between married and single women in relation to rape cases.

Consent means a free agreement. Consent cannot be a free agreement if a person submits because of force or because they are held captive, or are asleep or unconscious.

Consent does not include situations in which the person does not understand the sexual nature of the act or believes mistakenly that the perpetrator is performing an act for medical or hygiene purposes.

**Indecent assault**

An indecent assault is an assault in circumstances that are not ‘decent’. These circumstances include touching a person against their will. It may also include circumstances such as forcing a person to watch pornography.
Sexual offence reform

Recent changes in the law offer greater protections to victims of sexual assault. All victims of sexual assault have the right to give evidence via closed circuit television and to have a support person with them when they give evidence. An unrepresented defendant cannot personally cross-examine a victim or a member of the victim’s family. The use of evidence of the victim’s past sexual activity is also limited. Special rules apply to the hearing of evidence in rape cases involving a child victim or a victim with a cognitive impairment. These rules include the following.

- The victim cannot be forced to give evidence at committal hearings.
- The victim is protected by strict rules about questioning that aim to limit questions that are harassing, repetitive or inappropriately phrased.
- Statements made by children to a trusted adult may be given in evidence.

Abortion

Prior to 2008, Section 65 of the Crimes Act provided that it was an offence to unlawfully procure or attempt to procure an abortion. The fact that a woman consented to the action did not alter the fact that it was an offence.

For many years there has been ongoing debate in the community about the laws on abortion. In 2007, the Victorian Law Reform Commission undertook a review of these laws and handed in its report to parliament in 2008. The Abortion Law Reform Act was passed by the Victorian Parliament in October 2008, removing the offence under the Crimes Act in Victoria for a woman to seek an abortion.

The Abortion Law Reform Act outlines the grounds on which an abortion may take place before and after 24 weeks:

1. A registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if the medical practitioner—
   (a) reasonably believes that the abortion is appropriate in all the circumstances; and
   (b) has consulted at least one other registered medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.

2. In considering whether the abortion is appropriate in all the circumstances, a registered medical practitioner must have regard to—
   (a) all relevant medical circumstances; and
   (b) the woman’s current and future physical, psychological and social circumstances.

Source: Abortion Law Reform Act 2008 s. 4
The Crimes Act now states that it is a criminal offence for an unqualified person to perform an abortion. It is also an offence for an unqualified person to supply a drug that they know will be likely to cause an abortion. A person found guilty of this offence may be imprisoned for a maximum of 10 years.

**Crimes against property**

Many activities relating to stealing are classified as crimes. The most common crimes against property are theft, burglary and property damage.

### 3.7 Crimes against property, 2007–08 to 2008–09

<table>
<thead>
<tr>
<th>Type of crime</th>
<th>No. of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property damage</td>
<td>54 122</td>
</tr>
<tr>
<td>Theft from motor vehicle</td>
<td>47 366</td>
</tr>
<tr>
<td>Burglary (residential)</td>
<td>28 030</td>
</tr>
<tr>
<td>Deception</td>
<td>22 224</td>
</tr>
<tr>
<td>Theft (shopsteal)</td>
<td>19 455</td>
</tr>
<tr>
<td>Burglary (other)</td>
<td>17 206</td>
</tr>
<tr>
<td>Theft of motor vehicle</td>
<td>15 962</td>
</tr>
<tr>
<td>Handle stolen goods</td>
<td>7 070</td>
</tr>
<tr>
<td>Theft of bicycle</td>
<td>4 532</td>
</tr>
<tr>
<td>Arson</td>
<td>3 462</td>
</tr>
<tr>
<td>Burglary (aggravated)</td>
<td>1 909</td>
</tr>
<tr>
<td>Theft (other)</td>
<td>56 856</td>
</tr>
<tr>
<td>Total</td>
<td>278 194</td>
</tr>
</tbody>
</table>


**Crimes against property recorded and cleared, 2004–05 to 2008–09**

---

<table>
<thead>
<tr>
<th>Year</th>
<th>Cleared</th>
<th>Uncleared</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004/05</td>
<td>282 147</td>
<td>31.1%</td>
</tr>
<tr>
<td>2005/06</td>
<td>280 512</td>
<td>30.1%</td>
</tr>
<tr>
<td>2006/07</td>
<td>283 004</td>
<td>28.8%</td>
</tr>
<tr>
<td>2007/08</td>
<td>282 663</td>
<td>31.1%</td>
</tr>
<tr>
<td>2008/09</td>
<td>278 194</td>
<td>30.8%</td>
</tr>
</tbody>
</table>

---

- cleared
- uncleared
**Theft**

Persons are guilty of theft if they:

> ... dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it.

*Source: Crimes Act 1958 s. 72*

All these elements must be proven in court for a person to be found guilty of theft. A brief examination of the different parts or terms of the definition should help in clearly understanding the law.

- **Dishonestly.** Whether a person acted dishonestly will depend on the circumstances; clearly, when a customer enters a store, takes an item and leaves the store without paying for the item, there has been an act of dishonesty.
- **Appropriates.** A person is considered to have appropriated (assumed rights of ownership of) property if the person treats it as their own.
- **Belonging to another.** Belonging, according to previous case law, relates to more than ownership; possession or control of property is also considered to mean ‘belonging’.
- **Intention of permanently depriving.** The intention must be to keep the item permanently, rather than to borrow it temporarily.

**Robbery**

Robbery is theft that involves force or the fear of force. Where the robbery is committed with the presence or use of a firearm, imitation firearm, offensive weapon, explosives or imitation explosives, the crime is armed robbery and carries a higher penalty than unarmed robbery. The two most common weapons used in robberies are knives and firearms. (Refer to the case file on knife-related crime.)

**Burglary**

Entering premises without permission, with the intent either to steal something from the building, or commit an offence involving assault or damage, is the crime of burglary. When the burglary is committed with the presence or use of a firearm, an imitation firearm, an offensive weapon, explosives or imitation explosives, the crime is aggravated burglary and carries with it a higher penalty.

**Criminal damage to property**

According to Division 3 of the Crimes Act, a person who intentionally destroys or damages any property belonging to another shall be guilty of an indictable offence. The maximum penalty for criminal damage to property is 10 years imprisonment. It is also an offence to destroy or damage property by fire (arson) and the maximum penalty for this offence is 15 years imprisonment. Any person who intentionally or recklessly causes a bushfire can also be liable for an offence with a maximum prison term of 15 years imprisonment.

**Graffiti Prevention Act 2007 (Vic)**

The *Graffiti Prevention Act 2007 (Vic)* makes it an offence to graffiti. A person must not graffiti property if the graffiti is visible from a public place unless the person has first obtained the express consent of the owner to do so.

A person must not, without lawful excuse (for instance, as part of their work) possess a prescribed graffiti implement on public transport; or in a public place; or in a place where the person is trespassing or has entered without invitation. Police are able to search a person if they believe the person has or is about to graffiti. Police are able to conduct a search of a person’s property, such as a bag or coat. The maximum penalty for the offence of graffiti is two years imprisonment.
Former manager to stand trial for office fire

A FORMER manager of Fifteen, Jamie Oliver’s Melbourne restaurant, has been ordered to stand trial over a $1 million fire he allegedly lit to hide his thefts from the charity.

The accused pleaded not guilty to 16 counts of theft and a charge of arson over the fire that gutted the city offices of Fifteen.

He denies stealing more than $22,000 from its takings and setting the fire to conceal his crime.

Fifteen’s head chef told the court that the accused said $15,000 had been lost in the fire because it was in the accused’s desk rather than in the restaurant’s safe where it belonged. Asked why it wasn’t in the safe, the manager said he had made a mistake.

A fire expert told the court the chance of an electrical fault causing the fire was remote and it was most likely to have been deliberately lit.

Source: adapted from Herald Sun, 12 January 2010

Apply your understanding Crimes against property

In each of the following situations, decide whether an offence has taken place.

Case A

Over a two-year period the accused, an artist, was given access to anatomical specimens used to train surgeons. He took home between 35 and 40 body parts, including three human heads, six arms and 10 legs. He made casts of the body parts and included some of these casts in an art exhibition. He had no intention of returning the body parts and buried some near his home.

Case B

The defendant took goods from the shelf of a supermarket. He peeled off the price tag and replaced it with another tag showing a lower price. He then went to the checkout and paid the lower price for the goods.

Case C

The defendant found a wallet on the floor of his local TAB. He put the wallet in his pocket and did not check the contents. Two days later he looked in the wallet and found money as well as documents that identified the owner of the wallet. He decided to keep the wallet and the money for himself.

Case D

The defendant decided to take a holiday interstate. She would update her Facebook page with comments and photos on a regular basis. One photo that appeared on her page was of a train station that was covered in a mural (wall painting) that she painted without the consent of the public transport authority.
Defences to crimes

Sometimes there are situations when a person commits an act that would normally be a crime, but the circumstances surrounding the events or reasons for the person’s action should be taken into account by the court. These reasons can be used in court as part of the accused person’s defence. Over the years, the law has come to recognise various defences. These defences are found mainly in common law and the Crimes (Homicide) Act 2005 (Vic).

Self-defence

Self-defence is based on the need to repel, or fight off, an attack with force and relates to the use of force to protect oneself. The force one uses must be reasonable; that is, not greater than the force the attacker uses. For example, if a person attacks you with their fists, you are not necessarily entitled to defend yourself with a gun.

A person is not guilty of murder if they kill someone when they reasonably believe it is necessary to defend themselves, or another person, from death or really serious injury. The defence of self-defence cannot be claimed in murder or manslaughter cases if the force threatened was lawful conduct, such as the use of force to prevent escape of lawful imprisonment.

Usually self-defence will not apply unless the person was responding to an immediate attack. However, this is not an absolute requirement in cases of family violence. In family violence cases, the court can look at the impact of the history of violence in the family. Violence includes physical, sexual, and psychological abuse. These special provisions in cases of family violence recognise cases of ‘battered spouse syndrome’.

Battered spouse syndrome

‘Battered spouse syndrome’ is a term coined to explain the ‘learned helplessness’ of some victims of domestic violence. In cases of this type, the spouse, through constant fear and attacks on their self-esteem, cannot take any independent action to escape the violence. This syndrome has been used as a defence by some spouses who have, after years of abuse and terror, killed their violent partners. The killing does not usually take place in response to the first or a one-off act of abuse by the partner.

Defensive homicide

Defensive homicide may be used as a defence where the accused committed an act causing death believing that they were acting in self-defence, but in the court’s view, the actions or beliefs were not reasonable. A person can be either charged with the offence of defensive homicide or a jury may find a person guilty of defensive homicide as an alternative verdict to murder.

Mental impairment

The defence of mental impairment may be used when a person suffered from a mental impairment at the time they committed the offence. The mental impairment must have the following effects.

- The person did not know the nature and quality of their actions.
- The person did not know that their actions were wrong (that is, they could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong).

If the defence of mental impairment is established, the person is found not guilty due to mental impairment. The court will make a supervision order placing the person in custody or releasing them on conditions. A supervision order is for an indefinite period. The court will set a date for the order to be reviewed by the Supreme Court. For example, in 2004 a Monash University student who killed two classmates and wounded four others...
was found not guilty of murder because of mental impairment. The judge ordered that the student be detained for up to 25 years in a high-security hospital.

Mental impairment defence in bridge death

MENTAL impairment will be central to the defence of a man accused of throwing his four-year-old daughter to her death off Melbourne’s West Gate Bridge, the Supreme Court in Melbourne has heard.

The accused pleaded not guilty to the murder of his daughter. During a preliminary hearing in the Supreme Court the defence said it intended to subpoena various medical records.

Source: adapted from Herald Sun, 23 October 2009

Duress

A person is not guilty of an offence if they committed the act under duress. Duress is the use of threat or force to make someone do something. A person can claim the defence of duress if they reasonably believe all of the following.

- A threat has been made that will be carried out unless an offence is committed.
- Carrying out the conduct is the only reasonable way that threatened harm can be avoided.
- The conduct is a reasonable response to the threat.

A person cannot claim the defence of duress if the offence was committed while they were voluntarily part of a group to commit some other offence. For instance, if a person is part of a group robbing a bank, they cannot claim duress if other gang members insist on the use of violence to force the bank manager to open the safe. Duress only applies in the case of murder if the threat is to inflict death or serious injury.

Intoxication

The defence of intoxication can be claimed if the accused was so under the influence of a drug or so drunk that they did not know what they were doing, thus limiting their ability to form the mens rea to commit a crime. Alternatively, it can be claimed when the influence of a drug or alcohol affected the individual’s judgment as to the facts.

The law distinguishes between self-induced intoxication and intoxication that is not self-induced. Intoxication is self-induced unless it came about:

- involuntarily
- due to fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force
- from the use of a prescription drug that was used according to the directions
- from the use of a non-prescription drug used as recommended by the manufacturer.

Intoxication is self-induced if the person using the drug knew, or had reason to believe, that when they took the drug it would significantly impair their judgment or control. In cases of self-induced intoxication the accused’s actions or beliefs will be compared to a reasonable person who is not intoxicated. In other words, the courts will not accept that intoxication reduces the accused’s responsibility. Voluntary intoxication is not a defence.

The courts will take into consideration the impact of intoxication that is not self-induced. In these cases, the courts will compare the actions of the intoxicated person to a ‘reasonable person who is intoxicated to the same extent as the accused’.

Sudden or extraordinary emergency

A person is not guilty of a homicide if the act is necessary due to a sudden or extraordinary emergency. This defence can be claimed in murder, manslaughter and defensive homicide cases. The defence applies in murder cases only if the emergency involves a risk of death or really serious injury. The accused can claim the defence of sudden or extraordinary emergency if the accused reasonably believes all of the following.

- Circumstances of sudden or extraordinary emergency exist.
- Committing the offence is the only reasonable way to deal with the emergency.
- The conduct is a reasonable response to the emergency.
Necessity

The defence of necessity (that the criminal action was necessary) can be used in circumstances where a person causes harm in order to prevent a greater harm. To claim the defence of necessity needs to be shown, all of the following:

- The criminal act was done to avoid an irreparable evil or harm to the accused (or others that the accused has a duty to protect).
- The accused believed on reasonable grounds that there was a situation of imminent peril.
- The act done was proportionate to the peril to be avoided.

Apply your understanding  Survival and necessity

Consider the following case study involving shipwrecked sailors, then answer the questions that follow.

Trials of the Mignonette

Dudley, Stephens, Brooks and Parker (a 17-year-old cabin boy) were all members of the crew of an English yacht called the Mignonette. The yacht sank in a storm on 5 July 1884. The boy and the three crew members escaped in a lifeboat that had no supply of water or food except for two tins of turnips. For the first three days the four sailors lived on the turnips.

On the fourth day they caught a turtle, which they ate that day and for the next seven. For the following eight days they had nothing to eat. The only fresh water they had was the small amount of water that collected in their oilskin coats at night. During all this time their boat drifted. They were a long way from shore and there was no sign of help.

On the eighteenth day, after seven days without food or water, Dudley and Stephens discussed a plan with Brooks. Their plan was that if no help came they should sacrifice Parker to save the rest. Brooks disagreed. The plan was not discussed with Parker.

On the twentieth day, no vessel being in sight, Dudley told Parker to go and have a sleep. Dudley told Stephens and Brooks that the time had come to kill Parker. Brooks disagreed. At this time Parker was lying at the bottom of the boat quite helpless.

Dudley offered up a prayer for forgiveness and, with the consent of Stephens, went to Parker and told him that his time was up. He killed Parker by cutting his throat with a knife.

For the next four days, Dudley, Stephens and Brooks fed on Parker’s body and blood. On the fourth day a passing vessel picked up their lifeboat and they were rescued. Dudley and Stephens thought that they had done nothing wrong. When rescued, they presented themselves to the harbourmaster at Falmouth to report the loss of the Mignonette. He took down their story (a full confession) and asked them to stay a few days in case any further details were needed.

They were arrested when police read the report.

Dudley and Stephens were charged with the murder of Parker. At the trial it was established that if the men had not fed on the boy’s body they would not have survived to be rescued and that Parker was likely to have died before the rescue boat arrived. At the time of the killing there was no sail in sight and no possibility of rescue.
Following his rescue, Dudley felt no concern talking about his meal. This led to his prosecution for murder. Dudley and Stephens were both found guilty. They were sentenced to death. This was later changed to six months imprisonment. No evidence was given against Brooks. When Dudley was released from jail, he emigrated to Australia, became a wealthy boat fitter, and died from bubonic plague in 1900.

1 Do you think that Dudley and Stephens should have been found guilty of murder in these circumstances? Why or why not?
2 Under what circumstances, if any, would killing the cabin boy be justified?
3 Suggest why Brooks was not charged with an offence.
4 The jury hearing this case left it to the judge to decide whether the act amounted to murder. This is very unusual. In reaching his decision the judge stated:

   We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we cannot ourselves satisfy. But a man has no right to declare temptation an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners’ act in this case was wilful murder.

5 Do you think that the law is effective if it establishes standards that ‘we cannot reach ourselves’? Discuss.
6 Dudley and Stephens were sentenced to death, but were released after serving only a very short term of imprisonment. Does this additional information alter your opinion about the outcome in this case? Explain.

Automatism

To plead the defence of automatism, it must be shown that the defendant’s actions were not controlled by the defendant’s conscious mind. If this is established, automatism can be a complete defence. Common instances are where the accused was sleepwalking, hypnotised or suffering from an epileptic fit or concussion. This defence is uncommon, although in 1994, a Victorian boy was found not guilty of murdering his father using this defence. The circumstances of this case and another case where the defence of automatism was upheld are outlined in the following articles.

‘Night terror’ husband cleared of murder

A BRITISH man who has suffered night terrors has been acquitted of murdering his wife, Christine, of 40 years after prosecutors accepted he had not been in control of his actions but was not a danger to anyone else. He was in the throes of a nightmare about a ‘boy racer’ who had broken into the campervan they were sleeping in. The accused had been prone to sleepwalking and other sleep disorders since he was a boy. At home he and his wife slept in separate rooms but they shared a bed when sleeping away in their campervan.

The accused made an emergency call. He said to the operator: ‘What have I done? I’ve been trying to wake her. I think I’ve killed my wife. Oh my God. I thought someone had broken in. ‘I was fighting with those boys but it was Christine. I must have been dreaming or something. What have I done? What have I done? Can you send someone?’

At first police were sceptical but tests carried out on the accused, some while he spent 10 months in prison on remand, confirmed he suffered from night terrors. The jury had been told that he was in a state of ‘automatism’—his mind was not in control of his body.

Source: adapted from The Age, 22 November 2009
No memory of shooting

A 17-YEAR-OLD boy who shot his father was found not guilty of murder. Claiming that the boy acted in a ‘robotlike’ state, the boy’s barrister told the jury that the boy was not mentally aware of what he was doing and therefore not responsible for his actions.

The jury heard psychiatric evidence that the boy, aged 16 at the time of the offence, was in an automaton-like state when he shot his father in the back of the head. The prosecution alleged that the boy had demonstrated increasing hostility to his father following his mother’s recent death. The boy’s sister testified that there had been increasing tension in the relationship between father and son mainly due to her father’s high expectations of the boy. However, the defence claimed the boy’s state of mind was like sleepwalking, and he had no memory of the shooting.

Note: This is an author-written article

Accident

The defence of accident applies where something happens beyond a person’s control, or as an unexpected result of a lawful act. If a court accepts this defence then it believes that mens rea did not exist. The accused would be found not guilty and would be set free.

Consent

Only in certain circumstances can the defence that the victim consented to the act be applied. One example would be on the sports field where physical contact is acceptable and players accept a certain level of risk. Under these circumstances the defence of consent to an assault charge against one player by another might be successful. But a person consents only to normal risks implied in the rules of the game. Players do not consent to hostile or violent assaults. Consent to an act that is against the law does not make the act lawful just because the victim consented.

Check your understanding

1 ‘The concepts of harmfulness, immorality and punishment by law can generally be associated with crime.’ Explain this statement.
2 Explain the main ways of classifying crime.
3 Using examples, illustrate the purpose of criminal law. Which law-making bodies are responsible for making criminal laws?
4 What are the two main elements of a crime? Can someone be found guilty of committing a crime if one of these two elements cannot be proven?
5 Outline the legal definitions of the various participants in a crime.
6 What does the term ‘homicide’ mean? Distinguish between lawful and unlawful homicide.
7 How did R v. Doherty define the offence of murder? Why is this definition important?
8 Outline the elements of manslaughter.
9 Defensive homicide is both an offence and a defence. Explain.
10 Draw a table similar to the one below and complete the details on crimes against the person.

<table>
<thead>
<tr>
<th>Criminal offence</th>
<th>Definition</th>
<th>Possible defences</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11 What is the difference between theft, robbery and burglary?
Apply your understanding

Class discussion

Is it a crime?

Look at the following activities and decide which you believe are harmful, which you believe are immoral and which ones ought to result in punishment. You may decide to put some items in two or even three of these categories. Discuss your answers with other members of the class.

<table>
<thead>
<tr>
<th>Which of these items are, or ought to be, crimes? Is it a crime if:</th>
<th>Yes/No/Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>You keep extra change from a shopkeeper</td>
<td></td>
</tr>
<tr>
<td>You do not report a crime in progress, such as when you see someone stealing</td>
<td></td>
</tr>
<tr>
<td>You do not return a wallet you found in the street</td>
<td></td>
</tr>
<tr>
<td>You eat a chocolate bar in Safeway and do not pay for</td>
<td></td>
</tr>
<tr>
<td>You do not use the school crossing when crossing the road</td>
<td></td>
</tr>
<tr>
<td>You drop litter from your vehicle</td>
<td></td>
</tr>
<tr>
<td>You do not wear a safety belt in the back seat</td>
<td></td>
</tr>
<tr>
<td>You drop litter in the school yard</td>
<td></td>
</tr>
<tr>
<td>You waste water</td>
<td></td>
</tr>
<tr>
<td>You know someone has cheated on a VCE Year 12 exam and do not report it</td>
<td></td>
</tr>
<tr>
<td>You graffiti on college equipment, benches and public walls</td>
<td></td>
</tr>
<tr>
<td>You trespass on a neighbour’s property to pick fruit</td>
<td></td>
</tr>
<tr>
<td>You drive a car without a licence</td>
<td></td>
</tr>
<tr>
<td>You consume alcohol in a restaurant while under the age of 18</td>
<td></td>
</tr>
<tr>
<td>You text or email someone a threatening message</td>
<td></td>
</tr>
</tbody>
</table>

Folio and report

Types of crime

Working in pairs, collect stories of different types of crimes from newspapers. For each example that you collect:
- Identify how the example reflects the three basic features of the definition of crime: harmfulness, immorality and punishment.
- Identify the type of crime referred to in the article.
- Provide a legal definition of the offence.
- Provide an explanation of the key elements that need to be proven for an offender to be found guilty of the offence.
- Explain the possible defences to the crime committed in each article.

Present your findings as a folio or a visual display.
Case study
Criminal intent
Read the following case study. How would you decide the case? Explain in detail with reference to the definition of murder and relevant defences.

In 1954, four men attempted to kill a man by beating him on the head with a piece of iron. Although the men were unaware of it, their attempt failed and the victim was still alive when they rolled him over a cliff to get rid of his body. Later the injured man died of exposure. The four were charged with murder, but argued that they were innocent. ‘When we intended to kill him we didn’t, and when we killed him we thought he was already dead so we couldn’t have been intending to kill him. At no time did we have both actus reus and mens rea,’ they said.

Case study
Murder and intent
Using legal argument, copy and complete the following table on how you would decide the following cases in which a person was killed. You have several issues to consider.

<table>
<thead>
<tr>
<th>Case</th>
<th>What is the actus reus?</th>
<th>What is the mens rea?</th>
<th>Should D be charged? If so, with what crime?</th>
<th>If charged, should D be found guilty? Give reasons for your answers.</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>D fought with V in shallow water, dragged him unconscious from the water, and left him alive on the beach below the high-water mark. D went to sleep on the beach and, when he woke, V was in the sea and had drowned.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>D stabbed V in the stomach in a café brawl. V was treated for the injury in hospital. A drug to which V was allergic was used. It was found to be unsuitable and was discontinued, but unfortunately was later administered again. V died.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>D, a serviceman, stabbed V with a bayonet during a brawl: once in the arm and once in the back. The wound in the back pierced V’s lung. V was dropped twice by accident while being taken to a first aid post. There he was given extensive treatment but died some hours later. Medical evidence suggested that if V had been given a blood transfusion his chances of recovery would have been good, though not certain.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d</td>
<td>D took part in robbing a bank. The gun D was holding went off accidentally, killing V, a customer of the bank.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e</td>
<td>D took part in robbing a bank using a classic imitation gun. V, a customer in the bank, believed that the gun was real. During the robbery V suffered a heart attack and died.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>f</td>
<td>D earned his living as a professional boxer. During a contest, V was knocked out by D and later died.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>g</td>
<td>D hunted deer in a park that had been recently declared open for deer hunting. D saw a movement in the bushes and fired, killing V—a bushwalker.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h</td>
<td>D is a truck driver who had been working very long hours. While driving he fell asleep and ran into the back of a car, killing V.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i</td>
<td>D is a babysitter who likes more than the occasional drink. One night, after drinking heavily, she mistook baby V (in her care) for a log of wood and threw the baby on the fire. She then lapsed into a drunken sleep without realising the mistake.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Case study
Is it a defence?

In each of the following cases consider the defence an accused might use and decide the likely outcome of each case. Give reasons for your decision.

a Mark, who was married to Sue, came home for lunch unexpectedly to find Sue in bed with the next-door neighbour. He stabbed the man, who later died in hospital.

b Richard was walking home with George when they were attacked by four youths. They were thrown to the ground and kicked savagely. Richard managed to grab a piece of iron lying on the ground and lashed out, hitting one of the youths. This youth died. The police arrested all at the scene, charging Richard with murder.

c Maria, who had a history of psychiatric problems, smothered her young daughter while she slept. Maria had no recollection of her action because she was a sleepwalker.

d Madeleine killed her husband William while he slept after he had beaten her and threatened to kill her and their three children. She had suffered years of physical and emotional abuse from her husband and had tried to leave several times, but each time William threatened to harm the children.

e Dale, who had been drinking heavily, was thrown out of a pub. He left the pub and climbed into the driver's seat of his road train. He drove his road train into the crowded front bar of the pub, killing five people.

f Desmond, who had been drinking heavily, found his de facto embracing another man. He picked up a metal pipe and struck her on the head, killing her.

g Alan entered into a suicide pact with his girlfriend. She had shot herself but did not die and asked Alan to get help. While Alan was away getting help, but still in the area, there was a second shot. The girlfriend had shot herself a second time and died.

h Foy deliberately struck his wife on the head with a tomahawk, killing her. Foy has been epileptic since he was a child.

i Parris, who was three times over the legal alcohol limit, smashed his car into a lamppost. When police arrived at the scene of the accident there was no sign of the driver. He was later found at home and claimed that he knew nothing about the accident. During a police interview the man stated that he believed that he did it but could not recall getting into the car to drive. A sleep expert gave evidence during the hearing that the man was asleep at the time of the accident.

Case study
Murder or manslaughter?

Read the following case study, then answer the questions below.

A group of school students were waiting at a tram stop. One student was celebrating the end of his VCE exams with his friends. A verbal altercation took place between the Year 12 student and a 14-year-old boy. The younger boy called a girl with the group a ‘slut’. The Year 12 student responded by calling the 14-year-old boy ‘unibrow’. The 14-year-old boy speared the Year 12 student with the metal tip of his umbrella. Four days later the Year 12 student died as a result of the blow. The boy, who was 16 by the time of his trial, pleaded not guilty to murder. He was convicted and sentenced to 12 years in prison.

1 Read pages 167–74. In which court would this case be heard? Explain.

2 If you were a member of the jury in this case, what factors would you need to take into account in deciding whether this is a case of murder or manslaughter?

3 What impact, if any, would the age of the offender have on your decision?
Case studies

Is it murder?

Read the following case studies and explain how the principles of murder, manslaughter or defensive homicide may apply to each.

**Case A**
The defendant dressed in camouflage gear and waited in a ‘sniper’s nest’ for 90 minutes before shooting dead her abusive husband. He had subjected her to years of physical, psychological and sexual abuse and had raped her on the night of his death.

**Case B**
A mother was jailed for poisoning her baby. The mother had fed her 10-month-old baby poison four times over a period of several weeks. In sentencing the woman, the judge stated that her actions were not a spontaneous act of violence stemming from the stress of parenthood. Her actions stemmed from a deeply disturbed background and severe personality disorder. The court heard evidence that she poisoned her baby in an attempt to attract the attention of the baby’s father.

**Case C**
The defendant, who was a qualified electrician, had been growing a crop of marijuana plants in the backyard of his family home. To protect the plants from being stolen or damaged by animals, he placed chicken wire and some electrified wire around them. Late one night another man entered the property with the intention of stealing some of the illegal crop. The intruder was electrocuted when he touched the electrified wire and died.

**Case D**
An 18-month-old boy died of a methadone overdose. The parents, both recovering heroin addicts on the methadone program, fell asleep after shooting up methadone on the morning of the child’s death. When the father woke up, the boy was asleep on his mother’s lap. The mother woke up about two hours later. She didn’t notice anything wrong with the child and thought that he was asleep. Another hour passed before the parents realised that the child was dead and called an ambulance. The prosecution told the court that there were three possibilities—that the boy was fed the methadone as a sedative, drank residue from a cup used to dilute it, or consumed the contents of a misplaced syringe of the drug.

**Case E**
The defendant had a ‘vision’ about two men and a boy under a bridge. The next day he went to a carpark under a bridge. Two men and a boy walked by. The defendant jumped out of his car, attacked the group and fatally stabbed one of the men. When asked why he killed the man, he said that he had seen a sign that the victim was the ‘evil one’.
Case study
Intruder horror
Read the following case study, then answer the questions below.

Intruder hurt in house break-in

Three intruders went to a house, believing the house to be unoccupied, to remove a brass bed. Minutes after breaking in, one intruder found himself lying on the ground with a gunshot wound to the pelvis.

In a statement to police, he claimed that as soon as he opened the door he saw a camera flash and heard an explosion.

‘I looked down and my jeans had been blown away and my entrails were hanging out,’ said the intruder. ‘I didn’t hear a word, I thought I had walked into a trap.’

The owner pleaded not guilty to a charge of intentionally causing injury and intentionally causing serious injury to the intruder.

1. What defence do you think may apply in this case?
2. Do you think that the owner should be found guilty or not guilty? What additional information about the case would assist you in making this decision?
3. Should the intruder be entitled to compensation? Justify your viewpoint.

Case study
Suicide or murder?
Read the following case study, then answer the questions below.

Novel killing goes wrong

A Melbourne man wanted to die but feared that he could fail at suicide. So he took out some insurance: he hired two youths, neither with a police record, to finish the job. He paid them $5000 each. If he did not die after taking sleeping tablets, the youths were to kill him and dump his body over a cliff. They went to the Dandenongs but could not find a cliff. It was decided that hiding the body in the scrub would be satisfactory. The man took the pills. Instead of going into a coma, he convulsed; he was still alive. The youths hit him on the head three times with an iron bar and left.

The ‘victim’ awoke later, bloodied and disoriented. He was found staggering along a road. He was taken to a hospital and later transferred to a psychiatric unit. The victim’s car was found outside the home of the youths, both aged 18. They told the story and how they spent the money on alcohol, cigars and mobile phones. They were charged with attempted murder.

1. The defendants in this case have been charged with attempted murder. Can they use consent as a defence? Explain.
2. Had the defendants been successful, should they be charged with murder or assisting a suicide?
3. Should ‘contract’ killings be treated differently from other murders? Give reasons for your answer.
Chapter 3
Criminal law

Research

Report on a recent case

Using the judgments on the AustLII website, undertake research into a court decision in a criminal case. Prepare a report that includes the following information:

- the name of the case
- the court hearing the case
- the name of the judge
- the type of offence and a brief definition of the offence
- a summary of the facts of the case
- a summary of the main legal issues discussed in the judgment
- a summary of any past cases referred to.

Thinking critically and creatively about the chapter

The following activities have been designed to develop a broad range of analytical, critical and creative thinking skills and abilities.

| Remembering | Write a paragraph listing the principles of criminal liability. |
| Understanding | Explain what the following have to do with criminal law: statute law, Burden of Proof and Standard of Proof. |
| Applying | What are some disadvantages of police work? Suggest some possible solutions to these problems. |
|             | **Disadvantages** | **Solutions** |
| Analysing | How might a juror use some or all of the following to determine a case: the elements and the defences of murder. |
| Evaluating | Consider some alternatives to reducing crimes against the individual, such as murder and assault. Be creative in your approach to reducing the statistics in these two crimes. |
| Creating | Invent three new ways of assisting a court to determine the guilt or innocence of crimes against individuals. |