

NCA LIBRARY · STUDY GUIDE

Criminal Law

A complete guide to the NCA Criminal Law syllabus, topic by topic, with case snapshots, exam tips and practice problems with model answers.

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- Part I** General Overview and Preliminary Matters
 - Part II** The Elements of a Criminal or Regulatory Offence
 - Part III** Extensions of Criminal Liability
 - Part IV** Select Criminal Defences
 - Part V** The Adversarial Proceeding

Follows: NCA Criminal Law syllabus, revised August 2026 (Topics 1–32)

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This guide is a study aid, not legal advice. Always check the current NCA syllabus and the primary sources.

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General Overview and Preliminary Matters

Syllabus Topics 1–4

ON THE SYLLABUS

What the syllabus assigns for Part I

Topic 1, The Sources of Criminal Law: *Criminal Code* ss 8 and 9; *Frey v Fedoruk*, [1950] SCR 517; *R v Jobidon*, [1991] 2 SCR 714; Roach pp 5–6, 100–101, 139–140. The syllabus also names *Lévis (City) v Tétreault*, [2006] 1 SCR 420 and *R v Mack*, [1988] 2 SCR 903 as examples of common law defences; we study them fully in Topics 22 and 21.

Topic 2, The Power to Create Criminal Offences and Rules of Criminal Procedure: *Constitution Act*, 1867, ss 91(27) and 92(14); *R v Marmo-Levine*, 2003 SCC 74, **paras 73–79 only**; Roach pp 26–30. *Canada (AG) v Bedford*, 2013 SCC 72; *R v Oakes*, [1986] 1 SCR 103; Roach pp 7–9, 25–26, 33–35, 68–94. *R v Labaye*, [2005] 3 SCR 728; Roach p 108; Roach pp 35–45, 48–68.

Topic 3, The Procedural Classification of Offences: Coughlan pp 42–53, and the *Code* provisions cited there, including s 553.

Topic 4, Interpreting Criminal Provisions: *Code* s 2, and ss 348(3) and 350 as examples of definitions; *R v Sundman*, 2022 SCC 31; *R v Paré*, [1987] 2 SCR 618; *R v Mac*, [2002] 1 SCR 856; *R v Collins*, [1987] 1 SCR 265, at para 43; *Canadian Foundation for Children, Youth and the Law v Canada (AG)*, [2004] 1 SCR 76; Roach pp 102–107.

Page references are to Roach, *Criminal Law*, 8th ed (2022) and Coughlan, *Criminal Procedure*, 5th ed (2026), the editions the syllabus assigns. The syllabus warns that every listed case must be read, "even when identified as examples or illustrations," and that you are responsible for the law each decision describes.

Learning objectives

By the end of Part I you should be able to:

- explain why every criminal offence in Canada must come from a statute, and identify the three places where the common law still shapes criminal law;
- describe how criminal law power is divided between Parliament and the provinces, and state the test for a valid federal criminal law;
- identify the four main ways the Charter limits criminal law, and use *Bedford*, *Oakes* and *Labaye* for the right proposition;

- classify any offence as indictable, summary or hybrid from its wording, and work out what follows: penalty, mode of trial, jury, preliminary inquiry and limitation period;
- read an unfamiliar offence provision the way a court would: definitions first, then text, context and purpose, then the French version, then the Charter, with strict construction as the last resort.

How Part I is examined

Part I is rarely the subject of a whole exam question, but it runs underneath almost every question you will write.

Reading an unfamiliar provision. The syllabus says plainly that candidates must be able to analyse any offence put at issue in an exam question, "even if they have not previously dealt with that offence." Examiners sometimes supply a provision, even an invented one, and ask whether the accused committed it. Topic 4 is the method for that.

Procedure hidden in the facts. A question may ask whether the accused can have a jury, whether there will be a preliminary inquiry, or whether a charge is out of time. Every one of those answers starts with classification (Topic 3).

Charter challenges to the law itself. You may be asked whether an offence, a reverse onus or a defence survives the Charter. Topic 2 gives you the tools: s 7 (*Bedford*), s 11(d) and s 1 (*Oakes*), and interpretation in light of Charter values (*Labaye*, *Canadian Foundation*).

EXAM TIP

The habit that earns marks in Part I

Open your *Code* to the section before you write a word. Quote or closely paraphrase the words that matter, check s 2 and the definitions at the start of the Part, and read the penalty clause. Markers reward candidates who build their answer on the text of the provision; they penalize answers that describe "the offence of X" in general terms.

Topic 1: The Sources of Criminal Law

1.1 Offences come only from statute

Section 9 of the *Criminal Code* provides that no one may be convicted of an offence at common law, of an offence under an English or UK statute, or of an offence under pre-Confederation legislation of a province or territory. The only exception is the power of courts to punish contempt of court, which survives from the common law.

So every criminal offence in Canada must be found in a statute. Most are in the *Criminal Code*, but not all. Drug offences are in the *Controlled Drugs and Substances Act*, and many other federal statutes create offences too. Provincial statutes and municipal by-laws create regulatory offences, which

Topic 8 examines.

Why insist on a statute? The principle of **legality** holds that a person should be punished only under law that was clear, knowable and in force before they acted. A judge-made offence fails all three tests. The person had no way to know beforehand that the conduct was criminal. The judge, rather than an elected legislature, decides what counts as a crime. And the offence is defined only after the fact, in the case that creates it. Several Charter rights reinforce the same idea: s 11(g) forbids convicting anyone for conduct that was not an offence when it occurred, and s 7 forbids laws so vague that they give no fair notice (see 4.4).

CASE SNAPSHOT

***Frey v Fedoruk*, [1950] SCR 517**

Context. Frey was caught at night looking through a window of a private house at a woman undressing. He was chased, held and handed over to a police officer, who arrested him. He later sued for false imprisonment. The detention and arrest were lawful only if what he had done was a criminal offence.

Issue. Was "peeping" a crime at common law, on the theory that it was likely to provoke a breach of the peace?

Holding. No. The conduct was not an offence known to the law, and the Court refused to create one. Cartwright J reasoned that if conduct not previously regarded as criminal is to be made criminal, Parliament must do it, not the courts. A court that declared crimes case by case, by asking whether conduct seemed likely to provoke retaliation, would make the criminal law uncertain and dependent on the individual judge's view.

Why it matters. It is the leading statement of the principle that courts do not create new crimes. Parliament codified that principle in s 9 when it enacted the 1955 *Criminal Code*, and later created offences aimed at this kind of conduct (loitering or prowling at night near a dwelling-house, s 177, and later voyeurism, s 162).

1.2 Where the common law still matters

Section 9 bans common law *offences*. It does not remove the common law from criminal law. It survives in three important places.

Defences. Section 8(3) preserves every common law rule or principle that makes circumstances a justification or excuse for an act, or a defence to a charge, except where Parliament has altered it. That is why courts can still recognize and develop defences. Necessity (Topic 18), the common law form of duress (Topic 19), entrapment (*Mack*, Topic 21) and officially induced error (*Lévis*, Topic 22) are all common law defences. The logic is asymmetric on purpose: creating a crime expands state power, so it needs a statute, while recognizing a defence protects the individual, so courts may do it.

The meaning and reach of statutory offences. Parliament often uses words that carry a common law history, such as "consent," "assault" or "wilfully." Courts read those words against that history. *Jobidon*, below, is the syllabus example: the common law's policy limits on consent shaped the statutory

offence of assault. The presumption that true crimes require subjective fault (Topic 6) is another common law rule that controls how statutory offences are read.

Procedure. Much of the procedure is in the *Code* (Parts XV to XXVIII), but a great deal is not. Many police powers come from the common law (Topic 24), as do the doctrine of abuse of process and many evidentiary rules.

Source	What it supplies	Example
Federal statutes (<i>Code</i> , CDSA and others)	Every offence and its penalty; most procedure	Murder (s 229); possession for the purpose of trafficking (CDSA s 5(2))
The Constitution	Who may legislate, and the limits on what they may do	s 91(27); Charter ss 7–14
Common law	Defences; the meaning of statutory words; parts of procedure; contempt of court	Necessity; limits on consent (<i>Jobidon</i>); common law police powers
Provincial statutes	Regulatory offences; administration of justice	Highway traffic offences; juror eligibility

CASE SNAPSHOT

***R v Jobidon*, [1991] 2 SCR 714 (the Topic 1 angle)**

Context. *Jobidon* and the victim agreed to fight outside a bar. *Jobidon* knocked the victim unconscious with a punch to the head and kept punching him for a few seconds. The victim died. *Jobidon* was charged with manslaughter, and the unlawful act alleged was assault. The trial judge acquitted, finding that the victim had consented to a fair fist fight; the Court of Appeal substituted a conviction.

Issue. The definition of assault in s 265 speaks of force applied "without the consent" of the other person, and s 265(3) lists only four things that vitiate consent: force, threats, fraud and the exercise of authority. Could the common law's limits on consent still apply?

Holding. Yes. The majority (Gonthier J) held that s 265 must be read in light of the common law, which had long refused, on grounds of public policy, to recognize consent to intentional harm in a fight. Section 265(3) does not list every situation in which consent is ineffective. Consent is vitiated where adults intentionally apply force causing serious hurt or non-trivial bodily harm to each other in a fist fight or brawl. The conviction was upheld. Sopinka J concurred in the result on a narrower ground: whatever the victim consented to, it did not include being struck after he had been knocked unconscious.

Why it matters here. It shows the common law narrowing the reach of a statutory element (consent), and so widening an offence, even after codification. We return to *Jobidon* in Topic 5(c), where the focus is on what it decides about consent.

COMMON MISTAKE

Common mistakes on sources

- Saying a judge may convict for conduct because it is harmful, immoral or "a breach of the peace" when no statute prohibits it. Section 9 and *Frey* close that door.
- Treating the *Code* as the complete source of criminal law. Defences, the meaning of many elements, and much procedure come from the common law.
- Confusing a common law *defence* (permitted, s 8(3)) with a common law *offence* (forbidden, s 9).

Topic 2: The Power to Create Criminal Offences and Rules of Criminal Procedure

2.1 (a) The constitutional division of powers

Section 91(27) of the Constitution Act, 1867 gives Parliament exclusive power over "The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters." Three things follow from that wording. Only Parliament can create true crimes. Parliament also controls criminal procedure, which is why the *Code* governs how trials run in every province. And the *constitution* of the criminal courts is carved out of the federal power and left to the provinces.

Section 92(14) gives each province power over "the Administration of Justice in the Province," including the constitution, maintenance and organization of provincial courts of both civil and criminal jurisdiction. That is the source of the provinces' large practical role in criminal justice.

Section 92(15) lets a province enforce its own valid laws by fine, penalty or imprisonment. Provinces can therefore create offences and even send people to jail for them, but only as a means of enforcing laws within provincial jurisdiction (highway safety, liquor licensing, occupational health and safety). These are regulatory offences, not true crimes, and different principles apply to them (Topic 8).

Function	Who	Constitutional basis
Defining crimes and their punishments	Parliament	s 91(27)
Rules of criminal procedure	Parliament (plus the common law)	s 91(27)
Creating and organizing the criminal courts; provincial court judges	Provinces	s 92(14)
Appointing superior court judges	Federal government	s 96
Prosecuting most <i>Code</i> offences	Provincial Attorneys General	s 92(14), and the <i>Code's</i> definition of "Attorney General"

Function	Who	Constitutional basis
Prosecuting offences under other federal statutes (for example the CDSA), and all offences in the three territories	Federal Attorney General (the Public Prosecution Service of Canada)	Federal statute
Policing	Mostly provinces and municipalities; the RCMP under contract in many places	s 92(14) and statute
Juror eligibility	Provinces	s 92(14)
Penitentiaries (sentences of two years or more) / prisons (under two years)	Federal / provincial	ss 91(28), 92(6)
Regulatory offences enforced by jail	Either level, within its own heads of power	ss 91, 92(15)

What makes a federal law a valid criminal law? The test comes from the *Margarine Reference* (1949) and is restated in *Malmo-Levine*: a valid criminal law has a **prohibition**, backed by a **penalty**, directed at a **legitimate criminal law purpose**. The Constitutional Law guide (Part II, Topic 8) covers the test in depth. For the Criminal exam, what you need is the version in the assigned paragraphs of *Malmo-Levine*.

CASE SNAPSHOT

***R v Malmo-Levine; R v Caine*, 2003 SCC 74 (paras 73–79 assigned)**

Context. Two accused charged with marijuana offences argued that Parliament had no power to criminalize possession of marijuana, because its use caused little harm to anyone other than the user. They also argued that s 7 of the Charter contains a "harm principle" that forbids criminalizing conduct that does not harm others.

The assigned paragraphs. Paras 73–79 summarize the federal criminal law power. The majority (Gonthier and Binnie JJ) described it as **plenary** and broadly construed. A valid criminal law needs three things: a prohibition, a penalty and a valid criminal law purpose, such as public peace, order, security, health or morality. Parliament may not use the power colourably to invade provincial territory. The criminal law may protect vulnerable groups, including people at risk of harming themselves, and not only third parties. Morality remains a legitimate concern, in the sense of fundamental societal values rather than mere propriety. Parliament does not have to prove that the conduct actually causes harm: it may act on a **reasoned apprehension of harm**, even where the scientific evidence is not settled (para 78). Finally, para 79 makes the bridge to Topic 2(b): since 1982, a law that is valid criminal law must also comply with the Charter.

The wider holding (for context). The prohibition was a valid exercise of s 91(27). The harm principle is not a principle of fundamental justice under s 7, because there is no consensus that it is vital to our idea of justice and it is not precise enough to be applied as a legal standard. The law was also not arbitrary or grossly disproportionate. Three judges dissented on the s 7 issue.

Why it matters. Cite it for the test for a valid criminal law and for the proposition that Parliament may criminalize on a reasoned apprehension of harm, including harm to the user.

2.2 (b) The Charter: four ways it limits criminal law

The Charter binds Parliament and the provinces (s 32), and **s 52(1) of the Constitution Act, 1982** makes any law inconsistent with it of no force or effect to the extent of the inconsistency. In criminal law, it works in four main ways.

How the Charter bites	Main rights	Syllabus illustration	Where it returns
Striking down an offence	s 7 (arbitrariness, overbreadth, gross disproportionality, vagueness, minimum fault)	<i>Bedford</i>	Topics 7, 8
Striking down a rule of procedure or evidence	s 11(d) presumption of innocence	<i>Oakes</i>	Topic 23
Striking down a limit on a defence, or a punishment	ss 7, 11(d), 12	<i>Brown</i> (Topic 16); mandatory minimums (Topic 31)	Topics 16, 31
Shaping how a provision is read	Charter values; presumption of constitutionality	<i>Labaye</i> ; <i>Canadian Foundation</i>	Topic 4

The Charter is subject to two general qualifications. **Section 1** allows reasonable limits prescribed by law that are demonstrably justified in a free and democratic society. **Section 33**, the notwithstanding clause, allows Parliament or a legislature to declare that a law operates notwithstanding s 2 or ss 7–15 for renewable five-year periods. Parliament has never used s 33 in criminal law.

Section 7 in outline. Section 7 protects life, liberty and security of the person, and allows the state to deprive a person of them only in accordance with the principles of fundamental justice. Any offence that carries a possible prison term engages liberty. The analysis has three steps.

Step	Ask	If yes
1	Does the law deprive someone of life, liberty or security of the person ? A possible prison term is enough for liberty; a law that increases the risk of serious harm can engage security of the person.	Go to step 2
2	Is the deprivation caused by the law? A sufficient causal connection is enough; the law need not be the only or dominant cause.	Go to step 3
3	Is the deprivation not in accordance with the principles of fundamental justice ? The main principles are arbitrariness, overbreadth, gross disproportionality and vagueness, plus the fault requirements for particular offences.	s 7 is infringed; go to s 1 (which will rarely save it)

CASE SNAPSHOT

***Canada (Attorney General) v Bedford*, 2013 SCC 72**

Context. Three women with experience in sex work challenged three Code provisions: keeping a common bawdy-house (s 210), living on the avails of prostitution (s 212(1)(j)) and communicating in public for the purpose of prostitution (s 213(1)(c)). Selling sex was itself legal.

Issue. Did the provisions violate s 7 by making a legal activity more dangerous?

Holding. Yes; all three were struck down. A unanimous Court (McLachlin CJ) held that the laws engaged security of the person because they prevented people engaged in a lawful activity from taking steps to protect themselves: working indoors, hiring drivers or bodyguards, and screening clients face to face. The fact that the women chose to sell sex did not break the causal connection. Measured against its purpose of controlling nuisance, the bawdy-house law was **grossly disproportionate**. The living-on-the-avails law was **overbroad**, because it caught people who were not exploiting sex workers, such as a driver or bodyguard who increased their safety. The communicating law was **grossly disproportionate** to its purpose of taking prostitution off the streets. The declaration of invalidity was suspended for one year.

Key reasoning to use. The three principles compare the law's effect with its **purpose**. **Arbitrariness** asks whether there is any connection between the effect on the individual and the law's purpose.

Overbreadth asks whether the law goes too far and catches some conduct that has no connection to its purpose. **Gross disproportionality** asks whether the effect on the individual is so severe that it is completely out of line with the purpose. Each is assessed by the law's impact on a single person, not by how many people are affected: one person whose rights are infringed is enough. The Court also held that a trial judge may revisit a binding Supreme Court precedent (here, the 1990 *Prostitution Reference*) where a new legal issue is raised, or where there is a significant change in the circumstances or evidence that fundamentally shifts the debate.

Why it matters. It is the leading illustration of a criminal offence struck down under s 7, and the source of the modern definitions of arbitrariness, overbreadth and gross disproportionality.

NOTE

What happened next

Parliament responded with the *Protection of Communities and Exploited Persons Act* (2014), which made purchasing sexual services a crime while generally not criminalizing the sale. In 2019 Parliament repealed the remaining common bawdy-house offences altogether. You will not be tested on the 2014 regime; *Bedford* matters for its s 7 method.

Section 11(d) and s 1. Section 11(d) guarantees the right to be presumed innocent until proven guilty according to law in a fair and public hearing. In practice, it means the Crown must prove every element beyond a reasonable doubt. A law that lets the accused be convicted **despite a reasonable doubt** infringes it. That is the problem with "reverse onus" clauses, which require the accused to *prove* something to avoid conviction.

CASE SNAPSHOT

***R v Oakes*, [1986] 1 SCR 103**

Context. Oakes was found with eight small vials of hashish oil and some cash. He was charged with possession for the purpose of trafficking under the *Narcotic Control Act*. Section 8 of that Act provided that once the Crown proved possession, the accused was presumed to possess the drug for the purpose of trafficking unless he **established** that he did not.

Issues. Did s 8 infringe s 11(d)? If so, was it saved by s 1?

Holding. Section 8 infringed s 11(d). It required the accused to disprove an essential element on a balance of probabilities, so he could be convicted even if the evidence left a reasonable doubt about whether he intended to traffic. It was not saved by s 1. Reducing drug trafficking was a pressing and substantial objective, but the provision failed the **rational connection** test: possessing a small or negligible quantity of a drug gives no rational basis for inferring an intention to traffic.

The s 1 test. Dickson CJ set out the framework still used today (see the table below).

Why it matters. It is the illustration the syllabus gives of a rule of criminal procedure struck down under the Charter, and the source of the s 1 test. It returns in Topic 23 on burdens and presumptions.

Step	Ask	Burden and standard
0	Is the limit prescribed by law (a statute, regulation or common law rule, not a purely discretionary decision)?	The government must justify the limit, on a balance of probabilities
1	Is the law's objective pressing and substantial in a free and democratic society?	
2a	Is the measure rationaly connected to the objective, and not arbitrary, unfair or based on irrational considerations?	
2b	Does it impair the right as little as reasonably possible ?	
2c	Are the law's benefits proportionate to its harmful effects on the right?	

NOTE

How the *Oakes* approach has evolved

The syllabus asks you to note that the approach has developed since 1986. In later cases, courts have accepted most objectives as pressing, and few laws now fail the rational connection step. Minimal impairment is usually where the analysis is decided, and courts give Parliament some room to choose among a range of reasonable alternatives, especially on complex social problems. The final step has become a real weighing of the law's actual benefits against its actual harms. It is also very hard to justify a s 7 breach under s 1. *Bedford* explains why: a law that is arbitrary, overbroad or grossly disproportionate is fundamentally flawed, although the Court said justification is not impossible in principle, since s 1 looks at the law's wider social benefits rather than only its impact on the individual.

2.3 The Charter as an interpretive tool

Courts presume that Parliament intends to legislate within the Constitution. Where a provision can reasonably be read in more than one way, courts prefer the reading that is consistent with the Charter and its values. This lets a court narrow a vague or overbroad provision instead of striking it down, as the Court did with s 43 in *Canadian Foundation* (4.4). It also changes how old concepts are applied, as *Labaye* shows.

CASE SNAPSHOT

***R v Labaye*, [2005] 3 SCR 728**

Context. Labaye ran a members-only club in Montréal where couples and single people met for group sex. The sexual activity took place on a separate floor behind a locked door, which only members and their guests could reach, and only willing adults took part. Labaye was charged with keeping a common bawdy-house, defined at the time as a place kept for the purpose of prostitution or "the practice of acts of indecency."

Issue. Were the acts "indecent"?

Holding. No; the conviction was set aside. The majority (McLachlin CJ) replaced the old test, which asked what the community would tolerate, with a **harm-based test**. Conduct is indecent only if (1) by its nature it causes harm, or presents a significant risk of harm, to individuals or society in a way that undermines or threatens a value reflected in the Constitution or similar fundamental laws, for example by forcing unwilling members of the public to confront conduct that seriously intrudes on their autonomy and liberty, by encouraging others toward anti-social behaviour, or by causing physical or psychological harm to the participants; and (2) the harm, or risk of harm, is so serious that it is incompatible with the proper functioning of society. The harm must be proved on evidence, not assumed from moral disapproval. None of it was shown: nobody was exposed against their will, no one was pressured, and there was no evidence of anti-social effects.

The dissent. Bastarache and LeBel JJ would have kept the community standard of tolerance, and criticized the majority for making indecency turn on harm alone.

Why it matters. It illustrates the Charter's values (autonomy, liberty, equality, human dignity) changing the content of a criminal concept through interpretation. The offence itself was never struck down.

EXAM TIP

Using dissents and obiter

The syllabus makes a point worth applying in every answer: a dissent is not the law, however persuasive. Cite *Labaye* for the majority's harm test, not for the dissent's view. But a court's explanation of the law that nobody on the court disputed, even if it was not strictly necessary to the decision (obiter), is a respectable source for an argument, particularly on a point the cases have not squarely decided.

2.4 The Charter and criminal procedure: a map

The Charter's biggest effect on criminal law has been on procedure. Part V of this guide covers each right in detail; this table shows where.

Right	What it protects	Where we study it
s 7	Fair process generally; the right to silence; disclosure	Topics 23, 26
s 8	Freedom from unreasonable search or seizure	Topic 24
s 9	Freedom from arbitrary detention or imprisonment	Topics 24, 25
s 10(a), (b)	On arrest or detention: to be told the reasons, and to retain and instruct counsel without delay and be told of that right	Topic 25
s 11(b)	Trial within a reasonable time	Topic 30
s 11(d)	Presumption of innocence; fair and public hearing by an independent and impartial tribunal	Topics 2, 23
s 11(e)	Not to be denied reasonable bail without just cause	Topic 25
s 11(f)	Jury trial where the maximum punishment is five years or more	Topics 3, 28
s 11(g), (i)	No retroactive offences; the benefit of the lesser punishment if the penalty changes	Topics 1, 31
s 12	No cruel and unusual treatment or punishment	Topic 31
s 24(1), (2)	Remedies: a stay or other appropriate remedy; exclusion of evidence that would bring the administration of justice into disrepute	Topics 24, 30

EXAM TIP

Exam strategy: Charter challenges to the law itself

When a question asks whether an offence, a presumption or a defence survives the Charter, identify the right precisely, apply its test to the facts step by step, and then go to s 1, even if you think the breach is clear. If there is a breach, say exactly what the court should do with the provision: strike it down, sever the offending subsection, or read it down. Finish with what happens to *this* accused.

COMMON MISTAKE

Common mistakes on Topic 2

- Saying provinces cannot use imprisonment. They can, for valid provincial regulatory offences (s 92(15)). What they cannot do is create true crimes.
- Saying *Malmo-Levine* requires Parliament to prove harm to others. It requires only a reasoned apprehension of harm, and harm to the user counts.
- Analysing a reverse onus without saying what the accused must prove and to what standard. The s 11(d) problem arises when the accused can be convicted despite a reasonable doubt.
- Stopping at the s 7 breach in a *Bedford*-type problem without naming the specific principle (arbitrariness, overbreadth or gross disproportionality) and comparing the law's effect with its purpose.

Topic 3: The Procedural Classification of Offences

3.1 Three categories, read from the text

Every offence belongs to one of three procedural categories, and the offence-creating section tells you which.

Category	Typical wording in the <i>Code</i>	Examples
Indictable (straight indictable)	"is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years"	Murder (s 235), robbery (s 344), break and enter a dwelling-house (s 348(1)(d))
Summary conviction	"is guilty of an offence punishable on summary conviction"	Causing a disturbance (s 175), trespassing at night (s 177)
Hybrid (dual procedure)	"is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than X years; or (b) an offence punishable on summary conviction"	Assault (s 266), sexual assault (s 271), theft of property worth \$5,000 or less (s 334(b))

Hybrid offences are by far the most common. For them, the **Crown elects** which way to proceed, usually at the first appearance. The choice is a matter of prosecutorial discretion, and a court will review it only for abuse of process (Topic 23).

Until the Crown elects, a hybrid offence is deemed to be indictable (*Interpretation Act*, s 34(1)(a)). That matters for police powers, for example, because the power to arrest without a warrant on reasonable grounds applies to indictable offences (s 495(1)(a)), and so to hybrid ones (Topic 25).

3.2 Penalties

Summary conviction: unless another penalty is specified, the maximum is a fine of \$5,000, two years less a day of imprisonment, or both (**s 787(1)**). The maximum was raised from six months in 2019.

Indictable: the maximum is stated in each section (2, 5, 10 or 14 years, or life). Where an indictable offence specifies no punishment, the maximum is five years (s 743).

The choice of procedure therefore sets the ceiling on sentence. For a hybrid offence, proceeding summarily usually caps the sentence at two years less a day, whatever the indictable maximum.

3.3 The limitation period for summary proceedings

Summary conviction proceedings must begin within **12 months** of the time when the subject matter of the proceedings arose, unless the prosecutor and the accused agree otherwise (**s 786(2)**). Most indictable offences have no limitation period. The practical consequence is important: if more than 12 months have passed, the Crown can proceed on a hybrid offence only by indictment (unless the accused agrees to summary proceedings), and a purely summary offence cannot be prosecuted at all.

3.4 Who tries the case

Summary conviction offences are tried by a provincial court judge (or, for some matters, a justice of the peace) sitting as a summary conviction court under Part XXVII of the *Code*. There is no jury and no preliminary inquiry.

Indictable offences fall into three groups for mode of trial.

- **Section 469 offences** (the most serious, including murder and treason) must be tried in the **superior court**, by judge and jury, unless both the accused and the Attorney General consent to trial by judge alone (s 473).
- **Section 553 offences** are in the **absolute jurisdiction** of a provincial court judge. The accused has no election. The list includes theft (other than theft of cattle), possession of property obtained by crime, obtaining by false pretences, fraud, and mischief, in each case where the value involved is **not more than \$5,000**; certain gaming and betting offences; and failure to comply with a probation order. Read s 553 in your own *Code*, because the list is specific.
- **All other indictable offences** are **electable** (s 536(2) and (2.1)). The accused chooses trial by (i) a provincial court judge, (ii) a superior court judge alone, or (iii) a superior court judge and jury. For an offence punishable by 14 years or more, choosing a provincial court judge also means giving up the preliminary inquiry. An accused who does not elect is deemed to have chosen a jury (s 565). The Attorney General can require a jury trial for an offence punishable by more than five years, even if the accused elects otherwise (s 568).

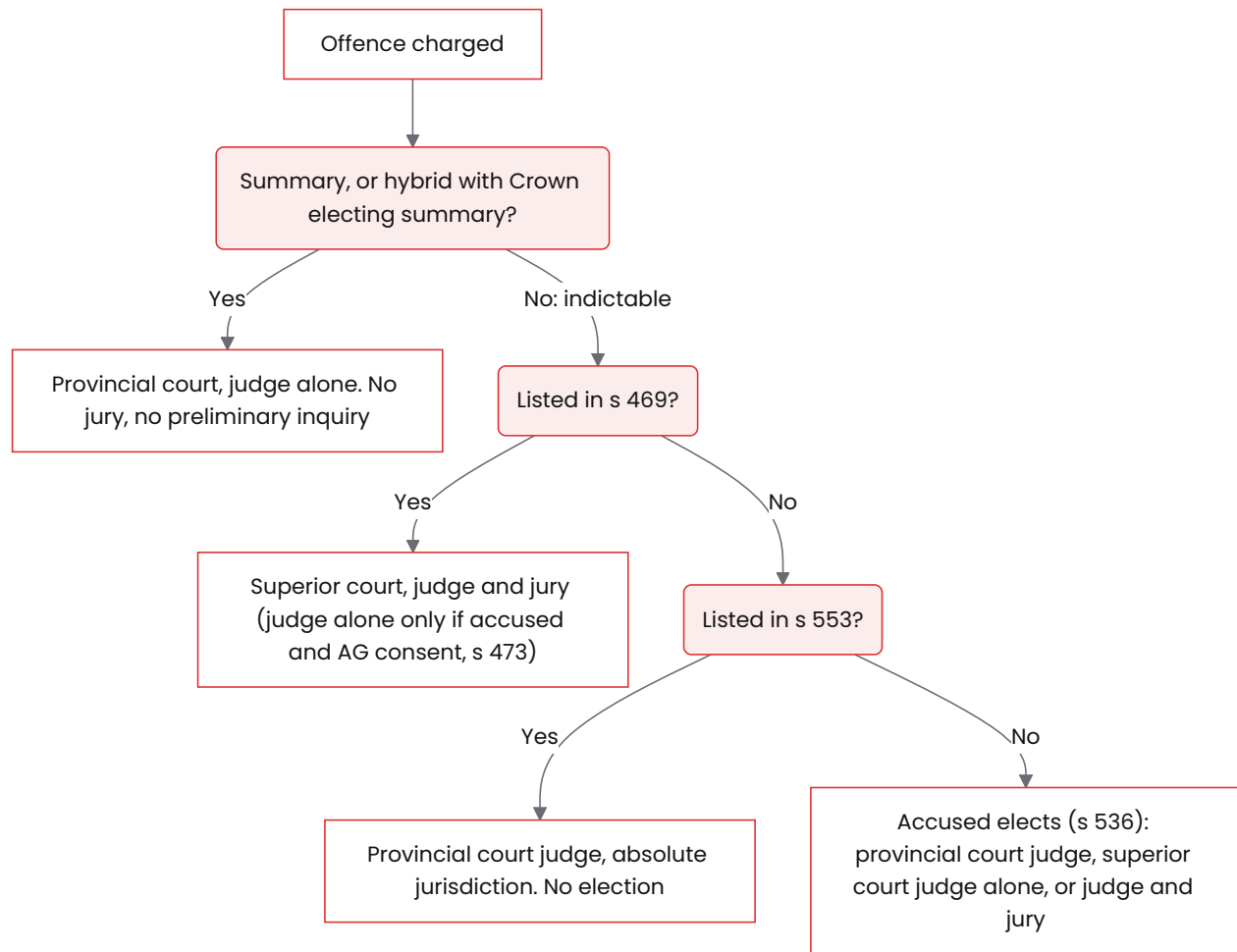
Preliminary inquiries are available only for adults charged with offences punishable by **14 years or more** (s 535), and only on request (s 536(4)). Since 2019 they are no longer available for other indictable offences. Topic 27 covers the test at the inquiry.

The constitutional jury right. Section 11(f) of the Charter guarantees trial by jury where the maximum punishment for the offence is imprisonment for **five years or more**. Because the right is the accused's, the accused may generally give it up by electing trial by judge alone.

3.5 Why classification matters

Consequence	Summary	Indictable (or hybrid before election, or on indictment)
Maximum penalty	\$5,000 and/or two years less a day, unless specified (s 787(1))	As stated in the section; five years if none (s 743)
Limitation period	12 months unless both sides agree (s 786(2))	Generally none
Court and mode of trial	Provincial court, judge alone	Depends on ss 469, 553 and 536
Jury	Never	s 469 offences and electable offences; constitutional right under s 11(f) if the maximum is five years or more
Preliminary inquiry	Never	Only if the maximum is 14 years or more, on request (s 535)
Arrest without warrant	Only if found committing the offence (s 495(1)(b))	Also on reasonable grounds of past or intended commission (s 495(1)(a)), subject to s 495(2) (Topic 25)
Appeals	Part XXVII route (to the superior court)	Part XXI route (to the court of appeal) (Topic 32)
Other provisions that turn on "indictable offence"	Not triggered	For example, provocation now requires conduct by the victim that would be an indictable offence punishable by five years or more (s 232(2), Topic 20)

The flowchart below pulls the mode-of-trial rules from 3.4 together.



EXAM TIP

Exam strategy: classification

When a procedural issue appears in a problem, work from the offence section outward: quote the penalty clause, say whether the offence is indictable, summary or hybrid, and then apply the rule the question needs (s 553, s 469, s 536, s 535, s 786(2) or s 11(f)). Always check the dates in the facts. Many candidates never notice that a summary prosecution is out of time.

COMMON MISTAKE

Common mistakes on classification

- Saying that a hybrid offence is summary until the Crown decides. It is deemed indictable until the election.
- Saying that every accused charged with an indictable offence can choose a jury. Section 553 offences never have one, and s 469 offences have one unless both sides consent otherwise.
- Saying that a preliminary inquiry is available for any indictable offence. Since 2019 the threshold is a maximum of 14 years or more.
- Confusing the s 11(f) threshold (five years or more) with the preliminary inquiry threshold (14 years or more).

Topic 4: Interpreting Criminal Provisions

Interpreting the *Code* follows the same method as any other statute, with some special features. The four subsections below follow the syllabus's own (a) to (d).

4.1 (a) Definitions

Before deciding what a word in an offence means, look for a definition. The *Code* places definitions in several layers.

- **Section 2** defines terms used throughout the *Code*: for example "bodily harm," "dwelling-house," "peace officer," "prison," "property" and "weapon."
- **Part-specific definitions** appear at the start of many Parts and apply only within that Part: for example s 321, which defines "break" for Part IX (offences against rights of property).
- **Section-specific definitions** sit in or beside the offence. The syllabus's examples are in the break and enter provisions. Section 348(3) defines "place" as a dwelling-house; a building or structure (or part of one) other than a dwelling-house; a railway vehicle, vessel, aircraft or trailer; or a pen or enclosure where fur-bearing animals are kept for breeding or commercial purposes. Section 350 then provides that a person **enters** as soon as any part of the body, or of an instrument they use, is within the thing being entered, and that a person is **deemed to have broken and entered** if they got in by a threat, a trick or collusion with someone inside, or entered without lawful justification or excuse through a permanent or temporary opening.
- **Common law meanings**. Some words take their meaning from the common law, as "consent" did in *Jobidon*.

Definitions can widen a word well beyond its everyday meaning (walking through an open door can be a "break" under s 350), or narrow it (a car is not a "place" under s 348(3), so entering one cannot be break and enter under s 348). Checking them is often the whole answer.

EXAM TIP

A method for reading any offence provision

The syllabus expects you to analyse an offence you have never seen before. This sequence is a thinking tool; the marks come from applying each step to the facts, not from listing the steps.

Step	Ask
1	What exactly does the section say? Identify the penalty clause, and so the classification (Topic 3).
2	Are any of its words defined, in s 2, at the start of the Part, or in or beside the section?
3	What are the elements? Separate the conduct, the circumstances and any consequence (the actus reus) from the mental words ("knowingly," "wilfully," "with intent," "for the purpose of"). If no fault is stated, remember the presumption of subjective fault for true crimes (Topic 6).
4	Does the section contain deeming provisions, presumptions or its own defences ("without lawful excuse," "the proof of which lies on him")?
5	Read in context and in light of its purpose, is a word still reasonably ambiguous? Check the French version.
6	Does the Charter point to one reading over another?
7	Only if a reasonable ambiguity remains after steps 5 and 6, resolve it in the accused's favour (strict construction).
8	Apply each element to the facts and reach a conclusion.

4.2 (b) Purposive interpretation, and strict construction as a last resort

The modern approach. Courts read the words of a statute in their entire context, in their grammatical and ordinary sense, in harmony with the scheme and object of the Act and the intention of Parliament. The *Interpretation Act* (s 12) adds that every enactment is deemed remedial and must be given the fair, large and liberal interpretation that best achieves its objects. The *Code* is no exception.

Strict construction. The older rule was that penal statutes are construed strictly, with any ambiguity resolved in favour of the accused. It developed when minor offences carried the death penalty. It has not been abandoned, but its role is now limited: it applies only where a **reasonable ambiguity remains after** the provision has been read in context and in light of its purpose. It is a tie-breaker, not a starting point. A grammatically possible narrow reading is not enough to trigger it if the purpose makes the meaning clear.

CASE SNAPSHOT

R v Paré, [1987] 2 SCR 618

Context. Paré, aged 17, indecently assaulted a seven-year-old boy. About two minutes after the assault ended, he killed the boy, fearing that the boy would tell his mother what had happened. Under what is now s 231(5), murder is first degree, whether or not planned and deliberate, when death is caused "while

committing" certain listed offences, which then included indecent assault.

Issue. Does "while committing" require the killing to coincide exactly with the listed offence?

Holding. No. Wilson J, for the Court, accepted that the narrow reading was grammatically possible but held that it would produce arbitrary distinctions: the result would depend on whether the killer struck a moment before or a moment after the assault ended. The purpose of the provision is to treat as especially blameworthy a murder that exploits the position of power created by an offence of **illegal domination**. Where the killing and the listed offence form **one continuous sequence of events** making up a **single transaction**, the killing is committed "while committing" the offence. Because the purposive reading removed any reasonable doubt about the meaning, there was no occasion for strict construction. The first degree murder conviction was restored.

Why it matters. It is the classic authority that strict construction is a last resort, used only if real ambiguity survives a purposive reading.

CASE SNAPSHOT

R v Sundman, 2022 SCC 31

Context. Sundman confined a rival drug dealer in a moving pickup truck and repeatedly struck him with a handgun. When the truck slowed to make a turn, the victim jumped out and ran. Sundman and two accomplices chased him on foot. Sundman shot him at least three times without killing him, and as the victim lay wounded, one of the accomplices shot and killed him at close range. The trial judge convicted Sundman of second degree murder, treating the confinement in the truck as over by the time of the killing. The Court of Appeal substituted a conviction for first degree murder under s 231(5)(e) (murder while committing unlawful confinement).

Issue. Was the victim still "unlawfully confined" when he was killed, even though he had escaped from the truck? And was the murder committed "while committing" the confinement?

Holding. Yes to both; the first degree murder conviction stood. A unanimous Court (Jamal J) read unlawful confinement purposively: a person is confined when they are coercively restrained and prevented from moving about as they wish, and that restraint can continue through fear, violence and pursuit even without physical barriers. The victim, running for his life from armed pursuers, was still being coercively restrained. The confinement and the killing were part of one continuing course of domination.

The s 231(5) framework. The Court listed what the Crown must prove: (1) the accused committed or attempted a listed crime of domination; (2) the accused committed murder; (3) the accused participated in the murder in a way that made them a substantial cause of death; (4) no intervening act of another person broke that connection; and (5) the crime of domination and the murder were part of the **same transaction**. It explained that the two ways courts have described the fifth element, the **single transaction** approach from *Paré* and the **close temporal and causal connection** approach, are not competing tests. They are two ways of asking the same question.

Why it matters. It is the syllabus's modern illustration of purposive interpretation: both "unlawfully confines" and "while committing" were read in light of the provision's purpose rather than in the narrowest literal sense.

Approach to "same transaction"	What it asks
Single transaction	Are the crime of domination and the killing one continuous sequence of events, held together by the continuing illegal domination of the victim?
Temporal and causal connection	Are they close in time, and linked by something more than timing, for example because the reason for the killing arose from the domination?

BEYOND THE SYLLABUS

Strict construction and defences

Strict construction protects the accused, so it applies most naturally to offences. In *R v McIntosh*, [1995] 1 SCR 686, the Court also used it to give a defence (the former self-defence provisions) the reading most favourable to the accused. But the rule is not absolute. In *Canadian Foundation* (4.4) and in the duress cases (Topic 19), the Court narrowed statutory defences by interpretation. *McIntosh* is not on the syllabus.

4.3 (c) French and English

The *Code*, like all federal legislation, is enacted in English and French, and **both versions are equally authoritative**. Where one version is ambiguous and the other is clear, the clear version usually settles the meaning. Courts look for the meaning **shared** by both versions before turning to other interpretive tools, including strict construction.

CASE SNAPSHOT

***R v Mac*, [2002] 1 SCR 856**

Context. Mac was found with machines and materials for forging credit cards. He was charged under what was then s 369(b) (the offence is now in s 368.1) with possessing, without lawful justification or excuse, equipment "adapted and intended to be used to commit forgery." The issue was the word "adapted." In English, it can mean "suitable for" or "altered so as to be suitable for." The Court of Appeal had read it in the second, narrower sense.

Holding. In short reasons for a unanimous Court, the Court held that there was no ambiguity once the French version was consulted. That version had not been argued in the courts below. In a related provision on credit-card instruments (then s 342.01(1)(d)), the French text translated "adapted" as *modifié* (altered). In s 369(b), by contrast, it used *adapté*. Read together, the two provisions showed that "adapted" in s 369(b) meant "suitable for," not "altered." The shared meaning was "suitable for," so the Crown did not have to prove that the equipment had been modified. Because the ambiguity in the English was resolved by the French, the rule of strict construction did not come into play. The convictions were restored.

Why it matters. Cite it for the rule that an ambiguity in one official version may be resolved by the other, before any resort to strict construction.

CASE SNAPSHOT

***R v Collins*, [1987] 1 SCR 265, at para 43**

The point assigned. Section 24(2) of the Charter says evidence shall be excluded if its admission "would bring the administration of justice into disrepute." The French text says *est susceptible de déconsidérer*, which the Court read as "could" bring it into disrepute, a less demanding standard. Because both versions are authoritative and the purpose of s 24(2) is to protect the fairness of trials, the Court adopted the reading more favourable to the accused.

Why it matters. It is the syllabus's "very simple example" of the French text shaping the meaning of a legal standard. (The rest of *Collins*, including its test for exclusion of evidence, has been replaced by *R v Grant*, 2009 SCC 32, covered in Topic 24.)

BEYOND THE SYLLABUS

When the versions genuinely conflict

If the two versions are not merely unclear but say different things, and one is narrower, courts generally adopt the narrower meaning that both versions share, which in a criminal case usually favours the accused: *R v Daoust*, 2004 SCC 6. *Daoust* is not on the syllabus.

4.4 (d) The Charter as an interpretive influence

Because courts presume that Parliament intends to respect the Constitution, the Charter can shape how a provision is read even when nobody asks the court to strike it down. The syllabus's examples are *Labaye* (2.3) and *Canadian Foundation*.

The Charter also supplies the **void for vagueness** doctrine. A law is unconstitutionally vague under s 7 only if it is so unclear that it gives no sufficient basis for legal debate: it fails to mark out a zone of risk that tells citizens when they may be exposed to criminal liability, and fails to limit the discretion of those who enforce it. Courts decide vagueness only **after** interpreting the provision, using its text, purpose, the case law and other interpretive aids. A phrase that looks vague on its face will survive if interpretation can give it an intelligible core.

CASE SNAPSHOT

***Canadian Foundation for Children, Youth and the Law v Canada (AG)*, [2004] 1 SCR 76**

Context. Section 43 of the *Code* justifies schoolteachers, parents and persons standing in the place of a parent in using force by way of correction toward a child in their care, "if the force does not exceed what is reasonable under the circumstances." An advocacy group sought a declaration that s 43 violated ss 7, 12 and 15 of the Charter, arguing in particular that "reasonable under the circumstances" was unconstitutionally vague and overbroad.

Holding. The majority (McLachlin CJ) upheld s 43, after interpreting it narrowly. Read in light of its purpose, Canada's international obligations, expert evidence and social consensus, s 43 has a solid core of meaning:

- it applies only to parents, persons standing in the place of a parent, and teachers;

- the force must be for **genuine correction**: sober and reasoned, used to restrain, control or express disapproval of the child's actual behaviour, and the child must be capable of learning from it, which excludes children under two and children whose disability prevents them from understanding;
- "reasonable under the circumstances" means only **minor corrective force of a transitory and trifling nature**. It excludes corporal punishment of teenagers, the use of objects such as rulers or belts, slaps or blows to the head, and any degrading, inhuman or harmful conduct, and it excludes force that results from the caregiver's frustration or anger;
- **teachers** may not use corporal punishment at all, but may use reasonable force to remove a child from a classroom or to secure compliance with instructions.

So construed, s 43 is not vague or overbroad under s 7, is not cruel and unusual under s 12, and does not discriminate under s 15. Three judges dissented in whole or in part.

Why it matters. It shows legal technique at work: a Charter challenge prompts the Court to read significant limits into a provision, and the provision survives because of those limits. Cite it for the void for vagueness standard (an intelligible zone of risk, assessed after interpretation) and for the modern scope of the corrective force defence.

NOTE

Status of s 43

Section 43 is still in force in the current consolidation of the *Code* (September 2026), although the Truth and Reconciliation Commission (Call to Action 6) and many others have urged its repeal, and repeal bills have been introduced in Parliament. Check your current *Code*.

COMMON MISTAKE

Common mistakes on interpretation

- Jumping straight to "ambiguities are resolved in favour of the accused." Strict construction is the last step, not the first (*Paré*).
- Ignoring the French version when the English is unclear (*Mac*).
- Arguing that a provision is void for vagueness because a word such as "reasonable" is open-ended. The question is whether, after interpretation, it gives an intelligible standard (*Canadian Foundation*).
- Forgetting to check s 2 and the section-specific definitions. The answer to "is this a break and enter?" often turns on s 348(3) or s 350.

Part I review

The review brings Topics 1 to 4 together in the forms the exam uses. The Criminal exam is made up of fact-based problems, so instead of essay angles this review includes short issue-spotting drills.

Quick checks: true, false or partly true?

Answer each in two or three sentences, then compare with the suggested answer.

1. A court may convict a person for conduct that is plainly harmful even if no statute prohibits it.

False. Section 9 of the *Code* bars convictions for common law offences, with the sole exception of contempt of court. *Frey v Fedoruk* explains why: creating new crimes is Parliament's job, not the courts'.

2. Because the *Criminal Code* is a code, common law defences no longer exist. *False.* Section 8(3) preserves common law justifications, excuses and defences except where Parliament has altered them. Necessity, entrapment (*Mack*) and officially induced error (*Lévis*) are all common law defences.

3. A province cannot create an offence punishable by imprisonment. *False.* Under s 92(15) of the *Constitution Act*, 1867, a province may enforce its valid laws by fine or imprisonment. What it cannot do is create true crimes, which fall within Parliament's exclusive power under s 91(27).

4. Parliament may use its criminal law power only against conduct that is proven to harm others. *False.* *Malmo-Levine* (paras 73–79) holds that a reasoned apprehension of harm is enough, and that Parliament may protect vulnerable groups, including users themselves. The majority also held that the "harm principle" is not a principle of fundamental justice under s 7.

5. A provision requiring the accused to prove a fact on a balance of probabilities is unconstitutional. *Partly true.* Under *Oakes*, such a reverse onus infringes s 11(d) where it allows a conviction despite a reasonable doubt about an essential element. But it may still be justified under s 1; the provision in *Oakes* failed the rational connection test on its own facts.

6. A hybrid offence is treated as summary until the Crown elects. *False.* Under s 34(1)(a) of the *Interpretation Act*, a hybrid offence is deemed indictable until the Crown elects to proceed summarily.

7. Everyone charged with an indictable offence may choose trial by jury. *False.* Offences listed in s 553 are in the absolute jurisdiction of a provincial court judge, with no election and no jury. Section 469 offences are tried by jury unless both the accused and the Attorney General consent to judge alone (s 473).

8. A preliminary inquiry is available on request for any indictable offence. *False.* Since 2019, s 535 limits preliminary inquiries to offences punishable by 14 years or more.

9. Where a Code provision is ambiguous, it must be read in the accused's favour. *Partly true.* Strict construction applies only if a reasonable ambiguity remains after the provision is read in context and in light of its purpose (*Paré*), and after consulting the other official language version (*Mac*).

10. Under *Labaye*, conduct is indecent if the community would not tolerate it. *False.* The majority replaced the community tolerance standard with a harm-based test: the conduct must cause, or significantly risk, harm that threatens a value reflected in the Constitution or similar fundamental

laws, at a degree incompatible with the proper functioning of society. The community-tolerance view is the dissent's.

Issue-spotting drills

Read each snippet and list the issues before you read the suggested list. The skill being practised is spotting everything the facts raise.

Drill 1. Ravi is charged with criminal harassment (s 264), which is hybrid, with a maximum of 10 years on indictment. The course of conduct ended 13 months before the charge was laid. Ravi wants a jury, and his lawyer wants to cross-examine the complainant at a preliminary inquiry. *Issues:* whether the Crown can still proceed summarily (s 786(2): only if Ravi agrees); the consequence that the Crown must otherwise proceed by indictment; whether s 264 is in s 469 or s 553 (neither), so Ravi can elect under s 536(2.1), including a jury; the s 11(f) jury right (maximum of 10 years); the Crown's power to require a jury if Ravi elects judge alone (s 568, since the maximum exceeds five years); no preliminary inquiry, because the maximum is under 14 years (s 535).

Drill 2. A new *Code* offence makes it a crime to "knowingly promote a harmful dietary supplement to a person under 18," and provides that anyone who sells a listed supplement to a minor "shall be presumed to have known it was harmful unless the contrary is proved on a balance of probabilities." *Issues:* validity under s 91(27) (prohibition, penalty and a health-protection purpose; protection of a vulnerable group, *Malmo-Levine*); the meaning of "promote," checking definitions and the French version; a s 7 challenge (vagueness of "harmful"; overbreadth); the reverse onus under s 11(d) and s 1 (*Oakes*), including whether an evidential burden would do; the remedy (sever the presumption).

Drill 3. Mila walks into her neighbour's unlocked garage, which is attached to the house by an internal door, and takes a bicycle worth \$900. *Issues:* whether this is break and enter: "break" (s 321) and the deemed break for entry through an opening without lawful excuse (s 350(b)(ii)); whether the garage is part of a "dwelling-house" (s 2 includes a building within the curtilage connected by a doorway or covered passage), which affects the charge under s 348(1)(d) and its maximum of life imprisonment; the alternative charge of theft under \$5,000 (s 334(b)), a s 553 absolute jurisdiction offence if the Crown proceeds by indictment.

Practice problems

NOTE

How to use these problems

The fact patterns are original and differ from the Exam Simulator questions. Where a problem sets out a provision, treat it as law for the purposes of the problem, as the exam sometimes does. Time yourself, write in full sentences and paragraphs, then compare. The model answers show the depth and style an examiner rewards; do not memorize them as scripts.

Problem 1: The drone near the jail (about 20 minutes)

Assume Parliament has added the following section to the *Criminal Code*:

128.1 (1) Every person who, without lawful excuse, operates a remotely piloted aircraft within 500 metres of the perimeter of a prison is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than five years; or (b) an offence punishable on summary conviction. (2) A person found within 500 metres of the perimeter of a prison in possession of both a remotely piloted aircraft and its control unit is presumed, in the absence of evidence to the contrary, to have operated the aircraft within that distance.

The French version of subsection (1) makes it an offence where a person, without lawful excuse, *fait voler* (causes to fly) a remotely piloted aircraft within the same distance.

Dara, a hobby photographer, spent the afternoon flying her drone over farmland four kilometres from the Riverside Correctional Centre, a provincial jail. On her drive home, she stopped at a coffee shop 350 metres from the jail's perimeter fence. Police patrolling the area saw the drone in its case on the back seat and the controller, switched on and showing a live camera image of the car's interior, on the passenger seat. Dara told them she had switched the controller on to check the battery before packing up and had forgotten to turn it off. The drone never left the car. She is charged under s 128.1.

Is Dara guilty? In your answer, also say whether she can have a jury trial.

Model answer

Issue. The main issue is whether Dara "operated" a remotely piloted aircraft within 500 metres of a prison. That turns on the meaning of "operates," on whether the Riverside Correctional Centre is a "prison," and on the effect of the presumption in s 128.1(2). A secondary issue is the mode of trial.

Rule. The words of s 128.1 must be read in their entire context and in their ordinary sense, in harmony with the scheme and purpose of the provision. Both language versions are equally authoritative, and an ambiguity in one may be resolved by the other (*R v Mac*). Strict construction in the accused's favour applies only if a reasonable ambiguity remains after that exercise (*R v Paré*). Section 2 of the *Code* defines "prison" to include a common jail and any other place where people charged with or convicted of offences are usually kept in custody.

Application. The Riverside Correctional Centre is a provincial jail, so it falls within the s 2 definition of "prison," and Dara was within 350 metres of its perimeter. Those circumstances are established.

The difficulty is "operates." In English, the word is open to two readings. It could mean flying the aircraft. It could also be read more broadly to cover managing or working the system, which might include switching on the controller. The French version is not ambiguous: *fait voler* means causing the aircraft to fly. The meaning shared by both versions is therefore the narrower one: the aircraft must be flown within the prohibited distance. That reading also fits the provision's evident purpose. The mischief is an aircraft in the airspace near a prison, where it can deliver contraband or conduct

surveillance. A drone packed in its case in a parked car poses neither risk, and nothing in the purpose requires stretching the English word. Because the two versions, read together, resolve the ambiguity, there is no need to rely on strict construction, although it would point to the same result.

On that reading, the Crown cannot prove the *actus reus* directly. The drone never left the car. The Crown may try to rely on the presumption in s 128.1(2). Dara was within 500 metres and had both the aircraft and its controller, so the basic facts are proved. But the presumption operates only "in the absence of evidence to the contrary." That wording places only an evidential burden on Dara: she need only point to evidence capable of raising a reasonable doubt, and she does not have to prove anything on a balance of probabilities (Topic 23). The police observations themselves supply that evidence. The drone was in its case, and the controller was showing the inside of the car, not an aerial view. Her explanation about the battery check fits those facts. The presumption is displaced, and the Crown is left with no evidence that the drone flew near the prison.

Conclusion. Dara is not guilty. Read with its French version and in light of its purpose, s 128.1(1) requires that the drone be flown within 500 metres of the prison, and the evidence rebuts the presumption that she did so. On mode of trial: the offence is hybrid. If the Crown proceeds by indictment, the maximum is five years. The offence is not listed in s 469 or s 553, so Dara may elect trial by judge and jury under s 536, and s 11(f) of the Charter guarantees her a jury, because the maximum punishment is five years. If the Crown proceeds summarily, the trial is before a provincial court judge alone. No preliminary inquiry is available in either case, because the maximum is less than 14 years (s 535).

Problem 2: The ticket reseller (about 15 minutes)

Between January and February of last year, Imogen sold tickets to a sold-out concert through an online marketplace to four buyers, who paid her \$1,900 in total. The tickets did not exist. In early March of last year, one buyer, Theo, posted her name online and demanded a refund. Imogen sent him a private message: "Delete that post or you won't live to see the concert." The police traced her only recently, and in June of this year they charged her, in separate informations, with fraud not exceeding \$5,000 (s 380(1)(b)) and uttering a threat to cause death (s 264.1(1)(a)). Fraud of that value is punishable on indictment by up to two years, or on summary conviction. Uttering a threat to cause death is punishable on indictment by up to five years, or on summary conviction (s 264.1(2)).

The Crown would prefer to proceed summarily on both charges. Imogen wants a jury on both, and a preliminary inquiry on the threat charge. Advise Imogen.

Model answer

Issue. Four questions arise: whether the Crown can still proceed summarily on either charge; whether Imogen can have a jury on each charge; whether she can have a preliminary inquiry on the threat charge; and whether the Crown could insist on a jury she does not want.

Rule. Both offences are hybrid. Summary proceedings must be instituted within 12 months of the time the subject matter arose, unless the prosecutor and the accused agree (s 786(2)). An indictable offence listed in s 553 is in the absolute jurisdiction of a provincial court judge, with no election and no jury; the list includes fraud where the value does not exceed \$5,000. For other indictable offences not listed in s 469, the accused elects the mode of trial (s 536(2.1)). Section 11(f) of the Charter guarantees a jury trial where the maximum punishment is five years or more. A preliminary inquiry is available only for offences punishable by 14 years or more (s 535). The Attorney General may require a jury trial despite the accused's election, but not for an offence punishable by five years or less (s 568).

Application. Both offences were complete by early March of last year, and the charges were laid in June of this year, about 15 months later. The Crown can therefore proceed summarily only if Imogen agrees. That gives her real leverage. Summary proceedings would cap her exposure at two years less a day on the threat charge (s 787(1)), but would also mean no jury. If she refuses to consent, the Crown must proceed by indictment on both charges.

On the fraud charge, proceeding by indictment does not give Imogen a jury. The total value is \$1,900, so the charge falls within s 553(a)(iv), and a provincial court judge has absolute jurisdiction. She has no election. That is consistent with s 11(f), because the maximum on indictment is two years, below the five-year threshold.

On the threat charge, proceeding by indictment gives Imogen an election. Uttering threats is in neither s 469 nor s 553, so under s 536(2.1) she may choose a provincial court judge, a superior court judge alone, or a judge and jury. Because the maximum is exactly five years, s 11(f) guarantees her the right to a jury: the Charter threshold is "five years or a more severe punishment." The same figure works in her favour in the other direction. If she chose a judge alone, the Crown could not override that choice, because s 568 does not apply to offences punishable by five years or less. She cannot, however, have a preliminary inquiry: the maximum is well below 14 years, so s 535 does not apply. She will have to rely on disclosure (Topic 26) to learn the Crown's case.

Conclusion. The Crown cannot proceed summarily on either charge without Imogen's consent. If she withholds it, the fraud will be tried by a provincial court judge without a jury, whatever she prefers. On the threat charge, she can elect a jury trial, and the Crown cannot force one on her if she chooses otherwise. No preliminary inquiry is available on either charge. Whether to consent to summary proceedings is a tactical choice: it would lower her maximum exposure on the threat charge, at the cost of the jury she wants.

Problem 3: The card-reader amendment (about 25 minutes)

Payment-card "skimming" has become common, and prosecutions often fail because the Crown cannot prove that an accused knew a device had been tampered with. Parliament responds by enacting the following hypothetical section (alongside the existing offence in s 342.01):

342.9 (1) Every person who possesses a card-reading device, knowing that it has been modified to copy data from payment cards without the cardholder's knowledge, is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

(2) A person found in possession of three or more card-reading devices is presumed, unless the person establishes on a balance of probabilities that the devices were not so modified or that the person did not know of the modification, to have possessed them knowing that they had been modified as described in subsection (1).

Police search Juniper Electronics, a small repair shop that services payment terminals for local restaurants. They find six terminals awaiting repair. Two have been fitted with skimming components. The owner, Hal, says he had not yet opened them and had no idea. He is charged under s 342.9. The Crown relies on subsection (2).

Hal's lawyer wants to challenge the provision. Advise on the challenge and on its likely effect on Hal's prosecution.

Model answer

Issue. The issues are whether s 342.9 is valid federal criminal law, whether the presumption in s 342.9(2) infringes the presumption of innocence in s 11(d) of the Charter, whether any infringement is justified under s 1, and what remedy would follow.

Rule. A federal law is valid criminal law if it contains a prohibition, backed by a penalty, directed at a legitimate criminal law purpose; a reasoned apprehension of harm is enough (*Marmo-Levine*, paras 73–79). Section 11(d) requires the Crown to prove every element beyond a reasonable doubt. A provision that requires the accused to disprove an element on a balance of probabilities infringes s 11(d), because it permits a conviction despite a reasonable doubt (*Oakes*). The government may justify the infringement under s 1 by showing a pressing and substantial objective, rational connection, minimal impairment, and proportionality between the benefits and the harms (*Oakes*).

Application. *Validity.* Section 342.9 prohibits possessing tampered card readers, imposes up to 10 years' imprisonment, and aims to protect the public from fraud and the theft of financial information. That is a classic criminal law purpose, so the section is a valid exercise of s 91(27). The challenge must be under the Charter.

Section 11(d). Knowledge that the devices were modified is an essential element of the offence in s 342.9(1). Subsection (2) presumes that knowledge once the Crown proves possession of three or more devices, and the accused can escape only by **establishing** the contrary on a balance of probabilities. On these facts, Hal could raise a reasonable doubt about his knowledge (the terminals were unopened customers' devices awaiting repair) and still be convicted if the judge is not persuaded, on a balance of probabilities, that he did not know. That is exactly the vice identified in *Oakes*: s 11(d) is infringed.

Section 1. The presumption is prescribed by law. Its objective, overcoming the difficulty of proving knowledge in skimming prosecutions and so deterring a widespread fraud, is likely to be accepted as pressing and substantial.

Rational connection is the weakest point, as it was in *Oakes*. Possessing three or more card readers does not, as a matter of logic or experience, suggest knowledge that any of them has been tampered with. Repair technicians, retailers, restaurants and suppliers routinely hold several terminals for entirely innocent reasons. The basic fact (possession of three or more devices) does not rationally support the presumed fact (knowledge of modification). Just as the possession of a small quantity of narcotics said nothing about an intention to traffic in *Oakes*, possession of a handful of terminals says nothing about knowledge of their contents.

Even if a court found some connection, the provision would fail minimal impairment. Parliament had a less intrusive option that would meet much of its objective: an evidential burden, requiring the accused only to point to evidence raising a reasonable doubt about knowledge. It could also have limited the presumption to devices found in circumstances that genuinely suggest fraud, such as devices installed in the accused's own point-of-sale system. Finally, the deleterious effects are severe: the risk of convicting innocent people of an offence carrying 10 years' imprisonment outweighs the prosecutorial convenience the presumption provides.

Remedy. Under s 52(1), a law is of no force or effect to the extent of its inconsistency with the Charter. The inconsistency lies only in subsection (2), and subsection (1) can stand without it, so the appropriate remedy is to strike down s 342.9(2) and leave the offence in place.

Conclusion. The challenge should succeed. Section 342.9(2) infringes s 11(d) and cannot be justified under s 1, mainly because possessing several card readers is not rationally connected to knowledge that they were modified, and a less intrusive evidential burden was available. Without the presumption, the Crown must prove beyond a reasonable doubt that Hal knew the two terminals had been modified. On the facts as they stand (unopened devices awaiting repair, owned by customers), it is unlikely to be able to do so, unless it has other evidence linking Hal to the tampering.

Problem 4: The stunt in the parking lot (about 15 minutes)

Tariq runs a video channel built on "harmless pranks." One Saturday afternoon, he walks along a residential street trying the doors of parked cars. When he finds an unlocked car, he gets in, sits in the driver's seat for about a minute while filming himself, sticks a small cartoon sticker on the inside of the windshield, and leaves. He enters four cars this way. He takes nothing and does not start any engine. One owner spends 20 minutes scraping the sticker off with a razor blade, leaving faint marks on the glass.

The Crown asks you, as a junior prosecutor, whether Tariq can be charged with (a) the common law offence of conduct likely to cause a breach of the peace, (b) break and enter with intent under s 348(1) (a), or (c) mischief under s 430(1).

Model answer

Issue. The question is whether any of the three proposed charges is legally available on these facts.

Rule. Under s 9 of the *Code*, no one may be convicted of a common law offence, other than contempt of court (*Frey v Fedoruk*). Section 348(1)(a) makes it an offence to break and enter a "place" with intent to commit an indictable offence in it; s 348(3) defines "place" exhaustively as a dwelling-house; a building or structure other than a dwelling-house; a railway vehicle, vessel, aircraft or trailer; or a pen or enclosure for fur-bearing animals. Under s 430(1), a person commits mischief who wilfully (a) destroys or damages property, (b) renders property dangerous, useless, inoperative or ineffective, or (c) or (d) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or with a person in that use or enjoyment. Under s 429(1), "wilfully" includes causing the result knowing that it will probably occur, while reckless whether it occurs.

Application. (a) *The common law charge.* This is not available. Conduct likely to provoke a breach of the peace is exactly the theory the Supreme Court rejected in *Frey*, and s 9 now forbids convictions for common law offences. Whatever one thinks of Tariq's conduct, only Parliament can make it criminal.

(b) *Break and enter.* This fails at the first element. A car is not a "place" under s 348(3). The definition lists particular kinds of vehicle (railway vehicles, vessels, aircraft, trailers) and does not include motor vehicles. That omission is deliberate, so it cannot be cured by purposive reading. It would also be hard to prove an intent to commit an indictable offence inside, as Tariq's plan was to film himself and leave a sticker.

(c) *Mischief.* This is the realistic charge, at least for the car with the scraped windshield. Mischief requires wilful damage to property or wilful interference with its use or enjoyment. Sticking an adhesive decal on a windshield that must be scraped off, leaving marks, is arguably **damage**: it impaired the glass and required work to restore it. The fault element is met, because Tariq intended to stick the decal to the glass and must at least have foreseen that removing it would take effort. Alternatively, entering and occupying a stranger's car, even briefly, arguably **interferes with the owner's lawful enjoyment** of the property. That argument is weaker, because the owners were not present, and courts are reluctant to read mischief so broadly that trivial intrusions become crimes. The strongest count is the car whose owner had to scrape off the sticker. For the other three cars, the Crown should look for similar evidence of lasting marks. If the stickers peeled off cleanly, prosecution for mischief is harder to justify. The value involved is well under \$5,000, so if the Crown proceeds by indictment, the charge falls within the absolute jurisdiction of a provincial court judge (s 553); a summary prosecution is more likely.

Conclusion. The common law charge is barred by s 9 and *Frey*, and break and enter is unavailable because a car is not a "place" under s 348(3). Mischief under s 430(1)(a) is available, and strongest for the car left with marks on the windshield; for the other cars, it depends on whether the stickers caused damage or real interference with the owners' use of their property.

Part I summary

- **Offences come only from statute** (s 9, *Frey*). The common law survives in defences (s 8(3)), in the meaning of statutory words (*Jobidon*), and in parts of procedure.
- **Parliament alone creates true crimes** (s 91(27)) and controls criminal procedure; the provinces run the courts, prosecute most offences and may create regulatory offences enforced by jail (ss 92(14), 92(15)). A valid criminal law has a prohibition, a penalty and a criminal law purpose; a reasoned apprehension of harm is enough (*Marmo-Levine*, paras 73–79).
- **The Charter limits criminal law** by striking down offences (s 7: arbitrariness, overbreadth, gross disproportionality, vagueness, per *Bedford*), procedures (s 11(d) and reverse onuses, per *Oakes*), defences and punishments, and by shaping interpretation (*Labaye*, *Canadian Foundation*).
- **Classification drives procedure**: indictable, summary or hybrid (hybrid is deemed indictable until the Crown elects). Check the penalty (s 787(1)), the 12-month limit for summary proceedings (s 786(2)), ss 469, 553 and 536 for mode of trial, s 535 (14 years or more) for preliminary inquiries, and s 11(f) (five years or more) for the jury right.
- **Interpretation**: definitions first (s 2, Part and section definitions such as ss 348(3) and 350); then text, context and purpose (*Paré*, *Sundman*); then the other official language (*Mac*, *Collins*); then the Charter. Strict construction is the last resort, used only if a reasonable ambiguity remains.

Coming up: Part II, The Elements of a Criminal or Regulatory Offence

Part II takes the method from Topic 4 and applies it to the building blocks of every offence, following syllabus Topics 5 to 8. It begins with the **actus reus**: acts and statutory conditions (*R v D(J)*), voluntariness, possession (*York*, *Terrence*, *Morelli*), consent (*Jobidon* again, *J.A.*, *Mabior*), causation (*Nette*, *Williams*, *Maybin*, *Strathdee*) and omissions (*Peterson*, *Browne*). It then turns to subjective and objective fault, and to regulatory offences.

END OF THE FREE SAMPLE

That was Part I. Four Parts to go.

Parts II to V cover the other 28 syllabus topics, from the elements of an offence to defences, police powers, bail and sentencing, in the same depth, including the 2026 bail and delay reforms.

PART II • TOPICS 5–8

The Elements of a Criminal or Regulatory Offence

Voluntariness, possession, consent, causation (*Nette, Maybin*) and omissions; intent, knowledge, wilful blindness and recklessness; marked departure (*Beatty*); and regulatory offences after *Sault Ste Marie*.

PART III • TOPICS 9–12

Extensions of Criminal Liability

Parties under s 21 (*Briscoe*), common intention, counselling (*Hamilton*), attempt and conspiracy, and the liability of organizations under ss 22.1 and 22.2.

PART IV • TOPICS 13–22

Select Criminal Defences

Mental disorder, automatism (*Stone*), intoxication after *Brown* and the 2022 s 33.1, self-defence (*Khill*), necessity, duress and the *Aravena-Willis* split, provocation, entrapment and mistake of law.

PART V • TOPICS 23–32

The Adversarial Proceeding

Burdens and the roles of counsel, search and detention (*Grant, Le*), arrest and bail under the 2026 reforms, disclosure and records, juries, *Jordan* delay under the new Part XV.1, sentencing and appeals.

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