**Examining Case Studies**

For the remainder of this module, you will be examining specific cases, both as precedents and as illustrations. A precedent is a case that, having already been decided, sets down a set of rules for judging similar cases.

Any case decided by the Supreme Court of Canada, our highest court, is a binding precedent. In other words, before rendering a judgment, a judge must consider the case and compare it to a previous one of similar nature. If they are similar, the judge will have to render judgment in a similar manner. All other courts in the land must follow the legal interpretations in these rulings. Similar rulings by the highest court of appeal in a province are binding within that province, but they are only instructive precedents in other jurisdictions. In fact, any case may be considered an ***instructive*** precedent and provide guidance for judging similar cases. Collectively, precedents are known as ***case law***. The rulings in precedent-setting cases from across Canada may be accessed on the [***Canadian Legal Information Institute***](https://www.canlii.org/en/index.html) <https://www.canlii.org/en/index.html> website.

Illustrative cases, mostly fictional, have been included in this module to clarify legal concepts and to allow you to apply your understanding of the law. When considering these cases, you will be asked to follow a particular method of case analysis. The method is intended to simulate the steps in an investigation and prosecution while breaking the problem-solving process into manageable steps. Using it should help you apply your understanding of the law in an orderly and logical way. The case analysis method consists of five steps.

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| 1. List the facts This stage is the equivalent of the investigation of an incident by police. Like them, you have to establish what happened. Read the case and separate the facts related to the offence from statements of opinion, irrelevant details and assumptions about what happened. Continually ask yourself, "What happened?" List the answers in point form in the order they appear in the case. |
| 2. Review the relevant law Once the facts have been established, the Crown Prosecutor and the police must review the law in light of the facts to decide if a charge will be laid. At this point in the method, you too should refer back to the law and any discussions of it, to make sure you are clear on the required actus reus and mens rea and any special provisions of the Criminal Code. This will help you establish exactly what it is you have to try to prove or disprove in the prosecution and defence arguments, respectively. |
| 3. Argue the prosecution If a charge is laid as a result of Step 2, the Crown Prosecutor will have to make the case to a judge or judge and jury in court. It must be proven **beyond a reasonable doubt** (that is, to such an extent that no other explanation is reasonably possible), that the accused committed the actus reus of the crime while having the requisite mens rea. In this stage of the case analysis, you must do the same. |
| 4. Argue the defence In this step, you will simulate the defence by arguing the innocence of the accused. The duty of the defence counsel is to provide the accused with the best and fullest defence possible under the circumstances. In court, the defence must make arguments that show the accused could not have done the actus reus and/or did not have the mens rea of the crime. At this time, the defence may also introduce evidence to prove that one of several standard recognized defences, such as mental disorder or self-defence, applies. You will learn more about these later in the course. If it is not possible to argue for the innocence of the accused, defence counsel may argue that the defendant is guilty, but of a lesser offence. The defence may also try to introduce mitigating factors as an explanation for the actions of the accused and a reason to impose a lighter sentence. |
| 5. Render judgment with reasons The final stage in a trial is to render judgment. At that time, the judge or jury will weigh the two sets of arguments presented in court and decide on guilt or innocence. In open court, the accused will then be declared guilty or innocent and reasons for the decision will be given. By this point in a case analysis, you will have carefully weighed the arguments on both sides and you too will have to make a decision on guilt or innocence and provide reasons for your decision. |

Step 2 is built into the lessons. As you read the relevant Criminal Code sections and the commentary, you will in effect be reviewing the law; however, you will be asked to summarize this review in the assignments to demonstrate your comprehension. Your ability to do Step 4 will be restricted until recognized standard defences have been covered. In the meantime, you will have only limited defence arguments available to you; essentially that the accused didn't commit the actus reus and/or didn't have the mens rea, or that the defendant is not guilty of the charge but of a lesser included offence.

**Standard Defences**



No one can be held responsible for committing a crime if it cannot be proven that they committed the actus reus, even if mens rea exists. In defence terms, this means that an **alibi** (a known fact that proves that the accused could not have committed the actus reus) provides a complete defence to a charge.

In addition, those who cannot be held criminally responsible (those considered **doli incapax**) include children under twelve, spouses (in some instances) and the mentally challenged, if they cannot appreciate the nature and consequences of their actions.

When considering the offence of assault, one must explore if **consent** was involved in the case. In games and sports such as hockey or wrestling, it is possible to consent to what might otherwise be considered a criminal activity. Wrestling, for example, would clearly be assault if it were not for the fact that the participants consent to the activity in order to entertain and make a living.

The defence of **provocation** may be considered when comparing murder and **manslaughter**. Murder may be reduced to manslaughter if there is enough provocation to cause a reasonable person to lose control and if the act was committed in the heat of the moment without a cooling off period. Provocation does not eliminate criminal responsibility, but it does reduce the penalty. It is considered a partial defence as opposed to a complete defence, such as having an alibi.

# Standard Defences (Continued)

There are a number of other recognized defences to an accusation of criminal activity. Here are a few that we will examine using case studies.

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| **Defence of Mental Disorder** This defence is perhaps more commonly known as the defence of insanity. It provides that no one shall be held criminally responsible if they have insufficient mental ability or suffer from a disorder of the mind that makes it impossible for them to understand the criminal nature of what they are doing. To be found not guilty by reason of mental disorder does not mean that one is released. Generally, such a person is held for treatment. | **Defence of Self-Defence** The right to defend one's self has long been recognized in law. The defence is as simple as that. If the circumstances necessitated an otherwise criminal act, for example assault, in order to defend one's self from harm, it is an acceptable defence. The qualification here is that no more force than is reasonable under the circumstances is allowed. For example, if someone attacked you, you would be justified in hitting your assailant to stop the attack. If your blow knocked the assailant out, and in your anger you proceed to kick the unconscious person, you would have exceeded the limits of reasonable force and would be guilty of assault. |
| **Defence of Intoxication**Drunkenness or drug impairment would fall under this heading. This defence does not mean that one can get drunk or high and commit a crime with no fear of consequences. At best, it is only a partial defence allowed to those so intoxicated that they do not have the ability to clearly form the necessary intent of a crime. The rules on drunkenness, established in case law over the years, are such that one would have to be drunk almost to the point of insanity for this defence to be accepted. Drug impairment, being a more recently recognized defence, does not have the same body of case law to define it; however, it is similar to drunkenness in that it affects the defendant's ability to form the necessary intent. Intoxication is, at best, a partial defence. For example, if someone, in an advanced stage of intoxication, uses a bottle they have in their hand to attack another who has angered them, it may be held that they were too intoxicated to form the specific intent of assault with a weapon. The court might hold that the weapon was used only because it was already in hand and find that the accused had only the intent of assault, not assault with a weapon. | **Defence of Automatism** The sleepwalker's defence is perhaps one of the most peculiar defences recognized by law and one of the toughest for people to accept as valid. In essence, automatism refers to a reflex action such as that which occurs when the doctor taps your knee with a mallet. There is nothing you can do to stop your leg from jumping as a result. It is a reflex action. In some circumstances, people can be in a state whereby they do things without consciousness, as when they sleepwalk or are delirious. In specific circumstances, the law recognizes that this behaviour occurs and that consequently the necessary mens rea of a crime is absent even though the person committed the actus reus. None of the conditions which are accepted as causing automatism are self-induced, as is often the case with intoxication. |
| **Defence of Necessity** The law recognizes that there may be circumstances that compel a person to act in an otherwise illegal manner to avoid an even greater evil. For example, a person without a driver's licence may be compelled to drive if someone has had a serious accident and that person is the only person around to drive the victim to a hospital. Necessity only applies, however, if there is no other option. In the above example, if there were a phone available, the unlicensed driver would not be allowed to plead necessity against a charge of driving without a licence because an ambulance could have been called. For necessity to be accepted as a defence, the illegal action must be taken to avoid a greater evil, there must be no other option, and the person must stop the action at the earliest possible moment. | **Defence of Mistake**People have been known to make mistakes and, in some instances, this is a defence. In a British case from 1889, R. v. Tolson, a woman, whose husband was reported as lost at sea when his ship went down with all hands, was found not guilty of bigamy when her husband returned after she had remarried. She had believed in a mistaken fact. There was no criminal intent. This does not excuse ignorance of the law. The defence is one of mistake of fact only. A variation on this is the defence of honest mistake. A person, out shopping, may pick up a small object then be waylaid by a friend for conversation. While talking, the person may put the item in their pocket or shopping bag and forget about it when they leave the store. If charged with shoplifting, they may argue honest mistake as a defence. The issue in such a situation would be one of the individual's credibility. |
| **Defence of Duress/Compulsion by Threats** A person may be forced into an illegal action and this is recognized as a defence. To be accepted as a defence, the threat must be one of death or grievous bodily harm and the person making the threat must be present when the offence is committed so that the threat is immediate. There is a list of serious offences for which the defence of duress will not be accepted. | **Defence of Entrapment** Entrapment is an allowable defence when the authorities entice someone to commit an offence which otherwise would not have happened. It does not mean that police sting operations are illegal. It only means that the police cannot persuade or force people to commit a crime and then hold them criminally responsible. If an undercover police officer asks a suspected pusher to sell drugs and the pusher does so, this is not entrapment. |
| **Defence of Double Jeopardy** This is the defence used if one has already been tried on the same facts or charge. No one can be tried twice for the same offence unless a court of appeal grants a new trial on grounds such as new evidence. In legal terms, such a case would be considered **res juducata** (already judged), and the defence, on behalf of the accused, would immediately enter a plea of either **autrefois acquit** (already tried and acquitted) or autrefois convict (already tried and convicted.) In either case, **the charge would be dismissed immediately and there would be no further action.** |  |

## **Supplemental Reading**

Sections on defences are scattered throughout the Criminal Code. If you wish to have a look at the actual wording of the law, check out the Code. Search for and review sections 16, 17, 19, 25–33, 34–37, 38–42, 43–45, 150.1, 273.2, 284 and 286 specifically.

Some defences may always be raised, e.g. that the accused did not commit the crime. Others are specified in the Criminal Code and may only apply with limitations or in specific circumstances, e.g. sections 34 to 37 on self-defence.

# Check Your Understanding: Standard Defences

Read the definition below and match the defence it describes. Once you have completed this, copy the chart below and send it to me in an email. I will attempt to get back to you ASAP.

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| \_\_\_\_\_this defence recognizes that some people cannot be held criminally responsible for their actions, eg: young children  \_\_\_\_\_this defence recognizes that in the heat of the moment, people may lose control over their actions. It may affect sentencing.  \_\_\_\_\_this is the defence used if one has already been tried on the same facts or charge  \_\_\_\_\_this defence provides that no one shall be held criminally responsible if they have insufficient mental ability or suffer from a disease of the mind that makes it impossible for them to understand the criminal nature of what they are doing  \_\_\_\_\_a person may be forced into an illegal action and this is recognized as a defence  \_\_\_\_\_a sleepwalker may use this defence. The defence refers to reflex actions such as that which occurs when the doctor taps your knee with a mallet  \_\_\_\_\_this law recognizes that there may be circumstances that necessitate a criminal act, for example assault, in order to defend one’s self from harm  \_\_\_\_\_this defence recognizes that authorities may entice someone to commit an offence, which otherwise would not have happened  \_\_\_\_\_the law recognizes that there may be circumstances that compel a person to act in an otherwise illegal manner to avoid an even greater evil  \_\_\_\_\_the issue in this type of defence would focus on the individual’s credibility  \_\_\_\_\_drunkenness or drug impairment would fall under this defence | 1. doli incapax 2. provocation 3. automatism 4. intoxication 5. duress/compulsion by threats 6. mental disorder 7. self-defence 8. entrapment 9. mistake 10. necessity 11. double jeopardy |

**Standard Defences: Case Studies**

The following cases illustrate the various defences covered in this section.

Read each of the cases shown below. Read each case carefully and try and answer the questions. Record your answers. After answering the questions fully, review the Expert Opinion below the cases and read the analysis carefully.

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| **Case #1**  Federico suffers from a schizophrenic disorder. A psychiatrist has been treating him for years and he is on medication to help control his symptoms. Federico leads a reasonably happy family life and works regularly in the corner store. His symptoms are rarely obvious, but occasionally he suffers paranoid delusions that people in certain uniforms are conspiring to harm him. One day two uniformed police constables drop into his store and Federico becomes irrationally frightened. He gets agitated and fears for his life, punching an officer in the eye when she asks him if he is OK. Federico ends up at the police station charged with assault.   1. Restate the facts relevant to the charge 2. Argue the prosecution's case. 3. How might a defence of mental disorder be used here? 4. What might be the verdict and why? 5. If found not guilty by reason of mental disorder, what might Federico's penalty be? |
| **Case #2**  Jesse heads to a club on Friday night after work. She has a few drinks with her friends, a few more with their friends, a couple for the road and one or two to chase the earlier drinks down. By this time, she is falling-down, bleary-eyed drunk. When the bartender cuts her off, Jesse flies into a rage and starts throwing glasses at him, jumps over the counter and attacks him with a jagged piece of broken glass. The bouncer restrains Jesse and she tries to attack him, too. The bartender calls the police and Jesse is arrested for assault with a weapon.   1. Restate the facts relevant to the charge. 2. Argue the prosecution's case. 3. Using a defence of intoxication, argue the defence case. 4. What will the verdict likely be and why? |
| **Case #3**  Joan attends a party. The other guests consume huge amounts of alcohol and are totally impaired. Joan, on the other hand, is moderately sober because she is not much of a drinker. She is nonetheless impaired. One of the guests suddenly clutches his chest, complains of heart pains and proceeds to pass out. Everyone panics for a moment until someone shouts, "Phone 911!" Unfortunately, the party is at an isolated summer cottage, out of cell-phone range. There are no neighbors, everyone is impaired, and no one knows what to do. They decide they must take the sick man to the hospital immediately and Joan, as the most sober, is elected to drive.  The decision made, the unconscious man is loaded into a car and Joan gets behind the wheel. She starts out, being as careful as she can but also trying to be quick. Her haste attracts the attention of a police cruiser along the remote road. When the officer pulls her over, Joan tells him, "Thank goodness you're here!" and explains the situation to him so he will understand why she is driving under the influence. The officer takes over the car and rushes the man to hospital while his partner escorts them with sirens blaring. Once the patient is admitted, the police officer demands and gets a breathalyser test from Joan. She fails the test and the officer then arrests her for impaired driving.   1. Restate the facts relevant to the charge. 2. Argue the case for the prosecution. 3. Argue the defence case using the defence of necessity. 4. Render judgment and give your reasons. |

Expert Opinion Answers

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| 1. **Expert Opinion Case #1:** 2. 1. The facts are:    * Federico suffers from paranoia.    * He sometimes fears that uniformed people are conspiring to hurt him.    * He has been receiving psychiatric treatment for years.    * He rarely behaves out of the ordinary.    * Two police officers dropped into the store where Federico works.    * Federico, in fear for his life, attacked an officer.    * Federico was taken into custody and charged with assault. 3. 2. The prosecutor will argue that all the elements of assault have been met. Federico, because of his distrust of uniformed people, intended to attack the police officer. In other words, he had the mens rea of assault and his attack certainly constitutes the actus reus of the offence. Federico should therefore be found guilty. 4. 3. The defence will argue that Federico should not be held criminally responsible by reason of **mental disorder**. He has an identifiable disorder of the mind, as proven by his years of psychiatric treatment. The disorder sometimes leads him to believe in a set of facts that are not in tune with reality. Consequently, Federico cannot always appreciate the nature and consequences of his actions. In this case, he would genuinely believe he was acting in self-defence when in fact there was no need to defend himself at all. 5. 4. Federico meets the criteria for a defence of mental disorder to be accepted and he will not likely be held criminally responsible as a result. He does have a disorder of the mind as required and it does cause his failure to be able to appreciate the nature and the consequences of his actions. 6. 5. Federico will not likely serve time in jail, but he may be considered a danger to the public and detained for treatment. The period of detention is unspecified to allow sufficient time for effective treatment. However, there is a limit to the length of time a committal order may stay in force in order to ensure a person is not detained for an unjustifiable amount of time. A committal order is reviewed annually to ensure no one is detained beyond the time needed to effect treatment. If there is no threat, the accused may be discharged or discharged with conditions. |
| 1. **Expert Opinion Case #2** 2. 1. The facts include:    * Jesse had a minimum of eight drinks.    * Jesse was so drunk she was unsteady on her feet and bleary-eyed.    * The bartender cut her off.    * She threw glasses, jumped over the counter, and attacked the bartender with a piece of glass.    * The bouncer stopped her. She attacked the bouncer.    * The police were called and Jesse was charged with assault with a weapon. 3. 2. Assault with a weapon is complete if someone physically attacks another person with a weapon and without consent. There is no question of consent here as the bartender called the police. According to the *Criminal Code*, a weapon is anything that is used as a weapon. A piece of broken glass used in an attack certainly qualifies. As for intent, the prosecutor would argue that it is pretty difficult to unintentionally leap over a bar in order to attack someone; almost as hard as it is to unintentionally prepare for that attack by breaking glasses in order to get a weapon to carry into the fight. Consequently, the prosecutor would argue, that all elements of the offence are present. There was a weapon, there was an attack, there was no consent and there was evidence that it was intentional. 4. **3. Intoxication** is at best a partial defence. There are, indeed, offences for which self-induced intoxication is not recognized as a defence at all. This, however, is not one of them. Therefore, the defence would concede that the assault took place and that Jesse intended to assault the bartender. The argument that Jesse was too intoxicated to form the specific intent of assault with a weapon would be the thrust of the defence. The glass ended up in her hand simply because it was readily available after her glass-throwing tantrum. 5. 4. Jesse will probably be found guilty of assault, but not assault with a weapon because of the amount of alcohol she had consumed and the degree of intoxication the evidence indicated it caused. Her advanced state of intoxication rendered her incapable of forming the specific intent to attack the bartender with a weapon. In her drunken state, she was simply striking out in rage. |
| 1. **Expert Opinion Case #3** 2. 1. The key facts of the case are:    * Everyone was at a party in an isolated cottage with no phone access.    * Everyone was impaired to some degree.    * A guest had a medical emergency.    * Joan was elected to drive the guest to the hospital.    * The police stopped her. She explained the situation and an officer took over the driving.    * Once the guest was safely under medical care, Joan failed a breathalyser test and was arrested for impaired driving. 3. 2. The prosecution would argue that there was no question of Joan's guilt. Joan was seen driving by the police and admitted she was driving while impaired. This was confirmed by the breathalyser test. The test certificate would be entered into evidence as proof of her impairment. Police testimony would confirm she was driving. 4. 3. The defence would argue that Joan acted out of **necessity** and that she met the three conditions generally demanded for necessity to be accepted as a defence: She had no other alternative but to break the law. If she had not, a greater evil would most likely have resulted; the guest could have died. Finally, she broke the law only as long as it was necessary. She turned over the driving to someone else as soon as she had the option. 5. 4. Joan may be found not guilty by reason of necessity. The test of necessity, as outlined in the defence, is the standard that must be met. Joan fulfilled all three parts. |